

# RECENT DEVELOPMENTS

## PLAYING BY THEIR RULES: THE DEATH PENALTY AND FOREIGNERS IN SAUDI ARABIA

*Mary Carter Duncan\**

*We do not propose to change any country's judicial system, and we will not allow any country to change our system.<sup>1</sup>*

When in Rome, do as the Romans do. This adage promoting respect for foreign cultures is well-known. However, it is often put aside in the name of human rights and decency when a foreigner in a foreign land is subjected to the criminal laws of that land. This article attempts to reconcile the criminal procedures of Saudi Arabia with the international law governing such procedures in light of the recent arrest and conviction of two British nationals charged with murder. This examination of the Saudi criminal system, when considered in light of the religious convictions underlying Saudi law, will show that Saudi Arabia's criminal procedures are consistent with international law.

### I. FACTUAL BACKGROUND

Yvonne Gilford's dead body was found on December 11, 1996 in her bed.<sup>2</sup> According to reports, she had been stabbed four times, beaten with a hammer, and suffocated with a pillow.<sup>3</sup> While shocking, murders such as this one are rarely the subject of international attention. However, this

---

\* J.D. 1998, University of Georgia.

<sup>1</sup> Caroline Davies, *Envoy Appeals for Reason as Anger Mounts Saudi Nurses*, THE DAILY TELEGRAPH (London), Sept. 25, 1997, at 4, available in 1997 WL 2340725, (quoting Dr. Ghazi Alogsaibi, Saudi Arabia's Ambassador to London).

<sup>2</sup> John Daniszewski, *Judging the Divine Law of Islam Upcoming Trial of Two Britons in Saudi Arabia Raises the Specter of Beheadings. But Defenders Say Westerners Often Ignore the Sharia System's Humane, Lofly Aspects*, L.A. TIMES, Jan. 31, 1997, at A1, available in 1997 WL 2177978.

<sup>3</sup> *Id.*

murder occurred in Saudi Arabia, a nation with one of the lowest per capita crime rates in the world.<sup>4</sup> Additionally, the victim was an Australian national, and the accused murderers are two British nationals. Add the fact that the punishment for murder in Saudi Arabia is death by public beheading, and the situation becomes potentially explosive, both on a personal level; affecting the families of the victim and the accused, and politically; affecting the relationship between Saudi Arabia and the United Kingdom.

Gilford was an Australian nurse working for the King Fahd Military Medical Complex, a military hospital, in Saudi Arabia at the time of her murder.<sup>5</sup> On December 19, Saudi officials arrested two British nurses, Lucille McCauchlan and Deborah Parry, in connection with the murder.<sup>6</sup> The accused nurses had worked in the same hospital ward as Gilford.<sup>7</sup> The accused were questioned by the police for five days without access to either a representative of the British embassy in Saudi Arabia or a lawyer.<sup>8</sup> On December 24, both women signed written confessions to the murder and were formally charged.<sup>9</sup> The confessions were then verified by a three judge panel.<sup>10</sup> Saudi investigators claim several pieces of evidence point to the guilt of McLauchlin and Parry. First, days after the murder, the two nurses were videotaped on the surveillance system of a Saudi store using the deceased's bank card. Additionally, a report from the National Commercial

---

<sup>4</sup> Saudi Arabia releases few official reports on crime statistics, but a 1980s study suggests that the crime rate in Saudi Arabia is 1/30th that in Ohio. *Id.*

<sup>5</sup> *Two Nurses Held in Murder of a Third*, MONTREAL GAZETTE, Dec. 23, 1996, at B5, available in 1996 WL 4219003.

<sup>6</sup> *Id.* The two nurses were formally charged with the murder on December 24. Steve Boggan, *Nurses Pressured to Confess, Colleagues Say*, VANCOUVER SUN, Dec. 28, 1996, at A17, available in 1996 WL 5036333.

<sup>7</sup> Many health care professionals are lured to Saudi Arabia by large tax-free annual salaries of pounds 16,551, free accommodation, and a lump sum at the end of the contract. More than 100 nurses from Britain, Australia, and South Africa currently work at the King Fahd Military Hospital. Caroline Davies, *Deborah Parry and Lucille MacLauchlin Have Spent Interminable Hours . . . ACCUSED: Britons Took 'Escape Route' Abroad That Ended in Despair*, THE DAILY TELEGRAPH (London), Sept. 24, 1997, at 3, available in 1997 WL 2340537.

<sup>8</sup> Stephen Farrell, *Nurses on Murder Charge Are Able to Choose Their Lawyer*, THE TIMES OF LONDON, Dec. 31, 1996, at 4, available in 1996 WL 14489070.

<sup>9</sup> *Id.*

<sup>10</sup> Michael Fleet, *Official Report Says British Pair Killed Colleague During Row. Nurses Confessed to Murder, Claim Saudis*, DAILY TELEGRAPH (London), Jan. 1, 1997, at 6, available in 1997 WL 227400B.

