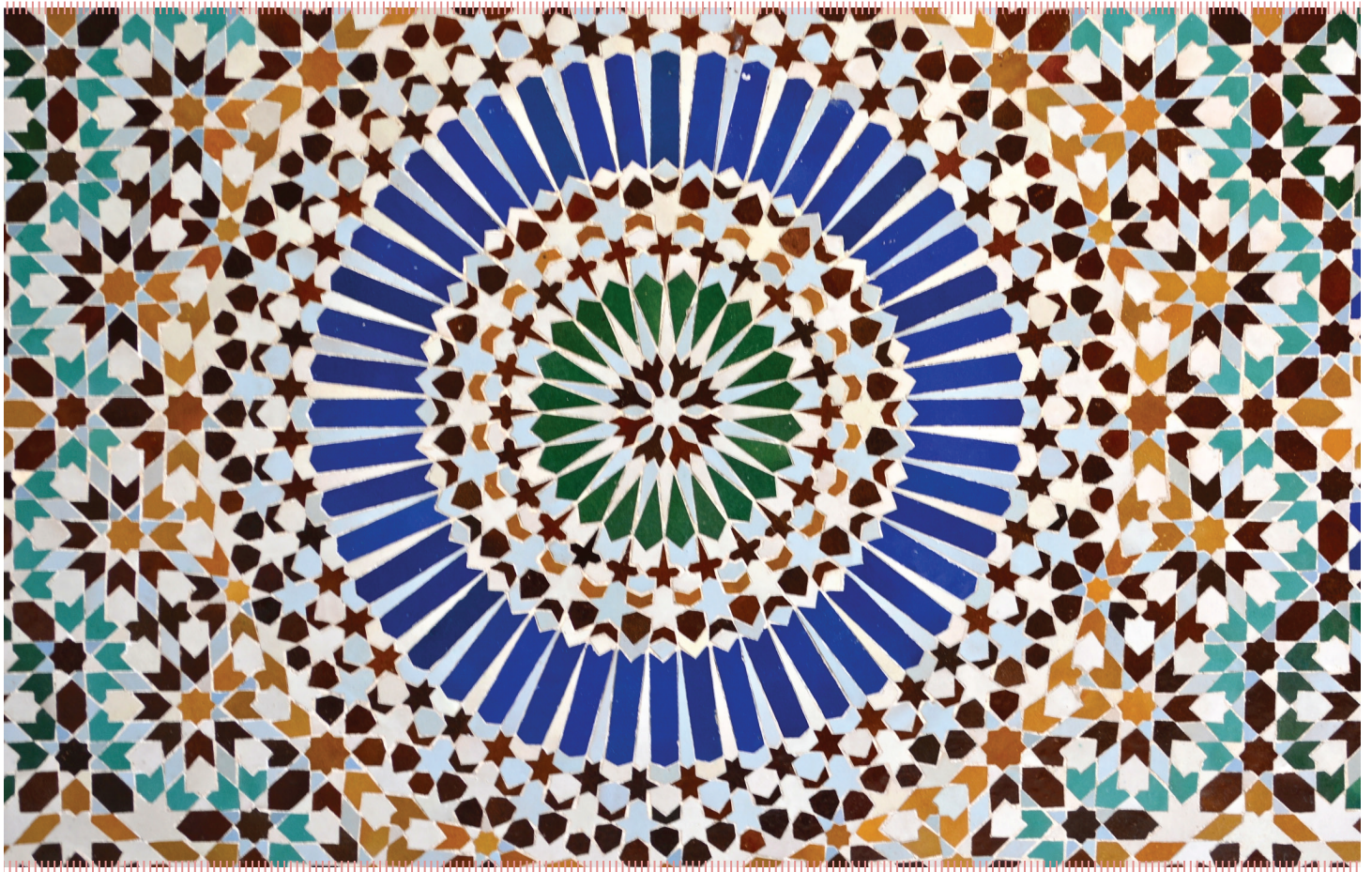


The Rights of Religious Minorities in Predominantly Muslim Majority Communities

Legal Framework and a Call to Action Marrakesh, Morocco

25th-27th January 2016



Framework speech by His Eminence
Shiekh Abdallah Bin Bayyah





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SPECIAL EDITION OF THE MARRAKECH
DECLARATION CONFERENCE
HELD BETWEEN 25TH-27TH JANUARY 2016





