Inflicting Harm:

Judicial corporal punishment for drug and alcohol offences in selected countries

HARM REDUCTION INTERNATIONAL

Inflicting Harm:
JUDICIAL CORPORAL PUNISHMENT FOR DRUG AND ALCOHOL OFFENCES IN SELECTED COUNTRIES

Eka Iakobishvili

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About Harm Reduction International

Harm Reduction International is one of the leading international non-governmental organisations promoting policies and practices that reduce the harms from psychoactive substances, harms that include not only the increased vulnerability to HIV and hepatitis C infection among people who use drugs, but also the negative social, health, economic and criminal impacts of drug laws and policies on individuals, communities and society.

Our vision is a world in which individuals and communities benefit from drug laws, policies and practices that promote health, dignity and human rights.

We work to reduce drug-related harms by promoting evidence-based public health policy and practices and human-rights-based approaches to drug policy through an integrated programme of research, analysis, advocacy and collaboration with civil society partners.

About Harm Reduction International's Human Rights Programme

Harm Reduction International's human rights programme aims to promote a human rights-based approach to international drug policy. We advocate for an international legal and policy environment that is conducive to the expansion of harm reduction policies and services and to the realisation of the human rights of people who use drugs and those who are affected by drug use, drug policies and the drug trade.

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I. INTRODUCTION

> *What is common to all forms of corporal punishment is that physical force is used intentionally against a person in order to cause a considerable level of pain. Furthermore, without exception, corporal punishment has a degrading and humiliating component. All forms of corporal punishment must be considered as amounting to cruel, inhuman or degrading punishment in violation of international treaty and customary law.*
>
> Manfred Nowak
>
> UN Special Rapporteur on Torture[1]

Nobody forfeits their human rights because they use or are dependent on drugs – licit or illicit. This was the statement of the UN High Commissioner for Human Rights in 2009, and is at the root of the harm reduction approach to drug policies.[2] Harm reduction emerged in the 1980s as a response to HIV among people who inject drugs and has been shown over the decades to be a cost-effective way to reduce the negative social and health consequences of drug use.[3] Over the years an important, indisputable fact has emerged: human rights abuses against people who use drugs and excessively punitive approaches to drug control are not only wrong in themselves, but are also counter-productive for individuals, communities and public health. Harm reduction, therefore, consists of evidence-based interventions underpinned by the basic principles of dignity and human rights. Judicial corporal punishment – the state-sanctioned beating, caning or whipping of a person for drug use, purchase or possession – represents everything harm reduction opposes.

Judicial corporal punishment is a manifestation of cruel, inhuman or degrading punishment, it may amount to torture, and is absolutely prohibited in international law. Despite the academic discussions around the distinction between torture and other cruel, inhuman or degrading punishment, the prohibition is reflected in international human rights treaty law, and is a recognised rule of customary international law. The application of corporal punishment to people who use drugs or alcohol is, simply put, illegal. Just as it would be for anyone convicted of any offence. Despite this fact, institutionalised, legally sanctioned, violence is commonly applied to drug and alcohol offences. Whipping, flogging or caning is often carried out in public to escalate feelings of shame and humiliation. Aside from the physical damage, the result can be long-lasting psychological trauma for those punished in this manner.[4]

The focus of this report is physical violence as a legally sanctioned punishment for drug and alcohol offences.[5] It does not include corporal punishment of children in the home or in schools, police abuses or beatings in drug detention centres and prisons, or corporal punishment applied in informal

1 UN Human Rights Council (9 February 2010) Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/13/39, para. 63.
2 Office of the High Commissioner for Human Rights (10 March 2009) Press release: High Commissioner calls for focus on human rights and harm reduction in international drug policy.
3 Harm Reduction International, 'What is harm reduction?', available at: www.ihra.net/what-is-harm-reduction [accessed 25 November 2010].
4 Amnesty International (November 2010) *A Blow to Humanity: Torture by Judicial Caning in Malaysia*, ASA 28/013/2010, p. 40.
5 These include use, cultivation, production, trade, possession, consumption, buying, selling, sending, receiving, obtaining, and circulation.

or traditional justice systems.[6] This is not to diminish the importance of these concerns, on which information is available elsewhere. The aim of this report is to highlight an issue that has received little attention, but that exemplifies institutionalised violence towards drug and alcohol users within domestic law-enforcement structures.

This report examines judicial corporal punishment in international law, and the laws around its application at national level. Twelve jurisdictions for which we could find credible, primary sources and legal texts are reviewed. Although not a global overview, this report is the beginning of much-needed attention to a practice that is without justification, and that may be easily abandoned. With increasing attention to abuses by police against people who use drugs, in drug detention centres, in prisons and in healthcare settings, it is also a timely discussion. It is hoped that this report will help policy makers, academics, researchers and practitioners to understand better the legal frameworks surrounding corporal punishment for drugs and alcohol offences, and shape their work in the light of international standards and norms.

6 For example, research on the Ugandan traditional courts scheme has found that it regularly practises corporal punishment, though this is not regulated by state legislation. See M. Owor (2009) Making international sentencing relevant in the domestic context: lessons from Uganda, PhD thesis, University of Bristol, UK.

II. CORPORAL PUNISHMENT FOR DRUG AND ALCOHOL OFFENCES IN LAW AND PRACTICE

It is estimated that over forty countries worldwide maintain corporal punishment as a sentence of the courts or as an official disciplinary punishment in different institutional settings.[7] In relation to drug and alcohol offences, including those for consumption and for relapse from treatment, corporal punishment is allowed for in some jurisdictions as either a main punishment or in addition to imprisonment. Judicial corporal punishment for drugs and alcohol offences is applied in both secular and religious states.

This report examines the use of judicial corporal punishment for drug and alcohol offences in twelve states: Singapore, Malaysia, Iran, Yemen, Saudi Arabia, Qatar, United Arab Emirates, Libya, Brunei Darussalam, Maldives, Indonesia (Aceh) and Nigeria (northern states). The legal frameworks in these countries illustrate how such laws are formulated, what they apply to and how they are carried out. However, the list of countries practising judicial corporal punishment for such offences is likely longer.

The legal basis for judicial corporal punishment varies from country to country. It may be provided for in state or religious laws. In some countries only one type of corporal punishment is used, whereas others incorporate various methods and techniques. Singapore, for example, utilises caning, whereas in Iran, Saudi Arabia and other countries, courts may impose various types of instruments and techniques, including lashing and stoning, depending on the crime committed.[8]

A trend towards the abolition of sentences that cause bodily harm, including the death penalty, is well under way among African, Asian, European, Caribbean and American states. While most states have abolished judicial corporal punishment, a number still employ questionable claims about the deterrent value of such sanctions or the religious nature of the laws to resist abolishing judicial corporal punishment.[9]

The intensity of the application of judicial corporal punishment for drug and alcohol offences varies from country to country and region to region. For example, available data show that Singapore and Malaysia are the most active countries in terms of the frequency and number of cases in which judicial corporal punishment is applied (mirroring their vigorous application of the death penalty for drug offences).[10] Most countries that apply judicial corporal punishment for alcohol and drug offences do so either explicitly or implicitly as *hudud*[11] or *ta'azir* crimes[12] under Shari'a or Islamic law.

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7 42 states according to End All Corporal Punishment (www.endcorporalpunishment.org/pages/frame.html) and 40 states according to the Child Rights Information Centre (www.crin.org/violence/campaigns/sentencing/#countries) [both accessed 25 August 2010].

8 See the individual country reports in Part III.

9 Save the Children (May 2008) *Prohibiting All Corporal Punishment and Other Humiliating Punishment of Children: Achieving Legal Reform*, Bangkok, Thailand, pp. 31–32.

10 P. Gallahue (2010) *The Death Penalty for Drug Offences: Global Overview 2010*, Harm Reduction International, pp. 27, 29.

11 *Hudud* means the limits, or the limits proscribed by Allah. See M. Cherif Bassiouni (2004) Death as a penalty in Shari'a, in P. Hodgkinson and W.A. Schabas (eds.) *Capital Punishment – Strategies for Abolition*, Cambridge University Press.

12 *Ta'azir* crimes are referred to as offences rather than crimes and they represent lesser crimes. See M. Cherif Bassiouni (2004) Death as a penalty in Shari'a, in P. Hodgkinson and W.A. Schabas (eds.) *Capital Punishment – Strategies for Abolition*, Cambridge University Press.

As noted above, in some countries corporal punishment is not regulated by the written law, although it is widely applied through traditional justice schemes.[13]

Despite these differences between countries that apply judicial corporal punishment, there is one constant: all such acts are prohibited in international law, and are considered to amount to cruel, inhuman or degrading punishment or, in some cases, torture. Judicial corporal punishment has long-lasting and damaging effects on the psychological and physical wellbeing on people who experience it. In a recent report by Amnesty International, a forensic pathologist who has participated in UN human rights investigations explains:

> [T]he impact of the cane on the buttocks results in a blunt force injury which lacerates the skin. The laceration causes bleeding, and leaves permanent scars on the victim's body. In addition to blood, caning victims interviewed by Amnesty International said the caning resulted in a yellow discharge. The forensic pathologist explained that the yellow fluid is subcutaneous fat which has been crushed into pulp by the impact of the cane.[14]

The Amnesty International report notes that 'when he whips the cane into the victim's buttocks, the caning officer inflicts a deep wound; when dragging the tip of the cane across the wound, he lacerates the skin; in the double gesture, the cane both crushes and tears the flesh'.[15] 'At first it bruised then it cut,' said Ahmad Faisal, a Malaysian heroin user who received five strokes. 'When it gets beyond five, the flesh disintegrates,' he said.[16]

Due to the impact, victims lose muscle control in the buttocks. Also, due to the physical pain caused by the cane, as well as intense fear, victims may lose control over their urinary and bowel functions. 'I urinated after the first stroke because of the pain. It was unbearable,' said Ismail, a Malaysian caned in 1989. 'Even faeces and urine came out,' said Nik Hazan, a twenty-seven-year-old Malaysian caned for drug possession. 'People were screaming, crying, calling for their mothers and fathers.' This loss of continence further compounds the victim's degradation.[17]

