

***Molla Sali v. Greece* [GC] (Application no. 20452/14)
Third Party Observations**

I. Introduction

1. Christian Concern is a leading legal advocacy group in the United Kingdom dedicated to the protection of religious liberty. We acted as counsel of record for several of the applicants in the seminal case of *Ewedia and Others v. the United Kingdom*, and have taken part in many of the precedent setting cases involving freedom of thought, conscience, and religion in the United Kingdom. Christian Concern's cases are frequently covered by British print and broadcast media.
2. This submission has been co-authored by Andrea Williams,¹ Roger Kiska² Tim Dieppe,³ and Yassir Eric.⁴ As an addendum, we submit a peer reviewed expert opinion from Bishop Michael Nazir-Ali.⁵

II. Sharia and its Influence in the United Kingdom: An Overview

3. It is estimated that there are over 85 Sharia Courts in the United Kingdom.⁶ Concurrently, between 2001 and 2011, the population of the United Kingdom rose by 4.1 million people⁷;

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² Roger Kiska is a solicitor for England and Wales and a Member of the Michigan State Bar. He has litigated before both the European Court of Human Rights and the Court of Justice of the European Union. In 2012, he was the recipient of the Scandinavian Human Dignity Award. He has also served on the Advisory Panel of the European Union's Fundamental Rights Agency.

³ Tim Dieppe had a successful career in fund management for over twenty years before joining Christian Concern in 2016 to focus on Islamic affairs. His interest in Islam developed over a number of years and he has written a booklet entitled "What's wrong with Islamic finance?". Tim regularly writes and speaks about how to respond to the increasing influence of Islam in the UK. He has a degree from Oxford University and an MA in Theology from Westminster Theological Centre.

⁴ Yassir Eric is Professor for Islamic Studies at the European School for Culture and Theology and Director of the European Institute of Migration, Integration and Islamic studies in Korntal, Germany. Yassir Eric was born and raised in a very fanatic Islamic family. At the age of 19 he converted to Christianity. He studied Islamic Science, and Intercultural Theology and comparative religions. Yassir Eric is an ordained minister.

⁵ Bishop Michael Nazir-Ali was the 106th Bishop of Rochester, for 15 years, until 1 September 2009. He is originally from Southwest Asia and was the first Diocesan Bishop in the Church of England born abroad. He was appointed in 1994. Before that he was General Secretary of CMS from 1989-1994 and prior to this position was Bishop of Raiwind in Pakistan.

⁶ Denis MacEoin, *Sharia Law or 'One Law for All?'*, Civitas, June 2009, page 69.

⁷ Office for National Statistics (2012) Statistical bulletin: 2011 Census: Population Estimates for the United Kingdom, March 2011. Estimates of the usually resident population of the UK and its constituent countries, by age and sex (as cited in: Dame Louise Casey, *The Casey Review: A Review into Opportunity and Integration*, Department for Communities and Local Government, §3.2).

with more than half of this growth due to immigration.⁸ By way of a freedom of information request, the Home Office has revealed that between 7 September 2015 and 30 September 2016, 98% of Syrian refugees resettled within the United Kingdom were Muslim.⁹ The cost to the United Kingdom resultant from lack of integration is approximately £6 billion each year.¹⁰

