



General Assembly

Distr.
GENERAL

A/HRC/7/NGO/26
22 February 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 3

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Written statement* submitted by Human Rights Advocates (HRA),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 February 2008]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Stoning: Violation of International Human Rights Standards

1. Human Rights Advocates, Inc. (HRA) submits the following statement on the violation of human rights implicating the practice of stoning.

Violation of the Prohibition on Violence Against Women

2. The stoning sentence violates several international human rights guarantees, including the U.N. Charter, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), customary international law, and namely the ICCPR's Article 3 protecting equality of rights between men and women, Article 6 protecting the right to life, and Article 7 protect against torture and cruel, inhuman, or degrading treatment or punishment (UDHR Article 5), all of which can be enforced through counterpart provisions of Islamic law.¹

3. Stoning is not practiced in a majority of nations, including most Muslim states. There is, however, a handful of nations that allow the practice, including Nigeria, Sudan, Iran, Pakistan, Somalia, and Saudi Arabia. In 2002, a man and a woman were sentenced to death by stoning in Nigeria, however the sentences were not carried out due to international outcry.² Also, in 2002, a pregnant southern Sudanese woman was sentenced to death by stoning for adultery. Her sentence was reduced to flogging, though without permitting her the right to appeal the new sentence.³ Saudi Arabia has no written penal code, code of criminal procedure, or code of judicial procedure, allowing police and judges wide discretion in many cases to determine what activities constitute criminal offenses and what sentences such "crimes" deserve. Punishments for certain *hudud* crimes include execution by stoning, however no stoning sentences have been reported.⁴

4. In Afghanistan, Fazul Hadi Shinwari, the Chief Justice of the Supreme Court, was quoted in press interviews in 2002 saying that the stoning punishment would be retained, though with stricter due process guarantees. However, no stoning sentences have been reported in Afghanistan.⁵ In 2003, one woman was sentenced to death by stoning on grounds of adultery in Pakistan. However, after the President demanded that the unusual

¹ "[T]he most effective approach to tackling the issue of stoning is from an "internal" perspective that considers Islamic debates on Shariah and supplements the traditional human rights argument with arguments likely to have currency with conservative Muslim governments. This "internal" approach would be the "Islamic" approach. It would allow for Muslim self-determination while simultaneously promoting dialogue on human rights issues and the meaning and nature of Islamic law." Reza Aslan, *The Problem of Stoning in the Islamic Penal Code: An Argument for Reform*, 3 UCLA Journal of Islamic and Near Eastern Law (JINEL) 91, 95 (2003-2004). See also, Kristin J. Miller, *Human Rights of Women in Iran: The Universalist Approach and the Relativist Approach*, 10 Emory Int'l L. Rev. 779, 830 (1996).

² Human Rights Watch, "Political Shari'a"? Human Rights and Islamic Law in Northern Nigeria,' September 2004 Vol. 16, No. 9 (A). Available at: <http://www.hrw.org/reports/2004/nigeria0904/nigeria0904.pdf>.

³ Human Rights Watch, "Sudan Update to Press Release of February 1, 2002: Dinka Woman's Death Sentence Overturned," March 2002. Available at: <http://www.hrw.org/press/2002/03/sudan-0308.pdf>. <http://hrw.org/english/docs/2002/02/01/sudan3719.htm>

⁴ Human Rights Watch, "Saudi Arabia: Flawed Justice - Origins of the 'Witchcraft' Charge," 1997. Available at: <http://www.hrw.org/reports/1997/saudi/Saudi-03.htm>.

⁵ Human Rights Watch, "Afghanistan: Analysis of New Cabinet," June 20, 2002. Available at: <http://hrw.org/english/docs/2002/06/20/afghan4051.htm>.

sentence be overturned, the court promptly complied.⁶ In Iran the Head of the Judiciary issued a moratorium on stoning in 2002, due in part to a vigorous debate in the courts over the legality of the punishment. At least three stoning sentences have been carried out since 2006, although at least five stoning sentences have been stayed due to international campaigns.⁷ As of November 2007, thirteen people have been sentenced to death by stoning. A new version of the Iranian Penal Code is currently under consideration by the Majles, which, if passed, would allow stoning sentences to be changed to execution by other means or flogging.⁸

5. Thus, Iran is the most egregious violator of the practice of stoning. The practice violates Article 20 of Iran's Constitution mandating that "all citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, social and cultural rights, in conformity with Islamic criteria."⁹ Some Islamic legal scholars argue that condoning the regular sentencing of stoning represents a distorted interpretation of the Qur'an.¹⁰ The Iranian government has enacted the Islamic Penal Code and enforced an interpretation of the Shari'ah that discriminates against women.¹¹

