IRAN

Civil Society Report on the Implementation of ICCPR

by

Project on **Extra-Legal Executions in Iran (ELEI)**

Replies to the List of Issues
Death Penalty Concerns (Article 6, and Articles 2 and 7 in conjunction with Article 6)

REVIEW OF THE THIRD PERIODIC REPORT OF IRAN
(CCPR/C/IRN/Q/3)
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The Project on **Extra-Legal Executions in Iran (ELEI)** was established by the Iranian Refugees' Alliance Inc, a non-governmental organization working from the US since 1995, to collect and analyze data on capital crimes, judicial proceedings in capital cases, and judicial executions in Iran that violate binding international legal standards on capital punishment.

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Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Please state whether the provisions of the Covenant have ever been invoked before domestic courts. If they have, please provide details on the cases in which this occurred, and the courts' responses to invocation of the Covenant. Please indicate how article 4 of the Constitution (requiring that all civil, penal, financial, economic, administrative, cultural, military, political and other laws and regulations are based on Islamic criteria) is consistent with the provisions of the Covenant, and explain which provision takes precedence in cases of conflict.

The State Party's judicial proceedings lack transparency. There is no system for court case reporting, and no mechanism which provides the public, or indeed the legal profession, with free access to information about court proceedings. A minority of of Supreme Court's precedent rulings (*araye vahdat-e raviyeh*) are printed in the Official Gazette, and a handful of other judgments are published by the Office of the Judiciary for educational purposes. ELEI's review of over a thousand of junior court and Supreme Court criminal judgments (mostly death-penalty related) revealed not a single instance in which a provision of the International Covenant on Civil Political Rights [hereinafter the Covenant] was invoked.[1] There appears to have been no progress from the situation in November 2004 when, in written replies to the UN Committee on the Rights of the Child, the State Party reported: "based on the inquiries made into juvenile courts, no cases in which the terms of the convention have been invoked have been viewed".[2]

The Constitution of the State Party, passed in 1979 and subsequently modified in 1989, does not acknowledge, explicitly or implicitly, any status or applicability of the international instruments to which it is a party, including the Covenant. In none of the legislation adopted in civil and criminal law over the past three decades is there any acknowledgement of the applicability of the Covenant in Iranian courts.

Article 4 of the Constitution explicitly declares the Shi'a Twelve-Imam *Ja'fari* school of Islam as the origin of all national law. In addition, Article 167 states that in case of 'the silence or deficiency of the law on a particular matter, or its brevity or its contradictory character' the judge 'shall deliver his judgment on the basis of authoritative Islamic sources and authentic *fatwa*'. In accordance with these provisions, judges rely in their rulings on Islamic statute law, the Qur'an (the holy book of Islam), Islamic jurisprudential texts dating from the 6th to the 20th century, and a body of over twenty thousand issue-specific '*fatwas*' [Islamic rulings or edicts] issued by about

[1] These include the following books published by or with support of the Judiciary: *Qatl-e amd va qir-amd-Gozideh ara-ye kayfari*, compiled by Jafar Reshadati, 1388, Payam Rashedeh (150 cases), *Qatl-e amd, qanun-e mojazat-e Islami dar Ayineh-ye Ara-ye Divan-e Ali Keshvar*, Yadollah Bazgir, volumes I and II, 1376, Quqnus, (202 cases), *Qatl-e Shabih-e amd va khataye mahz*, 1376, (106 cases), *Gozideh Araye dadgah-haye kayfari*, Nurmohammad Sabri, Ferdowsi, 1381, (171 cases), *Elal-e naqz-e araye kayfari dar shoab divan-e ali keshvar*, Yadollah Bazgir, Hoquqdan 1377, (214 cases), Qa*vayed-e feqhi va hoquqi dar araye divan ali kishvar*, Yadollah Bazgir, Danesh-negar, 1381, (173 cases).

[2] Committee on the Rights of the Child, Written Replies by the Government of the Islamic Republic of Iran to the List of Issues (CRC/C/Q/IRN/2), 16 November 2004, CRC/C/RESP/71, p 20.

a dozen state-approved contemporary Shi'a *maraj'a taqlid* [literally: Islamic authority worthy of emulation or religious reference (singular *marja' taqlid*)].[3] A division of the Office of the Judiciary presents issue-specific inquiries [*istifta*] to *maraj'a taqlid* and transmits their responses [*fatwas*] to judges on a case-by-case basis as well as in published collections.[4]

The Islamic jurisprudential text which is regarded as the foundation of the State Party's laws as well as the primary source according to Article 167 is the treatise *Tahrir-ol-vasileh* (literally, "Commentaries on the Vehicle" [to salvation], collection of *fatwas*) written in the 1960s by the late Ruhollah Mousawi Khomeini (Grand Ayatollah, 1902-1989, the Islamic Republic of Iran's first *valiy-e faqih* [Islamic Supreme Ruler].

The following sentence of death, quoted by the State Party on 15 February 2011 in one of its few responses to the *UN Special Rapporteur on extrajudicial, summary or arbitrary executions*, demonstrates how unlegislated Islamic law supersedes not only international law but even domestic statute law:[5]

> "Mr. Latifi's case was brought before Branch 1 of Sanandaj Court of Revolution. On the basis of Verse 33 of Holy Quran's *Maedah* chapter and issues 1, 3 and 5 of chapter 6, volume 4 of *Tahrir-ol-vasileh* (book of general Islamic rulings) – written by the late Imam Khomeini (P.B.U.H.) – and with consideration to the *Had* (punishment prescribed by Holy Quran for *Mohareb* or enemy of God) principle, the court – through verdict No. 8709978712100497 of 30 June 2008 – found the accused guilty of all charges and sentenced Mr. Latifi to death."

In its third periodic report, the State Party failed to explain which provision takes precedence where there is a conflict between domestic law and the Covenant. In its past responses to UN human rights bodies, the State Party's delegates to the Committee on the Rights of the Child (CRC) stated that "Article 9 of the Iranian Civil Code stipulated that when the country acceded to an international instrument the provisions of that instrument took precedence over domestic legislation." This is not the usual position taken by the State Party, either in practice or in its responses to UN human right bodies or public statements, and unfortunately, it runs counter to

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[3] *Tahrir-ol-vasileh* ("Commentaries on the Vehicle" [to salvation]) is Ayatollah Khomeini's (1902-1989) most comprehensive treatise. It consists of his commentaries on Ayatollah Seyyed Abul-Hassan Esfahani's (1867-1946) treatise *Vasilat-ol-nejat* (Vehicle to Salvation). It was written in Arabic during his exile years in Turkey in the 1960s and initially printed in two volumes in early 1980s. Later reprints are in four volumes. Each volume consists of several books, sections, and *masaleh* (issues) formulated as solutions to concrete or speculative questions.

[4] Presently, the most comprehensive edition of contemporary fatwas is apparently in the form of a Compact Disc entitled the Treasure of Isamic Jurisprudence and Judicial Rulings (*Lowh-e feshordeh-ye ganjineh-ye ara-ye feqhi qazayi*). The CD reportedly contains more than twenty thousand *istifta-ye feqhi* on more than fourteen thousand legal topics. It is produced by the Judiciary's Bureau for the Education of the Clergy and Compilation of Islamic-Jurisprudence (*Daftar-e amuzesh-e rohaniyun va tadvin-e motun-e feqhi*) in Qom <http://www.tebyan.net/index.aspx?pid=34528>.

[5] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, communications to and from governments, A/HRC/17/28/Add.1, p 187.

the actual text of the law.[6] Nor was it corroborated by any examples whatsoever. Moreover, what is clear is that violation of an international treaty such as the Covenant is not acceptable as grounds for appeal in either a civil or a criminal case under the State Party's laws.

On all other occasions the State Party has stated the opposite. As early as 1982, during its first review, the State Party's delegates to the Human Rights Committee emphasized that "although many articles of the Covenant were in conformity with the teachings of Islam, there could be no doubt that the tenets of Islam would prevail whenever the two sets of laws were in conflict."[7] In its 16 November 2004 written replies to the CRC, the State Party, modified its earlier assertion and stated: "In accordance with Iran's domestic law, after ratifying or acceding to international conventions, the provisions and premises of the international conventions are binding in the scope of the domestic regulations and laws".[8] Most recently, on 1 June 2011 [11.03.90], Mohammad Javad Larijani, head of the Office of the Judiciary's Human Rights Council and chief delegate at the UN's Human Right's Council's February 2010 Universal Periodic Review said that accession to some human rights treaties did not put the Islamic Republic of Iran under any obligation 'to leave their interpretation to westerners'. This remark was made in defense of the high number of *qisas* and drug-related executions, the use of stoning as a method of execution for adultery, the execution of juveniles, and the implementation of punishments such as lashing and amputation.[9]

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[6] Article 9 of the Civil Code states: "Treaty provisions which have been concluded between the Iranian government and other governments in accordance with the Constitution shall have the force of law." The article derives from the first Iranian Civil Code of 8 May 1928 [18.02.1307] passed under the first Pahlavi monarch, when the emergence of international treaties half a century later was clearly not anticipated. The State Party has, since its inception in 1979, made many amendments to the Civil Code but Article 9 has been retained with no modifications.

[7] Human Rights Committee, Summary Record of the 364th meeting, Iran, 15 July 1982, CCPR/C/SR.364, p 3.

[8] Committee on the Rights of the Child, Written Replies by the Government of the Islamic Republic of Iran to the List of Issues (CRC/C/Q/IRN/2), 16 November 2004, CRC/C/RESP/71, p 20.

[9] MEHR News, 1 June 2011 [11.03.90], *Tozihat-e Larijani dar mored-e qisas va sangsar* ("Larijani's clarifications on *qisas* and stoning"), http://www.mehrnews.com/fa/newsdetail.aspx? NewsID=1326271. In another statement, Mohammad Javad Larijani, head of the Judiciary's Human Rights Council said: "When international human rights instruments were being drafted, Islamic thinking was not considered. Westerners devised a version of human rights based on liberal secular thinking, expecting this version to replace religious, cultural, national and domestic values of all countries … Although Iran has acceded to the major international human rights conventions, the question of whether or not the provisions of these documents are complied with is, naturally, a matter determined by the boundaries of Iran's Constitution, criminal laws and cultural, social and religious values", AFTAB News, 14 May 2011 [24.02.90], *Larijani dabir-e setad-e hoquq-e bashar-e guvveh-ye qazaiyyeh matrah kard: Tahdid-e qarb be transit-e mavad-e mokhader az Iran* ("Secretary of Judiciary's Human Rights Council, Larijani, threatened the west with narcotics being transited from Iran"), http://aftabnews.ir/vdcevf8zvjh8wzi.b9bj.html.

a. Further information on the State Party's deliberate exclusion of the Covenant from the process of drafting the new Bill of the Islamic Criminal Code

The current Islamic Criminal Code composed in 1991-96 consists of five volumes:

1. General provisions,
2. *Hoddud* [singular form: *hadd*] (divinely specified offenses with mandatory fixed punishments),
3. *Qisas* (offenses against the person which incur mandatory retaliatory punishment),
4. *Diyyat* (offenses against the person which incur *diyyeh*, financial compensation or blood money), and
5. *Ta'zirat* [singular form: *ta'zir*] (discretionary punishments).

The *Hoddud, Qisas* and *Diyyat* volumes were mainly copied from the respective chapters of Ayatollah Khomeini's jurisprudential treatise, *Tahrir-ol-vasileh*. The *Ta'zirat* section was devised on the basis of Islamic law, practice and tradition, and the *fatwas* of state approved *maraj'e taqlid*, in particular those of Ayatollah Khomeini.

A new draft Bill of the Islamic Criminal Code (Volumes 1-4), drawn up mainly by theologian members of the judiciary over the course of seven years, was finally submitted to the Islamic Consultative Assembly on 11 December 2007 [20.09.1386]. On 16 December 2009 [25.09.1388] the Assembly passed the Bill provisionally with some revisions for implementation over a trial period of five years.[10] The Bill has been subject to a process of vetting for compatibility with Islamic law by the Guardian Council since 30 December 2009 [09.10.1388] (in violation of Article 94 of the Constitution which sets a maximum of ten days for the Guardian Council's vetting of legislation).[11] On 11 October 2009 [19.07.88] a member of the Islamic Assembly who was questioned about the delay said: "the Guardian Council is only bound by the 20-day [with additional 10 days of extension] time-limit if legislation is found to be in conflict with the Constitution but not when it is found to be in conflict with Islamic principles."[12]

The long list of legal sources and authorities consulted by the Islamic theologians who drafted most of the new Islamic Criminal Code and quoted on a website, now closed down, of the Office of the Judiciary's Centre for Islamic-Jurisprudence Research located in Qom include no

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[10] The revised Bill of the Islamic Criminal Code consisting of 737 Articles passed by the Islamic Consultative Assembly on 16 December 2009 [25.09.1388], available at: http://tarh.majlis.ir/?Report&RegId=127&dore=8.

[11] Constitution, Article 94: All legislation passed by the Islamic Consultative Assembly must be sent to the Guardian Council. The Guardian Council must review it within a maximum of ten days from its receipt with a view to ensuring its compatibility with the criteria of Islam and the Constitution. If it finds the legislation incompatible, it will return it to the Assembly for review. Otherwise the legislation will be deemed enforceable.

[12] IRNA news agency, 11 October 2009 [19.07.88], *Mokhber comesiyon qazayi: majles bezudi dar mored mohlat-e ijraye qanun-e mojazat-e islami raygiri mikonad* ("Judicial Affair's Commission's spokesperson: parliament soon to vote on implementation period of Islamic Criminal Code"), http://www.irna.ir/View/FullStory/?NewsId=726751

reference to international instruments such as the Covenant. The following is the English translation of all the consulted sources listed by the Centre:[13]

> "1- Islamic-Jurisprudence books, i.e. deductive and traditionalist (*istidlali va qir-istidlali*), ancient and recent (*qadima va hadisa*) texts and inquiries regarding Islamic jurisprudence (*istifta'at*),
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> 2- Legal books, i.e. almost all criminal law sources relevant to the topics in the Islamic Criminal Code,
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> 3- Written articles, i.e. almost all criminal law sources relevant to the topics in the Islamic Criminal Code,
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> 4- University teaching texts,
>
> 5- [The Supreme Court's] precedent rulings (*araye vahdat-e raviyeh*),
>
> 6- Advisory opinions of the Legal Bureau [of the Office of the Judiciary],
>
> 7- Questions submitted by courts to the office of the Judiciary's Center for Islamic-Jurisprudence Research and inquiries regarding Islamic-Jurisprudence (*istisfa'at*) submitted to *maraja's* bureaus,
>
> 8- Computer software such as A Compilation of Islamic-Jurisprudence (*moa'jam feqhi*) by Grand Ayatollah [Mohammad Reza] Golpaygani [1898-1993]], The Library of the House of Prophet's Islamic-jurisprudence (*jam'e feqh-e ahl-e bayt*), Index and Treasure of Islamic-Jurisprudence Judicial Rulings (*namayeh va ganjineh araye fiqhi qazayi*), and
>
> 9- The internet."

If the theologians' internet research did include examination of international instruments to which their government had made a public commitment, it is curious that they made no specific reference to it.

Furthermore, the long list of issues that the Centre analyzed during the pre-draft survey of the current Islamic Criminal Code, which it described as a 'study of pathology', included no reference whatsoever to the issue of compatibility with the Covenant or other international human rights instruments. The following is an English translation of all the analyzed issues listed by the Centre:[14]

> "1- Silence [of the law],
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> 2- Defects (*naqs*),
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> 3- Ambiguity and brevity
>
> 4- Breach of Islamic law,
>
> 5- Implementation difficulties,
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> 6- Unsuitable wording for the present societal circumstances,
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> 7- Structural problems,
>
> 8- Repetitive articles, and
>
> 9- Contradictory issues."

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[13] *Markaz-e Tahqiqat-e Feqhi-ye Quvveh-ye Qazaiyyeh* ("The Office of the Judiciary's Centre for Islamic-Jurisprudence Research"), *Piramun-e layeheh-ye qanun-e mojazat-e eslami* ("About the Bill of Islamic Criminal Code"), http://www.feghegaza.com/node/282 (last visited on 20 May 2010).

[14] Ibid.

Right to life (art.6)

6. Please provide information, on an annual basis since 2005, on death sentences imposed, the number of executions carried out, the grounds for the conviction and sentence, the age of the offenders at the time of committing the crime, as well as their ethnic origin. Please indicate whether the State party intends to revise the Penal Code to restrict the imposition of the death penalty to only the "most serious crimes", within the meaning of article 6(2) of the Covenant and the Committee's General Comment No. 6 (1982) on the right to life. Please clarify whether the circular of January 2008 by the former head of the judiciary banning public executions is respected in practice. Please clarify why stoning as a method of execution continues to be handed down by courts, despite a moratorium issued by the judiciary in 2002, and explain how this method of execution is consistent with the provisions of the Covenant.

