

# Human Rights In The Middle East: Questions Of Compatibility And Conflict

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## Human Rights In The Middle East: Questions Of Compatibility And Conflict

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REBECCA DEVITT, MAR 30 2011

*'It is natural that rights concepts should have become a preoccupation of contemporary Islamic thought because they are intimately related to actual political and legal problems facing all Muslim societies, which are struggling through incomplete transitional stages'.[1]*

Issues of human rights in the Middle East and Central Asia and its relevance in Islamic societies, as suggested by the quote above go to the very heart of the political and social challenges that the region faces today. So what are the major human rights issues in Middle Eastern and Central Asian states and how can these issues be reconciled with the current political and social problems facing the region? The US invasion of Iraq and the occupation of Palestinian territories threatens self-determination whilst the continued oppression of women's rights and religious freedoms have adversely effected human development and attempts at good governance in the region.[2]

The rise of Islamic terrorism and conflict in the region has led to huge amounts of human suffering and poverty whilst the right to freedom of association and free speech has been denied in many countries stifling the emergence of civil society. It is within this context that the debate surrounding the issue of human rights and its application in the region will be discussed. Central to the debate over human rights is the issue of whether Islam is compatible with universal human rights.[3]

The debate over human rights and Islam has often focused on two opposing groups: those traditionalist Muslim leaders and Islamists who argue that human rights are a cover for Western domination of Middle Eastern states and those who argue that Islam is not compatible with modern human rights norms and conventions such as Bernard Lewis.[4] These groups often take the spotlight in the debate over human rights; however those traditionalist Muslim leaders who argue that human rights are a Western construct are merely trying to legitimize their oppressive rule whilst those authors such as Bernard Lewis merely reinforce stereotypical views of Islam in Western eyes.

Neither of these views is helpful when trying to understand the debate on human rights and its applicability to Middle Eastern states. It can in fact be argued that Middle Eastern philosophers, scholars and intellectuals have contributed to the international discussion on human rights since the penning of the Universal Declaration of Human Rights and this reflects the importance that the issue has in the region. [5] Furthermore as Anne Elizabeth Mayer has argued:

*'The frequent references to international human rights, even by Muslims who quarrel with these, show that these concepts are already percolating through Islamic culture and becoming part of the apparatus that Muslims use internally in debating laws and policies.'[6]*

Therefore it can be argued that human rights have taken a central role in debates over the political direction in the region and that recent efforts by governments of Muslim countries to justify the rejection of international law based on alleged obligations to uphold Islamic principles are paradoxical as most of these governments have already indicated that they accept international law, for example joining the United Nations or membership on the UN Human Rights Council.

# Human Rights In The Middle East: Questions Of Compatibility And Conflict

Written by Rebecca Devitt

In order to understand the debate and issues surrounding human rights in the Middle East it must be remembered that the idea of the nation state in the region is one that is very flawed. Nation states in the Middle East as we know them today have been shaped by events following the fall of the Ottoman Empire, by the Allies who divided up the region with total disregard for the people in agreements such as the Sykes-Picot Agreement and the Mandate system.[7]

The result of this is that today most states in the Middle East and Central Asia are governed by corrupt, often oppressive and unelected officials who have little regard for the will of the people as 'they did not emerge from the collective agency of the people, unlike nation states in the West, which developed their own political and constitutional way of life.'[8]

Issues of good governance, the validity of democracy in the region and human rights are at the very centre of the challenges facing Middle Eastern society today. In order to understand this we must look at the major human rights issues facing Middle Eastern and Central Asian countries and the application of human rights norms and compatibility with Islam.

