



**No Justice in Justifications:
Violence against Women in the Name of
Culture, Religion, and Tradition**

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THE GLOBAL CAMPAIGN TO STOP KILLING AND STONING WOMEN
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Summary

This briefing presents a survey of culturally justified violence against women, including how violence against women is justified by 'culture', the different forms this violence can take, and recommendations for change. The SKSW Campaign is undertaking projects on 'culture', women and violence, with partners in Senegal, Afghanistan, Nigeria, Pakistan, Indonesia, Iran, and Sudan. This briefing paper will therefore give a general overview of discourses on culture, tradition, and/or religion that are used to justify, and therefore perpetuate, specific manifestations of VAW in these focal countries, as well as local methods to counter such arguments. While recognising that culture and religion can be empowering for, and central to, both individual and collective identities, this article will look at the *misuse* of these discourses for the purpose of sanctioning impunity for perpetrators and silencing dissenters. This discussion concludes with recommendations for activists, scholars, and policy makers.

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Contents

Acknowledgments and Summary	1
1 ‘Culture’ and ‘Religion’	5
1.1 The Inextricable Links between ‘Culture’ and ‘Religion’	5
1.2 Violence against Women in the Name of ‘Culture’ and ‘Religion’ . . .	8
1.3 Culturally Justified VAW in Conflict Situations	10
2 Manifestations of VAW Justified in the Name of Culture and Religion	12
2.1 ‘Honour’ Killings and Crimes	12
2.2 Female Genital Mutilation (FGM)	15
2.3 Marital Rape	17
2.4 Stoning	19
2.5 Flogging	21
2.6 Forced Marriage	23
3 Strategies for Combating ‘Cultural’ and ‘Religious’ Justified VAW	25
3.1 Religious-Based Strategies	25
3.2 Local Civil Society Interventions	28
3.3 United Nations Interventions	31
3.4 Holding States Accountable	35
4 Recommendations	37
References	44

Introduction

Violence against women (hereafter VAW) is undeniably endemic the world over, and cuts across all cultures, religions, and nations. While manifested in different forms, there is not a country on the planet where women do not face violence simply because they are women. However, regardless of the universal nature of VAW, news media and certain governmental officials still tend to limit their discussion on the prevalence of VAW to specific parts of the world as an indicator of cultural and/or religious ‘backwardness’ in those areas.¹ On the other hand, despite a noted upsurge in international agreements and efforts to combat such practices, an increasing number of so-called progressives are showing trepidation in denouncing those violations of women’s human rights justified in the name of ‘culture’ or ‘religion’. Out of a genuine desire to respect world diversity and multiculturalism, many in the international community and particularly in the ‘West’ are relaxing the same human rights standards they wish to promote and are excusing or minimising VAW if it is touted as an ‘authentic’ cultural, religious, or traditional practice.

But are these practices really part of an ‘authentic’ cultural tapestry? Who is speaking for these ‘cultures’? Whose interests do they represent? Which cultures or cultural practices are at stake? And where are the voices of women themselves when it comes to cultural and religiously justified VAW?

This briefing presents a survey of culturally justified violence against women, including how violence against women is justified by ‘culture’, the different forms this violence can take, and recommendations for change. Since 2007, the SKSW Campaign² has worked to combat culturally justified VAW in alliance with existing movements by facilitating new sister campaigns, presenting analytical studies, and documenting cases of violence against women excused in the name of ‘culture’, ‘religion’ and ‘tradition’. The intersection of women, culture, and violence is a topic worthy of many volumes; however, due to space constraints, the issues of VAW and culture will be addressed within the parameters of the broader

¹For example, UN Secretary-General’s In-depth Study on All Forms of Violence Against Women (2006); UN Resolution 143 on Intensification of efforts to eliminate all forms of violence against women (2007); UN Secretary-General’s Campaign to End Violence Against Women (2008).

²See www.stop-killing.org Date of Access: December 2009.

‘Women Reclaiming and Redefining Cultures: Asserting Rights over Body, Self and Public Spaces’ (WRRC) programme, of which this study a part. This three-year programme investigates issues surrounding women and culture with three main themes: gender-based violence, women’s sexuality and sexual rights, and inheritance and property laws.

The aim of the WRRC programme – jointly undertaken by the Women Living Under Muslim Laws (WLUML) international solidarity network and the Institute for Women’s Empowerment (IWE) – is to enable women to repossess and reconstruct cultural norms (including religion and tradition) to claim rights, empowering them to counter cultural/religious discourses that are used to disempower women and legitimate the violation of their bodies and rights. The SKSW campaign’s contribution to this programme is to expose the inter-connections between these three areas of concern – for example, how violence against women is systematically perpetuated by the use of ‘culture’, and how culturally legitimised violence is used to limit women’s rights to self-determination by controlling their bodies and sexuality. To this end, the SKSW Campaign is undertaking projects on ‘culture’, women and violence, with partners in Senegal, Afghanistan, Nigeria, Pakistan, Indonesia, Iran, and Sudan. This briefing paper will therefore give a general overview of discourses on culture, tradition, and/or religion that are used to justify, and therefore perpetuate, specific manifestations of VAW in these focal countries, as well as local methods to counter such arguments. While recognising that culture and religion can be empowering for, and central to, both individual and collective identities, this article will look at the *misuse* of these discourses for the purpose of sanctioning impunity for perpetrators and silencing dissenters.

It must be noted here that although this briefing paper will examine primarily these seven focal countries, VAW justified in the name of ‘culture’ and ‘religion’ is by no means limited to such contexts, or to Muslim majority nations. There are numerous accounts of this phenomenon occurring across various regions, cultures, and religions in the world. However, as the WRRC focal countries are Muslim-majority contexts, Muslim practices will be under discussion here as it pertains to culture, religion, and law in these communities.

1 ‘Culture’ and ‘Religion’

1.1 The Inextricable Links between ‘Culture’ and ‘Religion’

Aspects of culture are evident in everything we do in our daily lives – from speaking to eating to clothing – yet defining the term ‘culture’ is no easy task; it is an abstract and ever evolving concept. Yakin Ertürk, former UN Special Rapporteur on violence against women, its causes and consequences, stated that:

Culture can be defined as the set of shared spiritual, material, intellectual and emotional features of human experience that is created and constructed with social praxis. As such, culture is intimately connected with the diverse ways in which social groups produce their daily existence economically, socially and politically. It therefore embraces both the commonly held meanings that allow for the continuation of everyday practices as well as the competing meanings that galvanize change over time (Ertürk, 2007, pg. 8).

As is clear from this definition, ‘culture’ is deeply intertwined with experience and modes of operation. It is therefore not a fixed or immutable entity but fluid and context specific based on variables such as space, time, location, gender, class, etc. Even within one cultural context there exist many competing cultural perceptions. Therefore what is often seen as a singular culture is, in fact, the dominant (or hegemonic) expression of that culture (Farahani, 2007; Shaheed, 2008). In other words, what is often articulated as the ‘authentic culture’ – especially when it comes to the issue of women’s rights and VAW – is, in fact, just the presentation of the hegemonic culture, and women are seen as the symbols of that ‘culture’.

Likewise, a very similar argument can be made on the issue of religion, which is an equally problematic concept to define, due to religion’s “nature being so complex and varied that what can be hoped for at most is the recognition of its traits or common denominators” (Alatas, 1977, pg. 214). What can be said with relative certainty is that:

in all societies, religion bears the distinctive mark of the regional cul-

ture and the traditions which preceded it or were subsequently absorbed by it. Every religion necessarily remains imprinted in a cultural setting, just as each culture necessarily has a religious dimension... It would therefore seem difficult... to separate religion from culture or from custom and tradition since, to some extent, religion is also a tradition, custom, or legacy handed down (Amor, 2009, pg. 8).

It cannot be disregarded that in religion there are also aspects of the supernatural – i.e. a belief in and fear of an otherworldly power that shapes people’s lived behaviours.

However, for the purposes of this study, the inextricable link between religion and culture is the imperative (Amor, 2009). The same process that characterizes culture – hegemonic articulations masquerading as the *only* authentic interpretations – can be applied to religion. The characteristics of a particular religion that are presented as the most ‘inherent’ or ‘authentic’ are, in reality, simply the traits that are emphasised by the dominant discourse at a particular time and place. Dissenting, minority, or marginal interpretations will often have substantially different readings of a religion’s ‘essential’ qualities.

In terms of the relationship between culture and religion, we conclude from the above discussion that culture and religion provide parallel frameworks to justify VAW, “inasmuch as religion, culture, and tradition are [malleable] constructs which can be defined, used and (re)interpreted depending on the interests involved” (Wytttenbach, 2008, pg. 229). The relationship between cultural and religious justifications for VAW is much less about their conceptual intersections – although they are clearly enmeshed – and more to do with the fact that both are equally susceptible to patriarchal interpretations. Those individuals who are in positions of power, as a means of maintaining that power, define both the dominant culture and interpretation of a religion (Shaheed, 2008). Thus is nearly impossible to talk about a culture or religion when it comes to VAW without talking about power relations within that particular society.

