

Lord Donald Anderson (SOC, United Kingdom)
Kerstin Lundgren (ALDE, Sweden)
& Pieter Omtzigt (EPP/CD, Netherlands)

Invite you to
A Lunch Meeting on:

Sharia Law & Human Rights

Monday 21 January 2019

1-2 pm - Room 8

The Panel will include:

- Mr. Pieter Omtzigt – *Dutch Member of Parliament*
- Dr. Grégor Puppinck – *Director General of the European Centre for Law and Justice*
- Mrs. Shirin Musa – *Muslim activist and director of Femmes for Freedom*
- *An anonymous Muslim woman will speak about her experience about Sharia law*

It will be followed by an open discussion with Members of Parliament

Lunch will be Provided

co-organized by, *inter alia*:



Femmes for Freedom
Defending Women's Rights



I- SHARIA LAW

The following chart sets forth specific Islamic criminal and civil laws. These Islamic standards of justice, punishments, and resolution of disputes are essentially deduced from the Quran and the Sunna (Tradition of the Prophet) but apply in a variable manner.

Individual Rights	Islamic Sharia
<i>Conversion from Islam</i> (Apostasy)	Punished by death. ⁱ
<i>Defaming Islam</i> (e.g., blaspheming Muhammad, showing disrespect to the <i>Quran</i> , or defaming Allah)	Punished by death. ⁱⁱ
<i>Interfaith Marriage</i>	Muslim women may only marry Muslim men; Muslim men may marry only Muslim, Jewish, or Christian women. ⁱⁱⁱ
Criminal Law	Islamic Sharia
<i>Consuming Alcohol</i>	Punished by flogging of forty lashes. ^{iv}
<i>Domestic Violence</i>	Not punished if a wife is deemed to be rebellious or disobedient; the <i>Quran</i> allows a husband to beat his wife (or wives) to compel them to obey the husband's commands. ^v
<i>Female Genital Mutilation</i>	Required for strict compliance with <i>Sharia</i> ; generally done to promote women's chastity. ^{vi}
<i>Marital Rape</i>	A wife must have sex with her husband upon the husband's demand; if the wife refuses, the husband may take disciplinary steps (verbal admonition to physical beating). ^{vii}
<i>Theft</i>	Punished by amputation. ^{viii}
Family Law	Islamic Sharia
<i>Adultery</i>	Punished by stoning; ^{ix} may be mitigated completely for <i>Shi'ites</i> by <i>mut'ah</i> (short-term sexual relationship); if a married woman is raped and cannot provide the necessary witnesses, she will likely be stoned as an adulteress. ^x

<i>Child Custody</i>	There is no “best interests of the child” standard; depending on whether the mother remarries or leaves Islam, custody will default to the father or mother. ^{xi}
<i>Divorce</i>	Generally, husbands may divorce their wives without cause and without notifying them and may do so by merely declaring it audibly; ^{xii} women do not obtain legal divorces on their own initiative, but merely <i>dissolve</i> their marriages and become lawfully separated from their husbands. ^{xiii} These dissolutions (<i>khul</i>) are limited to very particular grounds, and if women do choose to dissolve the marriage, they forfeit their financial security. ^{xiv}
<i>Forced Marriage</i>	Fathers and grandfathers have the power to force their minor daughters (in some cases as young as nine years old) to marry the men of the father’s or grandfather’s choosing. ^{xv}
<i>Polygamy</i>	Men may take up to four wives; women may only marry one man. ^{xvi}
Miscellaneous	Islamic Sharia
<i>Sharia-Compliant Financing: Banking and Financial Markets</i>	Financial institutions must become “ <i>Shariah-compliant</i> ,” involving saving, investing, and building wealth according to the teachings of the <i>Quran</i> and <i>Sunna</i> . ^{xvii}
<i>Sharia-Compliant Financing: Funding Jihad</i>	<i>Sharia</i> , and by extension <i>Sharia-compliant financing</i> , requires Muslims to give obligatory charitable contributions (<i>zakat</i> ^{xviii}), and part of such contributions must be given to “ <i>those fighting for Allah</i> , meaning people engaged in Islamic military operations” ^{xix}

<i>Fornication</i>	Punishable by 100 lashes; ^{xx} if an unmarried woman is raped but cannot provide the necessary witnesses, she will be lashed as a fornicator.
<i>Homosexual Sodomy</i>	Punished by death. ^{xxi}
<i>Honor Killings</i> (killing women or any family member who dishonor their Islamic families)	Certain offenses are justified under <i>Sharia</i> , e.g., killing a non-Muslim, killing an apostate, or killing one's own offspring. ^{xxii}
<i>Testifying Witnesses: Men and Women</i>	A woman's testimony is equal to half that of a man because of the supposed "deficiency of a woman's mind." ^{xxiii}

Confrontation between Sharia law and Human Rights in Europe

“To each of you We prescribed a law and a method” (Quran, 5:48). This law, consubstantial to Islam, is the Sharia. The norms of Sharia law are essentially deduced from the Quran and the Sunna (Tradition of the Prophet), and therefore of exclusively religious and *revealed* origin. The legal codification from texts considered sacred requires a process of interpretation and exegesis, called *Idjtihad* and carried out by the *mujtahid*. As early as the seventh century (Hegira), Islam defined a nomenclature of obligatory (*wadjeb*), lawful (*moubah*), forbidden (*haram*) and blameworthy (*makrouh*) acts. Sharia is thus a set of norms of private law, accompanied with sanctions, aiming at ruling every social relationship.

➤ The reasons why Sharia law and Human Rights will always be incompatible

Sharia law establishes a superiority of men over women, “because God has made the one superior to the other” (Quran, 4:34). The Islamic family law includes concrete rules implementing this principle. For instance, “for [the women] from whom you fear disobedience, admonish them and forsake them in beds apart, and beat them” (Quran, 4:34). In criminal law, Sharia defines inhuman punishment for certain crimes, such as a hundred lashes in case of sexual intercourse outside of marriage (Quran, 24, 2). Furthermore, Sharia law refuses freedom of religion, since a hadith specifies that all human beings are supposed to be born Muslim.¹ In particular, the apostasy of Islam is severely condemned many times in the Quran and Muhammad said “If [a Muslim] discards his religion, kill him.”² Sharia law also violates freedom of expression, since it prohibits blasphemy against Allah and Muhammad and defines punishments derived from hadith literature.