In the name of God, the Compassionate, the Merciful

Framework Paper for the Conference

Abridgment of The Rights of Religious Minorities in Muslim Majority Communities Its Legal Framework and a Call to Action

Shaykh Abdallah bin Bayyah

January 25th, 2016
Marrakech

Introduction

Praise be to God who made the religion of Islam a source of peace for the people of the earth, made His messenger ﷺ a gifted mercy for all the worlds, and made the rulings of His religion wisdom, mercy, and benefit for all of creation; in addition, prayers and peace be upon our master Muhammad and his brothers from amongst all the Prophets and Messengers, upon his family and companions, and upon those who carry the guidance until the Day of Judgment.

Noble, virtuous, and honorable Excellencies, we meet here today on this pure land, this ancient, deeply rooted, historical land, a land that has known the most exalted forms of conviviality among various races, tongues, and religions, the land of the noble Moroccan kingdom, a land of tradition and creativity. All of this is embodied in the city of Marrakech, which, in less than two decades, will be celebrating its millennial anniversary. We are gathered under an exalted aegis, that of the Prince of the Believers, His Majesty, King Muhammad VI, may God protect, help, and grant him success.

We are gathered here to meet in light of deteriorating circumstances that the Muslim nation is unfortunately experiencing, as well global destabilization displayed in unrelenting violence that has resulted in much bloodshed, igniting the flames of hatred and raising the intensity of the violence. Our meeting is also in light of circumstances in the Arab and Muslim majority worlds that are not only painful for them but also cause us pain, as well as circumstances that perplex the intelligent and confound even the wise in spite of their wisdom. Here, I am speaking of ignorant fools, who audaciously arrogate to

themselves an unjust authority to desecrate houses of worship, bombing and destroying them, and heinously declaring sanctified blood permitted.

To be sure, we have not gathered here to apologize on account of anyone for a sin that we did not commit or for behavior that we do not condone. We have not gathered here to justify anything or to sign a blank check for the aggressors and conspirators on this earth. We have gathered in this environment, in the midst of this chaos and conflagration, to prove that there is one who is indeed innocent of a crime committed. This innocent one I am referring to here is the religion of Islam, whose own name is derived from the root of the Arabic word for “peace.”

The philosopher Nietzsche stated, “Civilizations get sick, and their doctors are the philosophers.” I would qualify his statement by adding that while civilizations do get sick, their doctors are actually the religious scholars and social scientists. This is the reason we are gathered here today—to discuss this crisis so that we may diagnose the illness and work on a cure and put forward approaches that can address these many, diverse crises. Such crises include the prevalence of excommunication, mutual injustice, sectarianism, revenge killings, falsified histories and partial truths, claims against the unknown, and interpretations that lead to absurd violence, even when dressed in the garment of piety.

The situation demands of us a discussion about this crisis in general and on the state of civil strife; we have discussed this in the past and will continue to do so. However, here, we are going to focus on only one problem, which is that of the harm now afflicting religious minorities who live in Muslim majority countries, although, in reality, the harm has consequences that imperil everyone. Indeed, it often affects the majority more than the minority, afflicting upon them even greater injury. This necessitates that the scholars descend from their ivory towers to reach the people and to expound sound understandings and a correct approach, as well as to answer questions regarding the complex contemporary conditions. This is especially important in light of the enfeebled spiritual authority in Muslim societies and subsequent protestations against the temporal powers resulting from these complexities. This has all resulted in certain people of “piety” engaging in the most heinous behaviors. It is well known that religiosity is instinctual to the human, like eating, procreating, and acquiring property. However, the expression of any natural desire, if not restrained by reason and the will to secure benefit—which, in their noblest forms, surely do not contradict religious and ethical values—negates the very purpose of the desire, resulting in its opposite. For instance, in answering the natural instinct for food, a man may eat something that is poisonous and end up destroying himself.

