

Because of their understanding with Sonny, she decided to conceal her pregnancy to him until she gave birth to a cute baby girl. At the registration of birth of the baby, Arlene wrote Sonny as the baby's father. However, Sonny denied as the baby's biological father and refused to acknowledge the baby saying that he was never informed of Arlene's pregnancy and stood pat on their understanding that Arlene would abstain from pregnancy.

What is Arlene's remedy to ensure that her baby girl is acknowledged by her biological father?

A. Arlene would not have concealed her pregnancy to Sonny even if it was against their understanding to refrain from pregnancy for the time being. Many things happen beyond the control of man. There are things that you don't like but are good to you, and there are things that you like but are bad to you. Certainly, only God knows what is best to human. And who knows, Arlene's baby girl is a blessing to them.

Meanwhile, Arlene must submit her baby girl to a DNA test to prove to Sonny that he is indeed the baby's biological father. This way, Sonny has no option except to acknowledge and recognize the baby girl as his.

*Please send your questions to
marshlawyer@gmail.com*

Sources:

- Al-Hadith and Al-Baqarah, The Holy Qur'an
- The Law of Annulment of Marriage, Jim V. Lopez

Muslim Family Law

Inheritance for Muslim husband

25 March 2007

By Tomara M. Ayo, Ph.D.
Philippine *Shari'a* Lawyer

Q. Ali married Maria in a Muslim court. Maria, a registered Filipina nurse never converted to Islam despite their union for ten years. They have no child, but Maria has two daughters from her common-law husband in the Philippines. In June 2006, Maria met an accident and died instantly. Her beneficiaries include Ali and her two daughters. When Ali asked to claim his share from the property and other death benefits left by Maria, the latter's lawyer told him that he would get nothing because Maria is not a Muslim, and therefore Ali as a Muslim could not inherit from his non-Muslim wife. Is this right?

A. Yes, Maria's lawyer is right. Ali would get nothing from the property and other death benefits left by Maria. It is a settled jurisprudence that, a Muslim could not inherit from his or her non-Muslim spouse and vice-versa.

In several opinions, *Shari'a* jurists have expounded the importance of oneness in religion of spouses to avoid problems in the disposition of property left by either spouse because Islam has its own way, embedded in the Holy Qur'an of disposing the property of the deceased.

Such disposition is beyond compromise by a man-made law. In fact, many Muslim countries, which by its standard, could not fully implement *Shari'a* or Islamic law ensure that their family laws, particularly on inheritance and property relations are in accordance with the Holy Qur'an and/or teachings of Prophet Mohammad, *peace be upon him*.

Only Allah is truly omniscient.

*Please send your questions to
marshlawyer@gmail.com*

Muslim Family Law

**Widow's waiting period
(*Iddah*)**

06 May 2007

**By Tomara M. Ayo, Ph.D.
Philippine *Shari'a* Lawyer**

Q. Sarah's husband died in the Philippines in 2006. After returning to Kuwait in February 2007, she met an Egyptian bachelor named Adil. After a few weeks of courtship, Adil proposed to marry Sarah. Sarah accepted Adil's proposal but when she informed Adil of her acceptance, Adil demanded a death certificate of Sarah's late husband. He said that he just wanted to ensure that



Sarah's *iddah* or waiting period is properly observed. Sarah is confused. She does not know the meaning of *iddah* or waiting period. Is Adil correct? What is the meaning of *iddah* or waiting period under *Shari'a* or Islamic law?

A. Adil is correct. It is a must to require Sarah as a widow to present her late husband's death certificate to ensure that there is no legal impediment on her second marriage.

Iddah or waiting period refers to the number of days where a divorced woman or widow is barred to contract new marriage. It is the interval of time, which a woman must observe after divorce or death of a husband, before she can remarry. Its purpose is not only to determine the paternity of possible offspring but also, in the case of divorce, which has not been pronounced three times, to provide a space for reconciliation with the husband (Cyril Glasse, *The Concise Encyclopedia of Islam*).

