

## LAW, RELIGION AND HUMAN DIGNITY IN THE MUSLIM WORLD TODAY: AN EXAMINATION OF OIC'S CAIRO DECLARATION OF HUMAN RIGHTS

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Human dignity is the recognition and respect of human need, desire and expectation one individual by another. This recognition is indispensable because no human being survives alone: Human dignity creates the foundation of society and civilization. Our knowledge of history suggests that religious ideas have provided this basic foundation of civilization. Describing the first recognized civilization in history one historian says, "Religion permeated Sumerian civic life."<sup>1</sup> According to another historian, "Religion dominated, suffused, and inspired all features of Near Eastern society—law, kingship, art, and science."<sup>2</sup> Based on these observations while defining civilization Samuel Huntington asserts, "Religion is a central defining characteristic of civilizations."<sup>3</sup>

In Islam, the Qur'an declares that: "We have bestowed dignity on the progeny of Adam." The verse then continues to remind the whole of mankind of God's special favor unto them with physical and intellectual abilities, natural resources and with superiority over most other creatures in the world.<sup>4</sup> This dignity is bestowed through God's act of creating Adam and breathing into him His Own Spirit.<sup>5</sup> Since all human beings originated from Adam and his spouse,<sup>6</sup> every single human being possesses this dignity regardless of color, race, religion and tribe. The whole of mankind, as *khalifah* (vice-regent)<sup>7</sup> is responsible for

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1. Richard L. Greaves, Philip V. Cannistraro, Robert Zaller & Rhoads Murphey, *Civilizations of the World: The Human Adventure Volume A* 19 (2<sup>d</sup> ed., Harper & Collins College Publishers 1993).

2. Marvin Perry et al., *Western Civilization: Ideas, Politics, and Society* 27 (8<sup>th</sup> ed., Houghton Mifflin Co. 2007).

3. Samuel P Huntington, *The Clash of Civilizations and the Remaking of World Order* 47 (Simon & Schuster 1996).

4. Qur'an 17: 70.

5. See Qur'an 15:29; 32:9; 38:72.

6. Qur'an 4: 1.

7. Qur'an 2:30-39; 15:28-44; 38:69-74.

establishing peace on earth through divinely ordained values such as *amānah* (trust), *‘adālah* (justice) and *shūra* (consultation).<sup>8</sup>

Islamic civilization began to translate these values of human dignity into history under the leadership Prophet Muhammad (peace be upon him) in seventh-century Arabia. The Qur’an refers to this change in history as a divine sign of God’s guidance for mankind.<sup>9</sup> Muslims developed *sharī‘ah* (principles for policy making) for guidance in economic, environmental, legal, political and social features of life in order to preserve and promote life, religion, reason, progeny and wealth. These features combined to create a glorious civilization: Islamic civilization prospered and flourished for many centuries.<sup>10</sup> However, this civilization began to suffer and decline when Muslims deviated from these values.<sup>11</sup> The situation in Muslim communities deteriorated further during the two centuries of European colonial occupation followed by a period of nationalist fervor in the twentieth century.<sup>12</sup> In response reformers and leaders came forward to reorganize and reconstruct the society to revive values of human dignity.<sup>13</sup> Islamic values were re-interpreted and presented in comparison with Western values.<sup>14</sup>

Human rights based on the Qur’anic ideal of human dignity have gained further significance in contemporary times as independent Muslim-majority nation-states established political institutions to secure Muslim interests. The Organization of the Islamic Conference (OIC)—an international intergovernmental Islamic political institution representing all Muslim majority nation states<sup>15</sup>—adopted the Cairo Declaration of Human Rights (CDHR) at a meeting held in Cairo. The charge of the CDHR is to “serve as a guide for member states on human rights issues.”<sup>16</sup> CDHR translated the Qur’anic teachings as follows:

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8. For detailed discussion on the subject, see Abdullah al-Ahsan & Stephen B Young, *Guidance for Good Governance: Explorations in Qur’anic, Scientific and Cross-Cultural Approaches* 13-32 (IIUM Press 2008).

9. Qur’an 3:103.

10. Many works are available on the subject. For a general view, see W. Montgomery Watt, *The Majesty that was Islam: The Islamic World 661-1100* (Praeger Publishers 1974).

11. AbdulHamid A. AbuSulayman, *Crisis in the Muslim Mind* (Yusuf Talal DeLorenzo trans., Intl. Inst. Islamic Thought 1994).

12. See Muddathir ‘Abd al-Rahim, *Human Rights and the World’s Major Religions Volume 3: The Islamic Traditions* 83-89 (William H. Brackney ed., Praeger 2005).

13. *Id.* at 90-102.

14. *Id.* at 103-130.

15. See *Organisation of the Islamic Conference*, [www.oic-oci.org](http://www.oic-oci.org) (accessed Mar. 12, 2009).

16. OIC Resolution 1/19-P.

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. True religion is the guarantee for enhancing such dignity along the path to human integrity.<sup>17</sup>

This paper examines the success of this declaration in guiding and ensuring human dignity and rights in these countries and questions how successfully the OIC has put this declaration into practice. This paper also examines whether the Qur'anic values of human dignity have the potential to play any role in rescuing the contemporary Muslim community from its declining state of affairs or whether these ideas about human rights could contribute to avoiding the catastrophic clash of civilizations scenario in the twenty-first century.

The OIC Charter declared member countries' determination to consolidate the prevailing brotherly and spiritual friendship of their citizens, and protect their freedom and the common legacy of their civilization founded on the principles of justice, toleration, and non-discrimination.<sup>18</sup> In the Charter's preamble,<sup>19</sup> members pledged to endeavor to increase human well-being, progress and freedom everywhere; and they resolved to unite their efforts in order to secure universal peace, security, freedom, and justice for their people and all people throughout the world.<sup>20</sup> The Charter recognized the importance of human dignity and rights, and noted in the Preamble that its member states "reaffirming their commitment to the U.N. Charter and fundamental Human Rights, the purpose and principles of which provide the basis for fruitful cooperation amongst all people."<sup>21</sup> The OIC has also made references to the UN Charter and UDHR<sup>22</sup> in resolutions related to the rights of Muslim minorities living in non-member countries.<sup>23</sup> In one of its early resolutions, the OIC appealed to "countries with Muslim minorities to respect those minorities and their

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17. Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, Art. 1(a), U.N. Doc. A/CONF.157/PC/62/Add.18 (1993).

18. See *Organisation of the Islamic Conference, Home*, [www.oic-oci.org/home](http://www.oic-oci.org/home) (accessed Mar. 12, 2009).

19. *Organisation of the Islamic Conference, Charter*, <http://www.oic-oci.org/is11/english/Charter-en.pdf> (accessed Mar. 12, 2009).

20. *Id.*

21. 'Abdullah al Ahsan, *OIC: The Organization of The Islamic Conference (An Introduction to an Islamic Political Institution)* App. A 128 (Intl. Inst. Islamic Thought 1988).

22. OIC Resolution on Muslim Minorities and Communities, 10/4, 9/8-P, and many other resolutions on the subject.

23. *Id.*

culture and beliefs and grant them their rights in accordance with the UN Charter and the Universal Declaration of Human Rights (UDHR).”<sup>24</sup> However, in 1990 the OIC signed its own “Cairo Declaration on Human Rights (CDHR) in Islam.”<sup>25</sup> We shall consider why the OIC needed CDHR given the UDHR.

After the promulgation of the UDHR in 1948, the question of human rights began to receive attention in the Muslim world. Some independent Muslim countries had already come into existence and become members of the United Nations.<sup>26</sup> When the UN General Assembly enacted the UDHR, two Muslim countries, Pakistan and Saudi Arabia, took opposite stands on the issue: Pakistan strongly endorsed the document, while Saudi Arabia refused to sign, arguing that Islamic *shari’ah* had already adequately recognized the rights of men and women in Islam: thus the signing of UDHR was unnecessary.<sup>27</sup> With the passage of time, theoretical discussion and argument on the question and its practical implications received more attention. One human rights academician has rightly pointed out that,

The issue of the relationship between the Islamic legal tradition and human rights, which is of great theoretical interest, has gained in practical significance in the wake of the Islamic resurgence that began after the Arab-Israeli war of 1967.<sup>28</sup>

This discrepancy between theory and practice began to create tension when International Non-governmental Organizations (INGOs) such as Amnesty International (AI) and Human Rights Watch (HRW) began to describe human rights violations in Muslim countries in their annual reports. It took several years for the OIC to crystallize ideas of human dignity and transform them into real terms. After years of deliberation and gathering opinion from various quarters the OIC tabled a resolution on the subject of human rights in Islam in its 17<sup>th</sup> Foreign Ministers Conference held in Amman, Jordan.<sup>29</sup> However, it was only at the nineteenth Conference of Foreign Ministers held in Cairo, Egypt in 1990 that the OIC adopted the CDHR in Islam. This document was expected

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24. OIC Res. 10/4.

