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ISLAMIC LAWS AS VIOLATIONS OF HUMAN RIGHTS IN THE SUDAN

CAROLYN RATNER*


Judith Miller's book, *God Has Ninety-Nine Names*, examines the rising wave of Islamic fundamentalism in the Middle East. The book presents its country-by-country analysis of the movement through history, recent politics, and personal accounts. Miller bases the book largely on interviews she has conducted and on her travels and adventures during twenty-five years of reporting from the region. She discusses the fervor that has gripped almost every Arab state, the young militants who lead the movements, the visions of bringing about revolutionary changes through a devout adherence to the prescriptions of Islam, and the responses to these movements in the varied and culturally distinct countries where they have emerged. Miller suggests that, contrary to militant Islamic claims that religion will induce unification among Muslims in the Arab world, fundamentalism is a fragmented and diverse movement that does not have the power to surmount differing national, cultural, and religious identities. In Miller's words:

> Just as the Koran gives ninety-nine names for God, Islam—and Islamic militancy, in particular—occurs in many varieties, as distinct from country to country as Catholicism is in France, Italy, Brazil, and America. There is no more an Islamic world than there is an Arab world or a Christian world.

Miller approaches her study of each country by evaluating the country within the contexts of society, history, political traditions, and culture.

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* Articles Editor, Boston College Third World Law Journal.
2 See id.
3 See id. at 17.
4 See id.
5 See id.
6 Miller, supra note 1, at 14.
7 See id.
Miller perceives militants’ utilization and involvement in politics as a way to replace secular laws and rulers, with not only Muslim edicts and rulers, but with their own brand of Islam. She notes their contumacious desire to rid their societies of secular and traditionally un-Islamic customs, influences, and cleavages, which militants see as impediments to Muslim advancement and prosperity. “The militants I write about inhabit a ‘hybrid world’ and promote a cult of nostalgia for an imagined past that they seek to reclaim by securing sufficient political power to ‘re-Islamize’ their societies and produce, if not a more democratic, a more ‘just’ government and ‘authentic’ environment.”

The book focuses on the effect these movements will have on non-Muslim minorities, intellectuals, and women. While politics is unavoidably at the center of the book, Miller attempts to convey, in a historical context, the “mood of the countries[,] ... the tone of their debates, and the forms taken by the struggle for dominance in each of them.”

Islam endures and has become, in some countries, extremely influential and threatening to the prevailing order. Even in countries where there is little prospect that Islamic forces will rule, Islam provides the vocabulary of everyday life, reshaping the language of politics, fundamental aspects of national culture, and long-standing traditions.

A common feature of the Islamic fundamentalist movements recently embraced in the Middle East is the demand for stricter adherence to Islamic law. One of the most obvious and prevalent manifestations of the process of Islamization is the primacy of religious over secular law. The implementation of Islamic religious law, Shari’a, is one of the ultimate goals of militant Muslims in their quest to fundamentalize the Arab world. Islam itself is based on the principle of the inseparability of religion and politics which necessitates the codifica-

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8 See id. at 17.
9 See id.
10 Id. at 18.
11 See MILLER, supra note 1, at 18.
12 Id.
13 See id. at 13.
14 See id.
15 See Safia Safwat, Islamic Laws: The Case of Sudan, in ISLAMIC FUNDAMENTALISM 12 (1990), (papers presented at a seminar held by the Institute for African Alternatives on June 3, 1989).
16 See Abdullahi Ahmed An-Na’im, Qur’an, Shari’a and Human Rights: Foundations, Deficien-
17 See id. at 65.
tion of Islamic law as the law of the country, proclaimed and administered by national governments.\textsuperscript{18} The recent resurgence of Islamic fundamentalism has been most notably displayed in Saudi Arabia, Pakistan, Iran, the Sudan, and Afghanistan.\textsuperscript{19} The Sudan provides a framework of analysis for, and an illustration of, fundamentalist implementation of Shari'a as state law and the consequent violations of individual countries' constitutional guarantees and international human rights standards.\textsuperscript{20} The forced implementation of Islamic law in the Sudan may be seen as a reflection of the resurgence of Islam throughout the Muslim world.\textsuperscript{21}

The Sudan is a country that has been plagued by political instability.\textsuperscript{22} There have been eight failed governments since independence from Great Britain and Egypt in 1956.\textsuperscript{23} Since independence, the Sudanese government has continually vacillated between military or civilian rule and sectarian democracy.\textsuperscript{24} Military rule has prevailed for twenty-seven of the thirty-eight years of Sudanese independence.\textsuperscript{25} The most recent military rule has yielded an uncompromising Islamic militancy.\textsuperscript{26}

