

SHARIA LAW IN BRITAIN

A THREAT TO ONE LAW FOR ALL & EQUAL RIGHTS



The One Law for All Campaign was launched on 10 December 2008, International Human Rights Day, to call on the UK Government to recognise that Sharia and religious courts are arbitrary and discriminatory against women and children in particular and that citizenship and human rights are non-negotiable. The Campaign aims to end Sharia and all religious courts on the basis that they work against, and not for, equality and human rights.

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Sharia Law in Britain: A Threat to One Law for All and Equal Rights

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"If Sharia law is implemented, then you can turn this country into a haven of peace because once a thief's hand is cut off nobody is going to steal.

"Once, just only once, if an adulterer is stoned nobody is going to commit this crime at all.

"We want to offer it to the British society. If they accept it, it is for their good and if they don't accept it they'll need more and more prisons."

Suhaib Hasan, Secretary General of the Islamic Sharia Council¹

¹ Divorce, Sharia Style, Channel 4, February 2008: <http://video.google.ca/videoplay?docid=7551240419498830429#> and We want to offer Sharia law, The Telegraph, 20 January 2008: <http://www.telegraph.co.uk/news/uknews/1576066/We-want-to-offer-sharia-law-to-Britain.html>

Introduction

Sharia law has been implemented in the UK since the early 1980s by Sharia Councils² and since 2007 by Muslim Arbitration Tribunals.³

Attention has been focussed on these courts since 2008 when the Archbishop of Canterbury Rowan Williams⁴ and retiring Lord Chief Justice of England and Wales, Lord Phillips of Worth Matravers,⁵ suggested that Sharia had a positive role to play in the settlement of disputes.

Contrary to the claims of its proponents, however, the decisions of Sharia and other religious courts are arbitrary and discriminatory, particularly against women and children.⁶

The following report based on an 8 March 2010 Seminar on Sharia Law,⁷ research, interviews, and One Law for All case files, aims to provide evidence of the discriminatory nature of these courts and make recommendations for curtailing Sharia and religious tribunals on the basis that they work against and not for equality, and are incompatible with human rights.

2 Islamic Sharia Council: <http://www.islamic-sharia.org/about-us/about-us-6.html>

3 Muslim Arbitration Tribunal: <http://www.matribunal.com/>

4 Sharia law in UK is 'Unavoidable,' BBC, 7 February 2008: <http://news.bbc.co.uk/1/hi/7232661.stm>

5 Sharia law 'could have a UK role,' BBC, 4 July 2008: <http://news.bbc.co.uk/1/hi/uk/7488790.stm>

6 One Law for All Campaign: <http://www.onelawforall.org.uk/about/>

7 One Law for All Seminar on Sharia Law, 8 March 2010: <http://www.onelawforall.org.uk/8-march-2010-london/>

What is Sharia Law?

Sharia (or Islamic) law is based on a combination of sources, including the Quran, the Hadith or Sunna (sayings and actions of Prophet Mohammad), and Islamic jurisprudence and rulings or fatwas issued by scholars.⁸

Sharia law is far from monolithic and consistent; there are four prominent schools of Sharia in Sunni Islam⁹ and one major school in Shia Islam.¹⁰ Despite the inconsistencies, however, there is consensus within all schools regarding the necessity of the death penalty for apostasy and sexual “crimes” including homosexuality, on the need for women to be veiled, and on different treatment under the law accorded to men compared with women as well as Muslims compared with non-Muslims.

One Law for All’s Spokesperson, Maryam Namazie, says: “Whilst Sharia is practised differently in different countries, any positive difference is the result of progressive social movements for the secularisation of rights rather than a non-existent woman-friendly interpretation of Sharia law, particularly given that any innovation is considered heresy.”

Sharia Law’s Penal Code

In Sharia law’s penal code, women can be stoned to death for sex outside of marriage.¹¹ Homosexuality¹² and apostasy¹³ are punishable by death. Eating

8 Sharia, BBC: http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia_1.shtml

9 SunniPath, The Online Islamic Academy: <http://www.sunnipath.com/about/faqs.aspx>

10 Sunni and Shia, BBC: http://www.bbc.co.uk/religion/religions/islam/subdivisions/sunnishia_1.shtml

11 Sharia Law, The Guardian, 20 August 2002: <http://www.guardian.co.uk/world/2002/aug/20/qanda.islam>

12 How Islam views homosexuality, IslamOnline: http://www.islamonline.net/servlet/Satellite?c=Article_C&cid=1212925221746&pagename=Zone-English-Living_Shariah/LSELayout

13 Guidelines for Ex-Muslims and Frontline Practitioners, Council of Ex-Muslims of Britain, May 2010: http://www.ex-muslim.org.uk/CEMB_guidelines_final_Printing_version3.pdf

during Ramadan is punishable by imprisonment¹⁴ or flogging.¹⁵ Improper veiling is punishable with fines and imprisonment¹⁶ and with threats, intimidation and honour killings even when it is not compulsory.¹⁷ The punishment for robbery is amputation.¹⁸

Many aspects of Sharia's penal code are based on retribution. For example, if a victim loses an eye in an altercation, the law requires that the eye of the perpetrator be surgically removed in return. There is also the concept of blood money (or *Diyeh*) for first- or second-degree murder, where the family of the murder victim can decide whether to accept financial compensation or demand the death penalty.¹⁹

In Iran, over 130 offences are punishable with death under Sharia law. These include sex crimes such as adultery and homosexuality; crimes against the state and religion including enmity against God; corruption on earth; apostasy; heresy and blasphemy; and acts prohibited under Sharia law such as a third conviction for drinking alcohol, moral crimes such as the distribution of obscene/pornographic audio-visual materials; public order crimes; and drug-related offences, including for possession.²⁰

14 Morocco: Ramadan fast break protestors arrested, *Women Living Under Muslims Laws*, 17 September 2009: <http://www.wluml.org/node/5545>

15 Malaysia postpones caning of woman for Ramadan, *Amnesty International*, 24 August 2009: <http://www.amnesty.org/en/news-and-updates/feature-stories/malaysian-woman-caning-postponed-20090824>

