

# KILLING IN THE NAME OF GOD

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STATE-SANCTIONED VIOLATIONS OF  
RELIGIOUS FREEDOM



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Back cover: A Hazara man touches *Alam* (sacred flag) to get its blessings in Mehr Abad, Quetta, Pakistan. January 2012.

**ELEOS  
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# FOREWORD

This timely and significant report—*Killing in the Name of God: State-Sanctioned Violations of Religious Freedom*—comes as we continue to live through the human tragedy and widespread uncertainty of the COVID-19 pandemic. The pandemic has disproportionately affected certain marginalised groups, and I have been deeply concerned by the rising number of reported acts of discrimination, hostility, and violence against religious and belief minorities.

In my capacity as the United Nations mandate holder for freedom of religion and belief, I routinely call upon States and non-State actors to uphold this fundamental human right and highlight its violations in many countries worldwide. In July 2021, I drew the international community's attention to the dire situation of Ahmadiyya Muslims. Targeted on the basis of their religious identity, they have endured hatred, violence and stigmatisation, including through unfounded conspiracy theories that they have caused and spread COVID-19. In the name of 'protecting' national security, Shi'a Muslims in Saudi Arabia and Baha'is in Iran have been arbitrarily detained, incarcerated and even executed.

Furthermore, the return of Taliban rule in August 2021 strongly suggests that Afghanistan's diverse ethnic and religious or belief minorities are at heightened risk of violence and repression, given the Taliban's history of violently targeting these vulnerable communities. Concerningly, the Taliban and others also have invoked religious precepts to perpetrate violence and discrimination against women, girls and lesbian, gay, bisexual, and transgender persons.

Against this backdrop, *Killing in the Name of God: State-Sanctioned Violations of Religious Freedom* comes at an urgent juncture. There has been a surge of religious intolerance worldwide, including revival of anti-blasphemy and anti-apostasy laws. These laws cannot be justified under the international human rights law framework precisely because this framework protects individuals, rather than religions or beliefs. Nonetheless, these laws restrict the freedom to express views which may be deemed offensive to certain religious or belief communities, generally invoking national security, public order, or morality.

The report examines twelve countries that have retained the death penalty as a lawful possibility for offences against religion, such as blasphemy, apostasy, and proselytising. The authors persuasively argue that the existence of such provisions that privilege certain religions over others, or expect strict adherence to a religion recognised as a State religion, have a devastating impact. Even in jurisdictions where the death penalty is not imposed for offences against religion, its mere lawful possibility—codified or not—stifles the freedoms of religion or belief and expression. In some countries, this possibility also fosters an environment in which people feel entitled to engage in mob violence against those accused of offending religious morals. The report is a scathing indictment of overreach of criminal law, where State power is wielded to kill individuals for offending religious doctrines.



The UN ‘Faith for Rights’ framework aims to foster the development of peaceful societies that uphold human dignity and equality for all and where diversity is not just tolerated, but fully respected and celebrated. Community leaders, politicians, and civil society groups are instrumental actors in speaking out against intolerance, discrimination, and hate speech. Notably, religious or belief leaders can play a crucial role in translating ‘faith’ into the language of ‘rights’ and *vice versa*, thereby engaging their considerable influence over the hearts and minds of millions of people to defend diversity, peace, and freedom. Ultimately, States must protect freedom of religion or belief for everyone, everywhere and at all times—and one clear step towards realisation of that goal is to abolish the death penalty for offences against religion.

*Written in October 2021, in celebration of the World Day Against the Death Penalty.*

**Ahmed Shaheed**

**UN Special Rapporteur on freedom of religion or belief**

*Ahmed Shaheed was appointed as Special Rapporteur on freedom of religion or belief by the UN Human Rights Council in 2016. Mr Shaheed is Deputy Director of the Human Rights Centre, University of Essex, UK.*



## EXECUTIVE SUMMARY

Since 2015, numerous States have repealed blasphemy laws that had not been used for decades: Iceland (2015), Norway (2015), Malta (2016), Denmark (2018), Canada (2018), Greece (2019), New Zealand (2019), Ireland (2020), and Scotland (2021). This wave of reform was directly inspired by al-Qaeda's brutal killing of 12 people at the Paris offices of satirical newspaper *Charlie Hebdo*, motivated by the newspaper's publication of a caricature of the Prophet Muhammad. This same trend has not, however, been mirrored in countries where Islam is the State religion. In 2019, Brunei introduced the death penalty for apostasy and blasphemy. In 2018, Mauritania amended its laws such that the death penalty became mandatory for apostasy and blasphemy. While Sudan abolished apostasy in 2020, this was part of a series of reforms introduced by the new administration to make Sudan a secular State.

As of 2020, blasphemy was formally criminalised in some 84 countries (Fiss and Kestenbaum, 2020:8). As many as 21 countries criminalised apostasy as of 2019 (Humanists International, 2019:18). Keeping in mind that acts in the vein of apostasy and blasphemy may also be encompassed under alternate criminal laws,<sup>1</sup> the number of States in which offences against religion are *informally* criminalised is likely much higher. The legal penalties for such offences range from fines to imprisonment to corporal punishment—and in at least 12 countries,<sup>2</sup> the death penalty.

This report examines the extent to which States commit, or are complicit in, killings that violate religious freedom. Focussing on the 12 States in which offences against religion are lawfully punishable by death, we examine four different types of State-sanctioned killings on the basis of religious offence (apostasy, blasphemy, or alike) or affiliation (most commonly, membership of a religious minority): judicial executions, extrajudicial killings, killings by civilians, and killings by extremist groups. We explore the relationship between the retention of the death penalty for religious offences and other forms of State-sanctioned killings motivated by alleged religious offending or by religious identity.

An examination of death penalty policy and practice since 2010 found that:

- **Apostasy** is punishable by death in at least 11 countries.<sup>3</sup> This is codified in three countries;<sup>4</sup> elsewhere, the death penalty is prescribed by unwritten *Shari'a* law.
- **Blasphemy** is punishable by death in at least seven countries,<sup>5</sup> four of which prescribe the death penalty in legislation.<sup>6</sup>

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<sup>1</sup> States have also treated blasphemous acts as violations of laws prohibiting conversion, hate speech, extremism, and witchcraft (Fiss and Kestenbaum, 2020:7).

<sup>2</sup> Afghanistan, Brunei, Iran, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, United Arab Emirates, and Yemen.

<sup>3</sup> It is unclear whether apostasy carries the death penalty in Nigeria.

<sup>4</sup> Brunei, Mauritania, and Yemen.

<sup>5</sup> Afghanistan, Brunei, Iran, Mauritania, Nigeria, Pakistan, and Saudi Arabia.

<sup>6</sup> Brunei, Iran, Mauritania, and Pakistan.

- Islam is the **State religion** in 11 of the 12 countries; Nigeria is secular. In all 12 countries, the death penalty for offences against religion stems from, and is justified on the basis of, Islamic law.
- **Death sentences** were imposed for offences against religion in at least six countries,<sup>7</sup> and **executions** were carried out in at least one: Iran.
- The death penalty appears to have been used to persecute **religious minorities** in two countries: Iran and Saudi Arabia. In both cases, religious minorities were grossly overrepresented in execution statistics, and killed in circumstances suggesting that the charges of which they were formally convicted (political, security, or drug-related offences) were a guise.

Looking beyond the death penalty, the following forms of State-sanctioned killing have been documented since 2010:

- Extrajudicial killings in four countries, including:
  - **Direct killings** of religious offenders in Pakistan, and of religious minorities by security forces in Nigeria and Yemen.
  - **Deaths in custody** of religious offenders in Pakistan, and of religious minorities in Iran and Saudi Arabia.
  - **Enforced disappearances** of religious minorities in Yemen.
- Killings by civilians in four countries, including:
  - **Vigilantism** and **mob justice** against persons accused of having committed offences against religion in Afghanistan, Nigeria, and Pakistan.
  - **Assassinations** of persons deemed sympathetic to religious offenders (such as lawyers and politicians) in Pakistan.
  - **Hate crimes** motivated by victims' religious affiliations in Iran and Pakistan.
- Killings by violent extremist groups in four countries, including:
  - Killings (including quasi-judicial executions) by al-Shabaab in territory over which it **exercises *de facto* control** in Somalia.
  - **Assassinations** by al-Qaeda affiliates in collusion with the State in Maldives.
  - The **decades-long pattern of gross and systematic killing** of Hazaras by extremist groups in Afghanistan and Pakistan, in response to which these States have been unable or unwilling to intervene.

As the title of this report indicates, all killings documented were carried out ‘in the name of God’; that is, they were motivated by, and justified on the basis of, conservative—and sometimes extremist—interpretations of Islam. However, our examination of international human rights standards and Islamic law suggests that the two are not irreconcilable. Indeed, our analysis concludes that Islam does not mandate—and indeed denounces, or even prohibits—homicidal violations of religious freedom.

Armed with this more progressive interpretation of Islam, we reviewed existing advocacy efforts by various stakeholders through the lens of norm localisation theory. Whether or not to abolish the death penalty for religious offences is ultimately a decision for each State. However, the decision to do so may come from within (‘norm localisation’) or may result

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<sup>7</sup> Iran, Mauritania, Nigeria, Pakistan, Saudi Arabia, and Yemen.

from external pressure ('rhetorical adoption'). Non-State actors can adopt the new norm of death penalty abolition ('norm localisation'), or superficially adopt it (rhetorical adoption), or reject it completely. We argue that while most existing advocacy efforts simply promote freedom of religion couched in human rights terms, some initiatives manage to translate the outside norm into a local norm. However, these initiatives have largely remained a 'thought experiment' for external stakeholders (with some exceptions) and have lacked 'local norm entrepreneurs' to test their potential to stop State-sanctioned killings in the name of God.

# SCOPE OF THE REPORT

This report documents and critically examines State-sanctioned killings on the basis of religious offending and religious identity in the 12 countries that retain the death penalty for offences against religion.

## STATE-SANCTIONED KILLINGS IN 12 COUNTRIES

In this report, the terms ‘offences against religion’ and ‘religious offences’ are used interchangeably to refer to any acts deemed to insult or offend religious morals. This umbrella category includes, but is not limited to, apostasy (renouncing religion), blasphemy (broadly defined as speaking ill of religion), propagating (disseminating one’s religion), and proselytising (encouraging others to convert from one religion to another).

The 12 countries under examination are those identified as retaining the death penalty as a lawful possibility for offences against religion: Afghanistan, Brunei, Iran, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, United Arab Emirates, and Yemen.<sup>8</sup>

While we use the death penalty as a starting point, this report looks beyond judicial executions to all killings in which the State is complicit to some degree. In some cases, killings follow formal (e.g., criminal charges) or informal (e.g., community level) accusations of the victim having engaged in an act deemed to constitute an offence against religion. In other cases, killings are motivated exclusively by the religious identity of the victim, that identity itself construed as an affront to religious morals.

We term such homicides ‘State-sanctioned killings’, and define this as including:

- Judicial executions;
- Extrajudicial killings—that is, killings carried out by State actors<sup>9</sup> (e.g., police, military, deaths in custody) in the absence of any formal criminal justice process; and
- Killings by non-State actors (civilians and extremist groups) where the State endorses or condones homicidal violence, or manifestly fails to prevent violence, protect victims, or bring killers to justice.

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<sup>8</sup> See the section ‘Countries excluded from analysis’ for an explanation of why some countries were not deemed to retain the death penalty for offences against religion and excluded accordingly.

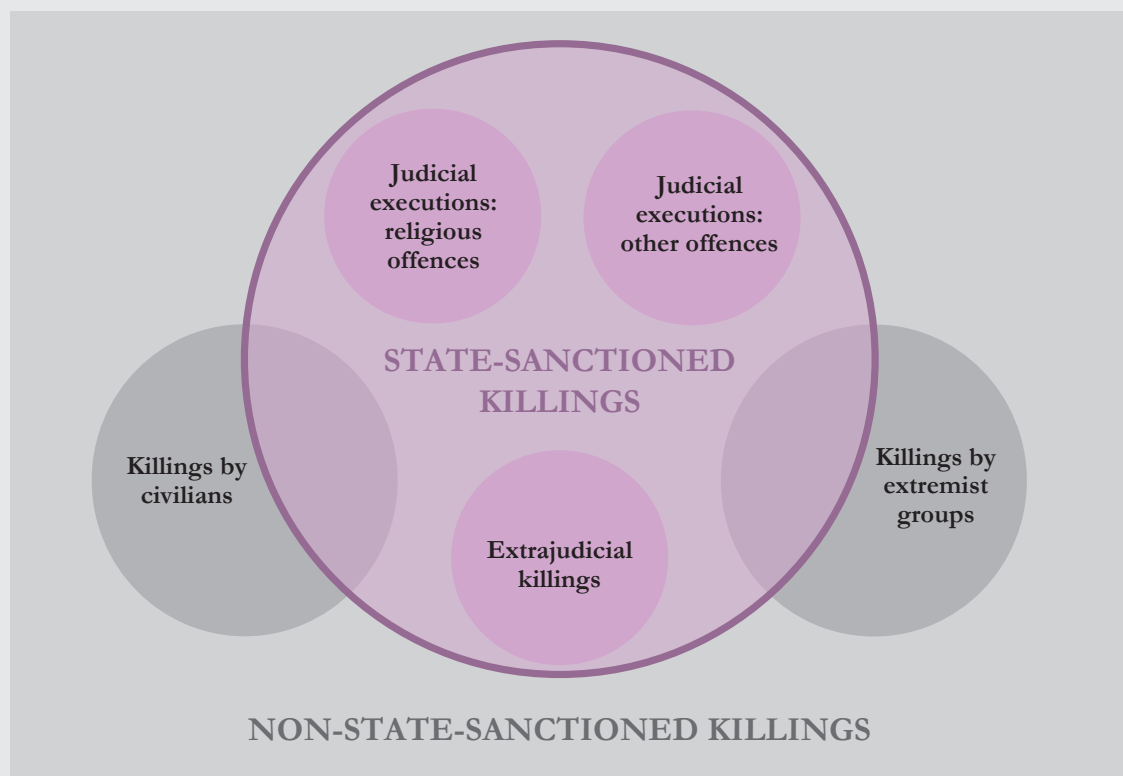
<sup>9</sup> Even if it were established that State authorities were conducting the killings without being ordered or authorised to do so, their conduct is nonetheless attributable to the State under Article 7 of the Articles on State Responsibility: ‘The conduct of an organ of a State or a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the organ, person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions.’

Of course, violence of this nature exists beyond the 12 countries examined in this report.<sup>10</sup> This report is not intended to be a comprehensive global catalogue of all religiously motivated homicides (horizontal analysis). Rather, we use the death penalty for offences against religion as a starting point from which to examine the array of religiously motivated killings that take place in these countries (vertical analysis). While both analyses—horizontal and vertical—offer different benefits, we focus on the latter by examining not only the legal provisions that legitimise homicidal violence, but also the cultural and historical contexts in which these killings take place.

The following instances of violence have been excluded from this report accordingly:

- Killings by non-State actors in circumstances which cannot be reasonably construed as State-sanctioned; and
- State-sanctioned killings occurring outside the 12 countries under examination.

**Figure 1: State-sanctioned killings**



<sup>10</sup> For example, the killing and the persecution of minority Muslims in the Central African Republic; the murder, rape, torture, burning and forced starvation of Rohingya population by Myanmar security forces; and ISIL/Daesh massacres targeting religious minorities in the Syrian Arabic Republic.

## VICTIMS

Two distinct but overlapping groups are victims of State-sanctioned killings: those killed for (allegedly) committing religious offences (**‘religious offenders’**), and those killed for their **‘religious identity’**—that is, their membership of a religious group deemed an affront to the perpetrator’s religion.

For reasons of linguistic economy, we use the term **‘religious offenders’** to describe:

- people judicially executed after being convicted of religious offences that they actually committed;
- people judicially executed for religious offences of which they were wrongfully convicted, either due to genuine mistakes being made in the enforcement of relevant legal provisions, or deliberate misuse of such provisions on the part of the State authorities;
- people judicially executed for offending religious morals, but formally charged with and convicted of *non-religious* offences; and
- although the term ‘offender’ implies that the guilt of the accused was determined following a criminal conviction—people killed following a mere accusation of wrongdoing, without any formal criminal justice process.

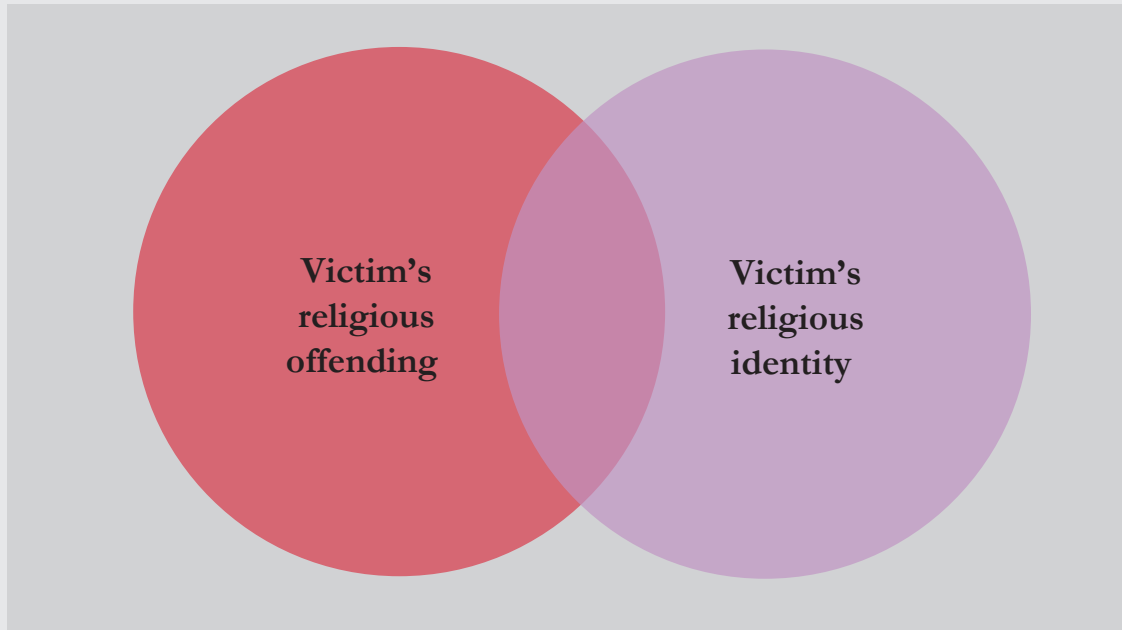
We stress that the term ‘religious offenders’ is by no means an endorsement of the characterisation of offences against religion as acts of wrongdoing.

We refer to the second category of State-sanctioned killings as those motivated by **religious identity**—that is, where the victim’s religious affiliation (e.g., membership of a minority religious group) *per se* is construed as an affront to religious morals, thereby inspiring subsequent State-sanctioned killings.

As Figure 2 illustrates, these two groups of victims are not mutually exclusive; rather, in the context of State-sanctioned killings, there is substantial overlap:

- people from certain religious groups convicted of and executed for committing offences against religion, including cases of genuine and deliberate wrongful convictions;
- people from certain religious groups executed for *non-religious* offences, where the executions a part of a systematic homicidal campaign against that religious group; and
- people from certain religious groups killed following a mere accusation of committing religious offences, without any formal criminal justice process.

**Figure 2: Motivations for killings**



The following case exemplifies the complex nature of these killings where ethnoreligious identity, religious offences, and politics traverse. In 2016, Iran executed 25 Sunni Muslim men—22 were from Iran's Kurdish minority and the other three of Iraqi nationality (Abdorrahman Boroumand Centre for Human Rights in Iran, n.d.; Amnesty International, 2016b). They were executed for committing 'enmity against God' (*moharebeh*) in connection with a number of armed attacks.<sup>11</sup> The Iranian authorities published 'confession' videos of the armed attacks, but many of the men denied any involvement in these attacks and had claimed, in messages leaked from prison, that they were targeted for their religious beliefs and practices (Amnesty International, 2016b). Veria Qaderi, one of the men executed, stated:

[I was arrested] because I defended the oppressed adherents of the Sunni faith and the oppressed religion [of Islam], [an oppression] that has taken on astronomical dimensions in Iran ... Iran oppressed us and insulted us and killed our scholars, and arrested those who were missionaries and sought religious knowledge. No one was talking until we started exposing these things and told the people what Iran was doing and that it has a plan called the 50-year plan to purge Iran of Sunnis. (Video file broadcast on YouTube, August 22, 2016, quoted in Abdorrahman Boroumand Centre for Human Rights in Iran, n.d.)

In this case, it is unclear whether these men were targeted for their promotion of Sunni faith or they were indeed terrorists. The lack of information including public access to court judgments makes this type of research extremely difficult—a problem also applicable to other countries examined in this report.

<sup>11</sup> Religious minorities are disproportionately represented amongst those charged with terrorism offences. Such abuse of terrorism laws amounts to targeting and criminalising the peaceful expression of a person's identity (Shaheed 2020: para.17).



## AIMS AND METHODS

This report is a review of publicly available sources: academic literature; reports published by NGOs, governments, and international organisations; news articles published between January 2010 and September 2021; and online resources, including databases on executions. Due to limited access to court judgments and official justice statistics, it was far from straightforward to find information on the number of individuals executed for these religious offences. This report therefore relies heavily on reports published by NGOs and local news reports. For our analysis of the situation in Pakistan, we analysed 203 English articles on blasphemy-related criminal justice processes and violence published in three newspapers—DAWN,<sup>12</sup> The News International,<sup>13</sup> and Express Tribune<sup>14</sup>—between 1 January 2020 and 1 June 2021. Where necessary, we contacted the authors of these sources to verify the accuracy or reliability of findings.

Where gaps in the literature were identified, we reached out to persons working in the field. Of the 64 expert individuals and organisations we approached, 31 were willing to speak with us.<sup>15</sup> Given the sensitivity surrounding this topic, we were surprised that only 6 of the 31 interviewees wanted to remain anonymous. Appendix 1 provides a list of interviewees' names, expertise, and organisational affiliation where applicable; for interviewees who did not wish to be identified, we provided a description of their expertise only. Each interviewee has also been assigned a number (e.g., I-17). These unique identifiers are used whenever we quote the interviewee or paraphrase information they shared with us. Given the sensitivity of this report's subject matter, we decided to anonymise the interview content in the interests of our interviewees' security.

This report was written with two aims. First, we wanted to present an authoritative account of the full gamut of State-sanctioned killings motivated by religious offending and religious identity in the 12 countries in which the death penalty remains a lawful punishment for offences against religion. While the death penalty may be the most obvious form of State-sanctioned killing, this report confirms that this is only one of four ways in which the State is complicit in the killing of such victims.

Of the 12 countries analysed in this report, we take a closer look at Afghanistan and Pakistan. At the time of writing, Afghanistan had recently returned to Taliban rule after 20 years of conflict. Alongside our own research, Muzafar Ali (Hazara activist) and Mohammad 'Musa' Mahmodi (human rights lawyer and former Executive Director of the Afghanistan Independent Human Rights Commission) offer insights on what Taliban rule may mean for religious offenders and minorities in Afghanistan. As for Pakistan—despite sentencing more people to death for blasphemy than any other country, Pakistan has never executed anyone on this basis. Instead, there is widespread violence at the community level, with people accused of blasphemy being killed by mobs. This led us to look deeper into the causes of such violence, and how this may be addressed.

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<sup>12</sup> Dawn is the largest and oldest English-language newspaper in Pakistan.

<sup>13</sup> The News International is one of the largest English language newspapers in Pakistan.

<sup>14</sup> The Express Tribune is the first internationally affiliated newspaper in Pakistan. Partnered with The International New York Times – the global edition of The New York Times.

<sup>15</sup> We received approval from the Monash University Human Research Ethics Committee (project ID: 27979).

Second, this report aims to summarise existing advocacy efforts that promote freedom of religion. We analyse these initiatives using norm localisation theory. We also explore how abolition of the death penalty for offences against religion may unfold in practice, including its possible repercussions on other forms of State-sanctioned killings of religious offenders and people of faith.

# FREEDOM OF RELIGION: HUMAN RIGHTS AND ISLAMIC LAW

## INTERNATIONAL HUMAN RIGHTS LAW

The right to freedom of thought, conscience, and religion has long been recognised in various international legal instruments—from the Universal Declaration of Human Rights (UDHR)<sup>16</sup> and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration) to the International Covenant to Civil and Political Rights (ICCPR)<sup>17</sup> and the Convention on the Rights of the Child.<sup>18</sup> In particular, the 1981 Declaration provides that:

All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter. (Article 4(2))

In addition to these provisions of general application, the religious freedoms of ethnic and religious minorities have been underscored in and fortified by the ICCPR<sup>19</sup> and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

In his latest report, the United Nations Special Rapporteur on freedom of religion or belief concludes that, over the last 15 years, States have tightened their restriction of freedom of religion or belief. In particular, the Special Rapporteur notes that States have continued to use extralegal measures to violate the religious freedoms of religious minorities, including the forced closure of place of worship, the persecution of faith leaders, and the restriction of access to health, education, housing and legal status (Shaheed, 2020:6–7). In our report, we focus on cases in which individuals' rights to life have been violated in the name of religion, including but not limited to the use of the death penalty.<sup>20</sup> In all 12 countries under examination, the death penalty remains a lawful punishment for religious offences. With the exception of Nigeria, each of these countries has adopted Islam as their State religion and

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<sup>16</sup> Article 18 of the UDHR states: 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.' (Article 18)

<sup>17</sup> Article 18(1) of the ICCPR states: 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.' In addition, Articles 19 and 20 guarantee the right to freedom of opinion and expression, and the prohibition on incitement of religious hatred, respectively.

<sup>18</sup> Article 14 of the Convention on the Rights of the Child states: 'States Parties shall respect the right of the child to freedom of thought, conscience and religion.'

<sup>19</sup> Article 27 of the ICCPR states: 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.'

<sup>20</sup> Although Article 6 of ICCPR does not expressly prohibit the death penalty in all circumstances, instead fixing a 'most serious crimes' threshold, many death penalty abolitionists take the view that the international community is on an irrevocable path towards complete eradication of the death penalty.

have routinely used Islam as a justification for their retention and imposition of the death penalty for these ‘crimes’.

These countries have critiqued and attempted to divorce themselves from the UN system based on human rights, arguing that it was incompatible with the Islamic worldview. For example, Iran has continued to challenge the universal character of human rights enshrined in the UDHR as a Western concept of Judeo-Christian origin divorced from the *Shari’a*:

Conventions, declarations and resolutions or decisions of international organizations, which were contrary to Islam had no validity in the Islamic Republic of Iran ... The Universal Declaration of Human Rights, which represented a secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran; his country would therefore not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions. (Summary of Iranian representative Mr Rajaie-Khorassani’s address at the 65th meeting of the Third Committee of the United Nations General Assembly, 17 December 1984:paras 91, 95)

To formally distance themselves from the UDHR, the Member States of the Organisation of Islamic Cooperation (OIC) later created and adopted the Cairo Declaration of Human Rights in Islam—a standalone Islamic human rights instrument. The language and tone of the Cairo Declaration at first blush appear similar to the UDHR. However, Article 25 of the Cairo Declaration emphasises that ‘[t]he Islamic Shari’ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration’, thereby placing Islam above human rights. Similarly, Article 5(a) on marriage states that: ‘Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.’ While this provision may appear inclusive, a rejection of restrictions based on religious differences is missing (Bielefeldt, 2000:105). Accordingly, the Cairo Declaration has been described as ‘a one-sided and uncritical Islamisation of human rights language at the expense of both the universalism and the emancipatory spirit of human rights’ (Ibid:105-106).

Even though the rejection of the UDHR and the adoption of the Cairo Declaration may give the impression that Islamic countries have divorced themselves from the UN system, this is not entirely true. The UDHR was referred to as ‘Judeo-Christian-centric’ and hence not universal; however, 48 out of the 58 members voted in favour of the UDHR at the time, including four of the Islamic countries examined in this report: Afghanistan, Iran, Pakistan, and Yemen.<sup>21</sup> Similarly, the ICCPR, which recognises freedom of religion, freedom of expression, and the right to life, has been ratified by nine of the 12 countries examined in this report (Appendix 3). Though the three remaining States—Brunei, Saudi Arabia, and United Arab Emirates—may appear to have rejected the idea of freedom of religion under the ‘Western’ human rights framework, they remain very much part of the UN system; for example, through ratification to other human rights treaties and for taking part in the Universal Periodic Review.

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<sup>21</sup> The following countries were not members of the United Nations in 1948: Brunei, Maldives, Mauritania, Nigeria, Qatar, Somalia, and United Arab Emirates. Saudi Arabia was a member of the United Nations but abstained (United Nations Bibliographic Information System, n.d.).

That being said, one may argue that ratification of the ICCPR is not a valid indicator to measure States' commitment to human rights mechanisms, due to the fact that States can enter reservations under the ICCPR. We would agree. Of the nine countries that ratified the ICCPR, four—Maldives, Mauritania, Pakistan, and Qatar—have entered reservations to Article 18 (Appendix 3). These reservations are made on the basis of the *Shari'a*. For example:

The Mauritanian Government, while accepting the provisions set out in Article 18 concerning freedom of thought, conscience and religion, declares that their applications shall be without prejudice to the Islamic Shariah.

[Qatar] shall interpret Article 18, paragraph 2 . . . based on the understanding that it does not contravene the Islamic Sharia. [Qatar] reserves the right to implement such paragraph in accordance with such understanding.<sup>22</sup>

By entering reservations, these States assert the supremacy of the *Shari'a* over human rights, thereby reducing the efficacy of the ICCPR. Human rights principles do rest on universalistic ideals (Roberts et al., 2015), but not having realised these aspirations does not automatically undermine the legitimacy of human rights treaties, provided that States remain engaged with the UN system. UN mechanisms rely on dialogue and negotiation, and thrive by building consensus. Indeed, the UN Special Rapporteur on the law and practices relating to reservation of treaties has contended that 'reservations to treaties were a fact of life' and that 'it was better for a State to accept part of a treaty than simply decide not to become a party' (International Law Commission, 1997:47).

The behaviour of these Islamic countries—being part of the UN system while simultaneously rejecting the norms that the UN upholds—is what Robert Merton referred to as ritualism. Applying Merton's theory on ritualism to human rights, Charlesworth (2017) argues that:

Ritualism is a technique of embracing the language of human rights precisely to deflect human rights scrutiny and to avoid accountability of human rights abuses, while at the same time gaining the positive reputational benefits or legitimacy associated with human rights commitments. (Charlesworth, 2017:365)

Even if these Islamic countries only accept the means to human rights commitments (ratification) and reject the goals (protection of human rights), these countries recognise the value of being part of the UN mechanism and its treaties that they do not embrace in practice. Perhaps the clearest example is the Taliban asking to speak at the UN general assembly after their return to power Afghanistan (BBC News, 2021b). This again points to the UN as a symbol of international legitimacy.

If the adoption of the Cairo Declaration was as an example of Muslim States attempting to *divorce* themselves from the UN, then the 'defamation resolutions' put before the UN by the OIC under Pakistan's leadership are an example of Muslim States aiming to change the framing of freedom of religion and expression *within* the UN system, to which we now turn.

<sup>22</sup> See Appendix 3 for the reservations by Pakistan and Maldives.

Defamation resolutions have sought to ban speeches and actions that ‘defame’ Islam and other religions by placing religion under the protection of human rights. The first such resolution was put forward in 1999 as a draft resolution to the UN Commission on Human Rights.<sup>23</sup> Between 2005 and 2010, a resolution titled ‘Combating defamation of religions’ was adopted at the General Assembly. The resolution expresses concern that ‘Islam is frequently and wrongly associate with human rights violation and with terrorism’ and notes that ‘defamation of religion is among the causes of social disharmony and leads to violation of human rights’ (United Nations General Assembly, 2007:para 4). It calls on States to:

[P]rovide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions, to take all possible measures to promote tolerance and respect for all religions and their value systems and to complement legal systems with intellectual and moral strategies to combat religious hatred and intolerance. (United Nations General Assembly, 2007:para 11)

The notion of defamation of religions places religions (not individuals) under the protection of human rights. This resolution in 2005 passed with 101 countries voting in favour which gradually decreased to 79 countries in 2020 (Appendix 4). The 12 countries examined in this report have consistently voted in favour of the resolution, with the exception of Mauritania voting against it in 2005 and Nigeria abstaining between 2005 and 2009 (Appendix 4).

In 2007, the Muslim States succeeded in including ‘respect for religions or beliefs’ as a ground for limiting freedom of expression under Article 19(3) of the ICCPR (Knechtle, 2017:209). The Human Rights Council Resolution 4/9, ‘combating defamation of religions’, stated that:

[E]veryone has the right to freedom of expression, which should be exercised with responsibility and may therefore be subject to limitations as provided by law and necessary for respect of the rights or reputations of others, protection of national security or of public order, public health or morals and respect for religions and beliefs (UN Human Rights Council, 2007:para 10).

In effect, this narrative legitimises the criminalisation of speech that is considered disrespectful of religions or beliefs and can be used to supports blasphemy laws (Knechtle, 2017:209).

The turning point was the adoption of the Human Rights Council Resolution 16/18 in 2011, which removed references to ‘defamation of religions’ and replaced them with ‘combatting intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence and violence against persons based on religion or belief’ (UN Human Rights Council, 2011:1). The then US Secretary of State Hillary Clinton hailed the passing of the resolution as a sign that ‘we have begun to overcome the false divide that pits religious

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<sup>23</sup> The resolution calls upon State to: ‘[i]n conformity with international standards of human rights, to take all necessary action to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief.’ (UN Commission on Human Rights 1999:95) (UN Commission on Human Rights, 1999:95).



sensitivities against freedom of expression' (Reuters, 2011a). Indeed, the resolution was thought to mark the end of the OIC attempting to use the idea of defamation of religions to legitimise offences such as blasphemy.<sup>24</sup> General Comment 34 noted that religion and religious belief were not protected under international human rights legislation, and that blasphemy law was 'incompatible' with the ICCPR; it also declared it was not permissible 'to punish criticism of religious leaders or commentary on religious doctrine and tenets of faith' (UN Human Rights Committee, 2011:para 48). Since 2011, these resolutions have been adopted without a vote every year (Appendix 4).

The expanding and contracting of concepts such as freedom of religion and expression demonstrate that human rights are dynamic (Alston, 1990).<sup>25</sup> Furthermore, for human rights to be effective, they must address concerns of local cultures and communities and 'be flexible without sacrificing integrity' (Messer, 1997:307). In the following section, we argue that Islamic law is also dynamic. While there is the textualist view that considers the meaning of the *Qur'an* to be fixed and universal in its application (Saeed, 2006:3), contextualists disagree. They argue that Islamic teaching is, in fact, the product of a very slow and gradual process of interpretation of the *Qur'an* and the collection, verification, and interpretation of the *Hadith* during the first three centuries of Islam (7th-9th century AD). For contextualists, the *Qur'an* and the *Hadith* must involve human interpretation: the *Qur'an* and the *Hadith* cannot be understood, nor have any influence on human behaviour, except through the efforts of (fallible) human beings.

## ISLAMIC LAW

In Muslim understanding, Islam is based on the revelations of God; however, human interpretation of the *Qur'an* and the *Hadith* inevitably leads to differences of opinion and the possibility of error, both among scholars and the community in general. While the *Qur'an* contains a variety of components, such as stories, moral injunctions, and general as well as specific legal principles, it prescribes only those details which are essential. It thus leaves considerable room for development, and requires safeguarding against restrictive interpretation.<sup>26</sup> It is in this context we examine the Islamic position on offences against religion.

In Islam, *riddah* or *irtidad*, which literally means 'turning back' (from Islam), is probably the closest to what is referred to in the West as apostasy, blasphemy, and proselytising.

<sup>24</sup> It has been observed that Resolution 16/18 did not significantly change the OIC's or Pakistan's conceptions of free speech; instead, it has instead merely resulted in a tactical shift away from the language of defamation (Skorini and Petersen, 2016:44).

<sup>25</sup> The progressive interpretation of how 'most serious crimes' are defined in restricting the scope of the death penalty under international human rights law is also an example of the dynamic nature of international human rights law. The application of the death penalty is permitted for 'most serious crimes' under Article 6 of the ICCPR; in 2018, the UN General Comment 36 has narrowly defined the term as crimes of extreme gravity involving 'intentional killing' (UN Human Rights Committee, 2018:para 35).

<sup>26</sup> It is not only the complex nature of the document that makes the *Qur'an* difficult to interpret. One of the fundamental reasons for differences of opinion over the *Qur'an* lies in the ambiguous language used in some verses. That these words are given debatable meanings is in this understanding a sign from God; they were meant to be ambiguous and subject to different opinions. The contextualists argue for a high degree of freedom for Islamic scholars to determine the social, ethical and legal content that is mutable, against that which is immutable (al-Zarkashi, 2007:140; Kamali, 1991:19–20).



Blasphemy and apostasy are sometimes used interchangeably because for a Muslim, a blasphemer is, by definition, an apostate. Other terms used in Islamic tradition include *sabb* (insult against the Prophet), *shatm* (abuse against the Prophet), *takdhib* (accusing the Prophet of lying), *ẓandaqa* (concealed apostasy) and *isa'a* (vilification of the Prophet). A related concept is *takfir*, declaring another Muslim an apostate.

Apostasy means to convert from Islam to any other religion or faith. In this regard, one's Islamic beliefs are rendered null and void by any action, saying, or belief that opposes the teachings and instructions of Islam. In the *Qur'an*, God's anger and punishment are mentioned against those who have left the faith. However, the apostate is threatened with harsh punishment in the next world only. For example:

...and whoever of you turns away from his religion and dies faithless—they are the ones whose works have failed in this world and the Hereafter. They shall be the inmates of the Fire, and they shall remain in it [forever]. (QS 2:217)

Indeed those who turn faithless after their faith, and then advance in faithlessness, their repentance will never be accepted, and it is they who are the astray. (QS 3:90)

As for those who believe and then disbelieve, then believe [again] and then disbelieve and then increase in disbelief, Allah shall never forgive them, nor shall He guide them to any way. (QS 4:137)

*La ikraba fi-din* [There is no compulsion in religion]. (QS 2:256)

The last of these verses explicitly states that embracing religion can never be based on coercion: it begins with 'la'—a negation in a broad, general sense of the term—meaning it is not permissible to force anyone to embrace a particular religion. For people to accept a certain religion, they should consciously and willingly accept its ideas and beliefs. Ibn Kahir, a famous commentator of the *Qur'an*, explains the meaning of this verse:

Do not force anyone to become Muslim, for Islam is plain and clear, and its proofs and evidence are plain and clear. Therefore, there is no need to force anyone to embrace Islam. Rather, whoever Allah directs to Islam, opens his heart for it and enlightens his mind, will embrace Islam with certainty. Whoever Allah blinds his heart and seals his hearing and sight, then he will not benefit from being forced to embrace Islam.<sup>27</sup>

The *Qur'an* evidently maintains that faith must be sustained through belief and that religion induced by compulsion is meaningless. Abou-Bakr (2021) explains the analysis of another commentator of the *Qur'an*, Ibn Jarir al-Tabari, on how this verse was revealed in response to three stories:

The first mentions the pre-Islamic custom that a wife whose male infants did not survive, would vow that if one of them lived, she would offer him to the 'people of the Book', the Jewish community in Medina. Hence, when the Jewish tribe Banu al-Nadir evacuated the city and these families wanted to take back their children by

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<sup>27</sup> See the online version of *Tafsir Ibn Kathir*: <https://www.alim.org/quran/tafsir/ibn-kathir/surah/2/256>

converting them to Islam by force, the verse was revealed to indicate that those who left would be choosing Judaism and those who willingly stayed would be choosing Islam. No coercion was to be practiced. Another citation mentions a Muslim man (Salem bin 'Awf) from the Ansar consulting the Prophet whether he should force his two Christian sons to adopt Islam, though they refused to leave Christianity. The answer was a prohibition from doing so. A third narrative, similar to the first, again cites the situation where Jewish women had nursed children from a Muslim tribe in Medina, so when the Jews were leaving the city, these sons also wanted to accompany them and adopt Judaism, whereas the families objected, wanting to keep them by forcing them to become Muslims. (Abou-Bakr, 2021:35)

Regarding blasphemy, the *Qur'an* not only documents instances of insult, ridicule, and attacks on Islamic icons and personages, but also appears to provide guidance on how one should behave when faced with such conduct. Instead of mandating any physical worldly punishment, the *Qur'an* directs believers to leave the blasphemer's company:

And it has already been revealed to you in the Book that when you hear the verses of Allah being denied and mocked at, then sit not with them, until they engage in talk other than that; certainly in that case you would be like them. Surely, Allah will collect the hypocrites and disbelievers all together in Hell. (QS 4: 40)

Indeed, those who abuse Allah and His Messenger—Allah has cursed them in this world and the Hereafter and prepared for them a humiliating punishment. And those who harm believing men and believing women for [something] other than what they have earned have certainly born upon themselves a slander and manifest sin. (QS 33:57-58)

A literal reading of the two verses above suggests that the 'humiliating punishment' for blaspheming God and His Messenger rests with God alone, and it is up to Him whether He punishes such persons in this world or the hereafter.

All the verses on apostasy and blasphemy mentioned above clearly highlight that the spirit of the *Qur'an* calls for respect of religious freedom. However, in contrast to the *Qur'an*'s silence on the punishment of apostates, many *Hadith* speak of the death penalty for apostasy; for example, 'Slay who changes his religion' (Sahih Al-Bukhari (9:57)). According to another tradition, the Prophet is said 'to have permitted the blood to be shed of him who abandons his religion and separates himself from the community' (Sahih Al-Bukhari (9:83)). Interestingly, there were occasions when certain individuals apostatised after professing Islam, yet the Prophet did not penalise them let alone condemn them to death. One could consider the following story:

A Bedouin pledged Islam to the Messenger of Allah, then the Bedouin was stricken with the fever in Al-Madinah. So he came to the Messenger of Allah and said: 'O Messenger of Allah, cancel my pledge,' but he refused. Then he came to him again and said: 'Cancel my pledge,' but he refused. Then he came to him again and said: 'Cancel my pledge,' but he refused. Then the Bedouin left (Al-Madinah) and the Messenger of Allah said: 'Al-Madinah is like the bellows; it expels its dross and brightens its good'. (Sahih Al-Bukhari 39:37)

Kamali (2019:144) explains that this incident was a clear case of apostasy in which the Prophet did not impose any punishment at all: the Bedouin, despite his persistent renunciation of Islam, was free to go unharmed.

