



**Stoning is Not Our Culture:**  
**A Comparative Analysis of Human  
Rights and Religious Discourses in Iran  
and Nigeria**

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THE GLOBAL CAMPAIGN TO STOP KILLING AND STONING WOMEN  
WOMEN RECLAIMING AND REDEFINING CULTURE PROGRAM  
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**Summary**

Stoning is a cruel form of torture that is used to punish men and women for adultery and other ‘improper’ sexual relations. It is currently sanctioned by law and carried out by state actors in at least two countries, and at least seven individuals have been stoned to death in the last five years. This briefing paper analyses the stoning punishment through several lenses. First, we explain how stoning violates basic human rights. Stoning is a form of torture that is often characterised by gender discrimination and unfair judicial processes. Second, although stoning is often justified in the name of Islam, the use of stoning today is wholly un-Islamic and religiously illegitimate. Since stoning is implemented differently in different contexts, this paper presents two case studies – Iran and Nigeria – in order to examine the issue in a comparative perspective. These case studies detail the specific ways in which stoning arises, as well as how local activists work to eliminate stoning in their own countries. We conclude with specific recommendations to policy makers and civil society.

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## 1 Introduction

This paper presents an overview of contemporary stoning, arguing that it is grossly unjustified from both human rights and religious perspectives. Stoning is a cruel form of torture that is used to punish men and women for adultery and other ‘improper’ sexual relations. It is currently sanctioned by law and carried out by state actors in at least two countries, and at least seven individuals have been stoned to death in the last five years.

This briefing paper analyses the stoning punishment through several lenses. First, we explain how stoning violates basic human rights. Stoning is a form of torture that is often characterised by gender discrimination and unfair judicial processes. Second, although stoning is often justified in the name of Islam, the use of stoning today is wholly un-Islamic and religiously illegitimate. This is because stoning is never mentioned in the Qur’an, is dubiously alluded to in the hadith (or sayings of the Prophet) and is impossible to carry out due to the high evidentiary burden needed to prove adultery, or *zina*, cases.

Since stoning is implemented differently in different contexts, this paper presents two case studies – Iran and Nigeria – in order to examine the issue in a comparative perspective. These case studies detail the specific ways in which stoning arises, as well as how local activists work to eliminate stoning in their own countries. We conclude with specific recommendations to policy makers and civil society.

## 2 Brief Background on Stoning

Stoning, (or lapidation, *rajm* in Arabic, *sangsar* in Persian), is a method of execution in which an organised group throws stones or rocks at the person they wish to execute. Stoning has been used in many religious and cultural traditions throughout history as a kind of capital punishment. For instance, the practice has been documented among the ancient Greeks to execute prostitutes, adulterers or murderers.<sup>1</sup> It is also documented in the Jewish Tradition via the Torah, the first five books of the Bible, and the Talmud, or Jewish Oral Law (Alasti, 2007). In the

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<sup>1</sup>See for instance, Rosivach, Vincent J. 1987. “Execution by Stoning in Athens.” *Classic Antiquity*, Vol. 6, No. 2.

Old Testament (of the Bible), stoning is prescribed as a method of execution for crimes such as murder, blasphemy or apostasy.<sup>2</sup> While there is very little historical evidence documenting incidents of stoning in modern times, the practice appears to have been revived in the last few decades, and is now predominantly associated with Islam and Muslim culture. There is no mention of stoning in the Qur'an, but many Muslim clerics cite instances in the hadith,<sup>3</sup> (the acts and sayings of the Prophet Muhammad), when discussing the legitimacy of stoning in Islam. Later sections of this paper will explain the religious aspects of stoning.

Of all the Muslim-majority countries, only the criminal codes of Iran and the twelve northern states of Nigeria prescribe stoning, which make them appropriate case studies for this paper. While stoning has never been carried out in Nigeria, it is still legal, and several high profile cases have arisen in recent memory. There have been numerous reports that Qatar, Saudi Arabia, the Sudan, United Arab Emirates, and Yemen have had stoning on the books at one point or another in recent history, although these accounts remain unconfirmed.<sup>4</sup> Stonings have been

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<sup>2</sup>See the Bible, Old Testament, Deuteronomy 13:6 to 13:10.

<sup>3</sup>Hadith are traditions relating to the words and deeds of the Prophet Muhammad. Hadith are regarded by most Muslims as important tools for determining the Muslim way of life, or the Sunna. Hadith were transmitted orally until they were written down en masse and evaluated into large collections, mostly in the 8th and 9th centuries. Their individual validity is still the subject of debate today. Some hadith are used as the basis for interpretations of Shari'a, (Muslim laws), which in turn is used to set policy in countries such as Iran.

<sup>4</sup>Stoning was sanctioned in the Pakistan Hudud Ordinances, until it was repealed in 2006 after protests by the Pakistani national women's movement. Amnesty International states that stoning is still mentioned under the Yemeni penal code as a punishment for stoning as of 2008: <http://www.amnesty.org/en/library/asset/MDE31/012/2008/en/28b002a7-b259-11dd-8634-af6d09acdca/mde310122008en.html> Date of Access: October 30, 2009.

Amnesty International also reported that stoning was a viable punishment for adultery in Saudi Arabia as of 2001: <http://www.amnesty.org/en/library/asset/MDE23/015/2001/en/f7e8fb6a-d8c9-11dd-ad8c-f3d4445c118e/mde230152001en.html> Date of Access: October 30, 2009. This is also mentioned in the report by the Committee on the Rights of the Child (in 2001): <http://www.universalhumanrightsindex.org/documents/829/537/document/en/text.html> Date of Access: October 30, 2009.

In Qatar, reports as of 2005 show stoning included in the Penal Code (see Committee Against Torture 2006). There is some confusion over whether stoning is applicable in these countries, as well as if they have ever been implemented. It is well known that stoning was legalised under the Taliban in Afghanistan until 2001. As of writing, there is currently a draft law legalizing stoning within the legislature of the Aceh Province in Indonesia.

reported in other countries such as Somalia<sup>5</sup> and Iraq,<sup>6</sup> but were conducted by communities outside the national legal realm (with or without due diligence by the State to prevent or penalise such actions.)

In almost all contemporary cases, stoning is prescribed for the punishment of *zina*, or illicit sexual relations. *Zina* can refer to both fornication (sex while unwed), as well as adultery. In Iran, stoning only applies to adultery. In Nigeria, stoning also applies to same-sex relations whether gay or lesbian. However, to date, only men have been convicted for *zina* of same-sex relations. Because this paper focuses primarily on how women experience *zina* laws and stoning, the issue of same-sex relations will be discussed in detail, although it is important to remember how men also experience abuse of their human rights with regards to stoning.

In places where stoning is legal, it is usually issued for cases of adultery. (There are disagreements whether or not divorced individuals can be stoned to death for *zina*.) Fornication is usually punished by lashing in places that enforce Shari'a. Fornication and adultery are extremely difficult to prove. In nearly all cases, four eyewitnesses who have all seen the same act of vaginal penetration by those committing the adulterous act must testify in court. If one witness is unsure or retracts his or her statement, the others are supposed to be severely punished (in most cases, one hundred lashes) for the crime of false accusation. Thus adultery is very rarely proven by witness testimony. Alternatively, one can be convicted of *zina* by confession, but the confession must usually be made four separate times, freely and without pressure or coercion, and can be retracted at any time before execution of the sentence. Few voluntarily give themselves to stoning – usually the confessions are forced or manipulated. Finally, *zina* can be proven either by judges' 'knowledge' in Iran or sometimes pregnancy outside a valid marriage in Nigeria. Later sections of this paper explain this in detail.

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<sup>5</sup>For a case of stoning in Somalia, see for instance: [http://www.wlum1.org/english/actionsfulltxt.shtml?cmd\[156\]=i-156-562890](http://www.wlum1.org/english/actionsfulltxt.shtml?cmd[156]=i-156-562890) Date of Access: October 30, 2009.

<sup>6</sup>For a case of stoning in Iraq, see for instance: [http://www.wlum1.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-561239](http://www.wlum1.org/english/newsfulltxt.shtml?cmd[157]=x-157-561239) Date of Access: October 30, 2009.

## 3 Stoning and Human Rights

### 3.1 Stoning as Torture

There is a consensus within the international community that stoning violates the fundamental right to freedom from torture and/or cruel, inhuman, or degrading treatment (Alasti, 2007; Aslan, 1998; Eghtedari, 1997; Baghi, 2007a; International Federation for Human Rights, 2009; Kar, 2007; Nowak, 2008; Rejali, 2001). Torture is defined by the United Nations Convention against Torture as “any act by which causes severe pain or suffering, whether physical or mental; is intentionally inflicted on a person for purposes that include punishment for an actual or suspected crime inflicted by a person acting in an official capacity.”<sup>7</sup> Stoning surely fits this definition, as a slow, painful process by which the victim eventually dies by blunt impact injury and blood loss.(Nowak, 2008).

Many U.N. agencies have confirmed that stoning is torture. Separate reports from the committees representing the Convention on the Rights of the Child (Committee on the Rights of the Child, 2005); Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Committee Against Torture, 2006); the International Covenant on Civil and Political Rights (Human Rights Committee, 2005); as well as the Special Rapporteurs on Violence against Women (Ertürk, 2006); Extrajudicial, Summary or Arbitrary Executions (Alston, 2006); and Freedom of Religion or Belief (Jahangir, 2005); and the United Nations General Assembly (United Nations General Assembly, 1998, 2008) have all recognised stoning as a form of torture and/or cruel, inhuman, or degrading punishment. In one document, the Special Rapporteur on the situation of human rights in Iran states: “there is no doubt that stoning is a cruel, inhuman or degrading punishment, as discussed in the international instruments” (Copithorne, 1997). In addition, “even if the sentence [stoning] is never carried out, the mere possibility that it can threaten the accused for years until overturned or commuted constitutes a form of cruel, inhuman or degrading treatment or punishment” (Alston, 2006).

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<sup>7</sup>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, 10 December 1984. [http://www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm). Date of Access: September 30, 2009.

Nigeria has been a party to the Convention Against Torture since 2001. Iran is not signatory to the convention; however, there is a strong argument that the prohibition of torture comprises a peremptory norm, or *jus cogens*, meaning it has been accepted by the international community as a norm from which no derogation is ever permitted regardless of explicit commitments.<sup>8</sup> Thus there is no allowance for states to make reservations to the Convention for the Prevention and Punishment of Torture, and the convention is considered binding for all states, not just those party to it. Finally, respected international human rights organisations such as Amnesty International have long considered stoning as torture. “Stoning to death is particularly cruel and constitutes torture, which is absolutely forbidden under all circumstances in international law” (Amnesty International, 2009).

