



UNITED NATIONS SECRETARY-GENERAL

**UN Secretary-General's forthcoming report on the question of the death penalty
to the 27th session of the Human Rights Council, September 2014**

**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)
TO THE UN SECRETARY-GENERAL IN VIEW OF HIS FORTHCOMING REPORT
ON THE QUESTION OF THE DEATH PENALTY TO THE 27TH SESSION OF THE
HUMAN RIGHTS COUNCIL, SEPTEMBER 2014**

Submitted March 2014

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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Introduction

1. In its decision 18/117 adopted on 28 September 2011,¹ the Human Rights Council requested "the Secretary-General to continue to submit to the Human Rights Council, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement to his quinquennial report on capital punishment...".
2. In February this year, a consultation period began in view of the forthcoming report of the UN Secretary-General on the question of the death penalty to the 27th session of the Human Rights Council in September 2014. In light of this, Governments, specialized agencies and intergovernmental and non-governmental organizations have been invited to provide information covering relevant developments between 1 April 2013 and 31 March 2014 on the question of the death penalty.
3. The International Commission of Jurists (ICJ) opposes the death penalty under any circumstances, and considers its use to constitute a violation of the right to life and freedom from cruel, inhuman or degrading punishment.
4. The present submission focuses exclusively on the retention, imposition and the carrying out of capital punishment in connection with real or purported engagement in consensual sexual relations.² It in no way purports to constitute a comprehensive enumeration of all States in which such situations arise.
5. The ICJ considers that laws criminalizing real or purported engagement by adults in consensual sexual relations, including extramarital sex and premarital sex -- whatever the sexual practice, proclivity and the gender identity or expression and/or sexual orientation of the persons concerned -- contravene international human rights law and standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These core global instruments each affirm the universal and inalienable rights to human dignity, equality and non-discrimination.
6. Legal provisions criminalizing consensual sexual relations between adults necessarily result in violations of, and generally impair the exercise of, a number of rights. These include the rights to dignity; equality, including equality before the law and equal protection of the law; non-discrimination; liberty and security of person; privacy; opinion and expression; association and peaceful assembly. They may also often lead to denials of the right to access health services and care without discrimination. In addition, although such laws may be gender

¹ Decision 18/117, available at <http://goo.gl/U7xWc5>.

² In this context, the previous report of the Secretary-General of the question of the death penalty states "During the reference period, Islamic Republic of Iran, Mauritania, Saudi Arabia, Sudan and Yemen continued to retain laws providing the imposition of the death penalty against those found guilty of offences relating to consensual, adult, same-sex relationships that do not meet threshold of 'most serious crimes'. In addition, local and regional courts in some parts of Somalia and Nigeria continued to have power to impose the death penalty for such offences on the basis of the Sharia law. While no execution in cases involving consensual same-sex conduct was confirmed in the past year, the mere existence of these laws has a terrorizing effect on an entire community and, as in other places where homosexual relationships are criminalized, also reinforces stigma, and fuels discrimination and violence against anyone perceived to be gay or lesbian"; A/HRC/24/18*, 1 July 2013, para. 73, footnote in the original omitted, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/157/38/PDF/G1315738.pdf?OpenElement>.

neutral and may not directly discriminate against women, in practice their application and enforcement often disproportionately and discriminately affect women's enjoyment of their rights.

7. Moreover, the retention, imposition and the carrying out of capital punishment in connection with real or purported engagement in consensual sexual relations contravene the right to life and freedom from cruel, inhuman or degrading treatment or punishment.
8. In this context, the ICJ welcomes the opportunity to submit the present briefing covering country developments in the reference period as set out below.

Afghanistan

9. Afghan law continues to criminalize a range consensual sexual activity.³ While it appears the penalties imposed may differ depending on the act, circumstances and evidence available, the death penalty may legally apply in certain cases. The penal code provides that if evidentiary requirements are met the crime of "adultery" (or *zina*), a term which is used to denote unlawful non-marital consensual sex, may be subject to the "*hodod*" or "*hadd*" penalties prescribed under "Islamic law".⁴ In certain circumstances if requirements are met the punishment may include the death penalty.⁵

Brunei Darussalam

10. In October 2013, the Government enacted the Syariah Penal Code Order 2013. The ICJ has set out its concerns with regard to this legislation in an open letter to the Prime Minister of Brunei Darussalam.⁶ The new penal code continues to criminalize consensual sex between men and women outside of marriage (*zina*)⁷ and consensual anal sex (*livat*).⁸ It introduces the application of the death penalty to these "crimes" in a range of circumstances.⁹ The method of execution prescribed is stoning to death.¹⁰ The new penal code is set to enter into force from April 2014.