While this *Hadith* appears to conflict with those that mandate the death penalty for apostasy, it is important to keep in mind that, as previously explained, scholars might interpret the *Hadith* differently. Whereas Kamali (2019) interprets this as a case of apostasy, others may interpret ‘Cancel my pledge’ as the Bedouin wanting to return home from Madinah after becoming ill, and despite being refused permission to do so, managed to leave Madinah unharmed because he was still considered a Muslim—that is, he had not committed apostasy.<sup>28</sup>

Kutty (2018:217) mentions another infamous example: the killing of Ka’b b. al-Ashraf for his extensive anti-Muslim activities and slander of the Prophet and his followers in Medina. Ka’b was a poet who was known for regularly lampooning the Prophet, his teachings, and his symbols. More importantly, he is said to have been involved in a plot to kill the Prophet. This likely explains why he was targeted: not just because he blasphemed, but also because he was perceived as waging war against the emerging Muslim community (Abou-Bakr, 2021:20).

### ***Contemporary interpretation on offences against religion***

While the *Qur’an* is silent on worldly punishment for both apostasy and blasphemy, the *Hadith* project mixed messages. This space for interpretation enabled the juristic opinion of schools of thought (*madhabib*) to devise varied definitions, conditions, and justifications advocating for the death penalty for those who commit apostasy and blasphemy.

First, contemporary scholars have re-examined the validity of the transmission chain (*sanad*) of the *Hadith* imposing the death penalty for apostates. The Prophet is said to have permitted the blood to be shed of him who abandons his religion and separates himself from the community. Ayoub (1994:79–85), for instance, takes the view that such *Hadith* is transmitted via one individual. This is called *Hadith Aḥad*: thought reliable, this remains open for reinterpretation as it does not reach the status of *Qat’i* (a definitive text). Ayoub (1994) concludes that:

There is no real basis for the *riddah* law in either the *Qur’an* or Prophetic tradition. Furthermore, the few traditions that exist appear to be late and confused. (Ayoub, 1994:84–85)

Kamali (2019) explains further by quoting Sheikh Mahmud Shaltout:

The *Hadith* ‘one who changes his religion shall be killed’ has evoked various responses from the Muslim scholars, many of whom are in agreement that the *hudud* cannot be established by solitary (*Aḥad*) *Hadith*, and that unbelief by itself does not call for the death punishment. (Hashim Kamali, 2019:147)

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<sup>28</sup> See the explanation from (Hajar, n.d.).

Second, it is worth considering that other scholars, who accepted the validity of the *Hadith* on the death penalty for apostasy, evaluated the *illat* (legal reasoning) of such punishment. They emphasise that apostasy during the Prophet Muhammad's time should be associated with treason. The Prophet was building a socio-political order. Apostates, by their rejection of this order, were effectively excluding themselves from it. Their action becomes equivalent to 'treason', meriting the punishment of death (Saeed and Saeed, 2004:90). The text of the *Hadith* above restricts the death sentence to whoever forsakes Islam and separates himself from the community, but not all those who forsake Islam separate from the community. The part 'separated from the community' describes thus only the apostates who committed acts of aggression against the Muslim community, which is the reason why they deserved to be killed. They were not killed for their apostasy, but rather for having committed acts of aggression against Muslims (Forte, 1994). Saeed (2006) explains further:

Among Muslim modernists, Rashid Rida seems to have given up the pre-modern view that the Muslim who abandoned Islam should be put to death. He makes a distinction between the apostate who revolts against Islam and is therefore a danger to the *ummah*, and those who abandon it quietly as individuals. The first should be put to death, if captured, the second category not. (Saeed, 2006:90)

In other words, this *Hadith* does not view apostasy alone as a legal justification for sentencing an apostate to death. Instead, it stipulates that another characteristic must be fulfilled: 'separation from the community of Muslims'. This phenomenon occurred during times when apostasy entailed a complete and comprehensive change in all aspects of the apostate's life, including his belief, thought, and attitude toward other Muslims. This is the opinion of some of the Islamic scholars who believe that this *Hadith* refers mainly to the *muharabun* (those who committed acts of aggression against Muslims).<sup>29</sup> Subhi Mahmasani and Salim al-Awwa, both highly respected scholars, have observed that the death penalty was meant to apply not to simple acts and pronouncements of apostasy from Islam but to cases where apostasy was linked to an act of political betrayal of the community, and high treason. They hold the view that the Prophet never killed anyone solely for apostasy. It was not meant to apply to a simple change of faith but to punish acts of treason that consisted of sedition and joining forces with the enemy.

Those scholars refer to the incident of Ka'b b. al-Ashraf mentioned earlier. Abou-Bakr (2021) evaluates this incident:

Historical sources shed light on two reasons for Ka'b's killing. The first describes his part in severing the alliance between the Jewish tribe of Banu al-Nadir and the Prophet Muhammad. Subsequently, he was involved in making a treaty with Abu Sufyan (who was then leading the Meccan opposition to the Prophet Muhammad) and a number of Jews, which set forth that 'Quraysh and the Jews should cooperate against Muhammad'. Following these events and the assassination of Ka'b b. al-Ashraf, the Banu al-Nadir were expelled from Medina. The second reason, reported by 'Ikrima (d. 723), states that the Banu al-Nadir plotted to kill Prophet Muhammad; they spoke to Ka'b b. al-Ashraf about the matter, and he concurred. This was

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<sup>29</sup> See the discussion in Brow (2017) and Baker (2018).

probably the justification for the Prophet's alleged order of his death. The continued existence of Ka'b b. al-Ashraf jeopardized the survival of the new religious-political community. (Abou-Bakr, 2021:20)

Third, contemporary scholars have also reviewed the Hanafi school position that the punishment is not prescribed (*hadd*) by God or the Prophet but is a discretionary (*ta'zir*) punishment. This makes it susceptible to change over time. Some classical scholars within the schools also confirm that the punishment for offences against religion should be put under the *ta'zir* category (discussed in the following section). The contemporary scholars view this as a political *ta'zir*, or governmental or administrative ruling (Zahrah, 2006:165). The ruler exclusively decides to either forgive or to punish via imprisonment, exile, financial penalty or deprivation of social privileges or rights, in order to avoid the death penalty. Professor Kamali confirms this view:

Evidence in the *Qur'an* that have been examined here and elsewhere is also supportive of the freedom of belief, attested by the fact that the *Qur'an* has discussed apostasy in no less than twenty-one places but has nowhere provided a punishment for it. Freedom of religion thus remains to represent the normative position of shariah on nonsubversive apostasy that is due purely to personal conviction and belief. Only when it is committed under aggravating circumstances, or when the lawful authorities consider that it is committed under conditions that represent a threat to the sensibilities of believers, may it then be subject to a deterrent punishment of *ta'zir*. (Hashim Kamali, 2019:149)

Saeed (2006:94) highlights the view of retired Chief Justice of Pakistan, S. A. Rahman. After an analysis of the relevant texts of the *Qur'an* on apostasy, CJ Rahman concludes: 'The position that emerges, after a survey of the relevant verses of the *Qur'an*, may be summed up by saying that not only is there no punishment for apostasy provided in the Book but that the Word of God clearly envisages the natural death of the apostate. He will be punished only in the Hereafter.'

The Shi'a jurisprudence has argued that male *fitri*<sup>30</sup> apostates should be sentenced to death regardless of their repentance (discussed in more detail the next section). However, many reformers from the Shi'a school take the view that male *fitri* apostate can repent. This means that this option to repent is available to all apostates, both male and female, and the *fitri-milli* division is meaningless. This view removes the main difference between the Shi'a and Sunni schools' conceptions of apostasy (Kadivar, 2021:58). Contemporary scholars, similarly to the opinions of some classical scholars discussed earlier, believe that there is no limit to the period allowed for repentance 'because requesting apostates to repent is unlimited' (Ibid). Therefore, the apostates cannot be executed as there is always a chance they will repent later on.

An-Na'im (2014) reminds us that:

[I]n contrast to the localized traditional existence of past Islamic societies, Muslims today live in multi-religious nation-states which are fully incorporated into a globalized

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<sup>30</sup> Male *fitri* apostates have one parent who was a Muslim at the time of their conception; they express their beliefs in Islam after attaining maturity or reaching puberty, and renounces Islam later.

world of political, economic and security interdependence, and constantly experiencing the effects of mutual social/cultural influence with non-Islamic societies.

This means that the circumstances fifteen centuries ago during the Prophet's time are different to the circumstances we currently live in; therefore, a new interpretation that reconciles the spirit of the *Qur'an* and certain texts of the *Hadith* with the emergence of modern nation-states is necessary. We have seen a new position emerging among many contemporary Islamic scholars today that the *Qur'an* supports the view that freedom of belief is an essential aspect of Islam, with the *Qur'an* prescribing absolutely no temporal punishment for apostasy. Any examination of offences against religion in the *Hadith*, in the views of Islamic schools of thought, and in legislation in Muslim countries should be interpreted in the context of such *Qur'anic* provisions to make Islam adaptable to social change.



# STATE-SANCTIONED KILLINGS: FROM JUDICIAL EXECUTIONS TO MOB-VIOLENCE

This section examines State-sanctioned killings on the basis of religious offending and of religious identity. We start by setting out the domestic legal frameworks, including Islamic jurisprudence (*fiqh*), that prescribe the death penalty for religious offences. We then examine the judicial executions, extrajudicial killings, and State-sanctioned killings carried out by non-State actors documented between 2010 and 2020. We focus exclusively on the 12 countries that retain the death penalty for offences against religion, and end this section by justifying our exclusion of certain other countries from our analysis.<sup>31</sup>

## THE DEATH PENALTY IN LAW

### *Domestic legal frameworks*

The death penalty is a legal possibility for offences against religion in 12 countries: Afghanistan, Brunei, Iran, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, United Arab Emirates, and Yemen (Table 1). In *at least* 11 of these countries, the death penalty for **apostasy** (renouncing religion) is a legal possibility. The law is unclear for Nigeria: we have been unable to locate the Penal Codes of the 12 Northern Nigerian States that operate *Shari'a* courts. Accordingly, we are unable to confirm the legal provisions of the death penalty for apostasy and blasphemy in these jurisdictions.<sup>32</sup> The precise source of the death penalty for apostasy in Pakistan is also unclear; however, it is undisputed that apostasy is punishable by death, either as a discrete uncoded offence or as a subset of blasphemy (Penal Code s 295C). In *at least* seven of these countries, **blasphemy** (broadly defined as speaking ill of religion)<sup>33</sup> is punishable by death: Afghanistan, Brunei, Iran, Mauritania, Nigeria, Pakistan, and Saudi Arabia.

We say ‘at least’ for two reasons. First, in some cases, we have been unable to locate legislation or jurisprudence to confirm whether apostasy is criminalised or carries the death penalty. Second, while apostasy and blasphemy are discrete offences in law, they may—and indeed do—become blurred in practice. Accordingly, the distinction between the two offence categories is somewhat of an artificial one: an absence of formal proscription of blasphemy is not a safeguard against blasphemous acts being construed and prosecuted as apostasy and vice versa.

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<sup>31</sup> This section provides an overview of the 12 countries under examination; readers interested in the situation by country should refer to the ‘**Country Profiles**’ section below. Note that the ‘Country Profiles’ section does not include Afghanistan and Pakistan (see sections ‘Afghanistan: Killings By Extremist Groups and an Uncertain Future under Taliban Rule’ and ‘Pakistan: where Citizens take Blasphemy Law into their own Hands’).

<sup>32</sup> However, blasphemy is punishable by death due to reports of death sentences being meted out on this basis.

<sup>33</sup> We should note that in the Islamic tradition, the term blasphemy is much wider than the English usage of the term. Blasphemy may be defined as any verbal expression that gives grounds for suspicion of apostasy (*riddah*) from denying that the Qur’an is divine revelation to uttering falsehood about god (McAuliffe, 2020)



As discussed above, *riddah* is often translated as ‘apostasy’ but covers various offences referred to in the West as apostasy, blasphemy, and proselytising. In Islamic law, there are at least four types of *riddah*: converting to other beliefs; doing something against Islamic teachings; saying something negative about God, the Prophet, and others; and not practising Islamic rituals. Muslims must utter expressions, or commit deeds, of unbelief to constitute apostasy.<sup>34</sup> In this sense, *riddah* covers both what is often categorised as apostasy or blasphemy. However, *riddah* can be committed only by those born a Muslim or by those who have converted to Islam. Therefore, blasphemy, which has historically been regarded as an act that shows the abandonment of Islam, committed by a Muslim is the same as committing apostasy. It is important to note, however, when a non-Muslim commits blasphemy (understood here as speaking ill of Islam) is not apostasy.

Of these 12 countries, 11 have established Islam as a State religion. Nigeria, the twelfth country, has no State religion; however, the 12 Nigerian states in which blasphemy is punishable by death operate a *Shari’a* law system in parallel to secular courts. In all 12 countries, *Shari’a* is cited as the basis on which the death penalty is prescribed for offences against religion, regardless of whether or not that penalty has been subsequently codified.

### ***Islamic jurisprudence: the death penalty for riddah***

Islamic law has developed over fourteen centuries. Over this period, various schools of jurisprudence have emerged, each with its own interpretation and application of the *Shari’a*. The schools spread to different regions in the Muslim world, following different interpretive approaches and applications. The Hanafi school is well represented in Iraq, Egypt and Syria; and it had earlier spread to Afghanistan and Turkish central Asia. The Maliki school spread westwards from its first centre, Madinah, over practically the whole of North Africa and over Central and West Africa. The Shafi’i school is followed by Muslims in Indonesia, Malaya, and Southeast Asia, whereas the Hanbali school is followed by Muslims in Saudi Arabia and Qatar.<sup>35</sup> In addition to these four Sunni schools—Hanafi, Hanbali, Maliki, and Shafi’i—the majority of Shi’a Muslims follow the Ja’fari school, named after the sixth Imam, Ja’far al-Sadiq.

These schools of Islamic jurisprudence guide and inform how religious offenders should be treated, and some have legitimised the prescription of the death penalty for religious offences. In countries where codified penal codes prescribe the death penalty for offences against religion, they are often (but not always) informed by the school of jurisprudence followed by the country; where codified penal codes do not exist, the justification for the death penalty appears to stem directly from relevant school of jurisprudence (see the ‘Country Profiles’ section for the relevant legal sources in specific countries). Of the 12 countries under examination, the Hanafi school is followed in Afghanistan and Pakistan; the Hanbali school in Qatar and Saudi Arabia; the Maliki school in Mauritania, Nigeria, and the

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<sup>34</sup> Examples of acts amounting to *riddah* include: denying God’s divinity or the prophethood of Muhammad, believing that Jesus is the son of God, adding or omitting *Qur’anic* verses, saying ‘*bismillah*’ (‘in the name of Allah’) as a toast when drinking alcohol, ridiculing the Prophet’s wives and the Prophet’s companions, and neglecting to pray daily prayers or fast in Ramadan (Kuwait Ministry of Awqaf and Islamic Affairs, 2005:183–87). However, erring or believing something based on incorrect interpretation of religious norms is allowed and does not constitute *riddah*.

<sup>35</sup> For more information on schools of Islamic law, refer to Al-Alwani (1993), Coulson (1964), Kamali (1991), and Madkur (1974).

UAE; the Shafi'i school in Brunei, Maldives, Somalia, and Yemen; and lastly the Ja'fari (Shi'a) school in Iran (see Table 1).

As described above, the *Qur'an* is silent on the appropriateness of the death penalty as punishment for *riddah*. However, the following section will demonstrate that the schools of jurisprudence followed by the 12 countries have all adopted the ruling of the *Hadith* that provides that one 'who changes his religion shall be killed', though some scholars contest this position.

#### Sunni schools: Hanafi, Hanbali, Maliki & Shafi'i

All traditional Sunni schools, except the Hanafi school, hold that *riddah* is a *hadd*<sup>36</sup> crime (Al-Zuhayli, 2010:714–15). The Hanafis take the view that it is a *ta'zir*<sup>37</sup> crime, and that women are exempt from execution. They base this view on a *Hadith* ('Slay him, who changes his religion'), considered reliable by their school, in which the Prophet banned the killing women who left Islam.<sup>38</sup> However, most Islamic scholars consider this *Hadith* to be unreliable and instead follow the principle that men and women should be treated equally in *hudud* (plural of *hadd*) punishments.

Despite the differences in regarding *riddah* as a *hadd* crime or *ta'zir*, there is general agreement among all four Sunni schools that the punishment for *riddah* is the death penalty.<sup>39</sup> However, some scholars disagree. For example, Kamali (1991) explains that the Maliki jurist Abu al-Walid al-Baji held that *riddah* is a sin that carries no prescribed punishment, and that sin of this kind may be punished by one year of imprisonment under the discretionary punishment of *ta'zir* rather than *hudud*. The renowned Hanafi jurist, al-Sarakhsi, held that *riddah* does not qualify for *temporal* punishment and that there is no prescribed punishment (*hudud*). Al-Sarakhsi is reported to have said:

Renunciation of the faith and conversion to disbelief is admittedly the greatest of transgressions, yet it is a matter between man and his Creator, and its punishment is postponed to the Day of Judgment. (Hashim Kamali, 2019:146)

As discussed in the section on 'Islamic Law' one possible explanation for prescribing the mandatory death penalty for *riddah* in the four Sunni schools is that the *Hadith* which held *riddah* as a *hadd* crime was developed back when *riddah* was seen as treason or a betrayal of the Muslim communities. In other words, renouncing Islam was not framed as a religious transgression, but a political one that justified the application of the death penalty.

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<sup>36</sup> Criminal punishments are divided into two categories: *hadd* (pl. *hudud*) and *ta'zir*. *Hadd* refers to mandatory punishments that are determined by the *Qur'an* or the *Hadith*.

<sup>37</sup> *Ta'zir* are discretionary punishments: adjudicators of *ta'zir* are authorised to determine the punishment, provided that their decisions are in line with the general spirit and intent of the Islamic law—namely, to realise and protect the common good of humankind (al-Qadir 'Audah, 1992:93–96).

<sup>38</sup> According to the Hanafi school, the punishment for women is that they are to be held in custody and beaten every three days until they repent and return to Islam. One of the reasons for executing male apostates was that they were considered to pose a threat to the Islamic state. The Hanafis based their opinion on the concept that because women do not take part in wars, they should not be killed, which is why they believe that the *Hadith* ('Slay him, who changes his religion'), refers only to those who fight against Muslims.

<sup>39</sup> See Al-Jaziri (2003:372) and Kuwait Ministry of Awqaf and Islamic Affairs (2005:190).

The Sunni schools agree that only the ruler or the State could sentence people to death and that vigilantism on the basis of alleged *riddah* would be punished, meaning that no individual Muslim without State authority could execute an apostate (Al-Zuhayli, n.d.:6290). This is of relevance to Pakistan (Hanafi school) where there is widespread violence at the community level, with people having been accused of blasphemy being killed by mobs (discussed in the section ‘Pakistan: taking Blasphemy LawS into their own Hands’).

To convict someone of *riddah* requires a confession by the accused or testimonies of witnesses. As always in a criminal trial in which the accused is a Muslim, witnesses must be a Muslim of good reputation (‘*adil*). Witnesses must explain the acts or words that led them believe that the accused committed *riddah*. The accused can only be punished if their criminal responsibility is fully shown (Baker, 2018). For example, if one is accused of renouncing Islam, first, it must be clear that the accused was indeed a Muslim before renouncing Islam. It also needs to be proved that the accused renounced Islam out of their own free will, and that the accused was not underage (*baligh*) at the time of renouncing Islam and was in full possession of their mental faculties (‘*aqil*). In other words, people with severe mental illness and intellectual disability cannot be punished for apostasy; however, the next section shows that this is not followed in practice.

Islamic scholars have different views on whether a *murtad* (a Muslim who commits *riddah*, i.e., an apostate) should be given a chance to repent. According to three Sunni schools of law (Hanbali, Maliki and Shafi’i), an apostate must be provided a chance to repent, while the Hanafi school merely recommends such an opportunity be given. There is an overwhelming consensus among Islamic scholars that this opportunity to repent should be given, based on a set of *Hadiths* in which the Prophet mentioned giving apostates a chance to change their minds, and the precedent of the second caliph Umar bin Khattab. Usually, the opportunity to repent lasts three days; Ibn Hanbal of the Hanbali school and Abu Hanifa of the Hanafi school both recommend a longer period, stating that the accused should be given a month to repent. Ibn Hazm goes further by proposing that apostates should be given the opportunity to repent throughout their lifetime (Brow, 2017). Other classic scholars such as Ibrahim al-Nakha’i and Sufyan al-Thawri held that the apostate should be reinvited to Islam and not be condemned to death. They maintained that the invitation back to Islam should continue for as long as there is hope that the apostate might change their mind and repent. Similarly, Al-Nakha’i elaborated on this position by arguing that asking the apostate to repent, according to Islam, is not limited to once or three times, nor to one or three days, but that the apostate should be continually asked to return to Islam (Zahrah, 2006:165).

#### Shi’a jurisprudence: Ja’fari

The Shi’a jurisprudence on the death penalty for *riddah* has been confirmed since the 10th century. Shi’a scholars have divided apostates (defined as a Muslim who renounces Islam) into *fitri* and *milli*, though Sunnis do not use this categorisation. The former represents those who had one Muslim parent at the time of their conception, expressed their beliefs in Islam after attaining maturity or reaching puberty, and renounced Islam later. The latter are those whose parents were non-Muslims at the time of their conception, had expressed their own unbelief after having attained maturity, and who, after subsequently adopting Islam, returned to being an unbeliever (Kadivar, 2021:25).

In Shi'a jurisprudence, *Fatawa*<sup>40</sup> by Ayatollah Mousawi Khomeini, the founder and first Supreme Leader (1979-1989) of the Islamic Republic of Iran, continue to serve as the main source and foundation of *Shari'a* rulings and law, including the Islamic Penal Code of Iran. A male *fitri* is sentenced to death for *riddah*, and the death penalty shall be carried out regardless of whether the apostate repents or sincerely professes Islam. In contrast, a male *milli* should be allowed to repent, but may be executed if he refuses to do so. A three-day grace period where he shall be encouraged to repent shall be given; if he repents, he will not be executed. A female *fitri* or *milli* is sentenced to life imprisonment, is to be whipped during the five daily prayers, and is to receive only meagre amounts of food and water, as well as insufficient clothes, to induce her to repent and recant. If the female apostate repents, she shall be freed (Kadivar, 2021:26). Furthermore, unlike the Sunni schools, the traditionalist Shi'a jurisprudence obligates those who hear a person (applicable to Muslims and non-Muslims) abuse or slander the Prophet to kill them without consent or waiting to receive authorisation from the *Imam*. This obligation is often lifted if such a person fears that doing so will cost him or another Muslim considerable property loss (Ibid:27).

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<sup>40</sup> Nonbinding legal opinion on Islamic law given by qualified jurists; plural of *fatwa*.

**Table 1: Domestic legal frameworks for offences against religion**

Country	Apostasy		Blasphemy <sup>†</sup>		State religion	Predominant <i>fiqh</i>
	Source of offence	Death penalty	Source of offence	Death penalty <sup>†</sup>		
Afghanistan	Uncodified	✓	Uncodified	✓	✓	Hanafi
Brunei	Codified	✓	Codified	✓	✓	Shafi'i
Iran	Uncodified	✓		✓	✓	Ja'fari
Maldives		✓			✓	Shafi'i
Mauritania	Codified	✓	Unclear *	✓	✓	Maliki
Nigeria	Unclear *	Unclear *		✓		
Pakistan	Unclear #	✓	Codified	✓	✓	Hanafi
Qatar	Uncodified	✓			✓	Hanbali
Saudi Arabia		✓	Uncodified	✓	✓	
Somalia		✓	Codified		✓	Shafi'i
United Arab Emirates	Codified	✓			✓	Maliki
		✓			✓	Shafi'i
Yemen	Codified	✓				

\* We have been unable to locate the Penal Codes of the 12 Northern Nigerian States that operate *Shari'a* courts. Accordingly, we are unable to confirm the source of the death penalty for apostasy and blasphemy in these jurisdictions, and whether apostasy is even a capital offence. We can confirm that blasphemy is indeed punishable by death due to reports of death sentences being meted out on this basis.

# The precise source of the death penalty for apostasy in Pakistan is unclear; however, it is undisputed that apostasy is punishable by death, either as a discrete uncodified offence or as a subset of blasphemy (Penal Code s 295C).

† While apostasy and blasphemy are discrete offences in law, they become blurred in practice. Therefore, the absence of the death penalty for blasphemy in law is not necessarily mirrored in practice, as blasphemous acts may, in some jurisdictions, be prosecuted as apostasy.

## DEATH SENTENCES AND EXECUTIONS

### *Death sentences*

Since 2010, religious offenders have been sentenced to death in at least six countries: Iran, Mauritania, Nigeria, Pakistan, Saudi Arabia, and Yemen (Table 2).

In 2014, **Mauritania** sentenced blogger Mohamed Cheikh Ould Mkheitir to death for apostasy, marking the country's first death sentence for apostasy since 1960 (Humanists International, 2015). In 2015, **Saudi Arabia** sentenced at least two people to death for publication of blasphemous social media videos and poetry respectively (Human Rights Watch, 2015b; Reuters, 2015). In 2020, singer Yahaya Sharif-Aminu was sentenced to death for blasphemous lyrics, becoming the latest of at least 10 individuals on death row for blasphemy in **Nigeria** (Callamard, 2021:para 92).

**Pakistan** is the world's leading proponent of the death penalty for offences against religion, sentencing more people to death for blasphemy than any other country. In 2019, at least 29 people convicted of blasphemy were on death row; by the end of 2020, this number had risen to at least 40 (Human Rights Watch, 2021d; United States Department of State, 2020k:1). Religious minorities are disproportionately represented amongst those against whom blasphemy cases have been registered: despite comprising less than 5 per cent of Pakistan's population, religious minorities have been implicated in more than 50 per cent of registered blasphemy cases (Ashraf, 2018:68; Centre for Social Justice (Pakistan), 2021:4).<sup>41</sup> Most notable is the overrepresentation of Ahmadi Muslims: despite comprising less than 0.2 per cent of Pakistan's total population, Ahmadis constitute almost 33 per cent of persons against whom blasphemy cases are registered (Centre for Social Justice (Pakistan), 2021:4). Alongside religious minorities, persons with mental disabilities are particularly vulnerable to abuses of blasphemy laws, as the relevant legislation makes blasphemy a strict liability offence (Amnesty International, 2016a:23). Children are also at risk: in 2021, an eight-year-old Hindu boy became the youngest person ever charged with blasphemy in Pakistan (Janjua, 2021a). We examine the situation in Pakistan in more detail below (see 'Pakistan: taking Blasphemy Laws into their own Hands' section).

The situation in **Iran** is slightly more complex. As with the preceding countries, we have identified instances where Iran has sentenced people to death on the basis of offences against religion: for example, in 2021, two men were sentenced to death for 'insulting the Prophet' (Iran Human Rights Monitor, 2021; Radio Farda, 2021). While such sentences are relatively infrequent, Iran more regularly employs overly broad and ill-defined capital offences such as 'spreading corruption on Earth' and 'enmity against God' to prosecute and convict people of conduct that would traditionally be conceived as offences against religion (Ibid).

In many cases, concern has been raised as to the fairness of the legal processes preceding the imposition of death sentences. For instance, in 2018, Baha'i man Hamed bin Haydara was sentenced to death in **Yemen** on a trumped-up medley of religious and political charges.

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<sup>41</sup> In 2020, Sunni Muslims (majority religious group in Pakistan) made up 40 per cent of the accusations for blasphemy, followed by 33 per cent for Ahmadis, 15 per cent for Christians, 8 per cent for Shi'a Muslims, 2 per cent for Hindus, and 2 per cent unknown (Centre for Social Justice (Pakistan), 2021:4).



After being forcibly disappeared in 2013, he was detained incommunicado for months, during which he was physically and psychologically tortured, denied access to legal representation, and refused medical care (Amnesty International and Mwatana Organization for Human Rights, 2017; Baha'i International Community, 2019; Human Rights Watch, 2018c; United States Commission on International Religious Freedom, 2020). Very similar circumstances have been observed in **Iran** (e.g., United Nations Office of the High Commissioner for Human Rights, 2021) and **Saudi Arabia** (Amnesty International, 2020a:35; Van Esveld, 2020, 2021; Human Rights Watch, 2016a). In **Pakistan**, many blasphemy cases brought before the courts are subsequently discovered to have been founded upon false accusations, and while the majority of these cases have been righted on appeal, those responsible for making the wrongful allegations have generally gone unpunished (Badry, 2019:100). In other cases, wrongful convictions stem from judges feeling pressured into convicting individuals charged with blasphemy for fear of violence should they acquit the accused (I-10; I-29). Similar fears are held by lawyers: unlike the preceding jurisdictions wherein accused religious offenders are denied legal representation, in Pakistan, lawyers themselves are reluctant to take up blasphemy cases due to the very real threat of violence. Such fears are not unjustified: in 2014, lawyer Rashid Rehman was shot dead for defending an academic charged with blasphemy (Amnesty International, 2016a:35; Fiss and Kestenbaum, 2020:20).

### *Judicial executions*

Of the six countries that sentenced religious offenders to death since 2010, two countries—**Iran** and **Saudi Arabia**—carried out executions (Table 2). These include executions of religious minorities convicted of non-religious offences—mainly political offences—where the executions constitute a systematic homicidal campaign by the state.

In **Iran**, despite cataloguing 13 death sentences for religious offences since 2010, we have identified only one execution on strictly religious grounds: in 2015, a man whose identity remains unknown was hanged for apostasy (Abdorrahman Boroumand Center for Human Rights in Iran, n.d.). However, we have recorded a further six executions of religious offenders convicted under *political* offences: for example, in 2018, Karim Zargar was convicted of ‘spreading corruption on Earth’ for propagating and promoting unorthodox spiritual teachings and executed (FIDH and League for the Defence of Human Rights in Iran, 2020:15). Similarly, in 2012, Mohammad Zaher Bahmani was convicted of ‘enmity against God’ and executed for holding religious classes and distributing religious materials propagating Sunni beliefs (Abdorrahman Boroumand Center for Human Rights in Iran, n.d.).

Given that Iran executes more individuals per capita than any other country in the world, the number of executions of persons convicted of offending religious morals, whether formally charged with religious or political offences, appears to be relatively low. That being said, ethnoreligious minorities are grossly overrepresented amongst those executed for non-religious offences. For instance, of the 35 people known to have been executed on drug-related charges in the first five months of 2021, the majority of them were Baluchis (Iran Human Rights, 2021). Kurds are estimated to comprise half of all political prisoners in Iran, with 37 Kurds executed between January and August 2019 (FIDH and League for the Defence of Human Rights in Iran, 2020:30). Iran has also carried out mass executions of ethnoreligious minorities, including in apparently retaliatory circumstances: for instance, on



26 October 2013, 16 Baluchi prisoners were executed within hours of 14 border guards being killed in an attack allegedly carried out by Baluchi insurgents (Ibid:32). This escalation in executions of Sunni civilians, such as the Baluchis, by the Iranian Shi'a State 'raises serious concerns that the authorities are using the death penalty to sow fear among disadvantaged ethnic minorities, as well as the wider population' (Amnesty International, 2021d).

A similar trend has been observed in **Saudi Arabia**. Despite meting out at least two death sentences for offences against religion during 2010-2020, there have been no reported executions for such offences in recent years (United States Department of State, 2020f:3-4, 2021f:3, 5). However, the State—a proponent of Wahhabism, a conservative strain of Sunni Islam—appears to have abused security laws as a 'political weapon' to persecute Shi'a Muslims (Amnesty International, 2017). For example, in 2019, the Saudi government mass executed 37 people, at least 32 of whom were Shi'as, on terrorism-related charges, despite being arrested for mere participation in pro-democracy protests (Amnesty International, 2020a:33; Middle East Eye, 2020; Al Najjar, 2019; United States Department of State, 2020f:7).

Both Iran and Saudi Arabia have prosecuted, convicted, and executed religious minorities under the guise of political and security-related offences in a deliberate attempt to avoid criticism. Armed with an acute awareness that executions for offences against religion are no longer justifiable in the eyes of the domestic and international communities, the States have employed more palatable—that is, less controversial—charges as an alternate route by which to persecute religious offenders while simultaneously mitigating outcry and scrutiny (I-13; I-16; I-19).<sup>42</sup> In both cases, the adoption of Islam as the State religion enables these governments to frame acts against religion as acts against the State. Thus, while executions of this nature are legally distinct from those following an accusation of religious offending, they are functionally equivalent: irrespective of the formal charges laid, both forms of judicial executions are motivated by the State's desire to silence religious dissidents or exterminate religious minorities.

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<sup>42</sup> However, one interviewee disagreed, stating that Iran does not execute religious minorities by securing conviction for non-religious charges (I-19).

*Table 2: State-sanctioned killings of religious offenders since 2010*

Country	The death penalty		Extrajudicial killings	Killings by civilians	Killings by extremist groups
	Sentences imposed	Executions carried out			
Afghanistan *				✓	✓
Brunei					
Iran	✓	✓	✓	✓	
Maldives					✓
Mauritania	✓				
Nigeria	✓		✓	✓	
Pakistan	✓		✓	✓	✓
Qatar					
Saudi Arabia	✓	✓	✓		
Somalia					✓
United Arab Emirates					
Yemen	✓		✓		

\* Given the disputed legitimacy of the Taliban's self-proclaimed authority, any Taliban killings since August 2021 have been classified in the same manner as those prior to August 2021: as 'killing by extremist groups', rather than 'extrajudicial killings'.

## EXTRAJUDICIAL KILLINGS

Of the various forms of killing identified in this report, extrajudicial killings—that is, killings carried out by State-actors in the absence of legal authority—appear to be the least frequent. Such killings have been identified in five countries: Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen (Table 2).

In **Iran**, several Gonabadi Dervishes—Sufi Muslims with a long history of persecution by the State—have died in custody as a result of torture or the denial of medical treatment: ‘Iran is now trying to cover up its intent to murder peaceful religious activists through deliberate medical malpractice’ (United States Commission on International Religious Freedom, 2021). In both **Pakistan** and **Saudi Arabia**, religious minorities and dissidents have similarly died in custody in instances of suspected neglect or abuse (Al Jazeera, 2019; Centre for Social Justice, 2021; Middle East Monitor, 2019; United States Department of State, 2020f:8). Extrajudicial killings have also occurred in broad daylight: in 2019, 11 civilians were killed when Saudi security forces stormed two predominantly Shi’a villages (United States Department of State, 2020f:8), and in 2014, a Pakistani police officer axed a suspected blasphemer to death in the street (Centre for Social Justice, 2021; unpublished).

In **Nigeria**, members of the Islamic Movement of Nigeria (IMN)—a Shi’a organisation—have been killed in various instances of violence, the most notable of which transpired in 2015, when at least 347 IMN members were killed by the Nigerian army and buried in a mass grave without identification or autopsy (Callamard, 2021:paras 76-78; United States Department of State, 2021d:10). In **Yemen**, the Houthi government continues to perpetrate a violent campaign against the Baha’i community, characterised by enforced disappearances (construed for these purposes as a form of extrajudicial killing), among other grave human rights violations (United Nations Office of the High Commissioner for Human Rights, 2017). Other religious minorities have also been targeted: in 2020, the Houthis used the COVID-19 pandemic as a pretext to expel thousands of Ethiopian migrants—many of whom were Christians—from the country, killing dozens (Human Rights Watch, 2020c).

## KILLINGS BY NON-STATE ACTORS

### *Killings by civilians*

In at least four countries, religious offenders have been killed by civilians: Afghanistan, Iran, Nigeria, and Pakistan (Table 2). These killings were civilian responses to formal or informal accusations of having committed a legally recognised offence against religion. In this report, we only document killings committed by civilians where the State endorses or condones homicidal violence, or manifestly fails to prevent violence, protect victims, or bring killers to justice.

In 2015, a mob in **Afghanistan** lynched Farkhunda Malikzada, beating and burning her alive after she was wrongfully accused of blasphemy (Jalalzai, 2020; Najibullah, 2015). In 2021, a mob besieged a police station in **Nigeria** where a man accused of insulting the Prophet was being held. They dragged him outside and stoned him to death, after which his

body was set alight (Sahara Reporters, 2021; Ufuoma, 2021). Killings of this nature are most frequently observed in **Pakistan**, where at least 78 accused blasphemers have been killed since the introduction of Section 295C—the section prescribing the death penalty for blasphemy—to the Penal Code (see ‘Pakistan: taking Blasphemy Laws into their own Hands’ section for a detail analysis of the situation in Pakistan). For example, in 2020, Tahir Ahmad Nazeem was shot in a courtroom while facing trial on blasphemy charges (Baloch and Graham-Harrison, 2020). The prevalence of such killings in Pakistan has been attributed to the State’s inconsistent messaging vis-à-vis the death penalty for blasphemy: despite sentencing more people to death for blasphemy than any other country, Pakistan has never carried out an execution on this basis. It has been widely contended that the criminalisation of blasphemy and the State’s failure to actually carry out death sentences imposed has inspired mobs and vigilantes to ‘administer justice’ themselves (Shahid, 2019:1).

In some cases, killings were instead motivated by the religious affiliations of the victims, in instances altogether divorced from allegations of religious offending. In **Iran**, Baha’is have been killed by civilians with absolute impunity (FIDH and League for the Defence of Human Rights in Iran, 2020:34). In **Nigeria**, thousands have been killed in conflict between Christian Farmers and Muslim herders (Amnesty International, 2018a:6, 2020b; Callamard, 2021:para 50; International Crisis Group, 2018; Intersociety, 2021). In **Pakistan**, at least six Ahmadis have been killed on grounds of their religion since August 2020 (Al Jazeera, 2020a, 2020c, 2021a; Voice Pakistan, 2021). Despite the absence of any formal or informal allegation of religious offending preceding killings of this nature, their inclusion in this report is due to the religion-tinged rhetoric surrounding the minorities against whom such violence is inflicted. The Iranian regime deems Baha’is ‘heretical’ (Bowman, 2021), while in Pakistan, Ahmadis are considered apostates and blasphemers under the Penal Code for calling themselves ‘Muslims’ while maintaining beliefs that are fundamentally different to those of the Muslim majority, such as their belief in the prophethood of Mirza Ghulam Ahmad (Ashraf, 2018:61; Human Rights Watch, 2010b). In Nigeria, though violence between farmer and herder communities is due to a complex intertwining of factors including the dwindling of land resources, the framing of this conflict by authorities and other stakeholders as a religious one—including by some as a ‘invasion’ by Muslims against Christians—has been criticised as inspiring further violence (Callamard, 2021:paras 50-51).

While the killings set out in this section were carried out by civilians, the State remains nonetheless complicit in all such killings, albeit to varying degrees. **Afghanistan** has been called ‘incapable—or even unwilling—to protect the people’ (Najibullah, 2015), thereby furthering a climate of impunity within which religiously motivated violence proliferates. The case of Farkhunda seems to be an outlier in this respect: the State unprecedentedly apprehended accused lynchers and law enforcement officials alike, sentencing four of the latter to death for their manifest failure to protect Farkhunda. In **Iran**, the State continues to perpetrate a systematic campaign of discrimination and marginalisation against the Baha’i community. While the State does not directly carry out judicial or extrajudicial killings itself, its legislative framework enables the killing of Baha’is, and its failure to investigate or prosecute the perpetrators of such violence constitute the State’s tacit endorsement of such violence. In **Nigeria**, the sheer scale of violence, and the impunity with which such violence has and continues to be perpetrated, has been called ‘at least, wilful negligence; at worst, complicity’ (Amnesty International, 2018a:50). Moreover, as mentioned, State authorities have, either ignorantly or with malintent, framed the conflict as a religious one, inflaming the violence

(Callamard, 2021:paras 50-51). Finally, **Pakistan** has been criticised for failing to sufficiently address, and indeed for inciting, violence against religious offenders (Amnesty International, 2016a:51; Human Rights Watch, 2018c).

### *Killings by extremist groups*

Of the 12 countries under review, extremist groups have killed religious offenders in at least seven: Afghanistan, Maldives, Nigeria, Pakistan, Saudi Arabia, Somalia, and Yemen. In four of these jurisdictions—Afghanistan, Maldives, Pakistan, and Somalia—we have classified this violence as ‘State-sanctioned’, due to the extremist group exercising de facto control of territory, or State collusion with extremist groups, or manifest failure of the State to protect persecuted minorities against systematic and protracted violence (Table 2).

The political situation in **Somalia** is fragmented and volatile, with al-Shabaab holding swathes of territory, albeit informally, in which it administers de facto control. In some instances, al-Shabaab has executed religious offenders following some form of quasi-judicial process: in 2015, a man was publicly executed for ‘insulting the Prophet’ after he reportedly pleaded guilty in a *Shari’a* trial (BBC News, 2015c; Humanists International, 2020c). The extremist group has reportedly imposed Islamic law on Muslims and non-Muslims alike, carrying out executions for apostasy (United States Department of State, 2020g:6, 2021g:6). In other instances, al-Shabaab has killed alleged religious offenders without any semblance of judicial proceeding. In 2018, the group attacked the compound in which a cleric accused of blasphemy lived, killing him and at least 13 others (Maruf, 2018). In 2020, al-Shabaab killed 13 humanitarian aid workers, accusing them of proselytising Christianity (United States Department of State, 2020g:6, 2021g:7).

In the **Maldives**, domestic extremist groups have ‘contributed to the emergence of a discourse of religion-based violence’ (Zahir, 2017) that has ensued in the persecution of those who have vocally criticised religious conservatism or advocated for reform. A local Al Qaeda affiliate group is believed to be responsible for the murders of two bloggers and a reformist religious scholar (Abdul-Samad, 2021; Rasheed, 2019). A presidential commission into the killings concluded that Former President Yameen and his Government conspired to ‘divert the focus’ of the police investigation and obstruct justice in relation to one of the killings (Abdul-Samad, 2021; Rasheed, 2019). Moreover, while the incumbent Government has taken incremental steps away from the culture of absolute impunity fostered by its predecessors, it has failed to effectively address the issue of radicalisation to which the rise in extremism in the Maldives has been widely attributed. In fact, rather than engaging with this issue, the Government has stifled civil society for doing so: in December 2019, the Maldives Democracy Network was deregistered for publishing a report on radicalisation in the country (Abdul-Samad, 2021).

Hazaras, proponents of Shi’a Islam, have been subjected to decades of gross violence by various extremist groups in both Sunni-majority **Afghanistan** and **Pakistan**, where they constitute an ethnoreligious minority. In 2013, bomb attacks carried out by hardline Sunni group Lashkar-e-Jhangvi marked the bloodiest attacks since Pakistan’s independence in 1947: at least 180 Hazaras were killed (Thacker, 2014). Islamic State of Khorasan Province (ISKP) has carried out attacks against Hazaras in both countries, as recently as 2021 (Al Jazeera, 2021b; Gossman, 2018). The Taliban has historically targeted Hazaras, in what has been

termed a ‘systematic ethno-sectarian killing’ (Adili and Van Bijlert, 2018a, 2018b), and have continued such violence into 2021 (see ‘Afghanistan: Killings by Extremist Groups’ section for a detailed analysis of the situation in Afghanistan). In July 2021, after taking control of Ghazni province, Taliban fighters massacred nine Hazara men in instances of immense brutality, with Amnesty International (2021a) warning of what Taliban rule might mean for religious minorities in Afghanistan: ‘the cold-blooded brutality of these killings is a reminder of the Taliban’s past record, and a horrifying indicator of what Taliban rule may bring’. Finally, other instances of violence have been carried out by unknown actors: for instance, in 2020, gunmen attacked a maternity hospital in a predominantly Hazara district in western Kabul, killing 24 people including new-born babies (Al Jazeera, 2021b).