16 Iranian women to be filmed and fined if they don't wear the veil right, *Firat News Agency*, 27 May 2010: <http://en.firatnews.com/index.php?rupel=article&nucleID=169>

17 Women are being beheaded for taking their veil off in Iraq, *Alternet*, 30 April 2008: <http://www.alternet.org/world/83710/>

18 Saudi, 2 Yemenis suffer amputation, *Sodomy Laws*, 13 February 2000: http://www.glapn.org/sodomylaws/world/saudi_arabia/saudinews01.htm

19 Afkhami, Mahnaz and Erika Friedl, eds. *In the Eye of the Storm: Women in Post-Revolutionary Iran*. Syracuse, New York: Syracuse University Press, 1994: <http://www.learningpartnership.org/resources/legislation/nationallaw/iran>

20 I would be executed in Iran for this: <http://www.facebook.com/pages/I-would-be-executed-in-Iran-if-I-did-this/107261949318147>

Human Rights Campaigner Peter Tatchell says: “Sharia law is a form of religious dogma and tyranny. It is homophobic, sexist and anti-democratic.”²¹ Terry Sanderson, President of the National Secular Society, says: “Sharia law does not develop, it is fixed and immutable, but its interpretation is unpredictable, unregulated and subject to the whims and prejudices of individual practitioners.”²²

Many commentators, including the BBC²³ and the Archbishop of Canterbury Rowan Williams²⁴ are quick to assert that Sharia law is misunderstood and wrongly associated with the amputation of limbs, death by stoning, lashes and other medieval punishments - yet this is what Sharia’s penal code demands. Examples include the death sentence imposed on Parwez Kambakhsh in Afghanistan for blasphemy²⁵ and the 9 May 2010 execution of five political prisoners in Iran for “enmity against God.”²⁶ The image of Sharia law is draconian because the reality is draconian.

In a Channel 4 documentary, Suhaib Hasan, Secretary General of the Islamic Sharia Council and a Spokesperson of the Muslim Council of Britain (MCB) at the time, says that if Sharia law was implemented in Britain: “then you can turn this country into a haven of peace because once a thief’s hand is cut off nobody is going to steal. Once, just only once, if an adulterer is stoned nobody is going to commit this crime at all. We want to offer it to the British society. If they accept it, it is for their good and if they don’t accept it they’ll need more and more prisons.”²⁷

21 Peter Tatchell, One Law for All rally, 21 November 2009: <http://www.onelawforall.org.uk/november-21-a-successful-day-against-sharia-and-religious-laws/>

22 Terry Sanderson, One Law for All rally, 21 November 2009: <http://www.onelawforall.org.uk/november-21-a-successful-day-against-sharia-and-religious-laws/>

23 Sharia, BBC: http://www.bbc.co.uk/religion/religions/islam/beliefs/sharia_1.shtml

24 Archbishop of Canterbury, Lecture on Civil and Religious Law in England: a Religious Perspective, 7 February 2008: <http://www.archbishopofcanterbury.org/1575>

25 Parwez Kambakhsh sentenced to 20 years, RAWA News, 21 October 2008: <http://www.rawa.org/temp/runews/2008/10/21/parwez-kambakhsh-sentenced-to-20-years.html>

26 Five executed on 9 May for enmity against God, Iran Solidarity, 13 May 2010: <http://iransolidarity.blogspot.com/2010/05/on-execution-of.html>

27 Divorce, Sharia Style, Channel 4, February 2008: <http://video.google.ca/videoplay?docid=7551240419498830429#>. Also We want to offer Sharia law, The Telegraph, 20 January 2008: <http://www.telegraph.co.uk/news/uknews/1576066/We-want-to-offer-sharia-law-to-Britain.html>

Roy Brown, International Representative of the International Humanist and Ethical Union, says: “the MCB appears to be regarded by the UK Government – at least until quite recently as the principal organisation representing Muslims in the UK. Given the general perspective of organisations like the MCB that the imposition of Sharia’s penal code is not erroneous but the duty of Islamic states, it is open to question how far Islamists would go, given the chance, in moving towards them.”²⁸ Whilst Britain’s democratic processes and human rights obligations preclude such a possibility in its entirety, nonetheless, Sharia courts are already dealing with some criminal matters.

In one case, the stabbing of a Somali youth was dealt with in a Sharia Council.²⁹ Moreover, Sheikh Faiz-ul-Aqtab Siddiqi who heads the Muslim Arbitration Tribunal has said he expects the courts to handle a greater number of “smaller” criminal cases in the coming years.³⁰

Whilst Sharia’s penal code is brutal and medieval, what of its civil aspects? The call for Sharia law in Britain and Europe is primarily for its civil code to be widely implemented. This is what Ibrahim Mogra, Assistant Secretary General of the MCB, describes as: “small aspects of Sharia for Muslim families when they choose to be governed with regards to their marriage, divorce, inheritance, custody of children and so forth.”³¹

Sharia Law’s Civil Code

Marriage, divorce and child custody may be “small aspects” to proponents of Sharia but they are a cornerstone in the subjugation of women living under Islamic law. Much of the struggle for women’s rights has taken shape in countries under Islamic rule against these very aspects. Often, even when the Sharia penal code is no longer applied, the civil code remains.³² Many women have fled and

28 Roy Brown, International Humanist and Ethical Union, 5 June 2010

29 Sharia court frees London knife youths, This is London, 8 February 2008: <http://www.thisislondon.co.uk/standard/article-23436339-sharia-court-frees-london-knife-youths.do>

30 Sharia law courts operating in Britain, Telegraph, 16 Sept 2008: <http://www.telegraph.co.uk/news/uknews/2957428/Sharia-law-courts-operating-in-Britain.html>

31 Williams under fire in Sharia row, BBC, 8 February 2008: <http://news.bbc.co.uk/1/hi/7233335.stm>

32 Sharia Delusions in Canterbury, Mona Eltahawy, Women Living Under Muslim Laws, 14 February 2008: <http://www.wluml.org/node/4430>

sought asylum as a result of these “small aspects.”³³

Under Sharia law’s civil code, a woman’s testimony is worth half that of a man’s,³⁴ a woman’s marriage contract is between her male guardian and her husband and a Muslim woman is not permitted to marry a non-Muslim. A man can have four wives and divorce his wife by simple repudiation, whereas a woman must give justifications for requesting a divorce, some of which are extremely difficult to prove. Child custody reverts to the father at a preset age, even if the father is abusive; women who remarry lose custody of their children even if the child has not reached the preset age; and sons are entitled to inherit twice the share of daughters.³⁵

A “small aspect” or a section of Sharia law does not mean that it is trivial or in any way moderate. The promotion of Sharia’s civil code as innocuous by Islamists is a telling sign of their view of women as second class citizens.

