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[Home](#) > [Research](#) > [Responses to Information Requests](#)

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[New Search](#) | [About RIRs](#) | [Help](#)

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Nigeria: Penalty under Sharia law for a man who has premarital sex
Research Directorate, Immigration and Refugee Board, Ottawa

Under Sharia law in Nigeria, the penalty for a man who has extra-marital sex depends on whether the man is or has been married (HRW Sept. 2004, 22; EC Sept. 2001, 8). The offence of adultery applies to a married or divorced man and is punishable by death (HRW Sept. 2004, 22; AI 10 Feb. 2004, Sec. 1.1; EC Sept. 2001, 8). The offence of fornication applies to a man who has never been married and is punishable by 100 lashes and imprisonment for one year (AI 10 Feb. 2004, Sec. 1.1; *ibid.* Nov. 2003; EC Sept. 2001, 8, 19).

According to a report prepared by Doctor Ruud Peters for the European Commission (EC), "unlawful sexual intercourse (i.e. between persons who are not married)" is called *zinâ* (*ibid.*, 8), which includes rape (*ibid.*, 19). According to the Sharia penal codes in force in 12 northern states, the definition of someone who has committed *zinâ* is "whoever, being a man or a woman fully responsible, has sexual intercourse through the genital [sic] of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act" (AI 10 Feb. 2004, Sec. 1.1).

According to Human Rights Monitor, as quoted in the *Report From a Fact-Finding Trip to Nigeria (Abuja, Kaduna and Lagos) 23-28 February 2004* by the Norwegian Directorate of Immigration and Immigration Appeals Board, "the implementation of [S]hari'a in Northern Nigeria has not meant a change in what acts are defined as criminal offences - the 1959 Penal Code Law for the Northern Region was based on [S]hari'a and is still valid" (Norway Oct. 2004, Sec. 2.2.1). Rather, the difference lies in the punishments, which are based on *hudud* punishments since the establishment of Sharia courts in 1999 (*ibid.*). *Hudud* punishments are the "fixed penalties" for "crimes mentioned in the Qur'an" (EC Sept. 2001, 8).

Under Sharia law, "[j]udges in cases of *zina* do not have any discretion with regard to the sentences they are handing down; they are mandatory" (AI 10 Feb. 2004, Sec. 3.1). Flogging sentences are usually carried out immediately after the sentence has been declared (HRW Sept.

2004, 59). According to Human Rights Watch, "the instant administration of the punishment means that the defendant's right to appeal, although existing in theory, is systematically ignored" (ibid.).

For "unlawful sexual intercourse," there need to be four "male Muslim eye-witnesses" to prove the guilt (EC Sept. 2001, 8, 19; see also HRW Sept. 2004, 64). Therefore, men are not often convicted for this offense because it is quite difficult to prove their guilt (HRW Sept. 2004, 64).

If there is "the slightest doubt (*shubba*)," the penalty cannot be applied (EC Sept. 2001, 10). For instance, if the man accused states that he thought he was "entitled ... to have intercourse with the woman in question (e.g. because he thought he was married to her, whereas the marriage contract was void," then "the punishment cannot be imposed" (ibid.).

Between 1999 and February 2004, "[o]nly two men were sentenced for *zina*," while no sentence was carried out during the same period (AI 10 Feb. 2004, Sec. 1.1).

Kano and Zamfara states have particular provisions regarding *zinā* (EC Sept. 2001, 19). In Kano state, the law requires four male or eight female witnesses (ibid.). The Kano and Zamfara penal codes force the person who committed the crime to compensate the woman by paying "up to the amount of the proper bride price" (ibid., 20).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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Publications: *Against Violence Against Women, The Talibanization of Nigeria: Sharia Law and Religious Freedom, Women's Access to Justice and Personal Security in Nigeria.*

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