

Ashlea Hellmann

The Convergence of International Human Rights and Sharia Law

Can International Ideals and Muslim Religious Law Coexist?

Ashlea Hellmann

INTRODUCTION

Ali al-Nimr was a seventeen-year-old Saudi Arabian high school student when he was arrested in 2012 for allegedly taking part in protests, which were calling for social and political reform in the country's Qatif province. At his trial two years later however, which many claimed lacked basic due process rights, he was convicted of multiple more serious charges, including belonging to a terror cell, attacking police with Molotov cocktails, incitement, and stoking sectarianism. He has remained incarcerated during this entire process, but this is not the only penalty. His ultimate penalty is decapitation, after which his headless body will be strung up in a public crucifixion.¹

As barbaric and incredulous as his fate sounds, Al-Nimr's plight is unfortunately just one of many stories which have cast a recent international spotlight. As conversation on the topic has continued to grow, the focus has been narrowed to a group of countries, whose religiously driven laws have been central in guiding their choice of punitive actions. These appalling stories of punishment as well as exploration into their criminal justice system have given rise to many questions as to the amount of attention human rights issues are being afforded in countries that practice Sharia law.

To many Muslims the Qur'an is the Magna Carta of human rights; it shows great concern to freeing human beings from the bondage of traditionalism, authoritarianism, tribalism, racism,

sexism, slavery or anything else that prohibits or inhibits human beings from actualizing the Qur'anic vision of human destiny.² However, there is considerable debate surrounding the incompatibility of application between the Sharia on the one hand and human rights norms on the other.

The purpose of this paper is to offer a discourse into the interaction between Sharia law and the principles embodied in international human rights laws. Part I provides an overview of how the practice of Sharia law developed in Muslim-dominant countries, as well as how different variations and degrees of Sharia have arisen and are utilized by different regions and countries. Part II examines the competing laws by offering a brief overview of the applicable international human rights protocols that are called into question by the application of Sharia law in criminal punishment and comparing it to the standards that the Muslim community both claims to apply and the systems of punishment countries applying Sharia law countries to their criminal punishment systems actually implement. Part III then seeks to offer suggestions as to whether countries who claim to follow the practice of Sharia law have or can find a level of compatibility in their criminal laws with international human rights standards with regards to humane treatment.

I. SHARIA LAW: ITS ORIGINS AND VARIATIONS

A. Where does Sharia Law come from?

The term “Sharia law” is commonly used when referencing the legal systems of predominantly Islamic countries. However, it is often misunderstood by many as to how Sharia is formed and what it actually encompasses. Sharia law is the product of a combination of two

sources: the language taken from religious texts and the supplementing interpretations of these texts. The prominent sources of religious text in Islam are the Qur'an and the Sunnah, which contains the teachings of the Prophet Muhammad.³ Sharia, means “path” in Arabic, and is a “body of rules that God revealed to men in the sacred texts of Islam.”⁴ Muslims consider obedience to these wide-ranging collection of ethical and legal principles to be a crucial religious duty.⁵ As such, these religious texts serve to authorize the rules and regulations that create and govern not only legal aspects of these countries, but a comprehensive way of Muslim life.⁶ The Sunnah of Muhammad includes his specific words (*Sunnah Qawliyyah*), habits, practices (*Sunnah al Fiiliyyah*), and silent approvals (*Sunnah Taqririyyah*). According to Muslim belief, Muhammad was the best exemplar for Muslims, and his practices are to be adhered to in fulfilling the divine injunctions, carrying out religious rites, and molding life in accord with the will of God. Instituting these practices was, as the Quran states, a part of Muhammad's responsibility as a messenger of God.⁷

While the texts of these scriptures are often the main sources cited when referring to Sharia law, fewer than 100 of the Qur'an's 6,236 verses deal with actual legal issues, such as family or criminal law.⁸ At its core, these scriptures of the Qur'an only requires Muslims to follow three basic principles in their political system: 1.) The political system should be consistent with the teachings of Islam; 2.) the masses should be obedient to the political authority of the rulers; and 3.) the political system should function on the basis of mutual consultation of the participants.⁹ The principles essentially act to create an outline of a political system wherein the Qur'an and Sunnah would be supreme and the details of the process are left to Muslims to carve out in accordance with the needs of the time, so long as those processes do not violate the Islamic Sharia.¹⁰ As a result, in the 1,400 years since the Qur'an was written, Muslim history

has played a significant role in interpreting how these texts are applied to Islamic law.¹¹ To aid in this process, *Fiqh*, a form of Islamic jurisprudence, has also been developed through the juristic opinions of Islamic jurists, known as *fuqahaa*, or judges, known as *qadis*¹² in order to help determine how the Qur'an and the Sunnah should be applied in the creation of modern Sharia law. The practice has aided in creating the unique legal structure of current laws in Muslim countries, one that is unlike any of the legal system that are recognized by countering Western civilizations.

