ISLAMIC LAW IN SUDAN:
A COMPARATIVE ANALYSIS

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I. INTRODUCTION

Since the late 1970's, Islamic fundamentalism and violence has spread from the Middle East to as far away as Algeria in West Africa and Mindanao, an island in the Philippines. If a government falls to the fundamentalists, some form of Islamic law (Shari'a) is always imposed, completely erasing Western law. Although it may be difficult for a Westerner to understand, in an Islamic state, the government, religion, and law are inseparable.

In an Islamic state, all law is based on the Qu'ran and any laws contrary to the express word of the Qu'ran are void. In a Western country such as the United States, government and law are separated from the Christian religion, although many of our most basic laws are drawn from the Bible. In fact, the First Amendment to the Constitution requires that there shall be no established religion. In an Islamic state however, Islam and the Qu'ran are inseparable from law and government. For example, in many of the most conservative Islamic countries, religious leaders are often

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the most powerful political leaders as well. In fact, virtually every Muslim
country, no matter how liberal, has established Islam as the state religion.
In a legal context, perhaps the Qu’ran could be seen as the equivalent of
the United States Constitution in that both are the highest laws of the land
in their respective spheres and thus, both negate any other laws contrary to
their meaning.

In the world today, it appears that all states with Muslim majorities
can be categorized into four groups based on their legal systems. The first
is the secular state, in which religion is separated from law in virtually all
areas. A good example is Turkey, where despite some recent inroads,
there has been almost a complete separation of law and religion since the
1920’s.

A second group of Muslim states are those that apply Western law in
all areas with only a few limited exceptions. In these states, Islamic courts
exist but generally only have jurisdiction over consenting Muslims who
have family or inheritance law disputes. Examples include Malaysia,
Indonesia, Jordan, Oman, Ethiopia (except in the Oromo region), Tunisia,
and Morocco. Djibouti was once in this category but now appears to be
moving toward a stricter form of Islamic law due to their crackdown on
alcohol in order to gain favor with the money-rich Saudi Arabians.
Somalia was once in this category as well (at least in the Somali cities) but
now has moved to the strictest form of Islamic law.

A third group, are those states that apply Islamic law universally
except in one or more specific areas, such as certain forms of capital
punishment and/or certain areas of the Shari’a that regulate business
activities. Examples include Pakistan, Kuwait, The United Arab Emirates
(UAE), Qatar, Yemen, and Libya. Iraq was once in category two,
relegating Islamic law to family law matters; but should now be considered
part of this group due to Iraq’s amputations for thievery in accordance with
strict Islamic law.²

The fourth and final group are those states that apply strict Islamic law
with no exceptions. States in this category include Iran (although there are
hints of a possible future moderation), Saudi Arabia, and more recently,
the Sudan, Afghanistan, and Somalia.

The purpose of this note is to determine how extensive the application
of Islamic law has become in the Sudan, in relation to other states that
apply Islamic law.

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1. WORLD PEACE THROUGH LAW CENTER, LAW AND JUDICIAL SYSTEMS OF NATIONS
II. A BRIEF HISTORY OF SUDAN

In order to understand the legal system of the Sudan, it is imperative to understand the history of the Sudan. However, history that has little or no legal implications will be omitted.

In 1877, Charles George Gordon, a British officer, took control of most of the Sudan, weakened the slave trade there, and became Governor General of the Sudan.\(^3\) In 1881, Islamic fundamentalists, led by the Mahdi, began to unify the tribes of northern Sudan and by 1885, they captured Khartoum and killed Charles Gordon.\(^4\) Shari’a courts were immediately established and full-fledged Islamic law was practiced throughout the area.\(^5\) In 1896, Lord Kitchener launched a campaign to reconquer the Sudan and by 1898, Khartoum and most of the rest of the country was again part of the British Empire.\(^6\)

Fearful of another Islamic uprising in northern Sudan, the British wrote the Sudan Mohammedan Law Courts Ordinance of 1902 which allowed Sudanese Muslims to use the Shari’a courts in matters dealing with family law, gifts, and inheritances.\(^7\) In southern Sudan, most of the inhabitants practiced tribal religions unrelated to Islam. In that part of the country the British closed off the region from the Islamic north, encouraged Christian missionary education, and denied any development which was reserved to the North. “In 1947, only eight years before independence, the separatist policy was officially reversed.”\(^8\) Despite the vast differences between the two regions in terms of both human and physical geography, the British forced the regions together and granted independence to a unified Sudan on January 1, 1956. The Christian and animist South immediately revolted from the Islamic North due to southern resentment of northern domination. The war continued until 1972, with the signing of the Addis Ababa Accords.\(^9\)

Since independence, the basic structure of the legal system remained the same.\(^10\) Family, gift, and inheritance law disputes between Muslims were covered by the Shari’a courts while all other matters were resolved through the English common law.

All of this changed in 1983 when Sudan’s dictator, Colonel Jaafar Nimeiri, imposed full-fledged Islamic law (the Shari’a) and declared an

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5. LIBRARY OF CONGRESS, supra note 3, at 21.
6. Id. at 23.
7. MODERN LEGAL SYSTEMS CYCLOPEDIA, 100.33, 100.51 (Kenneth Redden ed., 1984).
9. Id.
Islamic state. The vast majority of those who live in southern Sudan are Christians or Animists, consequently they once again took up arms against the government due to their fear of the harsh punishments which always accompany violations of Islamic law. Indeed, the imposition of Islamic law was the main reason for the resumption of the war, which continues to this day. In addition, Southerners felt discriminated against because Shari’a court proceedings are conducted in Arabic, a language most southern Sudanese do not understand.

