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# THE RIGHTS OF THE ELDERLY IN THE ARAB MIDDLE EAST: ISLAMIC THEORY VERSUS ARABIC PRACTICE

Radwa S. Elsaman\* & Mohamed A. 'Arafa\*\*

*"If anyone travels on a road in search of knowledge, Allah will cause him to travel on one of the roads of Paradise."*<sup>1</sup>

*"Knowledge is a treasure, but practice is the key to it."*<sup>2</sup>

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1. Quote of The Prophet Mohammad (Peace Be Upon Him) ("PBUH"). *Sunan Abu-Dawud*, Hadith No. 3643.

2. IBN KHALDOUN, AL-MUQADDIMA [THE INTRODUCTION, OR PROLEGOMENON] (1377). Ibn Khaldoun was a lawyer, sociologist, economist, and Muslim jurist. He wrote his masterpiece, MUQADDIMAH, or "Prolegomenon," in 1377 A.D. For an English translation, see IBN KHALDOUN, THE MUQADDIMA: AN INTRODUCTION TO HISTORY (Franz Rosenthal trans., Princeton Univ. Press 1958).

## INTRODUCTION

The world's elderly population is growing quickly in developing countries. However, in those nations with less advanced economic development and access to health care, it is difficult to cope with the medical, economic, and social needs of the elderly. Practical solutions to these challenges can be spurred by social awareness of the needs of the elderly.

This article discusses the rights of the elderly in the Arab Middle East, where so far the issue of how to better care for its elderly has received little scholarly attention. The cultural teachings of Islam direct that children should care for their aged parents. This prevents many from sending relatives to nursing homes.<sup>3</sup> The conservative tradition of caring for one's parents, however, can be costly for families. While social insurance systems may cover nursing home care, they usually do not provide supplemental funds to help families care for an elderly relative in their home.<sup>4</sup> Islamic teachings on the rights of the elderly are highly inspiring, however, practice does not always reflect such moral attitudes.

This article examines how Islamic law provides for the needs of the elderly population. Part I provides a succinct background on Islamic law and its sources. Part II analyzes the Islamic approach to the care of the elderly and their rights. Part III elaborates on the different systems of protecting the elderly in the Arab Middle East countries. Finally, it concludes that Islamic law is sufficient to create a comprehensive scheme for the care of elderly citizens, but domestic legislation must meet

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3. See Roaa M. Al-Heeti, Note, *Why Nursing Homes Will Not Work: Caring for the Needs of the Aging Muslim American Population*, 15 *ELDER L. J.* 205, 206 (2007).

4. *Id.*

its lofty ideals.

## PART I. OVERVIEW OF ISLAMIC LAW (*SHARIE'A*)

The predominant religion in the Middle East is Islam.<sup>5</sup> The two main denominations, the Sunnis and Shi'aas, have different views of history, politics, and government.<sup>6</sup> To a higher degree than many other religions, Islam dictates all aspects of Muslims' lives.<sup>7</sup> A law-oriented religion, Islam creates a legal framework for economic, social, and political interactions.

### DEFINITION AND DESCRIPTION OF ISLAMIC LAW

The term Islamic law, or *Sharie'a* (an Arabic word meaning the right path), is used in reference to the entire system of law and jurisprudence associated with the religion of Islam. This includes the primary and secondary sources of law and the methodology used to interpret them.<sup>8</sup> Islamic law is divided into two parts: worship rules (*Ibadat*) governing the relationship between an individual and God, and transactional rules (*Mo'amalat*) governing the relationship between individuals and society.<sup>9</sup> An individual's relationship with society is not fixed; rather, it develops and adapts to changing times and places.<sup>10</sup>

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5. MOHAMED RAMADAN HASSANIEN, UNITED STATES BILATERAL FREE TRADE AGREEMENTS: CONSISTENCIES OR CONFLICTS WITH NORMS IN THE MIDDLE EAST? 113 (2010).

6. *Id.* Muslims were divided into Sunnis and Shi'aas after the arbitration between 'Alī ibn Abī Tālib (the fourth rightly guided Caliph) and Ma'waya ibn Abi Soufyian. *Id.* at n.644. No more than 10% of Muslims are Shi'aas. Shi'aas are the majority population in Iran and Iraq, and the minority in North Africa, Bahrain, Pakistan, and Saudi Arabia. *Id.*

7. *Id.* at 113.

8. *Id.*

9. *Id.*

10. Norman Calder, *Legal Thought and Jurisprudence*, in 2 THE OXFORD ENCYCLOPEDIA OF THE MODERN ISLAMIC WORLD 452 (John L. Esposito ed., 1995).

SOURCES OF ISLAMIC LAW<sup>11</sup>

Sources of *Sharie'a* are divided into primary and secondary rules.<sup>12</sup> The first primary source is the *Qur'an*, which Muslims believe to be the word of God as revealed by the Angel Gabriel to the Prophet Muhammad (Peace Be Upon Him ("PBUH")) over a period of twenty-two years, from 610 A.D. until 632 A.D.<sup>13</sup> The *Qur'an* is comprised of 114 chapters (*Surats*) of varying length and 6,236 verses (*Ayahs*).<sup>14</sup> These verses deal in part with legal matters (*Khitab*), and each of these judicial verses bears either an order (*'Amr*) or a prohibition (*Nahi*).<sup>15</sup> The *Qur'an* is "the constitution of all Muslims, a source that trumps all other sources and is regarded by Muslims as the highest authority in all facets of life, including legal, social, political and economic matters."<sup>16</sup>

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11. *Note from the authors and editors:* As you will learn throughout this article, the sources of Islamic law focus on exactitude. It is important that Muslims understand and recite exactly what was said and done by the Prophet Muhammad (PBUH) in order to follow and apply his examples in practice. This method of repeating exactly what was stated carries over into Islamic writings. For this reason, much of the information contained in this article can be found not only in the cited sources, but in many additional sources as well.

12. HASSANIEN, *supra* note 5, at 113. *See also* M. Cherif Bassiouni & Gamal M. Badr, *The Shari'ah: Sources, Interpretation, and Rule-Making*, 1 UCLA J. ISLAMIC & NEAR E. L. 135, 138–39 (2002).

13. HASSANIEN, *supra* note 5, at 113. The words of the *Qur'an* were memorized, recited, and written down by the Prophet's companions (*Sahaba*) after each revelation by the Prophet. The *Qur'an* is regarded as the culmination of a series of divine messages that started by the revelation of Adam, the *Suhuf* of Ibrahim ("Scrolls of Abraham"), the Torah, the Zabur ("The Book of Psalms"), and the Injil ("Evangel/The Bible"). It should be noted that a great resemblance exists between the *Qur'an* and the holy books of Judaism and Christianity.

14. HASSANIEN, *supra* note 5, at 113. Its legal material is contained in about 500 *ayahs*. M. CHERIF BASSIOUNI, *THE ISLAMIC CRIMINAL JUSTICE SYSTEM* 152 (1982). The majority of the *Qur'anic* legislation has been given in broad outlines. Shah Abdul Hannan, *Islamic Jurisprudence (Usul Al Fiqh)*, MUSLIM TENTS, [http://www.muslimtents.com/aminahsworld/Jurisprudence\\_ind.html](http://www.muslimtents.com/aminahsworld/Jurisprudence_ind.html) (click The Quran) (last visited Sept. 12, 2012).

15. BASSIOUNI, *supra* note 14, at 152. ("Out of each judicial verse, a decision [*Hukum*] arises which is analogous to a judgment and is a specific legal rule.")

16. HASSANIEN, *supra* note 5, at 113. *Qur'anic* prescriptions are characterized by their general formulation:

The *Qur'an* is a code which governs religious and social life. It has foreseen everything, so that all is implicitly or explicitly regulated. When a new

The second primary source is the *Sunnah*, the collection of the traditions of Prophet Muhammad (PBUH).<sup>17</sup> The *Sunnah*<sup>18</sup> is the compilation of Muhammad's actions, sayings, judgments, attitudes, and opinions, which are individually known as *Hadith*. The *Sunnah* is not as authoritative as the *Qur'an* but is considered essential to its interpretation.<sup>19</sup> Unlike the *Qur'an*, the *Sunnah* is not direct revelation; however, it is considered divinely inspired.<sup>20</sup>

Several *Qur'anic* verses convey the importance of following Muhammad's example; for instance, *Surat 24*, at *Ayah 54*, instructs: "Obey Allah and obey the Messenger . . ." <sup>21</sup>

A *Hadith* generally takes one of three forms<sup>22</sup>: (1) a *Sunnah*

situation arises, or a new need is found, it is met with the help of the principles which are laid down in the *Qur'an*. In its entirety, the *Qur'an* aims at prohibiting all acts detrimental to society.

The true reading of the *Qur'an* is not possible except by resorting to its commentaries (*tafsir*).

BASSIOUNI, *supra* note 14, at 152.

17. HASSANIEN, *supra* note 5, at 113.

18. "Sunnah is the collective word for the mass of texts which tell of the Prophet's spoken words, or are an account of acts or the absence of acts attributed to him. These comprise the tradition, or more literally, the path of the Prophet, which a Muslim strives to follow." BASSIOUNI, *supra* note 14, at 153.

Moreover, jurists exclude the features of the Prophet from the *Sunnah*. Shah Abdul Hannan, *Usul Al-Fiqh*, WORDPRESS, <http://thequranblog.files.wordpress.com/2008/06/usul-al-fiqh.pdf>, at 6 (last visited Sept. 23, 2012). *Sunnah* refers to "all that is narrated from [the Prophet Muhammad (PBUH)], his acts, his sayings and whatever he tacitly approved." *Id.* It is worth mentioning that the *Sunnah* is narrated mainly by six of the Prophet's companions (*Sahaba*): Aboū-Huraira, 'Abduallah Ibn 'Ummar, 'Aisha, Jabir Ibn 'Abduallah, Ibn 'Abbas, and Anas Ibn Malik. The *Sunnah* was compiled over a period of 300 years by various methodologies. Between 850–915 C.E., the *Sahih* ("Authentic") movement verified the authenticity of the *hadiths*. From this movement, the Six Books (also known as the Six Acclaimed Hadiths) were compiled by recognized scholars of high character: Al-Bukhari, Muslim, Aboū Dāwūd, Al-'Tirmidhi, Al-Nasa'i, and Ibn Majah. To date, the total number of *hadiths* is still not agreed upon, but the prevailing opinion is that there are 4,400 strong *hadith* (*Hadith Sahih*), including the 500 religious and legal legislating *hadiths*.

19. HASSANIEN, *supra* note 5, at 114. The *Qur'an* has priority over the *Sunnah* because it is God's word as recited by the Prophet himself.

20. BASSIOUNI, *supra* note 14, at 153.

21. *Id.*; THE HOLY QURAN: ENGLISH TRANSLATION OF THE MEANINGS AND COMMENTARY, 24:54 [hereinafter QUR'AN].

22. BASSIOUNI, *supra* note 14, at 153.

uttered by the Prophet; (2) a *Sunnah* of reported facts about the Prophet;<sup>23</sup> and (3) a *Sunnah* "by the confirmation of the Prophet, who validates an act either expressly or through silence."<sup>24</sup> Because it interprets the *Qur'anic* principles, the *Sunnah* is the most important source in developing religious dogma and judicial norms.<sup>25</sup>

*Ijm'a*, the third primary source of Islamic law, refers to the "unanimous consensus of the community [*Ummah*] through its competent representatives."<sup>26</sup> The *Ummah* consists of all Muslims, and its competent representatives are the *Ulama* (jurists).<sup>27</sup> *Ijm'a* is the consensus of opinion during a particular age on a question of law, so it is dynamic and may be reformulated as the cultural environment develops.<sup>28</sup> However, because *Ijm'a* underlies Islamic laws, regulations, and decrees,<sup>29</sup> it must be supported by either a verse in the *Qur'an* or a *Hadith* in the *Sunnah*.<sup>30</sup> *Ijm'a* is given equal weight to the *Qur'an* and the

23. *Id.* ("As one example, Muhammad applied the penalty of stoning to death in cases of admitted adultery, and inflicted the amputation of the right hand in cases of theft.")

24. *Id.* at 153–54:

For example, independent judicial reasoning was validated in a *Hadith*. When Prophet Muhammad sent Mu'adh ibn Jabal as a judge (*qadi*) to Yemen, he asked him: "How will you decide when a question arises?" He replied: "According to the Book of God." "And if you do not find the answer in the Book of God?" "Then according to the *Sunna* of the Messenger of God." "And if you find the answer neither in the Book nor in the *Sunnah*?" "Then I shall come to a decision according to my own opinion without hesitation." Then Muhammad [PBUH] slapped Mu'adh on the chest with his hand saying: "Praise be to Allah who has led the messenger of the Messenger of Allah to an answer that pleased him."

25. *Id.* at 154.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 155.

30. *Id.* at 154:

When one is faced with an obscure *Qur'anic* passage or apparently contradictory texts, or is in a position where no available *Hadith* explains or anticipates the situation, Islam finds the solution in the form of a collective action. This is the legislative process called *Ijm'a*, the consensus of the Prophet's Companions, and later of their disciples, and their followers and those who follow.