Perhaps among the most compelling of today’s questions is the question of non-Muslim minorities living in majority Muslim countries. Addressing their plight is a clear obligation that demands our attention, for Muslim societies today are in dire need of a new reading of society’s varied elements and complexities given the context of the current conditions and in the light of sacred law. Realistically, this new reading must work within the framework of our international context and observe the demands of reason that aims for a sound restoration. This impetus arises from the obligation to fulfill the rights of others and is buttressed by the aims and imports of the sacred law, which is founded upon universal principles that are rooted in benefit and wisdom, and upon the

need to engender peace and remove exploitation. It is also in order to further examine the current conditions in light of which rulings are appropriate due to their legal rationales being clear, their conditions fulfilled, and the absence of their preventatives determined. Such legal considerations require envisioning consequences and future probabilities.

A group of intellectuals and scholars worked with us in our response when we began this initiative in Nouakchott in 2012. His Excellency, the Minister, Ahmad Tawfiq, was at the forefront of those who answered this call, along with a delegation of enlightened Moroccan scholars. We continued the process of this project in the Tunisian Republic where we held a conference concerning the same conflict in 2013. We were hoping for a greater and more influential conference that would include representatives from the various religions, sects, and minorities. So, when God blessed us with the Forum for Peace in Muslim Societies, which we founded in the UAE, our resolve increased, and our bond with the Minister continued to strengthen until his Majesty, the Prince of the Believers, Muhammad the VI, issued a royal decree that the Moroccan kingdom would host this momentous affair.

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The Charter of Medina, the Universality of the Qur'an, and the Basis of Citizenship

The Principles and Values Upon Which the Charter of Medina Was Based

The life of Prophet Muhammad ﷺ serves as an exemplary model of observing covenants and adhering to them accordingly. Consistent with the values of Islam's sacred law—whose summation is mercy, wisdom, justice, and a strong commitment to the commonweal—scripture explicitly proclaims dignity for every human being, affirms Divine Mercy for every creature, declares justice to be a right of every person, and then places pardon as the complement to justice.

The Charter of Medina affirms that to the extent that people commit to shared ethical values, they will find harmony, cooperation, and positive outcomes. Likewise, to the extent that they do not adopt such values, such that they have no transcendent view of life, their ability to interact with others will suffer. This is because such a person's interactions will be based on his own personal benefit or, alternatively, he will adopt a negative worldview based on absolutes so that, unknowingly, he will come to think that he himself is absolute. Such a person has no scriptural qualifiers to regulate his actions, or any specific exceptions to general principles, or any concept of weighing benefits and harms not to mention the universal objectives of sacred law and its maxims to lead him to sound conclusions. Hence, such a person beats the drums of war without restraint. This is what happens with fundamentalism, no matter what religious façade it dons or the beliefs

that it touts, manifesting itself in violent groups and with a type of rhetoric that spews out animosity and xenophobia. As for values of reason, justice, balance, and moderation, they give life to our humanity and engender love. We must revive the values of reconciliation and forgiveness, and reject conflict and subjugation; we must embrace peace and harmony, and shun discord and divergence.

Discord and conflict are not Islamic values, even though some people attempt to conceal them with a veneer of religiosity. Rather, they are Hegelian values that originated in Europe. It was Hegel who believed that destruction of the old must precede construction of the new, that a conflictual thesis/antithesis dialectic engenders a new synthesis.