25. OIC Res. 49/19-P.

26. Eight Muslim countries, Afghanistan, Egypt, Iran, Pakistan, Saudi Arabia, Syria, Turkey and Yemen were members of the UN in 1948. The rest became UN members as they became independent. For their membership, see *United Nations Member States, List of Member States*, [www.un.org/members/list.shtml](http://www.un.org/members/list.shtml) (accessed Mar. 12, 2009).

27. Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* 11 (2<sup>d</sup> ed., Westview Press 1995).

28. *Id.* at 1.

29. Resolution 44/17-P.

to “serve as a guide for member states on human rights issues.”<sup>30</sup> The document stated that fundamental human dignity and universal freedom of the individual in Islam were an integral part of the Islamic religion and no one as a matter of principle had the right to violate, suspend or even ignore them. CDHR was patterned after the UN-sponsored UDHR of 1948, but it also frequently refers to the *Qur’an*, the prophetic teachings, and the Islamic legal tradition as sources of inspiration. The references to these Islamic sources of law are significant.<sup>31</sup> Because of them, one could argue that there are fundamental differences between the two declarations.

One may obviously find a significant difference on the issue of the extent of individual’s freedom of choice. While the UDHR stands for absolute freedom of individual choice, the Qur’an advocates certain fundamental values. Islamic *sharī’ah*, for example, doesn’t permit enacting laws to allow sexual relations outside the institution of marriage, or allow marriage between two members of the same sex. The HRW also reports every year about discrimination in Muslim countries on these issues, yet any observer of political developments in Muslim countries would agree that these are not fundamental problems of human rights violations in Muslim countries.<sup>32</sup> This is because the demands for gay rights and the right of consensual sex outside of marriage are not popular demands in Muslim countries.<sup>33</sup> The main predicament related to the issue of human rights in Muslim countries, like many other countries in the world, is individual freedom of speech and political opinion.<sup>34</sup>

The suppression of political opinion was seen as a natural occurrence under colonial rule.<sup>35</sup> It did not emerge as a significant problem even during the early days of the independent nation-state system mainly because immediately after independence, Muslim patriotic fervor ran high and most people wanted to see their newly independent states strong and stable. Thus, they were generally willing

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30. Resolution 49/19-P.

31. *Id.*

32. See e.g. Human Rights Watch, *Middle East/N. Africa, LGBT Rights*, <http://www.hrw.org/en/category/topic/lgbt-rights> (last updated Apr. 15, 2009) (for yearly reports on rights of homosexuals in Egypt and other countries).

33. This is based on the author’s general observation on current events on the basis of newspaper reports.

34. Compare e.g. Human Rights Watch, *Middle East/N. Africa, Reports*, <http://www.hrw.org/en/publications/reports/11/related> (last updated Mar. 28, 2009) (for reports of human rights organizations on Egypt, Ethiopia, and other countries).

35. For Egypt as an example, see Afaf Lutfi al-Sayyid, *Egypt and Cromer: A Study in Anglo-Egyptian Relations* (Frederick A. Praeger, Publishers 1968).

to sacrifice certain violations of rights on the part of their governments.<sup>36</sup> By the latter part of the twentieth century, the question of human rights in freedom of speech and political opinion has become a really sensitive and delicate issue. When asked why the idea of human rights became so important in the latter half of the 1960s, one Egyptian human rights activist explains:

The issue of human rights became potent among intellectuals in Egypt only after 1967. Before that, under Nasser, the need to liberate Egypt from foreign domination and to socially develop the country dominated our attention and we allowed human rights considerations to remain in the background. This in itself was probably a reaction to the so-called "liberal" period in Arab history, from about the 1920s to the 1940s, which had led to little concrete achievement. Arab thinking during the liberal period was subject to the criticism not only that it had been imported from the West, but also that it was the privilege of only a small number of people from the upper social classes.<sup>37</sup>

The activist further explains that

. . . [even] after the July 1952 revolution . . . people were willing to accept the trade-off of human rights for social development. But our defeat in the 1967 war against Israel made everyone think again . . . that this trade-off wasn't necessary, but also that it was a harmful trade-off.

. . . This led to great disillusion in the late 1970s. . . many Arab regimes were becoming more repressive . . . Israel's invasion of the [sic] Lebanon in June 1982 really marked the low point.<sup>38</sup>

Slowly this consciousness grew and political opinions began to be more crystallized in other Arab and Muslim countries.<sup>39</sup> But as human rights activists grew more energetic, these countries' ruling regimes increased political repression. Interestingly, during this same period, these countries were also trying to build consensus on a declaration on human rights. One cannot help but question why they pursued such a blatant contradictory policy. These conflicting policies seem to have contributed to the rise of intimidation and terrorism in the Muslim world today. This author has selected Algeria, Egypt, Saudi Arabia and

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36 See Kevin Dwyer, *Arab Voices: The Human Rights Debate in the Middle East* (U. Cal. Press 1991).

37. *Id.* at 159-160 (quoting from an interview of Saad ed-Din Ibrahim, a former Secretary General of Arab Human Rights Organization).

38. *Id.*

39. Member countries of the Arab league and the OIC and the Arab League are in consideration here.

Turkey for in-depth analyses: Egypt and Saudi Arabia were chosen because these two countries have been at the vanguard in adopting CDHR. Turkey was selected because it has not only made significant achievements on human rights in recent years; it has also set an example as a meeting-ground between the values of Islamic and Western civilizations. Algeria was chosen because of the rise of violence in that country in the last couple of decades and because of the involvement of Algerian nationals in international terrorism.

#### ALGERIA

Algeria achieved independence in 1962 under the leadership of *Front de Liberation Nationale* or FLN after it fought one of the bloodiest anti-colonial wars against France in recent history.<sup>40</sup> In 1965 the democratic process suffered its first setback when the Minister of Defense staged a military coup against the nationalist leadership and introduced a one-party system with a socialist orientation. Soon the one-party system created a wide gap between the ruling elite and the masses. By the late 1970s,<sup>41</sup> protests against the socialist orientation of the government gained momentum, and demands were made in favor of a multi-party system. Mustafa Bouyali—a veteran of the war of independence—established an underground organization in 1982 in response to government's suppressive measures.<sup>42</sup> However, in the early years of 1980s two prominent Muslim sheikhs 'Abdul Latif Sultani and Ahmad Sahnoun raised their voices against the government's socialist and Europeanized secular tendencies. Although Bouyali's movement acted within the legal framework, the protest gatherings in support of the sheikh's demands at the University of Algiers were met with arrests and persecution.<sup>43</sup>

By October 1988, the economic condition of the country deteriorated sharply. In 1989 the government responded by drafting a new constitution in which socialism was dropped as the state ideology and political parties were allowed to function.<sup>44</sup> In 1990 the government decided to hold provincial and municipal elections in which multiple

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40. See John Ruedy, *Modern Algeria: The Origins and Development of a Nation* 156-194 (Ind. U. Press 1992).

41. *Id.* at 209.

42. See Greg Noakes, *Post-Independence Islam*, IslamOnline.net, [www.islamonline.net/english/Contemporary/2002/05/Article18-a.shtml](http://www.islamonline.net/english/Contemporary/2002/05/Article18-a.shtml) (accessed Dec. 4, 2008) (describing the growth of FIS).

43. *Id.*

44. *Id.*

parties participated.<sup>45</sup> An Islamic oriented *Front Islamique du Salut* or FIS, under the leadership of another veteran of the war of independence and educator, ‘Abbasi Madani, demonstrated very strong public support in the elections.<sup>46</sup> The FIS secured thirty-two of the forty-eight regional councils. The military, which had developed vested interests by controlling power for almost three decades, seemed to have become extremely worried: they intervened in the political process by postponing the general elections, which were due in 1992. The authorities also banned the FIS and its leaders from participating in politics. They banned demonstrations and gatherings using a state of emergency decree.<sup>47</sup> Soon Algeria plunged into a chaotic situation. AI’s annual report of 1994 recorded that the government had cracked down on Islamist activists, who came mainly from the supporters of FIS. The government enacted new laws to legitimize its actions: In September 1992 the security forces were granted special powers to arrest and try suspected Islamist activists on terrorism charges. But these trials generally violated international trial standards. According to AI, “secret and accelerated trials . . . extended the scope of the death penalty, doubled sentences for terrorist offences and lowered the age of criminal responsibility in such cases to 16 years.”<sup>48</sup>

The authorities’ response suggests that they were only interested in eliminating political opponents. The government claimed to have acted to maintain law and order in the country but apparently not in good faith or in a democratic manner as this was evidenced in the authorities’ attitude toward FIS. In order to neutralize the situation when FIS responded by condemning violence through its spokespersons in exile, the authorities did not respond positively.

