

NGO REPORT
ON THE IMPLEMENTATION OF THE ICCPR
(PRIOR TO THE ADOPTION OF THE LIST OF ISSUES)

United States of America

Prepared and Submitted in December 2013 by the Islamic Human Rights Commission (UK)



Profile

Islamic Human Rights Commission (IHRC) is a not-for-profit campaign, research and advocacy organisation founded and based in the United Kingdom. It was set up in 1997 and works for redress of human rights violations and a better understanding of rights and norms across confessional, ethnic, national, political and other boundaries.

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Introduction

Due to a lack of resources and time, IHRC submits a non-exhaustive list of concerns for which further evidence can be submitted if required. The brevity of this submission should not be taken to mean that substantive content is not available regarding the issues raised.

Articles 2& 26 NON-DISCRIMINATION, CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED, AND ACCESS TO REMEDIES and EQUALITY BEFORE THE LAW

Political prisoners

IHRC is deeply concerned that the US government is in breach of Articles 2 &26 with regard to the following:

1. A number of detentions of political dissidents and activists, including Mumai Abu Jamal, Imam Jamil Al-Amin, Sheikh Omar AbdulRahman, Aafia Siddiqui
2. A number of detentions of human rights defenders and charity workers, including, the Holy Land 5, Lynne Stewart

The above cases are replete with accusations of a biased judiciary, an unfair judicial process or abuse of the law. Whether on the basis of ethnicity, religion or political persuasion and activity or an intersectionality of some or all, these prisoners' cases exemplify discriminatory treatment at individual and systemic levels.

Further details of each case are provided in Appendix A.

In addition IHRC is concerned that unduly punitive measures are used in civil cases, often resulting in prolonged incarceration. IHRC knows of and has dealt with cases where failure to pay alimony through sudden hardship has resulted in imprisonment, and in criminal cases, where sentencing for the same crime is vastly different, where the only difference is between the ethnicity of the defendant.

IHRC recommends immediate action in all of the cases cited in Appendix A, including but not solely:

- (a) The release of Lynne Stewart on compassionate grounds
- (b) The expedited re-opening of the legal process in the HLF5 case based on recent developments
- (c) Transparent and independent investigation into the case of Aafia Siddiqui and in particular as to what has happened to her missing child
- (d) The release on compassionate grounds or failing that the repatriation of Sheikh Omar AbdulRahman to serve out the rest of his sentence in Egypt
- (e) The reopening of the imam Jamil al-Amin case based on the new evidence and confessions, and the immediate release on bail of Imam Jamil pending further investigations
- (f) The immediate release of Mumia Abu Jamal, and full and transparent investigation into the denial of due process that has marred his case.

Discriminatory Law

Further IHRC is concerned that these articles are violated, in the cases of the following (but not exclusively) laws and policies:

- (i) The continued operation of the Guantanamo Bay detention facilities per se
- (ii) The continued detention of men cleared for release at the Guantanamo Bay detention facilities
- (iii) The operation of, or complicity in operation of detention bases in various parts of the world to, from and via which rendition take places, and within which interrogative methods are undertaken which violate Article 7 (see Article 7 below)
- (iv) Various laws brought in that effectively criminalise the social activities of certain groups including Muslims e.g. charitable giving
- (v) Various laws and policies brought into effect that criminalise dissident thought e.g. NDAA

Recommendations in Appendix C relate to some of these issues under *Securitisation*

Redress under the Law and Prevention of Hate Crimes

IHRC notes the legal and other provisions of several states to address the issue of hate crimes. It also notes the FBI's collation of statistics with regard to hate crime. Based on its own survey work in California, IHRC found that 29% of Muslims had experienced a hate-motivated physical assault. This is an unacceptably high level of experience and bodes ill for other states, given California's progressive reputation.

Appendix B provides an executive summary of the findings of that research, and Appendix C outlines a series of recommendations with regard to media, law, securitisation and education. Whilst media and education fall outside of the legal framework, IHRC argues that the operation of policies and practices, as well as the institutionalisation of prejudices (often unintentionally) are mutually constitutive with the securitisation discourse and praxis and law per se.

Article 7 Prohibition of Torture

The cases in Appendix A, highlight many of the concerns of IHRC that Article 7 is violated in many ways at an institutional level in the US.

Aside from aggressive and physically and mentally violent interrogation techniques, there are also issues around prolonged solitary confinement, denial of basic facilities, and even in the case of Lynne Stewart denial of release on compassionate grounds.

Provisional Concluding Notes

As stated at the outset, lack of time means this report is brief and does not cover all areas we wish to raise or go into further discussion. The authors are available for further briefings and, resources permitting we will try and submit a fuller report before the session.

APPENDIX A

Details of Prisoners of Concern

Mumia Abu Jamal

Mumia Abu Jamal's conviction in December 1981 and ensuing sentence of death penalty in July 1982, for the murder of Philadelphia police officer, Daniel Faulkner, has created much controversy in the US as his case became a very strong representation of the ever increasing racial tension that was rife between the predominantly white authorities and the black minority. Abu Jamal has maintained his innocence ever since and continues to fight for his case in prison. Following the October 2011 US Supreme court ruling, his death sentence has been vacated and as of January 2012, he has been placed into the general prison population. However, he continues to fight for his freedom, supported by many distinguished and notable politicians, human rights advocates, religious leaders, lawyers and political groups.

Abu Jamal was reportedly driving a cab near the scene of the crime when he saw Faulkner stop Abu Jamal's brother on the road. Apparently there was an unruly encounter between the two which made Abu Jamal step out of his vehicle to help his brother. What ensued thereafter left Faulkner dead and Abu Jamal wounded in the chest with Faulkner's gun; his own legally registered gun was found at the crime scene as well. The media coverage of the crime made many references to Abu Jamal's affiliation and connection with MOVE and former membership to the Black Panther Party to the extent that caused the president of the Association of Black Journalists to comment on the biased reporting stating that 'We hope that Mr Jamal will be tried in the court and not in the press.'