### 3.2 Death Penalty for Adultery

Under the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration for Human Rights (UDHR), both by which Nigeria and Iran are legally bound, the death penalty should only be executed for the most heinous crimes. There is a consensus within the international community that adultery does not fit this qualification. Article 6(2) of the International Covenant on Civil and Political Rights, the relevant jurisprudence of the Human Rights Committee, and the 1984 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty each specify that “capital punishment may be imposed only for the most serious crimes.” In the words of Philip Alston, current UN Special Rapporteur on extrajudicial, summary or arbitrary executions:

Moral sanction is a matter for the consciences of individuals and the beliefs of religious groups. Criminal sanctions are an entirely different matter and when the threat of execution is involved the state cannot stand idly by and permit the two types of sanctions to be conflated in

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<sup>8</sup>Although there is no clear argument regarding precisely which norms are *jus cogens*, it is generally agreed upon that *jus cogens* include a prohibition of genocide, slavery, and torture among other things. The International Criminal Tribunal for the Former Yugoslavia stated in *Prosecutor v. Furundžija* that there is a *jus cogens* for the prohibition against torture. The rationale for this is that “the torturer has become, like the pirate and the slave trader before him, *hostis humani generis*, an enemy of all mankind” (Janis and Noyes, 2006, pg. 148).



a way that violates international law (Alston, 2006).

Furthermore, the European Union as well as international human rights organisations such as Amnesty International make strong claims that adultery never warrants the death penalty, while opposing the criminalization of consensual adult sexual relations conducted in private (e.g. *zina*) (Amnesty International, 2008; European Union: European Parliament, 2008).

### 3.3 Legally sanctioned Discrimination against Women and the Gender Dimensions of Stoning

Women are more likely to be sentenced to stoning than men because they are more often found guilty of adultery under *zina* laws in Nigeria and Iran. This is due to legally sanctioned discrimination inherent in personal status laws, as well as higher rates of poverty and illiteracy among women (see sections on Iran and Nigeria, below.) These laws violate article 23 of ICCPR which guarantees equal rights to men and women within marriage and at its dissolution, and to which Iran and Nigeria are party. Although these rights are specifically dealt with in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Iran is one of the few states<sup>9</sup> that are not a signatory to the convention.<sup>10</sup> Nigeria, on the other hand, has signed and ratified CEDAW, and is obliged to report on its implementation of CEDAW to the United Nations under international law (Imam, 2003). However, international treaties have to be domesticated, or enacted internally, before they become part of Nigerian law. As a result, even though Nigeria is party to CEDAW, Nigerian women cannot directly enforce their rights under CEDAW through the courts in Nigeria.<sup>11</sup>

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<sup>9</sup>The other nations that have not signed CEDAW are: Qatar, Somalia, Sudan and the three pacific nations of Nauru, Palau and Tonga. The United States has signed but not ratified CEDAW.

<sup>10</sup>Women's rights defenders have explored strategies involving pressuring Iran to ratify CEDAW as a way of initiating the change in discriminatory laws; these strategies have recently been pursued more directly by Iranian women's rights activists. For more information, see: <http://www.cedaw-iran.org/>

<sup>11</sup>CEDAW is entering Nigerian law by way of case precedent as some judges have recently begun to mention CEDAW in their judgements (Imam, 2003). The African Charter on Human and People's Rights was adopted by the Organisation of African Unity in 1981 and has been

Rape (or, more specifically, the penalization of potential victims of rape) is also of concern. Instances of women being found guilty of adultery after they report being raped is less common in Iran than in other countries such as Nigeria or Sudan (Sidahmed, 2001). Pregnancy out of wedlock is also a potential factor in the discrimination of women, but this is much more problematic in Nigeria than in Iran. In Nigeria, the dominant trend in the Maliki school of Shari'a considers pregnancy as conclusive evidence of *zina*, (here meaning adultery or fornication.) There are instances in which a pregnant woman was considered guilty of fornication if she had never married, but found guilty of adultery, on the other hand, if she was married at one point in her life although she was currently divorced. She thus receives the stoning punishment reserved for married individuals in this case (see section on Nigeria, below.) This is less problematic in Iran because adultery is legally defined as applicable only to currently married individuals. However, unwed pregnant women are at risk of being found guilty of unlawful fornication, which carries a maximum punishment of one hundred lashes after they give birth.

### 3.4 Unfair Trials

Women face immense gender discrimination in the court room. The majority of documented stoning cases in Iran and Nigeria involve unfair trials that lead to dubious sentencing. Unfair judicial processes in adultery cases often have a gender component. As described earlier, adultery is extremely difficult to prove. Four eyewitnesses are needed to prove guilt (besides confession or 'judge's knowledge'.) However, in Iran a women's testimony is considered half of a man's. That is, the testimony of two women is equivalent to testimony on one man.

Adultery is more often proven by confession rather than by eyewitness testimony. However, the processes by which these confessions are obtained frequently violate human rights norms. For instance, the following violations have been documented in cases involving stoning: individuals confessed after abuse and living in harsh prison conditions; their lawful right to see an attorney before confession was

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domesticated in Nigeria and therefore is part of national law. However, women's rights were addressed ambiguously in the Charter (Nasir, 2002). The Protocol of the African Charter on the Rights of Women in Africa, which builds directly on CEDAW, was ratified by Nigeria, but has not yet been domesticated.

denied; they were not told of the consequences of their confession (i.e. the possibility of stoning); they were illiterate and could not adequately understand the confession they were asked to sign; or they later disavowed their confessions, which under Iranian and Nigerian law immediately nullifies the confession in court, but their disavowals were not accepted (Baghi, 2007a; BAOBAB for Women's Human Rights, 2003). For one or several of these reasons, many confessions that lead to stoning sentences violates either the penal codes, the laws on criminal procedure and evidence, or human rights norms that guarantee protection against forced confession.

The most common source of proof of guilt in Iranian adultery cases the judge's 'knowledge' (*'elm-e qazi*, sometimes translated as 'intuition', or 'gut feeling.')<sup>12</sup> Here, a judge issues the sentence based on his own personal understanding of the case regardless of the evidence, or lack thereof, presented to the court.<sup>13</sup> There is a great deal of controversy surrounding the legal and religious justifications for the judge's 'knowledge' process. There is no consensus among Shi'a scholars whether or not the judge must himself witness the act of *zina* take place before he finds the defendant guilty of adultery. As it takes place today, judge's often rule based on their 'knowledge', without any hard evidence whatsoever. Because of the negative social stigma associated with women's sexuality along with the gender discrimination in Shari'a, women are highly susceptible to being found guilty of *zina* as a result of the judge's knowledge (Raesi, 2006; Sadr, 2006). There are no female judges in Iran. Furthermore, the 'judge's knowledge' method is inconsistent, lacks accountability, and violates both the Iranian constitution and article 14 of the ICCPR guaranteeing a fair trial, to which Iran is a state party (Sadr and Vahdati, 2006).

While Nigeria has no such provision for 'judge's knowledge', other factors play a role in producing unfair trials. Poverty, lack of education, illiteracy, lack of access to legal aid or advice, and the lack of observance of procedural guarantees

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<sup>12</sup>Eight of the ten most recent cases of stoning Iran resulted from the judge's 'knowledge' allowance.

<sup>13</sup>See Iranian Penal Code, "Hudud and their Relevant Laws," Chapter 1, Section 99 and 141. Section 120 states: "The Judge may act according to his knowledge in matters relating to Allah as well as those relating to the People, and execute the hadd of Allah. It is, however, necessary that he should mention the source of his knowledge." Quoted from Aslan (1998).

or procedural justice by trial court judges all serve to prevent women from receiving a fair and balanced trial when charged with *zina* (Tawfid Laden, 2002). See Section on Nigeria for more details specific to the Nigerian context.

## 4 Stoning and Religion

### 4.1 Stoning in the Qur'an and Sunna

Muslim religious scholars have been struggling with the definition and punishment of adultery since the first generation of Muslim jurists following the Prophet's death. The Qur'an mentions *zina* in twenty-seven verses, but never mentions stoning, or *rajm* as a punishment. Instead, it calls for one hundred lashes in one verse<sup>14</sup> and lifelong imprisonment in another.<sup>15</sup> On the other hand, the Sunna (or sayings and doings of the Prophet as told by his companions) depicts the Prophet Muhammad as occasionally ordering stoning as the punishment for *zina*.

These hadith generally comprise the foundation for religious arguments in favour of stoning. However, even the most reliable of these cannot escape controversy. For instance, Abdulla Aufa showed that while the Prophet Muhammad may have endorsed stoning during his lifetime, there was a great deal of confusion among the early jurists as to whether he had done so before or after Surah an-Nur was recited, which prescribes one hundred lashes for adulterers.<sup>16</sup> Furthermore, Surah an-Nur 24: 3 states: "The adulterer cannot have sexual relations with any but an adulteress or an idolatress, and the adulteress, none can have sexual relations with her but an adulterer or an idolater; and it is forbidden to believers." How can one found guilty of adultery have sexual relations with an adulteress or adulterer if he or she is stoned to death (Engineer, 2007)?

After the Prophet Muhammad's death, the first generation of Muslim legal

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<sup>14</sup>Surah 24: 2.

<sup>15</sup>Surah Al-An'am 6: 15-16.

<sup>16</sup>Hadith recorded by Sahih al-Bukhari, on the authority of ibn Umar. See al-Bukhari Volume 8, Book 82, Number 804; where, when asked directly whether the Prophet Muhammad prescribed stoning before or after Surah an-Nur, b. Aufa replies, "I don't know." Quoted from Aslan (1998). Read the full hadith here: <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/bukhari/082.sbt.html#008.082.804> Date of Access: October 30, 2009

scholars included adultery (*zina*) as one of the six major offenses, or *hudud* (singular: *hadd*), in Muslim laws (or Islamic legal tradition) for which the penalty is ‘fixed’ by God in the Qur’an and whose application is the right of God (*haqq Allah*.) This made *zina* a supposedly unalterable and unpardonable under the Muslim Penal Code. However, unlike the other five major offenses (false accusation, theft and armed robbery, drinking of alcohol, and apostasy) that are laid out in the Qur’an, the controversy over the nature of adultery in the Qur’an and the Sunna had led many to question adultery’s position as *hadd*. The fact that stoning, as the punishment for *zina*, relies solely on the Sunna and not on the Qur’an violates the very definition of *hudud* as ‘punishments mandated by God’ (Aslan, 1998) According to scholar Reza Aslan, this fact alone should be enough to put an immediate end to the practice of stoning adulterers. Some Iranian politicians and religious officials support this view (Javad Larijani, 2007), as do several Nigerian scholars.