*Sunnah*, but few solutions are based solely on *Ijm'a*.<sup>31</sup>

*Qiyas* (analogical deduction) represents the fourth primary source of Islamic law. It literally means ascertaining the length, weight, or other quality of something. It is the extension of a *Sharie'a* ruling in one case (based on the *Qur'an* or the *Sunnah*)<sup>32</sup> to a new, similar case.<sup>33</sup> It operates by comparing like to like, like to contrary, or more to less, without a middle ground.<sup>34</sup> For example, the *Qur'an* prohibits liquors because of the intoxicating effect on the body; similarly, jurists forbid drugs because they have the same effect. *Qiyas* is used to decide a matter by analogy “only if no guidance is available on the point under discussion in any of the other three previous sources of law.”<sup>35</sup>

The most important secondary source of Islamic law is *Istihsan* (juristic preference):

Literally, [*Istihsan*] means to deem something preferable. Technically, it is the exercise of personal opinion to avoid any rigidity and unfairness which could result from literal application of the law. In Western law this is most similar to the doctrine of equity. *Istihsan* allows Muslim jurists to be literalists without causing injustice.<sup>36</sup>

There are three additional sources of secondary law:

*Al-Maslahah Al-Mursalah* (“consideration of the public

31. *Id.* at 155.

32. *Id.* at 156.

33. *Id.*:

*Qiyas*, analogical reasoning, may be used to broaden the application of an existing rule of law derived from a decision (*hukm*). Systematic reasoning, disciplined by the rules of analogy, projects the rule beyond its immediate application onto a different plane. For example, the solution to a case at hand may be found by analogy to a similar case found in the *Qu'ran* or the *Sunna* and thus already settled by text.

*Id.* at 155–56.

34. *Id.* at 156.

35. HASSANIEN, *supra* note 5, at 114.

36. Mohamed A. 'Arafa, *Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?*, XVIII ANN. SURVEY INT'L & COMP. L. 171, 180–81 (2012) (internal citations omitted). “For instance, oral testimony was the standard form of evidence in Islamic law. Photography, voice recording, and laboratory analysis have become more reliable means of proof. Therefore, with *Istihsan*, we can employ the latter means.” *Id.* at n.64.

interest") represents another source or tool of Islamic law. Etymologically, *Maslahah* means "benefit" or "interest" and *Maslahah Mursalah* means benefit or interest not mentioned in a primary source. . . . This source grants a Muslim legislator a great deal of freedom in the resolution of new questions in the absence of a primary source of law. . . .

*Al-Istihab* ("presumption of continuity") is also considered a source of law. This device is more a rule of evidence than a method of process and is well known by other names in Western law, such as "beyond a reasonable doubt." It stands for the proposition that a thing or situation known to exist continues to exist until the contrary is proven. An example is the fundamental Islamic [and Western] criminal principle that a person is innocent until proven guilty.

Finally, *Al-'Urf* ("custom and usage") is a source of Islamic law in which recurring practices are acceptable for people of sound nature. . . . Rulings based on *Ijtihad* are usually influenced by custom. Thus, if custom changes, rulings may also change.<sup>37</sup>

Lastly, supplemental sources of Islamic law include treaties, pacts, contracts, arbitral awards, and judicial jurisprudence.<sup>38</sup> However, it is important to note that Islamic law is not the same as Islamic *Fiqh* (jurisprudence), which is "the understanding of Islamic rules and principles," divided into the schools of opinion and of tradition.<sup>39</sup>

### SHARIE'A IN PRACTICE

A distinction should be made between the official reaction of each Muslim country with regard to *Sharie'a* as a source of national law, and the reaction of individual Muslims. Some Muslim countries, such as Lebanon and Turkey, do not make *Sharie'a* a source of their national laws.<sup>40</sup> Others, *e.g.*, Bahrain,

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37. *Id.* at 180–82 (internal citations omitted).

38. *Id.* at 182.

39. *Id.* at 182–83.

40. NISRINE ABIAD, *SHARIA, MUSLIM STATES AND INTERNATIONAL HUMAN*

Egypt, Morocco, and Syria, officially adopt *Sharie'a* as the main source of their national laws, but do not apply it to all areas of their legal systems.<sup>41</sup> Finally, countries such as Iran, Pakistan, and Saudi Arabia make *Sharie'a* the only source of legislation and adopt its rules literally in their national laws and regulations.<sup>42</sup> Regardless of the incorporation of Islamic law into national law, Islamic rules greatly affect Muslims' everyday behavior.<sup>43</sup>

## PART II. THE RIGHTS OF THE ELDERLY IN ISLAMIC LAW

The two foundational sources of Islamic law—the *Qur'an* and the *Sunnah*—contain principles and precepts that create family obligations to afford physical, mental, and emotional comfort to the elderly.<sup>44</sup> Before investigating these principles, a short word needs to be said about the large role of the family in Muslim society.<sup>45</sup>

Traditionally, the Muslim family structure is extended rather than nuclear.<sup>46</sup> Extended family members may or may not occupy and inhabit a common residential unit.<sup>47</sup> In all circumstances, however, family ties remain intact and family duties must be followed by all.<sup>48</sup> "A Muslim family primarily includes the self, the spouse and the immediate ascendants and descendants—the position of none of these constituents being inferior to any other."<sup>49</sup>

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RIGHTS TREATY OBLIGATIONS: A COMPARATIVE STUDY 35, 44 (2008).

41. *Id.* at 47.

42. *Id.* at 44.

43. See generally GEOFFREY WILLIAMS & JOHN ZINKIN, DOING BUSINESS WITH ISLAM: CAN CORPORATE SOCIAL RESPONSIBILITY BE A BRIDGE BETWEEN CIVILISATIONS? (2006).

44. Tahir Mahmood, *Law and the Elderly in the Islamic Tradition—Classical Precepts and Modern Legislation*, IX ISLAMIC & COMP. L. Q. 33, 33 (1989).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* See also Abdul-Rahman al-Sheha, *Human Rights in Islam and Common Misconceptions*, DAR FOUNDATION, <http://www.darfoundation.com/Human%20>

Within the intergenerational roles prescribed by Islam, the elderly hold a place of honor.<sup>50</sup> The “security, protection, and comfort” of the elderly are “guaranteed by the behavioral norms and obligations” placed on younger members of the family.<sup>51</sup> The following sections will highlight the religio-legal texts from the *Qur'an* and the *Hadiths* which deal with this subject.

## RIGHT OF EQUALITY

Islam is based on equality among individuals regardless of

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Rights%20in%20Islam.pdf, at 2 (last visited Dec. 16, 2012):

Every society must ensure for its citizens the rights that guarantee for them their basic needs and security, and enable them to feel a sense of belonging and attachment to the larger social group. Individuals need to feel secure and a sense of belonging in order to perform their tasks and duties in a satisfactory manner.

Presently, three distinct trends are discernible in our global society. The first trend exaggerates the right of the individual over the society. This trend gives the individual full freedom to do as he pleases with minimal restrictions. Unfortunately this leads to a chaotic social situation because when unlimited freedom is granted to the individual, selfish desires predominate and bring conflicting results. The entire society suffers immensely from greed and selfishness. This trend is found in the liberal democratic capitalist society.

The second trend, contrary to the above, advocates the rights of the society over the individual. The latter is stripped of his individual rights. Only rights that serve the ruling regime are granted to the individuals, according to the dominant ideology of the ruling class or group. This trend is prevalent in communist and totalitarian societies.

The third trend, ideally neither emphasizes the right of the society over the individual, nor the right of the individual over the society. Each is given its due right in life according to the given system. Rights and obligations are governed and controlled by strict rules and conditions. In this trend, the public interest is given priority over the interest of an individual only in case of a serious conflict.

....

We firmly believe that the application of the individual and social principles of the third trend, when guided by the perfect revealed law from Allah in the *Qur'an* and *Sunnah*, will definitely make humanity happier and more prosperous. The application of these principles will enable the society to achieve peace and security. These social rights and principles are not a result of previous experiences, social ideologies, temporary and immediate needs and/or political drives and motives; rather they are from the Beneficent and the Omniscient for man's progress to happiness in this life and salvation in the Hereafter.

50. Mahmood, *supra* note 44, at 34.

51. *Id.*

religion, belief, color, language, race, gender, or nationality. The *Qur'an* says:

O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honored of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).<sup>52</sup>

As a religion, social order, and legal system, Islam prohibits racism. In this regard, the Prophet Muhammad (PBUH) is reported to have said:

No Arab has superiority over a white person and no white person has superiority over an Arab; no black person has superiority over a white person and no white person has any superiority over a black person. The criterion of honor in the sight of Allah is righteousness and honest living.<sup>53</sup>

## RIGHT TO CARE

Worldwide, it is generally understood that parents owe certain obligations to their own children. In Islam, children likewise owe certain obligations to their parents. Regard and respect are due to parents at all times, but special emphasis is placed on parents in old age. The *Qur'an* states at verses 17:23–24:

Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents. Whether one or both of them attain old age in thy life, say not to them a word of contempt, nor repel them but address them, in terms of honour. And, out of kindness, lower to them the wing of humility, and say: "My Lord! Bestow on them thy mercy even as they cherished me in childhood."

The order to worship only God follows a prohibition on the

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52. QUR'AN 49:13.

53. *Ahmad ibn Hanbal*, Hadith No. 24204.

that prohibits worship of others alongside God.<sup>54</sup> The order is a decisive ruling:

The term, *qadā*, used in the Arabic text and translated as 'ordained', signifies a final verdict imparting additional emphasis to an already emphatic order that also uses the construction of a negation and exception: "You shall worship none but Him." The mode is one of total emphasis and stress. When this basic ruling is well established, individual and community duties are outlined. These rely on a firm belief in the One God. Hence, motives and goals behind actions and practices work towards the same end.

The most important bond next to that of faith is the family. . . .

Parents are naturally motivated to look after their children, sacrificing everything in the process, even when the sacrifice includes them personally. . . .

Thus, parents do not need any encouragement to be kind to their children. It is the children who need to be reminded of their duty towards the generation that has become dry, in need of tender care, after having spent most of its vitality in bringing up their young. Hence, the divine command to take good care of parents comes in the form of a ruling from God, following immediately after the command to worship God alone.<sup>55</sup>

The *Qur'an* pays high attention to the way parents should be treated. For example, it prohibits minor vulgarities, such as the word "Fie," to be addressed to parents. By analogy, because it is unlawful to utter the scornful word "Fie" to parents, it is equally forbidden to use any other hurtful language.<sup>56</sup> Children

54. SAYYID QUTB, 11 FI DHILAL AL-QUR'AN [IN THE SHADE OF THE QUR'AN] 119 (Adil Salahi trans. and ed., The Islamic Foundation 2007); QUR'AN 17:22 ("Take not with Allah another god; or thou (O man!) wilt sit in disgrace and destitution.")

55. SAYYID QUTB, *supra* note 54, at 120. See also QUR'AN 31:14 ("And We have enjoined on man (to be good) to his parents: in travail upon travail did his mother bear him. And in years twain was his weaning; (hear the command), 'Show gratitude to Me and to thy parents: to Me is (thy final) Goal.'").

56. HADHRAT MAULANA MUJADDID ASHRAF ALI THANVI RA, MUSLIM WAY OF LIFE 20, n.1 (Iqbal Husain Ansari, trans.), available at <http://issuu.com/shafiqbhatti/docs/muslimwayoflife-maulanamujaddidashrafalithanvira> (last visited Dec. 16, 2012):

should keep in mind the implications of this injunction at all times and places.

There are no verses in the *Qur'an* that emphasize the rights of parents as emphatically as 17:23–24; however, approximately a dozen other verses use varying terminology to relay the same message.<sup>57</sup> It is understood from those verses that parents are placed immediately next to God: “The placement of parents at such a high pedestal . . . is aimed at providing a firm scriptural foundation for the formulation of detailed socio-legal principles in order to secure for the parents all possible material and emotional comfort that the children could afford to provide.”<sup>58</sup>

Moreover, the *Qur'an* treats the mother and father as equals.<sup>59</sup> This stands in contrast to some Muslim understandings that prefer one parent over the other.<sup>60</sup> Thus, the *Qur'an* “erects a system of material and moral protection for the elderly” based on the family structure.<sup>61</sup> The *Qur'an* is

Some Tabi'een [followers] are reported as saying: He who prays for his parents five times daily has paid their dues, because Allah has said: Give thanks to Me and to your parents. To Me is the ultimate resort. Accordingly, giving thanks to Allah consists in praying to Him five times daily and similarly so is praying for the parents five times daily. The Holy Prophet (PBUH) said: If there had been in the knowledge of Allah a lesser degree of disobedience than the word 'Fie', He would have forbidden that too. So the disobedient son may do whatever he likes[;] he shall never enter Paradise.

On the other hand, the obedient son may do whatever he likes[;] he will never enter the Fire (of Hell). The said Faqih narrated this. I said: He should give something in charity on behalf of his parents at the time of paying Zakat, etc. The Holy Prophet (PBUH) said: If a son finds that his father is a slave, he should purchase him, [and] then set him at liberty.

(internal citation omitted).

57. Mahmood, *supra* note 44, at 35.

58. *Id.*

59. Joseph A. Islam, *Parents*, QURAN'S MESSAGE, <http://quransmessage.com/articles/parents%20FM3.htm> (last visited Oct. 28, 2012).

60. *Id.*:

Muslim beliefs which emanate from theology sourced from Islamic secondary sources often tend to prefer one parent over another. As an example, heaven is understood to be present ‘under the feet of one’s mother’ or gives the mother preference over the father in multiples of 3. The Quran however supports no preferences[;] rather it underscores the message of fair and equal treatment.