Abu Jamal's trial on the charges of first degree murder and possession of a weapon commenced on 7 June 1982, and for the following reasons amongst others, was considered unfair:

- It was presided by trial judge Albert F. Sabo, known for his connection to the police, bias against the defence and preference for 'expediency over fairness'.
- Lack of satisfactory representation for Abu Jamal;
- Lack of funds allocated for the defence to produce expert testimony on ballistics and pathology.
- Bias in selection of jurors
- The prosecution produced conflicting evidence with many unresolved issues warranting a retrial.
- The prosecution used Abu Jamal's political beliefs during the sentencing phase of the trial

Abu Jamal's first appeal in 1989 to the Pennsylvania Supreme Court was denied on all grounds. He cited a number of irregularities in the trial including:

- Employing Abu Jamal's political affiliations and stance in court as evidence of his character thus affecting his sentencing
- Lessening the jury's responsibility for imposing the death penalty by referring to the lengthy appeals process
- Withdrawal of the court's permission for Abu Jamal to represent himself in violation of his constitutional rights

On March 26, 2012 the Supreme Court of Pennsylvania rejected his most recent appeal for retrial argued on the basis that a 2009 report by the National Academy of Science demonstrated that

forensic evidence put by the prosecution and accepted into evidence in the original trial was unreliable.

On December 6, 2005, the Third Circuit Court admitted four issues for appeal of the ruling of the District Court:

- in relation to sentencing, whether the jury verdict form had been flawed and the judge's instructions to the jury had been confusing;
- in relation to conviction and sentencing, whether racial bias in jury selection existed to an extent tending to produce an inherently biased jury and thus an unfair trial (the Batson claim);
- in relation to conviction, whether the prosecutor improperly attempted to reduce jurors' sense of responsibility by telling them that a guilty verdict would be subsequently vetted and subject to appeal; and
- in relation to post-conviction review hearings in 1995–6, whether the presiding judge, who had also presided at the trial, demonstrated unacceptable bias in his conduct.

On April 26, 2011, the Third Circuit Court of Appeals reaffirmed its prior decision to vacate the death sentence on the grounds that the jury instructions and verdict form were ambiguous and confusing. In December 2011, the death penalty was dropped. On February 25, 2013, Mumia's legal team filed an appeal in the Pennsylvania Superior Court challenging his sentence of life imprisonment without parole. An opinion/ruling awaits.

Holy Land 5

The case of the Holy Land 5 is a case of extreme injustice, reflecting, on a larger scale, the misdemeanour of the US government in targeting Islamic charities on the pretext of the 'war on terror'.

The Holy Land Foundation for Relief and Development (HLF) was an Islamic charity established by Palestinian-American Ghassan Elashi primarily to support Palestinians in Lebanon, Jordan and Occupied Palestine through various projects including 'orphan and family sponsorship programs, back-to-school funding, hospital building and home reconstruction'. HLF also provided aid to countries including Bosnia, Albania, Kosovo, Chechnya, and Turkey after natural disasters and wars and in the US during the aftermath of Iowa floods, Texas tornadoes and the Oklahoma City Bombing. HLF also ran volunteer-based services throughout the Dallas-Fort Worth area in Texas. HLF became the largest Islamic charity in the US and had an annual budget of around \$14 million. It had offices in California, New Jersey, Illinois, the West Bank and Gaza and had representatives scattered throughout the US.

However, in December 2001, HLF was implicated in supporting terrorism and had its assets frozen when President Bush designated it as a terrorist organisation for allegedly raising money for Hamas which was claimed to be used by Hamas to 'support schools and indoctrinate children to grow up to be suicide bombers' and to 'recruit suicide bombers and to support their families'. According to reports, the designation was based on flawed evidence including 'incorrect and misleading translations of documents and tape-recorded conversations'.

All charges of direct support to Hamas were dropped before the beginning of the criminal trial in 2007 and the prosecution admitted that all of the HLF funds went to charitable causes such as zakat committees. However, the government held that these committees were somehow controlled by Hamas and distributed aid to parties involved with Hamas. Elashi and his four co-defendants, Shukri Abu-Baker (HLF C.E.O.), Abdulrahman Odeh (New Jersey office director), Mohammad El-

Mezain(California office director) and MufidAbdulqader (HLF volunteer), categorically deny all charges and contend that they funded legitimate humanitarian aid in Palestinian territories.

During the trial, witness accounts and documentary evidence lead to mounting proofs in favour of the defendants such as the fact that the Zakaat committees that HLF is accused of supporting have received aid from other renowned charities as well such as International Committee of Red Cross and United Nations Relief and Work Agency. Also there was testimony by formal consul general at the US Consulate General in Jerusalem, Edward Abington, that he personally visited the named Zakaat committees and received no information of their involvement with Hamas.

The US Treasury relied on certain pieces of information in designating HLF as a terrorist group which were inconclusive such as their claim that HLF aided a hospital in Jenin, West Bank; however, they failed to mention that the US Agency for International Development had also funded the same hospital at another occasion. Further, they claimed that HLF provided financial support to 400 Palestinian deportees in Lebanon in 1992-93; however, the Red Cross as well as other countries supported them too.

Furthermore, the criminal trial revealed serious flaws in the FBI summary of a 1996 wiretapped conversation which attributed Abu Baker to have made anti-Semitic and inflammatory statements since it did not match actual transcripts. The Defence team only received 10 percent of the declassified recordings and their requests for the full 10 years of surveillance tapes for review was subsequently denied by Judge A. Joe Fish

The 2007 criminal trial was declared a mistrial by the judge as the eight-man, four-woman jury deadlocked on most of the 197 counts against the five defendants, returning zero guilty verdicts.

The retrial on 24 November 2008, found the five men guilty on all 108 counts of 'material support to terrorism, money laundering, conspiracy and tax fraud'. The prosecution still admitted that all HLF funds were humanitarian relief to local charities not related to Hamas; however the conviction still went through. The defendants were not allowed to review their own wiretapped statements that they had made over years because they were classified. Further alleged statements by co-conspirators were used as evidence, however 'nobody knew who wrote them; nobody knew when they were written.' Formal Dallas federal prosecutor Tom Melsheimer commented after the convictions, 'I think this case proves that, with enough effort, the federal government can convict really anyone.'

On 27 May 2009, HLF defendants were sentenced with prison terms ranging from 15 to 65 years. Elashi was handed down a 65 year sentence. In May 2010, four of the Holy Land 5 were transferred to the harsh life of the CMUs so that their communications could be closely monitored. El-Mezain and Baker are being held at the Terre Haute, Indiana facility whereas Elashi and Abdulqader are detained at the US Penitentiary, Marion, Illinois, according to reports. All their calls and mails are carefully monitored and they are required to speak in English when dealing with outsiders.