As for Islamic principles and values, they teach that engendering trust and love are the basis of improving society. The Charter of Medina includes the most central values and is, in fact, an illustration of them. The principles of the sacred law and scripture bear witness that in the Charter of Medina, the Prophet ﷺ stipulated responsibilities and secured rights for each demographic in Medina. It thus serves as a great basis for envisioning relations between Muslims and other communities, for its contents neither contravene scripture nor contradict the aims and purposes of sacred law. Every article it contains is merciful to creation, reaffirms wisdom, calls for justice, or secures the commonweal for all—not only for Muslims but for every citizen therein, regardless of religion or race. It prevents the ills of animosity and bloodshed and safeguards life, property, and freedom—particularly freedom of religion for all peoples.

What are the Values of Islam in Dealing with Others?

1. Kindness

“He does not forbid you to deal kindly and justly with anyone who has not fought you for your faith nor driven you out of your homes: God loves the just” (Qur’an, 60:8).

2. Honor

It has a divine origin and is a heavenly gift that every single person is born with.

“We have honored the children of Adam and carried them by land and sea; We have provided good sustenance for them and favored them specially above many of those We have created” (Qur’an, 17:70).

3. Cooperation, Solidarity, and Rectification

“Help one another to do what is right and good; do not help one another towards sin and hostility” (Qur’an, 5:2). “Do not corrupt the earth after it has been set right” (Qur’an, 7:56). “Do not seek to spread corruption in the land, for God does not love those who do this” (Qur’an, 28:77). “God knows those who spoil things and those who improve them” (Qur’an, 2:220).

4. Reconciliation

“Make things right between you” (Qur’an, 8:1).

5. Human Fraternity and Interaction

“People, We created you all from a single man and a single woman, and made you into races and tribes so that you should get to know one another. In God’s eyes, the most honored of you are the ones most mindful of Him; God is all-knowing, all-aware” (Qur’an, 49:13).

This is the basis of interaction between peoples, not dominance as is found in the Hegelian dialectic that is predicated upon perpetual dominance based on the “master/slave” theory.

6. Wisdom

“Whoever is given wisdom has truly been given much good, but only those with insight bear this in mind” (Qur’an, 2:269).

7. Commonweal

“We will not deny those who benefit their rewards” (Qur’an, 7:170).

8. Being Just with Others

“God commands justice, doing good, and generosity toward relatives, and He forbids what is shameful, blameworthy, and oppressive. He teaches you so that you may take heed” (Qur’an 16:90).

9. Mercy

“It was only as a mercy that We sent you (Prophet) to all people” (Qur’an, 21:107). *“My mercy encompasses everything”* (Qur’an, 7:156).

10. Peace

Lastly, there is peace, which is an even higher principle and value, loftier, and, in reality, the ultimate objective and goal of all the values listed above. *“O you who believe, enter wholeheartedly into submission to God, and do not follow Satan’s footsteps, for he is your sworn enemy”* (Qur’an, 2:208). *“But if they incline towards peace, you (Prophet) must also incline towards it”* (Qur’an, 8:61). It is for the very purpose of preserving peace that fulfilling treaties and covenants is considered a sign of true faith. Peace is the basis of compromise, trust, and coexistence between individuals and societies, irrespective of people’s beliefs or socioeconomic status. *“O you who believe, fulfill your obligations”* (Qur’an, 5:1). *“If they seek help from you against religious persecution, it is your duty to help them, except against people with whom you have a treaty; God sees all that you do”* (Qur’an, 8:72).

The Authenticity of the Charter of Medina

Early historians¹ agree that the Charter of Medina was drafted by the Prophet ﷺ upon his arrival to Medina, before the Battle of Badr. The charter incorporated all segments of society that, according to historic records, were present in Yathrib, which

¹ These historians include Ibn Ishāq, Ibn Hishām, al-Wāqidī, Abū ‘Ubayd al-Qāsim bin Salām, Ibn Zanjawayh, al-Balādhri and others.

would later be known as Medina. At the same time, some hold that the Charter was drafted in two phases: the first was upon the Prophet's arrival to Medina when all the Jews pledged their allegiance to him, and the second was after the Battle of Badr. Some contemporary historians posit that it was drafted in several stages. The first position is the correct one, and God knows best.