61. *Id.*

“absolutely clear that a person who is giving any kind of material or emotional support to an elderly relative is in no sense doing a favour to him or her; he is only discharging his own sacred obligation and thereby acquitting himself well in the sight of God.”<sup>62</sup>

The dictates of the [*Qur'an*] relating to the protection of parents and other elderly relatives were explained, illustrated and demonstrated by [personal] action by the Prophet of Islam. In an Awe-inspiring exhortation he said:

Curse be on him who finds either of his parents in old age and does not attain eternal bliss by serving them well.

On another occasion in a metaphoric warning he declared:

None else but parents are their children's heaven or hell.

To this stern warning he once added that:

Punishment for every sin can be deferred to the eternal life but not for that of neglecting one's parents; for this sin one must suffer in one's worldly life.<sup>63</sup>

Similarly, the Prophet stated,

There is no sin more fitted to have punishment meted out by Allah to its perpetrator in advance in this world along with what He stores up for him in the next world than oppression and severing ties of relationship.<sup>64</sup>

Moreover, it is reported by Aboū-Huraira that Allah's Apostle (PBUH) said,

Let him be humbled into dust; let him be humbled into dust. It was said: Allah's Messenger, who is he? He said: He who sees either of his parents during their old age or he sees both of them, but he does not enter Paradise.<sup>65</sup>

62. Mahmood, *supra* note 44, at 35–36.

63. *Id.* at 36.

64. *Sunan Aboū-Dawood*, Hadith No. 4884.

65. *Sahih Muslim*, Hadith No. 6189.

He is also reported to have said that,

The finest act of goodness is that a person should treat kindly the loved ones of his father.<sup>66</sup>

From all these traditions, it becomes clear that respect for one's parents is an obligation that must be met in a variety of prescribed ways. For instance:

[Children] should not walk ahead of their parents, nor speak before them in matters that they know are their father's . . . . Children should wholeheartedly avoid upsetting their parents and should please them as much as possible. Making [one's] parents' life enjoyable is one of the most virtuous acts . . . .<sup>67</sup>

No harm should be done to parents even if they commit any excesses.<sup>68</sup> They must be respected, loved, obeyed, and honored in speech and dealings.<sup>69</sup> This involves care and kindness to both parents, completely obeying and serving<sup>70</sup> them in all acts permissible in *Sharie'a*.<sup>71</sup> If they are in need of money, children should give them access to their own wealth, even if they are unbelievers (*kafirs*), and offer them the best of their food and drink.<sup>72</sup>

66. *Sahih Muslim*, Hadith No. 6193.

67. *How Muslims 'Should' Treat Their Parents*, ZAUFISHAN (Nov. 3, 2010), <http://www.zaufishan.co.uk/2010/11/how-muslims-should-treat-their-parents.html> ("Children must hasten to respond to their parents' call. If a child is performing voluntary prayers, the prayer should be shortened to respond promptly. . . . Keep in mind that it's human nature to want to be the best in status, prestige and popularity, and dislike that someone is better than yourself. Only your parents would wish that you become better than what they are. So how should you treat those who prefer you over themselves, and truly wish you the best?").

68. *E.g.*, Ahmed, *Rights of Parents*, HAQ ISLAM (Apr. 12, 2009), <http://www.haqislam.org/rights-of-parents>.

69. *Id.* See also QUR'AN 19:13–15 (describing Yahyā (John the Baptist): "He was devout, and kind to his parents, and he was not overbearing or rebellious. So Peace on him the day he was born, the day that he dies, and the day that he will be raised up to life (again)!")

70. Patience (*Sabr*) and perseverance are required when serving parents, no matter what the circumstances.

71. Ahmed, *supra* note 68.

72. See *id.*

## RIGHTS OF PARENTS AFTER DEATH

The following rights are due to parents after their death: praying (*Dua'a* and *Istighfar*) for forgiveness and mercy for them; sending rewards to them in the form of voluntary acts of worship and charity on their behalf; meeting their friends and relatives in a friendly and humble way throughout life and assisting them wherever possible; settling their unpaid debts (*al-Diyoun*) and fulfilling the permissible bequests (*al-Wasiyya*) they have made; and visiting their graves and reciting the *Qur'an* in a loud voice, while abstaining from crying aloud, so that their souls will not be troubled.<sup>73</sup>

## FINANCIAL RIGHTS AND INHERITANCE

As described above, Islamic law prescribes a moral obligation for children to provide material support for their parents when they are in need.<sup>74</sup> Similarly, Islamic law entitles parents to their children's wealth, so long as no harm comes from taking it. It is narrated by Ibn Majah on the attribution of Jaber ibn 'Abdullah that:

A man came to the Messenger of Allah and said: "My father is taking all my wealth." He said: "You and your wealth belong to your father. Your children are among the best of your earnings, so eat from your wealth."<sup>75</sup>

The pre-eminent pro-elderly principle in Islamic law is the doctrine of "absolute ownership of property."<sup>76</sup> Traditional property rights include the rights to exercise control over one's property, to use it for one's pleasure, and to extinguish rights in it by way of transfer. The concept of birth rights to ancestral

73. *Id.*

74. *Id.*

75. *Sunan Ibn Mājah*, Hadith No. 2380.

76. AFZAL-UR-RAHMAN, MUSLIM EDUCATIONAL TRUST, ECONOMIC DOCTRINES OF ISLAM, Vol. II 208–12 (1980). See also Ahmad Ibrahim, *Islamic Concepts and Land Law in Malaysia*, in THE CENTENARY OF THE TORRENS SYSTEM IN MALAYSIA 189 (Ahmad Ibrahim & Judith Sihombing, eds., 1989).

property, which has been the cornerstone of some societies, was never recognized in Islam because it is believed that everything belongs to God.<sup>77</sup>

Additionally, under the Islamic law of inheritance, both parents are among the primary heirs of their children, and they cannot be excluded by each other or by any other heir.<sup>78</sup> In the major schools of Islamic law, it is stated that in the absence of the mother, a maternal grandmother becomes the heir and successor, and in the absence of both parents, a paternal grandfather becomes the heir and successor.<sup>79</sup> If a child is

77. RAHMAN, *supra* note 76, at 209–10; Ibrahim, *supra* note 76, at 189 (“While Islam therefore gives the right of benefit, sale and purchase and even inheritance of land to the individual, the absolute ownership of land is given to Allah and from Him to the State or the community.”).

78. Abid Hussain, *Islamic Laws of Inheritance*, ISLAM 101, <http://www.islam101.com/sociology/inheritance.htm> (last visited Oct. 6, 2012).

79. *Id.*:

If there are any sons the share of the daughter(s) is no longer fixed because the share of the daughter is determined by the principle that a son inherits twice as much as a daughter. In the absence of any daughters this rule is applicable to agnatic granddaughters (son’s daughters). The agnatic granddaughter has been made a Quranic heir (sharer) by Muslim jurists by analogy.

If there is only a single daughter or agnatic granddaughter her share is a fixed one-half[;] if there are two or more daughters or agnatic granddaughters then their share is two-thirds. Two or more daughters will totally exclude any granddaughters. If there is one daughter and agnatic granddaughters, the daughter inherits one-half share and the agnatic granddaughters inherit the remaining one-sixth, making a total of two-thirds. If there are agnatic grandsons amongst the heirs then the principle that the male inherits a portion equivalent to that of two females applies.

“And for his parents for each of them there is one-sixth of the inheritance if he has a child [*walad*], but if he does not have a child and the parents are the heirs then for the mother one-third.” [QURAN 4:11].

The Arabic word “*walad*” has been variously translated [by Muslim jurists and interpreted in Islamic law of Inheritance] as child, son, children and offspring by translators. However, there is universal agreement amongst the Sunni Muslim jurists that “*walad*” here refers to any child or agnatic grandchild (grandchild through son).

If there is a child or agnatic grandchild amongst the heirs then each of the parents inherits one-sixth. In the absence of a child or agnatic grandchild the mother inherits one-third[;] the share of the father is not mentioned under these circumstances. The father in fact inherits as a residuary (a residuary heir gets whatever remains of the inheritance after the Quranic sharers have been allocated their shares[;] residuary heirs are generally male agnates) under these circumstances.

predeceased by his father, then his living grandfather or great-grandfather will be among the heirs.<sup>80</sup> All these ancestors, outstandingly, inherit as primary beneficiaries. The Islamic law of inheritance takes remarkable care of elderly relatives by giving them shares in the deceased's property, even at the cost of excessive fragmentation.

## RIGHTS OF GRANDPARENTS

The Prophet (PBUH) equated one's parents with his grandparents, aunts, and elder brothers, thereby giving them the benefit of those *Qur'anic* verses relating to the well-being of parents.<sup>81</sup> "According to the [*Sharie'a*], the rights of the paternal and maternal grandparents are similar to those of the parents and they should be regarded as such."<sup>82</sup> Thus, paternal and

80. *Id.*:

To these two Quranic heirs, the mother and the father, the maternal grandmother and paternal grandfather have been added by analogy. The maternal grandmother substitutes the mother in the latter's absence, "but if he has brothers (or sisters) [*akhwatun*] then for the mother one-sixth." [Quran 4:11].

The consensus of opinion is that the word "*akhwatun*" used in the Quranic text means two or more brothers or sisters of any kind. So that any combination of full, consanguine or uterine brothers and sisters, if two or more will mean that the mother inherits a one-sixth share.

"And for you there is one-half of what your wives leave behind if there is no child, but if they leave a child then for you there is one-fourth of what they leave behind; . . ." [Quran 4:12]

. . . . The husband, another Quranic heir, inherits one-half in the absence of a child or agnatic grandchild and one-quarter in the presence of a child or agnatic grandchild.

"And for them one-fourth of what you leave behind if you did not have a child, but if you have a child then for them one-eighth of what you leave behind; . . ." [Quran 4:12].

This statement gives us the ruling on the share of the wife (widow). The share of the wife is one-quarter in the absence of a child or agnatic grandchild and one-eighth in the presence of a child or agnatic grandchild. Two or more wives share equally in this prescribed share.

81. TAHIR MAHMOOD, *THE MUSLIM LAW OF INDIA* 168–70 (2d ed. 1982). In the terminology of the *Qur'an*, all these relatives are *dhawi'l qurba* (kith and kin), and the old and the needy among them are declared to be the most rightful recipients of all possible help from their affluent relatives.

82. *Rights of Parents*, THE TRUE KNOWLEDGE, <http://www.thetrueknowledge.org/rights-of-parents> (last visited Oct. 6, 2012) ("[T]he rights of the maternal and

maternal grandparents are to be maintained if they have no closer descendants to do so.<sup>83</sup>

The provision of financial and emotional support for the elderly is one reason why Islam extends close familial relationships beyond the nuclear family. The rights of the elderly to maintenance and emotional support are available irrespective of whether any one of them is or is not a follower of Islam,<sup>84</sup> and, unlike with some inheritance practices, there is no order of priority between maternal and paternal ancestors—both have the same rights to maintenance.<sup>85</sup> In this context, maintenance includes day-to-day needs, such as the provision of food, clothing, residence, and personal assistance, as well as respect.<sup>86</sup>

#### RIGHTS OF OLDER NEIGHBORS, FRIENDS, AND OTHER COMPANIONS

The Prophet Muhammad (PBUH) also strongly asserted that one must do everything possible for the friends, companions, and associates of one's parents after their death.<sup>87</sup> This matter has its own merits based on religious teachings, moral obligations, mental judgment, and pure innate duties and requirements.<sup>88</sup> It reflects the extent to which Islam provides for the needs of man.<sup>89</sup> There is a real pleasure that one gains from

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paternal uncles and aunts are similar to those of the parents."'). It is a child's obligation to maintain each of these relations when they are in need. MAHMOOD, *supra* note 81, at 184–86.

83. *Id.* at 185.

84. *Id.* at 186.

85. *Id.* at 185. If the circumstances so demand, one is required to maintain any member of the family that is even remotely related, including, of course, one's stepmother, sister, aunt or uncle, and great-aunt or great-uncle. *See id.* at 184–86.

86. *See Rights of Parents, supra* note 82.

87. QUR'AN 47:22–23 ("Then, is it to be expected of you, if ye were put in authority, that ye will do mischief in the land, and break your ties of kith and kin? Such are the men whom Allah has cursed for He has made them deaf and blinded their sight."').

88. Shaykh Muhammad Saleh Al, *Essential Rights*, ALOLOOM SALAFI NETWORK, <http://aloloom.net/vb/archive/index.php/t-8236> (last visited Mar. 29, 2012).