On 29 October 2012, the Supreme Court declined to hear the Holy Land 5 case without any explanation. Their decision marks the end of the judicial process for the detainees, yet the struggle for their freedom continues by the defence team and supporters. A press release by the Muslim Legal Fund of America commented, "Attorneys for the five defendants and representatives from MLFA are evaluating all remaining options and will announce a decision on how they will proceed soon."

Dr Aafia Siddiqui

The case of Pakistani neuroscientist, Dr Aafia Siddiqui, is one of the most shocking cases of miscarriage of justice today. She has reportedly endured several years of extremely horrendous abuse at the hands of her captors and her nightmare continues to the shock of her angry supporters.

She disappeared along with her three children in Karachi on 28 March 2003. Aafia was hooded and drugged and separated from her children. Her youngest son, Suleman, was said to have been killed on the spot and is declared as missing. She was then alleged to be transported to a secret location for questioning and handed over to the US authorities a year later. Throughout this time, Aafia was held without charge and abused whilst in secret detention.

Aafia was amongst hundreds of 'suspects' arrested by Pakistani secret services and handed over to the FBI as part of the 'War on Terror' in the wake of the September 11 attacks.

Aafia's exact location after her abduction cannot be determined due to the secrecy behind her capture. However, we have numerous reports about her horrific torture and rape during her detention. There are also reports that she was forced to make false confessions and sign statements. Further, it is also reported that 'manuals of explosives and dangerous substances in sealed jars' were 'planted on her' and that she was forced to copy notes from a magazine under the threat that her children would be harmed if she did not comply. She is said to have described her life in detention as 'living hell'.

By August 2008, Aafia had been reportedly extradited to the US from Afghanistan where she reemerged from disappearance after the US government was probed about her whereabouts by the press and her supporters alike. She was alleged to have shot at US personnel in custody in Afghanistan and was consequently charged and tried in the US for this allegation. Aafia categorically denied shooting at anyone. Statements she made during detention in a state of medication and sleep deprivation, tied down to a hospital bed for several weeks were used by the court as evidence in breach of Miranda laws. There was no mention of her alleged abduction, torture and missing children at the trial. Despite the conflicting testimony of the soldiers and lack of evidence - no gun residue from the rifle, no trace of fingerprints on the rifle, no bullet shells in the room or bullet holes on the walls, she was found guilty on all counts.

She remained detained at the Metropolitan Detention Centre in New York post conviction, where she was reportedly subjected to humiliating strip searches, 'prompting her to refuse legal visits on many occasions'. On 23 September 2010 Aafia was sentenced to 86 years in prison on 5 counts. She is currently held at Federal Medical Centre in Carswell, Texas, which caters to female inmates with special medical and mental health needs. She has been refused contact with her family and is not permitted any letters, phone calls or reading materials for the sake of 'national security'.

Her elder two children have been returned to her family in Pakistan; however, the whereabouts of her youngest one is still unknown and he is feared to have been killed during the kidnapping.

Imam Jamil Al-Amin

Imam Jamil (formerly known as H. Rap Brown) was one of the most articulate and outspoken critics of the tyranny and oppression perpetuated by the Jim Crow laws of the 1960's which served to legally segregate whites from blacks. During this period, Imam Jamil received his 'violent' label by these individuals who sought to demean his advocacy of self-defence against US government-induced terrorism against the black communities and racist Ku Klux Klan activities.

On 16 March 2000, after shootings outside his grocery store involving two police officers, Deputy Ricky Kinchen and Deputy Aldranon English resulted in the death of the former deputy a day later, Imam Jamil was charged with 13 counts of murder and felony murder and was ultimately found guilty on all counts and sentenced to life imprisonment without parole.

The trial followed the extremely muddled and chaotic investigation of the shootings in which flaws have been well documented. Further, a possible suspect and / or witness was overlooked by the prosecution, possibly deliberately. Otis Jackson, signed a confession and admitted to shooting a police officer and mentioned details of the scene of the crime. However within days of his confession, it was announced that Otis Jackson has recanted it. His recantation was immediately accepted and further investigations were not made despite Otis Jackson's detailed knowledge of the events on the night of 16 March 2000. He was not even allowed to meet the defence team. Subsequent evidence, including a letter from Jackson stating that 'he never recanted his confession, rather it was recanted for him' demands further investigation which has not yet been committed to date.

On 14 November 2005, Imam Jamil's legal team filed a habeas corpus on his behalf, citing 14 grounds for the reversal of his sentencing. Some of the obvious flaws in the trial included failure to:

- investigate the confession of Otis Jackson;
- permit Imam Jamil to testify in his own defence;
- allow the right to counsel of Imam Jamil's choice
- challenge the issue of the prosecution striking out all persons from the jury who indicated an affiliation to Muslims;
- allow the presentation of favorable testimony and evidence
- provide discovery to the defence team

This discovery clearly brings into question the grounds for Imam Jamil's sentencing, as well as serious problems in the US judicial system which is apparently adamant upon detaining an innocent man and willing to let the offender go free.

The Freedom of Information Act revealed that there are over 44,000 documents compiled on Imam Jamil's life since the 1960s when he was known as H Rap Brown, which Imam Jamil himself has made reference to on several occasions. Imam Jamil himself said in his statement of innocence that for over 30 years he has been "...tormented and persecuted for reasons of race and belief" and now "...They have done their level best to reduce me to a one-dimensional monster that is a composite of a Black Panther..., a cop killer, and the fictional character of the Godfather..."

He is currently held in Colorado's ADMAX Federal facility and was under 23 hour lockdown. In Feb 2009, as reported by his son Kairi Al-Amin, Imam Jamil was strip searched, his Quran and personal belongings were seized and he was placed even further underground, in a cell with no bed, no shower and no control on the lights.

Imam Jamil's case is still remains open. Currently, petitions are being signed and efforts are underway by his supporters to get the Imam transferred back to Georgia state prison so that he may continue to fight his case for his freedom.

Sheikh Omar Abdul Rahman

Sheikh Omar Abdul Rahman, a 73 year old religious scholar from al-Azhar institute in Egypt, was convicted in October 1995 for the 1993 New York World Trade Centre bombing and other New York attack plans. He was charged under US sedition laws not used since the civil war. He was found guilty on all five counts as charged of seditious conspiracy against the US government, solicitation to murder Egyptian President Hosni Mubarak, conspiracy to murder Mubarak, conspiracy to bomb and solicitation to bomb a US military installation.