In any case, for our purposes, the document is authentic in its origin and verified in the books of hadith, of biographical literature of the Prophet ﷺ, and of history. Imam al-Shāfi'ī said, "I do not know of a single dissenting biographical historian on that fact that the Prophet ﷺ made peace with the Jews without levying a covenant tax." Ibn Qayyim said,

It is just as al-Shāfi'ī said, and that is because around Medina there were three major Jewish tribes: Qaynuqā', Naḍir, and Qurayzah. The tribe of Qaynuqā' and Naḍir were allies of the Khazraj clan of Medina, while the Qurayzah tribe was an ally of the Aws clan of Medina. So, when the Prophet ﷺ arrived in Medina, he made a treaty with them and others as a reaffirmation of their pre-existing alliances, just as he did for the other alliances already in place with other polytheists around Medina. His treaty with the Jews additionally included their military aid in the case of war.

Ibn Ishāq said,

Upon his arrival to Medina, the Prophet ﷺ composed a treaty along with the Migrants and the Helpers, which secured peace with the Jews and ensured their religious freedom and economic independence. This treaty placed conditions upon them, and in it the Jews stipulated conditions upon the Muslims as well.

Ibn Ishāq also said, "Uthmān b. Muḥammad b. al-Akhnas b. Shurayq told me, 'I took this document from the family of 'Umar b. al-Khaṭṭāb [the second Caliph of Islam] along with his book of charity wherein 'Umar maintained records for laborers.'"

Al-Wāqidī said,

'Abd Allāh b. Ja'far b. al-Ḥārith b. Fuḍayl told me that Muḥammad b. Ka'b al-Qurazī [i.e. from the tribe of Qurayzah] related to him that when the Prophet ﷺ arrived to Medina, all the Jews of Medina made a pact with him, and a scribe penned the document. The Prophet ﷺ eventually entered into a treaty with every group and its respective allies. In doing so, he established security between them and set conditions for the treaty, one of which was, "They will not display any sign of insurrection." Ibn Ka'b thus corroborates the contents of the document and shows that the Prophet ﷺ entered into a treaty with all of the Jewish tribes. This is what all biographical historians agree upon, and whoever studies the prophetic history and hadith literature will, without a doubt, be aware of this.

Pluralism in the Charter of Medina

The Charter of Medina is an example of contractual citizenship governed by a treaty or constitution, as is evident from Articles 25 and 37. Article 25 states, "The Jews of Banī 'Awf are a community alongside the Believers. The Jews have their religion, and the

Muslims theirs.” Article 37 states, “The Jews are responsible for their own financial needs, and the Muslims are responsible for their own financial needs. They will join together to fight against anyone who attacks the people under this charter.” Thus, this document is the foundation for an inclusive multicultural, multi-religious society in which all individuals enjoy the same rights and shoulder the same responsibilities, which are outlined in a just constitution, confirming that they are indeed one nation.

If the first two edicts² exclusively become the subject of juristic study utilizing historical case studies from a time quite different—in time, place, and type of people—the result will be fighting and killing. However, the third edict, which guarantees the community’s unity and religious freedom and pluralism, has not been the subject of much study despite its deep importance owing to the fact that it is the original state of affairs for the Muslim community and is related to an intrinsically multi-faith society.

As we have previously discussed, our methodology entails compiling all relevant source texts before declaring one to be more reliable and another to be abrogated or unsubstantiated. This compilation of source texts, which is the first step of the jurist’s process before any weighing thereof, can be illustrated in the attempt to reconcile two source texts (whether both from the Qur’an, or both from the Prophet’s Way [Sunnah], or one from each, or from the works of any master jurist). This can be by way of specifying a general edict, qualifying an unqualified statement, or allegorically interpreting the apparent meaning in order to reconcile the meaning of one with the other. It is for this reason that compiling all of the relevant source texts must precede any process of interpretation, for each text may be for a particular situation.