Bank states that the bank card was used after Gilford's murder, with the maximum daily amount withdrawn for three days in a row.<sup>11</sup> Saudi police also claim that the signed confessions establish the guilt of the two women, as the confessions detail the murders and the motivations behind the murders.<sup>12</sup> Saudi officials additionally claim that the pair were taken to the scene of the murder on December 24 and reenacted the murder in detail.<sup>13</sup>

Initially, Saudi officials refused the British embassy's requests for access to the women.<sup>14</sup> On December 24, five days after the arrest, a British consul was allowed to visit the prisoners.<sup>15</sup> On December 30, the women were able to choose, through the British consul, a legal advisor to represent them.<sup>16</sup> The attorney chosen was Salah al-Hejailan, a Saudi attorney with thirty-five years experience who was trained in both America and Egypt.<sup>17</sup> With his help, the women worked to retract their previous confessions, claiming that the confessions were secured after Saudi officials promised the women that they would be deported in lieu of standing trial for the crimes in Saudi Arabia.<sup>18</sup>

Over a four month period, the two women were tried and convicted of the murder of Yvonne Gilford by a three-judge panel.<sup>19</sup> Parry was found guilty of intentionally murdering Gilford, and McLauchlin reportedly was found

---

<sup>11</sup> Daniel McGrory, *Saudi Leaks Reveal New Evidence in Nurses Case*, THE TIMES OF LONDON, Dec. 30, 1996, at 1, available in 1996 WL 14489239.

<sup>12</sup> *Id.* The alleged motive for the murder, as described in the written confessions, was a spat that arose between Parry and Gilford, who, according to the confessions, were involved in a lesbian relationship. Violence erupted during the course of the spat, which led Parry to hit Gilford with a teapot, then stab her. McLauchlin allegedly delivered the final blow by smothering Gilford. *Id.*

<sup>13</sup> Bill Frost, Joanna Bale, and Michael Binyon, *Nurses Could Face Public Execution*, THE TIMES OF LONDON, Dec. 24, 1996, at 1, available in 1996 WL 14487910.

<sup>14</sup> Will Bennett and Christopher Lockwood, *Storm Over Nurses Held by Saudis. Britons Could Face Public Execution*, THE DAILY TELEGRAPH (London), Dec. 24, 1996, at 1, available in 1996 WL 15126688.

<sup>15</sup> Farrell, *supra* note 8.

<sup>16</sup> *Id.*

<sup>17</sup> *Wealthy Lawyer Is Key Player in Trial*, THE TIMES OF LONDON, Sept. 25, 1997, at 5, available in 1997 WL 9231548.

<sup>18</sup> Stephen Farrell and Roger Maynard, *Lawyers Seek Talks on Confessions*, THE TIMES OF LONDON, Jan. 6, 1997, at 4, available in 1997 WL 9189349.

<sup>19</sup> Tim Reid and Sebastian Berger, *British Nurse 'Condemned to Death' For Saudi Killing*, THE SUNDAY TELEGRAPH, London, Aug. 31, 1997, at 2, available in 1997 WL 2335296. The verdict, supposedly reached on August 17, 1997, was not made public, apparently to allow the appeals process in Saudi Arabia to take place. *Id.*

guilty of being an accessory to murder.<sup>20</sup> While McLauchlin was sentenced to 500 lashes and eight years imprisonment,<sup>21</sup> Parry potentially faced the death penalty.<sup>22</sup>

However, Parry will not be executed, and McLauchlin's sentence will likely be reduced. Throughout the trial, the judges hearing the case sought to convince the victim's family, headed by her brother, Frank Gilford, to grant clemency to the two accused women.<sup>23</sup> The judges adjourned the trial for several weeks on separate occasions so that lawyers could consult with Gilford's family and convince them to grant clemency.<sup>24</sup> The Gilford family continued to refuse such requests until after Parry's verdict was reportedly handed down. The victim's family ultimately accepted a pounds 850,000 settlement in exchange for agreeing not to press for the execution of Parry.<sup>25</sup> While the Gilford's waiver of the death penalty does not apply to her, it is likely that McLauchlin's sentence also will be reconsidered and reduced.<sup>26</sup>

---

<sup>20</sup> *Id.*

<sup>21</sup> McLauchlin's sentence was handed down September 23, 1997. Caroline Davies and Colin Randall, *Nurse Sentenced to 500 Lashes Mystery Over Saudi "Deal" To Spare Life of Second Briton*, THE DAILY TELEGRAPH (London), Sept. 24, 1997, at 1, available in 1997 WL 2340527.

<sup>22</sup> Caroline Davies, *Saudi Nurses' Confessions To Murder Are Revealed*, THE DAILY TELEGRAPH (London), Sept. 26, 1997, at 1, available in 1997 WL 2340914.

<sup>23</sup> The Australian courts have debated who the proper representative of the Gilford family is. The victim's elderly mother suffers from Alzheimer's disease, and may be incompetent. An Australian court ruled that Frank Gilford, the victim's brother, could not demand execution of Parry until Saudi officials saw the medical records of Mrs. Gilford. However, the Saudi courts had already determined that Frank Gilford has the right to speak for all of the victim's heirs. Caroline Davies, *Saudi Nurses Win Plea Over Death Penalty*, THE DAILY TELEGRAPH (London), Aug. 9, 1997, at 7, available in 1997 WL 2330080.

<sup>24</sup> Barbie Dutter, *Family Spurns Mercy Plea for British Nurses, Clemency Call By Saudi Judge Rejected*, THE DAILY TELEGRAPH (London), May 26, 1997, at 3, available in WL 2312238. See also David Millward, *Brother Seeks Cash from Saudi Nurses*, THE DAILY TELEGRAPH (London), June 25, 1997, at 10, available in 1997 WL 2319740; Caroline Davies, *Judges' Questions Halt Nurses' Murder Trial*, THE DAILY TELEGRAPH (London), July 28, 1997, at 6, available in 1997 WL 2327188.