Loss of consciousness is another common effect of caning. According to Dr Nisha, a physician who attended victims at a caning session in Malaysia, 'this fainting results from neurogenic shock or a loss of nerve signals to muscles caused by trauma.'[18] The caning is not terminated after a victim loses consciousness, it is merely interrupted.[19] According to Amnesty International, 'a doctor will order a bucket of water to be thrown over his head. The doctor fails to fulfill his obligation to treat the victim's injury or trauma. Instead, the doctor ensures, then certifies that the victim is conscious, and thereby

13 See M. Owor (2009) Making international sentencing relevant in the domestic context: lessons from Uganda, PhD thesis, University of Bristol, UK.
14 Amnesty International (November 2010) *A Blow to Humanity: Torture by Judicial Caning in Malaysia*, ASA 28/013/2010, p. 28.
15 Ibid.
16 Ibid.
17 Ibid., p. 32.
18 Ibid.
19 Ibid.

authorizes the caning officer to inflict even more injury.'[20]

Corporal punishment resulting in death has been documented in Bangladesh, where a local Shari'a court imposed one hundred lashes on a fourteen-year-old girl for allegedly having an illicit relationship with a married cousin. The girl died after receiving the lashes, which had been carried out publicly.[21]

There are no comprehensive statistical data on how many people are subjected to judicial corporal punishment around the world, how many lashes individuals receive, nor for which offences. This may be due to the sometimes ad hoc nature of the punishment or simply because such figures are not collected. But statistics are available from other sources. For example, while the Government of Singapore does not publish the statistics of persons who receive caning as a punishment, the US State Department reports that during 2010, 3,170 persons were sentenced to judicial caning, and 98.7 per cent of caning sentences were carried out.[22]

According to news reports, 'thousands face floggings' in Iran, including women and minors. [23] In the Maldives, 180 persons were condemned to public flogging during the first six months of 2009.[24] In Malaysia, Amnesty International estimates that up to 1,200 canings happen in prison centres each month.[25] At the same time, it is reported that more than 35,000 people were caned in Malaysia since 2002.[26] In a response to a parliamentary question on 9 March 2010, Home Minister Hishammuddin Hussein disclosed that Malaysia had caned 29,759 foreigners between 2005 and 2010 for immigration offences alone.[27] Although the number of people caned for drug offences is not known, it is considered to be high.

Judicial corporal punishment in international human rights law

There is no single accepted definition of corporal punishment. This report, however, focuses on all types of physical violence imposed as a form of punishment for drug or alcohol offences (including consumption).

The prohibition of cruel, inhuman, degrading treatment or punishment and torture is enshrined in numerous international human rights instruments. The Universal Declaration of Human Rights, the UN International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

20 Ibid.

21 F. Karim (3 February 2011) Bangladeshi girl 14 dies after receiving 100 lashes, *Guardian*.

22 US Department of State (8 April 2011) *2010 Human Rights Report: Singapore*, available at: www.state.gov/g/drl/rls/hrrpt/2010/eap/154401.htm [accessed 29 August 2011].

23 D. Williams (22 August 2007) Rough justice: 80 lashes for 'immoral' Iranian who abused alcohol and had sex, *Daily Mail* (London).

24 US Department of State (8 April 2011) *2010 Human Rights Report: Maldives*, available at: www.state.gov/g/drl/rls/hrrpt/2010/sca/154483.htm [accessed 29 August 2011].

25 BBC (6 December 2010) Malaysia urged to stop caning 'epidemic', available at: www.bbc.co.uk/news/world-asia-pacific-11911998 [accessed 30 September 2011].

26 Amnesty International (24 August 2009) Malaysia postpones caning of woman for Ramadan, available at: www.amnesty.org/en/news-and-updates/feature-stories/malaysian-woman-caning-postponed-20090824 [accessed 12 February 2011].

27 Amnesty International (10 March 2011) Malaysian government reveals nearly 30,000 foreigners caned, available at: www.unhcr.org/refworld/docid/4d79c525a.html [accessed 29 August 2011].

Punishment, and regional human rights treaties,[28] all strongly condemn any form of torture or other cruel, inhuman or degrading treatment or punishment.

Besides international human rights law, torture has also been prohibited in international humanitarian law and international criminal law. Article 3 common to the four Geneva Conventions of 1949 expressly obliges states parties to refrain from any kind of torture and inhuman, cruel or degrading treatment or punishment that is incompatible with the human rights obligations of the states.[29] The Rome Statute of the International Criminal Court prohibits torture and other inhuman, cruel or degrading treatment or punishment and makes their application an international offence that falls under the jurisdiction of the court.[30]

The infliction of corporal punishment as a criminal sanction is widely considered to amount to cruel, inhuman or degrading punishment and is therefore prohibited under international law. It may even amount to torture.

The UN Special Rapporteur on Torture, across many years and various holders of the office, has consistently found the judicial or administrative application of corporal punishment to be contrary to the prohibition of cruel, inhuman and degrading treatment or punishment or torture. In 1997, Nigel Rodley, who then held the position, was clear that corporal punishment fell under the mandate and that 'corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment'.[31]

In 2005, towards the beginning of his term as Special Rapporteur, Manfred Nowak rejected any reliance on national law to justify a state's application of corporal punishment. In his report to the UN General Assembly, Nowak called upon the states 'to abolish all forms of judicial and administrative corporal punishment without delay'.[32] In a report to the UN Human Rights Council in 2010, he concluded that 'legislation providing for corporal punishment, including excessive chastisement ordered as a punishment for a crime or disciplinary punishment, should be abolished'[33] as 'inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment', [34] thereby concurring with the conclusion of Rodley thirteen years previously.

The UN Human Rights Committee has repeatedly called upon UN member states to abolish corporal punishment as a disciplinary measure, as it is inconsistent with the prohibition against torture or cruel, inhuman or degrading punishment that is enshrined in the UN International Covenant on Civil

28 European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14 (4 November 1950, entered into force 3 September 1953), art. 3; Inter American Convention on Human Rights 'Pact of San Jose, Costa Rica' (22 November 1969, entered into force 18 July 1978), art. 5; African [Banjul] Charter on Human and Peoples' Rights (27 June 1981, entered into force 21 October 1986), art. 5; Revised Arab Charter on Human Rights (22 May 2004, entered into force 15 March 2008), art. 8.

29 UN Human Rights Committee (10 March 1992) General comment no. 20, para. 15; common art. 3 to the four Geneva Conventions of 1949 (adopted 12 August 1949, entered into force 21 October 1950).

30 Rome Statute of the International Criminal Court (17 July 1998), the text of the Rome Statute circulated as A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

31 UN Commission on Human Rights (10 January 1997) Report of the Special Rapporteur on Torture, E/CN.4/1997/7, para. 6.

32 UN General Assembly (2005) Report of the Special Rapporteur on Torture, A/60/316, para. 28.

33 UN Human Rights Council (2010) Report of the Special Rapporteur on Torture, A/HRC/13/39, para. 63

34 UN General Assembly (2005) Report of the Special Rapporteur on Torture, A/60/316, paras 19 and 26.

and Political Rights.[35] The committee has stated that 'flogging, amputation and stoning, which are recognized as penalties for criminal offences are not compatible with the Covenant'.[36]

The case law of the Human Rights Committee further supports the prohibition of any kind of corporal punishment. In the landmark decision of *Osbourne v Jamaica*, the committee unanimously concluded that 'irrespective of the nature of the crime that is to be punished, however brutal it may be, it is the firm opinion of the committee that corporal punishment constitutes cruel, inhuman, and degrading treatment or punishment contrary to article 7 of the Covenant'.[37] The committee added, 'The State party is also under an obligation to refrain from carrying out the sentence of whipping upon [a man convicted of armed robbery and aggravated wounding] ... The State party should ensure that similar violations do not occur in the future by repealing the legislative provisions that allow for corporal punishment.'[38] The committee has repeated the call for abolition of corporal punishment in its concluding observations to states parties under its periodic review procedure.[39]

Similarly, the UN Committee against Torture has urged states parties to prohibit any type of corporal punishment. The committee recommended that the Namibian government bring about 'the prompt abolition of corporal punishment insofar as it is legally still possible under the Prisons Act of 1959 and the Criminal Procedure Act of 1977'.[40] In relation to Zambia, the committee stated that corporal punishment, regardless of whether the cane was three feet or four feet long, was a clear violation of article 16 of the Convention against Torture, which prohibits cruel, inhuman or degrading treatment or punishment.[41]

The UN Committee on the Rights of the Child has also consistently recommended the abolition of corporal punishment in all settings in its reports to states parties to the Convention on the Rights of the Child.[42]

International human rights law, therefore, is clear in prohibiting corporal punishment of any kind. The type of crime committed is irrelevant. With the rapid eruption of judicial corporal punishment in a number of countries in the 1990s, the UN Human Rights Commission, the predecessor body to the UN Human Rights Council, went so far as to adopt a special resolution on the issue. It concluded that 'corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture'[43] and called on member states to ensure complete eradication of such practices.

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35 UN Human Rights Committee (10 March 1992) General comment no. 20, para. 5.

36 UN Human Rights Committee (5 November 1997) Concluding observations: Sudan, CCPR/C/79/Add.85, para. 9.

37 UN Human Rights Committee (13 April 2000) *George Osbourne v Jamaica*, CCPR/C/68/D/759/1997, para. 9.1. This jurisprudence has been further expanded in *Higginson v Jamaica*, 792/1998; *Sooklal v Trinidad and Tobago*, 928/2000; and *Errol Pryce v Jamaica*, 793/1998.

38 UN Human Rights Committee (13 April 2000) *George Osbourne v Jamaica*, CCPR/C/68/D/759/1997 (Jurisprudence), para. 11.

39 UN Human Rights Committee (19 November 1997) Concluding observations: Iraq, CCPR/C/79/Add.84, para. 12; UN Human Rights Committee (19 November 1997) Concluding observations: Sudan, CCPR/C/79/Add.85, para. 9; UN Human Rights Committee (6 November 1998) Concluding observations: Sudan, CCPR/C/79/Add.101, para. 10.

40 UN Committee against Torture (6 May 1997) Concluding observations: Namibia, A/52/44, para. 250.

41 UN Committee against Torture (26 November 2001) Summary record: Zambia, CAT/C/SR.494, para. 34, inserted in UN General Assembly (2005) Report of the Special Rapporteur on Torture, A/60/316, para. 22.