In Egypt, Sheikh Omar was very vocal against the government and their policies, hence he was arrested on more than one occasion for his politically motivated sermons. In order to escape further persecution, he left Egypt in 1990 for the United States of America and become an imam in a mosque in Brooklyn.

He was already under surveillance by the Egyptian intelligence authorities and FBI before he became implicated in the New York bombings. After arrest, he was subject to several serious violations during his investigation and trial. Throughout the trial, repeated attempts were made to demonize the Sheikh in more ways than one. Judge Mukasey barred the defence from presenting experts to testify on the meanings of Islamic terminology used during the trial. Further, according to reports, illegally recorded and doctored tapes were used by the FBI to weaken the defence. Also, one of the defendants was reportedly forced to confess under torture and his testimony was used against the Sheikh.

Although the Sheikh had been blind almost since birth, could only read Arabic braille, suffered from diabetes and heart disease and was unfamiliar with the American geography let alone knowing the whereabouts of the landmarks in New York, this did not make a difference to the US government. His attorney Ramsey Clark said of the trial "From its opening...the government appealed to fear and prejudice, telling the jury time and time again...Dr Abdel Rahman sought to kill Christians and Jews, to destroy Israel and the United States...If our law has any role in the protection of fundamental human rights, this conviction must be reversed." According to the committee set up to free him, he was not found guilty of any act, but rather for his thoughts, speech and writings which were highly critical of Hosni Mubarak's regime.

He was given a life sentence without the chance for parole and detained in solitary confinement. He was not allowed to pray Juma (Friday prayers) or any other congregational prayers. Many times when the Sheikh recited the Quran in prison, the prison guards played loud music in disrespect. He was not allowed any contact with the outside world, and rarely received any visitors. Every time he did have a visitor, he was subjected to strip searches. He was only allowed a five-minute phone call to his family once a month. He has been physically abused on many occasions. In addition to this he was routinely subjected to degrading treatment such as internal examinations and reportedly suffered from gangrene in one of his legs.

After Sheikh Omar's detention, Mr Clark wrote a letter of appeal to the prison authorities which revealed that Sheikh Omar had become significantly weak in prison, was constantly tired due to sleeplessness and suffered from 'headaches and organ pains'. His condition was further exacerbated by the 'poor air quality and bad odours' in the cell in which he was confined. Sheikh Omar went on many voluntary fasts as a protest against his inhumane conditions. Mr Clark further stated, 'It would be difficult to devise a crueller plan to kill him.'

After the 9/11 attacks, restrictions on the Sheikh were further increased and all contact between the Sheikh and his family was cut off.

The Sheikh was detained in the federal Supermax prison in Colorado until September 2003, a prison which is known for housing USA's most dangerous and notorious criminals. He was shifted to the US Medical Center for Federal Prisoners (MCFP) in Springfield, Missouri due to his serious health conditions. He suffers from severe heart problems and diabetes. His diabetes has worsened to the extent that it has 'threatened the loss of his limbs.'

In early December 2006, he suffered a medical emergency and was given blood transfusion. During his medical examination at the centre it was also discovered that he has a tumour on his liver. According to physician reports, 'his overall prognosis is poor.'

He is now 75 years of age and is currently detained at Federal Medical Centre (FMC) in Butner, North Carolina. His family has requested for him to be able to spend his last moments with them in Egypt. They have only been granted a visitation once in the last 18 years. Their efforts of gaining a visa to visit him more often were on every occasion denied. The Egyptian authorities have also made an official request to the US administration for them to return Sheikh Abdul Rahman to his native Egypt but the US Administration has not responded to the request of the family or to the official request of the Egyptian government to date.

Lynne Stewart

Lynne Stewart, a former criminal defence lawyer, born on October 8, 1939, was found guilty of assisting an Egyptian cleric (Omar Abdul Rahman, otherwise known as the "The Blind Sheikh") relay jailhouse messages to his followers and issuing press releases on his behalf. She was lead trial counsel in the aforementioned case and represented this Islamic scholar since 1995 until the arrest of her and her paralegal including the interpreter for the case in April 2002, on grounds of materially aiding a terrorist organisation. Stewart was convicted on charges of conspiracy and providing material support to terrorists in 2005 and sentenced to 28 months in prison. Her felony conviction led to her being automatically disbarred. Subsequently, she was re-sentenced on July 15, 2010, to ten years in prison.

The case of Sheikh Omar Abdul Rahman, also known as the Blind Sheikh, was nothing different to Stewart's usual client profiles when she took it up in 1994. He was a man wrongly accused of seditious conspiracy against the state. Stewart continued to defend him with courage even after he was convicted on false charges. She was subject to 'special administrative measures' (SAMs) during her meetings with the Sheikh and hence was restricted from conveying messages or correspondences of her meetings to third parties.

However, in November 2003 she was indicted on evading the SAMs and was charged for 'obstruction of justice and conspiracy to provide material support to terrorism'. Stewart insisted that she was simply doing her job when she read out a statement made by the Sheikh to Reuters in April 2000.

On 10 February 2005, after a nine-month trial and 13 days of jury deliberations, she was convicted of lying to the government and aiding 'terrorists' by conveying messages from the Sheikh to his followers in Egypt. Her supporters believed that she only intended to create awareness and gain public support for her client. Her conviction was an attack on the First Amendment right of free speech, free press and petition and on the right to effective assistance of counsel. The 'evidence' in her case was gathered by wholesale invasion of private conversations, private attorney-client meetings and private faxes, letters and e-mails.

On 15 July 2015, Stewart was re-sentenced to 10 years in prison for alleged perjury at her trial. Her entire trial made a mockery of the system of due process and the age old principle of attorney-client confidentiality.

On 25 June 2013 Stewart's request for compassionate release was denied by the Federal Bureau of Prisons Director. She is currently serving her sentence at the Federal Medical Centre in Carswell, Texas. She suffers from breast cancer which is feared to be terminal. Her physician called it the worst case he had ever seen.

Lynne Stewarts' attorney recently filed a petition asking the Judge to end her ten year prison sentence and release her into the care of her family under "compassionate release" given that she is sadly dying of stage four breast cancer. She was diagnosed with the disease even before she was jailed in 2009 and her condition continues to deteriorate. She is now in a federal medical facility for women in Texas, several miles away from her home, loved ones and community.