4. Sharia law is based on the injunctions of the Qur'an and the Sunnah (the practices of Muhammad).¹¹ The Qur'an constitutes the primary source of law and consists of 114 surahs or chapters, which are divided in 6, 149 verses.¹² The Sunna relates to the religious deeds and sayings of Muhammad as told by his closest followers (Sunni) or by the imams (Shia).¹³ Adherents of sharia hold out the Qur'an to be perfect and unchangeable, and therefore not subject to criticism.¹⁴ Secondary sources include consensus (ijma'), analogical deduction (qiyas) and individual reasoning based on the general principles of Islam (ijtihad). Added to these are spontaneous sources such as local custom ('urf) and judicial practice ('amal).¹⁵ It also includes concrete and prescriptive codes or schools of law known as fiqh.¹⁶ The various schools of Islamic jurisprudence include the four Sunni schools: the Hanafi school of Abu Hanifa, the Maliki school of Malik ibn Anas, the Shafi'i school of Muhammad ibn Idris al-Shafi'i and the Hanbali school of Ahmad ibn Hanbal. There are at least two main Shia schools: the Ja'fari and the Zaydi.¹⁷ Each of these schools find themselves in direct and fundamental confrontation with Western Public law in relation to Western assumptions about equality.¹⁸
5. Central to the efforts to delegitimise comparisons between Islamic sharia law and international human rights law are convictions that such a comparison would violate canons of cultural relativism. At the heart of this line of reasoning is the belief that international law is somehow infected by a strict and exclusive Western perspective.¹⁹ Cultural relativism is tied to moral relativism and suggests that different societies use different moral codes and

⁸ Office for National Statistics (2016) Population Estimates for UK, England and Wales, Scotland and Northern Ireland: mid- 2015, Statistical bulletin (as cited in: Dame Louise Casey, *The Casey Review: A Review into Opportunity and Integration*, Department for Communities and Local Government, §3.2).

⁹ Cf.: <<https://barnabasfund.org/news/Number-of-Christians-among-Syrian-refugees-accepted-into-UK-falls-to-less-than-1>>.

¹⁰ Social integration commission (2014) Social Integration: A wake-up call. Available at: <<http://socialintegrationcommission.org.uk/a-wake-up-call-social-integration-commission.pdf>>

¹¹ Morteza Motahhari, *Jurisprudence and Its Principles*, Tahrike Tarsile Qur'an (2014).

¹² L. Milliot and F.-P. Blanc, *Introduction à l'étude du droit musulman*, Editions Dalloz, 2001, pp. 83-84.

¹³ *Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories of the 'Cairo Declaration'?*, Rapporteur Meritxell Mateu, Committee on Legal Affairs and Human Rights, AS/JUR (2016) 28, § 8.

¹⁴ See e.g.: Surah 5, The Table (Al-Ma'idah), verse 3: 'This day I have perfected your religion for you.'

¹⁵ *Id.*, § 9.

¹⁶ Frank E. Vogel, *Islamic Law and the Legal System of Saudi: Studies of Saudi Arabia*, Brill (2010), pp. 4-5.

¹⁷ Baudouin Dupret, *La Charia: Des sources à la pratique, un concept pluriel*, Paris, La Découverte, 2014, pp. 13-16.

¹⁸ Bishop Michael Nazir-Ali, *The Challenges of Islamist Ideology to America's Founding Principles*, Backgrounder No. 2430, (2010), Heritage Foundation, p. 3.

¹⁹ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics*, 5th ed, Westview Press (2013), pp. 8-9.

no objective standard exists to evaluate whether one moral code is better or worse than another.²⁰ The result has been the accommodation of Islam and Sharia principles which has led to a consequent lack of social integration in the United Kingdom.²¹

6. The accommodation of Sharia courts in the United Kingdom have led to numerous problems. Sharia has been allowed to operate fairly freely as a parallel legal system through Muslim arbitration tribunals.²² However, experts argue that sharia councils should neither be considered as arbitration nor mediation tribunals because they do not actually operate as such.²³
7. Women in particular may face tremendous family pressure to use Sharia courts, and may lack both the necessary English skills and a proper understanding of their rights under British law to otherwise enjoy the protections that would be afforded them through the English court system.²⁴ Equally as worrisome is that many of those supporting Sharia Councils in the United Kingdom are widely recognised as fundamentalists.²⁵
8. In addition to family pressure, refusal to settle a dispute in a Sharia forum could lead to threats and intimidation, being labelled as an unbeliever or being ostracised from the community.²⁶ It is also a common interpretation of Islam that a person who leaves the faith is an apostate and can therefore be put to death.²⁷ All schools of fiqh (Sunni as well Shi'a) prescribe the death penalty for the apostate.²⁸ Only the Hanafis and the Shi'a exempt women from this extreme penalty, instead prescribing imprisonment until Islam is once again accepted.²⁹
9. It has been reported that between 2010 and 2014, in the United Kingdom alone, more than 11,000 honour crimes were recorded by police forces.³⁰ Other reporting suggests that in the last 5 years, incidences of 'honour' violence have soared by 40 percent, and instances of forced marriages have doubled.³¹ The Honour Based Violence Awareness