Today, there are some terribly unfortunate circumstances for religious minorities in some Muslim majority countries. For this reason, we propose to put forth a new contract with old roots that will respect their private lives and under which they can enjoy the freedom to practice their faiths. In this manner, they can be included in managing the affairs of their society, in accordance with their rights and duties, to be outlined by a reasonable constitution that seeks harmonious living, the rule of law, and redressing political grievances with fairness and equity.

The Universal Charter

The Charter of the United Nations and its Amendments, which include a declaration of human rights and international treaties, are considered universally accepted by all nations. Previously, we made mention of a just constitution, one that will prevent oppression against minorities and will not deprive the majority of its right to live in accordance with its values based upon the principle, “There is to be no harm and no reciprocation of harm.” Such a constitution has a human dimension that is confirmed by the religion of Islam, acknowledged by reason, and also has an ethical dimension.

This citizenship has taken on a contractual form within a pluralistic frame, what Habermas has called, “National Constitutionalism.” This is a novel concept that describes

² There are various edicts that inform Muslim interaction with other communities. One is a hadith that is specific to the polytheists in the Sacred Precinct of Mecca and states that the Prophet ﷺ was commanded to fight them. The second edict scholars discuss is the verse in the Qur’an, which instructs the Muslims to levy the covenant tax (*jizyah*) on the Byzantines. The third edict for scholarly consideration is the charter of Medina.

equitable relationships among individuals within a group that live on the same land. This group is not necessarily bound by a shared ethnicity, historical narrative, or religion. Their framework is their constitution, shared values, and a system and laws that outline the responsibilities and rights of its citizens. It is a cooperative society comprised of individuals who are united by a contractual agreement in such a manner that even the newest member obtains the same rights and responsibilities as its oldest member. It is a citizenship that rises above factionalism without negating each group's respective rights. This is so that they may live in harmony and conviviality, thereby enabling collective prosperity.

The contemporary context, with its eventual universality, calls for us to reflect for a moment to confront the many realities, including the following:

- Islamic states are no longer imperial; rather, they have also entered into the framework known as the “nation state.”
- Allegiances are no longer religious in nature; rather, they are compound and complex allegiances that are controlled by interdependent factors, each of which cannot be separated from the others.
- Individualism and the dissolution of collective associations have become widespread such that the group no longer determines the actions of the individual who now deems himself independent of the group. As a result, new issues have emerged affecting the family, economics, and even politics.
- International law, agreements, and treaties now frame the relationship with “the other.”
- As a result of globalization, multicultural, ethnic, and religious societies now exist in every country. This has resulted in there being no other option, despite the apparent freedom of choice, than to engage “the other” contractually, culturally, ideologically, economically, and politically.
- The culture of freedom exists as an effective and influential factor in our world today.
- The establishment of a system of human rights exists as a mechanism for the peaceful existence of minorities among majorities.

All of the above mentioned realities put forth the Charter of Medina as the best model to serve as a sound basis for contractual citizenship in Muslim societies. More than that, what further clearly makes it the best choice is that the values it embodies concur with those of the times that we are in now, as it contains the same values with which we engage the universals of our time in order to actualize our shared humanity. Hence, it will marginalize the elements of alienation and expulsion. The Medina Charter is an agreement that was reached without war, fighting, violence, or compulsion; it is an agreement that all of its parties arrived at voluntarily due to their commitment to the shared principles contained therein, within the sphere of positive cooperation, the context of their conditions, and the various elements of the Medinan society. It was a step towards the realization of social peace based upon their mutual recognition of rights and responsibilities and of accepting the demands of

their diversity, their various religious affiliations, benefits, and lifestyles. This was coupled with the existence of a judicial system that all of them could refer back to in order to redress disputes and disagreements.

The Covenant of Medina established a historically unprecedented model that displaced the tribalism that the Arabs held sacrosanct. It established an integrationist philosophy within the context of a state that had been previously unknown to the Arabian Peninsula. Although the concept of a state did exist in the minds of many of the rulers on the Peninsula, it was not a very mature concept and had been influenced by the form it took within the two great powers of that time, Byzantine and Persia.