6. The practice of stoning in Iran violates international norms as codified in CEDAW and the Human Rights Council's mandate banning violence against women. First, stoning is applied to women more frequently than men.¹² Currently, eleven out of thirteen people given stoning sentences are women.¹³ In the 1998 five out of seven people given stoning sentences were women.¹⁴ The Iranian Penal Code provides for death by stoning as a method of punishment for adultery and other sexual offenses. Defenders of the law claim that it upholds gender equality because men and women are subject to the same punishments. However, this Penal Code provision discriminates against women because in Iran women are more readily accused and convicted of adultery because they are more

⁶ New York Times, Seth Mydans, "Sentenced to Death, Rape Victim is Freed by Pakistani Court," June 8, 2002. Available at:

<http://query.nytimes.com/gst/fullpage.html?res=9904E7DA153DF93BA35755C0A9649C8B63>. Human Rights Watch, Letter to General Pervez Musharraf, "Return Pakistan to Civil Rule," October 10, 2003. Available at: <http://www.hrw.org/press/2003/10/pakistan10103-ltr.htm>.

⁷ Amnesty International Report, "Iran: End Executions by Stoning," January 2008. Available at: http://www.amnesty.org/en/alfresco_asset/2b087fb2-c2d2-11dc-ac4a-8d7763206e82/mde130012008eng.pdf.

⁸ Amnesty International, Urgent Action Letter, February 6, 2008. Available at: <http://www.amnestyusa.org/actioncenter/actions/uua03308.pdf>.

⁹ Miller, *Human Rights of Women in Iran* at 830.

¹⁰ "[T]he very fact that the punishment for zina relies, according to 'Umar, solely on the Sunnah and not on the Quran violates the very definition of hudud as "punishments mandated by God." Indeed, this fact alone should be enough to put an immediate end to the practice of stoning adulterers. Even if one accepts the validity of stoning for zina, the law is defined in such a way as to make it nearly impossible to legally implement the punishment..." Aslan, *The Problem of Stoning in the Islamic Penal Code* at 98.

¹¹ Elizabeth Ann Mayer, A "'Benign' Apartheid: How Gender Apartheid Has Been Rationalized," 5 UCLA Journal of International Law and Foreign Affairs (JILFA) 237, 282 (2000-2001).

¹² Amnesty International Report, "Iran: End Executions by Stoning," January 2008. Available at: http://www.amnesty.org/en/alfresco_asset/2b087fb2-c2d2-11dc-ac4a-8d7763206e82/mde130012008eng.pdf.

¹³ Amnesty International, Urgent Action Letter, February 6, 2008. Available at: <http://www.amnestyusa.org/actioncenter/actions/uua03308.pdf>. See also, Amnesty International Report, "Iran: End Executions by Stoning," January 2008. Available at:

http://www.amnesty.org/en/alfresco_asset/2b087fb2-c2d2-11dc-ac4a-8d7763206e82/mde130012008eng.pdf.

¹⁴ Lily Mazahery, "Ashraf Kalhori, Mother of Two, Being Prepared For Public Stoning," Thursday, July 27, 2006. Available at: <http://www.news.faithfreedom.org/index.php?name=News&file=article&sid=292>.

likely to be poorer than men, and thus have less access to sound legal advice. Women are also more likely to be illiterate and thus sign confessions without full disclosure and knowledge for crimes they did not commit. Poverty, drug addiction, and domestic violence also make women more vulnerable to stoning than men. Women occupy fewer decision-making positions and thus are more vulnerable to prosecution.¹⁵ Additionally, trials in Iran are inequitable and inadequate by the standards set forth in Articles 6 and 14 of the ICCPR, and Articles 10 and 11-1 of the UDHR, and even by standards set forth in the Iranian Constitution.¹⁶

7. Second, the stoning provision of the Islamic Penal Code discriminates against women because the evidentiary rules are different for women and men, and do not give equal weight to a woman's testimony, making women more likely to be prosecuted and convicted.¹⁷ Although the Qur'an does not mandate that witnesses be male, the current regime requires that four sane, Muslim adult males testify as eyewitnesses to the adulteress act in order to convict a person of adultery under current Islamic law. Alternatively, three men and two women may testify if four men are not available.¹⁸ Thus a woman's testimony in court is given less weight than a man's testimony and women are not treated equally before the law.

9. A third discriminatory aspect of the laws is that only men can claim that they were "temporarily married" to a woman outside of his formal marriage.¹⁹ A temporary marriage is for a specific period of time where a man and woman may lawfully have sexual relations but the wife is not entitled to support from the husband and cannot inherit from him. Furthermore, while men are allowed four permanent wives, women are not permitted to have multiple spouses and therefore can not claim a temporary marriage if a woman is married.²⁰ Thus stoning sentences, the punishment for adultery, are applied in greater proportion to women.²¹

¹⁵ Amnesty International Report, "Iran: End Executions by Stoning," January 2008. Available at: http://www.amnesty.org/en/alfresco_asset/2b087fb2-c2d2-11dc-ac4a-8d7763206e82/mde130012008eng.pdf.

¹⁶ Miller, *Human Rights of Women in Iran* at 795, FN 94. "Many trials are not held in public, the accused are not given the opportunity to consult with a defense attorney prior to trial..."