Through interviews with the most predominant political figures in the Sudan, personal accounts, and her own observances, Miller notes numerous human rights violations occurring in the Sudan as a result of this Islamic militancy and the laws of Islam.\textsuperscript{27} This book review addresses the intrinsic constitutional and human rights violations that result from the dominance of Islamic law in the Sudan. Part I will discuss the basic tenets of Islam and Islamic law. It will attempt to define Islamic fundamentalism and some of the reasons posited for its growth in the Middle East. Part II will deal with the political history of the Sudan. It will address the inherent conflicts between the Sudanese Constitutions and the implementation of Shari'a.\textsuperscript{28} Part III will dem-

\begin{itemize}
  \item \textsuperscript{19} See generally Miller, supra note 1, at 14--17.
  \item \textsuperscript{20} See id. at 14--15.
  \item \textsuperscript{21} See Carey N. Gordon, The Islamic Legal Revolution: The Case of Sudan, 19 Int'l L. 793, 798 n.3 (1985).
  \item \textsuperscript{22} See Miller, supra note 1, at 134.
  \item \textsuperscript{23} See id.
  \item \textsuperscript{24} See id.
  \item \textsuperscript{25} See id.
  \item \textsuperscript{26} See id. at 15.
  \item \textsuperscript{27} See Miller, supra note 1, at 15.
  \item \textsuperscript{28} The Arabic word Shari'a is a noun derived from the verb Shari'a, which means to set the
onstrate that Muslim law, as it is applied in the Sudan, violates internationally recognized human rights standards. Finally, Part IV will argue that cultural relativism does not justify violations of internationally recognized human rights standards.

I. ISLAM, ISLAMIC LAW, AND ISLAMIC FUNDAMENTALISM

There was considerable international optimism as to the role the Sudan would play in forming bridges between Africa and the Middle East as the country approached independence.29 Geographically, the Sudan is the largest country in Africa30 and is adjacent to eight sub-Saharan and North African countries: Egypt, Ethiopia, Kenya, Uganda, Zaire, Central African Republic, Chad, and Libya.31 The Sudan is an Afro-Arab microcosm due to the ethnic and cultural diversity that is represented within its borders.32 The U.S. Department of State said of the newly independent Sudan, "As a new African nation, the Sudan will be deeply involved in [the] future cause of Africa. But as a Middle Eastern nation too the Sudan will also be a bridge to Africa, imparting to it ideas, philosophies, and forces which may have great influence on Africa's decisions and on its future."33

The Sudan, however, has been afflicted with chronic domestic conflict, the central theme of which is a North-South religious, racial, and cultural dichotomy.34 The North, is Islamic and Arabized and has benefited from political, economic, social, and cultural development.35 The South is more indigenously African in religion, race, and culture with the exception of a small, educated, predominantly Christian minority.36 The South has received little benefit from the country's socio-economic development.37 This rift, and the resultant fears of northern
domination, culminated in a seventeen-year civil war. This conflict has been the main source of instability in the Sudan since independence.

Religion is the controlling theme of the Sudan’s history because of the comprehensive influence of Islam on all aspects of public and private life. Islam links together all facets of life into a composite whole that is regulated by Shari’a. Shari’a, which can be literally translated as “the road to the watering place” or “the clear path to be followed,” means in the legal context, “the sacred law of Islam.” It encompasses the entire system of Islamic law, dictating penal laws and daily religious, social, and personal interactions. The whole of the law is permeated by religious and ethical considerations, and everything is measured by the standards of religious and moral rules. In Islam there is an integral relationship between religion and morality. This relationship necessitates the set of rules embodied in Islamic law for the protection of the moral values of the Muslim community. The Islamic community is responsible for watching over the practice of what is good and decent, and prohibiting that which is evil. In the Holy Koran, God is quoted as saying, “Ye are the best community that hath been raised up for mankind. Ye enjoin right conduct and forbid indecency.” The premise of Shari’a is that one lives his or her public and private life, twenty-four hours a day, under the watchful eyes of Allah. The laws of Shari’a that are important for the purposes of this review are the personal laws governing women and non-Muslims and the criminal laws of the reformulated penal code.

The first and most important source of Shari’a is the Koran. The Koran is the Holy Book for Muslims. In addition to monotheism and

58 See id. at 40–41.
59 See Deng, supra note 29, at 41.
60 See id.
61 See id.
62 Sherman, supra note 18, at 279.
63 See id.
64 SANAD, supra note 18, at 46.
65 See id.
66 See id. The Koran prohibits such vices as drinking alcohol, adultery, fornication, gambling, usury, and false testimony on the basis of their moral consequences. See id.
67 See id.
68 The Koran is the Holy Book for Muslims. See SANAD, supra note 18, at 38. Quoran has been spelled many ways including Koran, Quran, Qu’ran, and Qur’an. I will use Koran, as it is the English transliteration. Sherman, supra note 18, at 280.
69 SANAD, supra note 18, at 46. (citing Surat al-Imran V:110).
70 See id.
71 See id.
72 See id.
the postulate of the exclusive worship of God, the Koran creates a complete moral system for human beings and sets down the foundations of the world order for humankind.\textsuperscript{53} There are dogma, ethics, history, wisdom sayings and legislation in the Koran.\textsuperscript{54} It is the totality of rules which God has laid down and revealed to the Prophet Mohammed for governing man's behavior.\textsuperscript{55} The Koran is a code which governs the religious and social life of mankind.\textsuperscript{56} As the aggregate of divinely ordained rules known as Ahkam alshari'a, the Koran is first among Islamic legal sources.\textsuperscript{57} The rules derived from the Koran are therefore regarded as the highest rules, and all rules derived from other sources should be in full accord with Koranic ones.\textsuperscript{58}

The second source of Islamic law is the Sunna, which is comprised of collections of sayings and records of the Prophet Mohammed, who founded Islam in seventh century Arabia.\textsuperscript{59} It includes what the Prophet is recorded to have said, done, approved, or forbidden.\textsuperscript{60} The third source of Islamic law, Ijma, is the consensus of Islamic legal scholars on any particular point of law.\textsuperscript{61} The final major source is the concept of deduction by analogy, Qiyas, which involves the use of logic and reason.\textsuperscript{62}

