

# **An International call for Moratorium on corporal punishment, stoning and the death penalty in the Islamic World**

*Wednesday 30th March 2005, by Tariq RAMADAN*

Muslim majority societies and Muslims around the world are constantly confronted with the fundamental question of how to implement the penalties prescribed in the Islamic penal code. Evoking the notion of *shari'a*, or more precisely *hudûd*[1], the terms of the debate are defined by central questions emerging from thought provoking discussions taking place between *ulamâ'* (scholars) and/or Muslim masses: How to be faithful to the message of Islam in the contemporary era? How can a society truly define itself as "Islamic" beyond what is required in the daily practices of individual private life? But a critical and fruitful debate has not yet materialized.

Several currents of thought exist in the Islamic world today and disagreements are numerous, deep and recurring. Among these, a small minority demands the immediate and strict application of *hudûd*, assessing this as an essential prerequisite to truly defining a "Muslim majority society" as "Islamic". Others, while accepting the fact that the *hudûd* are indeed found in the textual references (the *Qur'an* and the *Sunna*[2]), consider the application of *hudûd* to be conditional upon the state of the society which must be just and, for some, has to be "ideal" before these injunctions could be applied. Thus, the priority is the promotion of social justice, fighting against poverty and illiteracy etc. Finally, there are others, also a minority, who consider the texts relating to *hudûd* as obsolete and argue that these references have no place in contemporary Muslim societies.

One can see the opinions on this subject are so divergent and entrenched that it becomes difficult to discern what the respective arguments are. At the very moment we are writing these lines- while serious debate is virtually non-existent, while positions remain vague and even nebulous, and consensus among Muslims is lacking- women and men are being subjected to the application of these penalties.

For Muslims, Islam is a message of equality and justice. It is our faithfulness to the message of Islam that leads us to recognize that it impossible to remain silent in the face of unjust applications of our religious references. The debate must liberate itself and refuse to be satisfied by general, timid and convoluted responses. These silences and intellectual contortions are unworthy of the clarity and just message of Islam.

In the name of the scriptural sources, the Islamic teachings, and the contemporary Muslim conscience, statements must be made and decisions need to be taken.

- **What does the majority of the *ulamâ'* say?**

All the *ulamâ'* (scholars) of the Muslim world, of yesterday and of today and in all the currents of thought, recognize the existence of scriptural sources that refer to corporal punishment (*Qur'an* and *Sunna*), stoning of adulterous men and women (*Sunna*) and the penal code (*Qur'an* and *Sunna*). The divergences between the *ulamâ'* and the various trends of thought (literalist, reformist, rationalist, etc.) are primarily rooted in the interpretation of a certain number of these texts, the conditions of application of the Islamic penal code, as well as its degree of relevance to the contemporary era (nature of the committed infractions, testimonials, social and political contexts, etc.).

The majority of the *ulamâ'*, historically and today, are of the opinion that these penalties are on the whole Islamic but that the conditions under which they should be implemented are nearly impossible to reestablish. These penalties, therefore, are “*almost never applicable*”. The *hudûd* would, therefore, serve as a “deterrent,” the objective of which would be to stir the conscience of the believer to the gravity of an action warranting such a punishment.

Anyone who reads the books of the *ulamâ'*, listens to their lectures and sermons, travels inside the Islamic world or interacts with the Muslim communities of the West will inevitably and invariably hear the following pronouncement from religious authorities: “*almost never applicable*”. Such pronouncements give the majority of *ulamâ* and Muslim masses a way out of dealing with the fundamental issues and questions without risking appearing to have betrayed the Islamic scriptural sources. The alternative posture is to avoid the issue of *hudûd* altogether and/or to remain silent.

- **What is happening on the ground?**

One would have hoped that this pronouncement, “*almost never,*” would be understood as a assurance that women and men would be protected from repressive and unjust treatment; one would have wished that the stipulated conditions would be seen, by legislators and government who claim Islam, as an imperative to promote equality before the law and justice among humans. Nothing could be further from the reality.