B. How applying the same sources resulted in many variations of criminal law

Sharia law is applied to state laws, in at least some form, in 53 different Muslim countries as well as a number of non-Muslim countries. However, the term Sharia is often used in a broad, sweeping manner. Upon closer examination, the term has clearly come to stand for a variety of different things to those who make the laws in the large spectrum of Muslim-dominant countries. Sharia law has generally been incorporated into, or removed from, political systems under one of three broad methods:

1. In the approximately twenty-two (22) Muslim countries of Albania, Azerbaijan, Bosnia and Herzegovina, Cameroon, Chad, Gabon, Guinea-Bissau, Guinea, Kazakhstan, Kyrgyzstan, Mali, Mozambique, Niger, Senegal, Sierra Leone, Tajikistan, Turkmenistan, Turkey, Tunisia, Togo, and Uzbekistan, the government has declared the law under their Constitutions to be “*completely secular*” in nature, and Sharia has no role in the legal process.¹³
2. A “*dual legal system*” in which the government applies secular law, however practicing Muslims may still opt to bring any familial and financial disputes to the Sharia courts for resolution. While this method is practiced in the majority of Muslim countries, the exact reach of the jurisdiction of the Sharia courts varies from country to country. Typically however, the law covered usually includes marriage, divorce, inheritance, and guardianship. The approximately thirty-two (32) countries that practice this form include Algeria, Comoros, Djibouti, Gambia,

Libya, Morocco, Somalia, Bahrain, Bangladesh, Brunei, Gaza Strip, Jordan, Kuwait, Lebanon, Malaysia, Oman, and Syria.¹⁴

3. Muslim countries where Islam is the official religion and Sharia law has been declared to be a source, or even the only source, of the law, practice a “*classical Sharia*” system, creating a sort of “government under God.” The fifteen (15) countries that implement this form of Sharia law include: Afghanistan, Egypt, Iran, Iraq, certain regions in Indonesia, the Maldives, Malaysia, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Sudan, United Arab Emirates, and Yemen.¹⁵ In these countries, Sharia law has a high degree of influence on the entire legal system, including the areas of family and criminal law.¹⁶ In Pakistan, Iran, and Iraq, it is also forbidden to enact any legislation that is antithetical to Islam.¹⁷

As each country tried to reconcile its local customs with the law prescribed by Sharia religious text, the determination as to how far Sharia law reached began to vary. The exact extent of Sharia law began to be determined by the Islamic school of thought that controlled the area, be it the Sunni schools (Hanabali, Maliki, Shafi’I and Hanafi) or Ja’fari, the Shiite school of thought.¹⁸ Each group varies in the weight they apply to religious sources and the *Fiqh* determinations, from which Sharia law is derived. For example, Hanbali is often considered to be the most orthodox sect, and is practiced in Saudi Arabia and by the Taliban, while Hanafi is known for being the most liberal, and is dominant in Central Asia, Egypt, Pakistan, India, China, Turkey, the Balkans, and the Caucasus.¹⁹ The Ja’fari school is most notably practiced in Shia-dominant Iran.²⁰

C. Why certain variations of Sharia have drawn opposition by the International Human Rights Community

While the domestic relations areas of marriage and divorce have shown to be the most commonly used areas of Sharia law, the treatment of women in these countries has only drawn a portion of the negative media attention. In contrast, the majority of Muslim-dominant countries

implement little to no aspects of Sharia law, and have criminal penal systems that function much like their Western counterparts. However a small number of Muslim-dominant countries do prescribe to a criminal system completely guided by Sharia law retain a penal system that is very different from much of the rest of the international community. It is these Muslim countries' application of Sharia to their criminal law systems that has attracted the most media attention. The international criticism often stems not from the use of the system itself however, but human right supporters have noted that the harshness and severity of the punishments that are proscribed for many crimes under this system do not seem to fall in line with the standards established by the international community. Videos showing gruesome beheadings and newscasts playing stories of those who were executed for seemingly minor infractions have created much criticism by human rights supporters.

Many scholars and leaders who voice support for the use of Sharia law have argued that, like many of the legal systems of the rest of the world, systems which implement Sharia law has systems that are based on an inherent "respect for justice, protection of human life, and dignity."²¹ In fact, many Islamic countries have demonstrated this by creating criminal law systems that interpret Sharia law in a way that meets this standard, or even by completely eliminating Sharia from their criminal systems. However, for other countries who adhere to a much stricter version of Sharia law, the punishments proscribed by this application of Sharia Law have been argued by many to be completely incompatible with the idea of "respect for justice, protection of human life, and dignity." While a 2013 Pew poll conducted in thirty-nine countries found strong civilian support within for the use of these often harsh punishments for crimes such as theft, adultery, and conversion away from Islam,²² many others, Islamic and non, have concluded that the use of these forms of punishment ultimately mean that traditional Sharia

criminal law cannot possibly fit into ideals of human rights that been adopted by much of the international community.