For all these reasons, the European Court of Human Rights (ECHR) condemned Sharia law in principle. In its decision *Refah Partisi and Others v. Turkey [GC]* of February 13th, 2003, the Court noted “that Sharia is incompatible with the fundamental principles of democracy, as set forth in the Convention” especially concerning “its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts.”³

¹ Sahih Muslim, Book 033, Hadith Number 6426.

² Sahih al-Bukhari, Volume 004, Book 052, Hadith Number 260.

³ ECHR, *Refah Partisi (the Welfare Party) and Others v. Turkey [GC]*, n° 41340/98, 41342/98, 41343/98, and 41344/98, 13 February 2003, § 123.

Moreover, it is not only the substance of the norms of Sharia law that contravenes Human Rights, but the very nature of these norms. Indeed, Sharia is positive law with a supposed divine origin and Islam thus replaces human nature by religion as the exclusive source of law. Sharia law has been codified very early in the history of Islam and the Quran and Sunna includes some very clear provisions. The traditional Sunni schools of law consider that “*the gates of Idjtihad are closed,*” which puts an end to the debate and thus stabilizes Sharia law. Hence, it is impossible to change Sharia law to make it compatible with Human Rights. Thus, the Organization of Islamic Cooperation (OIC) decided instead to create a new conception of so-called “*Human Rights,*” with the *Cairo Declaration of Human Rights in Islam* of 1990. However, this text, adopted by fifty-seven States, is nothing more than a legal drafting of Sharia law using the vocabulary of Human Rights. Indeed, the *Declaration* considers that “*Islam is the religion of true unspoiled nature*” (Art. 10) and declares rights and freedoms “*subject to the Islamic Shari’ah*” (Art. 24), which is “*the only source of reference for the explanation or clarification to any of the articles of this Declaration*” (Art. 25).

A report from the Parliamentary Assembly of the Council of Europe (PACE) demonstrated that the Cairo Declaration, as well as the other Islamic declarations of Human Rights adopted since the 1980s, “*fail to reconcile Islam with universal Human Rights, especially insofar as they maintain the Sharia law as their unique source of reference.*”⁴

➤ **The reasons why the application of Sharia law is a real issue today in Europe**

All or part of the territories of some member States of the Council of Europe can be considered today as part of *Dar al-Islam* (“land of Islam”). In other words, Muslims may find it legitimate to apply Sharia law in these territories, unlike *Dar al-Harb* (“house of war”) in which they are a minority and where they are supposed to make Sharia happen.

The Greek region of Western Thrace is formally applying Sharia law to its Muslim community in private law issues. This situation was inherited from the Ottoman Empire and has been perpetuated with the treaties of Sèvres (1920) and Lausanne (1923) regulating after the Great War the fate of “*minorities*” in Turkey and Greece. According to the Greek law, “*the mufti’s jurisdiction applies to Greek citizens of Muslim faith resident in his region, in the spheres of marriage, divorce, maintenance payments, guardianship, trusteeship, capacity of minors, Islamic wills and intestate succession, where such matters are governed by Islamic holy law.*”⁵

⁴ PACE, Committee on Legal Affairs and Human Rights, “*Compatibility of Sharia law with the European Convention on Human Rights: can States parties to the Convention be signatories of the “Cairo Declaration”?*,” AS/Jur (2018) 46, 3 January 2019, § 4.

⁵ Section 5(2) of Greek Law no. 1920/1991 ratifying the Legislative Act of 24 December 1990.

In the United Kingdom, there are “*Sharia councils*,” which have a role of mediation for family conflicts and of advice on many other issues. According to the PACE, there would be between thirty and ninety Sharia councils and “*little is known about their work, which is conducted in private.*”⁶ These groups are not officially part of the British legal system, but their authority comes from the approval of the Muslim community. They violate in practice Human Rights. For instance, women are discriminated by the Sharia councils and marital rape is not recognized as rape.

The application of Sharia law is also an issue in some territories of the Russian federation, such as Chechnya.

In addition, three Member States of the Council of Europe (Turkey, Azerbaijan and Albania) are signatories to the *Cairo Declaration*. Jordan, Kyrgyzstan, Morocco and Palestine, whose parliaments enjoy “*partner for democracy*” status at the Council of Europe, also signed this text. If no legal value is recognized to the *Cairo Declaration* in international law, it is a declaration of allegiance to the Sharia law, which is at the top of the hierarchy of norms according to Islam. Moreover, it is common for international standards to be originally mere political declarations and eventually to become later more significant and binding on States.

According to the *Cairo Declaration*, Human Rights must be accepted only when they comply with Sharia law or when they decide on matters not covered by Sharia. The *Declaration* has various effects on the domestic legal orders of the countries mentioned. In any case, this text is a formal means to ignore Human Rights law.

➤ **The reasons why it does not make sense to apply Sharia law only to willing Muslims**

Some people would like to find a compromise between Sharia law and Human Rights by applying Sharia norms only to the Muslim minorities who request it, in parallel with the common law. They suggest conditions for the creation of such a legal framework: the respect of the individual consent of Muslims, the compatibility of the Sharia norms applied with Human Rights and the non-discrimination between religious groups. These conditions are not realistic and do not make any sense for Islam, for at least three reasons.

Firstly, it would be illusory to divide Sharia law, examining each of its norms on a case-by-case basis. It is true that some Sharia provisions can be made compatible with Human Rights, or even provide additional rights. For example, the Cairo Declaration recognizes a special protection to the human fetus (Article 7), contrary to the European Convention of Human Rights. However, Sharia law is an indivisible and coherent legal system, involving social and political structures. That is why, the PACE noted “*the existence of structural*

⁶ PACE, *op. cit.*, § 45.