Furthermore, although argument based on culture might appear to carry less weight than those based on religion (religion being associated with the divine and therefore sacred and unquestionable, whereas culture is ‘man-made’), historical

experience, particularly of the colonial legacy and foreign interference, has pushed culture into the realm of the seemingly unquestionable. As most of the contexts under discussion here have experienced some manifestations of interference from the ‘West’ (whether it be formal colonisation or political/cultural/economic coercion) arguments that stress the need to ‘maintain our authentic culture in the face of foreign influences’ are both powerful and ubiquitous. The strict West/East dichotomy that promoted cultural essentialism provided the academic and moral justification for colonialism, which resulted in a kind of internalised essentialism on the part of the colonised. This dichotomy was articulated in anti-colonial movements, that further solidified the concrete barriers between essential aspects of ‘cultures’ (Narayan, 2004). As Radhika Coomaraswamy, the former Special Rapporteur on Violence against Women, stated in 2005 when discussing violent ‘customary’ practices in South Asia:

In response to the international critique of our practices, we have had mixed local responses. One is to say that... the practices can be justified by the internal logic of our cultural systems and that any attempt to critique and eradicate such customs is part of the arrogant legacy of colonialism and westernization.

However, she continues by saying: “The charge of westernization is also disingenuous since many of these societies are rapidly globalizing and the question of culture seems primarily relevant only to the subordinate position of women” Coomaraswamy (2005). It must be noted that deciding what is ‘Western’ and what is ‘indigenous’ is a highly selective, and inconsistent, process. In the words of one observer:

I just cannot accept it. I have seen many of these men. They cut and paste as they wish and, of course, for their own benefit, without showing respect for free choice for both men and women (Farahani, 2007, pg. 269).

1.2 Violence against Women in the Name of ‘Culture’ and ‘Religion’

The United Nations Declaration on the Elimination of Violence against Women (1993) defines VAW as:

any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private.³

Although international human rights laws have progressively become more explicit in stating that culture cannot be invoked to justify human rights violations, those who commit VAW (in both the public and private spheres) in the name of ‘culture’ often escape with lesser punishments or even impunity for their crimes. Conversely, women who transgress cultural norms (sexual and ‘moral’) are more likely to be punished through violent means than men. The misuse of cultural or religious arguments as a means of legitimising this violence is the focus of this discussion the SKSW campaign. As stated above, these concepts can be used as tools to obtain or maintain power, thereby entering the political realm, and are often invoked when it comes to justifying the subordinate status of women:

Today, with the advent and propagation of political Islam and various forms of religious extremism, stoning and other forms of cruel, inhuman, and degrading treatment of women have been increasing in many parts of the world...(T)he trend towards political Islam is accompanied by a disturbing rise in the control of women’s bodies in the name of religion and culture.⁴

In certain contexts, state and non-state justice systems are dominated by predominantly conservative⁵ forces who claim that their interpretation of culture,

³http://www.unifem.org/attachments/products/213_chapter01.pdf. Date of Access: December 2009.

⁴SKSW Concept Note: <http://www.stop-stoning.org/concept> Date of Access: December 2009.

⁵Conservative here does not just refer to those forces who reject change or are ‘traditional’, but also those with particular political agendas aimed at enforcing a closed, hegemonic, and/or

tradition and/or religion is the ‘authentic’ one, often imposing narrow and rigid views of religious and customary laws. In these contexts, incidents of gender-based discrimination and violence justified in the name of their ‘culture’ or ‘religion’ are common.⁶

As has been observed by numerous scholars and women’s rights advocates, women are often assigned the role of the bearers of culture, embodying ‘tradition’ and ‘cultural authenticity’.⁷ Women’s bodies, therefore, have become the battleground for arguments of cultural relativism.⁸ Although many scholars, activists, and observers have proved otherwise,⁹ many people still believe that the international human rights framework is solely applicable to ‘Western’ nations and therefore not relevant to ‘indigenous’ cultures. Therefore, when attempts to justify VAW invoke culture or religion, the international human rights regime (which also bears colonial memories) has shown trepidation in its criticism of gender-based violence. “Despite these international norms and standards, the tension between universal human rights and cultural relativism is played out in the everyday lives of millions of women throughout the globe” (Coomaraswamy, 2003, pg. 7). The common denominator in the use of ‘culture’ to justify women’s subordinate status, and violence against them, is the instrumentalisation of sacred concepts and suppressive view of culture, religion, or politics that reject any kind of plurality or dissent. This ‘conservatism’ may not hark back to an authentic historical time at all, but can in turn be another form of reinterpretation.

⁶As the Report of the Secretary General stated in the “In-depth study on all forms of violence against women”: “Cultural justifications for restricting women’s human rights have been asserted by some states and by social groups within many countries claiming to defend cultural tradition. These defences are generally voiced by political leaders or traditional authorities, not by those whose rights are actually affected” (United Nations Secretary General, 2006).

⁷See, for example, Kandiyoti (1991); Coomaraswamy (2003); Ertürk (2007).

⁸“Cultural relativism is the belief that no universal legal or moral standard exists against which human practices can be judged. It is argued that the human rights discourse is not universal but a product of the European enlightenment and its particular cultural development, and thus a cultural imposition of one part of the globe upon another” (Coomaraswamy, 2003).

⁹For example, Mamdani (1993) and Hountondji (1988) argue that the conception of rights stem from experiences of oppression, which have occurred everywhere. Therefore, human rights cannot only be located in the philosophies of the European Enlightenment, but in fact can be found in various cultural contexts. “Nothing sensible or pertinent can be said about human rights if one ignores this daily, universal fact of revolt. Only those aware of rights infringed and dignity flouted can be indignant. Only by remaining silent about this commonly experienced fact, or by considerably reducing its implications, is it possible to make human rights an invention of Western culture” (Hountondji, 1988, pg. 320).

human rights instruments to maintain patriarchal gender relations.

Culturally justified VAW is generally considered to fall under the domain of the private sphere – i.e. in the family as well as in the community. But, as [Cockburn \(2004\)](#) and [Moser \(2001\)](#) put forward, gender-based violence is a continuum; violence that starts in the home is spread and connected to violence permeating the street, community, country, and across continents. These spaces are inextricably linked, meaning that one cannot discount the role of the community or state in violence that occurs in the home. It is the culture of impunity for acts of VAW that must be addressed. As will be made clear in the next section, it is not only on an individual level that manifestations of culturally justified VAW occur. Rather, the dominance of hegemonic patriarchal culture engenders and promotes violence, particularly against women, as acceptable across all societal levels. ¹⁰

1.3 Culturally Justified VAW in Conflict Situations

While the subject of violence in times of conflict is too broad to be thoroughly addressed here, it is important to note that culturally justified VAW occurs during both ‘peace times’ and time of conflict. Sexual violence against women has always existed during times of conflict, but only recently have attempts been made by the international community to document this phenomenon and analyse its causes and consequences, and provide formal redress at the international level. Women experience all forms of physical, sexual and psychological violence before, during, and after periods of conflicts, perpetrated by both state and non-state actors. Sexual violence includes rape, sexual slavery, sexual exploitation, involuntary disappearance, arbitrary detention, forced marriage, forced prostitution, forced abortion, forced pregnancy and forced sterilization. VAW is perpetrated by both state military forces and non-state armed groups, motivated by military and political objectives to use such violence: as deliberate tactics of war, as a form of torture, to inflict injury, to extract information, to degrade and intimidate, and to destroy communities ([Bauer and Hélie, 2006](#); [Chilendi, 2008](#)). In addition women are often forced to leave their homes during conflict as refugees or live in camps

¹⁰“An enabling environment for marital violence is sustained through the collusion of state and religious ideologies, and hegemonic cultural construction of sexuality, gender and honour” ([Idrus and Bennet, 2003](#), pg. 38).

for displaced persons. The repercussions of conflict continue long after the open violence has ended with devastating impacts, particularly an increased tolerance for and expectation of violence within communities, including amongst women and girls.