89. *Id.* It is the unfortunate observation of these authors, however, that many

being kind to relatives: One grows socially, matures ethically, and feels at peace with oneself and one's community.<sup>90</sup> Malik bin Al-Hwairith, an honored companion of the Prophet Muhammad (PBUH), is reported to have said:

I was with a youth group that visited the Messenger of Allah in Madina for twenty nights. The Messenger of Allah was very kind and compassionate. He sensed that we might have missed our families back home and he asked us about whom we had left behind. When we informed him, he said: Go back to your families, live with them, teach them Islam and tell them of the good deeds. At the times of prayer, let one of you call the Azan, and have your eldest lead the prayer.<sup>91</sup>

In general, the Prophet Muhammad (PBUH) told his followers that the aged and the infirm among their neighbors were to enjoy rights additional to those of the general Muslim populace. It is important to note that "neighbors" is a term that means those who are not family, and it includes, for example, colleagues and companions. The Prophet Muhammad (PBUH) taught that the best of neighbors is the one who is best to his neighbor.<sup>92</sup> Accordingly, we apprehend that God has not enjoined the requirement of kindness exclusively to parents, but also to relatives, orphans, neighbors, and others:

Serve Allah, and join not any partners with Him; and do good—to parents, kinsfolk, orphans, those in need, neighbours who are of kin[,] neighbors who are strangers, the Companion by your side, the way-farer (ye meet), and what your right hands possess: for Allah

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people neglect such important social rights and religious obligations. Many Muslims do not care to be kind to their relatives either financially (if they are wealthy and their relatives needy), or socially (if they are able to render help at no cost). At times, one may instead find a person being harsh, mean, disrespectful, jealous, or miserly to his or her own relatives, while being the opposite towards others who are distant. Unfortunately, some people do not even visit their relatives, offer them occasional gifts, look after them when they are vulnerable, or extend a helping hand when they are in need.

90. *Id.*

91. *Sahih Al-Bukhari*, Hadith No. 654.

92. *Sahih Muslim*, Hadiths Nos. 75–78 (stating generally that he who believes in Allah and the Last Day should not harm his neighbor, but show hospitality to his guest and speak good or remain silent).

loveth not the arrogant, [or] the vainglorious . . .<sup>93</sup>

Being good to one's own neighbors is an act of high consideration as the neighborhood represents an essential component of society.<sup>94</sup> One is obligated to cause no harm physically, mentally, or spiritually to his neighbor. Allah's Apostle (PBUH), said:

He will not enter Paradise whose neighbor is not secure from his wrongful conduct.<sup>95</sup>

The rules related to the treatment of neighbors in Islam apply to all neighbors, without distinction between Muslims and non-Muslims.<sup>96</sup> In this regard, it has been narrated by Anas ibn Malik that the Prophet (PBUH) said:

No one amongst you believes (truly) until he likes for his brother or for his neighbor that which he loves for himself.<sup>97</sup>

In sum, Islam sets forth a framework for human society at large. Islam rewards its followers for respecting the rights of neighbors and severely punishes them for trespassing those rights.<sup>98</sup> A Muslim should love his non-Muslim brother as he loves himself in order to enjoy the benefits of Islam and the rewards of Allah.<sup>99</sup>

93. QUR'AN 4:36.

94. Shaikh Mohammed Saleh Alothaimeen, *The Right of Neighbor*, ALMENHAJ, <http://almenhaj.net/disp.php?linkid=9129> (last visited Oct. 6, 2012). The importance of good relationships and strong ties with one's neighbors is shown in *Sahih Muslim*, hadith no. 6358, which states, "If you make soup, increase the broth, and pass a bowl to your neighbor." *Id.*

95. *Sahih Muslim*, Hadith No. 74. "This Hadith reflects the importance of being good, kind, nice, and caring for your neighbors at large. Such an act enables man to assure himself of being on the right track for paradise[.] otherwise, one will be subjecting his soul to torture in Hellfire." Alothaimeen, *supra* note 94.

96. Islam classifies neighbors into three categories: (1) A relative Muslim neighbor, which category of neighbor has three rights over you: the right of kin, the right of neighbors, and the right of Islam; (2) a Muslim neighbor, who holds the right of neighbors and the right of Islam; and (3) a non-Muslim neighbor, who holds the right of neighbors. *Id.*

97. *Sahih Muslim*, Hadith No. 72; *Sahih Al-Bukhari*, Hadith No. 12.

98. Mentallyinmakkah, *Neighbors in Islam*, YOUTUBE (May 18, 2007), <http://www.youtube.com/watch?v=AAXa8mZUhsQ>; Rehanrehanrehan, *Neighbours in Islam*, YOUTUBE (Dec. 7, 2007), <http://www.youtube.com/watch?v=6zDjJs1nX2w>.

99. This aspiration does not mean abandoning our distinct personalities to

## ENABLING ENVIRONMENTS AND PARTICIPATORY APPROACHES

Islamic teachings produce an environment that is highly deferential to elders. The Prophet (PBUH) specified that the eldest in a group should lead the prayers if all in the group are equal in their knowledge and learning.<sup>100</sup> "Being older in such a case merits leading the prayers."<sup>101</sup> However, where all in the group are not equal in knowledge and learning, the person possessing the most knowledge should lead the prayer because knowledge is a higher honor than age.<sup>102</sup>

Arab elders are also to be served first, as it is a long-established custom that respect, obedience, and the best seats are given to the elderly or other dignitaries<sup>103</sup> ahead of anyone

befriend all others. It means merely that we must be fair, kind, and moderate with ourselves and our neighbors without discrimination in any matter.

100. Ahmed, *Social Manners with the Elderly*, HAQ ISLAM (Jun. 1, 2010), <http://www.haqislam.org/social-manners-with-the-elderly> (citing SHAYKH ABDUL-FATTAH ABU GHUDDAH, *ISLAMIC MANNERS* (2001)).

101. *Id.*

102. *Id.* In addition to the exception for a more knowledgeable person to lead the prayer, an exception exists for a host:

If the prayers were offered at a house, the host is entitled to lead it. Out of respect, he may request a person who is more knowledgeable, older or more prominent. If the guest declines, the host should not hesitate to lead the prayers. Imam Ahmad reported in his Musnad that Abdullah ibn Masoud visited Abu Musa Al-Ashari. When it was time to pray, Abu Musa asked Ibn Masoud, 'Please lead the prayers since you are older and have more knowledge.' Ibn Masoud said, 'No, you lead the prayer. This is your house and praying area. You should lead the prayer.' Abu Musa did lead the prayer then.

103. *Id.* "To emphasize the importance of these manners, Imam Al-Nawawi, in his book *Riyad Al-Salihin*, cited a large collection of Hadith and devoted a whole chapter to the subject of 'Respecting Scholars, the Elderly and the Dignitaries. Giving them Precedence and the Best Seat. Acknowledging their Preeminence.'" *Social Manners*, REGINA HUDA SCHOOL 25, <http://www.hudaschool.regina.sk.ca/Curriculum%20and%20staff/manners%2023-35.pdf> (last visited Dec. 16, 2012) (citations omitted). Furthermore:

In his book *Dalil Al-Falihin* (2:205), the eminent scholar Ibn 'Illan stated the following: "Respect of scholars entails honouring them even if they are not old. The 'elderly' are those who are old in age even if they are not scholars. The dignitaries are those known for generosity, good manners, courage and other noble traits. Precedence is to be given to them over others who do not enjoy such qualities. You must give them the best seat even if, out of modesty, they do not ask for it. The messenger of Allah PBUH used to sit at the nearest vacant seat. Acknowledging their

else.<sup>104</sup> After the elders are served, those to their right are served.<sup>105</sup>

Imam Aboū Dāwūd recited as a *Hadith* that Aboū-Mousa Al-Ash'ari stated that the Prophet (PBUH) said that:

Glorifying [paying homage to] Allah involves showing honor to a grey-haired Muslim [an elder] and to one who can expound the *Qur'an*,<sup>106</sup> but not to one who acts extravagantly regarding it, or turns away from it, and showing honor to a just ruler.<sup>107</sup>

Respecting elders “is so important that the Prophet made it a part of respecting and venerating Allah. To ignore it is a gross misbehaviour.”<sup>108</sup>

eminence means giving them due respect.”

The above expression implies that in a meeting they should be ranked according to the following: the scholars; the elderly; and others. This should be followed if the ruler is not present, otherwise, the ruler ought to be given precedence over anyone else, because it is the ruler's due right.

*Id.* at n.7.

104. *Id.* at 25; see also *id.* at 29–30:

I would like to quote in full the advice of Qais bin Asem AL-Tamimi, a great companion. On his death bed, Qais advised his children to make their elders/seniors their leaders from whom they will also receive valuable advice and wisdom all revolving around Islamic behaviour. Qais bin Asem Al-Minqeri Al-Tamimi was one of the leaders of Tamim. Famous for his eloquent speeches, the Prophet [PBUH] gave him the title “Master of the Desert Dwellers.” He was a wise and mild-mannered person. . . .

Al-Hasan Al-Basri who met him and studied at his hand said that when Qais bin Asem was dying, he called his thirty-three children, and advised them as follows: “Oh my sons, fear Allah and remember what I will say, for no one will give you more sincere advice. When I die, make your seniors your leaders. Do not make your juniors your leaders for if you promote your seniors you will maintain your father's memory. Do not make your juniors your leaders for if you do so people will not only disrespect your seniors, but will look down at you.”

105. *Id.* at 25.

106. This refers to a person who knows the *Qur'an* by heart and exercises its rules. The deserter of the *Qur'an* is a person who abandons reading and practicing its commands.

107. *Sunan Aboū Dāwūd*, Hadith No. 4825. See also Hadith No. 4190 (“Do not pluck out grey hair. If any believer grows a grey hair in Islam, he will have light on the Day of Resurrection. (This is Sufyan's version.) Yahya's version says: Allah will record on his behalf a good deed for it, and will blot out a sin for it.”).

108. *Social Manners*, *supra* note 103, at 27:

Imam *Al-Nawawi* concluded this (issue) by citing a Hadith as reported by Al-Bukhari and Muslim in which Samura bin [sic] Jundub [ ] said: “Though

## THE RIGHT TO WORK<sup>109</sup>

Islam appreciates the value of work for everybody, including the elderly. For example, the Prophet Muhammad (PBUH) is reported to have said: "Nobody has ever eaten a better meal than that which one has earned by working with one's own hands."<sup>110</sup> Moreover, Prophet Muhammad (PBUH) is also reported to have said: "One would rather cut and carry a bundle of wood on his back than ask somebody who may or may not [help] him."<sup>111</sup>

The Prophet (PBUH) gave a practical example of the importance and dignity of work when he told the following story, as recorded by Anas ibn Malik:

A man of the Ansar came to the Prophet (PBUH) and begged from him. He (the Prophet) asked, "Have you nothing in your house?" He replied, "Yes, a piece of cloth, a part of which we wear and a part of which we spread (on the ground), and a wooden bowl from which we drink water."

He said, "Bring them to me." He then brought these articles to him and he (the Prophet) took them in his hands and asked, "Who will buy these?" A man said, "I shall buy them for one dirham." He said twice or thrice, "Who will offer more than one dirham?" A man said, "I shall buy them for two dirhams."

He (the Prophet) gave these to him and took the two dirhams and, giving them to the Ansari, he said, "Buy food with one of them and hand it to your family, and buy an ax and bring it to me." He then brought it to him. The Apostle of God fixed a handle on it with his own hands and said, "Go, gather firewood and sell it,

I was a young child at the time of the Prophet, I used to listen to what he said and memorize it. Nothing prevents me from narrating my knowledge except the presence of men older than me.

One who disobeys, insults, or curses his or her parents commits a major sin (*Kabira*), and this person is considered a *Fasiq*. *Sahih Muslim*, Hadith No. 162 ("Abusing one's parents is one of the major sins.").

109. For information on labor laws in Islam, see Radwa S. Elsamani, *Corporate Social Responsibility In Islamic Law: Labor And Employment*, 2 YONSEI L.J. 64 (2011).

110. *Sahih Al-Bukhari*, Hadith No. 1948.

111. *Sahih Al-Bukhari*, Hadith No. 1950.

and do not let me see you for a fortnight.” The man went away and gathered firewood and sold it. When he had earned ten dirhams, he came to him and bought a garment with some of them and food with the others.

The Apostle of God then said, “This is better for you than that begging should come as a spot on your face on the Day of Judgment.”<sup>112</sup>

The most important teaching about labor in Islam is that employment relationships are based on brotherhood interactions.<sup>113</sup> This conclusion comes directly from the Prophet Muhammad (PBUH), who recited that:

Your employees are your brothers upon whom Allah has given you authority, so if one has his brother under his control, one should feed them with the like of what one eats and clothe them with the like of what one wears. You should not overburden them with what they cannot bear, and if you do so, help them in their jobs.<sup>114</sup>

This passage requires employers to establish reasonable working hours, and, beyond this, Islam highly supports an employee’s freedom of religion.<sup>115</sup> It requires, for example, that employers allow their employees to perform daily prayers.<sup>116</sup> The rules governing employees’ freedom of belief are to be applied equally to both Muslim and non-Muslim employees.<sup>117</sup> In support of this notion, the *Qur’an* reads: “To you be your way and to me mine.”<sup>118</sup>

Moreover, the *Sharie’a* has strict rules on prompt payment of fair wages.<sup>119</sup> ‘Abdullah ibn ‘Ummar narrated that the Prophet Muhammad (PBUH) said: “Give the worker his wages

112. *Sunan Abou Dāwūd*, Hadith No. 1637.

113. Adnan A. Zulfiqar, *Religious Sanctification of Labor Law: Islamic Labor Principles and Model Provisions*, 9 U. PA. J. LAB. & EMP. L. 421, 436 (2007) (discussing employees’ rights in Islam, the importance of having labor codes, and the development of a labor code from the sources of *Sharie’a*).

114. *Sahih Al-Bukhari*, Hadith No. 2383.

115. Elsaman, *supra* note 109, at 88.

116. *See id.*

117. *Id.*

118. *Id.* (quoting QUR’AN 109:6).