Under Article 57 of P.D. 1083 or Muslim Code of the Philippines, every wife shall be obliged to observe *iddah* as follows:

1. In case of death of husband, four months and ten days counted from the husband's death;
2. In case of termination of marriage by divorce, three monthly courses;
3. In case of pregnant woman, for a period extending until delivery; and
4. Should the husband die while the wife is observing *iddah* for divorce, another *iddah* for death shall be observed.

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Muslim Family Law

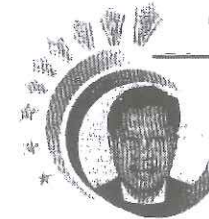
Illegal solemnization of marriage

14 November 2006

By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

Q. A religious person from Mindanao solemnized the marriage between Linda and Akbar. This person was without government authority to solemnize marriages. A year later, Linda found out that their marriage has no record in the National Statistics Office. She wanted to register their marriage officially, and if possible, file a case against the said person who solemnized their marriage. Please give your advice.

Only Allah is truly omniscient



Muslim Family Law

By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

**Wife's divorce &
custody of minor**

27 May 2007

A. Linda's marriage can be re-solemnized by a person in authority under Article 18 of P.D. 1083 and officially register it. For this purpose, she can inquire from the nearest Philippine Embassy or Consulate. And if she insists, she can also file a case against the person who solemnized their marriage without proper authority.

Under Article 181 of P.D. 1083, any person who shall, without authority, solemnize marriage purportedly under this Code (P.D. 1083 or *Shari'a*) or shall do so in a manner contrary to the provisions thereof, shall be punished by imprisonment of not less than two months but not more than two years or a fine of not less than two hundred pesos but not more than two thousand pesos or both, in the discretion of the court.

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*Please send your questions to
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Q. A certain OFW sent interesting questions regarding a popular Filipino movie star whose marriage is now a subject of news articles in the Philippines. The movie star converted to Islam and has two children from her Muslim husband. Because of the notion, that only a husband can divorce his wife under Islamic law, the OFW is asking whether the movie star could divorce her husband under exceptional cases. If the divorce is granted, who would take custody of their minor children?

A. The notion that only a husband can divorce his wife under Islamic law is wrong. Under Article 52 of P.D. 1083 or the Muslim Code of the

Philippines, the court may, upon petition of the wife, decree a divorce by faskh on various grounds, among others, for the unusual cruelty of the husband, as follows:

1. Habitually assaults her or makes her life miserable by cruel conduct even if this does not result in physical injuries;
2. Associates with persons of ill-repute or leads an infamous life or attempts to force the wife to live an immoral life;
3. Compels her to dispose of her exclusive property or prevents her from exercising her legal rights over it; or
4. Does not treat her justly and equitably as enjoined by Islamic law.

As to the custody of their minor children, the court sees to it that the welfare of the minor children is ensured, before it awards the custody of the children. Nevertheless, Article 78 of P.D. 1083 states that:

“The care and custody of children below seven years of age whose parents are divorced shall belong to the mother or, in her absence, to the maternal grandmother, to the paternal grandmother, the sister and aunts. In their default, it shall devolve upon the father and the nearest paternal relatives. The minor above seven years of age but below the age of puberty may choose the parent with whom he or she wants to stay.

The unmarried daughter who has reached the age of puberty shall stay with the father; the son, under the same circumstances, shall stay with the mother”.

*Please send your questions to
marshlawyer@gmail.com*

Muslim Family Law

Guardianship

By Tomara M. Ayo, Ph.D.
Philippine *Shari'a* Lawyer

Q. Mira has a two-year old daughter from her former husband. Recently, the husband asked Mira to hand over to him the guardianship of their daughter. Mira does not like to agree with her former husband who is a local citizen. Instead, she went to her country's Embassy for advice. The Embassy advised her to see a lawyer for this purpose, but Mira has no enough money to pay the services of a lawyer. Please give your legal advice.

A. It is indeed true that Mira needs a lawyer if her former husband insists on taking over the guardianship of their two-year old daughter. At any rate, guardianship is a father's right.

If the father is absent for long or dead, the guardianship will go to the paternal grandfather, and if the latter is not alive then to the nearest paternal relatives. However, the judge will still decide on a guardianship according to the welfare of the minor. In Mira's case, the paramount consideration is still the welfare of their two-year old daughter.