Case: Afghanistan

Thirty-two years (and counting) of conflict in Afghanistan has almost completely destroyed the country's infrastructure and rendered the formal judicial structures nearly non-existent in large parts of the country. The result is the virtual absence of the rule of law and a climate in which armed groups and government soldiers can perpetrate acts of VAW with impunity.¹¹ Before the United States and Coalition invasion in 2001, the Taliban had imposed an extreme form of Shari'a law, which included the sanctioning of 'honour' crimes and stoning for sexual 'offences'. Since the invasion – partly justified on protecting and promoting women's rights – sexual violence against women is no less common. Women suffer significantly from the deteriorated security situation, which has inhibited women's sense of safety in leaving their homes without threat of sexual harassment and violence. There are numerous cases in which rapes have been ordered by warlords who are rarely brought to justice, as the government rarely prosecutes perpetrators, and women victims who do come forward risk being punished for sexual 'misconduct' (*zina*).¹² Despite the work over the past few years to rebuild Afghanistan's legal systems, the rule of law holds little sway beyond Kabul, leaving women completely unprotected. In place of a formal justice system, informal tribal mechanisms, or *jirgas*, are commonly utilised. Unaccountable and lacking formal legal authority, *jirgas* commonly prescribe forced marriage and exchanging women as means of settling interfamily disputes.

¹¹See "Afghanistan: No one listens to us and no one treats us as human beings. Justice denied to women" by Amnesty International. <http://www.web.amnesty.org/library/index/engasa110232003>.

¹²Please see: " 'We Have the Promises of the World': Women's Rights in Afghanistan" (Human Rights Watch 2009) for a detailed discussion on VAW in conflict zones with reference to Afghanistan.

2 Manifestations of VAW Justified in the Name of Culture and Religion

The following section briefly explains some of the most prevalent forms of VAW justified in the name of ‘culture’ or ‘religion’ in the seven focal countries of the SKSW Campaign. It is important to emphasise here that multiple forms of culturally justified VAW exist in one country. But, due to research and space limitations, only one or two specific case examples of each form of violence are explored, based on documentation by women and civil society groups working within the particular country.

2.1 ‘Honour’ Killings and Crimes

‘Honour’ killings¹³ involve the murder or attempted murder, often of a woman,¹⁴ on the grounds of preserving or regaining family or communal ‘honour’. ‘Honour’ crimes involve a similar process, but may not go so far as murder, including physical or mental abuse, exile, or forced marriage. As the Special Rapporteur on violence against women defines it:

Honour is defined in terms of women’s assigned sexual and familial roles as dictated by traditional family ideology. Thus, adultery, premarital relationships (which may or may not include sexual relations) rape and falling in love with an ‘inappropriate’ person many constitute violations of family honour (Coomaraswamy, 1999).

¹³It must be noted that the term ‘honour’ killings/crimes is highly contested. As Rochelle Terman points out, the term is often misused (and abused) by the media and public discourses, which acts to further marginalise Muslim and immigrant groups (Terman, 2010). Welchman and Hossain caution that “(t)he definition of ‘crimes of honour’ is by no means straightforward and the imprecision and ‘exoticisation’ (in particular in the West) of its use are among the reasons for caution in use of the phrase” (Welchman and Hossain, 2005, pg. 4). Some activists critique the focus on ‘honour’ and the de-emphasis on ‘violence’, and term these crimes instead as ‘dishonourable’ killings. The term is employed here for ease of discussion.

¹⁴It must be made clear that many men are also killed for ‘honour’, especially in Pakistan, where nearly half of all ‘honour’ killings are men.

If a woman transgresses this ‘moral’ threshold – or is perceived to have done so – her family’s honour is tarnished in the eyes of the community. In order to reinstate her family’s honour, her life may be ended and portrayed as a sacrifice. The United Nations Population Fund estimates that around 5000 women and girls are killed as a result of honour-related violence every year. Although these types of killings are most often associated with Muslim contexts, it is wrong to assume that ‘honour’ killings are solely a feature of Muslim cultures or societies. In fact, VAW along these lines has been known to occur in a variety of cultural and religious contexts – e.g. Italy and Latin America.¹⁵ Such violence (rightly classified as extrajudicial executions¹⁶) is certainly in direct opposition to numerous human rights standards and law. However, because state or non-state actors (or both) execute or sanction such violence in the name of culture or religion, ‘honour’ killings have been difficult to stop. Numerous Muslim scholars have stated that ‘honour’ killings are un-Islamic;¹⁷ nevertheless, this practice is still justified by some as ‘Islamic’ and, further, as an inherent ‘cultural’ practice.

Case: Pakistan

Pakistan provides a key case study in the discussion on ‘honour’ killings, as it has one of the highest incidence rates in the world. The social sanctioning of such acts (in the province of Sindh, called *karo kari*, or ‘black man, black woman’) is demonstrated by the fact that perpetrators of ‘honour’ killings are rarely, if ever, brought to justice for their actions. According to some tribal *jirga*, or councils,¹⁸

¹⁵Please see UNICAMP Center for Gender Studies (2006) for more information on crimes of ‘honour’ in Latin and South America.

¹⁶As defined by Asma Jahangir (1999), the former Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. See http://www.extrajudicialexecutions.org/reports/E_CN_4_1999_39.pdf. Date of Access: December 2009.

¹⁷For example, Sheikh Muhammad Ali Al-Hanooti, Sheikh Ahmad Kutty, and Sheikh ‘Atiyyah Saqr. See: http://www.islamonline.net/servlet/Satellite?pagename=IslamOnline-English-Ask_Scholar/FatwaE/FatwaE&cid=1119503543392 (Date of Access: December 2009), who state that there is no such concept of ‘honour killings’ in Islam. Islam does not permit such acts and, in fact, forbids them.

¹⁸A traditional decision-making committee of male elders who, as opposed to the state law or police, often hear criminal cases and make rulings in most rural areas. “The objective of the *jirga* ruling is to restore communal harmony in accordance with established conventional norms, which often rest on patriarchal hierarchies that are discriminatory with regard to women and youth” (Ertürk, 2003, pg. 6).

killings a woman in the name of ‘honour’ is not a crime at all; it is the perpetrator and his family who are considered the aggrieved party. The women’s movement of Pakistan spent over two decades campaigning against the *Hudud* Ordinances, laws allegedly based on Islam that sanctioned the criminalisation of all forms of extra-marital sexuality, punishing both consensual sex and survivors of rape. Since the 2006 enactment of the Women’s Protection Bill, the Pakistani judicial system, while not explicitly condoning ‘honour’ killings, has remained sympathetic to the perpetrators of such crimes. The process of prosecuting committers of ‘honour’ crimes is incredibly arduous and more often than not leads to acquittals or lenient sentences (Hussain, 2006). In 2005, an Honour Killings Bill was passed into law, marking the first piece of legislation that openly acknowledged ‘honour’ killings and significantly raised the bar for punishments of such crimes. However, because the bill failed to address or amend the *Qiyas* and *Diyat* ordinances, which allow the perpetrator of ‘honour’ crimes to be forgiven by the victim or her family, guilty parties could avoid criminal prosecution.¹⁹ And because the family of the victim is, often times, also the perpetrator(s), these ordinances, based on religious laws, facilitate impunity for honour-related violence despite other progresses in the legal framework.

Case: Iran

Although they take a different form, ‘honour’ crimes and ‘honour’ related violence are also pervasive in the Iran, often taking the form of forced self-immolation.²⁰ While these deaths are made to appear like suicides, they are often staged incidents in which women are forced by their family members to set themselves ablaze (Ertürk, 2006). These crimes are particularly pervasive in the Ilam and Khuzestan provinces. In 2003, there were 45 ‘honour’ killings in one tribe alone, all of them under the age of twenty. In 2001, a total of 565 women lost their lives in ‘honour’ related crimes, of which 367 were reportedly staged as self-immolation cases (Ertürk, 2006). Unfortunately for these women, the so-called ‘Islamic’ laws of Iran actually sanction such killings. Article 630 of the Islamic Penal Code of

¹⁹Please see, among many others, Hussain (2006); Irfan (2008); Khudsen (2004) for a more detailed discussion on tribal laws.

²⁰This is also a prevalent form of ‘honour’ killing in Afghanistan. See Ertürk (2003).

Iran recognises a man's right to kill his wife and her cohort if he witnesses her willingly commit *zina* (adultery);²¹ if she appears to be unwilling in the act, then her husband is only legally sanctioned to kill the offending man (Zuhur, 2009). While 'honour' is not explicitly mentioned, notions of honour and shame are clearly being alluded to in these laws.

2.2 Female Genital Mutilation (FGM)

According to the World Health Organisation (WHO), FGM is defined as comprising "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for cultural or other non-therapeutic reasons." As these procedures can vary significantly according to regional, cultural, or religious contexts, the WHO has outlined a four-fold classification system:

1. **Clitoridectomy:** partial or total removal of the clitoris and, in rare instances, the prepuce (the fold of skin surrounding the clitoris) as well.
2. **Excision:** partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora.
3. **Infibulation:** narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner, and sometimes outer, labia, with or without removal of the clitoris.
4. **Other:** all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.²²

FGM is often touted as a 'traditional' and 'cultural' practice. Less often it is justified as having 'Islamic' foundations. Even though many Muslim scholars (even

²¹Meaning, adultery. See Ziba Mir Hosseini; Terman and Fijabi's briefs for more information on *zina*.