II. THE CONFLICT: CRIMINAL LAW UNDER SHARIA VS. INTERNATIONAL HUMAN RIGHTS IDEALS

A. International law's stance on human rights in regards to criminal punishment

1. Stance on Inhumane Treatment

On 26 June 1945, in San Francisco, California, 50 of the 51 original member countries signed the United Nation Charter, and established the intergovernmental organization that would seek to promote human rights.²³ Such a promise to act in good faith to promote and observe human rights was one that was set out early in the Charter. The Preamble to the Charter states:

“We the Peoples of the United Nations determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom...”²⁴

In perseverance of achieving these aims, The Universal Declaration of Human Rights, adopted in 1948, sought to recognize the basic rights and fundamental freedoms that are inherent to all human beings, and in doing just that, it has generally been agreed to be the foundation of international human rights law.²⁵ Following this Declaration, a series of treaties were developed to give some symbol of force to the rights being proclaimed.²⁶ The broadest, the International

Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, along with the Declaration, serve to create the International Bill of Rights.²⁷

Two of the most important articles to examine when looking at the compliance of criminal punishment with human rights are Articles 7 and 10 of the International Covenant on Civil and Political Rights. Article 7 bans any torture or other cruel, inhumane or degrading treatment, to those deprived of their liberty, essentially allowing prisoners to retain the same conditions that have previously been protected for free persons.²⁸ Article 10 compliments this promise in stating that “any person deprived of their liberty shall be treated with humanity and dignity.”²⁹ The article adds additional impositions on member states, including: the separation of prisoners in pre-trial detention from those already convicted, the separation of accused juveniles from adults, with the goal of bringing them before trial speedily.³⁰

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment was entered into force on June 26, 1987, after 20 ratifications by 158 parties, many of which were Muslim-dominated states. The Convention provided an added level of international protections against inhuman criminal punishments. The Preamble to the Convention stated that, The States Parties to this Convention:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which

provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...Have agreed as follows...³¹

Under Part I of the Convention, contained in Articles 1-16, States parties who signed agreed to the training and education of their law enforcement, military, medical and personnel, as well as any other persons involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment, on the details of the Conventions prohibition against torture, contained in Article 10.³²

2. International Stance on the Death Penalty

On December 15, 1989, The Second Optional Protocol to the International Covenant on Civil and Political Rights was adopted by the General Assembly as a side agreement to the earlier enacted International Covenant on Civil and Political Rights. The Optional Protocol, which was signed at the time by 81 member states, aimed to see the eventual international abolition of the death penalty, beginning with abolition occurring immediately within the signing states.³³ The Protocol states (in part):

...Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights...

...Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

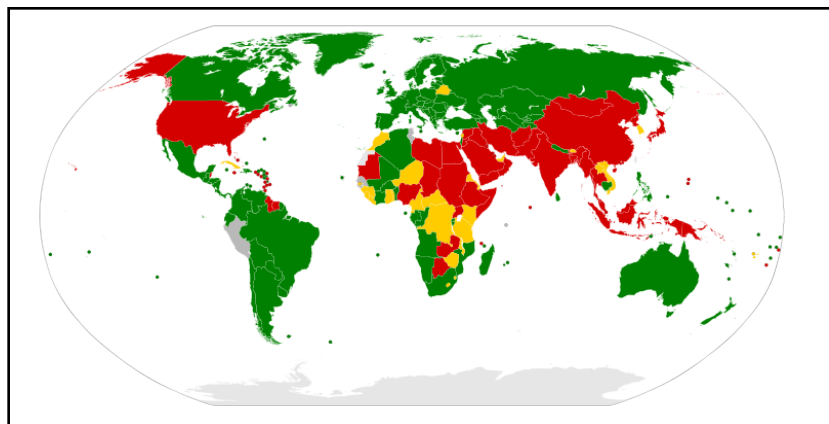
Have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction...³⁴

In 1999, the United Nations followed up on this aim to abolish the death penalty by passing the “Moratorium on the Death Penalty.”³⁵ The resolution was presented to the General Assembly of the United Nations by the European Union in partnership with eight co-author member States, and rather than push the issue of abolition, called for general suspension of capital punishment throughout the world.³⁶ In its plea, the General Assembly mentioned the irreversible and irreparable character of the death penalty and expresses its conviction that a moratorium on the use of the death penalty contributes to the respect and enhancement of human dignity and human rights. It also states that there is no conclusive evidence of the deterrent value of the death penalty.³⁷ A vote in 2007 at the Third Committee of the United Nations General Assembly affirmed the moratorium, and on December 18, 2008, the General Assembly reaffirmed its previous resolution.³⁸ The global moratorium on capital punishment was upheld by a vote of 106 to 46 (with 34 abstentions and another 6 were absent at the time of the vote).³⁹

The green countries in the graphic identify the countries who voted in favor of the resolution, the red are those who voted against, and the yellow are those who abstained.⁴⁰ The graphic clearly shows that the majority of the countries who voted



against or abstained from voting are countries where Sharia law prevails.

