



ADF INTERNATIONAL

ECOSOC Special Consultative Status (2010)

SUBMISSION TO THE SPECIAL RAPPORTEUR ON
EXTRA-JUDICIAL SUMMARY OR ARBITRARY
EXECUTIONS

**Response to the call for input: Report on the imposition of the
death penalty and its impact**

29 April 2022, Geneva, Switzerland

Submission by:

ADF International
Rue Pré-de-la-Bichette 1
1202 Geneva, Switzerland

Web: www.ADFinternational.org
Email: UN@ADFinternational.org

Introduction

1. ADF International (ECOSOC registered name “Alliance Defending Freedom”) is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions.
2. In response to the call for inputs on the imposition of the death penalty and its impact, this submission brings attention to the enormously detrimental impact of the death penalty for so-called “offences” against religion on persons belonging to religious or belief minorities. Despite moratoriums and the overall declining rate of enforcement of the death penalty for religious offences, the threat posed by the mere existence of laws permitting capital punishment for religious offences perpetuates the widespread suppression of religious communities and their religious freedom, in addition to contributing to the spread of vigilantism. Furthermore, the submission lays out the importance of and right to spiritual assistance for persons on death row.

(a) Impact of the death penalty on religious or belief minorities

3. For the purposes of this submission, religious “offences” are crimes that relate to the state’s interest in protecting the majority religion, such as blasphemy or apostasy. Such laws constitute a clear violation of the right to religion or belief, and, as of 2021, are punishable by the death penalty in twelve countries. These are Afghanistan, Brunei, Iran, Maldives, Mauritania, Somalia, Nigeria, Pakistan, Qatar, Saudi Arabia, United Arab Emirates and Yemen, out of which Brunei and Mauritania have moratoria.¹ Legal frameworks punishing religious practice by death present a particular threat to persons belonging to religious or belief minorities, as they criminalize practices or expression deemed incompatible with the state or majority religion. This severely undermines their right to freedom of religion or belief and expression due not only to the death penalty law, but also out of fear of deadly reprisal by other actors. It is important to note that in some states such as Iran, the actions of members and leaders of religious communities are often framed as political, linking them to allegations of threats to national security or espionage, thereby requiring a lower threshold of evidence.² This means that even where apostasy or blasphemy do not appear as the official ground for an execution, it does not necessarily exclude religious motivations.
4. The threat of death for manifesting one’s religion or belief results in a severe chilling effect, causing persons belonging to religious or belief minorities to self-censor for fear of reprisal. This effect is exacerbated in cases where executions have taken place. The knowledge

¹ Jubilee Campaign, ‘International Religious Freedom and Human Rights, Country Factsheets’ (2021) <https://jubileecampaign.org/wp-content/uploads/2021/04/Country-Briefs_finalized.pdf>; End Blasphemy Laws <https://end-blasphemy-laws.org/countries>>.

² Family Research Council, ‘Stories from Iran: Religious Freedom and the Secret Growth of the Underground Church’ (February 5, 2020) <<https://www.frc.org/familypolicylecture/stories-from-iran-religious-freedom-and-the-secret-growth-of-the-underground-church>>; *F.G. v. Sweden*, no. 43611/11, para 57, 2016, ECtHR (The Danish Immigration Service’s “Update on the Situation for Christian Converts in Iran”).

of a relative, acquaintance or a member of the same religious community being sentenced to death due to religious offences acts as a powerful deterrent to the free expression of one's religion or belief, further stifling pluralism and perpetuating a culture of fear. The widespread societal impact of such executions may be seen in Iran, where many Christians are forced to practice their faith in underground church networks for fear of the state.³

5. Although there has been an overall decline in the implementation of the death penalty for religious offences,⁴ the existence of these laws are rightfully perceived as life threatening for religious minorities, prompting many to seek asylum.⁵ Christian converts have explicitly referred to the threat of the death penalty in their asylum claims abroad, stressing that the fear of it is such that they would not be able to manifest their faith publicly and would remain in a state of extreme insecurity.⁶ In *F.G. v. Sweden* for example, the ECtHR pointed out that practicing the applicant's faith in secret would be a violation of his right to FoRB and most importantly that the choice between potentially facing death or suppressing one's religion was an unacceptable violation of human rights, enough to claim asylum under the principle of non-refoulement.⁷