²²See <http://www.who.int/mediacentre/factsheets/fs241/en/>. Date of Access: December 2009.

those who are not otherwise seen as ‘progressive’) have condemned FGM as un-Islamic,²³ there still exists a minority of Muslim clerics and believers who preach the ‘Islamic’ nature of FGM and work for its continuation.²⁴ The underlying reality is that FGM lacks basis in any major religious text, and is widely practiced by persons of varying faith or no faith (Amor, 2009), serving primarily as a mechanisms by which to control women’s sexuality:

FGM is also a result of the patriarchal power structures which legitimize the need to control women’s lives. It arises from the stereotypical perception of women as the principal guardians of sexual morality, but with uncontrolled sexual urges. FGM reduces a woman’s desire for sex, reduces the chances of sex outside marriage and thus promotes virginity (Coomaraswamy, 2003, 10).

In addition, the challenges of working to change attitudes concerning FGM are exacerbated when those who perform and perpetuate FGM are often women themselves.

Case: Sudan

Sudan demonstrates a case in point for the above discussion (although it should be noted that these practices also occur in Nigeria, Senegal and Indonesia – amongst other countries.) The World Organisation Against Torture (OMCT) estimated in 2002 that 89.2% of the women and girls in Sudan had endured FGM and the Coalition for Sexual and Bodily Rights in Muslim Societies (CSBR) reported that in 2006 FGM was still practiced on 69% of girls. Although the government claims to have taken actions to end the practice of FGM by outlawing all forms of FGM (in

²³Gamal Al Banna has stated with regards to FGM: “It didn’t exist in Islamic history and those who argue it is Islamic or part of the Shariah are wrong... Religion does not subscribe to this kind of treatment that can cause death and other horrible results. It is un-Islamic.” Al Azhar, a leading Sunni religious authority, has stated that FGM is “harmful, have no basis in core Islamic though and should not be practiced.” See <http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1240247808&archive=>. Date of Access: December 2009.

²⁴Please see debate of Muslim scholars on the issue of FGM here: http://www.fgmnetwork.org/gonews.php?subaction=showfull&id=1173011408&archive=&start_from. Date of Access: December 2009.

1946 and 1974) except *sunna*,²⁵ or Type 1, form of FGM was still permitted) it is clear that the legislation is rhetorical. For instance, the 1991 Penal Code makes no mention of FGM, there have been no arrests or prosecutions of practitioners, and many groups continue to advocate openly for FGM in Sudan.²⁶ Also, in 2009, the Sudanese Council of Ministers rejected Article 13 in the draft of a new Child Act that would have criminalised all forms of FGM (including Type 1). This decision was justified by the Islamic Fiqh Academy of Sudan that argues that some forms of FGM are ‘Islamic’.²⁷

2.3 Marital Rape

In most countries in the world, including but not limited to the SKSW focal countries, marital rape, or ‘conjugal rape’ is not legislated as a crime.²⁸ In countless homes the world over, ‘cultural’ norms that function on patriarchal codes of conduct regulate women’s sexuality within a marriage and emphasise their duty to obey their husbands’ sexual demands. Furthermore, “(t)he emphasis of some religious institutions on... the sinfulness of women’s refusal to have sexual intercourse with their husbands, perpetuate the problem of marital rape” (Kennedy Bergen, 1999, pg. 6-7). Women’s sexuality is often seen as the property of their husbands, and sexual intercourse does not depend on the explicit consent of the wife; marriage is an institution that dictates wives to serve their husbands’ sexual needs.²⁹ In Muslim contexts, many argue that the institution of marriage is interpreted as a contract that provides for the financial maintenance of a woman in exchange for

²⁵ *Sunna* refers to the removal of the hood and part of the clitoris. For more information, see: <http://www.e-joussour.net/en/node/3705> and <http://www.fgmnetwork.org/intro/fgmintro.htm>. Date of Access: December 2009.

²⁶For instance, at a workshop organised by the Female Student Centre of Omdurman Islamic University and the Ministry of Religious Affairs and Endowment in 2002, it was recommended that FGM be legalised; campaigns emphasising the importance of FGM to society be conducted; and greater support be given to the training of excisors (Benniger-Budel and Bourke-Martignoni, 2003).

²⁷Information provided by Salmamah Women’s Resource Centre.

²⁸Marital rape occurs in all the focal countries of this study, and has only recently been addressed in the legal framework of some ‘Western’ states.

²⁹“Presumption of women’s sexual consent provides the social justification for marital rape. Society condones this violence through the normative construction of marriage as a sexual contract that ensures men the exclusive right to their wives’ bodies” (Idrus and Bennet, 2003, pg. 50).

her obedience (*ta'a*), including sexual availability. Although statistics are hard to come by, marital rape is an undeniably widespread and unregulated form of culturally justified VAW.

Case: Indonesia

Marital rape is not considered a crime under Indonesian Criminal Code, which states that rape can only take place between individuals who are not married to each other.³⁰ Furthermore, the new *Qanun Jinayah* (Islamic Criminal Legal Code) passed in Aceh in 2009 legalises rape within marriage, as part of a broader criminalisation of consensual sexual relations outside marriage, including homosexuality and adultery.³¹ These laws are often justified using cultural or religious arguments:

Women's subordinate position in religious and state ideology is legitimised by invoking the doctrine of *kodrat* (referring to women's 'nature' or destiny) to naturalise gender inequality. The colloquialism *ikut suami* ('follow the husband') is frequently invoked in popular interpretations of state and religious rhetoric that seek to instruct women on appropriate gender roles and relations, whilst attempting to normalise women's subservience (Idrus and Bennet, 2003, pg. 44).

The state chooses not to challenge patriarchal religious and cultural discourses and, as a result, the issue of marital rape remains in the domain of the dominant religious ideology and law alone, which views a woman's sexual refusal as a sin (Idrus and Bennet, 2003). Although there exists many progressive interpretations of Shari'a, or Muslim laws, dealing with marital sexual relations,³² the hegemonic interpretation in Indonesia deems that according to Islam, marital rape is an impossibility. A woman's human right to bodily integrity is not recognized.

³⁰This is the case of many countries – rape is by definition applicable only to unmarried parties.

³¹For more information, see: <http://wluml.org/node/5796>. Date of Access: December 2009.

³²See Mas'udi (1997) who argues that it is a sin for a man to force himself upon his wife because he is violating *mu'asyarah bil ma'ruf*, which deems that Muslims must take care of anyone under their protection.

Case: Afghanistan

In Afghanistan, marital rape has come to be a socially accepted norm (Ertürk, 2003). The Shi'a Afghan family code, passed into law by President Karzai last year (2009), very nearly legalised marital rape. Although the final version of the bill omitted the original phrasing – which stated that a wife was required to have sex with her husband at least once every four days – the bill still maintains that “if the wife without any Shari'a-approved and legal excuses refuses to perform legal and Shari'a-approved marital obligations, she shall not be entitled to maintenance” (Article 162).³³ The bill, drafted by hard-line and influential Shi'a clerics in Parliament, was justified as being ‘true to the dictates of Islam.’ President Karzai ordered the law to be revised following international outcry that was sparked in April 2009 in response to the original version, as well as the harsh condemnation by Afghan women who took the streets to protest the bill. However, the revised law still refers to a woman's ‘sexual duties’ as a requisite to her maintenance (Human Rights Watch, 2009).³⁴

2.4 Stoning

Stoning³⁵ is a method of capital punishment in which a group of people throw stones or rocks at the person they wish to execute. Today, stoning is most commonly associated with Muslim contexts as a punishment for *zina* (adultery), even though there is no reference to stoning in the Qur'an.³⁶ Upon the supposition that stoning is an ‘Islamically’ sanctioned form of punishment, it is practiced (either by state or non-state actors) in Afghanistan, Iran, Nigeria, Pakistan, Sudan, and

³³Translation obtained from the Canadian Embassy. 2009. Shiite Personal Status Law. Kabul. p. 49 (unofficial translation).

³⁴For more information, see <http://wluml.org/node/5465>. Date of Access: December 2009.

³⁵Also called lapidation. Please see Terman and Fijabi's brief, “Stoning is not Our Culture: A Comparative Analysis of Human Rights and Religious Discourses in Iran and Nigeria”, for a more comprehensive discussion on stoning.

³⁶The Qur'an only speaks to flogging, or whipping, and exile as the appropriate punishment for *zina*. Some claim that this punishment is prescribed by Islam as based on particular hadith. Please see Ziba Mir-Hosseini's brief for a more detailed explanation of *zina* ordinances, and Terman & Fijabi's (pg. 8-14) for a more comprehensive analysis of religious arguments on stoning.