As of today, more than 160 Members States of the United Nations have either abolished the death penalty or do not practice it. However, 94 countries still legally permit executions, and 37 still perform them. These countries include the Muslim-dominant countries of: Afghanistan, Bahrain, Bangladesh, Chad (only for terrorism), Egypt, Guinea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Malaysia, Nigeria, Oman, Pakistan, Saudi Arabia, Somalia, Syria, Sudan, United Arab Emirates, and Yemen

B. Sharia law's perspective on the principles of human rights

1. Stance on Inhumane Treatment

While Islamic beliefs about humane treatment may not be conceived or visualized in the same manner as in modern international human rights instruments, many of the rights discussed above are found to have content that is at least comparable to their Islamic counterparts. The Organisation of the Islamic Conference (now the Organisation of Islamic Cooperation) is the second largest inter-governmental organization after the United Nations, with a current membership of 57 states, spread over four continents.⁴¹ The Organisation was formed to create a collective voice for the Muslim world, with the purpose of safeguarding and protecting the interests of the Muslim world and promote international peace and harmony in the world.⁴² On March 14, 2008, in Dakar, The Charter of Organsiation was signed into effect, and states:

We the Member States of the Organisation of the Islamic Conference, determined:

...to adhere our commitment to the principles of the United Nations Charter, the present Charter and International Law;
to preserve and promote the lofty Islamic values of peace, compassion, tolerance, equality, justice and human dignity;
...to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States in accordance with their constitutional and legal systems...⁴³

In reviewing how countries which implement Sharia law into their criminal systems apply (or fail to apply) these principles to their system of criminal punishments, it is first important to understand the role Sharia laws play on these criminal systems. Sharia law enters into the criminal field by proscribing that all criminal law shall fall into categories of offenses: those that are prescribed a specific punishment in the Quran, known as *hadd* punishments, *ta'zir* crimes, where punishment falls to a judge's discretion, and *qisas* crimes, which are resolved through a tit-for-tat measures, such as blood money (*diya*) paid to the family of a murder victim.⁴⁴

There are five *hadd* crimes: unlawful sexual intercourse (sex outside of marriage and adultery), false accusation of unlawful sexual intercourse, drinking wine (sometimes all alcohol drinking), theft, and highway robbery.⁴⁵ Those countries who implement Sharia law into their criminal systems claim that the Qur'an proscribes that the punishments for these *hadd* offenses, including flogging, stoning, amputation, exile, and execution, are divinely ordained, set, and immutable.⁴⁶ As these punishments clearly stand in opposition of international human rights standards, they are often the types of punishment which receive the most significant amount of media attention when they occur. The penalties for *hadd* offences however are not universally adopted as law in Islamic countries.⁴⁷ In fact, the majority of Middle Eastern countries, including Jordan, Egypt, Lebanon and Syria, have not adopted *hadd* offences as part of their state laws.⁴⁸ Many Islamic scholars have argued however, that these punishments are not often, if ever prescribed. For example, of the world's around 50 Muslim-majority states, only approximately six allow for amputations, and one, Pakistan, is believed to have never carried out the penalty in practice.⁴⁹

"In reality, most Muslim countries do not use traditional classical Islamic punishments," stated Ali Mazrui of the Institute of Global Cultural Studies in a Voice of America interview.⁵⁰ Even in countries, such as Pakistan, where *hadd* punishments are still "on the books", the penalties have not been enforced and lesser penalties are usually considered sufficient.⁵¹ In fact, the majority of "contemporary" criminal cases fall under the category of *ta'zir* crimes, whose punishments are not proscribed by the Quran.⁵² However, as the opinion on punishment for these crimes (*fiqh*) is handed down by judges (*qadis*) over a multitude of un-unified courts, the penalty may still range from a private admonition to death.⁵³ The various sects of Sunni and Shiite discussed earlier may all apply the various customs and jurisprudence that has prevailed in the area over which they exert control.

2. Stance on the Death Penalty

Essentially all Muslim or Islamic countries retain the death penalty in their domestic laws. In fact, these countries made up thirteen of the top twenty executing countries of 2014, executing at least 551 people in total.⁵⁴ Additionally, at least 151 people have been put to death in Saudi Arabia alone so far this year.⁵⁵ However, the practice of the punishment varies considerably from one to another. Some, like Iran and Iraq, are enthusiastic practitioners, while others, such as Tunisia, conduct executions in only the rarest of cases.⁵⁶ The following table gives some examples of which countries permit executions for select crimes.