The true scale of executions carried out by the State Party is kept secret in order, as the authorities admit, to soften international criticism and avoid scrutiny. In its third periodic report, the State Party provided a wide range of detailed statistics on matters as trivial as the monthly break down for the number of contacts with 'voicemail boxes of Office of the Judiciary officials' [CCPR/C/IRN/3, paragraph 93], while failing to give any quantitative indication of the scale upon which the death penalty is imposed and carried out in Iran. The only relevant statistic provided by the State Party was that in 1387 [March 2008 to March 2009] the Central Clemency Commission pardoned a total of 742 'death penalty victims' [*sic*] [CCPR/C/IRN/3, paragraph 294]. This extremely high number of death sentences pardoned in a single year provides in itself some indication of the volume of death sentences which are being imposed.

The State Party publicizes only a proportion of death sentences and executions in the mass media for their supposed retributive and deterrent effects. In recent years Iranian human rights NGOs and individual political prisoners in contact with prison populations have also become outlets for exposing death penalty cases usually after a sentence has been carried out. From January 2008 to September 2011 ELEI recorded 1,704 publicly reported executions (310 in 2008, 369 in 2009, 594 in 2010, and 431 in the first eight months of 2011). The surge in the number of executions since 2010 is, as has been acknowledged, the result of the policy of 'swift and merciless punishments' introduced by the new Judiciary Head Ayatollah Sadiq Larijani. Mr. Larijani has confirmed that 'for reasons of expediency' the public is still not informed of all executions. The extent to which individual executions are under-reported is unavoidably difficult to assess. Sporadic disclosures of aggregate execution statistics by some provincial officials has revealed, for example, that while in one province details of all 140 executions carried out in one year had not been made public, in another province no details of executions other than 'five occasions of executions' were made public despite the fact that reliable unofficial reports indicated that as many as 48 executions had taken place in the span of three months in five group executions. Official statistics on crime and punishment, such as the annual statistics on murder incidents and drug-related arrests also suggest that the true scale of executions in Iran is much higher than the numbers reported officially and made public by independent sources.

Further information on the State Party's underreporting of executions and the ongoing secret large-scale executions provided in **section f**.

Since its foundation in 1979, the Islamic Republic of Iran has been expanding the number of capital offences so that there are now at least 135 capital crimes provided for in the Islamic Criminal Code and eleven other pieces of legislation. A detailed table of capital crimes and their basis in statute law, if any, compiled by ELEI is shown in the Table of Capital Offenses in the Islamic Republic of Iran and their Sources in Statute Law and Islamic law (see Appendix I). Since its last review by the Human Rights Committee in 1993, the State Party has amended or enacted seven pieces of legislation with provisions for 67 retained or new capital crimes.[15] Most recently, a new amendment to the 1997 amended Anti-Narcotics Drug Law (enforced since December 2010) expanded the definition of illegal narcotics drugs to include marijuana and synthetic psychotropic substances and added two additional offenses that provide the death penalty for drug barons. Currently, a further 24 capital crimes are envisaged in four pending pieces of legislation.[16] These include the new draft Bill of the Islamic Criminal Code that was revised and passed by the Islamic Consultative Assembly on 16 December 2009 and is still under vetting for compatibility with Islamic law by the Guardian Council. The revised Bill not only retains nearly all the capital crimes provided in the current 1991/96 Islamic Criminal Code, but adds a further seven *hoddud* offenses for which the death penalty will be imposed mandatorily. (see Appendix I- section III) The revised Code also retains the definition of 'intentional' for *qisas* crimes (intentional homicide and bodily injury), which regardless of the circumstances, considers any killing resulting from bladed instruments, firearms, sharp or heavy stones, or blows to the head or other vital parts as 'intentional' and therefore subject to the mandatory *qisas* death sentence. This anomalous definition of intentionality is the most significant factor in the high number of *qisas* executions, including juvenile offenders, in Iran. Many deaths which would be treated as manslaughter or second-degree murder under other systems are automatically subject to the *qisas* death sentence in Iran.

In the original draft of the Bill of Islamic Criminal Code (2007), the drafters, intending to reduce judges' reliance on uncodified *shari'a* law, added several *hoddud* capital crimes (such as apostasy and witchcraft) that were not inserted in the Islamic Criminal Code of 1991/1996 which is currently applicable. Criticism by the international community prompted the Islamic Consultative Assembly to delete some of these newly added capital offences when it revised and passed the draft Bill on 16 December 2009. The Assembly also removed from the draft Bill all references to punishment by stoning, admitting that it took this step 'due to international sensitivities' (See Appendix IV- The Islamic Consultative Assembly's comments on the removal

[15] The amended laws are: The Islamic Criminal Code (Volume 5- *Ta'zirat*) amended in 1996, eight capital offenses; the Law Concerning Amendments and Annexations to the Anti-Narcotic Drug Law amended in 1997 and 2010, fifteen offenses; the Press Code amended in 2000, one offense. The new laws are: Law Concerning Penalties for Crimes Committed by Members of the Armed Forces (2003), 49 offenses; the Law on Combating Human Trafficking (2004), one offense; the Law Concerning Cyber Crimes (2009), one ofense; the Law Concerning Punishment of Persons Involved in Illicit Audio-Visual Activities (2008), six offenses.

[16] The revised Bill of the Islamic Criminal Code, seven offenses; Draft Bill Concerning Increase of Penalties for Disturbing the Psychological Security of Society, under review since 2008, seven offenses; Draft Bill Concerning Increase of Penalties for Smuggling of Arms and Ammunition and Possessors of illegal Arms and Ammunition, under review since 2008, seven offenses; Draft Bill Concerning Smuggling of Goods and Currency, under review since 2011, three offenses.

of execution by stoning from the revised Bill of the Islamic Criminal Code). To ensure that the deleted offenses and punishments 'remain irrevocable and fully applicable', a new provision was added to the revised Bill stating that for 'all *hoddud* offenses not specified in the Code' judges shall, pursuant to Article 167 of the Constitution, act on the basis of *fatwas* issued 'by the Supreme Leader or by a person or persons appointed by him'. [Articles 220-221] This wording ensured that offences such as apostasy remained punishable by death, and also that execution by methods such as stoning could continue as before.

Further information on the proliferation of non-serious capital crimes and other factors contributing to the high number of unlawful executions is provided in **section b**.

In their third periodic report, the State Party, indeed, admits that the goal of former Judiciary Head Ayatollah Mahmoud Hashemi Shahroudi's (1999-2009) 29 January 2008 directive was not to ban public executions but to ensure that 'implementation of death sentences in public will only take place with the agreement of the Judiciary Head and in response to social exigencies' [CCPR/C/IRN/3, paragraph 289]. During the month preceding the directive (January 2008) ELEI recorded 10 public executions. There were 17 public executions in the seventeen and a half months between 1 February 2008 and the end of Ayatollah Shahroudi's term of office on 17 August 2009. Public executions continued at progressively higher rates following Ayatollah Shahroudi's replacement as Judiciary Head by Ayatollah Mohammad Sadeq Larijani: 11 in the last two months of 2009, 17 in 2010, and 38 (including two juveniles) in the first eight months of 2011. On 22 November 2010 [01.09.89], when Mr. Larijani was asked whether Mr. Shahroudi's directive had been changed, he reiterated: 'The directive did not ban [public execution of] all sentences, it only excluded those public executions that brought the regime into disrepute or were subject to abuse by foreigners.'[17]

Further information on public executions provided in **section c**.

In its third periodic report, the State Party remains silent about the so-called moratorium on stoning, rumours of which have been circulating since 2002. The Iranian authorities have repeatedly mentioned a moratorium directive issued by the former Judiciary Head, Ayatollah Mahmoud Hashemi Shahroudi (1999-2009), but have never identified the document or disclosed its actual content. All Office of the Judiciary directives are published in the Official Gazette and other judiciary publications. The rumored directive is not among them. In fact, the four directives relating to execution by stoning issued by Ayatollah Shahroudi during his term (1999-2009) contain no more than technical instructions or recommendations to judges in the event that they decide to exercise their discretionary right to suggest a pardon. Furthermore, public statements made by Mr. Shahroudi, guidelines for implementation of stoning issued by him in 2003, the draft Bill of the Islamic Criminal Code prepared under his stewardship in 2007, and sentences of stoning that have been passed and carried out during his term, all rule out any suggestion of a genuine intention to abolish stoning in Iran.

Further information on stoning and other cruel execution methods provided in **section d**.

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[17] FARS News Agency, 22 November 2010 [01.09.89], *Neshast-e khabari guvveh-ye qazaiyyeh* ("Judiciary's press conference"), http://www.farsnews.com/printable.php?nn=8909011399.

b. Further information on proliferation of non-serious capital offenses and other factors contributing to the high number of unlawful executions in the Islamic Republic of Iran

For many capital offences currently provided in statute or *shari'a* law (at least 135 offenses) or envisaged in pending legislation (24 offenses), the death penalty is imposed mandatorily, and in many cases also, the evidentiary standards used to secure a conviction are based on Islamic rules conceived and practiced in ancient times.

135 offenses for which the death penalty is mandatory or discretionary, and 24 more in pending legislation

The Constitution of the State Party (Articles 4 and 167) declares *shari'a* as the origin of all national law enforceable in courts, including criminal law and makes it applicable irrespective of whether or not offenses or punishments referred to in *shari'a* pronouncements were incorporated into statute law. Several statute laws also explicitly guarantee that unlegislated *shari'a* law retains its status as applicable law.[18]

As far as the death penalty is concerned, the multiplicity of sources of law has resulted in a situation where only some of the capital crimes and some of the methods of execution imposed in the Islamic Republic of Iran are actually set out in statute law. These are referred to as 'legislated' capital crimes and execution methods and are listed in the Islamic Criminal Code, which is the main criminal statute law in Iran, or in eleven other shorter pieces of legislation. The revised Islamic Criminal Code and three more pieces of legislation that are currently pending introduce 24 new capital offenses.

Presently, a variety of other capital crimes (such as apostasy) and execution methods (such as throwing the offender from a high place) derive from *shari'a* law and are imposed by judges on the basis of the Qur'an, Islamic jurisprudential texts, primarily the treatise *Tahrir-ol-wasileh*, or *fatwas* issued by about a dozen state-approved contemporary Shi'a *maraj'a taqlid*. To give an example of the way various legal and Qur'anic authorities are coordinated in passing sentence, the death sentence for apostasy of 22 September 2010 [31.06.89] imposed on 33-year-old Pastor Youcef Nadarkhani of the Pentecostal church *Kelisay-e Iran* by Chamber 11 of Gilan's Provincial Criminal Court expressly relied on Article 167 of the Iranian Constitution, on Grand Ayatollah Khomeini's *Tahrir-ol-wasileh* and concurring *fatwas* by Grand Ayatollahs Mohammad Taqi Bahjat [d. 2009], Lutfollah Safi Golpayegani [1920-], Nasser Makarem Shirazi [1927-], and Seyyed Mohammadreza Golpayegani [d. 1993].[19]

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[18] The Criminal Procedure Code for General and Revolutionary Courts (1999), Article 214; The Civil Procedure Code for General and Revolutionary Courts (2000), Article 3; the Amended Law Concerning Formation of Public and Revolutionary Courts (2002), Article 9; The Islamic Criminal Code (1991/96), Article 597.

[19] A copy of the two-page verdict and sentence in the prosecution of Pastor Yousef Nadarkhani is available at: <http://www.iranhumanrights.org/2010/12/khanjani-nadarkhani-apostasy/>. The following is an English translation of the last paragraph of verdict:

Capital offenses exist in three classes of crime: *Qisas* (four offenses), *Hoddud* (31 offenses), and *Ta'zirat* (97 offenses). A detailed table of capital crimes and their basis in statute law, if any, has been compiled by ELEI in the Table of Capital Offenses in the Islamic Republic of Iran and their Sources in Statute Law and Islamic law given in Appendix I. The table also shows which capital crimes were retained, omitted or newly added to the draft revised Islamic Criminal Code (both the initial 2007 draft bill and the 2009 revised version).

Qisas (literally, 'retaliation') is defined in the 1991/96 Islamic Criminal Code as a punishment 'equivalent to the crime, which God has prescribed for *jenayat* (intentional murder or bodily harm)'.[20] *Qisas-e nafs* ('retaliation with a life') is the Islamic term for capital punishment in *qatl-e amd* ('intentional killing') and is considered a right conferred upon the heirs of the victim. The bringing of the prosecution in such cases, the trial proceedings and the carrying out of the *qisas* sentence are all conditional upon the wishes of the heirs.

Under Islamic law as it relates to offenses of murder in Iran, the term 'intentional killing' carries a meaning quite different to its customary and internationally accepted sense in this context. The *UN Special Rapporteur on extrajudicial, summary or arbitrary executions* has stated that "the term ['intentional'] should be equated to premeditation and should be understood as deliberate intention to kill".[21] In the *qisas* murder laws of Iran, however, the briefest momentary 'intent' on the part of the perpetrator is sufficient to establish the element of 'intention' in murder. Even where there is no intent to kill, intentionality is considered proven if the perpetrator has committed an act deemed to be 'typically lethal'.[22]

> All [five] judges of Gilan's Provincial Criminal Court have unanimously obtained conscientious certainty [*elm-e vojdani*] that Mr. Yousef Nadarkhani, son of Biram, born to Muslim parents, having adopted Islam after puberty, subsequently defected from the holy religion of Islam at the age of 19. His act, pursuant to consensus of Shi'a, jurists constitutes innate apostasy [*irtidad-e fetri*]. Pursuant to Article 167 of the Constitution, Article 3 of the Civil Procedure Code for General and Revolutionary Courts, Article 8 of the Amended Law Concerning Formation of Public and Revolutionary Courts, Article 105 of the Islamic Criminal code, *Tahrir-ol-vasileh* issue [*masaleh*] 8 of chapter titled the Judge's Qualifications, and the *fatwas* of jurisconsults such as the Imam [Khomeimi] PBUH and the esteemed Supreme Leader [Khamenei] and Grand Ayatollahs Seyyed Mohamadreza Golpayegani, Safi, Makarem Shirazi, and Bahjat Fumani as inserted in pages 103-109 [of the case file], the said person is sentenced as an innate apostate to execution by hanging until death occurs. This verdict is issued in the presence of the defendant and is appealable before the Supreme Court within twenty days of notification.

[20] 1991/96 Islamic Criminal Code, Article 14.

[21] Report of the *Special Rapporteur on extra-judicial, summary or arbitrary executions* on his mission to the USA, UN Doc. E/CN.4/1998/68/Add.3, 22 January 1998, p. 7.

[22] Article 206 of the 1991/96 Islamic Criminal Code:

> "Murder is intentional in the following instances: a) where the murderer intends to kill a particular person or unspecific person(s) within a group by perpetrating an act which results in death, regardless of whether the act is typically lethal or not; b) where the murderer intentionally perpetrates an act which is typically lethal, even if s/he did not intend to kill the person; c) where the murderer does not intend to kill and the act perpetrated by him is not typically lethal by its nature, but will be lethal for

The 'typically lethal' status of an act is generally determined by the type of weapon used in the killing. Any killing resulting from bladed instruments, firearms, sharp or heavy stones, or blows to the head or other vital parts is considered to have resulted from a 'typically lethal act' and is therefore considered to be 'intentional'. Since most killings are committed by such blows or with such objects,[23] especially knives, many deaths which would be treated as manslaughter or second-degree murder under other systems are automatically subject to *qisas* death sentences in Iran. This anomalous interpretation of intentionality is the single most significant factor in the large number of *qisas* executions and death-row prisoners, including juvenile offenders. (see Appendix X- List of known juvenile executions from 2008 to 2011)

From 1 January 2008 to 1 September 2011, ELEI recorded 280 *qisas* executions, including 12 juvenile executions (2008: 133, 2009: 113, 2010: 18, 2011:16). (see Appendix IX- Statistic on publicly reported executions (2008-2011))

Hadd, (plural: *hoddud*. Literally, 'boundary or limit') is a punishment for which '*shari'a* has fixed the measure, the degree and the method'.[24] It is thus by definition unchangeable, irreducible and mandatory. Since *hadd* crimes are claims of God, they do not require a private complainant for prosecution (*qazf*, false accusation of illicit intercourse being the only exception to this rule). Therefore, for example, in the offense of adulterous *zina*, a wife or husband who has been found guilty of adultery will be put to death even if their spouse has made no complaint, or indeed even if they oppose the death sentence. The only mitigating circumstance for a *hadd* death sentence is 'repentance,' but such mitigation can only be applied to persons whose crimes were proven in court on the basis of their own confession. Even then, it is up to the discretion of the judge to grant a pardon or proceed with the death sentence.[25] *Hoddud* capital crimes consist of thirty-one offenses in three subcategories of heterosexual and homosexual sex crimes, crimes against the state and religion, and recidivism (repeat offending). The *hoddud* crimes of *moharebeh* and *ifsad-e fil arz* (literally, 'insurrection against God's ordinances' and 'corruption on earth') are undetermined in the scope of offenses they can encompass and in addition to their conventional application to armed robbery, they may also be extended to armed or unarmed dissident political activity.[26] In the 2009 revised Bill of the Islamic Criminal Code the scope of *ifsad-e fil arz* has

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the victim due to conditions such as sickness, old age, disability, or infancy, etc., of which the murderer is aware."