<sup>25</sup> Caroline Davies, *Pounds 850,000 Deal Saves Nurse From Beheading Saudi Murder Victim's Brother Denies Taking 'Blood Money'*, THE DAILY TELEGRAPH (London), Oct. 16, 1997, at 17, available in WL 2345650. Most of the money will reportedly go to a children's charitable hospital in Australia in memory of Yvonne Gilford. *Id.*

<sup>26</sup> *Saudi Nurses Face Only 5 Years' Jail, Says Envoy*, THE DAILY TELEGRAPH (London), Oct. 17, 1997, at 11, available in 1997 WL 2345809.

Since their arrest, the women have been allowed several contacts with the outside world. In addition to visits from representatives of the British embassy and from attorneys,<sup>27</sup> the women were allowed to see members of their families on January 12 for a few hours.<sup>28</sup> In addition to these visits, the women were allowed several brief phone calls to their families in Britain.<sup>29</sup> McLaughlin was even allowed to marry in a Western style ceremony at a courthouse near the jail.<sup>30</sup> The women, by all reports from their visitors, have been well treated by Saudi authorities while in prison.<sup>31</sup>

This case is not the first time that foreign nationals have been accused of capital crimes in Saudi Arabia. Dozens of Asians and Africans, after convictions for murder, have been executed by public beheadings in Saudi Arabia.<sup>32</sup> However, no European nor American<sup>33</sup> has ever been executed under Saudi law.<sup>34</sup> That is not to say that no European has ever faced the death penalty in Saudi Arabia. In 1986, Helen Feeney was murdered, and Peter and Monica Hall, Irish nationals, were convicted of the murder and

---

<sup>27</sup> British officials have reportedly been visiting the women weekly. David Wastell and Olga Craig, *Jailed Saudi Nurse Is On the Brink of Suicide*, THE SUNDAY TELEGRAPH (London), Dec. 7, 1997, at 5, available in 1997 WL 2357059.

<sup>28</sup> *Saudi Murder Charge Nurses See Relatives*, THE TIMES OF LONDON, Jan. 13, 1997, at 8, available in 1997 WL 9186749.

<sup>29</sup> Russell Jenkins and Michael Binyon, *Family Pleads for Nurses Accused Over Murder*, THE TIMES OF LONDON, Dec. 28, 1996, at 2, available in 1996 WL 14488351.

<sup>30</sup> Will Bennett, *Murder Case Nurse Is Given Saudi Wedding With Western Touches*, THE DAILY TELEGRAPH (London), Dec. 1, 1997, at 7, available in 1997 WL 2354123. The wedding ceremony was followed by a reception at a Saudi police station, complete with flowers, food, and a wedding cake provided by the British consulate. Afterwards, the couple was allowed a private visit at the jail. *Id.*

<sup>31</sup> James Hardy, *Nurses 'May Avoid Saudi Death Trial'*, THE DAILY TELEGRAPH (London), Jan. 5, 1997, at 2, available in 1997 WL 2275669.

<sup>32</sup> Frost, *supra* note 13.

<sup>33</sup> While no American has been executed in Saudi Arabia, there have been allegations of torture of American citizens while held by the Saudi government. See, e.g., *Nelson v. Saudi Arabia*, 923 F.2d 1528 (11th Cir. 1991), *rev'd* 507 U.S. 349 (1993).

<sup>34</sup> Sebsten Berger and Con Coughlin, *How Woman Spared Nurse's Saudi Killers*, THE SUNDAY TELEGRAPH (LONDON), Dec. 29, 1996, at 4, available in 1996 WL 15127884. Interestingly, when a British national was murdered in Saudi Arabia by a Saudi citizen, the wife of the deceased demanded the death penalty without a similar public outcry. David Walmsley, *'I'm Glad By Husband's Killer Was Beheaded'*, THE DAILY TELEGRAPH (London), Sept. 25, 1997, at 4, available in 1997 WL 2340723. That woman has stated, "If you live in an Islamic country, you have to be prepared to live by their rules." *Id.*

faced possible execution.<sup>35</sup> However, the Halls escaped execution because the family of the victim did not demand the death penalty.<sup>36</sup>

These arrests highlight the historical differences between Saudi Arabia and the United Kingdom. Sixteen years ago, the two nations experienced a four month diplomatic crisis over a film aired on British television entitled "Death of a Princess," which graphically detailed the execution of a Saudi princess for adultery.<sup>37</sup> In 1994, tensions arose over the presence of a prominent Saudi dissident, Mohammed al-Massari, in the United Kingdom.<sup>38</sup> Britain deported al-Massari after hints from the Saudi government that failure to do so would affect trade between the nations.<sup>39</sup> Political differences also led to the collapse of the British Broadcast Corporation's (BBC) television-channel broadcast to the Middle East in Arabic, which had been sponsored by Saudi Arabian trade partners.<sup>40</sup>

The situation with the two nurses has increased the tensions between the Saudi and British governments. Britain is concerned over the treatment of its citizens, while Saudi Arabia is offended by the public British criticism of its judicial system. A Saudi foreign ministry statement released said: "any form of interference in the legal process could only complicate the issue."<sup>41</sup> The Prince of Wales at one point responded with an offer to intervene on behalf of the two women if diplomatic efforts failed.<sup>42</sup> In an effort to diffuse the situation, British Foreign Secretary Robin Cook met with the Saudi Foreign Minister Prince Saud al-Faisal where the pair recognized the potential consequences of any punishment suffered by the nurses and agreed to work together to solve the problem.<sup>43</sup>

---

<sup>35</sup> The situation in 1986 is remarkably similar to the situation at hand in that the alleged motive for the murder was theft, and the Halls alleged that their confessions were obtained under duress. Berger and Coughlin, *supra* note 34, at 4.