119. *Id.*

before his sweat dries up."<sup>120</sup> Additionally, the Prophet Muhammad (PBUH) reported God to have said:

I will be against three persons on the Day of Resurrection: one who makes a covenant in my name and then was treacherous, one who enslaved a free man and consumed the price, and a man who employs a laborer and gets the full work done by him but does not pay him his rightful wages.<sup>121</sup>

It is clear then, that failure to pay an employee's fair wages makes the employer an enemy to Allah.<sup>122</sup> A fair wage should be "at least at a level that would enable employees to fulfill all their and their families' essential needs in a humane manner."<sup>123</sup>

#### EMPOWERMENT OF WOMEN<sup>124</sup>

The *Qur'an* provides:

If any do deeds of righteousness,— be they male or female— and have faith, they will enter Heaven, and not the least injustice will be done to them.<sup>125</sup>

By the same token, the Prophet Muhammad (PBUH) implied that the only permissible criteria of preference in employment are the workmanship, qualifications, and credentials an employee possesses—and not gender:

Whoever delegates a position to someone whereas he sees someone else as more competent, verily he has cheated Allah and His Apostle and all Muslims.<sup>126</sup>

120. *Id.*

121. *Sahih Al-Bukhari*, Hadith No. 2092.

122. Elsaman, *supra* note 109, at 88.

123. *Id.* (quoting Zulfiqar, *supra* note 113, at 436).

124. For further discussion on women's labor in Islamic law, *see generally id.*

125. QUR'AN 4:124.

126. Rafik Beekun, *The Leadership Process of Muhammad [PBUH] from Hadith Sources*, THE ISLAMIC WORKPLACE, <http://makkah.wordpress.com/leadership-and-islam> (last visited Dec. 16, 2012). *See also* QUR'AN 4:1 ("O mankind! Fear your Guardian Lord, who created you from a single person."); QUR'AN 3:195 ("And their Lord hath accepted of them, and answered them: 'Never will I suffer to be lost the work of any of you, be he male or female: Ye are members, one of another . . . .'); QUR'AN 33:35 ("For Muslim men and women,— for believing men and women, for devout men and women, for true men and women, for men and women who are

*Sharie'a*, therefore, provides for the right to equal treatment between males and females in employment and in community involvement. Historically, women could not only be present in Muslims' meetings during the era of the Prophet Muhammad (PBUH), but they could also discuss matters openly with the Prophet, argue and debate with men, defend and preserve their interests, take part in politics, and even serve in the military.<sup>127</sup>

#### RIGHTS TO SOCIAL INSURANCE, SECURITY, AND SOLIDARITY

The Muslim community as a whole is designed to be a harmonious family held together by their religious values of solidarity, mutual assistance, and cooperation. In Islam, family rights and obligations are both private and societal affairs. In private, as discussed above, family members are assigned specific rights and obligations, which are enforced within the family. However, as you will see in the country analyses in Part III, legal authorities can step in to ensure the values of Islam are upheld when a family is unable or unwilling to abide by the religion's commands. All the family obligations towards the elderly, such as maintenance and succession, are, therefore, enforceable by the state where Islamic law is operative. Where an aged person has no relative—near or distant—to take care of him or her, the machinery of the community or the state must move to help.

Islamic institutions play an imperative role in this framework. For instance, the *Waqf* is a religious endowment in Islamic law, typically denoting a building or plot of land used for Islamic religious or charitable purposes.<sup>128</sup> The *Hanafi* school

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patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast, for men and women who guard their chastity, and for men and women who engage much in Allah's remembrance[,] for them has Allah prepared forgiveness and great reward.”)

127. WILLIAMS & ZINKIN, *supra* note 43, at section 2.8.

128. See generally Monica M. Gaudiosi, Comment, *The Influence of the Islamic Law of Waqf on the Development of the Trust In England: The Case of Merton College*, 136 U. PENN. L. REV. 1231 (1987).

of law defines *Waqf* as “the detention of the corpus from the ownership of any person and the gift of its income or usufruct either presently or in the future, to some charitable purpose.”<sup>129</sup> Although the *Qur'an* contains no verses specifically establishing *Waqf*, there are *Hadiths* that address the matter. For instance, Ibn ‘Ummar reported that,

‘Ummar ibn al-Khattab got land in Khyber, so he came to the Prophet Muhammad and asked him to advise him about it. The Prophet said, if you like, make the property inalienable, and give the profit from it to charity.<sup>130</sup>

Hence, *Waqf* is the permanent dedication of property for religious, pious, or charitable purposes.<sup>131</sup> The concept of *Waqf* encourages private contributions to the public good.

In the same context, *Zakāh* refers to “obligatory charity,” a sort of religious tax that is calculated “based upon a percentage of annual surplus wealth.”<sup>132</sup> *Zakāh* is paid at the end of the year by Muslims whose earnings exceed *nisab*, which is usually defined as the amount of money necessary to sustain one’s family for one year.<sup>133</sup> Although *Zakāh* is compulsory from a religious standpoint, it is voluntary from a legal standpoint, as it is not collected by state as a tax, but rather is paid directly by citizens to the charity of their choice.<sup>134</sup> For this reason, the observance of *Zakāh* distinguishes among Muslims the true believers, whose donations demonstrate their faith and devotion to God and His commands. *Zakāh* does not necessarily have to be paid in money; it can be paid by donations of food, clothing, or other goods. Thus, *Zakāh* occupies an imperative position in

129. *Id.* at 1233–34.

130. *Sahih Muslim*, Hadith No. 4006; *Sahih Al-Bukhari*, Hadith No. 2557.

131. For further discussion about the *Waqf* System and its various forms in Islamic Law, see RAMADAN ‘ALI AL-SHORONBASY, *AHKAM AL-WASYIA WA AL-WAQF FI AL-SHARIE’A AL-ISLAMIA* [THE GENERAL PRINCIPLES OF THE WILLS AND TRUSTS IN ISLAMIC SHARIE’A] (2005) (available in Arabic).

132. *Glossary of Islamic Legal Terms*, 1 J. ISLAMIC L. 89, 103 (1996).

133. VIRGINIA B. MORRIS & BRIAN D. INGRAM, *GUIDE TO UNDERSTANDING ISLAMIC INVESTING* 12 (2001). In 2001, *nisab* was only about \$740.00 USD. *Id.*

134. *See id.*

the Islamic social and economic justice system.<sup>135</sup> It is important to understand that giving *Zakāh*, like caring for one's parents, is neither a favor nor a gift, but an obligatory duty.

### PART III: ELDER RIGHTS IN THE MODERN ARAB MIDDLE EAST

A common feature of care plans and systems providing protection to older people in most Arab Middle East countries is that older people in these countries are considered to be a source of spiritual blessings and wisdom.<sup>136</sup> As a result, it is considered shameful to send an elderly parent to a nursing home because it would violate the general social and religious feelings of commitment towards them.<sup>137</sup> In other words, the governments of Arab countries rely heavily on families and the private sector to take care of the elderly.<sup>138</sup> This reliance may explain the lack of laws and regulations on elder rights in the Arab Middle East that will be discussed below.

### INTERNATIONAL AGREEMENTS TO ENHANCE SHARIE'A LAWS ON HUMAN RIGHTS, INCLUDING ELDER RIGHTS<sup>139</sup>

Muslim countries have taken important collective measures concerning elder rights by issuing the Universal Islamic Declaration of Human Rights (1981) ("UIDHR"),<sup>140</sup> the Cairo Declaration of Human Rights in Islam (1993) ("CDHR"),<sup>141</sup> and

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135. See generally Grace Clark, *Pakistan's Zakat System: A Policy Model for Developing Countries as a Means of Redistributing Income to the Elderly Poor*, in 20 ISSUES IN GLOBAL AGING 47-75 (Frederick L. Ahearn ed., 2001) (describing the *Zakāh* system's various goals of providing economic rehabilitation for the employable, eliminating beggary and poverty, and redistributing wealth in society).

136. Abdulrazak Abyad, *Health Care Services for the Elderly in the Middle East*, 2 MIDDLE E. J. BUS. (July 2006), available at [http://www.mejb.com/upgrade\\_flash/Vol2\\_Issue2/2\\_2\\_Healthcare.htm](http://www.mejb.com/upgrade_flash/Vol2_Issue2/2_2_Healthcare.htm).

137. *Id.*

138. *Id.*

139. This part is adapted from the author's article, Elsaman, *supra* note 109.

140. Universal Islamic Declaration of Human Rights, 21 Dhul Qaidah 1401, Sept. 19, 1981, available at [http://www1.umn.edu/humanrts/instreet/islamic\\_declaration\\_HR.html](http://www1.umn.edu/humanrts/instreet/islamic_declaration_HR.html) [hereinafter UIDHR].

141. Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, available at

the Arab Charter on Human Rights (2004) ("Charter").<sup>142</sup>

Fifty Muslim states worked on the UIDHR under the supervision of the Islamic Council in London and declared it at the UNESCO [United Nations Educational, Scientific and Cultural Organization] Headquarters on 19 September 1981. The UIDHR is based on the *Qur'an*, the *Sunna*, and any laws deduced from them. Generally speaking, the UIDHR provides for different human rights such as the right to life, the right to freedom, the right to equality [and] prohibition against impermissible discrimination, the right to justice, . . . the right and obligation to participate in the conduct and management of public affairs, . . . the right to education, [and others].<sup>143</sup>

The UIDHR also specifies that everyone shall be materially supported and elderly people in particular shall be provided necessary care.<sup>144</sup> Further, it provides that mothers are entitled to special respect, care, and assistance from their families and communities.<sup>145</sup>

The CDHR, however, has been criticized as a repetitive combination of elements from international and Islamic formulations, and it was confused to a certain extent with the International Bill of Human Rights ("IBHR").<sup>146</sup> The CDHR does not have specific rules for elder rights but rather has general rules that apply to everybody, including the elderly. Primary among these rights is that of equality between men and women and the prohibition of discrimination. Additionally, every

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<http://www1.umn.edu/humanrts/instate/cairodeclaration.html>. [hereinafter CDHR].

142. Council of the League of Arab States, Arab Charter on Human Rights, May 23, 2004, available at <http://www1.umn.edu/humanrts/instate/arabcharter2.html> [hereinafter "Charter"]; Mervat Rishmawi, *The Revised Arab Charter on Human Rights: A Step Forward?*, 5 HUM. RTS. L. REV. 361, 361 (2005).

143. Elsaman, *supra* note 109, at 90 (citing SALMA K. JAYYUSI, HUMAN RIGHTS IN ARAB THOUGHT 259 (2009)); UIDHR, *supra* note 140, arts. I–XXIII.

144. UIDHR, *supra* note 140, at art. XIX(f).

145. *Id.* at art. XIX(g).

146. Elsaman, *supra* note 109, at 91 (citing Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?* 15 MICH. J. INT'L L. 307, 329 (1994)).

person has a right to be free from harm, to a healthy environment, to marry, to knowledge and education, to freedom of religion and freedom of expression, to own property, to privacy, to equality before the law, to fair criminal procedures and impartial trials, and to participate in public life.<sup>147</sup>

The Charter was adopted by the Arab League in 1994 and revised in 2004.<sup>148</sup> Comprised of a Preamble and 53 Articles, the Charter is consistent with international human rights standards and current human rights jurisprudence.<sup>149</sup> The Charter adopted rights aligned with those in the Human Rights Committee's General Comment on Article 4 of the International Covenant on Civil and Political Rights (1966) regarding states of emergency.<sup>150</sup> The Charter's preamble states its intent to implement the "eternal principles" imparted by *Sharie'a* and other "divine religions."<sup>151</sup>

Unlike the CDHR and the UIDHR, the Charter provides an enforcement mechanism to ensure that member states respect the rights and obligations provided in its articles. The Charter establishes a Committee of seven members, which will examine periodic reports filed by the member states and recommend actions to be taken to improve their compliance.<sup>152</sup> In addition to the general rules on different aspects of human rights, such as equality<sup>153</sup> and the right to work<sup>154</sup>, to health,<sup>155</sup> to education<sup>156</sup> and others, the Charter provides that each member country shall "ensure the necessary protection and care for mothers, children, older persons and persons with special needs."<sup>157</sup>

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147. See generally CDHR, *supra* note 141.

148. Rishmawi, *supra* note 142, at 361.

149. Elsaman, *supra* note 109, at 91 (citing Rishwami, *supra* note 142, at 364–65).

150. *Id.* at 91–92.

151. Charter, *supra* note 142.

152. *Id.* at arts. 45–48; Elsaman, *supra* note 109, at 92.

153. Charter, *supra* note 142, at Preamble.

154. *Id.* at art. 34.

155. *Id.* at arts. 38–39.

156. *Id.* at art. 41.

157. *Id.* at art. 33(b).

Unfortunately, the rules of these international agreements that concern protection of the elderly are few, general, and not comprehensive. The fact that the agreements refer to *Sharie'a* as the main source of their rules does not guarantee the protection of the elderly that is so strongly advocated by the *Sharie'a*. One reason for this discrepancy is that a huge gap exists between the theoretical principles of *Sharie'a* and their legal implementation in each individual member country. One can look to a nation's laws relating to the elderly to determine its social awareness of elder needs. As seen in the next section, the number and subject of laws concerning elder rights vary among Arab countries.