As guardian, he or she must care for and maintain the interests of the minor. Impose discipline and oversee his or her education until the minor reaches fifteen years, and matures to handle personal matters. In addition, the guardian must have the same religion with the minor's father.

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*Please send your questions to
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Muslim Family Law

Non-Muslim spouse

29 April 2007

By Tomara M. Ayo, Ph.D.
Philippine *Shari'a* Lawyer

Q. Ahmad, an Egyptian proposed to marry his Christian Filipino girlfriend at the Philippine Embassy. Is this permissible and possible, and if so, what are the requirements? Please give your advice.



A. Marriage with a Christian woman is permissible under *Shari'a* or Islamic law. Prophet Mohammad, *peace be upon him*, married Maria, an Egyptian Copt who later converted to

Islam. In your case, I regret to inform you that the Philippine Embassy solemnizes marriage only between Filipino spouses. However, you can go to the Justice Palace in Reggae for marriage. Before doing so, please ask your Filipino girlfriend to secure the following documents:

1. Certificate of no marriage record from the National Statistics Office in Manila duly authenticated by the Authentication Office in Malacañang and Department of Foreign Affairs in Manila;
2. Birth Certificate from the National Statistics Office in Manila;
3. No Objection certificate from the Philippine Embassy in Kuwait duly translated into Arabic. Payment for this document is K.D. 8.125

In my belief, it is only upon compliance of the afore-stated documents that your marriage is officiated by an officiating authority in Kuwait.

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*Please send your questions to
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Muslim Family Law

Spousal rape

08 April 2007

By Tomara M. Ayo, Ph.D.
Philippine *Shari'a* Lawyer

Q. A certain employer raped his DH. To avoid criminal liability and public scandal at a conservative society, he proposed to marry the DH. Helpless and hoping for a bright future, the DH accepted her employer's proposal. A year later, they were blessed with a beautiful baby girl. However, the husband continued to engage sex with her by force, even against the latter's will. One day, a Filipino friend advised the DH wife to file a legal action of rape against the employer husband, saying that a husband could be charged with rape under Philippine law. Is this true and possible under *Shari'a* or Islamic law? Please give your advice.

A. It is true that a wife is now allowed to charge her husband with rape under Philippine law, particularly R.A. 8353 dated 31 September 1997. Unfortunately, this law does not operate in Kuwait and *Shari'a* or Islamic law. If the couple lives in the Philippines or the alleged rape took place while there, the DH wife can do so, through a Philippine court of justice, but not in Kuwait.

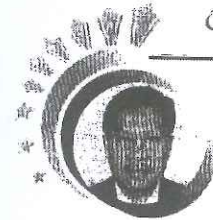
Traditionally, marital union is understood in our culture to include the spouses' obligation to give each other the right to each other's body. However, by human nature and at times, either of the spouse is physically exhausted, sick or not in the mood for sex. For these reasons, this law came into being. The new law expanded the definition of the crime of rape and reclassified it from a crime against chastity to a crime against persons.

In the DH wife's case, her remedy is to talk to her husband in a very diplomatic manner. And if the husband remains unheeded, the DH wife can still go to a local court or religious adviser invoking that she cannot cope up with the sexual demands of her husband.

Certainly, only Almighty Allah is omniscient.

*Please send your questions to
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Muslim Family Law

By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

Zakah on woman's dowry

04 November 2007

Q. Maria, a newly-wed OFW convert to Islam wanted to know if the dowry in the amount of K.D. 1,000 she receives from her husband is subject to Zakah (tax for the poor) or not. Please give your advice.

A. According to the Hanafi School of law, there is no Zakah on the dowry of a woman until the amount is not in her account or possession and reaches nisab (one-year possession). In Maria's case, this writer presumes that as a newly-wed she has not withheld the said amount for a year and therefore Maria has nothing to pay for the poor or Zakah.