[23] For example, of 19 killings that took place in Tehran in one month, eight (42%) were committed with a knife, four (21%) with blunt objects such as metal rods or stones, three (25%) with rope, two (11%) with firearms and two (11%) by pushing the victim from a high place. *Etemaad Meli* newspaper, *Yek jenayat dar har 29 sa'at* ("One murder every 39 hours in the capital"), 26 August 2006 [05.06.1375].

[24] 1991/96 Islamic Criminal Code, Article 13.

[25] 1991/96 Islamic Criminal Code, Articles 72, 126, 132, and 182.

[26] Article 186 of the 1991/96 Islamic Penal Code of Iran [formerly Article 198 of the 1982 of the Law on *Hoddud* and *Qisas*] states: "any group or organization that attempts armed uprising against the Islamic regime, as long as its leadership exists, all its members and supporters who assist such a group or organization in one way or another, being aware of its status and intentions are deemed to be *mohareb,* even where they are not members of the armed wing [of such a group or organization]."

been expanded to cover offenses such as distribution of dangerous poisonous and microbiological matters, crimes against internal and external security, arson, destruction and terror, establishment of centers of prostitution and corruption when committed 'on an extensive level' or 'result in extensive disruption of the national order or cause insecurity or inflict damage in a major way to the physical integrity of people or to public or private property or spread corruption or prostitution on an extensive scale'.[27]

From 1 January 2008 to 1 September 2011, ELEI recorded 271 *hoddud* executions, 139 of which were reportedly for so-called state and public security crimes (*moharebeh and ifsad-e-fil-arz*), and 132 for so-called sex crimes (*zina* and *lavat*). (see Appendix IX- Statistic on publicly reported executions (2008-2011))

Ta'zir (Literally 'chastisement') is defined in Iranian law as punishment imposed for 'an act or an omission that is prohibited in the sacred Islamic *shari'a'. Ta'zir* punishments are not specified in *shari'a* and are left to 'the discretion of the Islamic judge'. The death penalty is applied to offenses classified as *ta'zir* usually on the pretext that the gravity of the offense makes it 'tantamount' to the *hadd* crime of *moharebeh* and/or *ifsad-e fil arz*.

Altogether there are 99 *ta'zir* capital offenses. Eight of these are provided for in the *ta'zirat* section of the 1991/96 Islamic Criminal Code and 30 in nine other shorter pieces of legislation. They cover a wide range, from acts with potentially lethal consequences, such as attempting to assassinate the Leader,[28] to economic crimes such as counterfeiting currency,[29] morality crimes such as extensive distribution of obscene/pornographic audio-visual materials,[30] and public order crimes such as providing improperly baked breads in order to undermine the regime.[31] There are also 15 capital offenses in the Anti-Narcotic Drugs Law of 1997/2010, and 49 further offenses in the Law Concerning Punishments for Crimes Committed by Members of the Armed Forces of 2003. The pending Bill of the Islamic Criminal Code and three new proposed laws concerning 'psychological' public disturbance, smuggling and possession of arms, and smuggling of goods and currency will result in twenty-four new capital offenses.

According to the Tehran Prosecution Office, Ali Akbar Siadat, accused of being 'an agent of the Zionist regime's espionage services' was executed in Tehran on 27 December 2010 under Articles 501 and 508 of the *ta'zirat* section of the 1991/96 Islamic Criminal Code.[32] Article 508

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[27] 2007 Draft Bill of Islamic Criminal Code, Article 228-10 and 2009 Bill of the Islamic Code, Article 287, for all newly added capital crimes see section III.l of Appendix I.

[28] 1991/96 Islamic Criminal Code, Article 515.

[29] Law Concerning Increase of Penalties for Bill Counterfeiters and Persons who Import, Distribute or Pass Counterfeit Bills, Article 1.

[30] Law Concerning Punishment of Persons Involved in Illicit Audio-Visual Activities (2008), Article 3a.

[31] Law Concerning Increase of Penalties for Speculators and Profiteers (1988), Article 5-5.

[32] IRNA News Agency, *Yek ozv-e monafeqin va yek jasus-e Mossad edam shodand* ("Member of hypocrite group and Mossad spy executed"), 27 December 2010 [07.10.89], http://www.irna.ir/Print.aspx?NID=30155401.

states: "Any person or group who aids and abets in any way a belligerent foreign government against the Islamic Republic of Iran shall be sentenced from one to ten years' imprisonment unless deemed to be *mohareb* [and therefore subject to the punishments for *mohareb*]." On 31 January 2011 [11.11.89], Alireza Qarabat, accused of 'claiming to be God and communicating with the Twelfth Imam', was hanged in Ahvaz reportedly under Articles 513, 639 and 640 of the *ta'zirat* section of 1991/96 Islamic Criminal Code.[33] Article 513 states: "Any person who insults the sacred principles of Islam or any of the great prophets or the infallible imams or the daughter of the prophet shall be sentenced to between one to five years' imprisonment unless the act is deemed *sabb al-nabi* [blasphemy] in which case the offender shall be executed."

The authorities admit that in practice most *ta'zirat* capital sentences are imposed under the Anti-Narcotic Drugs law of 1997/2010. Most recently, Mohammad Javad Larijani, the head of Office of the Judiciary's Human Rights Council told the press that 'more than 70% of executions are related to drug offenses'.[34]

From 1 January 2008 to 1 September 2011, ELEI recorded 1,115 *ta'zir* executions, 1,111 of which were drug-related, and 4 were for blasphemy, espionage and economic crimes. (see Appendix IX- Statistic on publicly reported executions (2008-2011))

The 2010 amendment of the Law expanded the definition of illegal narcotic drugs to include marijuana and synthetic psychotropic substances and added two additional offenses that punish drug barons. Drug-related capital offenses are not limited to trafficking, cultivation, manufacturing, importing and exporting. People in possession of illicit drugs exceeding certain amounts are also executed, and where the individual has multiple convictions, the narcotics are calculated cumulatively, and the death penalty applied if the total quantity of narcotics reaches a stated threshold. Drug-related offenses are tried in Revolutionary Courts and are not appealable. Any such death sentences have to be confirmed by the Head of the Supreme Court or the Prosecutor General [Article 32 of 1997 Anti-Narcotics Law]. In November 2010, a legal affairs deputy to the Prosecutor General said that since 2009 [1388] drug-related sentences have been reviewed only by the State Prosecutor General and numbered 5,000 to 6,000 annually, including 'sentences of death and other measures such as confiscation of property or vehicles'.[35] In the 1997 amendment to the Anti-Narcotic Drugs Law a new provision has allowed the courts the discretion to request pardon and commutation of drug-related sentences from the Pardon and Clemency Commission. [Article 38] In death sentences the request may be issued after the sentence has been confirmed and finalized.

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[33] FARS News Agency, 31 January 2011 [11.11.89], *Khodaye doruqin dar Ahvaz be dar-e mojazat avikhteh shod* ("False God Hanged in Ahvaz"), http://www.farsnews.net/printable.php?nn=8911111212.

[34] AFTAB News, 14 May 2011 [24.02.90], *Larijani dabir-e setad-e hoquq-e bashar-e guvveh-ye qazaiyyeh matrah kard: Tahdid-e qarb be transit-e mavad-e mokhader az Iran* ("Secretary of Judiciary's Human Rights Council, Larijani, threatened the west with narcotics being transited from Iran"), http://aftabnews.ir/vdcevf8zvjh8wzi.b9bj.html.

[35] FARS News Agency, 5 November 2010 [14.08.89], *Salaneh 6,000 parvandeh-e qachaq mavad-e mokhader dar dadsetani-ye kol baresi mishavad* ("Prosecutor General reviews 6,000 drug trafficking cases annually"), http://www.farsnews.com/printable.php?nn=8908140110.

In 1993, the UN Human Rights Committee said in its concluding observations on Iran's second periodic report (CCPR/C/79/Add.25, paragraphs 8 and 18) that it considered the imposition of the death penalty for any crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life, as being in breach of the Covenant. The Committee recommended that domestic laws be revised with a view to reducing the number of offences currently punishable by the death penalty and reducing the number of executions.

In its third periodic report, the State Party fails to report a single offense for which the death penalty has been abolished since 1993 and admits that the death penalty is still applied for non-lethal offenses such as smuggling of narcotics and adultery (CCPR/C/IRN/3, paragraph 273). The State Party also confirms that the death penalty is applied to 'intentional homicide' under the *qisas* laws of Iran but fails to give any explanation of the anomalous interpretation of 'intentionality' which significantly contributes to the high numbers of unlawful *qisas* death sentences and executions (CCPR/C/IRN/3, paragraph 276).

The State Party also fails to mention the numerous other non-lethal crimes for which the death penalty can be imposed including rape, homosexual intercourse, apostasy, a range of other crimes of a political, religious, moral, economic, audio-visual, and internet-related nature, and crimes of public disturbance, drug possession, human trafficking and arms smuggling, many of which have been enacted since 1993. [For ratification dates of all death penalty legislation see section I.1 of Appendix I]

Mandatory sentencing

Iranian legislation dictates mandatory sentencing for *qisas* (four offenses) and *hoddud* (31 offenses). Mandatory death sentences are prohibited under international human rights law, but contribute significantly to the high number of executions in Iran. The *Special Rapporteur on extrajudicial, summary or arbitrary executions* has explained the legal principles underpinning this prohibition on mandatory sentencing, and has concluded that in death penalty cases, individualized sentencing by the judiciary is essential to prevent cruel, inhuman or degrading punishment, and the arbitrary deprivation of life.[36]

In its third periodic report, the State Party admits that under Iran's criminal system any consideration of a sentence other than death in 'intentional homicide' is determined solely by the decision of the 'owners of the blood' (CCPR/C/IRN/3, paragraph 276). Furthermore, reports show that even when there were no 'owners of blood', the State Party still applied the death penalty mandatorily without any regard to the circumstances of the individual. According to the Islamic Criminal Code [Article 266], in the absence of the 'owners of blood', the decision whether or not to prosecute and impose the death penalty lies entirely with the Prosecutor. In 2006, a 27-year old homeless woman who called herself Soheila and said that she had 'hepatitis and AIDS' was prosecuted for the 'intentional homicide' of her five-day old baby. In the absence of the baby's father, whom Soheila had left seven months earlier because of his drug addiction, the Tehran Prosecutor stood as the 'owner of the blood' and sought the *qisas* death penalty.

[36] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, 29 January 2007, paragraphs 54-62, 66.

Soheila was found guilty and sentenced to death by Chamber 71 of the Tehran Provincial Criminal Court despite evidence that at the time of the incident she was also suffering from post-natal depression. Her sentence was upheld by Chamber 42 of the Supreme Court.[37] On 7 March 2008, the *Special Rapporteur on extrajudicial, summary or arbitrary executions* appealed to the Iranian authorities on her behalf.[38] Later that year, a lawyer found the baby's father who filed an official petition stating that he has pardoned Soheila unconditionally. On 20 October 2009, Soheila was hanged inside the Evin prison alongside four other men.[39] Her real identity, Khorshid Qasemi, was revealed after her family saw her photograph in newspapers and read that she had been executed.[40]

The State Party also admits that under the criminal system of Iran any consideration of a lesser sentence by judges is permitted for 'deterrent or *ta'zir* punishments' (CCPR/C/IRN/3, paragraph 284) and not for *hoddud* crimes. Since *shari'a* has 'fixed the measure, the degree and the method' of punishing *hoddud* crimes the sentences are by definition unchangeable, irreducible and mandatory. This Islamic principle is explicitly confirmed in the 2009 revised Bill of the Islamic Criminal Code which states in Article 219 that: "The court cannot change, reduce, convert or rescind the type or measure of *hoddud* punishments. These punishments are rescinded, reduced or converted only through repentance and pardon pursuant to conditions stipulated in the law".

Evidentiary standards

Another factor in the high number of executions under the criminal system of the State Party is the anomalous standard of proof used to secure capital convictions. For *qisas* and *hoddud* crimes Iranian legislation explicitly prescribes the *shari'a*-based methods of proof which were conceived and practiced in ancient times when the norms of due process, as defined in contemporary international law, forensic sciences and crime investigation tools and techniques, were neither known nor applied.

The *Special Rapporteur on extrajudicial, summary or arbitrary executions* has emphasized that the defendant's guilt must be proven beyond reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence, and after taking into account all mitigating factors.[41] The methods of proof dictated in the State Party's criminal system do not meet the international standard that guilt must be proven beyond reasonable doubt.

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[37] *Aftab-e-Yazd* newspaper, 20 October 2009 [29.07.88], *Madar-e sangdel idam mishavad* ("Cruel mother will be hanged").

[38] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/8/3/Add.1, 30 May 2008, p 235.

[39] *Etemaad* newspaper, 21 October 2009 [30.07.88], *Soheila va 4 mard sahargah-e diruz be dar avikhteh shodand* ("Soheila and four men hanged yesterday morning").

[40] IRAN newspaper, 29 October 2009 [07.08.88], *Ifshaye asrar-e zendegiye zan-e javan pas az idam* ("Young woman's life secrets revealed after execution").

[41] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/51/457, 7 Oct. 1996, paragraph 111.

For *qisas* ('intentional homicide') and *hoddud* crimes, the law specifies the methods of proof as either the 'confession of the accused', or 'the testimony of witnesses', or 'the judge's *elm*' [literally, knowledge]. In *Qisas* crimes, a conviction can also be obtained with the archaic institution of oath-taking [*qasameh*].[42] The 2009 revised Bill of the Islamic Criminal Code extends the first three methods to all crimes [Article 159].

Article 232 of the 1991/96 Islamic Criminal Code provides that a confession of intentional homicide, even if made only once before the presiding judge is sufficient to prove intentional homicide. Articles 68 and 114 state that a four-fold confession of a woman and/or a man before the judge incurs the *hadd* for *zina* (illicit heterosexual intercourse) and *lavat* (homosexual penetrative intercourse) respectively. Article 189-a states that a single confession suffices to convict the accused of *moharebeh*, a *hadd* crime that also extends to non-violent anti-government political activity. Similar fixed levels of 'confession' are prescribed for other *hoddud* crimes. The law provides no qualification for a confession other than that the person making the confession should be 'of sound mind, mature, exercising their free will with intent' and that the individual should not be 'a lunatic, a drunkard, a child, mentally disabled, or lacking intent, such as a person who is absent-minded, a joker, or a sleeping or unconscious person' [Articles 69 and 233]. Determination of these qualifications is left to the discretion of the presiding judge. The Islamic 'rule of confession' (*qa'edeh-ye iqrar*) stipulates that in private law-suits (*haq-ol-nas*), including proceedings for 'intentional homicide', confessions made by sane defendants are binding on them, even if later repudiated. This rule was not included in the 1991/96 Islamic Criminal Code, but was inserted in the 2009 revised Bill of the Islamic Criminal Code in the section titled 'Confession' [Article 172].

Media reports, information from lawyers representing *qisas* and *hoddud* defendants, the few examples of published cases, and the admission of the authorities themselves all confirm that 'confession' is the most favored and commonly used proof. In 'intentional killing', the Islamic Criminal Procedure Code of 1999 [1378] itself explicitly states that at the request of the heirs of the blood, suspects can be detained for up to six days without charge 'for the purpose of obtaining testimony' [Article 32-5], an arrangement that is virtually an invitation to ill-treatment and torture.

Human rights organizations have extensively documented the systematic use of incommunicado detention and torture in the State Party's criminal system in order to obtain confessions of guilt in political cases. The same factors apply to ordinary criminal offences. Ms. Shahla Jahed who was executed on 1 December 2010 for 'intentional homicide' of the wife of her lover, the well-known footballer Nasser Mohammadkhani, was convicted on the basis of a false confession obtained under torture. She was arrested without probable cause and before she confessed she was held in incommunicado detention for eleven months on an unrelated and false charge of illicit relations with Mohammadkhani. Jahed repudiated her confession repeatedly, and while giving details of some of the abuse she endured during the eleven months of her incommunicado

[42] 1991/96 Islamic Criminal Code, Articles 68, 114, 128, 136, 153, 168, 189-a, 199-2, 231-1 (confession); Articles 74, 75, 117, 128, 137, 153, 170, 189-b, 199-1, and 232-2 (testimony); Articles 105 and 120, 199-3, and 231-4 (judge's *elm*); and Article 231-3 (*qasameh*).

derention, stated that her treatment at the hands of the police was such that if she were again taken to the Detective's Bureau she would readily confess to any number of other murders as well.[43] Broadcast courtroom footage shows that in order to establish the inadmissibility of Ms. Jahed's repudiation of her confession, the presiding judge/investigator/prosecutor recited in Arabic the above noted Islamic 'rule of confession' (*qa'edeh-ye iqrar*).

