UNITED STATES COMMISSION *on* INTERNATIONAL RELIGIOUS FREEDOM

FACTSHEET

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SHARI'A AND LGBTI PERSONS

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To advance international freedom of religion or belief, by independently assessing and unflinchingly confronting threats to this fundamental right.

The Use of Shari'a as Religious Justification for Capital Punishment Against LGBTI Persons

Introduction

This factsheet provides an overview of the international human rights standards relevant to the official enforcement of religion-based laws imposing capital punishment against members of the lesbian, gay, bisexual, transgender, or intersex (LGBTI) community. It also includes short case studies of governments that impose capital punishment on members of the LGBTI community based on religious interpretations of Shari'a law.

In some countries around the world, criminal laws provide for the death penalty based on religious interpretations. Such laws, many of which penalize *same-sex relationships*, *opposite sex relationships outside marriage*, *blasphemy*, or *apostasy*, result in violations of freedom of religion or belief (FoRB) and other human rights. Moreover, laws that make same-sex relationships subject to the death penalty violate the human dignity and rights of LGBTI persons and embolden societal hostility, discrimination, and violence against them.

Relevant International Standards

Articles 18 of the *Universal Declaration of Human Rights (UDHR)* and the *International Covenant on Civil and Political Rights (ICCPR)* protect the rights, including FoRB, for all individuals. FoRB empowers individuals to manifest their religion or belief as they see fit, subject only to the narrow *limitations* specified in international law.

According to Articles 2 of the UDHR and the ICCPR, everyone is entitled to enjoy all of the rights and freedoms guaranteed in those documents without distinction of any kind. Article 26 of the ICCPR also contains a prohibition on discrimination on grounds including religion, sex, or other status. The *UN Human Rights Committee* (HRCttee)—the body of independent experts charged with interpreting provisions of the ICCPR and monitoring state parties' compliance with the treaty—has held that the word sex in Article 26 includes sexual orientation (See *Toonen v. Australia*).

Furthermore, Article 6(2) of the ICCPR provides that death sentences may only be imposed for the "most serious crimes." The use of the *death penalty* for nonviolent acts, including same-sex relationships between consenting adults, constitutes a violation of international human rights law under this principle. The UN Special Rapporteur on *extrajudicial executions* has noted it is "unacceptable" to apply the death penalty for LGBTI relationships or activity.

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Under international human rights law, religion is not a legitimate justification for egregiously violating fundamental rights of individuals. As explained by the HRCttee in *General Comment 22*, the existence of a state or majority religion cannot result in the impairment of the rights of individuals under the ICCPR. General Comment 22 also explains that "the concept of morals derives from many social, philosophical, and religious traditions; consequently limitations … for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition."

International law requires states to respect FoRB for everyone, equally. Thus, states must not coercively enforce religious interpretations on individuals who do not adhere to those interpretations; that includes members of the LGBTI community, who have the right to determine how to live and thrive in accordance with their religious beliefs. Religiously based laws criminalizing LGBTI relationships and activity may also violate the rights of religious communities by forcing them to accept the state's position.

Different religious communities have differing views, including on LGBTI issues, and FoRB permits them the liberty to have and to follow their own interpretations. As *explained* by the UN Special Rapporteur on freedom of religion or belief, "[r]eligious communities are not monolithic. In many religions, a plurality of self-understandings exists, some of which may be more committed than others to advancing gender equality and non-discrimination."

Shari'a and LGBTI Persons

Shari'a refers to the Islamic "way of" doing things. No person or entity in Islam has the sole authority to definitively interpret Shari'a. Most Muslims agree that Shari'a, as a body of texts, encompasses at least the Qur'an and sayings of the Prophet *(hadith)*. Many interpretations of Shari'a draw on additional work by later scholars, court judgments, and local custom as sources. Centuries-long debates within and between the major schools *(madhahib)* of Islamic jurisprudence endure over which sources are permissible for making legal determinations.

While *neither* the Qur'an nor the Sunna (traditions and practices of the Prophet) explicitly reference same-sex relations, many Muslim scholars reference the story of Lot (Lūt) to *opine* that acts of sodomy *(liwat)* are a form of illicit sex *(zina)* that should be punished. Some Muslim scholars hold that same-sex attraction is *not itself forbidden* in Islam, and *liwat* as acts also differ from gay sexual identity. Some later Muslim discourse *distinguishes further* between gay men, intersex, third gender, transgender, and effeminate men.

While debates over Shari'a and its interpretation are the purview of Muslims and Islamic scholars, many Muslim-majority countries have constitutions and criminal law systems that appeal to Shari'a as a basis for laws. Countries whose constitutions appeal to Shari'a reflect wide variation in their treatment of LGBTI people. There are also differences between legal prohibitions on same-sex relations applying to both men and *women*, and actual prosecutions, which tend to target men. This heavier focus on men results from the specific mention of *liwat* (interpreted as "sodomy") in legal discourse, and the greater presence of men in the public sphere in some countries where Shari'a is a basis for law.

There are *10 countries* where consensual same-sex relationships are formally punishable by death, all of which justify denial of rights and personhood on official interpretations of Shari'a.