Channel 4’s documentary called “Divorce Islamic Style”³⁶ about Sharia law in civil matters here in Britain when compared to a documentary called “Divorce Iranian Style”³⁷ about a family court in Iran, demonstrates that the similarities in the subjugation of women as applied in both Britain and Iran are striking even though one takes place in a parliamentary democracy and the other in a theocracy.

Whilst there is an obvious difference between stoning a woman to death and denying her the right to divorce and child custody, the fundamentals and misogyny behind Sharia’s civil and penal codes are the same – it is just a matter of degree. It is deceptive, or at best a mistake, not to see the civil aspects of

33 Pregnant Nigerian seeks Sharia asylum, BBC, 22 August 2002: <http://news.bbc.co.uk/1/hi/world/africa/2209911.stm>

34 On the Testimony of Women, Islamic Sharia Council: <http://www.islamic-sharia.org/general/on-the-testimony-of-women-2.html>

35 Women’s Rights and Sharia, NPTI: <http://www.ntpi.org/html/womensrights.html>

36 Divorce, Sharia Style, Channel 4, February 2008: <http://video.google.ca/videoplay?docid=7551240419498830429#>. Also We want to offer Sharia law, The Telegraph, 20 January 2008: <http://www.telegraph.co.uk/news/uknews/1576066/We-want-to-offer-sharia-law-to-Britain.html>

37 Divorce, Iranian Style, <http://video.google.com/videoplay?docid=760777740102230188#>

Sharia law as part of and an extension of its penal code.³⁸

Despite all efforts to package Sharia's civil code as mundane, its imposition represents a concerted attempt by Islamists to gain further influence in Britain. By undermining British legal principles of equality before the law, the universal concept of one law for all and the protection of the rights of women and children, these courts help to increase discrimination, intimidation and threats against the most vulnerable. They also deny people their rights and leave countless human beings at the mercy of Islamists.

38 Islamic [in]justice, on the establishment of an Islamic court in Canada, Maryam Namazie, 8 March 2004: http://maryamnamazie.com/articles/against_sharia_court_in_Canada.html

How is Sharia Applied in Britain?

Sharia law is applied here in Britain primarily via an indeterminate number of Sharia Councils and Muslim Arbitration Tribunals (MATs).

Most reports cite five MATs in London, Birmingham, Bradford, Manchester and Nuneaton (Warwickshire) established since 2007 which have decided on over 100 cases.³⁹ There have also been more recent reports of one established in Wales.⁴⁰ Sharia Councils have been around much longer. The first one was started in Birmingham in 1982. The Islamic Sharia Council has decided on more than 7,000 cases in that time, with 95% relating to divorce.⁴¹ Civitas found at least 85 courts operating across the country.⁴² The actual numbers are likely to be much larger. Anjem Choudary, for example, the notorious leading member of the Islamist group al-Muhajiroun, is a judge of the “Sharia Court of the UK.” He says he has conducted 1,800 marriages so far.⁴³

In Sharia courts, there is neither control over the appointment of “judges” nor an independent mechanism for monitoring them. People often do not have access to legal advice and representation.⁴⁴ The proceedings are not recorded, nor are there any searchable legal judgements. Nor is there any real right to appeal. In the Channel 4 documentary, Hasan says to a woman who questions his unfair ruling: “there is no exception to this rule; in the Sharia there is no exception, you have to accept it.”⁴⁵

39 Sharia law courts operating in Britain, Telegraph, 16 Sept 2008: <http://www.telegraph.co.uk/news/uknews/2957428/Sharia-law-courts-operating-in-Britain.html>

40 Sharia law is proposed, BBC, 10 December 2009: <http://news.bbc.co.uk/1/hi/wales/8406796.stm>

41 In the name of the law, The Guardian, 14 June 2007: <http://www.guardian.co.uk/world/2007/jun/14/religion.news>

42 Sharia law or One Law for All, Civitas, June 2009 <http://www.civitas.org.uk/pdf/ShariaLawOrOneLawForAll.pdf>

43 Sharia a threat to Britain’s future as ‘tolerant’ society, Times, 30 December 2009: http://www.timesonline.co.uk/tol/life_and_style/court_and_social/article6971399.ece

44 Fears over non-Muslims’ use of Islamic law to resolve disputes, The Guardian, 14 March 2010: <http://www.guardian.co.uk/uk/2010/mar/14/non-muslims-sharia-law-uk>

45 Divorce, Sharia Style, Channel 4, February 2008: <http://video.google.ca/videoplay?docid=7551240419498830429#>. Also We want to offer Sharia law, The Telegraph, 20 January 2008: <http://www.telegraph.co.uk/news/uknews/1576066/We-want-to-offer-sharia-law-to-Britain.html>

Distinction between Sharia Councils and Muslim Arbitration Tribunals

Much is made about the distinction between Sharia Councils and Muslim Arbitration Tribunals (MATs). MATs are seen to be of more concern because they are classified as arbitration tribunals under the Arbitration Act 1996,⁴⁶ which makes their rulings binding in law, provided that both parties in the dispute agree to give it the power to rule on their case. Arbitration can be carried out by any two adults in Britain if they have volunteered for arbitration. It is regulated by statute and involves the parties signing an arbitration agreement before the “trial” begins.⁴⁷ The arbitrator can act in accordance with any rules or legal system specified in the arbitration agreement including Sharia law, and the ultimate “judgement” of the arbitrator can be registered with the civil courts and enforced in the same way as if it were a judgement of the civil courts. It is this aspect of civil courts enforcing arbitration judgements based on Sharia principles which has led to claims that Sharia law has been given “official” recognition.

