

Stoning as a Form of Punishment under Sharia Law

by ISHR Germany **back to
anti-
stoning
campaign**

The incidences of two death by stoning sentences in two states of Nigeria in 2001 and 2002 internationally highlighted the practice of stoning under sharia law. Between 2000 and 2002, 12 Northern Nigerian states introduced sharia principles in their penal legislation, although many provisions are in conflict with the Nigerian federal constitution. The introduction of sharia penal law directly and indirectly led to widespread civil unrest. In Malaysia, the decision to introduce sharia penal laws was passed in two state parliaments. In Indonesia, the sharia penal laws were newly introduced in the province of Aceh. In view of an increasing tendency to introduce sharia principles in penal codes in recent years, growing tension between factions in countries where sharia penal laws are applied and several other stoning sentences that became public in 2002 in Iran, Pakistan and Sudan, it is paramount to address the issue of this particularly inhuman form of punishment, and to introduce ways and measures to halt further proliferation as well as to achieve non-application and future eradication from the national penal codes.

In general, sharia is a system that regulates every aspect of Muslim life. It comprises legal norms concerning inheritance law, family law and property law, but also ritual regulations such as the prayer, almsgiving, fasting and observing religious holidays. Sharia law regulates the relationship of the every Muslim to God and his environment. At the same time, sharia also includes regulations concerning penal jurisdiction and criminal law. Within these regulations, crimes are defined in different categories, the most severe crimes being the so-called hudud crimes. The forms of punishment for hudud crimes are severe and include stoning to death. Death by stoning mostly applies to cases of adultery, but may possibly also apply to homosexuality. The legitimacy of stoning as a form of punishment is derived from the hadith sayings and written records of the prophet Muhammad. Stoning is not mentioned in the Koran. Penal codes tend to prescribe the execution of the stoning in detail. Thus, men are buried up to their waste, women up to their chest (Art. 102, Iranian Penal Code). Article 104 of the Iranian Penal Code prescribes the size of the stones, which must not be too large as to kill the person immediately, but not too small either.

Sharia tends to be at least partly in force, wherever Islam is the official state religion of a specific country or where the majority of the population is Muslim. However, the extent of its application varies from country to country. Not every Muslim country has endorsed sharia penal laws in its penal code or applies its regulations in its harshest form. For example, jurisprudence in Turkey, a member state of the Organisation of the Islamic Conference (OIC), is secular and fully independent from sharia law. In Egypt, which does base its jurisprudence on sharia, adultery is punished with prison sentences of up to six months for men and up to two years for women. Stoning as a form of punishment is provided in the criminal codes of at least the following countries: Iran, one province in Indonesia (Aceh), two federal states of Malaysia (Terengganu, Kelantan), twelve federal states in Northern Nigeria (Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, Zamfara), Pakistan, Saudi Arabia, Sudan and the United Arab Emirates. However, provisions for stoning in the penal codes does not necessarily mean its strict application.

Cases of stoning sentences or execution of stoning sentences have been reported from Iran, Nigeria, Pakistan and Sudan. At the same time, execution of stoning sentences in these countries needs to be differentiated. Thus, only in Iran sharia court stoning sentences were carried out in 2002. In Pakistan, the Federal Shariat Court overruled the stoning sentence of a sharia court; instead, extrajudicial stoning executions have occurred in the country. It is impossible to record all stoning sentences, actual executions and illegal stoning executions world-wide. Overall, the number of undetected cases of stoning is estimated to be much higher.

Pakistan introduced the so-called Haddood Ordinance, which punishes adultery with death by stoning, in 1979. In accordance with this law, Zafran Bibi was sentenced to death by stoning on 17 April 2002. However, she was acquitted by the appellate Federal Shariat Court on 6 June 2002. On 5 July 2002, the 40-year old Zahid Shah was stoned to death by a mob in the Chak Jhumra village near Faisalabad, because he had called himself "the last prophet of Islam". The prayer leader Maulvi Fakir Mohammed had incited the people in the mosque to kill the mentally ill Zahid Shah for blasphemy. In this case, the phenomenon of illegal stoning occurs. It is the responsibility of the government and state organs to take all necessary steps to prevent such illegal stonings and to prosecute the perpetrators, including those who call on others to carry out stonings.