Drug Trafficking	Afghanistan, Bangladesh, Brunei , Egypt, India (is an option if its a second conviction for drug trafficking in quantities specified), Indonesia, Iran, Iraq, Jordan, Kuwait, Laos, Malaysia, Morocco, Oman, Qatar, Pakistan, Saudi Arabia, Somalia, Syria, Sudan, United Arab Emirates, Yemen, Zimbabwe ⁵⁷
Homosexuality	Afghanistan, Brunei, Iran, Iraq, Mauritania, Libya, Nigeria, Saudi Arabia, Somalia, Sudan (only for three-times offenders; punishment for the first and second times is flogging), United Arab Emirates, Yemen ⁵⁸

Apostasy	Afghanistan, Iran, Iraq, Mauritania, Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, United Arab Emirates, Yemen ⁵⁹
Adultery	Brunei, Saudi Arabia, Somalia, Yemen ⁶⁰

Many Muslim scholars and judges agree that the Qur'an does not refer to executions for certain offenses or through particular methods. For example, Chapter 24 of the Qur'an, explicitly instructs believers to whip those found guilty of adultery, not execute them.⁶¹ Additionally, it has also been agreed by scholars that the Quran does not permit execution by stoning either.⁶² However, extremist groups, such as the Islamic State in Iraq and Syria (ISIS), have become notorious for using Sharia law's principles to conduct executions by stoning and crucifixion, as well as other *hadd* punishments rarely used by any other group over the course of Islamic history.⁶³ Saudi Arabia is presently the only actual country however to carry out many of its executions through more violent methods, such as public beheadings, as is endorsed in the Qur'an.⁶⁴ Saudi Arabia also continues to impose death sentences on and execute juveniles below 18 years of age, in violation of the country's obligations under international customary law and the Convention on the Rights of the Child.⁶⁵ Also in violation of United Nations treaties (in particular the Convention Against Torture) they signed, as well as their own constitution, some northern Nigerian *qadi* courts have imposed beheadings, stoning and amputations for what many consider to be relatively minor crimes, not sanctioned for death by other Sharia-practicing courts. Some executions have even been ordered as punishment for defendants whose acts are not even considered criminal in other jurisdictions.⁶⁶

Qisas crimes, which are retributive crimes, including honor killings to restore the honor taken from a family and murders committed in retaliation for the killing of one's family member, are also considered to be an international human rights issue. While precise statistics are scarce,

the United Nations estimates thousands of women are killed annually in the name of family honor.⁶⁷ Though *diya* may be accepted as compensation in lieu of retribution, the ultimate ability to hand down potentially violent punishments ultimately rests with the injured person or their family. For example, in 2009 when Ameneh Bahrami, an Iranian woman, was blinded in an acid attack, only she had the ability to pardon the perpetrator and withhold his inhumane punishment, acid dropped in his eyes.

III. CAN CRIMINAL SHARIA LAW'S PRINCIPLES EVER MEET INTERNATIONAL IDEALS ON HUMAN RIGHTS?

Even the brief overview above is enough information to give the clear picture: some aspects of Sharia law, when applied to criminal law systems, are fundamentally in contrast to the principles held out by the international community as standards for the promotion of human rights. However, it should be remembered that currently, only a small number of countries actually apply traditional Sharia laws to their criminal law systems.⁶⁸ Therefore, their actions should be examined individually, and not grouped with the Muslim-dominant countries from the other distinct groups. When determining if Muslim-dominant countries are or can comply with Sharia law, we must look at the category under which their actions fall, starting by determining to what extent Sharia law has a presence in their legal system.

The European Court of Human Rights appears to suggest that democratic ideals including democracy, free expression and human rights cannot be accommodated within the Sharia model.⁶⁹ However, many Muslim-dominant countries who fall into the “completely secular” category, find their laws to fall completely in line with these principles. For example, Turkey, a

country which is 99.8% Muslim,⁷⁰ boasts a secular parliamentary representative democratic republic, where Sharia law plays no roll. In fact, the system of criminal justice that replaced the Islamic justice system is derived from the Italian penal code, and their civil law follows the Swiss model.⁷¹ The judiciary even accepts the European Court of Human Rights' decisions as higher court decisions.⁷² All of these different functions of the system promote a process that appears to be in line with international ideals on human rights. The punishments proscribed under these laws seem to abide by international goals as well; for punishments for felonies are limited to either imprisonment or heavy fines, as the death penalty officially ended in 1991.⁷³

Dual-legal systems are not far behind in achieving legal systems that meet international human right standards either. In 1956, the country of Jordan adopted a new criminal code and code of criminal procedure that was based on Syrian and Lebanese codes, which were modeled from Islamic law and French codes.⁷⁴ In addition to this criminal code, the country does retain some Islamic Sharia laws on the books for certain types of cases.⁷⁵ These religious courts maintain jurisdiction over all matters of "personal status" for Muslims located in the country. This encompasses most family law matters such as marriage, divorce, child custody, and adoption or guardianship.⁷⁶ The country also accommodates other religious beliefs, such as Christians, by retaining religious "Councils" as well, which handle similar cases involving members of their sect of church community.⁷⁷ While many international human rights advocates still find cause for concern over the way some family law matters are handled in Sharia courts, many of these dual-legal systems have shown steps towards compliance by removing Sharia law from their criminal systems.