On April 6, 1985 a group of military officers, led by Lieutenant General Abd ar Rahman Siwar adh Dhahab overthrew Nimeiri. Despite the change in leadership, the civil war continued because Dhahab refused to repeal the institution of Islamic law.

In 1986, a general election was held in all regions of Sudan except for thirty-seven southern districts afflicted by the civil war. A series of fragile coalition governments were formed and dissolved during the next three years. Various members of these coalition governments attempted to abolish the imposition of Islamic law but were unable to do so due to the opposition of the National Islamic Front (NIF) Party, led by Hassan al-Turabi who, as Attorney General of the Sudan in 1983, convinced Nimeiri to impose Islamic law which was not done since the nineteenth century. Thus, in 1989 the civil war continued to drag on and it was observed that "[t]he main obstacle [to ending the war] for the past three years has been the refusal of the civilian government to back down from the imposition of Islamic law." Finally, the existing coalition government expelled the NIF from the coalition, replacing it with several other smaller parties whose platforms included making peace with the Southerners. The resulting coalition government was weaker than it had been previously and before a peace treaty could be signed to end the civil war, a coup brought the NIF and Doctor Turabi back into power. Turabi’s partner, Colonel Umar Hassan Ahmad al Bashir led the coup against the coalition government on June 30, 1989 and established the Revolutionary Command Council for

14. LIBRARY OF CONGRESS, supra note 3, at 50.
15. Id. at 52-3.
Gravelle

National Salvation which was committed to imposing Islamic law on the non-Muslim South through military conquest.\textsuperscript{18}

It has become evident that the coup was fully backed and perhaps inspired by the political organization of the Sudanese Islamic Fundamentalists, the National Islamic Front (NIF). The NIF wants an Islamic state in Sudan and full implementation of Shari‘a, or Islamic law. The NIF has pushed other parties to take public stands in favor of implementing Shari‘a, and labels those who call for a secular government ‘atheists’ or ‘anti-Islamic.’\textsuperscript{19}

The leader of the NIF is Hassan al-Turabi, who, almost all Sudanese and diplomats agree, is the real president of Sudan.\textsuperscript{20} Turabi, who has a master’s degree in law from the University of London and a Doctorate in law from the Sorbonne, wants to spread Islamic fundamentalism, and thus Islamic law throughout East Africa.

‘Islam is on the march,’ he said proudly. ‘There is a collapse of socialism and the bankruptcy of Western liberal and socialistic regimes.’ He is confident that Islam will emerge as the world’s major political force. ‘...whatever the West does, Islam will still overcome it’ he said. ‘I feel very confident that Islam cannot be stopped.’ Eventually, Turabi foresees much of the Horn of Africa will be one Islamic community—Sudan, Somalia, Ethiopia, and Eritrea...It will happen naturally, Turabi is sure, because a devotion to Islam will unite the people...Turabi wants a revival, or resurgence, of Islam—a return to the glory of the Islamic Empire.\textsuperscript{21}

In late 1991, former President Jimmy Carter went to Sudan to try to broker a peace accord between the Islamic government and the Christian/Animist rebels but “Again the issue of Shari‘a led to the collapse of the meeting.”\textsuperscript{22} “The regime’s claim to exempt the South from Islamic laws cannot be taken seriously: in the event of conflict between national and regional laws, the supreme law of the land, Shari‘a, would prevail.”\textsuperscript{23}

\begin{itemize}
  \item \textsuperscript{18} LIBRARY OF CONGRESS, \textit{supra} note 3, at 53.
  \item \textsuperscript{20} Raymond Bonner, \textit{Letter From Sudan}, THE NEW YORKER, July 13, 1992, at 70, 72.
  \item \textsuperscript{21} \textit{Id.} at 73-4.
  \item \textsuperscript{22} Benaiah Yongo-Bure, \textit{Sudan’s Deepening Crisis}, MIDDLE EAST REP., Sept.-Oct. 1991, at 8, 12.
  \item \textsuperscript{23} \textit{Id.} at 12.
\end{itemize}
As one might expect, the NIF traditionally has had strong ties to the Iranian theocratic leadership. "The party is funded by wealthy local businessmen, Saudi interests opposed to leftist tendencies, and the Iranian government." It has unusually close connections with the Iranian-inspired El Jihad el Islami movement, whose leader, Hassan Haj Ali, is actually a NIF member.24 In December of 1991, Iran and Sudan signed a mutual defense pact and according to CIA analysts, Iran has built and operated bases throughout Sudan in order to facilitate the training of Islamic militants for "terrorist" actions throughout Africa.25

In January of 1992, the Sudanese government declared a jihad (holy war) against the Christian/Animist rebels.26 One scholar defines jihad as a form of political struggle designed "...to disarm the enemy so that Islam is allowed to apply its shari'a unhindered by the oppressive power of idolatrous tyrannies."27 Sudan is also attempting to export its Islamic revolution (and thus Islamic law) to Egypt, Algeria, Eritrea, Ethiopia, and Uganda.28 Perhaps most vulnerable to Sudan's efforts is Ethiopia's Oromo region; which, if it secedes from the rest of Ethiopia, "...fits in with Turabi's vision of a chain of Islamic states across Africa."29 Already, secessionist tendencies are starting to appear in Ethiopia's Oromo region:

One evening last year, officials in the Muslim-controlled Oromo region of southern Ethiopia raided the area's largest evangelical Christian church and arrested most of its congregants. Many churchgoers died in jail and denied proper burial and left to be scavenged by nearby wildlife. Saving special treatment for the church's minister, the authorities permitted him to live as an ironically visible symbol, but only after torturing him and plucking out his eyes.30

Sudan is even spreading its tendrils as far as the Islamic Republic of the Comoros Islands in the Indian Ocean where weekly flights have been landing from Khartoum with possible shipments of military hardware. Even General Aideed, the infamous late Somali warlord has flown to Khartoum, seeking aid from Turabi. Finally, on August 12, 1993, Secretary of State Warren Christopher, in accordance with section 6(j) of the Export Administration Act, 50 U.S.C. App. 2405(j), put Sudan on the international terrorism list.

By 1995, the civil war was into its thirteenth year with over 1.3 million southern Sudanese killed. By October of 1995, the rebels made their largest advance since 1991 and in 1997 it began to appear that the Sudanese rebels, like their brethren in the former Zaire, might take over the whole country. However in the winter dry season, the Sudanese government will be able to utilize their Soviet tanks and probably retake some of the captured territory. The chances of peace are not great.

III. CRIMINAL LAW IN SUDAN

There are three categories of crimes in Islamic law: Hudud, Quesas, and Ta'azir crimes. Except for the Hudud crime of fornication, all other Hudud crimes and all Quesas crimes require that there be two male witnesses who have witnessed the crime in order for there to be a conviction. One of the major differences between the three categories of crimes is that punishment by the State for Hudud crimes is mandatory, punishment by the State for Ta'azir crimes is discretionary, and the type of punishment for Quesas crimes is largely left up to the victim or the victim's family.

A. Hudud Crimes

Hudud crimes are punishable by a Hadd, a penalty fixed by the Qu'ran. Because Hadd penalties are quite drastic, how strictly a state enforces the Hudud crimes is perhaps the best indicator in determining whether a state follows a strict interpretation of Islamic law or a watered-down, more moderate version. As we shall see, Sudan punishes all Hudud crimes exactly as the Qu'ran outlines. This puts Sudan in company with only a few other states/areas: Saudi Arabia, Afghanistan, and Somalia. Other conservative Islamic states either substitute jail terms for all Hadd

penalties or only carry out some of the Hadd penalties while refusing to carry out others.

Examples abound throughout the Islamic world. In 1979, the Pakistani government promulgated the Hadood Ordinances which provide Hadd penalties in accordance with the Qu'ran, including stoning to death for adultery. However, these penalties have never been carried out, because prison terms were given instead. In Libya, General Qadhafi "criticized the leniency of judicial punishments, recommending legislation to mandate amputation for thievery and public whipping for adulterers." There was no evidence that these recommendations were enacted into law. Even if they were, Libya would still not be using some of the more drastic Hadd penalties as required by the Qu'ran. In Qatar, the death penalty is used in accordance with Islamic law but amputations are prohibited by the government. In another Persian Gulf state, the United Arab Emirates (U.A.E.), the "Federal Supreme Court ruled in 1993 that Shari'a punishment may not be imposed on non-Muslims." In addition, no amputation sentences have ever been known to be carried out, even on Muslims. Finally, even in the increasingly conservative country of Yemen, the Yemeni Supreme Court has refused to confirm order by the lower courts requiring amputations and has ordered jail sentences instead.

There are six Hudud crimes. They are: 1) fornication and false accusation of fornication; 2) drinking alcoholic beverages; 3) theft; 4) brigandage or highway robbery; 5) apostasy; and 6) rebellion or transgression against the legitimate authority.

1. Fornication and False Accusation of Fornication

The Qu'ran provides that fornication by an unmarried person is punishable by 100 lashes, "flog each of them with a hundred stripes. Let not compassion move you in their case; in a matter prescribed by God, if ye believe in God and the last day, and let a party of the believers witness their punishment." As for fornication of a married person (adultery), "During his life the Prophet [Mohammad] ordered the stoning to death of a man and a woman found guilty of adultery" and stated "As for a woman and a man guilty of adultery, flog them with 100 stripes and stone them."

36. UNITED STATES ST. DEP'T., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1372 (1994).
37. Id. at 1245.
38. Id. at 1270.
39. Id. at 1302.
40. Id.
41. Id. at 1308.
42. Surat al-Tur LII:2.
In strict accordance with the Qu’ran, Sudan’s 1991 Criminal Act requires death by stoning for adulterers. However, convictions of fornication between unmarried persons are rare for three reasons. First, it is physically impossible for the average unmarried woman in northern Sudan to commit fornication due to operations performed on over 90% of adolescent northern Sudanese girls. Upon marriage, the operation is reversed and thus, fornication (adultery) is more common among married women in Sudan. As a result, there have been convictions for adultery in Sudan. Second, in order to convict a person of fornication, there must be four male witnesses to the act which is an extremely difficult burden to pass. Third, people rarely bring accusations of fornication because if the accuser does not bring forth four male witnesses, the accuser himself is guilty of the second Hudud crime, false accusation of fornication, and is subjected to eighty lashes. The Qu’ran states, “[a]nd those who accuse honorable women but bring not four witnesses, scourge them with eighty stripes.”