Abdullah Farivar, a 50 year old music teacher, who was sentenced to stoning in 2005 and eventually hanged on 19 February 2009 [01.12.1387] in Sari for adulterous *zina* was convicted exclusively on the basis of a three-fold confession obtained by torture during his incommunicado detention by the Intelligence Bureau of the Police Forces [*idareh etela'at niruye entezami*] from 7 February 2008 [19.11.83] to 28 February 2008 [10.12.83]. He was convicted despite repudiating his confessions, the only evidence against him, at his trial on 23 August 2005 [1.6.84] and 17 December 2005 [26.9.84], stating that they were obtained under torture.[44]

Confessions allegedly extracted under torture are also commonly referred to in the relatively small number of published court cases in which it is reported that defendants repudiated their confessions extracted prior to their appearance in court, stating that they were obtained under duress or torture.

Article 237 stipulates that intentional homicide is proven conclusively by the testimony of two males. Women's testimony, even that of a large number, is not accepted in intentional homicide. Article 74 states that *zina* is proven by the testimony of four just men or three just men and two women and Article 117 states that *lavat* is proven by the testimony of four just men. Article 189 states that *moharebeh* is proven by the testimony of two just men. However, witness testimony is hardly ever reported as a form of proof used in Iranian courts.

The only conditions that are currently stipulated in the law for judge's *elm* are that it should be obtained through 'customary methods' [*mota'aref*] and that 'the grounds for it shall be stated' [Article 105]. 'Customary methods,' as explained by judicial authorities, are 'ways in which people regularly obtain knowledge' as opposed to, for example, 'soothsaying' or 'dreaming'.[45] *Elm*, which literally means knowledge as opposed to ignorance, is defined differently in Islamic jurisprudence and is understood as 'certainty' [*yaqin*] as opposed to 'doubt' [*shak*]. Thus, the 2009 revised Bill of the Islamic Criminal Code defines 'judge's *elm*' as "certainty [*yaqin*] derived from clear perceptions in a matter before the judge".[46] The said provision also makes the judge's reliance on any actual investigative evidence such as 'expert opinion' or 'scene

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[43] See ELEI, Urgent Appeal to UN Special Rapporteurs and UN Working Group on Arbitrary Detention on behalf of Khadijeh (Shahla) Jahed, 23 January 2008, available at <www.irainc.org/elei/cases.php>, pp 7-14.

[44] Abdullah Farivar's letter to the Judiciary in 2006 following the stoning sentence imposed by the Second Chamber of the Provincial Criminal Court of Mazandaran, published by the *Stop Stoning Campaign*, available at <www.meydaan.com/Showarticle.aspx?arid=762> (last viewed 22 Feb 2009).

[45] Ayatollah Muqtada'ie (former Prosecutor General and Head of the Supreme Court), *Elm-e qazi* ("Judge's Certainty"), available at <www.dadsetani.ir>.

[46] 2009 revised Bill of the Islamic Criminal Code, Article 210.

examination' completely discretionary.[47] Article 211 of the revised Bill adds that if judge's *elm* remains clear to him even in the face of 'other legal evidence' [confession and testimony] which contradicts his *elm*, that 'evidence' does not bind the judge, and the judge should rule on the basis of his own *elm* by stipulating the grounds and the reasons for rejecting the evidence.

The small number of published court cases, media reports, and information from lawyers indicate that 'judge's *elm*' is the method of proof in a significant number of cases, especially when confessions are not made before the presiding judge (in *hadd* crimes), or when confessions become problematic during the proceedings, for example because the defendant repudiates the confession or it conflicts with physical evidence. The recently publicized sentence of stoning to death passed on Sakineh Mohammadi Ashtiani, the woman who has become the focus of widespread international campaigning since 2010, clearly illustrates the subjective nature of 'judge's *elm*'. The sentence that Ms. Ashtiani should be stoned to death was issued on 10 September 2006 [19.6.85] by the Sixth Chamber of the Criminal Court of the Province of Eastern Azerbaijan (verdict number 38-19.6.85) and upheld on 27 May 2007 [6.3.86] by Chamber 39 of the Supreme Court summarily in three lines (ruling number 39/206). The substantive part of the one-page verdict of 10 September 2006 stated:[48]

> In view of the content of the case file, the complaint of the children of the accused and her deceased husband, the late Ebrahim Qaderzadeh, and in light of the report of police investigators, the explicit confessions of the accused in all stages of preliminary investigations, and the reports of the interrogation sessions dated 9/9/1384 (30/11/2005) and 4/10/1384 (25/12/2005) (as described in pages 50, 58 and 63 of the case file), it seems that the primary motive of the accused for killing her husband, with the complicity of a male legally forbidden to her, who will be tried in another chamber of the provincial criminal court, was her illicit relations with male partners legally forbidden to her. Her grave moral depravity and other circumstantial evidence point to her commission of the crime of aggravated adultery and have, as a whole, convinced the majority members of the court of her guilt in committing the crime of aggravated adultery. Consequently, according to Articles 63, 83 and 105 of the criminal code (i.e. respectively, the articles of the Islamic Criminal Code defining *zina*, its exclusive stoning punishment, and judge's *elm* as one of its methods of proof), the court condemns her to the punishment of death by stoning.

In 'intentional homicide' (and other intentional bodily injuries), the Islamic Criminal Code also provides that oaths [*qasameh*] may be accepted when, in the absence of 'legal evidence', there is strong suspicion based on some 'incriminating indications' [*lowth*]. In the case of 'intentional homicide' the deceased's family is first asked to have fifty of their male relatives to 'take an oath' that the suspect is guilty of 'intentional homicide' even though they will not have witnessed the murder or have any direct knowledge of it. If that condition cannot be fulfilled, a

[47] 2009 revised Bill of the revised Islamic Criminal Code, Note to Article 210.

[48] Copy of original verdict available at: <www.iranrights.org/english/attachments/doc_1123.pdf>, English translation of the full document available at: <www.iranrights.org/english/document-1453-1824.php?searchtext=c2FraW5laA %3D%3D>.

number of other options are also provided, including an option for the family of the deceased to ask the accused to have fifty of his or her male relatives 'take an oath' that he is not guilty.[49]

According to a 1998 study by the Office of the Judiciary on reasons for annulments of judgments by the Supreme Court, the archaic institution of oath-taking was the method of proof in about half of the cases concerning 'intentional homicide'. The study also reports that 'of these, about half were annulled by the Supreme Court for procedural noncompliance'.[50] This conclusion is confirmed by frequent contemporary newspaper reports of *qasameh* convictions or acquittals. The daily newspaper IRAN, which has been reporting for several years on the case of a man identified as Mansur detained since 2001 for 'intentional homicide' of another Iranian man in a restaurant fight that took place in 1995 in Bucharest, Romania, said that his case was going to be resolved with oath taking. According to the newspaper, the Romanian Court which tried Mansur in 1995 found him guilty of 'attempted murder' and sentenced him to 5 years' imprisonment. After serving his sentence, Mansur returned to Iran in 2001. He was immediately arrested and detained based on a *qisas* petition by the family of the deceased. He has since been tried four times resulting in two *qisas* sentences, a *diyyeh* [blood-money] sentence, and again a *qisas* sentence. On the fourth occasion after the Supreme Court [Chamber 16] referred the case back to the same junior court [Chamber 1156 of the General Criminal Court], the judge decided to proceed with oath-taking, 'requesting the heirs of the deceased to introduce fifty family members to the court'.[51]

c. Further information on public executions

The criminal laws of Iran explicitly provide for the option of carrying out executions publicly in the method of stoning (Article 101 of the 1991/96 Islamic Criminal Code and Article 21 of the 2003 Implementation Code) and for certain narcotics offenses (Articles 9 and 11 of the 1997 Anti-Narcotic Law). For other death sentences the option of public execution is provided implicitly in the law. The 2003 Implementation Procedure Code for Sentences of *Qisas*, Stoning, Killing, Crucifixion, Execution, and Lashing refers to the participation of either 'prison authorities' or 'law enforcement officers' (police) depending on whether the sentence is carried out 'inside or outside the prison'.[52]

Following a surge in the number of public executions in the second half of 2007, in January 2008 former Judiciary Head Ayatollah Mahmoud Hashemi Shahroudi (1999-2009) issued a directive

[49] 1991/96 Islamic Criminal Code Articles 239-256. *Qasameh* is also retained in the 2009 revised Bill of the Islamic Criminal Code.

[50] Yadollah Bazgir, *Elal-e naqz-e araye kayfari dar sho'ab divan-e ali-ye keshvar* ("Reasons for annulment of judgments of criminal courts in the Supreme Court"), 2nd print, *Nashre huqudan*, 1998.

[51] IRAN newspaper, 5 December 2010 [14.09.1389], *Qasameh, farjam-e jenayat dar restaurant parandeh-e abi-ye Buokharest* ("Oath, the final solution for Bucharest's Blue Bird Restaurant case").

[52] 2003 Implementation Code, Articles 7, 10, 13, 15 and 19.

to control public executions more tightly, and to ban publication of photographs of executions.[53] Numerous press reports incorrectly referred to 'a ban on public execution' but Shahroudi's directive merely authorized unspecified 'judicial authorities' to decide for themselves whether a public execution is 'socially expedient', and to seek the opinion of the Judiciary Head in this matter. Subsequent announcements by judicial authorities concerning public executions confirm that the decision whether to hold an execution in public remained discretionary and that the decision concerning the location of the execution, where not stipulated in the sentence, was to be made by the body responsible for implementation of the sentence, currently the Prosecution Office [*dadsara*].[54] Thus, on 10 July 2007, Alireza Jamshidi, then spokesperson for the judiciary, announced the imminent execution of twenty 'hooligans' and added that the decision as to whether the executions would be carried out privately or publicly rested with the Tehran General Prosecutor.[55]

d. Further information on stoning and other cruel methods of execution

Prior to the establishment of the Islamic Republic of Iran, the only civil execution method provided for in the statute books was hanging by the gallows, and this sentence would be carried out inside prison grounds. Since its foundation in 1979, the Islamic Republic of Iran has not only permitted executions to be carried out in public, but has also extended judicial methods of execution to include shooting by firearms, electrocution, stoning, crucifixion, killing with a sword (beheading and splitting in two), throwing from a high place, burning to death, and collapsing a wall over the condemned individual. In addition to these nine specified methods, death sentences based on *qisas-e-nafs* (retribution-in-kind) provisions grant the family of the deceased victim the right to exercise a measure of equivalence between the murder and the execution method.

Protocols concerning execution methods are defined to some extent in the Implementation Procedure Code for Sentences of *Qisas*, Stoning, Killing, Crucifixion, Execution, and Lashing [hereafter, the 2003 Implementation Code][56] issued on 18 October 2003 by former Judiciary

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[53] Directive [no. m/11317/86] issued on 29 January 2008 [09.11.1386] printed in *Majmoye bakhshnamehye ghoveh ghazayieh 1385 va 1386* (Digest of Directives Issued by the Judiciary 2006-2008), pages 236-7. English translation of the directive is provided in Appendix V.

[54] Implementation of sentences was carried out by a division called the Unit for Enforcement of Sentences between 1995 and 2002, but the Prosecution Office (*dadsara*) resumed this role after its reinstatement in 2002.

[55] Fars News Agency, 10 July 2007 [19.04.1386], *Jamshidi: 20 tan az ashrar bezudi idam mishavand* ("Jamshidi: 20 hooligans will soon be executed"), <www.farsnews.net/newstext.php?nn=8604190160>.

[56] Official Gazette, No. 1562/01/444, 18 October 2003 [27.06.1382], issued pursuant to Article 293 of the Criminal Procedure Code for General and Revolutionary Courts (1999). A similar code of implementation had been issued in 1991 by Ayatollah Mohammad Yazdi (1989-1999), Mr. Shahroudi's predecessor, under a somewhat different title: 'Implementation Code for Sentences of Execution, Stoning, Crucifixion, and Amputation or Injury to Limbs' (*ayin-nameh nahveye ijraye ahkam-e idam, rajm, salb, qat ya naqz ozv*), Official Gazette, No. 1/2697/4, 21 May 1991 [31.02.1370], issued pursuant to Article 28 of The Law on

Head Mahmoud Hashemi Shahroudi (1999-2009). Appendix III (Table of Execution Methods in the Islamic Republic of Iran and their Sources in Statute Law and Islamic Law) provides a summary of all execution methods currently legal in Iran, as well as the type of death penalty, the offenses they are prescribed for, and their basis in statute law, if any.

Four of the methods of execution mentioned above (killing with a sword, throwing from a high place, burning to death, and collapsing a wall over the condemned) are not provided for explicitly in statute law, but are fully applicable on the basis of *shari'a* law.[57] Explicit references to two other execution methods, namely crucifixion and stoning, do also exist in the Islamic Criminal Code. The draft Bill of the Islamic Criminal Code that was passed by the Islamic Consultative Assembly on 16 December 2009 and is still under vetting by the Guardian Council removed all explicit references to the punishment of stoning 'due to international sensitivities,'[58] To ensure that the punishment of stoning 'remain irrevocable and fully applicable', a new provision was added to the revised Bill stating that for 'all *hoddud* offenses not specified in the Code' judges shall, pursuant to Article 167 of the Constitution, act on the basis of *fatwas* issued 'by the Supreme Leader or by person or persons appointed by him'.[59]

Since the Iranian authorities do not provide information and figures on all death sentences or executions, it cannot be determined if, when, or how often each method has been imposed and applied. Most publicly reported executions in Iran over the past thirty years were carried out by shooting (particularly in the initial years of the Islamic Republic) or by the most slow and agonizing methods of hanging (the 'short drop' method when carried out inside prison compounds and 'suspension hanging' by being lifted by a crane when carried out publicly), but sentences of crucifixion, stoning, beheading with a sword, and throwing from a high place are known to have been imposed and carried out. For example, on 25 May 2009 the daily newspaper *Quds* reported that an unidentified man was sentenced to death by beheading by Chamber 5 of the Provincial Criminal Court of Khorasan Razawi for alleged sexual assault of one girl and four boys aged nine to twelve.[60] On 2 January 2008 the daily newspaper *Quds* reported the Supreme

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Establishment of Criminal Courts One and Two and Chambers of the Supreme Court passed on 11 July 1989 [20.04.1368]

[57] For example, in making that choice, judges will rely on Islamic treatises like Ruhollah Mousawi Khomeini's *Tahrir-ol-vasileh* which stipulates: "In choosing the mode of execution for the person who gives or receives *lavat*, the Islamic judge is authorized either to behead him with a sword, or throw him off a cliff or any high place with bound hands and feet, or burn him in fire, or stone him. It is said that [the judge] can also collapse a wall over his head irrespective of whether he is the active or the passive party. Regardless of the method of the executions, it is even permissible to burn his corpse in fire." *Tahrir-ol-vasileh* issue 4/199/5.

[58] See Appendix IV- The Islamic Consultative Assembly's comments on the removal of execution by stoning from the new draft of the Islamic Criminal Code.

[59] Articles 220-221 of the revised Bill of Islamic Criminal Code passed by the Islamic Consultative Assembly on 16 December 2009 [25.09.1388], available at: http://tarh.majlis.ir/?Report&RegId=127&dore=8.

[60] *Quds* newspaper, 25 May 2009, [04.03.1388], *Amele azar-e kudakan be qat-e garden ba shamshir mahkum shod* ("Child molester sentenced to beheading by the sword"), <www.qudsdaily.com/archive/1388/html/3/1388-03-04/page8.html#2>.

Court's confirmation of a sentence, imposed by Chamber 2 of the Fars Provincial Criminal Court, that two young men identified as Tayyeb and Yazdan should be thrown from a high place for allegedly raping two male university students in April of 2007.[61]

Since 2002 Iranian officials have repeatedly told UN bodies that the former Judiciary Head, Ayatollah Mahmoud Hashemi Shahroudi (1999-2009) had declared a 'moratorium' on stoning. A 2008 UN Report of the Secretary General was led to conclude, based on communications between 'Iranian judicial authorities' and the Office of the United Nations High Commissioner for Human Rights (OHCHR), that continued stonings in Iran are due to a problem in the 'enforcement' of the so-called directive.[62] Iranian representatives even stated that the so-called directive was 'intended as an interim measure until the passage of new laws'.[63] These assertions are, however, belied by the facts. Sentences of execution by stoning have continued to be passed and carried out by state officials. Since 1999, ELEI has documented nine stoning executions, almost all carried out privately without advance public announcement or spectators.[64] In most cases these executions became known publicly through unofficial channels before officials admitted that they had taken place. The secret stoning of Mahbubeh M. and Jafar H., exposed by journalist Asieh Amini [see Appendix VI - Secret stoning execution misreported by officials as *Idam*], the dozens of acquittal retrials, post-conviction commutations, or commutations on reduced charges, and pending stoning cases exposed in recent years by the campaign *Stop Stoning Forever* all indicate that the actual number of executions carried out secretly in recent years is higher than the number about which details have become known publicly.[65]

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[61] *Quds* newspaper, 2 January 2008 [12.10.1387], *Du javan-e shaytansefat be partab az bolandi mahkum shodand* ("Two evil youngsters sentenced to being thrown off a height"), http://www.qudsdaily.com/archive/1386/html/10/1386-10-12/page58.htm'.