In practice, the arbitration “judgement” is rarely subjected to legal enforcement, but even where it is, the enforcing court is not expected to delve into the basis for the judgement unless it is manifestly absurd or contrary to UK law or public policy. Furthermore, the Act cannot be used to oust the jurisdiction of the Family Law courts. Therefore the MATs are only permitted to conduct arbitration on issues such as commercial and inheritance disputes. Those decisions could be challenged in a civil court if not consistent with UK law or public policy but rarely are. Carla Revere, Chair of the Lawyers Secular Society, says: “Research has revealed that the MATs are purporting to conduct binding arbitrations on family law issues, and that decisions in areas like inheritance are inconsistent with UK law or public policy.”⁴⁸

46 Arbitration Act 1996 (UK): http://www.opsi.gov.uk/acts/acts1996/ukpga_19960023_en_1

47 Sharia law or One Law for All, Civitas, June 2009 <http://www.civitas.org.uk/pdf/ShariaLawOrOneLawForAll.pdf>

48 Carla Revere, Lawyers Secular Society, 5 June 2010

Keith Porteous Wood, Executive Director of the National Secular Society, says: “For several years, the website of the Muslim Arbitration Tribunal has shown pictures of the former Justice Minister and a bewigged former Lord Chief Justice. This gives the impression of official endorsement of this process, indeed a senior lawyer at the European Commission who saw it assumed it was part of the UK justice system and looked for reciprocal links on the Ministry of Justice website.”⁴⁹

Sharia Councils, on the other hand, are religious bodies and their decisions are said to be a form of mediation. Mediation does not rely upon the application of legal rules or the determination of legal rights and aims instead at finding common ground between parties. Mediators cannot impose their decision. Mediation is meant to lead to an agreement rather than a judgement.⁵⁰

Although Sharia Councils are said to mediate in family matters, they have a different understanding of the term “mediation” and fail to distinguish between mediation and arbitration. Sharia Councils, for example, will often ask people to sign an agreement to abide by their decisions.⁵¹ Councils often call themselves courts and the presiding imams are called judges. According to the British Shariah Council for example: “In changing times, [the BSC] fulfils the criteria for consultative processes. In regard to domestic problems it works as a Shariah court.”⁵² Their decisions are imposed and seen to be legal judgements.

Mediation in family law means focussing on issues causing disputes between married people and discussing different solutions for their resolution. A One Law for All client who had been to a Sharia Council for “mediation” reported that the judge quoted the Quran and told her to “listen to her husband otherwise she

49 Keith Porteous Wood’s meeting with the European Commission, 2 September 2009

50 Sharia Law or One Law for All, Civitas, June 2009 <http://www.civitas.org.uk/pdf/ShariaLawOrOneLawForAll.pdf>

51 Recognizing the Un-Recognized: Inter-Country Cases and Muslim Marriages & Divorces in Britain, WLUML Publications, January 2006: <http://www.wluml.org/node/566>

52 Confidential British Shariah Council letter to solicitor, 5 May 2007

53 Confidential interview with One Law for All client

would burn in hell.”⁵³ Yassi Atasheen, One Law for All’s Legal Coordinator, says: “This is clearly not mediation; instead, it is taking advantage of a vulnerable woman who has been pressured into attending these courts.”⁵⁴

There is also danger to those who are at risk of domestic violence. In some cases, the Islamic Sharia Council has disclosed the location of women to their husbands. Grace Busuttil, Manager of the North Kirklees Refuge near Leeds, says: “We’ve had an application for divorce go through the Sharia Council which led to the husband finding the wife. He had no idea where she was until he contacted the Sharia Council. Then a week later he knew exactly where she was.”⁵⁵

In one study, a staggering four out of ten women attending Sharia courts were party to civil injunctions issued against their husbands on the grounds of violence and threatening behaviour. They were not even meant to be in the same vicinity with them - let alone be, as they were, in a Sharia Council mediating civil matters. “In this way, these privatised legal processes were ignoring not only state law intervention and due process but providing little protection and safety for the women in question. Furthermore the interviews and observation data revealed that husbands used this opportunity to negotiate reconciliation, financial settlements for divorce, and in many cases access to children. Settlements which in effect were being discussed under the shadow of law.”⁵⁶

In the light of the evidence, the One Law for All Campaign is concerned about the existence of both Muslim Arbitration Tribunals and Sharia Councils. One solicitor – who has assisted a number of women who have been denied their rights under Sharia says: “MATs and Sharia Councils are the same; they merely have different names.” She told One Law for All of cases in which women had lost child custody in Sharia Councils and felt unable to challenge such judgements in civil courts because of community pressure. In one such case, when the woman eventually contacted the solicitor in question to try and regain child custody, a lot of time had passed and since the children were now older, living

54 Yassi Atasheen, One Law for All Seminar on Sharia Law, 8 March 2010: <http://www.onelawforall.org.uk/8-march-2010-london/>

55 Crimes of the community, Honour-based violence in the UK, Centre for Social Cohesion, second edition, 2010: http://www.socialcohesion.co.uk/files/1229624550_1.pdf

56 Islamic Family Arbitration, Justice and Human Rights in Britain, Samia Bano, University of Reading, 6 December 2007: http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2007_1/bano

in an environment hostile to the mother, and settled in their new environment, a British civil court also refused her custody.⁵⁷ In civil courts, the child's best interest is the paramount consideration. Once a child has been living with one parent for a sufficient length of time, without any serious risk of danger to the child such as abuse, the civil courts are reluctant to consider the case from the beginning and reverse the custody of the child even if the other parent is more capable of looking after the child. This is because the civil courts consider any such changes too disruptive and not in the child's best interest. So effectively the Sharia Council's decision is upheld. In this way, even if a Sharia court decision is challenged, irreparable harm may have already been done to the woman and the interests of the child.