In order to account for the inconsistencies between the Qur’an and the Sunna regarding stoning, the early Caliph Umar (632-634 AD) claimed that stoning was not mentioned in the Qur’an because it made up a ‘lost verse.’ This verse was reportedly part of the Prophet’s revelation but was somehow lost in transcription. Some say it was forgotten by those committing the revelation to memory, others say it was transcribed but the verse was eaten by a goat.<sup>17</sup> This argument is widely rejected by those Shi’a who question the Sunna’s ability to abrogate the Qur’an, as well as those who reject Umar’s legitimacy as a Caliph.<sup>18</sup> It also provides a difficult problem for Sunni Muslim jurists to explain – how could something be originally part of the revelation and not be included in the Qur’an, as the word of God wholly and complete? It has been suggested that Caliph Umar was probably attempting to provide an answer for these discrepancies while simultaneously validating a practice already popularised due to the heavy influence of Talmudic law on early Muslim communities (Aslan, 1998).

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<sup>17</sup>Engineer (2007) goes into great detail over the invalidity of this claim. For a hadith on this matter, see Sahih al-Bukhari, Volume 8, Book 82, Number 816: <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/bukhari/082.sbt.html#008.082.804> Date of Access: October 30, 2009.

<sup>18</sup>For more on Shi’a view concerning abrogation of the Qur’an, see the fatwas in Answering-Ansar.

## 4.2 Hadith

In the hadith<sup>19</sup> that mention stoning, there are a few trends that stand out. First, many of the stoning victims are Jewish, not Muslim. Stoning was a common punishment in Jewish communities, validated by the Talmud. It was also common amongst their Arab neighbors at the time due to the wide-spread influence of Talmudic law. Second, the Muslims who were stoned to death were strongly encouraged by the Prophet not to confess and thus be spared. In one hadith, the Prophet turns away a man who confesses to adultery four times (telling him instead to repent directly to Allah) before finally issuing the stoning sentence.<sup>20</sup>

These trends have several important implications. First, some have argued that stoning was an endorsed law, not a constitutional law (Ebadi, 2007). In other words, the Prophet Muhammad simply endorsed an ongoing popular practice at that time. This implies that the practice is not necessarily appropriate for today's reality as the Prophet Muhammad did not mandated this punishment for all people at all times. Second, one does not need to confess or be punished in order to be forgiven. One hadith narrates that the Prophet Muhammad said: "Keep the Muslims away from punishments as much as possible. If there is any way out for an offender to escape punishment, acquit him. It is better for a judge to make an error in acquittal than in conviction."<sup>21</sup>

In fact, in the hadith used to support stoning as a Muslim punishment, the Prophet tried to persuade the adulterer not to confess. To illustrate:

A man came to the Prophet, confessing adultery. In such matters the confession should be repeated four times to be credible. The Prophet said, "Maybe you mean you kissed her?" The man said, "No. It was adultery." The Prophet said again, "Perhaps you only gave her a pinch," hoping again that he would say, "Yes," and he would then be

<sup>19</sup>The collections of *hadith* differ for Shi'a and Sunni Muslims. According to Twelvers Shi'a jurisprudence, hadith consist not only of the words and actions of the Prophet Muhammad, but the twelve imams as well. Consequently, Shi'a scholars, or *ulama* justify stoning not only with hadith from the Prophet Muhammad, but with the imams as well, particularly Imam Ali.

<sup>20</sup>This hadith is mentioned in many sources, but for one see Sahih Muslim Book 017, Number 4196: <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/muslim/017.smt.html#017.4205> Date of Access: October 30, 2009.

<sup>21</sup>Sunan Tirmidhi, no: 1424

pardoned. But the man gave a negative answer. This dialogue went on until it was quite clear that adultery had been committed and the man begged for punishment in order to be relieved of punishment in the next world.<sup>22</sup>

In another instance, a woman came to Imam Ali (the son-in-law of the Prophet Muhammad and an extremely important figure in Shi'a Islam) and confessed to adultery, but was sent away. She came back another two times but was sent away each time. Finally, on the fourth time, "Ali, peace be upon him, felt very uncomfortable that the matter reached a point where no alternative was left for him but to order her to be punished." These examples show us that one is not obliged to confess that he or she has committed adultery in Islam. Repenting directly to Allah is sufficient for forgiveness. Some Shi'a scholars interpret these hadith as ordering that the Muslim judge should "try his utmost that the crime of adultery is not proved" (Shirazi).

Of course, the legitimacy of the hadith must also be brought into question. Both Shi'a and many Sunni scholars tend to believe that no hadith is absolutely infallible as they are recorded by fallible human beings. Indeed, Muhammad ibn Ya'qub al-Kulayni, the exalted Shi'a scholar of hadith and Islamic law of the fourth century: "Test the various reports [hadith] by the Book of God; whatever agrees with it take it, whatever disagrees with it reject it."<sup>23</sup> Similarly, Imam Malik, the founder of the Sunni school of *fiqh* accepted in Nigeria, cautioned against treating any legal tradition as infallible, saying: "I am but a human being. I may be wrong and I may be right. So first examine what I say. If it complies with the Book and the Sunna, then you may accept it. But if it does not comply with them, then you should reject it." In addition, Sunni founder of the Hanafi School, Abu Hanifa, considered less than twenty of the hadith (out of hundreds if not thousands) to be reliable and there did not make much use of hadith in his legal reasoning. Thus in the views of the founders of the Sunni schools of Shari'a, good Muslims were those who questioned and examined the declarations of others. It was acceptable that one legal tradition might be considered correct on one issues, but that of another more correct on another issues (BAOBAB for Women's Human Rights, 2003).

<sup>22</sup><http://www.al-islam.org/discourses/7.htm>. Date of Access: October 30, 2009.

<sup>23</sup>This is from Al Kulayni, *Usūl al-Kāfī*, introduction. Quoted from *Answering-Ansar*.

### 4.3 Overwhelming Necessity and Flexibility in *Hadd*

Even if adultery is legitimately part of the *hudud* crimes, some argue that *hudud* is not necessarily a permanent and inflexible category. Some argue that *hudud* punishments, rather than being requirements, are actually the *maximum* punishment allowed in Islam, and should not be issued in every case. For instance, because the Qur'an's ultimate emphasis is on reforming the offender through repentance and Allah's compassion, *hudud* punishments should not be seen as requirements but rather as illustrations of the weight of immorality on the crime itself (Engineer, 2007). Even though it may be a reprehensible sin in the eyes of Allah, the *state* has no duty to punish adultery with the maximum punishment prescribed in the Qur'an. Rather the Qur'an states that the devout individual has a *religious* duty to repent.

It is also important to recognise the 'overwhelming necessity' argument, which states that if the execution of stoning harms the national interest or damages the reputation of Islam, it can be lawfully abandoned. If at any time, or in any place, stoning weakens the faith or damages the reputation of Islam, then it must not be carried out (Radio Farda, 2007). Leaders of the Islamic Republic of Iran used the doctrine of *Maslahat* or *Zarurat* (overwhelming necessity) to justify laws that did not correspond to, or even contradicted Islamic principles.<sup>24</sup> If one can show stoning fits into this category of damaging the reputation or security of Islam or the Islamic Republic, then it can be legitimately banned.

Multiple reports, including one by Ayatollah Musavi-Bojnourdi, a former member of the Supreme Judicial Council after the Revolution and Head of the Islamic Human Rights Commission, that Ayatollah Khomeini himself issued a circular in 1981 that prohibited judges from issuing stoning as a punishment (Bojnourdi, 2007). Although it remains unclear what happened to that decree, other sources demonstrate that Khomeini opposed stoning sentences in the early years of the

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<sup>24</sup>As a principle or method of law, this doctrine derives its validity from the idea that the basic purpose of legislation in Islam is to secure the welfare of the people by promoting their benefits and by protecting them against harm. Ayatollah Khomeini himself said: "The government is empowered to unilaterally revoke any Shari'a agreements which it has concluded with the people when these agreements are contrary to the interest of the country or Islam." Cited in (Tamadonfar, 2001).



Islamic Republic.<sup>25</sup>

The ‘overwhelming necessity’ argument is usually coupled with the idea that stoning, while perhaps appropriate during the time of the Prophet, is no longer acceptable under modern conditions. Ayatollah Saanei, a high-ranking religious official in Iran, states that some scholars believe that stoning was perhaps suitable in the time of the Prophet and his successors, but nowadays, the punishment for adultery should be something other than the death penalty (Saanei, 2004).<sup>26</sup> He also argues for the possibility that hudud punishments are not applicable during the time of the hidden 12 Imam Mahdi (i.e. currently). The return of the 12th Imam will usher in an era of justice; in his absence, hudud must be suspended. The concept of flexibility is also applicable to the Nigerian context. There is an example of the Caliph Umar refusing to cut hands of thieves in time of famine.<sup>27</sup> Some conservative scholars argue that to ban stoning would be to admit that the Prophet Muhammad committed a sin or some wrongdoing, but this argument is not credible. One only needs to look at the universal ban on slavery, which the Prophet Muhammad certainly endorsed during his time, to realise that changing the law does not invalidate Muslim belief of the Prophet as a role model for humanity.

#### 4.4 Method of Proof for Adultery

Some argue that because adultery is so difficult to legitimately prove beyond reasonable doubt, stoning is practically forbidden (Alasti, 2007; Stop Stoning Forever Campaign, 2007b; Oba, 2003; Peters, 1994; Quraishi, 2008; Raesi, 2006; Saanei, 2004). In order to be rightfully found guilty of adultery, the perpetrator must be

<sup>25</sup>There is no evidence of a stoning taking place in public after Khomeini issued the decree. See: Seyyed Hossain Musavi Tabrizi, *Khodad Newspaper*, 3 Khodad 1377 (24 May 1998), p. 6; Mohammed Taqi Fazel Maibodi, “Negahi be Hokm-e Sangsar” (“A look at the Stoning Sentence”), *Etemad-e Meli Newspaper*, No. 412, 24 Tir 1386 (15 July 2007). Both cited in Abbasgholizadeh (2007)

<sup>26</sup>Other scholars and officials make this argument as well. See: Javad Larijani (2007); Baghi (2007a,b); Nayouf (2008); Montazeri (2007); Dareini (2002); Alasti (2007). He also puts forth another valid argument that because the implementation of hudud punishments such as stoning are always subject to doubt, they should be suspended and replaced by the ta’zir category of punishments which allows for more flexibility.

<sup>27</sup>Quoted in (Oba, 2003, pg. 58)

of sound mind and in a valid marriage (Salih Al-Munajjid). Concerning the latter, it may be argued that punishment for adultery should not be applied if one of the individuals was traveling, ill, or in other way unable to sexually satisfy his or her partner.

According to mainstream interpretations (both Sunni and Shi'a), in order for adultery to be proven by witnesses, four 'just' men or three 'just' men and two 'just' women must have seen the act of intercourse (i.e. the private parts meeting) at the same time and be sure that the individuals in question were not married to each other. Thus the adulterous couple must be flagrantly committing the act in public. Furthermore, if any of the witnesses recant their testimony before the punishment is carried out, the punishment should be abandoned and the other witnesses should be punished for the crime of false accusation (Ibn Adam al Kawthari), discouraging individuals to testify in the first place. As we have seen, the confessions must be done willingly without coercion and with absolute understanding of the consequences. Moreover, even after confession, if the accused recants, his or her recantation is admissible according to theological practice (Radio Farda, 2007). In other words, the defendant must practically volunteer to be stoned to death.