Most other Muslim states do not punish adulterers, but as mentioned earlier, General Qadhafi recommended legislation requiring public whippings for adulterers. In Saudi Arabia, adultery is punished by execution through stoning which is the same punishment required by the Pakistani Hadood Ordinances of 1979 although this punishment has never been carried out in Pakistan. Finally, in Hargeisa, Somalia, “[f]ive women suspected of prostitution were stoned to death, after having been buried up to the neck.”

2. The Drinking of Alcoholic Beverages

The second Hudud crime is the drinking of alcoholic beverages. Mohammed said, “He who drinks wine, whip him.” Sudan’s 1991

44. UNITED STATES ST. DEP’T., supra note 36, at 278.
45. Professor Bret Wallach, Lecture at the University of Oklahoma (Fall 1991).
46. UNITED STATES ST. DEP’T., supra note 36, at 284.
47. Wallach, supra note 45.
51. UNITED STATES ST. DEP’T., supra note 36, at 1245.
52. Id. at 1275.
53. Id. at 1372.
Criminal Act requires that persons who consume or brew alcohol shall be subjected to forty lashes and the Sudanese government has enforced this law by routinely lashing persons convicted of brewing or consuming alcohol. In mid-1994, Khartoum authorities charged 657 people, many of whom were later flogged, with alcohol-related offenses; among those charged were poor women who were brewing a mild, local alcoholic drink in order to make a living.

Most other Muslim states allow their citizens to drink alcohol although the tide is slowly turning. For example, in Djibouti the government closed down more than eighty alcohol-related establishments. However, it is thought that this action was not due to religious fervor, but rather a ploy to acquire more financial aid from Saudi Arabia. It is quite probable that part of the reason for the spread of Islamic Law is the desire of destitute Muslim countries to please wealthy Islamic states such as Saudi Arabia, in the hope of garnering more aid from their oil-rich coffers. “Many Sudanese openly admit that the higher profile given to the Arab identity has been influenced by Sudan’s need for Arab financial support, which has enhanced by a combination of the Arab petrodollar boom of the 1970’s and the increasing poverty of Sudan and of Africa.”

In Saudi Arabia, drunkenness is punishable by flogging with a cane. The Saudi Arabian religious police (Mutawwa), without a warrant, regularly force their way into homes looking for alcohol and other evidence of non-Islamic behavior. In 1987, Saudi Arabia’s ulema (Islamic theologians) decided to extend the punishment of beheading to drug smugglers. In 1993, Saudi Arabian authorities beheaded eighty-five people, many of whom were convicted of drug smuggling. All beheadings are performed in public town squares in order to serve as a deterrent to others. Beheadings for drug smugglers continued into 1995. Unlike Pakistan’s coastal plain, Islamic law is more strictly applied in Pakistan’s northern interior, where “[e]ven foreigners are not allowed to drink alcohol.”

58. DENG, supra note 8, at 741.
59. UNITED STATES ST. DEP’T., supra note 36, at 1275.
62. UNITED STATES ST. DEP’T., supra note 36, at 1275.
63. Caryle Murphy, In Saudi Arabia, No News Isn’t Necessarily Good News, WASH. POST NAT’L WEEKLY, Jan. 4-10, 1993, at 19
Amazingly, in brutally conservative Somalia, most males are stoned on “khat, a leaf with narcotic qualities that when chewed gives a marijuana-like high.” Likewise, in Yemen’s 1994 civil war, conservative northern Yemenese troops destroyed Yemen’s only brewery despite the fact that khat is chewed in Sana (North Yemen’s capital) by women and men twice a day, one third of Yemen’s purchases are khat, and (for such an impoverished country) “the fields are planted with khat, not corn.”

3. Theft

The fourth Hudud crime is theft. The Qu’ran states, “[a]s for the thief, both male and female, cut off their hands; it is the reward for their own deeds, an exemplary punishment from Allah.” Like all Hudud crimes, the actus reus and the mens rea of the crime must be proved beyond a reasonable doubt through the testimony of at least two reasonable male witnesses and the penalty must be carried out in public in order for the penalty to serve as an example. In Sudan, “Sudanese courts handed down several sentences involving amputations in 1994, of which at least one was carried out.”

Again, although most Muslim states do not amputate limbs for theft, the list of states/areas that use the punishment is growing. In Somalia, which has ceased to exist as a state since 1991, popular new Islamic courts have sprung up which have carried out cross-amputation (amputation of the right hand and left foot) on petty thieves. However, according to a United States State Department official, the amputations are not carried out on thieves who have connections or influence. In Iraq, in an effort to combat that country’s soaring crime rate, Saddam Hussein has ordered that first offender thieves will lose a hand and second-time offenders will lose their left foot while thieves found carrying a weapon will be executed. In Libya, General Qadhafi recommended legislation requiring amputation for theft but there is no way of knowing if these recommendations have been carried out because the United States does not maintain an embassy in Libya “...and because the regime strictly limits access to information.”