[62] Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, 1 October 2008, A/63/459, paragraph 12.

[63] ibid.

[64] In 2001 Maryam Ayubi and an unnamed woman were stoned to death in Evin prison in Tehran. In 2006 Mahbubeh M. and Abbas H. were stoned to death in Mashad. In 2007 Jafar Kiani was stoned to death in Ghazvin. In 2009 three men were stoned to death in Mashad and one man identified as Vali Azad was stoned to death inside the Lakan prison in Rasht.

[65] Acquittals, pardons, and commuted sentences: Kobra Najar (f, Tabriz, pardoned and commuted to 100 lashes), Hajieh Esmailvand (f, Jolfa, acquitted on retrial), Parisa Akbari (f, Shiraz, 99 lashes on reduced conviction by the Discernment Branch of the Supreme Court), Najaf Akbari (m, Shiraz, same as Parisa Akbari plus 5 years' internal exile), Zahra Rezai (f, Karaj, acquitted on retrial), Soqra Molaie (f, Varamin, 80 lashes on reduced conviction at retrial), Mokarameh Ebrahimi (f, Ghazvin, pardoned after husband Jafar Kiani was stoned to death), Shamameh Qorbani (f, Orumiyeh, 100 lashes on reduced conviction at retrial), Azar Kabiri (f, Karaj, 99 lashes on reduced conviction), Zohreh Kabiri (f, Karaj, 99 lashes on reduced conviction). Pending sentences: Ashraf Kalhori (f, Tehran, plea for pardon pending), Leila Ghomi (f, Tehran), Azam Khanjari (f, Tehran), Kheyriyeh Valania (f, Ahvaz, execution pending), Kobra Babayi (f, Tabriz, stoning pending), Iran A. (Ahvaz, retrial pending), Gilan Mohammadi (f, Esfehan), Gholamali Eskandari (m, Esfehan), M. Kh. (f, Mashad), ? Hasheminasab (f, Mashad).

Furthermore, to date, Iranian authorities have not identified the so-called stoning moratorium directive or disclosed its actual content. All judiciary directives are published in the Official Gazette as well as in a 'Digest of Directives' published periodically by the Judiciary itself, and in periodic newsletters. The rumoured directive does not exist in any of the official sources. In fact, the four directives relating to the punishment of stoning actually issued by Mr. Shahroudi during his term (1999-2009) contain no more than technical instructions or recommendations to judges should they decide to exercise their discretionary right to suggest a pardon for any narrowly eligible group of persons among those they have sentenced to stoning.[66] Identical directives had been issued prior to 1999 by Mohammad Yazdi, Mr. Shahroudi's predecessor.[67] Furthermore, as early as 2003, Ayatollah Shahroudi, a conservative member of the clergy explicitly ruled out any suggestion that stoning would ever be abolished in Iran.[68] Just a few months later, he further

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For pending cases reported by the official press see for example *Iran* newspaper, 8 February 2005 [20.11.1383], *Mojazat-e idam-e yek gonah nabakhshoudeh* ("Death penalty for an unforgivable sin"), reporting on a woman who had received a prison term rather than a sentence of execution by a majority vote of three to two at Chamber 79 of the Tehran Provincial Criminal Court after she was caught by her husband with a younger man and admitted to having a sexual affair with him. The Supreme Court favored Branch 79's minority vote of '*idam*' (judicial execution), overturned the prison sentence and referred the case for retrial at Chamber 74 of the Criminal Court. See also 27 September 2007 [05.07.1386], *Sodur-e hokm-e idam baraye zan-e sheytan sefat* ("Evil woman sentenced to death"), http://www.qudsdaily.com/archive/1386/html/7/1386-07-05/page58.html concerning a woman who was sentenced to *rajm* (stoning) after she lodged a complaint accusing a man of rape and extortion. When the woman submitted photographs and videotapes to prove the extortion and rape allegations, Chamber 5 of the Provincial Criminal Court of Khorasan Razavi charged the woman with consensual extra-marital intercourse, and proceeded to convict her.

[66] *Majmueh-ye bakhshnameh-haye quvveh-ye qazaiyyeh, jeld-e 2, 1368-1381* (Digest of Directives Issued by the Judiciary, vol. 2, 1989-2002), published by *Moavenat-e Amuzesh va Tahqiqat-e Guvveh-ye Qazaiyyeh* (Education and Research Division of the Judiciary), Qom, 2003 [1382] and *vol. 3 1382-84* (2003-5). Directive no. 1/80/16472 issued on 18 November 2001 [27.08.1380] and Directive no. 1/82/10392 issued on 17 September 2003 [26.06.1382] request that sentencing judges send their proposals for pardon of eligible convicts to the office of the Judiciary Head rather than to the Supreme Leader. Directive no. 1/80/8813 issued on 4 August 2001 [13.05.1380] recommended that sentencing judges propose a *ta'zir* punishment when they submit a proposal for pardon of eligible convicts. Directive No. 1/80/16472 dated 4 October 1999 [25.07.1378] requests that sentencing judges state the reason for requesting pardon and the details of the case. For an English translation of Mr. Shahroudi's directives, see Appendix VI.

[67] See, for example, Directive No. 70/5859/m dated 28 March 1992 [08.01.1371] in *Majmueh-ye bakhshnameh-haye quvveh-ye qazaiyyeh, jeld-e 2, 1368-1381,* (Digest of Directives Issued by the Judiciary, vol. 2, 1989-2002), published by *Moavenat-e Amuzesh va Tahqiqat-e Guvveh-ye Qazaiyyeh* (Education and Research Division of the Judiciary), Qom, 2003 [1382].

[68] On 3 February 2003, the Iranian press reported that the Judiciary Head Ayatollah Mahmoud Hashemi Shahroudi had defended executions by stoning when visited by the EU Commissioner for External Relations Chris Patten. According to *Hamshahri* newspaper, Shahroudi told Patten:

The punishment of stoning is not only imposed on women. In our criminal system, this punishment also applies to men within the limits established by the law. This law, which is derived from *shari'a,* is implemented to protect the rights of married couples and to strengthen the institution of the family. Whether or

reinforced the practice by reissuing instructions on how to implement stoning sentences, in the 2003 Implementation Code.[69]

In 2007, under his stewardship, the Office of the Judiciary's Centre for Islamic Jurisprudential Research [*Markaz-e Tahqiqat-e Feqhi Quvveh-ye Qazaiyyeh*] issued the draft Bill of Islamic Criminal Code. This also retained stoning as the sole legitimate method of execution for female or male adultery. [Article 221-e]. The only amelioration introduced in the 2007 draft Bill of the Islamic Criminal Code under Ayatollah Shahroudi's stewardship was inserted in Note 4 of Article 221.[70] This gives judges the discretion to convert a sentence of execution by stoning to execution by hanging or to one hundred lashes for a narrowly eligible group of convicts if the publicity of the stoning sentence inflicted 'harm upon the system or bring it into disrepute'. The basis of this provision is apparently a *fatwa* issued by the Supreme Leader.[71] So far two

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not a stoning sentence is implemented is up to the *shari'a* judge. At present the Islamic Republic is trying to determine a substitute punishment for these kinds of offenses.

Hamshahri newspaper, 3 February 2003 [16.11.1381], *Gofteguye namayandeh orupa va rayis-e qoveh qazayieh darbareh huquq basher dar Iran* ("Talks on human rights in Iran between Europe's representative and Chief Justice"), <www.hamshahrionline.ir/hamnews/1381/811116/siasi.htm>.

[69] Articles 22 and 23 of Implementation Procedure Code for Sentences of *Qisas*, Stoning, Killing, Crucifixion, Execution, and Lashing [hereafter, the 2003 Implementation Code, 18 October 2003 [27.06.1382], issued pursuant to Article 293 of the Criminal Procedure Code for General and Revolutionary Courts (1999).

[70] Article 221-5: The fixed punishment (*hadd*) for illicit heterosexual intercourse (*zina*) is killing (*qatl*) in the following cases:

> a) *Zina* with relatives with whom marriage is prohibited
> b) *Zina* with stepmother which renders the male party liable to *qatl*.
> c) *Zina* between a non-Muslim male and a Muslim female which renders the male party liable to *qatl*.
> d) Rape (*Zina be onf*) by a male party.
> e) *Zina* by a married man or woman which is subject to the *hadd* of stoning.
> …
>
> Note 4: Where carrying out stoning may inflict harm upon the system or bring it into disrepute, stoning shall be converted to *qatl* (killing) on the initiative of the prosecutor in charge of implementation of the sentence and subject to approval by the Judiciary Head where the offense was proven by b*ayineh* (evidence other than the condemned person's own confession). Otherwise it shall be converted to one hundred lashes.

[71] *Ganjineh araye feqhi-qazayi* ("Treasury of Islamic Jurisprudence and Judicial Rulings"), published by *Markaz-e tahqiqat-e feqhi quvveh-ye qazaiyyeh* (Research Center for Islamic Jurisprudence of Judicial Branch). Question 4189 quoted in *Majmuyeh araye feqhi dar omur-e kayfari* ("Digest of Islamic jurisprudential rulings in criminal matters"), Vol. 3, 2nd ed, 2003 [1382], p 44. The following is an English translation of the question presented to Ayatollah Khamenei and his answer:

> **Question**: If a man or a woman is sentenced to stoning in court in accordance on the basis of Islamic criteria, can the method of *qatl* (killing) be changed from stoning or not, bearing in mind that the enemies of the Islamic revolution are waiting for an excuse to tarnish the image of the sacred religion of Islam before the nations of the world nations by drawing attention to such sentences which are new and unusual to non-Muslims of the world, and are incompatible with the

individuals with stoning sentences are known to have been executed by hanging instead of by stoning, apparently on the basis of this *fatwa*.[72] Another two who in addition to stoning sentences for adultery had also been sentenced to death by hanging for 'intentional homicide' and *lavat* were also executed by hanging.[73]

In response to international criticism, and encouraged by the international community's acceptance of the stoning moratorium rumor at face value, the Islamic Consultative Assembly decided to remove all explicit references to the punishment of stoning (as well as explicit references to other *hoddud* crimes such as apostasy) from the 2009 revised Bill of Islamic Criminal Code. To ensure that the deleted offenses and punishments 'remain irrevocable and fully applicable', a new provision was added to the revised Bill stating that for 'all *hoddud*

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tastes and laws of such countries. Such enemies of the Islamic revolution embellish the details in their propaganda against the Islamic revolution in order to attack the revolution and Islam.

Answer: Perhaps it can be said that when the *shari'a*-based sentence is *qatl* (killing) by means of *rajm* (stoning), as for example, in the case of female adultery proven by *bayineh* (evidence other than confession), if there is a valid excuse for refraining from *rajm* it is legitimate to pursue the end goal which is killing [irrespective of the method]. But if the *shari'a*-based *rajm* (stoning) sentence is imposed on the basis of a confession, if the condemned person escapes the pit, then the sentence of *hadd* (stoning) is extinguished. So in this case carrying out the end goal of killing [by methods other than stoning, which do not give the culprit the chance of extinguishing the death sentence by escaping the pit] would not be legitimate.

[72] On 21 June 2006, a 31-year old woman identified in the press as Masumeh Sh. was hanged inside Evin prison in Tehran after being convicted of *zina-e mohseneh* (female adultery) and sentenced to death by stoning on 4 January 2005 by Chamber 71 of Tehran Province Criminal Court, see Fars News, 20 June 2006, *Motaham-e radif-e dovum janjalitarin parvandeh jenayi parsal farda idam mishavad* ("Second defendant in last year's most controversial trial to be executed tomorrow"), <www.farsnews.net/newstext.php?nn=8503300382>. On 19 February 2009, Abdullah Farivar, a 50 year old music teacher, was hanged in Sari after being sentenced to stoning for male adultery on 21 December 2005 by the Second Chamber of Mazandaran Province Criminal Court. His mother said that they were informed of her son's date of execution, and that he was going to be hanged instead of stoned, just one day before the execution. BBC Farsi, 19 February 2009, *Mard-e mahkum be sangsar be dar avikhteh shod* ("Man sentenced to stoning is hanged"), <www.bbc.co.uk/persian/iran/2009/02/090219_pm_stoning_iran.shtml>.

[73] Afsaneh Rahmani, 30 years old, who was sentenced to stoning for adultery and to hanging for 'intentional homicide' of her husband was hanged in Shiraz on 19 May 2009 [29.02.1388] without notice to her lawyer or family, ROOZ electronic journal, Sara Moqadam, 24 May 2009 [2.03.88], *Afsaneh Rahmani idam shod* ("Afsaneh Rahmani executed"), <www.roozonline.com/persian/news/newsitem/article/2009/may/23//-904380a511.html>. Rahim Mohammadi who was sentenced to stoning for adultery and to hanging for homosexual intercourse was hanged in Tabriz on 6 October 2009 [14.07.88] without notice to his lawyer or family. Personal weblog of Mohamad Mostafaie, 7 October 2009 [15.07.88], *Rahim Mohammadi bedun-e etela be vakil va khanevadehash sobh-e diruz dar Tabriz idam shod* ("Rahim Mohammadi executed yesterday morning in Tabriz without notice to lawyer or family"), <www.mohegh.blogfa.com/post-194.aspx>.

offenses not specified in the Code' judges shall, pursuant to Article 167 of the Constitution, act on the basis of *fatwas* issued 'by the Supreme Leader or by person or persons appointed by him'.[74]

In addition to the gruesomely cruel execution methods such as stoning provided in the criminal system of the State Party, the *qisas* laws of Iran have provisions which allow the heirs of the deceased to implement the death sentence in a way that reflects the Islamic principle of equivalency (*momaseleh*) between a murder and its punishment by permitting the heirs of the deceased a measure of choice in how the death penalty is implemented. This practice explains why the 1991/96 Islamic Criminal Code and the 2003 Implementation Code contain prohibitions on the use of 'a dull or blunt weapon' and the 'mutilation of the culprit' during execution.[75] In the 2009 revised Bill of the Islamic Criminal Code a new provision further recognizes the right of the heirs to carry out the execution personally with unconventional methods. It states that if after implementing *qisas* the executee is still alive, the deceased's heir's right of *qisas* is still protected 'unless [they] have implemented the *qisas* in an impermissible way'. The provision adds that if the executee is injured by the failed execution the heir's right to a second execution of the culprit is reinstated only after the culprit exercises his or her right to bodily *qisas* of the heir.[76]

In a 2008 *qisas* death sentence ordered to be carried out 'with a sword', the method was apparently imposed on the basis of equivalence with the murder weapon. This sentence was announced by the Office for Public Affairs of Tehran's General and Revolutionary Prosecutor on 25 February 2008. It reportedly provided that 'Shahin, a 19-year-old youth, was sentenced to death with a sword for intentionally murdering Ali during a street fight'.[77] Daily newspapers described the incident as a brawl over an accusation by Shahin that Ali had been harassing his sister. After Ali and his nephew Meysam attacked Shahin, he fetched his martial art sword and threatened to use it. As Ali and his nephew continued to attack Shahin in order to disarm him of the sword, Ali was struck in the groin and this caused his eventual death by bleeding.[78] Another known case demonstrating the possible consequences of an injured party's insistence on carrying out *qisas* by means of equivalent weapons and modes, concerns a blinding sentence issued on the same principle. In this case the condemned, Majid Movahedi, after being spurned in marriage, had blinded his former university classmate, Ameneh Bahrami, by throwing a pitcher of sulfuric acid at her face. The verdict, as quoted in a daily paper, stated that: "In view of the plaintiff's petition, in which she has requested to pour acid in the defendant's eyes in person, and the

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[74] Articles 220-221 of the revised Bill of Islamic Criminal Code passed by the Islamic Consultative Assembly on 16 December 2009 [25.09.1388], available at: http://tarh.majlis.ir/?Report&RegId=127&dore=8.

[75] 1991/96 Islamic Criminal Code, Article 263 and 2003 Implementation Code, Article 16.

[76] 2009 revised Bill of Islamic Criminal Code, Article 439.

[77] Radio Zamaneh, 25 February 2008 [04.12.1386], *Qisas-e yek motaham ba shamshir* ("Qisas with a sword for a convict"), available at <www.zamaaneh.com/news/2008/02/print_post_3946.html>.