While we have identified many more instances of religion-motivated violence perpetrated by extremist groups in the countries under examination, these have not been the subject of analysis as they cannot be reasonably construed as State-sanctioned. Such instances are only briefly acknowledged in the interests of completeness. For example, in 2015, Islamic State of Iraq and the Levant (ISIL) killed 137 people in attacks on Shi’a mosques in **Yemen** (Aboudi, 2015; Counter Extremism Project, 2017). Two months later, ISIL claimed responsibility for a similar attack on a Shi’a mosque in **Saudi Arabia** which killed at least 21 people (BBC News, 2015b). Unlike the aforementioned instances of violence, these attacks were relatively unprecedented, and do not reflect an ongoing failure of the State to protect civilians. In **Nigeria**, Christians have been killed in various targeted attacks by Boko Haram and Islamic State West Africa Province.

## COUNTRIES EXCLUDED FROM ANALYSIS

### *Bahrain, Kuwait & Oman*

While there is unanimous consensus among the extant literature that Qatar, Saudi Arabia, the United Arab Emirates, and Yemen are the only Gulf States in which the death penalty remains a legal possibility for apostasy, a few civil society organisations and legal scholars with whom we spoke indicated that apostasy *may* be similarly punishable in **Bahrain, Kuwait, and/or Oman**. Proponents of this position argue that the Constitutions of these States prescribe the *Shari’a* as ‘a primary source of legislation’ (Bahrain Constitution, Article 2; Kuwait Constitution, Article 2) or ‘the primary source of legislation’ (Basic Law of Oman, Article 2), and that apostasy—a *hadd* offence under *Shari’a* law—may to be construed by Courts as a capital offence accordingly.

We respectively disagree with this position. At least seven<sup>43</sup> of the 12 countries included in this report have been assessed as retaining the death penalty for apostasy despite an absence of explicit legislation to this effect. However, the legal frameworks of those jurisdictions may be distinguished from those of Bahrain, Kuwait, and Oman.

The Constitutions of Bahrain, Kuwait, and Oman prescribe that the *Shari’a* is a source

<sup>43</sup> These seven countries are Afghanistan, Iran, Maldives, Qatar, Saudi Arabia, Somalia, and the United Arab Emirates. Furthermore, in Pakistan, the source of the death penalty for apostasy is unclear; however, it is undisputed that apostasy is punishable by death, either as a discrete uncodified offence or as a subset of blasphemy (Penal Code s 295C). See ‘Pakistan: where Citizens take Blasphemy Law into their own Hands’ section for more detail.



of legislation; the Constitutions mandate that *Shari'a* is to *inform* the drafting of legislation. In other words, the Constitutions of these countries do not go as far as mandating that the *Shari'a* ought to govern criminal matters in the absence of legislation.<sup>44</sup> By way of comparison:

- The Constitutions of **Afghanistan** and **Iran** dictate that Courts must *apply* the *Shari'a* in the absence of express legislation (Afghanistan Constitution, Article 130; Iran Constitution, Article 167).
- The Provisional Federal Constitution of **Somalia** provides that the *Shari'a* is 'the supreme law of the country', trumping the Constitution itself (Article 4(1)). The Constitution also recognises *xeer* (customary or traditional law). It is unclear how the *Shari'a* and *xeer* are to be reconciled with the Constitution and Penal Code (US Department of State *Somalia*: 3). Accordingly, it is widely accepted that apostasy may, under either the *Shari'a* or *xeer*, be punishable by death.
- **Saudi Arabia** does not have a codified Constitution; rather, the Holy Qur'an and the Prophet's Sunnah have been adopted as the Constitution (Basic Law of Governance 1992, Article 1). In the absence of a Penal Code, criminal prosecutions are based exclusively on the *Shari'a*; accordingly, apostasy is punishable by death as a *hadd* offence.

The Penal Codes of Bahrain, Kuwait, and Oman do not incorporate the *Shari'a*. The Penal Codes of the **Maldives**, **Qatar**, and the **United Arab Emirates**, on the other hand, expressly provide that the *hudud* offences (including apostasy) are punishable in accordance with the *Shari'a* (Maldives Penal Code, Section 1205; Qatar Penal Code, Article 1; United Arab Emirates Penal Code, Article 1).

As this illustrates, the death penalty for apostasy is well within the realm of legal possibility in these seven countries, despite being uncoded. Indeed, as noted in the previous section, at least two of these countries (**Iran** and **Saudi Arabia**) have imposed death sentences for apostasy, with Iran carrying out executions on this basis. In contrast, the legal frameworks of Bahrain, Kuwait, and Oman do not, in our opinion, leave any reasonable scope apostasy to be criminalised whatsoever. As all three of these countries enshrine the principle of *nulla poena sine lege* in their Constitutions (Bahrain Constitution Article 20; Kuwait Constitution Article 32; Oman Constitution Article 21), it follows that neither the death penalty nor any other punishment may be meted out for apostasy, as this is not an offence recognised by law.

Moreover, the judicial frameworks of these jurisdictions leave no space for the courts to apply the *Shari'a*. Oman does not have *Shari'a* courts (US Department of State 2020 *Oman*: 4). Bahrain and Kuwait do have religious courts; however, the jurisdictions of these courts are limited to matters of personal status (such as marriage, divorce, alimony, custody, and inheritance) (Bahrain Independent Commission of Inquiry 2011:37; US Department of State 2021 *Kuwait*: 6). In all three countries, criminal matters are governed by legislation and adjudicated by secular courts.

We have excluded Bahrain, Kuwait, and Oman from this report accordingly.<sup>45</sup>

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<sup>44</sup> These countries restrict the application of the *Shari'a* to civil law. In Bahrain, Article 1 of the Civil Code permits courts to resort to the *Shari'a* when deciding civil matters in the absence of legislation and custom. In Oman, Article 5 of the Law of Commerce defaults to the primacy of the *Shari'a* should any confusion, silence, or inconsistency of laws arise in commercial matters.

<sup>45</sup> We have received feedback from the Bahrain Institute for Rights and Democracy and Dr Noora Mohamed AlShamlan (Assistant Professor, College of Law, University of Bahrain) in drafting this section.



## Malaysia

Malaysia operates a dual legal system, whereby *Shari'a* courts operate alongside secular civil courts (Tew 2011:4). Article 74(2) of the Federal Constitution empowers state (as opposed to Federal) legislatures to enact laws with respect to any of the matters enumerated in the 'State List'. One such matter is the 'creation and punishment of offences by persons professing the religion of Islam against precepts of that religion' (Malaysia Constitution, Schedule 9, List II, paragraph 1). Accordingly, it may be argued that scope remains for states to legitimately enact legislation stipulating that apostasy—an act 'against the precepts' of Islam—is a crime punishable by death.

Alternatively, it might be argued that state legislatures are banned from criminalising apostasy, on the basis that they have no right to legislate with respect to criminal matters whatsoever. Federal Parliament has the power to legislate with respect to criminal law (Malaysia Constitution, Schedule 9, List I, paragraph 4), and Article 77 of the Constitution provides that the states are not authorised to make laws with respect to any matter within the purview of Federal Parliament. Such a reading is consistent with the notion that *Shari'a* courts are to deal exclusively with personal and family law matters (Dahlan & Faudzi 2016).

Two states—Kelantan and Terengganu—have prescribed the death penalty for apostasy in their respective *hudud* laws. Even if one were to construe the enactment of such laws as Constitutionally permissible, the operation of Federal safeguards precludes any scope for these laws to be implemented (MalayMail 2021; US Department of State Malaysia 2021:4). One such safeguard is Article 11 of the Malaysia Constitution, which provides for absolute freedom of religion, arguably rendering the death penalty an unlawful punishment for apostasy in Malaysia. In a 1993 statement, the Attorney-General confirmed that these laws may not be enforced without a Constitutional amendment (EndBlasphemyLaws 2020; Humanists 2020).

Legally speaking, Malaysia is somewhat reminiscent of **Nigeria**—where the death penalty is a legal possibility at the state level, but is rendered unlawful by the operation of the Federal Constitution, which enshrines absolute freedom of religion (Article 38). However, unlike Malaysia, at least one Nigerian state, Kano, has violated the Constitutional protection of freedom of religion and sentenced multiple people to death for blasphemy. Thus, while the death penalty for blasphemy is not technically lawful in Nigeria, the fact that Courts have nonetheless imposed the death penalty on this basis justifies Nigeria's inclusion in this report. On the other hand, the Malaysian states of Kelantan and Terengganu have never engaged their *hudud* laws with respect to apostasy (EndBlasphemyLaws 2020; Humanists 2020, US Department of State Malaysia 2021:4).

Given that the death penalty is not a lawful possibility in Malaysia, and that neither Kelantan nor Terengganu have demonstrated any intention to impose the death penalty for apostasy in violation of Federal law, Malaysia has been excluded from this report.<sup>46</sup>

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<sup>46</sup> We have received feedback from Dobby Chew (Executive Coordinator, Anti-Death Penalty Asia Network) in drafting this section.

## ***Sudan***

In July 2020, Sudan abolished apostasy, which had previously been punishable by death, as part of a broader suite of secularisation reforms including the abolition of corporal punishment for blasphemy and introduction a new provision criminalising '*takfir*' (the act of accusing someone of being an apostate) (Library of Congress, n.d.; United States Department of State, 2021h:5).

Prior to this, prosecutions were frequently brought under apostasy laws (African Centre for Justice and Peace Studies, 2018), and on occasion, Sudan sentenced people to death on this basis. Indeed, such sentences were meted out during the study period (i.e., since 2010). In 2014, Christian woman Meriam Yehya Ibrahim was sentenced to death for apostasy for marrying a Christian man. Ibrahim refused to renounce her Christian faith, despite the Court's insistence that she was in fact Muslim, and that her marriage contravened Islamic law (BBC News, 2014). Days later, she gave birth to her daughter while in shackles. The following month, her conviction was overturned by an appellate court due to her 'unstable psychological condition', despite a medical report indicating her good health (African Centre for Justice and Peace Studies, 2018:13; Amnesty International UK, 2014).

According to Amnesty International (2018), Sudan is not believed to have carried out executions for apostasy since at least 1991. We have been unable to identify any executions for apostasy since 1985 (African Centre for Justice and Peace Studies, 2018:9).

This report only examines those countries in which offences against religion were lawfully punishable by death at the time of writing. Although Sudan did retain the death penalty for apostasy during part of the study period, the fact that apostasy is no longer criminalised, it has been excluded accordingly.

# AFGHANISTAN: KILLINGS BY EXTREMIST GROUPS AND AN UNCERTAIN FUTURE UNDER TALIBAN RULE

At the end of August 2021, after the US troops and diplomats departed Afghanistan, the country is once again under Taliban rule. This section discusses the State-sanctioned killing of religious offenders between 2010 and 2020. The following section on the law in Afghanistan outlines the provisions under the Afghan Government. At the time of writing (September 2021), it is too early to predict the impact of the Taliban takeover on the current Penal Code or to the Constitution of Afghanistan. However, based on the Taliban's continued persecution of the Hazaras—an ethnoreligious minority in Afghanistan—from declaring *jihad* against them in 1996, to their continued persecution as recent as the massacre in July 2021, everything points to an increase in State-sanctioned killing of religious offenders under Taliban rule. This section concludes by imagining what the future may hold in Afghanistan: what does freedom of religion mean under Taliban rule and how will Shi'ite Hazaras be treated?

## THE LAW

In 2017, Afghanistan adopted a revised Penal Code.<sup>47</sup> Though the Code addresses various religious crimes, neither apostasy nor blasphemy are codified, nor are any other religion-related capital offences (End Blasphemy Laws, 2020; United States Department of State, 2020i:5). However, scope remains for the death penalty to be imposed for apostasy and blasphemy in accordance with Islamic law. Article 130 of the Afghanistan Constitution provides that, in the absence of other laws, the courts shall apply Hanafi jurisprudence. As neither apostasy nor blasphemy are accounted for in the Penal Code, courts may fall back on Islamic precepts:

- Under Hanafi jurisprudence, **apostasy** is a capital crime for male offenders (carried out by beheading), while women are given life imprisonment. Accused apostates have three days to recant before sentences are carried out (United States Department of State, 2020i:5).
- **Blasphemy** is also a capital crime, and the same recantation period applies; however, it is unclear whether there is a gendered distinction in the penalty imposed (United States Department of State, 2020i:6)
- The Hanafi school also prescribes the death penalty to **proselytizing** (trying to convert someone from Islam to another religion) (United States Department of State, 2020i:6)

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<sup>47</sup> We have been unable to locate an English translation of the Code in its entirety; however, various sources have corroborated its contents.

These laws do not, however, apply to all persons in Afghanistan. While Hanafi jurisprudence governs the actions of Sunni Muslims, some minority groups are subject to different laws:

- Article 131 of the Afghanistan Constitution provides that, when dealing with **Shi'a Muslims**, the courts shall apply Shi'a jurisprudence (as opposed to Hanafi jurisprudence). In this context, this Article has little effect, as Shi'a jurisprudence similarly condemns apostates and blasphemers to death.
- A 2007 ruling from the General Directorate of Fatwas and Accounts under the Supreme Court provides that the **Baha'i faith** is distinct from Islam and therefore blasphemous. However, while Muslims who convert to the Baha'i faith are deemed to have committed apostasy, Baha'is are labelled as 'infidels' (rather than 'apostates') and have therefore not been charged for either apostasy or blasphemy (United States Department of State, 2020i:6, 9)
- Finally, it is unclear how these laws apply to **non-Baha'i non-Muslims**: while the State has carved express distinctions between Sunnis, Shi'as, and Baha'is, no mention is made as to other non-Muslims.<sup>48</sup> Article 2 of the Afghanistan Constitution enshrines freedom of religion, provided that followers of other faiths comply with Afghan law.

## ENFORCEMENT

While theoretical scope remains for the death penalty to be imposed and carried out for apostasy, blasphemy, and proselytising, it appears that these laws are effectively inactive. Since at least 2014, there have been no reported prosecutions for apostasy or blasphemy (United States Department of State, 2020i:9), nor have we identified any prosecutions of proselytising. The most recent prosecution for blasphemy was in 2012, where Zaman Ahmadi was convicted and sentenced to 20 years imprisonment for an article he had submitted for publication (Kabul Now, 2019). In March 2020, Ahmadi was released early, after the Court decided that the term of incarceration already served was in fact sufficient for his 'crime' (Kabul Now, 2020).

Interestingly, despite the death penalty being a lawful punishment for blasphemy, it was not imposed in Ahmadi's case. In fact, our review indicates that the death penalty has only been imposed for blasphemy once. In 2008, Sayed Pervez Kambaksh, a 23-year-old journalist and student, was charged with blasphemy for downloading 'un-Islamic' content concerning women's rights from the internet. In a five-minute trial without legal representation, Kambaksh was sentenced to death (Leithead, 2008). Various domestic and international human rights organisations campaigned for Kambaksh's release, ultimately prompting President Hamid Karzai to grant Kambaksh amnesty in 2009 (Choudhary, 2009).

In Afghanistan, the President must affirm all death sentences before executions are carried out (Leithead, 2008). To this end, Sir Sherard Cowper-Coles, former British ambassador to Afghanistan, has commented on the dynamics at play in the interrelationship between religion, politics and the law:

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<sup>48</sup> While non-Muslims have been prosecuted for blasphemy in other jurisdictions (e.g., Pakistan), no such cases have been identified in Afghanistan.

President Karzai is a deeply conservative Pashtun who understands the traditions... He understands perhaps better than anyone that one of his jobs is to reconcile these traditions – the call for modernism, the call for openness and at the same time respect for sincerely and devoutly-held religious traditions. (Leithead, 2008)

An Afghan lawyer and human rights activist with whom we spoke echoed these sentiments, suggesting that respect of international human rights law and fear of international backlash motivates Afghanistan's observance of freedom of expression and religion, despite deep-seated religious values being held by the masses, thereby explaining the apparent infrequency of state action in response to offences against religion (I-11). This is in stark contrast to Pakistan, where blasphemy prosecutions are rife and readily ensue in death sentences being issued to appease the religious masses, only to be overturned on appeal. This perceived interruption of the justice process in turn engenders widespread violence, as explained below.

With this in mind, perhaps the lack of known prosecutions for apostasy or blasphemy during our study period (2010-2020) is because such prosecutions are sporadic political statements aimed at maintaining social control, rather than standard practice motivated by religious adherence. The same can likely be said of Kambaksh's death sentence in 2008. Three years earlier, in 2005, fellow journalist Ali Mohaqeq Nasab was similarly prosecuted for publishing controversial magazine articles about Islam (Witte, 2005). Whereas Kambaksh had simply downloaded controversial material from the internet, Nasab disseminated blasphemous material; however, while Kambaksh was sentenced to death, Nasab received a two-year prison sentence, despite prosecutors calling for the death penalty. Moreover, the courts do not appear to have strictly followed Islamic precepts: though Hanafi jurisprudence affords the accused three days to recant his blasphemy before being sentenced to death, Nasab's sentence was downgraded to a six-month suspended sentence when Nasab apologised for his actions *three months* after his initial conviction (Witte, 2005).

In sum, it appears that the prosecution of, and imposition of the death penalty for, crimes against religion are rare occurrences in Afghanistan, and that when such prosecutions do take place, they are motivated by political agendas, rather than a strict adherence to Islamic law.

This is not necessarily the complete picture, however. It has been suggested that the parallel operation of formal and informal justice mechanisms has enabled the covert prosecution—and potentially execution—of accused religious offenders, and that 'widespread corruption leads many Afghans to distrust the formal judicial system, turning to Taliban courts and traditional *jirgas*' (Fiss and Kestenbaum, 2020:41). This was corroborated by one interviewee:

[Due process] is costly, time-consuming, lengthy... and only possible if we minus the corruption that exists in Afghanistan's judiciary ... The Taliban is completely different. There is no due process. There is no, you know, right to defend oneself before their courts. There is just a Taliban-appointed judge sitting... who issues their verdicts which could be very illegal and unjust. But since it is swift and can be enforced, this is why people think that the Taliban have a better system. (I-11).

The same interviewee indicated that because parallel justice outcomes tend to go unreported, the true extent to which such forums may lead to the execution of accused religious offenders is effectively impossible to ascertain (I-11). Moreover, rather than using the strict legal categories of ‘apostasy’ and ‘blasphemy’, these quasi-judicial decision makers may instead term the offender *mahdur al-dam*, meaning ‘worthless blood’ or ‘a life without value’, a category of persons that *Shari’a* classifies as deserving of death, and may accordingly be killed with impunity (I-11) (Aranchi and Ebadpour, 2017:2128; Milani, 2016a). In effect, the distinction between this label and the more widely used terms ‘apostasy’ and ‘blasphemy’ is merely semantic. The root of this offence, and its corresponding punishment, is the same: offending Islam.

## BEYOND THE LAW

Though we have been unable to identify a single judicial killing on the basis of apostasy or blasphemy, perceived infractions of such laws have resulted in instances of lynching by civilians. On 19 March 2015, 27-year-old Afghan woman, Farkhunda Malikzada, was beaten and burned alive after being wrongly accused of blasphemy. When Farkhunda challenged a peddler about his practice of selling charms outside an Islamic shrine in Kabul, she was falsely accused of blasphemy. Hearing the accusation, a group of people attacked her, while hundreds of onlookers, including police officers, watched the lynching. Following the attack, public outcry toward the violence and police inaction propelled the authorities into damage control: 28 civilians were arrested, and 20 police officers suspended (Jalalzai, 2020; Najibullah, 2015). In May 2015, four men were sentenced to death for Farkhunda’s murder, and a further eight were sentenced to 16 years imprisonment. 11 policemen were sentenced to one year in prison for failing to protect Farkhunda, while another eight were found not guilty (ABC News, 2015). Rights activist Selay Ghaffar observes that in Afghanistan, ‘the government and its police force are incapable—or even unwilling—to protect the people’ (Najibullah, 2015); accordingly, the holding of police officers to account in this case is an unprecedented occurrence.

### *Persecution of Hazaras*

Hazaras are an ethnoreligious minority in Afghanistan. Proponents of Shi’a Islam, they are a religious minority in the predominantly Sunni country. As an ethnic minority, their unique characteristics make them easily identifiable. This has resulted in the Hazara community facing severe repression, persecution, and violence in Afghanistan (as well as in neighbouring Pakistan and Iran) for decades (Hossaini and Latifi, 2021).

After seizing power in 1996, the Taliban declared *jihad* on the Hazara community, and in their five-year reign that followed, thousands of Hazaras were killed (Minority Rights Group International, n.d.). One interviewee recounted a conversation with a former member of the Taliban:

When 9/11 happened and the Taliban were defeated, this man came. He had shaved his beard, taken that big Taliban turban away, and was now just a normal person in the street. I said to him, ‘why did you come back?’ He said, ‘my jihad finished’. I said, ‘who did you do jihad against?’. He said, ‘I promised myself that I will serve God by



killing seven people. Seven Hazaras.’ His Mullah had told him that if he killed seven Hazaras, his seven ancestors will go to heaven, and his seven descendants will go to heaven. So he came and joined the Taliban—to kill seven Hazaras, to serve his religion, to serve his ancestors and the next generation.

I asked him, ‘did you kill seven Hazaras?’. He said, ‘I killed six Hazaras. The last time we were in Bamyan, we were killing Hazaras... but then America started bombarding us. We were under attack, so our leadership decided to flee. I had no option but to kill an animal. I killed one cow from a Hazara home, and begged God to forgive me because I could not kill the seventh Hazara.’ (I-24).

After the Taliban was ousted in 2001, their continued insurgency involved the killing of Hazaras. For instance, a series of attacks were carried out by the Taliban in various Hazara areas in late 2018, ensuing in the deaths of many civilians. While the Taliban claimed that these attacks were politically motivated, they have been condemned as ‘systematic ethno-sectarian killing’ (Adili and Van Bijlert, 2018a, 2018b).

Since its emergence in the mid-2010s, Islamic State of Khorasan Province (ISKP) has declared war against the Shi’ite community in Afghanistan, and has claimed responsibility for numerous attacks against the Hazara community (Gannon, 2021). One such example is the 2017 attack on the Imam Zaman Mosque, a Shi’a mosque in Kabul, which left 65 people dead (Gossman, 2018).

Other instances of violence have been carried out by unknown actors:

- In May 2021, 85 people, most of them female students between 11 and 17 years of age, were killed in bombings outside a high school in a predominantly Hazara neighbourhood in western Kabul (Hossaini and Latifi, 2021).
- In March 2021, seven Hazara labourers were executed by unknown gunmen (Atakpal, 2021; Human Rights Watch, 2021a).
- In May 2020, gunmen attacked a maternity hospital in a predominantly Hazara district in western Kabul, killing 24 people including newborn babies and their mothers (Al Jazeera, 2021b).

Analysts have interpreted these recent attacks as an attempt ‘to stoke sectarianism in the multi-ethnic country, at a time when insecurity is on the rise and reports are emerging of regional leaders establishing local armed militias along ethnic lines in fear of the Taliban’s return to power’ (Hossaini and Latifi, 2021). Indeed, these fears were realised in August 2021, when the Taliban declared themselves the ruling authority in the country. Within weeks of the Taliban takeover, fears of persecution had prompted an estimated 10,000 Hazaras to flee into neighbouring Pakistan (Baloch, 2021).

In July 2021, after taking control of Ghazni province, Taliban fighters massacred nine Hazara men in instances of immense brutality. Among the victims was a 75-year-old man and two men with mental health conditions. At least three of the victims were tortured: one had his arms and legs broken and hair pulled out; another was severely beaten, strangled to death, and had his arm muscles cut off (Amnesty International, 2021a). Agnes Callamard, Secretary General of Amnesty International and former UN Special Rapporteur on extrajudicial,



summary or arbitrary executions, has warned of what Taliban rule might mean for religious minorities: ‘the cold-blooded brutality of these killings is a reminder of the Taliban’s past record, and a horrifying indicator of what Taliban rule may bring’ (Ibid).

## A RETURN OF TALIBAN RULE

*By Mohammad ‘Musa’ Mahmodi*<sup>49</sup>

Blasphemy accusations have a dreadful impact on freedom of religion, freedom of expression, freedom of assembly, and freedom of association in Afghanistan. They are a fear-based practice intended to threaten and silence opponents and solidify government power. It is often dangerous to talk about blasphemy in Afghanistan, but information about the impacts of blasphemy laws and policies, and the social and religious contexts in which they operate, should be freely available.

In this note, I briefly describe why such awareness must be raised. I explain why we must stand against the weaponisation of blasphemy, demanding that it not be used against people and their human rights. While I reiterate the importance of protecting religions from defamation, I emphasise the need to protect human rights and freedoms against policies and misuse of power by any government or radical group.

In August 2021, the Taliban seized power in Afghanistan, and there are genuine fears that they might make laws or use their interpretation of *Shari’a* law to harshen punishment against those who exercise their freedom of speech, freedom of conscience, and freedom of religion. These fears are well founded: Afghans who have lived through the Taliban’s previous rule and insurgency know all too well of their capability of committing crimes towards people and their human rights.

### *Blasphemy under the Taliban*

The Taliban is a radical militant group composed of Students of Religious Madrasas in Pakistan, hard-line religious scholars and Mullahs, and violent militants. They are motivated by two drivers: extreme violence in pursuing their political and religious goals, and their belief that their actions will be rewarded by God. They are mostly so-called traditionalists (AHL HADITH) claiming that they follow the tradition of the Prophet Mohammad, and believe that return to the early days of Islam will make their lives glorious and pious. Their violent extremism makes them intolerant towards anything they deem contrary to their thoughts, policies, and beliefs. In fact, they regard such things as un-Islamic and deserving of punishment.

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<sup>49</sup> Musa is a human rights lawyer. He served as Executive Director of the Afghanistan Independent Human Rights Commission for ten years, providing strategic direction for programs and activities to monitor, protect, and promote human rights in a conflict-affected country. As part of his work, he focused on transitional justice, women rights, children rights, human rights education, and investigations of human rights violations and abuses by all parties to the conflict. Musa also advocated for reviews of laws and policies of Afghanistan to comply with the international human rights instruments. He previously worked with the National Democratic Institute for International Affairs, whereby he led and ran programs strengthening democracy and political parties in Afghanistan. Musa is a Research Fellow in Law at the Schell Centre for International Human Rights at Yale Law School.

In this regard, blasphemy is particularly dangerous. The Taliban has not and will not allow any room for tolerance for religious researchers to question or say anything that is contrary to popular and current beliefs of the Taliban. In the past, the Taliban displayed the harshest of reactions towards anyone who even believed in something different than their school of thought, let alone against them. A bloody history of assassination of Mullahs who confronted them, students and scholars, and even journalists and human rights activists are a testimony to their malign and horrific conducts.

While blasphemy is also a criminal offence in other countries, under the Taliban, blasphemy accusations would not follow the principle of legality and due process as they apparently do not recognise the formal civil and criminal laws of Afghanistan. Any proceedings by the Taliban would be adjudicated in accordance with *Shari'a* sources which are wide open to various interpretation and differ based on various sects of Islam.

I am worried that the Taliban will resort to their strict policy of harsh punishment without regard to due process, Afghan law, or international human rights law. Criticising even their restrictive and imposing policy of promotion of virtue and anti-vice may result in conviction on charges of blasphemy.

### ***The impact of Taliban rule on minority groups***

Afghanistan is a country of minority groups, but the Taliban and its violent tactics have displaced the harmony and coexistence between these groups and substituted them with division, loyalty to traditions, and strict religious zeal. Under Taliban rule, activities of other religions may be illegal; for example, preaching and proselytising may be considered apostasy. Such threats have been realised in the past: bombing attacks against several NGOs before, between 2012 and 14 and even after are the examples of this. As this shows, exercising freedom of religion under the Taliban is risky.

The Taliban's intolerant policy was not, and is not, targeted at non-Islamic religions only. In fact, the Taliban has shown intolerance and violence against the Shi'a sect of Islam. The Hazara minority and other Shi'as were largely persecuted and perceived as non-believers to the true tenants of Islam, therefore, they deem the Shi'a sect and the ethnic group as apostates. During the first Taliban government from 1996-2000, Hazaras and other Shi'a minorities lost many of their freedoms and were subject to persecution, massacres, and systematic and widespread killings which could amount to genocide and crimes against humanity.

Recognition of the Hazaras' religion as an official branch of Islam, which was a hard-won inclusion in the 2004 Constitution, may be lost by the Taliban's annihilation of the Constitution. According to the Taliban, Hazaras' possession of property and even marriages are against *Shari'a*, and could be confiscated without any due process. The historical confiscation of Hazara lands, massacres, and mass displacement are rooted in the *Shari'a* interpretations of the Taliban and Taliban-like groups. Looking back at Taliban attacks on the Hazara community, they are justified on this common belief that Hazaras are blasphemers because they allegedly curse the Islamic figures or saints (*Sahaba*), that they are apostates because they allegedly do not believe in *Qur'an* or Mecca and instead go to Karbala, and a long list of other false accusations.

### ***ISIS, DAESH, and Taliban***

In the past 6 years since the announcement of Islamic State Khorasan Province (ISKP) presence in Afghanistan, most of the responsibility for attacks against religious places and minorities have been claimed by ISKP or DAESH. These claims have made it easier for the Taliban to avert a public relation crisis; however, this does not mean that the Taliban had or has changed.

ISIS and the Taliban may benefit from an unholy coalition of demonstrating harsh and violent opposition towards people with different sets of belief, thoughts, and religions. By pursuing their uncompromising position on Islamic and *Shari'a* believe in defiance of international law, both the Taliban and ISKP may continue to attack those pursuing and exercising freedom of thought and freedom of religion, as well as activists who promote human rights.

There are equally dangerous predictions for women, sexual and gender minorities, and other socially marginalised and minority groups. Women's rights may be denied, and the laws and programs that were developed to support their protection may no longer apply. Further, anyone advocating for women's rights may be punished and put in restraints: the recent attacks on the women's rights protestors in Kabul and Herat attest to this. These realities, and the public executions of four people in Herat and several others in Panjshir, herald the dark beginning of an era in which the Taliban are eager to retain their policy of killing, intimidation, and fear.

The international community is obliged, and have a legal, moral, and ethical responsibility to take action against the Taliban so that a dark age is not repeated. Without a credible and acceptable system of democratically elected government, and by preventing the active and meaningful participation of all Afghans, including women, youth, and minorities, the Taliban will transform Afghanistan into a State of fear in which freedom of thought, freedom of speech, freedom of religion, and freedom of association would be denied. We, as Afghan citizen, also have a responsibility to stand against the tyranny. To advance the freedoms of all in Afghanistan, we must support the human rights defenders.

## RENEWED PERSECUTION OF HAZARAS

By *Muzafar Ali*<sup>50</sup>

On 29 February 2020, the ‘Agreement for Bringing Peace to Afghanistan’ (commonly known as the Doha Agreement) was signed between the United States and the ‘Islamic Emirate of Afghanistan’, more commonly known as the Taliban (United States Department of State, 2020a). In my view, this deeply flawed agreement will not bring peace to Afghanistan. The focus of the agreement was to pave the way for a complete withdrawal of US forces from Afghanistan, in return for the Taliban’s assurance that they will not again collaborate with international terrorist organisations such as Al-Qaeda. The Afghan government, however, was not a party to this agreement.

The dramatic events in Afghanistan stunned the world, as the Taliban took back complete control of the country with little or no resistance. Provinces fell like dominoes from the beginning of August 2021. Sporadic resistance by former *jibadi* commanders was too little, too late. Given the collapse of the Afghan government, the return of Taliban rule was not a matter of ‘if’, but ‘when’. By 15 August 2021, the Taliban had captured swathes of the country including major cities. That same day, President Ashraf Ghani left Afghanistan. His departure signified the collapse of the Afghan government—and was an open invitation to the Taliban to take charge of the *Arg* (the presidential palace). People in Kabul were left in shock and disbelief, devastated to see Taliban soldiers roam their street, again.

The majority of Taliban fighters are ethnic Pashtuns from Afghanistan and Pakistan. They follow *Pashtunwali*, the tribal code of Pashtuns, along with strict interpretations of Islam. The founder of the Haqqani Network (a branch of the Taliban), Anas Haqqani, claimed in a video message that ‘the unique formation and invincibility of the Islamic Emirates of Afghanistan are due to *Islamic* and *Afghani* values’. Important to note here is that in the eyes of the Taliban, the term ‘Afghan’ means ‘Pashtun’, not citizens of Afghanistan. With conservative religious ideologies and ethnocentric beliefs, the Taliban pose serious threats to minorities groups, including Hazaras.

Since its inception in the mid-1990s, the Taliban have been accused of serious human rights violations, particularly against Hazaras. The majority of Hazaras follow Shi’a Islam, constituting a religious minority in predominantly Sunni Afghanistan. Many live close to Pashtun areas in the southern parts of the country. The Taliban’s pre-9/11 massacres of Hazaras are well documented by the Afghanistan Independent Human Rights Commission: Hazaras were targeted and killed in Mazar-e-Sharif, Dara Suf, Pul-e-Khumri, Bamyan, and Yakawlang between 1998–2001 (Cooper, 1998; Human Rights Watch, 2001). During this period, the Taliban also put entire Hazara populated areas in Afghanistan under siege, and imposed bans of food supplies to starve the whole population (Filkins, 1998).

Considering the past crimes committed by the Taliban, the Hazara community is extremely concerned about the possibility of further massacres and persecution. Despite international pressure and media scrutiny, the Taliban have already committed several targeted

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<sup>50</sup> Muzafar Ali is a Hazara photographer and human rights activist from Afghanistan (see ‘About the Photographer’ section for Muzafar’s bio.)

killings of the Hazaras in the Ghazni and Daikundi provinces (Amnesty International, 2021b). Meanwhile, Mullah Yaqoob Omari, the son of former Taliban leader Mullah Omar, and now the Taliban interim Defence Minister, has acknowledged extrajudicial and revenge killings and the mass misconduct of his fighters across Afghanistan.

I am concerned that Daikundi may be targeted by the Taliban. Daikundi is an isolated, and arguably the most underdeveloped province, in Afghanistan. The population of this province is predominantly Hazaras. Daikundi borders Oruzgan, Helmand, and Ghazni provinces, where Pashtuns live, the latter a traditional stronghold of the Taliban. In 2007, when I was working as political analyst for the United Nations, a Daikundi shopkeeper told me about the Taliban's conduct in the region:

The Taliban let us trade in major markets, but they keep warning us of the consequences of supporting the Afghan government and the US forces. They tell us that they are busy fighting Americans and once they are defeated, they will teach us a lesson.

The Hazaras of Daikundi are now experiencing the tightening grip of Taliban rule in many aspects. Land confiscation and forced displacement is the biggest concern of local people. The Taliban have ordered hundreds of Hazara families to leave their homes and land in Pato, Gezab, Kijran, and Khedir districts. Some of the homes in Sartagao village have been bombed to create fear among the villagers. Farmers have been ordered to pay *Oshr*, the Islamic tax, which amounts to one tenth of their crops—too expensive for people who mostly rely on rain-fed crops in the mountainous region.

Despite a 'general amnesty' announced by the Taliban leadership, locals in Daikundi have reported arrests of former Afghan National Defence Force personnel. On 29 August, the Taliban killed 2 civilians and 12 former National Directorate of Security personnel in Khedir district, after they had surrendered their weapons. The locals complained that the Taliban governor openly threatened Hazaras with genocide if they shot at Taliban soldiers. Similar reports emerged from Bamyan, and other Hazara districts in Ghazni, Ghor, Herat, Baghlan, and Maidan provinces.

Another concerning issue is the lack of media presence in areas populated by the Hazaras. 'Radio Nasim' is the only radio station broadcasting news in Daikundi. The only local journalist is under scrutiny and pressure from the Taliban. He was threatened when he broadcasted the news of women who complained against the Taliban's restrictions to remain at home. Traditionally, Hazara women wear a scarf over their heads and do not cover their faces. They used to receive education and earned a living. Many Hazara women work in the farming sector as shepherds and bring firewood from the mountains. The Taliban's restrictions will keep women out of the workforce.

Systematic efforts are under way by the Taliban to restrict the Hazara people's mobility and access to resources. I have received reports that the Taliban authorities are forcibly taking pick-up trucks, vehicles, and motor bikes in Hazara areas. Equipment, furniture, and assets have also been plundered as *Ghanimat*, spoils of holy war. One Hazara expressed his frustration to me:

Each day Pashtuns come to our village in their cars and motor bikes. They are armed and are abusive to us. They take whatever they like. They take our cars, motor bikes, and other belongings. We do not know whether they are Taliban or thieves. But there is no difference between the two, because they are all the same.

Most Hazaras do not feel safe. Many have gone to take refuge in remote Aylaq, in Bamyan. Many want to leave the country, but they cannot, due to borders closures by neighbouring countries. A former Daikundi representative told me, 'Afghanistan has become a large prison—and we are the prisoners, at the mercy of Taliban guards'.





*Hazara children in Daikundi, Afghanistan. May 2008.*





*Upper: Hazara worshippers performing ablution before prayer in Quetta, Pakistan. November 2012.*

*Lower: Mass prayer during the annual Ashura procession in Quetta, Pakistan. November 2012.*





*Upper: Bodies of the victims of the twin suicide attacks in Quetta, Pakistan on 10 January 2013.*

*Lower: Funeral procession for the victims of the Quetta attacks. January 2013.*

# PAKISTAN: TAKING BLASPHEMY LAWS INTO THEIR OWN HANDS

On 29 July 2020, Tahir Ahmad Naseem, a Pakistani-American who had been charged with blasphemy, was shot dead in the courtroom during the hearing of his case. The alleged killer, who was 17 years of age, had managed to smuggle a pistol into the highly guarded Peshawar Judicial Complex. Footage that circulated on social media appeared to show the alleged killer sitting barefoot on a bench under police guard, claiming that he had been ordered in a dream to kill Naseem (Baloch and Graham-Harrison, 2020).

Within days of the incident, thousands of Pakistani civilians rallied in support of the alleged killer (Gannon, 2020). At a rally in Peshawar, demonstrators carried signs praising the killer, calling for his immediate release on grounds that he had killed Naseem because the Government was too slow in prosecuting blasphemy cases. Mufti Shahabuddin Popalzai, who led the rally, stated: 'We are not in favour of taking the law into our own hands, but Faisal did what the government should have done two years ago.' Video clips and photos circulated on social media showing lawyers hugging and kissing the killer as he attended court for his hearing while encircled by a dozen policemen; a couple of days later, selfies of smiling police guards with the alleged killer in a police van also emerged (Gillani, 2020). On 19 August 2020, a lawyer was arrested for allegedly arming the accused with the murder weapon (DAWN, 2020).

This incident is not an isolated case. In Pakistan, there is widespread violence at the community level, with people accused of blasphemy being assassinated or lynched by mobs. Additionally, as can be seen in the immediate responses of protestors and law enforcement agencies, these heinous crimes committed on the basis of alleged religious offending are often condoned and, in some cases, celebrated by the Pakistani authorities.

This section unpacks the violence committed by Pakistani civilians against religious offenders and minorities. While killings of this nature have also taken place in Afghanistan<sup>51</sup> and Iran,<sup>52</sup> the volume of such violence observed in Pakistan is unparalleled, hence our decision to scrutinise this further. This section begins by examining the number of killings committed by civilians, before analysing the country's laws on offences against religion and how they have been implemented.

## MOB VIOLENCE, ASSASSINATIONS, AND ACTS OF EXTREMISM

Between 1987 and 2020, at least 78 people were killed in instances of mob violence following accusations of blasphemy (Centre for Social Justice, 2021:1). Among the 78 killed were 42 Sunni and Shi'a Muslims, 23 Christians, 9 Ahmadis, and 2 whose religious identities remain unknown (Centre for Social Justice 2021:1). As these numbers show, religious

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<sup>51</sup> See the previous section on 'Afghanistan: Killings by Extremist Groups and an Uncertain Future under Taliban Rule'.

<sup>52</sup> See section on 'Iran'.



minorities are particularly vulnerable to such violence.<sup>53</sup> For example, in November 2014, Christians Shahzad Masih and his pregnant wife Shama Masih were beaten and burned to death in a kiln after being accused of desecrating a *Qur'an* (Amnesty International, 2016a:46–47). In July 2014, a blasphemy allegation against a single Ahmadi in Gujranwala ensued in a mob attack against the entire Ahmadi community, killing eight-month-old Kainat Tabbassum, her seven-year-old sister Hira Tabbassum, and their 54-year-old grandmother Bushra Bibi (Amnesty International, 2016a:44). As Pakistan continues to record killings of this nature, it has been observed that minors are increasingly being recruited to carry out acts of these killings, with the knowledge that juvenile offenders cannot be sentenced to death for murder (I-26).

The number of deaths reported by Centre for Social Justice (2021) is a conservative estimate of the number of killings motivated by alleged religious offending, and do not include killings on the basis of religious identity (note, however, that these two forms of killing overlap significantly, as explained earlier). The Ahmadi community—followers of Islam but whose beliefs differ somewhat from those of other Muslims—has faced homicidal violence at the community level in Pakistan and beyond (Shaheed and Khan, 2021). As the following section illustrates, Pakistan's Penal Code explicitly discriminates against Ahmadis by prohibiting them from 'imitating' Muslims, declaring or propagating their faith publicly, building mosques or referring to them as such, and making the call to Muslim prayer (Human Rights Watch, 2010a). Moreover, the fundamental Ahmadi belief in the prophethood of Mirza Ghulam Ahmad is considered blasphemous under Section 295C of the Penal Code (Ibid). In this sense, the State has cultivated an environment in which the persecution of the Ahmadi based on their identity is 'wholly legalised, even encouraged' (Ibid).

Data provided to us by a confidential source indicate that between 2010 and February 2021, 169 Ahmadis were killed due to their faith. More than half of these victims were killed on 28 May 2010, when Islamist extremists attacked two Ahmadi mosques in Lahore, killing 94 people. Three days later, unidentified gunmen attacked the Intensive Care Unit of Lahore's Jinnah Hospital, where victims were being treated, killing at least 12 people (Human Rights Watch, 2010a). Although there have been no reports of mass killings since the 2010 attack, Ahmadis continue to be targeted: since 2017, at least 13 Ahmadis have been killed in religiously motivated attacks (Human Rights Watch, 2021c). We have documented six killings since August 2020:

- In September 2021, Pakistan army veteran and British national Maqsood Ahmad was shot and killed, reportedly for professing his Ahmadi faith (Voice Pakistan, 2021).
- In February 2021, 65-year-old homeopathic doctor and Ahmadi man Abdul Qadir was shot and killed. Police apprehended the teenaged suspect, and confirmed that the attack had been religiously motivated (Al Jazeera, 2021a).
- In November 2020, 82-year-old Ahmadi man Mahmood Khan was shot and killed by unknown gunmen (Al Jazeera, 2020a).