68. Legendary Trails (PBS television broadcast, Dec. 20, 1994).
70. Kamel, supra note 34, at 164.
71. UNITED STATES ST. DEP’T., supra note 56, at 5.
72. ABC News with Peter Jennings (ABC television broadcast, Mar. 1, 1995).
74. Iraqi Leader Orders Amputation for Theft, supra note 2.
75. UNITED STATES ST. DEP’T., supra note 36, at 1244-45.
The small Persian Gulf states are generally more liberal than their neighbors. For example, Qatar does not allow amputation\textsuperscript{76} while in the U.A.E.; higher authorities have pardoned all amputation sentences imposed by lower U.A.E. courts.\textsuperscript{77} As one might expect, Saudi Arabia rigorously observes the Qu'ranic requirements of amputation for theft.\textsuperscript{78} It appears that in Saudi Arabia, amputations as well as beheadings are carried out on a weekly basis.\textsuperscript{79} Finally, Pakistan's 1979 Hadood Ordinances require amputation of limbs for theft but these punishments have never been carried out in Pakistan.\textsuperscript{80}

4. Brigandage

The fifth Hudud crime is brigandage, otherwise known as highway robbery. The Qu'ran states that the "...reward for those who wage war upon Allah and His Messenger, and strive after corruption in the land, will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled out of the land."\textsuperscript{81} As with other Hudud crimes, the Sudan carries out the Qu'ranic prescription for the punishment of brigandage. In late January of 1992, "[a] court in Darfur, the country's [Sudan's] westernmost province, sentenced four men who had been found guilty of killing four villagers during an armed robbery to be hanged and then crucified."\textsuperscript{82} The only other country in the world that crucifies dead criminals is Saudi Arabia.\textsuperscript{83} However, the Sudan goes even further by prescribing death by crucifixion. Sudan's 1991 Criminal Code requires amputations, death by stoning, lashings, and death by crucifixion depending on the crime committed.\textsuperscript{84} A reporter who traveled throughout Sudan wrote, "[a]nd, on occasion children as young as seven are crucified."\textsuperscript{85} If this is true, Sudan has gone beyond any other country in the world where the harshness of its Islamic penalties is concerned.

\begin{thebibliography}{99}
\bibitem{76} Id. at 1270.
\bibitem{77} Id. at 1302.
\bibitem{78} Id. at 1275.
\bibitem{79} Stiff Penalty, supra note 64.
\bibitem{80} UNITED STATES ST. DEP'T., supra note 36, at 1372.
\bibitem{81} Surat al Maeda, V:33.
\bibitem{82} Bonner, supra note 20, at 70.
\bibitem{83} UNITED STATES ST. DEP'T., supra note 36, at 1275.
\bibitem{84} UNITED STATES ST. DEP'T., unclassified U.S. ST. DEP'T. memo, Nov. 23, 1991.
\end{thebibliography}
5. Apostasy

The fifth Hudud crime is apostasy which is defined as the turning away from Islam after once having embraced it.1 Apostasy is punishable by death.86

On January 18, 1985, Mahmoud Mohamed Taha, the leader of a Sudanese political opposition party, was executed for apostasy.87 According to a Roman Catholic bishop, four Arab Christians were whipped and then crucified for refusing to reconvert to Islam which they had left twenty years ago.88 However, a United States State Department official stated that this report has not been confirmed.89

Other Muslim countries are more forgiving of Muslims who change their religion. The Persian Gulf island state of Bahrain, for example, allows its citizens to convert from Islam to other religions without penalty,91 which is also the policy in Jordan.92 However, Egypt, which is liberal in most respects, imprisons Muslims that convert to other religions.93 This is the case in Morocco as well, despite the fact that Morocco is even more secular than Egypt.

Some states' Islamic punishment laws have more "bark than bite." For example in Iran, a Christian convert from Islam was sentenced to death in 1983, but due to heavy pressure from international human rights groups the defendant was not executed and was finally released from prison in 1994.94 Another example is Qatar, where apostasy is a capital offense, but "no one is known to have been executed for it."95

In Saudi Arabia, apostasy is punishable by death, but no one has been punished for this crime in the past several years.96 However, in a related vein, a Saudi Arabian court sentenced an Egyptian national to 1,000 lashes for blasphemy, 500 of which were administered before he was deported.97 In Yemen, a teacher has been in prison since 1992 for apostasy98 and in the

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86. Kamel, supra note 34, at 165.
87. Id. at 166.
88. Deng, supra note 8, at 725.
91. United States ST. DEP'T., supra note 36, at 1159.
92. Id. at 1219.
93. Id. at 1171.
94. Id. at 1180.
95. Id. at 1271.
96. Id. at 1279.
97. United States ST. DEP'T., supra note 36, at 1275.
98. Id. at 1310.
U.A.E. six Indian expatriates were imprisoned in 1993 for performing a play critical of Islam.\textsuperscript{99} Even in the tranquil Maldive Islands, apostasy is punishable by loss of citizenship, "... although law enforcement authorities say this provision of the law has never been applied."\textsuperscript{100}

Pakistan’s blasphemy law has received the most press. It stipulates that anyone speaking or acting against the prophet Mohammed must be punished by death.\textsuperscript{101}

In 1986 legislation was passed inserting Section 295(c) into the Pakistan Penal Code, making blaspheming the Prophet Muhammad a capital offense. The law was apparently aimed at Ahmadis but has increasingly been used against Christians and Muslims as well. In 1992 the Senate unanimously adopted a bill to amend the blasphemy law so that the death penalty is mandatory in cases of conviction.\textsuperscript{102}

Early in 1995, a Christian boy and his uncle were sentenced to hang for writing anti-Islamic slogans on a mosque.\textsuperscript{103} However, this sentence was overturned by the Lahore High Court but hundreds of Muslims vowed revenge.\textsuperscript{104} In summary, although a few Muslim states’ laws require death for apostasy, in the past several years, only Sudan has actually executed anyone for the crime.