It is known that most stoning cases in Iran result from either dubious confession or 'Judge's Knowledge'. Nonetheless, we have found no religious basis for the 'Judge's Knowledge' loophole as it occurs in practice. In fact, several Iranian officials and religious scholars have spoken out against it (Radio Farda (2007); Stop Stoning Forever Campaign (2007a)). Other noteworthy arguments against stoning refer to the method in which stoning is carried out. Some argue that stoning can only be carried out legitimately in a public place, with the witnesses, judge, and political leader themselves casting the first stones. This, undoubtedly, is very unlikely to occur in modern Iran (Stop Stoning Forever Campaign, 2007a; Salih Al-Munajjid).<sup>28</sup>

In Nigeria, the offense of *zina* can be proved in the Maliki School in three ways: by evidence, by confession, and by pregnancy. Proof by witness and confession are the same in the Maliki school as in the Shi'a doctrine outlined above. The

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<sup>28</sup>Under Iranian law, at least three people must participate in the stoning. The judge and the witnesses should be among them, but it is not absolutely necessary. See: [http://hoghoogh.online.fr/article.php3?id\\_article=87](http://hoghoogh.online.fr/article.php3?id_article=87) for more information. Date of Access: December 2009.

notable difference regards proof by pregnancy. From a common law perspective, pregnancy is at most circumstantial evidence for *zina*; for there are many ways one can become pregnant without committing *zina* (e.g. rape, artificial insemination, by one's legal husband, etc.)

However, of the four Sunni schools, only the Maliki school accepts the pregnancy of an unmarried woman as conclusive proof of *zina* (unless she can provide proof to exonerate herself.) In the *Al-Muwatta* of Imam Maliki, it states that:

The position with us about a woman who is found to be pregnant and has no husband and says, "I was forced," or she says "I was married," is that it is not accepted from her and the hadd is inflicted on her unless she has a clear proof of what she claims about the marriage or that she was forced or she comes bleeding she was a virgin or she calls out for help so that someone comes to her and she is in a state or what resembles it of the situation in which the violation occurred . . . If she does not produce any of those, the hadd is inflicted on her and what she claims is not accepted from her.(Quoted from [Oba \(2003\)](#))

However, many observers challenge this position by calling attention to the fact that in contemporary times, pregnancy no longer necessarily connotes sexual intercourse and that the other schools may be more appropriate for the circumstances of modern Nigeria ([Oba, 2003](#)).

## 5 Case Study 1: Iran

### 5.1 Stoning under the Law

In Iran, stoning did not exist in the modern era until 1983, when the contemporary Islamic Penal Code was ratified, codifying Shari'a based on Twelver Shiism.<sup>29</sup> The

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<sup>29</sup>Twelver or Twelve Imam Shiism is the largest branch of Shi'a Islam. The name derives from the belief in twelve divinely ordained leaders, known as the Twelve Imams. Twelvers share many beliefs with Sunni Muslims but hold that the prophet Muhammad's family ('the People of the House') and certain individuals among his descendants, who are known as Imams, have special spiritual and political rule over the Muslim community. Shi'a Muslims believe that Ali, the prophet's cousin and son-in-law, was the first of these Imams and the rightful successor to Muhammad. They thus reject the legitimacy of the first three Rashidun Caliphs following the

Islamic Penal Code<sup>30</sup> prescribes stoning as the punishment for adultery<sup>31</sup> and is very specific about the details of the execution. Article 63 of the Islamic Penal Codes indicates that adultery applies to an illicit sexual act where at least one of the parties is married to a third party. It does not include premarital fornication, although this too is illegal. The article states: “Adultery is the act of intercourse, including anal intercourse, between a man and a woman who are forbidden to each other, unless the act is committed unwittingly.” This definition is the subject of debate as some Muslim jurists argue that the punishment for adultery should not be applied to instances in which the married person is unable to consort with their spouse due to legally accepted conditions such as prolonged travel, life imprisonment, illness or disability.

Article 102 of the penal code states that men shall be buried up to their waists and women up to their breasts for the execution. Article 104 states, referring to the penalty for adultery, that the stones used should “not be large enough to kill the person by one or two strikes; nor should they be so small that they could not be defined as stones (pebbles)” (*Amnesty International*, 2008). In some cases, if a victim is able to escape from the ditch during the stoning, then they should be freed. However, since the law calls for women to be buried up to their breasts and men only to their waists, women have a smaller chance of escaping than men (*Sadr and Vahdati*, 2006).

The burden of proof required for adultery cases is very high. The Islamic Penal Code of Iran, specifically articles 63-107, is explicit in its description of the procedures that should be followed in adultery cases and when stoning is an appropriate sentence. Of special note are articles 68, requiring that a man or woman must confess to adultery four times before a judge to be sentenced to the adultery punishment; 71, annulling the punishment of killing or stoning if a person confesses to adultery and then denies it; 74, requiring the eyewitness testimony of either four just men or three just men and two just women (meaning that eyewit-

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prophet Muhammad’s death. Twelvers believe in many of the same tenets of Shiism with related sects, but differ in the number of Imams and/or the path of succession of the Imamate.

<sup>30</sup>The full section of the Islamic Penal Code dealing with adultery can be found here in English: [http://www.wluml.org/english/newsfulltxt.shtml?cmd\[157\]=x-157-555118](http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-555118). Date of Access: October 30, 2009.

<sup>31</sup>Article 83 of Iran’s Islamic Penal Code

nesses much actually see the act of coitus, specifically vaginal-penis penetration); and 81, requiring the punishment to be annulled if the accused repents prior to testimony. Due to this almost unreachable bar of evidentiary support, most stoning sentences are issued on the judges' 'knowledge' or 'intuition' not testimony or confession (Sadr, 2006). Article 105 of the Islamic Penal code of Iran allows a judge to rule according to his own intuition but only if his ruling is based on documented evidence. These rulings are often dubious and problematic, because they stem from the judges' 'gut feeling' instead of hard evidence. The result of the 'judge's knowledge' allowance is that system, which excludes women, provides a loophole to the burden of proof and issues stoning sentences inconsistently.

## 5.2 Moratorium on Stoning and its Persistence

While stoning was legally on the books, the government placed official moratoriums on the punishment due to enormous domestic and international controversies and the public outcry in the early years of the Islamic Republic. As a result, stoning was rarely practiced. Nevertheless, much of the public remained outraged that such a backward and tortuous ritual was part of their laws. Finally, in 2002, the Ministry of Justice indicated that stoning would no longer be practiced in Iran. It was only after the election of President Ahmadinejad (2005 – present) and the defeat of the reformist movement (mostly associated with Khatami's presidential tenure from 1997 to 2004) that the practice was revived.

Independent judges can order stoning sentences despite the moratorium due to the structure of the Iranian judicial system. The independence of judges is protected in both issuing and executing sentences in Iran. Because Islam does not mandate an operational hierarchy similar to that of the Roman Catholic Church, the Head of the Judiciary, whether an Islamic institution or not, does not have irrefutable control over lower judges or their rulings. So, many high ranking Ayatollahs and other religious leaders can disagree with the legality of the stoning sentence and still be unable to influence 'lower ranked' judges from executing such sentences. In short, this lack of accountability mandates that unless stoning is prohibited in law, judges will continue to order it, regardless of the religious opinions of their superiors in the Judiciary or Ministries. In all cases, judges are

obligated to respect the law before any procedural order ([Stop Stoning Forever Campaign, 2007a](#)). However, high ranking religious leaders do have influence on the Iranian *Majlis* (Parliament) which is entrusted the power to write laws, as well as the Guardian Council, who must with approve such laws before they are implemented.<sup>32</sup>

It is important to note that stoning in Iran is inextricably tied to the context of the 1979 Revolution and the broader landscape of Iranian politics. Generally speaking, stoning represents just one of the many forms of violence perpetrated against women in order to control their sexuality in contemporary Iran. Other mechanisms used for controlling women's sexuality include mandatory hijab (or women's dress considered to be Islamic), restrictive personal status laws (more information given below), and gender segregation limiting women's mobility. Stoning is a rare but harsh component of system of punitive measures meant to control women's agency, mobility, and sexuality – one that ranges from fines and imprisonment to lashing/whipping and the death penalty.

### 5.3 Gender Discrimination and Stoning

Although stoning does not apply solely to women, women are at a far greater risk of stoning in Iran because they are at far greater risk of being found guilty of adultery. The Iranian Civil Code, particularly the Family Law, privileges men with regards to age of consent, divorce, polygamy, temporary marriages, child custody, and sexual rights. For instance, men and women do not have equal rights or access to divorce. Furthermore, women have no custody rights of their children after infancy, so many women who can obtain a divorce, by proving her husband is either abusive or an addict, choose not to do so because of the loss of their children ([Sadr, 2006](#)). A man can marry up to four wives simultaneously, and may establish a sexual relationship with any other single woman through a temporary marriage (*sigheh*) without the requirements of marriage registration, ceremony, or obligation to any possible child that may result. (Women cannot have multiple marriages, temporary or permanent) ([Sadr, 2006](#)). In addition, a woman is legally obliged to submit to her husband's sexual demands and do her best to satisfy him sexually

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<sup>32</sup>For a specific look at the different factions concerning stoning, see [Abbasgholizadeh \(2007\)](#).

(*tamkin*.) Hence if a man is sexually unsatisfied or in an unhappy relationship, he has many avenues open to him to dissolve the marriage and/or satisfy his sexual needs in a different marriage. At the same time, a woman has far fewer legal options open to her, and is often driven to adultery by these discriminatory laws limiting her sexual rights and status.

#### 5.4 Case: Mokarameh Ebhrahimi

The case of Mokarameh Ebhrahimi serves as just one illustration of the specific dynamics surrounding stoning in Iran as well as the successful strategies taken by activists. On March 17, 2006, Mokarameh Ebhrahimi and her four-year-old son, Ali, were released from prison by the Judicial authorities in Qazvin, Iran. Mokarameh had been awaiting execution by stoning for adultery for the last ten years in Choobindor Prison, near Takistan, Iran. While in prison, she had given birth to her son who remained in custody with his mother. Mokarameh's partner, Jafar Kiani, was stoned to death for adultery on July 5, 2007.