<sup>36</sup> See discussion, *infra* pp. 238-240. Notably, that case was the first in Saudi history where a victim's family refused both the death penalty and blood money. Berger and Coughlin, *supra* note 34, at 4.

<sup>37</sup> Elizabeth Grice, *No Room for Mercy from the System That Deals in Death*, THE DAILY TELEGRAPH (London), Dec. 28, 1996, at 15, available in 1996 WL 15127334.

<sup>38</sup> Bennett and Lockwood, *supra* note 14.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> James Hardy and Tim Reid, *Prince of Wales Set to Plead for Saudi Nurses*, THE SUNDAY TELEGRAPH (London), Sept. 28, 1997, at 1, available in 1997 WL 2341462.

<sup>42</sup> *Id.*

<sup>43</sup> Caroline Davies, *Execution Threat Lifted After "Blood Money" Deal*, THE DAILY TELEGRAPH (London), Sept. 27, 1997, at 1, available in 1997 WL 2341127. Britain's primary concern at this time is the 500 lashes to be suffered by McLauchlin. Davies and Randall, *supra* note 21.

In addition to the diplomatic and public opinion concerns, trade between Britain and Saudi Arabia would be threatened by a breakdown in relations between the two governments. British exports to Saudi Arabia in 1996, a substantial portion of which were weapons, were valued at pounds 2.5 billion, while imports from Saudi Arabia, primarily oil, totalled pounds 750 million.<sup>44</sup> Any diplomatic rift could damage the substantial trade between the two countries.<sup>45</sup> The importance of this trade was demonstrated by the fact that the "blood money" given to the Gilford family was raised by British businesses unrelated to the nurses.<sup>46</sup>

The biggest differences between the nations result from their differences regarding crime and punishment. Britain, unlike Saudi Arabia, does not practice capital punishment. There have been numerous articles appearing in British newspapers decrying the treatment of these women and the perceived unfairness of the Saudi system.<sup>47</sup> Additionally, criminal procedures in the two nations have significant differences, with the UK following procedures similar to those in the United States,<sup>48</sup> and Saudi Arabia following Islamic law.<sup>49</sup> These differences have led to statements and cautions from officials from both the UK and Saudi Arabia, ensuring that the Saudi system is fair and that the women are being treated well.

---

<sup>44</sup> Colin Randall, *Diplomatic Rift Could Damage Pounds 2bn Exports*, THE DAILY TELEGRAPH (London), Sept. 24, 1997, at 2, available in 1997 WL 2340532.

<sup>45</sup> In the words of one unnamed senior representative from the British weapons industry, "We are talking about the survival of a business which puts billions of dollars into the public coffers, and keeps an army of people in jobs. The last thing we need is a wave of public outrage at a public execution and retaliation from the Saudis." Alasdair Palmer, *Comment: Life Costs an Arm and a Leg*, THE SUNDAY TELEGRAPH (London), Sept. 28, 1997, at 32, available in 1997 WL 2341568.

<sup>46</sup> Davies, *supra* note 25.

<sup>47</sup> See, e.g., *Leading Article: . . . Until Proven Guilty*, THE DAILY TELEGRAPH (London), Sept. 27, 1997, at 17, available in 1997 WL 2341332; Christopher Lockwood, *Land That Won the Lottery. The Saturday Profile: Saudi Arabia To Muslim Zealots, The Kingdom That Ibn Saud Forged In Blood in 1932 Is Dangerously Liberal: To the West, Barbaric*, THE DAILY TELEGRAPH (London), Sept. 27, 1997, at 16, available in 1997 WL 2341320; *Leading Article: The Saudi Lash*, THE DAILY TELEGRAPH (London), Sept. 24, 1997, at 19, available in 1997 WL 2340607; Caroline Davies, *supra* note 7.

<sup>48</sup> These procedures include the right to a jury trial, the right to counsel, the right to remain silent, and many other rights of criminals traditionally recognized in the Anglo-Saxon courts.

<sup>49</sup> See discussion, *infra* pp. 238-240.