## Human Rights and Islam: Are they compatible?

As mentioned above the question of international human rights and its compatibility with Islam must be the starting point for any discussion on human rights in the region as it goes to the very core of arguments for and against adherence to international norms. Arguments that human rights norms are against *Shari'ah* law and that Islamic law itself is incompatible with human rights are countered by the fact that Islamic law contains common principles of good governance and human development as respect for justice, protection of human life and dignity are central in *Shari'ah* law.[9]

That said the argument that human rights is a Western construct is not just exclusive to countries in the Middle East and reflects the impact the colonial expansion into Africa, Asia and the Middle East has had on developing nations attitudes towards human rights. The colonial expansion into the Middle East during the late 19<sup>th</sup> and 20<sup>th</sup> Century has left an undeniable mark on the functioning of state systems in the region today. The 2004 UN Arab Human Development Report (AHDR) states that whilst Arab-Islamic tradition holds special importance for ideas of justice and human welfare, history has shown that *'they were not sufficiently prevalent in society to foster a culture based on a political contract, and allow for the legitimacy of differences of opinion, dialogue and transfer of power.'*[10]

Additionally it can be argued that adherence to international human rights systems are based on the assumption of sovereignty, an assumption that cannot be applied to all Middle Eastern countries as some remain under foreign occupation as the current situation in Iraq and the Palestinian territories reflect. Those states, in the region however, who have claims to sovereignty are often ruled by regimes that are undemocratic, under-representative and corrupt preferring to condemn and block any adoption of human rights in order to remain in power.

Nevertheless there has been much criticism of those governments who claim that their oppressive actions are in line with Islamic law as a Report on Human Rights in Islam observed in 1980:

*'It is wrong to abuse Islam by seeking to justify certain political systems in the face of obvious contradictions between those systems and Islamic law.'*[11]

Whilst many reports have focused on arguments by traditionalists against the application of human rights many scholars have called for the process of interpretive scholarship (*ijtihad*) of Islamic law when applied to human rights issues such as gender equality and religious freedom. As Abdullah Ahmed An-Na'im has argued solutions must be found from within Islam in order to reconcile with human rights regimes rather than manipulate the idea of human rights as a Western concept to further particular political objectives.[12] This humanist approach is one that has gained prominence in the late 20<sup>th</sup> Century early 21<sup>st</sup> century and is at the core of questions on how to deal with

# Human Rights In The Middle East: Questions Of Compatibility And Conflict

Written by Rebecca Devitt

international human rights on a local level. The AHDR 2004 argues that it may be appropriate to work towards a concept of human rights in an Arab context, that respects international human rights law in its entirety, 'while recognizing the Arab national identity and its aspirations as an historical legacy of critical importance...in shaping Arab future'[13]

It is reconciling this that will be most challenging for the future of the region and there are signs that progress is being made. *The Draft Charter for Human Rights in the Arab Homeland* 1986 was based on this idea, focusing on the civil, political, cultural and finally the collective rights of the Arab people. However an updated version of this draft penned in 2004 fell short of international human rights standards and omits texts on the elimination of all forms of discrimination against women and the rights of children.[14] The draft which was put into act in 2008 has been met with criticism by international experts such as then High Commissioner for Human Rights Louise Arbour who stated that the Charter is incompatible with international standards for women's, children's and non-citizens rights and that it equates 'Zionism to racism.'[15] This charter whilst recognizing the rights of individuals fails to recognize Israel's right to exist, a move which does little to ease tension between Israel and Palestinians and which can create greater conflict in the region. The issue of human rights and Islam has been given more prominence in the Middle East as most states within the region suffer under oppressive and authoritarian rule. Furthermore the strategic push by the United States for democracy promotion and human rights in a region which provides oil to the rest of the world has added to concerns by Middle Eastern states that human rights are a western construct.

The issue of democracy promotion is one of major importance for Middle Eastern states as those who most benefit from greater freedoms are often Islamist groups in opposition such as the Muslim Brotherhood in Egypt and Hamas in the Palestinian Territories, groups which are viewed as terrorist organizations. Issues such as this reflect the difficulty in addressing the reality of the situation in the Middle East with human rights and the application of international human rights norms to Muslim States and it is to the issue of elections and democracy promotion that we shall turn to next.

## **Elections, Democracy and Human Rights: Palestinian Territories and Egypt**

One of the major human rights issues facing the Middle East is that of self-determination and national freedom. Countries such as Iraq and the Palestinian territories remain under foreign occupation with populations enduring serious violations of human rights. In the Occupied Territories, Palestinians are denied their civil and political rights and their legitimate rights under international law such as the right to freely establish their own political system.