Within months, a small group called *Groupe Islamique Arme* or GIA, allegedly drawn from among the supporters of the FIS, stepped up an armed opposition to the government. Immediately the level of violence increased. Reports of brutal massacres in various parts of the country became a common feature in the press.<sup>49</sup> However, some rightist groups have cast doubts on whether all the killings were really conducted by GIA or any other similar groups.<sup>50</sup> In order to legitimize

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45. Ruedy, *supra* n. 40, at 252.

46. *Id.*

47. *Id.* at 254-256.

48. See *Amnesty International, Amnesty International Report 1994—Algeria*, <http://www.unhcr.org/refworld/country,,AMNESTY,,DZA,456d621e2,3ae6aa0274,0.html> (accessed Dec. 4, 2008).

49. *Id.*

50. See e.g. Human Rights Watch, *Human Rights Watch World Report 2002, Middle East &*

their actions against those who once supported FIS, the security forces conducted themselves in a way so they could construct evidence against the FIS. The HRW reported in 1999:

The succession of massacres between August 1997 and January 1998 were concentrated near the heavily militarized outskirts of Algiers and in the province of Relizane near the western oil port of Arzew. The precinct of Beni Massous on the outskirts of Algiers, where about eighty persons were killed, according to press reports, on September 5, 1997, was virtually surrounded by military installations. Survivors told Algerian reporters the day after the Chouardia massacre that even though a paramilitary gendarme post was located only one kilometer away, security forces did not arrive until four and one-half hours after the killing ended.<sup>51</sup>

The same report described a number of other incidents casting doubts about the role of government forces in the reported massacres.<sup>52</sup> AI also reported similar incidents.<sup>53</sup> AI noted in its annual report of 2002 that the security forces “neutralized” twenty thousand “terrorists” since 1992.<sup>54</sup> It also reported that, “[h]undreds of civilians were killed by armed groups which define[d] themselves as ‘Islamic groups’ in both targeted attacks and indiscriminate bomb explosions.”<sup>55</sup>

Furthermore, no action was taken by the authorities to clarify the fate of some four thousand men and women who “disappeared” after arrest by members of the security forces or state armed militias since 1993.<sup>56</sup>

Non-governmental organizations continued to report thousands of cases of extrajudicial executions, deliberate and arbitrary killings of civilians, torture and ill treatment, and “disappearances.”<sup>57</sup> Some members of the security forces and militias were reportedly tried and

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*North Africa, Algeria* (available at <http://www.hrw.org/legacy/wr2k2/mena1.html>) (stating in its 2002 Annual Report that, “Attribution was often difficult because the assailants usually fled without being apprehended and rarely claimed responsibility or explained their motives.”) (accessed Mar. 12, 2009).

51. Human Rights Watch, *Human Rights Watch World Report 1999—Algeria* 334, <http://www.unhcr.org/refworld/type,ANNUALREPORT,HRW,DZA,3ae6a8aa18,0.html> (accessed Apr. 20, 2009).

52. *Id.*

53. *See Amnesty International, supra* n. 48.

54. *See Amnesty International, Amnesty International Report 2002—Algeria*, <http://www.unhcr.org/refworld/publisher,AMNESTY,,DZA,3cf4bc144,0.html> (accessed Dec. 4, 2008).

55. *Id.*

56. *See id.* Such cases of disappearances are common to many Muslim countries. In Algeria the government provided no information about any investigation on the reports of disappearances as stated subsequently herein.

57. *Amnesty International, supra* n. 54.

sentenced, but according to AI, no concrete measures were known to have been taken to bring to justice the overwhelming majority of those responsible for human rights abuses.<sup>58</sup> These reports attracted attention of the UN Working Group on Enforced or Involuntary Disappearances.<sup>59</sup> In 2000 the Group sought permission to visit Algeria to conduct investigations on these reports, but the authorities refused to entertain the request.<sup>60</sup> AI recorded that:

Long standing requests by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Rapporteur on torture to visit Algeria had not resulted in invitations (by the government) by the end of the year.<sup>61</sup>

Reports produced by Amnesty International are generally very clear about the state of affairs on the lack of individual rights to freedom of expression. The authorities conveniently accused the political opposition of being terrorists, partially because of the violent method adopted by some opponents of the government.<sup>62</sup> The government does not seem to have left dissidents with any peaceful means of expressing opposing views.<sup>63</sup> This, of course, does not justify the violent method in which some opponents of the government have reacted, for Islamic teachings on human life and dignity highlighted by CDHR do not approve any form of indiscriminate killing of civilians.<sup>64</sup> One might, indeed, conclude that the authorities are also equally, if not more, responsible for the rise of violence in the country.

Thus, the most disturbing element of these developments is the cases of disappearance. The 2002 report of Amnesty International recorded that, “no steps were known to have been taken to investigate information provided by families about the alleged burial place of relatives who had been abducted and killed by armed groups.”<sup>65</sup> Under the circumstances one may question whether the FIS can be held

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58. Amnesty International, *Amnesty International Report 2007—Algeria*, <http://www.unhcr.org/refworld/country,COI,AMNESTY,ANNUALREPORT,DZA,,46558ebc23,0.html> (accessed Apr. 20, 2009). The report says, “No steps were taken to clarify the fate of thousands of victims of enforced disappearance between 1993 and 2002.”

59. The UN Working Group on Enforced or Involuntary Disappearances [hereinafter “Group”] has been reported in *Amnesty International*, *supra* n. 54. For regular report of the Group, see the Office of the United Nations High Commissioner for Human Rights, <http://www2.ohchr.org/English/issues/disappear/index.htm> (accessed Mar. 12, 2009).

60. See *Amnesty International*, *supra* n. 54.

61. *Id.*

62. Amnesty International annual reports also highlight indiscriminate killings by opponents of the government.

63. We shall elaborate this point at the concluding segment of this paper.

64. See Cairo Declaration on Human Rights in Islam, arts. 2(a)-(c), 4 et seq.

65. *Amnesty International*, *supra* n. 54.

responsible for the growth of militancy among the people especially when the criminal activities occurred while its leaders were under arrest and the party was officially banned.

It is noteworthy that because of the UN's commitment to UDHR the UN Group attempted to intervene in response to reports on human rights violations.<sup>66</sup> But CDHR also declares that, "Life is a God-given gift and the right to life is guaranteed to every human being . . . it is prohibited to take away life except for a *sharī'ah* prescribed reason."<sup>67</sup> It is doubtful that *sharī'ah* would have approved acts of torture, disappearances, and detention without trial.<sup>68</sup> However, the OIC never raised any such question with the Algerian authorities. The Islamic Jurisprudence Academy<sup>69</sup> also never initiated any public discussion on this subject.

The events of September 11, 2001 provided the Algerian authorities with fresh opportunities to go on the offensive against their opponents. In 2002 Algeria hosted three international meetings relating to "counter-terrorism" and "organized criminality."<sup>70</sup> The authorities seem to have been taking advantage of the U.S. government's new approach toward terrorism. In order to justify their actions against FIS and other anti-government forces, which it called acts of counter-terrorism, the government seemed to have held these meetings. According to the Amnesty International 2003 report, Algeria informed the UN Security Council's Counter-Terrorism Committee on 24 December 2001 and 15 August 2002 that it had taken action in order to prevent and combat terrorism.<sup>71</sup> The measures reported by the government included legislative amendments and ratifications of instruments such as the Arab Convention for the Suppression of

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66. Amnesty International, *Amnesty International Report 2000—Algeria*, <http://www.unhcr.org/refworld/country,COI,AMNESTY,ANNUALREPORT,DZA,,3ae6aa1154,0.html> (stating, "The UN Special Rapporteurs on torture and extrajudicial, summary or arbitrary executions were not granted access to Algeria.").

67. Cairo Declaration on Human Rights in Islam, Art. 2 (a).

68. See Mohammad Hashim Kamali, *The Dignity of Man: The Islamic Perspective* 80-85 (Ilmiah Publishers 1999); see also Mohammad Hashim Kamali, *Freedom of Expression in Islam* 207-212 (Islamic Texts Socy. 1997) (discussing the Islamic concepts of human dignity and rights).

69. The Islamic Jurisprudence Academy is an OIC subsidiary organ established with the aim "to achieve the theoretical and practical unity of the Islamic Ummah." See International Islamic Fiqh Academy, <http://www.fiqhacademy.org.sa/> (accessed Mar. 12, 2009).