Muslim Family Law

Adulterous spouse

22 April 2007

**By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer**

Q. Ahmed married Liza in the Philippines in 2002. Two (2) years later, Liza gave birth to a baby boy named Ali. Ahmed, a fo-



reignier and based in Kuwait continued to support Liza and Ali. Recently, Ahmed learned that Liza is still meeting with her former boyfriend and Ali is not his natural son. Because of the unpleasant information, Ahmed stops supporting Liza and their son Ali. Meanwhile, Liza went to court and filed a legal action for support. Will the legal action prosper?

In the Shafii School of law, it holds the view that a woman must pay Zakah on her dowry at the end of a year, even if it is before the wedding as long as the dowry (amount) is already in her possession. Meanwhile, the Hanbali School of law holds the view that a woman must pay Zakah on her dowry regardless of her economic and social status.

This writer adopts the opinion of the Shafii School of law. Therefore, in Maria's case she must pay Zakah on her dowry at the end of the year even if it did not reach a year or nisab in her possession.

*Please send your questions to
marshlawyer@gmail.com*

Source: As Sayid Sabiq, Fiqh us-Sunnah

A. Yes, the legal action for support will prosper *pendente lite* or while the case is under litigation. Liza's alleged meeting with her former boyfriend and mere information that Ali is not Ahmed's natural son are not valid grounds for Ahmed to stop his financial support to his dear family (Reyes v. Luciano, 88 Phil. 803). Hence, Ahmed as a father or head of the family must continue supporting Liza and Ali.

Competent evidence should be established, and convince the court of Ahmed's information because it is Liza's honor as a woman and Ali's bright future that are at stake. One is not supposed to rely on gossips and baseless information especially on personal and intimate nature because it will not only ruin one's family, but will destroy the bright future of the concerned individual.

Under *Shari'a* or Islamic law, if Liza's alleged adultery is not proven in court, Ahmed can be liable for Kidab or fake accusation, which is punishable by eighty (80) lashes in public.

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Please send your questions to marshlawyer@gmail.com

Certificate of Singleness or No Marriage Record

08 September 2007



Muslim Family Law
By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

Q. Mariam hails from Maguindanao Province. Her co-worker in a department store proposed her a marriage. As Filipino Muslim, she wanted to know if she still needs a certificate of singleness or no marriage record to facilitate their marriage.

A. As Filipino Muslim, there is no need for Mariam to get a certificate of singleness or no marriage record to facilitate her marriage. In Article 15 of P.D. 1083 or the Muslim Code of the Philippines, it enumerates the requisites for marriage as follows:

1. Legal capacity of the contracting parties;
2. Mutual consent of the parties fully given;

3. Offer (ijab) and acceptance duly witnessed by at least two competent persons after the proper guardian (wali) in marriage has given his consent; and
4. Stipulation of customary dowry (mahr) duly witnessed by two competent witnesses.

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Please send your questions to marshlawyer@gmail.com

Muslim Family Law

**Pregnancy and
paternity**

04 March 2007

By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

Q. Maria gave birth to a baby boy five months after her marriage. When she recovered and brought the infant's documents for birth registration at local authorities, the latter told her that there was a question of her legal pregnancy and proof of infant's paternity, and such should be decided by the court before the infant's birth is registered. Maria was amazed. Is this true? Please give your legal advice.

A. Yes, authorities are right because Kuwait's personal law states among others, that the period of pregnancy is between six lunar months and 365 days at maximum, and the birth of an infant within this period is a proof that he or she is the child of the

legitimate husband. Hence, in Maria's infant's case, which was born less than six months after Maria's marriage gives doubt to infant's paternity.

In this situation, Maria and her husband should go to court to prove that her husband is the real father of the infant, by presenting credible witnesses who are familiar of Maria's marriage to said husband.

Maria may wish to also seek assistance from her country's Embassy or Consulate in Kuwait by asking a certificate or proof that her marriage to said husband has been noted or registered at the Embassy or Consulate, at least six months before the infant's birth.