Attempts by the Palestinian Territories to establish their own political system have backfired both domestically and internationally whilst the US led invasion of Iraq has led to over 95,000 civilian deaths since the beginning of the war in 2003.[16] Pushes for democratic change in both Iraq and the Palestinian Territories has led to wider conflict and greater suppression of the peoples rights. Elections in Iraq in 2005 were marred by terrorism and violence and call of ballot tampering and forgeries whilst the Palestinian elections in 2006 where Hamas claimed victory saw a wave of condemnation from the international community with the United States and the European Union refusing to recognize the result as Hamas is a recognized terrorist organization.[17]

It can be argued therefore that the idea that democracy promotion would spread human rights and peace has backfired in the Palestinian territories as infighting between Hamas and Fatah has led to the take over of the Gaza Strip by Hamas and the collapse of the coalition government; throwing not only Palestinian, but also Israeli-Palestinian politics in disarray, whilst the international boycott on Hamas led to sanctions on the Gaza Strip and West Bank in 2007 with devastating effects on the Palestinian populations livelihood.[18]

The idea of democracy promotion in the Middle East and major powers involvement in the region has had an enormous effect on views on human rights in the region, as U.S policy towards the Middle East in the 20<sup>th</sup> Century has primarily focused on the protection of oil supplies and its unequivocal support of Israel. Due to these primary concerns the US along with other major powers glossed over any human rights abuses by their client states as long as they didn't threaten interests, thus enabling governments in the region to rule oppressively for decades. The aftermath of 9/11 has further raised questions about the effort of major powers to promote democracy as the Bush

# Human Rights In The Middle East: Questions Of Compatibility And Conflict

Written by Rebecca Devitt

Administration sort to curtail civil and political rights of its citizens in order to continue its war on 'terror'. [19]

Furthermore the election of Islamist groups such as Hamas and the Muslim Brotherhood leads to a presumption that Islamists only value the ballot box once and act as a justification to Arab regimes to keep those who are hesitant about the rise of Islamist groups on their side as well as a justification for international forces support of oppressive regimes.

This point of view argues that opening up the democratic process to all of society will lead to the election of groups such as the Islamist, followed by oppression and an end to the political process in the state. Many of these groups such as the Muslim Brotherhood in Egypt defend human rights 'because they are concerned with protecting their own rights, as individuals and as an organization. They also defend rights because they are intent on presenting a picture of a moderate and respectable movement.' [20]

Whilst the Muslim Brotherhood has made some ground in Egyptian elections it has been largely banned from contributing to the public sphere and many members have been detained. These sorts of actions by authoritarian governments can only lead to the disenfranchised seeking alternative means and the Islamist are therefore best able to exploit the idea of democratization as there is a lack of other options for voters. As Chris Zambelis has explained 'Given the current circumstances, the advent of democracy in the Middle East will empower Islamists.' [21]

Furthermore Islamist organizations such as the Muslim Brotherhood often work with non-government organizations and run effective welfare programs that cannot be provided by the state, whilst the most radical of these groups revert to terrorism to fight against the repressive regimes. The Muslim Brotherhood has in fact influenced Islamist movements around the world with its mix of political activism and charity work and is an example of how the use of human rights language can galvanize civil society. [22]

Whilst critics argue that this leads to the rise of radical Islamist groups taking power as in Hamas's victory in the Palestinian territories, it can be argued that the process of democratization itself does not happen overnight and the fact that there are shifts towards a more open political process in the region in which the rule of law, human rights and civil society are engaged suggests that progress is being made. In addition to this, nine governments throughout the region including Egypt, Saudi Arabia, Jordan, The Palestinian Territories and Qatar have created 'national human rights institutions' (NHRI) in the last decade to implement internationally recognized norms. [23]

Whilst this suggests a greater engagement with international human rights principles and these NHRI's have improved some conditions for individuals and groups suffering from human rights abuses in the region, it can be argued that many of these institutions have been set up to appease opposition and criticism. For example in Egypt, the creation of the National Council for Human Rights has been viewed by many as window dressing for the National Democratic Party's political ambitions and that the creation of the council seems somewhat of a propagandist move as the Egyptian government continues to violate international law in regards to political and civil rights. [24]