42 UN Committee on the Rights of the Child (21 September 2005) Concluding observations: Yemen, CRC/C/15/Add.267, paras. 41–42; UN Committee on the Rights of the Child (13 June 2002) Concluding observations: United Arab Emirates, CRC/C/15/Add.183, para. 32; UN Committee on the Rights of the Child (4 July 2003) Concluding observations: Libyan Arab Jamahiriya, CRC/C/15/Add.209, paras. 45–46; UN Committee on the Rights of the Child (13 July 2007) Concluding observations: Maldives, CRC/CDV/CO/3, paras. 55–56, 97–99.

43 UN Commission on Human Rights (11 April 1997) Resolution 1997/38, para. 9.

The views of these international mechanisms concur with those of regional and national courts.[44] International tribunals have further recognised the customary nature of the prohibition on corporal punishment in a number of cases, and have established an absolute ban on such treatment.[45] As a norm of customary international law, the prohibition on the use of cruel, inhuman and degrading treatment or punishment or torture is applicable to all countries, regardless of whether they have ratified the relevant human rights treaties.[46]

Corporal punishment and the international drug conventions

More than 95 per cent of UN member states are parties to the three core UN drug control conventions.[47] These conventions codify the international community's approach to drug control. Although the conventions require states to enact domestic criminal laws for various types of drug offences, they make no mention of the kinds of sanctions that must be applied. They reserve deprivation of liberty for 'serious' crimes, but say nothing about actual sentences.[48] They do not refer to corporal punishment. Treatment and rehabilitation as an alternative to incarceration for 'drug abuse' is provided for within the treaties,[49] but corporal punishment, of course, is a form of neither.

The conventions do allow for 'more strict or severe measures' to be adopted than provided for within their texts.[50] This has led some countries to use the conventions to justify especially harsh punishments, including the death penalty.[51] However, these provisions do not and cannot negate international human rights law, and such measures must be read in the light of concurrent human rights obligations. For example, executing a child for a drug-related crime is certainly 'more severe' than the treaties provide for, but it is wholly contrary to international human rights law. It is clear, and should not require elaboration, that nothing in the drug conventions may be read to permit the inflicting of torture or cruel, inhuman and degrading treatment or punishment or torture. This holds true for corporal punishment. The official commentary on the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances supports this interpretation, stating that stricter measures must be '*subject always to the requirement that such initiatives are consistent with applicable norms of public international law, in particular norms protecting human rights*'[52] [emphasis added].

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44 See, for instance, *Tyrer v United Kingdom* (Application No. 5856/72, 25 April 1978); *Winston Caesar v Trinidad and Tobago* (Inter-American Court of Human Rights, Series C, No. 123, judgment of 11 March 2005); *State v Williams and Other* ([1995] 2 LRC 103, South Africa Constitutional Court); *Kyamanywa Simon v Uganda* (Constitutional Reference 10 of 2000); *Kyamanywa Simon v Uganda Supreme Court* (Criminal Appeal No. 16 of 1999).

45 *Prosecutor v Furundzija* (10 December 1998, Case No. IT-95-17/I-T); *Prosecutor v Delacic and Others* (16 November 1998, Case No. IT-96- 21-T, §454); *Prosecutor v Kunarac* (22 February 2001, Case Nos. IT 96-23-T and IT-96-23/1, §466).

46 The Court of Appeal of Singapore recently disagreed with this in a case relating to the mandatory death penalty for drug offences. Its legal reasoning has been heavily criticised. See Y. McDermott (2010) Yong Vui Kong v. Public Prosecutor and the mandatory death penalty for drug offences in Singapore: a dead end for constitutional challenge?, *International Journal on Human Rights and Drug Policy* I, pp. 35–52.

47 UN Single Convention on Narcotic Drugs (adopted in 1961) as amended by the 1972 Protocol, UN Convention on Psychotropic Substances (adopted in 1971), UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted in 1988).

48 See UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), art. 3.

49 See UN Convention on Psychotropic Substances (1971), art. 22.

50 UN Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, art. 39; UN Convention on Psychotropic Substances (1971), art. 23; UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), art. 3.

51 See, for example, Decision of the Constitutional Court of the Republic of Indonesia (2007) 2-3/PUU-V/2007, p. 103.

52 Commentary on the UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances (done at Vienna on 20 December 1988), art. 3.3, p. 49.

Religious laws and corporal punishment

Religious texts are frequently cited to support corporal punishment.[53] However, this should not imply that there is consensus on the use of corporal punishment among religious leaders and scholars.[54] In a study on whether corporal punishment of children is permitted in Islam, for example, Hademine Ould Saleck, President of the Network of Imams, Islamic Republic of Mauritania stated, 'The evidence that corporal punishment of children is forbidden in Islam is clear and abiding for all of us. Let us stop arguing. We don't have a choice and we must apply Shari'a which fully protects children.'[55]

In its 2009 report, the Global Initiative to End All Corporal Punishment of Children notes that a number of religious leaders and theologians clearly indicate that there is nothing inherent in their faiths to justify the continued legality and social approval of corporal punishment. The same paper highlights that the core values which most faiths share – compassion, equality, equity and justice – and the sacred respect which each religion holds for inherent human dignity are not compatible with hurting and causing pain.[56]

The suggestion that Shari'a necessarily supports corporal punishment does not explain the diversity of its practice in Islamic states, or the inconsistency in its application to alcohol and drug crimes. For example, Egypt, Lebanon, Syria, Jordan and a number of other members of the League of Arab States do not practise any type of judicial physical punishment, as it is viewed as incompatible with their international human rights obligations. This would indicate that the application of corporal punishment depends as much on the political view of the government concerned as on the interpretation of religious texts.

In his report on the 'Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment', submitted to the UN Human Rights Commission in 1997, the then UN Special Rapporteur on Torture commented that 'certain religious law and custom, such as that arising from Shari'a, as interpreted by some Governments, requires the application of corporal punishment in practice and that this exigency overrides any interpretation of the norm against torture which would effectively outlaw corporal punishment'.[57] Noticing a great divergence of views among Islamic scholars and clerics concerning the obligations of states to implement corporal punishment, the Special Rapporteur stated that the overwhelming majority of member states of the Organization of the Islamic Conference do not have corporal punishment in their domestic laws.[58] Furthermore, the Special Rapporteur made clear that

53 Save the Children Sweden (July 2010) *Ending Corporal Punishment of Children in Mozambique*, available at: www.crin.org/docs/Ending_CP_Mozambique.pdf [accessed 2 March 2011].

54 A number of non-governmental organisations campaigning for the abolition of corporal punishment for children point out that such a justification of violence through religion has compelled respected authorities in the world's major faiths to speak out to create greater awareness among religious communities of the devastating impact of violence on children, and to take strong leadership roles in addressing the problem of corporal punishment. Save the Children (May 2008) *Report of the Global Workshop on 'Prohibiting All Corporal Punishment and Other Humiliating Punishment of Children: Achieving Legal Reform'*, Bangkok, Thailand.

55 UNICEF (6 May 2009) Religious leaders call for ending corporal punishment in Mauritania, available at: www.unicef.org/infobycountry/mauritania_49593.html [accessed 12 February 2011].

56 End All Corporal Punishment of Children (2009), *Global Report 2009*, available at: www.endcorporalpunishment.org/pages/pdfs/reports/GlobalReport2009.pdf [accessed 8 November 2010].

57 UN Human Rights Commission (10 January 1997) Report of the Special Rapporteur on Torture, E/CN.4/1997/7, para.10.

58 Ibid.

there is no exception envisaged in international human rights or humanitarian law for torturous acts that may be part of a scheme of corporal punishment. States that apply religious law are bound to do so in such a way as to avoid the application of pain-inducing acts of corporal punishment in practice.[59]

Religion, it should be pointed out, is not the only justification used to defend judicial corporal punishment. Some secular states rely on cultural relativism, or on simple differences of philosophy relating to crime and punishment. This latter defence was used by Singapore during its recent review at the UN Committee on the Rights of the Child when quizzed by committee members on its ongoing judicial corporal punishment of children, including for drug use or relapse.[60] Just as with religious justifications, however, these arguments do not and cannot exempt states from their human rights obligations to prohibit torture and other forms of cruel, inhuman or degrading treatment or punishment.

Medical standards on the prohibition of judicial corporal punishment

International medical standards clearly prohibit the involvement of medical personnel in torture or cruel, inhuman or degrading punishment or in inflicting punishments that conflict with international medical ethical standards. The World Medical Association's guidelines on this issue for medical doctors (Tokyo Declaration) states in no uncertain terms that 'the doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedure is suspected, accused or guilty, and whatever the victim's belief or motives, and in all situations'.[61]

The UN Principles of Medical Ethics are similarly direct, stating that it is 'a gross contravention of medical ethics, as well as an offense under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment'.[62] Article 4(b) specifies that it contravenes medical ethics for doctors and other health professionals to 'certify, or participate in the certification of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health … or to participate in any way in the infliction of such treatment or punishment'.[63]

A number of other international standards related to the ethics of medical personnel in different regions explicitly ban any participation of medical staff in the practice of torture or any other forms of cruel, inhuman or degrading procedures.[64]

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59 Ibid.

60 Nations Unies Comité des droits de l'enfant (3 February 2011) Summary record, CRC/C/SR.1591, paras. 39–41, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/404/80/PDF/G1140480.pdf?OpenElement [access 2 December 2010].

61 World Medical Association (WMA) (adopted 1975 and editorially revised 2005 and 2006) Declaration of Tokyo – Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment, available at: www.wma.net/en/20activities/10ethics/20tokyo/index.html [accessed 2 December 2010].