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*Please send your questions to
marshlawyer@gmail.com*

**Sources: Articles 169, 170, Kuwait
Personal Law**

Muslim Family Law

Denial of paternity

04 March 2007

By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

Q. Raul married Paula through the Justice Palace in Kuwait in 2002. A year later, Paula gave birth to a baby girl named Ana. In 2005, Raul learned from a reliable source that Ana is not his natural child, but Paula's child from her former boyfriend. Instead of bringing the information to Paula's attention, he kept it secret and continue to love and care for Paula and Ana. In December 2006, he learned that Paula was meeting her former boyfriend without Raul's knowledge. This time he is bothered. He decided to file a case denying paternity for Ana. What shall he do? Please give your advice.

A. Firstly, Raul should see a Kuwaiti lawyer to handle and articulate the case in court. However,

technically, Raul's contention may not prosper because the law requires that denial of paternity must be filed, within seven days from the time the information is known to the father that the child is not his natural child. In Raul's case, he is filing the denial of paternity after a year or more since he learned that Ana is not his natural child; and secondly, if Raul's contention will lead to a legal separation, and the court finds Paula guilty of adultery, her marriage to Raul is considered null and void and no compensation shall be awarded to Paula. In addition, Ana shall inherit only from her maternal side and cannot use Raul's family name.

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*Please send your question to
marshlawyer@gmail.com*

Sources:

- Walid I. Kaaki, All the Kuwaiti Laws You Need to Know in Plain English

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Muslim Family Law

By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

Child's support from divorced parents

11 November 2007

Q. Alia (not her real name) is married to Ahmad (not his real name), and obtained divorce after 8 years of their marriage. The couple has a 6-year old daughter under the care and custody of Alia. Last October 2007, Alia's employer terminated her contract of service. And unknown to Ahmad, Alia brought her daughter to Manila where she intends to rear and probably educate her until college. Meantime, Ahmad refused to give his monthly or financial support to their daughter unless the latter is returned to Kuwait. What is Alia's remedy? Is Ahmad's contention correct?

A. Ideally, Alia should have asked Ahmad's consent before she brought their daughter to Manila, unfortunately, it did not happen that way. Anyhow,

Alia's remedy is to bring the case to court in Kuwait so that the court could compel Ahmad to support his daughter. Ahmad's contention is wrong. The matter of support to a child is universally guaranteed among nations, whether the parents are divorced or not. Hence, Alia's legal action will surely prosper.

Ahmad's demand to bring their daughter back to Kuwait is a separate issue because his financial obligation remains, as long as the child needs financial support.

*Please send your questions to
marshlawyer@gmail.com*

Sources:

- Al-Hadith & The Holy Qur'an
- The Law of Annulment of Marriage, Jim V. Lopez
- The Muslim Code of the Philippines

Muslim Family Law

Abortion!

10 December 2006

By Tomara M. Ayo, Ph.D.
Philippine *Shari'a* Lawyer

Q. A certain OFW nurse who is two months pregnant from her boyfriend wanted to abort her pregnancy because her boyfriend is married in the Philippines. A Filipino driver she met offered her a tablet for abortion, but her boyfriend restrained her from taking the tablet. He wanted to have a baby with her even outside marriage. She loves her boyfriend, but confused of her situation. Is abortion illegal under *Shari'a* or Kuwait family law? Please give your advice.

A. Islam forbids abortion. Therefore, it is illegal under *Shari'a* or

Kuwait family law. However, Article 12 of Law 25/1981 (Practice of Medicine) allows abortion only in case the pregnancy will harm the mother's health or the possibility of delivering a deformed child.

Under this circumstance, parental approval or consent is necessary. In addition, abortion is only permissible if the embryo is younger than four months and three specialists must supervise the operation. Hence, it is illegal if the said OFW nurse will take the tablet for abortion she got from a Filipino driver.

Since the boyfriend wanted a baby from her, this writer recommends that the OFW nurse continue the pregnancy and deliver the baby in the Philippines or other country where the delivery of a child out of marriage is not punishable by law. In Kuwait, the penalty for such is imprisonment followed by immediate deportation.

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*Please send your questions to
marshlawyer@gmail.com*

By Tomara M. Ayo, Ph.D.
Philippine *Shari'a* Lawyer

Q. Omar's father is a Syrian national who died in the Philippines when Omar was only seven years old. Omar is now an OFW based in Kuwait. Recently, he met his father's brother who is also an expatriate from whom he learned that his late father's family in Syria owned a big ancestral home and other valuable properties. Omar wanted to get his share from the said property. Is the property communal and is Omar entitled to share from the said property? Please reply.