The availability for compassionate release was injected into the criminal justice proceedings through the 1984 Sentencing Reform Act, with the intention of humanising the institution of prison.

Factors that should qualify a prisoner for release include:

> suffering from a terminal illness

>a permanent physical or medical condition

>a significant deterioration of mental capacity

>impairment due to old age

> or if the sole adult responsible for taking care of the prisoner's minor children dies or becomes incapacitated.

Stewart's prison physician had recently given her a prognosis of, at most, 18 months to live, while other doctors had estimated her life expectancy to be closer to 12 months. Thus there is no doubt she satisfies the requirements for this type of release.

But on 24 June 2013, the Bureau of Prisons denied Stewart's application for compassionate release. In a brief two-paragraph response, the BOP justified its dismissal on the grounds that she appeared to be "responding well to treatment".

Stewart's lawyers filed an emergency motion with Judge Koeltl in July, asking that he grant compassionate release. They argue that the BOP's record of negligence and outright disregard for "compassion" should allow Judge Koeltl to override procedural guidelines that require that the BOP refer applications to the sentencing judge. During an August 8 hearing, Judge John Koeltl agreed that Ms. Stewart's medical condition had seriously deteriorated. The U.S. Attorney did not refute this assessment. Judge Koeltl noted additionally: "The petitioner has appropriately submitted a renewed petition for compassionate release to the BOP, and the court is prepared to give prompt and sympathetic consideration to any motion by the BOP that seeks compassionate release."

Appendix B

Once Upon a Hatred: Anti-Muslim Experiences in the USA by Saied R. Ameli, EbrahimMohseniAhoeei and ArzuMerali

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Introduction

This book presents the findings of a survey of Muslim experiences in the USA. In addition to analysing the findings of the survey, the authors provide a historical and political context for the work they have undertaken. This includes a thorough critique of ethnocentrism in academia and in the social sciences in particular. They set this critique within the political history of the USA as a colonial enterprise from the time of Columbus through the founding of the USA until the present day. Muslims, they find, are caught up in a cycle of demonisation and social and statutory targeting that is not new but part of the US's very DNA when it comes to the treatment of people of colour within and without its shores. What emerges is a deeply disturbing picture of a community under daily physical threat, surveilled by state agencies and disciplined by law and political and media discourse.

In attempt to do more than simply deconstruct and criticise, the authors also present a strong set of recommendations are targeted at distinct groups and many are sourced from previous works that speak to the same and similar challenges. They are addressed to Law and Policy Makers, the Media, Civil Society groups including Muslim groups and discuss: the Law; Media; Securitisation; Education and Community Work. The recommendations look to previous specialised research, national commissions and the recommendations of Muslims from the survey, in the hope that a start can be made to transforming the situation.

Background:

This report is part of a project to assess the experiences of hostility and discrimination against Muslims in various states. The project sprang from the need to find a way for civil society (in lieu of any serious government undertaking in any country) to collect reliable statistics of hate crimes and discrimination in a manner that was sustainable. The traditional approach of relying on reporting or seeking out report of individual cases has been proven to be unreliable, unsustainable due to the immense financial, personnel and time resources required, and prone to under-representing the scale of the issue particularly where the minority groups in question are numerically a large and diverse population.

The pilot project findings for the UK and France were published in 2011 and 2012 respectively. This book is the third publication to come out of this project. The survey of Muslims took place in California in early 2012 and 1264 persons took part.

The research method and analysis have been refined after the pilot project and the findings are analysed and presented within discrete categories – demonised media and political discourse fall within the category of ideological hatred; being mistreated, demeaned, patronised, insulted on the basis of one's faith are included in the category of being a member of a hated society (a term coined in Ameli et. Al's earlier work in 2012 on France); and finally the category of Discrimination and Double Discrimination, which includes discrimination at work or school, as well as discrimination or repercussions when reporting discrimination to supervisors or agencies.

The author set their project and the findings in a historical and political context. They begin with a critique of academia per se and social science in particular as ethnocentric and thus complicit in replicating demonised representations of 'others' against the ethnic, religious, racial, gender and political norms of the dominant community represented in the field of study i.e. white, European men. It goes on to provide a demographic overview of Muslims in the USA and the history of Muslim interaction, arrival and existence on its shores. It then provides a summary of existing literature on Muslim concerns, as well as on hate crimes, discrimination and the issues Muslim face. The sources range from academic papers, to the US State Department, decolonial texts, community organisation publications and large international surveys.

The findings of the survey are presented according to the categories referred to above, and involve both cross tabs and charts based on the quantitative findings, as well as responses to the open ended questions. The recommendations that follow look at past thoughts of commissions of enquiry in the USA, as well as other work by the authors where they apply. The authors conclude that only systemic change can bring about an end to the ceaseless demonisation and targeting of minorities of which Muslims are simply the latest victims. They propose through their recommendations, the coming together of civil society actors to work in the fields of education, outreach, media and law to sustain and empower the existing movements for such change.

A Problem in Mainstream Intercultural Communication Research

The first chapter seeks to provide a self-critical review of the theoretical framework within which this work operates i.e. intercultural communication. This review argues that ethnic, religious and gender bias exists under the banner of scientific objectivity and that the researcher must critically reflect on how they inadvertently replicate stereotypes without interrogating research ontologies and epistemologies.

Muslims in the US – Then and Now

This chapter overviews existing research and statistics with regard to the demographics of Muslims in the USA, from polling organisations, academics and the US State Department. It brings together in one place competing narratives of immigration, the growth of Black Muslim communities and conversions amongst Hispanic communities, enslavement and pre-Columbian contact and interaction between Muslim peoples and the indigenous peoples of the Americas. It also outlines the complexity and diversity of Muslims in the USA including their concerns as outlined in existing research including mainly a concern with increased securitisation and Islamophobia.

Despite some variance in narratives, it is clear that Muslims in the USA (in contrast to their counterparts in Europe) are well-educated and mainly economically affluent.

Hate Crimes against Muslims in the US

A summary of existing research on hate crimes is provided, as well as an overview of existing hate crime legislation and procedures. The USA, on paper, has some of the best examples of hate crime laws, yet as the Recommendations at the end of the work explore, implementation and training are inconsistent and ad hoc. This chapter also explores reports of media, political and social discourses through the lens of two key concepts: hate representation and hate environment, which are elaborated upon in the next chapter.

