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Violence and Restraints on Women in Islamic Immigrant Communities

A summary of European best practices in approaching these issues and recommendations to U.S. legislators and policymakers

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Summary

This paper presents an overview of Sharia law, honor-based violence, female genital mutilation, and forced marriages as they affect women living in Islamic communities in Western countries. European countries have been confronting the issues described longer than the U.S. has, and the paper summarizes efforts made by selected European countries to address them.

At the end of each section, a summary is provided of U.S. laws (where applicable), and normative recommendations are made as to how gaps in laws and policy in the U.S. might best be filled.

Certain U.S. states and localities, such as New York City, may be developing different ways of approaching the issues addressed in this paper – legal and social solutions to violence and restraints on women’s rights in Islamic immigrant communities in the U.S. are still in flux. If Federal policy is clear, it may help provide guidance and a model for state laws and judicial decision-making at all levels.

Sharia Law

Overview: Under Sharia law's civil code, a woman's testimony is worth half that of a man's; 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.¹

Sharia law's penal code is incompatible with modern Western individual rights. Sharia law permits the stoning of women to death for sex outside of marriage. Failure to veil can result in fines and imprisonment, or honor violence.² Homosexuality and apostasy are also death penalty crimes.³ Polygamy is permissible.

Western Examples: Sharia "arbitration courts" operate in the U.K. and have been proposed in Australia and Canada. A report by the British think-tank Civitas found at least 85 Sharia arbitration courts operating in the U.K., mainly out of mosques dotted around the country. Sharia arbitration courts usually deal with marriage, divorce, inheritance, and guardianship issues.⁴ In the U.K. their decisions are legally binding and can be enforced by country courts and high courts, provided both parties in a case have agreed to be ruled by Sharia law.⁵⁶

In the Sharia courts operating in the U.K., there is neither control over the appointment of these judges nor an independent monitoring mechanism. People often do not have access to legal advice and representation. Proceedings are not recorded, nor are there any searchable legal judgments. Nor is there any real right to appeal.⁷

United States: Presently, there are no publicly known Sharia courts operating in the United States. Recently, a state judge in New Jersey, ruling over a domestic violence case

¹ Namazie, Maryam. 2010. "Sharia law in Britain: A Threat to One law for all and equal rights." *One Law for All*. < <http://www.onelawforall.org.uk/wp-content/uploads/New-Report-Sharia-Law-in-Britain.pdf>>

² Ibid.

³ Ibid.

⁴ Vriens, Lauren. 2009. *Backgrounder: Islam: Governing under Sharia*. Council on Foreign Relations. < <http://www.cfr.org/publication/8034/islam.html>>

⁵ MacEoin, Denis and David G. Green. 2009. *Sharia law or 'One Law for All'?* Cromwell Press Group: Trowbridge, Wiltshire. <<http://www.civitas.org.uk/pdf/ShariaLawOrOneLawForAll.pdf>>

⁶ Taher, Abul. 2008. "Revealed: UK's first official Sharia courts". *The Telegraph*, September 14. < <http://www.timesonline.co.uk/tol/comment/faith/article4749183.ece>>

⁷ Namazie, Maryam. 2010. "What isn't wrong with Sharia law?" July 5. <<http://www.guardian.co.uk/law/2010/jul/05/sharia-law-religious-courts>>

involving a Muslim couple that had been married in an arranged marriage in Morocco, accepted a cultural defense for unlawful intercourse inspired by the defendant's Sharia views. The judge was overruled in this by the Appellate Court, which ruled "the judge determined to except defendant from the operation of the State's statutes as the result of his religious beliefs. In doing so, the judge was mistaken".⁸ As the number of Muslims in the U.S. increases, such cases are expected to become more prevalent.