²⁰ Machteld Zee, *Choosing Sharia? Multiculturalism, Islamic Fundamentalism & Sharia Councils*, Eleven International Publishing (2016), pp. 38-39.

²¹ See e.g. Dame Louise Casey, *The Casey Review: A Review into Opportunity and Integration*, Department for Communities and Local Government.

²² Bishop Michael Nazir-Ali, *The Challenges of Islamist Ideology to American's Founding Principles*, Backgrounder No. 2430, (2010), Heritage Foundation, p. 4.

²³ Zee at pp. 118-123.

²⁴ *Sharia Law in Britain: A Threat to One Law for All & Equal Rights*, One Law for All, June 2010, p. 16.

²⁵ Zee at pp. 111-118.

²⁶ Baroness Caroline Cox, *A Parallel World: Confronting the abuse of many Muslim women in Britain Today*, Bow Group, 2015, p. 9.

²⁷ MacEoin at p. 5.

²⁸ Bishop Michael Nazir-Ali, 2010, *Islamic Law, Fundamental Freedoms, and Social Cohesion*. In: Shari'a in the West, Ed. Rex Ahdar & Nicholas Aroney, Oxford University Press (2010), p. 77.

²⁹ *Id.*

³⁰ Divya Talwar and Athar Ahmad, 'Honour Crime': 11,000 UK cases recorded in five years, BBC News, 09 July 2015, <<http://www.bbc.co.uk/news/uk-33424644>>.

³¹ David Churchill, *Revealed: Girl Aged 6 Among Victims of 'Honour' Crime in London*, The Evening Standard, 07 April 2017, <<https://www.standard.co.uk/news/crime/revealed-girl-aged-six-among-victims-of-honour-crime-in-london-a3509701.html>>.

Network estimates there are 12 honour killings in the UK each year.³² The Evening Standard has also reported that girls as young as 10 are among hundreds of suspected forced marriages and honour crime victims in London.³³ The United Kingdom based charity, Freedom, reports that British Imams are using video calling services, including Skype, to marry off girls as young as 11 to strangers and Mosque leaders are carrying out arranged marriages by conducting ceremonies over the internet, with the girls' new husbands then applying for a visa to come and join them in the United Kingdom.³⁴

10. The Casey Review, a year-long study of community cohesion in the United Kingdom, observed that: “too many public institutions, national and local, state and non-state, have gone so far to accommodate diversity and freedom of expression that they have ignored or even condoned regressive, divisive and harmful cultural and religious practices, for fear of being branded racist or Islamophobic.”³⁵ Dame Casey continues: “We must put a stop to cases where, in the name of religion, women and children are given short shrift, discriminated against and denied the rights that this country provides for everyone.”³⁶
11. Muslims should, of course, enjoy the protections of the Convention to be free to practice their faith like anyone else. The question in the instant matter is whether another system of law should be given public recognition in terms of an autonomous and universal tradition founded on cultural and legal assumptions which conflict with those of a democratic society.³⁷
12. The danger inherent in accommodating the competing principles of Sharia law with those of Western democratic values is Sharia’s rejection of many of the philosophical underpinnings of European human rights law. Indeed, between 45 and 73 percent of European Muslims believe religious laws are more important than secular laws and that Sharia supersedes secular political and legal rights and duties.³⁸ This makes it all the more pressing for this Court to adhere to its case-law relating to Member States and the positive obligations they owe to enforcement of the Convention:

...the Convention does not merely oblige the higher authorities of the Contracting States themselves to respect the rights and freedoms it embodies; it also has the consequence that, in order to secure the enjoyment of those rights and freedoms, those authorities must prevent or remedy any breach at subordinate levels. The higher authorities of the State are under a duty to

³² Emma Lake, *Honour Crimes: What is an Honour Killing and How Common Are They in the UK?*, The Sun, 13 September 2017, <<https://www.thesun.co.uk/news/4091357/honour-killing-karachi-murder/>>.