In efforts to push these countries even closer to compliance with international human rights standards, focus should be shifted towards insuring that the Constitutional guarantees

afforded in the majority of these countries are being applied in the areas of jurisdiction over which Sharia has control. Retaining Jordan as an example, the country's Constitution promotes: *Gerstein*-like protections (i.e. persons arrested by the police are brought before a magistrate and charged with a crime within 48 hours after the arrest), the right to *habeus corpus* petitions, the right to be *Mirandized* (including the right to remain silent from Fifth Amendment incriminations and the right to counsel), the right to cross examine and present their own witnesses, the right to an appeal, and the protections of evidentiary laws.⁷⁸ Therefore, international human rights advocates should focus their work in these countries on promoting and advancing these common due process protections, which offer significant protections to those who might suffer inhumane treatment.

Countries who practice classical Sharia law however, pose the biggest challenge to international human rights advocates. Baobab, a Nigerian based NGO which promotes women's rights, as well as Amnesty International state that, "the current practice and many regulations in the new Sharia penal Codes and Sharia Codes of Criminal procedure violate many international human rights instruments ratified by Nigeria, including the 'Convention for the Elimination of All Forms of Discrimination Against Women,' the 'Convention Against Torture and other Cruel, Inhuman or Degrading Treatment' and the 'International Covenant on Civil and Political Rights.'"⁷⁹ Fundamental Islamists challenge this attitude towards the Islamic perception on human rights with the belief that Sharia law is important, for it serves to regulate social and political relations in Muslim societies, and as such governments should enforce their practices, even when the parameters are at odds with universal human rights.⁸⁰

However, many feel that it is not the practice of Sharia in general, but the current practice of Sharia as it stands, that is the problem. "Sharia has been translated to be harsh, extreme

treatment — it isn't," stated Massoud Shadjareh, of the London-based Islamic Human Rights Commission.⁸¹ In fact, the concepts of crime and punishment under Sharia law were meant to, "bring about the type of society and moral order that the religion of Islam foresaw."⁸² Many Islamic scholars argue that Sharia law should be construed to be much less violent than many "classical Sharia" countries currently practice it as. They argue that one should confine one's attention to the Qur'an and Sunnah (the religious practices given by the prophet). There can at times be considerable difference between what Islamic teachings say and what Muslims do. There could at times be differences between true Islamic teachings and what many Muslim scholars say or write.⁸³

For example, many argue that Sharia truly only requires that capital punishment only be enforced under the strictest of procedural safeguards that should comply with international legal norms.⁸⁴ In fact, it is argued that the Qur'an does not require that the death penalty be a mandatory punishment, except in the narrowest of situations.⁹² Additionally, scholars like Shadjareh argue that lesser punishments, like amputations and stonings, are also supposed to be used only as "a last resort, and only within those Islamic societies that have eliminated poverty and corruption." He additionally claims that he feels as though neither condition has yet been achieved in countries where such stonings are practiced.

Those that seek to eliminate or at least modify these controversial practices often cite the religious tenet of *tajdid*.⁸⁵ The concept is one of renewal, where Islamic society must be reformed constantly to keep it in its purest form. The Prophet Muhammad, phrased the tenet as such:

"At the turn of each century there will arise in this ummah (the Muslim community) these who will call for a religious renewal (revival)". Such people (mujaddid), are believed to always come in the time when Muslim community departs from the true path defined by the Qur'an and sunnah (example of the

Prophet). The task of the mujaddid, therefore, is to return Muslims to their basic sources (the Qur'an and sunnah), to clean Islam from all un-Godly elements, to present Islam and make it flourish more or less in its original pure form and spirit.⁸⁶

The effort by Muslims who seek to pursue harmony with human rights through the use of *tajdid* is that it can be used to explain changes in the way Sharia law is practiced, and how it may be adapted in continually changing to promote human rights without violating Islam's core principles.⁸⁷

CONCLUSION

The compatibility of Islamic Sharia law with international human rights law can be achieved, in fact, in many countries it already has. However, Islamic nations practicing dual or classical Sharia law are often seen as retaining aspects of their justice systems which do not seemingly comply with international standards at first glance. Nevertheless, it should be remembered when drafting solutions to the human rights issues in these countries, that the actual teachings of Sharia law itself may not be the reason for this perceived non-compliance. In truth, the law of the Qur'an can, and should, be read in a manner which places it in conformity with the majority of today's international human rights instruments.⁸⁸ Additionally, with many Islamic scholars now pursuing legal reform under the concept of the tenet of *tajdid*, the ideas and movements such reforms embody will likely be crucial arguments in bringing about these changes. Driven by those who see the potential for harmony, Muslim countries who have already made changes to comply with Sharia law can use new age technology to rapidly spread their ideas of *tajdid* to the leaders of other Muslim countries who have not yet created systems which achieve these human rights standards. As such, a new age interpretation of Islamic

traditions will foreseeably serve to aid Islamic countries in reaching the goal of bringing their judicial and legal theories closer to international norms.

