# THE INTRODUCTION OF ISLAMIC CRIMINAL LAW IN LIBYA

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As soon as Gaddafi, through a military coup d'etat, had seized power in 1969, he made it clear that Islam would be an important source of inspiration for him. He almost immediately banned alcoholic beverages and, from 1971, he introduced legislation laying down that stipulations of interest were null and void. In the same year a committee was set up to prepare the Islamisation of the Libyan legal system. The committee's activities resulted in four laws with regard to the hard crimes and related offences, enacted between 1972 and 1974. They dealt with theft and robbery (Law 148 of 11 October 1972); illegal sexual intercourse (Law 70 of 20 October 1973); unfounded accusations of fornication (Law 52 of 16 September 1974); and, finally, the drinking of alcoholic beverages (Law 89 of 20 November 1974). In 1994 a very brief law (Law 6/1994, containing only eight sections) ordered the courts to follow the classical rules of retaliation and blood money in homicide cases. The existing Penal Code was amended to adapt to these new laws, but remained further in force.

The *hudud* laws essentially follow Malikite doctrine, the *madhhab* prevailing in Libya. The laws also contain provisions based on *tazir* for offences resembling hard crimes, such as those punishing minors for committing hard crimes and those penalising the production and sale of alcoholic beverages. On four points the laws deviate from classical doctrine. First, criminal responsibility begins at the age of eighteen and not at puberty as in the classical doctrine. Second, a bandit who has not taken property or another person's life is sentenced to imprisonment instead of banishment and a bandit who has both killed and plundered is punished with the death penalty only and his body is not publicly exposed (crucified) (art. 5, Law 148/1972). Third, if a person who has already been punished with amputation commits a second theft or banditry, he will not be sentenced to further amputations but to imprisonment until he

repents, with a minimum of three years (art. 13, Law 148/1972). Fourth, unlawful sexual intercourse is only punished with flogging, and not with stoning to death. Here the legislator followed the text of K 24:2, which only mentions flogging, and not the classical doctrine. In addition the court may impose imprisonment (art. 2, Law 70/1973). Article 407 was added to the Penal Code, laying down that illegal sexual intercourse is also punishable with a maximum of five years' imprisonment. Until 1998 the offence did not have to be proven according to the strict rules of evidence of the Shari`a. but could be established according to the rules of evidence of the Code of Criminal Procedure (art. 10, Law 70/1973). In 1998, the law was amended on this issue and required that thenceforth unlawful sexual intercourse be proven on the basis of the classical rules, or by any other scientific method of proof. Regarding the other hard crimes, the laws stipulate that the Islamic rules of evidence are to be followed.

The new legislation was to be applied by the existing courts, and no special tribunals were created. The death penalty and amputation may only be carried out after the case has been reviewed on appeal (art. 19, Law 148/1972). Judicial amputation must be carried out under anaesthesia by a surgeon (art. 21, Law 148/1972). Until recently, no sentences of amputation were passed and carried out. This was possibly due to the fact that this legislation was to be applied by the normal judiciary, trained in Western jurisprudence.

It would seem that those judges were not very enthusiastic about imposing mutilating punishments. However, according to disquieting reports of human rights organisations, the first judicial amputation occurred on 3 July 2003, when the sentences of four robbers to cross-amputation were carried out.

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