*incompatibilities between Islam and the Convention which, as far as Sharia law is concerned, are sometimes absolute and sometimes relative.*⁷ Admittedly, some Western Muslims choose not to apply Sharia law in its entirety and content themselves with following its requirements that are least incompatible with Human Rights. But it should be known that this practice is provided by Sharia law, which allows believers to derogate from its provisions “*as long as the circumstances are not conducive to the establishment of Islam as the dominant religion and to the full application of Sharia law.*”⁸

Secondly, Sharia law is not intended to apply only to Muslim minorities, within a multi-judicial system. Sharia law claims exclusivity and aims at defining for all citizens a multi-judicial system based on religious beliefs and traditions.⁹ According to the ECHR, a difference in treatment based on theological arguments constitutes a discrimination.¹⁰ Sharia law thus discriminates on the grounds of religion and gives the Muslims more rights from a legal point of view. Christians and Jews have a status of *dhimmis*, placing them in a state of legal inferiority with additional taxes and special duties. Under this status, they are allowed to remain subject to the laws established by the religious authorities of their communities. However, *kuffar* (polytheists, atheists or assimilated) must convert or leave the *Dar al-Islam* (“land of Islam”). Moreover, in practice, Sharia law cannot be applied only to Muslims. For example, in Western Thrace, the Supreme Civil and Criminal Court of Greece had to accept an application to non-Muslim people in the case of mixed couples.

Thirdly, it is dangerous to accept an application of Sharia law based on individual consent.¹¹ Indeed, one cannot assume that the choice in question is completely free, provided it is informed, because consent is not enough to guarantee real freedom. For example, it is not because a young Muslim woman agrees to marry a man chosen by her parents that her choice is free. Moreover, when we know how much Islam can constitute a closed society, there is reason to wonder about the true freedom to leave it, especially since Sharia punishes apostasy with death.

These three arguments show that it does not make sense to create conditions for the application of Sharia law if they contradict the very substance of this law. Sharia law should thus be, sooner or later, accepted or refused as a whole.

⁷ PACE, *op. cit.*, § 29.

⁸ Annie Laurent, *L'islam pour tous ceux qui veulent en parler (mais ne le connaissent pas encore)*, Artège, 2017, p. 66.

⁹ Abdulaziz Sachedina, *Islam and the Challenge of Human Rights*, Oxford University Press, 2009, p. 77: “*the main problem that haunts any religious system, including the Shari’a in a multifaith situation, is its claim to exclusive loyalty (...). [The Shari’a] simply divides the populace into Muslim members, with full privileges, and non-Muslim minorities, with protected status under its divinely ordained system.*”

¹⁰ ECHR, *İzzettin Doğan and others v. Turkey* [GC], n°62649/10, 26 April 2016, § 179.

¹¹ Grégor Puppinck, “[What Emerges from the Molla Sali v. Greece Judgment](#),” *Figaro Vox*, 26 December 2018.

Cairo Declaration on Human Rights in Islam (1990)

Excerpts from the Declaration on Human Rights in Islam, adopted on 5 August 1990 in Cairo, Egypt, at the Nineteenth Islamic Conference of Foreign Ministers.

The Member States of the Organization of the Islamic Conference,

Reaffirming the civilizing and historical role of the Islamic Ummah which Allah made as the best community and which gave humanity a universal and well-balanced civilization, in which harmony is established between hereunder and the hereafter, knowledge is combined with faith, and to fulfill the expectations from this community to guide all humanity which is confused because of different and conflicting beliefs and ideologies and to provide solutions for all chronic problems of this materialistic civilization.

In contribution to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah.

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization as well as a self-motivating force to guard its rights;

Believing that fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as **they are binding divine commands, which are contained in the Revealed Books of Allah and which were sent through the last of His Prophets to complete the preceding divine messages and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin**, and that the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire Ummah;

Do hereby and on the basis of the abovementioned principles declare as follows:

Article 1

(a) **All human beings form one family whose members are united by their subordination to Allah** and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations.

The true religion is the guarantee for enhancing such dignity along the path to human integrity.

(b) All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds

(...)

Article 6

a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.

b) **The husband is responsible for the maintenance and welfare of the family**

Article 7

(...)

b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children **in accordance with ethical values and the principles of the Shari'ah.**

c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, **in accordance with the tenets of the Shari'ah.**

(...)

Article 9

a) The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society **so as to enable man to be acquainted with the religion of Islam** and uncover the secrets of the Universe for the benefit of mankind.

b) Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect to and defence of both rights and obligations.

Article 10

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

Article 11

a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty
(...)

Article 12

Every man shall have the right, **within the framework of the Shari'ah**, to free movement and to select his place of residence whether within or outside his country and if persecuted, is entitled to seek asylum in another country. **The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.**
(...)

Article 16

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical labour of which he is the author; and he shall have the right to the protection of his moral and material interests stemming therefrom, **provided it is not contrary to the principles of the Shari'ah.**
(...)

Article 19

(...)
d) There shall be no crime or punishment except as provided for in the Shari'ah.

(...)

Article 22

a) **Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.**
b) **Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.**
c) Information is a vital necessity to society. **It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith. (...)**

Article 23

(...)

b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office **in accordance with the provisions of Shari'ah.**

Article 24

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

Article 25

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

III- SHARIA LAW DEBATED AT THE PARLEMENTARY ASSEMBLY

Parliamentary debate at the Council of Europe about a draft resolution

On January 22nd, 2019, the Parliamentary Assembly of the Council of Europe (PACE) will discuss and vote on a draft resolution recalling the incompatibility of Sharia law with the European Convention of Human Rights. It particularly targets Western Thrace, a Greek region formally applying Sharia law for its Muslim community, which PACE had already clearly condemned in 2010.¹² The draft resolution also denounces the excesses of the United Kingdom's "Sharia councils." It is also concerned about the fact that three Member States of the Council of Europe (Turkey, Azerbaijan and Albania) are signatories to the *Cairo Declaration of Human Rights in Islam* of 1990.

➤ Confirm and develop the principles drawn by the ECHR

This draft resolution on Sharia law is in line with the case-law of the European Court of Human Rights (ECHR). In fact, in their decision *Refah Partisi and Others v. Turkey [GC]* of February 13th, 2003, the Strasbourg judges had already noted "that Sharia is incompatible with the fundamental principles of democracy, as set forth in the Convention," especially concerning "its rules on the legal status of women."¹³ Similarly, in *Molla Sali v. Greece [GC]* case of December 19th, 2018, the ECHR « [noted] that several international bodies have expressed their concern about the application of Sharia law to Greek Muslims in Western Thrace and the discrimination thus created, in particular against women and children, not only within that minority as compared with men, but also in relation to non-Muslim Greeks »¹⁴. Parliamentarians from the Council of Europe are therefore called upon to confirm and develop this case-law protecting Human Rights.