Mokarameh's release was the result of a long and difficult struggle by the Stop Stoning Forever Campaign in Iran, the commitment of her lawyer Shadi Sadr and other activists, and increasing pressure put upon the Iranian government by the international community. After the widely publicised stoning of her partner, Jafar, three significant Ayatollahs released fatwas, or religious opinions, stating that stoning Mokarameh should be against Shari'a.<sup>33</sup>

The case of Mokarameh serves to illustrate how many stoning sentences in Iran result from a previous failure on behalf of the court to grant the defendant a divorce, thereby in a way coercing her into an adulterous relationship. Reports indicate that Mokarameh was forced into prostitution by her lawful husband, fled the abusive relationship, and proceeded to request a divorce from the Iranian court. However, because the courts do not usually respond to such divorce requests in a timely manner (in the hope that with the passage of time, these requests will be rescinded), Mokarameh's request remained unanswered for years. Thus when Mokarameh entered her consensual relationship with Jafar Kiani, she was

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<sup>33</sup>Many of these fatwas were in response to death of Mokarameh's partner, Jafar. For statements by Ayatollahs after the death of Jafar Kiani, see: [Baghi \(2007b\)](#); [Bojnourdi \(2007\)](#); [Stop Stoning Forever Campaign \(2007b\)](#); [Javad Larijani \(2007\)](#); [Montazeri \(2007\)](#); [Nayouf \(2008\)](#).

technically committed adultery because the law considered her previous marriage still valid. But Mokarameh was under the impression that Jafar had obtained a divorce for her, and that she and Jafar were legally married based on a marriage contract they had obtained from a local clergyman. In fact, Mokarameh's marriage contract should have been considered null and void due to her husband's unethical and unlawful behavior (i.e. forcing his wife into prostitution and committing abuse). The failure on behalf of the courts in effect entrapped Mokarameh into committing adultery (Baghi, 2007a).

Several other stoning cases have been identified in which the defendant was so desperate in her attempt to escape her abusive relationship that either she or an accomplice killed her husband. Because murder carries a lighter punishment than adultery under the Iranian Penal Code (Ebadi, 2007), these women often serve out their prison sentences for murder and are then stoned to death for adultery. Many times, these women were unable to obtain a divorce, and were victims of abuse or forced marriage. As a demonstration, the large number of female suicides in Ilam (400 cases of self-immolation, 300 of which were women), are largely caused by forced marriage and abusive relationships (Baghi, 2007a).

Mokarameh's case demonstrates several other things as well. First, the Iranian government and political elite are divided when it comes to stoning. As we have seen, many religious figures have spoken out against the intended stoning of Mokarameh and the execution of her partner Jafar. Judicial spokesmen, however, often give contradictory statements, saying that the Islamic Republic of Iran does not stone people and that such an accusation is a propaganda tool used by the 'West' to degrade Islam. At the same time, however, they defend stoning as part of their laws, reject the accusation that stoning is a human rights abuse, and aver that the Iranian judicial system has a right and duty to implement its own laws and regulations free from foreign intervention (Javad Larijani, 2007; Abbasgholizadeh, 2007). Second, the case of Mokarameh illustrates how women's rights activists can and do successfully challenge stoning using nuanced strategies. Such strategies are detailed below.



## 5.5 Successful Strategies: The Stop Stoning Forever Campaign

Activists involved in the anti-stoning movement have implemented multiple strategies in their work to end stoning. Groups such as the Stop Stoning Forever Campaign are clear in their demand for an amendment to the Islamic Penal Code that unequivocally bans stoning under the law. In order to do this, activists engage in three primary strategies: 1) raising public awareness on the reality of stoning to the wider public in Iran as well as internationally; 2) pressuring Iranian decision-makers and encouraging international pressure, and 3) advocating for reform of religious laws and arguing that stoning is un-Islamic.

Activists have engaged in the first strategy of awareness raising since 2006, when it became clear that the 2002 judicial moratorium on stoning was not being enforced.<sup>34</sup> It was important for the world to know that stoning still happened, especially because from 2002 to 2007, the Iranian government denied that stoning happened at all (Kar, 2007; Terman, 2007). Even the word ‘stoning’ (*sangsar*) was censored in Iran. One of the most common and direct activities of the Stop Stoning Forever Campaign and Network of Volunteer Lawyers has been defending potential victims of stoning and publicising their cases to the general public and internationally. Ever since the first campaign to save Ashraf Kalhori was initiated in June 2006, Campaign activists have appealed the sentences of more than a dozen individuals at risk for stoning, and made these appeals known to the world (Raesi, 2006). In the process, they have also publicised the flaws that exist within the judicial system that makes the 2002 moratorium realistically ineffective. The crux of their argument is that as long as stoning remains a legal option ‘on the book,’ women will continue to be vulnerable to the whims of independent judges and susceptible to stoning. This strategy has seen success. Since the much-publicised stoning of Jafar Kiani in June 2007, the Iranian government no longer categorically denies the existence of stoning and the international community is now aware that the 2002 Moratorium has not been enforced.

In conjunction with appealing known sentences, campaign activists also pres-

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<sup>34</sup>For more information on the reemergence of stoning and how the Stop Stoning Forever Campaign began see Terman (2007).

sured the Judiciary, Parliament (*Majlis*), Supreme Leader Ayatollah Khamenei and other high-level decision-makers to ban stoning, saying that it violates the Iranian constitution as well as Iran's international human rights commitments. They also encourage the international community to put pressure on the Iranian government and judiciary to repeal the stoning orders. Using the initial Kalhori case as an example, Stop Stoning Forever activists utilised interviews, Calls for Action, and petitions as major tools to achieve their goal of commuting Kalhori's stoning sentence.<sup>35</sup> Sadr and other activists raised public awareness of the situation by conducting multiple interviews with international news agencies and non-governmental organisations. They were successful in bringing the Kalhori case to international attention, and as a result Ayatollah Shahroudi temporarily stayed Ashraf Kalhori's execution.<sup>36</sup> Since the start of the campaign, activists have continued using these tools in successfully suspending the sentences of dozens of defendants, and even winning acquittal in a few cases.<sup>37</sup> However, punishment by stoning remained lawful and continued to be issued: three men were stoned in Behesht Reza Cemetery in December 2008, and an unnamed man was stoned to death in May 2009.

Another strategy involves using 'religious reform' methodology to argue that stoning is un-Islamic, or in other ways violates religious laws and norms, using a primarily Islamic framework. While this strategy is not exclusive to Iran, it provides serious challenges in the Iranian context, due to the fact that government policies and laws are religiously based and the regime derives its legitimacy from religious sources. While stoning is clearly a human rights issue, some argue that the only means of affecting permanent change in the Iranian penal code and Islamic adultery laws in general is through a rigorous theological dialogue that uses religious sources to argue for the prohibition of stoning (Alasti, 2007; Aslan, 1998; Baghi, 2007a; Engineer, 2007; Kar, 2007; Mir-Hosseini, 1999; Peters, 1994; Quraishi, 2008; Rejali, 2001; Tamadonfar, 2001). This strategy is important be-

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<sup>35</sup>For more information on this case, see: Terman (2007).

<sup>36</sup>Her case was then sent to the '*Daftar-e Nezarat va Paygiri*' ('Office of Monitoring and Follow Up') for review.

<sup>37</sup>In August 2008, spokesman for the Judiciary, Alireza Jamshidi, announced that the sentences of four Iranians set to die by stoning were commuted by the Iranian judiciary. He also reported that of the nine remaining cases of individuals sentenced to stoning, two were pardoned completely by the Supreme Leader Ayatollah Khamenei, and the rest were sent for review.

cause within the context of Iran, religious figures influence policy. Many activists, such as those involved in the Stop Stoning Forever Campaign, Women Living Under Muslim Laws and the Global Campaign to Stop Killing and Stoning Women use both secular and religious strategies to end stoning.

## 5.6 Future of Stoning in Iran

As of May 2009, the Judicial Commission of the *Majlis* passed an amendment to a new draft of the Islamic Penal Code that eliminated stoning altogether. As of the time of writing (January 2010), the *Majlis* has passed the bill and it is currently awaiting approval by the Council of Guardians. Members of *Majlis* passed the bill quickly, without much discussion, possibly as an attempt to bolster the Iranian governments reputation in the world following the disputed elections in June 2009. It is unclear when exactly the bill will be voted on by the Council of Guardians and implemented, but most analysts expect that the bill will pass and become law shortly thereafter.

In the bill, the punishment for adultery is not explicitly stated in the text of the law. However, according to article 167 of the Iranian constitution, a judge can decide a punishment by referring to *fiqh* (Islamic jurisprudence) based on the fatwa of the *mujdaheds* (doctors in religious law who are governmentally permitted to give a legally binding decree). Members of the Judiciary Commission have stated that the only fatwa acceptable for such rulings is that of the Supreme Leader, or Ayatollah Khamenei. As of writing, Ayatollah Khamenei has not yet issued any fatwas on stoning. If the bill passes, the assumption by many analysts is that the Judiciary Commission will ask the Supreme Leader for a fatwa concerning stoning and it is very unlikely for the Supreme Leader to give a fatwa approving the stoning sentence. “The argument is that the image of Iran was damaged by the stoning law in the past,” says Shadi Sadr. “So the new law will most likely state that the punishment for adultery will be lashes and imprisonment . . . because that’s what it says in the Qur’an.”

## 6 Case Study 2: Nigeria

### 6.1 Background on Nigerian Shari'a

Stoning did not exist in Nigerian law until 1999,<sup>38</sup> when Shari'a was expanded in twelve northern Nigerian states. Since before Independence in 1960, Nigeria has had three systems of law in the realm of family and personal status (concerning marriage, divorce, child custody, inheritance and the like). These were general (sometimes referred to as secular or civil law),<sup>39</sup> Muslim laws (based on the Maliki School), and customary laws. Over the past twenty or thirty years, Shari'a Courts have played a major role in adjudicating issues relating to family law and sexuality in Muslim communities.

Then in 1999, Alhaji Sani Yerima, the Executive Governor of the northern state of Zamfara, signed a bill that expanded Shari'a to include criminal and penal aspects. This action was considered by many to be clearly motivated by political opportunism ([BAOBAB for Women's Human Rights, 2003](#)). Eleven other states quickly followed suit, including Kano, Katsina, Niger, Bauchi, Borno, Kaduna, Gombe, Sokoto, Jigawa, Yobe, and Kebbi. (There are a total of 36 states in Nigeria). While each state had their own independent Shari'a Penal Code, they mirrored one another to a great extent. (Non-Muslim minorities in the North are not subjected to Shari'a law but can request that it be administered in cases relating to them.)<sup>40</sup>

The present system of Shari'a in Nigeria has been described as "political Shari'a" due to its concentration on *hudud* punishments. In each of the twelve northern states implementing *Shari'a*, the penal codes dictate fixed punishments for the *hudud* offenses of *zina* (including fornication, adultery, and same-sex sexual

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<sup>38</sup>Uncodified Muslim laws did exist the predominantly Muslim communities – mostly in northern Nigeria – that may have included the offence of *zina*, before Nigeria was colonised by the British in 1906, when all penal law was superseded by British law. However, there are no records of stoning as a punishment during this time.

<sup>39</sup>This system was based initially on British colonial laws and, since Independence, on acts passed by the Nigerian legislative bodies or established by decree in the periods when Nigeria was under military regimes.