[78] *Etemaad* newspaper, 14 December 2008 [24.09.1387], *Zoodtar edamam konid, digar taqat nadaram* ("Execute me sooner, I cannot tolerate it any longer"), <www.magiran.com/ppdf/3291/ p0329118440151.pdf> and *Etemaad-Meli* newspaper, 14 December 2008 [24.09.1387], *Qatl baraye defa az khahar, motaham baraye bar-e dovum be qisas mahkum shod* ("Murder to defend sister, defendant condemned to *qisas* a second time"), <www.magiran.com/ppdf/5061/p0506108130141.pdf>.

finding that the defendant is guilty, it is sentenced that drops of acid be poured in Majid's eyes by Ameneh until the defendant is blinded"[79]

e. Further information on execution procedures

The 2003 Implementation Code requires only a 48-hour minimum notification of a death warrant [Article 7], which is provided only to the prisoners' lawyers, and not to the prisoners or their relatives [Article 7-h]. In a significant number of cases even this minimum has not been observed. In some extreme cases, prisoners have learned of their impending executions only minutes before dying, and families have been informed only after their death, sometimes by pure coincidence rather than any form of formal notification. On 22 April 2007, twenty-year-old Mohammad Mousawi was secretly executed in Shiraz without notice to his lawyer or parents for the accidental killing of a man when he was sixteen. His parents found out that he had been executed when a cell-mate telephoned his parents to come to Shiraz's Adel-abad prison. The only explanation the prison authorities gave them for failing to notify them was: "We did not tell you because we knew you would become too upset at the execution ceremony".[80]

In *qisas* death sentences, the 2003 Implementation Code requires the presence of 'the heirs of the blood' at the execution [Article 7-g]. The 'heirs' are also given permission to carry out the execution themselves [Article 15 and also Article 265 of the Islamic Criminal Code]. This further enhances the likelihood of torture or cruel, inhuman or degrading treatment being applied to the convict by inexperienced persons who may also feel the grounds to inflict additional suffering on the convicted person. On 6 May 2009, when nine men and one woman were scheduled to be hanged in Tehran's Evin prison, a daily paper reported, apparently from accounts of the heirs in other cases, that Zahra Nazarzadeh, a woman who was convicted of killing her husband was hanged in a particularly cruel and unusual manner because her 60-year-old mother-in-law, rather than kicking away the platform, insisted on pulling the rope herself despite the fact that she lacked the strength to do this effectively.[81]

The 2003 Implementation Code states that private visits by the prisoner's family before execution is prohibited [Article 9] and that even a supervised visit will be refused if it 'delays the carrying out of the execution' [Article 8]. Food and water may also be refused on the same grounds [Article 12]. The prisoner's testamentary will is subject to censorship by the prison authorities before being passed on to the prisoner's family [Article 10-3]. Clearly, these minimal

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[79] *Etemaad* newspaper, 03 February 2009 [15.11.1387], *Tayide hokme koor kardane pisare asidpash* ("Acid thrower's blinding sentence upheld"), <www.etemaad.ir/Released/87-11-15/97.htm>.

[80] Etemaad-e-Melli newspaper, 8 June 2007 [18.03.1386], Nojavani ke dar 16 salegy mortakeb qatl shodeh bud dar shiraz idam shod, o ta abad sheshm be rah didan madar mand ["Youngster who committed murder when 16 was hanged in Shiraz without saying good-bye to mother"].

[81] *Sarmayeh* newspaper, 7 May 2009 [17.02.1388], *Madar shohare shast saleh besakhti tanab-e dar-e Zeynab ra keshid* ("Sixty-year-old mother-in-law struggled to pull the gallow's rope"), <www.sarmayeh.net/ShowNews.php?43744>.

rights are, of course, entirely disregarded where a prisoner becomes aware of his or her execution only moments before it is carried out, and where relatives are informed only when it is too late.

The 2003 Implementation Code states that 'if the relatives of the convict request his or her remains' the decision to release the body to the relatives is 'at the discretion of the judicial authority in charge of the implementation of the sentence'. [Article 18] The discretion to refuse information apparently extends to also the place of burial. More than two decades after the abrupt and unanticipated execution of thousands of political prisoners in the summer of 1988 in Tehran's Evin prison and twenty other prisons throughout Iran, their relatives are still denied information about the whereabouts of their loved ones' remains.[82] The families of five political prisoners, Farzad Kamangar, Ali Heydarian, Farhad Vakili, Shirin Alam Hooli and Mehdi Islamian who were executed on 9 May 2010 and buried secretly, are still being denied any information about their place of burial.

In its third periodic report, the State Party provided no information on the procedures it uses to implement death sentences.

f. Further information on the State Party's underreporting of executions and ongoing secret large-scale executions

The actual number of death sentences and executions is a matter shrouded in state secrecy. Despite numerous requests by UN human rights bodies, the State Party has persistently failed to provide information on the actual numbers of executions, death sentences and the crimes for which death penalty has been applied. This failure, as noted earlier, is also evident in the State Party's third periodic report of 27 October 2009 (CCPR/C/IRN/Q/3).

In the first decade of the Islamic Republic, Iranian judicial officials did report most non-political executions through the mass media, apparently because of the supposed retributive and deterrent effects of such reports. Over those years, UN human rights bodies were able to document scores of executions. Since early 1990s, however, the State Party, following its analysis of the reports of the then UN Special Representative, Reynaldo Galindo Pohl,[83] has been censoring death penalty news in the mass media. The State Party's analysis was apparently that the mass media had been the UN Special Representative's 'primary source of information concerning executions', and it was therefore decided that such news should be suppressed in order to 'neutralize' the Special Representative's source of information.[84] Since then, successive Heads of the Judiciary have issued directives to restrict the reporting of death penalty news.[85]

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[82] See Geoffrey Robertson QC's report *The Massacre of Political Prisoners in Iran 1988* http://www.iranrights.org/english/newsletter-14.php, (for the full 145 page report see http://www.iranrights.org/english/document-1380.php).

[83] See Reynaldo Galindo Pohl, 8 November 1993, "Situation of human rights in the Islamic Republic of Iran", Note by the Secretary-General, UN Doc. A/48/526, paragraph 92.

[84] The official Iranian study was entitled "International monitoring of the human rights situation in Iran and comparative examination of three reports by Galindo Pohl" and the translation of the relevant paragraph stated:

Despite the secrecy surrounding death sentences and executions, the State Party has permitted publicity with respect to some executions. In recent years, unofficial sources such as Iranian NGOs in contact with prison populations have also reported some of the executions. Executions recorded by ELEI from 1 January 2008 to 1 September 2011, mostly from official sources (79%), yield the following statistics:[86]

Publicly reported executions from 1 January 2008 to 1 September 2011

2008	2009	2010	2011 (1/1 to 1/9)	Total
310	369	594	431	1,704

A portion of the figure for officially reported executions recorded by ELEI are from aggregate numbers occasionally revealed to the official press by provincial judicial or law enforcement officials. These occasional insights indicate the extent to which information about individual executions are being censored. For example, for the province of Khuzestan in southwest Iran, during the Iranian calendar year of 1388 (21 March 2009 to 21 March 2010), ELEI recorded 26 individual executions reported by Khuzestan's Justice Administration (*Dadgostry*) and 4 more from the now closed reformist newspaper *Vatan-e Emrooz*.[87] During interviews with the press in the last quarter of 1388, Ahvaz (Khuzestan's capital) Prosecution Office provided aggregate figures for the year's prior months. The figures brought the total to 41 executions, indicating that 37% had not been reported during the year either by the Justice Administration or the mass media.[88] In another province, Markazi in western Iran, during the Iranian calendar year of 1387

Following previous negotiations, in order to prevent the negative effects of publication of reports on the executions and statements of the judicial authorities on the record of arrests and sentences determined for the convicts, publication of the above-said news was considerably reduced and one of the sources used by Galindo Pohl to provide documented and irrefutable reports was therefore neutralized.

[85] For example, a 2 March 1992 [12.12.1370] directive signed by a deputy of the then Judiciary Head, Ayatollah Mohammad Yazdi, instructed all public prosecutors of the General, Revolutionary and Military Courts that they should 'first consult with the Judiciary Head's office and refrain from acting directly' in any execution of a sentence of *idam*, *qisas-e-nafs*, crucifixion or stoning 'before reporting any news or printing or publishing photographs of any execution ceremonies'. Directive M/22185/1 issued on 2 March 1992, printed in *Majmu-ye bakhshnameh-haye ghove-ye ghazayieh, jeld-e 2, 1368 ta 1381* (Digest of Directives, vol. 2. 1989-2002), compiled by *Markaz-e tahqiqat-e feqhi qoveh-e qazayieh* (Judiciary's Centre for Islamic-Jurisprudence Research), p 245.

[86] Database of Publicly Reported Executions in Iran available at <http://www.irainc.org/elei/database.php>. More detailed statistics provided in Appendix IX- Statistic on publicly reported executions (2008-2011).

[87] Sources available at the Database of Publicly Reported Executions in Iran available at <http://www.irainc.org/elei/database.php>.

[88] Khuzestan province Justice Administration (Dadgostry-e ostan-e Khuzestan), 18 November 2009 [27.08.88], *Az ebteday-e sal-e jari hokm-e edam-e 13 nafar az qacaqcian-e mavad-e mokhader dar ahvaz ejra shod* ("13 drug traffickers executed in Ahvaz since beginning of this year"), http://www.dadgostari-khz.ir/NewsPrint/tabid/70/Code/592/Default.aspx; 10 February 2010 [21.11.88], *Moaven-e dadsetan-e omumi*

(21 March 2008 to 21 March 2009), ELEI recorded five executions of drug traders reported by the Justice Administration and law enforcement officials. In April 2009, Arak's (Markazi province's capital) Police Forces Commander told an official news agency that a total of 18 drug traders had been executed in the province in 1387, indicating that detailed information had been withheld on 73% of executions in that province.[89]

In Razavi Khorasan province where, according to unofficial reports, hundreds of executions were carried out in 2010 and 2011,[90] information expressed by officials for the first six months of 2010 and the first three months of the Iranian calendar year of 1390 [21 March to 22 June 2011] yield underreporting rates of 86% and 100% respectively. For the first six months of 2010, ELEI recorded seven executions in Mashad, the province's capital, and three in April 2010 in the city of Taybad. The seven that were carried out in the first half of 2010 in Mashad, were reported by Mashad's Prosecution Office (5 executions, drug related) and the official daily *Quds* (2 executions, for rape). In July 2010, Ahmad Qabel, a dissident religious scholar who was released on 11 June 2010 [21.03.89] after being detained in Mashad's Vakilabad prison for approximately three months confirmed that during his detention he witnessed as many as '50 executions'.[91]

When, during a visit to Tehran in December 2010, staff of the UN's Office of the High Commissioner for Human Rights sought further information from Iranian counterparts about a large number of prisoners who were reportedly executed simultaneously in Mashad prison in July 2010, the Iranian authorities confirmed that '60 persons had been executed in Mashad in pending cases mostly linked to drug trafficking'.[92] Assuming that the 60 admitted executions include the seven reported in April, this yields an 86% underreporting rate. Even more alarmingly, official and unofficial execution reports for the first three months of the Iranian calendar year of 1390 [21 March to 22 June 2011] suggest an underreporting rate of 100%. During this period, ELEI could not find a single officially reported executions. Based on reports received from prisoners, an NGO reported a total of 48 executions carried out in groups of 4-12

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va enqelab-e Ahvaz khabar dad ("Deputy head of General and Revolutionary of Prosecution Office reporting"), http://www.dadgostari-khz.ir/NewsPrint/tabid/70/Code/670/Default.aspx

[89] MEHR News Agency, 14 April 2009 [25.01.88], *Enhedam-e yek band-e mavad-e mokhader dar ostan-e markazi* ("Narcotic drugs band in Markazi province disbanded", http://www.mehrnews.com/fa/NewsPrint.aspx?NewsID=860335.

[90] According to the International Campaign for Human Rights in Iran, the following group executions took place between September 2009 and December 2010: 150 persons between Sept 2009 and May 2010, 50 persons between April and June 2010, 68 persons on 18 August 2010, 13 persons on 5 October 2010, 10 persons on 12 October 2010, 10 persons on 26 October 2010, 11 persons on 9 November 2010, 9 persons on 30 November 2010.

[91] KALAME website, 10 September 2010 [19.06.89], *Ahmad Qabel: makhfikari va adam-e shafafiyat dar edamhaye gostardeh zendan-e vakilabad mashad* ("Mass executions in Mashad's Vakilabad [prison] shrouded in secrecy and lack of transparency"), http://www.kaleme.com/1389/06/19/klm-31491/.

[92] UN Human rights Council, 14 March 2011, Interim report of the secretary-General on the situation of human rights in Iran, p 6.

on five different dates between 6 April and 24 May 2011.[93] On 22 June 2011, the head of Mashad's Prosecution Office confirmed that in the first three months of 1390 executions had been carried out 'on 5 occasions' in Mashad's prison. While he did not disclose the dates or the numbers executed on each occasion, he confirmed that the numbers had been 'high' and 'proportionate' to 'the high volume' of narcotics entering the province and 'the high number' of large-scale dealers arrested in the province.[94] Similarly, on 24 June 2011, an official from South Khorasan's Justice Administration, Department of Crime Prevention, informed of 140 drug-related executions in 1389 [21 March 2010 to 21 March 2011] in that province.[95] The only information made public during that year was on 31 January 2011 in which the State Prosecutor General merely said that 'some drug traffickers were executed in Birjand [South Khorasan's capital] this morning'.[96]

The rise in the number of executions since 2010, particularly drug related executions, is due to a policy of 'swift and merciless punishments' dictated by the new Judiciary Head, Ayatollah Larijani, who took office on 17 August 2009.[97] Mr. Larijani has confirmed that 'for reasons of expediency' the public is still not informed of all executions.[98] Since his inauguration, Mr. Larijani has vehemently admonished judicial officials for fearing criticism of executions by 'the proprietors of human rights'. He has asked judges to impose the death penalty on anyone who frightens a citizen with a weapon as *mohareb* and *mofsed-e-fl-arz* and called for 'relentless combat with death merchants [drug traders]'.[99] On 26 October 2010, Tehran's Prosecutor

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[93] International Campaign for Human Rights in Iran, 13th June 2011, Sixteen More Prisoners Executed Secretly in Mashad on 23 & 24 May, http://www.iranhumanrights.org/2011/06/vakilabad-executions-may/. The reported group executions were as follows: 6 April 2011 [17.01.90]: 10 persons, 13 April 2011 [24.01.90]: 12 persons, 16 May 2011 [26.02.90]; 10 persons, 23 May 2011 [02.03.90]: 12 persons, and 24 May 2011 [03.03.90]: 4 persons including three sisters.

[94] ISNA news Agency, 22 June 2011 [01.04.90] *Resanehaye biganeh dar mored edamhaye mavad mokhader zendan vakilabad bozorgnamayee miknand* ("Foreign media exaggerates drug related executions Vakilabad prison"), http://isna.ir/ISNA/NewsView.aspx?ID=News-1793635&Lang=P.

[95] MEHR news agency, 23 June 2011 [04.04.90], *140 qachaqchi-ye mavad-e mokhader dar Khorasan-e Jonubi edam shodand* ("140 drug traffickers executed in South Khorasan"), http://www.mehrnews.com/fa/NewsPrint.aspx?NewsID=1343604.

[96] FARS news agency, 31 January 2011 [11.11.89], haftomin neshaste khabari-ye sokhanguye guveyeh-ye qazaiyyeh ("Judiciary spokesperson's Seventh press conference"), http://www.farsnews.net/printable.php?nn=8911111099.

[97] The policy was reiterated in directive 100/48334/9000 of 13 February 2011 [24.11.89], available at http://www.rooznamehrasmi.ir/Detail.asp?CurPage=&isParent=1&Level=0&CategoryID=700000&NewsID=975398374542025.

[98] MEHR news agency, 23 June 2011 [02.04.90], Ayatollah Amoli Larijani [Television interview], http://www.mehrnews.com/fa/NewsPrint.aspx?NewsID=1342123.