Countries that Impose the Death Penalty for Consensual Same-Sex Relationships

- Iran
- Saudi Arabia
- Yemen
- Nigeria
- Somalia
- Mauritania
- United Arab Emirates
- Qatar
- Pakistan
- Afghanistan

There are also many countries whose laws are guided by Shari'a, where consensual same-sex relationships are not a capital offense but are criminalized. Additionally, many countries whose governments do not profess an official version of Islam and/or Shari'a law nonetheless impose criminal penalties and engage in the torture and killing of LGBTI persons on religious grounds; the torture and killing of members of the LGBTI community in Chechnya is one prominent and horrifying example. This factsheet is focused on those countries imposing capital punishment against LGBTI persons under religious interpretations of Shari'a law. While individuals and religious communities enjoy the right to debate religious interpretations, including on LGBTI issues, free from government interference, governments are accountable to international human rights standards guaranteeing freedom of religion or belief, and other fundamental human rights, to everyone.

Case Studies

This section provides a brief overview of the legal provisions and implementation in select countries that rely on Shari'a principles to subject LGBTI persons to the death penalty.

Iran

Iran actively executes people who engage in same-sex relations, including minors. Iranian laws against same-sex relations are based in interpretations of Islamic religious teachings, and imposed on Iranians regardless of their religious beliefs. Articles 233–239 of Iran's 2013 Penal Code prescribe the death penalty for samesex relations between two men, and *whip lashings* for sexual intimacy between two men. The law prescribes lashes for women who engage in same-sex relations as well. Following an appeal from transgender woman *Maryam Khatoon Molkara*, former Ayatollah Ruhollah Khomeini issued a *fatwa* permitting gender reassignment surgery in 1984; gay men, however, are often pressured to undergo this surgery as a "solution" for their same-sex attraction. Iran actively enforces the hanging of gay men, including a *hanging* in January 2019. In 2016, Iran executed 17-year-old Hassan Afshar after having what he claimed was consensual intercourse with another male minor. When asked about Iran's execution of gay men at an event in Germany in 2019, Foreign Minister Javad Zarif *responded*, "Our society has moral principles. And we live according to these principles."

Saudi Arabia

Consensual same-sex relations are *punishable* by death in Saudi Arabia, though the government has not sought this penalty in recent years. In 2019, the state security agency *published* a video categorizing homosexuality as a form of extremism. In April of that year, Saudi Arabia conducted a mass execution of Shi'a, including one man who *allegedly* confessed to having same-sex relations with four of the other men¾a confession his lawyer later denied. In September 2019, two gay Saudi journalists *sought asylum* in Australia after Saudi state security allegedly revealed their relationship to the family of one of the men.

Nigeria

Under *Shari'a penal codes adopted in northern states*, sodomy and/or anal intercourse is punishable by death by stoning or public flogging. Criminal codes in both the *south* and *north* of the country reflect the language in the Shari'a penal codes, deeming LGBTI activity as "against the order of nature." Convictions are rare due to strict requirements regarding evidence and witnesses. In 2014, a few cases tried by a Shari'a court in Bauchi state led to *public floggings* of those found guilty. More frequently, public officials use the threat of harsh punishment, or the threat of public shaming, to *extort bribes* from individuals accused of violating laws against LGBTI activity. Those accused of LGBTI activity have also been subject to *arbitrary detention*, *unlawful search of property*, and *beatings and torture* at the hands of state security forces. Moreover, individuals suspected of violating laws against LGBTI activity are often victims of *mob justice*, with human rights organizations accusing the government of *complicity and willful impunity* for the perpetrators.

Brunei

In April 2019, Brunei fully implemented its new penal code based on Shari'a interpretations, the *Syariah Penal Code Order* of 2013, which blurs the lines between the country's previously demarcated dual legal system. The new penal code holds all Muslims, regardless of citizenship, under the same standard within the territory of Brunei.

The punishment for LGBTI activity initially included death by stoning. In May 2019, after significant international outrage and media attention, the Sultan *announced* that the government would not enforce death penalties. The Sultan's announcement, however, did not amend the law.

Afghanistan

The Afghan constitution provides that laws are to be based on the government's interpretation of Shari'a and requires courts to rely on Shari'a in the absence of governing constitutional or legal provisions. In February 2018, the Afghan Penal Code was revised with several explicit provisions that affect the LGBTI community, particularly *Sections 645-650* of Book 4, which allow for the imposition of the death sentence for same-sex sexual relations. While in power, the *Taliban allegedly executed homosexuals* regularly. Although no official death sentences have been handed down since the end of Taliban rule in 2001, interpretations of Shari'a continued to be imposed through various stakeholders (i.e., religious leaders, village elders, and anti-state elements) in village and district settings where there is a judicial vacuum. The LGBTI community in Afghanistan continues to face significant violence from the state and society at large.

Pakistan

In Pakistan, LGBTI activity is illegal and punishable by *imprisonment* under the penal code. However, Pakistan's *Hudood Ordinances*, laws enacted to bring the country's legal system in compliance with the government's interpretation of Shari'a, can be interpreted to implement more severe punishment, including death, for LGBTI activity and relationships.

Conclusion

Governments must not desecrate the rights and humanity of LGBTI persons through the imposition of the death penalty, under interpretations of Shari'a or other religion-based laws. Religious freedom includes not being coerced by the state to follow a particular religious interpretation.

Individuals and religious communities have the right to hold and follow diverse views on religious precepts, including regarding sexuality, without government interference and violence.

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The U.S. Commission on International Religious Freedom (USCIRF) is an independent, bipartisan federal government entity established by the U.S. Congress to monitor, analyze, and report on religious freedom abroad. USCIRF makes foreign policy recommendations to the President, the Secretary of State, and Congress intended to deter religious persecution and promote freedom of religion and belief.

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