If the draft resolution is so complete and precise, it is because it has been prepared following a full report by the Committee on Legal Affairs and Human Rights entitled "Compatibility of Sharia law with the European Convention on Human Rights: can States

¹² PACE, "Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece)," resolution 1704, 27 January 2010.

¹³ ECHR, *Refah Partisi (the Welfare Party) and Others v. Turkey [GC]*, n° 41340/98, 41342/98, 41343/98, and 41344/98, 13 February 2003, § 123.

¹⁴ ECHR, *Molla Sali v. Greece [GC]*, n°20452/14, 19 December 2018, § 154.

parties to the Convention be signatories of the “Cairo Declaration”?” The report and draft resolution address several worrying aspects of Sharia law, including the superiority of men over women, the rules governing marriage, the inhuman punishment for certain crimes, the absence of freedom of religion and the discriminatory status of Christians and Jews. The ECLJ asked European parliamentarians to amend the draft resolution to include as well the issue of banning blasphemy against Allah and Muhammad.¹⁵ All these elements of Sharia law are incompatible with Human Rights, but they are nevertheless present in the Cairo Declaration of 1990. For this reason, the report demonstrates that this text, as well as the other Islamic declarations of Human Rights adopted since the 1980s, “*fail to reconcile Islam with universal human rights, especially insofar as they maintain the Sharia law as their unique source of reference.*”¹⁶

➤ **Update and clarify the PACE recommendations to the Member States**

The PACE, in several resolutions, already indirectly opposed some Sharia provisions. In particular, it considered that “*governance and religion should not mix*” and that “*States must require religious leaders to take an unambiguous stand in favor of the precedence of human rights, as set forth in the European Convention on Human Rights, over any religious principle.*”¹⁷ In addition, a resolution was passed to address the specific case of Western Thrace and recommends to Greece “*to abolish the application of Sharia law – which raises serious questions of compatibility with the European Convention on Human Rights – as recommended by the Commissioner for Human Rights.*”¹⁸ The PACE has also repeatedly reaffirmed its commitment to principles that Sharia law contests, such as non-discrimination between men and women as well as between religious communities.

The draft resolution to be discussed on January 22nd, 2019 would complete and clarify the PACE recommendations to States. In particular, the text denounces “*the fact that Sharia*

¹⁵ Article 22 of the Cairo Declaration of 1990 contradicts the article 10 (freedom of expression) of the European Convention of Human Rights. Indeed, Article 22 states: “(a) *Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari’ah.* (b) *Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari’ah.* (c) *Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith.* (d) *It is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.*”

¹⁶ PACE, Committee on Legal Affairs and Human Rights, “*Compatibility of Sharia law with the European Convention on Human Rights: can States parties to the Convention be signatories of the “Cairo Declaration”?*,” AS/Jur (2018) 46, 3 January 2019, § 4.

¹⁷ PACE, “*State, religion, secularity and human rights,*” recommendation 1804, 29 June 2016, § 10 and 17. See also : PACE, “*Freedom of religion and living together in a democratic society,*” resolution 2076, 30 September 2015, § 7.

¹⁸ PACE, “*Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece),*” resolution 1704, 27 January 2010, § 18.5.

law – including provisions which are in clear contradiction with the Convention - is applied, either officially or unofficially, in several Council of Europe member States, or parts thereof (§ 5). The draft resolution calls on the concerned States to “*consider withdrawing from the Cairo Declaration*” (§ 12.1), reiterates the need to abolish the application of Sharia law in Greece (§ 13.2) and to protect women from Sharia councils in the United Kingdom (§ 14.1, 14.4, 14.5, 14.6). More generally, the PACE, in such a resolution, would recall the fact that the right to freedom of religion does not imply the right to benefit from a legal framework of religious origin, parallel to the common law and in contradiction with Human Rights.

Excerpts from the report of the Parliamentary Assembly

PACE, Committee on Legal Affairs and Human Rights, Report, AS/Jur (2018) 46, Doc. 14787, 3 January 2019, “Compatibility of Sharia law with the European Convention on Human Rights: can States parties to the Convention be signatories of the “Cairo Declaration”?”

8. **Sharia law is understood as being “the path to be followed”, that is, the “law” to be obeyed by every Muslim (Surah 5).** It divides all human action into five categories – what is obligatory, recommended, neutral, disapproved of and prohibited – and takes two forms: a legal ruling (*hukm*), designed to organise society and deal with everyday situations, and the fatwa, a legal opinion intended to cover a special situation. Sharia law is therefore meant in essence to be positive law enforceable on Muslims. Accordingly, it can be defined as “the sacred Law of Islam”, that is, “an all-embracing body of religious duties, the totality of Allah’s commands that regulate the life of every Muslim in all its aspects.”

9. While most States with Muslim majorities have inserted a provision referring to Islam or Islamic law in their Constitutions, the effect of these provisions is symbolic or confined to family law. Admittedly, **these religious provisions may have a legal effect if raised in the courts and a political effect if they intrude into institutional attitudes and practices.** (...).

11. In Islamic family law, men have authority over women. Surah 4:34 states: “**Men have authority over women because God has made the one superior to the other**, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because God has guarded them. As for those from whom you fear disobedience, admonish them and forsake them in beds apart, and beat them. Then if they obey you, take no further action against them. Surely God is high, supreme.” In Sharia law, adultery is strictly prohibited. Legal doctrine holds that the evidence must take the form of corroborating testimony from four witnesses to prove an individual’s guilt (Surah 4:15). These witnesses must be men of good repute and good Muslims. The punishment is severe and degrading, namely “a hundred lashes” (Surah 24:2). In the case of rape, which is seldom committed in public before four male witnesses who are good Muslims, punishing the rapist is difficult, if not impossible. In practice, this obliges women to be accompanied by men when they go out and is not conducive to their independence.

12. (...) In cases where the husband has deserted the wife, has failed to co-operate with the divorce process or is acting unreasonably, the marriage may be dissolved (*faskh*), but only by a qadi or a Sharia ruling. Hence, **while divorce by mutual consent is enshrined in Islamic law (Surah 2:229 and Surah 4:128), the application must come from the wife, since the**

husband can repudiate his wife at any time. There is also the question of equal rights regarding divorce arrangements such as custody of children.