Moreover, whilst MATs purport to arbitrate in family cases, they have no legal jurisdiction to do so as the Family Courts retain jurisdiction over family cases due to the sensitive nature of these disputes and their consequences. Although the Arbitration Act 1996 does not clearly exclude family matters from its jurisdiction, nevertheless there is legal authority confirming that this is and should be the case.⁵⁸ This point was confirmed by former Minister of Justice Jack Straw speaking in Parliament on 24 November 2008 when he said in response to a question about Sharia law courts in the UK: "Arbitration is not a system of dispute resolution that may be used in family cases. Therefore no draft consent orders embodying the terms of an agreement reached by the use of a Sharia Council have been enforced within the meaning of the Arbitration Act 1996 in matrimonial proceedings."⁵⁹

An example of the kind of decision that is contrary to UK law and public policy is the custody of children. Under British law, the child's best interest is the court's paramount consideration. On the other hand, in a Sharia court the custody of children reverts to the father at a preset age regardless of the circumstances of the case.⁶⁰

57 Confidential conversation with a solicitor, March 2010

58 *Edgar v Edgar* (1980) 1 WLR 1410

59 Faith-Based Arbitration and Mediation in the UK, Lawyers Secular Society, <http://www.lawyerssecularsociety.org/default.asp?sectid=394>

60 Islamic perspective on child custody after divorce, Islamic Sharia Council, <http://www.islamic-sharia.org/children/islamic-perspective-on-child-custody-after-divorce.html>

In divorce proceedings, too, civil law will take into account the particular merits of the case and divide the assets based on the needs and intentions of both parties.⁶¹ Under Sharia law, only men have the right to unilateral divorce. If a woman manages to obtain a “Khula” divorce without her husband’s consent in a Sharia court, she will lose even the sum of money (also known as dowry) that was agreed between her husband and her male guardian at the time of marriage. The Islamic Sharia Council says: “In a Khula case, the wife is required to return the dowry (money, jewellery, land, etc.) to the husband. If the husband agrees to divorce in exchange of dowry, the Khula divorce is deemed to be completed. If he does not agree the Council may issue divorce as an authoritative body working in the capacity of an Islamic Court.”⁶²

Sharia law cannot be compared to other secular legal systems because it is considered sacred law that cannot be challenged. It is also considered binding and as taking precedence over man-made laws. There is therefore no scope to look at the interests of the individuals involved, as required by UK law in family proceedings.

Both the Sharia Councils and the MATs are undermining the legal rights of a large section of the population of Britain. David Pollock, President of the European Humanist Federation, says: “Arguments for Sharia law are based on the concept of group rights. And group rights are inherently hostile to human rights.”⁶³

In principle, both men and women can take advantage of this parallel legal system to gain personal benefits but in practice men have many more opportunities due to the discriminatory nature of Sharia. Men can use these courts and their children to threaten and dominate their wives. One woman says her husband threatened: “Sharia entitles me to the custody of children whether you agree or not.”⁶⁴ And whilst their decisions can be challenged in a civil court, this hardly

61 Matrimonial Causes Act 1973 governs ancillary relief (money matters) in divorce: http://www.opsi.gov.uk/revisedstatutes/acts/ukpga/1973/cukpga_19730018_en_1. Equality in divorce stems from case law - primarily *White v White*: <http://www.publications.parliament.uk/pa/ld199900/ldjudgmt/jd001026/white-1.htm>

62 Khula case, Islamic Sharia Council: <http://www.islamic-sharia.org/divorce-khula/khula-case-what-are-the-factors-taken-into-consideration-to-decide-a-2.html>

63 David Pollock, One Law for All rally, 21 November 2009: <http://www.onelawforall.org.uk/successful-rally-against-sharia-law-in-uk-21-nov-2009/>

64 Confidential interview with One Law for All client

ever happens due to the woman's lack of knowledge of English or her rights under the British law or as a result of intimidation or fear of being ostracised.

Mumtaz Ali who unsuccessfully attempted to establish a Sharia court in Canada's Province of Ontario a decade ago, says it all: "Once the parties have agreed ...they will be committed to it by their prior consent. As a consequence, on religious grounds, a Muslim who would choose to opt out at this stage, for reasons of convenience, would be guilty of a far greater crime than a mere breach of contract--and this could be tantamount to blasphemy-apostasy."⁶⁵

In similar vein, the Islamic Sharia Council of Britain has said of those who criticise Sharia law: "As a Muslim we should know that our religion is perfect without any imperfection as Allah says: 'this day, I have perfected your religion for you, and have chosen for you Islam as your religion.' Therefore, belittling [Sharia laws] or calling them as out-of-date constitutes disbelief..."⁶⁶

In addition to dealing with civil matters, Sharia courts address other matters contrary to fundamental human rights. In one letter to a solicitor who was enquiring about the status of a client who refused to wear the hijab (veil) her husband had imposed on her, the British Shariah Council in Birmingham wrote: "...any God-fearing woman that has the basic understanding of her religion will wear the hijab..." The letter goes on to say: "In Islam, hijab is compulsory and any woman who denies the ruling of hijab is disobeying her Lord and is rebelling against Islamic law."⁶⁷ Also the "advice to gays and lesbians" of the Islamic Sharia Council is to "make repentance" and "contemplate on the Quran and the punishment and rewards."⁶⁸ A Sharia court in Britain has even issued a death sentence against a writer in 1999.⁶⁹

65 A review of the Muslim Personal/Family Law Campaign, Canadian Society of Muslims, August 1995: <http://muslim-canada.org/pfl.htm>

66 Deeming Shariah as Incompetent, Islamic Sharia Council: <http://www.islamic-sharia.org/general/deeming-shariah-islamic-law-as-incompetent-2.html>

67 Confidential British Shariah Council letter to solicitor, 5 May 2007

68 Advice to Gays and Lesbians, Islamic Sharia Council: <http://www.islamic-sharia.org/general/advice-for-gays-lesbians-2.html>

69 Islamic court condemns author who depicts Jesus as homosexual, The Independent, 30 October 1999, <http://www.independent.co.uk/arts-entertainment/books/news/islamic-court-condemns-author-who-depicts-jesus-as-homosexual-743509.html>

Voluntary Nature a Sham

There is a general assumption that those who attend Sharia Councils and MATs do so voluntarily and that unfair decisions can be challenged in a British court. Many of the principles of Sharia law are contrary to British law and public policy, therefore in theory they would be unlikely to be upheld in a British court. In reality, however, women are often pressured by their families into going to these courts and adhering to unfair decisions and may lack knowledge of English and their rights under British law. Moreover, refusal to settle a dispute in a Sharia court could amount to threats and intimidation, or at best being ostracised and labelled “Western” or a “Kafir” (disbeliever).⁷⁰ This is as true for men as for women.