Within the past three decades Islamic fundamentalism has become a political movement.\textsuperscript{63} The ousting of the Shah of Iran and his subsequent replacement by the Ayatollah Ruholla Khomeini marked the induction of the Middle East into the Islamic fervor that has dominated politics in the region since 1979.\textsuperscript{64} While the original roots of Islamic fundamentalism can be traced to Muslim Brother Sayyid Qutb, fundamentalism in the Middle East, as a powerful movement, has been augmented as a result of the peculiar conditions of particular Arab countries.\textsuperscript{65} Islamic leaders who favor a fundamentalist reading

\textsuperscript{53} See id.
\textsuperscript{54} See SANAD, supra note 18, at 38.
\textsuperscript{55} See id.
\textsuperscript{56} See id.
\textsuperscript{57} See id.
\textsuperscript{58} See id.
\textsuperscript{59} See SANAD, supra note 18, at 38.
\textsuperscript{60} See id.
\textsuperscript{61} See id.
\textsuperscript{62} See id.
\textsuperscript{63} See Gordon, supra note 21, at 800.
\textsuperscript{64} See id.
\textsuperscript{65} See Youssef M. Choueiri, Islamic Fundamentalism 70 (1990); see also MILLER, supra note 1, at 13.
of sacred texts, are the new leaders of an old battle.\textsuperscript{66} They are fighting a battle to militantly impose on Muslims, the way enjoined by the Prophet Mohammed.\textsuperscript{67} The defining features of the modern fundamentalist movement are its inflexibility and antiquated prescriptions.\textsuperscript{68} The movement endorses the original principles and commands of Islam without taking into consideration changes in the countries themselves and the world around them.\textsuperscript{69}

Fundamentalism in the Middle East has been a parasite to economic instability, attracting and recruiting the poor and dispossessed—those whom Muslims call “the disinherited.”\textsuperscript{70} Islamic fundamentalism preaches hostility to the existing secular authoritarian states.\textsuperscript{71} It promises a better life if secular governments can be replaced by simpler religious governments that are closer to the people.\textsuperscript{72}

The “Islamist” response . . . seems to be a pragmatic response to the problems of modernity—matters of convenience and affordability rather than ideology. Modernity is frightening and disorienting, especially when its cost is likely to exceed its promised benefit. In the Middle East as elsewhere, social roles, values, and traditions are undergoing great changes for which tradition offers psychic protection.\textsuperscript{73}

Contemporary Islamic fundamentalism is distinct from earlier fundamentalist movements in that it demands a return to a “distant utopian past.”\textsuperscript{74} The consequence of this ideology is that in addition to considering technical, socio-economic and political changes to be a direct threat to Islam and the Islamic way of life, fundamentalism also assumes that these changes have been constructed in order to threaten Islam.\textsuperscript{75}

Fundamentalism is not unique to Islam, nor does Islam uniquely encourage fundamentalism. It is the economic, social, and political

\textsuperscript{66} See Miller, \textit{supra} note 1, at 13.
\textsuperscript{67} See id.
\textsuperscript{68} See generally id.
\textsuperscript{69} See generally An-Na’im, \textit{supra} note 16, at 63.
\textsuperscript{70} See Miller, \textit{supra} note 1, at 13.
\textsuperscript{71} See id.
\textsuperscript{73} Id.
\textsuperscript{75} See id.
environment that encourages the formation of forces for change—sometimes minor and at other times radical. Islamic fundamentalism is like any other form of mystical or secular religion that can be used as a force for the political mobilization of people and as an instrument of socio-economic and political change. Nevertheless, it would be delusory or deceitful to minimize the authentic indigenous character of Islamic fundamentalism. Islam is more than Islamic fundamentalism, but Islamic fundamentalism is one authentic expression of Islam. 76

Theocratic government defines fundamentalist political aspirations. 77 This type of government is diametrically opposed to democracy in its belief that authority derives from God as opposed to the popular support of the people. 78 Because Islamic fundamentalism believes that humans do not have the authority to change or prescribe laws, they may only be executed by those individuals who have dedicated their lives to worshipping and studying God’s wishes in the Koran. 79 Any indication of the people’s wishes is unnecessary for the legitimacy of the fundamentalist government. 80 Because fundamentalism demands total commitment to God and the community, individual rights of Muslims are considered subordinate to God and the community. 81

II. Sudanese Political and Constitutional History

Despite the Sudan’s historical instability, it established a peaceful existence in March of 1972 when President Jaafar Mahammed Nimeiri signed the Addis Ababa Agreement ending the seventeen year civil war between Northern and Southern Sudan. 82 The agreement provided for complete autonomy for the Southern Region subject only to national regulation of defense, foreign affairs, currency, economics, and inter-regional affairs. 83 In 1972, shortly after the Addis Ababa Agreement, the President formed the Sudanese People’s Assembly. 84 The Assembly’s sole responsibility was the drafting of a new Constitution based on democracy and socialism. 85 The Constitution was completed in 1973

76 See id. at 513.
77 See id. at 514.
78 See id. at 515.
79 See Reisman, supra note 74, at 515.
80 See id.
81 See generally id. at 516-17.
82 See Sherman, supra note 18, at 283.
83 See id.
84 See id.
85 See id.
and embodied paradigmatic democratic principles: guarantees of personal rights and freedoms, powers and duties of the executive, legislative, and judiciary branches, functions of the military, state sovereignty, supremacy of law, and several additional rules regarding procedure for the effective operation of the government. Islamic law maintained its deferential status while accommodating the rights and customs of non-Muslims. The 1973 Constitution reads, “Islamic law and custom [Shari’a law] shall be the main sources of legislation. Personal matters of non-Muslims shall be governed by their personal laws.” The 1973 Sudanese Constitution charges the Sudanese Supreme Court with the task of determining what is constitutional, and contains a supremacy clause which states that the “Rule of Law” is paramount. This has been interpreted by non-Muslims and non-fundamentalist Muslims to mean that any acts not conforming to the Constitution are conceptually unconstitutional; this applies specifically to Shari’a law.