## · II. LEGAL BACKGROUND

A. *Saudi Arabian Law*<sup>50</sup>

The Constitution of Saudi Arabia is a very brief document. Article 1 of the Constitution simply states, "The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's peace and prayers be upon him, are its constitution, Arabic is its language and Riyadh is its capital."<sup>51</sup> God's Book is the Koran, and the Sunnah is a supplement to the Koran.<sup>52</sup> In essence, the constitution establishes that the Koran, the holy book of Islam, will be the law of the land. Of the 6,236 verses of the Koran, only 500 or so contain instructions that could be taken as moral or legal rules.<sup>53</sup> However, around these verses and the sayings and deeds of the prophet Muhammad has developed a complex legal system.<sup>54</sup>

Many of the principles of Sharia are the same as those underlying Western criminal law. Under Saudi law, an accused is presumed innocent until proven guilty.<sup>55</sup> The evidentiary standard required to convict someone of murder is high, requiring proof beyond a reasonable doubt.<sup>56</sup> Circumstantial evidence carries little weight under Sharia, with the fact finder preferring witnesses or confessions to support a conviction.<sup>57</sup> Defendants are entitled to have agents speak for them.<sup>58</sup> The accused are not entitled to a jury trial, rather a judge is the primary fact finder, charged with finding the truth in a particular case.<sup>59</sup>

---

<sup>50</sup> This brief summary is intended to merely give a synopsis of the relevant Saudi criminal law. It is in no way a complete representation of the details and nuances of the Saudi system.

<sup>51</sup> Saudi Arabia Const. (March, 1992) ch. 1 art. 1, para. 1.

<sup>52</sup> Daniszewski, *supra* note 2.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Daniszewski, *supra* note 2. Traditionally, these agents were family members. Now, the agent is more often a lawyer, although attorneys are often discouraged because the judge prefers to deal with the accused directly. *Id.*

<sup>59</sup> *Id.*

The punishment for murder under Sharia is a public beheading, a penalty specifically mandated by the Koran.<sup>60</sup> Sharia dictates that the beheadings be public, as a lesson to the community.<sup>61</sup> However, a conviction for murder does not necessarily result in execution. Murder is considered to be a very personal crime.<sup>62</sup> Therefore, the family of the victim has the ultimate power to decide the punishment of the convicted murderer.

A murderer will be executed only if all of the victim's heirs demand it.<sup>63</sup> If one heir refuses to ask for the death penalty, then the execution does not occur.<sup>64</sup> The family may also choose to forgive the murderer, and instead receive blood money from the murderer.<sup>65</sup> The family may also elect to forego both the death penalty and blood money.<sup>66</sup> In the event that the victim's family does not choose the death penalty, the murderer will receive a jail sentence, usually of five years or less.<sup>67</sup>

The appeals process in Saudi Arabia should be fairly familiar to the Westerner. Every prosecution for murder must be tried before a three judge panel.<sup>68</sup> Appeal of the panel's decision is mandatory, requiring a lengthy appeal process.<sup>69</sup> The decision is first reviewed by a five-member Saudi appellate court.<sup>70</sup> From there, the case is reviewed by the seven-member

---

<sup>60</sup> *Id.* In 1996, Saudi Arabia executed 71 people. Executions are carried out in a large plaza, bordered by the main mosque and shops. In the very center of the plaza is a small metal grate, used to catch the blood of the executed. Last spring, a man and a woman were executed in this square. Each was led into the square by two policemen. The executioner forced the man to kneel down in front of the grate, exposed the man's neck, then poked the man's back to force him to arch his back. With one swift motion, the executioner severed the man's head with a four foot, crescent-shaped sword. The process was repeated for the woman, while the mosque loudspeaker briefly described the crimes the two had committed. He had killed a friend, while she had killed her husband. The entire process took less than 15 minutes. *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Ghazi A. Algosabi, *Why Islam's Law Bewilders the West*, THE INDEPENDENT-LONDON, Jan. 1, 1997 at 11, available in 1997 WL 4469547.

<sup>63</sup> Daniszewski, *supra* note 2.

<sup>64</sup> *Id.* Executions may be postponed for several years until a victim's heirs reach adulthood and are able to decide whether the murderer should be executed or not. *Id.*

<sup>65</sup> The traditional amount received by a victim's family is equal to the price of one hundred camels. *Id.*

<sup>66</sup> Rarely does a family choose this option. See Davies, *supra* note 25.

<sup>67</sup> Daniszewski, *supra* note 2.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

Supreme Judicial Council.<sup>71</sup> Finally, prior to every execution, the case must be personally reviewed by the King of Saudi Arabia.<sup>72</sup>

The procedures will differ slightly from the normal Saudi criminal procedures when the accused are not Saudi citizens. The Governor of the Eastern Province of Saudi Arabia, who is a member of the executive portion of the Saudi government,<sup>73</sup> has the power to decide the next step for foreigners accused of crimes.<sup>74</sup> Sharia provides three options in cases where the accused are not Muslims.<sup>75</sup> The governor can put the case before a Sharia court, dismiss the allegations, or seek deportation of the accused.<sup>76</sup>

### *B. International Law*<sup>77</sup>

Saudi Arabia was one of the charter members of the United Nations when it was created in 1945.<sup>78</sup> As a member of the United Nations, Saudi Arabia has agreed to "promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all."<sup>79</sup> These rights and freedoms are not specifically described in the Charter itself. However, the parameters of these rights and fundamental freedoms have been defined in international law through conventions and resolutions adopted by the General Assembly of the United Nations.

Relevant to this situation, the General Assembly has passed resolutions on a variety of subjects related to human rights. The methodology of trials is one subject that has received the attention of several resolutions. Additionally, the General Assembly has set forth rules regarding the proper standard of proof required to convict an accused of a crime. Finally, arms of the United Nations have promulgated rules concerning the death penalty for nations that still practice capital punishment.

---

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> The Governor, known as the Emir, is responsible for the administration of his assigned region in accordance with the general policies of the state. Regional Authorities Establishment Act, 1992, art. 1, para. 1 (Saudi Arabia).