[99] FARS news agency, 18 December 2010 [27.09.89], *Amoli Larijani dar jam-e asatid va daneshjuyan-e daneshkadeh-ye olum-e qazayi* ("Amoli Larijani addressing College of Law's students and instructors"), http://www.farsnews.net/printable.php?nn=8909271421

General said that 'the previous [Judiciary Head's] policy kept the door of mercy open to drug traffickers but in the current term the Judiciary Head's policy is to close this door in the Clemency Commission so that punishments deliver their deterrent effects.'[100]

In May 2010, the deputy head of the Anti-Narcotics Headquarters said that the 300,000 drug-related cases reviewed in courts across the country in 1388 [21 March 2009 to 21 March 2010] represent a 'significantly higher figure than the previous year' and are a reflection of 'the new Judiciary Head's new policy'. Another 'important event' in 1388, he added, was an '80% confirmation of sentences' [by the State General Prosecutor] and 'a 56% decrease in clemency requests [by sentencing Revolutionary Courts].[101]

The hasty and indiscriminate execution of large-scale and small-scale narcotics traders, first time as well as repeat offenders, is evident in the details reported in recent executions. For example, one group execution of five men in Esfehan on 13 October 2010 reportedly included a persistent offender executed for 'armed trafficking of 1,252 kilograms' opium' alongside another executed for 'transportation and possession of 358 grams of crack'.[102] Another three men executed simultaneously on 24 July 2010 [02.05.89] in Ahvaz were convicted of transportation and possession of 80 grams of crack, 335 grams of heroin, and possession of 43 grams of heroin.[103] Zahra Bahrami, of dual Dutch and Iranian nationality was initially arrested in late December of 2009 for taking part in anti-government demonstrations, but later charged and convicted of drug trafficking on the basis of a false confession obtained under torture (according to her daughter's account). Zahra Bahrami was sentenced to death by Tehran's Chamber 10 of the Revolutionary Court on or around 5 January 2011 and hanged within the week in Evin prison on 11 January 2011 [09.11.89]. She was convicted of possession of 450 grams, and sale of 150 grams, of cocaine.[104] Just a year earlier, in a case of 'transporting 15.37 kilograms of heroin', death sentences imposed on two men were commuted by the Supreme Court to life imprisonment, according to a report dated 10 August 2009 [19.05.88] from Hormozgan Province's Justice

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[100] ISNA news agency, 26 Oct 2010 [04.08.89], *Jafari Dolatabadi: 5 vared konandeh va tozi konandeh mavad mokhader edam shodand* ("Jafari Dolatabadi: 5 narcotics drugs importers and distributers executed"), http://isna.ir/ISNA/NewsView.aspx?ID=News-1641924.

[101] IRNA news agency, 12 May 2010 [22.02.89], *300,00 parvandeh mortabet ba mavad-e mokhader dar mahakem qazayi residegi shod* ("300,000 drug-related cases reviewed in judicial tribunals"), http://www.irna.ir/View/Fullstory/Tools/PrintVersion/?NewsId=1111143.

[102] FARS news agency, 13 October 2010 [21.07.89], Five narcotics traffickers executed in Esfehan.

[103] Khuzestan Province Justice Administration (*Dadgostry-e ostan-e Khuzestan*), 26 July 2010 [04.05.89], *Hokme idam-e 3 qacaqci dar ahvaz ejra shod* ("Death sentence for three narcotics trafficker carried out in Ahvaz"), http://www.dadgostari-khz.ir/NewsPrint/tabid/70/Code/848/Default.aspx.

[104] General and Revolutionary Prosecution Office (*Dadsaraye Omumi va Enqelab*), [09.11.89], *Hokme edame Zahra Bahrami be etehame mavad-e mokhader ejra shod* ("Zahra Bahrami's drug-related death sentence carried out"), http://www.dadsara.ir/Default.aspx?tabid=41&ctl=Edit&mid=655&Code=636.

Administration.[105] The amount of narcotics transported by those two men was 30 times the weight attributed to Zahra Bahrami, and 176, 44, and 348 times the quantities for which the three men executed in Ahvaz were allegedly responsible.[106] In the 13 October 2010 group execution in Esfehan the alleged repeat offender was already serving a life-imprisonment for trafficking 900 kilograms of narcotic drugs. On 23 May 2011 another alleged repeat offender was executed in Behbahan for trafficking 80 kilograms of opium while on leave from a life-imprisonment sentence he had received earlier for transportation and possession of 100 kilograms of opium.[107] Both life sentences were apparently reprieves from initial death sentences as the volumes involved were 180 and 20 times over death-penalty eligible thresholds. The discrepancy in the practice of the judiciary in imposing the death penalty clearly indicates that the new draconian approach is resulting in a sharp increase in executions for non-lethal offences.

The Anti-Narcotic Drugs Headquarters (*Setad-e mobarezeh ba mavad-e mokhader*) publishes detailed annual statistics on drug-related death sentences and executions. These statistics are not made available to the public. The work of an academic researcher who was given access to this data for 1378 (1999) and 1379 (2000) for a study on the effectiveness of Iran's criminal drug policies provides a glimpse of the very large number of defendants who may be exposed to risk of execution by the State Party's tough policy. According to the *Setad* during the years 1999 and 2000 as many as 15,869 (1378) and 13,252 (1379) narcotics defendants were legally eligible to receive the death penalty.[108] This constituted approximately 13% of the numbers arrested for smuggling, transportation, distribution and possession of narcotics drugs per year a decade ago. Presently, the number of potential candidates for execution is likely to be in the range of 20 to 30

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[105] Hormozgan Province Justice Administration (Dadgostry-e ostan-e Hormozgan), [19.05.88], *Yek darejeh takhfif baraye hokm-e edame hamelin-e mavad-e mokhader* ("A first-degree commutation for transporters of narcotic drugs"), http://www.dadhor.ir/tabid/58/ctl/Edit/mid/375/Code/84/Default.aspx.

[106] Under Iran's Anti-Narcotic Drugs Law, for the death penalty to be applied, heroin and cocaine have the same threshold of 30 grams and opium has a 5 kilograms threshold. Where the specified weights are exceeded, there is no difference in the punishments for possession, sale and transportation. For a description of all drug-related capital crimes see section 3.b of Appendix I - Table of Capital Offenses in the Islamic Republic of Iran and their Sources in Statute Law and Islamic law.

[107] IRNA news agency, 23 May 2011 [02.03.1390], *Sodagar-e marg dar Behbahan be dar-e mojazat avikhteh shod* ("Death merchant hanged in Behbahan"), http://www.irna.ir/Print.aspx?NID=30399479.

[108] Mansur Rahmdel (Assistant professor, Tehran University, Department of Law and Political Science, *Siasat-e jenayi iran dar qebal-e jarayem-e mavad-e mokhader* ("Iran's Criminal Policy vis-a-vis Drug Offences), 2007 [1386]. While the number of death penalty eligible defendants for the years studied (1378: 15,869 and 1379: 13,252) demonstrated an extremely harsh 'legal policy', the author describes the actual 'criminal policy' as being far more lenient on the basis of the number of death sentences actually issued by Revolutionary Courts (1378: 1,725 and 1379: 2,390) and the proportion affirmed by the Supreme Court or State General Prosecutor (1378: 404 and 1379:403). The author also observes more leniency since 1378, in part, due to an amendment to the Anti-narcotic Drugs law empowering sentencing courts to refer cases with finalized sentences to the Clemency and Pardon Commission. As noted, 'in 1379, of a total of 1,653 affirmed death sentences (including cases from previous years) reprieve was requested for 1,250 persons (76%) showing an 87% increase from previous year's reprieve referrals.' (pp 174-175).

thousand, since publicly available data show that the volume of drugs seized and the number of defendants arrested have more than quadrupled and doubled respectively in the past decade.[109]

The Islamic Republic of Iran has a history of very high rates of execution for narcotics offences. There were an average of approximately 750 executions a year during the first two decades of the Islamic Republic, with 1,300 executions in one year.[110]

Publicly available data from the Statistical Center of Iran also indicates that the rate of *qisas* executions is much higher than the numbers accumulated from publicly reported individual executions. According to the Islamic Republic of Iran's Police Forces, there are on average, 2,214 new 'intentional homicides' each year, in some of which more than one defendant is involved.[111] Murder clearance rates by the police are on average 80%.[112] An uncertain fraction of this number are pardoned because they 'reach reconciliation' with the heirs of the deceased. In 2009, the former Judiciary Head Ayatollah Shahroudi remarked to the press that 'more than 70% and up to 80%' of convicts who receive the *qisas* death penalty 'reach reconciliation' and are

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[109] According to the Statistical Center of Iran, in 1380 (2001), the total number of persons arrested for smuggling, transportation, distribution and possession of narcotic drugs was 111,938 and the volume of narcotic drugs seized was 111,936 kilograms. <sci.org.ir/portal/faces/public/sci/sci.mahsulatvakhadamat/sci.paygah>. According to the Anti-Narcotic Drugs Headquarters, in 1388 (2009) and 1389 (2010) the number of arrestees were 228, 499 and 229,183 and the average weight of narcotics seizures between 1384-89 was 540 tons. Anti Narcotics Headquarters Official Website, *Amal-karde Setad* (1390) ("2011 Operational Report"), http://dchq.ir/html/images/AMALKARD/1390/amalkard88-89-9005.pdf.

[110] In the 1980s when Iranian officials did report almost all of the drug-related executions in the mass media, UN human rights bodies were able to document scores of executions. In 1985 UN Special Representative, Reynaldo Galindo Pohl noted over 1,300 executions reported in the official media and another 900 awaiting execution (E/CN.4/1990/24, 12 February 1990, paragraph 132). Despite censorship of death penalty news since early 1990s, in November 1995, a senior Iranian official revealed the figure of some 4,000 drug traffickers executed since 1989, yielding an average figure of approximately 600 executions per year. (reported by the Official Chinese news agency, as noted in Maurice Copithorne, 21 March 1996, Report on the situation of human rights in the Islamic Republic of Iran, E/CN.4/1996/59, paragraph 43). A report prepared in 2000 by the former Judiciary Head's Office for an international symposium on drug criminal policy held on 9 May 2000 [20.02.79] stated that 8,997 drug-related convicts were condemned to execution between 1988 and 1998 (noted in Mohammad Reza Saki, *Jarayem-e Mavade Mokhader* ("Narcotics Drug Offenses"), second print 2007 [1386], p 197).

[111] According to official data from the Islamic Republic of Iran's Police Forces from 1385 [2006] to 1389 [2010] the number of 'intentional homicides' each year were: 2,410, 2,034, 2,234, 2,117, and 2,277. Islamic Republic of Iran Police News Center, 25 July 2011 [04.05.90], *Gozaresh az kholaseh vaziyat-e jarayem-e jenayi dar keshvar* ("Report on Criminal Offenses in the Country"), p. 11, <www.news.police.ir/Images/News/AtachFile/4-5-1390/FILE634472912684218750.pdf>.

[112] According to official data from the Islamic Republic of Iran's Police Forces from 1385 [2006] to 1389 [2010] murder clearance rates were: 76.1, 80.5, 81.3, 80.2, and 81 respectively. The Islamic Republic of Iran's Police Forces, 25 July 2011 [04.05.90], *Gozaresh az kholaseh vaziyat-e jarayem-e jenayi dar keshvar* ("Report on Criminal Offenses in the Country"), p 6, <www.news.police.ir/Images/News/AtachFile/4-5-1390/FILE634472912684218750.pdf>.

therefore spared execution.[113] This is not consistent with the recent remarks of Tehran's head of the Unit for Enforcement of Sentences who has said from his direct experience that out of the 350 *qisas* death sentences he had implemented only in Tehran since his appointment in 2004 [1383] he had obtained reconciliation only in 180 cases - that is, just over 50%.[114] In either case, the average 2,214 killings per year classified as 'intentional homicide' after applying an 80% murder clearance rate and a 50-80% reconciliation rate would still result in a figure in the region of 354 to 886 new (mandatory) *qisas* death sentences each year (assuming one defendant per case). In July 2003, the founder of the Society to Protect Prisoners (*Anjoman Hemayat az Zendaniyan*) closed down by the authorities in 2009, said that at least 1,363 prisoners convicted of 'intentional killing' were held on death row in Iran's prisons.[115]

[113] ISNA news agency, 14 April 2009 [25.01.1388], *Hashemi Shahroudi dar didar ba safeer-e suis* ("Hashemi Shahroudi's meeting with the Swiss Ambassador"), <www.isna.ir/ISNA/NewsView.aspx?ID=News-1317905>.

[114] MEHR news agency, 18 August 2011 [25.05.90], *350 bar paye chubeh dar raftam/180 rezayat az khanevadeh-ye maqtul gereftan* ("Stood at the gallows 350 times, obtained 180 pardons from victim's families"), http://www.mehrnews.com/fa/NewsPrint.aspx?NewsID=1378995.

[115] Emadeddin Baghi, *Gozareshi az yek pazhuhesh jame'eh shenakhti va huquqi dr dast-e ejra darbareh idam-haye 27 sal-e gozashteh dar Iran* ("A report on a socio-legal study of executions in Iran in the past 27 years"), 4 January 2007, <emadbaghi.com/archives/000850.php>.

7. Will there be further amendments to the draft Juvenile Crimes Investigation Act and the Bill of Islamic Criminal Code with the aim of abolishing the death penalty for persons commit a crime while below the age of 18. Please also provide statistics for the number of offenders held on death row, as of April 2011, who were below the age of 18 when committed the crime for which they were sentenced to death, and the number of executions of such offenders upheld by the Supreme Court, which is awaiting final authorization by the head of the judiciary.

Current law explicitly allows juvenile offenders to be executed. Some provisions of pending legislation also implicitly permit juvenile offenders to be executed. These provisions are, firstly, the age of criminal responsibility, which the State Party deems to be the 'age of religious puberty' [15 and 9 lunar years for boys and girls respectively], and secondly, the affirmation that *hoddud* and *qisas* punishments are not revocable or alterable. The effect of these provisions is that the draft Juvenile Crimes Investigation Act, which has been pending before the Islamic Consultative Assembly since 2005, and the revised Bill of Islamic Criminal Code passed by the Islamic Consultative Assembly on 16 December 2009 and currently under vetting for compatibility with Islamic law by the Guardian Council, permit juveniles to be executed for *hoddud* and *qisas* crimes. (see Appendix II- Table of Juvenile Death Penalty Provisions in the Islamic Republic of Iran, current and pending legislation)

The State Party is secretive about its use of the death penalty in general, but even more secretive about the scale of execution of young people. However, juvenile death sentences and executions are occasionally reported officially in high profile cases, or by defendants' lawyers in some other cases. From 1 January 2008 to 1 September 2011 ELEI recorded 16 juvenile executions, two of which were carried out publicly this April. Twelve were convicted of 'intentional homicide', one *moharebeh*, two of *rape, and one for an unspecified charge*. (see Appendix X- List of known juvenile executions from 2008 to 2011) The most recent death sentence to be carried out publicly was imposed on 20 August 2011 by the First Chamber of Karaj's Provincial Criminal Court on 17-year-old boy Alireza Molla-Soltani [born 25 December 1993] for a clearly unpremeditated involuntary killing, the details of which are provided in section g.

Further information on juvenile executions is provided in **section g**.

g. Further information on juvenile executions in law and practice

The Iranian government usually denies that it executes child offenders. Since 2005 the government has also claimed that there is a 'legal ban on under-aged capital punishment' pending ratification by the parliament.[116] In its third periodic report, the State Party responded in

[116] See for example A/HRC/4/20/Add.1, p. 152. In January 2005, the Government of the Islamic Republic of Iran informed the Committee on the Rights of the Child that all executions of persons who had committed offences while still under the age of 18 had been halted. This was reiterated in a *note verbale* of 8 March 2005 to OHCHR, in which it explained that the ban had been incorporated into the draft bill on juvenile courts. The note stated:

> "In recent years the enactment of the death penalty for individuals aged under18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged

similar terms by misleadingly conflating the age of criminal responsibility with the age of special civil protection for children (which continues up to 18) and by presenting unfounded claims that in new proposed legislation '[d]eath sentence for all age groups of children and juveniles under 18 has been omitted'. (CCPR/C/IRN/3, paragraphs 297-98)

The facts of the matter are quite different. Current and pending law explicitly permit the imposition of the death penalty on juvenile offenders. [See Appendix II- Table of Juvenile Death Penalty Provisions in the Islamic Republic of Iran, current and pending legislation] In practice also, juveniles continue to receive death sentences, and are being executed in significant numbers. The Islamic Republic of Iran is, in fact, the only country in the world from which the *UN Special Rapporteur on extrajudicial, summary or arbitrary executions* continues to receive significant numbers of credible reports of such sentences being passed and, in some cases, carried out, on juveniles.[117] The State Party has rarely responded to the *Special Rapporteur's* communication and responses forwarded by the State Party misrepresent the true situation.

On 14 February 2008, in one of the rare instances that the State Party responded to the *Special Rapporteur,* it was not denied that the person in question, Behnam Zare, was 16 at the time of the alleged murder. Moreover, the State Party said that the judicial system, on the basis of humanitarian considerations, had entered the case into conciliation process and was seriously pursuing it in the hope of a final settlement. The State Party assured the *Special Rapporteur* that 'carrying out the penalty was not in its programme of work'.[118] Behnam Zare was executed in Shiraz six months later, on 26 August 2008. The execution took place clandestinely without Zare's parents or lawyer being notified.[119]

On 28 February 2008, the State Party submitted an identical response to the *UN Working Group on Arbitrary Detention* in the case of Delara Darabi who was convicted of murdering a relative when she was 17, in 2003. In that case too the State Party did not deny that the person in question was 17 at the time of the alleged crime and again assured the Working Group that 'carrying out the penalty was not in its programme of work'.[120] In May 2008, the Working Group adopted a decision (No. 4/2008) which declared the detention of Ms. Delara Darabi by the Iranian authorities to be arbitrary and in contravention of the Covenant, and asked the Iranian

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capital punishment has been incorporated into the draft bill on Juvenile Courts, which is at present before parliament for ratification."