In 1977, Nimeiri, unable to attract Sudanese support away from traditional rival political and religious groups, increasingly emphasized his own Islamic orientation and made a deal with other Islamists (the Ansar and the Muslim Brotherhood) to stay in power. Despite the urgings of these allies, Nimeiri resisted imposing Islam on his heterogeneous country and inevitably reinstating civil war. However, in 1980, Nimeiri published a book, Why the Islamic Path? in which he praised Islam as the best way to achieve Sudanese unity. Shortly after his book was published, the Nimeiri regime destroyed any remaining facades of national unity and equality by applying Shari’a throughout the country. In September of 1983, Nimeiri declared that a version of Shari’a law would be applied in the criminal, civil, and personal law systems. Nimeiri asserted that these laws, referred to specifically as the “September Laws” would be a “step toward transforming the Sudan into an Islamic state.” The civil war that Nimeiri had ceased a decade

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86 See id.
87 See Sherman, supra note 18, at 283–84.
88 Id. at 283 (citing The Permanent Constitution of the Sudan (1973) Art. 9).
89 See id. at 286.
90 See id.
91 See Miller, supra note 1, at 135.
92 See id. at 136.
93 See id.
95 See Lloyd, supra note 94, at 448.
96 Id. (citing Ann M. Lesch, Confrontation in the Southern Sudan, 40 Middle E.J. 410, 418
before once again resumed and his hold on power as well as Sudan's economic position rapidly deteriorated. In 1985, Nimieri was overthrown by Major-General Abdul Rahman Sawar-Dahab. In October of that year, the transitional military government adopted the Transitional Constitution of the Republic of the Sudan 1985. The 1985 Constitution was remarkably similar to the 1973 Constitution, and Nimieri's "September Laws," were never repealed despite promises of extreme modification or in the alternative, complete removal.

General Sawar-Dahab was succeeded by the democratic but ineffective government of Sadiq El Mahdi whose rule was indecisive and irresolute. The economy in the Sudan continued to decline throughout Mahdi's rule and the civil war exacted increasingly large amounts of resources and lives. The subsequent rule of Brigadier General Omer Hassan Ahmed El Beshir and the National Islamic Front long dominated by Hassan al Turabi, a well known militant fundamentalist, marked the most draconian and militantly Islamic government in Sudanese history. "Few governments will bear so much responsibility for such a painful and needless human tragedy as the Islamic military junta in Khartoum."

Both Sudanese Constitutions guaranteed such personal liberties as freedom of religion, equal rights, and freedom from inhumane punishment. Yet, there are several inconsistencies that have arisen between Shari'a and the Constitutions. According to Shari'a, the criminalization of apostasy (conversion or some other means of renouncing one's religion) is in direct violation of the 1985 Constitution. The 1985 Constitution explicitly protects freedom of religion (1986). Many speculated about why Nimieri imposed an Islamic code. Miller reports that he claimed that he had a "revelation that came to him in a dream." Miller, supra note 1, at 137. Former advisers suggested he was trying to bolster his popularity in the face of a deteriorating economy. See id. Others suggest he was attempting to place himself at the forefront of what he saw as the resurgence of a winning trend. See id.

97 See MILLER, supra note 1, at 136.
98 See Lloyd, supra note 94, at 449.
99 See id.
100 See id.
101 See id. at 450; see also MILLER, supra note 1, at 146-47.
102 See Lloyd, supra note 94, at 450.
103 See id.
104 Id. (citing Julian Ozanne, Sudan Plays the Politics of Famine (clipping from private file of John Koehring, USAID Fellow)).
105 See Sherman, supra note 18, at 295-96 (citing The Permanent Constitution of the Sudan (1973), The Transitional Constitution of the Republic of the Sudan (1985)).
106 See generally id. at 278, 284.
107 See id. at 296.
for all Sudanese pursuant to Article 18.\textsuperscript{108} This is also in direct violation of Article 47 of the 1973 Constitution which explicitly protects "freedom of belief, prayer, and performance of religious practices."\textsuperscript{109} The criminalization of apostacy renders freedom of religion an empty guarantee.\textsuperscript{110} It implies that freedom of religion for Muslims is defined as freedom to practice Islam or die.\textsuperscript{111} This inconsistency is defended by the fundamentalist belief that once having been born a Muslim or otherwise having adopted the Islamic beliefs, the freedom of belief no longer exists.\textsuperscript{112} This interpretation denies freedom at any level to all but a minority of Sudanese.\textsuperscript{113}