Behind an Islamic discourse that minimizes the reality and rounds off the angles, and within the shadows of this “*almost never*”, lurks a somber reality where women and men are punished, beaten, stoned and executed in the name of *hudûd* while Muslim conscience the world over remains untouched.

It is as if one does not know, as though a minor violation is being done to the Islamic teachings. A still more grave injustice is that these penalties are applied almost exclusively to women and the poor, the doubly victimized, never to the wealthy, the powerful, or the oppressors. Furthermore, hundreds of prisoners have no access to anything that could even remotely be called defense counsel. Death sentences are decided and carried out against women, men and even minors (political prisoners, traffickers, delinquents, etc.) without ever given a chance to obtain legal counsel. In resigning ourselves to having a superficial relationship to the scriptural sources, we betray the message of justice of Islam.

The international community has an equally major and obvious responsibility to be involved in addressing the question of *hudûd* in the Muslim world. Thus far, the denunciations have been selective and calculated for the protection of geostrategic and economic interests. A poor country, in Africa or Asia, trying to apply the *hudûd* or the *sharî'a* will face the mobilization of international campaigns as we have seen recently. This is not the case with rich countries, the petromonarchies and those considered “allies”. Towards the latter, denunciations are made reluctantly, or not at all, despite ongoing and acknowledged applications of these penalties typically carried out against the poorest or weakest segments of society. The intensity of the denouncements is inversely proportional to the interests at stake. A further injustice!

- **The passion of the people, the fear of the *ulamâ'***

For those who travel within the Islamic world and interact with Muslims, an analysis imposes itself: everywhere, populations are demonstrating an increasing devotion to Islam and its teachings. This reality, although interesting in itself, could be troubling, and even dangerous when the nature of this devotion is so fervent, where there is no real knowledge or comprehension of the texts, where there is so little if any critical distance vis-à-vis the different scholarly interpretations, the necessary contextualization, the nature of the required conditions or, indeed the protection of the rights of the individual and the promotion of justice.

On the question of *hudûd*, one sometimes sees popular support hoping or exacting a literal and immediate application because the latter would guarantee henceforth the “Islamic” character of a society. In fact, it is not rare to hear Muslim women and men (educated or not, and more often of modest means) calling for a formal and strict application of the penal code (in their mind, the *shari’a*) of which they themselves will often be the first victims. When one studies this phenomenon, two types of reasoning generally motivate these claims:

1. The literal and immediate application of the *hudûd* legally and socially provides a visible reference to Islam. The legislation, by its harshness, gives the feeling of fidelity to the *Qur’anic* injunctions that demands rigorous respect of the text. At the popular level, one can infer in the African, Arabic, Asian as well as Western countries, that the very nature of this harshness and intransigence of the application, gives an Islamic dimension to the popular psyche.
2. The opposition and condemnations by the West supplies, paradoxically, the popular feeling of fidelity to the Islamic teachings; a reasoning that is antithetical, simple and simplistic. The intense opposition of the West is sufficient proof of the authentic Islamic character of the literal application of *hudûd*. Some will persuade themselves by asserting that the West has long since lost its moral references and became so permissive that the harshness of the Islamic penal code which punishes behaviors judged immoral, is by antithesis, the true and only alternative “to Western decadence”.

These formalistic and binary reasoning are fundamentally dangerous for they claim and grant an Islamic quality to a legislation, not in what it promotes, protects and applies justice to, but more so because it sanctions harsh and visible punishment to certain behaviors and in stark contrast and opposition to the Western laws, which are perceived as morally permissive and without a reference to religion[3]. One sees today that communities or Muslim people satisfy themselves with this type of legitimacy to back a government or a party that calls for an application of the *shari’a* narrowly understood as a literal and immediate application of corporal punishment, stoning and the death penalty.

When this type of popular passion takes hold, it is the first sign of a will to respond to various forms of frustration and humiliation by asserting an identity that perceives itself as Islamic (and anti-Western). Such an identity is not based on the comprehension of the objectives of the Islamic teachings (*al maqâsid*) or the different interpretations and conditions relating to the application of the *hudûd*.