Somalia.³⁷ A recent bill in Aceh Province in Indonesia prescribes stoning and is being debated by lawmakers at time of writing (2009).

Case: Iran

Iran has received the much international attention as the nation with the most executions by stoning, as well as a strong grassroots movement against it. Stoning is codified in the Islamic Penal Code of Iran as a punishment for adultery, meaning extra-marital sexual relations. (Fornication, or pre-marital sexual relations is also illegal but is not punished by stoning.) According to the mandates of the law, a woman is buried in the ground up to her shoulders and then pelted with stones – not too big and not too small, but a size that guarantees a gradual death – by a surrounding crowd (Article 102). The Islamic Penal Code is also very explicit about the evidentiary requirements as it pertains to stoning sentences. Adultery is very difficult to prove by hard evidence – four eyewitnesses must testify or the accused must confess four separate times – but this burden of proof is rarely followed. Article 105 of the Islamic Penal Code allows a judge to exert discretion as it pertains to adultery, meaning that a judge can act on his own ‘knowledge’ (or ‘gut feeling’) instead of the evidence presented (Sadr, 2006).

Due to immense international pressure, the Iranian Head of the Judiciary issued a moratorium on the practice of stoning in 2002. However, because the moratorium was never enforced, judges were able to issue stoning according to their own interpretation of the law. In addition, since the election of Mahmoud Ahmadinejad in 2005, there has been a resurgence of stoning due to an increasingly fundamentalist political landscape. The Islamic Penal Code prescribes stoning as punishment for both men and women; however, given that the Family Code privileges men with the freedom to have sex outside of a permanent, monogamous marriage and obtain an easy divorce, while denying women the same option, women are at a higher risk of being convicted of adultery and receiving this punishment.³⁸ Stoning continues to be enshrined in the Iranian law and attributed to Islam, violating numerous human rights norms (including the fundamental right to life

³⁷Please see Terman & Fijabi’s brief (pg. 22-28) for a detailed case study on Iran and Nigeria.

³⁸See Terman and Fijabi for an explanation of how the Iranian Family Code privileges men and how this affects adultery laws.

and freedom from torture), despite there being no mention of it in the Qur'an and to the dismay of many high-ranking religious clerics who oppose the practice.³⁹

2.5 Flogging

Flogging (whipping, lashing, caning) is closely related to stoning, as it, too, is a corporal punishment for adultery and attributed to Islam.⁴⁰ This punishment is instituted in the Shari'a laws of Afghanistan, Indonesia, Iran, Nigeria, Pakistan, and Sudan. The Qur'an prescribes one hundred lashes for the punishment for *zina*, including adultery and fornication, although in its prescription, flogging should be carried out so as not to cause much harm. However, in several of the contexts under discussion here, flogging is also executed in cases of 'immoral behaviour' – for example in Iran, Indonesia, Sudan, and Nigeria. These laws are clearly meant to control women's sexuality.⁴¹ It must be noted that men too are flogged for fornication; however, women are particularly at risk of such punishments due to discriminatory laws that put women at greater risk of being convicted of adultery.

Case: Sudan

In the Sudan, according to article 146 of the 1991 Criminal Act, those convicted of fornication, while unmarried, should be punished with one hundred lashes. It is not uncommon for victims of rape to be subjected to this penalty, as rape is incredibly difficult to prove under the Sudanese laws.⁴² Oftentimes, a woman who has been raped, instead of being protected by the state as the victim of a violent

³⁹See for example Grand Ayatollah Montazeri's condemnation of stoning here: <http://www.stopstoning.net/spip.php?article4>. Date of Access: December 2009. See Terman and Fijabi for more instances of religious scholars opposing stoning in Iran.

⁴⁰Although, in this case, there is actually mention of flogging in the Qur'an.

⁴¹"Women are disproportionately charged with *hudud* crimes related to sexual and moral conduct, such as adultery, and suffer serious consequences in this regard... (W)hen women are charged with these crimes, they are often unable to refute the charge because of additional discriminatory laws and procedures governing the administration of justice" (Ertürk, 2006, pg. 15).

⁴²This is true for many nations implementing *hudud* ordinances. Rape is often analogous to adultery with regards to proof: four eyewitnesses are needed or the rapist must confess to the crime. If neither of this happens, the victim is often charged with fornication via confession or bearer or false witness to *zina*.

crime, is charged with a *zina* offence and flogged.⁴³ This occurrence suggests that the criminalisation of sexual acts, and the call for physical punishment, takes precedent over the protection of women against rape.

Furthermore, the Law of Public Order (1996) – which changed to the Society Safety Code in 2009 – lists those offences ascribed to ‘Islamic propriety’ for which whipping is the penalty and is only applicable to women and girls. These include having uncovered hair, wearing trousers or being found in the company of a stranger in public. In these cases, women are rounded up by ‘morality police’ and summarily whipped, without being given the chance to properly defend themselves against the charge (Benniger-Budel and Bourke-Martignoni, 2003). These instances have only recently been brought to public attention as a result of the 2009 case of Lubna Ahmed Hussain, who widely publicised her prosecution and potential flogging for a ‘dress code violation’.⁴⁴

Case: Indonesia

Since 2006 the Muslim Village Project – implemented by the Preparation Committee for the Implementation of Shariah Islam (KPPSI) – has been under way in the Bulukumba regency of South Sulawesi, Indonesia. Under the guise of religion, this project encourages village leaders to implement harsher laws regulating women’s ‘moral behaviour’ – e.g. the passing of *hukum cambuk* (whipping law), which dictates whipping punishments for *zina* offences, along with several other provisions that control women’s sexuality and movement. Furthermore,

Under these regulations, women are vulnerable to prosecution with observance of the principle of presumption of innocence in the judicial process. In addition, the women themselves... were not even informed about the formulation of these regional and village regulations

⁴³“Sudanese law places the onus on the woman to prove that she has in fact been a victim of rape, whilst simultaneously defining extramarital pregnancy as ‘confession’ of *zina* (adultery), and as irrefutable evidence. This has led to the prosecution of rape victims for adultery in cases where there is not the required number of witnesses to confirm the rape” (Sudan Organization Against Torture (SOAT, 2006, pg. 65).

⁴⁴Please see the WLUML and Amnesty International submission to the Committee on the Status of Women for more information on this case: <http://www.wlum1.org/node/5517>. Date of Access: December 2009.

(*Women's Empowerment in Muslim Contexts (WEMC) and Solidaritas Perempuan*, 2009, pg. 2).

Not only do these regulations condone and enable VAW in the name of religion, they also entrap those most vulnerable (women), giving no advance warning of their implementation. In response, local women's groups in Bulukumba (in association with WEMC and Solidaritas Perempuan) have set up women's schools in which literacy, public speaking, and issues of gender equality (among other things) are taught; assisting women in articulating their rights and equipping them with the skills to participate in decision-making apparatuses (*Women's Empowerment in Muslim Contexts (WEMC) and Solidaritas Perempuan*, 2009).

2.6 Forced Marriage

According to the Working Group on Forced Marriage's "A Choice by Right," a forced marriage is "a marriage conducted without the valid consent of both parties, where duress is a factor. It is a violation of internationally recognised human rights standards⁴⁵ and cannot be justified on religious or cultural grounds" (*Working Group on Forced Marriage*, 2000, pg. 6).⁴⁶ The Southall Black Sisters, an advocacy organization based in the United Kingdom, further reiterates that forced marriage is "primarily about the control of female sexuality and autonomy. It is their 'sexual purity' that reflects on the honour of the family" (*Southall Black Sisters*, 2001, pg. 5). The practice of early/forced marriage often leads to other

⁴⁵Article 16 of the Convention on the Elimination of all Forms of Violence against Women (CEDAW) states: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) the same right to enter into marriage; (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent." See full text at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>. Date of Access: December 2009.

⁴⁶It is important to point out that forced marriages are different from arranged marriages. As *Thomas (2009)* points out: "In forced marriages, one or more parties lose their right to choose their partner. In arranged marriages, the parents and families play a leading role in arranging the marriage, but the ultimate decision on whether to marry lies with the individuals getting married. Many regard arranged marriages as a well established cultural tradition that continues to successfully exist within many communities, and so it is important that a clear distinction be drawn between forced and arranged marriages." Of course, all forced marriages are arranged somehow, but not all arranged marriages are forced.

forms of VAW in the household.