Additionally, existing work on attacks on mosques, their upsurge and symbolism are discussed, as well as issues persistent issues around discrimination in the workplace, and the reversal of the levelling off of Islamophobia as a result of the Presidential campaign of 2008.

Domination Hate Model of Intercultural Relations (DHMIR)

This chapter introduces the adopted theoretical framework of the study, the Domination Hate Model of Intercultural Relations (DHMIR), first formulated in 2011 by Ameli, and developed throughout this project.

The theory holds that hate crimes – those acts of individuals and groups against others motivated by bias against a person's race, religion, sexuality, gender etc. – do not occur in a vacuum. For (a) perpetrator(s) to feel they must commit an act of hate, several conditions apply. Otherisation of the victims is key and this is done systemically and does not spring simply from the biases of individuals. Thus anti-Muslim political and media rhetoric and discourse (hate representation), laws and policies that target specific communities (hate policy), biased implementation of state laws and policies e.g. in law enforcement or schooling (hate practice) all contribute to a hate environment within which individual acts of hatred – whether violent or implicit – take place.

As a result of the hate environment, the hated society (Ameli et al, 2012) is created. The hated society is an otherised community, in this case Muslims, who suffer discrimination (whether at structural or individual levels), double discrimination (fear of or actual discrimination at the hands of institutions when reporting discrimination or hatred) and collective hate (being the subject of demonised discourse e.g. in the media, or being profiled by certain laws e.g. the Patriot Act and NDAA).

The concepts are developed in the US context upon the basis of the field work.

A Mixed Method Approach

This chapter outlines the benefits and critiques of using a mixed methods approach as is used in this project.

In the Field

Findings

Amongst the key findings are:

☐ 29.9 percent said they had been a victim of a hate motivated physical attack. This is the highest figure found so far in this project. In the UK the project found the figure to be 13.9% (2011) and in France 20% (2012). In the US a further: 37.9 percent reported being overlooked, ignored or denied

service in a public; office/places; 39.7 percent report being treated with suspicion; 49.1 percent hearing an offensive joke or comment concerning Muslim people or about Islam.

☐ The research also found that there is a clear correlation between Islamic appearance (clothing, having a beard, other identifying markers) and negative experience.

☐ Counterintuitively, those in the middle economic class reported more experiences of bias and hatred. Reasons as to why this might, included the idea that those of a lower economic class (who generally report higher experiences) felt pressured by double discrimination and did not want to report even to this project.

☐ 88 percent of respondents stated they had had some sort of negative experience.

☐ 71.1 percent said they have seen negative or insulting stereotypes of Muslim people in the media (news, TV, etc); 70.4 percent said they had witnessed politicians philosophise that Islam and Muslims are innately problematic; 64.9 percent said they had heard Islamophobic comments made in particular by politicians or high ranking officials; 52 percent said they had heard or witnessed Islamophobia; 45.7 percent said they had experience having their religious beliefs challenged by work colleagues/school/college peers

☐ The survey was developed over the pilot to try and assess respondents feelings to where they felt Islamophobia emanates and how it can be overcome. To this end:

☐ In the range of 0-100, 77.7 felt that if people has a clear and correct picture of Islam there would not be this level of anti-Muslim hatred.

☐ A further 71 felt that those who discriminate against Muslims are highly driven by media content.

☐ 76 percent said they seen political policies (local or national) that negatively affect Muslim people

☐ 70.4 percent felt that discriminatory acts against Muslims are condoned by politicians, with 60.8% saying that politicians do not care about Muslims, 67 percent said they have seen policies or practices at work or school that negatively affect Muslims.

The demographics of Muslims surveyed for this project in California:

A total of **1268** people were surveyed.

☐ 55.6 percent of respondents were aged between 19 – 35.

☐ 49.4 percent of the respondents were male and 50.6 percent were female.

☐ 40.2 percent of the participants said that they were born in the US and the country of origin is highly diverse with 18 countries. In this group, Pakistan ranked the highest for place of birth (outside the US) with 8.9 percent followed by Egypt with 7.7 percent and India with 6.6 percent. People born in other countries were represented at 3 percent or less in the study. Those countries included Afghanistan, Algeria, Bangladesh, Canada, Eritrea, Ethiopia, Iraq, Jordan, Kenya, Kuwait, Lebanon, Morocco, Palestine and Saudi Arabia.

☐ 95 percent of the respondents stated they were resident in the USA.

☐ Over 69 percent said that less than a quarter of their neighbours were Muslims and only 14 percent reported that three quarters of their neighbours were Muslims.

☐ 62.3 percent were from the economic middle class. 21.5 percent said that they are from the lower economic class, while 13.6 percent categorised themselves as upper class.

☐ 50.4 percent of the total had finished an undergraduate programme; 16.6 had a graduate degree, and 3.8 held a PhD. 16.4 percent had finished high school and only 0.3 percent had received just primary education.

☐ 48.3 percent of the respondents had a job; 18.7 percent were students; 14.4 percent were jobless and looking for a job; 11.6 percent were self-employed, and 1.2 percent were retired. Of all employed people, 41.8 percent worked for the public sector while 58.2 percent said they had a job in the private sector.

- ☐ 70.7 percent of total said that they were practising Muslims, 17.8 percent said that they were highly practising.
- ☐ 3.5% said they were secular Muslim, 3.1% said they were nonreligious people of Muslim origin and
- ☐ 2.4 percent said they were non-practising Muslims.

Conclusion: Multicultural or Multi-Hated Society?

The conclusion raises a critique of the idea that the US as a multicultural society. It contends that there are a multi-faceted levels of hatred creating a multi-hated society e.g. place of birth of respondents seems to impact on the level of negative experience they face, as does gender (women face more bias), as does age etc. The research concludes with a call for collaborative advocacy and research between different otherised communities as a way of learning from

APPENDIX C:

From pp160 – 174 of Once Upon a Hatred: Anti-Muslim Experiences in the USA by Saied R. Ameli, EbrahimMohseniAhooei and ArzuMerali

Recommendations:

A kind of Alice in Wonderland

This section begins with a reference to the conclusion of the Kerner Report (1967) properly known as the Report of the National Advisory Commission on Civil Disorders. It has already been referenced above in its stark assessment of the role of the media in perpetuating a 'white' view of the world and in fomenting anti-black sentiment and violence. The Kerner Report concludes thus:

“One of the first witnesses to be invited to appear before this Commission was Dr. Kenneth B. Clark, a distinguished and perceptive scholar. Referring to the reports of earlier riot commissions, he said:

“I read that report. . . of the 1919 riot in Chicago, and it is as if I were reading the report of the investigating committee on the Harlem riot of '35, the report of the investigating committee on the Harlem riot of '43, the report of the McCone Commission on the Watts riot.