<sup>74</sup> McGrory, *supra* note 11.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Again, this is not meant to be an in-depth examination of international law concerning human rights; rather, it is merely a statement of some of the international law provisions most relevant to this case.

<sup>78</sup> U.N. CHARTER art. 111, para. 3.

<sup>79</sup> *Id.* at art. 1, para. 3.

In 1948, the General Assembly made its first and biggest step towards defining fundamental human rights and freedom. The Universal Declaration of Human Rights,<sup>80</sup> adopted by the General Assembly of the United Nations, sets forth the basic rights of all peoples, including the rights of those accused of committing crimes. The Declaration contains only two articles defining the rights of accused criminals. Article 10 of the Declaration states that every accused is entitled to a fair public hearing by an independent tribunal.<sup>81</sup> Article 11 of the Declaration states that an accused shall be innocent until proven guilty in a trial where the accused has all the guarantees necessary to insure his defense.<sup>82</sup>

The Declaration has been supplemented by various conventions and UN General Assembly resolutions.<sup>83</sup> Many of these documents directly address the issue of capital punishment. The International Covenant on Civil and Political Rights<sup>84</sup> sets forth specific protections for those who receive the death penalty. These protections include imposition of the death penalty only for the most serious crimes,<sup>85</sup> the right to seek pardon or commutation of the sentence,<sup>86</sup> and the final judgment of a competent court before execution.<sup>87</sup> Article 9 of the covenant outlines the rights of a person who

---

<sup>80</sup> *The Universal Declaration of Human Rights*, G.A. Res. 217 (III 1948) [hereinafter *The Declaration*].

<sup>81</sup> The text of Article 10 is as follows: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." *Id.* at art. 10, para 1.

<sup>82</sup> The text of Article 11 is as follows:

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

*Id.* at art. 11.

<sup>83</sup> See, e.g., International Covenant on Economic, Social, and Cultural Rights, Annex to G.A. Res. 2200, 21 GAOR, Supp. 16, U.N. Doc. A/6316, at 490.

<sup>84</sup> *The International Covenant on Civil and Political Rights*, G.A. Res. 2200, GAOR 21, Supp. No. 16, U.N. Doc. A/6316, Dec. 16, 1966, in force March 23, 1976.

<sup>85</sup> *Id.* at art. 6, para. 2.

<sup>86</sup> *Id.* at art. 6, para. 4.

<sup>87</sup> *Id.* at art. 6, para. 2.

has been arrested for a crime.<sup>88</sup> Article 14 of the covenant provides the rights of all persons before courts of law, including the right to a defense, a trial without undue delay, to examine the witnesses against him, and the right to an appeal.<sup>89</sup>

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>90</sup> defines torture<sup>91</sup> and requires nations to take steps to prevent acts of torture.<sup>92</sup> "Torture" is defined as: "any act by which severe pain of suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."<sup>93</sup>

International law, through safeguards adopted by the General Assembly of the United Nations, also describes the procedures by which the death penalty may be imposed. A 1984 resolution reiterates that the death penalty may only be imposed for the most serious of crimes, and may only be imposed after the person is convicted by no less than clear and convincing evidence of his guilt.<sup>94</sup> The resolution adds that, "[w]here capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering."<sup>95</sup>

### III. ANALYSIS

In this situation, where two Britons are accused of the murder of an Australian, Saudi Arabia is caught between its obligations under international law and its own Islamic law.<sup>96</sup> In most respects, Saudi criminal procedure

<sup>88</sup> Article 9 requires that arrests occur only as according to the laws of that country, that the detainee shall be informed of the charge against him and brought promptly before a judge, and given a trial within a reasonable time. *Id.* at art. 9, para. 2.

<sup>89</sup> *Id.* at art. 14, para. 3.

<sup>90</sup> *The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment*, G.A. Res. 46, U.N. Doc A/RES/39/46 (1984).

<sup>91</sup> *Id.* at art. 1, para. 1.

<sup>92</sup> *Id.* at art. 2, para. 1.

<sup>93</sup> *Id.* at art. 1, para. 1.

<sup>94</sup> *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, E.S.C. Res. 1984/50, annex, 1984 U.N. ESCOR Supp. No. 1 at 33, U.N. Doc. E/1984/84 (1984).

<sup>95</sup> *Id.* at para. 9.

<sup>96</sup> According to Said Aburish, the author of the House of Saud, "Saudi Arabia is caught between its overtly friendly relationship with the West and the strict application of Islamic law. No one is trying to confront Islamic fundamentalism and everyone is trying to compete

conforms to international norms. In this case, however, the Saudis allegedly have departed from international norms by torturing confessions out of the two nurses and by using the death penalty as the possible punishment for the nurses. General attitudes towards Islam and Saudi Arabia's conformance to Islamic norms contribute to the belief that the nurses will not be treated fairly. However, the treatment of the nurses thus far—in arrest, detention, and prosecution—has been generally in compliance with international law standards, and there is no reason to believe that the Saudis will depart from those standards while the women remain in custody.

The most fundamental problem in analyzing Saudi Arabia's laws in light of international laws is the fact that Saudi Arabia has not been a signatory to the Declaration or most of the other covenants concerning human rights. However, Saudi Arabia's failure to sign on to these documents does not necessarily relieve the nation of responsibility for abiding by the rules set forth in the documents. International law in the field of human rights has been so pervasive as to make it customary international law—law by which all nations are bound.<sup>97</sup> Therefore, even though Saudi Arabia is not bound to follow international law on human rights as a signatory, the nation is bound to follow the international laws because of their status as customary international law.

