

**Stoning:**

**Legal or Practised in 16 Countries  
and Showing No Signs of Abating**

**WLUML's Submission to the UN Secretary General on  
the Question of the Death Penalty to the 27<sup>th</sup> Session  
of the Human Rights Council**

**حوائظ زير اش مسلم قوانين**  
**Women Living Under Muslim Laws**  
**النساء في ظل قوانين المسلمين**  
**Femmes sous lois musulmanes**

**International Solidarity Network  
March 2014**

### **Who are WLUML?**

WLUML is an international solidarity network providing information, support and a collective space for women whose lives are shaped by laws and customs said to derive from Islam. One of WLUML's areas of focus is combating culturally-justified violence against women (CVAW). The national partners working with us on CVAW issues raised their concern at the ongoing practice of stoning, leading to the launch of the Global Campaign to Stop Stoning Women in March 2013.

### **What is stoning and when is it practised?**

Stoning is a method of execution in which a group throws stones at the person they wish to execute. There is no mention of stoning in the Qur'an. However, the practice has grown to be associated with Islam and Muslim culture. Many Muslim clerics and scholars, however, have spoken out against stoning, deeming it 'un-Islamic'.

Stoning to death is largely prescribed – whether by law or by custom – for the crime of 'adultery of married persons' (*zina al-mohsena*). *Zina al-mohsena* does not include premarital or homosexual acts. However, in the Northern Nigerian states that use Shari'a, in Mauritania, and in Yemen (for married men) the punishment for homosexuality is death by stoning. In Somalia, Al Shabab judges have handed out stoning sentences for sodomy, as in the stoning to death of a Somali teenager in 2013.<sup>1</sup>

### **Where is stoning used as a death penalty?**

Stoning is on the law books as a death penalty in 11 countries: Brunei, Iran, Mauritania, Nigeria (in one-third of the country's states), Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, the United Arab Emirates, and Yemen. Additionally, in Malaysia stoning is sanctioned as a death penalty regionally, despite being banned under national legislation.

Out of these countries, two have actually conducted stoning as a form death penalty in recent years: Iran and Somalia (stonings have happened in Pakistan, but extra-judicially).<sup>2</sup> It is not known whether a stoning sentence issued to a man in 2007 in the United Arab Emirates was carried out.<sup>3</sup> Stoning

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1 At present, a group of 12 men are standing trial on charges of homosexuality, 11 of which are Muslim and face possible death by stoning. See <http://www.bbc.co.uk/news/world-africa-25749308>. For the case of Somalian Mohamed Ali Baashi, see [http://www.huffingtonpost.com/2013/03/21/gay-teen-stoned-somalia-sodomy\\_n\\_2916655.html](http://www.huffingtonpost.com/2013/03/21/gay-teen-stoned-somalia-sodomy_n_2916655.html)

2 In Nigeria, Sudan, Saudi Arabia, and UAE sentences have been handed down in recent years and then revoked after pressure or appeals. [www.trust.org/iten/20130927165059-w9g0i](http://www.trust.org/iten/20130927165059-w9g0i)

3 [www.trust.org/iten/20130927165059-w9g0i](http://www.trust.org/iten/20130927165059-w9g0i)

was reportedly used as death penalty by the Saudi government four times between 1981 and 1992; limited information means we cannot be sure if it has been carried out in recent years<sup>4</sup>

It should also be noted that stoning, although not an official death penalty, takes place extra-judicially in three more countries: Afghanistan, Iraq, and Mali.

### ***What is the relationship between stoning and human rights?***

Stoning is a grave violation of International Human Rights Law. Stoning breaches the International Convention of Civil and Political Rights (1966), to which Iran, Afghanistan, Iraq, Nigeria, and Sudan are party signatories. Article 6 of the ICCPR states that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes", of which adultery is not one. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This last injunction is the content of a whole Convention: the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1987), which is widely considered to have reached the level of customary law due to its strong international acceptance by more than fifty nations, including many Muslim nations. Furthermore, with regards extra-judicial stoning, states' legitimising or allowing of parallel legal systems which carry these out similarly runs against the international obligations they are signatories to.

#### *The broader context – A gendered human rights violation*

Stoning is applicable to both men and women. However, there is a gendered aspect to its practice. On the first level, there is gender discrimination in the way stoning, in the Iranian context, is conducted – men are buried up to their waists and women up to their chests before stoning begins, making the (already slim) possibility of escape impossible for women (in Iran, if you can escape, you are freed from the punishment).<sup>5</sup>

Stoning is gendered at a more ingrained level, however. Stoning can be seen as the violent pinnacle of a system of policing women's freedoms in relation to concepts of sexual 'morality'. Women are the primary targets of these concepts, owing to patriarchal interpretations of religion, and misogynist culture more generally. Women are perceived to be the bearers of 'honour' and as such their commitment of *zina* is viewed as a more serious transgression than men's and is punished at higher rates. In Iran, for example, the gender nature of adultery and morality is written into the legal structures; the criminalization of *zina* has been overwhelmingly directed against Iranian women because Iranian men enjoy both a unilateral right to divorce and a right to marry two permanent wives in polygamous marriages and an unlimited number of temporary wives in *Mut'a* (temporary marriages).<sup>6</sup>

The conceptualisation as women as bearers of 'honour' goes as far as to allow rape to be regarded as adultery - a crime against morals and honour rather than against the woman as a human being. This

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4 Vogel, Frank E. (1999). *Islamic law and legal system: studies of Saudi Arabia*. p. 246.