Faced with this passion, many *ulamâ’* remain prudent for the fear of losing their credibility with the masses. One can observe a psychological pressure exercised by this popular sentiment towards the judicial process of the *ulamâ’*, which normally should be independent so as to educate the population and propose alternatives. Today, an inverse phenomenon is revealing itself. The majority of the *ulamâ’* are afraid to confront these popular and simplistic

claims which lack knowledge, are passionate and binary, for fear of losing their status and being defined as having compromised too much, not been strict enough, too westernized or not Islamic enough.

The *ulamâ'*, who should be the guarantors of a deep reading of the texts, the guardians of fidelity to the objectives of justice and equality and of the critical analysis of conditions and social contexts, find themselves having to accept either a formalistic application (an immediate non-contextualized application), or a binary reasoning (less West is more Islam), or hide behind “*almost never applicable*” pronouncements which protects them but which does not provide real solutions to the daily injustices experienced by women and the poor. -

- **An impossible *status quo*: our responsibility**

The Islamic world is experiencing a very deep crisis the causes of which are multiple and sometimes contradictory. The political system of the Arab world is becoming more and more entrenched, references to Islam frequently instrumentalized, and public opinion is often muzzled or blindly passionate (to such a point as to accept, indeed even to call for, the most repressive interpretations and least just application of the “*Islamic sharî'a*” and *hudûd*).

In terms of the more circumscribed religious question, we can observe a crisis of authority accompanied by an absence of internal debate among the *ulamâ'* in the diverse schools of thought and within Muslim societies. It becomes apparent that a variety of opinions, accepted in Islam, are whirling today within a chaotic framework leading to the coexistence of disparate and contradictory Islamic legal opinions each claiming to have more “*Islamic character*” than the other.

Faced with this legal chaos, the ordinary Muslim public is more appeased by “*an appearance of fidelity*”, then it is persuaded by opinions based on real knowledge and understanding of the governing Islamic principles and rules (*ahkâm*).

Let us look at the reality, as it exists. There is today a quadruple crisis of closed and repressive political systems, religious authorities upholding contradictory juristic positions and unknowledgeable populations swept up in remaining faithful to the teachings of Islam through religious fervor than through true reflection. The crisis cannot legitimize our silence. We are accomplices and guilty when women and men are punished, stoned or executed in the name of a formal application of the scriptural sources.

It leaves the responsibility to the Muslims of the entire world. It is for them to rise to the challenge of remaining faithful to the message of Islam in the contemporary era; it is for them to denounce the failures and the betrayals being carried out by whatever authorities or any Muslim individual. A prophetic tradition reports: “Support your brother, whether he be unjust or victim of an injustice.” One of the Companions asked: “Messenger of God, I understand how to support someone that is a victim of injustice, but how can I support him who is unjust?” The Prophet (peace be upon him) responded: “Prevent him from being unjust, that is you support to him.”<sup>[4]</sup>

It thus becomes the responsibility of each *âlim* (scholar), of each conscience, every woman and man, wherever they may be to speak up. Western Muslims either hide behind the argument that they are exempt from the application of the *sharî'a* or *hudûd* since they are “in a minority position”<sup>[5]</sup>. Their avoidance of the questions leaves a heavy and troubling silence. Or they express condemnation from afar without attempting to change the situation

and influence the mentalities. These Muslim women and men who live in spaces of political freedom, who have access to education and knowledge, shoulder - in the very name of the Islamic teachings - have a major responsibility to attempt to reform the situation, open a relevant debate, condemn and put a end to injustices perpetrated in their name.

• **A call, some questions:**

Taking into account all these considerations, we launch today a call for *an immediate international moratorium on corporal punishment, stoning and the death penalty* in all Muslim majority countries. Considering that the opinions of most scholars, regarding the comprehension of the texts and the application of *hudûd*, are neither explicit nor unanimous (indeed there is not even a clear majority), and bearing in mind that political systems and the state of the majority Muslim societies do not guarantee a just and equal treatment of individuals before the law, it is our moral obligation and religious responsibility to demand for the immediate suspension of the application of the *hudûd* which is inaccurately accepted as an application of “Islamic *sharî’a*”.