#### A. *General Attitudes Toward Saudi Laws*

The international community generally views Islamic law, and in particular Saudi law, as frequently violative of human rights. Western anecdotes regarding the Saudi system are full of horror stories of public beheadings, amputations, floggings, and stonings.<sup>98</sup> Indeed, the punishments are harsh and often brutal. However, Westerners often fail to understand the principles and procedures which underlie the punishments.

Sharia<sup>99</sup> dictates both the procedure and the punishment for those accused

---

with it." Caroline Davies and Elizabeth Grice, *British Nurses May Face Death Under Islamic Law*, CHICAGO SUN-TIMES, Dec. 29, 1996, at 3, available in 1996 WL 6779694.

<sup>97</sup> Jerome J. Shestack, *Forty Years Ago, the Universal Declaration of Human Rights Was Issued. A Look At What Has Happened Since*. 15 SUM Hum. Rts. 16 (1988).

<sup>98</sup> Daniszewski, *supra* note 2.

<sup>99</sup> Currently, only Saudi Arabia, Iran, and Sudan follow Sharia. However, several other nations, including Egypt, Algeria, and Afghanistan, have experienced violent campaigns demanding the imposition of Sharia. *Id.*

of murder and other crimes.<sup>100</sup> In considering Sharia, a foreigner must remember that Sharia is more than just a legal system. Rather, the people of Saudi Arabia believe that Sharia is mandated by God, and failure to conform to its requirements is to disobey the word of God. While this concept may seem strange to more secular Westerners, it is nonetheless part of the culture and belief system of Saudi Arabia.

Inherent in Sharia are safeguards for the rights of people stemming from the religious origins of the law. Judges in Saudi Arabia are, by definition, religious scholars<sup>101</sup> and their task is to interpret the law in accordance with the will of God. Saudi judges anguish over their decisions, fearing that they themselves will be judged in the next life by those they judged in this life.<sup>102</sup> Additionally, court proceedings are typically more informal than those conducted in the West, as the accused meets with the judge in more of a conference-style meeting than a trial.<sup>103</sup> In this setting, the accused is reminded of his duty to God, creating an environment where the accused's sense of religion plays a larger role than the legal wranglings of his attorney.

In addition to the religious aspects of Sharia, the system that has developed provides several procedural safeguards that are in conformance with international law. As required by international law, a man is innocent until proven guilty by evidence that clearly establishes his guilt.<sup>104</sup> Additionally, Saudi law is in accord with international law in entitling the accused to an agent, in conducting a trial to ascertain the truth, and in providing a process by which appeals may be made.<sup>105</sup>

Despite the principles of Sharia that seem to ensure fairness in trials, Human Rights Watch, an international watchdog organization, thinks that Saudi Arabia falls short of its aspirations. According to the organization, "[t]hroughout 1996, the conduct of trials fell far short of international norms. Saudi law did not guarantee . . . the right to counsel, made no provision for notifying families of arrests and imposed no maximum time limit on . . . pretrial detention."<sup>106</sup> Additionally, the organization claims, "[t]here were

---

<sup>100</sup> For example, the punishment for a married adulterer is stoning, for an unmarried adulterer, flogging, and for theft, amputation. *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* There is a saying in Islam that "[f]or every three judges, two will go to the Fire and only one to Paradise." *Id.*

<sup>103</sup> Daniszewski, *supra* note 2.

<sup>104</sup> *Id.*

<sup>105</sup> See discussion, *supra* pp. 238-240.

<sup>106</sup> Daniszewski, *supra* note 2.

reports that judges often accepted uncorroborated, forced confessions as the sole basis for conviction."<sup>107</sup>

However, in this case, there is no evidence that the accused nurses have been subjected to such abuses. The families of the nurses were allowed to visit with the imprisoned women soon after their arrest.<sup>108</sup> The accused women have had an attorney representing their interests.<sup>109</sup> Finally, there is no evidence that the confessions signed by the women were the sole basis for their conviction.<sup>110</sup> Rather, the Saudi judges apparently based their decision of the women's guilt on several pieces of evidence besides the confessions.<sup>111</sup>

### B. Claims of Torture

The accused women claim that their confessions were forced by the false promises of Saudi police during their five day interrogation prior to the police bringing formal charges against them.<sup>112</sup> Under the General Assembly's definition of torture, the mental pain caused by such forced confessions may qualify as torture.<sup>113</sup> However, in this case, the confessions, while not obtained under conditions considered ideal to the average Westerner, were not necessarily obtained in violation of international law.

Saudi officials may have acted in violation of international law in several respects. The acts of the Saudi government that the women presumably would claim were contrary to international law are: the five day detainment without formal charges, a false promise to deport the women in exchange for the confessions, and the intense questioning of the women while detained.<sup>114</sup> No acts of physical torture of the women have been alleged. Additionally, people who have visited the women report that they are in

---

<sup>107</sup> *Id.*

<sup>108</sup> *Saudi Murder Charge Nurses See Relatives, supra* note 28.

<sup>109</sup> Farrell, *supra* note 8.