Of concern is that a number of U.S.-based Islamic leaders, such as the supposedly moderate Imam Feisal Abdul Rauf, are not unsympathetic to the main principles of Sharia law: "The important issue is to establish the general fundamentals of Sharia that are required to govern," Imam Rauf has said in an interview. Imam Rauf is the man behind the Cordoba House (also referred to as the "Ground Zero Mosque" and "Park51"), the planned \$100 million, 13-story, glass and steel Islamic cultural center and mosque in New York City. In the future, certain individuals may call for separate Sharia arbitration courts, and those efforts, which will most likely be made in the name of "religious equality", should be resisted in order to protect Muslim women's right to equal treatment under the law.

⁸ In a domestic violence case involving a Muslim couple living in New Jersey, a Judge found that the defendant did not act with a criminal intent when he repeatedly insisted upon intercourse, despite plaintiff's contrary wishes. To justify his actions, the defendant had told his wife "this is according to our religion, you are my wife, I c[an] do anything to you. The woman, she should submit and do anything I ask her to do".

The couple had been married in an arranged marriage in Morocco. The judge in New Jersey reasoned as follows: "This court does not feel that, under the circumstances, that this defendant had a criminal desire to or intent to sexually assault or to sexually contact the plaintiff when he did. *The court believes that he was operating under his belief that it is, as the husband, his desire to have sex when and whether he wanted to, was something that was consistent with his practices and it was something that was not prohibited.*" The Appellate Court in New Jersey that heard the case overturned the Judge's ruling, writing: "the judge determined to except defendant from the operation of the State's statutes as the result of his religious beliefs. In doing so, the judge was mistaken".

Female Genital Mutilation

Overview: Female genital mutilation, known as FGM, is the cutting of the genitals of little girls between the ages of 4 and 14 and even baby girls, as in a case in Georgia this year where a nine-month old was mutilated⁹.

United Kingdom: The British Female Genital Mutilation Act of 2003 is the toughest legal code in the world through a four-part law:

- 1) It makes FGM illegal in the UK.
- 2) It makes it illegal to take girls who are British nationals or UK permanent residents abroad for FGM.
- 3) It makes it illegal to aid, abet, counsel or procure the carrying out of FGM abroad.
- 4) It enforces a penalty of up to fourteen years in prison and/or a fine.

Netherlands: As a Member of Parliament in the Netherlands, Ayaan Hirsi Ali unsuccessfully campaigned to create a control system for girls from at-risk communities by requiring pediatricians and child medical professionals to screen them for FGM.

Norway: The first Norwegian Action Plan to combat FGM was published in 2000. The present plan focuses on prevention and changing attitudes through dialogue and dissemination of information involving the groups concerned.¹⁰

United States law and recommendations: Federal law at the moment makes FGM illegal but does not punish parents or relatives who take young girls out of the country to undergo FGM. A bipartisan bill introduced in 2010, the “Girls Protection Act” (H.R. 5137) sponsored by Rep. Joseph Crowley (D-NY) and Mary Bono Mack (R-CA), would make it a federal crime to transport a minor outside the United States for the purpose of female genital mutilation (FGM).

The Girls Protection Act would extend current U.S. federal law to ensure that the same penalties that exist for domestic FGM apply to those involved in the transport of a minor abroad for the purpose of FGM.

⁹ Stevens, Alexis. 2010. “Mom accused of circumcising female infant.” March 11. <
<http://www.ajc.com/news/mom-accused-of-circumcising-363230.html>>

¹⁰ Kafo, Musu Kangbeng. 2009. “Criminalizing early and forced marriages and female genital mutilation.” September 22. <http://www.regjeringen.no/en/dep/bld/Whats-new/Speeches-and-articles/other-political-staff/statssekretar-grepp-knutzen/2009/criminalizing-early-and-forced-marriages.html?id=577629>

Forced Marriages

Overview: Forced marriages are sometimes described as an "arranged marriage," but the difference is dependent on how much pressure is put on the girl to accept the arrangement. Resistance to this sort of marriage very often leads to severe beatings and the punishment can go as far as to lead to an "honor" killing.