In one case that was brought to the attention of One Law for All, a father who went to a civil court in order to gain the custody of his child had a “Worldwide Expulsion and Boycott Order” issued by the Sharia Council against him. He explained “they are still forcing me and my family to hand over the child, withdraw the case from the UK court, accept all their demands and allegations and keep apologising until they pardon me for taking the case to UK Family Court and ignoring their internal court.”⁷¹

There is ample evidence of the pressures involved. [Name redacted], One Law for All’s Policy and Campaigns Coordinator, says: “My cousin was forced by her husband to seek a resolution at a Sharia Council. The only “choice” she was given was to stay with her husband or lose her children. I don’t think that can be a choice; how can it be? Every day dozens of women like her are bullied, and forced into Sharia courts across the country. How can we allow these women to have lesser rights? Is this really the way to foster social cohesion and to protect the most vulnerable in our society?”⁷²

70 Confidential interview with One Law for All client

71 Confidential correspondence to One Law for All

72 [Name redacted], One Law for All rally, 21 November 2009: <http://www.onelawforall.org.uk/november-21-a-successful-day-against-sharia-and-religious-laws/>

Tanisha Jnagel, the Community Services Team Leader for Roshni Asian Women's Aid in Nottingham, says: "Within the Sharia Council they will approach family members to listen to the wife's side of the story and the husband's side and then use religious texts to approach the question of whether a divorce should be granted. In our experience this isn't going to result in a solution which is fair for the woman."⁷³

According to the Centre for Islamic Pluralism, which interviewed 90 Muslims in London, the West Midlands, Lancashire and West Yorkshire, many felt they did not get a fair hearing under Sharia law.⁷⁴ The CIP's international director Irfan Al-Alawi said he knew of a 15-year-old girl in Pakistan who was tricked into marriage over the telephone with a 40-year-old man from Sheffield, who had the mental age of a four-year-old child. "The Home Office refused to recognise the validity of the marriage but the Islamic Sharia Council in Britain accepted it," said Al-Alawi. The CIP also uncovered the case of thirty-year-old from West Yorkshire, who was 13 when her father arranged her marriage. She went to three different imams who all ruled she was legally married according to the Sharia. "I told them I had been forced but they said that did not change anything." She eventually secured her divorce because her husband finally agreed to it.⁷⁵

There is also ample evidence of the unfair rulings imposed by Muslim Arbitration Tribunals acting under the Arbitration Act 1996. According to Faiz-ul-Aqtab Siddiqi, a barrister who launched the MATs, in an inheritance dispute judges gave the sons twice as much as the daughters, in accordance with Sharia. In six cases of domestic violence, Siddiqi said the judges ordered the husbands to take anger management classes and mentoring from community elders. In each case, the women subsequently withdrew the complaints they had lodged with the police and the police stopped their investigations. Siddiqi said that in the domestic violence cases, the advantage was that the marriages were saved.⁷⁶

73 Crimes of the community, Honour-based violence in the UK, Centre for Social Cohesion, second edition, 2010: http://www.socialcohesion.co.uk/files/1229624550_1.pdf

74 Imam's biased against women, BBC Asian Network, 15 December 2008: <http://news.bbc.co.uk/1/hi/uk/7783627.stm>

75 Ibid.

76 Sharia law courts operating in Britain, Telegraph, 16 Sept 2008: <http://www.telegraph.co.uk/news/uknews/2957428/Sharia-law-courts-operating-in-Britain.html>

In both the MAT's and Sharia Councils, reconciliation between the husband and wife, irrespective of the circumstances, takes precedence. As the British Shariah Council says in its letter about a One Law for All client on "un-Islamic" divorces: "they have destroyed their house and their children's lives... [and] they have committed a sin.." The letter goes on to say: "...divorce is the most hated thing in the sight of Allah. If the husband and wife cannot live together, then the Shariah does not force them together; on the contrary, it has given the man the right to divorce and with it the proper procedures as well."⁷⁷ For women and children in particular, Sharia Councils are as harmful as Muslim Arbitration Tribunals.

Fariborz Pooya, Chair of the Council of Ex-Muslims of Britain, says: "Sharia law is not voluntary, but rather compulsory by its very nature. To deceptively talk of the voluntary nature of these courts is a means by which Islamic groups give legal cover and pretence to their discrimination. For the Government to accept this argument is akin to outsourcing the legal system to Islamic groups. This is detrimental to, and a betrayal of, the rights of our most vulnerable citizens to being equal before the law."⁷⁸

Journalist Rahila Gupta says: "accommodating alternative systems of justice is not about choice or tolerance in a pluralistic society; it is not about Muslim women's autonomy. These demands emerge from fundamentalist politics - however they are dressed up."⁷⁹

77 Confidential British Shariah Council letter to Solicitor, 5 May 2007

78 Fariborz Pooya, Council of Ex-Muslims of Britain, June 2010

79 Rahila Gupta, One Law for All rally, 21 November 2009: <http://www.onelawforall.org.uk/november-21-a-successful-day-against-sharia-and-religious-laws/>

Sharia Law is Discriminatory

In 2008, the Law Lords in the House of Lords, Britain's highest court, ruled that Sharia law was discriminatory in the case of a woman known as EM.⁸⁰ They decided that if she was deported to Lebanon, under Sharia law there she would lose custody of her child to his violent father as the law automatically awards fathers custody of boy children from the age of seven irrespective of the welfare of the child.⁸¹ This, they determined, was a human rights violation. Yet the Government has failed to recognise or take seriously the same breach of the human rights of women who lose custody of their children at the hands of Sharia courts here in Britain.

Proponents will most likely argue that unlike Lebanon, women in Britain have the right to challenge Sharia law rulings in a civil court but that is far from what happens in practice. Whilst many are dissatisfied with the rulings of Sharia courts, most dare not come forward and challenge them publicly, given the pressures involved.