The Constitutions also endorse equal rights.\textsuperscript{114} However, the imposition of a set of laws for Muslims, different from those applied to non-Muslims, violates the equal protection guaranteed by Article 17(1)(2) of the 1985 Constitution.\textsuperscript{115} Unequal treatment is also prohibited in Article 38 of the 1973 Constitution, which provides that "Sudanese have equal rights . . . irrespective of . . . sex, . . . or religion."\textsuperscript{116} However, according to Islamic law, non-Muslims constitute a secondclass citizenship which precludes them from holding certain government, military, judicial, and legislative positions.\textsuperscript{117} Additionally, women, while granted equal dignity in Islam are not given equal rights.\textsuperscript{118} They are most obviously discriminated against in family law.\textsuperscript{119} This is evidenced in issues such as marriage, divorce, and inheritance.\textsuperscript{120}

Finally, Article 29 of the 1985 Constitution assures freedom from inhumane punishment and is violated by the 1988 and 1991 Penal Codes which institute flogging and amputation for certain crimes and

\textsuperscript{108} See id.
\textsuperscript{109} Id. at 287 (citing THE PERMANENT CONSTITUTION OF THE SUDAN (1973)).
\textsuperscript{110} See Sherman, supra note 18, at 287.
\textsuperscript{111} See id.
\textsuperscript{112} See id.
\textsuperscript{113} See id.
\textsuperscript{114} See Sherman, supra note 18, at 298 (citing THE TRANSITIONAL CONSTITUTION OF THE REPUBLIC OF THE SUDAN (1985)).
\textsuperscript{115} Id. at 295 (citing THE PERMANENT CONSTITUTION OF THE SUDAN (1973)).
\textsuperscript{117} See An-Na’im, supra note 16, at 63. The general rationale of women’s inferiority to men under Shari’a is the principle of quwama whereby men are deemed to be guardians of women. See id. Based on verse 4:34 of the Koran, this principle has been used as the basis for limitations on women’s rights. See id.
\textsuperscript{118} See id.
\textsuperscript{119} See id. at 65–64.
death for adultery and fornication. These punishments also violate Article 72 of the 1973 Constitution which states, “No person shall be subjected to any unusual or inhuman treatment or punishment.” Additionally, Articles 70, 72, 73, 74, and 75 of the 1973 Constitution, when read in conjunction, suggest a fairness or proportionality standard to be applied to decisions on punishment. Non-Muslims and human rights observers believe that the violent per se nature of Shari’a punishment, as applied by the fundamentalist government, is contrary to human dignity. The National Islamic Front’s most recent literal interpretation of Islam’s injunctions is manifested in the 1988 Penal Code which defines existing crimes, makes provisions for crimes not previously criminal, and applies punishments not previously utilized. The imposition of the 1988 Penal Code violates both the 1985 Constitution and the 1973 Constitution and renders Sudanese criminal law unacceptable for Muslims and non-Muslims alike.

III. Violations of International Human Rights Standards in the Sudan

The contemporary human rights movements have succeeded in conferring on the international community the competence to recognize and determine whether a violation has occurred. This process is based on international standards which transcend national, cultural, and religious boundaries. The wave of international human rights resolutions originated with the Universal Declaration of Human Rights in 1948 and has been subsequently reinforced by several human rights affirming instruments, most notably the International Bill of Rights. These are the rights that are claimed by individuals against their governments and are supported by the international community.

In 1948, seven out of the then eight Muslim states voted in favor of the Universal Declaration of Human Rights. Saudi Arabia re-

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121 See Sherman, supra note 18, at 296.
122 Id. at 289 (citing THE PERMANENT CONSTITUTION OF THE SUDAN, Art. 72).
123 See id.
124 See id. at 289–90.
125 See Safwat, supra note 15, at 17.
126 See Sherman, supra note 18, at 298.
127 See Reisman, supra note 74, at 510.
128 See id.
129 See id. at 511.
130 See id.
131 See id. at 516.
mained the only Muslim country in the United Nations that failed to ratify it.\textsuperscript{132} Despite majority endorsement of the Declaration, reservations among the Muslim states were never entirely vanquished.\textsuperscript{133}

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations, on December 10, 1948.\textsuperscript{134} As the very term indicates, human rights apply universally, to all people, regardless of the color of their skin, their gender, or their religious convictions.\textsuperscript{135}

All Islamic states are bound by the obligation, imposed by the United Nations Charter on all member states, to respect and promote human rights.\textsuperscript{136} It is now clearly agreed that the rights to be promoted are those set out in the Universal Declaration of Human Rights.\textsuperscript{137} The general consensus is that the Declaration has become binding on all states.\textsuperscript{138} Additionally, the Covenants are most likely binding because they essentially elaborate the Declaration’s provisions.\textsuperscript{139} It is widely agreed that the legal obligation to respect these rights rests on a moral obligation.\textsuperscript{140}

The application of strict Shari’a since 1983, and more extensively since 1989, in the Sudan, has brought the legal relationship between Shari’a and human rights violations to a significantly more serious level.\textsuperscript{141} The expanded application of Shari’a violates the fundamental human rights of women and non-Muslims.\textsuperscript{142} Taken together, these two groups constitute about one-third of the total population of the Sudan.\textsuperscript{143} The main human rights violations for women and non-Muslims under Shari’a can be discussed under the rubric of equality before the law.\textsuperscript{144} The Universal Declaration of Human Rights posits in Article I: “All human beings are born free and equal in dignity and rights” and Article 7: “All are equal before the law and are entitled without any