United Kingdom: The British government has set up a Forced Marriage Unit and increased police awareness of forced marriages and honor-related violence. The forced marriage unit has a confidential helpline and is the UK's 'one-stop shop' for leading the development of government policy on forced marriage, coordinating outreach projects and providing support and information to those at risk.¹¹

Forced marriage protection orders, made possible under British law, offer help to people who face the prospect of being forced into marriage, either inside or outside the U.K.—orders can even be made immediately in an emergency to protect and prevent a forced marriage. Violators can be punished with up to two years in prison.¹² The British government has worked through the Foreign and Commonwealth Office (the equivalent of the U.S. State Department) and the British police, backed by legislation where appropriate, to deter and punish perpetrators and open avenues of escape for victims and potential victims of violence.¹³

The British government has provided highly detailed guidelines to Members of Parliament and Constituent offices¹⁴, as well as to civil servants, health professionals and others on how to deal with forced marriages, in a bid to raise awareness and efficiently disseminate best practices.¹⁵

Highly detailed statutory guidance has been provided to department heads of relevant agencies as well as to government employees who may confront a case of forced marriage in the course of carrying out their official duties.¹⁶

¹¹ *Forced marriage case handling guide for MPs and Constituency Offices*. Forced Marriage Unit, 2009. <<http://www.fco.gov.uk/resources/en/pdf/3849543/fmu-guide-mps.pdf>> P. 4.

¹² *Forced marriage protection orders—how can they protect me?* Her Majesty's Courts Service, 2008. <http://www.hmcourts-service.gov.uk/courtfinder/forms/fl702_leaflets.pdf>

¹³ Murray, Douglas. 2010. *Crimes of the Community: Honour-based violence in the UK*. London: Centre for Social Cohesion. <http://www.socialcohesion.co.uk/files/1229624550_1.pdf>

¹⁴ *Forced marriage case handling guide for MPs and Constituency Offices*. Forced Marriage Unit, 2009. <<http://www.fco.gov.uk/resources/en/pdf/3849543/fmu-guide-mps.pdf>>

¹⁵ *Multi-Agency practice guidelines: Handling cases of Forced Marriage*. Foreign and Commonwealth Office, 2009. <<http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf>>

¹⁶ *The Right to Choose: Multi-Agency statutory guidance for dealing with forced marriage*. Foreign and Commonwealth Office, 2008. <<http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-right-to-choose>>

Netherlands: A case study for prevention is the city of Rotterdam's school attendance monitoring system to ensure that Muslim girls are not withdrawn from school and forced into an arranged marriage during summer break.¹⁷ If a girl faces a looming forced marriage, the girl can, if she wants, provide a declaration to the school, and the school must legally notify police if she does not return after summer break. A forced stay abroad can be fought legally with such a declaration. Teachers are also being trained to recognize signs of possible forced marriage. As of September 2009, in Rotterdam three young women signed such a contract. The municipality of Rotterdam and the GGD maintain regular contact with these girls. As a result, the girls were not forced to marry in the summer of 2009.¹⁸

Germany: German teachers are to get guidelines on handling the issue of forced marriages with their pupils, the German government announced in June 2010, following a spate of cases in recent months.¹⁹ The guidelines aim to give schools and teachers concrete tips for picking up on early warning signs if a student is being pushed into a forced marriage, and on talking to parents and alerting child protection services.²⁰

Sweden: The Swedish government announced in May 2010 the launch of an inquiry aimed at tightening legislation banning forced and child marriages, which it identified as a continuing problem.²¹

United States recommendations: Estimates are that hundreds of Pakistani girls in New York have been flown out of the New York City area back to Pakistan to undergo forced marriages: those that resist are threatened and coerced.²²