<sup>53</sup> In addition to religious minorities, students and educators have been targeted: between 1990 and 2020, 6 educators and 1 student were killed following allegations of blasphemy (Unpublished: information received from the Centre for Social Justice on 18 September 2021). Persons with disabilities have also been killed for their alleged religious offending. In 2012, a mob of hundreds of civilians attacked the police station where Ghulam Abbas, accused of burning a copy of the *Qur'an*, was being held. Abbas, believed to have been severely mentally ill, was dragged to the location where he allegedly desecrated the *Qur'an* and beaten to death, after which his body was burned. Only 32 of the 178 people accused of participating in the lynching are known to have been arrested (Amnesty International, 2016a:28; Christian Solidarity Worldwide, 2012).

- In November 2020, an Ahmadi doctor was shot and killed and his father critically wounded after a teenager opened fire on their house (Voice Pakistan, 2021).
- In October 2020, Professor and Ahmadi man Naeemuddin Khattak was shot and killed by a colleague following an argument about religion (Al Jazeera, 2020c)
- In August 2020, Ahmadi businessman Meraj Ahmed was shot and killed by unidentified assailants (Voice Pakistan, 2021).

While extralegal violence has been most frequently perpetrated by civilian actors, accused religious offenders and minorities have also been extrajudicially killed by various law enforcement personnel. For example, in 2014, Tufail Naqvi was axed to death by a police officer who suspected him of committing blasphemy. In 2012, police are alleged to have brutally tortured Ahmadi teacher Master Abdul Qudoos Ahmad during an interrogation, causing severe internal injuries from which he died in hospital. In 2011, Christian man Qamar David died in custody, with his lawyer insisting that the death was suspicious, despite officials claiming David had suffered a heart attack (Centre for Social Justice, 2021; unpublished).

Religious minorities in Pakistan have also been persecuted by extremist groups. In January 2021, gunmen killed a group of Hazaras near Quetta, the provincial capital of Balochistan, home to approximately 600,000 Hazaras largely confined to two fortified enclaves. While ISIL claimed responsibility for this particular attack, Lashkar-e-Jhangvi (LeJ), another hardline Sunni group, has historically subjected the Hazara community to sectarian violence (Al Jazeera, 2021c). For example, in 2011, the group claimed responsibility for the killing of 29 Hazaras: gunmen stopped a bus carrying Hazaras to holy sites in Iran and, after freeing the Sunni passengers, executed those of Hazara ethnicity (Adams et al., 2014:1). In 2012 alone, Human Rights Watch recorded at least 450 killings of Shi'as; in 2013, another 400 such killings were carried out (Adams et al., 2014:1). In 2013, bomb attacks carried out by LeJ marked the bloodiest attacks since Pakistan's independence in 1947: at least 180 Hazaras were killed. Moreover, this violence is both merciless and indiscriminate: in 2014, six-year-old Sahar Batool was kidnapped, tortured and murdered, her body found in a garbage dumpster (Thacker, 2014). Saroop Ijaz, consultant at Human Rights Watch in Pakistan, has condemned the actions of the State in responding to such violence: 'Pakistan has failed abysmally in securing any convictions of those arrested for sectarian killings' (Thacker, 2014).

As extralegal violence motivated by alleged religious offending and religious identity continues to run rife across the country, the State's response to these homicides has been criticised as haphazard and manifestly inadequate. In May 2021, police arrested 36 men and charged them under anti-terrorism laws for breaking into a police station in an attempt to lynch two brothers held in custody on blasphemy charges (Shahzad, 2021). While this case may give the impression that the State is responding to civilian violence through the criminal justice process, they are few and far between. One interviewee told us that 'there have been instances where the police have acted very bravely and rescued the accused, but most of the time, they seem to share the feelings of the mob' (I-3). Indeed, observers have gone so far as to attribute responsibility for mob violence to the State:

[There is a] lack of a consistent, robust and timely response by the authorities to situations of developing mob violence, which forces people from their homes and can lead to death and destruction of property. The lack of such a response, and the failure to prosecute rigorously and promptly those responsible, leads to a climate of

impunity which can provide fertile ground for further such attacks. (Amnesty International, 2016a:51)

The fact that community level killings have often taken place following a formal accusation of religious offending signals the erosion of trust that the country's criminal justice system will handle these allegations properly.<sup>54</sup> In March 2021, Taqi Shah, a Shi'a religious scholar facing blasphemy charges, was axed to death (Gabol, 2021). Indeed, mob violence has often occurred inside or outside of police stations (Shahzad, 2021), as well as during and after court trials (Ashraf, 2018:52). As discussed at the beginning of this section, the courtroom shooting of Tahir Ahmed Nazeem is a clear example of how civilians disregard and circumvent criminal justice processes and administer vigilante 'justice' instead:

There is gory symbolism in Pakistan's latest blasphemy killing being committed inside a courtroom. It explains why, unlike... [other] states that establish death as the penalty for sacrilege against Islam, vigilante justice is the norm in Pakistan. The country's encouragement of mob violence is rooted in its paradoxical aspiration to be both a democratic republic and an Islamic state. (Shahid, 2020:1)

Not only is the State failing to bring vigilantes to justice—it may also be seen as actively encouraging such violence. In May 2017, the Pakistan Telecommunication Authority sent out a text to millions of users, asking them to report persons having uploaded or shared blasphemous content (Human Rights Watch, 2018c).

Given the violent reactions from civilians against alleged religious offenders, it is not surprising that people who speak up against such violence are also targeted and killed. In 2014, gunmen murdered lawyer Rashid Rehman in his office for defending an academic charged with blasphemy (Amnesty International, 2016a:35; Fiss and Kestenbaum, 2020:20). Such cases give credence to lawyers' very real fears of violence, justifying their reluctance to take up blasphemy cases (I-10). In 2011, Minorities Minister Shahbaz Bhatti and Governor of Punjab Salman Taseer were murdered for calling for reform of blasphemy laws and speaking in defence of Aasia Bibi, who was convicted and sentenced to death for blasphemy (Fiss and Kestenbaum, 2020:28).

## SECTION 295C: THE DEATH PENALTY IN LAW BUT NOT IN PRACTICE

Section 295C of Pakistan's Penal Code provides the death penalty for **blasphemy** where it involves the making of derogatory remarks against the Prophet. This is an offence of strict liability, meaning that the prosecution need not establish any specific intent of the accused (Amnesty International, 2016a:17). Where the prosecution convinced the court of the defendant's guilt under Section 295C, the death penalty is mandatory (Badry, 2019:96, 99; Human Rights Watch, 2020b; United Nations Human Rights Council, 2017a:[43]). This has been the case since 1991, when a decision of the Federal Shariat Court, and an unsuccessful appeal to the Supreme Court, removed life imprisonment as an alternative sentence (Ahmad, 2018:18; Badry, 2019:99).

<sup>54</sup> While we do not have data on the profile of individuals engaged in mob violence, one interviewee noted that, very often, mobs are comprised of 'very disempowered, uneducated, unemployed youth, looking for a sense of purpose' (I-12).

Although not explicitly criminalised in the Penal Code, **apostasy** is widely considered to carry the death penalty in accordance with Islamic precepts, though the source of this offence remains unclear. Some commentators have indicated that ‘renouncing Islam is widely considered by clerics to be a form of blasphemy’, and therefore a capital offence (United States Department of State, 2020k:5). Others contend the reverse—that apostasy is a *hadd* offence carrying the death penalty in its own right, and that blasphemy is punishable by death as a subset of apostasy (Ahmad, 2018:21–22). It has also been suggested that in Pakistan, apostasy and blasphemy have been ‘merged together’, with no legal distinction existing therebetween (Ashraf, 2018:61). We have been unable to identify a single criminal prosecution for apostasy in Pakistan. Regardless, while the source of the law is unclear, the potential for apostasy to be punished by death in Pakistan appears to be relatively uncontroversial.

**Proselytising** is generally lawful: non-Muslims may disseminate their beliefs provided that they do not preach against Islam, and acknowledge that they themselves are not Muslim (United States Department of State, 2018). However, Ahmadis, discussed above, are prohibited from propagating or proselytising their faith, and may be imprisoned for up to three years should they be convicted of such offences (Penal Code, Section 298C).

### **Section 295C**

Section 295C has been subject to widespread controversy, with critics questioning the reconciliation of the Penal Code with Islamic law, arguing that the scope and operation of the Code extend well beyond the parameters set by Islamic jurisprudence. Comparing it to classical Islamic jurisprudence, Badry (2019:99) describes Section 295C as an ‘unusually draconian regulation’.

Hanafi jurisprudence—the prevailing *fiqh* in Pakistan—provides that blasphemy is punishable by death as *hadd* only when committed by a Muslim.<sup>55</sup> The Penal Code, however, provides that it applies to ‘every person’ for ‘every act or omission contrary to [its] provisions’. Moreover, this is not merely a semantic oversight: the State has indeed sentenced non-Muslims to death. In 2010, Christian woman Aasia Bibi was sentenced to death for blasphemy. Her sentence was confirmed by the Lahore High Court in 2015, before being overturned by the Supreme Court in 2018 (Ahmed, 2021:274). The Pakistani courts have failed to explain this inconsistency. The 1991 decision of the Federal Shariat Court justified the removal of life imprisonment from Section 295C on the basis that *apostasy* is a *hudud* offence, which could not be changed or commuted (*Ismail Qureshi v The Government of Pakistan*, PLD 1991 FSC 10, [17], [21], [27]–[32]). It follows, then, that the Court considered blasphemy a subset of apostasy. However, the Court did not in that case, nor in any case since, satisfactorily address how a non-Muslim could be punished for blasphemy, if blasphemy was in fact a form of apostasy (Ahmad, 2018:19).

<sup>55</sup> When committed by a non-Muslim, Hanafi jurisprudence deems blasphemy a *siyasah* offence (offence against the government/state/public), rather than a *hudud* offence (offence for which punishment is mandated by God) (Ahmad, 2018:28). *Siyasah* offences concern the public at large; thus, blasphemous statements made in private will not attract *siyasah* punishment. Moreover, *siyasah* offences do not have prescribed punishments; rather, punishment may be determined by the state and applied with judicial discretion. Moreover, because punishments are not mandatory, the government may pardon or commute any sentence issued (as opposed to the mandatory death penalty imposed under section 295C of the Penal Code). Concerning, however, while *hudud* crimes have strict evidentiary thresholds, *siyasah* offences may be established by any evidence the judge deems convincing, or which domestic law permits (Ahmad, 2018:36–37, 40).



Hanafi jurisprudence also demands that the court consider *mens rea*, and that repentance by the accused suspends the death penalty (Ahmad 2018:38). However, in Pakistan, the mandatory death penalty applies to any offender ‘irrespective of his intent ... and willingness to repent’ (Badry, 2019:99). In its 1991 decision, the Federal Shariat Court justified its derogation from Islamic law on the basis that blasphemy cannot be pardoned by anyone other than the Prophet Himself (*Ismail Qureshi v The Government of Pakistan*, PLD 1991 FSC 10, [26]).

Despite having had countless opportunities, the Supreme Court—Pakistan’s highest court—has repeatedly failed to address the questionable Islamic foundations of Section 295C. For instance, in the aforementioned case of Asia Bibi, the Court acquitted the appellant on *evidentiary* grounds (Ahmed, 2021:274). In fact, the Court went further to justify the law as a necessity to appease ‘the emotional constitution of Pakistani Muslims and the need to protect their religious sensitivities in order to prevent conflict’ (Ahmed, 2021:282). Ahmed (2021:283) argues that:

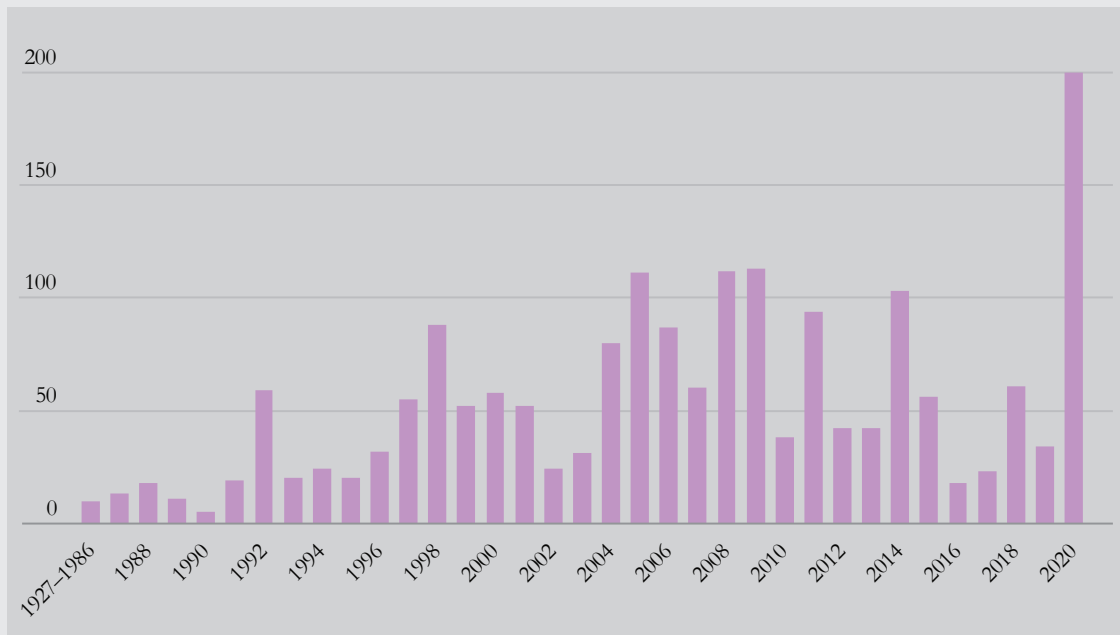
It is notable that in a case where the victim of gross injustice is a woman from a minority religious community, the judgment speaks at length on the importance of defending the sensitivities of the majority. Indeed, rather than a detailed discussion on the importance of the protection of religious minorities, and the need to uphold their constitutionally mandated personal and religious freedoms, the unfolding narrative of the verdict avoids serious engagement with the real and hostile threats and obstacles these communities face in order to simply practice their faiths, and to exist in the country unmolested.

This judgment has been criticised for ‘advanc[ing] sympathy for those advocating against the reform or removal of the blasphemy laws on the basis of defending Islam’ and ‘emphasiz[ing] the need to strictly police the theological boundaries of Islam on the basis of protecting the sensibilities and sensitivities of Muslims in Pakistan and abroad’ (Ahmed, 2021:283).

### ***Death sentences and executions***

In recent history, Pakistan has taken an increasingly strict stance against blasphemy (Figure 3). Between 1927 and 1986—before blasphemy became a capital offence—less than 10 cases were filed under religion-related offences (Ashraf, 2018:51). Between 1987 and 2020, at least 1,855 people have been accused of blasphemy (Centre for Social Justice, 2021:1). In 2020, 200 people were formally accused of blasphemy, marking the highest number of formal accusations in a single year to date. The courts have also been actively sentencing people to death under these laws. During 2014–2018, the number of persons on death row for blasphemy fluctuated between 17 and 19 (Human Rights Watch, 2015c, 2016b, 2017, 2018c, 2019b). In 2019, the number of persons on death row for blasphemy increased to at least 29, while a further 55 were imprisoned on blasphemy charges (United States Department of State, 2020k:1). In 2020, this number rose again: at least 40 people were on death row for blasphemy (Human Rights Watch, 2020b).

**Figure 3: Number of blasphemy accusations in Pakistan: 1927-2020**



Sources: Ashraf (2018) for figures between 1927 and 1986; Centre for Social Justice (2021) for figures between 1987 and 2020.

The sheer volume of prosecutions pursued, convictions recorded, and death sentences imposed, reflects the State's strict anti-blasphemy stance. It may come as somewhat of a surprise, then, that despite prescribing the death penalty for blasphemy in law, and despite the courts sentencing blasphemers to death, Pakistan has *never* carried out a judicial execution on this basis (United States Department of State, 2020k:1). Instead, persons accused of such crimes have been killed extrajudicially, and even more frequently by private actors, as discussed above. In fact, this lack of judicial executions is widely cited as the *cause* of such killings: by taking such a strict stance against blasphemy but failing to carry out the death sentences imposed, the State 'further encourages mobs and vigilantes to take matters in their own hands' (Shahid, 2019:1).

Pakistan has claimed that its blasphemy laws are 'non-discriminatory in nature', and 'applied to Muslims and non-Muslims alike' (United Nations Human Rights Council, 2017c:[124]). However, a review of criminal justice statistics suggests otherwise. In 2020, Sunni Muslims (the majority religious group in Pakistan) made up 40 per cent of the accusations for blasphemy, followed by 33 per cent for Ahmadis, 15 per cent for Christians, 8 per cent for Shi'a Muslims, 2 per cent for Hindus, and 2 per cent unknown (Centre for Social Justice, 2021:4). Such high representation of religious minorities is of great concern, given that they comprise only 5 per cent of the total population (Ashraf, 2018:68). Ahmadi Muslims are particularly overrepresented: despite making up less than 0.2 per cent of Pakistan's total population, Ahmadis were the subjects of one third of all formal blasphemy accusations in 2020.

Religious minorities are not the only communities disproportionately impacted by Pakistan's blasphemy laws. Men are significantly more likely to be accused of blasphemy, comprising 86 per cent of all allegations (Centre for Social Justice, 2021:5).<sup>56</sup> Moreover, 76 per

<sup>56</sup> The data cover the period between 1987 and 2020.

cent of all accusations are levelled in the Punjab region (Ibid).<sup>57</sup> Children and young people are not immune from persecution: in August 2021, an eight-year-old Hindu boy became the youngest person ever charged with blasphemy in Pakistan (Janjua, 2021a).

Because blasphemy is a strict liability offence, persons with mental disabilities are ‘especially vulnerable to violations of this law or potential abuses of it by third parties’ (Amnesty International, 2016a:23). For instance, Mohammad Ashgar, who had paranoid schizophrenia, was sentenced to death in 2014 for blasphemy ‘arising from bizarre letters he had written’. In 2016, he was shot (but not killed) in his cell by a prison guard, and remained in prison until his conviction was quashed on evidentiary grounds in 2018 (Freckelton, 2020:169):

Such cases have the real potential to result in miscarriages of justice and even in executions or reprisals which have no proper justification and are born of ignorance, prejudice and fear . . . Clearly enough, a person with florid symptomatology of mental illness, such as delusions or command hallucinations, may well have little appreciation of the nature and quality of their conduct of that what they are doing is wrong. In addition, their symptoms may preclude their meaningful participation in the trial process—they may be unfit or incompetent to stand trial. However, this reality may not be appreciated easily by those who are distressed or appalled by the conduct itself and who may misconstrue the intentions of the person. (Freckelton, 2020:176)

The extent to which persons with mental disabilities are vulnerable to abuse by blasphemy laws is illustrated by the following case. Shortly after having a dispute with his landlord, Ahmed Khan (pseudonym) was charged with blasphemy following an allegation being made by his landlord. Prior to his arrest, Ahmed had been diagnosed with paranoid schizophrenia. Though this evidence was brought before the court, the judge refused to hear the mental health argument unless a medical board was convened and verified Ahmed’s condition. After being intimidated by protestors, the initial board of doctors concluded that Ahmed suffered from depression only. A second attempt to assess Ahmed was made, but various criminal justice authorities refused on the false ground that only government doctors were permitted access to the prison. Accordingly, the trial court disregarded evidence of Ahmed’s mental health and, declaring him mentally competent to stand trial, convicted and sentenced him to death (Amnesty International, 2016a:23–24).

Pakistan has claimed to have ‘a number of safeguards in place to prevent [blasphemy laws being] abuse[d]’ (United Nations Human Rights Council, 2017c:[124]). For example, blasphemy accusations are required by law to be investigated by a senior police officer before formal charges are laid. However, such safeguards are flagrantly disregarded: junior police are often permitted to investigate allegations, and such procedural breaches are routinely accepted by trial courts (Amnesty International, 2016a:30). Indeed, authorities have in some cases reportedly lodged blasphemy allegations without any investigation whatsoever, prioritising the pacification of frenzied mobs demanding prosecution of an alleged blasphemer over the rule

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<sup>57</sup> Followed by Sindh (19 per cent), Khyber Pakhtunkhwa (3 per cent), Federal Capital (1 per cent), Azad Jammu and Kashmir (1 per cent), Balochistan (1 per cent), and Gilgit Baltistan (0.3 per cent). The data cover the period between 1987 and 2020. The proportions do not add up to a 100 due to the rounding up of figures.

of law (Centre for Social Justice (Pakistan), 2019:27). Accordingly, it appears that any checks and balances have overwhelmingly failed: the majority of blasphemy cases brought before the courts are substantiated upon false allegations, motivated by religious affiliation of the alleged blasphemer, professional rivalry, to favour business transactions, or to settle personal scores (Badry, 2019:100).

In recent years, technological advancements and the advent of social media have created further space for blasphemy accusations to be made (Centre for Social Justice (Pakistan), 2019:27). Although the majority of convictions based on false accusations have been righted on appeal, those responsible for making the false accusations have generally gone unpunished (Badry, 2019:100). Such impunity may be seen as the tacit approval of such actions by the State. Of further concern is the fact that, because blasphemy is considered by the public as a reprehensible act, such words are never repeated by an accuser; in effect, this means that a person accused of blasphemy may be sentenced to death by a court that never hears the precise substance of the alleged blasphemy (Amnesty International, 2016a:17–18).

Pakistan has acknowledged that ‘no sentence of a lower court in blasphemy laws ... has been upheld by the higher courts and no one has been punished under these laws’ (United Nations Human Rights Council, 2017b:[75]). To this end, one may argue that Pakistan’s judicial hierarchy ensures that the secular Supreme Court will ‘serve as a remedial check’ on the enforcement by Islamic courts of blasphemy laws (Fiss and Kestenbaum, 2020:41). On the contrary, the fact that the overwhelming majority of blasphemy convictions have been overturned highlights a major issue in Pakistan’s criminal justice system. Moreover, the appeals process is complicated and protracted, often taking years, during which the wrongfully convicted individual may be assaulted or tortured in custody (Badry, 2019:100). For instance, in June 2021, a Christian couple sentenced to death for sending blasphemous texts in 2014 were acquitted by the Lahore High Court after seven years on death row (Amnesty 2021). In September 2019, the Pakistan Supreme Court acquitted a man who had spent 17 years awaiting execution on blasphemy charges (Freckelton, 2020:170).

Interviewees suggested that trial judges are often cornered into convicting individuals charged with blasphemy, despite a lack of evidence as to their guilt, due to the lack of security provided to judicial officers (I-10; I-29):

There can be no fair trials. Judges are either biased or are in fear of being killed or assaulted, even in the courtroom. They are not provided security ... They are very, very reluctant [to acquit an individual charged with blasphemy] because in case they decide to go for a fair procedure, they might be seen as siding with the accused. (I-10)

Reflecting on these myriad factors, one interviewee concluded that ‘the system is heavily loaded against the accused, right from the beginning. There can be absolutely no fair trial.’ (I-10).

## UNPACKING MOB VIOLENCE

### *History: from criminalisation to the prescription of the death penalty for religious offences*

Although it was the British Government that originally introduced offences against religion to the country, a review of Pakistan's blasphemy laws reveals that it took active steps to expand the scope of religious offences and increase the severity of punishment by prescribing the death penalty and later making it mandatory.

In 1860, the British Government introduced the Indian Penal Code (Act XLV of 1860) in India. To this day, this remains the substantive underpinning of criminal law in Pakistan, in the form of the Pakistan Penal Code (Ahmad, 2018:12). The original Penal Code contained four 'Offences Relating to Religion': 'defiling a place of worship' (Section 295 of the Penal Code), 'disturbing religious assembly' (Section 296), 'trespassing on burial places' (Section 297), and 'uttering words etc. with deliberate intent to wound the religious feelings of a person' (Section 298) (Ahmad, 2018:13; Amnesty International, 2016a:16). A fifth category—'offences against public tranquillity' (Chapter VIII)—was added in 1898 (Ahmad, 2018:13). These offences are not exclusive to any one religion; rather, they apply broadly to all faiths (Amnesty International, 2016a:16). An analysis of these provisions demonstrates that 'the British Government looked at this issue from the perspective of "public order" and "harmony"', rather than religious conformity. (Ahmad, 2018:13)

In 1927, the British Government prescribed the punishment of two years' imprisonment for one who 'insults the religion or the religious beliefs' of a class of people 'with deliberate and malicious intention of outraging the religious feelings' of that class (Section 295A of the Penal Code) (Ahmad, 2018:15; Amnesty International, 2016a:16).<sup>58</sup> Between 1977 and 1988, Pakistan was run by the military government of General—and later President—Muhammad Zia-ul-Haq, who imposed martial law. This saw the introduction of various blasphemy laws, and various Islamist legislative reforms (Ahmad, 2018:15; Amnesty International, 2016:17). In 1980, Pakistan criminalised the 'use of derogatory remarks against holy personages' (Section 298A).<sup>59</sup> In 1982, it criminalised defiling, damaging, or desecrating a copy of the *Qur'an* or any extract, or using a *Qur'an* in a derogatory manner (Section 295B).<sup>60</sup> In 1984, Pakistan further criminalised the 'misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places' (Section 298B) and a non-Muslim 'calling himself a Muslim or preaching or propagating his faith' (Section 298C). These offences were inserted to persecute the Ahmadis, who, despite a declaration by the Pakistani Parliament in 1974 that Ahmadis were not Muslims, had continued to present themselves as Muslims and use Muslim terminology (Ahmad, 2018:16). Mohammed Zia ul-Haq used these blasphemy laws 'to fuse religion and nationalism, gain support of conservative Islamist forces, silence moderates and liberals, and weaken opponents' (Saiya, 2017:1090).

<sup>58</sup> This was a response to an incident whereby a publisher of blasphemous pamphlet avoided criminal liability due to loopholes in the existing provisions.

<sup>59</sup> Unlike Section 298A, this section does not have a *mens rea* element (i.e., is a strict liability offence) (Ahmad 2018:16).

<sup>60</sup> This offence has a requisite *mens rea* element and is punishable by life imprisonment (Ahmad 2018:15-6).



In 1986, Section 295C was inserted to the Penal Code, prescribing the death penalty for blasphemy. This was precipitated by a 1984 petition, filed by Muhammad Ismail Qureshi, contending that Section 295A was contrary to Islamic law, insofar as it made blasphemy punishable by imprisonment, while Islamic law prescribe the death penalty. Before the Court could pronounce its judgment, Parliament changed the law, inserting Section 295C. At this stage, however, the law gave the courts the choice between imposing either the death penalty or life imprisonment (Ahmad, 2018:17). This changed in 1991, when Muhammad Ismail Qureshi again petitioned to the Court, claiming that Section 295C was not compliant with Islamic law. The Court agreed, making the death penalty mandatory. Life imprisonment is no longer an available punishment, and the section applies to blasphemy against other Prophets, not just Muhammad (Ahmad, 2018:18). The Court also held that repentance would not suspend the death penalty, despite this being an established principle of Islamic law (see section 'Islamic jurisprudence: the death penalty for riddah').

### ***2009 Gojra riot: a missed opportunity for reform?***

In August 2009, a mob comprising 100-150 people started attacking a Christian settlement near Gojra (in Punjab) over two days. In addition to mass property damage and the maiming of several individuals, seven Christians were burnt alive (Lahore High Court, 2009:11–12). This violence was the result of announcements made by religious leaders urging Muslims to 'teach the culprits a lesson' (Human Rights Commission of Pakistan, 2009:137). The attack was the culmination of several days of rioting over a claim that a Christian family had desecrated pages of a Qur'an. Despite officials insisting that the allegation was false, local mullahs filed a blasphemy case against the family.

A judicial inquiry into the incident, headed by Lahore High Court Judge Iqbal Hameedur Rehman, was completed in September 2009. The resulting report concluded that the riots were the result of 'the irresponsible behaviour of the administration, [and] the complete failure of police while discharging their duties', with both failing to take appropriate action despite the occurrence of the earlier riots, as well as knowing about the announcements of the mosques (Lahore High Court, 2009).<sup>61</sup> The report made a total of ten recommendations, mostly administrative and educational measures to prevent future attacks from taking place, but also proposed a review of the country's blasphemy law. The inquiry concluded that 'the system fosters injustice, sectarian violence and violence between religions' (Ibid:239), and that 'penal provisions are often misused for ulterior motives' (Ibid:247). Consequently, the report called for the laws to be reviewed 'after achieving consensus of Mujtahideen of all Muslim's schools of thought' (Ibid:243), with the report including a questionnaire for the Islamic schools of thought regarding potential changes in the law.

The prevailing mood after the Gojra riot was one of critical reflection on the country's blasphemy laws and the need for reform. When the judicial inquiry was initially formed, Shahbaz Sharif, then-Chief Minister of Punjab, assured the public that the findings of the judicial inquiry would be implemented (The Nation, 2009). Concurrently, the DAWN

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<sup>61</sup> The report also warned that '[Pakistan] is already facing grave peril of terrorism and militancy which ... has disfigured our national image all over the world ... The unfortunate incidents of Gojra must be taken seriously ... without any further loss of time' (LHC, 2009:224).



newspaper, Pakistan's oldest and most widely read English newspaper, published a scathing critique of the country's blasphemy laws:

Are we not supposed to be a democratic society that treats all its members, regardless of faith, equitably? Unfortunately, the fact that we have blasphemy laws suggests that we are not. These laws have become a ticket in the hands of the majority to persecute and victimise the minority communities if they don't easily submit to their inferior status in society. In not being blind to the faith of each individual, the state is supporting bias and bigotry against non-Muslims. . . the state will have to ensure that all forms of religious discrimination, including faith-based laws that victimise even innocent civilians, are done away with. (Habib, 2009)

Despite the Gojra riot providing impetus for reflection and change—coupled with political and public willingness for reform—successive governments have made no efforts to repeal or amend the blasphemy laws. Indeed, it would appear that the pendulum swung in the other direction after the 2011 assassinations of Salman Taseer (then Governor of Punjab) and Shahbaz Bhattif (then Federal Minister for Minorities Affairs) (I-31; Jacob, 2019). In 2010, after Aasia Bibi was sentenced to death for blasphemy, Salmaan Taseer visited her in jail and later told President Asif Ali Zardari that she deserved clemency, spurring Pakistan's first public debate over the blasphemy law. In January 2011, Taseer was assassinated in Islamabad by one of his bodyguards, Mumtaz Qadri, with Interior Minister Rehman Malik saying the guard told police he did so because of the Governor's opposition to Pakistan's blasphemy laws (BBC, 2011). In that same year, another ardent supporter of Aasia Bibi who defended religious minorities, Shahbaz Bhatti, a Roman Catholic and Minister for Minority Affairs, was shot multiple times after leaving his mother's home. Tehrik-i-Taliban claimed responsibility for the attack, with the group's spokesperson warning, 'we will continue to target all those who speak against the law which punishes those who insult the prophet. Their fate will be the same.' (Saiya, 2017:1098).

Since then, the rise of the Islamist Tehreek-e-Labbaik Pakistan party (TLP) as a political force has done little to stem blasphemy accusation-related violence. Even though it was banned in April 2021, the TLP remains popular. In the wake of cartoons depicting the Prophet Muhammed being published in France, and the French response reaffirming the 'right' to blasphemy after a schoolteacher was beheaded in October 2020 for showing caricatures of the Prophet to his class, mass protests arose in Pakistan, with the TLP demanding that the government expel the French ambassador and endorse a boycott of French products. Michael Kugelman, a South Asia expert at the Woodrow Wilson Centre for Scholars, said: 'Unfortunately, given the blasphemy laws are fiercely defended by a critical mass of Pakistanis, the TLP has been able to attract substantial constituencies of support ... not only through street power, but also through respectable performances in elections' (Janjua, 2021b).

There has been little indication that the current political climate will change, with the current Prime Minister Imran Khan stating: 'We are standing with Article 295C and will defend it' (Barker, 2021).

### ***Media reporting***

We reviewed Pakistan's newspaper coverage of blasphemy-related issues between January 2020 and June 2021 (see 'Aims & Methods' section). Of the 203 articles that discussed blasphemy laws, cases, or blasphemy accusation-related violence, the overwhelming majority belong to one of the three following categories:

- 'Western influence' – articles which mentioned the efforts of the Western world to influence blasphemy politics in Pakistan (51 out of 203 total collected articles);
- 'Mob violence' – articles which mentioned instances of or matters regarding mob violence (63 out of 203); and
- 'Response of authorities' – articles which mentioned the responses of Pakistani authorities (e.g. legal system, police, politicians, etc.) to issues of blasphemy or mob violence (108 out of 203)

The articles, with a couple of exceptions, tended to simply recount the facts, showing no opinion either for or against blasphemy laws, nor regarding the causes of community-level violence. One of the interviewees explained that the role of the Pakistani media in shifting the discourse on blasphemy laws is severely limited by public opinion, which supports the criminalisation of blasphemy (I-3). The same interviewee continued to state that the assassination of Governor of Punjab Salman Taseer has made it even more difficult to open the debate: 'I remember the early years, we would write very openly against [blasphemy laws], we would have consultations ... there would even be demonstrations...[b]ut we can't imagine that happening anymore' (I-3).

It is notable that Pakistani politicians attempted to discourage violent protests, with the notable example of when the government banned Tehreek-i-Labbaik Pakistan (otherwise known as the TLP, a far-right Islamic extremist political party) after their violent protesting against blasphemy. Upon his government banning the party, the Prime Minister Imran Khan suggested that it did so not because of their motivation but rather their methods (DAWN, 2021a). Additionally, the Special Assistant to the Prime Minister on Religious Harmony urged protestors to shun violence (News International, 2021), with the Prime Minister stating that 'violent protests in Pakistan will make no difference to the country where the blasphemous act occurred' (DAWN, 2021b). These examples of Pakistani authorities and politicians condemning violent protest are particularly notable given their simultaneous and passionate defence of anti-blasphemy laws, the very same laws that protestors use to justify their actions, which suggests a difficult if hypocritical balancing act that Pakistani politicians partake in the country's blasphemy politics. In their study of the role of media in blasphemy cases in Pakistan, Khlid, Saeed and Ahmad (2020) found that more than half of those surveyed think that the media fails to perform its duty as a watchdog of society.

While newspapers in Pakistan stay out of taking a stand on the blasphemy debate, social media has been used as a platform to accuse people of blasphemy and to incite violence against alleged blasphemers. The *Aurat* March (Women's March) is an annually held political demonstration in Pakistan that calls for equal rights for women. In 2020, doctored images and video alleging that placards and banners from that year's march insulted the Prophet went viral on social media and, despite the allegations being false, the march was consequently condemned on social media for imposing 'western debauchery' through their 'liberal' and

‘vulgar’ demands (The Express Tribune, 2021a). Social media platforms have transformed allegations of blasphemy so easy to make, instantaneous, and widely accessible. These platforms have allowed ‘within only a few hours of identifying victims online . . . getting their personal information, mass-sharing it with text messages, and then killing the accused’ (Dad, 2014).

A recent example involves a journalists being targeted with death threats. Pakistani journalist Marvi Sirmed, only a day after sending a tweet intended as commentary on Pakistan’s problem of political abductions, #ArrestMarviSirmed\_295C became the top trending Twitter hashtag in Pakistan, with countless people suggesting her extrajudicial murder (Sirmed, 2020). As a result of this viral social media campaign and calls for violence, she was forced to go into hiding, ‘fearing that vigilantes might take matters into their own hands’ (Ibid).

Furthermore, a study published in 2016 found that there have been at least 18 instances in Pakistan (excluding hate speech cases) where cell phone and internet usage led to official allegations of blasphemy (Noor, 2016:67).

### ***Interdependence of law and public opinion***

The need for legal systems to command popular support has long been recognised (Robinson, 2009; Robinson and Darley, 1995). Public support for laws and the criminal justice system is a key determinant of public acceptance of and compliance with them. Tyler (2006:284) argues for the importance of maintaining legitimacy and warned against disregarding public opinion completely: ‘it is only when the perspectives of everyday members are enshrined in institutions and in the actions of authorities that widespread legitimacy will exist’. One of the consequences of losing public trust in the justice system is vigilantism. A combination of ineffectiveness in policing and extralegal practices in Mexico led to the loss of public trust in the criminal justice system; this led to the establishment by activists of a new grass-roots system operating outside the formal legal structure where unpaid volunteers have acted as police, court and penal system, often using torture (Tyler, 2007).

In this sense, the rise in mob-violence over alleged religious offending in Pakistan in recent years may be attributed to the public’s frustration with the State’s reluctance to execute those accused (and convicted) of blasphemy. In 2019, when a student in Bahawalpur killed his teacher for ‘speaking against Islam,’ he accused Pakistani authorities of ‘freeing the blasphemers,’ referring to the acquittal of Aasia Bibi a year earlier (Shahid, 2019). This frustration was also reflected in an incident, on 19 May 2021, in which around two-hundred people armed with batons, weapons and stones assembled in front of a police station and asked them to hand over a blasphemy suspect, pelting the police with stones and firing shots at them for not complying (Azeem, 2021).

However, the mob violence started *before* the Pakistani public could draw any meaningful observations about the lack of judicial executions carried out or about appeal courts overturning death sentences for blasphemy. Indeed, the killings committed by civilians on the basis of alleged religious offending started around the time when blasphemy became a capital offence. Between 1947 and 1980, there was no record of anyone in Pakistan accused of blasphemy being killed, whereas 51 people accused of blasphemy were killed by mob violence

from 1990–2012 (Julius, 2016:101). 1991—the year these killings by civilians began—was also the year in which the Federal Shari’at Court made the death sentence for blasphemy mandatory under Section 295C.

Another way of understanding the mob violence in Pakistan is to view the death penalty for blasphemy as devaluing the life of alleged religious offenders and thus legitimising the killing of these offenders in the eyes of the public. While a distinction can be drawn between the State carrying out the death penalty (judicial execution) and civilians engaged in vigilantism (lynching), the use of the death penalty as punishment for blasphemy serves as an official declaration by the State that blasphemers deserve to die. The idea that the death penalty *increases* the incidence of homicide—which directly challenges the deterrent effect of the death penalty—is not new. Scholars applying the brutalisation thesis to the death penalty have argued that executions may increase the level of post-execution homicides because they demonstrate that ‘it is correct and appropriate to kill those who have gravely offended us’ (Bowers and Pierce, 1980:456).

# REFORMING LAWS ON OFFENCES AGAINST RELIGION

We preface this section by noting that we have been unable to identify instances of successful reform where State-sanctioned killings were significantly reduced or eliminated, which we could propose as an advocacy strategy or framework to be applied to the 12 countries examined in this report. We discuss the abolition of religious offences in Sudan in this section, but we do not view these reforms as transferable to the 12 countries under review. In the absence of ‘success stories’, we review existing advocacy efforts and proposals for reform in the sphere of freedom of religion (see Appendix 6 for a summary of various advocacy tools). We analyse these efforts and proposals using the conceptual framework on norm localisation.

## CONCEPTUALISING REFORM

In this section, we define ‘reform’ in the broadest sense to refer to any progress towards the protection and enjoyment of religious freedom—from specific law reform that improves the safeguards for those accused of committing offences against religion, to the abolition of the death penalty for religious offences, to the elimination of vigilantism against alleged religious offenders. So far, we have focused on the victims of State-sanctioned killings. The motivations behind the killings covered in this report have ranged from devotion to hatred. In some cases, the killings have taken place, or appeared to have taken place, within the ambit of the law; more commonly, the killings have occurred wholly outside of it. In this section, we shift our attention to the perpetrators.

Actors directly responsible for the killings covered in this report are States (or State-actors) and non-State actors (namely, civilians and extremist groups). We note, however, that all killings by non-State actors examined in our report remain linked to the State for reasons stated at the beginning of this report (see ‘Scope of the Report’ section). We conceptualise that for any reform to achieve optimal impact, it needs to be embraced on two-levels: by the State and by non-State actors. Compared to civilians, the behaviours of extremist groups discussed in this report are virtually impossible to change, as they reject the existing social order and resort to violence to achieve ideological, religious, or political beliefs.

In addition, the *norms* that underpin the proposed reforms need to be fully embraced and adopted by States and non-State actors if reform is to be truly effective. Unlike ideas which may be held privately, norms are ‘shared and social’ (Finnemore, 1996:22), meaning they need to be widely accepted. Thus, norms are defined as ‘shared expectations about appropriate behaviour held by a community of actors’ (Ibid). However, what is considered ‘appropriate behaviour’ is context dependent; by definition, there are no ‘good’ or ‘bad’ norms:

Norms most of us would consider ‘bad’—norms about racial superiority, divine right, imperialism—were once powerful because some groups believed in the appropriateness (that is, the ‘goodness’) of the norm, and others either accepted it as

obvious or inevitable or had no choice but to accept it. Slaveholders and many non-slaveholders believed that slavery was appropriate behaviour; without that belief, the institution of slavery would not have been possible. (Finnemore and Sikkink, 1998:892)

Given the dynamic nature of norms, the process through which normative standards and policies travel across time and space is referred to as ‘norm diffusion’ (e.g., Finnemore, 1996; Acharya 2004; Zimmerman 2016). How does norm diffusion work? Acharya (2004:242) is critical of what he calls ‘cosmopolitanists’ who operate under an implicit dichotomy of ‘good global or universal norms’ and ‘bad regional or local norms’. Cosmopolitanists view norm diffusion as ‘norm-providers’ (referred to as ‘transnational agents’) ‘teaching’ good global norms to ‘norm-takers’ (the local actors) (Ibid; emphasis original). Cosmopolitanists therefore regard resistance to these norms illegitimate or immoral. However, Acharya (Ibid: 239) argues that ‘many local beliefs are themselves part of a legitimate normative order, which conditions the acceptance of foreign norms’.