³³ David Churchill, *Revealed: Girl Aged 6 Among Victims of ‘Honour’ Crime in London*, The Evening Standard, 07 April 2017, <<https://www.standard.co.uk/news/crime/revealed-girl-aged-six-among-victims-of-honour-crime-in-london-a3509701.html>>.

³⁴ Katie Mansfield, *Forced Marriages Scandal: British Imams Marrying Off Young Girls to Men Abroad Over Skype*, Express, 01 March 2016, <<http://www.express.co.uk/news/uk/648630/forced-marriages-scandal-British-Imams-marrying-off-young-girls-men-abroad-Skype>>.

³⁵ Dame Louise Casey at §1.67.

³⁶ *Id.*, §8.51.

³⁷ Bishop Michael Nazir-Ali at p. 3.

³⁸ *Id.*, pp. 51-52.

require their subordinates to comply with the Convention and cannot shelter behind their inability to ensure that it is respected.³⁹

III. The Status of Sharia Law in Europe

13. In many European countries, there exists a parallel legal system comprising of a recognition and application (at least to some extent) of Sharia law and the application of ordinary law.
14. In Greece, for example, there exists such a parallel legal system in Western Thrace where the Greek Laws permit the Muslim citizens in Western Thrace to choose either Sharia law or Greek law when dealing with private law matters. In the United Kingdom, the Islamic Sharia Council has the authority to issue divorce certificates for Islamic marriages. As recognised by the Divorce (Religious Marriages) Act 2002, courts may refuse to grant a divorce to a petitioning partner if they fail to first obtain a divorce before a Sharia Council.⁴⁰ Also in Eastern European regions such as the Chechen Republic, Sharia law is used to judge matters relating to family and property issues.⁴¹
15. This Court's case law provides important insight as to the status of Sharia law in Europe. In the case of *Refah Partisi v. Turkey*⁴², the Turkish Constitutional Court had ordered for the dissolution of the Refah Partisi (the Welfare Party) that had been advocating for Sharia law to be introduced. The Grand Chamber held that this decision was compatible with the Convention, and the Court clearly affirmed the following: 'It is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on Sharia, which clearly diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts.'⁴³ The Court further stated that 'a political party whose actions seem to be aimed at introducing Sharia in a State Party to the Convention can hardly be regarded as an association complying with the democratic ideal that underlies the whole of the Convention.'⁴⁴
16. The European Court of Human Rights has since reiterated this position in the *Kasymakhunov and Saybatalov v. Russia* case.⁴⁵
17. At the very time that prominent figures in Britain were advocating the recognition of Islamic law, the Law Lords, at that time the highest court of law in the land (now replaced by the Supreme Court), declared that Sharia, at least in this respect, was contrary to human rights

³⁹ ECHR, *Assanidzé v. Georgia* [GC], application no. 71503/01, judgment of 8 April 2004, § 146.

⁴⁰ Divorce (Religious Marriages) Act 2002 - <<http://www.legislation.gov.uk/ukpga/2002/27/section/1>>.

⁴¹ International Crisis Group, *The North Caucasus: The Challenges of Integration (I), Ethnicity and Conflict*, Europe Report No. 220, 19 October 2012

⁴² *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003.

⁴³ *Id.*, § 72.

⁴⁴ *Id.*, § 123,

⁴⁵ *Kasymakhunov and Saybatalov v. Russia*, applications Nos. 26261/05 and 26377/06, judgment of 13 March 2013, §§ 99-100, and 111. See also: *Vasilyev and Others v. Russia*, application no. 38891/08 [communicated case].