\textsuperscript{132} See Reisman, \textit{supra} note 74, at 516.
\textsuperscript{133} See id.
\textsuperscript{134} See \textit{The Declaration of Human Rights, Adopted by the General Assembly on 10 December 1948} [hereinafter \textit{Declaration}].
\textsuperscript{135} See An-Na’im, \textit{supra} note 16, at 61.
\textsuperscript{136} See id.
\textsuperscript{137} See id.
\textsuperscript{138} See id.
\textsuperscript{139} See id.
\textsuperscript{140} See Paul, \textit{supra} note 72, at 1067.
\textsuperscript{141} See Abdullahi Ahmed An-Na’im, \textit{Shari’a and Human Rights Violations in the Sudan}, in \textit{Islamic Law Reform and Human Rights} 135, 144 [hereinafter \textit{Shari’a and Human Rights}].
\textsuperscript{142} See id.
\textsuperscript{143} See id.
\textsuperscript{144} See An-Na’im, \textit{supra} note 16, at 63.
discrimination to equal protection of the law . . . ."145 Both of these articles are inconsistent with the treatment and status of women and non-Muslims.146

The basis for women’s inferiority in Islam is derived from the Koran which states, “Men are in charge of women, because Allah hath made the one of them to excel the other, and because they spend of their property (for the support of women). So good women are the obedient . . . .”147 The purpose of women, according to the Koran, is to compliment men.148 Women’s rights to employment and participation in public life, freedom of movement and freedom of organization, are severely restricted through a combination of the Shari’a principles of qawam (men’s guardianship over women), hijab (the veil) and segregation between men and women.149 Examples of women’s inequality can be found in the administration of justice and in certain aspects of family law.150 A woman’s judicial testimony is deemed to be of half the value of that of a man, in civil cases, and is not accepted at all in serious criminal cases.151 In certain types of wrongful homicide, monetary compensation paid to the heirs of a female victim is less than that paid to the heirs of a male victim and a woman’s share in inheritance is half that of a man’s.152 Additionally, no woman may hold any public office which involves exercising authority over men.153 This effectively denies women access to high-ranking public office regardless of personal competence and qualifications.154

In the application of Shari’a family law, women are persistently discriminated against.155 An Islamic man is entitled to take a maximum of four permanent wives and may maintain an infinite number of “temporary wives” at the same time.156 He may divorce any of them at will without justification or explanation.157 A woman, on the other

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145 Declaration, supra note 134.
146 See generally Shari’a and Human Rights, supra note 141, at 144.
148 See id. at 519.
149 See Shari’a and Human Rights, supra note 141, at 145.
150 See generally An-Na’im, supra note 16, at 63–65.
151 See Shari’a and Human Rights, supra note 141, at 145.
152 See id.; see also An-Na’im, supra note 16, at 13.
153 See An-Na’im, supra note 16, at 63.
154 See id.
155 See id.
156 See id. at 63–64; see also Reisman, supra note 74, at 519.
157 See An-Na’im, supra note 16, at 63.
hand, is restricted to one husband at a time and may only obtain a judicial divorce on very specific grounds. Additionally, women must obtain the permission of their husbands to work or to travel abroad.

The laws and treatment applied to non-Muslims are also in direct violation of Articles 1 and 7 of the Universal Declaration of Human Rights. Non-Muslims are subject to restrictions based on what is known as the dhimmi system. Under this system, members of "tolerated" communities of non-Muslims living within an Islamic state are guaranteed protection of their persons and property, the right to practice their faith, and a certain degree of communal autonomy, in exchange for submission to Muslim sovereignty and payment of a poll tax. According to the dhimmi system, non-Muslims are forbidden from holding any public office which would involve their exercising authority over Muslims. They are also forbidden from serving in the armed forces of an Islamic state. Due to the indivisibility of religion and politics that defines Islamic fundamentalism, dhimmis are forbidden to participate in policy making or the management of any Muslim affairs which require divine authority and deep Islamic conviction.

With regards to the criminal justice system, the testimony of a non-Muslim witness is not accepted. Furthermore, the monetary compensation paid for the wrongful homicide of a non-Muslim victim is less than that paid for a Muslim victim.

The dhimmi system only applies to "People of the Book," believers in other religions which are deemed to have had a heavenly-revealed scripture. Therefore, many southern Sudanese who are believers in traditional African religions do not even qualify for the inferior dhimmi status. Atheists and non-recognized religious minorities are generally not recognized as persons by Shari'a, and are therefore

158 See id.
159 See Reisman, supra note 74, at 519.
160 See Declaration, supra note 134.
161 See Shari'a and Human Rights, supra note 141, at 145. Dhimmis may conduct their own communal affairs in accordance with their own law but they are subject to the jurisdiction of the Muslim state in public matters. See An-Na'im, supra note 16, at 64.
162 See Shari'a and Human Rights, supra note 141, at 145.
163 See id.
164 See id.
165 See id.
166 See Reisman, supra note 74; see also Sanad, supra note 18, at 46.
167 See Shari'a and Human Rights, supra note 141, at 145.
168 See id.
169 See id. at 145-46.
subject to the harshest discrimination.\textsuperscript{170} For these reasons, Shari‘a violates the fundamental human rights principle of equal rights and freedom from discrimination.\textsuperscript{171}