Vigilantism

6. Laws imposing the death penalty for religious offences have contributed to an increase in the spread of vigilantism among extremist groups. The presence of the death penalty for religious offences is interpreted by extremists as justifying violence against persons deemed to violate religious values, thereby inciting vigilante mob violence and extra-judicial killings.⁸ In Iraq, Christian communities live in constant fear of 'death squads', receiving regular death threats and intimidating leaflets demanding inter alia that "all Christians should leave Iraq because the punishment is going to be worse in coming days".⁹

³ Norwegian Country of Origin Information Centre – Landinfo, 'Report Iran: Christian converts and house churches (1) – prevalence and conditions for religious practise' (2017) <<https://landinfo.no/wp-content/uploads/2018/04/Iran-Christian-converts-and-house-churches-1-prevalence-and-conditions-for-religious-practice.pdf>>; USNews 'In Iran, Covert Christian Converts Live With Secrecy and Fear' (2008) (<<https://www.usnews.com/news/world/articles/2008/05/08/in-iran-covert-christian-converts-live-with-secrecy-and-fear?context=amp>>).

⁴ Amnesty International, 'Death penalty 2020: Middle East and North Africa dominates list of world's top executioners' (2021) <<https://www.amnesty.org/en/latest/news/2021/04/death-penalty-2020-middle-east-and-north-africa-dominates-list-of-worlds-top-executioners/>>.

⁵ Family Research Council, 'Stories from Iran: Religious Freedom and the Secret Growth of the Underground Church' (February 5, 2020) <<https://www.frc.org/familypolicylecture/stories-from-iran-religious-freedom-and-the-secret-growth-of-the-underground-church>>.

⁶ See for example *F.G. v. Sweden*, no. 43611/11, para 57, 2016, ECtHR and *M.A.M. v. Switzerland*, no. 29836, 2022, ECtHR.

⁷ Art. 33 of the 1951 Refugee Convention.

⁸ DW, '#JusticeForMashal: Speaking out against Pakistan's blasphemy laws | Follow the Hashtag' (2017) <<https://www.dw.com/en/justiceformashal-speaking-out-against-pakistans-blasphemy-laws-follow-the-hashtag/av-38541214>>.

⁹ The New Humanitarian 'Christians live in fear of death squads' (2006) <<https://www.thenewhumanitarian.org/report/61897/iraq-christians-live-fear-death-squads>>.

7. Research suggests that countries with laws criminalizing blasphemy, apostasy, or defamation of religion experience higher levels of social hostility based on religion compared to countries that did not have such laws.¹⁰ State restrictions on freedom of religion or belief have been found to lead to increased radicalization and incitement to violence.¹¹ Globally, the source of violence or threats of violence to enforce religious norms has increasingly come from outside of state judicial systems from either extralegal acts by government authorities or from other individuals or groups operating unrestricted by the government.¹² It follows that when death for religious crimes is affirmed at the highest government levels, societal wide violence is subsequently heightened.
8. Just as the criminalization of religious offences, including with the death penalty, exacerbates vigilantism, widespread social hostility may in turn influence the enforcement of capital punishment, thereby reinforcing a vicious cycle. In Pakistan, capital punishment was halted from 2008 to 2014 as a consequence of pressure from human rights groups. However, in 2014, after a deadly Taliban attack in a school in Peshawar killing over 100 children, the death penalty was reinstated to “fast-track executions [...] vital to reigning in militant attacks”, extending to all, irrespective of the crime.¹³

Impact on institutional balances

9. In addition to the individuals directly threatened by the death penalty for religious offences or the resultant social hostility, lawyers and human rights defenders standing up for the rights of targeted minorities also find themselves impacted by these phenomena, along with other members of society involved in such cases. Author ██████████ points out that the widely accepted claim that “anyone helping an apostate is themselves an apostate” is a powerful weapon in spreading fear among those who oppose capital punishment for religious minorities.¹⁴ This includes defense lawyers, police officers protecting victims of mob violence, and doctors agreeing to treat persons deemed apostates.¹⁵ The rise in blasphemy cases in Pakistan punishable by death may be attributed in part to the fear factor among witnesses, judges and lawyers. This also

¹⁰ Pew Research Center ‘Laws Against Blasphemy, Apostasy and Defamation of Religion’ (2011) <<https://www.pewresearch.org/religion/2011/08/09/rising-restrictions-on-religion6/>>.

¹¹ P. Henne, S. Hudgins, T. Shah ‘Religious Freedom and Violent Religious Extremism: A Sourcebook of Modern Cases and Analysis’ (December 2012) Berkeley Center: Religious Freedom Project, 7-11; Pew Research Center ‘Key findings on the global rise in religious restrictions’ (2018) <<https://www.pewresearch.org/fact-tank/2018/06/21/key-findings-on-the-global-rise-in-religious-restrictions/>>.