62 UN Principles on Medical Ethics (18 December 1982) GA Resolution 37/194, principle 2.

63 Ibid., principle 4.

64 Declaration of Kuwait (Islamic Code of Medical Ethics), adopted by the International Conference of Islamic Medical Associations in 1981; Declaration of Hawaii, adopted by the

The World Medical Association has also adopted a special resolution in support of medical doctors refusing to participate in, or to condone, the use of torture or other forms of cruel, inhuman or degrading treatment. The resolution reminds medical personnel of their responsibility to encourage doctors to serve humanity, to support physicians experiencing difficulties and to resist any pressure to act contrary to the ethical principles governing their dedication to this task.[65]

Many national medical associations explicitly oppose participation in corporal punishment and recommend that doctors do not collaborate in such practices. As the British Medical Association (BMA) states, 'from a medical perspective, it is important to acknowledge that facilitating deliberate physical injury or execution contravenes the traditional codes of medical ethics of all cultures'.[66] The BMA goes on to state that medical ethics are very different from law, and recommends that doctors should not breach the standards of professional ethics even if this is provided for in the legislation.[67]

The International Conference on Islamic Medicine, held in 1981 in Kuwait, addressed doctors participating in torture and other cruel, inhuman or degrading treatment or punishment. Reflecting the direct positions of the other institutions above, the conference agreed:

> Health is a basic human necessity and is not a matter of luxury ... [The doctor] should be an instrument of God's mercy not of God's justice, forgiveness and not punishment, coverage and not exposure ... The medical profession shall not permit its technical, scientific, or other resources to be utilised in any sort of harm or destruction or inflicting upon man of physical, psychological, moral, or other damage ... regardless of all political or military considerations.[68]

World Psychiatric Association in 1977; WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment, initiated September 2002, adopted by the WMA General Assembly, Helsinki in 2003 and amended by the WMA General Assembly, Copenhagen, Denmark in October 2007; Declaration of Hawaii, adopted by the World Psychiatric Association in 1977; Declaration of Geneva, adopted in 1948, and Resolution on Physician Participation in Capital Punishment, adopted by WMA in 1981 and amended in 2000 and 2008; the Standing Committee of European Doctors' Statement of Madrid, adopted in 1989; the Nordic Resolution Concerning Physician Involvement in Capital Punishment, adopted in 1981 by WMA and amended in 2000; WMA Council Resolution on Prohibition of Physician Participation in Torture, adopted by the WMA 182nd Council Session, Tel Aviv in May 2009.

65 WMA Declaration Concerning Support for Medical Doctors Refusing to Participate in, or to Condone, the Use of Torture or Other Forms of Cruel, Inhuman or Degrading Treatment, adopted by the 49th WMA General Assembly, Hamburg, Germany in November 1997.

66 Recommendations from British Medical Association (27 September 2006) *The Medical Profession and Human Rights: Handbook for a Changing Agenda*, available at: www.bma.org.uk/ethics/human_rights/MedProfhumanRightsRecommendations.jsp [accessed 15 January 2011].

67 Ibid.

68 Declaration of Kuwait (Islamic Code of Medical Ethics), adopted by the International Conference on Islamic Medicine in 1981.

III. JUDICIAL CORPORAL PUNISHMENT FOR DRUG AND ALCOHOL OFFENCES IN TWELVE SELECTED COUNTRIES

Definitive data on countries practising judicial corporal punishment for alcohol and drug offences is difficult to obtain. Sometimes this is due to lack of transparency in a country about its laws and judicial practices, sometimes it reflects the differing definitions used by various human rights defenders about what constitutes corporal punishment, and sometimes it is a result of the practice's ad hoc nature.

This section provides legal overviews of the practice in the twelve jurisdictions for which credible sources, primary data and/or legal documentation could be found. It does not provide a true global overview of the judicial application of corporal punishment for drug and alcohol offences, which is certainly more widespread than these countries. The legal analyses of these twelve jurisdictions, however, indicate how such laws are framed, the levels of judicial discretion applied, the differences in sentencing practice and who may be subjected to corporal punishment. The overviews also shed light on internal contradictions in national laws, and on national laws that conflict with international treaty obligations.

Singapore

Article 53(e), chapter 224 of the Singapore Penal Code prescribes caning as a legislated criminal sanction and provides guidelines for its implementation (caning with the rattan).[69] The same legislation stipulates that caning can be used for children as well as for adults according to the gravity of the crime committed. Under Singapore law, a juvenile offender will be caned with a lighter rattan than is used for adults. Women and girls are not liable to caning under section 231 of the Criminal Procedure Code.[70] Caning is used not only as a judicial punishment, but also as a disciplinary sentence in prisons.[71]

Under Singapore law, drug classification determines the number of strokes received by an offender. For example, a person who commits unauthorised traffic in a controlled substance containing certain amounts of opium, morphine, diamorphine, cocaine, cannabis or methamphetamine may receive two to five, three to ten or five to fifteen strokes, depending upon the class of the drug involved, either as an alternative or an additional criminal sanction to long-term imprisonment.[72]

Those convicted of more minor drug offences also face judicially sanctioned physical violence. Persistent or so-called 'recalcitrant' users of a range of drugs, including cannabis, who have been

69 Penal Code 1871, Singapore (ch. 224, 1985 ed.), art. 53, available at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-224 [accessed 1 September 2011].
70 UN Committee on the Rights of the Child (26 July 2010) *Second and Third State Report of Singapore*, para. 9.
71 End Corporal Punishment (February 2011) Report on Singapore, available at: www.endcorporalpunishment.org/pages/progress/reports/singapore.html [accessed 14 April 2011].
72 Misuse of Drugs Act 1973, Singapore (ch. 185), ss. 2, 33.

admitted more than twice to drug rehabilitation centres are treated as criminals.[73] According to the government, 'third-time abusers ... could face a minimum sentence of five years' imprisonment and three strokes of the cane and a maximum of seven years' imprisonment and six strokes of the cane' under the long-term imprisonment regime.[74]

Relapse is harshly punished. 'Those who relapse upon their release ... would be sentenced to a minimum of seven years' and a maximum of thirteen years' imprisonment, as well as a minimum of six and a maximum of twelve strokes of the cane.'[75] Relapse, it should be noted, is a common, expected and manageable element of drug treatment.

In 2007, 2,211 people were arrested for drug use in Singapore.[76] Of these, according to the government, over 70 per cent or 1,600 people were liable for long-term imprisonment, which also carries a sanction of corporal punishment.[77] How many of them were in fact convicted and subsequently caned is unknown. Statistics on caned persons, for any crime, are not made available by the government.

In its 2011 recommendations to Singapore, the UN Committee on the Rights of the Child recommended that the government prohibit unequivocally by law, without any further delay, all forms of corporal punishment, including caning, in all settings.[78]

The Constitution of Singapore does not explicitly prohibit torture or other cruel, inhuman or degrading treatment or punishment. Nor is there a definition of torture laid down in domestic legislation. The Court of Appeal recently used this omission to suggest that torture or cruel, inhuman or degrading treatment or punishment is not illegal in Singapore.[79]

Singapore is a state party of the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child.[80]

73 Singapore Prison Service (25 July 2007) Treatment and rehabilitation regime and long-term imprisonment for abusers of cannabis and cocaine, available at: www.prisons.gov.sg/content/sps/default/newsaboutus/in_the_news/news_release_6.html [accessed 30 September 2011].

74 Ibid.

75 Ibid.

76 Central Narcotics Bureau, Singapore (2007) Drug situation report, available at: www.cnb.gov.sg/drugsituationreport/drugsituationreport2007.aspx [accessed 23 August 2011].

77 Ibid.

78 UN Committee on the Rights of the Child (4 February 2011) Concluding observations: Singapore, CRC/C/SGP/2–3, paras. 39–40.

79 *Yong Vui Kong v Attorney-General*, summary of the judgment of Chan Sek Keong CJ (4 April 2011), Civil Appeal No. 144 of 2010. For further discussion of the case and the court's decision, see Y. McDermott (2010) Yong Vui Kong v. Public Prosecutor and the mandatory death penalty for drug offences in Singapore: a dead end for constitutional challenge?, *International Journal on Human Rights and Drug Policy* I, pp. 35–52.

80 Compilation prepared by the Office of the High Commissioner for Human Rights in relation to Singapore's review in the Universal Periodic Review in the UN Human Rights Council (21 February 2011) A/HRC/WG.6/11/SGP/2, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session11/SG/A_HRC_WG.6_11_SGP_2_Singapore_E.pdf [accessed 28 September 2011].

Malaysia

The Constitution of Malaysia does not contain a prohibition of torture or other cruel, inhuman or degrading treatment or punishment. Nor is such a prohibition found in criminal legislation. Caning as a form of judicial corporal punishment is widely used as a supplementary punishment to imprisonment for some forty crimes listed in the Penal Code of Malaysia, including a variety of drug-related crimes.[81]

Section 39A of the Dangerous Drugs Act 1952 defines specific amounts of drugs for which whipping is applicable. For example, possession of a certain amount of heroin, morphine, cocaine, cannabis, cannabis resin, raw opium, prepared opium, coca leave and other illegal drugs shall be punished with three to nine strokes of the whip.[82] If the circumstances of the offence are considered aggravated, involving, for example, 30 grams of certain drugs, whipping is prescribed as a mandatory sanction, with no less than ten strokes.[83] Section 39C of the Act imposes a mandatory sentence of three to six strokes (depending on the gravity of the offence) for the use of premises, possession of utensils, opium for personal use, consumption of opium and 'self administration' as defined by the legislation.[84]

Section 289 of the Criminal Procedure Code prohibits the caning of women and girls, and men who are sentenced to death or who are over fifty years of age.[85] The maximum number of strokes of the cane that can be inflicted is twenty-four in the case of an adult and ten in the case of a child. Boys aged ten years and older may be given up to ten strokes of a 'light cane'.[86]

Legislation on corporal punishment in Malaysia, therefore, is quite similar to that of Singapore. However, Malaysia has a dual system of secular and Islamic law.[87] Some Shari'a laws in Malaysia also prescribe caning, carried out with a half-inch-thick wooden cane that commonly causes welts and at times scarring.[88] However, most caning sentences in Malaysia are handed down by civil courts rather than Shari'a courts.[89] A case that came to public attention was that of Kartika Sari Dewi Shukarno, a Singaporean model who was sentenced to six strokes for drinking beer in public.[90]

Although the international guidelines on medical ethics prohibit the involvement of medical

81 The same legislation determines caning for crimes of robbery (arts. 390–392), rape (arts. 375–376), kidnapping (arts. 359–374) and causing grievous hurt (arts. 322–325); Penal Code (Act 574) of Malaysia, amended 1 January 2006.