<sup>40</sup>Nigeria is governed by the 1999 Constitution, which makes provision for the administration of justice at the federal and state levels and also empowers the state to establish local/customary courts for the administration of justice.

relations), rape, theft, robbery, drinking of alcohol, and apostasy. Other sanctions introduced by the expansion of Shari'a include retaliatory punishment (*qisas*) and monetary compensation for murder (*diyeh*) (Imam, 2003).

Harsh punishments for adultery were not the only method by which Nigerian authorities attempted to control women's sexuality, freedom of movement, and independence. Conservative interpretations of Muslim laws resulted in tightened restrictions on women's dress, transportation, and presence in the public sphere. In Zamfara, for example, women who wore the headscarf were barred from traveling on motorcycles behind men. In Gusau, a midnight curfew was imposed. A host of practices, with no legal basis at all, were implemented as part of a "sharianization" program that sanctioned and encouraged both the growth and expression of extremely conservative interpretations of Muslim laws in northern Nigeria. Many of these practices are still enforced by extra legal groups of young men vigilantes, who take the law into their hands, with mixed reactions by the official state governments (Imam, 2003). It is important to note as well that conservative religiosity is not limited to Muslim communities. In the largely Christian southern areas of Nigeria, women have been attacked for wearing trousers and the 'Indecent Dressing' Bill was sponsored by a Christian woman senator.<sup>41</sup>

## 6.2 Gender Discrimination under the Law

While the language differs from state to state, the punishment for *zina* remains constant. In the Penal Code for Zamfara state, for instance, the punishment for *zina* reads as follows.

126: Whoever being a man or a woman fully responsible, has sexual intercourse through the genital of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to illegality of the act, is guilty of the offense of Zina.

127: Whoever commits the offense of Zina shall be punished—

(a): With caning of one hundred lashes if unmarried, and shall be liable to imprisonment for a term of one year; or

<sup>41</sup>Ayesha Imam, personal interview with authors, January 15, 2010.

(b): If married, with stoning to death.<sup>42</sup>

Stoning is the prescribed punishment for both married men and women in each of the twelve states' Shari'a Penal Codes. However, the reintroduction of Shari'a has hurt women disproportionately. Like their counterparts in Iran, women encounter multiple difficulties while trying to access justice, especially when relating to issues concerning sexuality, personal status and family law.

Although the provisions of the twelve Shari'a Penal Codes are generally gender-neutral, there are some exceptions, mostly favouring men.<sup>43</sup> For instance, in the Shari'a Penal Codes, rape is treated as a form of *zina* and reporting rape is equivalent to confessing to *zina*. Rape is extremely difficult to prove; the rapist must confess or two witnesses must testify to the charge. Therefore, in the most probably case, women find themselves not only subject to *zina* punishments for reporting rape, but also liable to punishments for bearing false witness. As a result, the new Shari'a Penal Codes deprive women of protection from rape and sexual assaults (Imam, 2003) while leaving them at risk of being charged with *zina*.

Besides the texts of the laws, there has been discriminatory implementation and improper procedures within the Nigerian judicial system that violate women's rights. By postulating that pregnancy outside marriage is evidence of *zina* (a minority position in Shari'a which is not held by the Hanafi, Hanbali and Shafi schools, nor a variant of the Maliki school), women have been held to a different standard of evidence than have men. Non-married women are required to provide evidence to prove their innocence, whereas men are not. If the prosecution does not provide independent evidence, such as four eyewitnesses, men can simply walk away. The same is not the case for women, which, as we have seen, is in direct violation of the Qur'an's demands for proving adultery. As a result of these discriminatory patterns, more women than men have been both charged with and

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<sup>42</sup>Zamfara State of Nigeria, Gazette, LAW NO 10 Shari'a Penal Code Law, 2000.

<sup>43</sup>As in the 1960 (secular) Penal Code, the Shari'a Penal Codes continue to permit husbands to beat wives. Nor do they recognise marital rape, which is neither recognised in general secular law in Nigeria. Some of the Penal Codes (Niger, Kano, and Kebbi states) specify that men's testimony will be worth more than that of women. The *diyeh* (monetary compensation in cases of physical injury or death, if the victim or his or her family are willing to accept this instead of the stated punishment) to be paid for Muslim men is higher than that of Muslim women (or non-Muslims), although *qisas* (retaliatory punishment) can be applied regardless of gender (Imam, 2003).

convicted of *zina*.<sup>44</sup>

Finally, discrimination against women is also rooted in the lack of knowledge and biases of judges. Judges who administered justice at the local courts were not given new training as a response to the new laws, depended solely on their past experiences and personal biases. Some judges had no formal training in law whatsoever; their only source of formal education being their primary and/or secondary education. As a result, many of their rulings were based on patriarchal interpretations of Muslim laws and personal biases against women's rights (Tawfid Laden, 2002).

With the reintroduction of Shari'a penal law in the twelve states, women bore the brunt of the stoning punishments, as women make up most of the adultery related cases. As we have seen, even when women were raped, their attempts to report the crime to the authorities were turned into charged of adultery as the men who were accused of rape were easily let off the hook after they denied the accusation by "swearing on the Holy Qur'an." According to women's rights defender Sanusi Lamido Sanusi, "the womb has been charged while the sperm is acquitted."<sup>45</sup> In addition, most of the women accused of adultery are poor, and thus disadvantaged in getting an adequate legal defense (e.g. hiring a lawyer.) Both women and men have the right to legal representation in court and to appear in court in Nigeria. However, as with the secular and customary law courts, very few people actually have legal representation in the lower courts. Poverty, the high cost of legal representation, minimal provision of legal aid, lack of knowledge, and fear of the whole court process are contributing factors (Imam, 2003).<sup>46</sup>

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<sup>44</sup>According to Dr. Ayesha Imam, women who ought not to even have been charged, have been convicted of *zina* and sentenced to death, by ignoring the well-established Maliki doctrine of the 'sleeping embryo' (*kwantace* in Hausa), whereby a child born to a woman within a set period after the end of her marriage (in some areas up to seven years), is assumed to be the child of that marriage. Women have also been accused and convicted of *zina* as prostitutes, for instance, with neither confession nor the testimony of four witnesses to a willing act of sexual intercourse, nor even pregnancy, for evidence (Imam, 2003).

<sup>45</sup>Sanusi Lamido Sanusi is currently Nigeria's Apex Bank Governor. He is an economist as well as an Islamic Scholar. His writings and various interviews in the early days of the expansion of the Shari'a were supportive of women's rights.

<sup>46</sup>For more on how poverty affects women's access to justice in northern Nigeria, see (Tawfid Laden, 2002, Part V, Section (a)).

It should be noted that in cases of alcohol consumption, theft, and sodomy, men more often than women are prosecuted; so far only men and boys have been tried and convicted of theft and sentenced to amputation. In these cases, too, it is the poor and not the wealthy and powerful who have faced criminal prosecutions (Imam, 2003).

### 6.3 Case: Amina Lawal

One of the most widely publicised cases of stoning in Nigeria is that of Amina Lawal, from Bakori in Katsina state. After leaving her second husband, Amina began a relationship with Yahaya Mohammad, who agreed to marry her. On January 15, 2002, Amina was charged with adultery (*zina*) along with her partner. Yahaya was set free after swearing on the Holy Qur'an that he did not have sexual relations with Amina Lawal. However, she was convicted of adultery by a single judge, Alhaji Nasiru B. Dayi in the lower court in Bakori, who found her guilty and sentenced her to death by stoning. The grounds for conviction were admission, pregnancy, and the existence of Wosilat, Amina's daughter born outside of marriage.

An appeal was filed at the Upper Shari'a Court, Funtua, on March 28, 2002 before four judges. The appeal was led by BAOBAB for Women's Human Rights, the Women's Rights Advancement and Protection Alternative (WRAPA) and supported by several other concerned organisations. The first appeal failed on all grounds and the decision of the first court was upheld on August 19, 2002. A second appeal was subsequently filed at the Shari'a Court of Appeal, Katsina. This appeal suffered several adjournments before it was finally entertained on August 27, 2003. On September 25, 2003, Amina was acquitted of all charges.

The Court of Appeal found several shortcomings that warranted Amina's acquittal. First, they held that the arraignment of the defendant before the Shari'a Court of Bakori was incurably defective. The court held that any person accused of *zina* can only be arraigned before a court on the basis of four witnesses required by the Qur'an; furthermore, any person alleging *zina* against another must prove it by evidence, else he or she would receive the mandatory one hundred lashes for false accusation. On the issue of retraction of confession, the court held that any person accused could retract his or her confession any point before the execution of



a judgement. Finally, the court observed that indisputable fact that Amina was a divorcee. Under the Maliki legal tradition, a divorcee can carry a pregnancy for a period of five years from the period of her divorce – known as the ‘sleeping embryo’ concept (*kwantace* in Hausa). Therefore the mere fact of Amina’s pregnancy and the ultimate birth of her daughter cannot provide sufficient grounds a conviction of *zina* (BAOBAB for Women’s Human Rights, 2003).

The case of Amina Lawal demonstrates several things. First, it shows the failings of the lower court, and many other courts, in northern Nigeria. The Court of Appeal held that Amina should have never been charged, must less convicted; that pregnancy outside of marriage is not proof of adultery; that Amina’s alleged confession was no confession at all; and that her rights of defense had not been properly recognised in the lower courts. More generally, Amina’s case showed that victims of rights abuses in Shari’a can successfully fight for their rights, and do so in Shari’a Courts themselves, which strengthened local cultures of respect for rights and resistance of potential abuses.

Amina’s case was also a very good example of how local and international efforts could successfully work together on a serious and sensitive campaign relating to women’s access to justice and ties to religion and culture. It also demonstrated the *risks* involved when international groups intervene in such a case. After women’s rights groups raised the stoning issue internationally, a wave of support was orchestrated by various groups across the globe. Some of this support was useful, and some was counterproductive. For example, there had been a host of petitions and letter writing campaigns about Amina, many of which were inaccurate and ineffective and possible even damaging to her case and those of others in similar situations. Some protest letters represented negative stereotypes of Muslims, and inflamed anti-Muslim sentiments rather than helping reflection and appropriate action. These negative and inaccurate portrayals about the plight of women, Islam, and Nigerian culture damaged the credibility of local activists, and encouraged the threatening, hostile, and violent behavior of vigilantes. Finally, the various letters written to the Zamfara, Katsina and Sokoto state governments about the cases of Amina Lawal and others engendered a backlash; some officials became even more committed towards carrying out the death sentence after receiving these letters (BAOBAB for Women’s Human Rights, 2003).