Acharya (2004:251) proposes an alternate model of norm diffusion, in which ‘willing and credible local actors’ reconstruct foreign norms to ensure that they fit with the norm-takers’ worldviews and identities:

Localization, not wholesale acceptance or rejection, settles most cases of normative contestation. [...] External norms may be reconstructed to fit with local beliefs and practices even as local beliefs and practices may be adjusted in accordance with the external norm. To find this common ground, local actors may redefine the external norm, selecting those elements which fit the pre-existing normative structure and rejecting those that do not. (Acharya, 2004:239–51)

An ideal outcome of norm diffusion according to Acharya would be ‘norm localisation’, but not all ‘global’ norms end up fully adopted at the local level. Superficial norm adoption may occur where certain norms are *rhetorically* accepted by States: for example, the ratification of an international treaty leading to superficial changes in domestic law, decoupled from proper implementation and behavioural change (Meyer et al., 1997). The rhetorical adoption of norms may be due to the State’s capacity problems, particularly in developing countries, to fully implement the norm. In other cases, rhetorical adoption may be motivated by States seeking international legitimacy, despite having no interest in actually enforcing norms (Levitsky and Murillo, 2009). We have covered this idea through the lens of ‘ritualism’ (Merton, 1938) in the ‘Freedom of Religion: Human Rights & Islamic Law’ section where we discussed Islamic countries ratifying the International Covenant on Civil and Political Rights, which enshrines freedom of religion, while criminalising religious offences.<sup>62</sup>

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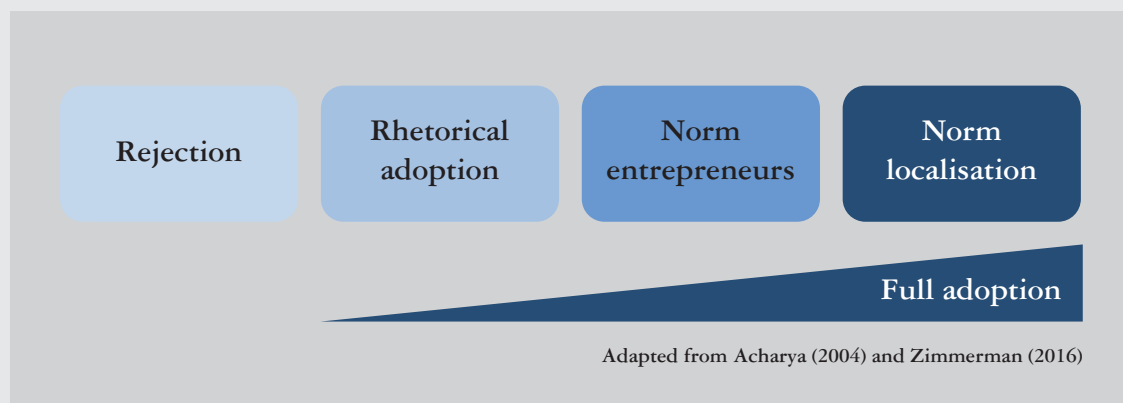
<sup>62</sup> In 2021, Saudi Arabia announced a series of major law reforms involving the codification of the *Shari’a*, a move that Crown Prince Mohammed bin Salman says will ‘increase the reliability of procedures and oversight mechanisms as cornerstones in achieving the principles of justice, clarifying the lines of accountability’ (Turak, 2021). While these reforms are indeed commendable, observers have suggested that they were motivated by economic interests: ‘this is an important step on the path towards global best practices that give businesses the confidence to invest’ (Ibid). While it is too early to assess the impact of such reforms, including the actual implementation of such reforms, this is a clear example of Saudi Arabia’s rhetorical adoption of the rule of law.



In other words, the outcome of norm diffusion is not dichotomous but better envisaged as a linear scale with rhetorical adoption situated between rejection and adoption of norms (Zimmermann, 2016). Figure 4 summarises the different stages and outcomes of norm diffusion by combining the arguments of Zimmerman (2016) and Acharya (2004). ‘Norm entrepreneurs’ are those that can use the outside norm, which may be feared or resisted, to enhance the legitimacy of local institutions and practices ‘without fundamentally altering their existing social identity’ (Acharya, 2004:248). One of our interviewees from Iran spoke of norm entrepreneurship in the following way: ‘As reformers, we have to... nudge tradition in the path of modernity, rather than opposing it, abandoning it, or trying to attack it from without’ (I-1).

An example of a successful reform underpinned by norm localisation may be the recent move away from the death penalty in the US. It was not the right to life narrative (‘no one should be executed by the State’) that motivated US States to adopt the norm of death penalty abolition (Sato, 2019). Instead, the death penalty became increasingly associated with wrongful convictions and racial bias, and norm localisation was achieved by US States and local actors coming to view retention of the death penalty as incompatible with the values they stand for, such as fairness and integrity of the criminal justice system (Ibid).

**Figure 4: Norm diffusion**



In this report, we argue that the process of norm diffusion is possible at two levels: the State and non-State actors. Reform is most fully realised where both the State and non-State actors internalise the norm which underpins the reform; the least favourable outcome is the rejection of the norm by both States and by non-State actors (Table 3). Similarly, reform will not achieve its full potential if the State fully adopts the new norm (norm localisation) without this being reciprocated by non-State actors—that is, where non-State actors adopt the norm rhetorically, or reject it altogether. Of course, it is possible for States to force the reform upon civilians; however, this will, at best, result in rhetorical norm adoption, and in the worst case scenario could lead to complete rejection. Literature on policing in criminology has demonstrated that if citizens are not normatively aligned with the criminal law (i.e., they obey the law because they think it is the right thing to do), the police will need to rely on crime control models with harsh sanctions. This includes forced compliance measures (e.g., patrol; surveillance; use of force) and deterrence tactics (e.g., harsh penalties) to dissuade would-be offenders (e.g., Jackson et al., 2012; Tyler, 2006). Hence, rhetorical adoption of norms by non-State actors may be possible for top-down reforms, but they come with shortcomings.

**Table 3: Effectiveness of reforms: norm diffusion and actors**

		State		
		Norm localisation	Rhetorical adoption	Norm rejection
Non-State	Norm localisation	Optimal	Moderate	Low
	Rhetorical adoption	Moderate	Moderate	Low
	Norm rejection	Low	Low	None

Note: ‘Non-state’ refers to civilians and extremist groups.

## IMAGINING THE ABOLITION OF THE DEATH PENALTY FOR OFFENCES AGAINST RELIGION

Assuming that abolition of the death penalty for offences against religion might be realised in any of the 12 countries in question, one must ask how such a reform would play out in practice (Table 4). Whether or not to abolish the death penalty is ultimately a decision for each State. However, the decision to do so may come from within (norm localisation) or be coerced by external pressure (rhetorical adoption). Non-State actors can then adopt the new norm of death penalty abolition (norm localisation), or superficially adopt it (rhetorical adoption), or reject it completely.

Irrespective of how States or non-State actors may feel about this hypothetical reform, abolition would naturally bar the imposition of death sentences on, and execution of, persons convicted of religious offences, by rendering such punishment unlawful. However, if this reform is coerced, it is possible that the State may find alternate ways to execute those people who would have otherwise been executed for committing religious offences. Our research indicates that this has in fact occurred in **Iran**, the following example demonstrating the dangers of rhetorical norm adoption. During the study period, Iran meted out several death sentences for offences against religion, but we identified only a single execution. Given that Iran executes more individuals per capita than any other country (Amnesty International, 2021c), this appears out of character. However, a parallel trend has been observed: acts that would traditionally be prosecuted as offences against religion have instead been prosecuted under vague offences such as ‘spreading corruption on Earth’ and ‘enmity against God’—offences that are usually used to prosecute acts threatening public order and state security. During the study period, at least six people convicted of acts falling well within the ambit of offences against religion have been executed following conviction of these alternate offences. Several interviewees explained this shift in execution patterns by reference to the ‘cost’ of executions for offences against religion. They contend that public support of the death penalty for such offences has waned to such an extent that the regime can no longer justify executions on this basis (I-1, I-19, I-22). In effect, Iran has been forced into *de facto* abolition

of the death penalty for offences against religion. By masking executions of religious offenders in terms of state security, Iran has found a way to quell public outcry while continuing its persecution of religious offenders.

On the other hand, if abolition is an outcome of norm *localisation*, where freedom of religion becomes part of culture, this may have a positive knock-on effect: States may stop executing religious offenders and minorities altogether. The same logic applies to the impact of the abolition of the death penalty to the number of extrajudicial killings by State-actors. Genuine norm adoption is likely to result in no more killings against alleged religious offenders. It might also reduce the number of killings against religious minorities for the same reason given above. However, if only rhetorical adoption is achieved, the number of extrajudicial killings targeting alleged religious offenders may in fact increase.

For non-State actors, if norm localisation is achieved, we argue that civilians would stop engaging in vigilantism against those alleged of committing religious offences. However, if abolition of the death penalty is enforced upon them (rhetorical adoption), killings by civilians could increase, stay the same, or decrease. Killings may increase because civilians may take it upon themselves to ‘execute’ those that the State would not otherwise do. The number of killings may stay the same if the laws on offences against religion only existed in theory and had never been applied. Lastly, there is a possibility that killings may decrease despite civilians covertly rejecting the new norm. As discussed above, the power dynamics between a State and its citizens mean that the former can exert control over its people. If States are committed to upholding the new norm of respecting freedom of religion, they may engage in extensive instrumentally oriented crime control measures and deter civilians from committing vigilantism.

Recent reforms in **Sudan** illustrate the repercussions of successful norm diffusion at the State level, but rejection of the norm by non-State actors (some civilians). After the ousting of former president Omar al-Bashir in 2019, Sudan entered a five-year transitional period, during which the transitional government has taken steps to secularise the country. In July 2020, Sudan abolished the offence of apostasy, which had previously been punishable by death, as part of a broader suite of reforms including the abolition of corporal punishment for blasphemy, and the criminalisation of *taḳfir* (the act of accusing someone of being an apostate, which could lead to the prosecution of the accused for apostasy or for inciting mob-violence) (Library of Congress, n.d.; United States Department of State, 2021h:5).<sup>63</sup> In September 2020, Islam was renounced as the State religion, formalising the separation of religion and the State (Middle East Monitor, 2020).

The transitional government embraced a new norm: secularism. According to Justice Minister Nasredeen Abdulbari, the new norm resulted in the above reforms which attempted to bring Sudan’s criminal laws into compliance with international human rights standards (Al Jazeera, 2020b). Because the death penalty for apostasy was introduced by al Bashir and was a symptom of the previous local norm (*Shari’a*), legalisation of apostasy went hand in hand

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<sup>63</sup> The opportunity to abolish apostasy in Sudan appears to have been brought about exclusively as a result of the change in leadership in the country. Moreover, this is not a case of death penalty reform; rather, the removal of death penalty was a consequence of apostasy being altogether abolished. Given the unique climate in which these reforms transpired, we do not consider them transferable to other jurisdictions.

with this normative shift. Regrettably, it would appear that the new norm of secularism adopted by the State has not yet been adopted by non-State actors: in September 2021, military and civilian actors sympathetic to the former regime attempted to overthrow the transitional government (Al Jazeera, 2021e). While the coup was unsuccessful, it illustrates the risks of genuine norm localisation at the State level absent the support of the State's subjects.

Should the death penalty for blasphemy be abolished in **Pakistan**, the repercussions are uncertain. By relaxing its position on blasphemy, the State may inspire a similar normative shift amongst non-State actors. This prediction is founded upon the brutalisation hypothesis (discussed above in the section on Pakistan), which suggests that the death penalty—a lawful form of killing—has a trickle-down effect of legitimising violence within that society. Indeed, it may be argued that this explains, in part at least, the rampant community-level violence observed in the country. Alternatively, abolition may inflame community level violence: if we hypothesise the community violence currently observed as a product of perceived inaction by the State to hold religious offenders accountable, abolition of the death penalty may be viewed as an even greater failure of the State and inspire further violence.

Finally, we envisage great difficulty in changing the behaviours of extremist groups. Realising norm localisation amongst extremist groups is likely to be extremely difficult (though perhaps not impossible in the long term). For extremist groups, there is no need for displaying any signs of rhetorical norm adoption as they are transparent about rejecting the existing social order.

*Table 4: Implications of abolition of the death penalty for offences against religion*

Motivation for killing		States		Non-State Actors		
		Judicial executions		Extrajudicial killings	Killings by civilians	Killings by extremists
		Under religious offences	Under other offences			
Killing of (alleged) religious offenders	Killing on the basis of individuals' religious identity	Norm localisation by would-be perpetrator of violence	No more killing	No more killing	No more killing	N/A: Norm localisation unlikely
		Rhetorical norm adoption by would-be perpetrator of violence	No more killing	+ or =	+ or =	N/A: No need for rhetorical norm adoption
	Killing on the basis of individuals' religious identity	Norm localisation by would-be perpetrator of violence	No more killing	= or —	= or —	N/A: Norm localisation unlikely
		Rhetorical norm adoption by would-be perpetrator of violence	No more killing	=	=	N/A: No need for rhetorical norm adoption

Key:	+ killings may increase	= killings may remain the same	— killings may decrease
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## ISLAM AS STATE RELIGION: A BARRIER TO REFORM?

In 11 of the 12 States under review, Islam is the State religion, and in all 12 countries, the death penalty for offences against religion is derived from, and justified by, the *Shari'a*.<sup>64</sup> In these States, the abolition of the death penalty is not as simple as reforming certain sections of the criminal law. Such laws are products of the country's interpretation of Islam, which by way of State religion has become intrinsically bound with the State; accordingly, reform must go far deeper.

Norm replacement is extremely unlikely where advocacy is founded upon human rights—such an approach is likely to be rejected as Western propaganda in these countries (I-1). The realisation of reform turns in large part on norm entrepreneurship (Acharya 2004) to frame and translate the new norm within the local context. In other words, reform is more likely to succeed if presented in a way with which norm-takers can sympathise, consequently leading them to endorse and indeed adopt the normative shift. Accordingly, rather than framing advocacy in the language of human rights, a better alternative would be to work with pre-existing normative structure, such as promoting a contemporary understanding of Islam that rejects the retention of the death penalty. In substance, such an approach builds a bridge between religious thought and human rights, but does so in a way that allows both norm structures to co-exist without having to replace local religious sensitivities with human rights norms.

Writing about the possibility of reforming apostasy laws, Sadri (2021) advocates for reform in a way that is not only sensitive of norm-takers, but that cannot easily be rebuffed. He proposes that advocacy in Muslim States should not focus on 'inventing humanitarian versions of religion', but instead strive to 'recover...values from the traditional—even dogmatic—practices of religion' in achieving norm diffusion (Sadri 2021:200). One interviewee suggested that any proposals for reform targeting Islamic countries should exploit the local norm enshrined in the *Qur'an*:

The fact that God created everyone equal, and gave them the right of choice in religion, according to the *Qur'an*, according to the traditions. . . Challenge and encourage them to bring their practices in line with their beliefs . . . The advantage of this [approach] is that reformers cannot be pushed out as outsiders, as intruders, as enemies of the faith. (I-1)

Indeed, contemporary Islamic scholars have increasingly adopted the position that Islam does not, in fact, mandate the death penalty for *riddah*. In fact, some scholars have gone as far as to say that Islam prohibits executions on this basis. The theological and jurisprudential intricacies of such interpretations were explained earlier in this report (see section on 'Islamic Law').

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<sup>64</sup> We dispute the claim that Islam demands the death penalty for religious offences (see the 'Islamic Law' section).



With the local norm identified, the endorsement and engagement of local religious scholars, jurists, and clerics is paramount (I-1, I-4). It has been widely suggested that reform must be a collaborative effort between religious and non-religious actors (I-1; I-4; I-7; I-17; I-18).<sup>65</sup> While religious actors may change the dialogue from within the culture, non-religious actors may change the dialogue from the outside. The **‘Faith for Rights’ Toolkit**, born of the broader UN-led ‘Faith for Rights’ framework, finds common ground between religions and human rights on which to unite faith-based groups to combat hate speech and intolerance. One interviewee spoke of the importance of dialogue that connects the *Shari’a* with human rights:

You have to do something that allows this duality [i.e., between the *Shari’a* and human rights]... You have to liquify this distinction, this duality: make the duality from a mechanical and static polarity into a dialectical, dynamic relationship, and start the dialogue *inside* the culture. (I-1)

Comprising of 18 learning modules, this toolkit informs faith-based actors on how they might become guardians of and advocates for not only the right to freedom of religion or belief, but the full human rights canon. To this end, the role of faith leaders in campaigning for human rights cannot be understated. Indeed, as respected figureheads and custodians of religion, faith leaders may be better positioned to inspire respect for human rights than those perceived as foreign. Accordingly, the success of this toolkit depends on finding ‘willing and credible local actors’ (Acharya 2004)—in this case, *local* faith leaders.

Eleos Justice<sup>66</sup> has drafted a **statement** (see Appendix 7: Statement) calling for the abolition of the death penalty for offences against religion, on the basis that such laws are irreconcilable with Islam. Looking critically at our statement, we are confident that we have identified a strong local norm; however, we may have fallen short of identifying ‘willing and credible local actors’ (Acharya 2004: 251) to sign up to and disseminate our statement. The signatures we have managed to secure so far are all academics based outside of the 12 countries examined in this report. These signatories include those who fled the country; whether they are seen as ‘local actors’ or ‘outside norm entrepreneurs’ remains to be seen.

To achieve norm localisation, the work of norm entrepreneurs is key in translating the new norm into one that resonates with pre-existing and embedded local norms. Such framing techniques can open a path to norm adoption. However, as the Faith for Rights Toolkit and the Eleos Justice statement demonstrate, while the work of external norm entrepreneurs may indeed identify a local norm that could be utilised in achieving norm diffusion, norm-takers may still reject or only rhetorically adopt the norm precisely because they remain ‘external’ efforts by norm-takers.

<sup>65</sup> As one interviewee noted: ‘this kind of reform needs to happen in the everyday... where minds and hearts are challenged or nudged to think differently’ (I-18).

<sup>66</sup> Eleos Justice is a research initiative at the Faculty of Law, Monash University (see ‘About Eleos Justice’ section for more detail). Applying the theory on norm localisation, we acknowledge that Eleos Justice is an ‘outside local entrepreneur’ (Acharya 2004).

## EXTERNAL NORM-PROVIDERS

The previous section considered existing efforts by external norm entrepreneurs, attempting to find common ground between human rights and the *Shari'a*. In this section, we review external advocacy efforts that do not engage with moral entrepreneurship. These efforts instead expect norm-takers to replace their existing normative structure with the norms proposed by external norm-providers.

The advocacy strategies set out below have been divided into two sub-categories: 'hard advocacy' and 'soft advocacy'. These categories adopt the terminology used by Joseph Nye, who coined the notions of 'hard power' and 'soft power'. Power is 'the ability to affect others to obtain the outcomes you want', and the categories of 'hard' and 'soft' dictate how that power is exercised (Nye, 2008:94). Hard power is coercive, whether by threat or inducement (Ibid). Therefore, hard power diplomacy does not aim to achieve norm localisation, but rather rhetorical adoption of the proposed norm. Soft power operates by way of attraction; that is, by making the norm-taker 'want what you want' (Ibid).<sup>67</sup> However, without norm entrepreneurship, soft power diplomacy is most likely to similarly result in a rhetorical adoption of new norms by exploiting the States' desire to be *seen* to be aligned with the values that norm-providers represent.

### *Hard power advocacy*

**Brunei** is an example of where hard power advocacy may be successful. When the new Penal Code was introduced in 2019, there was calls for **boycotts** of Bruneian businesses abroad and the imposition of **sanctions** under Global Magnitsky laws (Sifton, 2019). Following international condemnation, which included both threats to use hard power diplomacy, Sultan Hassanal Bolkiah announced that the country's existing de facto moratorium on executions would be extended to cases brought under the new Code (United States Department of State, 2020j:8). Given that Brunei has demonstrated no desire to carry out death sentences since last executing in 1957, it seems unlikely that retaliatory executions would ensue should hard power advocacy measures be imposed on the country in the future. Indeed, it does not appear that hard power advocacy targeting the death penalty for offences against the religion would have any adverse implications on the country's death penalty policy. That being said, the potential consequences of hard power advocacy are not limited to the death penalty, and a fuller assessment of such ramifications ought to be undertaken before any such advocacy is implemented (Gerber, 2019).

Assuming that the State was to rhetorically adopt a shift away from the death penalty for offences against religion, motivated by economic disincentives rather than human rights outcomes, one must then consider whether such a move would be similarly endorsed by the public. Prior to Brunei's introduction of the death penalty for offences against religion in 2019, neither extrajudicial nor community level killings motivated by allegations of religious offending were observed in the country. This may be construed as indicative of the absence in Bruneian society of any incentive to commit such acts of violence: in other words, the

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<sup>67</sup> These categories ought not be viewed as necessarily mutually exclusive; rather, they may be combined to created what Nye (2008:107) calls 'smart power'.

public appears to have already localised the norm that religious offenders should not be killed. Accordingly, should the recently introduced death penalty—which is already frozen under moratorium—be formally abolished, there is no reason to suspect any reactive violence whatsoever. Rather, abolition is likely to see Brunei return to its pre-2019 position, where religious offenders were not being killed in any forum.

In 2021, the European Parliament adopted a resolution calling for a review of **Pakistan's** GSP+ status over the abuse of its blasphemy laws (European Parliament, 2021). The European Union's Generalised Scheme of Preferences (GSP) removes import duties from products coming into the EU market from developing countries, with the aim of helping these countries alleviate poverty and create jobs based on international values and principles. GSP+ status slashes these tariffs to zero per cent for vulnerable low and lower-middle income countries that implement twenty-seven (27) international conventions. In view of an alarming increase in blasphemy accusations, the 2021 resolution called on the Government of Pakistan to 'unequivocally condemn' incitement to violence and discrimination against religious minorities in the country (Ibid.). In response to this, however, the Pakistani government has been steadfast in their commitment to blasphemy laws, with Pakistan's Foreign Office Spokesperson declaring that the EU Parliament's resolution 'reflects a lack of understanding in the context of blasphemy laws and associated religious sensitivities in Pakistan', and Human Rights Minister Shireen Marazi questioning 'whether GSP plus is getting muddled in Islamophobia' (The Express Tribune, 2021b).

### ***Soft power advocacy***

Whereas hard power advocacy is coercive and instrumental, soft power advocacy operates on attraction:

A country may obtain the outcomes it wants in world politics because other countries want to follow it, admiring its values, emulating its example, and/or aspiring to its level of prosperity and openness. (Nye, 2008:94)

Therefore, the uptake of these advocacy strategies very much depends on norm-takers' views on the norm-provider.<sup>68</sup> Indeed, a critical analysis of soft power advocacy may lead one to argue that the content of the advocacy strategy is less important than the attractiveness of the norm-provider.

We examined the effectiveness of the **United Nations'** soft power advocacy earlier in this report (see the 'Freedom of Religion: Human Rights & Islamic Law' section). While the

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<sup>68</sup> While this section focuses on norm-providers, it is equally important to pay attention to norm-takers. The targets of advocacy should also be strategically selected. For instance, in the Arab Gulf region, there are four countries that retain the death penalty for offences against religion: Qatar, Saudi Arabia, United Arab Emirates, and Yemen. As noted above, the capacity of foreign actors to inspire reform in Saudi Arabia is limited. The same may be said of Yemen: the efficacy of international communication is doubtful given that the country is currently under de facto Houthi control. However, it has been suggested that perhaps the United Arab Emirates may be strategically targeted, given its interest in being viewed as progressive, and its relative susceptibility to pressure (I-16). Moreover, reform need not be confined exclusively to those countries with the death penalty for offences against religion; rather, it may target alternative limitations on freedom of religion or belief in other regional players, such as Bahrain and Kuwait (I-13; I-16). Should reform be realised in any Gulf countries, this may trigger a domino effect through the region, encouraging countries that might be more resistant to advocacy to shift their positions accordingly (I-13; I-16).

12 countries under examination have criticised the UN and its human rights mechanisms, they nonetheless wish to remain associated with the organisation. (See Appendix 6 for other efforts by the UN on the freedom of religion.)

**Foreign Governments** may publish statements and pass resolutions calling on States to abolish the death penalty for offences against religion. For example, in March 2021, **Australia** led a joint statement on the incompatibility of the death penalty for offences against religion with human rights at the United Nations Human Rights Council (Australian Government Department of Foreign Affairs and Trade, 2021). Among the 51 signatory States are **Israel**, **Japan**, and the **United States**, all of whom retain the death penalty in law, demonstrating how even countries that retain the death penalty for non-religious offences may be involved in this movement. While abolitionist governments have a significant role to play in nudging the target countries towards a rhetorical adoption of human rights principles, we acknowledge that they are unlikely to have significant influence over internalisation or localisation of these norms.

Certain international norm-providers may have greater prospects of success than others. Regional partners and countries with which the norm-taker has existing relationships may be more likely to engage in meaningful dialogues with the State. For instance, while several **ASEAN** member States retain the death penalty for various offences, only one—**Brunei**—prescribes the death penalty for offences against religion. The other eight States may, then, take measures to encourage Brunei to soften its stance on these offences. Similarly, Mauritania, Nigeria and Somalia may be more inclined to consider reforms suggested by the **African Union** than other international organisations. Despite all 12 countries examined in this report being members of the **Organisation of Islamic Cooperation**, the OIC is unlikely to be an effective forum for change in this space (see section on ‘Freedom of Religion: Human Rights & Islamic Law’). While some Member States may be willing to support calls for reform, the significant influence of Saudi Arabia—a proponent of the death penalty for offences against religion—over the OIC is likely to result in such calls being stifled (I-13; I-16).<sup>69</sup>

While **international NGOs** and foreign governments may target States directly, many of our interviewees stressed the importance of engaging Muslim voices in this dialogue and avoiding the perception of Western interference (I-1; I-2; I-7; I-15; I-17; I-18). Accordingly, foreign actors may instead consider rendering support to local advocates, providing behind-the-scenes support and building capacity. Indeed, many interviewees told us that internal bottom-up advocacy is the only feasible approach in many of the jurisdictions under consideration. That being said, it should be recognised that in some countries, such an approach is practically impossible given the dynamic realities and tensions at play. In some cases, there is no space for domestic advocacy, due to government stifling of advocates or community-level threats to the safety and security of rights defenders. Accordingly, in some instances, international advocacy may be the only viable option.

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<sup>69</sup> Our interviewees suggested that the United States is particularly well positioned to instigate reform in Saudi Arabia, given the existing relationship between the States (I-13; I-16).

While soft power advocacy measures are less likely than hard power advocacy measures to provoke adverse responses from the States at which they are targeted, they remain nonetheless capable of being perceived as being carried out by actors maintaining a colonial mindset of ‘us versus them’ or ‘good versus evil’. As long as such a divide exists, it runs the risk of undermining advocacy efforts. In view of this, it is imperative that space be created for dialogue and deep listening, rather than one-sided castigation (I-7, I-17, I-18). Such forums should bring together an array of actors: local and foreign, Muslim and non-Muslim, State and non-State. Diversification of this dialogue has two benefits. First, it changes the optics of advocacy, lessening the likelihood of advocacy efforts being met with resistance or altogether rejected as ‘foreign’ (whether that be non-local or non-Islamic). Second, it increases the likelihood of finding common ground, and increasing understanding amongst all parties involved:

Meaningful change cannot be brought about without dialogue and engagement. If we remain in our own echo chambers, we will never understand the experiences and views of those different than ourselves. Dialogue, debate, and discussion are the only way we can find common ground and work together in the direction of strengthening human rights for all. (I-18)

## INTERNAL NORM ENTREPRENEURS: PAKISTAN

The advocacy strategies set out in the preceding section are illustrative of the efforts of what Acharya (2004) calls ‘outsider proponents’. He argues that the norm localisation perspective calls for a change in the understanding of ‘norm entrepreneurship’ from ‘outsider proponents’ committed to a universal moral agenda to ‘insider proponents’:

A third condition favoring localization is the availability of credible local actors (‘insider proponents’) with sufficient discursive influence to match or outperform outside norm entrepreneurs operating at the global level. The credibility of local agents depends on their social context and standing. Local norm entrepreneurs are likely to be more credible if they are seen by their target audience as upholders of local values and identity and not simply ‘agents’ of outside forces or actors and whether they are part of a local epistemic community that could claim a record of success in prior normative debates. (Acharya, 2004:248)

This section focuses on the efforts of ‘internal norm entrepreneurs’, such as local NGOs and activists, working within **Pakistan** to reform the country’s blasphemy laws. First, we outline the environment in which these local organisations operate. Against the backdrop of this history of violence against those who criticise the country’s blasphemy laws, few openly advocate for reform or propose the repeal of these laws. Advocacy within Pakistan has become stifled: after the assassination of Salman Taseer, Mohammad Taheen, the Director of South Asia Partnership Pakistan, said: ‘We were not in a position to advocate for the repeal of blasphemy law, so there was complete silence’ (Bhatti, 2015:122). Such sentiments were echoed by Tanveer Jahan, Executive Director of the Democratic Commission for Human Development, who stated: ‘We conducted ... research on blasphemy laws but, due to an increase in threats throughout the region and a higher level of risk, we decided not to launch



the study' (Ibid). One of our interviewees told us that they would not publicly advocate for blasphemy laws to be repealed due to concerns for their safety. In a recent debate on minority rights, Catholic priests and nuns urged Christians in Pakistan to avoid demanding the repeal of blasphemy laws: 'It is impossible to abolish blasphemy laws,' said Father Khalid Rashid Asi, Director of the Diocesan Commission for Harmony and Interfaith Dialogue in Faisalabad Diocese. 'We are heralds of hope but we should not give false hope to others' (Chaudhry, 2021).

Important context for this hesitancy is that domestic and international NGOs have been severely affected by unnecessary and arbitrary restrictions imposed upon them by the Pakistan Government. In June 2015, the responsibility for the regulation of Pakistani NGOs was passed to the Economic Affairs Division of the Interior Ministry, with the Minister stating that NGOs which 'operate in conflict with our values' would not be allowed to work (Human Rights Commission of Pakistan, 2016:132). In October 2015, the Government announced new policies requiring international NGOs to apply for permission to operate and raise funds in the country, with the Ministry being empowered to cancel registrations on grounds of involvement with any activity inconsistent with Pakistan's national interests, or contrary to government policy. Brad Adams, Asia Director at Human Rights Watch, warned the regulations were 'an invitation to arbitrary use of power...[which] put at risk any international organisation whose work exposes government failures' (Human Rights Watch, 2015a). In 2017, the Government investigated more than a dozen NGOs for allegedly promoting blasphemy on social media; later that year, the UN High Commissioner for Human Rights noted that the Government had 'used vague and excessive legislation on the digital space, and regulations regarding NGO activities, to limit critical voices and shrink the democratic space' (Hussein, 2017). In 2018, Pakistan ordered 18 international NGOs to shut down operations and leave the country, with the Government rejecting all the appeals of the organisations (Sayeed, 2018).

In such an environment, the ability of domestic and international NGOs to advocate change on blasphemy laws has been significantly hampered. It is in this context that we showcase the advocacy efforts by local actors.

### ***Swipe: a short film***

*Swipe*, an animated short film by Puffball Studios, depicts a boy who is addicted to a smartphone app, called 'iFatwa', that allows people to vote on whether someone should be killed for blasphemy (see Appendix 5). The film confronts the rise in mob violence, the meaning of blasphemy, and the normalisation of violence in Pakistan. The boy is forced to learn a gut-wrenching lesson in the film's epilogue.<sup>70</sup>

The film was directed by Arafat Mazhar (Director, Engage Pakistan). Mazhar, who wanted the film to 'connect with the sort of ordinary people who hailed Qadri [the assassin of Taseer in 2011]' (Farooq, 2020), puts technology at the core of modern Pakistani life, presenting the app as an addictive force that distracts Pakistanis not only from their own lives and communities but also their religion. When speaking to Eleos Justice, Mazhar emphasised

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<sup>70</sup> The decision to feature a boy as the main character was influenced by the rise in children taking part in mob justice.

that he did not make the film for international film festivals, instead uploading the whole film on YouTube and screening the film at Pakistani universities for student audiences, highlighting the localised advocacy of the film.

In analysing the efforts of international human rights groups, Mazhar (2018) argues that their failure to successfully advocate repeal or reform to Section 295C is due to their ‘unwillingness, and perhaps inability...to engage with, and garner the support of, the majority of the populace amid whom the law enjoys passionate support.’ In *Swipe*, Mazhar and his team challenge the underlying attitudes that support blasphemy laws and justify vigilante killings. When speaking to Eleos Justice, he explained that mob justice following allegations of blasphemy has become associated with, and is a manifestation of, devotion, love, and honour. He told us that *Swipe* was an attempt to disassociate these ideas from violence committed in the name of God.

The film ends with video recording depicting small children enacting the execution of Aasia Bibi. Mazhar told us rather than directly criticising the law, he and his team consciously decided to include this clip as a reminder of the pervasive ways in which Pakistan’s blasphemy laws have infiltrated all aspects of society, even children.

Mazhar informed us that *Swipe* has received only positive reception, with ‘not a single hate comment’ on online platforms where the film can be viewed. In contrast, he received death threats when he wrote a newspaper article about the history of blasphemy laws in Pakistan. He also noted that, unlike his experience of giving lectures on blasphemy laws at a local university, *Swipe* had received ‘exceptional response[s] in universities and colleges’, which allowed him and the students to have ‘true, authentic engagement’.

### ***Reforming section 295C***

Given the significant difficulty in advocating for the repeal of Section 295C that prescribes the death penalty for blasphemy, some NGOs have instead explored the potential of reforming the law. In a report titled *The Untold Truth of Pakistan’s Blasphemy Law*, Engage Pakistan (see Appendix 5.) critiques Section 295C by drawing on the Islamic legal tradition and offering policy recommendations. Arafat Mazhar (Director, Engage Pakistan) explained to us that:

The thesis [of the report was] to try to not look at it from a Western lens ... but to use an intersectional approach that looks at it from a human rights *and* an Islamic traditional lens, reimagining not just the law but also the construct and the psychology [of blasphemy].

The report analyses canonical Islamic texts to challenge the notion that there is absolute consensus among the schools of Islamic jurisprudence on the issue of blasphemy and how it should be punished. On the basis that no such consensus could be established, the report recommends that Section 295C should be amended so that it becomes a non-*hadd* offence (Engage Pakistan, 2018:112). Further, in line with the conditions prescribed by various *fatwas* to which it refers, the report recommends that all those accused of blasphemy-related offences should be allowed a grace period during which to repent, and should be pardoned

before or during trial (Ibid). The report also calls for Section 295C to be amended such that it only applies to Muslim offenders, in line with Hanafi rulings on the matter (Ibid). Although these reforms do not equate to the repeal of blasphemy laws, Mazhar told us that the proposed changes alone will require many years, perhaps even a lifetime, of effective advocacy to materialise, and that they could form the trajectory necessary to abolishing the death penalty for blasphemy.

### *Need for social reconciliation*

The Centre for Social Justice (CSJ)<sup>71</sup> has emphasised the need for the rights of religious minorities to be at the forefront of advocacy against blasphemy laws. When speaking with Eleos Justice, Peter Jacob (Executive Director, Centre for Social Justice) stressed the ‘need for a broad national narrative to promote freedom of religion in the social life of Pakistan’. To do so, he called for *Paigham-e-Pakistan II*, ‘a process of social reconciliation and healing that seeks to integrate religious minorities through a social pact between the citizens of Pakistan and the government’ (Jacob, 2019:8). The name of this pact directly references the earlier *Paigham-i-Pakistan fatwa*, unveiled by the Pakistan Government in 2018, the central *fatwa* of which comprises of 22 points including that terrorism is by no means Islamic and that those indulging in anti-State terrorism do disservice to Islam (Researchers of the Islamic Research Institute, 2018:48). Although noting that the *fatwa* was an encouraging step towards inclusiveness, Jacob told us that the message did not penetrate the Pakistani society because of its ‘top-down’ approach—having been structured by Pakistan’s military establishment.

CSJ has published a position paper on blasphemy laws, which sets out concrete recommendations similar to those proposed by Engage Pakistan (Jacob, 2019). What sets CSJ apart from other interviewees based in Pakistan is its call for all stakeholders to take a more serious stance against the killings that have taken place to date and create a shared narrative. It proposes that all political parties and civil society should unite ‘to undo the impact of blasphemy laws on national psyche and social fabric of Pakistan’ (Ibid:8).

## ALTERNATIVES TO THE ABOLITION OF THE DEATH PENALTY FOR OFFENCES AGAINST RELIGION

Given the infrequency of death sentences being meted out for offences against religion, and the even fewer executions carried out on this basis, we asked our interviewees whether it would be better to ‘let sleeping dogs lie’; that is, whether non-intervention would be preferable. They unanimously said no. Thus, considering the unpromising prospects of abolition being realised, and the risks associated with advocating for it, we propose the following alternatives to abolition.

The 12 countries under review may be called on to instate **moratoriums** on executions for offences against religion. Three countries—**Brunei**, **Maldives**, and **Mauritania**—have observed decades-long moratoriums on executions for all crimes. In countries where

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<sup>71</sup> See Appendix 5 for more information about CSJ.

individuals convicted of offences against religion are currently on death row—**Iran, Nigeria, Pakistan, and Saudi Arabia**—advocates may call for the **commutation** of these sentences, or **pardons**.

Should abolition be deemed too unrealistic a prospect, advocacy may be alternatively geared towards **reforming other aspects of the laws** that criminalise and prescribe the death penalty for offences against religion (see the previous section).

Across many of the jurisdictions under review, the most successful form of advocacy to date appears to have been **case-based advocacy**. While activists may put pressure on Governments on a case-by-case basis, they may also mobilise the public into doing so. This in large part turns on the **media**. As one interviewee notes, ‘we live in the internet age in which the government cannot, as hard as it tries, insulate people from information that comes from outside’ (I-1). Of course, the accuracy of this statement is questionable: at the time of writing, Twitter remained banned in **Nigeria** (Al Jazeera, 2021d). However, in countries where foreign media is accessible, international outlets should, from their positions of relative security, use their platforms to unmask the realities of death penalty practice in these jurisdictions. We stress the ability—and indeed moral obligation—of the international media to report on the death penalty for offences against religion because in many cases, domestic outlets are incapable of doing so. For instance, it has been suggested that in **Pakistan**, critical coverage of capital blasphemy trials is almost impossible, due to security concerns, while non-critical coverage ought to be avoided as it may inflame public sentiment and lead to community-level violence (I-3, I-10, I-12).

**Combating false accusations:** As with any criminal justice process, the prosecution of offences against religion is not immune to miscarriages. Advocacy may be geared towards the avoidance of unsound convictions. For example, as detailed in our section on ‘Pakistan: taking Blasphemy Laws into their own Hands’, a high percentage of blasphemy cases registered in the country are founded upon false accusations, motivated by personal and professional vendettas (Badry, 2019:100). The vast majority of such accusations go unpunished (Ibid). Formal accountability for the making of false accusations may mitigate such accusations being made, therefore stemming the law enforcement and criminal justice processes before they begin. Reform may mirror that of **Sudan**: the criminalisation of *takfir* disincentivises all accusations of religious offending, not just false ones. Such reform has been endorsed by Ahmed Shaheed, UN Special Rapporteur on freedom of religion or belief (Humanists International, 2020f).

**Combating insecurity:** In **Pakistan**, lawyers are reluctant to take up blasphemy cases for fear of violence. Trial judges are similarly positioned, cornered into convicting individuals charged with blasphemy for fear of violence should they acquit the accused (I-10; I-29). In **Mauritania**, the enforcement of blasphemy laws has been justified by officials on the grounds of maintaining public order (Fiss and Kestenbaum, 2020:28), while in **Nigeria**, a trial court has disregarded orders by an appellate court to release a man acquitted of blasphemy (Akinwotu, 2021). In light of the heightened tensions and volatile community responses that often surround accusations of religious offending, criminal justice actors should be afforded increased security to enable them to carry out their responsibilities.

**Increasing capacity:** In some cases, law enforcement and judicial systems may lack the capacity to enforce religious offence laws with due process. For example, concern has been raised as to the insufficiency of resources and training available to key criminal justice actors in **Nigeria**, consequently inhibiting the proper administration of justice (I-15). In response to such concerns, advocacy may take the form of technical assistance, aimed at modernising the criminal justice infrastructure. By increasing investigative and prosecutorial capacities, and enhancing judicial service delivery, advocates may support criminal justice actors to fully and properly administer justice, including the observance of procedural safeguards (I-15).

**Institutionalising freedom of religion or belief:** In cases where the criminal provisions prescribing the death penalty for offences against religion are wholly out of the reach of reform, alternate measures may be taken to embed freedom of religion or belief within the broader legal framework. For instance, advocates may campaign for constitutional protection of freedom of religion or belief in a manner consistent with international human rights standards. Alternatively, advocacy may call for the establishment of independent bodies that monitor freedom of religion or belief in the country, or the provision of support to existing civil society organisations (I-18).

Despite most interviewees viewing abolitions of the death penalty for religious offences to be unlikely in the near future, one interviewee (I-4) suggested the possibility of **strategic litigation**. Such advocacy may ensure in existing laws being judicially reinterpreted, rather than legislatively amended. For example, should a court find the death penalty for offences against religion to be unconstitutional, this may compel the legislature into formalising abolition. It has been suggested that reform in this vein may succeed in the **Maldives**. Noting that the intent of the new Maldives Constitution was to constrain the implementation of the death penalty, one interviewee claimed that the current bench of the Maldives Supreme Court is sufficiently progressive to recognise that the country's uncoded *Shari'a* laws cannot be reconciled with the spirit of the Constitution, and ought therefore be barred (I-4). Other interviewees were less optimistic, but concurred that some judges, even if in the minority, are sufficiently positioned to offer dissenting opinions as to the impropriety of the death penalty for offences against religion in the Maldives today (I-6, I-20).

The issue with strategic litigation is that one requires a case to run. In this context, that means somebody must first be sentenced to death before strategic litigation challenging the legality of the death penalty for offences against religion can be carried out. As one interviewee noted, the case of Yahaya Sharif-Aminu, a singer sentenced to death for blasphemy in **Nigeria**, would be an ideal opportunity for strategic litigation: in January 2021, a court ordered that he be retried. However, as this interviewee noted, the accused must be willing to be the subject of strategic litigation: 'it all depends on the claimant—some claimants don't want to go all of the way, they are just happy to be free' (I-15).

**Online content moderation.** While this recommendation on online content moderation is much broader than justice reforms as an alternative to the abolition of the death penalty, the need to regulate hate speech and incitement to violence is undeniable. Hard-line religious discourse is proliferated at various loci—places of worship, classrooms, media, online forums—and by various actors—religious figures, the State, the media, extremist groups. As one interviewee explains 'globalisation and the internet have enabled everyone to become an



authority. And, of course, when there is minimal religious literacy, this becomes very toxic' (I-4). While the online space is where hard-line discourse can be proliferated, it also offers a unique opportunity to activists. Whereas advocacy may have difficulties penetrating and changing the rhetoric conducted in, for example, places of worship, online platforms are—in many instances—a privately-owned, or at least governed, space. Accordingly, these platforms have the capacity to engage in content moderation. One interviewee argued that online platforms ought to increase investment in content moderation by engaging moderators who (a) speak local languages, and (b) are versed in human rights. It is also important to consider whether moderators are representative of the population whose content they are scrutinising, and whether they may carry biases (I-4).

While content moderation may seem like the easy solution, it is vital that this not be abused. Content moderation must strike a careful balance, so as to not infringe upon the right to freedom of expression, or indeed freedom of religion. In a 2018 report, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression considers how States and social media companies ought to approach the regulation of user-generated content, so as to remain compliant with international human rights standards (Kaye, 2018). Indeed, the suppression of content may cause it to become worse: as one interviewee describes, 'if you suppress tradition, it goes underground and becomes radicalised and comes back as a monster' (I-1).