82 More specifically, possession of 2–5 grams of heroin, morphine, monoacetylmorphine; 5–15 grams of cocaine; 20–50 grams of cannabis, cannabis resin; 100–250 grams of raw opium, prepared opium; 250–750 grams of coca leave; 5–30 grams of 2 amino-1-phenylpropane, amphetamine, 2,5 dimethoxyamphetamine (DMA)/dimethoxybromoamphetamine (DOB)/2,5 dimethoxy-4-ethylamphetamine (DOET)/methamphetamine/5 methoxy-3, 4-methylenedioxyamphetamine (MMDA)/methylenedioxyamphetamine (MDA)/N-ethyl MDA/N-hydroxy MDA, N-methyl-1-2-butanamine/MDMA/Paramethoxyamphetamine (PMA)/3,4,5-Trimethoxyamphetamine (3,4,5 TMA) shall be punished with three to nine strokes of whipping; the same criminal actions in aggravated circumstances (amount of drugs increased) foresee whipping as a mandatory sanction with no less than ten strokes. For detailed information see: Act 234, Dangerous Drugs Act 1952 (revised 1980), incorporating latest amendment – P.U. (A) 44/2003, available at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-185 [accessed 1 September 2011].

83 Ibid., ss. 10.1, 15.1.a, 39.

84 Ibid., s. 39C.

85 Criminal Procedure Code, Act 593 (first enacted in 1935, F.M.S. Cap. 6, and revised in 1999, Act 593, w.e.f. 4 April 1999), s. 289 (Sentence of whipping forbidden in certain cases).

86 US State Department (2008) Human rights report: Malaysia, available at: www.state.gov/g/drl/rls/hrrpt/2008/eap/119046.htm [accessed 15 August 2010].

87 Child Rights Information Network (July 2010) Inhuman sentencing of children in Malaysia, available at: www.crin.org/docs/Malaysia_Inhuman_Sentencing.doc [accessed 12 November 2010].

88 R. Winslow (n.d.) Crime and society: a comparative criminology tour of the world, available at: www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/malaysia.html [accessed 18 December 2010].

89 Amnesty International (17 February 2010) Press release: Malaysia urged to end brutal punishments after women caned, PRE01/057/2010.

90 S. Ahmed (24 August 2009) Malaysia postpones woman's caning, CNN, available at: http://articles.cnn.com/2010-04-01/world/malaysia.beer.caning_1_caning-islamic-court-malaysia?_s=PM:WORLD [accessed 30 September 2011].

personnel in the infliction of corporal punishment (see Part II), criminal legislation in Malaysia explicitly requires it. Article 290 of the Criminal Procedure Code states that caning 'shall not be inflicted unless a Medical Officer is present and certifies that the offender is in a fit state of health to undergo such a punishment ... If, during the execution of a sentence of whipping (caning), a Medical Officer certifies that the offender is not in a fit state of health to undergo the remainder of the sentence the whipping shall be finally stopped.'[91]

Recommendations on the abolition of caning in Malaysia have been made by member states of the UN Human Rights Council. In the 2009 Universal Periodic Review of Malaysia, the government stated that the abolition of judicial caning and capital punishment for persons under eighteen years at the time of the offence was an 'immediate concern'.[92] However, to date, no measures have been taken to eliminate the practice of corporal punishment.[93]

Malaysia is a state party of the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child.[94]

Iran

Iran has adopted the approach of recognising Shari'a as its sole source of domestic law, and thus incorporating it into legislation.[95] The Anti Narcotics Law of the Islamic Republic of Iran (as amended on 8 November 1997 by the Expediency Council) provides an extensive list of drug offences that are punishable by between one and seventy-four lashes.[96]

Article 1 defines a range of activities related to drugs[97] that fall under the criminal punishment clause and sentences such as fines, imprisonment and lashes are set out.[98] In most cases, three or more punishments are mandatory and imposed all together. Moreover, article 16 of the same law states that a drug-dependent person who is involved in any of the listed offences shall be imprisoned, fined and whipped as well as excluded from governmental services.[99]

In addition to the national legislation on drugs that prescribes flogging as a mandatory criminal sanction, Iran also applies Shari'a for alcohol consumption (considered a *hudud* crime) and continues imposing sanctions that qualify as cruel and inhuman. In addition, the Islamic Penal Code specifies

91 Criminal Procedure Code, Act 593 (first enacted in 1935, F.M.S. Cap. 6, and revised in 1999, Act 593, w.e.f. 4 April 1999), s. 290.

92 UN Human Rights Council (5 October 2009) Report of the Working Group on the Universal Periodic Review, A/HRC/11/30), para. 56.

93 Child Rights Information Network (July 2010) Inhuman sentencing of children in Malaysia, available at: www.crin.org/docs/Malaysia_Inhuman_Sentencing.doc [accessed 12 November 2010].

94 Malaysia has made a reservation on the UN Convention on the Rights of the Child: 'The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 2, 7, 14, 28 paragraph 1(a) and 37, of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia.' This position has been criticised by a number of states for being void and contravening art. 19 of the Vienna Convention on the Law of Treaties.

95 Shari'a is the sole source of legislation in Iran. See N. Abiad (2008) *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, British Institute of International and Comparative Law, p. 44; also, Emory Law School (n.d.) Iran state report, available at: www.law.emory.edu/ifl/legal/iran.htm [accessed 18 December 2010].

96 Cultivating poppy, coca and cannabis for the purpose of production of narcotics; importing, exporting, producing and manufacturing any kind of narcotics; keeping, carrying, purchasing, distributing, hiding, transiting, supplying and selling narcotic drugs; setting up or running places for the use of drugs; using drugs in any form or manner except for cases provided for by law; producing, manufacturing, purchasing, selling and keeping tools and instruments used for manufacturing and consuming narcotics; causing to escape, or giving protection to, drug offenders and perpetrators who are under prosecution or have been arrested; destroying or concealing evidence of offenders' crimes; putting narcotic drugs or the tools used for their consumption in a place to entangle someone else. The Anti Narcotics Law of Islamic Republic of Iran (as amended on 8 November 1997), art. 1.

97 Ibid.

98 The Anti Narcotics Law of Islamic Republic of Iran (as amended on 8 November 1997), art. 1.

99 Ibid., art. 16.

various types of corporal punishment, amongst which consuming alcohol is punishable with one hundred lashes, and aiding the consumption of alcohol can be punished by seventy-four lashes.[100] Some news sources also report that persons drinking alcohol might get over the 'fixed number' of lashes. For example, a Norwegian-Iranian called Mamand Mamandy was arrested for drinking two beers while on holiday in Iran and received 130 lashes in public in 2007.[101]

According to the updated regulations of December 2003, flogging is to be carried out with leather cords that are 1.5 cm thick and 1 metre long. Typically the prisoner's legs and hands are bound.[102] Further details about how flogging should be implemented are specified in the Directive on Implementation Regulations for Sentences of Retribution-in-Kind, Stoning, Death Penalty, and Flogging.[103]

The issue of flogging and other types of corporal punishment was raised by the UN Human Rights Committee in its last recommendations to Iran in 1993. The government of Iran was asked to 'reconsider the question of corporal punishments'.[104] International attention to flogging and other types of physical punishment was also captured in the early 1990s when the Special Representative of the UN Commission on Human Rights reported on the human rights situation in Iran and looked at the issues of *hudud, qesas*[105] and *ta'azir* crimes in Shari'a. According to the Special Representative, more than fifty articles provided for up to seventy-four lashes, including for the offence of taking alcohol (articles 123–136), whether by a man or a woman (article 131).[106]

Iran is a state party to the UN International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child[107] and the UN International Convention on the Elimination of All Forms of Racial Discrimination, all of which prohibit torture and other forms of cruel, inhuman or degrading treatment or punishment.

Yemen

Yemen has ratified most of the international human rights treaties (conventions, covenants, instruments, declarations), including the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

100 Child Rights Information Network (July 2010) Inhuman sentencing of children in Libyan Arab Jamahiriya, available at: www.crin.org/docs/Iran_Inhuman_Sentencing.docx [accessed on 15 February 2011]; the same document found that other forms of corporal punishment are ordered under the Penal Code provisions for retaliation for injury. In retaliating for injury to a limb, the limbs must be equally healthy, not artificial, the injury or point of loss must be equal, retaliation should not result in death or the loss of a different limb, and retaliation must not exceed the crime. If the convicted person has no right hand, the left hand will be cut off; if no left hand, then the leg will be amputated. The Penal Code also provides for similar retribution with regard to the eye, ear, nose, tongue, lips and teeth. Theft is punished by amputation of the four fingers on the right hand for the first offence and half of the left foot on the second offence.

101 African Press International (19 May 2007) Whipped for drinking alcohol.

102 Amnesty International (25 February 2004) Public letter, AI Index: MDE 13/013/2004.

103 Islamic Penal Code of Iran (1991, amended 1996), arts. 27–35.

104 UN Human Rights Committee (3 August 1993) Concluding observations: Iran, CCPR/C/79/Add.25, paras. 5, 8, 11, 18–19.

105 *Qesas* are based on the verses of the Quran, which establish certain principles to be applied whenever certain transgressions against the physical integrity of the person occur. See M. Cherif Bassiouni (2004) Death as a penalty in Shari'a, in P. Hodgkinson and W.A. Schabas (eds.) *Capital Punishment – Strategies for Abolition*, Cambridge University Press.

106 UN Human Rights Commission (13 February 1991) Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, E/CN.4/1991/35, para. 141.

107 Iran has made a reservation to opt out from the Convention when it contravenes Shari'a. The reservation states: 'The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect.' A number of states have rejected the reservation as it contravenes the Vienna Convention on the Law of Treaties.

the UN International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child. In total, it is a party to fifty-six treaties and has also signed the Rome Statute of the International Criminal Court.

The Constitution of Yemen further affirms its adherence to the UN Charter, the Universal Declaration of Human Rights and the Charter of the Arab League,[108] and specifically prohibits torture, as well as physical punishment and inhuman treatment during arrest, detention or imprisonment.[109] However, the Constitution includes a number of contradictions, including recognising Shari'a, which permits flogging and stoning, as the source of all legislation.[110]

Despite the fact that Yemen does not prescribe corporal punishment for drug-related crimes under its civil law system, such punishments are imposed for *hudud* crimes by Islamic courts that operate under Shari'a law.