“I must again in candor say to you members of this Commission—it is a kind of Alice in Wonderland—with the same moving picture re-shown over and over again, the same analysis, the same recommendations, and the same inaction.

“These words come to our minds as we conclude this report.

“We have provided an honest beginning. We have learned much. But we have uncovered no startling truths, no unique insights, no simple solutions. The destruction and the bitterness of racial disorder, the harsh polemics of black revolt and white repression have been seen and heard before in this country.

“It is time now to end the destruction and the violence, not only in the streets of the ghetto but in the lives of people.”

There have been no uprisings, riots or revolts, and those under discussion in this volume as targets of hatred hail mainly from classes of society that have traditionally had social mobility. Yet there is violence aplenty: physical and psychological, targeted at individuals but sending community wide messages of hatred and exclusion. Yet, the recommendations that follow are not in essence new, either to the US or to many other countries where hate environments have arisen against Muslims and other groups. Without the cooperation of the federal government and its structures, all advocates and campaigners are often left to lobby on state levels for key policy and statutory changes. Yet this is a start that has been made, and must not be undervalued as it may continue to reap rewards. Just as lobbying, protest and advocacy in California on issues of sexual orientation eventually led to a change in attitudes across North America, there is scope.

The recommendations are targeted at distinct groups and many are sourced from previous works that speak to the same and similar challenges. They are addressed to Law and Policy Makers, the

Media, Civil Society groups including Muslim groups and discuss: the Law; Media; Securitisation; Education and Community Work.

Media

The media's role as an engine of hate practice has clearly been defined by respondents, and thus, this arena is highlighted first.

I) Denunciation

Organisations that work on issues of anti-racism, community cohesion, faith relations and human rights need to be prepared to take a much stronger stand in speaking out against these ways of thinking and publicly denounce those who adopt such a discourse, even if, as is increasingly the case, those who do so are speaking from a position of sound 'liberal' or 'left-wing' credentials (Kundnani, cited in Ameli et al., 2007:94). Cases in point relate not only to the operation of stereotypes and misrepresentation in news media print, audio/visual and digital, but also the reproduction of demonised discourse in film and literature.

Critiques of demonised discourse cannot exist in academia alone, and the implications of demonised representations of peoples and countries by filmmakers and writers perceived to be progressive must be denounced. Two topical cases in point at the time of writing are the Hollywood movies *Zero Dark Thirty* (2012) and *Argo* (2012). The social media response to *Zero Dark Thirty* exposed by Horowitz (2013) reveal that despite claims by cast and crew that the film stayed neutral on the issues involved, notably the use of torture by US agencies, the violent implications for Muslims at the hands of co-citizens were clearly exposed as real threats of violence. Likewise, the reproduction of long held stereotypes about Iranians and the Islamic Revolution and the depiction of events around the seizing of the US embassy in Tehran during the early days of the Revolution in *Argo* were noted only in passing.

Human rights groups in particular need to own up to the idea that hate speech and hate representation must be at the very least, denounced. Arguments about free speech are not impacted by such denunciations, but the safety and security of demonised peoples is assisted.

Additionally, by showing leadership on this issue, leading civil society organisations gain purchase with the targeted communities, creating alliances that are much needed if there is to be a genuine attempt to have a plural society.

...

III) Monitoring of Demonised Representation in the Media

This can and must work on a variety of levels, including in academic institutions, by community organisations and major civil society organisations (perhaps in partnership) and by media outlets themselves. This monitoring process should be done in earnest with a view to assessing the levels

and ways Muslims are demonised in order to avoid innocent and negligent repetition of such tropes. As Joseph and D'Harlingue (2012), in their study on the Wall Street Journal's Op-eds, point out: "[G]iven the power of these representations on other fields, such as politics, we suggest that the WSJ, whether inadvertently or intentionally (investigating intentionality is not our subject), contributes to the demonization of Islam and Muslims. This is not an exercise in identifying what the WSJ "got wrong."

Rather, the argument is that the paper's structure of representation participates in and contributes toward the production of politics, policy, rights, and citizenship." (authors' emphasis)

Monitoring needs to work towards identifying how to transform that structure from one that participates in oppression to one that challenges it. While the initial onus of this must be on broadcasters and those responsible for media representation of Muslims, local government needs to be involved in this process, commissioning studies if necessary or facilitating the requisite debate around alienation and the impact of media on the process, in the hope that this will generate more than just a superficial self-analysis by media producers (Ameli et al., 2007).

...

VI) Cultural change in the use of media by politicians, the judiciary and security and law enforcement agencies.

It is essential that the culture of politicians (Ameli et al., 2007), the judiciary and security and law enforcement agencies changes in the way that they utilise media. The media often gives a less than critical platform to all of the above when the issues under discussion are related to Islam, Muslims, immigrants or peoples of colour.

It is crucial to have a cultural change in the way the politicians (etc.) utilise the media and in the way that they deal with minorities. Due to disparity of access to media political comments, this cannot be countered and debated in a way that includes minority groups. As such the media becomes a destructive force and a blunt instrument to force minorities into certain positions, thus, creating demonisation between the majority and the minorities (Ameli et al., 2007). Organisations already involved in lobbying and interacting with the media need to make this a key call for change both in their interaction with media producers but also sympathetic figures in the other institutions whom may be able to make the case for change within these institutions—or at the very least speak truth to power.

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Law

The aforesaid problems that prevent the authors making recommendations to the Federal government also preclude such recommendations in this section. Here there is an emphasis on local government, state law and law enforcement. There is much convergence between Kerner (1967) and Ameli et al., (2006b) and again we list these in conjunction with each other.

- Enforcing the law, not prejudice (Ameli et al., 2006b)—police forces must tackle and be pushed by local government to tackle institutionalised racism. Everyday hate practice that involves the police is

often overlooked but ultimately culminates in Rodney King and Amadou Diallo type incidents, as well as facilitating travesties of justice like the Lodi arrests where intersectionality between agencies and structural prejudices culminate in such cases.