13. For division of an estate among the heirs, distinctions are made according to the sex of the heir. **A male heir has a double share, whereas a female heir has a single share. In addition, the rights of a surviving wife are half those of a surviving husband (Surah 4:12).**

14. In criminal cases, cruel, inhuman and degrading punishments are ordered by Sharia law, including death by stoning, beheading and hanging, amputation of limbs and flogging. Apostasy results, firstly, in the apostate's "civil death", with the estate passing to the heirs, and, secondly, in the apostate's execution if he or she does not recant (Surah 2:217). Lastly, non-Muslims do not have the same rights as Muslims in civil and criminal law, for example in terms of the weight attached to their testimony in court, which is discrimination on the ground of religion within the meaning of Articles 9 and 14 of the Convention.

(...)

16. On 5 August 1990, the conference of Foreign Ministers of the Organisation of the Islamic Conference (OIC) adopted the Cairo Declaration on Human Rights in Islam (Resolution 49/19-P) (...).

18. However, the Cairo Declaration has given rise to much controversy, for example concerning the concept of equality, the right to marry and the notable failure to recognise freedom of belief. Article 5(a) of the Cairo Declaration lays down the right to marry as follows: "Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right." According to experts, **the reason why religion is not mentioned here is because Sharia law does not recognise a woman's right to marry a non-Muslim.** The declaration further holds that "Islam is the religion of unspoiled nature" (Article 10). Article 1 of the 1990 Cairo Declaration recognises that "[a]ll men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations". **This suggests that equality is to be understood in terms of dignity, obligations and responsibilities but not in terms of law. To put it plainly, Muslim women and non-Muslims have the same obligations and responsibilities as Muslim men but not the same rights (just the same "dignity).** Last but not least, the Cairo Declaration is based solely on the rights and freedoms of Sharia law (Article 24: "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah"), which is considered "the only source of reference for the explanation or clarification of any of the articles of this Declaration" (Article 25) (...).

26. (...) The preamble to the Cairo Declaration, for example, states that fundamental rights are an integral part of the “Islamic religion” and refers directly to Sharia law as a source of reference for interpreting them. **We often find provisions which can prove to be disguised limitations on the rights being proclaimed, reflected in references to States’ domestic legislation,14 to Sharia law or to rather vague definitions of the rights being guaranteed. There are also serious omissions, particularly regarding freedom of religion,** since Article 10 of the Cairo Declaration makes no reference to freedom of belief or freedom to manifest one’s religion, stating only that “it is prohibited to exercise any form of compulsion on man ... in order to convert him to another religion or to atheism”. The 1981 Universal Islamic Declaration of Human Rights leaves in abeyance fundamental issues such as gender equality and freedom of religion and discriminates between Muslims and non-Muslims with regard to freedom of movement in the “Islamic world”.

(...)

30. It is also probable that **a large number of cases concerning the position of Muslim women under Islamic law never come before the ordinary courts or the European Court of Human Rights because women are under enormous pressure from their families and their communities to comply with the demands of the informal religious courts.** In such cases there arises the question of whether to use the concept of public order to refuse to recognise (or enforce) discriminatory decisions even if they are not challenged by the women concerned.

Draft resolution of the Parliamentary Assembly

PACE, Committee on Legal Affairs and Human Rights, Draft resolution, AS/Jur (2018) 46, Doc. 14787, 3 January 2019, “Compatibility of Sharia law with the European Convention on Human Rights: can States parties to the Convention be signatories of the “Cairo Declaration”?”

The draft resolution has been adopted unanimously by the Committee on Legal Affairs and Human Rights on December 13th, 2018 and will be submitted to vote at the plenary session on January 22nd, 2019.

1. The Parliamentary Assembly recalls, *inter alia*, its Resolution 1846 (2011) and its Recommendation 1987 (2011) on combatting all forms of discrimination based on religion, as well as its Resolution 2076 (2015) on freedom of religion and living together in a democratic society and its Recommendation 1962 (2011) on the religious dimension of intercultural dialogue. On those occasions, the Assembly examined the co-existence of different religions in a democratic society. It recalls that pluralism, tolerance and a spirit of openness are the cornerstones of cultural and religious diversity.

2. The Assembly reiterates from the outset the obligation on member States to protect the right to freedom of thought, conscience and religion as enshrined in Article 9 of the European Convention on Human Rights (ETS No. 5, “the Convention”), which represents one of the foundations of a democratic society. The right to manifest one’s religion, however, is a qualified right whose exercise may be limited in response to certain specified public interests and, under Article 17 of the Convention, may not aim at the destruction of other Convention rights or freedoms.

3. The Assembly also recalls that it has on several occasions underlined its support for the principle of the separation of State and religion, as one of the pillars of a democratic society, for instance in its Recommendation 1804 (2007) on State, religion, secularity and human rights. This principle should continue to be respected.

4. The Assembly considers that the various Islamic declarations on human rights adopted since the 1980s, while being more religious than legal, fail to reconcile Islam with universal human rights, especially insofar as they maintain the Sharia law as their unique source of reference. This includes the 1990 Cairo Declaration on Human Rights in Islam, which, whilst not legally binding, has symbolic value and political significance in terms of human rights policy under Islam. It is therefore of great concern that three Council of Europe member States - Albania, Azerbaijan and Turkey - are signatories to the 1990 Cairo Declaration, as are Jordan,

Kyrgyzstan, Morocco and Palestine, whose parliaments enjoy partner for democracy status with the Assembly.

5. The Assembly is also greatly concerned about the fact that Sharia law – including provisions which are in clear contradiction with the Convention - is applied, either officially or unofficially, in several Council of Europe member States, or parts thereof.

6. The Assembly recalls that the European Court of Human Rights has already stated in *Refah Partisi (The Welfare Party) and others v. Turkey* that “the institution of Sharia law and a theocratic regime were incompatible with the requirements of a democratic society”. Sharia law rules on, for example, divorce and inheritance proceedings are clearly incompatible with the Convention, in particular its Article 14, which prohibits discrimination on grounds such as sex or religion, and Article 5 of Protocol No. 7 to the Convention (ETS No. 117), which establishes equality between marital partners. Sharia law is also in contradiction with other provisions of the Convention and its additional protocols, including Article 2 (right to life), Article 3 (prohibition of torture or inhuman or degrading treatment), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 9 (freedom of religion), Article 1 of Protocol No. 1 (ETS No. 9) (protection of property) and Protocols Nos. 6 (ETS No. 114) and 13 (ETS No. 187) prohibiting the death penalty.