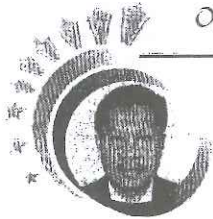
A. Yes, Omar is entitled to share from the said property. Ancestral home and other valuable items in the said home are considered communal property. P.D. 1083 or Muslim Code of the Philippine enumerates the following as communal property:

1. Customary heirloom, which shall include artifacts and ancestral implements or things of cultural value handed down from a common ancestor;
2. Ancestral property, which shall comprehend hallowed ancestral plot, ancestral shrine, royal court, and similar properties; and
3. Charitable trust property.

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Muslim Family Law

By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

Suicide due to pressure

Q. Yasmin (not her real name) is a teacher by profession in the Philippines. Because of disappointments in her personal life and career including the low monthly salary of a Filipino teacher, she decided to work abroad as domestic helper in Kuwait. Unfortunately, she was assigned to a militant employer with abusive wife.

Due to her lack of experience as domestic helper, she found the job too heavy and inhuman. One day she decided to kill herself to put an end to her misery and torture. Luckily, her employer's daughter saved her from jumping from the rooftop of their residence.

Yasmin hails from Mindanao and a Muslim Filipino. She needs legal advice and moral guidance.

A. Yasmin's legal problem cannot be solved by killing herself. All she needed to do is contact the Philippine Embassy or the recruitment agency that assigned her to the employer, for immediate assistance.

In addition, Yasmin should know that committing suicide is really forbidden by Islam and is a great sin. The penalty or sin applies to the crime of murder likewise applies to suicide. And whoever takes his or her life by any means has unjustly taken a life which ALLAH has made sacred.

Life is so precious given and entrusted by ALLAH to human beings and therefore, only ALLAH has the right to take away that life. Men and women are not allowed to diminish, harm or destroy that life. ALLAH said, "DO NOT KILL YOURSELVES; INDEED, ALLAH IS MERCIFUL TO YOU" (4:29, The Holy Qur'an).

Moreover, *Shari'a* Jurisprudence requires every Muslim to be resolute in facing hardships. He or she is not permitted to give up and run away from the vicissitudes of life when a tragedy befalls on him or her. A Muslim is created to strive and not to

sit idly, and combat the challenge in life in accordance with the teachings of Islam. Prophet Mohammad, *peace be upon him* warned that anyone who commits the crime of suicide would be deprived of the mercy of ALLAH and would not enter the Garden. He or she deserves God's wrath and enters the Fire.

In another Hadith, it says that he who throws himself down from a rock and commits suicide will be throwing himself into the fire of Hell. And he who drinks poison and kills himself will have the poison in his hand, drinking it forever in the fire of Hell, and he who kills himself with a weapon will have that weapon in his hand, stabbing himself forever in the fire of Hell.

With the foregoing, it is hoped that Yasmin would never attempt to commit suicide. After all, she can always seek the assistance of the Philippine Embassy or local authorities to intercede in her employment problem.

Only Allah is truly omniscient.

*Please send your questions to
marshlawyer@gmail.com*

Sources:

The Holy Qur'an, 4:29
Yusuf Al-Qaradawi, The Lawful and
Prohibited in Islam
Mohammad Bin Abdul Aziz Al-
Musnad,
Islamic Fatwa Regarding Women

You & Shari'a Law

BLOOD-MONEY UNDER SHARI'A LAW

27 June 2004

By Tomara M. Ayo, Ph.D.
Shari'a Legal Officer and
Administrative Officer,
Philippine Embassy

Q. In 1990, a truck wrecked a car in a road mishap in Saudi Arabia leading to the death of an OFW engineer who was driving the car. A few months later, the OFW's next of kin (NOK) in Manila received a check amounting to SR 100,000.00 issued by the insurance company that insured the truck driver. The Saudi authorities also freed the truck driver from jail and returned him to work. One day, a neighbor told the NOK that the latter was still entitled to blood-money or *diyyah* from the truck driver, in addition to the money given by the insurance company. Convinced by the neighbor's advice, the NOK went to the

Department of Foreign Affairs in Manila for help. Is the driver still liable? How does blood-money or *diyyah* work under *Shari'a*?