Groups such as BAOBAB for Women’s Human Rights worked to ameliorate these consequences. By detailing specifically what Nigerian groups needed from the international community, both local and global efforts on the Amina Lawal case and others were harmonised. The international community became more supportive of the efforts by local groups working on ground and waited for responses from them before taking further action. Although the Amina Lawal case sparked great international attention and put pressure on the Nigerian government, in Bauchi state alone, the stoning sentences continue to be issued for crimes of adultery.<sup>47</sup> However, there has been no reported instance of a stoning sentence being executed in Nigeria, whether by the state or by vigilantes.

#### 6.4 Successful Strategies: BAOBAB for Women’s Human Rights

As soon as the first cases of *zina* were announced, Nigerian women’s activists – Muslims and non-Muslims alike, and together with some concerned men – swiftly swung into action offering support for these women. BAOBAB for Women’s Human Rights has worked extensively to combat stoning and other manifestations of culturally justified violence against women. As the leading organisation dealing specifically with women’s rights, culture, and Muslim laws in Nigeria, BAOBAB has continued to articulate and defend the human rights of women in response to the expansion of Shari’a and fundamentalisms in general, including Christian fundamentalism.

BAOBAB has utilised a multi-pronged approach in their struggles against stoning and culturally justified violence against women. First, BAOBAB has been steadfast in their work to defend women’s rights, refusing to be intimidated by the accusations of being ‘anti-Islam’, ‘foreign’, or ‘inauthentic.’ A key message for BAOBAB is that Shari’a law is not divine, but has undergone human interpretations.<sup>48</sup> BAOBAB demonstrates this by showing how Muslim laws differ from one community to another, and how historical, political, cultural, and economic

<sup>47</sup>Reuters Africa. February 18, 2008.

<sup>48</sup>Or rather, Shari’a is divine, but the human interpretation of it, *fiqh*, is fallible. See Ziba Mir Hosseini’s brief in this volume for more on the similarities and differences between Shari’a and *fiqh*.

factors influence diversities in Muslim laws (drawing on their participation in the Women Living Under Muslim Laws Global Women and Laws programme), as well as how religious laws are misapplied resulting in women's oppression, and how conservative interpretations deny women their rights and hinder their access to justice within the legal system.

BAOBAB has also facilitated coalitions in Nigeria as well as internationally to form a broad campaign against stoning in Nigeria. This solidarity resulted in joint press statements, sharing of information and resources, and strategic meetings that worked to ensure women's safety and freedom. In addition, BAOBAB has worked extensively with the media, which in Nigeria has served as tool for public outreach and education. In this capacity, BAOBAB activists train journalists on how to report in a gender sensitive manner on cases concerning culturally justified violence against women, ensuring that the portrayal of women in these cases are fair and equitable. BAOBAB also works with journalists to ensure that issues concerning religious conservatism and political religiosity could be reported and critiques in a manner less likely to cause a backlash in Muslim communities. Finally, BAOBAB has worked directly with women accused of *zina*, providing victims with legal defense, education on their rights, and other forms of support.

The above activities, of course, are part of a larger strategy to fight women's human rights in a culturally sensitive manner. As part of their broader agenda, BAOBAB conducts numerous activities including research and documentation; capacity building; information, education and communication, and networking.

## 7 Concluding Statements

In conclusion, we cannot make a definitive statement on which strategy or argument (i.e. religious or human rights based) is more effective in the work against stoning or other culturally justified violence against women. But it is important to take inventory of all the 'tools in our toolbox.' Not every context will require the same strategy or combination of strategies, and we must choose our tools wisely depending on the context.

The information here is by no means exhaustive. The case studies of Iran and Nigeria focus on two particular initiatives that combat stoning, the Stop Stoning

Forever Campaign and BAOBAB for Women's Human Rights, respectively; but there are many other groups and individuals who work tirelessly to defend women and men from stoning. Also, many other countries experience stoning and we encourage researchers in Afghanistan, Sudan, Somalia, Iraq, and elsewhere to share their own documentation on how stoning plays out in their own contexts. We also encourage religious scholars and human rights experts to further the debate on stoning by providing arguments that we have missed or developing new ones.

Stoning is just one manifestation of culturally justified violence against women, and does not pose a significant threat to many communities. However, while the punishment of stoning touches very few directly, it embodies much of the violence, discrimination, and attempts at control that affect countless women around the world today. By looking at stoning in-depth, we find layer after layer of forces that serve to harm women – from the laws that prohibits her from obtaining a divorce to the judicial system that denies her a fair trial to the culture that views her sexuality as threatening and in need of violent control. At the same time, however, we also find women and men who reject the notion that stoning and violence are legitimate aspects of their culture, who dare to fight against such myths, and who affirm everyday that women's human rights are universal and inalienable.

While stoning still continues today, it is important to learn from the strategies mentioned above, as well as the arguments laid forth in this paper, so that activists in other contexts may borrow from their Iranian and Nigerian sisters in their own struggle to end stoning. Furthermore, we can gain much from the fight against stoning as an example of how to combat a religiously justified practice that violates the human rights of women – especially as we witness the disturbing trend of the growth in religious fundamentalisms worldwide. Three salient lessons can be taken away here:

1. Oftentimes, strong religiously based arguments exist that contradict such practices.
2. Even if the country in question is not signatory to all the human rights treaties that we would like (e.g. CEDAW), there are still human rights mechanisms that can prove useful in solving these problems.

3. Women can and do fight successfully against culturally justified violence against women, without having to sacrifice their culture, identities, or religious beliefs.

## **7.1 Recommendations**

The Global Campaign to Stop Killing and Stoning Women offer the following recommendations regarding stoning:

### **To Iranian Decision-Makers**

1. Immediately abolish the punishment of stoning by ensuring that article 83 is repealed.
2. Pass a new Penal Code that explicitly outlaws stoning.
3. Review and amend all relevant legislation with the aim of decriminalizing consensual, private sexual relations amongst adults, and especially *zina*.
4. Review and amend all legislation that discriminates against women, especially those concerning personal status and the family code, and work to ensure that women and men have equal rights in all areas of the law.
5. Abolish the ‘judge’s knowledge’ process and take all steps necessary to ensure that everyone receives a fair and balanced trial as required by the ICCPR.
6. Immediately commute the sentences of all prisoners awaiting stoning sentences.
7. Sign and ratify CEDAW and amend domestic laws to adhere to its requirements.

### **To Nigerian Decision-Makers**

1. Immediately abolish the punishment of stoning by repealing or amending Shari’a Penal Codes of all 12 states where it exists.

2. Review and amend all legislation that discriminates against women, especially those concerning personal status and the family code, and work to ensure that women and men have equal rights in all areas of the law.
3. Abolish the precedent of pregnancy as proof of *zina* and take all steps necessary to ensure that everyone receives a fair and balanced trial as required by the ICCPR.
4. Take all necessary steps to protect victims of rape and abolish the precedent of criminalizing rape victims.
5. Immediately commute the sentences of all prisoners awaiting stoning sentences.

### **To the International Community**

1. Press the Iranian and Nigerian authorities to immediately abolish the practice of stoning and comply with the recommendations made above.
2. Declare unequivocally that stoning is torture, and never acceptable, regardless of whether the state in question has signed and ratified the Torture Convention.
3. Support local activists and express solidarity with local struggles by liaising directly with those whose rights have been violated and/or local groups directly involved. Never launch campaigns or take action without discussing strategies of solidarity and support with local activists, and never act without knowledge of context or consequences.
4. Declare in the clearest and strongest words possible that violence against women is never acceptable, regardless of ‘religious’, ‘cultural’, or ‘traditional’ justifications.

We urge everyone to do their part to eradicate stoning and all forms of culturally or religiously justified violence against women. As we have seen, this kind of violence often *lacks* cultural roots, and is rather symptomatic of a new phenomenon

pushed by radical political actors in response to modern forces. The Global Campaign to Stop Killing and Stoning Women rejects the notion that violence against women is ever tolerable, ever excusable, ever justified.

## Appendices

### A Glossary

**Caliph** The Caliph is the head of state in a Caliphate, and the title for the leader of the Islamic Ummah, an Islamic community ruled by the Shari'a. It is a transliterated version of the Arabic word *Khalīfah* which means "successor" or "representative". The early leaders of the Muslim nation following Muhammad's (570 – 632) death were called "Khalifat Rasul Allah", means the political successors to the messenger of God (referring to Muhammad).

**Fiqh** *Fiqh* is Islamic jurisprudence. *Fiqh* is an expansion of the Shari'a Islamic law – based directly on the Qur'an and Sunna – that complements Shari'a with evolving rulings/interpretations of Muslim jurists.

**Hadith** Hadith are oral traditions relating to the words and deeds of the Muslim prophet Muhammad. Literally, hadith means "narrative".

**Hudud (hadd)** Hudud is the word often used in Islamic literature for the bounds of acceptable behavior and the punishments for serious crimes. In Islamic law or Shari'a, hudud usually refers to the class of punishments that are fixed for certain crimes that are considered to be "claims of God." They include theft, fornication, consumption of alcohol, false accusation, and apostasy.

**Ijtihad** *Ijtihad* is a technical term of Islamic law that describes the process of making a legal decision by independent interpretation of the legal sources, the Qur'an and the Sunna. The opposite of *ijtihad* is *taqlid*, Arabic for "imitation".

**Majlis** In the Iranian context, the *Majlis* is the name for the parliament of the Islamic Republic of Iran.

**Mojtahed** In the Iranian context, *mojtaheds* refer to religious doctors who are governmentally authorised to give legal religious decrees. Generally, a *Mojtahed* is an educated Muslim, usually men, who makes up his own ruling on the permissibility of an Islamic law (which may or may not be legally binding for others.)

**Qur'an** The Qur'an (literally "the recitation"; also sometimes transliterated as Quran, Qur'ān, Koran, Alcoran or Al-Qur'ān) is the central religious text of Islam. Muslims believe the Qur'an to be the book of divine guidance and direction for mankind, and consider the original Arabic text to be the final revelation of God.

**Shari'a** Shari'a in modern English it often refers to an Islamic concept, the body of Islamic religious law. Used thus, it refers to the legal framework within which the public and private aspects of life are regulated for those living in a legal system based on Islamic principles of jurisprudence and for Muslims living outside the domain. Shari'a deals with many aspects of day-to-day life, including politics, economics, banking, business, contracts, family, sexuality, hygiene, and social issues.

**Shi'a** Shi'a is the second largest denomination of Islam, after Sunni Islam. The followers of Shi'a Islam are called Shi'as or Shi'ites.

**Sunna** Literally, "habit", Sunna refers to the sayings and living habits of the Muslim Prophet Muhammad.

**Sunni** Sunni Islam is the largest denomination of Islam. It is also referred to as Ahl as-Sunna wa'l-Jamā'ah, (meaning "people of the example (of Muhammad) and the community") or Ahl as-Sunna for short.