## CONCLUSION

As we were gathering these concluding thoughts, we learnt that Pakistan has sentenced a Muslim woman to death for blasphemy (Sheikh, 2021). On 27 September 2021, Salma Tanveer, owner and principal of a private school, was convicted of blasphemy for writing and distributing texts which were judged to be derogatory of the Prophet. Her lawyer argued that, due to her mental illness, she was incapable of knowing the nature of her acts; the Court disagreed.

Based on our findings, this ‘religious offender’ is extremely unlikely to be executed, given Pakistan has not executed anyone under its infamous Penal Code. Pakistan is no outlier for imposing but not carrying death sentences for religious offences. Of the 12 countries where the death penalty remains a lawful possibility for religious offences, we identified death sentences in six since 2010;<sup>72</sup> however, we documented only a single judicial execution (in Iran) carried out on *strictly* religious grounds. Reasons for death sentences not resulting in an execution ranged from the procedural (e.g., convictions being overturned on appeal; cases pending a retrial) to the political (e.g., avoidance of international condemnation). Of course, it is entirely possible that the true number of executions could be much higher—we may have simply failed to uncover them. Whatever the true number of executions may be, the fact that convictions for religious offending have indeed resulted in a deliberate loss of life by a State is of serious concern, no matter how small those number appears to be.

Given the small number of executions that appear to be taking place, and that six of the 12 States that retain the death penalty for offences against religion do not appear to have handed down death sentences whatsoever, one could argue that the prescription of the death penalty for such offences is merely symbolic and that anti-death penalty advocacy is better focused elsewhere. We disagree. By prescribing the death penalty for religious offences—whether it is a theoretical or a real possibility—these 12 States assert that those who offend religious morals deserve to die. In this report, we set out to do much more than simply document judicial executions: we wanted to explore the relationship between the retention of the death penalty for religious offences and other forms of State-sanctioned killings motivated by alleged religious offending or by religious identity.

Although Iran’s hanging of a man for apostasy in 2015 was the only case in which an accused was executed for committing a *religious* offence, we have recorded numerous executions carried out under the guise of *non-religious* offences in Iran and Saudi Arabia. Both countries appeared to have executed religious offenders and minorities using a pretext of political and security-related offences in a deliberate attempt to avoid domestic and international criticism. This points to a discrepancy between the violence to which religious minorities are exposed and these States’ official lines of tolerance. Indeed, the victims of State-sanctioned killings documented in this report also involved people killed for their religious identities. We wanted to detail the wielding of State power to kill individuals for their

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<sup>72</sup> We recorded death sentences for religious offences in the following six countries between January 2010 and September 2021: Iran (13), Mauritania (1), Nigeria (1), Pakistan, Saudi Arabia (2), and Yemen (1). We do not have the total number of death sentences for Pakistan but 200 people were formally accused of blasphemy in 2020 alone.

ethnoreligious identities and to silence dissidents—religious, political, or otherwise—using laws that criminalise religious conduct or other laws unrelated to religious belief. It was not easy to determine whether these victims were killed for their religious offending, for their religious identity, or for both. Was the judicial execution for terrorism a mere cover to persecute and silence a particular religious group? Did the proponents of mob violence use an allegation of blasphemy as a cover to take revenge against a victim (who just happened to be of a religious minority) towards whom the killers held a grudge? It is an impossible task to prove the motivations behind every case. For the purpose of this report, however, we would have been remiss to focus only on known executions where people were convicted of offences against religion, as such an approach, while precise and neat, turns a blind eye to the complex nature of these killings where identity, religion, and politics are interlaced.

State actors have extrajudicially killed alleged religious offenders and religious minorities in four countries. In Iran, Pakistan, and Saudi Arabia, the State has deliberately mistreated religious minorities in custody, with lethal results. In Nigeria, Pakistan, and Yemen, on the other hand, State authorities have slaughtered civilians in broad daylight.

While we acknowledge that violent extremism is often beyond the reach of the State, in four jurisdictions, extremist groups killed religious offenders and minorities in circumstances that can be deemed State-sanctioned. The States in which these killings have taken place must be held accountable for allowing such violence—which in some cases has been ongoing for decades—to be perpetrated with impunity. The recent takeover of all of Afghanistan by the Taliban is an ominous instance of an extremist group transforming their role into that of Statehood—but with little change in outlook or prospect for the victims of their violence.

Non-State actors, however, commit the largest numbers of religiously motivated killings, as documented in Afghanistan, Nigeria,<sup>73</sup> Pakistan, and Iran. These occur within a context of religious laws or customs that call for the death penalty of anyone perceived to have offended religious morals, and while the States are not directly liable for the deaths of victims, they must be held responsible for allowing (and sometimes even endorsing) or failing to prevent such violence. The power dynamics between a State and its citizens mean that the former can exert control over its subjects either through regulation or by offering protection.

The idea that the sacred needs forceful protection, in some cases to the extent of lethal violence, is created—or at the very least legitimised—in these societies by the presence of the death penalty for religious offences. The impact of abolishing the death penalty for religious offences will likely extend far beyond the stemming of executions on this basis—potential exists for such reform to similarly stem the judicial and extrajudicial killing of religious minorities, and killings of perceived religious offenders or religious minorities carried out by civilians.<sup>74</sup> Advocacy in this space remains challenging, as reforms are not easily adopted if their proponents are perceived as outsiders and foreign, especially if norm localisation is the goal. We argued that while most existing advocacy efforts have promoted freedom of religion

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<sup>73</sup> The situation in Nigeria is different: the conflict between Christian Farmers and Muslim herders which has brought about thousands of deaths does not appear to have its roots in religion, but rather the scarcity of resources. That being said, the Government has framed the conflict as a religious one, thereby inflaming the violence.

<sup>74</sup> The behaviours of extremist groups discussed in this report are extremely unlikely to change, as they completely and utterly reject the existing social order and resort to violence to achieve ideological, religious, or political beliefs.

couched in human rights terms, some initiatives have managed to translate the outside norm into a local one. However, these initiatives have largely remained a ‘thought experiment’ for external stakeholders (with some exceptions) and have lacked ‘local norm entrepreneurs’ to test their potential.

States may defend the death penalty for religious offences by arguing that fear of death prevents acts deemed an affront to religious morals and the incitement to violence against persons based on religion or belief. Civilians may defend their violence as an expression of devotion, while extremist groups kill under the guise of religious mandate. However, States like Tunisia and Morocco are testament to the fact that there is an alternative route: in both countries Islam is the State religion, but they do not prescribe the death penalty for religious offences.

The *Qur’an* embraces religious freedom, and as we have shown, the abolition of the death penalty for religious offences is entirely compatible with its teachings. Islam is neither immutable nor inflexible. There is no need for *killing in the name of God*.

## COUNTRY PROFILES

This section documents the State-sanctioned killings of religious offenders by country. It does not contain sections on Afghanistan and Pakistan as these countries have been examined above.

### BRUNEI

In April 2019, Brunei's Syariah Penal Code Order 2013 came into full force. This new Code, founded upon Islamic law, introduces a suite of offences not featured in the previous Code, and codifies various *Shari'a* punishments including amputation, whipping, and death by stoning (Human Rights Watch, 2019a). Among the new offences are six forms of *irtidad*,<sup>75</sup> meaning 'apostasy' (although some forms of *irtidad* resemble **blasphemy**), all of which carry the death penalty (Syariah Penal Code 2013, Sections 108-113). The Code also introduces three offences<sup>76</sup> for which non-Muslims offending Islam may be sentenced to death (Sections 221-223). However, **proselytising**, though criminalised, is not a capital offence (Syariah Penal Code 2013, Section 210). In relation to all these offences, the Code prescribes specific evidentiary thresholds (confession of the accused, or testimony of two witnesses whose evidence the court deems credible). Moreover, the Code demands that courts 'shall, after sentencing the offender... and before execution of the punishment, order the offender to repent' (Syariah Penal Code 2013, Sections 116, 226), and that once such repentance is made, the offender should avoid all punishment (Syariah Penal Code 2013, Sections 117, 227).

The Code has been met with universal outcry: 'Brunei's new penal code is barbaric to the core, imposing archaic punishments for acts that shouldn't even be crimes' said Phil Robertson, Deputy Asia Director of Human Rights Watch (Human Rights Watch, 2019a). Due to international condemnation, the Sultan announced in May 2019 that Brunei's *de facto* moratorium on executions would be extended to include cases brought under the new Code (United States Department of State, 2020j:8). During the one-month period that the Code was operational, no executions were reported for offences against religion or otherwise. To date, there has also been no reports of death sentences for these offences.

Brunei's previous Penal Code contained five 'Offences Relating to Religion',<sup>77</sup> none of which carried the death penalty (Laws of Brunei (Revised Edition 2016) Chapter 22: Penal Code, Sections 295-298). Moreover, these offences applied to *all* religions, as opposed to Muslims specifically.

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<sup>75</sup> Declaring oneself as god (Syariah Penal Code, Section 108(1)); declaring oneself as a messenger or prophet (Section 109(1)); contempt of the Prophet Muhammad or of any prophet of God (Section 110(1)); deriding, mocking, mimicking, ridiculing or insulting any verse of the *Qur'an* or the *hadith* of the Prophet Muhammad (Section 111(1)); declaring oneself as a non-Muslim (Section 112(2)); attempting to commit *irtidad* (Section 113).

<sup>76</sup> Contempt of the Prophet Muhammad or of any prophet of God (Section 221(1)); deriding, mocking, mimicking, ridiculing or insulting any verse of the *Qur'an* or the *hadith* of the Prophet Muhammad (Section 222(1)); attempting to commit offences under Sections 221 or 222 (Section 223).

<sup>77</sup> Injuring or defiling place of worship with intent to insult the religion of any class (Section 295); Disturbing religious assembly (Section 296); Trespassing on burial places etc. (Section 297); Interference with grave of human remains (Section 297A); Uttering words etc. with deliberate intent to wound religious feelings (Section 298).



## IRAN

### *The law*

**Apostasy** (*ertedad*) is not codified under Iranian law.<sup>78</sup> However, the Iran Constitution requires judges to deliver judgment on the basis of authoritative Islamic sources (including the *Shari'a*) and authentic *fatwas* (legal opinions or decrees issued by Islamic religious leaders) in the absence of legislative provision (Iran Constitution, Article 167). Therefore, courts may impose death sentences for apostasy, a *hadd*<sup>79</sup> crime under *Shari'a* law (FIDH and League for the Defence of Human Rights in Iran, 2020:12; Global Legal Research Centre, 2014:7; Iran Human Rights and ECPM, 2021:28). A 1964 *fatwa* issued by Ayatollah Khomei provides that the death penalty for apostasy is only to be applied to men, while women are to be sentenced to life imprisonment and beaten at prayer times, and may be released from prison should they repent. During the 1980s, there were a series of executions of women in violation of the 1964 *fatwa*; however, it appears that the authority of the *fatwa* has been respected since (FIDH and League for the Defence of Human Rights in Iran, 2020:12).

Article 262 of the Islamic Penal Code of Iran 2013 prescribes the death penalty for **blasphemy**, more properly referred to as *sabb-e nabi* ('insulting the Prophet'). This includes instances where one insults the 'sacred values of Islam' or any of the Shi'ite imams or the Holy Fatima (daughter of Muhammed), should such insult be deemed tantamount to insulting the Prophet himself (Article 513). The death penalty will not be applied, however, where the blasphemer acted under coercion, by mistake, or in a state of drunkenness or anger, or was quoting someone else (Article 263) (Fiss and Kestenbaum, 2020:65).

Under Islamic law, the doctrine of *qisas*, akin to the concept of 'an eye for an eye', dictates that murder is punishable by death. However, there are legislative exceptions to this concept. A killer can avoid *qisas* where the victim (or the 'religious offender' in the eyes of the killer) committed one of the *hudud* offences (plural of *hadd*) (Article 302(a); Milani, 2014:14–15). As apostasy is a *hadd* offence, a person who kills an accused apostate may, instead of facing the death penalty, be sentenced to as little as three years' imprisonment (Article 612). Similarly, the Penal Code exempts Muslim, Christian, Jewish, and Zoroastrian (the four religions recognised by the Iran Constitution) killers from *qisas* where the victim is a follower of an 'unrecognised religion' (Article 310) (Iran Human Rights and ECPM, 2021:27; United States Department of State, 2021b:6). In effect, these provisions create a climate in which accused apostates or unrecognised religious minorities (such as Baha'is and Sufis, discussed below) may be killed with relative impunity.

### *Enforcement*

In summary, between 2010 and 2020, there were 13 known death sentences for religious offences, and one known execution on strictly religious grounds. However, we have recorded a further six executions of religious offenders convicted under *political* offences.

<sup>78</sup> An early draft of the revised Penal Code containing apostasy provisions was approved by the Iranian Parliament in 2008 but was never adopted (Global Legal Research Center 2014:7; I-6).

<sup>79</sup> *Hadd* crime is when the penalty is fixed by Islamic law and is mandatory.

Executions on the basis of **apostasy** appear to be relatively infrequent (I-19); one interviewee confirmed that as of August 2021, there were no pending apostasy cases, nor persons under sentence of death for apostasy (I-22).

- In December 2015, a man (identity unknown) was hanged for apostasy in Bandar Abbas Central Prison (Abdorrahman Boroumand Center for Human Rights in Iran, n.d.).
- In September 2010, Christian pastor Youcef Nadarkhani was sentenced to death for apostasy for having converted from Islam to Christianity at the age of 19. In September 2012, following international condemnation, the Supreme Court quashed Nadarkhani's conviction on the basis of 'investigative deficiencies'. The case was remanded to the trial court, where Nadarkhani was acquitted of the apostasy charge, but convicted of the lesser charge of 'evangelising', and released from prison (Global Legal Research Centre, 2014:7–8; Milani, 2014:32–34). In July 2017, he was re-arrested and sentenced to 10 years' imprisonment for proselytising, which he began serving in February 2019 (FIDH and League for the Defence of Human Rights in Iran, 2020:13).

We have been unable to identify any instances of executions, but individuals have indeed been sentenced to death on the basis of **blasphemy**:

- In April 2021, Yusef Mehrdad and Seyyed Sadrollah Fazeli Zare were sentenced to death for 'insulting the Prophet'. Mehrdad was also accused of various political offences (Iran Human Rights Monitor, 2021; Radio Farda, 2021).
- Between 2013 and 2019, at least eight death sentences were meted out for 'insulting the Prophet', four of which—Rouhollah Tavana (2013), Sina Dehghan (2016), Mohammad Noori (2016), and Mayssam M. (2019)—were upheld by the Supreme Court (FIDH and League for the Defence of Human Rights in Iran, 2020:12–13; Milani, 2014:28). It is unclear whether these individuals have been executed, remain on death row, or have been released.

Given that Iran continues to execute more individuals per capita than any other country in the world (Amnesty International, 2021c), the apparent infrequency of death sentences and executions for offences against religion is particularly notable. This may be speculatively attributed to an array of explanations, such as opacity of the criminal justice process (meaning executions are still being carried out, but in secret), or a shift in domestic policy (resulting in increased leniency of the State with respect to offences against religion). One interviewee contended a third possibility: that, as a result of domestic and international human rights advocacy, the reputational cost of such executions has increased to a point where authorities can no longer justify or sustain them (I-19).

Despite the relative infrequency of death sentences and executions for offences against religion, alternate capital offences such as '**spreading corruption on Earth**' (*mofsed-e-filarz*) and '**enmity against God**' (*moharebeh*) may be used to prosecute such acts.<sup>80</sup> These offences are defined in such broad and vague terms that they enable the prosecution of various acts against the State and public order. In the context of Iran, where Islam is the official State religion, anti-Islamic acts are deemed acts against the State and vice versa:

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<sup>80</sup> *Moharebeh* is enshrined in Article 279 of the Penal Code, while *mofsed-e-filarz* is contained in Article 286.

As a Shi'a Islamic theocracy, Iran equally holds expressions of unsanctioned religious views and expressions of political dissent to be acts of blasphemy. Those arrested for blasphemy are generally charged with *mofsed-e-filarz* ('spreading corruption on Earth'), a broadly defined crime capable of encompassing anything deemed undesirable by the state. (Berkely Center for Religion, Freedom and World Affairs, n.d.)

The government jails and executes periodically dozens of individuals on charges of 'enmity against God' (*moharebeh*). Although this crime is framed as a religious offense, and may be used against atheists and other religious dissenters, it is most often used as a punishment for political acts that challenge the regime (on the basis that to oppose the theocratic regime is to oppose Allah). (End Blasphemy Laws, 2021)

Accordingly, we need to look beyond offences of apostasy and blasphemy to appreciate the extent to which individuals are being executed on the basis of offending Islam. We were able to identify the executions of at least 6 individuals between 2010 and 2020:

- In December 2019, the Supreme Court of Iran upheld the death sentence of Meisam (surname unknown), who was convicted of 'insulting the prophet' and 'spreading propaganda against the state', among other charges. It is unclear whether this sentence has been carried out (Iran Human Rights, 2019; Iran Human Rights Monitor, 2019).
- In January 2018, Karim Zargar, founder of a spiritual group, was executed for 'spreading corruption on Earth' for propagating and promoting 'Eckankar' spiritual teachings (FIDH and League for the Defence of Human Rights in Iran, 2020:15).<sup>81</sup>
- In March 2015, Sediq Mohammadi and Hadi Hosseini were executed. They had been charged with '*moharebeh* through contact with a Salafi group', and 'propaganda against the State through proselytising Sunni beliefs' (Abdorrahman Boroumand Center for Human Rights in Iran, n.d.; n.d.). It is unclear what they were convicted of, and what the legal foundations of their executions were.
- In September 2014, Mohsen Amir Aslani Zanjani was hanged for 'corruption on Earth and heresy in religion' for his unorthodox interpretations of Islamic tenets and verses of the *Qur'an*, for giving religious classes propagating a new interpretation of the *Qur'an*, and for insulting the Prophet Jonah. His execution was carried out despite a Supreme Court ruling that had overturned his death sentence (Abdorrahman Boroumand Center for Human Rights in Iran, n.d.; FIDH and League for the Defence of Human Rights in Iran, 2020:13; Reuters, 2014).
- In December 2012, Mohammad Zaher Bahmani was executed for 'enmity against God' for holding religious classes propagating Sunni beliefs, and distributing books and CDs concerning Sunni ideology (Abdorrahman Boroumand Center for Human Rights in Iran, n.d.).
- In January 2011, Abdolreza Gharabat (referred to by FIDH and IHRDC as Seyed Ali Gharabat) was executed on charges of apostasy and 'spreading corruption on Earth'. It is reported that he had 'claimed to be God' and had 'deceived others into worshipping

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<sup>81</sup> Originally, Karim Zargar was also sentenced to death for rape; however, these two death sentences were meted out in different trials (i.e., Zargar was sentenced to death for 'spreading corruption on Earth', and sentenced to death again for rape, rather than being convicted of both offences in the same trial and sentenced to death) (FIDH and League for the Defence of Human Rights in Iran, 2020:15). Thus, this is a case of the death penalty being imposed and carried out for 'spreading corruption on Earth' exclusively on religious grounds.

him' (Abdorraahman Boroumand Center for Human Rights in Iran, n.d.; FIDH and League for the Defence of Human Rights in Iran, 2020:13; Milani, 2014:26–27; Reuters, 2011b).

A review of Iran's death penalty practice suggests that religious and political offences are employed in a relatively arbitrary fashion, with religious offences being used to silence political dissidents, and political offences used to persecute persons having acted against religion. The following jurisprudential case study provides further insight into the criminal justice processes preceding and following the sentencing of an offender to death for offences against religion.

### ***The case of Hasan Yousefi Eshkevari***

In September 2000, Hasan Yousefi Eshkevari was indicted on the following counts (Milani, 2014:19):

- A. Insulting sacred Islamic beliefs, denying and repudiating basic tenets of the enlightening religion of Islam and everlasting laws of the Qur'an through giving a speech against the Islamic veil and Islamic penal laws, giving interviews to foreign radio stations and denying the everlasting nature of Islamic and Qur'anic laws (addressed in the first discussion of the chapter apostasy in Imam Khomeini's Tahri'r al-Vasīlah as well as in Article 513 of the Book of Ta'zīrat).*
- B. Waging war on God, sowing corruption on earth, and acting against national security through participation in and leadership of a group that acted with the slogan of changing the religious government, taking part in the shameful Berlin conference, giving speeches against the Islamic Republic, participating in the meeting of the People's Fedaian Organization (majority branch) in Berlin, and other similar acts while abroad (related to Articles 186 and 498 of the Islamic Penal Code).*
- C. Propaganda against the Islamic Republic and disseminating falsehoods through speeches, writing articles, and giving interviews to foreign publications and radio states (related to Articles 500 and 698 of the Islamic Penal Code).*
- D. Insulting and making false accusations against Imam Khomeini by attributing false statements to him (related to Articles 514 and 697 of the Islamic Penal Code).*
- E. Seriously insulting the clergy by engaging in the above.*

Eshkevari was found guilty on charges A, B, C, and E, and was sentenced to death. However, he was informed that the death sentence 'would not be carried out because Attorney General Mohseni-Ejei was opposed to this sentence'. Nevertheless, Eshkevari appealed the decision. The Court quashed his conviction and submitted the case for retrial, where the charges of apostasy, enmity against god, and spreading corruption on earth were dropped with no official reason given. Eshkevari was, however, found guilty of insulting sacred Islamic beliefs (for challenging whether the veil should be compulsory), disseminating falsehoods, and participating in the Berlin conference, and was sentenced to a total of seven years' imprisonment (Milani, 2014:21).

This case clearly illustrates how offences against religion are used to mask political motives. First, it reveals how religious and political (e.g., national security and propaganda) charges are often laid in tandem, reflecting the inseparability of religion and the state. Second, the explanations provided by the indictment for its various counts essentially justify the religious offences on political grounds. The following extract is the explanation given in the indictment for count A (apostasy and blasphemy):

Unfortunately, from the time he was a member of the parliament, Mr. Yousefi Eshkevari became entangled with liberals, the so-called 'Freedom Movement' and Westoxified intellectuals. This problem and entanglement has been the root cause of his misguidedness. It is surprising that Imam Khomeini repeatedly warned about this issue but they [members of the Freedom Movement] did not pay any attention. (Milani, 2014:19)

Despite the first count of the indictment containing offences against religion, the justification given for these charges 'had clear political overtones' (Milani, 2014:19). Moreover, the political threads running in this indictment appear to have continued throughout, and even subsequent to, the trial. The fact that the Attorney General was capable of usurping a judicial ruling of Eshkevari's death sentence once again reveals the extent to which religion and politics are intertwined in Iran, and the fact that the judiciary does not operate independent of—or is at least subordinate to—the State.

Finally, Eshkevari's indictment also reveals a semantic issue: in the first count, the indictment uses the term 'apostasy' in parallel to a reference to Article 513 (a blasphemy offence). Perhaps, then, while a distinction exists as between apostasy and blasphemy at law, the apparent blurring of these offences in practice suggests that there is little utility in treating the two as distinct.

### ***Persecution of Sunni Muslims***

Given that Iran executes more individuals per capita than any other country in the world (Amnesty International 2021a), the number of executions of persons convicted of offending religious morals, whether formally charged with religious or political offences, appears to be relatively low. Ethnoreligious minorities, however, are grossly overrepresented amongst those executed for non-religious offences.

In recent years, reports have indicated that a disproportionate number of those persons judicially executed were Sunni Muslims—particularly those from Kurd, Baluchi, and Arab ethnic minorities (Austrian Centre for Country of Origin & Asylum Research and Documentation, 2015; United States Department of State, 2021b:14):

The recent escalation in executions of Baluchis and Ahwazi Arabs raises serious concerns that the authorities are using the death penalty to sow fear among disadvantaged ethnic minorities, as well as the wider population. The disproportionate use of the death penalty against Iran's ethnic minorities epitomizes the entrenched discrimination and repression they have faced for decades. (Amnesty International, 2021d)



Various organisations have raised concerns about the executions of these ethno-religious minorities, arguing that they are likely to have been targeted due to their identity:

- In May 2021, six Baluchi men were mass executed on drug charges. Of the 35 people known to have been executed on drug-related charges in the first five months of 2021, the majority of them were Baluchis (Iran Human Rights, 2021).
- Between December 2020 and February 2021, at least 19 Baluchis and one Ahwazi Arab were executed. This represents more than a third of all executions carried out in Iran during this period (Amnesty International, 2021d).
- In January 2021, Baluchi man Javid Dehghan was executed. He had reportedly been disappeared, held in solitary confinement, tortured to confess in interrogations without access to a lawyer, and denied both a fair trial and an appeal. Various UN experts condemned this as an 'arbitrary execution' (United Nations Office of the High Commissioner for Human Rights, 2021).
- In January 2021, Ahwazi Arab man Ali Motairi was executed while on a hunger strike. His death sentence was carried out despite allegations of torture and forced confessions. His family were not informed of his execution, and were denied the right to visit him prior to his execution, despite Iranian law enshrining this right (Amnesty International, 2021d).
- Of the ten political prisoners executed in 2020, four – Diako Rasolzadeh, Hedayat Abdollahpour, Mustafa Salimi, and Saber Shehkh Abdullah – were Sunni Kurds, and two – Abdulbaset Dehani and Abdulhameed Baluchzani – were Sunni Baluchis. They were charged with 'enmity against God' and other vague national security offences (United States Department of State, 2021b:11).
- In January 2020, UN Secretary General Antonio Guterres asserted that Kurds charged with national security offences constituted close to half of all political prisoners in Iran. Between January and August 2019, 37 Kurds were executed. During that same period, 352 Kurds were arrested, and four sentenced to death (FIDH and League for the Defence of Human Rights in Iran, 2020:30).

Particularly concerning are reports of mass executions of ethno-religious minorities:

- On 2 August 2016, 20 Sunni Kurds were executed. They had been held for long periods of solitary confinement, subjected to torture and ill-treatment, forced to make confessions, and sentenced to death followed 'grossly unfair trials.' They were accused of various security-related offences; however, the prisoners insisted that they had been detained on religious grounds such as arranging and partaking in religious meetings and disseminating religious materials (FIDH and League for the Defence of Human Rights in Iran, 2020:32).
- On 26 October 2013, 16 Baluchi prisoners were executed within 12 hours of an attack by Baluchi insurgents which had killed 14 border guards. Retaliatory executions such as these were also carried out in December 2010, when 11 Baluchi prisoners were executed after a mosque was bombed, presumably by Baluchi insurgents (Ibid).

Sunnis have also been killed extrajudicially:

- In May 2020, security forces killed Sunni Baluchi brothers Mohammad and Mehdi Pourian, aged 18 and 20 respectively. Daniel Brahovi, 17, was also reportedly killed in the incident. The local prosecutor referred to the three as ‘famous and well-known miscreants’, claiming that weapons and ammunition had been seized from them. The families of the victims filed charges, but received no response. It is reported that local police and the prosecutor threatened to kill the Pourian family if they continued pursuing the case (United States Department of State, 2021b:14).
- In May 2020, police killed Mousa Shahbakhsh, a Sunni Baluchi man, because he did not have a driver’s licence and failed to stop after a police pursuit (Ibid:11)
- In June 2020, a Sunni Ahwazi Arab died in custody under suspicious circumstances. It has been reported that he may have been tortured (Ibid).
- In February 2020, Davood Zahroozah, a Baluchi man, was shot and killed by security forces. He had been transporting fuel, an act which the government view as ‘smuggling’, when the security forces opened fire on his vehicle without warning (Ibid:13).

### ***Persecution of Baha’is***

The Baha’i community is the largest religious minority in Iran, with an estimated population of 350,000 (Bowman, 2021). Deemed ‘heretical’ by the Iranian regime, Baha’is have been subjected to ongoing discrimination, marginalisation, and violence for decades, albeit in varying forms (Ibid). Historically, Iran persecuted Baha’is by way of judicial executions: since the Islamic Revolution in 1979, at least 200 Baha’is have been executed (FIDH and League for the Defence of Human Rights in Iran, 2020:34). In response to international outcry, Iran was inspired to wage a more subtle—yet equally stifling—campaign against Baha’is, by exerting social, economic, and cultural pressures against the community. This strategy continues today, and in more recent years has been bolstered with a campaign to incite hatred and violence toward Baha’is at the community level (Diane Ala’i in Ensemble contre la peine de mort (ECPM), 2011:59–63). For instance, Baha’is are prohibited from enrolling in universities, and in 2020, the Baha’i faith was removed as a recognised religion on national identification cards (Bowman, 2021). Moreover, between March and October 2019, there was a wave of summons, detentions, and trials of Baha’is, with at least 65 standing trial for various offences (United States Department of State, 2020b:2).

While the State may not be directly involved in the killing of Baha’is, it has evinced a clear intention to eliminate the Baha’i faith from Iran. In 2021, leaked documents revealed that the Iranian State had instructed teachers to identify Baha’i students and convert them to Islam (Bowman, 2021). ‘Despite constant claims from the government that Baha’is are not persecuted for their beliefs, the Iranian authorities have once again exposed their true intentions’, says Diane Ala’i, the Representative of the Baha’i International Community to the United Nations.

When asked why the State is so committed to persecuting Baha’is, one interviewee shared the following thoughts:

When you are a government that is based on religion and on the power of clerics, and you have a religion that says ‘there should be no more clergy’, I think you feel threatened ... There is a threat that is intrinsic in the beliefs and in the teachings of the Baha’i faith that makes this persecution so strong. (I-5).

While no Baha’i is believed to have been judicially executed since the early 2000s, community level killings have continued. Articles 302(a) and 310 of the Penal Code, as set out above, effectively enable such killings by substantially reducing the penalties that may be meted out to killers.<sup>82</sup> Moreover, it has been reported that authorities have in fact altogether refrained from investigating or prosecuting instances of violence against Baha’is, affording absolute impunity to those who carry out such violence (Diane Ala’i in *Ensemble contre la peine de mort* (ECPM), 2011:62–63)). This climate of impunity—born of a prejudiced legislative framework and the State’s conscious failure to hold perpetrators to account—clearly demonstrates the motives of the Iranian State:

The legal and jurisprudential framework within which the rights of the Baha’i community are violated in Iran can be directly linked to the country’s aims of maintaining a national identity as an Islamic Republic. The Iranian Constitution and other existing laws institutionalise religious discrimination. Religious edicts by Iran’s Supreme Leader and other senior clerics further reinforce a systemic basis for the marginalisation of the Baha’is. (Milani, 2016b)

Moreover, while the State may not be carrying out killings judicially or extrajudicially, its complicity in community level violence is undeniable, as the following cases illustrate:

- In September 2016, Farhang Amiri was knifed to death by two men. In court, one of his killers is reported to have said that ‘Baha’is were Muslims who turned their back on Islam’ and that it was ‘a virtue to shed their blood’. Despite this, his killers were released on bail, and the judge said that ‘even if the Amiri family refuses to withdraw their complaint, the killers will be sentenced to a very light punishment’ (FIDH and League for the Defence of Human Rights in Iran, 2020:34).
- In August 2013, Ataollah Rezvani was shot dead by unknown assailants. He was killed shortly after refusing pressure from the Ministry of Intelligence to leave his home city. Rezvani’s family was offered bribes should they agree to close the investigation. The authorities refused to investigate Rezvani’s killing as religiously motivated, claiming that he had committed suicide (FIDH and League for the Defence of Human Rights in Iran, 2020:34; Milani, 2016b).
- In May 2013, Saeedollah Aqdasi was murdered in his home. His death was not reported until nine months later, and no investigation was carried out (FIDH and League for the Defence of Human Rights in Iran, 2020:34; Iran Human Rights and ECPM, 2021:27).
- Between 2005 and 2014, at least nine Baha’is were assassinated. The perpetrators were not prosecuted, or otherwise held accountable, in any of these cases (FIDH and League for the Defence of Human Rights in Iran, 2020:34).

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<sup>82</sup> If construed as ‘apostates’, the killing of Baha’is can be justified under Article 302(a). Alternatively, given that the Baha’i faith is not formally recognised by the Iranian State, somebody having killed a Baha’i may seek to diminish their culpability on the basis of Article 310.

Iran's persecution of the Baha'i community is not confined by Iran's borders. A 1991 secret memorandum reveals not only a domestic policy aimed at the 'quiet strangulation of the Baha'i community' but also calls for the devising of a plan 'to confront and destroy their cultural roots outside the country' (Baha'i World News Service, n.d.). One interviewee explained how this policy has been implemented in recent history:

We have seen that in whichever country the Iranian government has the capacity to reach out to and exert influence, they will. The most salient example at this moment is Yemen with the Houthis, who are directly linked to and supported by Iran, and who have started a campaign of persecution against the Baha'is that is actually very un-Yemeni-like, and very much along the lines of what Iran would do (I-5).

### ***Persecution of Gonabadi Dervishes***

Gonabadi Dervishes are proponents of Sufism—a 'mystical form of Islam'—and reject various Shi'a concepts that are incompatible with their beliefs. As a result of historical animosity born by Shi'a clerics toward Sufi orders, the Iranian Government portrays the Gonabadi Dervishes as 'a pervert sect' in discourse, policy, and propaganda. Viewed as a potential threat to society and the Islamic Republic, Gonabadi Dervishes are marginalised and subjected to various forms of discrimination and violence (Iran Human Rights Documentation Center, 2021). For instance, in 2019, 23 Gonabadi Dervishes were sentenced to terms of imprisonment for security-related offences ('assembly and collusion against national security', 'disobeying police', and 'disturbing public order'). These individuals were reportedly among the more than 300 Gonabadi Dervishes arrested in 2018 for protesting the house arrest of their spiritual leader (United States Department of State, 2020b:2).

We have identified numerous killings of Gonabadi Dervishes, both judicially (though falling far short of due process standards) and extrajudicially:

- 2021 – Behnam Mahjoubi died in custody after being tortured and denied medical care (Iran Human Rights Documentation Center, 2021). His death has been termed 'murder' by USCIFR: 'Iran is now trying to cover up its intent to murder peaceful religious activists through deliberate medical malpractice.' (United States Commission on International Religious Freedom, 2021).
- 2019 – Gonabadi Dervish spiritual leader Noor Ali Tabandeh died as a result of being denied urgent medical care while on house arrest (United States Department of State, 2020b:14).
- 2018 – Mohammed Raji died in police custody due to injuries. No one has been held accountable for his death (Iran Human Rights Documentation Center, 2021).
- 2018 – Mohammad Salas was executed on the charge of killing three police officers after an unfair trial. He was convicted on the basis of confessions extracted under torture (Ibid).
- 2011 – a police officer killed Vahid Banani in a fatal shooting in Kovar. The authorities did not prosecute the officer for murder (Ibid).

## MALDIVES

### *The law*

In the Maldives, **apostasy** may carry the death penalty (United States Department of State, 2020c:3). The Penal Code provides that, where an offender is found guilty of committing an offence for which punishment is predetermined in the Holy *Qur'an*, that person shall be punished according to Islamic *Shari'a* and as prescribed by the Penal Code and the Holy *Qur'an* (section 1205).

It is unclear whether children may be executed on this basis. The Penal Code provides that, even if the offender would otherwise be excused from culpability on the basis that he/she is a minor, he/she will be culpable for offences for which punishments are predetermined under *Shari'a* law (section 53(c)). However, since February 2020, the new Child Rights Protection Act has prohibited the execution of the children (UNICEF, 2020; United Nations Human Rights Council, 2020:[146]). The extent to which these laws are to be reconciled when dealing with *Shari'a* law is yet to be determined.

Neither **blasphemy** nor **proselytising** are capital offences. Blasphemy is codified as a misdemeanour (Penal Code sections 617(a), (b)), punishable by up to one year imprisonment (section 92(f)). Proselytising against Islam is punishable by two to five years imprisonment; however, if the offender is a foreigner, authorities may instead revoke the offender's license to preach in the country and deport them (United States Department of State, 2020c:4).

### *Enforcement*

We have been unable to identify any death sentences imposed, or executions carried out, for apostasy. This was corroborated by our interviews (I-6; I-20; I-27).

The Maldives has observed a de facto moratorium on executions since 1954 (The Advocates for Human Rights et al., 2020:[5]) and affirmed its intention to continue doing so during its 2020 Universal Periodic Review (United Nations Human Rights Council, 2020c:[10]). This has not, however, stopped courts sentencing people to death (United Nations Human Rights Council, 2020a:[19]). Of particular concern is the fact that courts have issued death sentences in accordance with *Shari'a* law: in January 2019, a court in Naifaru sentenced a woman to death by stoning for extramarital sex, relying on provisions that allow for discretionary *Shari'a* sentences in cases of hudud offences (Maldives Independent, 2019; United States Department of State, 2020c:6). In fact, the same Court sentenced another woman to death for giving birth out of wedlock in October 2015 (BBC News, 2015a; Maldives Independent, 2019). Though both these sentences were overturned by a higher court in a matter of days, it demonstrates that, unlike some other jurisdictions, the Maldives' retention of *Shari'a* law in parallel to codified law is not merely symbolic.

### *Beyond the law*

In recent years, concerns have grown as to the spread of radical strains of Islam in the Maldives. A report by Maldivian Democracy Network reveals how religious conservatism and



extremism is proliferated among the Maldivian community at various loci: in education, in the media, in religious spaces, and online (Maldivian Democracy Network, n.d.). Interviewees shared similar sentiments:

The religious landscape in the Maldives has changed beyond recognition in the last 10 years. It has become so conservative ... There is no difference in terms of ethnicity or language or beliefs, so it is very easy to radicalise a society (I:20).

When the State becomes ineffective, people resort to something else, and that solution appears to be, 'be more strict with everybody'. So the strictness promised by Islamic law becomes appealing ... more and more people have been radicalised into thinking that the solution lies in Islamic law (I:4).

People have been conditioned to the point where they see Salafism or extreme versions of Islam as the true form of the faith. So as long as that isn't countered, it is just going to be proliferated, because there are so many radio stations and TV channels that are feeding the public this type of disinformation (I:6).

This shift toward conservatism is perpetuated by the Maldives Constitution of 2008. In addition to establishing Islam as the State religion (Article 10), the Constitution mandates that all Maldivian citizens be Muslim (Article 9). Religious scholars and radical Islamist groups alike have used this as an opportunity to propagate narrow and extreme interpretations of Islam (Amnesty International, 2012; Human Rights Watch, 2018a). Some such interpretations have sought to mainstream Salafism and its strict interpretations of the *Shari'a*, including endorsement of capital punishment (I:20). 'There's been a blurring of the official interpretation of Islam', said one interviewee. 'Ironically, it was a democratic restructuring that gave a platform to a lot of these Salafi thinkers' (I:6).

Against this backdrop, the country has seen a rise in religious radicalisation and the amplification of extremist ideologies: Maldivians have reportedly left the country to join the Islamic State (Gough, 2021), while domestic extremist groups have 'contributed to the emergence of a discourse of religion-based violence' (Zahir, 2017). It has been suggested that such inflammatory and hateful rhetoric is responsible for violence against perceived religious dissidents:

- In May 2017, prominent blogger **Yameen Rasheed** was stabbed to death for 'mocking Islam' (Maldives Independent, 2017; Zahir, 2017). Prior to his death, Rasheed informed the police that he had received several death threats, some of which had come from Government officials. The authorities did not respond to his complaint, nor did they investigate the matter (Front Line Defenders, n.d.; Human Rights Watch, 2018a). The trial of the six men charged with Rasheed's murder is due to conclude in November 2021 (Raajjie, 2021).
- In August 2014, prominent blogger and journalist **Ahmed Rilwan** went missing. He had published pieces critical of a local Al Qaeda affiliate group, and was put on the group's hitlist after participating in a 2011 rally calling for religious tolerance (*arranged by Ismail Khilath Rasheed, below*). In August 2018, two men were acquitted of Rilwan's disappearance, the Court condemning the police and prosecution as negligent, careless,

and having failed to conduct a thorough investigation (Human Rights Watch, 2018a). At the time of writing, Rilwan's whereabouts remain unknown.

- In October 2012, prominent reformist religious scholar and Member of Parliament **Dr Afrasheem Ali** was stabbed to death (Zahir, 2017). Hussain Humaam Ahmed, a gang member, was sentenced to death for Ali's murder in 2014; however, activists have expressed concern, claiming that Humaam suffered from mental illness and was denied access to counsel, while other suspects were not properly prosecuted. In 2016, the Supreme Court upheld Humaam's death sentence (Human Rights Watch, 2018a). At the time of writing, he is believed to remain on death row.
- In December 2011, a rally calling for religious tolerance was attacked by ten men throwing stones. Rally organiser, prominent blogger and rights defender **Ismail Khilath Rasheed** was struck on the head and hospitalised with a fractured skull. Following the protest, police arrested Rasheed and detained him for almost four weeks, claiming that his call for religious tolerance was 'unconstitutional'. Authorities did not investigate his assailants (Amnesty International, 2012). Rasheed was attacked again in May 2012, and in June 2012, was stabbed in the neck (FIDH, 2012). Again, police made no arrests (Human Rights Watch, 2018a).

In September 2019, a presidential commission was established to independently investigate these murders and disappearances. It concluded that Ahmed Rilwan had in fact been killed by a local group affiliated with Al Qaeda, and that Former President Abdulla Yameen and his government had conspired to 'divert the focus' of the police investigation and obstruct justice in the case. The investigation also found that the same extremist group was responsible for the murders of Dr Afrasheem Ali and Yameen Rasheed, and the attempted murder of Ismail Khilath Rasheed (Abdul-Samad, 2021; Rasheed, 2019).

Since President Ibrahim Mohammed Solih assumed office in 2018, there has not been a single murder, disappearance, or assault against journalists. However, the culture of impunity that extremist groups have enjoyed for years remains, amid calls for the Government to restore the rule of law and ensure the delivery of justice in unresolved crimes (Abdul-Samad, 2021). Moreover, while the incumbent Government may be taking incremental steps away from this culture of absolute impunity fostered by its predecessors, it is simultaneously stifling civil society: in December 2019, the Maldives Democracy Network was deregistered for publishing the aforementioned report on radicalisation in the country (Ibid; I-6)

## MAURITANIA

### *The law*

Both **apostasy** and **blasphemy** carry the death penalty under Mauritania's Penal Code.<sup>83</sup> Historically, the death penalty could be substituted with a term of imprisonment if the offender repented; however, this Article was amended in 2018 to make the death penalty mandatory even if the accused repents (End Blasphemy Laws, n.d.; Human Rights Watch,

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<sup>83</sup> One source claims that the death penalty also applies for 'infidelity' (outwardly presenting as Muslim but not truly being a person of faith) and failing to perform prayers; however, we have been unable to verify this (USCIRF 2020:71).

2018b; Humanists International, 2018; Al Jazeera, 2017; United States Department of State, 2020d:2).<sup>84</sup>

### ***Enforcement***

We have been unable to identify a single execution on the basis of apostasy or blasphemy in Mauritania. In fact, Mauritania has observed a de facto moratorium on all executions since 1987 (World Coalition Against the Death Penalty, n.d.). Mauritania does, however, continue to impose death sentences, with at least 123 people on death row at 2020 year's end (Amnesty International, 2021c:48).