Forced marriage can take place for a variety of reasons, including: economic incentives, as girls are exchanged as wives for goods or money; conflict settlement, as women or girls are handed over from one family to another to settle a dispute; preservation of family ‘honour’, as women who are raped are sometimes forced to marry their rapist in order to retain the ‘honour’ of relatives; etc (Ertürk, 2007; Working Group on Forced Marriage, 2000). Forced marriages have been documented in the WRRC focal countries of Afghanistan, Indonesia, Iran, Pakistan, Sudan, and Nigeria. Viewing girls as property to be exchanged and maintaining control over female behaviour and sexuality are at the root of forced marriage; and these perceptions are often bolstered by legal or socially accepted precedents and mores.

Case: Afghanistan

Afghanistan is a telling case, as the Afghanistan Independent Human Rights Committee (AIHRC) estimates that between 60% and 80% of all marriages in Afghanistan are forced (Ertürk, 2007). The customs of bride price, *bad*, and forced remarriage of widows are widespread. *Bad* is a practice of settlement dispute whereby a woman or girl is ‘given’ by one family to another in order to settle a dispute, often upon the orders of a local *jirga*.⁴⁷ In essence, selling a young girl into marriage in order to pay off debts or alleviate the family’s poverty:

This oppressive process reflects in part the fact that girls and women are treated as an economic asset, with families receiving a price from the family of the groom on marriage... They are also reflective of the pervasive control exerted by husbands and male relatives on women’s lives (Amnesty International, 2003, pg. 14).

The practice of *bad* has also been described by human rights organisations as a ‘socially accepted’ form of human trafficking.⁴⁸ Yakin Ertürk further notes that

⁴⁷Such compensation could be ordered in cases of, for example, elopement or unintentional killing.

⁴⁸For instance, the International Organisation of Migration.

widows are often forced to remarry (often to a brother-in-law) and have their property seized, as widows are seen as the property of their former husband's family. Although such actions violate international laws that prohibit slavery, discrimination, and cruel, inhuman or degrading treatment, the Afghan government has taken no real recourse to halt these practices. In addition, women are denied access to information about their rights under the law.

3 Strategies for Combating 'Cultural' and 'Religious' Justified VAW

This section outlines some of the strategies for combating VAW justified in the name of culture or religion through various forms of action within the spheres of religion, civil society, government, laws, and the United Nations (UN). Although in the strategies listed here are categorized, it is important to use multi-pronged, multi-levelled strategies to address cultural norms and call for substantial change. These strategies are not mutually exclusive. In each subsection, the usefulness of each strategy is outlined, but also note the drawbacks inherent in employing *solely* one strategy.

3.1 Religious-Based Strategies

Numerous religious authorities have spoken out against violence against women justified in the name of religion. Although these opinions may or may not be part of the dominant religious discourse, they reveal the adaptability and diversity of religious thought. These religious scholars demonstrate that the real sources of abuse of women is the notion of a static, domineering, and patriarchal interpretation of a religion, not the inherent nature of that religion itself.

For example, at a conference on crimes of 'honour', organised by the NGO Terre Des Hommes in Amman, Jordan, Shaykh al-Tamimi stated outright that 'honour' killings are against Islamic law because the Qur'an condemns acting on the basis of unproven evidence (CIMEL and INTERIGHTS, 2001). Ayatollah Yousef Saanei of Iran issued a fatwa against stoning, stating that physical punishments under the *hudud* category of law are forbidden in the absence of the 'hidden Imam' (i.e.

Messiah).⁴⁹ Grand Ayatollah Montazeri, also of Iran, stated that stoning was only meant essentially as a deterrent to committing adultery. According to Muslim laws, proving and assigning guilt in order to execute this punishment is so difficult to achieve⁵⁰ that it is practically banned.⁵¹

The adaptability of Islam, and acceptability of diverse opinions is exemplified by the fact that, even within traditional orthodoxy, there are several school of Muslim legal thought or jurisprudence (*fiqh*) – Hanafi, Maliki, Shafi’i and Hanbali, as well as Shi’a schools. Each of these schools of thought were derived from a specific geographical context and, therefore, developed in response to different cultural, political and socio-economic situations. “It was recognised in that ‘golden period of Islam’ that there were legitimate variations in Muslim laws, based on context – and therefore that Shari’a must be subject to progressive development and therefore change” (BAOBAB for Women’s Human Rights, 2003, pg. 2). The originators of Islamic jurisprudence recognised the importance of *ijtihad* (human interpretation and exploration of religion) and accepted that Muslim laws must adapt according to context. However,

(t)he unthinking acceptance which dominates most Muslim societies derives from the myth of the ‘closing of the doors of ‘*ijtihad*’... Unfortunately, both existing argumentation and the possibility of development in Muslim law, especially as regards to women’s rights, are being blocked... by the fiction that there is only one unchangeable, uncriticisable system of Muslim laws and that this is already in effect (BAOBAB for Women’s Human Rights, 2003, pg. 2).

It must be noted that the presentation of Islamic laws as immutable, especially those that are said to advocate for VAW, is a political endeavour. As stated in Section 2, it is in the interest of those in power to justify their dominance through

⁴⁹Please see: <http://www.roozonline.com/archives/2007/08/006654.php> [in Persian] for Saanei’s full statement. (Date of Access: December 2009.) See Terman and Fijabi’s brief for more information on progressive religious opinions on stoning.

⁵⁰In most interpretations, four eye-witnesses are necessary to prove adultery; a retracted confession must be admissible; and if this punishment in any way leads to diminishing faith then it cannot be executed. See Terman and Fijabi for more information.

⁵¹For more information, see: <http://www.stopstoning.net/spip.php?article4>. Date of Access: December 2009.

this representation.

In addition to the progressive religious opinions mentioned above, women themselves have developed woman-centred, gender-equitable interpretations of Islamic texts on ethics and jurisprudence, building a movement of ‘Islamic feminists.’⁵² Islamic feminism challenges patriarchal interpretations of Islam in diverse ways. In the pursuit of women’s advancement, Islamic feminists advocate an alternative reading of Islamic texts and strongly contend that it is patriarchal interpretations, laws, and customs that subordinate women – not Islam.

Their alternative argument is that Islam has been interpreted in patriarchal and often-misogynistic ways over the centuries (especially in recent decades), that Shari’a law has been misunderstood and misapplied, and that both the spirit and the letter of the Qur’an have been distorted (Moghadam, 2006, pg. 87).

Women’s rights defenders working within a Muslim framework have been quite successful in challenging patriarchal laws, especially in places where laws are explicitly based on religious texts or where religious institutions have large influence on policy, and it is therefore strategic to work within a religious discourse.

While religion-centred arguments to combat VAW can be quite powerful, it is necessary to recognise that there can be limitations to this strategy. Even though reinterpretation of hegemonic religious thought can affirm human rights and be tactically appropriate, working entirely within a religious framework may end up reinforcing the legitimacy of religious authorities as well as the dominance of religious laws in public life.⁵³ Many remain sceptical that a strictly religious-based strategy will achieve the kind of broad-sweeping social, economic, and political changes that are so desperately needed to enhance the realisation of women’s rights. Finally, religious (re)interpretation will certainly be more effective in some contexts than others, depending on the role religious institutions play in the social structure.

⁵²For more information on Islamic feminism, see Moghadam (2002). It is important to note that the term ‘Islamic feminist’ is a disputed, and not everyone who works for a non-patriarchal interpretation of Islam choose to be identified with the label ‘Islamic feminist.’

⁵³This may not be seen as a limitation by non-secularists. Many of those who define themselves as ‘Islamic feminists’ may have no problem with the dominance of religious laws and authorities per se. It is the patriarchal content, rather, that they object to.

3.2 Local Civil Society Interventions

Civil society organisations and movements⁵⁴ have been incredibly active in the fight against culturally and religiously justified VAW. Awareness raising campaigns, advocacy, and governmental lobbying are among the actions taken by local organisations and activists in every country under discussion in the study. They have employed a variety of methods, from cultural and religious argumentation (interweaving religious-based strategies listed above) to political and legal standpoints. In fact, without local activism, scholarship, and critique, we would be ignorant about the forms of violence detailed above. Culturally justified VAW, as well as many other issues relating to gender-based discrimination, would have undoubtedly remained invisible and forgotten had it not been for women’s rights defenders on the ground. While it is beyond the scope of this study to speak to all civil society activism against VAW, the following section highlights a few of the campaigns and organisations that have been particularly successful in the focal countries.