6. Transgression

The sixth and final Hudud crime is transgression or rebellion against the legitimate authority. Most Islamic jurists agree that a transgression must be "by force" and the legitimate authority himself, must not be a transgressor of Islam in order for the rebel to be punished.\textsuperscript{105} "Those who are unable to fight or those who surrender or are arrested should not be punished by Had, but may be punished by Ta’azir [a less severe penalty]. Those who fight until subdued are subject to the death penalty as a Had."\textsuperscript{106}

The problem with this crime is who determines who is the legitimate authority? In reality, this Hudud crime provides an excuse for states like Iran, Sudan, Libya, and Iraq to execute coup plotters or even peaceful opposition leaders.

\textsuperscript{99} Id. at 1303.
\textsuperscript{100} Id. at 1358.
\textsuperscript{101} Horowitz, supra note 30, at 1.
\textsuperscript{102} United States St. Dep’t., supra note 36, at 1377.
\textsuperscript{105} Mansour, supra note A3, at 197-98.
\textsuperscript{106} Id.
B. **Quesas Crimes**

Quesas crimes (murder, manslaughter, assault and battery) are specifically listed in the *Qu’ran*, but specific punishments are not prescribed; instead, the victim or the victim’s family may choose monetary compensation or retaliation in kind.¹⁰⁷ The *Qu’ran* states, “The life for the life, and eye for the eye, and the nose for the nose, and the ear for the ear, and the tooth for the tooth, and for wounds retaliation.”¹⁰⁸ The *Qu’ran* also states that “[r]etaliation is prescribed for you in the manner of the murdered.”¹⁰⁹

The punishment and procedure for Quesas crimes in Sudan can best be understood from the following four paragraphs, published in the *Sudan Democratic Gazette*, an opposition newsletter published in London.

Meanwhile, the only state security agent ever to be successfully accused of murder, charged and convicted by a court of law, was set free by the regime. Major Abdel Hafiz El Bashir had confessed to killing engineer Abubaker Mohi El Din Rasikh, whom he confronted on the street and shot in cold blood in October 1992. The regime was pressed by the family of the deceased to bring the matter to trial and despite repeated non-showings of the major for various court hearings, he was eventually brought before a court of law and convicted. The regime then sought to win a reprieve for the major by the applying the Islamic code of blood money, whereby the death penalty can be commuted on the payment of a sum of money to the deceased’s family. The regime was taken aback by the family’s insistence on the death penalty.

The death penalty was handed down to the major by a court of law in February of this year. The regime offered the family of engineer Ababaker the sum of 250,000 Sudanese pounds, a mere $500 United States dollars, as recompense for the loss of their son. The family refused, insisting that Islamic law allowed for the death penalty to be carried out.

The case was then taken to the regime’s supreme court which reinterpreted the Islamic law and ruled that the family of the deceased had no choice but to accept the $500 being offered as blood money. The court further ruled that upon payment of the

¹⁰⁸. Surat al-Maeda V:45.
money, Major Abdel Hafiz need only serve a term of one year's imprisonment for carrying out the murder.\(^{110}\)

Besides Sudan, Quesas retaliation in kind is found in very few places, even in the Islamic world. For example, in Saudi Arabia relatives of a murder victim can demand a beheading of the perpetrator, but this punishment would be carried out by the government and not by the victim's family.\(^{111}\) However, like in Sudan, the victim's family can waive the punishment in exchange for a payment of blood money from the perpetrator.\(^{112}\)

There have been, however, several reports of Quesas retaliation in kind in war-torn Afghanistan. For instance, there have been at least two cases where commanders of various military factions allowed a relative of a murder victim to kill the "...convicted murderer, using a knife, in a so-called ‘Qisas’ (revenge) ritual,"\(^{113}\) in one well-publicized case in the northern Helmand province of Afghanistan, the wife of a murder victim carried out the sentence; this was believed to be the first case of a ‘Qisas’ killing by a woman.\(^{114}\)

C. Ta'azir Crimes

The third type of crime under Islamic law is the Ta'azir crime; crimes left undetermined by religious law. Ta'azir penalties are always less severe than Hudud penalties and are usually rehabilitative, retribution is not the guiding principle.\(^{115}\) Penalties available at the judge's discretion are reprimand, reparation, imprisonment, flagellation, and banishment.\(^{116}\) In Sudan, the Ta'azir was imposed when women who failed to cover their hair have been dragged off the street, taken to court, and subjected to forty to seventy lashes upon which one girl passed out after thirty lashes.\(^{117}\)

In a few other states, Ta'azir punishments are given for similar offenses. For example, in Saudi Arabia, a woman caught driving a car was run off the road, held for three days, and beaten.\(^{118}\)


\(^{112}\) Id.

\(^{113}\) Id.

\(^{114}\) Id.

\(^{115}\) MAUDIDI, supra note 35, at 25.

\(^{116}\) Cherif M. Bassiouni, Sources of Islamic Law and the Protection of Human Rights in the Islamic Criminal Justice System, in THE ISLAMIC CRIMINAL JUSTICE SYSTEM xii, 24 (Cherif M. Bassiouni ed. 1982)

\(^{117}\) Bonner, supra note 20, at 80.

\(^{118}\) UNITED STATES ST. DEP'T., supra note 36, at 1275.
IV. RIBA, INTEREST OR USURY?