70. Amnesty International, *Amnesty International Report 2003—Algeria*, <http://www.unhcr.org/refworld/country,COI,AMNESTY,ANNUALREPORT,DZA,,3edb47d4e,0.html> (accessed Apr. 20, 2009).

71. The Counter-Terrorism Committee was established by Security Council resolution 1373 (2001), which was adopted unanimously on September 28, 2001 in the wake of the Sept. 11 terrorist attacks in the United States. See *id.*

Terrorism.<sup>72</sup> AI criticized Algeria's "counter-terrorism" approach as a pretext to justify mass human rights violations, but the U.S. government publicly declared its support for Algeria's "counter-terrorism" policy.<sup>73</sup>

Thus, it is likely that the people chose FIS over FLN because of corruption, lack of accountability and transparency, and also suppression of challenging voices within FLN. FLN, which was dominated by the military, had developed vested interests and did not want to compromise in controlling political power. FLN had introduced a one-party system not because the leaders liked the socialist idea of equality, but because they did not want their power to be challenged. One questions why were they scared of the FIS. A fundamental question arises here as to why the military government acted so desperately to deny the FIS from grabbing political power. The only explanation possible is that the military had grown to enjoy vested interests under years of FLN rule in Algeria. In fact, the government tried to stop any Islamic-oriented party in the political process of the country from surfacing, and yet FIS emerged as victorious in the elections. According to human rights activist and political scientist Chandra Muzaffar:

Everything was stacked against the Islamic party. The FLN changed important rules of electoral competition to hobble the FIS. The entire state machinery was mobilized to the maximum to ensure a FLN victory. A massive propaganda drive was launched to tarnish the image of its main opponent. The FLN went all out to discredit the FIS's successes in the various municipalities that it controlled following municipal elections of 1990.<sup>74</sup>

In reality, however, the same author observes:

[t]he FIS, from all accounts, had improved the administration of its municipalities, delivered essential services to the poor with a degree of efficiency and checked rampant corruption and abuse of power. Its achievements at the municipal level were one of the reasons for the FIS's outstanding performance in the national election.<sup>75</sup>

Any observer of political developments in Algeria would agree, as Chandra Muzaffar suggests, FIS's records in checking rampant corruption and delivering essential services to the poor convinced the voters of FIS's legitimacy. What did the FLN leadership do after banning FIS from participating in politics? One could ask whether FLN

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72. *Id.*

73. See *Amnesty International*, *supra* n. 70.

74. Chandra Muzaffar, *Human Rights and the New World Order* 98 (Just World Trust 1993).

75. *Id.*

has addressed the question of corruption. According to a report of Transparency International:

President Bouteflika has frequently been questioned by foreign journalists about corruption . . . [he] has often changed his tune. The gap between his statements and reality is marked. On 2 June 2001, the Council of Ministers announced that: “The Head of State has recalled that the fight against corruption is one of the main means for building the rule of law, and it is integrated in the presidential agenda as a priority action.” But the President’s manifesto makes no mention of this. Algerians have waited in vain for any concrete measures. Frustration is mounting.<sup>76</sup>

Perhaps this frustration led some activists to terrorism. One could question further whether the same reasons are responsible for some activists’ decisions to transform their terrorist activities to a global arena. One European NGO—International Crisis Group—has drawn a comparison between the rise of FIS in Algeria and that of the Muslim Brothers in Egypt<sup>77</sup> which we will now consider.

#### EGYPT

Egypt is an important country not only in the region, but because of its contribution to early Islamic civilization,<sup>78</sup> what happens in Egypt has an impact over a substantial part of the contemporary Arab and the Muslim world. Like Algeria, Egypt also went through a one-party socialist system following a military coup in 1952. The opposition to military rule, which originated mainly from Islamic rudiments, was suppressed heavy-handedly.<sup>79</sup> By 1954 the main Islamic group, the Society of Muslim Brotherhood, was accused of conspiring against the government.<sup>80</sup> A special military court tried over 875 persons; six were punished with death and, another ten were given long-term prison sentences.<sup>81</sup> The party was banned from political activities and from social and humanitarian activities as well.<sup>82</sup> Political suppression

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76. Djillali Hadjadj, *Global Corruption Report 2001*, at 99 (Robin Hodess, Jessie Banfield & Toby Wolfe eds., Transparency Intl. 2001) (available at [www.globalcorruptionreport.org/2001](http://www.globalcorruptionreport.org/2001)).

77. See *Islamism in North Africa II: Egypt’s Opportunity* 2-3 (Intl. Crisis Group 2004) (discussing the ICG briefing).

78. See Israel Gershoni and James P. Jankowski, *Egypt, Islam, and the Arabs: The Search for Egyptian Nationhood, 1900-1930* (Oxford U. Press 1986).

79. Raymond A. Hinnebusch Jr., *Egyptian Politics Under Sadat: The Post-Populist Development of an Authoritarian-Modernizing State* 11-77 (Cambridge U. Press 1985).

80. See Richard P. Mitchell, *The Society of Muslim Brothers* (Oxford U. Press 1969).

81. *Id.* at 72-79.

82. *Id.* at 153-162.

continued throughout the rest of the 1950s and 1960s.<sup>83</sup> After the fall of the military strongman, Jamal Abdul Nasir, the new president, another military man, Anwar al-Sadat adopted a new policy of “controlled liberalization.”<sup>84</sup> He warned the Muslim Brotherhood that the government would not “tolerate those who try to tamper with the high interests of the state under the guise of religion.”<sup>85</sup> The Muslim Brothers were also reminded of the earlier days of the 1950s and 1960s, and the President is reported to have said that, “the Muslim Brotherhood are now free people in a respectable community. Their behavior should be in line with Egypt’s interests.”<sup>86</sup> But an unasked question was whether the interests of Egypt were guided by Qur’anic values, by CDHR or by persons in control of political and military power. Trouble began when the President thought the time was ripe to repair Egypt’s relations with the United States, and in the process, he took the initiative to establish diplomatic relations with Israel in 1978.

The government’s decision to recognize and strike a deal with Israel independently of the Palestinians and other Arab countries violated the country’s earlier commitment to the OIC.<sup>87</sup> The authorities kept this issue out of any public debate by declaring Emergency Rule in the country. On its part, the Muslim Brotherhood, apparently in an attempt to avoid any direct confrontation with the authorities, confined their opposition to passive criticism of the government.<sup>88</sup> However, this new approach seemed too passive for some radical supporters and sympathizers of the movement. During the final years of Sadat’s rule, new groups such as Jihad, the *Takfir wa al-Hijrah* and *Shabab al-Muhammad* emerged with a militant approach for political change in the country.<sup>89</sup> The government responded with increased repressive measures: President Hosni Mubarak, successor to Anwar al-Sadat, is reported to have said, “I refuse to allow human rights to become a slogan to protect terrorists.”<sup>90</sup> However, with the passage of time, this created extreme tension between the government and some political activists. AI in its 1994 report recorded that:

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83. *Id.*; Ibrahim M. Abu Rabi’, *Intellectual Origins of Islamic Resurgence in the Modern Arab World* (St. U. N.Y. Press 1987).

84. Raymond William Baker, *Sadat and After: Struggles for Egypt’s Political Soul* 244 (I.B. Tauris 1990).

85. *Id.*

86. *Id.* (citing *Al-Ahram*, Aug. 22, 1979).

87. OIC Resolution 8/10-P.

88. Hinnebusch, *supra* n. 79, at 204-208.

89. See Mahmud A. Faksh, *The Future of Islam in the Middle East: Fundamentalism in Egypt, Algeria and Saudi Arabia* 45-48 (Praeger 1997).

90. *Id.* at 50-51.

Numerous bomb and other attacks were carried out by armed opponents of the government, . . . [and] [t]housands of members or sympathizers of banned Islamist militant groups were detained under state of emergency regulations.<sup>91</sup>

In fact Egypt has been under Emergency Rule under President Hosni Mubarak since 1979 and when presidential elections, a single candidate, the president himself received ninety-seven or ninety-eight percent of the total vote cast. In parliamentary elections, the ruling National Democratic Party (NDP) has maintained control of the 454-seat People's Assembly.