<sup>110</sup> While it remains to be seen whether the women will be convicted and on what evidence, the Saudi officials have already released much of the evidence upon which they base their detention of the women, evidence that is likely to be used at trial. See discussion, *supra* pp. 231-237.

<sup>111</sup> See *supra* notes 11-13.

<sup>112</sup> Farrell and Maynard, *supra* note 18.

<sup>113</sup> *The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment, supra* note 90, at art. 1, para. 1.

<sup>114</sup> See discussion, *supra* pp. 231-237.

good health and well cared for.<sup>115</sup>

The acts of torture that could be claimed against the Saudi government do not rise to the level of a violation of human rights under international law. There is a fine line between torture and interrogation, one which the Saudis walked with success. Saudi officials did not detain the women until they had a reasonable suspicion that the women may have been involved in the murder.<sup>116</sup> Once detained, the methods used to interrogate the women have not been alleged to be anything but verbal questioning. While the length of detainment prior to the filing of charges may seem to be unduly long, nothing in the UN resolutions suggests that five days is a clear violation of international law. Further, the women at all times knew the reason for their detainment. Finally, the women were allowed to try to retract their confessions before the courts of Saudi Arabia.<sup>117</sup>

### C. *The Death Penalty*

The death penalty creates a great deal of debate in the international law arena. Saudi Arabia does employ capital punishment in administering criminal justice.<sup>118</sup> If convicted of murder, the women in this case would have faced the death penalty.<sup>119</sup> However, Saudi law contains all of the safeguards required under international law for the imposition of capital punishment, and these safeguards will be followed in the prosecution of the British nurses.

Many nations claim that the death penalty has been abolished under international law. Indeed, there is support for this proposition in the Declaration itself, which states that "[e]veryone has the right to life."<sup>120</sup> However, the Declaration also states, in the same clause, that everyone is entitled to liberty.<sup>121</sup> Yet few nations would argue that a nation lacks the power to imprison persons convicted of crimes. And several nations still practice capital punishment, including the United States. Both the failure to expressly ban capital punishment and the continued practice of it in the

---

<sup>115</sup> Hardy, *supra* note 31.

<sup>116</sup> The women were arrested after they were videotaped using the bank card of the victim. McGrory, *supra* note 11.

<sup>117</sup> Farrell and Maynard, *supra* note 18.

<sup>118</sup> Daniszewski, *supra* note 2.

<sup>119</sup> Grice, *supra* note 37.

<sup>120</sup> The Declaration, *supra* note 80, art. 3.

<sup>121</sup> *Id.*

world indicate that international law has not necessarily abolished the death penalty.

Not only has the United Nations failed to place an outright ban on capital punishment, it has promulgated rules concerning the procedures to be followed in sentencing a person to death and the method by which convicted criminals may be executed.<sup>122</sup> Saudi Arabia has followed those procedures in its laws and with respect to the British women currently facing the death penalty. Murder is certainly a serious crime, perhaps the most serious of all. Imposition of the death penalty after a murder conviction is in accordance with international law, which allows the death penalty for only the most serious crimes.<sup>123</sup>

Additionally, the trial procedures and evidentiary standards followed by Saudi Arabia meet international law's standards of impartiality and fairness to the accused, as well as the requisite appeals procedure.<sup>124</sup> The fact that the ultimate decision to pardon the convicted lies in the hands of the victim's family rather than the Saudi governmental authorities is not in violation of international law, which merely requires that the condemned have the right to seek a pardon.<sup>125</sup>

In reality, even if the murder victim's family had not waived the death penalty, Saudi officials were unlikely to execute the women. According to Michael Fields, an author and Middle East consultant, there is a tacit understanding that non-Muslim nationals of OECD nations are not subjected to capital punishment.<sup>126</sup> The fact that no American or European has ever been executed in Saudi Arabia<sup>127</sup> is evidence of this understanding. While the execution of the women was possible, it is unlikely that they would actually have been executed because of political sensitivities and the actions of the victim's family.

---

<sup>122</sup> See, e.g., *The International Covenant on Civil and Political Rights*, *supra* note 84; *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, *supra* note 94.

<sup>123</sup> *The International Covenant on Civil and Political Rights*, *supra* note 84, at art. 6, para. 2.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at art. 6, para. 4.

<sup>126</sup> Grice, *supra* note 37. Diplomatic and political concerns probably are the source of this understanding, as Saudi Arabia is probably unwilling to purposely create unbridled hostility with its OECD trade partners.

<sup>127</sup> Daniszewski, *supra* note 2.

## IV. CONCLUSION

In the words of Michael Dark, a British national who has practiced law in Saudi Arabia for sixteen years, "I am confident that the legal system here will produce a fair result."<sup>128</sup> International law does indeed mandate that all people be guaranteed certain fundamental rights. The Saudi system of Sharia does guarantee these rights. Even if occasional errors occur that result in the violation of human rights, these errors merely confirm that no system is perfect all of the time.

The two British nurses did face a daunting trial and possible death penalty, a possibility they would not face in their home country. However, the women elected to live, work, and reap the benefits of living in Saudi Arabia. Therefore, these women are subject to the laws of the country that provide not only benefits to them, but also penalties if the laws are broken. These women are learning the meaning of the adage, when in Rome, do as the Romans do, in learning respect for Saudi Arabia as a culture and as a nation, one capable of executing them.

---

<sup>128</sup> Fleet, *supra* note 10.