7. In this context, the Assembly regrets that despite the recommendation it made in its Resolution 1704 (2010) on freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece), asking the Greek authorities to abolish the application of Sharia law in Thrace, this is still not the case. Muftis continue to act in a judicial capacity without proper procedural safeguards. The Assembly denounces in particular the fact that in divorce and inheritance proceedings – two key areas over which muftis have jurisdiction – women are at a distinct disadvantage.

8. The Assembly is also concerned about the “judicial” activities of “Sharia councils” in the United Kingdom. Although they are not considered part of the British legal system, Sharia councils attempt to provide a form of alternative dispute resolution, whereby members of the Muslim community, sometimes voluntarily, often under considerable social pressure, accept their religious jurisdiction mainly in marital and Islamic divorce issues, but also in matters relating to inheritance and Islamic commercial contracts. The Assembly is concerned that the rulings of the Sharia councils clearly discriminate against women in divorce and inheritance cases. The Assembly is aware that informal Islamic Courts may exist in other Council of Europe member States too.

9. The Assembly calls on the member States of the Council of Europe to protect human rights regardless of religious or cultural practices or traditions.

10. The Assembly notes with approval the 2008 judgment of the United Kingdom's House of Lords addressing these principles.

11. The Assembly calls on Council of Europe member States and those whose parliaments enjoy partner for democracy status with the Assembly to:

11.1. bolster pluralism, tolerance and a spirit of openness by proactive measures, taken by governments, civil society and religious communities, whilst respecting common values as reflected in the European Convention on Human Rights;

11.2. accept that the Convention is an international instrument binding on all Council of Europe member States.

12. The Assembly calls on Albania, Azerbaijan and Turkey, as well as Jordan, Kyrgyzstan, Morocco and the Palestine Legislative Council, all signatories to the 1990 Cairo Declaration, to:

12.1 consider withdrawing from the Cairo declaration;

12.2 make use of all available means to make declarations, so as to ensure that the 1990 Cairo Declaration has no effect on their domestic legal orders that may be inconsistent with their obligations as Parties to the European Convention on Human Rights, as applicable; or

12.3 consider performing some formal act which clearly establishes the Convention as a superior source of obligatory binding norms.

13. The Assembly, while noting the legislative change in Greece which made the practice of Islamic sharia law in civil and inheritance matters optional for the Muslim minority, calls on the Greek authorities to:

13.1 monitor whether this legislative change will be sufficient to satisfy the requirements of the Convention;

13.2 allow the Muslim minority to choose freely its muftis as purely religious leaders (that is, without judicial powers), through election or appointment, thereby abolishing the application of Sharia law, as already recommended in Resolution 1704 (2010).

14. The Assembly, while welcoming the recommendations put forward in the conclusions of the Home Office Independent review into the application of sharia law in England and Wales, as a major step towards a solution, calls on the authorities of the United Kingdom to:

14.1 ensure that Sharia councils operate within the law, especially as it relates to the prohibition of discrimination against women, and respect all procedural rights;

14.2 review the Marriage Act to make it a legal requirement for Muslim couples to civilly register their marriage before or at the same time as their Islamic ceremony, as is already stipulated by law for Christian and Jewish marriages;

14.3 take appropriate enforcement measures to oblige the celebrant of any marriage, including Islamic marriages, to ensure that the marriage is also civilly registered before or at the same time as celebrating the religious marriage;

14.4 ensure that vulnerable women are provided with safeguards against exploitation and inform them about their rights to seek redress before the courts in the United Kingdom;

14.5 put in place awareness campaigns to encourage Muslim communities to acknowledge and respect women's rights in civil law, especially in the areas of marriage, divorce, custody and inheritance;

14.6 conduct further research on "judicial" practice of Sharia councils and on the extent to which such councils are used voluntarily, particularly by women, many of whom would be subject to intense community pressure in this respect.

ⁱ Converting from Islam is a form of “apostasy” and is punishable by death. AHMAD IBN NAQIB AL-MISRI, *RELIANCE OF THE TRAVELLER* 595 (Nuh Ha Mim Keller, trans., Amanat Publications rev. ed. 2008) (1368) [hereinafter *RELIANCE OF THE TRAVELLER*] (“When a person who has reached puberty and is sane voluntarily apostatizes from Islam, he deserves to be killed.”); see also ABDULLAH YUSUF ALI, *THE MEANING OF THE HOLY QURAN, Surah 5:33* (10th ed. 2001) [hereinafter *QURAN*] (“The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: That is their disgrace in this world, and a heavy punishment is theirs in the hereafter”). Muhammad was recorded to have said, “If . . . (a Muslim) discards his religion, kill him.” *SAHIH BUKHARI*, Vol. 4, Bk. 52, No. 260.

ⁱⁱ *QURAN*, at *Surah 4:140* (“Already has [Allah] sent you word in the book, that when ye hear the signs of Allah held in defiance and ridicule, ye are not to sit with them unless they turn to a different theme.”); see also *SAHIH BUKHARI*, at Vol. 3, Bk. 46, No. 705 (“The Prophet said, ‘Allah has accepted my invocation to forgive what whispers in the hearts of my followers, unless they put it to action or utter it.’”); RUDOLPH PETERS, *CRIME AND PUNISHMENT IN ISLAMIC LAW: THEORY AND PRACTICE FROM THE SIXTEENTH TO THE TWENTY-FIRST CENTURY* 65 (2005) (“If the apostasy consisted in insulting the prophet (*sabb al-nabi*), according to most schools the apostate is not given an opportunity for repentance, but is killed immediately after the sentence.”). Blasphemy is a form of apostasy. *RELIANCE OF THE TRAVELLER*, *supra* note i, at 596–98 (“Among the things that entail apostasy from Islam are to speak words that imply unbelief such as ‘Allah is the third of three,’ or ‘I am Allah’ to revile Allah or His messenger to be sarcastic about Allah’s name to deny any verse of the Koran or anything which by scholarly consensus belongs to it, or to add a verse that does not belong to it; to mockingly say, ‘I don’t know what faith is’ to describe a Muslim or someone who wants to become a Muslim in terms of unbelief, to revile the religion of Islam, to be sarcastic about any ruling of the Sacred Law; or to deny that Allah intended the Prophet’s message to be the religion followed by the entire world.”). Apostasy is punishable by death, see *supra* note i, and therefore blasphemy is also punishable by death.