Case: Pakistan

Since the 1990s, Pakistani women have campaigned tirelessly against the normalisation and acceptance of so-called ‘honour’ crimes under the slogan ‘There is No Honour in Killing!’. Instigated by Shirkat Gah Women’s Resource Centre,⁵⁵ this movement has helped to raise awareness on the issue of *Karo Kari*. In some areas (e.g. Sindh) open discussion on the subject has increased substantially as a result of these efforts, and manifestations of ‘honour’ crimes have been addressed across the country and its various cultural groups. In addition, local papers now openly discuss the issue of ‘honour’ killings, politicians are more inclined to take a position, and women themselves are becoming more vocal in their refusal to be sidelined in the patriarchal decision-making process. This awareness raising is key to undercutting the perception of ‘honour’ killing as an indisputable tradition. As the campaign illustrates, this so-called tradition is strengthened and reinforced

⁵⁴The delineation between religious-based strategies and civil society interventions does not imply that these strategies are not interwoven. Many civil society interventions are based on religious frameworks, and the methods – advocacy, awareness-raising, and governmental lobbying – are used also for religious-based strategies.

⁵⁵See <http://www.shirkatgah.org/> for more information

with each ‘honour’ crime that goes unpunished, when a murderer, instead of being brought to justice, is lauded by society as ‘honourable’ (Shirkat Gah, 2001). Shirkat Gah works with a broad coalition of organisations and individuals in the Women’s Action Forum (WAF), which has spoken out against ‘honour’ crimes and taken up individual cases since the late 1970s. After a case of five women buried alive in Baluchistan province in August 2008, Karachi-based members of WAF marched with banners proclaiming ‘Violence is not our culture!’. Women’s and civil society groups work to raise society’s awareness to the fact that ‘culture’ is not an immutable entity and, therefore, incite action against harmful practices attributed to the ‘culture’s’ monolithic representation.

Case: Nigeria

In Nigeria, BAOBAB for Women’s Human Rights⁵⁶ defends women’s rights within the frameworks of religious, statutory, and customary laws. Amongst other things (awareness raising; analysis and critique of patriarchal and class biased Muslim legal traditions, customary and secular laws; advocacy, policy-formulation), BAOBAB provided legal support for women accused of sexual offences in the twelve northern states in Nigeria governed by Shari’a law. They successfully supported appeals in many *zina* convictions, which resulted in acquittals of the women (and men), by invoking the proper use of the laws already in place – e.g. bringing into evidence discounted parts of the Sharia Penal Codes that aid women in disputing circumstantial charges, and referring to other arguments in *fiqh*. For example, in 2001, BAOBAB defended a woman named Hafsatu Abubakar Gwiwa against accusations of *zina*. Hafsatu was charged with *zina* on the basis of being pregnant out of wedlock and was coerced into confessing, although she had later tried to retract that confession. The attorney that BAOBAB retained argued, with reference to experts on Muslim laws, that retraction of confessions must be admitted in capital cases. They also argued that based on the theory of the ‘sleeping embryo’,⁵⁷ one could not discount that Hafsatu’s pregnancy could be the result of her former marriage; therefore, the manner of the ‘evidence’ left doubt and, according

⁵⁶For more information, see: <http://www.baobabwomen.org/>.

⁵⁷For more information on the ‘sleeping embryo’ concept in the Maliki legal tradition, see BAOBAB for Women’s Human Rights (2003).

to the principles of Shari'a, she could not be found guilty. As a result, Hafsatu was acquitted of all charges ([BAOBAB for Women's Human Rights, 2003](#)). BAOBAB is an example of a civil society that links up with other initiatives locally, nationally, and transnationally, which in addition to engaging with state mechanisms, also works within religious and cultural discourses and combining this strategy with reference to human rights and Nigerian constitutional law to defend women's rights and access to justice.

Case: Iran

The Stop Stoning Forever Campaign⁵⁸ (SSF) in Iran is another example of civil society working to end culturally and religiously justified VAW. The objective of this campaign is to amend the Islamic Penal Code of Iran to ban the stoning punishment. As a result of their legal advocacy activities, the Stop Stoning Forever campaign had successfully commuted over a dozen stoning sentences; some being outright pardoned and others having their sentences commuted to lesser forms of punishment. Through awareness-raising activities, the SSF successfully made stoning a worldwide-known issue as well as brought the Iranian government accountable to known stoning cases. (Before the SSF, the Iranian government categorically denied stoning still occurred in Iran.)⁵⁹ In 2009, a new penal code was proposed to Iranian Parliament that would ban stoning and is awaiting vote at time of writing; many expect the bill to pass.

Case: Indonesia

The Stop the Criminalisation and Inhuman Punishment of Women campaign in Indonesia is another sister campaign working in solidarity with the Global Campaign to Stop Killing and Stoning Women. The campaign was launched in reaction to the whipping sentences endorsed by the Muslim Village Project in Bulukumba (see section on flogging) and is coordinated by Solidaritas Perempuan (SP) and

⁵⁸For more information, see: www.meydaan.org.

⁵⁹See Terman and Fijabi's brief for more information on the SSF campaign and stoning in Iran.

numerous regional partners in South Sulawesi.⁶⁰ SP and its partners engage in educating women on their rights and advocate for increasing women's access to decision-making processes. The campaign works within a legal framework and has achieved numerous successes to date, including a productive dialogue with the Governor of South Sulawesi with regards to policy-making mechanisms and mass action on International Women's Day. It is currently working to support groups leading the fight against the newly imposed adultery laws in Aceh.

Local activists and organisations are often the most effective leaders for combating VAW, as they know best the cultural/religious context and can navigate the delicate lines to institute change. This is precisely why they are targeted so harshly by patriarchal authorities; local activists have tremendous potential to challenge the hegemonic interpretations and misuse of culture or religion. It is of utmost importance that local women's rights advocates have support, not moralizing, from the international human rights community, who too often become distracted or threatened by arguments of cultural relativism. Even more important is building solidarity across culture, religion, nation, strategy, and gender, based "on the shared recognition that the root cause of violence against women is patriarchy and that violence against women is not peculiar only to some 'cultural' guises of patriarchy" (*Women's Empowerment in Muslim Contexts (WEMC)*, 2008).

3.3 United Nations Interventions

The United Nations human rights regime⁶¹ has demonstrated increasing awareness on the issue of culturally and religiously justified VAW and has done more to address it in recent years. This has taken the form of conventions, campaigns, reports, resolutions, and calls for state accountability and due diligence. The following section will highlight the most salient of recent United Nations initiatives that specifically address VAW in the context of tradition, culture, or religion.

Any discussion on the role of the United Nations in combating gender-based

⁶⁰Please see <http://www.stop-killing.org/node/637> for more information on this Campaign.

⁶¹Please see <http://www.un.org/womenwatch/daw/vaw/v-work-ga.htm> for access to all UN resolutions relating to VAW

discrimination must begin with the groundbreaking Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Although the original Convention did not include a provision explicitly addressing VAW, the General Recommendation no. 19 was demanded by women and subsequently introduced in 1992 to compensate for this oversight. It states:

Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention (para. 7).

The recommendation also outlines the obligations of governments to take broad action in combating VAW committed by both state and non-state actors, and in both the public and private spheres. General Recommendation no. 19 can be seen as ushering in, and laying the groundwork for, all the subsequent work of the United Nations in tackling endemic forms of VAW within the human rights framework.

The first Declaration on the Elimination of all Forms of Violence against Women (DEVAW) was passed in 1993, followed by updates in 1997, 1999, 2000, 2002, and 2004 by the United Nations General Assembly. In this declaration, the UN broadly defines violence against women, its causes, and different sites where it may occur. In 1994, the United Nations Commission on Human Rights appointed a Special Rapporteur on violence against women, its causes and consequences,⁶² which constituted a further emphasis on and dedication to combating VAW. The position and work of the UN Special Rapporteurs on VAW has greatly improved our understanding of culturally justified VAW.

DEVAW was followed by the resolutions for the “Intensification of Efforts to Eliminate all Forms of Violence against Women” in 2006, 2007, and 2009. The updated resolutions call for greater efforts to end all forms of VAW, with a focus on ending impunity for perpetrators, and stress that:

it is important that states strongly condemn violence against women and refrain from invoking any custom, tradition or religious consider-

⁶²Radhika Coomaraswamy (1994-2003); Yakin Ertürk (2003-2009); Rashida Manjoo (August 2009-present)

ation to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence Against Women (United Nations Secretary General, 2009).

Furthermore, in 2006 the UN Secretary-General put forward an “In-depth Study on all Forms of Violence against Women,” which was followed in 2008 by the Campaign to End Violence against Women. The “In-depth Study on all Forms of Violence against Women” states explicitly that:

Impunity for violence against women compounds to effects of such violence as a mechanism of control. When the state fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behaviour are normalized (United Nations Secretary General, 2006).