Endnotes

-
- ¹ *Saudi protester Ali al-Nimr's crucifixion could happen 'at any moment'*. Schams Elwazer and Bryony Jones. CNN. October 21, 2015. (<http://www.cnn.com/2015/10/21/middleeast/ali-al-nimr-crucifixion-beheading-father-plea/>) (Last visited December 11, 2015).
 - ² *Humans Rights Law and Islamic Shari'ah: Areas of Compatibility and Conflict*. Dr. Khalid Zaheer. Accessed from: http://www.khalidzaheer.com/essays/kzaheer/social%20issues/human_rights.html (last visited December 11, 2015).
 - ³ *Sharia Law In The USA 101: A Guide To What It Is And Why States Want To Ban It*. Omar Sacirbey. Huffington Post: Religion News Services. July 29, 2013. http://www.huffingtonpost.com/2013/07/29/sharia-law-usa-states-ban_n_3660813.html.
 - ⁴ *Islamic Law As A Source of Constitutional Law in Egypt: The Constitutionalization of the Sharia in A Modern Arab State*. Clark Benner Lombardi. 37 Colum. J. Transnatl. L. 81, 91 (1998)
 - ⁵ *Id.*
 - ⁶ *Human rights and the death penalty: a comparative analysis of international and Islamic law*, Sukvir Gossal. Cov. L.J. 2007, 12(1), 16-33, 18 (2007).
 - ⁷ "Sunnah and Hadith". *World Spirituality: An Encyclopedia History of the Religious Quest*. Seyyed H. Nasr. 19 vols. New York: Crossroad Swag. 97–109.
 - ⁸ *SHARIAH IN AMERICAN COURTS: The Expanding Incursion of Islamic Law in the U.S. Legal System*. Center for Security Policy Press. 2014. Accessed at: https://www.centerforsecuritypolicy.org/wp-content/uploads/2014/12/Shariah_in_American_Courts1.pdf. (last accessed on December 11, 2015).
 - ⁹ Zaheer, *supra*
 - ¹⁰ *Id.*
 - ¹¹ *Sharia law compatible with human rights, argues leading barrister*. David Shariatmadari. The Guardian. January 16, 2012 <http://www.theguardian.com/world/2012/jan/16/sharia-law-compatible-human-rights>
 - ¹² Gossal, *supra*
 - ¹³ Sacirbey, *supra*
 - ¹⁴ *Id.*
 - ¹⁵ *Id.*
 - ¹⁶ *Id.*
 - ¹⁷ *Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy*. Jan Michiel Otto. Amsterdam University Press. Aug 1, 2008.
 - ¹⁸ *Islam: Governing Under Sharia (aka shariah, shari'a)*. Toni Johnson & Mohammed Aly Sergie. Counsel on Foreign Relations. July 25, 2014. Accessed from: <http://www.cfr.org/religion/islam-governing-under-sharia/p8034>.

-
- ¹⁹ *Id.*
- ²⁰ *Id.*
- ²¹ Modern Muslim States between Islamic Law and International Human Rights Law. Mashood Adebayo Badekin. The University of Nottingham School of Law. Thesis submitted for the Degree of Doctor of Philosophy (PhD). April 2001. <http://eprints.nottingham.ac.uk/10964/1/391368.pdf>
- ²² *Deal or No Deal – Iran, the Middle East, and US foreign policy.* 2cents4change. Blog. April 9, 2015. Accessed from: <https://2cents4changeblog.wordpress.com/2015/04/09/deal-or-no-deal-iran-the-middle-east-and-us-foreign-policy/>
- ²³ Charter of the United Nations, Introductory note. International Court of Justice. Accessed from: <http://www.icj-cij.org/documents/index.php?p1=4&p2=1&>
- ²⁴ Charter of the United Nations, Preamble. International Court of Justice. Accessed from: <http://www.icj-cij.org/documents/index.php?p1=4&p2=1&>
- ²⁵ The International Bill of Human Rights, Universal Declaration of Human Rights. Adopted and proclaimed by General Assembly resolution 217 A (III). December 10, 1948. United Nations. Accessed from: http://www.un.org/en/documents/udhr/hr_law.shtml.
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ The International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966; entry into force March 23, 1976, in accordance with Article 49. The Office of the United Nations High Commissioner for Human Rights. Accessed from: <http://www.ohchr.org/EN/Pages/Home.aspx>
- ²⁹ *Id.*
- ³⁰ *Id.*
- ³¹ *Id.*
- ³² *Id.*
- ³³ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Adopted and proclaimed by General Assembly resolution 44/128 of December 15, 1989. The Office of the United Nations High Commissioner for Human Rights. Accessed from: <http://www.ohchr.org/EN/Pages/Home.aspx>
- ³⁴ *Id.*
- ³⁵ *Moratorium World Medical Association statement.*, International Commission Against Death Penalty. October 2013. <http://www.icomdp.org/moratorium/>
- ³⁶ *Id.*
- ³⁷ *Id.*
- ³⁸ *Helping the world achieve a moratorium on executions.* Thomas Hubert. World Coalition Against the Death Penalty. June 29, 2007. <http://www.worldcoalition.org/moratorium.html>
- ³⁹ Gossal, *supra*
- ⁴⁰ *UN vote boosts support for a global moratorium on the death penalty.* Amnesty International. November 21, 2014. <https://www.amnesty.org/en/latest/news/2014/11/un-vote-boosts-support-global-moratorium-death-penalty/>.
- ⁴¹ *About OIC.* Organisation of Islamic Cooperation. <http://www.oicun.org/2/23/>
- ⁴² *Id.*
- ⁴³ *Id.*
- ⁴⁴ Gossal, *supra*
- ⁴⁵ *Id.*
- ⁴⁶ Johnson & Aly Sergie, *supra*.
- ⁴⁷ Shariatmadari, *supra*.
- ⁴⁸ *Sharia law: Susie Steiner explains the Islamic legal system which has sentenced a Nigerian woman to be stoned to death.* Susie Steiner. The Guardian. August 20, 2002. <http://www.theguardian.com/world/2002/aug/20/qanda.islam> .
- ⁴⁹ *Id.*
- ⁵⁰ Johnson & Aly Sergie, *supra*.
- ⁵¹ *Id.*
- ⁵² Gossal, *supra*
- ⁵³ *Id.*