#### RIGHTS OF THE ELDERLY IN THE ARAB-MIDDLE EAST – POSITIVE LAWS

##### ALGERIA

Generally speaking, the Algerian Constitution provides for equality among citizens;<sup>158</sup> equal rights to participation in political, social, economic, and cultural life;<sup>159</sup> equal rights to employment;<sup>160</sup> and equal rights to health care.<sup>161</sup> Moreover, its constitution requires the Algerian government to provide suitable living requirements for anyone who is unable to work for any reason.<sup>162</sup>

Additionally, the Constitution offers a very specific rule concerning the elderly—a provision punishing children who do not help or promote their parents.<sup>163</sup> In addition, the Algerian Family Code requires married people to respect their in-laws, to take care of them, to visit and to host them, and to treat them properly.<sup>164</sup> The Code also gives grandparents the right to

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158. PEOPLE'S DEM. REPUB. ALGERIA CONST., Nov. 28, 1996, art. 29.

159. *Id.* at arts. 31, 50–51.

160. *Id.* at arts. 55–56.

161. *Id.* at art. 54.

162. *Id.* at art. 59.

163. *Id.* at art. 65.

164. CODE DE LA FAMILLE, Jun. 9, 1984, art. 36.

choose a guardian for their minor grandchildren in the event of their parents' death or incapacity.<sup>165</sup> The Code also guarantees grandparents' rights of inheritance according to specific percentages and rules dictated by *Sharie'a*.<sup>166</sup> Furthermore, the Algerian government has drafted a new law punishing the mistreatment of older people by youth in general, and children in particular, and discouraging placing the elderly in nursing homes.<sup>167</sup>

### BAHRAIN

The Bahraini Constitution provides for equality between men and women in the political, social, and economic spheres in accordance with Islam, and it guarantees social security for its elderly citizens, by providing them with social insurance and healthcare services.<sup>168</sup> In addition to the rules of the current Constitution, Bahrain has social insurance laws that provide for older people.<sup>169</sup> Finally, the Bahraini *Shura* (legislative) Council, recently discussed a bill on the protection of elder rights and the establishment of a national committee that would focus on elder issues.<sup>170</sup>

### EGYPT

The recently implemented temporary Egyptian

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165. *Id.* at art. 92.

166. *Id.* at art. 158.

167. Basma Karasha, *A Law for Protecting the Algerian Elderly Against Abuse by Children*, DAR AL HAYAT (Oct. 21, 2010), <http://international.daralhayat.com/internationalarticle/194024>.

168. CONST. KINGDOM BAHRAIN, Feb. 14, 2002, arts. 1, 2, and 4.

169. SOCIAL INSURANCE LAW; LAW ORGANIZING THE SOCIAL INSURANCE AGENCY; LAW OF SOCIAL INSURANCE FOR BAHRAINI EMPLOYEES WORKING OUTSIDE BAHRAIN; LAW REGULATING PENSION CONTRIBUTIONS OF OFFICERS AND SERVICEMEN IN THE BAHRAIN DEFENSE FORCE AND PUBLIC SECURITY; LAW ESTABLISHING PENSIONS AND RETIREMENT ALLOWANCE FOR SHURA COUNCIL MEMBERS. All Bahraini laws are available at <http://www.gcc-legal.com/mojportalpublic/CountryHome.aspx?country=6>.

170. *Discussion of A Law Protecting Rights of the Elderly*, AL-WASAT NEWS (Feb. 2, 2009) <http://www.alwasatnews.com/2341/news/read/35675/1.html>.

Constitutional Declaration kept the rules of the abrogated Egyptian Constitution regarding equality between men and women, equal opportunity for all Egyptians, and the provision of cultural, social, and health services.<sup>171</sup>

Egypt also has a Social Insurance Law regulating social insurance for the aging and providing for retirement pensions.<sup>172</sup> Additionally, the Egyptian Labor Law<sup>173</sup> sets the retirement age at sixty and regulates the employment relationship between employers and employees who reach sixty years old while working.<sup>174</sup> Finally, the Egyptian Inheritance Law regulates elders' inheritance rights according to *Sharie'a*.<sup>175</sup>

Recently, civil society organizations have started to promote programs for taking care of the elderly. The vast majority of elder Egyptians are taken care of by their families, but an increasing number residing in large cities are provided with in-home care by non-family members or are placed in nursing homes.<sup>176</sup> Some universities have established centers to take care of the elderly through the assistance of volunteer students and alumni.<sup>177</sup>

## IRAQ

Unstable political conditions have been blamed for perceived elder rights abuse in Iraq.<sup>178</sup> However, the Iraqi

171. Mohamed A. 'Arafa, *Towards a Culture for Accountability: A New Dawn for Egypt*, 5 PHOENIX L. REV. 1, 20–21 (2011) (discussing the January 25, 2011 Egyptian Revolution and a proposal for political, social, and cultural transformation in Egypt). The Egyptian Constitution was abrogated after the January 25<sup>th</sup> Revolution and replaced, on a temporary basis, by the Constitutional Declaration. *Id.*

172. Law No. 79 of 1975 (Social Insurance Law), *Al-Jarida Al-Rasmiyya*, 28 Aug. 1975.

173. Law No. 12 of 2003 (Labour Law), *Al-Jarida Al-Rasmiyya*, 7 Apr. 2003.

174. *Id.* at art. 125.

175. Law No. 77 of 1943 (Inheritance Law), *Al-Jarida Al-Rasmiyya*.

176. See Thomas T. Boggatz et al., *Attitudes of Older Egyptians Towards Nursing Care at Home: A Qualitative Study*, 24 J. CROSS CULT. GERONTOL. 33 (2009).

177. See, e.g., CAIRO UNIVERSITY'S CENTER FOR THE CARE OF THE ELDERLY, <http://enia.cu.edu.eg/> (last visited Nov. 3, 2012).

178. See Zahir Al-Zubaidi, *On The Memorial Day of The Elderly, Where are the Iraqi Elderly?* AL-IRAQ NEWS (Oct. 9, 2010), <http://www.aliraqnews.com> (in Archives,

Constitution provides for equality among people, prohibits discrimination based on gender or race, and requires the government to guarantee the social and health security of elderly Iraqis.<sup>179</sup> There are no specific laws in Iraq dealing with rights of the elderly except those regulating retirement issues.<sup>180</sup>

### JORDAN

Generally speaking, the Jordanian elderly enjoy a good moral and psychological position derived from social and cultural factors.<sup>181</sup> The Jordanian Constitution, for instance, provides for the equality of all citizens, prohibits discrimination on grounds of race, language, and religion, and requires the Government to ensure work and equal opportunities to all Jordanians.<sup>182</sup>

In addition, Jordan has a large set of specialized laws that deal with specific issues on the rights of the elderly, including retirement and social insurance laws.<sup>183</sup> Jordan also has laws protecting the elderly against violence committed by family members;<sup>184</sup> laws establishing an agency to provide financial aid for families in need;<sup>185</sup> laws directing the Ministry of Health to supervise health services provided to older persons;<sup>186</sup> laws providing social insurance for the elderly;<sup>187</sup> labor laws regulating the termination of employment contracts when

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search "Zubaidi").

179. CONST. REPUB. IRAQ of 2005, preamble and arts. 29–30.

180. *See, e.g.*, Law No. 3 of 2010 (on retirement rights of military members); Law No. 61 of 2007 (council members); and Law No. 14 of 2005 (national council members).

181. *See International Day of Older Persons*, MINISTRY OF SOCIAL DEVELOPMENT, [http://www.mosd.gov.jo/index.php?option=com\\_content&task=view&id=728&Itemid=198](http://www.mosd.gov.jo/index.php?option=com_content&task=view&id=728&Itemid=198) (last visited Nov. 3, 2012).

182. CONST. HASHEMITE KINGDOM JORDAN, 1952, art. 6.

183. *E.g.*, Law No. 33 of 1959 (Military Retirement Act), and Law No. 34 of 1959 (Civil Service Retirement Act).

184. Law No. 6 of 2008 (Law on Protection from Domestic Violence).

185. Law No. 36 of 1986 (National Aid Fund Act), art. 7(A).

186. Law No. 47 of 2008 (Public Health Law), art. 4(G).

187. Law No. 7 of 2010 (Social Security Act of 2010).

employees reach the age of retirement;<sup>188</sup> and laws establishing the National Council for Family Affairs.<sup>189</sup>

### LEBANON

Lebanese laws tend to relate only tangentially to elders, with few regulations that pay attention to elder rights specifically. For example, the Lebanese Constitution establishes the equality of all Lebanese nationals before the law,<sup>190</sup> and the Ministry of Social Affairs administers programs that promote family welfare more generally.<sup>191</sup>

### LIBYA

Few laws and regulations touch on the rights of the elderly in Libya. Among them are the Labor Law,<sup>192</sup> which regulates the end of service remunerations for the elderly, and the Law of Social Security, which is "comprehensive in the area of social security, providing protection in the event of old-age, disability, sickness, work injury or occupational disease, loss of breadwinner, and general welfare assistance or assistance in the event of calamities, disasters, and death."<sup>193</sup>

### MOROCCO

The Moroccan government is preparing a new strategy to take care of the elderly from health and social perspectives.<sup>194</sup>

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188. Law No. 8 of 1996 (Labor Act of 1996); *see also* Law No. 26 of 1977 (Law of Economic and Social Organization for Retirees and Veterans of 1977).

189. Law No. 27 of 2001 (Act of the National Council for Family Affairs) (delegating responsibility to oversee and create policies to care for families).

190. CONST. REPUB. LEBANON, May 23, 1926, art. 7.

191. *See generally, About Us*, MINISTRY OF LABOR, [http://www.labor.gov.lb/\\_layouts/MOL\\_Application/AboutUs](http://www.labor.gov.lb/_layouts/MOL_Application/AboutUs) (last visited Dec. 16, 2012).

192. Law No. 58 of 1970 (Labor Code), May 1, 1970.

193. Law No. 13 of 1980, 8 Jun. 1980. *See also Health and Welfare*, COUNTRY STUDIES, <http://countrystudies.us/libya/55.htm> (last visited Nov. 23, 2012).

194. *See Sara Touahri, Morocco Gives Priority to Helping the Elderly*, HESPRESS (Oct. 13, 2009), <http://www.hespress.com/?browser=view&EgyxpID=15901>.

The Moroccan Constitution provides for equality among all Moroccan citizens before the law.<sup>195</sup> It also provides for equality among men and women in political rights<sup>196</sup> and in education and employment opportunities.<sup>197</sup> Furthermore, the Moroccan Family Code addresses elder issues, for example, through provisions that grant maternal grandmothers the right to take care of their grandchildren if the parents are unable to do so.<sup>198</sup> The family law also regulates the inheritance rights of the elderly according to *Sharie'a*.<sup>199</sup> The Moroccan Labor Code also contains some provisions related to the elderly, such as the prohibition on discrimination at work and the requirement of equality in wages.<sup>200</sup> Additionally, Morocco has social insurance laws that benefit the elderly.<sup>201</sup>

## OMAN

As with many countries, the Omani Constitution provides for equality among Omanis.<sup>202</sup> The Omani Constitution also specifically requires the government to provide assistance to and supply the needs of the elderly.<sup>203</sup> In furtherance of this idea, another Omani law requires the government to provide any person of limited income with free housing, including elderly of limited income.<sup>204</sup> Finally, Oman has several laws dealing with

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195. CONST. KINGDOM MOROCCO, Sept. 13, 1996, art. 5.

196. *Id.* at art. 8.

197. *Id.* at art. 13.

198. FAMILY CODE, Book III, art. 171.

199. *See id.* at Book VI (Inheritance).

200. LABOR CODE, art. 9.

201. *See, e.g.*, Decree No. 2-05-181, Jul. 20, 2005 (regarding premiums paid by employers to national social security fund for retirement of insured).

202. ROYAL DECREE NO. 101/96 [OMAN CONST.], Nov. 6, 1996, art. 12 ("Justice, equality and equality of opportunity between Omanis are the pillars of society, guaranteed by the State.").

203. *Id.* ("The State guarantees assistance for the citizen and his family in cases of emergency, sickness, incapacity and old age in accordance with the social security system."). *See also* Social Insurance Law No. 72 of 91 (establishing the Public Authority for Social Insurance, which regulates social insurance and pension issues).

204. Law No. 37 of 2010 (Social Housing).

pensions granted to specific categories of employees such as military members, police officers, governmental employees, and *Sultani* (presidential) security personnel.<sup>205</sup>

### KUWAIT

According to the Kuwaiti Constitution, the government is responsible to provide aid for the elderly against sickness or inability to work.<sup>206</sup> Kuwait also protects the right of inheritance of the elderly.<sup>207</sup> In the same domain, Kuwaiti laws provide for social insurance against aging and regulate pension issues and retirement compensation.<sup>208</sup> Kuwait is considered to be one of the most developed countries in promoting elder rights, in part because it has a health program whereby the elderly are provided free in-home health services.<sup>209</sup> Kuwait is also one of few Arab countries to have a specialized law regarding the social care of the elderly.<sup>210</sup> The attention given to the elderly by both the government and the community is linked to the rules and requirements of Islam, the official religion of the country.<sup>211</sup>

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205. See e.g. Law No. 49 of 1998 (*Sultani* security pensions and after service compensation); Law No. 2 of 2000 (police officer pensions and after service compensation), as amended by Law No. 4 of 2002; Law No. 3 of 2002 (ministry of defense employee pensions and after service compensation) as amended by Laws Nos. 100 of 2004 and 44 of 2006; Law No. 26 of 1986 (Omani government employee pensions and after service compensation) as amended by more than 10 laws; Law No. 86 of 1996 (sultan employee pensions and after service compensation).