- legislation. The House of Lords drew stark attention to the conflict between Sharia and UK law, calling the Islamic legal code "wholly incompatible" with human rights legislation.⁴⁶
18. The UK Law Society withdrew controversial guidelines for solicitors on how to compile 'sharia compliant' wills amid complaints that they encouraged discrimination against women and non-Muslims.⁴⁷
 19. This backlash against the application of Sharia Law in the UK has led to the then Home Secretary but now Prime Minister Theresa May on 26th May 2016 launching a review into the application of Sharia law in England and Wales, due this year.⁴⁸ The review has already been heavily criticised based on the Muslim composition of the review team, with the resultant appearance that the review will be plagued with bias.⁴⁹
 20. Discussion has also begun at the European level in regard to the legal weight that should be afforded to the Universal Islamic Declaration of Human Rights [UIDHR], a proposal by the Islamic Council of Europe, a non-governmental organisation based in London,⁵⁰ and the Cairo Declaration on Human Rights, issued by the Conference of Foreign Ministers of the Organisation of Islamic Conference on 05 August 1990.⁵¹ Both documents are replete with restrictions on fundamental freedoms. For example, the English translation of the Arabic version of the UIDHR obscures the intent of the document to restrict freedom of expression and freedom of religion.⁵² Similarly, the Cairo Declaration offers no guarantee of freedom of religion.⁵³ Of grave concern is the Cairo Declaration's subjugation of substantive human rights to Sharia: Article 22 states that freedom of expression is restricted by Sharia law, Article 24 states that all the freedoms are subject to Sharia law, and Article 25 says Sharia is the only source of reference for explanation of the articles.⁵⁴

IV. Sharia Law on Inheritance

21. The Parliamentary Assembly of the Council of Europe's Committee on Legal Affairs and Human Rights has recently produced a memorandum surveying the incompatibility of Sharia

⁴⁶ Guardian Article -<https://www.theguardian.com/world/2008/oct/23/religion-islam>

⁴⁷ Telegraph Article - <http://www.telegraph.co.uk/news/religion/11250643/Sharia-law-guidelines-abandoned-as-Law-Society-apologises.htm>

⁴⁸Independent Review on application of Sharia law in England and Wales - <https://www.gov.uk/government/news/independent-review-into-sharia-law-launched>

⁴⁹ See e.g.: <<http://www.christianconcern.com/our-concerns/islam/professor-boycotts-governments-sharia-review>>, <<http://www.christianconcern.com/our-concerns/islam/sharia-council-inquiry-criticised>>, <<http://www.christianconcern.com/our-concerns/islam/independent-review-into-sharia-law-launched>>, and <<http://michaelnazirali.com/articles/app/archive/07-2016/title/in-response-to-the-government-s-independent-review-into-sharia-law>>.

⁵⁰ See: Universal Islamic Declaration of Human Rights and Mohammed Amin Al-Midani, *Les droits de l'homme et l'Islam. Textes des organisations arabes et islamiques*, pp. 273-292.

⁵¹ Resolution 49/19-P adopting the Cairo Declaration on Human Rights in Islam.

⁵² Mayer, A. E. (2012). *Islam and Human Rights: Tradition and Politics* (5th ed.). Boulder, Colorado: Westview Press, pp. 177-179.

⁵³ *Id.*, p. 185.

⁵⁴ *Id.*, pp. 226-227.

law with the Convention, concluding that the structural incompatibilities which exist between the two are sometimes absolute.⁵⁵

22. The discriminatory nature of Sharia inheritance law, because of its relevance to the instant matter, is of note. Females inherit from their parents only half of what is due to a male child. This is based on the inheritance rules laid out in Qur'an 4:11ff.⁵⁶ Non-Muslims cannot inherit from Muslims, a principle in direct conflict with Western anti-discrimination laws and Article 14 of the Convention.⁵⁷ Furthermore, the rights of a surviving wife are half those of a surviving husband.⁵⁸
23. Baroness Cox, Member of the House of Lords in the United Kingdom, has published extensive findings relating to Sharia and its impact on Muslim women in Britain today. In relation to the topic of inheritance, she notes the ingrained discriminatory nature of Sharia courts:

However, there is a fear that even when these tribunals are operating legitimately they are embedding discrimination against women. For example, an MAT in Nuneaton adjudicated on an inheritance dispute between three sisters and two brothers. In accordance with Sharia law principles, the men were given double the inheritance of the women. It is a matter of serious concern that these kinds of discriminatory principles are being applied in a way which conflicts with the basic principles of UK law.⁵⁹

V. Sharia Finance

(a) Overview

24. The drive for the establishment of an interest-free Islamic economic system began in the 1970s by Abul A'la Mawdudi, founder of the militant Pakistani Islamist Jama'at-i Islami movement.⁶⁰ Sharia-compliant finance, or Islamic finance, as it has come to be known, is based on the notion that all forms of interest are prohibited (or *haram*) in Islamic law.⁶¹
25. Sharia finance has since been exported throughout the world, with the United Kingdom committing to "become the western hub of Islamic finance."⁶² In 2014, Britain made history by becoming the first non-Muslim country to issue an Islamic bond. There are now over twenty banks offering Islamic financial services in the UK, with over 100,000 Islamic finance retail customers.⁶³

⁵⁵ *Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories of the 'Cairo Declaration'?*, Rapporteur Meritxell Mateu, Committee on Legal Affairs and Human Rights, AS/JUR (2016) 28, § 62.

⁵⁶ Bishop Michael Nazir-Ali *at p. 5*.

⁵⁷ *Id.*

⁵⁸ Surah 4:12: 'Your wives shall inherit one quarter of your estate if you die childless. If you leave children, they shall inherit one eighth, after payment of any legacy you may have bequeathed or any debt you may have owed.'

⁵⁹ Baroness Caroline Cox *at p. 6*.

⁶⁰ Mahmoud El-Gamal, *Islamic finance: Law, Economics, and Practice* (Cambridge University Press, 2009), 137.

⁶¹ Christian Concern, *What's Wrong with Islamic Finance?*

<http://www.christianconcern.com/sites/default/files/docs/islamicfinance_resource.pdf> 5

⁶² Baroness Warsi, *The future of Islamic finance in a global economy*, <<https://www.gov.uk/government/speeches/the-future-of-islamic-finance-in-a-global-economy>>

⁶³ TheCityUK, *Global Market for Islamic Financial Services up 12% to \$2trillion*,

<<https://www.thecityuk.com/news/global-market-for-islamic-financial-services-up-12-to-2trillion/>>

(b) Preventing Integration

26. Far from being an innocent venture in free market capitalism, Islamic finance was conceived and is practiced as one of the key instruments of the militant Islamist movement in its struggle against the West.
27. Timur Kuran puts it this way: “The real purpose of Islamic economics has not been economic improvement but cultivation of a distinct Islamic identity to resist cultural globalization. It has served the cause of global Islamism, known also as ‘Islamic fundamentalism,’ by fuelling the illusion that Muslim societies have lived, or can live, by distinct economic rules. In fact, now as in the past, the economic life of Muslims has adhered to the very same principles observed elsewhere.”⁶⁴
28. He further describes the emergence of Islamic economics as: “a weapon of civilizational resistance,”⁶⁵ noting that: “unsurprisingly, the theme of clashing civilisations appears in all early contributions to Islamic economics.”⁶⁶ Robert Spencer cites examples where Muslims have successfully refused interest payment to the IRS, Mastercard and other creditors.⁶⁷
29. As noted by Nasser Suleiman in ‘Corporate Governance in Islamic Banking’, “An Islamic organization must serve God...” and advance “the Islamic way of life,”⁶⁸ Thus, Sharia finance is an element of a separate, self-sustained Islamic order with its own Islamic ideology, Islamic politics and Islamic economics which, taken together, would guarantee an Islamic way of life and ultimately the Islamic state as the first step toward establishing Muslim rule worldwide.⁶⁹ In the words of the former Malaysian Prime Minister, Mohamed Mahathir, "A universal Islamic banking system is a jihad worth pursuing, to abolish this slavery [to the West]."⁷⁰