Article 18 of the Declaration reads: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief . . . .”\textsuperscript{172} The fundamentalist application of Shari‘a, manifested in the law requiring death for apostasy, is inherently violative of this freedom of religion and conscience.\textsuperscript{173} According to Shari‘a, whereas non-Muslims are to be encouraged to convert to Islam, it is a crime punishable by death for a Muslim to repudiate his faith in Islam.\textsuperscript{174} Article 126 of the post-Nimeiri 1991 Sudanese Penal Code now authorizes the death penalty for any non-repenting Muslim who “advocates the rejection of Islamic beliefs or announces his own rejection of Islam by word or act.”\textsuperscript{175} The most recent and relevant illustration was the hanging of Mahmoud Muhammad Taha, a Muslim whose unorthodox religious views resulted in his execution in 1985.\textsuperscript{176} Taha had been convicted of sedition and apostasy, abandoning Islam, a charge that he denied until his death.\textsuperscript{177} Many believe that Taha was killed because of his strong religious convictions rather than his lack of them.\textsuperscript{178} Sheik Mohammed al-Ghozali, Egypt’s model of the mainstream Muslim cleric, when asked whether people who espouse secular views should be punished, answered: “[A] secularist represents a danger to society and the nation that must be eliminated. . . . It is the duty of the government to kill him.”\textsuperscript{179}

Finally, the Sudan has flagrantly violated international human rights standards forbidding cruel and inhumane punishments and treatments.\textsuperscript{180} Article 5 of the Declaration states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or

\textsuperscript{170}See Reisman, \textit{supra} note 74, at 518. Some non-believers may be granted safe conduct to reside in Muslim lands and, according to some jurists, long-term residents may be treated as dhimmis. See An-Na‘im, \textit{supra} note 16, at 64.

\textsuperscript{171}See \textit{Shari‘a and Human Rights}, \textit{supra} note 141, at 146.

\textsuperscript{172}See \textit{Declaration}, \textit{supra} note 134.

\textsuperscript{173}See An-Na‘im, \textit{supra} note 16, at 64.

\textsuperscript{174}See id.


\textsuperscript{176}See generally Miller, \textit{supra} note 1, at 11–13.

\textsuperscript{177}See id.

\textsuperscript{178}See id.

\textsuperscript{179}Reisman, \textit{supra} note 74, at 518.

\textsuperscript{180}See generally Miller, \textit{supra} note 1, at 147–48.
punishment.” However, militant Islamists in Sudan have, in addition to death for apostasy, redefined several offenses and their punishments in blatant disregard for human rights standards. For example, under the new Sudanese penal code the offense of “Highway Robbery” can be punished by death (with or without crucifixion), amputation of the right hand and left foot alternately, and/or imprisonment, depending on whether murder was committed during the course of the robbery. The code also prescribes loss of appendages for theft; flogging for drinking alcohol, homosexuality, and offending someone’s modesty; and, lengthy prison sentences for abortion and suicide attempts. A Muslim who drinks alcohol receives up to forty lashes; a suicide attempt is punishable by a year in prison and/or a fine; and an abortion that is not required to save the mother’s life or is not the result of rape can result in up to three years in jail and/or a fine. A homosexual is subject to a hundred lashes and imprisonment of up to five years. “Gross indecency,” which has been defined as “any act contrary to another person’s modesty,” brings forty lashes, the same as the penalty for someone who wears any “indecent or immoral uniform which causes annoyance to public feelings.”

The crime of adultery has been redefined to mean any act of unlawful sexual intercourse including rape and sodomy. Punishment for these acts depends on whether the offender is married or unmarried. Furthermore, the offense has been expanded to include attempted adultery. Police have been authorized to stop men and women who are together and demand that they produce their marriage certificates. If they fail to do so, they are charged with attempted adultery and, if convicted, flogged in public. For those who are married, “fornication shall be punished by death.” Unmarried male offenders “shall be sentenced to imprisonment and exile for one

181 DECLARATION, supra note 134.
182 See MILLER, supra note 1, at 147; see also Safwat, supra note 15, at 17.
183 See Safwat, supra note 15, at 18.
184 See MILLER, supra note 1, at 147.
185 See id.
186 See id.
187 Id. at 147–48.
188 See Safwat, supra note 15, at 17.
189 See id.
190 See id.
191 See id.
192 See id.
193 See id.
year in addition to whipping."\textsuperscript{194} Most disturbing is the amount of discretion the Penal Code accords the courts in regards to punishment.\textsuperscript{195} Section 458(f) reads: "\[T\]he court may at its discretion impose any sentence it deems appropriate even if no such sentence is expressly provided for in the Penal Code."\textsuperscript{196}

In 1990, Human Rights Watch/Africa, a non-governmental human rights group, branded Sudan's Islamic government, the most "brutal" to govern Sudan since independence.\textsuperscript{197} The report stated that the regime was guilty of human rights abuses "never before seen" in the country.\textsuperscript{198}

In addition to the aforementioned laws specifically promulgated in the Penal Code, sanctioned torture has become widespread in the Sudan, especially in the South.\textsuperscript{199} Examples of the torture include: paper bags filled with chili powder placed over men's heads; being tied to anthills; having one's testicles crushed and burned by cigarettes and electrical current.\textsuperscript{200} Gaspar Biro, a Hungarian law professor and the United Nation's special envoy to the Sudan in 1993, accused the Sudanese government of "widespread and systematic torture" of political detainees and "degrading treatment" in front of their family members.\textsuperscript{201} When governments impose a set of beliefs on their citizens, through the use of violence or torture, it is for the purpose of political expediency not culture.\textsuperscript{202}