206. KUWAIT CONST., Nov. 11, 1962, art. 11.

207. Personal Affairs Law No. 51 of 1984. Kuwaiti laws are available in Arabic at LEGAL INFORMATION NETWORK OF THE GULF COOPERATION COUNCIL, KUWAIT LAWS AND REGULATIONS, <http://www.gcc-legal.org/mojportalpublic/home.aspx> (last visited Nov. 25, 2012) [hereinafter, GULF COOPERATION COUNCIL].

208. PUB. INST. FOR SOC. SECURITY, SOCIAL SECURITY GUIDE IN KUWAIT 3 (2009), available at [http://www.pifss.gov.kw/upload/pifss\\_E\\_guide\\_eng\\_212.pdf](http://www.pifss.gov.kw/upload/pifss_E_guide_eng_212.pdf) (last visited Nov. 25, 2012).

209. *Afasy: Kuwait is One of the World's Developed Countries in Protecting The Elderly*, ALRAI JOURNAL (Oct. 3, 2010), <http://www.alraimedia.com/alrai/Article.aspx?id=229596&date=03102010>.

210. E.g., *id.* (citing Law No. 11 of 2007, which establishes the National Committee for the Elderly).

211. *Id.*

*THE PALESTINIAN TERRITORIES*

Palestine has enacted the Law of Public Retirement, which established the Retirement Agency to monitor issues of the elderly.<sup>212</sup> Palestine also has social insurance and labor laws dealing with specific groups, such as retired military personnel.<sup>213</sup>

A recent study showed that the elderly (aged sixty and older) represented 4.4% of the population in the Palestinian Territories in mid-2009.<sup>214</sup> The study found that today's elderly apparently lacked education opportunities, as 66.8% received no formal education during their lifetime.<sup>215</sup> Of the illiterate population (defined as those aged fifteen and older), 49.4% are elderly.<sup>216</sup> Just over a quarter of the elderly (26.3%) are disabled, and about half (49.8%) are living under the poverty line.<sup>217</sup>

Furthermore, the study found that the majority of Palestinian elderly in social care institutions do not have any source of income (68.4% of residents), and do not receive any pension (72.1%).<sup>218</sup> These groups depend on relatives to meet their material needs. However, many residents reported that they experienced family problems, which caused feelings of loneliness (44.9%), depression (19.1%), anxiety (13.2%), and lost sense of safety (12.5%).<sup>219</sup> Finally, residents reported that they experienced spiritual difficulties due to the institution's failure

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212. Law of Public Retirement No. 7 of 2005, Jun. 27, 2005, Pt. II, Ch. 1, art. 3.

213. See, e.g., Insurance and Pension Law of the Palestinian Security Forces, Law No. 16 of 2004, Feb. 28, 2005.

214. *Elderly People in the Palestinian Territory*, MIDDLE EAST MONITOR (Oct. 6, 2009), <http://www.middleeastmonitor.com/resources/reports-and-publications/81-elderly-people-in-the-palestinian-territory>.

215. *Id.*

216. *Id.*

217. *Id.*

218. Amin Abu Warda, *Palestine: Most Elderly in Social Care Institutions Have No Sources of Income*, AMAN JORDAN (Apr. 18, 2008), <http://www.amanjordan.org/a-news/wmview.php?ArtID=20810>.

219. *Id.*

to provide a place to exercise religious rites.<sup>220</sup>

The research indicated that those responsible for care of the elderly at these institutions were also facing problems. Their professional performance was most affected by the Israeli occupation and the accompanying continuous invasions of Palestinian cities.<sup>221</sup>

## QATAR

The Qatari Constitution establishes equality among all people and requires the government to secure equal opportunities to all citizens.<sup>222</sup> The Constitution further provides that the government shall organize means of protecting the elderly,<sup>223</sup> and that elderly inheritance rights are governed in accordance with *Sharie'a*.<sup>224</sup> Despite the Constitution's call for equality of opportunity, Qatar's labor law prohibits women from working in specific types of jobs.<sup>225</sup>

Qatar has laws regulating retirement, pensions,<sup>226</sup> and social insurance.<sup>227</sup> It also has a family code regulating the elderly's rights of inheritance,<sup>228</sup> and a law of trusteeship appointing grandparents as trustees for their minor grandchildren if necessary.<sup>229</sup>

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220. *Id.*

221. *Id.*

222. PERM. CONST. ST. QATAR, Apr. 29, 2003, arts. 1, 34, and 35.

223. *Id.* at art. 21 ("The family is the basis of the society. A Qatari family is founded on religion, ethics, and patriotism. The law shall regulate adequate means to protect the family, support its structure, strengthen its ties, and protect maternity, childhood, and old age.").

224. *Id.* at art. 51 ("The right of inheritance shall be maintained and governed by Shari'a law.").

225. Labour Law No. 14 of 2004, art. 94, *available at* GULF COOPERATION COUNCIL, *supra* note 207.

226. Law on Retirement and Pensions, Law No. 24 of 2002.

227. Social Security Act, Law No. 38 of 1995.

228. *See generally*, Family Law, Law No. 22 of 2006, Book V.

229. State Law on the Funds of Minors, Law No. 40 of 2004, art. 4.

*SAUDI ARABIA*

Saudi Arabia is a conservative Islamic country and its Constitution adopts the *Qu'ran* as its main component.<sup>230</sup> Elder care is based on the social solidarity derived from Islam, and those who have aged family members must provide for them according to the rules and norms of Islam.<sup>231</sup> The Ministry of Social Affairs has developed two programs for the care of the elderly who have no family members to take care of them.<sup>232</sup> The first is a program of in-home care, and the second is a system of ten nursing homes in Saudi Arabia.<sup>233</sup> It is notable that 90% of the nursing home residents have no natural children.<sup>234</sup>

Outside of these programs, nearly every legal directive related to the elderly is contained within the Saudi constitution. The constitution provides the basis for the state's obligation to strengthen family ties and to take care of all members of a family.<sup>235</sup> It also places an obligation on the state to guarantee the rights of citizens and their families in cases of illness, disability, and old age, and to support the system of social security.<sup>236</sup> Moreover, it obliges the government to provide job opportunities for everyone capable of working.<sup>237</sup> Lastly, it establishes a governmental duty to manage health issues and provide health care for each citizen.<sup>238</sup>

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230. CONST. KINGDOM SAUDI ARABIA, Mar. 1992, art. 1.

231. For more information on attitudes toward the elderly, and their role in Saudi society, see Elaine S. Kuntz, Note, *Social Security Systems Around the World: Do Cultural Priorities Affect Their Development?*, 18 *ELDER L. J.* 99, 116 (2010).

232. *Care for the Elderly*, MINISTRY SOC. AFF., <http://mosa.gov.sa/portal/modules/smartsection/item.php?itemid=10> (last visited Nov. 28, 2012).

233. *Id.*

234. *Id.*

235. CONST., *supra* note 230, at art.10.

236. *Id.* at art. 27 (Welfare Rights).

237. *Id.* at art. 28.

238. *Id.* at art. 31.

## SUDAN

The Sudanese interim constitution requires the government to “develop policies and strategies to ensure social justice among all people” and to ensure for all citizens “means of livelihood and opportunities of employment.”<sup>239</sup> The constitution also provides that, “[n]o qualified person shall be denied access to a profession or employment on the basis of disability; persons with special needs and the elderly shall have the right to participate in social, vocational, creative or recreational activities.”<sup>240</sup>

Sudan has a variety of laws that regulate elderly social insurance and pension issues.<sup>241</sup> The Sudanese Labor Code of 1997 has provisions that may alter an employment relationship when employees reach age sixty;<sup>242</sup> this is similar to the Egyptian labor law referenced above. Also consistent with other Arab countries, Sudan’s 1991 Law of Personal Status of Muslims directs that the inheritance rights of the elderly be in accordance with *Sharie’a* law.<sup>243</sup>

## SYRIA

The Syrian Constitution provides that citizens are equal before the law in their rights and duties, and that the government will provide equal job opportunities.<sup>244</sup> Furthermore, the constitution requires the state to insure every

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239. INTERIM CONST. REPUB. SUDAN, 2005, art. 12(1) (Social Justice).

240. *Id.* at art. 12(2).

241. *Social Security Programs Throughout the World: Africa, 2011: Sudan*, U.S. SOC. SEC. ADMIN., <http://www.ssa.gov/policy/docs/progdesc/ssptw/2010-2011/africa/sudan.html> (last visited Nov. 29, 2012).

242. LABOR CODE OF 1997, *e.g.*, art 50(1)(d).

243. *E.g.*, *Sudan: Personal Status Laws*, CHRISTIAN-MUSLIM ENCOUNTER, [http://awlaadibnhagar.org/sudan\\_Marriage\\_law.html](http://awlaadibnhagar.org/sudan_Marriage_law.html) (last visited Nov. 30, 2012).

244. CONST. SYRIAN ARAB REPUB., Feb. 26, 2012, art. 33(3) (“Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed.”); art. 33(4) (“The state shall guarantee the principle of equal opportunities among citizens.”). *See also* art. 40 (“Work shall be a right and a duty for every citizen.”).

citizen and his family against “emergency, sickness, disability, orphan-hood and old age,” and to provide for citizens’ healthcare.<sup>245</sup>

In 2009, Syria designated the city of Hama as elderly-friendly.<sup>246</sup> Hama was the 34<sup>th</sup> city in the world—but the first Arab city—to earn this classification.<sup>247</sup> To become “elderly-friendly,” Hama instituted various health, social, and cultural services specifically for the elderly.<sup>248</sup> These services are not provided by the government, but by community members, including doctors, economists, merchants, and others, who cooperate to care for the elderly in their community. Although this is primarily a private and not governmental initiative, the Ministry of Health did contribute to the distribution of a hundred posters and placards to be placed around the city reminding its citizens to care for and respect the elderly.<sup>249</sup>

## TUNISIA

Tunisia has a multitude of laws and decrees regulating retirement issues for different categories of employees.<sup>250</sup> Additionally, Tunisia has laws that concern the organization of

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245. *Id.* at art. 22.

246. *In Preparation for Its Launch as an Elder Friendly City, Hama Reviews the Procedures and Arrangements*, GLOBAL ACTION ON AGING (Oct. 12, 2009), <http://www.globalaging.org/elderrights/world/2009/eldercity.htm>.

247. *Id.*

248. *Id.*

249. *Id.*

250. *E.g.*, Law No. 61 of 1961 (regarding participation of Heads of Diplomatic Missions in the National Pension Fund); Law No. 31 of 1963 (regarding changes to the retirement system for some employees); Law No. 50 of 1966 (regarding Tunisian radio and television contractors); Law No. 31 of 1983 (regarding governmental officials); Law No. 42 of 1983 (regarding members of National Folklore); Law No. 7 of 1987 (regarding early retirement option); Law No. 16 of 1988 (regarding the retirement system administration); Law No. 71 of 1994 (amending rates of contributions to the pension systems in the public sector); Law No. 105 of 1995 (creating a unified system re retirement, disability and survivorship); Law No. 50 of 1964 (regarding members of the military). All Tunisian laws may be found at TUNISIAN HOUSE OF REPRESENTATIVES, [http://www.anc.tn/site/loi/AR/index2.jsp?C\\_t=12](http://www.anc.tn/site/loi/AR/index2.jsp?C_t=12) (last visited Dec. 1, 2012) (search by law number and year).

the national social security systems.<sup>251</sup> Tunisian laws further regulate the provision by social welfare centers of services including housing and basic medical and psychological care for the elderly and other needy persons.<sup>252</sup> Tunisia is one of the few Arab countries to have a specialized law concerning protection of the elderly from abuse.<sup>253</sup>

#### YEMEN

The Yemeni constitution provides that its economic system is based on "Islamic social justice in economic relations which aims at . . . providing equal opportunities and promoting higher living standards in society."<sup>254</sup> In the same framework, it places on the state a duty to guarantee equal opportunities for all citizens in political, economic, social, and cultural activities.<sup>255</sup> The constitution concentrates on the principles of social solidarity and family as the basis of society, the importance of granting equal job opportunities, and the concept of "brother-sister" linkages among people.<sup>256</sup>

The Yemeni Labor Code has some specific provisions on elder rights. For instance, Article 5 states in pertinent part that:

Work is a natural right of every citizen and a duty for everyone who is capable of working, on the basis of equal conditions, opportunities, guarantees and rights without discrimination on grounds of sex, age, race, color, beliefs or language.<sup>257</sup>

It is quite notable that this clause prohibits employment

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251. Law No. 30 of 1960.

252. Law No. 74 of 2001.

253. Law No. 114 of 1994.

254. CONST. REPUB. YEMEN, Sept. 29, 1994, art. 7(a). *See also* arts. 29 ("Work is a right, an honour, and a necessity for society's progress. Every citizen has the right to choose the appropriate work for himself within the law."), and 32 ("Education, health and social services are the basic pillars for building and developing the society. Society shall with the state take part in providing them.").

255. *Id.* at art. 24.

256. *Id.* at arts. 25, 26, 29, and 31.

257. LABOR CODE, Act No. 5 of 1995, art. 5 (emphasis added).

discrimination specifically on the basis of age; this is not commonly found in the anti-discrimination clauses of labor codes in Middle Eastern nations.