¹⁷ *Id.* at 796.

¹⁸ "Islamic Penal Code Article 74: Adultery, whether punishable by flogging or stoning, may be proven by the testimony of four just men or that of three just men and two just women." UNHRC U.N. Refugee Agency, "Islamic Penal Code in Iran," Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b51b8>.

See also, Report of the U.N. Working Group on Arbitrary Detention, June 27, 2003, E/CN.4/2004/3/Add.2.

¹⁹ The law has always permitted temporary marriages in Iran, although they are socially frowned upon. Tamilla F. Ghodsi, *Tying a Slipknot: Temporary Marriages in Iran*. 15 Mich. J. Int'l L. 645 (Michigan Journal of International Law), (Winter, 1994). See also, Aslan, *The Problem of Stoning in the Islamic Penal Code* at 94.

²⁰ Maryam Javaherian, *Women's Human Rights in Iran: What Can the International Human Rights System Do?*, 40 Santa Clara L. Rev. 819, 841 (2000).

²¹ "If zina [unlawful sexual act] is committed by a legally married man with a permanent wife (muhsan), or by a legally married woman with a permanent husband (muhsanah), then the punishment is stoning to death. However, where a man who commits zina with a minor is stoned to death, a woman guilty of the same crime may receive only lashes; this apparent gender discrimination is somewhat blurred by the fact that Islamic law commonly recognizes the age of puberty to be nine for girls and fifteen for boys. And lastly, a married man who has sex with another woman is stoned to death if the woman is married; if she is single, he could be spared, though she would be stoned to death for having sex with a married man. Thus, two equally illegal

10. The practice of stoning is also part of a larger scheme to enforce compliance and discourage dissent, which is arbitrarily enforced against women. Women face strict controls on their behavior that vary with time and place. The discretionary nature of sexually or morally oriented offences allows the government to relax the enforcement of highly oppressive measures when the political climate requires. At other times the government aggressively enforces these policies in order to squash opposition and dissent. These arbitrarily applied policies restrict women's right to freedom of expression and movement, including the enforcement of the dress code, such as wearing the hejab and policies against men and women socializing in public.²² Therefore, enforcement of the laws fluctuates and laws are arbitrarily applied, and the government moves from public disapproval of stoning to public defense or denial of the practice.²³

11. Stoning is not a fundamental aspect of Islamic law as it is not practiced in all Islamic states. Iran may ban the practice while maintaining its foundation in Islamic law.²⁴ Islamic jurists must interpret the Qur'an so that it encourages and upholds the evolving needs of a changing society, especially the provisions that do not adhere to international human rights standards under the current interpretation of the government.²⁵

Recommendations

12. HRA commends the Special Rapporteur on violence against women for reporting on Iran and the practice of stoning to the Commission on Human Rights in 2005. In addition to her recommendations to Iran, Human Rights Advocates recommends that the HRC:

1. Urge the government of Iran to abolish executions by stoning by repealing or amending Article 83 of the Penal Code, and review all legislation under which a convicted person may be killed by the state, with a view to the eventual abolition of the death penalty.
2. Recommend that the government revise all legislation that criminalizes consensual sexual relations conducted in private to ensure that no one may be put to death, flogged or imprisoned on account of such relations.
3. Encourage the government to ensure that executions by stoning are not permitted under any upcoming legislation.

sexual acts can have two very unequal punishments depending on the marital status and gender of the accused." *Id.* at 95-6.

²² Report of the Special Rapporteur on violence against women, its causes and consequences, January 27, 2006, E/CN.4/2006/61/Add.3.

²³ Human Rights Watch, "Iran: Human Rights Developments," 2008. Available at <http://hrw.org/englishwr2k8/docs/2008/01/31/iran17597.htm>. See also, Human Rights Watch, "Iran: Human Rights Developments," 1993. Available at www.hrw.org/reports/1994/WR94/Middle-03.htm

²⁴ "[T]he Shariah was developed within a clear historical context...And there is plenty of precedent for accepting the historical context of Islamic law, as many early practices have been set aside in the modern Muslim world. For instance, polygamy, which the Quran clearly endorses in its historical context, is (with some exceptions, especially in tribal societies like Saudi Arabia and Pakistan) considered an outdated practice in contemporary Islam.)" Aslan, *The Problem of Stoning in the Islamic Penal Code* at 95.

²⁵ For example, Tunisia forbid polygamy by reading two Qur'anic verses 4:3 and 4:129 together to conclude that polygamy was prohibited by the Qur'an. Baderin, *International Human Rights & Islamic Law* at 140.

4. Insist that the government ensure that the 2002 moratorium on all executions by stoning is reaffirmed and fully respected through the country until legislation is passed that bans stoning, and to overturn all stoning sentences.
5. Urge the government to commute all death sentences that are sent for pardon and announce a moratorium on the death penalty in order to abolish it.
6. Prohibit the practice of execution by stoning as well as urge all countries to take steps toward abolishing the death penalty.

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