IV. CULTURAL RELATIVISM: AN INSUFFICIENT JUSTIFICATION FOR HUMAN RIGHTS ABUSES

The idea of universal human rights standards has been ardently challenged by Islamic countries that have attempted to persuade the world that their blatant violations of human rights are required by, and are consistent with, Islamic law, culture and values.\textsuperscript{203} They have postulated that Islam prescribes unequal treatment of women and minori-
ties. Fundamentalists also claim justifications for violations of freedom of religion and expression as well as freedom from cruel and inhumane punishment. This reasoning ignores the premise that human rights apply to all humans irrespective of race, sex, religion, or national origin. As one scholar critiqued:

"The legal and political practices of any group—majority or minority, state or not—state, territorially or non-territorially based, whether it be the United States, China, or Iran, Christian, Islamic, Jewish or Hindu fundamentalist—can no longer be insulated from appraisal simply and exclusively by invoking talismanic terms like: "sovereignty," "domestic jurisdiction," "tradition," "history," the supposed wills of assorted divinities, "the way we have always done things," "nonpollution," "autonomy" or as alleged preconditions for group continuity."

A code of international human rights does not insist upon termination of any specific group, rather, it demands adjustments that allow for the coexistence of basic entitlements and traditional ideologies. There is nothing in human rights law that justifies the violation of human rights based on an alleged divine revelation. Muslim governments, however, even those not explicitly fundamentalist in nature, have held that human rights instruments do not adequately consider the principles of Islamic law, culture, and values.

The "cultural relativist" argument, that universal rights can never take hold in countries with deep-rooted traditions which appear antithetical to rights principles, is unacceptable. In recent years we have witnessed the development of several human rights movements in many culturally diverse regions of the Third World.

Cultural relativism posits that culture is the source of validity of rules and that existence of differing cultures necessitates varying responses to universal standards. Cultural relativism requires that

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204 See id.
205 See id.
206 See An-Na' im, supra note 16, at 61.
207 Reisman, supra note 74, at 509–10 (citing W.W. Michael Reisman, Comment, Autonomy, Interdependence, and Responsibility, 103 YALE L.J. 401, 416 (1993)).
208 Id. at 510.
209 See id.
210 See id. at 516.
211 See Paul, supra note 72, at 1069.
212 See id.
213 See Mayer, supra note 202, at 382.
tolerance be elevated to paramount value and external critiques of culturally—based practices be rejected.\textsuperscript{214} "Where human rights are concerned, cultural relativists claim that pressing for the universality of human rights in their international formulations involves a failure to respect the diversity of cultures."\textsuperscript{215}

Islamic Fundamentalists, in particular, have adopted this cultural relativist argument as justification for human rights abuses.\textsuperscript{216} They contend that international human rights standards cannot be reconciled with Islamic culture.\textsuperscript{217} They argue that these standards are developed by and applicable only to Western countries.\textsuperscript{218} Islamic fundamentalist governments posit that Islamic values are inimical to human rights and democratic freedoms and that attempts at their implementation are misguided endeavors.\textsuperscript{219} This cultural justification is not a sanction for disregarding the basic rights of equality and freedom from discrimination and inhumane punishment.\textsuperscript{220} Claims to power by the clergy of any religion must be judged by basic international human rights standards.\textsuperscript{221} Allowances should not be made for cultural pluralism.\textsuperscript{222} Accepting justifications based on cultural pluralism denies the universality of claims of all human beings to dignity.\textsuperscript{223}

After her experience interacting with women's delegations from around the world at the 1993 Vienna Conference on Human Rights, Dorothy Thomas, a representative of Human Rights Watch, said:

Women from every single culture and every part of the world are standing up and saying we won't accept cultural justification for abuses against us anymore. We are human, we have a right to have our human rights protected, and the world community must respond to that call and throw out any attempts to justify abuse on the grounds of culture.\textsuperscript{224}

Unfortunately, so long as blatant human rights abuses are perceived as part of the "divinely ordained Islamic way of life," Islamic

\textsuperscript{214} See \textit{id.}.
\textsuperscript{215} Id.
\textsuperscript{216} See \textit{id.}.
\textsuperscript{217} See \textit{id.} at 402.
\textsuperscript{218} See \textit{Mayer, supra} note 202, at 402.
\textsuperscript{219} See \textit{id.}.
\textsuperscript{220} See generally \textit{id.}.
\textsuperscript{221} See \textit{Reisman, supra} note 74, at 510.
\textsuperscript{222} See \textit{id.}.
\textsuperscript{223} See \textit{id.}.
\textsuperscript{224} \textit{Mayer, supra} note 202, at 401.
countries will continue to avoid compliance with international human rights standards and governments will refuse to make a formal commitment to the observance of human rights.\footnote{See An-Na'im, supra note 16, at 65.}

The recent implementation of Islamic law in the Sudan has left its mark on the country’s legal system.\footnote{See Gordon, supra note 21, at 794.} Regardless of what the future may hold for Sudan’s legal system, the experience of Islamization has been observed carefully by Muslim reformers in other countries.\footnote{See id.} The substance and methods of the movement in the Sudan provide an important chapter in the Islamic Fundamentalist movement that continues to grow in many parts of the world today.\footnote{See id.}