-
- ⁵⁴ *Death Sentences and Executions 2014*. Amnesty International. Printed by Amnesty International. 2015. Accessed from: https://www.amnesty.org.uk/sites/default/files/death_sentences_and_executions_2014_en.pdf
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ *Id.*
- ⁵⁸ *Id.*
- ⁵⁹ *Id.*
- ⁶⁰ *Id.*
- ⁶¹ *PUNISHMENT FOR NON-MARITAL SEX IN ISLAM: Sharia law as applied in some Muslim countries*. Ontario Consultants on Religious Tolerance. September 1, 2002. http://www.religioustolerance.org/isl_adul2.htm
- ⁶² Johnson & Aly Sergie, *supra*.
- ⁶³ *Id.*
- ⁶⁴ Gossal, *supra*
- ⁶⁵ *Saudi Arabia: 151 executed this year in highest recorded toll in nearly two decades*. Press release. November 9, 2015. <http://www.amnestyusa.org/news/press-releases/saudi-arabia-151-executed-this-year-in-highest-recorded-toll-in-nearly-two-decades>
- ⁶⁶ Ontario Consultants on Religious Tolerance, *supra*.
- ⁶⁷ Johnson & Aly Sergie, *supra*.
- ⁶⁸ Gossal, *supra*
- ⁶⁹ *Islam and Human Rights: Is Compatibility Achievable between the Sharia and Human Rights Law?* Javaid Rehman. Brunel University London, Brunel Law School. January 2, 2014. <http://poseidon01.ssrn.com/delivery.php?ID=717095022119088100028003017001064081051000032009017018022009083078002092107122102096114009062024001033045118098111119110117126019081034007072116101110110122068092028018076078116068069096103070064099104106109088006070071120067086122096094120066074116001&EXT=pdf>
- ⁷⁰ *Freedom and Liberty vs. Islam and Sharia: List of Muslim majority countries with sect/state/government*. WordPress Blog. <https://nosharia.wordpress.com/list-of-muslim-majority-countries-with-sectstategovernment/>
- ⁷¹ *Turkey Crime and Punishment*. Online republication from The Library of Congress Country Studies. Revised November 12, 2004. Accessed from: http://www.photius.com/countries/turkey/national_security/turkey_national_security_crime_and_punishment.html
- ⁷² *Id.*
- ⁷³ *Id.*
- ⁷⁴ *Jordan: A Modern Criminal Justice System Amidst Turmoil*. Cindy Moors. Crime and Justice International. Vol 15, Issue 27. April 1999. <http://www.cjimazine.com/archives/cji56d0.html?id=283>
- ⁷⁵ *Jordanian Legal System*. Embassy of the United States. Amman. Jordan. December 11, 2015. http://jordan.usembassy.gov/acs_jordanian_legal_system.html
- ⁷⁶ *Id.*
- ⁷⁷ *Id.*
- ⁷⁸ *Id.*
- ⁷⁹ Ontario Consultants on Religious Tolerance, *supra*.
- ⁸⁰ Gossal, *supra*
- ⁸¹ Ontario Consultants on Religious Tolerance, *supra*.
- ⁸² Gossal, *supra*
- ⁸³ Zaheer, *supra*
- ⁸⁴ Gossal, *supra*
- ⁸⁵ Johnson & Aly Sergie, *supra*.
- ⁸⁶ Maududi, 1981:34–5 and Vol 1, 1983
- ⁸⁷ Johnson & Aly Sergie, *supra*.
- ⁸⁸ Gossal, *supra*