(c) Sharia Law

30. Linked to the above creation of a rival financial system is the way in which Islamic finance legitimises sharia law, which is ‘illiberal, undemocratic and discriminatory,’⁷¹ and which conflicts with basic modern rights. Indeed, every Islamic finance instrument and scheme must be Sharia-compliant to be considered legitimate, and Islam recognises no authority superior to Sharia. The promotion of Sharia finance as a way to enhance the credibility of Sharia law more generally is a key aim of the Islamists involved.

⁶⁴ Allison Engel, Conversation With Timur Kuran, <<http://news.usc.edu/20744/Conversation-With-Timur-Kuran/>>

⁶⁵ Timur Kuran, *Islam and Mammon: The Economic Predicaments of Islamism*, Princeton University Press, 98

⁶⁶ *ibid.*

⁶⁷ Robert Spencer, *Stealth Jihad: How Radical Islam is Subverting America without Guns or Bombs*, Regnery Publishing, 185-186.

⁶⁸ Nasser M. Suleiman “Corporate Governance in Islamic Banking,” *Al-Bab*, <<http://www.al-bab.com/arab/econ/nsbanks.htm>>

⁶⁹ Alyssa A. Lappen, “Congress should outlaw shari’a finance,” *Washington Examiner*, Jun. 2, 2008, http://www.examiner.com/a-1419604~Alyssa_A_Lappen_Congress_should_outlaw_shari_a_finance.html

⁷⁰ Human Events, *Financial Jihad*, <<http://humanevents.com/2005/09/22/financial-jihad/>>

⁷¹ Christian Concern, *What’s Wrong with Islamic Finance?*

<http://www.christianconcern.com/sites/default/files/docs/islamicfinance_resource.pdf> 15

31. Timur Kuran puts it thus: “Successful Islamization in one domain lends credibility to Islamization attempts in other domains. So a significant consequence of the economic activities undertaken in the name of Islam is the support they give to the broader Islamist agenda.”⁷² And once people are comfortable with Sharia Finance, they will find it harder to criticise Sharia Law more generally.
32. Even influential voices within the Muslim community have raised their concerns and objections to certain practices within Sharia finance. The former Grand Mufti of Egypt, Dr. Ali Jum’ah, for example, has been critical of Sharia financial practices such as the impermissibility of cooperate or commercial insurance.⁷³ The inefficiency of Sharia finance and excessive transaction fees place its customers, including Muslims, at a disadvantage. El-Gamal explains: “Where the substance of contemporary financial practice is in accordance with Islamic law, adherence to pre-modern contract forms (with or without modification) leads most often to avoidable efficiency losses, thus violating one of the main legal objectives that defined classical Islamic jurisprudence.”⁷⁴

(d) Financing Terrorism

33. Finally, Sharia finance provides cover for the financing of terrorism. Sharia requires Muslims to tithe 2.5% of their money to charity (Zakat), and this extends to requiring businesses to tithe 2.5% of their profits.⁷⁵
34. Sheikh Yusuf Al-Qaradawi has issued a fatwa stating that zakat can be used to finance violent Jihad.⁷⁶ Directed in this way, Zakat is the single largest source of funds for terrorism.⁷⁷ Indeed, Brisard in his Terrorism Financing report for the Security Council of the United Nations explains that, using the system of zakat “al-Qaeda was able to receive between \$300m and \$500m”.⁷⁸
35. A recent IMF working paper also highlighted “The complexity of Islamic finance products as a factor increasing exposure to risk” of money laundering,⁷⁹ stating that very little study

⁷² Timur Kuran, *Islam and Mammon: The Economic Predicaments of Islamism*, Princeton University Press, 62

⁷³ Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics and Practices*, Cambridge University Press (2006), pp. 148-149.