- In order to deal with policing issues above, but also at the level of education, public sector employment, service provision and other public agencies, as per Kerner (1967), it is vital to establish comprehensive grievance-response mechanisms in order to bring all public agencies under public scrutiny. This is still a work in progress almost 50 years after the Kerner report and must find meaningful fruition soon.
- Bring the institutions of local government closer to the people they serve by establishing neighbourhood outlets for local, state and federal administrative and public service agencies (Kerner, 1967). While it can be argued that much physical progress has been made to this end since 1967, exclusionary barriers still exist that keep the working and involvement in local government away from those that need to participate the most. That need is as much for those excluded as for those structures of local power which cannot be transformed if they do not accept the standpoint(s) of those marginalised from its processes as an integral part of their knowledge base (Ameli et al, 2004a and 2007, Grosfoguel, 2011). Essentially, those voices that are excluded because their views are perceived to be radical or inimical to the 'values' of the state, must be heard and included and understood on their terms if local government is to govern with credibility and not as an extension of exclusionary power.
- Expand opportunities for excluded communities including Muslims to participate in the formulation of public policy and the implementation of programmes affecting them through improved political representation, creation of institutional channels for community action, expansion of legal services, and legislative hearings on problems affecting them, but also diverse social issues (Kerner, 1967 and Ameli et al., 2006b).

The recording of Hate Crime exists in the US in more advanced ways than other countries. The recommendations here relate to practical data collection issues, conceptual issues and policy.

Practical issues:

Standardisation of how hate crimes data is recorded is highly desirable. However, the proliferation of different methods must not be allowed to hamper the collation and recognition of reported incidents. Additionally, the failure of many law enforcement agencies to acknowledge a factor of bias or hatred when a crime is committed aggravates the situation where statistics seriously underrepresent the level of such crimes. To obviate both of these eliding problems, the authors recommend that the Macpherson principle of perception (Chahal, 1999) be used by those who record such crimes (i.e. a racist /Islamophobic act is such when it is perceived to be so by the victim).

Under-representation through the recording of reported incidents means that a full picture of the experiences cannot be gleaned. This dilemma is exactly the reason that this methodology used in this volume was developed. This type of research into the experiences of Muslims (and other minorities) must be regularly implemented to ensure that a clearer picture of the everyday experiences of hated societies be understood and presented at the relevant policy levels. At

the moment, the impetus for this is with civil society, but this is a project that can find many partners in academia and institutions committed to independent research.

...

Policy:

Policy makers must not use statistics collated by reporting only to make comparisons between the experiences of communities. This is a cynical attempt to portray one community's experiences as worse than another, and communities must resist the urge to fall into this narrative.

Issues of under-reporting need to be tackled by policy makers. Ameli et al (2004a, 2004b and 2006b), IHRC (2000, 2001 and 2002) and others found that under-reporting results from fear of double discrimination from or disaffection with law enforcement agencies and/or feelings of futility in the process as regards the merits or redress offered by reporting, and these are issues that policymakers need to tackle. What has been seen in various countries is that institutions use low statistics to claim that hate crimes are not perpetrated against certain communities in significant numbers, and therefore, do not put money or effort into dealing with hate crimes against those communities.

Additionally, as outlined above, policymakers need to understand reporting as one method, and look towards the type of research approach used in this volume. For example, among a representative sample of the California Muslim population, 29.9 percent said that they had been the victim of a physical assault because they were or were perceived to be Muslim.

It is outside the resources of this volume to have an extended discussion about changes to the law. Laws exist, as does a legal tradition regarding hate crimes in the US, and though commendable, a conversion from the rhetoric of condemnation in law, to actual and tangible prosecutions, litigation and a legal culture that tackles, not reinforces hatred is still required. As such, this is a project for radical lawyers and academics to pursue. Many such initiatives exist already and recommendations in this regard must come from these communities of critical legal theory and practice.

Securitisation

The language of securitisation cuts across all the above categories and spheres: political, legal (including law enforcement) and media, and so are in the main already addressed. However, very concrete examples of what needs to be tackled can be summarised thus:

- An immediate end to training of security personnel as identified by Cincotta (2011) by and using Islamophobic trainers and materials.
- The repeal of such laws that allow gross violations of civil liberties e.g. NDAA 2012.
- An immediate end to the use of informants and agent provocateurs in what are essentially forms of entrapment against often young and/or vulnerable or marginalised Muslims.

Additionally, any political movement or coalition championing these causes must include the target of eliminating the demonisation of valid political aspirations and affiliations, including but not solely, opposition to foreign policy, wars conducted overtly and covertly by the US, support for

the Palestinian cause, and support for non-Western ideas and political, religious and philosophical thought.

Education

Schools, school boards, pedagogues at whatever level including university instructors and academics of all disciplines, need to work towards content of education that is inclusive but also re-evaluates the assumptions that underlie canons of knowledge and implementation.

On an immediate and practical level, this involves the development of curricula that address children from the earliest stages of schooling about the various cultures of the world and their contribution to all that is good. This in turn teaches majority community children to value their diverse peers, but also fosters feelings of inclusion and acceptance among minority community children. It will also contribute to (but cannot solely impact) the long-term dissolution of a hate environment.

This new inclusive curricula emphasising the positive, is not a substitute for a serious re-evaluation of history when it comes to the existence of and structural development of the US as a colonial power that continues a colonial project today. This critique needs to be introduced into mainstream education if hate policy (internal or external) is to be tackled by means of political movements.

Finally, and for the long-term, an epistemic re-evaluation of the role of the university is required. Recommendations in this regard are beyond the scope of this volume, but the recommendation about dual educational space for minorities by Ameli et al (2005) and the concept of pluriversity as opposed to university (Grosfoguel, 2011) are good starting points. As regards dual space, as with media, having Muslim and minority specific schooling for those parents who want it for their children fosters affiliation to the state but also a sense of confident citizenship. Inevitably, this can create critical voices, but without critical and confident voices no society will prosper.

The acknowledgement of the validity of such educational space also fosters an environment where hitherto otherised knowledge can become relevant to the space in which they are now being learned, taught and developed. The pluriversity—a structure of learning that provides an alternative to the current university model is a natural point of development from this. [ENDS]