This call doubles itself with a series of basic questions addressed to the body of Islamic religious authorities of the world, whatever their tradition (*sunnî or shî’î*), their school of thought (*hanâfi, mâlikî, ja’farî, etc.*) or their tendencies (literalist, *salafi*, reformist, etc.) :

1. What are the texts (and what is their respective degrees of recognized authenticity), that make reference to corporal punishment, stoning and to the death penalty in the corpus of the Islamic scriptural sources circumscribed to what the specialists call the *hudûd*? Where are the margins of possible interpretations and on which points are there clear divergences (*al ikhtilâf*) in the history of the Islamic law and in the contemporary era?
2. What are the conditions (*shurût*) stipulated for each of the penalties by the sources themselves, the consensus of the scholars (*al ijmâ’*) or by individual scholars through Islamic law history and jurisprudence (*fiqh*)? Where are the divergences on the stipulations and what “extenuating circumstances” were sometimes elaborated by religious authorities throughout history or within the different schools of thought?
3. The socio-political context (*al wâqi’*) was always considered by the *ulamâ’* as one of the conditions needed for the application of *hudûd*. The importance of this question is such that it demands special treatment (and participation within the debate from intellectuals, notably those who are specialized in the social sciences). In which context today is it possible to apply *hudûd*? What would be the required conditions in terms of political systems and the application of the general legislation: freedom of expression, equality before the law, public education, eradication of poverty and social exclusion? Which are, in this domain, the areas of divergence between the legal schools and the *ulamâ’* and on what are these disagreements based?

Studying these questions are meant to clarify the terms of the debate with regards to the interpretative latitudes offered by the texts, while simultaneously taking into account the determining state of contemporary societies and their evolution. This intra-community reflection requires from the start a double understanding of the texts and contexts, in keeping solemnly with the objectives of the Islamic message. On the whole, this must allow us to respond to the questions of what is applicable (and according to which methods) and what is no longer applicable (considering the required conditions are impossible to reestablish as well as the fact that societal evolution is clearly moving away from the required ideal).

This undertaking requires, from within, rigour, time and establishing spaces of dialogue and debate, nationally and internationally, between the *ulamâ'*, Muslim intellectuals and inside the Muslim communities since this matter is not only about a relationship to the texts, but equally, to the context. In the interval, there can be no justification for applying penalties that sanction legal approximations and injustices such as is the case today<sup>[6]</sup>. A moratorium would impose and allow a basic debate to unfold in serenity, without using it as an excuse to manipulate Islam. All injustices made legal in the name of Islam must stop immediately.

- **Between the letter and objectives: fidelity**

Some will understand this call as an instigation to disrespect the scriptural sources of Islam, thinking that to ask for a moratorium goes against the explicit texts of the *Qu`ran* and *Sunna*. Precisely the opposite is true: all the legal texts demand to be read in light of the objective intended to justify them (*Al-maqâsid*). Foremost among these objectives, we find stipulated that the protection of the integrity of the person (*an-nafs*) and the promotion of justice (*al-'adl*) are primordial. Therefore, a literal and non-contextualized application of *hudûd*, with no regard for strict and numerous stipulated conditions, and one which would present itself as being faithful to the teachings of Islam, is in fact a betrayal if according to the context, for it produces an injustice.

The caliph 'Umar ibn al-Khattab established a moratorium towards thieves when he suspended the application of the punishment during a famine. Despite the *Qur'anic* text being very explicit on this, the state of the society meant it would have been an unjust literal application: they would have castigated poor people whose potential theft would have been for the sole purpose of surviving in a state of absolute poverty. Therefore, in the name of absolute justice demanded by the global message of Islam, 'Umar ibn al-Khattab decided to suspend the application of a text: keeping with the literalist interpretation would have meant disloyalty and betrayal of the superior value of Islam that is justice. It is in the name of Islam and in the understanding of texts that he suspended the application of one of these injunctions. The moratorium finds here a precedent of the utmost importance.