Iran

11. The revised Islamic Penal Code was approved by the Majlis (Parliament) and the Guardian Council in May and signed on 1 June 2013 by the President of the Islamic Republic of Iran.¹¹ It criminalizes consensual sodomy (*livat*) and imposes the death penalty in a range of circumstances.¹² It also criminalizes consensual

³ See Articles 1, 426-427 Afghan Penal Code, 1976.

⁴ See Articles 1 and 426.

⁵ See Oxford Islamic Studies Online, <http://www.oxfordislamicstudies.com/article/opr/t125/e757>. And see Death Penalty Worldwide (Northwestern Law School and the World Coalition Against the Death Penalty) <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Afghanistan>.

⁶ International Commission of Jurists, Brunei New Penal Code Open Letter advocay2013, available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/01/Brunei-Open-letter-on-2013-Penal-Code.pdf>.

⁷ Article 68, Syariah Penal Code Order, 2013.

⁸ Article 82, Syariah Penal Code Order, 2013.

⁹ Articles 69 and 82, Syariah Penal Code Order, 2013.

¹⁰ Articles 69 and 82, Syariah Penal Code Order, 2013.

¹¹ Communication of Special Procedure of the Human Rights Council, case type: Joint Letter of Allegation, case no. IRN 9/2013, 28 June 2013, available at: <https://spdb.ohchr.org/hrdb/24th/public - AL Iran 28.06.13 %289.2013%29.pdf>.

¹² Article 234, Islamic Penal Code. See Communication of Special Procedure of the Human Rights Council, case type: Joint Letter of Allegation, case no. IRN 9/2013, 28 June 2013, p.2, available at: <https://spdb.ohchr.org/hrdb/24th/public - AL Iran 28.06.13 %289.2013%29.pdf>.

sex between men and women outside of marriage (*zina*)¹³ and, in certain instances, imposes the death penalty by stoning.¹⁴

Mauritania

12. Mauritania continues to criminalize consensual sex between men and women outside of marriage (*zina*)¹⁵ and imposes the death penalty, to be carried out by stoning, on married individuals convicted of the crime.¹⁶ Consensual sex between individuals of the same-sex is also criminalized, and men engaging in consensual sex with men are subject to the death penalty by stoning.¹⁷

Nigeria

13. Consensual same-sex sexual activity is illegal under Nigerian legislation.¹⁸ In addition a number of states in northern Nigeria apply Sharia Penal Codes. These criminalize consensual same-sex sexual activities¹⁹ and impose the death penalty by stoning for sodomy (*livat*) between men.²⁰ They also criminalize consensual sex between men and women outside of marriage (*zina*)²¹ and provide for a sentence of death by stoning for married individuals.²²

Pakistan

14. Under the 1979 Offence of Zina (Enforcement of Hudood) Ordinance, 1979, consensual extra-marital sexual intercourse between a man and a woman is punishable in certain circumstances with stoning to death in public.²³ Consensual same-sex sexual activity may also be punishable with the death penalty under *sharia*, including by stoning.²⁴

Saudi Arabia

15. Amnesty International reported that Saudi Arabia executed a man for “adultery” in 2013.²⁵

¹³ Article 225, Islamic Penal Code. See Communication of Special Procedure of the Human Rights Council, case type: Joint Letter of Allegation, case no. IRN 9/2013, 28 June 2013, pp.2-3, available at: https://spdb.ohchr.org/hrdb/24th/public_-_AL_Iran_28.06.13_%289.2013%29.pdf.

¹⁴ Ibid.

¹⁵ *Mauritanie: Code Pénal*, Ordonnance No. 83.162 du 1983, 9 July 1983, articles 307

¹⁶ Ibid.

¹⁷ *Mauritanie: Code Pénal*, Ordonnance No. 83.162 du 1983, 9 July 1983, articles 308 and 306, available at: https://www.unodc.org/tldb/pdf/Mauritania_Code_penal_1983.pdf.

¹⁸ Article 214, Criminal Code Act, 1990. See also, International Commission of Jurists, Nigeria and Uganda: new laws herald further persecution based on sexual orientation and gender identity, available at: <http://www.icj.org/nigeria-and-uganda-new-laws-herald-further-persecution-based-on-sexual-orientation-and-gender-identity/>.

¹⁹ Articles 129, 133 Harmonised Sharia Penal Code, Ostien, P., *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, 5 volumes, Ibadan: Spectrum Books Ltd., 2007, ISBN: 978-978-029-837-1. Available at:

<http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php>

²⁰ Ibid. Article 130.