The government not only ensured victory in the elections for the party in power, it also adopted repressive measures to quell rising opposition voices in the country.<sup>92</sup> In its 1994 report, AI noted that hundreds of suspected supporters of banned Islamist groups were arrested and tortured.<sup>93</sup> The authorities refused to reveal the details of arrests and detentions: over two thousand people were believed to have been held under emergency legislation.<sup>94</sup> The report stated that hundreds of civilians were charged with membership in militant Islamist groups and many were accused of violent political offences. Their cases were referred to military courts by the order of President Mubarak<sup>95</sup> himself. However, AI's report also noted that

[t]he procedures of military courts fell far short of international fair trial standards: the judges, military officers, were not independent, and defendants were denied adequate time to prepare their defence and had no right to appeal . . . and (many were) tortured to extract confessions.<sup>96</sup>

The CDHR declares that, "Safety from bodily harm is a guaranteed right (of the individual). It is the duty of the state to safeguard it, and it is prohibited to breach it without a *Sharī'ah*-prescribed reason."<sup>97</sup> This declaration raises a number of uncomfortable questions, for example,

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91. Amnesty International, *Amnesty International Report 1994—Egypt*, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6a9f128&skip=0&query=Amnesty%20International%20Report%201994%20Egypt> (accessed Dec. 4, 2008).

92. This information can be found in annual reports of both Amnesty International and Human Rights Watch of the 1990s. See Amnesty International, <http://www.amnesty.org/>; Human Rights Watch, <http://www.hrw.org/> (annual reports are available on both websites; both accessed Apr. 20, 2009).

93. *Amnesty International*, *supra* n. 91.

94. *Id.*

95. *Id.*

96. *Id.*

97. Cairo Declaration on Human Rights in Islam, Art. 2 (d).

whether the *sharī'ah* even allows arresting “suspected members of militant groups” for information or confession, let alone torturing them. Yet the CDHR declaration causes one to ask: Were the Egyptian emergency laws enacted in accordance with *sharī'ah*? Has the state authority ensured citizens safety from physical injuries? Was the torture reported by the AI conducted in accordance with *sharī'ah*? Does the *sharī'ah* approve torture under custody? Who decides whether government actions were based on the teachings of *sharī'ah*? These questions are important because Egypt as a member of the OIC and a signatory of CDHR is under obligation to follow the teachings of *sharī'ah*. Neither any of the OIC-based institutions, nor traditional Egyptian Islamic institutions such as al-Azhar even raised any such question. Amnesty International, however, has found the practices of the Egyptian government unacceptable under Article 20 of the UN Convention against Torture,<sup>98</sup> and reported to the UN Committee on the subject. Egyptian authorities have never taken any steps to remedy the situation. AI also reported that:

In June an Amnesty International delegation, led by the Secretary General, visited Egypt and met senior government officials, including the newly appointed Minister of Interior. The Minister undertook to prevent the use of torture, but no specific steps were reported to have been taken by the end of the year.<sup>99</sup>

Egyptian and international human rights organizations have continued to report about violations in more recent years. According to Human Rights Watch (HRW), wide-ranging and unrelenting human rights abuses have continued to stain the government of President Hosni Mubarak<sup>100</sup> ruling under a state of emergency with the tight grip of the state security apparatus. Almost every single human rights report has highlighted the cases of torture, deaths in custody, and disappearances of individuals following their arrests by members of the security forces, while some also underscored appalling prison conditions.<sup>101</sup>

HRW also has reported that suspected militants met with unfair trials before state security and military courts, were sentenced to death and executed without the right to appeal to a higher tribunal required

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98. See United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <http://www.hrweb.org/legal/cat.html> (accessed Mar. 12, 2009).

99. Amnesty International, *supra* n. 91.

100. See Amnesty International, <http://www.amnesty.org>; Human Rights Watch, <http://www.hrw.org/> (annual reports from 1990 and beyond are available on both websites; both accessed Apr. 20, 2009).

101. Human Rights Watch, *Human Rights Watch World Report 1999: Events of December 1997-November 1998*, at 346 (Human Rights Watch 1998).

under international human rights law.<sup>102</sup> Many have been detained for mere membership in the Society of Muslim Brotherhood and for possessing leaflets which the security agencies considered opposed to the regime.<sup>103</sup> It is noteworthy that the authorities have occasionally attempted to convince the international community that the so-called Islamic “militants” have posed a serious threat to internal law and order, thus justifying their severe treatment. The HRW report noted that,

[s]enior government officials repeatedly emphasized to the international community the threat posed by Egyptian militants based abroad, seeking their extradition and even extra-legal return, but remained unresponsive publicly to calls from militant and moderate Islamists inside Egypt for a halt to politically motivated violence.<sup>104</sup>

Despite regular reports of serious human rights violations in the following years by national and international human rights organizations, there has been no change in the government’s attitude. The reports indicate how the Egyptian government has been violating democratic norms, international law and agreements and protocols as well as persecution. However, neither the OIC nor any other international Islamic organization or institution has pointed out how the Egyptian government was violating the teachings of *sharī’ah* elucidated by CDHR while conducting operations against the so-called Islamists.

#### SAUDI ARABIA

The geographical areas that constitute Saudi Arabia today had been under the peripheral rule of the Osmanli (Ottoman) state until early in the twentieth century, and the *sharī’ah* has been the main framework for law in the area since seventh century C.E. In 1932 Abdulaziz, popularly known as ibn Sa’ud, (1876-1953) established the Kingdom of Saudi Arabia and declared *sharī’ah* as the main framework for law in the country.<sup>105</sup> Ibn Sa’ud is reported to have regularly consulted the tribal chiefs and religious scholars. He also allowed the common people to reach him without restrictions and formalities. One academician, perhaps not exaggerating, romanticized the system as a “real and practical expression of the general will” of Rousseau.<sup>106</sup> This positive

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102. See Human Rights Watch, *Human Rights Watch World Report 2002, Middle East & North Africa, Egypt*, <http://www.hrw.org/legacy/wr2k2/mena2.html> (accessed Mar. 12, 2009).

103. *Human Rights Watch World Report*, *supra* n. 101, at 346.

104. *Id.* at 347.

105. See Faksh, *supra* n. 89, at 89-107.

106. Michael Hudson, *Arab Politics: The Search for Legitimacy* 176 (Yale U. Press 1977).

evaluation of Saudi rule could stem from the personal charisma and religious orientation of King Abdulaziz Ibn Sa'ud and his son Faisal (1906-75). Describing the potential legitimacy acknowledged by Abdulaziz ibn Sa'ud, historian Michael Hudson says, "All three types of legitimacy—personal, ideological, and structural—were cultivated within the traditional desert political culture. Rarely has a ruler exploited them so effectively."<sup>107</sup> However, this claim began to suffer in the late 1970s and 1980s. The Saudi political state of affairs further deteriorated under the leadership of Fahd ibn Abdulaziz.<sup>108</sup> In May 1991 about four hundred religious scholars in an open letter to the king demanded the establishment of *shūra* for "accountability of public officials to restore *amana* (trust) in government . . ."<sup>109</sup>

This was an interesting development, for similar demands were also put forward by many Western critics of the country.<sup>110</sup> In 1994 Saudi Arabia appointed a sixty-member consultative council as a part of a series of reforms announced. Yet, questions remained about how the members of the consultative council were appointed, i.e., whether they were appointed by the king or elected by the people. In the absence of the traditional pattern of direct access to the king and the policy-makers, this council could have played a mediating role between the government and the people. However, this was not to be the case when a number of Saudi intellectuals formed the Committee for the Defense of Legitimate Rights (CDLR) in the same year with the aim of "alleviating injustice, . . . [and] defence of human rights decided by the *sharī'ah*."<sup>111</sup> The highest religious authority of the country came out with a statement that "the country had no need for human rights organizations since it was ruled in accordance with the *Sharī'ah*."<sup>112</sup> The CDLR attempted to combine Islamic and Western tradition of people's participation in the political process but the government suppressed it by citing security reasons.<sup>113</sup>

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107. *Id.* at 169.

108. Faksh, *supra* n. 89, at 94-103.

109. *Id.* at 96.

110. See U.S. Department of State, *Honduras Country Report on Human Rights Practices for 1998* (released by the Bureau of Democracy, Human Rights, and Labor, Feb. 26, 1999), [http://www.state.gov/www/global/human\\_rights/1998\\_hrp\\_report.html](http://www.state.gov/www/global/human_rights/1998_hrp_report.html) (accessed Apr. 21, 2009) (site no longer available) (copy on file with author).

111. Amnesty International, *Amnesty International Report 1994—Saudi Arabia*, <http://www.unhcr.org/refworld/category,CO1,AMNESTY,ANNUALREPORT,SAU,3ae6a9f64,0.html> (accessed Apr. 20, 2009); see Faksh, *supra* n. 89, at 97.

112. *Amnesty International*, *supra* n. 111.