A. No. The truck driver is no longer liable to pay blood-money or *diyyah* to the NOK. This writer is of the opinion that the check issued by the insurance company represented the blood-money or *diyyah* for the NOK. Otherwise, the Saudi authorities would not have freed the truck driver from jail. This writer is also of the view that due to the stricter implementation of *Shari'a* in Saudi Arabia, companies in Saudi are under compulsion to have their drivers insured so that the liabilities (blood-money or *diyyah* and others) are passed on to the insurance company in case of an accident or damage done by their drivers in the course of the latter's duty.

In the case presented, had the NOK refuse to receive the check issued by the insurance company or indicated his reservations, the Saudi authorities would not have released the truck driver. And the driver would be obliged to satisfy the NOK's demand in accordance with *Shari'a*. However in case of disagreement, the court shall

fix a reasonable amount of blood-money or *diyyah* for the NOK.

Meanwhile, blood-money or *diyyah* refers to the monetary compensation imposed on the offender for causing homicide, in favor of the victim's legal heirs or injured party in case of injury. It is a prophetic sanction, a pecuniary substitute for capital sentence (*qisas*) against homicide or bodily injury. Normally, retaliation is the punishment for homicide, but if the victim's heirs eliminated the sentence of retaliation and demand blood-money or *diyyah*, *Shari'a* jurists allow the procedure for blood-money or *diyyah* to take its course.

Strictly, blood-money or *diyyah* does not apply to premeditated murder. Hence, the law of *qisas* (tooth for a tooth or eye for an eye) is applied as a matter of rule, unless the victim's heirs opted for blood-money or *diyyah* in accordance with the principle of saving the life of every individual. For every life saved from the death row, Islamic scholars liken it to saving the whole community from disorder and sorrow.

In addition, *Shari'a* Jurisprudence emphasizes the essence of forgiveness as Prophet Mohammad *peace be upon him*, practiced and taught it to his companions, i.e. if the blood-money or *diyyah* imposed or demanded is beyond the capacity of the offender, then it is better for the victim's heirs to forgive the offender than burden the latter. (Al-Hadith).

To sum up, the principle of blood-money or *diyyah* is a social and legal remedy, which is only applicable to accidental death or bodily injury. As a rule, it is not applicable in the case of willful murder (unless, the victim's heirs agree), damage to property, economic loss, future earnings, medical expenses and other forms of damage.

Muslim Family Law

Prisoners of war

26 November 2006

By Tomara M. Ayo, Ph.D.
Philippine Shari'a Lawyer

Q. A certain Filipino activist who requested to keep his name withheld is asking the rule on the prisoners of war under *Shari'a* law, if any, compared to the Geneva Convention's rule on the prisoners of war.

A. The rule of *Shari'a* on the prisoners of war or captives is an old law prescribed by Prophet Mohammad, *peace be upon him*, centuries ahead of the so-called Geneva Convention. *Shari'a* Jurisprudence explains that the Prophet made the clear-cut ruling on the prisoners of war or captives during one battle between the Muslims in Medina and infidels in Mecca (now Saudi Arabia). In the ensuing battle, the Muslim fighters captured Abu Aziz bin

Umair, infidels' flag bearer, and some of his commanders. When the Muslim fighters brought the prisoners to Medina, one of the Prophet's companions who saw the captives was carried away by emotions and suggested to execute all the prisoners. However, this did not prevail because the Prophet immediately told his companions to treat Abu Aziz and the other prisoners as humanly as possible. Othman, one of the Prophet's Caliphs also supported the Prophet and made a strong objection against any form of maltreatment towards the prisoners. Instead, Othman proposed to deal with the infidels in a manner that would benefit the Muslims in exchange for the prisoners' liberty. When Abu Aziz and the other prisoners were freed, they informed their curious Meccan relatives of the dignity afforded to them by their Muslim captors in Medina.