Reflection and necessary reform within Muslim majority societies will not occur but from within. It is for Muslims to take up their responsibilities and set in motion a debate that opens an intra-community dialogue, while refusing the continued legalized injustices in the name of Islam, i.e. in their name. An endogenous dynamic is imperative

This does not mean that the questions put forward by non-Muslim intellectuals or citizens should be dismissed. On the contrary, all parties must learn to decentre themselves and move towards listening to the other, to the other's points of reference, logic and their aspiration. For Muslims, all queries, from their co-religionists or women and men who do share their religious conviction, are welcome. It is for us to make use of these questions as a spark of dynamism to our thoughts. This is how we can remain faithful to the justice demanded by Islam while taking into account also the demands of the contemporary era.

- **Conclusion**

This call for *an immediate moratorium on corporal punishment, stoning and the death penalty* is demanding on many fronts. We are defining it as a call to consciousness of each individual so that she/he realizes that Islam is being used to degrade and subjugate women and men in

certain Muslim majority societies in the midst of collusive silence and chaotic judicial opinions on the ground. This realization implies:

- A mobilization of ordinary Muslims throughout the world to call on their governments to place an immediate moratorium on the application of *hudûd* and for the opening of a vast intra-community debate (critical, reasonable and reasoned) between the *ulamâ*, the intellectuals, the leaders and the general population.
- Taking the *ulamâ* to account so that they at last dare to report the injustices and instrumentalization of Islam in the field of *hudûd* and, in the name of fidelity to the Islamic texts, to put out a call for an immediate moratorium emulating the example of ‘Umar ibn al-Khattab.
- Promoting education of Muslim populations so that they go beyond the mirage of the formalism and appearances. The application of the repressive interpretations, measures and punishment does not make a society more faithful to the Islamic teachings. It is more the capacity to promote social justice and the protection the integrity of every individual, woman or man, rich or poor, that determines a truly authentic fidelity. The priority, according to the norms of Islam, is given to the protection of rights not to administering punishments which are meant to be implemented under strict and conditioned exceptions.
- This movement for reform from within, by the Muslims and in the name of the message and reference texts of Islam, should never neglect listening to the surrounding world as well as to the inquiries that Islam raises in non-Muslim minds. Not to concede to responses from “the other”, from “the West”, but, in order to remain, in its mirror, more constructively faithful to oneself.

We urge all of those that take heed to this call to join us and make their voices heard for the immediate suspension of the application of *hudûd* in the Muslim world so that a real debate establishes itself on the question. We say that in the name of Islam, of its texts and of the message of justice, we can no longer accept that women and men undergo punishment and death while we remain utterly silent, as accomplices, through a process which is ultimately cowardly.

It is urgent that Muslim throughout the world refuse the formalist legitimization of the teachings of their religion and reconcile themselves with the deep message that invites towards spirituality, demands education, justice and the respect of pluralism. Societies will never reform themselves by repressive measures and punishment but more so by the engagement of each to establish civil society and the respect of popular will as well as a just legislation guaranteeing the equality of women and men, poor and rich before the law. It is urgent to set in motion a democratization movement that moves populations from the obsession of what the law is sanctioning to the claim of what it should protect: their conscience, their integrity, their liberty and their rights.

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[1] A concept which literally means “limits”. In the specialized language of Muslim jurists, (*fuqahâ*), this term is inclusive of the punishment which is revealed in the application of the Islamic Penal code. *Sharî’a*, literally “the way to the source” and a path to faithfulness, is a corpus of Islamic jurisprudence the in-depth definition of which is beyond the scope of

*this paper. Sharî'a has sadly been reduced to legalistic formulae of a penal code in the minds of many, Muslims and non-Muslim alike*

[2] Prophetic tradition: texts which report what the Prophet of Islam (peace be upon him) did, said or approved of during his lifetime.

[3] In Muslim countries, laws that we see as being “ borrowed from the west “ are often interpreted as tools by dictatorial governments to mislead and legitimize their autocratic character, and more importantly, to promote a westernized culture and morals.

[4] *Hadîth* reported by al-Bukhârî and Muslim.

[5] The argument is weak and dangerous as it tacitly accepts the application of *hudûd* within today's societal context as “ Islamic “

[6] If ever in doubt, all circumstances require the benefit of the doubt towards the accused according to a legal universal principle (acknowledged from the start by the tradition of Islamic jurisprudence)