113. *Id.*

The government's action raises the question whether the *Sharī'ah* authorizes such groups as CDLR, since it implied that only government officials have power to do so. But that is not how Islamic Qur'anic teachings have been understood during the early centuries of Islam. Remember CDHR has declared that, "[e]very human being has the right to enjoy a legitimate eligibility with all its prerogatives and obligations."<sup>114</sup> CDLR supporters claimed to have established the NGO in order to fulfill their obligations recommended in the *sharī'ah*. According to the AI, the authorities have since harassed not only the officials of CDLR but also their relatives and associates.<sup>115</sup> Citizens have been arrested and detained indefinitely without charge or trial. Allegations of human rights violations were rarely heard under the rules of King Abdulaziz ibn Sa'ud or King Faisal.

In the following years, human rights organizations have reported numerous rights violations. In its 1997 annual report, the government's action raises the question whether the *sharī'ah* funded such groups as CDLR, implying that any government officials have power to do so. AI recorded many allegations of torture and ill treatment of political and criminal detainees.<sup>116</sup> One report included stories of beatings, the use of shackles and threats of sexual assault.<sup>117</sup> One prisoner was reportedly severely beaten while handcuffed and shackled with his arms and legs tied together behind his back. He was also reportedly kept in solitary confinement in an underground cell for over a year.<sup>118</sup> The detainees included relatives of CDLR activists living in exile, *shi'ah* scholars and activists, and the so-called Afghan-Bosnia veterans.<sup>119</sup> The report also related stories about injustices met by foreign Muslim and non-Muslim nationals.<sup>120</sup>

Over the years, the Afghan-Bosnia veterans have become involved in direct confrontation with the government. These veterans were

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114. Cairo Declaration on Human Rights in Islam, Art. 8.

115. Amnesty International, *Amnesty International Report 1995—Saudi Arabia*, <http://www.unhcr.org/refworld/category,COI,AMNESTY,ANNUALREPORT,SAU,3ae6a9fc44,0.html> (accessed Apr. 20, 2009).

116. *Id.*

117. Amnesty International, *Amnesty International Report 2000—Saudi Arabia*, <http://www.unhcr.org/refworld/category,COI,AMNESTY,ANNUALREPORT,SAU,3ae6aa0f58,0.html> (accessed Apr. 20, 2009).

118. *Id.*

119. Many Saudi nationals have participated in the Afghan war against the former USSR in the 1980s, and in the war in Bosnia in the early 1990s.

120. Amnesty International, *Amnesty International Report 2002—Saudi Arabia*, <http://www.unhcr.org/refworld/category,COI,AMNESTY,ANNUALREPORT,SAU,3cf4bc1334,0.html> (accessed Apr. 20, 2009).

volunteers who went to fight against the Soviet occupation of Afghanistan in the 1980s, and to Bosnia to support oppressed Muslims against Serbian aggression in the early 1990s. These soldiers were not only motivated to resist Soviet and Serbian domination of Muslims; they were equally concerned about the U.S. involvement in Muslim affairs in general and Saudi affairs in particular. Ironically, the Saudi government also has always been strongly opposed to any foreign intervention into Muslim affairs in general and in Saudi affairs in particular.

In 1978 when the Egyptian government planned to establish relations with Israel independently of other Muslim countries, and the OIC resolved to sever diplomatic relations with Egypt, Saudi Arabia actively participated in adopting a resolution not to allow the presence of foreign troops in any Muslim country.<sup>121</sup> However, within years, Saudi Arabia allowed U.S. troops to be stationed on its soil during the first Iraq war in 1990-91. In the view of many Saudis, this action was against the interest of the *ummah*. According to one author,

The decision to place U.S and other Western troops on Islam's sacred soil, there to unleash them against another Muslim country (Iraq) was deeply unsettling to many Saudis and aroused strong opposition in young fundamentalists.<sup>122</sup>

Since there was no formal mechanism to express their opinion, the veterans took up the language of arms to express their opposition to such moves as they were trained to do in Afghanistan and Bosnia, thus creating a direct confrontation between the veterans and the government.

These actions were taken despite the fact that the Qur'an clearly guides believers not to differentiate between words and deeds (61:2), and clearly censures arrest, detention without charge, and beating up of prisoners unless proven guilty. However, these human rights reports suggest that Saudi Arabia seems to have ignored its commitment not only to the *shari'ah*, but also to UN Conventions.

In its 2000 *Annual Report* AI recorded that,

Muhammad al-Farraj, a lecturer at the Mohamed bin Sa'ud Islamic University in Riyadh, was reportedly arrested at his home in Riyadh by al-*Mubahith al-'Ammah* (General Investigations) in August 1999. At the end of the year he was understood to be in al-Ha'ir prison in Riyadh. Reports indicated that he was arrested because of a poem he wrote . . . about two former political

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121. OIC Res. 17/11-P.

122. Faksh, *supra* n. 89, at 94.

prisoners.”<sup>123</sup>

The same report also documented that:

Dr Sa'id bin Zu[b]a'ir, head of the Department of Information at Imam Mohamed bin Sa'ud Islamic University, was arrested in early 1995 at his home in Riyadh by members of *al-Mabahith al-'Ammah*. He was believed to have been denied any visits by his relatives and to have been pressured to sign an undertaking to cease political activities in exchange for his release. He continued to be held in al-Ha'ir prison.<sup>124</sup>

The document also states that, “[t]o AI’s knowledge, he and other political detainees were not charged with any recognizably criminal offence and were denied the right to challenge the legality of their detention.”<sup>125</sup> The 2003 *Annual Report* records that a professor of al-Ihsa University was arrested after he participated in a demonstration protesting against Israeli atrocities in Palestine.<sup>126</sup> It also reported that

In July Sa'id bin Sa'id Zuba'ir, aged 28, was arrested at Riyadh airport. He was apparently planning to travel to Qatar to be interviewed by al-Jazeera television in order to raise awareness of his father’s detention in Saudi Arabia.<sup>127</sup>

His father, Sa'id bin Zuba'ir had been detained without charge or trial since his arrest in 1995.<sup>128</sup> The 2003 report of the AI also recorded that,

In May the UN Committee against Torture examined Saudi Arabia’s implementation of the UN Convention against Torture and urged it to bring legislation and practice into line with the letter and spirit of the Convention.<sup>129</sup>

Now having shown how Egypt and Saudi Arabia were in the vanguard in adopting CDHR, we turn our analysis toward Turkey as an example of a country adopting values of both Islamic and Western civilizations.

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123. *Amnesty International*, *supra* n. 117; see The Committee for Defense of Human Rights in the Arabian Peninsula, [http://cdhrp.net/text/english/\\_reports/human/human/1998,\\_2000\\_etc.html](http://cdhrp.net/text/english/_reports/human/human/1998,_2000_etc.html) (accessed Mar. 12, 2009).

124. *Amnesty International*, *supra* n. 117.

125. *Id.*

126. Amnesty International, *Amnesty International Report 2003—Saudi Arabia*, <http://www.unhcr.org/refworld/country,COI,AMNESTY,,SAU,,3edb47df4,0.html> (accessed Dec. 5, 2008).

127. *Id.*

128. *Id.*

129. *Id.*

## TURKEY

Turkey officially abandoned *sharī'ah* following a declaration of the republic after the fall of the Osmanli state in 1924. By the late 1940s Turkey institutionalized a democratic process in which political parties were allowed to participate. However, the Turkish armed forces remained vigilant in “safeguarding” democracy and secularism in the country.<sup>130</sup> Soon they developed vested interests in politics, and the armed forces intervened at least three times (1960, 1971, and 1980) to save what they called Kemalism (the six principles of Mustafa Kamal, the founder of the Republic).<sup>131</sup> Each time the military patronized political parties that favored the armed forces.<sup>132</sup> In 1997 the armed forces again intervened to overthrow the democratically elected government in order to install privileged parties and candidates.<sup>133</sup> These interventions resulted in a wide gap between the military elite and politicians patronized by the military on one hand and the common people on the other. These interventions also caused human rights abuses. HRW and AI annual reports have condemned Turkey for offenses similar to Algeria, Egypt and Saudi Arabia. The authorities then blamed mainly the Kurdish separatists, socialist extremists, and the Islamist parties for acting against “the state” and the “state ideology.” As in Algeria and Egypt, Turkish human rights organizations reported indiscriminate arrests, disappearances and extra judicial killings.<sup>134</sup>

AI’s 1994 report documented that, “[h]undreds of people suspected of supporting Kurdish separatism were arrested, . . . [a]t least 26 people were reported to have ‘disappeared’ in custody.”<sup>135</sup> The same document also reported extrajudicial executions.<sup>136</sup> The 1997 annual report of the organization noted that, “There were frequent well-documented reports of torture by police and gendarmes . . . at least eleven people died in custody apparently as a result of torture.”<sup>137</sup> It

130. See William Hale, *Turkish Politics and the Military* (Routledge 1994).

131. Erik J. Zürcher, *Turkey: A Modern History* 231-342 (I.B. Tauris 1997).

132. See Serif Mardin, *Religion and Politics in Modern Turkey*, in *Islam in the Political Process* 138-159 (James Piscatory ed., Cambridge U. Press 1983).