¹² K4D Knowledge, evidence and learning for development ‘Threats to and approaches to promote freedom of religion or belief’ (2018), pg. 2, <https://gsdrc.org/wp-content/uploads/2018/03/Threats_to_and_approaches_to_promote_freedom_of_religion_or_belief.pdf>.

¹³ Human Rights Watch, ‘Pakistan: Reinstate Death Penalty Moratorium’ (2014) <<https://www.hrw.org/news/2014/12/17/pakistan-reinstate-death-penalty-moratorium>>; DW, ‘Pakistan lifts death penalty ban after school attack’ (2014) <<https://www.france24.com/en/20141217-pakistan-lifts-death-penalty-moratorium-after-peshawar-school-attack>>.

¹⁴ Hamid Mohsin, ‘Fear and Silence’, Dawn, (27 June 2010).

¹⁵ Ibid.

explains the lack of political will to amend laws perpetuating the threat of the death penalty for religious crimes, which are viewed by many as 'untouchable'.¹⁶

(b) Right of persons on death row to receive spiritual assistance

10. Spiritual assistance is often denied to individuals on death row.¹⁷ It may come in many forms: access to religious books, on-site care or visits from clergy. Spiritual support for individuals facing the death penalty aims at helping people cope better with the hard, spiritual questions that come up at the end of life. For many, it is the point where they are most in need of spiritual support. Many on death row face psychological trauma and thus reach out for spiritual assistance as a form of care. The often-relentless passage of time separating them from death by execution may cause serious mental health problems, and fuel delusions in a form that is dangerous.¹⁸
11. Receiving spiritual assistance is integral to the right to freedom of religion or belief, particularly the freedom to worship: it encompasses a broad range of acts, including the use of ritual formulae and objects, ceremonial acts, customs such as participation in rituals associated with certain stages of life.¹⁹ Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.²⁰
12. Article 10 of the ICCPR states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Prisoners are entitled to the freedom of religion or belief.²¹ Therefore, depriving prisoners on death row of access to spiritual assistance cannot be justified. This right is explicitly affirmed in Rule 65 of the Nelson Mandela Rules, which states inter alia that "Access to a qualified representative of any religion shall not be refused to any prisoner."²²

¹⁶ DW, 'Pakistan: 'WhatsApp blasphemy' death sentence reinforces dangerous trend' (2022) <<https://www.dw.com/en/pakistan-whatsapp-blasphemy-death-sentence-reinforces-dangerous-trend/a-60511046>>.

¹⁷ Forum18, 'UZBEKISTAN: Death row prisoners denied clergy access' (2003) <https://www.forum18.org/archive.php?article_id=211>; NPR, 'Supreme Court Halts Execution Of 'Texas 7' Inmate Denied Buddhist Spiritual Adviser' (2019) <<https://www.npr.org/2019/03/29/707884682/supreme-court-halts-execution-of-texas-7-inmate-denied-buddhist-spiritual-adviser>>; NBC News, 'Supreme Court says spiritual advisers can touch prisoners at the time of execution' (2022) <<https://www.nbcnews.com/politics/supreme-court/supreme-court-says-spiritual-advisers-can-touch-prisoners-time-executi-rcna21374>>.

¹⁸ Avi Salzman, 'Killer's Fate May Rest on New Legal Concept', Santa Clara University (2005).

¹⁹ UN Human Rights Committee 'General Comment No. 22: Article 18 (Freedom of Religion)' (July 29, 1994), HRI/GEN/1/Rev.1 at 35, para 4.

²⁰ Art. 18(3) ICCPR.

²¹ UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, para 8.

²² UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly, 8 January 2016, A/RES/70/175.

Recommendations

13. In light of the aforementioned, ADF International suggests that the following recommendations be included in the Special Rapporteur's report on the imposition of the death penalty and its impact, to be presented at the 77th session of the General Assembly.

14. The Special Rapporteur should call on States to:

- a. Abolish the death penalty for religious offences such as apostasy and blasphemy, and guarantee full respect for freedom of religion or belief and expression;
- b. Take steps to prevent and mitigate the harmful impacts of the death penalty on persons belonging to religious or belief minorities, including by investigating and prosecuting all cases of extra-judicial violence by state or non-state actors;
- c. Uphold the right of persons on death row to spiritual assistance.



VIENNA

HEADQUARTERS

BRUSSELS

GENEVA

STRASBOURG

LONDON

NEW YORK

WASHINGTON, DC



ADF INTERNATIONAL