In Sudan, the 18-year old Christian Abok Alfa Akok was sentenced to death by stoning on 8 December 2001 in the West-Sudanese Darfur. The punishment was commuted to 75 lashings in March 2002. In the United Arab Emirates, a young Indonesian housemaid called Kartini was sentenced to death by stoning for alleged adultery in the Emirate of Fujairah in 2000. The sentence of stoning to death was later commuted on appeal to one year's imprisonment and deportation.

Iran is a country of which it is known that stoning sentences have been executed in recent years. Since May 1997, when Khatami became president, 25 stoning sentences have been executed, 17 of the convicted persons were women. On 26 October 1997, the Associated Press reported on the public execution of three men and three women in Northern Iran, after a court found them guilty of adultery and prostitution. On 11 July 2001, a woman called Maryam Ayubi was stoned to death, because she had committed adultery and had murdered her husband with the help of her lover. In May 2001, a woman was stoned to death in the Evin prison in Teheran, because she had acted in pornographic films and was engaged in extramarital relationships. On 25 September 2002, state representatives stoned to death a woman called Golo Nik-Khou and a man called Seyyed Younes Assadi in the north-western Iranian town of Naqadehzu, after both had spent 15 years in prison. According to the "National Council of Resistance of Iran", four women who were sentenced to death by stoning were held in Iranian prisons in October 2002.

On 8 August 2001, the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, sent a joint urgent appeal with the Special Representative on the situation of human rights in the Islamic Republic of Iran, in which they urged the government of Iran to remove article 82 (b) concerning stoning from the Islamic Code and to actively undertake a policy of suppressing recourse to stoning throughout the country. In December 2001, the UN General Assembly expressed its concern about "the growing number of executions in the absence of respect for internationally recognized safeguards and, in particular, public and especially cruel executions, such as stoning" in Iran. In his report to the 2002 session of the Commission on Human Rights in April 2002, the Special Representative of the Secretary-General on the situation of human rights in Iran, Mr. Maurice Danby Copithorne, again expressed concern at continued executions, in particular public and especially cruel executions, such as by stoning. ISHR greatly welcomes that the concerns of the world community seem finally to have been taken into consideration, when Iran announced on 26 December 2002, in the course of negotiation with the European Union, to temporarily suspend the punishment of death by stoning. However, it remains unclear, whether the government of Iran will be able to accomplish the suspension or even abolition of the death by stoning penalty.

Nigeria is the country which received most attention in 2002 concerning the issue of stoning. Between 2000 and 2002, twelve Northern Nigerian federal states introduced sharia penal law. The first state to introduce sharia penal law was Zamfara in January 2000. The Zamfara penal code serves as a model for all other Northern Nigerian states that followed suit. It provides the punishment of death by stoning not only in cases of adultery, but also in cases of rape, sodomy and incest.

On 14 October 2001, Safiya Hussaini was sentenced to death by stoning by a sharia court in the Nigerian federal state of Sokoto. After international protest, she was acquitted on 25 March 2002. On 22 March 2002, Amina Lawal was sentenced to death by stoning by a sharia court in the Nigerian federal state of Katsina. Her appeal was turned down by the sharia court in Funtua on 19 August 2002. Her next appeal will be heard at the supreme sharia court in Katsina on 25 March 2003. Both women had been charged with alleged adultery. In the federal state of Jigawa, Sarimu Mohammed was sentenced to death by stoning by a lower sharia court on 8 May 2002 for alleged rape of a nine-year old girl. A claims that the police beat him to extract a confession. In the federal state of Bauchi, the farmer Yunusa Rafin Chiyawa was found guilty of adultery and sentenced to death by stoning on 21 June 2002. The Upper Sharia court in the central Nigerian State of Niger sentenced Ahmadu Ibrahim and Fatima Usman to death by stoning in August 2002. Most cases are still pending. None of the death sentences were executed or have been executed yet.