In the early 1990s, Yemeni legislation changed to incorporate whipping or amputations for certain crimes into criminal legislation.[111] Some sources indicate that in addition to cruel, inhuman or degrading punishment for drug-related offences, sentences of flogging are frequently carried out after being handed down by the courts for alcohol offences.[112] Articles 283 and 289 of the Penal Code of Yemen, enacted in 1994, prescribe eighty lashes for a variety of offences including the consumption of alcohol.[113]

According to the Criminal Procedure Code, flogging should be inflicted with 'a single soft strap, without any knots at its end', in the presence of witnesses. Men may sit or stand, women must sit. The lashing proceeds from the foot to the neck, avoiding the head, and is more severe in cases of adultery. The flogging must be supervised by a medical doctor, who must ensure that it will not lead to death.[114]

Yemen has been repeatedly criticised for applying flogging, beating and even amputation in violation of its international human rights obligations. In 2001, the UN Committee against Torture expressed concerns that 'courts across the country impose sentences of flogging almost daily for alleged alcohol and sexual offences, and that floggings are carried out immediately, in public, without appeal. It is also concerned at the wide discretionary powers of judges to impose these sanctions and that they may be imposed in a discriminatory way against different groups, including women (articles 1, 2 and 16).'[115]

108 Constitution of the Republic of Yemen 1994, art. 6.
109 Constitution of Yemen (amended 20 February 2001), art. 48(B).
110 Ibid., art. 3.
111 Amnesty International (27 March 1997) Yemen – ratification without implementation: the state of human rights in Yemen, MDE 31/001/1997.
112 Amnesty International (2009) Country report on Yemen, available at: www.amnesty.org/en/region/yemen/report-2009 [accessed 14 February 2011].
113 Yemeni Republican Decree by Law No. 12 for 1994 Concerning Crimes and Penalties, art. 283.
114 Yemeni Republican Decree by Law No. 13 for 1994 Concerning the Criminal Procedures, art. 492.
115 UN Committee against Torture (25 May 2001) Concluding observations: Yemen, CAT/C/YEM/CO/2/Rev.1, para. 18.

The UN Committee on the Rights of the Child has also called for such punishments to be abolished, and for the state to comply with its constitutional and international human rights obligations.[116]

During Yemen's Universal Periodic Review in the UN Human Rights Council, Israel and Nigeria strongly recommended that the government 'abolish torture and other cruel, inhuman and degrading treatment in all forms'.[117] The recommendations have been rejected by Yemen.

Saudi Arabia

The influence of Islam over legal structures in Saudi Arabia is almost unlimited according to some commentators.[118] The Royal Decree of Saudi Arabia states that every law must be implemented in accordance with the stipulations of the Islamic faith. The same decree requires the government to implement Shari'a, and the court to apply the rules of Shari'a, in accordance with what is indicated in the Quran.[119]

The Constitution of Saudi Arabia provides no prohibition on cruel, inhuman or degrading treatment or punishment,[120] and torture is not unequivocally prohibited in law. This leads to serious concerns about the criminal justice system, with judicial and extrajudicial corporal punishment amounting to to cruel, inhuman and degrading treatment or punishment or torture in law and practice.[121]

Saudi Arabia's penal laws apply corporal punishment and bodily mutilation to a wide range of offences. Flogging is prescribed for various offences and is imposed on men, women and children. It is prescribed under *hudud* for alcohol-related offences and certain sexual offences.[122] Flogging can also be used at the discretion of judges as an alternative to, or in addition to, other punishments. Sentences can range from dozens to thousands of lashes. They are usually carried out in instalments, at intervals ranging from two weeks to one month.[123]

Flogging is applied as a judicial punishment throughout the country, often after trials that fail to meet international minimum standards of fairness.[124] Flogging for *hudud* crimes can top one hundred lashes, but when the penalty is imposed as a *ta'azir* punishment[125] there is no upper limit. Although it is reported that flogging imposed as a criminal sentence runs into the thousands. For example, in June 2001, three people were sentenced to 1,500 lashes each, in addition to fifteen years' imprisonment; all were convicted on drug charges.[126] In the same case it was decided that the floggings should be

116 UN Committee on the Rights of the Child (21 September 2005) Concluding observations: Yemen, CRC/C/15/Add.267, paras. 41–42.

117 UN Human Rights Council (5 June 2009) Report of the Working Group on the Universal Periodic Review: Yemen, A/HRC/12/13, para. 94.

118 N. Abiad (2008) *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, British Institute of International and Comparative Law, p. 46.

119 Ibid.

120 Constitution of Saudi Arabia, adopted March 1992 by royal decree of King Fahd.

121 Amnesty International (29 April 2002) Saudi Arabia: remains a fertile ground for torture with impunity, MDE 23/004/2002, p. 2.

122 Ibid.

123 Amnesty International (22 January 2010) Saudi Arabia must prevent flogging of teenage girl, available at: www.amnesty.org/en/news-and-updates/saudi-arabia-must-prevent-flogging-teenage-girl-20100122 [accessed 14 February 2011].

124 Amnesty International (29 April 2002) Saudi Arabia: remains a fertile ground for torture with impunity, MDE 23/004/2002, p. 8.

125 Crimes of *ta'azir* are discretionary offences and carry corrective punishments. The Penal Law under this framework was designed to protect society's political, social and economic systems, and discretionary power to regulate these offences is in the hands of the head of the state (the explanation used from Shari'a is the only source of legislation in Iran). N. Abiad (2008) *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, British Institute of International and Comparative Law, p. 4.

126 Amnesty International (2002) Report: Saudi Arabia, POL 10/001/2002, p. 1.

carried out at a rate of fifty lashes every six months for the duration of fifteen years.[127]

Saudi Arabia is not a party to the UN International Covenant on Civil and Political Rights. However, it has ratified other international treaties that prohibit torture or other cruel, inhuman or degrading treatment or punishment, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[128] the UN Convention on the Rights of the Child,[129] the UN Convention on the Elimination of All Forms of Discrimination against Women[130] and the UN International Convention on the Elimination of All Forms of Racial Discrimination.

The brutal practice of judicial corporal punishment in Saudi Arabia has been criticised by international human rights bodies. The UN Committee against Torture noted on 12 June 2002, 'the sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention' and suggested the state should 're-examine its imposition of corporal punishment, which is in breach of the Convention'.[131] In the later examination of Saudi Arabia's human rights record in 2009 at the UN Human Rights Council, the government of Saudi Arabia accepted the recommendations in relation to the prohibition and elimination of capital and corporal punishment of persons under the age of eighteen.[132]

Qatar

A number of provisions in the Constitution of Qatar protect the physical integrity of all persons, although exemptions are made for cruel punishments prescribed by law. Article 1 of the Constitution defines that 'Qatar is an independent sovereign Arab State and Shari'a law shall be a main source of its legislation.'[133] At the same time, the document strives to implement all international agreements, charters and conventions to which the country is party.[134]

Shari'a laws apply to certain criminal cases when the victim or the alleged offender is a Muslim.[135] Article 1 of the Criminal Code of Qatar states that criminal laws do not apply to *hudud* or *qesas* offences when the victim or the alleged offender is a Muslim. Punishments for drinking alcohol include flogging under the Shari'a law system. Punishments for other offences are determined by the secular law system.[136]

127 Ibid., p. 2.

128 The government of Saudi Arabia has reserved the jurisdiction of the Committee against Torture as provided for in art. 20 of the Convention. Also, Saudi Arabia opts out from para. (1) of art. 30 of the Convention. Such reservations have been criticised by number of states.

129 Saudi Arabia submitted a reservation stating that 'The Government of Saudi Arabia enters reservations with respect to all such articles as are in conflict with the provisions of Islamic law.' This reservation has been criticised by a number of states as being void and contravening the Vienna Convention on the Law of Treaties.

130 Saudi Arabia has opted out from the right to equality clause, stating: '1. In case of contradiction between any term of the Convention and the norms of islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention; 2. The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention.' This reservation has been criticised by a number of states as being void and contravening the Vienna Convention on the Law of Treaties.

131 UN Committee against Torture (12 June 2002) Concluding observations: Saudi Arabia, CAT/C/CR/28/5, para. 8.

132 UN Human Rights Council (9 June 2009) Report of the Working Group on the Universal Periodic Review: Saudi Arabia, A/HRC/11/23/Add.1, para. 38.

133 Constitution of Qatar (ratified by public referendum on 29 April 2003, endorsed by the Amir on 8 June 2004, effective from 9 June 2005).

134 Child Rights Information Network (September 2010) Inhuman sentencing of children in Qatar, available at: www.crin.org/docs/Qatar_Inhuman_Sentencing.doc [accessed 30 November 2010].

135 Ibid.

136 Ibid.

Qatar is a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[137] the UN Convention on the Rights of the Child,[138] the UN Convention on the Elimination of All Forms of Discrimination against Women,[139] and the UN International Convention on the Elimination of All Forms of Racial Discrimination. The UN Committee against Torture has noted: 'Certain provisions of the Criminal Code allow punishments such as flogging and stoning to be imposed as criminal sanctions by judicial and administrative authorities. These practices constitute a breach of the obligations imposed by the Convention. The Committee noted that authorities are presently considering amendments to the Prison Act that would abolish flogging though no actions have been observed to be taken until now.'[140] The committee recommended that 'the State Party review the legal provisions of the Criminal Code authorising the use of such prohibited practices as criminal sanctions by judicial and administrative officers, with a view to abolishing them immediately'.[141]

During its Universal Periodic Review at the UN Human Rights Council in February 2010, the government of Qatar was urged to abolish judicial corporal punishment, but the government did not support these recommendations.[142] The government stated that it would respond in due course to recommendations to abolish all corporal punishment of children.[143]

United Arab Emirates (UAE)

The constitutional status of Islamic law in the UAE is defined in article 7 of the Provisional Constitution, adopted on 2 December 1971 and made permanent in 1996. The document declares Islam the official state religion, and affirms that Islamic Shari'a shall be a principal source of legislation.[144]

Under the UAE Penal Code, offences for which flogging can be ordered include murder, violent assault, theft and sex crimes as well as alcohol and drug offences.[145]

The UAE is a state party to the UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women[146] and the UN International Convention on the Elimination of All Forms of Racial Discrimination. The UAE was reviewed under the Universal Periodic Review of the UN Human Rights Council in December 2008.