133. Sinan İkinçi, *Turkey: 12 Years Since the Last Military Intervention, New Coup Feared*, <http://www.wsws.org/articles/2009/mar2009/turk-m02.shtml> (accessed Mar. 2, 2009).

134. *Supra* nn. 110, 115.

135. Amnesty International, *Amnesty International Report 1994—Turkey*, <http://www.unhcr.org/refworld/country,,AMNESTY,,TUR,,3ae6a9f60,0.html> (accessed Dec. 5, 2008).

136. *Id.*

137. *Amnesty International Report 1997—Turkey*, <http://www.unhcr.org/refworld/country,,AMNESTY,,TUR,,3ae6a9f12c,0.html> (accessed Dec. 5, 2008).

recorded that, throughout the year Amnesty International appealed for the release of prisoners of conscience and urged the government to initiate thorough, prompt and impartial investigations into allegations of torture, extrajudicial executions and disappearances.<sup>138</sup> However, unlike Algeria, Egypt and Saudi Arabia, Turkey slowly began to allow human rights groups to monitor trials of rights activists. AI's 1997 report recorded that, in January, an Amnesty International delegate had observed the Ankara trial of Turkish Human Rights Foundation officials accused of insulting state institutions, who were subsequently acquitted. It is possible that the presence of outside observers had a role to play in the acquittal.<sup>139</sup>

In its 2000 annual report, AI recorded delegate visits to Turkey in March and November to observe and examine human rights violations.<sup>140</sup> These visits by rights groups placed Turkey at a unique position as compared to Algeria, Egypt, and Saudi Arabia. The Turkish system began to demonstrate more transparency as compared to other Muslim countries. In 2002 Turkey took another revolutionary step: the "[p]arliament passed three laws in February, March and August (2002)<sup>141</sup> aimed at bringing Turkish law into line with European human rights standards."<sup>142</sup> The report also notes that, "AI was given permission to open a branch in Turkey under the Law on Associations."<sup>143</sup> There is a strong possibility that Turkey took these steps in order to satisfy EU pre-conditions for membership. Clearly, what *sharī'ah*-inspired values of CDHR failed to achieve in Algeria, Egypt and Saudi Arabia, European-inspired values of UDHR achieved in Turkey. In the process the Turkish people benefited: they were able

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138. *Id.*

139. *Id.*

140. See Amnesty International, *Amnesty International Report 2000—Turkey*, <http://www.unhcr.org/refworld/country,,AMNESTY,,TUR,,3ae6aa113c,0.html> (accessed Dec. 5, 2008).

141. According to the International Federation for Human Rights, *Observatory for the Protection of Human Rights Defenders Annual Report 2003—Turkey*,

A number of amendments to the Turkish Law on Association n° 2908 of 6th October 1983, which contains numerous restrictive provisions, were passed in 2003. These amendments were drafted as part of the 4th, 5th and 7th "reform or harmonization packages," and passed on 2nd January, 21<sup>st</sup> March and 30<sup>th</sup> July respectively in the context of Turkey's application for membership of the European Union.

(available at <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?page=search&docid=48747c8251&skip=0&query=annual%20report%202003%20Turkey>).

142. Amnesty International, *Amnesty International Report 2003—Turkey*, <http://insanhaklarimerkezi.bilgi.edu.tr/source/turkce/4.2.5.1/Amnesty%202003-Turkey.pdf> (accessed Dec. 5, 2008).

143. *Id.*

to choose genuine leaders by ballot. It seems that the new Turkish leaders have developed a good compromise between the values of Islamic and Western civilizations. Turkey also seems to be developing an effective and positive relationship between religion and law in society.

Having completed the in depth analysis of several key countries in balancing *sharī'ah*, Islamic and Western concepts, we now discuss this question of law and religion in society in the context of the political atmosphere in the Muslim world.

#### SHARĪ'AH AND LAW IN THE MUSLIM WORLD

It is noteworthy that CDHR makes frequent reference to *sharī'ah* but ignores teachings of *sharī'ah* when its member countries repress citizens using torture, and imprisonment without trial and disappearance. Violations of *sharī'ah* and human rights have become very common in many OIC countries in recent years. This seems to indicate the common people are increasingly seeking guidance for good governance in religious ideas, as well as that OIC governments are desperately trying to pacify the people by declaring their commitment to *sharī'ah*.<sup>144</sup> However, this Machiavellian attempt is turning out to be catastrophic in the Muslim world. Let us first consider the case of Saudi Arabia, the country that is most vocal about the rule of *sharī'ah*. When the government proclaimed a reform of the political system of the country and announced the formation of a consultative council, some Saudi intellectuals formed CDLR to defend human rights in the light of the *sharī'ah*, but the authorities crushed them.<sup>145</sup> The Qur'an not only guides the believers not to discriminate between words and deeds, it also says that, "Most loathsome is it in the sight of God that you say what you do not do."<sup>146</sup> And yet "the council of senior 'Ulama—the highest religious authority in the kingdom—stated that the country had no need for human rights organizations since it was ruled in accordance with the *Sharī'ah*."<sup>147</sup> Now the question is how the *sharī'ah* will determine who is right—CDLR activists or the Council of senior 'ulama. The *sharī'ah* neither prohibits nor requires the formation of a political party, trade union or a rights group. But the Qur'an strongly recommends the

144. See *supra* nn. 87 & 97, at 114-122.

145. See *supra* n. 114, at 119-120.

146. Qur'an 61:3.

147. Amnesty International, *Amnesty International Annual Report 1994—Saudi Arabia*, <http://www.unhcr.org/refworld/publisher,AMNESTY,,SAU,,3ae6a9f64,0.html> (accessed Dec. 5, 2008).

believers to consult among themselves on their affairs.<sup>148</sup> Should the consultation be in the manifestation of political parties or trade unions or rights groups? The Qur'an seems to have left the followers to develop mechanisms for consultation. However, the government decision to consult only those who would be loyal to the government seems to clearly violate the Qur'anic principles. In fact Muslim scholars throughout history have almost unanimously opposed tyrannical regimes on the one hand and terror campaigns against an established government on the other. The scholars were generally fearful of abuse of human rights and human dignity under anarchic rule.

Examples of consultation between the ruler and the ruled under King Abdulaziz ibn Sa'ud are plentiful. On many occasions tribal and religious leaders challenged the king. For example, this happened when Saudi Arabia introduced technological innovations such as the radio, telephone and telegraph in the country. On every occasion, Abdulaziz convened a public debate to discuss the issue with opponents. He always supported his arguments by quoting the Qur'an, the prophetic tradition or events from Muslim history, and persuaded his opponents to follow his policies.<sup>149</sup> Abdulaziz went through very difficult times in the 1920s while he was persuading the nomadic tribes known as Ikhwan warriors to settle down in designated areas of the country. Occasionally he used force,<sup>150</sup> but generally he did not lose touch with the tribal and religious leaders. The situation under King Fahad turned out very differently: authorities hardly had any public debate or consultation on issues such as whether the formation of CDLR was permissible from the Islamic perspective.

The most disturbing issue for the Saudi society is the presence of U.S. troops in the kingdom. One Saudi dissident, Saad al-Fagih, who directs the Movement for Islamic Reform in Arabia from exile, has pointed that, "after the 1990 Gulf crisis, the U.S. crossed the psychological barrier by bringing in their forces. They failed to remember the sensitivities. Worse, the Saudi government was never brave enough to remind them."<sup>151</sup> This would not have happened under

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148. Qur'an 42:38.

149. For a good description on the subject, see John Demetrios Sotos, *Principles, Pragmatism, and the Al Saud: The Role of Islamic Ideals in Political Dissent in Saudi Arabia 1919-1982* (unpublished M.A. thesis, College of Pub. & Intl. Affairs, Am. U., 1982 (microfilmed on U. Microfilms).