A final indication of a state's commitment to strict Islamic law is its laws restricting Riba. "What constitutes Riba has long been the subject of debate amongst Islamic scholars. Some believe that Riba refers to usury, whereas others believe that all interest is Riba." Generally, more conservative Islamic states believe that all interest is Riba while more moderate Muslim states believe that Riba only refers to usury. All of the confusion stems from the fact that Mohammed prohibited Riba but he never gave it any precise definition. Whatever Riba is, it is banned by the Qu’ran.

Those who devour Riba will not stand except as he stands who has been driven to madness by the touch of Satan... O ye who believe! Fear God, and give up what remains of your demand for Riba, if you are indeed believers. If you do not, take notice of war from God and His Apostle . . .

Interestingly, the Bible has a similar provision. The Bible states, "[i]f thou lend money to any of my people that is poor by thee, thou shalt not be to him as a usurer, neither shalt thou lay upon him usury."

If one interprets the following quotation literally, it appears that the Bible also prohibits interest, "Take thou no usury of him or increase: but fear thy God . . . ." Despite the similarities between the quotations from the Bible and the Qu’ran, the two religions diverged in this area in the sixteenth century. "...when Protestantism arose, its support, especially the support of Calvinism, came chiefly from the rich middle class, who were lenders rather than borrowers. Accordingly, first Calvin, then other Protestants, and finally the Catholic Church, sanctioned ‘usury’.

Thus, during Europe’s colonization of the Islamic world, interest and usury (Riba) was allowed even in the most conservative, Islamic areas. It was not until the independence movements of the 1950’s and 1960’s, that the theory of Islamic banking emerged when macroeconomic models of interest-free economies were developed and some ideas were given on how interest-free banking could work at the microeconomic level.

121. Id. at 268.
125. RAYNER, supra note 120, at 271.
Still, a state’s prohibition of Riba is an indication of that state’s commitment to full-fledged Islamic law due to the fact that an interest-free economy operates at a disadvantage to economies that allow interest. A well-known Islamic jurist, Abd ar-Razzaq as-Sahuri, stated that Riba is a “major impediment to the evolution of Islamic jurisprudence coming into line with the requirements of modern life.”

Perhaps the biggest disadvantage to an interest-free society is the damage done to its banking system. Since depositors are not allowed to collect interest on their deposits, there is no incentive for prospective depositors to deposit funds into a bank. Thus, in Sudan (which as will see, completely prohibits Riba), most people do not make cash deposits into banks but rather buy more land or jewelry with their excess capital. This is economically inefficient because the banks have less capital to loan to entrepreneurs in order to start businesses or expand production. Thus, the Sudanese government has attempted to attract reluctant depositors by granting complete exemption from all taxes for those who put deposits in the Faisal Islamic Bank. However, this exemption was terminated in 1984.

In August of 1993, the Governor of the bank of Sudan set up a committee to provide ideas on how Sudan’s ailing banking system could be rescued. The committee’s recommendations, which were implemented in July of 1994, included reducing financial and investment risk, establishing Islamic inspection units to make sure that banks are complying with the Shari’a, and enhancing “sales promotion methods to attract more customers.” The Islamic inspection units are usually composed of NIF supporters who are appointed to a bank’s board of directors and often receive more compensation than other members of the board due to government pressure. It appears that these banking reforms were not successful in attracting more customers because in June of 1995, the Sudanese government was again forced to exempt savings accounts from taxation.

The Pakistani government has had more success with its Islamization of its economy. Since July 1, 1985, the Pakistani government has


128. Rayner, supra note 120, at 274.

129. Gordon, supra note 48, at 811.


131. Id.


Gravelle prohibited all interest-bearing deposits in Pakistani banks. Due to imaginative substitutes for interest (such as depositor ownership of companies that the bank invests in), "The effect of Islamization on deposits and the levels of savings has been positive. Bank deposits have continued to expand." However, Pakistan's success appears to be the exception rather than the rule.

Another disadvantage of an interest-free society is that "there can be no certainty in financial negotiations where there is any question of the Shari'a law being applicable." This is especially true for international business transactions conducted between interest free societies and societies that allow interest. For example, in 1984, Saudi Arabia became a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Pursuant to the convention's public policy exception (Article V; paragraph 2(b)), Saudi Arabia refuses to enforce arbitrated awards if they are found to be contrary to the Shari'a. Thus, if an arbitrated award includes interest, part of or all of the award will not be enforced.

A third disadvantage of an interest-free society is that "[e]ntrepreneurs with good profit expectations may prefer financing their projects on the basis of fixed interest so that they do not have to share the expected profits with someone else." In an Islamic state that prohibits Riba, one of the ways a bank can get a return on its loan is by becoming a partner in the debtor's business, and thus receiving a percentage of the debtor's profits. In Pakistan, this is known as a Musharika, where "Profits are shared according to a pre-agreed formula but losses, if any, are shared in proportion to the funds contributed by each party." However, as mentioned earlier, an entrepreneur may rather pay interest than give up a predetermined percentage of his profits if he expects his business to succeed while the bank may prefer interest payments if the chance of the business earning a profit is slight.

Thus, despite all of the disadvantages of an interest-free society, Sudan has completely outlawed Riba. Islamic law states that Riba is a Ta'azir crime, punishable by lashing.