137 Qatar has made a reservation on the UN Convention against Torture with the precepts of Islamic law and the Islamic religion. This has been criticised by a number of states as void and contravening the Vienna Convention on the Law of Treaties.

138 Qatar made a general reservation concerning any of the UN Convention on the Rights of the Child's provisions that are inconsistent with Shari'a, though later on it withdrew its reservations.

139 Qatar has made a number of reservations on the UN Convention on the Elimination of All Forms of Discrimination against Women that might be found to contradict Shari'a. This was criticised by the states as void and contravening the Vienna Convention on the Law of Treaties.

140 UN Committee against Torture (25 July 2006) Concluding observations: Qatar, CAT/C/QAT/CO/1, para. 12.

141 Ibid.

142 UN Human Rights Council (15 March 2010) Report of the Working Group on the Universal Periodic Review: Qatar, A/HRC/14/2, para. 86.

143 Ibid., para. 85.

144 Emory Law School (n.d.) United Arab Emirates state report, available at: www.law.emory.edu/ifl/legal/UAE.htm [accessed 30 November 2010].

145 Child Rights Information Network (July 2010) Inhuman sentencing of children in Libyan Arab Jamahiriya, available at: www.crin.org/docs/Libya_Inhuman_Sentencing.doc [accessed 1 December 2010].

146 The UAE has made selective reservations on the UN Convention on the Elimination of All Forms of Discrimination against Women. Articles reserved include: arts. 2(f), 9, 15(2), 16, 29(1). It stated that these articles will not be exercised if they are found to contradict Shari'a. These reservations have been criticised by a number of states as void and incompatible with the Vienna Convention on the Law of Treaties.

International human rights bodies have been unable to establish how flogging in the UAE is carried out in practice. In its concluding observations on the UAE, the UN Committee on the Rights of the Child noted that 'contrary to article 37 (a) of the Convention, the Committee is seriously concerned that there is a possibility that persons under eighteen may be subjected to judicial sanctions such as flogging'.[147] In its recent review at the UN Human Rights Council, the UAE was urged to abolish corporal punishment. Sweden recommended that the UAE 'consider legislative changes to repeal corporal punishment and bring legislation into line with international human rights obligations'.[148] The recommendations were rejected by the UAE representatives.

Libya

Article 2 of the Declaration on the Establishment of the Authority of the Peoples (1977) states that 'the Holy Quran is the Constitution of the Socialist People's Libyan Arab Jamahiriya'.[149] Accordingly, amendments to the Libyan Penal Code introduced *hudud* punishments into state legislation in the 1970s. Flogging and amputation may be ordered under Law No. 70 for alcohol consumption (amongst other crimes punishable with flogging and other physical sanctions).[150]

Libya is a party to all major UN human rights treaties, including the UN International Covenant on Civil and Political Rights, the UN International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of the Child and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Libya was reviewed at the UN Human Rights Council in November 2010.

Libya has been criticised for its practice of judicial corporal punishment by a number of international human rights bodies. The UN Committee on the Rights of the Child has made numerous recommendations to abolish judicial corporal punishment for children. In particular, 'to take legislative measures formally to abolish flogging as a punishment and to ensure that persons under 18 are not tried as adults'.[151]

The UN Committee against Torture also recommended that 'although corporal punishment has not been practiced in recent years, it should be abolished by law'.[152] In its latest recommendations in 2007, the UN Human Rights Committee also stressed that it 'remains deeply concerned that corporal punishment such as amputation and flogging are prescribed by law even if rarely applied in practice. They constitute a clear violation of article 7 of the Covenant.'[153] The committee has further recommended that the Libyan government 'immediately stop the imposition of all corporal

147 UN Committee on the Rights of the Child (13 June 2002) Concluding observations: United Arab Emirates, CRC/C/15/Add.183, para. 32.

148 UN Human Rights Council (12 January 2009) Report of the Working Group on the Universal Periodic Review: United Arab Emirates, A/HRC/10/75, para. 62.

149 Child Rights Information Network (July 2010) Inhuman sentencing of children in Libyan Arab Jamahiriya, available at: www.crin.org/docs/Libya_Inhuman_Sentencing.doc [accessed 1 December 2010].

150 Ibid.

151 UN Committee on the Rights of the Child (4 July 2003) Concluding observations: Libyan Arab Jamahiriya, CRC/C/15/Add.209, paras. 45–46.

152 UN Committee against Torture (11 May 1999) Concluding observations: Libyan Arab Jamahiriya, A/54/44, paras. 180, 189.

153 UN Committee on Human Rights (15 November 2007) Concluding observations: Libyan Arab Jamahiriya, CCPR/C/LBY/CO/4, paras. 16–17.

punishment and repeal the legislations for its imposition without delay, as stipulated in the previous concluding observations of the Committee'.[154] In previous recommendations, the committee had stated 'that flogging, which is recognised in the Libyan Arab Jamahiriya as a penalty for criminal offences, is incompatible with article 7 of the Covenant. The imposition of such punishment should cease immediately and all laws and regulations providing for its imposition should be repealed without delay.'[155]

Brunei Darussalam

Section 29 of the Law on the Misuse of Drugs stipulates that 'unauthorised traffic in controlled drugs, except as otherwise provided in Schedule 2 shall be punished from one to fifteen strokes'.[156] The number of strokes is determined by which classification the drug belongs to – the higher number (fifteen to twenty strokes) will go to A class drugs, and the lower (one to five strokes) to D class drugs.[157] Whipping is usually imposed as an additional sentence to imprisonment.[158]

Under the law, unauthorised traffic of illicit drugs is punishable with fifteen to twenty strokes, unauthorised possession of a controlled drug for the purpose of trafficking may be punished with fifteen strokes and unauthorised import or export of drugs is punishable with fifteen strokes (minimum).[159]

The Criminal Procedure Code of Brunei prescribes the procedure of whipping, and defines persons ineligible for the punishment. Article 257 provides that 'in no case shall the whipping exceed twenty-four strokes for adults or eighteen strokes for children'.[160] The rattan shall be not more than half an inch in diameter. In the case of a youthful offender, whipping shall be with a light rattan.[161]

Persons sentenced to death or those over fifty years of age, and women, are not eligible for whipping.[162] The maximum number of strokes the court can impose is twenty-four, despite the possibilities of concurrent criminal charges.

Brunei law is very explicit in requiring a statement by a medical officer to confirm the health of the sentenced person to withstand such punishment. The law also permits a medical doctor to stop the imposition of whipping if s/he considers that the person's state of health is worsening.[163] In the case of whole or partial prevention of whipping as a sentence, the person is kept in custody until the court revises the sentence. The court enjoys full discretion to either terminate the sentence or change it to

154 Ibid.

155 UN Committee on Human Rights (6 November 1998) Concluding observations: Libyan Arab Jamahiriya, CCPR/C/79/Add.101, para. 11.

156 Brunei Darussalam Misuse of Drugs Act, revised edition 2001, s. 29.

157 Ibid.

158 Ibid.

159 Ibid.

160 The minimum age of criminal responsibility in Brunei Darussalam is seven. The Criminal Procedure Code defines a youthful offender as one aged between eight and seventeen. Persons under eighteen at the time of the trial are tried by a juvenile court, except for certain offences (including those punishable by the death penalty and life imprisonment) that must be tried in the High Court. Criminal Procedure Code of Brunei Darussalam (1951), art. 258, revised version as of 1 October 2001.

161 Criminal Procedure Code of Brunei Darussalam (1951), art. 257 (Mode of executing sentence of whipping).

162 Criminal Procedure Code of Brunei Darussalam (1951), art. 258 (Certain persons not punishable with whipping).

163 Criminal Procedure Code of Brunei Darussalam (1951), art. 259 (Certain persons not punishable with whipping).

other types of punishment (such as imprisonment up to twenty months).[164]

Brunei Darussalam has ratified the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women.[165] In 2010, the country was reviewed under the Universal Periodic Review at the UN Human Rights Council, where a number of recommendations were made. The government of Brunei Darussalam actively opposed recommendations made by Spain and other countries to abolish caning and flogging, which is widely practised in the country.[166]

Maldives

Article 54 of the Constitution of the Maldives states that 'no person shall be subjected to cruel, inhuman or degrading treatment or punishment or to torture',[167] and articles 63, 66 and 68 establish that any legislation contrary to fundamental rights and freedoms is void.[168]

The Maldivian legal system is a combination of Shari'a and codified modern law.[169] According to article 2 of the Penal Code of Maldives, Shari'a enjoys specific status within the criminal law system and functions in parallel to the Penal Code.[170] The situation has the potential to cause some confusion, as, for example, alcohol use is dealt with under Shari'a whereas alcohol possession is dealt with under the Penal Code. Under Shari'a, a conviction requires that the offence be either witnessed by two people or admitted through a confession. The sentence is forty lashes, and there is a limit on how hard the lashes are given.[171]

Certain *hudud* offences are also punished with judicial corporal punishment.[172] There is no provision for corporal punishment in the Penal Code, but it is regulated through Shari'a. According to the local newspapers, judicial lashings were halted in 2007 because of the death of the man who administered them, but they resumed in May 2008.[173]

The Maldives ratified the UN Convention on the Rights of the Child in 1991 and its two Optional Protocols, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN International Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and

164 Criminal Procedure Code of Brunei Darussalam (1951), art. 260 (Certain persons not punishable with whipping).

165 Brunei Darussalam has made reservations on both Conventions in the case of any contradictions with Shari'a. These reservations have been criticised by a number of states as void and contravening the Vienna Convention on the Law of Treaties.

166 UN Human Rights Council (4 January 2010) Report of the Working Group on the Universal Periodic Review: Brunei Darussalam, A/HRC/13/14, paras. 89–90.

167 Constitution of Maldives (2008), art. 54.

168 Ibid. Art. 63: 'Any law or part of any law contrary to the fundamental rights or freedoms guaranteed by this Chapter shall be void or void to the extent of such inconsistency.' Art. 66: 'All existing statutes, regulations, decrees and notices inconsistent with the fundamental rights and freedoms provisions in this Chapter shall, to the extent of the inconsistency, become void on the commencement of this Constitution.' Art. 68: 'When interpreting and applying the rights and freedoms contained within this Chapter, a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party.'