In December 2014, blogger Mohamed Cheikh Ould Mkheitir was convicted of apostasy and sentenced to death (Humanists International, 2015). This was the first time Mauritania had sentenced anyone to death for apostasy since 1960 (Humanists International, 2015). In November 2017, an Appeals Court resentenced Mkheitir to two years' imprisonment and a fine, on the basis that he had in fact repented for his actions (Al Jazeera, 2017). This decision to reduce Mkheitir's sentence is believed to have precipitated the 2018 amendments to Article 306 (Al Jazeera, 2017). Mkheitir was released in 2019 and has since relocated to France (United States Department of State, 2020d:3). Prior to Mkheitir's release, Mauritanian President Mohamed Ould Abdel Aziz sought to justify Mkheitir's detention as necessary to ensure both Mkheitir's own safety and public order:

We know that from the point of the view of the law, he should be freed, but... millions of Mauritians took to the streets to demand his execution. His release would mean that chaos would be allowed to take root in the country. (Qantara, 2019)

Justification of the retention and enforcement of blasphemy laws on the basis of maintaining public order undermines criminal justice, because 'the individual accused of blasphemy bears the consequences of the state's failure both to protect individual rights and to ensure public order against private (mob) violence' (Fiss and Kestenbaum, 2020:28).

In 2020, eight political activists were charged with blasphemy. Five of these men were held in pretrial detention from February 2020 until trial in October 2020. All eight men were subsequently convicted of the lesser offence of 'violating the sanctity of God' and sentenced to prison terms between six and twelve months, and a fine (Human Rights Watch, 2020a).

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<sup>84</sup> While the majority of sources claim that the death penalty is mandatory, there appears to be some discrepancy. Some sources claim that an accused must be granted three days to repent before the mandatory penalty is applied (Bagga and Lavery, 2019:37; Fiss and Kestenbaum, 2020:71). Another suggests that repentance may be taken into account by the sentencing judge (United States Department of State, 2021c:2). Finally, one source suggests that apostasy and blasphemy are punishable *upon arrest* (United Nations Office of the High Commissioner for Human Rights, 2018).

## NIGERIA

### *The law*

In Nigeria, neither **apostasy** nor **blasphemy** carry the death penalty at the federal level (note: federal law is secular). However, in 12 Northern States, *Shari'a* courts operate in parallel to secular courts, and may pass death sentences based on *Shari'a* law (United States Department of State, 2020e:4–5).<sup>85</sup>

### *Enforcement*

At both the Federal and State levels, Nigeria maintains an informal moratorium, having not executed since 2016. This has not, however, prevented courts from issuing further death sentences: at 2019 year's end, 2,745 people were on death row—the highest number in sub-Saharan Africa (Callamard, 2021:para 91).

In August 2020, a *Shari'a* court in Kano State sentenced 22-year-old singer Yahaya Sharif-Aminu to death for one of his songs containing blasphemous lyrics (Reuters 2020; US Department of State 2021:1). In January 2021, a retrial was ordered (Amnesty International, 2021e; Callamard, 2021:para 92). At the time of writing, the outcome of this retrial remained unclear.

Since 2015, a further ten people are known to have been sentenced to death for blasphemy. As of March 2021, it is unclear if they have appealed (Callamard, 2021:para 92).

In August 2020, the same *Shari'a* judge who sentenced Yahaya Sharif-Aminu to death for blasphemy sentenced 13-year-old Omar Farouq to 10 years' imprisonment for blasphemy (Sahara Reporters, 2020). In January 2021, his conviction was overturned by a secular appeals court, on the grounds of his age, and because he did not have adequate legal representation (BBC News, 2021a; Busari, 2021; Ibrahim, 2021).

In April 2020, human rights activist Mubarak Bala was arrested in Kano State on grounds of blasphemous social media posts (United States Department of State, 2021d:10). In December 2020, the Federal High Court of Nigeria ordered Bala's release; however, as of April 2021, he remains arbitrarily detained in the custody of Kano State, without charge (Akinwotu, 2021). Since renouncing Islam in 2014, Bala has received death threats, and was forcibly held at the psychiatric ward for close to three weeks on grounds of his atheism (Humanists International, 2020a).

When asked why the Northern States continue to impose death sentences without carrying out executions, one interviewee explained how the States wield the spectre of the death penalty as a means of censorship and fear-based social control, while simultaneously mediating community expectations:

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<sup>85</sup> We have been unable to locate the Penal Codes of these respective States to identify the specific provisions prescribing the death penalty for such offences.

Many citizens are in favour of the *Shari'a* system. But if the *Shari'a* system becomes too harsh, if it becomes too difficult for many of them to live with, and uncompromising, then citizens will push back against it. I think many leaders in those parts of the country are very aware of that (I-2).

It has also been suggested that the Northern States' reluctance to carry out executions is due to an acute awareness of international onlookers:

When the *Shari'a* system was first instituted... there were death penalty judgments against people, but there was a huge outcry both within the country and internationally. So we saw this happen consistently: we would have these death penalty sentences meted out to citizens, but then civil society would mobilise, there would be huge international pressure, and we would see this eventually overturned, or completely abandoned, or interpreted into a different sentence, a lesser sentence. (I-2).

One interviewee suggested that the infrequency and arbitrariness of death sentences being meted out for blasphemy are explained by the fact that the death penalty is used by the Northern States to further political agendas, rather than a manifestation of their strict adherence to Islam: 'they [the authorities] use this as an opportunity to reinforce the supremacy of Islam or their affiliation to Islam' (I-15).

### ***Beyond the law***

State authorities have killed religious minorities extrajudicially, though not necessarily for offences against religion. In July 2019, police allegedly killed three members of the Islamic Movement of Nigeria ('IMN')—a Shi'a organisation<sup>86</sup>—during their annual procession, while a further two IMN members were killed in clashes with police in August. It has been reported that the families of at least three of the victims had been compensated by the Federal High Court (United States Department of State, 2021d:10). In December 2015, at least 347 IMN members were killed by the Nigerian army and buried in a mass grave without identification or autopsy. The lack of accountability for soldiers involved in the killings has been condemned by local and international activists alike (Callamard, 2021:paras 76-78; United States Department of State, 2021d:10). In July 2019, the Federal High Court declared the IMN an unlawful group, a decision the UN Special Rapporteur on extrajudicial, summary and arbitrary executions has called 'a dangerous precedent for the exercise of the right of freedom of religion or belief, and for respect of fundamental liberties and the right to life' (Callamard, 2021:para 79).

In addition to judicial prosecutions for blasphemy, perceived infractions of religious morals have also been met with hostility at the community level. In March 2021, Talle Mai Ruwa was stoned to death and then burnt in Bauchi State for allegedly insulting the Prophet Muhammad (Sahara Reporters, 2021; Ufuoma, 2021).

In Nigeria, the population is almost 50 per cent Christian (predominantly in the south of the country) and 50 per cent Muslim (predominantly in the north) (Pew-Templeton, n.d.), and

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<sup>86</sup> The majority of Muslims in Nigeria identify as Sunni, while Shi'as constitute a 12 per cent minority (US Department of State 2021:3).



the religious tensions between the Christians and the Muslims have resulted in violence throughout the country (Igwe, 2020). Violence between Muslim Fulani herdsmen and predominantly Christian farmers is particularly rife, and has been attributed, in part at least, to religious conflict between the groups (United States Department of State, 2021d:2).

While the extent of this violence cannot be accurately quantified, it is undisputed that the conflict is worsening: of the 3,641 killings recorded by Amnesty International between January 2016 and October 2018, more than half of the killings took place in 2018 alone (Amnesty 2018:6). One source claims that between January and April 2021, more than 800 Christians were killed by Fulani herdsmen in Nigeria's Southeast States, bringing the total of Christians killed by Fulani herdsmen and insurgent 'jihadists' in the whole of Nigeria during that period to at least 1,470 (Intersociety, 2021). This same source estimates that 1,350 Christians were killed in 2019, and that this number rose to between 2,400 and 3,530 in 2020 (Intersociety, 2021). A second source claims that, in the first six months of 2018, farmer-herder conflict was six times deadlier than the Boko Haram armed conflict, resulting in over 1,300 deaths (International Crisis Group, 2018). A third source claims that between January and June 2020, more than 1,100 villagers were killed by 'Bandits', with at least 366 in Kaduna State (Amnesty International, 2020b). The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has estimated that 11,000 persons have been killed since 2001 in Plateau State alone, terming the ongoing conflict 'the gravest security challenge' in Nigeria (Callamard, 2021:para 50).

The root cause of this violence is disputed, with commentators attributing the conflict to various sources (United States Department of State, 2021d:2). While some contend that this violence is purely religious (Intersociety, 2021), others suggest that such rhetoric is both inaccurate and inflammatory:

This conflict is often framed as a struggle by Christian Nigerians to preserve their indigenous lands against a religious and ethnic 'invasion'; rhetoric condoned by many in positions of authority, particularly at the Federal level. This widespread narrative, which can be used to justify far greater violence in the region, is remarkably short-sighted, offering little prospect for effective address of what are conflicts over scarce resources. (Callamard, 2021:para 51)

Indeed, this violence appears to have been incited by the dwindling of land resources, competition over which has occasioned increasing conflict between farming and nomadic communities which just so happen to be of different religious constitutions (Callamard, 2021:para 49). By framing this conflict in religious terms, however, commentators have inspired further violence (Ibid:paras 50-51).

That is not to say, however, that religiously fuelled violence has not occurred at the community level: for instance, in January 2020, Fulani herdsmen killed Pastor Matthew Tagwaif and three others, including a 10-year-old boy (United States Department of State, 2021d:16). Moreover, while the conflict between herdsmen and farmers appears to be overwhelmingly one-sided, there have also been reports of revenge killings carried out by Christians (Ibid:2)

The Nigerian Government has been criticised for its failure to adequately respond to this violence, with local and international commentators condemning the authorities' 'inability or unwillingness to prevent or mitigate violence between Christian and Muslim Communities' (United States Department of State, 2021d:2). Indeed, the sheer scale of the violence reported suggests that the Nigerian Government has, at the very least, manifestly failed to protect its citizens. Amnesty International (2018:41-43) has reported an overwhelming impunity gap, and a lack of adequate relief, rehabilitation, and humanitarian intervention. The same report examines the involvement of security forces in facilitating the violence:

Eye witnesses, victims, local officials and other independently interviewed have recounted several incidents where police and soldiers have either ignored credible warnings of impending attacks and/or abandoned people during or just before deadly attacks by heavily armed groups, suspected to be members of herder or farmer communities. The cases documented by Amnesty International demonstrate at least, wilful negligence; at worst, complicity. (Amnesty 2018:50)

In the interests of completeness, it ought to be noted that sectarian violence has also been perpetrated by extremist groups. In recent years, Christians have been targeted by both Boko Haram and its offshoot, Islamic State West Africa Province (ISWAP):

- In December 2020, Boko Haram killed at least seven people in Pemi, a Christian village in Borno State, a predominantly Muslim part of the country. The attack was carried out on Christmas Eve (Abrak and Saifi, 2020; BBC News, 2020; United States Department of State, 2021d:14).
- In January 2020, Boko Haram kidnapped and subsequently beheaded Reverend Lawan Andimi, a Christian pastor. President Buhari acknowledged this murder in an op-ed (United States Department of State, 2021d:14).
- In December 2019, footage emerged of ISWAP beheading 11 persons, reportedly Christians (BBC News, 2019b).
- On Christmas Day of 2011, Boko Haram carried out a series of attacks on several churches, one of which killed at least 37 people (Reuters, 2011c).

We have not categorised this violence as 'State-sanctioned' for the following reasons. First, the scale of this violence is much lesser than that occurring in Nigeria at the community level. Second, this violence is sporadic, whereas community violence is ongoing and increasing. Third, whereas the State arguably has the capacity to intervene in violence amongst civilians, the ability of the State to stem acts of extremism is far more limited. Fourth, the Nigerian State has been accused of inflaming community violence; the same cannot be said of extremist violence. Finally, whereas the persecution of Hazaras has been ongoing in Afghanistan and Pakistan for decades (the Taliban first declared *jihad* on Hazaras in 1996), acts of extremism targeting Christians in Nigeria are a much more recent phenomenon.

## QATAR

### *The law*

Article 1 of the Penal Code provides that, where either the plaintiff or defendant is a Muslim, **apostasy** is to be punished in accordance with *Shari'a* law. Accordingly, there is scope for the death penalty to be imposed in such cases.

Acts akin to **blasphemy** (insulting Islam, Allah or any of the prophets, misinterpreting or violating the *Qur'an*, or violating religious sites) are punishable by up to seven years imprisonment (Penal Code Article 256). Interestingly, this provision also extends to blaspheming against, or violating the religious sites of, Christianity and Judaism.

### *Enforcement*

There have been no recorded punishments for apostasy (or for any of the *hudud* offences) since Qatar's independence in 1971 (Humanists International, 2020b; United States Department of State, 2021e:3). In 2013, a Nepali teacher was arrested and detained for insulting Islam. He was released after an online petition and international campaign were launched (Humanists International, 2020b).

## SAUDI ARABIA

### *The law*

In Saudi Arabia, **apostasy** is recognised as a *hadd* crime, punishable by death. **Blasphemy**, against Salafism or the Saudi monarchy, is also punishable by death, but is more commonly punished by imprisonment, fines, and lashing (Fiss and Kestenbaum, 2020:78).<sup>87</sup>

In April 2020, Saudi Arabia issued a royal decree providing that a 2018 law prohibiting the death penalty for juvenile offenders is to apply retroactively, effectively prohibiting further executions of juvenile offenders even if already convicted and sentenced to death. However, this law applies only to those convicted of *ta'zir* offences (i.e. discretionary death penalty). Accordingly, while this prohibits the execution of juvenile offenders convicted of blasphemy, those convicted of committing apostasy—a *hadd* crime (that is, where the death penalty is mandated by religious sources)—may still be executed (Human Rights Watch, 2021b; United States Department of State, 2021f:6).

In the absence of a penal code, criminal prosecutions in Saudi Arabia rely on judicial interpretations of the *Shari'a*. Accordingly, the definitions of crimes, determinations of guilt, and the nature and severity of sentencing may vary from case to case (Fiss and Kestenbaum, 2020:78). For instance, in the 2013, the courts recommended charging blogger Raif Badawi

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<sup>87</sup> For example, in 2013, blogger Raif Badawi was convicted of 'insulting Islam through electronic channels'. He was sentenced to seven years imprisonment and 600 lashes. In 2014, following an unsuccessful appeal, his sentence was increased to 10 years imprisonment, 1000 lashes and a fine (Perrigo, 2020; United States Commission on International Religious Freedom, n.d.).

with apostasy for liking a Saudi Christian Facebook page, and for saying that ‘Muslims, Jews, Christians, and atheists are all equal’. The judge subsequently dropped this charge after Badawi affirmed that he was a Muslim and recited the Islamic declaration of faith (United States Commission on International Religious Freedom, n.d.; United States Department of State, 2020f:10).

### ***Enforcement***

There have been no reported executions for either apostasy or blasphemy in recent years (United States Department of State, 2020b:3–4; 2021d:3, 5).

In February 2015, after allegedly uploading videos to social media in which he renounced Islam and the Prophet Muhammad, and desecrated a copy of the *Qur’an*, Ahmad al-Shamri was convicted and sentenced to death for apostasy and blasphemy, despite arguing insanity and intoxication (Reuters, 2015; The Independent, 2017). He unsuccessfully appealed his conviction to the Appeals Court. In April 2017, the Supreme Court similarly ruled against him, upholding his death sentence (The Independent, 2017). As of 2020 year’s end, al-Shamri is believed to remain incarcerated (United States Department of State, 2021f:10).

In November 2015, Ashraf Fayadh, a Palestinian poet, was convicted of apostasy and sentenced to death for allegedly making blasphemous statements and publishing blasphemous material in his poetry (Human Rights Watch, 2015b). His lawyer contested the verdict, arguing that Fayadh had been denied a fair trial. In February 2016, despite upholding his conviction, a panel of judges overturned Fayadh’s death sentence, sentencing him instead to eight-years imprisonment and 800 lashes, and requiring that he publicly renounce his poetry on state media (Batty and Mahmood, 2016).

It should be noted here that the degree to which offences against religion are enforced in Saudi Arabia is likely greater than indicated by these limited examples:

Saudi Arabia proved challenging to research and compare with other countries’ criminal blasphemy law enforcement because the state does not have a formal written penal code. The criminal law system is based on Shari’a law and judicial interpretations are grounded in restrictive interpretations of Hanbali Sunni Islam. Additionally, the government exerts tight control over the media, resulting in low levels of press freedom and high rates of human rights abuses against journalists. As a result, this study likely underestimates criminal blasphemy law enforcement in Saudi Arabia. (Fiss and Kestenbaum, 2020:41)

Moreover, due to the enmeshing of religion and the State, acts that would traditionally be conceived as offences against religion may be alternatively prosecuted under the guise of state security. Indeed, one interviewee suggested that the apparent absence of convictions and executions of religious offenders may be explained by the State’s reframing of the issue as a political one, reflecting a shift in domestic policy instigated by the Arab Spring:

Saudi Arabia has one of the highest execution rates in the whole world. So why are they not executing convicts on religious bases? From 2011, the political situation in the [Gulf] region is not as stable as it was before. There is political unrest. People are

demanding their rights. I think [Saudi Arabia] is trying to control the citizens. They are trying to silence political opposition voices in the country. They are trying to control this political unrest, so they are concentrating more on their opponents than on the people convicted on a religious basis. However ... a good percentage of political convictions are actually on a religious basis. (I-13)

Unlike apostasy, political offences are not *hudud*; that is, they do not carry a mandatory, religiously stipulated death penalty. Rather, they are classified as *ta'zir*, meaning that the death sentence is discretionary, determined by judges. Concerningly, this has not stemmed the issuing of death sentences and carrying out of executions on this basis:

[The] discretionary death penalty is the most common among implemented executions in Saudi Arabia, and it is all too often abused by judges, who impose the penalty in a manner not proportionate to the alleged crime ... The Public Prosecutor continues to demand the death penalty against many defendants for reasons related to their politic and intellectual opinions, statements, and positions, with no charges related to violence. (Alhajji, 2021)

For instance, since September 2017, cleric and religious reformer Hassan Farhan al-Maliki has been detained on various charges, including ‘criticism of several early Islamic figures’ and ‘insulting the country’s rulers and the Supreme Council of Religious Scholars, and describing them as extremist’. In a December 2020 hearing, the Public Prosecutor reportedly called for the death penalty (Alhajji, 2021; ALQST, n.d.; United States Department of State, 2021f:11).

It has also been suggested that Saudi Arabia prosecutes dissidents—both religious and political—with trumped up or less controversial charges in an attempt to ‘whitewash’ their image (I-13; I-16). By employing more palatable charges, the State targets these same opposition voices while avoiding domestic and international outcry:

If you are an apostate, but they don’t want to create outrage around this issue, they won’t call you an apostate—they’ll say you stole cars.<sup>88</sup> They will fabricate the whole thing ... If you’re a protester, they will call you a terrorist. (I-16)

### ***Persecution of religious minorities***

Shi’a Muslims make up approximately 15 per cent of the population, constituting the country’s largest religious minority. Saudi Arabia’s ‘ruling authorities and religious establishment consider the Shi’a faith to be incompatible with the Wahhabi interpretation of Sunni Islam to which they adhere’, and actively uses legal processes to legitimate the discrimination, subjugation, and execution of Shi’as (Amnesty International, 2020a:31):

[T]hrough a continuous policy of intimidation, detentions and convictions, including

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<sup>88</sup> The interviewee gave the example of Osama al-Hasani, an Australian-Saudi academic extradited from Morocco to Saudi Arabia in March 2021. Saudi Arabia sought his extradition under the guise of a conspiracy to steal luxury cars—charges of which he was cleared in 2019—but observers believe al-Hasani was targeted due to his political dissidence (Middle East Eye, 2021; Welch, 2021). Al-Hasani was held incommunicado for months (MENA Rights Group, 2021). In September 2021, one outlet reported that a Saudi court had sentenced al-Hasani to four years’ imprisonment, on unknown charges (Arab Organisation for Human Rights in the UK, 2021).



numerous executions of leaders and activists, the Saudi government has itself waged a campaign of violent repression against the Shi'a community. (Minority Rights Group International, 2015:6)

In April 2019, Saudi Arabia beheaded 37 people, at least 32 of whom were Shi'a men (Amnesty International, 2020a:33; Middle East Eye, 2020; Al Najjar, 2019; United States Department of State, 2020f:7). Many of these men were arrested following pro-democracy protests inspired by the 2011 Arab Spring, in which the men 'call[ed] for the end of religious apartheid and sectarian discrimination' (Al Najjar, 2019). They were charged with terrorism-related offences and convicted in 'grossly unfair' trials after allegedly being tortured or forced into signing false confessions (Amnesty International, 2020a; Middle East Eye, 2020; Al Najjar, 2019). As many as six of the men executed may have been juvenile offenders (adults executed for crimes allegedly committed as children) (United States Department of State, 2020f:7). More than two years later, Saudi Arabia continues to refuse to return the bodies of those executed to their families (European Saudi Organisation for Human Rights, 2021).

Though Saudi Arabia has framed these executions as motivated by national security concerns, this is merely a front:

These brutal executions are the latest act in the Saudi Arabian authorities' ongoing persecution of the Shi'a minority. The death penalty is being deployed as a political weapon to punish them for daring to protest against their treatment and to cow others into silence. (Amnesty International, 2017)

The SCC's [Specialised Criminal Court] role has been to create a false aura of legality around the government's misuse of the counter-terror law to silence its critics and opponents. By doing so, the SCC and its judges are effectively complicit in a wide range of human rights violations – arbitrary arrests and detentions, unfair trials, death sentences, torture and other ill-treatment, threats, and repression of freedom of expression, association and peaceful assembly. (Amnesty International, 2020a:48)

Shi'a disenfranchisement in Saudi Arabia has deep historical roots and only recently has been instrumentalised in the growing regional conflict between Riyadh and Tehran. The only 'crime' of the Shi'a men who were executed in April and the many more who are still being held in Saudi jails was to demand the end of systemic discrimination and human rights abuses. (Al Najjar, 2019)

The 2019 executions are but the latest in a Saudi Arabia's bloody campaign against the Shi'a community:

- In July 2017, four Shi'a men were executed on terror-related charges, in connection with their participation in anti-government protests (Amnesty International, 2017).
- In January 2016, Shi'a cleric Nimr al-Nimr, a 'vocal critic of the Saudi Arabian government', was executed on terror-related charges, following a 'political and grossly unfair trial'. He was executed alongside three other Shi'a activists, and 43 persons convicted of involvement with Al Qaeda. 'Saudi Arabia's authorities have indicated that the executions were carried out to fight terror and safeguard security. However, the killing of Sheikh Nimr al-Nimr in particular suggests they are also using the death

penalty in the name of counter-terror to settle scores and crush dissidents.’ (Amnesty International, 2016c)

- In 2014, Ali al-Nimr, Dawoud al-Marhoun and Abdullah al-Zaher were sentenced to death after being held incommunicado, detained without charge or trial for up to 22 months, and allegedly tortured into confessing. The three men were aged 15-17 when arrested for allegedly participating in demonstrations. In February 2021, Saudi Arabia commuted their death sentences (Amnesty International, 2020a:35; Van Esveld, 2020, 2021; Human Rights Watch, 2016a).
- In September 2014, Murtaja Qureiris was arrested at age 13 for allegedly participating in protests when he was 10 years old. He was held in solitary confinement, beaten, and denied access to legal representation at various stages during his detention. The Public Prosecution demanded the death penalty despite Qureiris being a juvenile offender. In June 2019, Qureiris was sentenced to 12 years imprisonment following international pressure (Amnesty International, 2020a:36).

In February 2020, it was reported that the Supreme Court had upheld the death sentence of Mustafa al-Khayat, a Shi’a activist convicted on charges including participating in demonstrations, disrupting security, and carrying weapons (United States Department of State, 2021f:7). As of October 2020, as many as 53 individuals, the majority of whom are believed to be Shi’a, faced the possibility of the death penalty. This includes 13 Shi’a youth accused of offences allegedly committed as minors. The trials of numerous Shi’as were ongoing at 2020 year’s end (Ibid:8).

State actors have also killed religious minorities and opponents extrajudicially. In January 2019, security forces stormed two predominantly Shi’a villages, killing at least 11 civilians between the respective incidences (United States Department of State, 2020f:8). State authorities have also been accused of abusing Shi’a prisoners: in 2019, at least two Shi’as died in custody, their deaths attributed to abuse (Ibid:7). Religious dissidents have also died in custody: in 2019, Sheikh Saleh Abdulaziz al-Dhamiri and Sheikh Fahd al-Qadi both died while incarcerated in instances of possible neglect or abuse (Al Jazeera, 2019; Middle East Monitor, 2019).

Religious minorities have also been subjected to violence by non-state actors. In January 2016, at least four people were killed when a suicide bomber attacked a Shi’a mosque. No group claimed responsibility for the attack (Reuters, 2016). In May 2015, ISIL claimed responsibility for a similar attack on a Shi’a mosque which killed at least 21 people (BBC News, 2015b). It should be noted that extremist violence of this nature occurs sporadically, and ought not be construed as State-sanctioned.

## SOMALIA

The political situation in Somalia is complicated. From a legal perspective, so-called ‘Federal Member States’, such as Somaliland and Puntland, are self-declared independent jurisdictions (though not internationally recognised as such) and have their own Penal Codes, as opposed to the Federal Penal Code. However, the existence of Federal and State laws is not indicative of their effective implementation: Somalia is controlled by various forces, many

of which do not adhere to administer the laws ostensibly in force in the respective jurisdictions (Felter et al., 2021). For the purposes of this report, we will address Federal and State legal systems separately; however, this is not to suggest that such laws are functionally implemented, nor that the various jurisdictions are effectively controlled and governed.

### *The law*

In August 2012, in an effort to establish greater centralised authority, the new government of Somalia adopted the Provisional Federal Constitution (PFC) (Humanists International, 2020c). The PFC provides that ‘every person is free to practice his or her religion’ (Article 17), and that ‘all citizens, regardless of... religion... shall have equal rights and duties before the law’ (Article 11). However, the PFC undermines this claim by:

- Establishing Islam as the state religion (Article 2(1)),
- Establishing the *Shari’a* as ‘the supreme law of the country’, above even the Constitution itself (Article 4(1)),
- Prohibiting the propagation of any religion other than Islam (Articles 2(2) and 17(2)), and
- Prohibiting the enactment of laws that fail to comply with *Shari’a* principles and objectives (Article 2(3)).

**Apostasy** is not expressly criminalised in the Penal Code; however, it is prohibited under Islamic jurisprudence and the *Shari’a*, which are enshrined in the PFC. Because *Shari’a* both underpins and overrides all federal laws, ‘the relationship among *Shari’a*, the PFC, and the penal code remains unclear’ (United States Department of State, 2021g:3). Should a Somali court deem apostasy a capital offence, it is possible that non-Muslims may be executed on this basis, as the PFC does not exempt non-Muslims from *Shari’a* law (Ibid). Of course, the PFC does not provide that non-Muslims *are* bound by *Shari’a* law either; however, given that the PFC expressly excludes non-Muslims from the application of certain Islamic provisions,<sup>89</sup> the application of apostasy to non-Muslims remains a legal possibility.

The PFC also recognises *xeer* (traditional and customary law) as a mechanism for dispute resolution (United States Department of State, 2021g:3–4). Accordingly, it is theoretically possible that both apostasy and blasphemy may be punishable by death on this basis, although there is no evidence to indicate that this is in fact the case.

**Blasphemy** is criminalised under Article 313 of the Penal Code, punishable by up to two years imprisonment. (Humanists International, 2020c; United States Department of State, 2021g:3)

At the state level, the Somaliland Constitution provides that ‘every person shall have the right to freedom of belief and shall not be compelled to adopt another belief’. However, it also:

- Establishes Islam as the state religion,
- Prohibits the propagation of any religion other than Islam,

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<sup>89</sup> For example, Article 30(8) of the PFC expressly exempt schools owned by non-Muslims from compulsory Islamic education.

- Prohibits Muslims from converting to other religions, and
- Dictates that all laws must comply with the *Shari'a* (United States Department of State, 2021g:3).

Apostasy is not explicitly prohibited under Somaliland's Penal Code; however, international observers have expressed concern that an apostasy charge could carry the death penalty due to *Shari'a* and *xeer* (United States Department of State, 2021g:5).

The Puntland Constitution prohibits any law or culture that contravenes Islam, and demonstrations contrary to Islam. 'Contravention of Islam' is not defined in the Constitution or other laws (United States Department of State, 2021g:3).

Other Federal Member States, including Galmadug, Hirshbelle, Jubaland, and South West State, have their own constitutions identifying Islam as the official religion, and stipulating that all laws must comply with the general principles of *Shari'a* (United States Department of State, 2021g:3).

### ***Enforcement***

In most areas, the judiciary relies on a combination of the Penal Code, the *Shari'a*, and *xeer*. In some cases, elders will look to local precedents of *xeer* before examining relevant *Shari'a* references (United States Department of State, 2021g:3). In areas controlled by al-Shabaab, *Shari'a* is the only formally recognised legal system, although reports indicate that *xeer* is applied in some cases (Ibid:3-4). It has been observed that because religious expression is regulated at the local level, legal decisions tend to be made inconsistently between communities (Ibid).

While we have been unable to identify any instances of death sentences or executions being meted out for offending religion, we have identified two cases in which individuals were prosecuted and convicted on this basis:

- In April 2019, Professor Mahmoud Jama Ahmed was sentenced to 2.5 years in prison for blasphemy, having posted a social media statement questioning whether praying for water was a useful strategy for overcoming drought in the country and suggesting that authorities adopt a more scientific approach. He received a presidential pardon in January 2020 and was released on condition that he not practice any clerical activity. Following his release, a local imam labelled him an 'apostate' and called for his death (Humanists International, 2020c; United States Department of State, 2021g:8).
- In October 2020, Somaliland authorities arrested a married couple for proselytising Christianity. Some religious leaders called for the couple to be charged with apostasy under *Shari'a* law, as the couple had converted from Islam. It is unclear whether they were charged with either or both of apostasy and proselytising; however, in November 2020, a Somaliland court ordered that they be 'deported' to Mogadishu (Ibid:5)

### ***Beyond the law***

Following the December 2006 invasion of Somalia by majority-Christian Ethiopia, al-Shabaab rapidly emerged with the aim of establishing an Islamic State in Somalia (Felter et

al., 2021). The security situation in Somalia remains volatile, and though all parties to the conflict commit violations against the civilian population, al-Shabaab remains the most egregious perpetrator of such violence in central and southern Somalia (Danish Immigration Service, 2020:10). At the time of writing, and despite continuous territory loss since 2011, al-Shabaab continues to maintain control over parts of central and southern Somalia (see map), within which it enforces its own notoriously violent interpretation of *Shari'a* (Danish Immigration Service, 2020:7; Felter et al., 2021). The following examples illustrate the extent of al-Shabaab's war on religion:

- Throughout 2019 and 2020, al-Shabaab continued to impose Islamic law on Muslims and non-Muslims alike, including executions for apostasy (United States Department of State, 2020g:6, 2021g:6).
- Throughout 2019 and 2020, al-Shabaab targeted and killed federal and local government officials and their allies, calling them 'non-Muslims' and 'apostates' (Ibid).
- In 2020, al-Shabaab killed 13 humanitarian aid workers (as well as injuring 12 and abducting a further 23). Al-Shabaab accused both secular and faith-based humanitarian aid organizations of seeking to convert individuals to Christianity (United States Department of State, 2021g:7). In July 2019, al-Shabaab killed another humanitarian aid worker (United States Department of State, 2020g:6).
- In November 2018, after accusing a cleric of blasphemy, al-Shabaab attacked the compound in which he lived, killing him and at least 14 others (Maruf, 2018).
- In April 2015, al-Shabaab publicly executed a man by firing squad for 'insulting the prophet Muhammed'. It is reported that he pleaded guilty in a *Shari'a* trial (BBC News, 2015c; Humanists International, 2020c).

Al-Shabaab has also carried out religious-based killings outside Somalia. Such violence has been particularly notable in Kenya, ostensibly motivated by the entry of Kenyan forces into Somalia in October 2011 to apprehend the group (BBC News, 2016):

- In October 2016, al-Shabaab killed six Christians in Mandera, north-eastern Kenya (BBC News, 2016).
- In April 2015, al-Shabaab gunmen stormed Garissa University College, singling out and killing those who identified as Christians. 148 people, mostly students, were killed in the attacks (BBC News, 2019a).
- In December 2014, al-Shabaab separated Muslim and non-Muslim workers at a quarry, and killed 38 of the latter (BBC News, 2016).

## UNITED ARAB EMIRATES

### *The law*

**Apostasy** is not explicitly criminalised in the United Arab Emirates; however, the Penal Code leaves open the possibility of the death penalty for apostasy by way of enshrining *Shari'a* for *huddud offences* into the criminal law (Penal Code, Article 1). However, there are some caveats to this. First, death sentences must be commuted to imprisonment 'should there be an extenuating excuse' (Penal Code, Article 97). Second, it is unlikely that non-Muslims could be



sentenced to death for apostasy: when non-Muslims are convicted of criminal matters in Islamic courts, civil penalties are generally imposed, rather than Islamic law penalties. Should a court impose an Islamic penalty on a non-Muslim, this may be modified or overturned by a higher court (Humanists International, 2020d).

**Blasphemy** and related acts, including insulting any of the ‘divine recognised religions’ are criminalised by a term of imprisonment and a fine (Penal Code, Article 312; Federal Decree Law No.2/2015, Articles 4-5). Other religious offences such as ‘Crimes violating religious creeds and rites’ are also not capital offences (Penal Code, Articles 313-326).

### ***Enforcement***

There have been no known prosecutions of, nor executions for, apostasy (Humanists International, 2020d).

Prosecutions for other religious offences, including blasphemy, appear to be relatively frequent, often with substantial financial penalties imposed:

- September 2020 – blasphemy charges were filed against an Arab man after he reportedly insulted Islam in an altercation with police (United States Department of State, 2021a:9).
- January 2020 – three Sri Lankan workers were fined \$136,000USD and deported for offending religion in social media posts (Humanists International, 2020d; United States Department of State, 2021a:9).
- January 2020 – Dubai courts sentenced a Jordanian man in absentia to three months in prison, a fine \$136,000USD, and deportation, after he insulted Islam in WhatsApp messages (United States Department of State, 2021a:9).
- 2019 – A man was fined over \$136,000USD for blasphemy insulting God in a workplace (Humanists International, 2020d).

## **YEMEN**

### ***The law***

Article 259 of the Penal Code provides that **apostasy** is punishable by death. It also contains various other offences akin to **blasphemy** (Articles 194, 195, 260, and 261); however, none of these carry the death penalty (Fiss and Kestenbaum, 2020:87).

### ***Enforcement***

At the time of writing, the Houthi rebels continue to hold vast swathes of Yemeni territory,<sup>90</sup> including the capital Sana’a, having ousted the internationally recognised government in 2014-2015 (United States Department of State, 2021i:1). Within the territory

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<sup>90</sup> By the end of 2020, the Houthis controlled approximately one-third of Yemeni territory, home to almost 80 per cent of the Yemeni population (United States Department of State, 2021i:1).

under their control, the Houthis administer ‘a strict religious regimen’ and ‘discriminate against individuals who [do not] follow these practices, particularly religious minorities’ (United States Department of State, 2021i:1). While the precise international legal status of the Houthi rebels remains unclear, it may be argued that in the absence of the effective governance of the true Yemeni authorities, the Houthis have assumed the role of the ‘State’.<sup>91</sup> Accordingly, acts committed by the rebels within the territory over which they exercise effective control may be construed as ‘acts of the State’ (whereas acts committed by Houthi affiliates within the jurisdiction of other sovereign states would constitute terrorism).

In December 2013, prior to the Houthis gaining control of Sana’a, Baha’i community member Hamed bin Haydara was arrested by the National Security Bureau and forcibly disappeared, detained incommunicado without charge (Baha’i International Community, 2019; Human Rights Watch, 2018d; United States Commission on International Religious Freedom, 2020). Prior to being charged, Haydara was physically and psychologically tortured, denied access to his lawyer for the majority of interrogations, and refused medical care for various pre-existing health conditions (Amnesty International and Mwatana Organization for Human Rights, 2017). In January 2015, Haydara was officially charged with various offences related to his religious beliefs, including proselytising and being a spy for Israel (Amnesty International and Mwatana Organization for Human Rights, 2017; Baha’i International Community, 2019; Human Rights Watch, 2016c; Matharu, 2018; United States Commission on International Religious Freedom, 2020; United States Department of State, 2020h:6). When speaking with us, Hamed himself confirmed that during his period of incarceration, he was forced to change lawyers at least three times, due to the authorities threatening or physically assaulting his legal representatives (I-21). After four years of detention, Haydara was sentenced to death by the Houthi-controlled Criminal Court in Sana’a in 2018, at a hearing that he was prevented from attending (Human Rights Watch, 2018d; Matharu, 2018; Saif, 2020; United States Department of State, 2020h:6). Philip Luther, Middle East and North Africa Research and Advocacy Director for Amnesty International, described Haydara’s case as follows:

[Haydara] is a prisoner of conscience who has been tried on account of his conscientiously held beliefs and peaceful activities as a member of the Baha’i community. This sentence is the result of a fundamentally flawed process, including trumped up charges, an unfair trial and credible allegations that Hamed Haydara was tortured and ill-treated in custody. It is also part of a wider crackdown on critics, journalists, human rights defenders and members of the Baha’i community... (Amnesty International, 2018c)

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<sup>91</sup> Article 10(2) of the Articles on State Responsibility reads: ‘The conduct of a movement, insurrectional or other, which succeeds in establishing a new State in part of the territory of a pre-existing State or in a territory under its administration shall be considered an act of the new State under international law’. Moreover, the International Law Commission has confirmed that: ‘No distinction should be made for the purposes of article 10 between different categories of movements on the basis of any international on the basis of any international ‘legitimacy’ or of any illegality in respect of their establishment as a Government, despite the potential importance of such distinctions in other contexts. From the standpoint of the formulation of rules of law governing State responsibility, *it is unnecessary and undesirable to exonerate a new Government or a new State from responsibility by reference to considerations of legitimacy and illegitimacy of its origin*. Rather, the focus must be on the particular conduct in question, and on its lawfulness or otherwise under the applicable rules of international law.’ [Emphasis added] (Yearbook of the International Law Commission, 2001, Volume II Part Two: Report of the International Law Commission on the work of its fifty-third session, UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2), 51, [11].)

In March 2020, the Court of Appeals affirmed Haydara's death sentence; however, Haydara was pardoned just three days later, and released in July 2020 alongside five other Baha'i detainees (Jacobs, 2020; United States Commission on International Religious Freedom, 2020). These other detainees were part of a group of at least 23 Baha'is, including women and children, arrested in 2018 on charges of espionage and apostasy (both of which are capital offences) and subjected to judicial hearings without lawyers or families being notified (Amnesty International, 2018b; Humanists International, 2020e; Mwatana for Human Rights, 2020:87; Weiner, 2020). Those who were released in July 2020 were subjected to court-mandated deportation; however, upon leaving Yemen, the Specialised Criminal Court in August 2020 branded them as 'fugitives' (Baha'i International Community, 2021; Mwatana for Human Rights, 2021).

These are not isolated incidents. Between 2013 and 2017, at least four Baha'is were forcibly disappeared, subjected to incommunicado detention, and charged with a suite of capital charges including apostasy (Amnesty International, 2021f:13). In April 2017, a wave of court summons and arrest orders against Baha'is were issued. Similarly, in February 2021, 19 Baha'is were summoned before a Houthis court (Baha'i International Community, 2021). Ahmed Shaheed, the incumbent UN Special Rapporteur on Freedom of Religion or Belief, has condemned these acts:

The recent escalation in the persistent pattern of persecution of the Baha'i community in Sana'a mirrors the persecution suffered by the Baha'is living in Iran. ... The new wave of court summons and arrest orders appears to be an act of intimidation pressuring the Yemeni Baha'is to recant their faith ... The Houthis de facto authorities in Sana'a must stop summoning or arresting the Baha'is and immediately release all Baha'is arbitrarily detained. (United Nations Office of the High Commissioner for Human Rights, 2017)

In relation to the judicial persecution of the Baha'i community, the UN Human Rights Council Group of Eminent Experts on Yemen concluded in August 2019 that:

There are... reasonable grounds to believe that the right to freedom of religion or belief has been violated in Yemen. The de facto authorities continued to persecute Baha'is on the basis of their belief, including by detaining and charging them with apostasy, openly deriding and demonizing the Baha'i faith in legal filings, issuing death sentences, and threatening their supporters. (Group of Eminent International and Regional Experts, 2019:para 73)

A 2021 report by Amnesty International reveals the sheer extent of state-perpetrated rights violations as against the Yemeni Baha'is: incommunicado detention and enforced disappearances; prolonged pre-trial detention and denial of access to legal counsel; torture during interrogations; cruel and inhuman conditions of detention; lack of access to medical care while incarcerated; unfair trials; and forcible exile and displacement (Amnesty International, 2021f).

The persecution of the Baha'i community, including by way of the imposition of death sentences, is—in part at least—politically motivated, despite being disguised as religiously

mandated. In fact, this persecution is but one part of a calculated and coordinated abuse of the judicial system by the Houthi rebels in an attempt to silence dissent:

Amnesty International has documented the cases of 66 individuals, the vast majority men, whose proceedings... were brought before the Sana'a-based Specialized Criminal Court (SCC) – a court traditionally reserved for terrorism-related cases, between 2015 and 2020. Journalists, human rights defenders, political opponents and *members of religious minorities* are among those subjected to unfair trial on spurious or trumped-up charges by this court. All of those individuals are being tried on charges of spying, which are *mandatorily punishable by death* under Yemeni law. [Emphasis added] (Amnesty International, 2020c)

The judicial system has never been an independent system. It has always been politicised, and has always been exploited to oppress political opponents. It is being used by the Houthis now, and is being exploited in an even worse way. (I-8)

The Houthi rebels are proponents of Zaidi Shi'a Islam, and their *de facto* governance is marked by a 'trend of religious intolerance which restricts the religious freedom of non-Zaidi Yemenis from across a variety of religious affiliations and identities', including Baha'is, Christians, Hindus and Jews (Weiner, 2020:2–3). Uniquely, and in stark contrast to many other jurisdictions, it is not only religious minorities that are being subjected to State-sanctioned persecution and violence in Yemen. In fact, Zaidi Shi'ism, as practised by the Houthi rebels, is not the majority religion in Yemen; rather, approximately 65 per cent of the population are *Sunni* Muslims (Ibid:2). This has not, however, stopped the Houthis from targeting the religious majority:

The Houthis employ sectarian rhetoric and symbolism to highlight and exacerbate religious differences, even though some Sunni Muslim Yemenis support the movement. The Houthis have referred to Sunni Muslim opposition groups as *takfiri* (those who declare other Muslims apostates) and accuse Sunni Muslims who do not alight with the movement as collaborators with or spies for the Saudi-led coalition. (Weiner, 2020:2)

[The Houthi] movement presents its aims as political. However, with Saudi military intervention in support of the Sunni-dominated government-in-exile against the Iran-backed Houthis, regional geopolitics have increasingly framed the conflict in sectarian terms. Furthermore, as the conflict has progressed, rising religious extremism and sectarian rhetoric from all sides of the conflict has heightened the prospect of targeted violence between Sunni and Zaydi Shi'a Muslims. (Minority Rights Group International, 2019)

To contextualise this violence further, the persecution of religious groups is part of a wider campaign to silence dissidence from perceived critics and opponents, including journalists and academics (Amnesty International, 2021f:4).