ⁱⁱⁱ *QURAN*, at *Surah 5:5* (“This day are (all) things good and pure made lawful unto you. The food of the people of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time”); see also *RELIANCE OF THE TRAVELLER*, *supra* note i, at 529 (“It is not lawful or valid for a Muslim man to be married to any woman who is not either a Muslim, Christian, or Jew; nor is it lawful or valid for a Muslim woman to be married to anyone besides a Muslim.”)

^{iv} *QURAN*, at *Surah 5:90–91* (“O ye who believe! Intoxicants and gambling are an abomination of Satan’s handiwork; eschew such (abomination), that ye may prosper. Satan’s plan is (but) to excite enmity and hatred between you, with intoxicants, and hinder you from prayer: will ye not then abstain?”). The punishment of forty lashes for consuming alcohol derives from *hadith*. *SAHIH BUKHARI*, *supra* note i, at Vol. 8, Bk. 81, Num. 764 (“The Prophet beat a drunk with palm-leaf stalks and shoes. And Abu Bakr gave (such a sinner) forty lashes.”); see also *RELIANCE OF THE TRAVELLER*, *supra* note i, at 617; PETERS, *supra* note ii, at 64.

^v *QURAN*, at *Surah 4:34* (“(Husbands) are the protectors and maintainers of their (wives) because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next,) refuse to share their beds, (and last) beat them (lightly).”). Each parenthetical, which collectively

aim to soften the harshness of the text, was inserted by the translator's own initiative and is not in the original Arabic version of the *Quran*. See Int'l Inst. of Islamic Thought, *Preface to the New Edition*, in *QURAN*, at ix–x; see also 2 MUHAAMAD SUBHI BIN HASAN HALLAQ, *FIQH: ACCORDING TO THE QURAN AND SUNNA* 156 (2008) (Muhammad said: “[A]nd it is your right upon them that they do not allow any man whom you dislike to sit on your mattress; and if they do so, beat them, but not violently.”) (citing *Hadiths* Narrated by Al-Hakim (2/189–190), Al-Baihaqi (7/293) and At-Tabarani) [hereinafter *FIQH*].

^{vi} *RELIANCE OF THE TRAVELLER*, *supra* note i, at 59 (“Circumcision is obligatory (*O*: for both men and women. For men it consists of removing the prepuce from the penis, and for women, removing the prepuce (*Ar. bazr*) of the clitoris.”); see also CENTRE FOR SOCIAL COHESION, *CRIMES OF THE COMMUNITY: HONOUR-BASED VIOLENCE IN THE UK* 69 (2d ed. 2010).

^{vii} *QURAN*, at *Surah* 2:223 (“Your wives are as a tilth unto you so approach your tilth when or how you will.”); *RELIANCE OF THE TRAVELLER*, *supra* note i, at 525 (It is “obligatory for a woman to let her husband have sex with her immediately when: (a) he asks her; (b) at home . . . ; (c) and she can physically endure it.”). If a woman refuses her husband, she is deemed “rebellious” and the husband is permitted to force her to comply. *Id.* at 542; see also *QURAN*, at *Surah* 4:34.

^{viii} *QURAN*, at *Surah* 5:38 (“As to the thief, male or female, cut off his or her hands: A punishment by way of example, from Allah, for their crime.”). The *hadiths* explain that “[a] woman committed theft in the Ghazwa [(battle)] of the Conquest (of Mecca) and she was taken to the Prophet who ordered her hand to be cut off.” *SAHIH BUKHARI*, *supra* note i, at Vol. 3, Bk. 48, Num. 816. In another instance, “[t]he Prophet cut off the hand of a thief for stealing a shield.” *Id.* at Vol. 8, Bk. 81, Num. 788.

^{ix} According to *hadiths*, Muhammad prescribed stoning for adulterers. See, e.g., *SAHIH BUKHARI*, *supra* note i, at Vol. 3, Bk. 49, Num. 860 (“go to the [adulterous] wife of this (man) and stone her to death”); *id.* at Vol. 7, Bk. 63, Num. 195 (After a married man confessed to the prophet that he had committed adultery, “the Prophet ordered him to be stoned to the death.”); *SAHIH MUSLIM*, Bk. 017, Num. 4191 (“[I]n case of married male committing adultery with a married female, they shall receive one hundred lashes and be stoned to death.”); see also Ishtiaq Ahmed, *View: Stoning to Death*, *DAILY TIMES* (Pak.) (Sept. 14, 2010), (“[A]ll the five schools of Islamic jurisprudence—Hanafi, Shafai, Maliki and Hanbali of the Sunnis and Ja’afri of the Shias prescribe stoning for adultery. On this point of law, there is complete unanimity of opinion.”).

^x See, e.g., Seth Mydans, *In Pakistan, Rape Victims Are the ‘Criminals,’* *N.Y. TIMES* (May 17, 2002), (A Pakistani *Sharia* judge found the married rape victim, who could not meet the evidentiary requirements demanded of rape victims, guilty of adultery and subsequently sentenced her to death by stoning; the stoning sentence is rarely carried out in Pakistan, however, and female rape victims can typically expect ten to fifteen years in prison.).

^{xi} *RELIANCE OF THE TRAVELLER*, *supra* note i, at 550–53 (noting that “[a] woman has no right to custody . . . [if] she remarries” and the person who gets custody must also be a Muslim because a “non-Muslim has no right to authority and hence no right to raise a Muslim.”); *FIQH*, *supra* note v, at 201–202 (“The mother has more right to custody of her child, so long as she does not remarry[.]”).

^{xii} *RELIANCE OF THE TRAVELLER*, *supra* note i, at 556–60 (noting that a valid divorce must come from the husband); *FIQH*, *supra* note v, at 164; JOHN L. ESPOSITO, *WOMEN IN MUSLIM FAMILY LAW* 29–30 (2d ed. 2001) (“A husband’s act of divorce in Hanafi law is unencumbered. A Muslim who has attained puberty and is of sound mind has the right to divorce his wife whenever he wishes without citing a cause. The fact that the wife has no part in

the procedure is further indicated by the fact that she does not have to be present nor must she be informed. The divorce can be either revocable, which gives the man an opportunity to reconsider the decision, or irrevocable.”). Esposito noted that at-will divorce—without court procedure or notice to the wife—is legally valid. *Id.* at 31.