Pragna Patel, a founding member of Southall Black Sisters and Women Against Fundamentalism, says: "Religious personal laws are highly discriminatory and violate women's fundamental freedoms and rights. They reinforce women's subjugation within the family and society. Personal religious laws have no place in any society aspiring to be democratic, equal and just. They are antithetical to women's human rights."⁸²

As Islamism gains strength, women living in Britain are facing problems similar to women living under Islamic laws in other parts of the world and at times are even worse off.⁸³ Take Gaza as an example. A Gaza-based women's rights

80 Opinions Of The Lords Of Appeal For Judgement In The Cause EM (Lebanon) (FC) (Appellant) (FC) v Secretary of State for the Home Department [2008] UKHL 64 on appeal from :[2006] EWCA Civ 1531 <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/leban-1.htm>

81 Court rules Islamic law discriminatory, The Independent, 23 Oct 2008: <http://www.independent.co.uk/news/uk/home-news/court-rules-islamic-law-discriminatory-969777.html>

82 Pragna Patel, June 2010

83 Muslim leaders' death threat calls over dress, The Express, 7 March 2010: <http://www.express.co.uk/posts/view/162009/Muslim-leader-s-death-threat-calls-over-dress>

advocacy group has found that 88% of women are being denied inheritance rights but most would not challenge the rulings. Inheritance usually passes to the male deceased's brothers and sons rather than the widow. The organisation gave a number of reasons why women in Gaza are reluctant to demand their inheritance: fear of losing their children; lack of awareness of how to approach legal aid organisations; and pressure by family members to give up their rights.⁸⁴ Surprisingly, these are some of the reasons given as to why women in Britain do not challenge unfair Sharia rulings.

With the rise in the acceptability of Sharia courts, discrimination is being further institutionalised. Some UK law firms now offer clients "conventional" legal representation alongside advice on Sharia law⁸⁵ and are increasingly making use of collaborative law.⁸⁶

The discriminatory nature of the Sharia Councils and MATs is such that their use should be brought to an end.

84 Gaza Women denied inheritance rights, Jerusalem Post, 7 March 2010: <http://www.jpost.com/MiddleEast/Article.aspx?id=170400>

85 Scots Lawyers lead way with Sharia advice, Sunday Herald Scotland, 7 March 2010, <http://www.heraldsotland.com/news/home-news/scots-lawyers-lead-way-with-Sharia-advice-1.1011640>

86 Issue raised at One Law for All Seminar on Sharia law by a law firm, 8 March 2010: <http://www.onelawforall.org.uk/8-march-2010-london/>

Sharia Law is a Cheap Route to Injustice

Proponents of Sharia law in Britain have lobbied extensively to persuade the Government that the use of Sharia courts could free up the Court Service and provide a cost effective alternative to litigation. Whether they are cost effective for the women involved, however, is questionable. There are reports, for example, that members of the Islamic Sharia Council only grant women divorces in return for a considerable amount of money. Shahien Taj, Director of the Henna Foundation, says: "I have had cases where the Sharia Council is asking for money, as much as £250, to issue a divorce. This woman could have three children and be destitute and they have the audacity to ask for money."⁸⁷

Cuts in costs and expedited justice are likely to bring with them serious miscarriages of justice and human rights abuses. Government policy on outsourcing welfare services to religious groups has had a similarly detrimental impact on women.

Writer Ibn Warraq says: "Multiculturalism is turning communities against each other; it is fundamentally divisive. We need to get back to the principles of equality before the law, principles that so many people fought so hard to achieve for so long."⁸⁸

87 Crimes of the community, Honour-based violence in the UK, Centre for Social Cohesion, second edition, 2010: http://www.socialcohesion.co.uk/files/1229624550_1.pdf

88 Launch of One Law for All Campaign, House of Lords, 10 December 2008: <http://www.onelawforall.org.uk/launch-of-one-law-for-all-campaign-against-sharia-law-in-britain/>

Sharia Courts are not an Expression of Social Cohesion

Sharia courts are often promoted as an example of “social cohesion.”⁸⁹ In fact, they are just the opposite. Maryam Namazie says: “Sharia law promotes fragmentation and social conflict. It imposes different standards and norms and a parallel legal system for people deemed “different.” Rather than an expression of social cohesion, Sharia law in Britain is a capitulation to, and an attempt to placate and appease, the Islamists.”⁹⁰

Gina Khan, a women’s rights campaigner, says: “Under British law we are treated as equal and full human beings. Under the antiquated version of Sharia law that Islamists peddle, we are discriminated against just because of our gender. These Islamists use our plight by meddling in issues like forced marriages, domestic violence and inheritance laws for their own political agenda. To allow them to have any sort of control over the lives of Muslim women in British communities will have dire consequences.”⁹¹

Some may argue that abolishing MATs and Sharia Councils would contravene the right to freedom of religion but this is incorrect. The demand for the abolition of Sharia courts in Britain, as in Iran, Pakistan, Afghanistan, Nigeria or elsewhere, isn’t an attack on people’s right to religion; it is a defence of fundamental human rights. Moreover, there is a distinction between the right to religion and belief and the imposition of religious courts. Additionally, rights under the European Convention do not all carry the same weight. They are grouped into three broad categories: Absolute rights, Limited rights and Qualified rights. Qualified rights, such as freedom of religion, can be restricted where it is justified in the public interest. The One Law for All Campaign believes it is in the best interest of the public to abolish religious courts in the UK.

89 Sharia law in UK ‘Unavoidable,’ BBC, 7 February 2008 <http://news.bbc.co.uk/1/hi/7232661.stm>

90 Maryam Namazie, June 2010

91 Launch of One Law for All Campaign, House of Lords, 10 December 2008: <http://www.onelawforall.org.uk/launch-of-one-law-for-all-campaign-against-sharia-law-in-britain/>

The very existence and legitimisation of Sharia courts puts pressure on vulnerable women not to assert their civil rights in a British court. As long as Sharia Councils and MATs are allowed to continue to make rulings on issues of family law, women will be pressured into accepting decisions which are prejudicial to their rights and those of their children.