Aside from the more general resolutions calling for an end to VAW, specific calls to action have been made. Resolutions were passed in 1998, 1999, 2000, and 2002 targeting ‘traditional or customary practices affecting the health of women and girls’. These resolutions “[r]eaffirm that... harmful traditional or customary practices constitute a definite form of violence against women and girls and a serious violation of the human rights” (United Nations General Assembly, 2002). The UN Secretary-General has also issued three reports on measures taken by states to implement the anti-VAW resolutions and the actions of civil society to combat VAW.⁶³

In 2000, 2002, and 2004 the UN passed a series of resolutions addressing the phenomenon of ‘honour’ crimes, entitled “Working towards the Elimination of Crimes against Women and Girls Committed in the Name of Honour.” These resolutions call on states to be proactive and exercise due diligence in their behaviour towards crimes committed in the name of ‘honour’. It stresses that all forms of VAW, including ‘honour’ crimes, must be recognised and punished as criminal offences; emphasises the need to effectively address the root causes of VAW com-

⁶³FGM is of particular focus for these reports.

mitted in the name of ‘honour’; and undergirds the sentiment that such crimes are contrary to all religious and cultural values.

The Rome Statute of the International Criminal Court, which entered into force in 2002, for the first time recognised rape and other forms of sexual violence – whether perpetrated by state or non-state actors – as crimes against humanity.⁶⁴ This was followed by UN Security Council Resolution 1820 (2008), which focused on sexual violence in areas of armed conflict, but could also be invoked to hold non-state actors accountable for instances of sexual violence against women.⁶⁵

In addition to these international agreements, concerted efforts for tackling gender-based violence have also been made by departments and individuals within the United Nations system. The Special Rapporteurs on violence against women, its causes and consequences (Coomaraswamy, Ertik, and Manjoo) have greatly aided international awareness on issues of culturally justified VAW.⁶⁶ In 2008, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, reported on strengthening the protection of women from torture and a gender sensitive interpretation of torture.⁶⁷ And, in 2009, UNIFEM launched a global advocacy initiative entitled ‘Say NO – UNiTE to End Violence against Women’.⁶⁸

While the human rights framework outlined here provides many opportunities for advancement, the sole use of the human rights discourse opens one up to charges of ‘neo-imperialism’ or ‘westernisation’ by those employing a rigid, biased and patriarchal interpretation of culture. However, conjoining the strategies of progressive religious reinterpretation, civil society movements, and the human rights discourse can prove more fruitful.

⁶⁴See: http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf. Date of Access: December 2009.

⁶⁵See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement>. Date of Access: December 2009.

⁶⁶See: <http://www2.ohchr.org/english/issues/women/rapporteur/>. Date of Access: December 2009.

⁶⁷See: <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=47c2c5452>. Date of Access: December 2009.

⁶⁸See: <http://www.unifem.org/campaigns/sayno/>. Date of Access: December 2009.

3.4 Holding States Accountable

One of the main purposes of UN conventions and treaties is to hold states accountable for their actions regarding human rights, even if non-state actors commit violations. Under international human rights law, the due diligence standard demands that it is the obligation of the state to respect, protect, and fulfil the human rights of its citizens, as well as prosecute actors who violate these rights. It is clear from the above discussion that VAW is widely recognised as a violation of human rights. Thus states' obligations under the due diligence standard include a responsibility to prevent, investigate, and punish VAW, as well as provide compensation to victims for such acts. States are bound by this obligation regardless of who the perpetrators are, or where such crimes occur – i.e. whether it is the state or its agents, or non-state actors in the 'private sphere.'

However, despite this standard of due diligence, it is difficult to speak to positive state interventions. There are various levels at which the state can obfuscate its responsibilities:

1. Treaty ratification: Religiously/culturally motivated reservations or interpretive declarations at the time of ratification of international and regional human rights treaties (e.g., “the obligations assumed under this treaty in respect of equal rights of women and men in the family shall apply only where such obligations are compatible with the religious laws in force.”)
2. State reporting to human rights bodies: Invocation of religious/cultural impediments to the implementation of human rights obligations.
3. Domestic implementation: State reluctance to intervene in the private sphere or the religious/cultural attitudes of police officers and members of the judiciary frequently gives rise to negligence in dealing with violence against women, ranging from unduly protracted proceedings to complete inaction or even active shielding of the perpetrators. (Wyttenbach, 2008, pg. 229)

Concerning the treaty ratification level, the example of Pakistan – with regard to CEDAW – shows how ratification with reservation/declaration referencing religion/culture undercuts the validity of the Convention. Pakistan has fully ratified

the treaty (with only one specific reservation to paragraph 1 Article 29), but has also declared the overlying supremacy of Shari'a ([Economic and Social Commission for Asia and the Pacific, 2009](#)). Of the other WRRRC focal countries, all but two – Iran and Sudan – have ratified the Convention.⁶⁹ Iran chose not to become a signatory to the Convention on the basis of it “being in opposition to Islamic Law,” even though Iran ratified the Convention on the Rights of the Child with the reservation that it would not be bound by any articles that “contradict Islamic Law.”⁷⁰

Where we really see the shortcomings of effective measures to combat culturally justified VAW in the WRRRC countries is on level of state reporting and domestic implementation of anti-VAW measures. Although the governments under discussion here (and many more not considered in this study) have granted rights to women in their constitutions and ratified numerous international human rights treaties and conventions concerning women, the guarantee of these rights is sorely lacking. In addition to non-state actors, states themselves are often complicit in the instrumentalisation of ‘culture’ or ‘religion’ as a tool to oppress women. For example, the Indonesian Act on the Elimination of Domestic Violence includes many progressive laws (including the criminalisation of marital rape as well as specific references to CEDAW, human rights, gender equality, and non-discrimination) but rarely enforced ([Jaising et al., 2009](#)). Especially in the Aceh Province,

many of the laws that seek to criminalise violence against women, and domestic violence in particular, reflect the social and cultural realities of patriarchal societies and are often not implemented to their fullest ([Economic and Social Commission for Asia and the Pacific, 2009](#), pg. 7).

Despite the obstacles described here, holding states accountable to their international legal obligations is still an important strategy. Many of the achievements and breakthroughs in getting VAW recognised as criminal and human rights vio-

⁶⁹These countries ratified CEDAW either without reservations or with minor reservations that were justified by legal reasons outside of any ‘cultural’ or ‘religious’ argument.

⁷⁰This is not uncommon. Many signatories to CEDAW ratified the convention with significant reservations the basis of that certain articles conflicted with domestic laws, especially the Family Code and those relating to personal status.

lations were borne out of the advocacy by women's movements and organisations that focused on state's responsibilities. Although it is discouraging to see how many governments can demonstrate such blatant hypocrisy, it is still important for international instruments and women's organisations to continue to advocate at the state level, and hold these states accountable to their promises and obligations.

4 Recommendations

How can we now move forward in tackling cultural and religious justifications for VAW? It is evident that different cultural and political contexts require the employment of different strategies to stop culturally justified VAW. The countries included in this study are not only diverse amongst themselves but also contain internal diversity at the provincial and even village level. When choosing a strategy, international, nation, and local contexts must be considered. However, the juxtaposition presented in this study has brought to light some commonalities amongst these various contexts, which can aid us in reaching a more holistic understanding of the fight against culturally justified VAW.

As mentioned throughout this paper, those who use 'culture' or 'religion' to justify acts of violence against women usually do so on the grounds that their interpretation represents the one 'true' or 'authentic' vision, while simultaneously marginalising alternatives. It is important to demystify the concepts of 'culture' and 'religion', exposing the vested interests of those who claim to represent 'authenticity', and bringing to light alternative visions in order to protect women's human rights. As Ashish Nandy argues, "the greatest tradition of all is the reinvention of tradition." This concept represents the key strategy of the Global Campaign to Stop Killing and Stoning women: what oppresses women is the patriarchal reading of Islam, or any religion or culture, articulated and violently maintained by men in power. Women must reclaim and redefine their culture(s) as legitimate members of local and global communities.

What is ultimately required by women's human rights defenders is a truly multi-pronged, multi-layered approach to culturally justified VAW. This must include holding state governments accountable to their human rights obligations; invoking progressive religious and cultural reinterpretations that argue for the

compatibility between cultural and religious norms with the universal principles of human rights and gender equality; and direct advocacy especially amongst women and progressive leaders and members of the community. Furthermore, we must continue to build alliances and solidarities across culture, race, class, gender, ethnicity, religion, tradition, and nation. Such intersectional solidarity has the ability to bring about enough social momentum to reject the instrumentalisation of ‘culture’ as a tool to abuse women in all contexts ([Women’s Empowerment in Muslim Contexts \(WEMC\), 2008](#)).

While the proximate causes may vary, the root cause of culturally or religiously justified VAW lies in patriarchal interpretations undergirded by male-dominated power relations. The Global Campaign to Stop Killing and Stoning Women rejects the misuse of culture and religion, as we reclaim and rebuild cultures, religions, traditions that are grounded on value systems that uphold respect, tolerance, and openness.

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