Other Yemeni laws related to the elderly concern social security for the private sector,<sup>258</sup> as well as social insurance and pensions in the public sector.<sup>259</sup> Finally, the family code has the traditional provisions relating to the elderly concerning inheritance and guardianship rights under *Sharie'a*.<sup>260</sup>

### *THE UNITED ARAB EMIRATES*

The constitution of the United Arab Emirates (UAE) provides for equality, social justice, security, and equality of opportunities on an equal basis for all citizens.<sup>261</sup> It also provides that both the government and society are responsible for the protection of families.<sup>262</sup> The constitution states that “society” is responsible for protecting children, mothers, and the elderly, but directs that these matters “shall be regulated by welfare and social security legislation.”<sup>263</sup>

The care of the elderly in the UAE is based on religious values, cultural heritage, and social customs.<sup>264</sup> Despite recent cultural shifts toward a more westernized family structure, the tradition that adult children care for their elderly parents remains strongly in place.<sup>265</sup> Perhaps to ensure that this remains the tradition in the years to come, the government of the UAE issues an award to the best son or daughter, an award earned by

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258. Act. No. 26 of 1991.

259. Act. No. 25 of 1991.

260. Law No. 20 of 1992 (Personal Affairs).

261. CONST. UNITED ARAB EMIRATES, Dec. 2, 1996, art. 14.

262. *See id.* at arts. 15 and 16.

263. *Id.* at art. 16. *See also id.* at art. 19 (obliging “the community” to ensure “[m]edical care and means of prevention and treatment of diseases”).

264. Sami Abdul Rauf, *400 Million AED Annual Aid for the Elderly in the United Arab Emirates*, GENERAL WOMEN’S UNION (Apr. 24, 2008), <http://www.wu.gov.ae/NewsItem.aspx?Lang=AR&SectionID=10&RefID=3090>.

265. MINISTRY OF PLANNING, REPORT: CONDITIONS OF THE ELDERLY (Feb 25, 2002), *available at* <http://www.wam.org.ae/servlet/Satellite?c=WamAreport&cid=1065541744622&pagename=WAM%2FWamAreport%2FW-T-AreportFull>.

caring for one's aged parents.<sup>266</sup>

### CONCLUSION AND POLICY RECOMMENDATIONS

We conclude that although Islam provides a comprehensive system for protecting the elderly across many categories, actual practice has often failed to live up to its ideals. Still, this system could be used as a vehicle for the redistribution of wealth in society, or to create a reliable source for subsistence for the elderly, and in particular the elderly poor, by providing a simple safety net for the most vulnerable. Despite this highly moral and comprehensive Islamic system, the elderly are not fully protected by domestic employment, labor, and social security laws, nor are the Arab elderly fully protected by international human rights laws. The lack of legal protection of the elderly is due to the failure of most Arab Middle Eastern countries to implement and enforce laws that specify the Islamic duties and obligations their citizens are assumed to already follow.

Accordingly, an Islamic model cannot be secured unless we establish a powerful and large state, strong in its economy, social institutions, educational framework, and other necessities; *i.e.*, a nation that produces enough to permit all its citizens to enjoy decent life without poverty. Thus, developing Muslim countries should advance Islamic legal norms concerning the care of the elderly through social security and insurance, and should promote the rights of the elderly to food, drink, clothing, medicine, and appropriate jobs. This will require creativity in using modern concepts and techniques to create an inclusive social system.

Moreover, awareness needs to be spread in the Arab Middle East on the problems facing the elderly and how to address them. Governments may, for example, provide tax incentives to organizations that provide home nursing care. Providing suitable employment opportunities for the elderly and removing

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266. *Id.*

any labor market impediments to them are also necessary measures. Public pension systems should be enriched and developed, and existing pension services should be improved for better quality. Additionally, safe and comfortable life style programs for disabled older people should be provided.

These recommendations cannot be implemented without specialized laws that comprehensively provide for the protection of the elderly in the Arab Middle East. Current events indicate that the time for implementing such drastic measures is now. The recent Arab Spring Revolutions have given rise to much legal and political chaos. This chaos could be partially alleviated by reforming laws in different sectors to bolster a sense of community in Arab countries, and the care of the elderly is a sector ripe for reform.

## GLOSSARY OF ISLAMIC LAW TERMS

*Al-A'raff*: The Heights

*Al-Ahqaf*: The Wind-curved Sandhills or The Dunes

*Al-Ahzab*: The Clans or The Coalition or The Combined Forces

*Al-Balad*: The City or This Countryside

*Al-Baqarah*: The Cow

*Al-Diyoun*: Unpaid Debts

*Al-Fatiha*: The Opening

*Al-Hujurat*: The Private Apartments or The Inner Apartments)

*Al-'Imran*: The Family Of 'Imran or The House Of 'Omran

*Al-Isra'*: The Night Journey or Children Of Israel

*Al-Istihab*: Presumption of Continuity is also considered a source of law. It stands for the proposition that a thing or situation known to exist continues to exist until the contrary is proven.

*Al-Jarida Al-Rasmiyya*: The Official Gazette

*Al-Kafirun*: The Disbelievers or Atheists

Allah: God

*Al-Maslahah Al-Mursalah*: Considerations of the Public Interest which represents another source of Islamic law. Etymologically, ("*Maslahah*") means benefit or interest and ("*Maslahah Mursalah*") means benefit or interest not mentioned in a primary source of Islamic law.

*Al-Mumtahana*: She That Is To Be Examined or Examining Her

*AL-Muqddima*: The Introduction or Prolegomenon

*Al-Mut'aa*: The Smooth Path

*Al-Naas*: The People

*Al-'Urf*: Custom and Usage is a source of Islamic law in which recurring practices are acceptable for people of sound nature. This custom is subdivided in to general or specific.

*Al-Wasiyya*: Bequests and Wills

*Amr*: Order

*An-Nisa'ā*: The Women

*At-Tawba*: Repentance or Dispensation

*Ayah/Ayats(s)*: Verse(s) or Provision(s)

*Bait-al-mal*: Islamic State Exchequer or Public Exchequer  
("Treasury")

*Caliph(s)*: Leader(s)

*Diyya*: Legal Compensation

*Fasiq*: Miscreant and Trouble-maker ("*Immoral and Evil Person*")

*Fatwa*: Opinion ("Council") whatever religious or legal or not. It means the application of the ruling of the major Islamic schools of law to specific incidents.

*Fiqh Al-Mazaheb* ("*madhhabs*" "*Jurisprudential Thoughts*"): Schools of doctrine/law or thoughts in Islam. The four main schools of *Fiqh* are split into two leading categories: The first is the School of Opinion ("*Madresat Al-Ra'ye wa Al-Ijtihad*: which led by *Hanafi* and *Shafi'i* scholars) and the second is the school of tradition (*Madresat Al-Hadith*: which founded by *Maliki* and *Hanbali*).

*Hajj*: Pilgrimage

*Hukum*: Decision

*'Ibadat*: Worship

*Ijm'a*: Consensus. It refers to the unanimous opinion (agreement) of the recognized religious authorities (or the consensus of the community through its competent representatives) at any given time on a subject matter or a question of law. It is the third fundamental source of Islamic law.

*Ijtihad*: Individual Reasoning, which *literally* means striving or exerting mentally to reach a certain rule on a question that was answered by neither the *Qur'an* nor the *Sunnah*. Technically, it means putting forth every effort to determine a question of *Sharie'a*.

*'Ilm 'Usul Al-Fiqh*: The Science of the Islamic Jurisprudence Principles which determine then methodology of *Ijtihad*

Islam: The Muslim Religion, literally means Submission to God,

Surety/Peace

Islamic *Fiqh*: Islamic Jurisprudence

*Istihsan*: Juristic Preference. It is one of the most significant secondary sources of Islamic law. Literally, it means to deem something preferable. Technically, it is the exercise of personal opinion to avoid any rigidity and unfairness, which could result from literal application of the law.

*Jihad*: Striving/Struggling in the way of God by all legitimate means or "to struggle to improve one's self and/or society"

*Kabira*: A Major Sin

*Kaffara*: Expiation or Punishment or Reparation ("Penance")

*Khitab*: Message

*Madinan Surats*: The *Surats* (chapters of *Qur'an*) revealed in *Madinah* that dealt with legal rules regarding family, politics, economics, crimes and punishments, society, etc. . .

*Mahram (Maharams)*: Forbidden

*Makasid Al-Sharie'a Al-Islamia/Al-Daruriat Al-Khams Sharie'a objectives*. There are five essential things guaranteed in Islam: religion, life, mind, posterity, and property

*Meccan Surats*: The *Surats* (chapters of *Qur'an*) revealed in *Mecca* which consist the majority of *Qur'an* and mostly dealt with beliefs and argumentation with unbelievers.

*Mo'amalat*: Transactions

*Mufti*: Islamic Leader/Interpreter

*Mujtahid*: Qualified Jurist

*Nahi*: Prohibition

*Nask'h*: Abrogation

PBUH: Peace and Blessing may be upon him

Prophet Muhammad: The Prophet of Islam

*Qadi*: Judge (Justice)

*Qiyas*: Analogical Deduction: It represents the fourth source of Islamic law. It *literally* means the measuring or ascertaining the length, weight, or the quality of something. Technically, it is the extension of a *Sharie'a* ruling in one case to a new, similar case due to the resemblance of both cases effective

cause.

*Riyad Al-Salihîn/Dalil Al-Falihin*: The Guide of Good Behaviors and Good Individuals

*Sabr*: Patient

*Sadaqa*: Charity

*Sahaba(s)*: Companions

*Sahih Bukhari, Sahih Muslim, Sunan Aboū Dāwūd, Ibn Majah, Ibn Habban, and Jamia 'a A Tirmidhi (Sunan Al-Tirmidhi)*: The famous Narrators of the Sunnah ("Hadiths")

*Sahih*: Authentic

*Salah (Salats)/Dua'a/Istigfhar*: Prayers and Devotions

*Sewak*: Something like teeth brush

*Shar' al-falasifa or tariqat al-falasifa*: The methods of the Greek logicians

*Shar'/ Sharie'at man sabaq or man qablana*: The jurisprudence or the path of the oldest Islamic scholars, jurists, and their followers

*Sharie'a*: Literally means Straight Path. It is one of the world's main legal systems. In other words, it is the conglomeration of Islamic law principles.

*Sharie'at al-yahud*: The Jewish way or path-of-life

*Shi'aa*: The second largest group of Muslims. They believe that there are numerous narrations where Muhammad (PBUH) selected 'Alī ibn Abī Ṭālib (the fourth rightly guided *Caliph*) as his successor. *Shi'aa* comprise 10% or less of the Muslim world and they predominantly live in Iran, Iraq, Syria, Lebanon and minorities in North Africa, Bahrain, Pakistan, and Saudi Arabia.

*Sufism or Taṣawwuf*: is defined by its adherents as the inner, mystical dimension of Islam. A practitioner of this tradition is generally known as a "*Sūfī*." Another name for a Sufi is "*Derw[v]ish*". Classical Sufi scholars have defined Sufism as "a science whose objective is the reparation of the heart and turning it away from all else but God."

*Suhuf Ibrahim*: Scrolls of Abraham

*Sunnah/Hadith*: The collective word for the mass of texts which

tell of the Prophet's spoken words, or an account of acts or the absence of acts attributed to him. In other words, it is the oral or the habitual traditions—practice, life style, and conduct of Prophet Muhammad (PBUH)—(“*Sunnat al-Nabi*”). *Sunnah* is second primary source of Islamic law.

*Sunnis*: The largest group of Muslims. *Sunni* means people of the tradition of Muhammad (PBUH).

*Surah (Surats)*: Chapter(s)

*Ta'leem*: Education

*Tabi'een*: Followers

*Tafsir*: Interpretation(s) or Explanation(s) or Commentaries

The *Qur'an*: The Holy Book of Muslims, believed to be the word of God (“Allah”), which Prophet Muhammad (PBUH) relayed through revelations from 610 A.D. until 632 A.D. The *Qur'an* represents the main and the primary source of the Islamic law.

The *Injil*: The Bible

The *Zabur*: The Book of Psalms

*Torah*: The Book of Judaism

*'Ulamma*: Jurists or Scholars

*Umma(h)*: Community

*Ummar ibn al-Khattab*: The Second of the four “rightly guided” *Caliphs*

*Ustaadh*(s) or *Shaikh*(s) (“*Mashaa'ikh*”): Teacher or Scholar or Spiritual Guider

*Wajib*: Obligation/Duty/Commitment

*Waqf*: Religious Trusts

*Zakāh*: Financial Obligation on Muslim (“Purification”). It is one of the five fundamental pillars of Islam. It is an amount of money paid by Muslims at the end of the year as an obligatory donation to the needy and vulnerable members of society, in particular orphans, widows, and the elderly, who can no longer work and provide for themselves.

*Ziydi Shi'aa* (“*Zaidiyya/Zaidism*” or “*Zaydi*”): It is a *Shia'aa* school of Islam named after Zayd ibn 'Ali. Followers of the *Zaidi*

*fiqh* are called “Zaidis” (or occasionally Fivers). Like all Muslims, the *Zaydi Shi’aa* affirm the fundamental tenet of Islam known as the (“*Shahadah*”) or testament of faith that there is no god but God (“Allah”), and the Prophet Muhammad (PBUH) is His Messenger.