⁷⁴ *Id.*, p. 190 (as cited in: Christian Concern, *What’s Wrong with Islamic Finance*, p. 20.

http://www.christianconcern.com/sites/default/files/docs/islamicfinance_resource.pdf).

⁷⁵ Mark Polege, *Sharia-Compliant Finance And How We Are Funding Jihad in the Heartland*,

<<http://www.breitbart.com/national-security/2011/09/25/sharia-compliant-finance-and-how-we-are-funding-jihad-in-the-heartland/>> 25 September 2011

⁷⁶ Mufti Sheikh Yusuf Al-Qaradawi, *Is it permissible to spend charity money on Jihad - Fatwa Zakah Jihad*

<<http://www.freerepublic.com/focus/news/666056/posts>>

⁷⁷ Sookhdeo, *Understanding Shari’a Finance: The Muslim Challenge to Western Economics*,

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⁷⁸ Jean-Charles Brisard, “Terrorism Financing: Roots and Trends of Saudi Terrorism Financing,” (Report prepared for the President of the Security Council, United Nations, 2002), 3.

⁷⁹ Nadim Kyriakos-Saad et al., “Islamic finance and Anti-Money Laundering and Combating the Financing of Terrorism” in IMF Working Paper (2016), 9

has been done of the risks of money laundering and terrorist financing from Islamic finance.⁸⁰

VI. Conclusion

36. A government commissioned review in the United Kingdom concluded that religious codes and Sharia law cannot replace civil law: “an overriding principle is that these rules, practices and bodies must operate within the laws of the UK.”⁸¹ It is therefore vital that we no longer equate Sharia courts in the field of personal law as merely alternative tribunals leading to the mere application of a different set of norms to juridical acts that punctuate the private lives of a given minority.⁸² Because Sharia is more than a normative regime, and is also an ethos that prescribes a global vision of the relationship between religion, society and the individual; the religious pronouncement of a Sharia judge or arbitrator will always run the risk of carrying with it political underpinnings.⁸³ The inherently discriminatory nature of Sharia law cannot be ignored, particularly as it relates to women and non-Muslims. Sharia principles not only often conflict with those rights guaranteed by the Convention, the use of parallel Sharia tribunals in fact actively undermines the jurisdiction of the Convention. Individuals, in any case heard under Sharia law or by a Muslim arbitration tribunal, should always have a right of appeal to the ordinary courts to ensure that domestic legal protections are guaranteed.
37. As a result of different factors including demographic shifts, cultural relativism and unfettered accommodation, the United Kingdom provides the Council of Europe with an example of a system which has fundamentally failed in the area of social integration. The consequence has been the creation of a parallel society with competing human rights norms predicated upon views of equality which often times are diametrically opposed to democratic values.⁸⁴ The Foreign and Commonwealth Office’s embassy network reveals that similar circumstances exist in Belgium, Spain, France and Germany.⁸⁵
38. Given the weight of evidence regarding the twin precepts that Sharia law is incompatible with democratic values and that accommodation of Sharia law within Europe has led to catastrophic failings in the area of integration, it is incumbent on the Grand Chamber to reject any principle which would elevate the use of sharia law above the use of domestic law within a Council of Europe Contracting Party.

⁸⁰ Nadim Kyriakos-Saad et al., "Islamic finance and Anti-Money Laundering and Combating the Financing of Terrorism (Aml/Cft)," in IMF Working Paper (2016), 8

⁸¹ Dame Louise Casey at 8.36.

⁸² Jean-Francois Gaudreault-DesBiens, *Religious Courts, Personal Federalism, and Legal Transplants*. In: Shari'a in the West, Ed. Rex Ahdar & Nicholas Aroney, Oxford University Press (2010), pp. 159-160.

⁸³ *Id.*, p. 160.

⁸⁴ Cf. ECHR, *Case of Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], application nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003.

⁸⁵ Dame Louise Casey at Appendix B.