Rights, justice, inclusion, equality and respect are for people, not for beliefs and certainly not for inhumane parallel legal systems. In a civil society, people must have full citizenship rights and equality under the law. Sharia law contravenes fundamental human rights. In order to safeguard the rights and freedoms of all those living in Britain, there must be one secular law for all and no religious courts.

The philosopher AC Grayling says: "The principle of one law for all, with everyone equal before the law, is a vital one for a genuine democracy. The One Law for All Campaign is doing an urgently needed job of protecting those who, hidden behind the veil of Sharia or other religious 'courts,' risk injustice, abuse, and deprivation of rights."⁹²

⁹² A C Grayling, One Law for All rally, 21 November 2009: <http://www.onelawforall.org.uk/successful-rally-against-sharia-law-in-uk-21-nov-2009/>

Recommendations and a Way Forward

The One Law for All Campaign makes the following recommendations to help bring about the prohibition of Sharia and other religious courts:

1) We recommend that a Human Rights case be initiated to challenge Muslim Arbitration Tribunals and/or Sharia Councils.

Section 6 of the Human Rights Act 1998⁹³ prohibits public authorities from acting in any manner contrary to the European Convention on Human Rights (ECHR).⁹⁴ Section 6(3) defines what is meant by a “public authority” and this expressly includes courts and tribunals, but the extent to which Sharia Councils and MATs are so classified has not yet been tested in court.

Article 6(1) of the ECHR states that everyone is: “entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal.” As has been amply demonstrated in this report, Sharia Councils and MATs are not impartial, as they discriminate against women in particular, and are unfair for the same reason. As a result of case law, the definition of “public bodies” also includes charities and semi-charitable organisations because of the effect their services have on the general public, therefore we aim to establish that Sharia Councils are also bound by the Human Rights Act even though they are not officially labelled as tribunals.

The Human Rights Act describes an eligible claimant under the Act as a person who “is (or would be) a victim of the unlawful act.” Therefore, to challenge Sharia Councils or MATs, a claimant needs to be found who is suffering or might suffer because of the decisions of these bodies, and who is willing to proceed on the aforementioned grounds.

2) We recommend an amendment to the Arbitration Act⁹⁵ under which the Muslim Arbitration Tribunals operate in a similar way to which the Canadian Arbitration Act was amended, to exclude religious arbitration.

93 Human Rights Act 1998 (UK): http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1

94 European Convention on Human Rights: <http://www.hri.org/docs/ECHR50.html>

95 Arbitration Act 1996 (UK): http://www.opsi.gov.uk/acts/acts1996/ukpga_19960023_en_1

In 2006, the Canadian Arbitration Act⁹⁶ was amended⁹⁷ to state that family arbitration which was not conducted exclusively in accordance with Canadian secular law did not constitute family arbitration, and would not have any legal effect. This was applicable both to Sharia courts and also the Jewish Beth Din equivalent. It is our recommendation that the same be done in the United Kingdom. The wording of the amendment to the Act we propose would specifically prohibit arbitration tribunals from hearing family law cases and exclude all religious tribunals from the Arbitration Act.

Alternatively, effective but less sweeping changes could be made to the Arbitration Act. Section 98 of the Arbitration Act 1996 contains a provision for changes to be made to certain parts of the Act through Regulations introduced by a Minister, rather than by primary legislation.

3) Because of the many difficulties related to people lacking awareness of their rights in the UK and being unduly in the thrall of family or community pressure, we recommend launching a major and nationwide helpline and information campaign to inform people of their rights under British law. The campaign should be conducted in partnership with women's groups and with family law organisations.

4) It is also possible under the EU Citizens Rights Initiative⁹⁸ to propose legislation that would apply across the European Union. Given that Sharia law is a concern in a number of EU states, we recommend this course of action as a means of addressing the issue EU-wide.

5) Additionally, we recommend the strengthening of secularism and the separation of religion from the state, the judicial system and education in order to more fully protect citizenship rights.

96 Arbitration Act 1991 (Canada): http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_070134_e.htm

97 The Family Statute Law Amendment Act 2005 (Canada): <http://business.highbeam.com/1758/article-1G1-142117826/ontario-passes-family-statute-law-amendment-act-family>

98 Citizens Rights Initiative: http://www.europarl.europa.eu/news/expert/infopress_page/016-73036-109-04-17-902-20100419IPR73035-19-04-2010-2010-false/default_en.htm

Postscript

The application of Sharia law is on the rise in many countries across the globe, including in Europe, resulting in ever-shrinking secular spaces and brutal and discriminatory laws, particularly against women. Sharia is now the most widely used religious law, mainly because of the rise in influence of the political Islamic movement backed by Islamic states. And whilst Sharia is no different from other misogynist religious laws, its adverse effects on people's lives are more widely felt due to the growth of Islamism's political power and influence.

Shiria Khatun, a secular Muslim woman councillor from Tower Hamlets who has been forced to dress more conservatively after receiving death threats, is a good case in point. She has so far refused to wear the hijab, which she says is a more common sight on the streets of Tower Hamlets in London than in Bangladesh itself and that compared to the sixties: "It's all changed so much now for younger women."⁹⁹

In just a few decades, we have witnessed the rapid rise of Sharia law in Iran, Afghanistan, Iraq, Indonesia's Aceh Province, Nigeria, Somalia, Pakistan, Sudan, and Europe, including Britain. This is not because people have become more devout Muslims and are demanding Sharia law when they didn't before but because of the rise of Islamism. Sharia law is fundamentally the demand of Islamic states to limit citizens' rights.

Whilst the far Right blames "Muslim immigration" for the implementation of Sharia law in Britain (in order to further its racist and inhuman agenda), it is the people living under Islamic laws or the many who have fled Sharia and sought refuge here who are the principal victims of Islamism, and in the forefront of the struggle against it.

Within this context, the One Law for All Campaign and the fight against Sharia law in Britain is an important front in the ongoing battle of people everywhere against Islamism and for freedom, equality and secularism.

99 Muslim leaders' death threat calls over dress, The Express, 7 March 2010: <http://www.express.co.uk/posts/view/162009/Muslim-leader-s-death-threat-calls-over-dress>

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