135. Id. at 62.
138. Baldwin & Wilson, supra note 119, at 159.
139. Gordon, supra note 48, at 811.
140. The World Bank, supra note 134, at 61.
141. Salama, supra note 49, at 130.
Section 281 of the C.T.A. [Civil Transactions Act, 1984] provides that where a loan agreement contains a provision which would require the borrower to pay back to the lender funds over and above the principal amount of the loan (e.g., interest), such provision shall be void, but the balance of the loan contract shall remain valid.\textsuperscript{142}

As a result, "[i]n the commercial sphere the 'Islamic legal revolution' which promulgated the Civil Procedure Act in the Sudan in 1983, prohibited Riba transactions..."\textsuperscript{143} In order to enforce this law, Sudan has made it a criminal offense to charge interest. The first case to prosecute a defendant for Riba was \textit{The State v. Laleet Raiinahl Shah} (1984), in which a non-Muslim resident was convicted of lending money and charging interest.\textsuperscript{144}

Most other Muslim states are much more lenient where the question of Riba is concerned. Iraq, Egypt, and Qatar all recognize contracts containing interest.\textsuperscript{145}

In Oman, provided that interest is charged at a rate that could not be deemed exorbitant in the local market, there should be little problem. Contracts including such interest payments have been upheld by the Authority for the Settlement of Commercial Disputes, the judicial body set up by Royal Decree to have exclusive jurisdiction in commercial matters.\textsuperscript{146}

In Kuwait, the Court of Cassation in the High Court of Appeal has held that a plaintiff may recover interest, but only if the plaintiff has specifically asked the court for the payment of interest.\textsuperscript{147} Conversely, in Sudan, section 110 of the Civil Procedure Act of 1983 states, "The Court shall under no circumstances whatsoever make a decree ordering payment of interest on the principal sum adjudged."\textsuperscript{148} The civil laws of Kuwait, Bahrain, and the U.A.E. enforce interest payments, but only up to a ceiling set by the state.\textsuperscript{149} However, in these states, "there remain a significant

\textsuperscript{142} Gordon, \textit{supra} note 48, at 812.
\textsuperscript{143} Rayner, \textit{supra} note 120, at 277.
\textsuperscript{144} Gordon, \textit{supra} note 48, at 813.
\textsuperscript{145} Rayner, \textit{supra} note 120, at 279.
\textsuperscript{147} Rayner, \textit{supra} note 120, at 288.
\textsuperscript{148} Gordon, \textit{supra} note 48, at 812.
\textsuperscript{149} Rayner, \textit{supra} note 120, at 303.
number of practicing lawyers who will not defend cases whose main cause is the pursuit of Riba.'

There are several reasons why these states do not strictly enforce the Riba prohibition. First, these coastal states have had extensive trading relations with the West and, as a result, are somewhat less conservative than the largely land-locked Sudan. Second, it would be extremely difficult for these states to enforce the prohibition on Riba due to the large number of Western financial institutions found in these countries. Finally, the Gulf States realized that if they prohibited Riba, they would do irreparable damage to their economies.

Even if a state prohibits Riba, an enterprising attorney may be able to come up with Hiyal to circumvent the prohibition. Hiyal is a legal stratagem established by jurists to circumvent legal concepts proving too ideal to be practicable. In order to circumvent the prohibition on Riba, several Hiyal have been established.

The first Hiyal against Riba is called Bay’ al-Wafa and has been in existence for hundreds of years. The debtor sells his property to the creditor for a certain amount of money on the condition that the creditor will return the property once that same amount is paid back to the creditor. The creditor’s use of the property in the interim represents the interest on the loan. The problem with this Hiyal is that it constitutes a sale with a condition, which was strictly prohibited by Mohammed; thus, this contract would not be permitted.

A second Hiyal is the Bay’atan Fi Bya’atin, or double sale. In order to circumvent the Riba prohibition, the debtor sells personalty to the creditor for cash and at a future date, the debtor will buy back the personalty for a larger amount of cash. The difference in the two prices represents the interest. A third possible way for a financial institution to get around the Riba prohibition is by making service charges when granting loans. Sudanese banks claim that service charges are legal as long as the amount of the service charge is not related to the amount of the loan. As mentioned earlier, Section 281 of the Civil Transactions Act prohibits all interest. “It is unclear whether Section 281 would prohibit the ‘service charges’ typically charged....”

There are several other ways for a financial institution to avoid the Riba prohibition, which even the most conservative Islamic government

150. Id.
151. Id. at 288.
154. RAYNER, supra note 120, at 276.
156. Id. at 812.
will not prohibit. One is known as Mudaraba, or a partnership in which the client and the bank share equity. Thus, the bank shares in the losses or profits of the debtor's business. If a bank makes sound choices on which businesses to loan to, the bank can make even higher profits than a typical Western bank.

V. CONCLUSION

Sudan is clearly one of the strictest countries in the world where the implementation of Islamic law is concerned. However, where does Sudan stand in relation to other fundamentalist states such as Saudi Arabia?

If the reports of death by crucifixion are true, then Sudan's criminal punishments are more severe than those of any other state in the world, including Saudi Arabia. Even if the reports are false, criminal punishment in Sudan still ranks as one of the harshest in the world due to executions for religious beliefs and crucifixion of criminals already executed for highway robbery. The only other state that engages in this practice is Saudi Arabia. Add to this, Sudan's strict prohibition of Riba, and it is clear that Sudan is the world's strictest experiment in the implementation of full-fledged Islamic law.

157. Rayner, supra note 120, at 277.