The introduction of the sharia penal laws has led to considerable conflict between the federal government and the respective state governments. The sharia penal laws are in conflict with the constitution of the Federal Republic of Nigeria and the country's international obligations. The central government has announced that it will not tolerate death by stoning executions. However, it is unclear, how much control the central governmental and law enforcement organs do have over the local state governments. The report "The reintroduction of Islamic Criminal Law in Northern Nigeria", a study conducted on behalf of the European Commission in September 2001, points out that "(t)he recently enacted Shari'a Penal Codes violate basic human rights on several scores. The most important area of conflict is that these laws prescribe for certain offences penalties which must be regarded as torture or degrading and inhuman punishment. Within the framework of Islamic law, there are sufficient legal possibilities to restrict and even preclude the imposition of these penalties, e.g. by demanding very strict standards of evidence and by allowing many defence pleas based on uncertainty. There are many such defences listed in classical doctrine. This will require a more thorough training of the police and the Shari'a judges as well as enlightenment campaigns among the population. It is important that such projects and campaigns be conducted by local organisations."

The introduction of sharia law in national penal codes has led not only to a debate within society and the world community, but also to growing tension and conflict within the population in countries, where strict sharia is applied. The alarming situation in Nigeria shows the wider impact that the introduction and application of stoning has on a society. The international protest against the stoning sentence against Amina Lawal in March 2002, in particular the subsequent upheaval around the Miss World Contest, led to a violent clash between the different factions and riots with hundreds of deaths. The application of stoning under the pretext to hold up Islamic traditions and law, and its potential spread to the southern parts of Nigeria, create hardened positions amongst different political and religious factions and a hostile destabilising political environment in Nigeria, which could potentially lead to wide-spread civil unrest or even civil war. There is great concern that stoning sentences and unbending positions on this issue within national societies and the world community could be used as a trigger to spark off civil unrest in the Middle East, Asia and Africa. It could indeed instigate the "clash of civilisations" the world community, including the Islamic community, endeavours to prevent.

It is reiterated that it is not Islamic faith that is to be defamed. Nor is the Islamic legal system of sharia challenged, but the barbaric capital punishment of stoning, which is in uttermost contrast to human dignity inherent to all human beings. The mere fact that the dignity of the human being is a concern of all cultures and religions should give the impetus to discuss the matter rather than to dismiss it under the pretext that a discussion would constitute a defamation of cultural traditions. Within Islam, too, there are scholarly voices that doubt the eligibility of stoning as a legitimate form of punishment within Islamic jurisprudence. In addition, not every Islamic state which constitutionally bases its judicial system on Islamic jurisprudence as the principal source of legislation, e.g. Egypt and the Maldives, has introduced stoning as a form of punishment or carries out stoning sentences. The practice of stoning explicitly contradicts Article 5 of the Universal Declaration of Human Rights, Article 7 of the

International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty as well as the Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The International Society for Human Rights calls upon the UN Human Rights Commission:

- to call upon all states where stoning sentences have been pronounced to suspend the execution of these sentences;
- to call upon the Organisation of Islamic Conferences to actively promote the non-application of stoning as a form of punishment in their member states;
- to call upon all Islamic states to either ratify or, if ratified already, fully implement the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- to commission the Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment to conduct a special investigation into stoning as a form of punishment;
- to organise a symposium on the subject of stoning as a form of punishment under sharia law, similar to and as a follow up to the symposium "Enriching the Universality of Human Rights: Islamic perspectives on the Universal Declaration on Human Rights", held in Geneva in November 1998.

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home