150. See David Howarth, *The Desert King: A Life of Ibn Saud* 153-176 (Collins 1964).

151. Saad al-Fagih, *The coming Saudi eruption*, The Guardian (Jan. 29, 2002) (available at <http://www.guardian.co.uk/world/2002/jan/29/afghanistan.saudi-arabia>).

the rule of Abdulaziz.<sup>152</sup> In 1946 when President Truman appealed to the British Mandate Authorities in Palestine to admit 100,000 more Jews to Palestine, Abdulaziz Ibn Saud not only strongly objected to the President, he also made his opinion public by publishing his letter to the American press.<sup>153</sup> This decision protected his legitimacy in the sight of his people. But, as pointed out by Saad al-Fagih, in his article in *The Guardian*, King Fahad did not seem to have the courage to convey this public feeling about stationing U.S. troops in the country to the U.S. administration.<sup>154</sup>

This inability to represent public opinion is one of the fundamental causes for the growth of terrorism in the Muslim world today. But we must equally ask if the terrorists are sincere about their claims. Many activists in the Muslim world today view terrorism as an expression of patriotism. Discussing the current situation in Saudi Arabia, Al-Fagih warns:

the loyalty of the security forces is now seriously in doubt. The regime knows that Osama bin Laden is very popular in the country (a classified US report of a Saudi intelligence survey of educated Saudis between the ages of 25 and 41 in October [2001] found that 95% supported Bin Laden's cause). Any pressure on the security forces to "do their job" would backfire.<sup>155</sup>

This resistance is a major problem not only for Saudi Arabia, but also for many countries in the Muslim world today.<sup>156</sup> A huge gap has been created between the people and the ruling elite all over the Muslim world. It is interesting to note that although such an awareness of human rights among Muslim intellectuals did not occur as a direct response to any external challenge, many tradition-oriented and pro-establishment Muslim scholars continued to apologetically defend their position, as saying:

Human rights may be something new for the West, but we in Islam have had it since the beginning. We have no differences between whites, blacks, Jews, Muslims—everyone is free. We never

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152. See Sotos, *supra* n. 149.

153. See George Lenczowski, *The Middle East in World Affairs* 554 (Cornell U. Press 1962).

154. See al-Fagih, *supra* n. 151, at 120.

155. See al-Fagih, *supra* n. 151.

156. See Youssef H. Aboul-Enein, Book Review, *Ayman Al-Zawahiri's Knights Under the Prophet's Banner: the al-Qaeda Manifesto*, *Military Rev.* (Jan. 1, 2005). This book by Al-Zawahiri apparently was initially serialized in London *Al-Sharq al-Awsat* in Arabic (Saudi-owned London daily). See summary of excerpted statements and commentary of Ayman az-Zawahiri, one of Osama Bin Ladin's associates from Egypt (available at <http://www.freerepublic.com/focus/f-news/813856/posts>, posted Dec. 30, 2002).

persecuted the Jews here the way they did in France and England. In England and in the US you fight against the blacks—why just the other day there were news items about fighting between the police and blacks in London.<sup>157</sup>

This attitude indicates not only Muslims' refusal of Western values but also a clear indication of a conscious apology on the part of these Muslim intellectuals, an attitude recognized in the wordings of CDHR. There is an alternative to this dilemma: a meeting of minds between the values of *shari'ah* and the values reflected in UDHR.

This question has not only fueled the clash of civilizations thesis, it has created a huge tension in the Muslim world today. An enormous gap—a lack of trust, *amānah*—between the citizens and authorities in most Muslim countries has been created because of the inconsistency between what the leaders claim to stand for and their performance.<sup>158</sup>

The Qur'anic values of justice (*'adālah*) and consultation (*shūra*) are almost totally missing in most Muslim countries. In our opinion, cultivation of these values will be necessary for holding back declining civilizations or reviving lost civilizations. One point must be made clear: the revival of the values of Islamic civilization must not be perceived as a threat to other existing civilizations in the world today. These values are supposed to be universal and do not favor or discriminate against any ethnic, religious or linguistic community. However, the fundamental question is how one cultivates these values in our contemporary times. We shall briefly present several opinions on this issue.

“Reform” is a very common term in Muslim intellectual history. Any student of history will find a prominent role of reformers in many centuries of Muslim history. Ideas of reform have become even more frequent since the nineteenth century. “‘Arab reform’ has turned into a catchphrase[,]” says an author in article published in the Egyptian paper *Al-Ahram*.<sup>159</sup> He questions what kind of reform the Arabs and Muslims should initiate for their societies.<sup>160</sup> The late Edward Said believed that the “Arabs must throw off their shackles,” referring to the legacy of European colonialism in the Muslim world.<sup>161</sup> Cheryl Benard, a

157. Dwyer, *Arab Voices*, *supra* n. 11, at 38 (quoting from the interview of a member of Morocco's Council of Religious Scholars, Muhammad Mekki Naciri).

158. See *supra* nn. 8, 42, 89, 111 & 112 (regarding discussions of Algeria, Egypt and especially Saudi Arabia).

159. Hassan Abu Taleb, *Illusions of Reform*, *Al-Ahram* (Apr. 8-14, 2004), <http://weekly.ahram.org.eg/2004/685/op3.htm> (accessed Dec. 5, 2008).

160. A detailed treatment of this question does not fall within the scope of this paper.

161. See Edward Said, *Arabs Must Throw Off Their Shackles*, *Middle E. Times Intl.* (May 30,

researcher associated with the Washington-based think-tank Rand Corporation, advocates complete elimination of so-called fundamentalists in the Muslim world.<sup>162</sup> Another influential European think-tank, the Brussels-based International Crisis Group, in a report warns against legalizing the Muslim Brothers in Egypt.<sup>163</sup>

This seems to indicate that although on the surface everybody wants to see democracy being practiced in the Muslim world, in reality not only the Bush administration, but some of the think-tanks also want loyal governments in the Muslim world. This desire has been exposed following the Palestinian election in 2006. Graham Fuller, a former CIA official, pointed out:

Most regimes see almost any form of political Islam as a threat, since it embodies a major challenge to their unpopular, failing, and illegitimate presidents-for-life or isolated monarchs. . . . [on the other hand] these days nearly all Islamists . . . have discovered the importance of human rights . . . precisely because they are usually the primary victims of the absence of rights, filling regional jails in disproportionate numbers.<sup>164</sup>

Fuller finds that the Bush administration and Osama bin Ladin belong to two opposite camps, and proposes a compromise, what he calls “Turkish Delight.”<sup>165</sup> He says:

One successful model that merits emulation is Turkey. This is not because Turkey is “secular”; in fact, Turkish “secularism” is actually based on total state control and even repression of religion. Turkey is becoming a model precisely because Turkish democracy is beating back rigid state ideology and slowly and reluctantly permitting the emergence [of] the Islamist movements and parties that reflect tradition, a large segment of public opinion, and the country’s developing democratic spirit.<sup>166</sup>

What makes Turkey different from other Muslim countries? Is it the attempts at transparency and accountability by the Turkish government? Perhaps motivated by its strong desire to join the European Union,<sup>167</sup> Turkey has not only allowed institutions such as AI,

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162. See Cheryl Benard, *Civil Democratic Islam: Partners, Resources and Strategies* (Rand Corp. 2003).

163. *Islamism in North Africa II: Egypt’s Opportunity* 18 (Middle East/North Africa Briefing N 13) (Intl. Crisis Group Apr. 20, 2004) (discussing ICG Middle East and North Africa Briefing) (copy with author).

164. Graham E. Fuller, *The Future of Political Islam*, 81 *Foreign Affairs* 48 (Mar./Apr. 2002).

165. *Id.*

166. *Id.*

167. See *supra* text at pp. 590-591.

HRW and Transparency International to monitor its judiciary and security activities, it has also allowed these organizations to open their offices in the country. As a result, in Turkish politics, there is less of a gap between what Turkey stands for and what it does. What Muslim countries should have done because of their faith in God and the Qur'an, Turkey seems to have done because of its commitment to join the European Union. And this makes Turkey different from the rest of the Muslim world. The Turkish case is really out of the ordinary. It has achieved rather what is Islamic by cultivating western values, i.e. accountability and transparency. The Turkish experience raises the following questions: Shouldn't the *'ulama* and the so-called Islamists evaluate what they can achieve from the Islamic perspective by subscribing to some fundamental Western values? Should they not evaluate and analyze the performance of their governments based on whether there is any discrepancy between what they say and what they do? Aren't the *'ulama* and the Islamist political parties also responsible for the rise of extremism in the Muslim world, particularly when many extremists are justifying their action in the name of Islam?

In other words mere declaring but not following the principles of the *shari'ah* in CDHR will be extremely counter-productive. CDHR needs to develop legal mechanisms to ensure human dignity and human rights in practice. In our contemporary times, in an era of the clash of civilizations, what Muslims in general and the OIC in particular need is to practice what they stand for, not just to construct resolutions and declarations such as the Cairo Declaration of Human Rights.