Whilst this is true, it can be argued again that the establishment of such institutions is another step in the right direction towards reconciling international human rights with states in the region. Furthermore the establishment of the United Nations Development Program Arab Human Development Reports has given voice to prominent Arab scholars, policymakers and practitioners in the debate about the future of the Middle East, highlighting the importance of political freedom, women's rights and knowledge. [25] The establishment of such reports and institutions reflects the fact human rights have now become a legitimate political concern in the region. Whilst attempts have been made to reform policies towards political freedoms in the region, an issue that has lacked much progress is that of gender equality and this is where we shall turn next.

## Gender Equality in the Middle East

Gender equality and women's rights, is an issue that not only affects the Middle East but also the whole world, with

# Human Rights In The Middle East: Questions Of Compatibility And Conflict

Written by Rebecca Devitt

women having a disproportionate lack of power and the majority are poor. The gender inequality in the Middle East is by no means a phenomenon that only occurs in that region, but it has been a human rights problem that has been highlighted in the last decade.

In the Middle East women lack proper health and education and are severely under represented in the public and political sphere. Women in the region generally have a high mortality rate with an average of 270 deaths per 10,000 live births and whilst girls tend to outstrip boys in academic performance, women continue to lack opportunities to gain knowledge.[26] Forms of violence against women continue including honour killings and rape, whilst female circumcisions continue to cause major health complications for women and the patriarchal system maintained in the region treats women as second class citizens. This patriarchal system views women's position in society in relation to their duties towards the family thus preceding their rights as individuals, and whilst women's empowerment movements have been challenging the authorities for some time, many view the movement as a western concept rather than a reaction to Islamist trends.[27]

This again is a ridiculous claim as numerous Middle Eastern countries have ratified the 1979 Convention on Elimination of Discrimination against Women, that said whilst Saudi Arabia did ratify the convention in 2000 it had major reservations to its content and in 2003 public debate occurred in Iran about it's possible ratification of the treaty.[28] Whilst this debate did not result in Iran's ratification of the convention this reflected the 'dominance of hardline theocrats rather than necessarily reflecting Islamic requirements.'[29] As pointed out by Rebecca Barlow and Shahram Akbazzadeh, 'Muslim's have demonstrated that they span the whole spectrum of opinions' on politics and social issues.[30]

This again reflects the difficulty in reconciling Islam with international human rights norms, but authors such as Moroccan feminist Fatima Messini advocate for Islamic reformism in regards to human rights and in particular women's rights in the Middle East, arguing that a re-examination of Islamic texts is needed to understand its relevance to today's world.[31]

Whilst there have been many failures in the attempts to empower women in the Middle East, such as the banning of women participating in municipal elections in Saudi Arabia, there have been a few successes including: the passage of a new law in Egypt in 2001 making a no grounds divorce easier for women, the establishment of thousands of NGO's across the region engaged in development of women's income, girls education, political involvement and legal reforms.[32] This suggests that progress is being made no matter how slow.

## CONCLUSION

The advent of gender equality and political freedom as topics of heated debate in the Middle East suggests that the role that international human rights norms are taking in the further development of states in the region is a very significant one. The fact that the debate over whether Islam and human rights discourse are compatible is an example of how states in the Middle East continue to go through a transitional phase in regard to reforming laws and policies which infringe upon peoples rights. Post election violence in Iran and Iraq suggests that there is still a long way to go in terms of securing peace in security in the region.[33]

As suggested above attempts to reform such as democratization, the empowerment of women and the establishment of human rights institutions and legal frameworks do not occur overnight, but rather occur over a period of time. Developments such as the establishment of national human rights institutions are a step in the right direction and debate and discussion on the issue of human rights must continue not only in the Middle East but around the world. Issues of women's empowerment and democratization are not exclusive to the Middle East; however the current situation in the region suggests that the need for urgent reform in respect to human rights is needed if destabilization in the region is to be stopped.

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Written by Rebecca Devitt

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Written by Rebecca Devitt

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# Human Rights In The Middle East: Questions Of Compatibility And Conflict

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*Date written: January 2010*

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