^{xiii} See FIQH, *supra* note v, at 171 (asserting that “‘*Al-Khul’* is dissolution, not divorce”).

^{xiv} See QURAN, at Surah 2:229 (providing that in cases where a wife “fear[s] that [she] would be unable to keep the limits ordained by Allah” by remaining in a particular marriage, “there is not blame on either of [the spouses] if she gives something for her freedom”).

^{xv} RELIANCE OF THE TRAVELLER, *supra* note i, at 522 (There are two types of guardians over women (and young girls), “those who may compel their female charges to marry someone, and those who may not.” Guardians who may force the women or girls under their charge to marry include the girl’s father or paternal grandfather.); see also Susan W. Tiefenbrun, *The Semiotics of Women’s Human Rights in Iran*, 23 CONN. J. INT’L L. 1, 61 (2007).

^{xvi} QURAN, at Surah 4:3 (“[M]arry women of your choice, two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice.”); FIQH, *supra* note v, at 128 (“I embraced Islam and at that time, I had eight wives; I mentioned this to the Prophet and he said’: “‘Choose four of them.””) (citing Abu Dawood (no. 2241) and Ibn Majah (no. 1952)). Muhammad himself was a polygamist, and among his wives was a girl, Aisha, whom he engaged when she just was six years old and with whom he had sexual intercourse when she was only nine years old. SAHIH BUKHARI, *supra* note i, at Vol. 5, Bk. 58, Num. 236 (“[Muhammad] married ‘Aisha when she was a girl of six years of age, and he consumm[ated] that marriage when she was nine years old.”).

^{xvii} Tadashi Maeda, *Making Sense of the Fast-Growing Islamic Finance Market*, in CURRENT ISSUES IN ISLAMIC BANKING AND FINANCE: RESILIENCE AND STABILITY IN THE PRESENT SYSTEM 118 (Angelo M. Venardos ed., 2010). *Shari‘ah-compliant financing “is part of a wider agenda of jihad in accordance with the vision of Islamist ideologists of the overthrow of non-Islamic systems and the establishment of a pan-Islamic Caliphate that will rule the earth.”* PATRICK SOOKHDEO, UNDERSTANDING SHARI‘A FINANCE 39 (2008).

^{xviii} “Zakat is the prescribed share of one’s wealth one owns, possesses and holds for one lunar year, provided the wealth is equal to or above a minimum amount called Nisab.” *What is Zakat?*, ZAKATCHICAGO (last visited Mar. 9, 2011). Zakat is considered to be “one of the pillars of Islam,” a “duty toward Allah,” and an obligation placed “on every Muslim who[se] wealth exceeds the value of Nisab.” *Id.*; see also QURAN, at Surah 2:43 (“[P]ractice regular charity[.]”).

^{xix} RELIANCE OF THE TRAVELLER, *supra* note i, at 272. There are numerous documented instances of Islamic charitable organizations receiving zakat and using such funds to support terrorist organizations. See, e.g., Press Release, U.S. Dep’t of the Treasury, Treasury Designates Al-Aqsa International Foundation as Financier of Terror Charity Linked to Funding of the Hamas Terrorist Organization (May 29, 2003); *Suspensions Pursuant to Code Section 501(p)*, IRS.Gov (Mar. 10, 2011); U.S. DEP’T OF THE TREASURY, PROTECTING CHARITABLE GIVING—FREQUENTLY ASKED QUESTIONS 7–8 (2010). This has been termed “jihad with money.” Alex Alexiev, *Jihad Comes to Wall Street*, NAT’L REVIEW ONLINE (Apr. 3, 2008),; Press Release, BBC, Panorama: Faith, Hate, and Charity (July 30, 2006).

^{xx} See RELIANCE OF THE TRAVELLER, *supra* note i, at 610 (“If the offender is someone with the capacity to remain chaste, then he or she is stoned to death, someone with the capacity to remain chaste meaning anyone who had

sexual intercourse (A: at least once) with their spouse in a valid marriage, and is free, of age, and sane. If the offender is not someone with the capacity to remain chaste, then the penalty consists of being scourged (def. o12.5) one hundred stripes and banished to a distance of at least 81 km./50 mi. for one year.”).

^{xxi} SUNAN ABU-DAWUD, Bk. 38, No. 4447 [hereinafter ABU-DAWUD] (“[Muhammad] said: If you find anyone doing as Lot’s people did (i.e., committing homosexual sodomy), kill the one who does it, and the one to whom it is done.”); see also FIQH, *supra* note 143, at 442; RELIANCE OF THE TRAVELLER, *supra* note i, at 665 (recounting Muhammad’s statement that Muslims should kill “the one who sodomizes and the one who lets it be done to him”).

^{xxii} RELIANCE OF THE TRAVELLER, *supra* note i, at 584 (listing certain types of homicides in which perpetrators cannot be prosecuted: a Muslim killing a non-Muslim; killing an apostate (convert from Islam); killing one’s children); see also U.N. High Comm’r for Human Rights, Statement by Navi Pillay on International Women’s Day (Mar. 8, 2010), noted that, “[i]n the name of preserving family ‘honour,’ women and girls are shot, stoned, burned, buried alive, strangled, smothered and knifed to death with horrifying regularity. The reasons for these murders vary. They may be committed because the victim is considered to have breached family or community norms with respect to sexual conduct, or simply because a woman has expressed a desire to pick a husband of her own choice, or wishes to divorce or claim inheritance.”

Additionally, those who convert from Islam to another religion, like Christianity, are sometimes killed by their families for dishonoring the family. Because the punishment for apostasy is death, see *supra* note i, the families may go unprosecuted for murder. The *hadiths* continually reiterate that apostates should be killed, making the family even more justified in murdering an apostate son or “rebellious” daughter. See SAHIH BUKHARI, *supra* note i, at Vol. 9, Bk. 89, Num. 271; *id.* at Vol. 9, Bk. 84, Num. 57; *id.* at Vol. 9, Bk. 84, Num. 58; *id.* at Vol. 9, Bk. 83, Num. 37.

^{xxiii} See QURAN, at Surah 2:282 (“And get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her.”). *Hadiths* explain that the testimony of a woman is equal to half that of a man because of a supposed “deficiency of a woman’s mind.”