The Charter of Medina guaranteed the rights of citizenship for everyone living in Medina. This meant that simply residing in the land was one of the foundations of citizenship. This was in addition to allegiance, which we may examine further, for it enables groups and demographics of society to cooperate and work together as opposed to clashing and fighting.

Among the most important features of human rights within the Medina Charter were the recognition of diversity and the establishment of freedom of religion by asserting the rights of each group irrespective of their faiths. The Charter also established the principle of equality in rights and responsibilities in the civic life of Medinan society clearly delineating the components of society, both human and tribal, declaring their equality within the framework that enabled the perpetuity of society. In this way, every segment of society was equal to the other segments, and equity was established among them whenever possible. It thus left no place for a philosophy of subjects and sovereigns. The Charter also clarified the obligations of every segment of society, first and foremost in relation to its own constituents, and secondly, towards the rest of that community in general, within a framework of justice and the commonweal, whether in times of peace or war, and thirdly, towards neighboring groups, utilizing the values of the Medina Charter pertaining to religious, ethnic, and tribal diversity within the context of two interrelated principles: the principle of justice, forming the minimum with respect to engagement, and the context of benevolence, the highest calling within the context of human interaction. The requirement concerning justice is that the concept of a minority be absent from the discourse; rather, all discourse would pertain solely to a united nation.

Conclusion

In conclusion, we would like to state the following to the world:

- 1) Enough of bloodshed and fighting one another for survival, as that will lead only to annihilation; instead, let us all cooperate for survival.
- 2) The accusation that Islam oppresses minorities has no basis in sacred law or in history. History itself testifies that there was no religion except that minorities experienced calamities living amongst them at some point in history and in some place on the earth. That lesson necessitates that all of us work together and that we should all be members of the “majority,” for if

justice reigns, equality is guaranteed, and mercy spreads; then the concept of “majority or minority” will no longer have any significance.

- 3) These tragedies, which have afflicted minority communities, have also afflicted the majority communities without discrimination in the harm caused, whether by killing, displacement, conflagration, or expulsion. So let us not debate about it because these are the actions of criminal groups that have stolen the name of Islam, the term “caliphate,” and the identity of the *ummah* (Muslim community). All of these terms are falsely used by them, and falsehood was built upon them. In actuality, their real name should be “the terrorist organization.”
- 4) The Eastern Christians exist to remain, and they were born to live. They are one of the oldest roots of the Middle Eastern tree. They are so deeply rooted that they cannot be uprooted, no matter how strong the wind blows or how misguided the passions of their enemies may be.
- 5) We are working to collaborate with academics and scholars of various faiths on developing a historical charter that may serve as a basis for contemporary conceptualizations of citizenship.
- 6) We want to say that constitutional citizenship, which has no concept of majority or minority that would lead to infringing upon of the rights of others, is a citizenship committed to a mutuality that ensures freedom and guarantees societal peace. Such is a sound foundation, accepted by both religion and the pursuit of the commonweal.
- 7) We want to say to peoples of all faiths: Let us establish an alliance for peace—spiritual and psychological peace, the kind that inspires us to do good in the world. Allow me to quote the theologian, Hans Küng, who said, “There can be no peace in this world without peace among the religions.”
- 8) We want to improve the conditions of people everywhere.
- 9) We want to end these killings and other atrocities, and to declare in no uncertain terms, “No!” to terror and terrorism.
- 10) We want this aggression and oppression to stop, and we want the people’s consciences to awaken so that people can be given their rights and have their grievances redressed.
- 11) We want to say THANK YOU with brilliant capital letters to the *Emir al-Muminin*, the Prince of Believers, His Majesty, King Muhammad VI, may God exalt and protect him, and may God maintain the Kingdom of Morocco as an exemplar of peace and joyful conviviality.

In conclusion, may we live in peace, and peace be upon you and God’s mercy and blessings.



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