The current U.S. Department of State Foreign Affairs Manual provides a number of recommendations on what consular personnel can do when faced with a minor who contacts them in order to prevent a looming forced marriage from taking place.²³ It is not known how often consular officials are faced with this issue, and it is not known what advice consular personnel provides U.S. citizens abroad who are faced with this issue. It is worth researching and publicly releasing information on how often U.S. consular personnel are approached with regard to this topic and what their course of action tends to be, and how such cases are eventually resolved (or not). The "best practices" of the

¹⁷ NRC Handelsblad. 2009. "Possibly 15 girls in Rotterdam faced forced marriage." September 21 <http://www.nrc.nl/binnenland/article2365838.ece/Mogelijk_15_meisjes_Rotterdam_uitgehuwelijkt>

¹⁸ Ibid.

¹⁹ "Teachers to get training in forced marriage prevention." *The Local*, June 11, 2010. <<http://www.thelocal.de/national/20100611-27795.html> >

²⁰ Ibid.

²¹ "Sweden launches inquiry into forced marriage." *The Local*, May 21, 2010. <<http://www.thelocal.se/26766/20100521/>>

²² Katz, Nancie. 2007. "Parents force daughters to fly home to Pakistan for arranged marriages." November 24. *The New York Daily News*. <http://www.nydailynews.com/news/2007/11/25/2007-11-25_parents_force_daughters_to_fly_home_to_p-2.html#ixzz0ubspXRbY>

²³ U.S. Department of State. 2005. "7 FAM 1740: Forced marriage of minors." <<http://www.state.gov/documents/organization/86822.pdf> >

British Foreign Office may be worth replicating to ensure that vulnerable girls can sound the alarm if need be, so that legal authorities can intervene where necessary to help protect women from being flown out of the country to face forced marriages, and assist them abroad to return to the U.S. unharmed. From the information that is publicly available, British practices in this area seem more stringent and more “on alert” than current U.S. practices.

American courts, like British courts, should be able to offer “forced marriage protection orders” to protect girls and women who face a looming forced marriage. U.S. law enforcement officials, civil servants dealing with issues of women’s rights and education, as well as Congressional constituent Offices should receive statutory guidelines, as happens in the U.K., on what to do when a person contacts them facing a forced marriage.

At the institutional level, existing U.S. child welfare, domestic violence and human trafficking institutions are currently not equipped to protect forced marriage victims or to address their unique needs. Most domestic violence shelters will not accommodate minors, and few service providers are trained or funded to address the issue of forced marriage. In several states, child welfare officials declared that the intended child-brides were not at risk of imminent harm and sent them home, where the girls’ parents promptly severed all contact with advocates and sent the girls to the altar.²⁴ These resources should be strengthened at the local level, and in dialogue with agencies at the State and Federal level dealing with domestic violence issues.

²⁴ Alanen, Julia. 2010. “Forced marriage of minor girls in the U.S.” *Catholic Legal Immigration Network*. <<http://cliniclegal.org/blog/1003/forced-marriage-minor-girls-us>>

Honor Violence and Killings

Overview: Honor violence includes the beating of a girl or a woman for refusing to comply with the family code of honor by engaging in behavior deemed by the family to be shameful such as ignoring the rules of house arrest; resisting a forced marriage; seeking a divorce; dating; dressing in western attire; wearing make-up; or simply taking non-Muslims as friends. The beatings are intended to be corrective. If the girl complies, normally punishment ceases. If not, honor violence sometimes ends in murder—such as the 2009 murder of twenty-year old Iraqi-American Noor Almaleki in Arizona²⁵, or the 2008 honor killings of Sarah and Aminah Said in Lewisville, TX²⁶—carried out with the knowledge and help of a number of family members and other relatives. When the corrective beatings fail to dissuade a girl/woman from complying with the wishes of her family or giving up the behavior they consider shameful, the family may conclude that the only way they can regain the 'honor' lost through the girl's 'shameful' behavior is to kill her.