5 Based on Shia jurisprudence, this rule is applicable in any situation where stoning is sanctioned or carried out by according to Shia rules.

is illustrated by the case of Aisha Ibrahim Duhulow, the 13-year-old girl stoned to death (by and at the behest of Al Shabab) for 'adultery' in front of 1,000 people in Kismayo, Somalia after reporting being gang-raped. None of the men accused of raping her were arrested.<sup>6</sup> The case of Aisha, and other stoning cases involving minors, illustrate desires to police female sexuality from as young an age as possible, applying concepts of honour to their bodies before they even approach adulthood.

It is also important to note that many women sentenced to stoning have been victims of forced and early marriage and of long-standing patterns of physical and sexual abuse as well as forced economic dependence. They were in many cases drawn into adultery because of their inability to obtain divorce from their abusive husbands.<sup>8</sup>

#### *The broader context – The political-legal climate*

It is important to recognise the connection between the practice of stoning and the broader political and legal climate. On the first level, stoning is a symptom of the existence of a parallel legal system which allows for the enforcement of *fiqh* (Islamic jurisprudence) presented as Sharia. However, it is also intrinsically tied to a political atmosphere of extreme state repression, and lack of legitimate rule of law.

In Iran, stoning is one element of a climate of fear in which the state's threat to kill its citizens takes a prominent place in the national psyche. Stoning in Iran is part of a corrupt and repressive legal system characterised by lack of due process, unfair trials, forced confession, and arbitrary sentencing.

Stoning was actually banned in Iran by Ayatollah Shahroudi in 2002, but laws were never removed from the penal code. As such, lower judges continue to hand down stoning sentences, as all judges in Iran are obliged to follow the law over the order of a higher judge. Furthermore, despite the stringent burden of proof for adultery within many interpretations of Islamic Law (including the Iranian penal code),<sup>7</sup> most stoning sentences in Iran are issued not on the basis of testimony or confession but on the judge's 'intuition,' a process allowed according to Article 105 of the penal code.<sup>8</sup>

The ongoing case of Sakineh Ashtiani is good example of the multiple problems with legal process in Iran. Not only did Sakineh's stoning sentence come after a court decided to review her case, rather than being brought by an individual, but her televised 'confession' has been widely considered to make a mockery of legal process.

In Somalia, stonings have similarly been characterised by dubious 'confessions' and lack of legitimate (or any) trial. Aisha Ibrahim Duhulow, the 13-year old mentioned above is one such case.<sup>9</sup> The

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6 <http://violenceisnotourculture.org/content/somalia-girl-stoned-was-child-13>

7 Adultery punishable by stoning must be proven by the eye-witness testimony of either four just men (or three just men and two just women) or through four separate confessions by the defendant before a judge

8 [http://violenceisnotourculture.org/faq\\_stoning#sthash.gVcfVMQ1.dpuf](http://violenceisnotourculture.org/faq_stoning#sthash.gVcfVMQ1.dpuf)

9 <http://news.bbc.co.uk/1/hi/7708169.stm>

Somali situation is characterised by a failed state, where significant portions of the country are under the control of the militant Al Shabab Islamist group. Here, stoning is related to a militarised context, widespread instability, and a lack of rule of law. While stoning is not a 'death penalty' as traditionally conceived, the position of power of Al Shabab means that it is operating as such.

It is also imperative to recognise the climate of fear and arbitrary 'justice' that prevails even in the countries where stoning provisions have not yet been deployed. Even if stoning has never been carried out in a country, the state's enforcement of laws pertaining to 'morality' pose an everyday threat to women, and the presence of stoning in the law books adds a psychological burden to women – they know that stoning could be enacted if the situation in their country deteriorates. This is particularly true in places where stoning sentences have been handed out and then repealed, namely Nigeria and Sudan.<sup>10</sup> Such cases remind women of the dangerous presence of the state in their personal lives.

### ***Conclusions***

WLUMML believe that it is important for the Human Rights Council to address the ongoing practice of stoning within its forthcoming discussion of the death penalty. We ask the HRC to address stoning as a gendered form of death penalty. We also emphasise the need to examine the contexts surrounding stoning: extreme state repression in Iran and increased vulnerability owing to a failed state in Somalia. We also emphasise the need to counter the presence of stoning in any form of legislation, whether or not such legislation has yet been enacted.

Although stalled for now, a proposed new penal code in Afghanistan – if brought into effect – would mean one more country with stoning on the books as death penalty. The recent legal inclusion of stoning in Brunei's new penal code may mean there is soon one more country in which people are put to death in this brutal manner. We ask the Human Rights Council to address the problem with the appropriate urgency.

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10 In Sudan, for example, the sentence of stoning was deployed twice in 2012 following Intisar Sharif and Layla Jamool's convictions for adultery. Both cases were overturned following appeals. In Nigeria, six stoning sentences have been handed down, but all overturned after appeal. [www.trust.org/iten/20130927165059-w9g0i](http://www.trust.org/iten/20130927165059-w9g0i)

***Related links***

Stoning in Muslim Contexts: A Mapping Report - <http://violenceisnotourculture.org/resources/stoning-muslim-contexts-mapping-report>

Stoning is Not our Culture: A Comparative Analysis of Human Rights and Religious Discourses in Iran and Nigeria - <http://violenceisnotourculture.org/content/stoning-not-our-culture-comparative-analysis-human-rights-and-religious-discourses-iran-and>

Stoning and Islam - <http://violenceisnotourculture.org/content/stoning-and-islam>

WLUML's petition to end stoning - <http://www.change.org/en-GB/petitions/united-nations-secretary-general-the-ohchr-end-stoning-now>