169 Attacks on Justice – Republic of Maldives, available at: www.icj.org/IMG/MALDIVES.pdf [accessed 4 November 2010].

170 Maldives Penal Code (2004), ch. 2.

171 Information gained via personal communication (November 2010).

172 Child Rights Information Network (September 2010) Inhuman sentencing of children in the Maldives, available at: www.crin.org/docs/Maldives_final1.doc [accessed 14 February 2011].

173 J. Evans (1 June 2008) Lashings punishment resumes, *Minivan News* (Malé).

its Optional Protocol. The Maldives also ratified the UN International Covenant on Civil and Political Rights and its Optional Protocol enabling individuals to submit petitions to the UN Human Rights Committee, and the UN International Covenant on Economic, Social and Cultural Rights. The state was reviewed under the Universal Periodic Review in the UN Human Rights Council in November 2010.

The Maldives has been urged on a number of occasions to abolish the practice of corporal punishment to bring its laws in line with the government's pledges for promotion and protection of human rights. For example, the UN Committee on the Rights of the Child recommended in 2007 that the state party 'abolish the use of corporal punishment as a sentence for crime and for disciplinary purposes'.[174]

Indonesia

Article 28(g) of the Constitution prohibits torture and inhuman or degrading treatment.[175] In addition, Indonesia has passed a number of laws that prohibit any use of torture in specific situations. For example, article 4 of the Law on Human Rights (No. 39) 1999 states that 'the right to life, the right not to be tortured ... are non-derogable rights which cannot be restricted in any situation by anybody'.[176] Article 66 stipulates that 'Every child has the right not be the object of oppression, torture, or inhuman legal punishment.'[177] Moreover, Government Regulation No. 30 of 1980 on Discipline of Public Servants states that public servants shall not perform any activities that might be considered as, or related to, torture. According to Article 50 of the Law of Criminal Procedure, a detainee should be investigated immediately and not arbitrarily detained or ill-treated.[178] Indonesia has fully incorporated the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into its domestic legislation in Law No. 5 of 1998.[179]

Although the central government of Indonesia clearly bans the use of torture at any level, such practices are tolerated in certain parts of the country. For example, Aceh region has long enjoyed relative autonomy from the central government, including a semi-independent legal system. The Acehnese have the power to enact their own laws, although all laws governing citizens and residents of Indonesia must be consistent with the Indonesian Constitution.[180] However, the Indonesian government has accepted the application of Shari'a law interpretation in Aceh,[181] which permits the use of flogging and whipping for a number of crimes, including alcohol-related offences. This further contravenes the Vienna Convention on the Law of Treaties, which states that 'a state party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.[182] At the

174 UN Committee on the Rights of the Child (13 July 2007) Concluding observations: Maldives, CRC/CDV/CO/3, paras. 55–56, 97–99.

175 Art. 28I(1): 'The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted based on retroactive law and regulation are non-derogable human rights.'

176 Redress (n.d.) Country report on Indonesia, available at: www.redress.org/downloads/country-reports/Indonesia.pdf [accessed 9 November 2010].

177 Ibid.

178 Ibid.

179 Banda Aceh Public Court No. 11/PID.B/KONEKS/2000/PN-BNA; UN Committee against Torture (16 July 2001) Initial reports of States parties due in 1999: Indonesia, CAT/C/47/Add.3, para. 91.

180 Human Rights Watch (11 October 2009) Press release: Indonesia: new Aceh law imposes torture, available at: www.hrw.org/news/2009/10/11/indonesia-new-aceh-law-imposes-torture [accessed 4 November 2010].

181 End All Corporal Punishment (February 2009) Report on Indonesia, available at: www.endcorporalpunishment.org/pages/frame.html [accessed 8 November 2010].

182 Vienna Convention on the Law of Treaties (done at Vienna on 23 May 1969, entered into force on 27 January 1980), art. 27.

same time, the Convention establishes that 'unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory'.[183]

Upon the enactment of the Special Autonomy Law in 2001, Aceh's provincial legislature (Dewan Perwakilan Rakyat Aceh, DPRA) enacted a series of *qanuns* (local laws), one of which sets whipping/caning for alcohol offences. In particular, Qanun 12/2003 prohibits the consumption and sale of alcohol.[184]

Indonesia has ratified several human rights treaties, including the UN International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of the Child, the UN International Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Elimination of All Forms of Discrimination against Women. Indonesia was reviewed under the Universal Periodic Review mechanism of the UN Human Rights Council in 2008, and was visited by the UN Special Rapporteur on Torture the previous year.

In his visit to Indonesia, including Aceh, the UN Special Rapportuer on Torture expressed concern about penalties provided in Shari'a laws. Public flogging has been incorporated into the 2005 Aceh Criminal Code. The Special Rapporteur noted that local regulations criminalise the consumption of alcohol, and penalise it by flogging. In the recommendations to the Indonesian government, it was indicated that any type of corporal punishment constitutes degrading and inhuman treatment in violation of article 7 of the UN International Covenant on Civil and Political Rights and article 16 of the UN Convention against Torture and should therefore be abolished.[185] The Special Rapporteur also raised the concern that such 'morality offences' under Shari'a are normally tried in public hearings, at which the audience can shout at the defendant, rendering the presumption of innocence meaningless.[186]

In 2008, the UN Committee against Torture specifically discussed the introduction of corporal punishment in Aceh, commenting that 'the execution of punishment in public and the use of physically abusive methods (such as flogging or caning) ... contravene the Convention'. It recommended that Indonesia should review laws in Aceh 'that authorize the use of corporal punishment as criminal sanctions, with a view to abolishing them immediately, as such punishments constitute a breach of the obligations imposed by the Convention'.[187]

183 Ibid., art. 29.

184 Human Rights Watch (11 October 2009) Press release: Indonesia: new Aceh law imposes torture, available at: www.hrw.org/news/2009/10/11/indonesia-new-aceh-law-imposes-torture [accessed on 14 October 2010].

185 UN Human Rights Council (10 March 2008) Report of the Special Rapporteur on Torture, A/HRC/7/3/Add.7, para. 75.

186 Ibid.

187 UN Committee against Torture (2 July 2008) Concluding observations: Indonesia, CAT/C/IDN/CO/2, paras. 15–17.

Nigeria

The Constitution of Nigeria prohibits torture. Article 34.1 of the Constitution provides that 'every individual is entitled to respect for the dignity of his person and accordingly no person shall be subject to torture or to inhuman or degrading treatment'.[188] Despite these domestic laws and the state's international commitments, Nigeria still practises judicial corporal punishment. A number of federal states of northern Nigeria have revised their legal systems, and seven of these states have introduced Shari'a Penal Codes with provisions of Shari'a criminal law.[189]

Under these new regulations, the states actively use flogging and whipping for various types of crimes, including alcohol consumption. The sanction is usually imposed by Shari'a courts. According to Amnesty International, consumption of alcohol by Muslims (section 403) is among the crimes that are punishable under the Shari'a Penal Code.[190] There have also been a number of cases of public flogging for offences such as smoking marijuana (several men and at least one woman).[191] Amnesty International also reports that these sentences originated mostly from official sources, and there was no information about the medical effects of these floggings.

Nigeria's practice of corporal punishment contravenes the Vienna Convention on the Law of Treaties, which refuses the justification that a state party can invoke the provisions of its internal law as justification for its failure to perform a treaty.[192]

Nigeria has ratified the UN International Covenant on Civil and Political Rights, the UN International Covenant on Economic, Social and Cultural Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child. Nigeria was reviewed under the Universal Periodic Review mechanism of the UN Human Rights Council in 2009, and visited by the UN Special Rapporteur on Torture in 2007.

Following his mission to the country in 2007, the UN Special Rapporteur on Torture noted that corporal punishment, such as caning and the Shari'a Penal Code punishments of the northern states (i.e. amputation, flogging and stoning to death), remains lawful in Nigeria. He recalled that any form of corporal punishment is contrary to the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. Under international law, these are not lawful sanctions and, therefore, violate the international human rights treaties to which Nigeria is a party.[193]

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188 Constitution of the Federal Republic of Nigeria (1999), art. 34.1.

189 Redress (n.d.) Country report on Indonesia, available at: www.redress.org/downloads/country-reports/Indonesia.pdf [accessed 9 November 2010].

190 Amnesty International (December 2000) Nigeria – Time for justice and accountability, available at: www.amnesty.org/en/library/asset/AFR44/014/2000/en/a677253f-dc60-11dd-bce7-11be3666d687/afr440142000en.pdf [accessed 10 November 2010].

191 Ibid. Also, on 10 February 2000, Bahiru Sule received eighty lashes for drinking alcohol; two men each had eighty lashes inflicted on them in the town of Kaura-Namoda for drinking alcohol; on 8 August 2000, Abdullahi Saidu received eighty strokes of the cane in the town of Funtua for smoking marijuana; also in Funtua, Sule Sale, aged twenty-six, had eighty lashes inflicted on him for drinking alcohol and six lashes for stealing three packets of cigarettes.

192 Vienna Convention on the Law of Treaties (done at Vienna on 23 May 1969, entered into force on 27 January 1980), art. 27.

193 Redress (n.d.) Country report on Indonesia, available at: www.redress.org/downloads/country-reports/Indonesia.pdf [accessed 9 November 2010].

IV. CONCLUSION

The use of judicial corporal punishment is a violation of international human rights law and amounts to torture or cruel, inhuman or degrading punishment. International law explicitly prohibits torture and other cruel, inhuman or degrading punishment, and UN and regional human rights monitors have strongly condemned judicial corporal punishment as representing this form of human rights abuse and have called for its abolition. Despite this fact, thousands of people are caned, flogged or otherwise physically brutalised every year for violating drug or alcohol laws.

This report identifies twelve states with legislation allowing for judicial corporal punishment for drug and alcohol offences. However, given the lack of documentation and research in this area, it is likely that there are more countries inflicting these punishments on drug and/or alcohol offenders.

The legal frameworks described above illustrate the calculated nature of the punishment, with caning and beating being described in clinical terms as if there were no persons on the receiving end. However, more research is needed to better document the physical and emotional impact of judicial corporal punishment on peoples' lives.

Harm Reduction International is of the view that, in addition to being a violation of international law, corporal punishment represents the antithesis of responsible, ethical policies for addressing drug and alcohol use or related offences and should be immediately abolished.