The Netherlands: In a pilot project carried out by Dutch police between October 2004 and March 2006, many more incidents of honor-related crimes were uncovered (79) than had been expected when police screened cases specifically for the presence of “honor” motives and flagged such cases accordingly.²⁷ The figures, deemed “shocking” by government officials, led to more training of police officers, social workers and other officials to be on the lookout for such crimes and act appropriately.

In addition, the Dutch established the inter-agency Honor-Related Violence Taskforce in 2006 to raise awareness and develop inter-agency intervention approaches.²⁸ The taskforce focuses on cross-cutting issues of social prevention, protection and criminal prosecution. The Dutch government has set aside funds to help women who are (potential) victims of honor-related violence.

At the local level, Dutch cities, such as Amsterdam, are pressing ahead with initiatives to curb honor-related violence. Amsterdam has made co-operation agreements with non-governmental partners regarding a speedy and adequate approach in cases of imminent honor-related violence. Authorities work actively with NGOs with the mutual goals of

²⁵ Rubin, Paul. 2010. “Honor Thy Father: A Muslim man in Phoenix ‘honor killed’ his Americanized daughter.” March 31. < <http://www.riverfronttimes.com/content/printVersion/972718> >

²⁶ Eiserer, Tanya. 2008. “Slain Lewisville sisters mourned at Christian, Muslim services.” *Dallas News*. January 6. <

<http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/010608dnmetfunerals.216ceab.html>>

²⁷ Elsevier. 2005. “Verdonk: Gevallen Eerwraak ‘zorgwekkend’”. June 6. <

<http://www.elsevier.nl/web/Nieuws/Nederland/34690/Verdonk-Cijfers-eerwraak-zorgwekkend.htm>>

²⁸ “Honour-related violence.” Dutch Justice Ministry, July 2006. < http://english.justitie.nl/images/Honour-related%20violence_tcm35-14191.pdf>

protecting (potential) victims and using the law to prevent escalation of honor violence to the death of innocent victims.

United States recommendations:

American authorities currently do not track cases of “honor violence”. Most law enforcement officials, educators, guidance counselors and social workers are not familiar with “honor violence” and on the circumstances that make honor-related crimes different from “ordinary” cases of domestic violence.²⁹

Just as federal officials currently track the incidence of domestic violence, they should carefully track incidents of honor-related violence. Pilot projects could be established in large metropolitan areas such as New York to screen criminal cases (including murder cases of girls and women from honor-related cultures, such as Pakistani, Afghan, Kurdish women) for “honor” related motives.

Federal offices dealing with domestic violence can become aware through research of the specific challenges facing women from Islamic and honor-based cultures, and convey this information to cities and areas where larger populations from honor-based cultures are now living.

U.S. government officials must do a much better job in selecting good outreach partners and liaisons to the American Muslim community. Right now, many Muslim outreach partners that U.S. government officials select for dialogue and liaison are religiously orthodox: these orthodox Muslims, in turn, tell U.S. government officials that secular and feminist American Muslims are not representative of the American Muslim community, leading U.S. government officials not to include them in dialogue.³⁰ Moderate Muslims, secular Muslims, and feminist Muslims have thus been disempowered in the United States. The British government has made the same mistake in its choice of “representative Muslims”. Bad choices of dialogue partners ensure that issues such as honor killings, domestic violence, forced marriages and FGM are not put prominently on the agenda.

By selecting better dialogue partners and seeking their advice and input, U.S. government officials can empower moderate Muslims, secular Muslims, and feminist Muslims, giving them the voice they deserve to raise these issues in a constructive manner.³¹

²⁹ See Chesler, Phyllis. 2009. “Are honor killings simply domestic violence?” *Middle East Quarterly* (Spring). < <http://www.meforum.org/2067/are-honor-killings-simply-domestic-violence>>

³⁰ Mirahmadi, Hedieh. 2010. “Navigating Islam in America.” In *The Other Muslims: Moderate and Secular*, ed. Zeyno Baran. New York: Palgrave Macmillan. Pp. 17-32.

³¹ Ibid.

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