**Zina** *Zina* in Islam is extramarital sex and premarital sex (fornication) and applies to both men and women.



## References

- Abbasgholizadeh, M. (2007). *Nazam-e ghazayi dar tangena: Tahlili bar arayesh niruha-ye movafegh va mokhalef-e sangsar* (The Judicial System in Crisis: An Analysis of the Formation of Pro- and Anti-Stoning Forces). *Zanan*, 86.
- Alasti, S. (2007). Comparative Study of Stoning Punishment in the Religions of Islam and Judaism. *Justice Policy Journal*, 4(1).
- Alston, P. (2006). Civil and political rights, including the question of disappearances and summary executions: Extrajudicial, Summary or Arbitrary Executions: Report of the Special Rapporteur, Mr. Philip Alston. Addendum: Mission to Nigeria. <http://www.universalhumanrightsindex.org/documents/841/814/document/en/text.html>.
- Amnesty International (2008). Iran: End executions by stoning. <http://www.amnesty.org/en/library/asset/MDE13/001/2008/en/ec69fe85-d981-11dc-a340-29dd7d6e4103/This+document+is+not+available+as+HTML.html>.
- Amnesty International (2009). Indonesia must repeal “cruel” new stoning and caning law. <http://www.amnesty.org/en/news-and-updates/news/indonesia-must-repeal-cruel-new-stoning-caning-law-20090917>.
- Answering-Ansar. The authenticity of Faru al Kafi. [http://www.answering-ansar.org/answers/creed\\_of\\_shia\\_explained/sunnis\\_tahreef\\_flyer.pdf](http://www.answering-ansar.org/answers/creed_of_shia_explained/sunnis_tahreef_flyer.pdf).
- Aslan, R. (1998). The problem of stoning in the Islamic Penal Code. Paper presented at Center for Iranian Research Analysis (CIRA) Conference, Portland, OR, 1998. On file from author.
- Baghi, E. (2007a). The bloodied stone: Execution by stoning. <http://www.iranhumanrights.org/2008/08/baghibloodiedstone/>.
- Baghi, M. (2007b). The regime must decide: Interview with Ayatollah Mohammad Hassan Marashi Shushtari. <http://shahrvandemroz.blogfa.com/post-78.aspx>.
- BAOBAB for Women’s Human Rights (2003). Sharia implementation in Nigeria: The journey so far.
- Bojnourdi, M. (2007). In Imam’s opinion, a circular was issued to ban stoning. interview with ayatollah musavi bojnourdi. [http://rezaei.typepad.com/hassan\\_rezaei/files/stoning\\_in\\_figh\\_ayatollah\\_bojnourdi.doc](http://rezaei.typepad.com/hassan_rezaei/files/stoning_in_figh_ayatollah_bojnourdi.doc).

- Committee Against Torture (2006). Consideration of reports submitted by states parties under article 19 of the convention: Conclusions and recommendations of the Committee against Torture: Qatar. <http://www.universalhumanrightsindex.org/documents/829/406/document/en/text.html>.
- Committee on the Rights of the Child (2005). Concluding observations: The Islamic Republic of Iran. <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/CRC.C.15.Add.243.En?Opendocument>.
- Copithorne, M. D. (1997). Situation of human rights in the Islamic Republic of Iran. <http://www.unhchr.ch/Huridocda/Huridoca.nsf/%28Symbol%29/A.52.472.En?Opendocument>.
- Dareini, A. A. (2002). Iran's senior clerics say death by stoning could be stopped.
- Ebadi, S. (2007). Practice of the stoning is in our laws: Interview with Shirin Ebadi. Translated by Shahpoour S.
- Eghtedari, G. (1997). Islamic Republic of Iran and execution for adultery and homosexuality. <http://web.archive.org/web/19980214141404/http://www.ihrwg.org/CP/cirapapr1.htm>.
- Engineer, A. A. (2007). Adultery and Qur'anic punishment. [http://www.futureislam.com/20070501/insight/asgharali/Adultery\\_and\\_Quranic\\_Punishment.asp](http://www.futureislam.com/20070501/insight/asgharali/Adultery_and_Quranic_Punishment.asp).
- Ertürk, Y. (2006). Integration of the human rights of women and a gender perspective: Violence against women. <http://www.universalhumanrightsindex.org/documents/848/822/document/en/text.html>.
- European Union: European Parliament (2008). European Parliament revolution on women's rights in Iran. <http://www.unhcr.org/refworld/docid/483ac2dc2.html>.
- Human Rights Committee (2005). Consideration of reports submitted by state parties under article 40 of the covenant: Concluding observations of the Human Rights Committee: Yemen. <http://www.universalhumanrightsindex.org/documents/825/734/document/en/text.html>.
- Ibn Adam al Kawthari, M. The legal penalty for fornication. [http://qa.sunnipath.com/issue\\_view.asp?HD=1&ID=4208&CATE=42](http://qa.sunnipath.com/issue_view.asp?HD=1&ID=4208&CATE=42).

- Imam, A. (2003). Women, Muslim laws, and human rights in Nigeria. [http://www.wilsoncenter.org/index.cfm?topic\\_id=1417&categoryid=09B6BF65-65BF-E7DC-40F567F157F96E15&fuseaction=topics.news\\_item\\_topics&news\\_id=44660](http://www.wilsoncenter.org/index.cfm?topic_id=1417&categoryid=09B6BF65-65BF-E7DC-40F567F157F96E15&fuseaction=topics.news_item_topics&news_id=44660). A Keynote Address by Dr. Ayesha Imam.
- International Federation for Human Rights (2009). Iran/death penalty: A state terror policy. [http://www.fidh.org/IMG/pdf/Rapport\\_Iran\\_final.pdf](http://www.fidh.org/IMG/pdf/Rapport_Iran_final.pdf).
- Jahangir, A. (2005). Civil and political rights, including religious intolerance: Report of the Special Rapporteur of Freedom of Religion or Belief, Asma Jahangir: Mission to Nigeria. <http://www.universalhumanrightsindex.org/documents/843/802/document/en/text.html>.
- Janis, M. and Noyes, J. (2006). International Law: Cases and Commentary.
- Javad Larijani, M. (2007). Stoning not in contrast with human rights!' Mohammad Javad Larijani press conference. <http://www.stopstoning.net/spip.php?article44>. Translated by Niloofar Shahmohammadani. Edited by Navid Vafae.
- Kar, M. (2007). A brief history of grassroots struggle to end stoning. *Stop Stoning Forever Campaign*. Translated by A. Roya.
- Mir-Hosseini, Z. (1999). *Islam and gender*. Princeton University Press.
- Montazeri, H. A. (2007). Ayatollah Hossein Ali Montazeri and stoning. <http://www.islamopediaonline.org/readFatwa.php?fid=1248>.
- Nasir, D. J. (2002). Women's human rights in secular and religious legal systems. In *Sharia and Women's Human Rights in Nigeria: Strategies for Action*, 2 day strategic conferences on Islamic Legal System and Women's Rights in Northern Nigeria, Rochview hotel, Abuja. WARD C, Lagos and WACOL, Enugu with the support of the Henrich Boll Foundation.
- Nayouf, H. (March 15, 2008). Khomeini's grandson slams stoning of adulterers. <http://www.alarabiya.net/articles/2008/03/15/46970.html#002>. Translated from Arabic by Sonia Farid.
- Nowak, M. (2008). Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. <http://daccessdds.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement>.
- Oba, A. A. (2003). Improving women's access to justice and the quality of administration of Islamic criminal justice in northern Nigeria. In Ezeilo, J. N., Ladan,

- M. T., and Afolabi-Akiyode, A., editors, *Shari'a Implementation in Nigeria: Issues Challenges on Women's Rights and Access to Justice*. Women's Aid Collective (WACOL), Enugu/Post Harcourt/Abuja and Women Advocates Research and Documentation Centre (WARDC), With support from Heinrich Boll Foundation.
- Peters, R. (1994). The Islamization of criminal law: A comparative analysis. *Die Welt des Islams*, 34(2):246–274.
- Quraishi, A. (2008). Who says Shari'a demands the stoning of women?: A description of Islamic law and constitutionalism. <http://ssrn.com/abstract=1140204>.
- Radio Farda (July 12, 2007). Ayatollah Montazeri condemns stoning. <http://www.stopstoning.net/spip.php?article4>. Translated by Manesh.
- Raesi, G. (2006). Objecting to methods of proof of guilt in stoning cases: Interview with GholamHossein Raesi by Soheila Vahdat. <http://www.stopstoning.net/spip.php?article16>. Translated by Shouka Darvishi.
- Rejali, D. (2001). Studying a practice: An inquiry into lapidation. *Critique: Journal of Middle Eastern Studies*, 10(18):67–100.
- Saanei, Y. (2004). Interview of Economist's editor-in-chief with Grand Ayatollah Saanei. <http://saanei.org/?view=02,00,03,00,0#02,01,03,6,0>.
- Sadr, S. (2006). The revival of the abandoned law of stoning. <http://www.stopstoning.net/spip.php?article11>. Translated by Meriyam.
- Sadr, S. and Vahdati, S. (2006). Gender discrimination in stoning. <http://www.stopstoning.net/spip.php?article20>.
- Salih Al-Munajjid, M. Fatwa no. 101972. <http://islamqa.com/en/ref/101972/punishment%20adultery>.
- Shirazi, A. H. D. Greater sins: The complete book. [http://www.al-islam.org/greater\\_sins\\_complete/](http://www.al-islam.org/greater_sins_complete/).
- Sidahmed, A. S. (2001). Problems in contemporary applications of Islamic criminal sanctions: The penalty for adultery in relation to women. *British Journal of Middle Eastern Studies*, pages 187–204.
- Stop Stoning Forever Campaign (2007a). Iran Judiciary confirms stoning of Jafar Kiani. <http://www.stopstoning.net/spip.php?article37>.

- Stop Stoning Forever Campaign (2007b). Iranian judge talks about stoning. <http://www.stopstoning.net/spip.php?article29>.
- Tamadonfar, M. (2001). Islam, law, and political control in contemporary Iran. *Journal for the Scientific Study of Religion*, 40(2):205–219.
- Tawfid Laden, M. (2002). Women’s rights and access to justice under the Sharia in Northern Nigeria. In *Sharia and Women’s Human Rights in Nigeria: Strategies for Action*, 2 day strategic conferences on Islamic Legal System and Women’s Rights in Northern Nigeria, Rochview hotel, Abuja. WARD C, Lagos and WA-COL, Enugu with the support of the Henrich Boll Foundation.
- Terman, R. (2007). The Stop Stoning Forever Campaign: A report. [http://stop-killing.org/files/Terman\\_stoning.pdf](http://stop-killing.org/files/Terman_stoning.pdf).
- United Nations General Assembly (1998). Situation of human rights in the Islamic Republic of Iran. <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/fc69802134b6065c8025666a004fb81e?Opendocument>.
- United Nations General Assembly (2008). Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran. [http://www.onecountry.org/e201/UN\\_SG\\_report\\_Iran\\_2008\\_N0853075.pdf](http://www.onecountry.org/e201/UN_SG_report_Iran_2008_N0853075.pdf).