### ***Beyond the law***

Unlike many other countries examined in this report, our research indicates that violence motivated by religion rarely occurs in Yemen at the community level:

The Yemeni community is a very peaceful and accepting community that accepts all kinds of people. There have been no violations registered against religious minorities by non-State people, by regular citizens. (I-8)

Violence against religious minorities does, however, occur extrajudicially. For instance, in 2017, Walid Ayyash and Mahmood Humaid, both members of the Baha'i community, were arrested and remain disappeared (United Nations Office of the High Commissioner for Human Rights, 2017). Alongside politically motivated death sentences, torture, and arbitrary detentions, enforced disappearances are yet another unlawful feature of the Houthi-perpetrated campaign against freedom of expression (Amnesty International, 2020d) (I-8).

In March 2018, Abdel-Malek Al-Houthi, the leader of the Houthi movement in Yemen, gave a speech in which he labelled the Baha'i community as 'satanic' and claimed that its members were 'waging a war of doctrine' against Islam. He then called upon Yemenis to defend their country against religious minorities, declaring that 'those who destroy the faith in people are no less evil and dangerous than those who kill people with their bombs' (Baha'i International Community, n.d.). Sectarian rhetoric such as this has cultivated a climate in which violence against the Baha'i community is socially accepted, and even encouraged. For example, the Baha'i International Community ('BIC') has expressed concern that the Houthi authorities may publish the names of Baha'is facing prosecution in the media, and in doing so would be 'directly endangering their lives in a context where violence against the Baha'is has been publicly encouraged' (Baha'i International Community, 2021).

Baha'is are not the only religious minority persecuted by the Houthis: in April 2020, the rebels 'used the COVID-19 pandemic as a pretext to expel thousands of Ethiopian migrants, many of whom were Christians, from northern Yemen, killing dozens' (United States Department of State, 2021i:7). Upon crossing the border in Saudi Arabia, Saudi authorities opened fire on the migrants, killing dozens more (Human Rights Watch, 2020c).

Extremist violence motivated by religion has also been perpetrated by ISIL. Such violence cannot be termed 'State-sanctioned' due to its sporadic nature and the fact that the State neither endorses it nor has any real capacity to stem it. Nonetheless, we include it in the interests of completeness. In January 2019, two regional newspapers reports that ISIS had executed four persons in Al-Bayda Province on charges of 'atheism' (United States Department of State, 2020h:6). In March 2015, ISIL—proponents of Sunni Islam—carried out two attacks on Shi'a mosques in Sana'a, killing 137 people (Aboudi, 2015; Counter Extremism Project, 2017:8):

Islamic State draws on austere Sunni Muslim teachings... which see shrines as blasphemy and regards Shi'ites as infidels. [It] believes killing Shi'ite civilians is a religious duty, a position that even al Qaeda has criticised as recklessly violent. (Aboudi, 2015)



# APPENDICES

## Appendix 1: Interviewees

Name	Description
Ahmed Adham Abdulla	Human rights activist in the Maldives.
Ali Al-Ahmed	Director, <u>Institute for Gulf Affairs</u> .
Hind Al-Eryani	Journalist, writer, and advocate for human rights in Yemen.
Diane Ala'i	Representative to the United Nations, <u>Baha'i International Community (BIC)</u> .
Aroon Arthur	Director, <u>Redemption</u> , an organisation advocating for the rights of prisoners in Pakistan.
Raha Bahreini	Iran Researcher, Amnesty International.
Anietie Ewang	Nigeria Researcher, Human Rights Watch.
Hamed Kamal Bin Haydara	Baha'i and former death row detainee, convicted of various offences on the basis of his religion in Yemen.
Mahmood Iftikhar	Lawyer and advocate for the Ahmadi community in Pakistan.
Peter Jacob	Executive Director, Centre for Social Justice ( <u>CSJ</u> ) Pakistan.
Asad Jamal	Lawyer with experience defending individuals facing blasphemy charges in Pakistan.
Liv Hernæs Kvanvig	Director, International Panel of Parliamentarians for Freedom of Religion or Belief ( <u>IPPFoRB</u> ).
Arafat Mazhar	Director, <u>Engage Pakistan</u> .
Mushfiq Mohamed	Lawyer, writer, and activist working on the human rights situation in the Maldives. Member of the Maldives Working Group at the <u>World Coalition Against the Death Penalty</u> . Publishes on <u>Dhivehi Sitee</u> .
Azra Naseem	Scholar, writer, and activist working on the human rights situation in the Maldives. Publishes on <u>Dhivehi Sitee</u> .
Osai Ojigho	Nigeria Country Director, Amnesty International.

Maheen Pracha	Associate, Human Rights Commission of Pakistan ( <a href="#">HRCP</a> ).
Hossein Raeesi	Academic and lawyer specialising in criminal and human rights matters, with experience defending individuals facing the death penalty in Iran.
Palak Rao	Communications and Advocacy Advisor, International Panel of Parliamentarians for Freedom of Religion or Belief ( <a href="#">IPPFoRB</a> ).
Mahmoud Sadri	Academic specialising in social theory and sociology of religion, with a focus on Iran.
Ahmed Shaheed	Incumbent UN Special Rapporteur on Freedom of Religion or Belief. Former Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran and Minister of Foreign Affairs of Maldives.
Samah Subay	Lawyer and Director of Legal Support, <a href="#">Mwatana for Human Rights</a> , an organisation advocating for human rights in Yemen.
Katharine Thane	Advisor and Project Officer, International Panel of Parliamentarians for Freedom of Religion or Belief ( <a href="#">IPPFoRB</a> ).
Fatima Yazbek	Head of the Committee on Reports and Studies, Gulf Institute for Democracy and Human Rights ( <a href="#">GIDHR</a> ).
Farah Zia	Director, Human Rights Commission of Pakistan ( <a href="#">HRCP</a> ).
Anonymous	Activist for the Hazara community. Formerly based in Afghanistan and Pakistan.
Anonymous	Criminal and human rights lawyer based in Pakistan.
Anonymous	Academic, lawyer, and human rights activist. Formerly based in Afghanistan.
Anonymous	Rights defender based in Afghanistan.
Anonymous	Journalist and human rights activist based in Pakistan.
Anonymous	Baha'i who fled persecution in Yemen.

## Appendix 2: Sources of Islamic Law: the Qur'an, Hadith, and Ijtihad

The Prophet famously advocated both literal *and* contextual interpretations of the *Qur'an*. In one story, the Prophet directed a group of his companions by stating: 'do not perform the mid-afternoon prayer until you get to Banu Qurayzah.' Some took the Prophet's words literally and did not pray until they reached Banu Qurayzah. The others, however, took the Prophet's words more liberally, believing he simply meant for them to get to Banu Qurayzah before mid-afternoon. When this story was retold to the Prophet, he did not disapprove of either group (al-Alwani 2011: 20-21). Taha Jabir al-Alwani explains the significance of this story:

It is clear from this incident that the Companions of the Prophet had split into two groups over the interpretation of the Prophet's instructions...The fact that the Prophet approved of both groups showed that each position was legally just as valid as the other. Thus, a Muslim who is faced with a particular injunction or text (*nass*) can either adopt the literal or manifest (*ẓāhir*) meaning of the text or he may derive interpretations which are appropriate to the text by using his reason. (al-Alwani 2011: 20-21)

The clash of the literal and the interpretive understanding is an eminent source of debate between Islamic scholars and jurists, and is arguably the main reason why there are multiple schools of thought within Islam. Clearly, the *Qur'an* cannot, practically, be the only source of Islam.

This leads us to the second source, the *Hadith*, which contain reports of anything the Prophet said, did, or approved of during his life. As the *Hadith* are believed to contain the words and stories of the Prophet, and the Prophet is believed to have spoken to God, the *Hadith* are considered incredibly important to Muslims as providing guidance on life, law and the interpretation of the *Qur'an*. The *Hadith* are particularly significant as they heavily influenced and shaped early commentaries on the *Qur'an* and formed the basis of the *Shari'a*. The *Hadith* form the most important tool for understanding the *Qur'an*.<sup>92</sup> Essentially, while the *Qur'an* provides a broad framework for the Muslim way of life, the *Hadith* provide the details. For example, the *Qur'an* instructs Muslims to pray, but in the *Hadith* the Prophet teaches *how* and *when* to pray.

However, the existence of the *Hadith* does not necessarily make interpretation of law straightforward for Muslims:

Grounded in the prosaic moments of everyday life, and many thousands of times more numerous than Qur'anic verses, Hadith reports were even more entwined in historical context. Muslim scholars labored endlessly to determine if specific Hadith addressed specific situations and persons, or if they constituted general commandments. (Brown 2014: 98)

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<sup>92</sup> The Prophet is 'considered the first and best interpreter of the *Qur'an*, and thus any record of his thoughts may provide clues as to the meaning of *Qur'anic* texts' (Quraishi 2006: 67, 85).

There is much debate about the authority of *Hadith* in determining law. There have also been difficulties in authenticating and verifying *Hadith*, as records of the Prophet's life were not documented until well after his death. Verifying *Hadith* involved the complicated task of sifting through alleged fabricated stories and corroborating chains of narration. It ultimately gave rise to a distinct field of scholarship dedicated to the verification and preservation of the *Hadith* (Brown 2014: 69). This was, of course, a perilously difficult process, and not all Muslims have the knowledge required to verify the chain of authority in four different categories: *sahih* (sound); *hasan* (good); *da'if* (weak); and *maudu'* (fabricated).<sup>93</sup> Any *Hadith* found to have been passed down by a 'defective or interrupted chain of transmitters, or by transmitters known to be untrustworthy, was held to lack any legal effect' (Hallaq 2009: 17). Transmitters were judged on the following: their ability to transmit a *Hadith* in full and in *verbatim*; their age, as maturity indicated a superior ability to retain reliable information; their relationship to the Prophet, whether close or distant; and whether there was a strong thematic corroboration between their narration and the *Qur'an* (Hallaq 2009: 18).

*Ijtihad*, the third source of law, in Islamic law means interpretation. *Ijtihad* is a continuous process of development whereas the *Qur'an* and the *Sunnah*<sup>94</sup> are fixed sources of authority, neither altered nor added to after the death of the Prophet (Kamali 1991: 366). The rule of *ijtihad* originated when the Prophet sent Mua'z ibn Jabbal to Yemen as a judge. Mua'z engaged in the following dialogue with the Prophet:

How will you give a judgment or settle a dispute?' Mua'z said 'I will judge according to the Book of Allah.' The Prophet asked, 'What if you find no solution in the Book of Allah?' Mua'z said, 'Then I will judge by the *Sunnah* of the Prophet.' The Prophet asked: 'And what if you do not find it in the *Sunnah* of the Prophet?' Mua'z said: 'Then I will make *ijtihad* to formulate my own judgement.' The Prophet patted Mua'z's chest and said: 'Praise be to Allah, Who has guided the messenger of His prophet to that which pleases him and His Messenger.'<sup>95</sup>

However, the concept and meaning of *ijtihad*, as used in the conversation above, is different to *ijtihad* in its current context. Throughout history, the meaning of *ijtihad* has altered according to place and circumstance. During the times of the Prophet and his Companions, *ijtihad* was still very much an abstract concept. In the period of *aimmat al-madzhab* (the leaders of school of thought), Abu Hanifah (d. 150 A.H./767 AD), the founder of the Hanafi school, was reported as having said:

I follow the book of Allah, and if I find no solution there, I follow the *Sunnah* of the prophet, peace be upon him, If I find no solution in either the *Qur'an* or the *Sunnah*, I follow whichever of the pronouncements of the companions of the Prophet I prefer, and leave whichever I wish. If there is a pronouncement on a particular matter by any of the companions, I would not adopt any other opinion made by any other scholar. But if I found a solution only in the opinions of Ibrahim, al-Syu'bi, Ibn Sirrin,

<sup>93</sup> See the explanation of these terms in Kamali (2009: 139-54).

<sup>94</sup> *Sunnah* is the body of traditional custom and practice of the Islamic community. Along with the *Qur'an* and the *Hadith*, it is a major source of the *Shari'a*.

<sup>95</sup> See Sulaiman (1952, Hadith No. 3,119); al-Darimi (1997, Hadith No. 168); and Al-Tirmizi (1963).

al-Hasan, or Sa'id ibn al-Musayyab, I would make *ijtihad*, just as they did. (Madkur 1977: 57-58)

Abu Hanifah not only describes his approach to *ijtihad*, but also defines what the procedure for producing it. It is instructive to explore the meaning of *ijtihad* in the *Muwatta'* of Imam Malik (d. 179 A.H./795 AD), since this book is usually considered to be amongst the earliest of Islamic juristic works.<sup>96</sup> Ahmad Hasan explained that Malik used the term *ijtihad* generally, for cases where he could find no definite answer from the Prophet, or in commonly agreed practice, therefore leaving the matter to the discretion of the Imam to decide (Hasan 1970: 116).

In modern times, *ijtihad* can be conducted in one of at least three ways: *ijtihad bayani*, *ijtihad qiyasi*, and *ijtihad istislahi*.<sup>97</sup> The first method, *ijtihad bayani*, may be applied to cases that are explicitly mentioned in the *Qur'an* or *Hadith* but need further explanation. The second, *ijtihad qiyasi*, may be applied to cases that are not mentioned in the *Qur'an* or *Hadith*, but which are similar to cases mentioned in either of them. Finally, the third, *ijtihad istislahi*, may be applied to those cases that are not regulated by the *Qur'an* or *Hadith*, and cannot be solved by using analogical reasoning. In this case, *maslahah* (utilities) is considered the basis for legal decisions.

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<sup>96</sup> See the analysis of *al-Muwatta'* in Calder (1993: 20-38).

<sup>97</sup> Muhammad Ma'ruf al-Dawalibi (1959: 389) uses these classifications.



### Appendix 3: International Covenant on Civil and Political Rights: ratifications and reservations

Country	Ratification	Reservations under Articles 18 or 19
Afghanistan	1983	None (note: Afghanistan has entered reservations to paragraphs 1 and 3 of Article 48)
Brunei	Not ratified	Not applicable
Iran	1975 (Signed 1968)	None
Maldives	2006	‘The application of the principles set out in Article 18... shall be without prejudice to the Constitution of the Republic of Maldives.’
Mauritania	2004	‘The Mauritanian Government, while accepting the provisions set out in Article 18 concerning freedom of thought, conscience and religion, declares that their application shall be without prejudice to the Islamic Shariah.’
Nigeria	1993	None
Pakistan	2010 (Signed 2008)	2008: ‘[Pakistan’s Government] reserves its right to attach appropriate reservations, make declarations and state its understanding in respect of various provisions of the Covenant at the time of ratification.’  2011: ‘[Pakistan] declares that the provisions of Articles...18 and 19 shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Sharia laws.’
Qatar	2018	‘[Qatar] shall interpret Article 18, paragraph 2...based on the understanding that it does not contravene the Islamic Sharia. [Qatar] reserves the right to implement such paragraph in accordance with such understanding’
Saudi Arabia	Not ratified	Not applicable
Somalia	1990	None
United Arab Emirates	Not ratified	Not applicable
Yemen	1987	None

Sources: United Nations Treaty Collection, available from: [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=\\_en&mtdsg\\_no=IV-4&src=IND](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND) (last accessed on 28 September, 2021).

#### Appendix 4: UN General Assembly resolutions: 'defamation of religions' and 'combating intolerance'

Resolution	Voting	Countries in this report
Combating defamation of religions 16/12/05	Yes: 101 No: 53 Abstentions: 20 Non-voting: 17 Total: 191	Afghanistan: Yes Brunei: Yes Iran: Yes Maldives: Yes Mauritania: No Nigeria: Abstention Pakistan: Yes Qatar: Yes Saudi Arabia: Yes Somalia: Yes UAE: Yes Yemen: Yes
Combating defamation of religions 19/12/06	Yes: 111 No: 54 Abstentions: 18 Non-voting: 9 Total: 192	Afghanistan: Yes Brunei: Yes Iran: Yes Maldives: Yes Mauritania: Yes Nigeria: Abstention Pakistan: Yes Qatar: Yes Saudi Arabia: Yes Somalia: Yes UAE: Yes Yemen: Yes
Combating defamation of religions 18/12/2007	Yes: 108 No: 51 Abstentions: 25 Non-voting: 8 Total: 192	Afghanistan: Yes Brunei: Yes Iran: Yes Maldives: Yes Mauritania: Yes Nigeria: Abstention Pakistan: Yes Qatar: Yes Saudi Arabia: Yes Somalia: Yes UAE: Yes Yemen: Yes

<p>Combatting defamation of religions 18/12/08</p>	<p><b>Yes:</b> 86 <b>No:</b> 53 <b>Abstentions:</b> 42 <b>Non-voting:</b> 11 <b>Total:</b> 192</p>	<p><b>Afghanistan:</b> Yes <b>Brunei:</b> Yes <b>Iran:</b> Yes <b>Maldives:</b> Yes <b>Mauritania:</b> Yes <b>Nigeria:</b> Abstention <b>Pakistan:</b> Yes <b>Qatar:</b> Yes <b>Saudi Arabia:</b> Yes <b>Somalia:</b> Yes <b>UAE:</b> Yes <b>Yemen:</b> Yes</p>
<p>Combatting defamation of religions 18/12/09</p>	<p><b>Yes:</b> 80 <b>No:</b> 61 <b>Abstentions:</b> 42 <b>Non-voting:</b> 9 <b>Total:</b> 192</p>	<p><b>Afghanistan:</b> Yes <b>Brunei:</b> Yes <b>Iran:</b> Yes <b>Maldives:</b> Yes <b>Mauritania:</b> Yes <b>Nigeria:</b> Abstention <b>Pakistan:</b> Yes <b>Qatar:</b> Yes <b>Saudi Arabia:</b> Yes <b>Somalia:</b> Yes <b>UAE:</b> Yes <b>Yemen:</b> Yes</p>
<p>Combatting defamation of religions 21/12/2010</p>	<p><b>Yes:</b> 79 <b>No:</b> 67 <b>Abstentions:</b> 40 <b>Non-voting:</b> 6 <b>Total:</b> 192</p>	<p><b>Afghanistan:</b> Yes <b>Brunei:</b> Yes <b>Iran:</b> Yes <b>Maldives:</b> Yes <b>Mauritania:</b> Yes <b>Nigeria:</b> Yes <b>Pakistan:</b> Yes <b>Qatar:</b> Yes <b>Saudi Arabia:</b> Yes <b>Somalia:</b> Yes <b>UAE:</b> Yes <b>Yemen:</b> Yes</p>
<p>Combatting intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief 19/12/2011; 20/12/2012; 18/12/2013; 18/12/2014; 17/12/2015; 19/12/2016; 19/12/2017; 17/12/2018; 18/12/2019; 16/12/2020</p>	<p>Adopted without vote</p>	<p>Not applicable</p>

## Appendix 5: Advocacy tools and initiatives

### **‘Faith for Rights’ Framework**

The ‘Faith for Rights’ Framework is a UN-led movement that, with the objective of fostering the development of peaceful societies, provides a space for cross-disciplinary reflection on the deep, mutually enriching connections between religions and human rights. The framework is based on the Beirut Declaration and its 18 commitments on ‘Faith for Rights’, through which theistic, non-theistic, atheistic, and other believers articulate how religious actors can engage more rigorously with human rights, such that both can become better guardians of the other.

Launched in January 2002, the ‘Faith for Rights’ Toolkit examines the relationship between religions, beliefs, and human rights, finding common ground on which to unite faith-based groups to combat hate speech and intolerance. Comprising of 18 learning modules, this collation of case studies, resources, and artistic expressions is an important resource for engaging faith-based actors not only on the right to freedom of religion or belief, but the full human rights canon.

### **Freedom of Religion or Belief Learning Platform**

The Freedom of Religion or Belief Learning Platform, an initiative of the Nordic Ecumenical Network on Freedom of Religion or Belief (NORFORB) in partnership with a wide range of secular and faith based organisations, provides resources to facilitate learning and reflection on, and promotion of, the freedom of religion or belief for all. This learning platform ‘aims to contribute to building a social, political and legal culture of freedom of religion or belief for all from the grassroots up and the top down’. The platform’s resources are designed for a variety of contexts and target a diverse audience including parliamentarians, public policy officials, religious communities, NGO staff, and the media. To reach its widest possible audience, these resources are provided in varied accessible formats, such as film, and in several languages.

## **International Panel of Parliamentarians for Freedom of Religion or Belief (IPPFoRB)**

The International Panel of Parliamentarians for Freedom of Religion or Belief (IPPFoRB) is an international contact group that unites and engages parliamentarians around the world to address freedom of religion or belief issues through the parliamentary mechanisms of their own respective countries. It includes a diverse range of parliamentarians, with significant representation from Commonwealth countries, who are committed to utilising their own platforms to advance religious freedoms abroad.

Among the many resources compiled by IPPFoRB is the *IPPFoRB Toolkit*, which aims to enable parliamentarians to advocate for the freedom more effectively through ‘increasing their understanding of FoRB and the national, regional and international mechanisms at their disposal for promoting and protecting this right.’ This resource compiles a range of practical actions that parliamentarians can take to advocate for the right to freedom of religion or belief for everyone, everywhere.

Parliamentarians may also sign on to advocacy letters to be sent to political leaders of the States in question. Many such letters have been drafted by the International Panel of Parliamentarians for Freedom of Religion or Belief (IPPFoRB) and may be viewed [here](#).

## **Office for Democratic Institutions and Human Rights: Freedom of Religion or Belief**

The Office for Democratic Institutions and Human Rights (ODIHR) is the human rights institution of the Organization for Security and Co-operation in Europe (OSCE), an intergovernmental body working for stability, prosperity, and democracy in its 57 participating States. ODIHR is responsible for assisting participating States in implementing their commitments to ‘human dimension’ of security, thereby enhancing security in the region. As part of its responsibilities, ODIHR works ‘to secure the right to freedom of religion or belief for all in the OSCE region by assisting participating States in implementing their OSCE commitments in this field’. The activities of the ODIHR include reviewing legislation for governments, upon request, to bring them in line with OSCE commitments and other international standards; providing expert opinion on issues related to freedom of religion or belief; and developing guidance to assist States in strengthening implementation of OSCE commitments.

ODIHR has produced numerous resources in line with its mission of strengthening the right to freedom of religion or belief in the OSCE region. *Freedom of Religion or Belief and Security: Policy Guidance* (2019) offers practical guidance to help OSCE participating States ensure their security measures are in line with their international obligations by clarifying the interrelationship between freedom of religion and security. *Guidelines for Review of Legislation Pertaining to Religion or Belief* (2004), prepared by the ODIHR’s Advisory Panel of Experts on Freedom of Religion or Belief, provides guidelines designed to assist those involved in reviewing laws or draft legislation, including evaluating their compliance with international norms.

## Rabat Plan of Action

The *Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence*, developed from the findings of several OHCHR expert workshops, is a framework for the case-by-case assessment of statements to determine whether they qualify as hate speech. This determination turns on six criteria: the context of incitement to hatred, the speaker, intent, content, extent of the speech, and likelihood of harm. One of the primary objectives of this framework is 'to gain a better understanding of legislative patterns, judicial practices and policies relating to incitement to national, racial, or religious hatred, while ensuring full respect for freedom of expression' per articles 19 and 20 of the ICCPR.

The *Rabat Plan of Action* recommends the adoption of comprehensive national anti-discrimination legislations with preventative and punitive action to effectively combat incitement to hatred, as well as the empowerment of minorities and vulnerable groups. Additionally, the framework has been used to discuss the role of social media companies, with the former UN Special Rapporteur on freedom of expression recommending that companies adopt content policies that tie their hate speech rules directly to concepts international human rights law, including the *Rabat Plan of Action*.

## Religions for Peace

*Religions for Peace* is a global multi-religion peacebuilding coalition, comprised of experienced interreligious platforms in over ninety countries and six regions, with the aim of bringing together the world's religions to ensure that all people enjoy peace, harmony, and prosperity. Through unifying different faith groups, the coalition seeks to fight immediate crises affecting local communities by creating and organising structures to work effectively together, even in times of desperation, persecution and conflict.

In their *Strategic Plan 2020-2025*, Religions for Peace has set six strategic goals to advance a multi-religion vision of peace. These strategic goals are: promoting peaceful, just, and inclusive societies; advancing gender equality; nurturing a sustainable environment; championing freedom of thought, conscience and religion; strengthening interreligious education; and fostering multi-religious collaboration and global partnerships. The Plan enumerates several activities that Religions for Peace will carry out with the aim of advancing its strategic goals; for example, to champion freedom of thought, Religions for Peace has undertaken to provide safe spaces for reflection on concerns regarding the political instrumentalisation of the freedom of religion or belief and, specifically, the application of blasphemy laws.



## PAKISTAN

### Centre for Social Justice, Pakistan

Based in Lahore, the Centre for Social Justice, Pakistan (CSJ) is an NGO that engages in evidence-based public policy advocacy, provides technical support to organisations, and conducts training workshops to enable key actors to promote and protect human rights. Envisioning Pakistan as a society based on principles of peaceful co-existence, justice and democratic values, CSJ studies issues concerning the respect for rights of the people of Pakistan, with a particular focus on the experiences of marginalised people.

Through this advocacy, CSJ has produced a series of publications and resources, with several of them discussing the issues surrounding Pakistan's blasphemy laws. For instance, its research published in February 2021 found that more people were accused of blasphemy in 2020 than in any other year since 1987. In *Rescuing the Innocent Captives*, CSJ proposes the initiation of 'Paigham-e-Pakistan II', a process of social reconciliation that would seek to integrate religious minorities through a social pact between Pakistani citizens and the government, ultimately 'aiming to undo the impact of blasphemy laws on national psyche and [the] social fabric of Pakistan.' Additionally, in *Study on challenges in exercising religious freedom in Pakistan*, CSJ examines the demographics of those individuals accused of committing blasphemy, finding that an overwhelmingly disproportionate number of alleged blasphemers are from minority religious faiths.

### Engage Foundation for Research and Dialogue

Established in 2015, Engage is an NGO that seeks to approach issues of human rights, citizenship, and democratisation in an interdisciplinary and intersectional manner, with the aim of engaging with 'an audience beyond the privileged minority of Pakistan'. The NGO conducts research on issues of democratisation and rule of law, produces audio books and podcasts, presents work through the production of animated and documentary style videos, and presents talks in partnership with universities.

In *The Untold Truth of Pakistan's Blasphemy Law*, Engage Pakistan traces the history of the country's blasphemy laws, critiques them through the lens of Islamic legal tradition, and offers policy recommendations. The report, through its analysis of Islam's canonical texts, challenges the notion that there is absolute consensus among the schools of Islamic jurisprudence on the issue of blasphemy and how it ought to be punished. The report uses a 'historical-legal approach' to find common ground between human rights, the constitutional responsibilities of Pakistani citizens, and the Islamic legal tradition.

### ***Swipe* (2016, animated short film)**

In *Swipe*, a hand-painted animated short film by Puff Studios, the issue of social media's role in blasphemy cases within Pakistan is put under the microscope. The film depicts a boy who is obsessed with a smartphone app, called 'Fatwa', that allows people to vote on whether someone should be killed for blasphemy. 'The lesson we learn from Prophet Muhammad's life is that if you forgive someone with your whole heart, God counts it as a good deed', says a teacher to her inattentive students. Having failed to heed this lesson, the boy and Pakistani society are instead forced to learn a gut-wrenching one in the film's epilogue.

Arafat Mazhar (Director) told Eleos Justice that the film was not made for international film festivals, but to be screened in Pakistan at the community level. In particular, Mazhar stressed his efforts to screen the film at Pakistani universities for audiences of Pakistani students, highlighting the film's long-term and very localised advocacy goals.

### ***The Accused: Damned or Devoted?* (2020, Documentary)**

This film follows the cleric Khadim Hussain Rizvi, a fierce supporter of the country's blasphemy laws, and his efforts to run for Prime Minister of Pakistan. Although his campaign ran for merely five weeks, significantly shorter than that of other candidates, Rizvi was able to attract millions of supporters, sympathetic to his hardline stance on blasphemy. The film also follows those who have been convicted of blasphemy, those who have been threatened with death for speaking out against the country's blasphemy laws, and the circumstances in which those accused of blasphemy have been lynched in instances of mob violence. Through these dual focuses, the film depicts the hysteria that the laws have caused, and those who use the hysteria to their political advantage.

## Appendix 6: Promoting reform through UN mechanisms

The **Universal Periodic Review** (UPR) has been used by the international community as a platform to comment critically on, and encourage reform of, the death penalty and the criminalisation of offences against religion. For instance, in 2017, Pakistan received 13 recommendations to repeal, amend, or prevent the misuse of its blasphemy laws (United Nations Human Rights Council, 2017d:18). Such recommendations are, however, generally quite broad; perhaps more targeted and incremental recommendations may be made, such as calling for the abolition of the death penalty for offences against religion as an interim measure, rather than recommending complete repeal of the law. Despite various stakeholders providing information on Yemen's retention and use of the death penalty for offences against religion during the country's UPR in 2019 (United Nations Human Rights Council, 2018a:para 53, 2018b:paras 20, 23), not a single State made a recommendation addressing this. Instances such as this are glaring missed opportunities to remind the States examined in this report that they are under the constant scrutiny of the international community.

UN treaty bodies may provide similar commentary in their **concluding observations**. For example, in 2019, the Human Rights Committee expressed concern at the proscription of apostasy as a capital offence, violating Articles 2 (non-discrimination), 6 (right to life), 18 (freedom of thought, conscience, and religion), and 19 (freedom of expression) under the ICCPR, and recommended that Mauritania abolish the crime of apostasy accordingly (United Nations Human Rights Committee, 2019:paras 40-41). Assuming the State under review respects the authority of the UN treaty body, concluding observations are opportunities for the treaty bodies to put soft pressure on States to bring their practices into line with international human rights standards. Unfortunately, treaty bodies can only review States that are party to the convention over which they preside. Accordingly, the Human Rights Committee is barred from reviewing Brunei, Saudi Arabia, and the United Arab Emirates, as these States are yet to ratify the ICCPR.

**Individual communications mechanism.** In 2020, an Afghan national residing in Sweden submitted a complaint to the Human Rights Committee, alleging that his deportation to Afghanistan would amount to a violation of his rights under articles 6 (right to life), 7 (prohibition on torture), and 18 (freedom of thought, conscience, and religion) of the ICCPR. The man claimed that he would be at risk of severe persecution and even execution on the basis of apostasy or blasphemy due to his Christian faith and Hazara ethnicity. While the Committee concluded that Sweden would not be in violation of the ICCPR should it forcibly deport the man to Afghanistan, one Committee member offered a dissenting opinion, finding that deportation would indeed amount to a Covenantal violation (United Nations Human Rights Committee, 2020). One caveat to this is that the Human Rights Committee may only receive complaints concerning States parties to the First Optional Protocol to the ICCPR. While nine of the 12 States under examination have ratified the ICCPR, only two—Maldives and Somalia—have also ratified the ICCPR-OP1. Accordingly, persons at risk of execution in Afghanistan, Iran, Mauritania, Nigeria, Pakistan, Qatar, and Yemen have no recourse to the Human Rights Committee to challenge the international legality of their sentences.

**Special Procedures of the Human Rights Council** may publish reports or statements scrutinising the death penalty for offences against religion. For instance, in 2021, the Special Rapporteur on freedom of religion or belief released a statement calling on the international community to ‘pay attention to the persecution of Ahmadi Muslims worldwide’. The statement notes that Ahmadis are particularly vulnerable to violations under blasphemy laws, such as those in Pakistan, and urges States to ‘repeal all laws that discriminate against Ahmadi Muslims’ and ‘repeal all blasphemy laws or at least, amend them in compliance with the strict requirements of the ICCPR’ (Shaheed and Khan, 2021).

## Appendix 7: Statement

### *A Call to Abolish the Death Penalty for Offences Against Religion*

We, the undersigned, take the position that:

1. ‘Offences against religion’ are defined as any acts deemed to insult or offend religious morals, including, but are not limited to, apostasy (abandoning one’s religion), blasphemy (insulting a religion), and proselytising (encouraging someone to leave their religion). In Islam, *riddah* ردة or *irtidad* ارتداد encompasses the modern conception of offences such as apostasy, blasphemy, and proselytising, and in this statement, the term *riddah* is used to refer to offences against religion. In 12 countries, the death penalty remains a legal possibility for offences against religion. Where codified legislation exists, provisions are often vague, ambiguous, and broad, and they have been directed against political opponents, minority groups, progressive scholars, and activists whose lives are under threat because of these laws. Even in countries where the death penalty is not carried out, its mere prescription continues to stifle religious freedom, and in some cases creates an environment in which people feel entitled to engage in mob violence against persons accused of offending religious morals.
2. In jurisdictions where the death penalty is a legal possibility for offences against religion, the punishment, whether codified or not, is justified on the basis of the *Shari’a*. However, the Holy Qur’an is clear: ‘there shall be no coercion in matters of faith’ (2:256). Therefore, any text of the Hadith (record of the sayings and traditions of the Prophet’s tradition) that indicated that the death penalty should be imposed for apostates must be interpreted using a contextualist approach, as the Holy Qur’an does not impose the death penalty for *riddah*. Many contemporary Islamic scholars have offered new interpretations that reconcile the spirit of the Holy *Qur’an* and certain text of the Hadith. They argue that *riddah* in the context of the Prophet’s tradition 15 centuries ago was seen as treason or a betrayal of the Muslim communities. In other words, renouncing Islam was not framed as a religious transgression, but a political one that justified the application of the death penalty. This egalitarian approach to the authority of religious texts in Islam has led to the rich plurality of Qur’anic exegeses, Hadith understanding, and schools of jurisprudence (*madhabib*) which we have today.
3. In line with modern interpretations of Islam, *riddah* should no longer be a capital offence. People are no longer categorised by their religious background. The old categorisation of Muslims and *ahl dhimmah* (non-Muslims living in an Islamic state with legal protection) has been replaced by the concept of citizenship (*al-Muwathhinun*) in the Constitutions adopted by some Muslim states. Today, non-Muslims have the same rights as Muslims, including the right to practice or not to practice a religion, to promote a religion, to change one’s religion, and to not be persecuted for one’s religious beliefs.
4. Scholars of Islamic studies need to come together in promoting, protecting, and maintaining religious freedom. Different interpretations among scholars are to be acknowledged and appreciated. However, we must reject the classic formalistic interpretation that cannot be reconciled with the modern understanding of Islamic law.

More importantly, we must refuse the politicisation of religion by governments, and demand the fostering of harmony among all citizens, regardless of their religious background. Indeed, the spirit of the Holy Qur'an endorses both religious freedom and a respect for life: "For you is your religion, and for me is my religion" (109:6); and "If anyone killed a person, it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind" (5:32).

5. The incitement of hatred against religious groups is a legitimate topic for legislation. However, personal opinions or statements of religious disbelief should not be criminalised. Guaranteeing religious freedom while retaining the death penalty for such behaviour is not true religious freedom. We urge governments to abolish the death penalty for offences against religion in their legislation as an urgent first step.



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# CONTRIBUTORS

## ABOUT THE AUTHORS

### **Christopher Alexander**

Fellow, Eleos Justice

Christopher holds a LLB(Hons)/BA from Monash University, and has completed additional studies in refugee law and children's rights at Deakin University and Harvard University, respectively. Prior to this project, Christopher researched and co-authored Eleos Justice's first report, *State-Sanctioned Killing of Sexual Minorities: Looking Beyond the Death Penalty* (February 2021). He also remains actively involved in the abolitionist movement, contributing legal assistance in death row matters throughout Asia and collaborating with local and international partners on the development of advocacy tools. Beyond Eleos Justice, Christopher conducts research for the Faculty of Law, Monash University, primarily in the fields of criminal law and international human rights law. He has also provided research assistance to the School of Regulation and Global Governance (RegNet), Australian National University.

### **Nadirsyah Hosen**

Fellow, Eleos Justice; Senior Lecturer, Faculty of Law, Monash University

Nadirsyah is internationally known for his expertise in *Shari'a* and Indonesian law. Trained in three different legal systems (Civil Law, Common Law and *Shari'a*), he has taught in the Faculty of Law, Monash University, since 2015. Prior to this role, he was an Associate Professor at the School of Law, University of Wollongong. His relevant publications are *Shari'a and Constitutional Reform in Indonesia* (Institute of Southeast Asian Studies, Singapore, 2007); a co-editor (with Joseph Liow) of *Islam in Southeast Asia*, 4 volumes, (Routledge, London, 2010); and a co-editor (with Richard Mohr) of *Law and Religion in Public Life: The Contemporary Debate* (Routledge, London, 2011 and 2013); a co-author (with Ann Black and Hossein Esmacili) of *Modern Perspectives on Islamic Law* (Edward Elgar, UK, 2013 and 2015); and an edited volume of *Research Handbook on Islamic Law and Society* (Edward Elgar, UK, 2018). His 390,000 Twitter followers testify to the impact of his research.

### **James McLaren**

Fellow, Eleos Justice

James is a research assistant at Eleos Justice. As part of his responsibilities, he conducts evidence-based research for the organisation to assist it in developing strategic, coordinated and appropriate advocacy in the Asian region. He is also a recent Bachelor of Laws (Honours) and Bachelor of Commerce graduate from Monash University (Melbourne, Australia). For this report, he assisted in the qualitative study of Pakistan's leading newspapers, examining and analysing their reporting of instances of blasphemy and extrajudicial violence, helped research blasphemy politics generally within Pakistan, and drafted sections of the report related to the efforts of NGOs—both domestically and internationally—in advocating change to Pakistan's blasphemy law.



**Mai Sato**

Director, Eleos Justice; Associate Professor, Faculty of Law, Monash University

Mai is the inaugural Director of Eleos Justice and her academic focus is on the death penalty. She is a social scientist by training and has led and worked on projects on the death penalty in Japan, Malaysia, the Philippines, India, Kenya, and Zimbabwe. Her monograph *The Death Penalty in Japan: Will the Public Tolerate Abolition?* (Springer, 2014), and her documentary film which captured a social experiment exploring what the death penalty meant to ordinary Japanese citizens, influenced the decision by the Japan Federation of Bar Associations to become an abolitionist organisation in 2016. Mai's interest in the death penalty is not limited to scholarly understanding of punishment and the criminal justice system. Mai has created and currently co-runs an NGO *CrimeInfo* which promotes the abolition of the death penalty in Japan. Mai has a PhD from King's College London. She relocated to Australia in February 2019 and joined the School of Regulation and Global Governance (RegNet) at the Australian National University. Prior to joining the ANU, she worked at the School of Law, University of Reading; the Centre for Criminology, the University of Oxford; and at the Institute for Criminal Policy Research (UK).



## ABOUT THE PHOTOGRAPHER

**Muzafar Ali** is a Hazara photographer and human rights activist from Afghanistan. He is currently based in South Australia, where he is a university student. Muzafar also directs a refugee-led education program in Indonesia and Thailand.

After spending the early years of his life in Pakistan, he returned to Afghanistan in late 2004, when many of his friends were killed in various incidents in Quetta, Baluchistan.

In Afghanistan, he started working with the United Nations in 2005, which enabled him to visit remote areas of the Hazarajat Region of Afghanistan and photograph the lives of Hazaras. He became one of the first younger Afghan photographers to document his nation emerging from the ashes of war. His photographs depict the beauty and simplicity of the ordinary lives of Afghans.

In the United Nations, Muzafar worked in areas of strengthening democratic values, monitoring the human rights situation, governance, security, and rule of law. Due to sensitive nature of his work, he encountered several life-threatening situations: the Taliban hit his car with improvised explosive device, and he was threatened by local warlords and corrupt government officials.

In 2013, Muzafar arrived in Indonesia as a refugee. He co-founded the first refugee-led school in West Java, Indonesia. Muzafar is currently managing a program in Australia that funds refugee-led schools in Indonesia and Thailand, providing education to more than 1000 students. He also advocates for refugee rights and agency, raising the voices of refugees in limbo.



*Hazara children sitting outside their home in Daikundi, Afghanistan. December 2007.*

## ABOUT ELEOS JUSTICE

### **What is Eleos Justice?**

Eleos Justice is a collaboration between Capital Punishment Justice Project and the Faculty of Law at Monash University. Eleos is a Greek goddess of compassion and mercy. We like what Eleos stands for, which encapsulates the key message of our Initiative on non-violence and humane punishment. Eleos has a straightforward agenda: we want to be part of the anti-death penalty movement and help strengthen it. We plan to do this by becoming a leading regional hub for evidenced-based research, teaching, and advocacy on the death penalty in Asia.

### **What are its aims?**

Eleos wants to see a significant shift in the debate about the death penalty, and capital punishment policy. We hear a lot about the death penalty in the US. While each execution is significant, what we hear much less about are the executions carried out outside of the US, which translate to 97 per cent of global executions (according to 2019 figures, excluding the number of executions carried out in China). Asia lags behind the global trend of moving away from the death penalty along with the Middle East, so we think it's important to focus on this region.

### **Who is involved?**

Eleos alone cannot achieve abolition in Asia and beyond. Our vision is to be part of the anti-death penalty movement by becoming a significant regional hub for researchers, activists, practitioners, and governments to be able to come together—both physically and virtually—to share ideas. We've had the privilege of meeting with many advocates in the region. While their political, social, and cultural situations may differ, these advocates face similar challenges: censorship, online trolling, and in some cases threats to personal security. Individual NGOs, lawyers, and academics hold little political power or influence, but by creating a network of advocates in this region—alongside existing umbrella organisations such as Anti-Death Penalty Asia Network (ADPAN)—we can become a powerful voice for death penalty abolition.

### **How to get involved**

We have big ambitions for death penalty research in the Asia Pacific region, but Eleos is still a small team. We welcome approaches from colleagues across the globe who would like to collaborate on any of our three activities: research, teaching, and advocacy. We don't discriminate between students, PhD scholars, Clinic staff, and academics, so please get in touch if you would like to be involved. Thanks to seed funding from the Australian Government, we've been able to launch Eleos Justice. But to truly unlock transformational impact across the Asia-Pacific region, we need the support of like-minded philanthropic partners. We invite passionate philanthropists to join our mission.

### **Upcoming events**

'Eleos Justice Conversation Series' (offered online) brings together academics, practitioners, advocates to weigh in on topical issues pertaining to the death penalty in the Asia Pacific region. For other events and updates, please check our website.