²¹ Article 125, Harmonised Sharia Code, Ostien, P., *Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook*, 5 volumes, Ibadan: Spectrum Books Ltd., 2007, ISBN: 978-978-029-837-1. Available at:

<http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php>

²² Ibid. Article 126.

²³ The Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979), sections 4 and 5, available at <http://www.refworld.org/docid/4db999952.html>.

²⁴ Country of Origin Information (COI) report on Pakistan, produced by the COI Service, UK Home Office, para .21.04, 20.05, p. 176-7, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257637/report-09082013.pdf.

²⁵ Amnesty International, Death Sentences and Executions in 2013, p. 38, available at <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>.

16. Pursuant to the current interpretation of *sharia* in the country, any consensual sexual act outside marriage is an offence (*zina*), and such conduct may be punishable by death depending on the circumstances of the case.²⁶ The method of execution is beheading; however, the Law of Criminal Procedure retains capital punishment by stoning to death.²⁷ Stoning in public is reported to be a method of execution for married individuals convicted of *zina*.²⁸
17. Consensual same-sex relations between adults are reportedly treated as *zina*, making those convicted liable to the penalty of death or lashing according to the circumstances. However, the treatment of consensual same-sex acts differs. Male sodomy carries the death penalty, regardless of the marital status of the "offender", while it appears that consensual same-sex between women may be treated differently, depending on the evidence, circumstances and Islamic school.²⁹

Somalia

18. Under *sharia*, a married person who has extramarital consensual sex is liable to the death penalty.³⁰ Partly due to the interpretation and application of *sharia*, consensual same-sex sexual conduct between adults may attract the death penalty in the southern region of Somalia.³¹

Sudan

19. Sudan criminalizes adultery defined as sexual intercourse (as defined) between a man and a woman without a lawful bond (marriage) between them.³² When the offender is married the punishment is death by lapidation.³³ Consensual anal sexual intercourse, whether between a man and a woman or two men is defined as sodomy and criminalized.³⁴ Only men can be convicted of the offence; however, when both consenting partners are men, they can both be liable. Upon the offender's third conviction for the offence the penalty may be death.³⁵

²⁶ "Zina carries the death penalty as hadd for married persons". However, scholars also state that "any sexual contact other than penetration of the male organ into the female organ is not adultery and should not be punished as hadd"; reported in the Saudi Arabia page, the Death Penalty Worldwide, available at <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Saudi+Arabia#a36-3>. According to Amnesty International consensual extra-marital heterosexual sexual activity is illegal, and if the offenders, male or female, is married, the penalty would be death. See Amnesty International, Love, hate and the law: decriminalizing homosexuality, 4 July 2008, pp.47-48, available at: <https://www.amnesty.org/en/library/asset/POL30/003/2008/en/e2388a0c-588b-4238-9939-de6911b4a1c5/pol300032008en.pdf>.

²⁷ Article 10 of the Law of Criminal Procedure 2001 states: "Criminal panels of the Appellate Court shall consist of five judges to review sentences of death, stoning,...." Article 129 of the Law of Criminal Procedure [2001] states: "The General Court.... convening as three judges, shall have jurisdiction over cases wherein the sentence claimed is the death penalty, *rajm* (stoning)" NB the English version of this document is for guidance only. The Arabic version is the governing text, available at <http://www.saudiembassy.net/about/country-information/laws/CriminalProcedures2001-1of3.aspx>.

²⁸ Saudi Arabia page, the Death Penalty Worldwide.

²⁹ Ibid.

³⁰ Reported in the Somalia page, the Death Penalty Worldwide, available at <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Somalia#a14-1>.

³¹ Amnesty International, Death Sentences and Executions in 2013, available at <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>. See also, Amnesty International, Making love a crime : Criminalization of same-sex conduct in Sub-Saharan Africa, available at <http://www.amnesty.org/en/library/info/AFR01/001/2013/en>.

³² Criminal Act of 1991, s. 145, available at <http://www.icrc.org/ihl-nat.nsf/0/B9EEBA1CA8F54121C1256DC9005573F2>.

³³ Ibid, s. 146.

³⁴ Ibid, s. 148(1).

³⁵ Ibid, s. 148(2).

Yemen

20. Yemeni legislation criminalizes extramarital consensual sex activities, described as “adultery”, between a man and a woman and provides for death by stoning if the “the adulterer or the adulteress are married”.³⁶ Homosexuality, as defined, is also criminalized, whether engaged in by men or women; the offence may be punished by stoning to death if the offender is married.³⁷

³⁶ Republican Decree, By Law No. 12 for 1994, Concerning Crimes and Penalties, 1994, Article 263, available at: <http://www.refworld.org/docid/3fec62f17.html>.

³⁷ Ibid, Article 264.