[117] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2, 27 May 2009, paragraphs 29-42). CASES TRANSMITTED TO GOVERNMENTS AND REPLIES RECEIVED are reproduced in A/HRC/11/2/Add.1, pp. 191-2, 197-9, 208-15, 218-29, and 233-36.

[118] See the communications of 14 February 2008 and 24 October 2008 from and to the Islamic Republic of Iran, reproduced in A/HRC/8/3/Add.1, p. 223

[119] *Etemaad* newspaper, 27 August 2008 [06.06.1387], *Pesar-e Shirazi be jorm-e qatl dar 15 salegy be dar avikhteh* shod ("Shirazi boy hanged for committing murder at age 15").

[120] Opinion No. 4/2008 (Islamic Republic of Iran), May 2008, in Opinions adopted by the Working Group on Arbitrary Detention, A/HRC/10/21/Add.1, 4 February 2009, pp 91-98, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/13/PDF/G0910713.pdf>.

Government to remedy the situation of Ms. Darabi.[121] A year later Delara Darabi was executed secretly in Rasht on 1 May 2009 despite a two-month stay of execution issued by the Judiciary Head on 19 April 2009 for the purpose of 'conciliation'.[122]

The imminent public hanging of 17-year-old Alireza Molla-Soltani (born 25 December 1993 [04.10.1372]) is just the latest example of the State Party's systematic violation of the Covenant by permitting judges to pass sentence of death on juveniles, and by executing them in public after proceedings which wrongfully treat unpremeditated killings, killings in response to grave provocation, and killings in defense as 'intentional homicide'. Alireza was arrested on 18 July 2011 [27.04.90] for killing Ruhollah Dadashi, a popular athlete known as Iran's strongest man. Upon his arrest, State Prosecutor General Gholamhossein Mohseni Ejehi called for "a speedy resolution" of his case.[123] A month later, on 20 August 2011 [29.05.90], the First Chamber of Karaj's Provincial Criminal Court convicted Alireza Molla-Soltani of 'intentional homicide' and sentenced him to public hanging. Widely publicized accounts of the killing in the mass media, including a detailed interview with Alireza Molla-Soltani in a sports magazine on 27 July 2011 [05.05.90] and reports of his testimony in his trial on 6 August 2011 [15.05.90], unmistakably show that the triple stabbing of Mr. Dadashi in the dark by Alireza occurred spontaneously and unpremeditatedly during a driving dispute. It appears that Mr. Dadashi, a large and robust man, struck Alireza Molla-Soltani, of slight build, in the face, injuring him in the mouth, and then slammed him against the car with a kick while the two were arguing. Alireza Molla-Soltani claims that use of a knife in the direction of his alleged assailant in the dark was a panic defense.[124]

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[121] ibid.

[122] *Etemaad* newspaper, 2 May 2009 [12.02.1388], *Sa'at-e 6 sobh-e ruz-e jom'eh bedun-e elam-e qabli hokm-e qisas-e Delara ejra shod* ("Delara's *qisas* sentence carried out Friday 6 am with no advance notification").

[123] IRNA news agency, 20 August 2011 [29.05.90], *Qatel-e Ruhollah Dadashi be qisas dar mala'a am mahkum shod* ("Ruhollah Dadashi's killer sentenced to *qisas* execution in public"), http://www.irna.ir/Print.aspx?NID=30527556.

[124] *Sharq* newspaper, 7 August 2011 [16.05.90], *Motaham be qatl-e Ruhollah Dadashi dar jaleseh-ye dadgah tashrih kard: joziyat-e qatl-e qavitarin mard-e iran* ("Details of Ruhollah Dadashi's murder described by the defendant in court", http://sharghnewspaper.ir/News/90/05/16/7527.html; KHABAR-E VARZESHI, 27 July 2011 [05.05.90], *Mosahebeh ba qatel-e Ruhollah Dadashi* ("Interview with Ruhollah Dadashi's killer"), http://www.smba.ir/files/uploads/1311867498.www.smba.ir.jpg.

8. Please indicate whether plans exist to amend the Penal Code with the aim of removing the "*mahdoor-ol-dam*" (deserving of death) definition. Please also provide information on cases since 2008 in which this provision has been invoked by judicial officials in their rulings and explain how it is consistent with the terms of the Covenant.

The 1991/96 Islamic Criminal Code contains provisions that can be used to exempt killers who claim that their victims were *mahdoor-al-dam* (death-deserving according to Islamic law) from the *qisas* death penalty, and in some cases also from payment of *diyyeh* (blood-money). Under the *qisas* and *diyyat* laws of the State Party, the *qisas* death penalty is mandatorily imposed in killings considered 'intentional', and *diyyeh* is the alternative punishment when the deceased's family waives their option to exact *qisas*. Killers are immune from both the *qisas* death sentence and payment of *diyyeh* if they can prove their claim that victims were *mahdoor-ol-dam* [Article 226]. They can also be exempted from the *qisas* death sentence if the court is convinced that they jusitifiably believed that their victims were *mahdoor-ol-dam,* even if the victim is not proven to be *mahdoor-ol-dam*. In this case, the killer's act is considered as 'quasi-intentional' and the sentence is payment of *diyyeh* [Article 295 (note 2)]. Until 1996 the State Party's laws had no other penalties for killers who successfully invoked the *mahdoor-ol-dam* provisions. Since 1996 a provision added to the Islamic Criminal Code [Article 612] gives judges the discretion to impose three to ten years' imprisonment if they find the killers' acts "to have disturbed public order or caused fear or is an incitement to the perpetrator or others" [Article 612]. These provisions apply in bodily injury (*qisas-e-ozv*) cases as well. [For the text of the above-mentioned provisions see section d].

The draft Bill of Islamic Criminal Code (Volumes 1-4) submitted to the Islamic Consultative Assembly on 11 December 2007 [20.09.1386] not only retained the previously existing *mahdoor-ol-dam* provisions but also provided, for the first time, a definition of *mahdoor-ol-dam*. [Note to Article 331-1][125] The draft Bill also prescribed mandatory prison terms for such killers

[125] Note to Article 331-1 of the 2007 draft Bill of Islamic Criminal Code states:

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Note: Conditions where the victim is not *mahqoon-ol-dam* [*mahdoor-ol-dam,* ie "not *mahqoon-ol-dam"*] are as follows:

1. A person who has committed a *hadd* crime for which the penalty prescribed in the *hoddud* law is killing (*qatl*) or stoning (*rajm*) is not *mahqoon-ol-dam*. Where the offense is proven in court and the perpetrator has killed him/her without legal authority (*mojavez*), s/he is not subject to *qisas* but to one to two years' imprisonment and in other intentional offenses [bodily injury] to up to 74 lash strokes.
2. An invader (*motejavez*) injured or killed in legitimate defense of life, property or honor as stipulated in Article 313-16.
3. A person who has been sentenced to *qisas*, [to be deprived of] life or bodily parts, is not *mahqoon-ol-dam* vis-à-vis the owner of the right of *qisas*, and
4. A woman and man who are killed by the woman's husband during the act of committing zina are not *mahqoon-ol-dam*.

which are significantly less than the discretionary three to ten years prescribed in the current Islamic Criminal Code [Articles 313-2, 313-11]. When the Islamic Consultative Assembly passed the revised Bill of Islamic Criminal Code on 16 December 2009 it deleted mention of the term *mahdoor-ol-dam* and some related provisions just as it had deleted explicit mention of stoning and apostasy because of 'international sensitivities'. The Guardian Council has already rejected the Assembly's omissions and recommended reinsertion of the provisions contained in the draft. (See Appendix VII- Pending provisions on *mahdoor-ol-dam* in the 2007 draft Bill of Islamic Criminal Code and the 2009 revised Bill still under vetting by the Guardian Council).

The claim that the victim was *mahdoor-ol-dam* is raised in many murder cases reported in the official media, but also in a small number of published court cases. ELEI has identified very few examples where courts found victims to be *mahdoor-ol-dam* but has uncovered a significant number of cases where courts, choosing to accept the defence that the perpetrator believed the victim to be *mahdoor-ol-dom* spared perpetrators from the *qisas* death penalty by regarding the killings as 'quasi-intentional' under Article 295 (note 2) and sentencing them to pay *diyyeh* compensation. In some cases perpetrators also received a prison term of up to ten years. Available information indicates that the defense of *mahdoor-ol-dam* is most likely to succeed when used by members or former members of the security forces, paramilitary forces, and to some extent by male Muslim civilians of demonstrable piety.

Further information on legal extra-judicial executions in law and practice provided in **section h**.

h. Further information on legal extrajudicial executions in law and in practice (where the victim is *mahdoor-ol-dam* or the perpetrator justifiably believes the victim to be *mahdoor-ol-dam*)

In addition to the above, a 1993 edict issued by Supreme Leader Ayatollah Khamenei, published in the official press in 2004, reportedly extended the scope of immunity from the *qisas* death penalty for members of law enforcement and paramilitary forces (*Basij*) to include acts considered as 'enjoining good and forbidding evil (*amre be maruf va nah-ye az monker*)'. According to the reports, the edict (no. 719132, 17 April 1993 [28.01.1372]) issued by the Office of Supreme Leader Ayatollah Khamenei to the Office of the Judiciary stated: 'In regard to sentences of *qisas* issued against [law enforcement] officers and *Basijis* [volunteer militia under control of the Revolutionary Guards] who commit intentional homicide while performing Islamic duties or believing that [the deceased was] *mahdoor-al-dam,* or for the purpose of enjoining good and forbidding evil, his Excellency the Supreme Religious Ruler, while extending his gratitude for the sensitivity already bestowed upon such cases, orders that in every

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Although *mahdoor-ol-dam* is not defined in the current 1991/96 Islamic Criminal Code, the above sub-paragraphs 2, 3, and 4 are provided for respectively under Articles 61, 205, and 630 of the 1991/96 Code without reference to the term *mahdoor-ol-dam*.

instance of this kind the *qisas* sentence shall be converted to blood-money (*diyyeh*) on an appropriate and well-suited basis, and that the matter shall be reported to his Excellency.'[126]

The claim that the victims were *mahdoor-ol-dam* is frequently made in murder cases, though ELEI has identified few examples where the courts have found the victims to be *mahdoor-ol-dam*. One example occurs in verdict no. 75/510 issued on 19 August 1996 [29.05.75] by the General Court of Koohgiluyye a husband and several accomplices were completely acquitted after killing a man whom the husband had caught naked with his wife after he returned home from a trip late at night.[127]

In a significant number of cases, however, courts have spared the perpetrators from the *qisas* death penalty and sentenced them to *diyyeh* by invoking Article 295 (note 2). For example, on 16 November 2009 [16.11.09], the daily *Etemaad* reported that after two junior court trials in Mazandaran imposed the *qisas* death sentences on Mohammad [surname], the General Board of the Supreme Court overturned the sentence and determined the killing as 'quasi intentional' because the killer supposedly believed (wrongly) that the victim was *mahdoor-ol-dam* because he was suspected of seeking illicit relations with the perpetrator's wife and sister-in-law.

On 31 May 2008 [10.03.88], the daily newspaper *Etemaad* reported that a man who had killed another man who had been stalking his wife in 'the belief that he was a *mahdoor-al-dam*' was sentenced by Chamber 71 of the Tehran Criminal Court to payment of *diyyeh*.

On 9 January 2007 [19.10.85], *Etemaad* reported that Chamber 27 of Supreme Court had upheld the decision of Chamber 74 of Tehran's Criminal Court which had sentenced a man 'to payment of *diyyeh* and ten years' imprisonment' for killing a man he suspected of having a sexual relations with his wife and believed to be *mahdoor-ol-dam*.

In another case, on 27 April 2005 [07.02.85], the daily IRAN reported that Chamber 71 of the Tehran Criminal Court had sentenced a man to *diyyeh* 'under clause 2 of article 295' who had killed his young wife by throwing her off a high building on suspicion that she had been having a secret affair with a young man.

The following two cases illustrate how the courts of Iran can manipulate such provisions in order to pass disproportionately light sentences in grave crimes:

> In ruling no. 393 issued on 25 February 1998 [06.12.1376], Chamber Two of the Supreme Court effectively acquitted the perpetrator, an Iraq-Iran war veteran, who had killed his victim by beating him for hours with a wooden stick and a rubber hose and then by heating a crowbar on a picnic stove and piercing his nostrils, testicles and anus, on the grounds that these actions were committed in 'legitimate defense of honor and chastity'. The victim was the perpetrator's sister's boyfriend who, as

[126] *Vaqayeh Etefaqieh*, 17 April 2004 [29.01.1983], the edict was revealed following a series of extrajudicial killings in 2002-03 in Kerman in which six *Basij* paramilitary forces were eventually prosecuted for killing five of those killings.

[127] Printed in *Gozideh araye dadgahhaye kayfari* (Selective rulings of criminal courts), compiled by Nur-Mohammad Sabri, 2002 [1381] The wife for whom the indictment had requested a stoning sentence received a reduced sentence of 100 lashes because her adultery took place while her husband was a far distance away from her.

far as the court could establish, had only been communicating with her by phone. The decision by Chamber Two of the Supreme Court on recommendations from state officials, including the Supreme Leader Ayatollah Khamenei, twice overturned the *qisas* sentence imposed by two different junior courts in Azar-Shahr and Tabriz on 21 July 1996 [31.03.1375] and 18 September 1996 [25.06.1375]. The ruling added that if the 'act of legitimate defense' committed with the heated iron bar were to be deemed as 'excessive', the accused 'was still only liable to payment of blood-money'.[128]

In ruling no. 605 of 18 November 2000 [28.08.79] an unspecified Chamber of the Supreme Court invoked Article 295 (note 2) and overturned a *qisas* sentence imposed by an unspecified Tehran Criminal Court on a man who had killed his tenant premeditatedly by shooting him in the head with a revolver on suspicion that he was having an affair with his wife. The wife, who was simultaneously charged with illicit relations, was acquitted on the basis that she was a pious woman and the accusations were fallacies. The Chamber stated the following argument: "The contents of the case-file show that the defendant declared in court that the victim deserved the death penalty and was *mahdoor-ol-dam*. In his reply to the judge asking him to state his defense he stated: 'I accept the charge of murdering him (the victim). He was our tenant for a year, he had relations with my wife. I saw Qodrat (the victim) leaving our room a number of times. Qodrat's wife is a witness that the victim had relation with my wife. Therefore, I killed him in front of the house's entrance door with a gun that I brought from the war front. I am proud to have killed him because he deserved death and I was defending my honor. Afterwards, I went to kill my wife but the gun jammed. I wanted to kill myself too. In Islam the punishment for them is stoning. Likewise, I wanted to punish them with death and I succeeded killing Qodrat but my wife escaped death['']. In view of the fact that the victim's wife has confirmed the defendant's claim, the above mentioned evidence, the defendant's and his lawyer's objections, and the defendant's piety and religious convictions, it is altogether clear that the defendant killed the victim in the belief that he was *mahdoor-ol-dam*, albeit that he was unable to prove it. Therefore, as this case meets the criteria of paragraph 2 of article 295 of the Islamic Criminal Code, the killing is 'quasi-intentional'. The *qisas* sentence is overruled and the case shall be referred to another chamber of the General Court in Tehran."[129]

Iranian judicial officials confirm that Article 295 (note 2) is frequently invoked in court proceedings. In a controversial case known as 'the Kerman gang murders', six Basij paramilitary forces were eventually prosecuted in 2003 for committing five of a series of vicious and brutal killings in 2002-03 in Kerman. In later stages of the proceedings, all six claimed that they had killed their victims in the belief that they were *mahdoor-ol-dam*. During the proceedings, the families of three victims withdrew their complaints in exchange for receiving *diyyeh*, reportedly paid by the state, but the case against the paramilitaries is continuing in respect of two victims whose families did not accept *diyyeh*. The two were a newly engaged couple who were completely unknown to the killers and were killed after a chance encounter with the killers. In an article printed following a ruling of Chamber 31 of the Supreme Court, the lawyers for the two victims warned against 'the precedent that the ruling would set for future killers'. The Supreme Court ruling, relying on Ayatollah Khomeini's *Tahrir-ol-vasileh*, had said: 'the question of whether or not the victims were *mahdoor-ol-dam* requires proof, and if proven the perpetrators

[128] Chamber 2 of the Supreme Court, Ruling no. 5944/4 of 25 February 1998 [06.12.1376]. http://www.ghavanin.com/detail.asp?id=16971.

[129] *Qatl-e amd va qir-amd- Gozideh ara-ye kayfari* ("Intentional and unintentional homicide, selection of criminal rulings"), compiled by Jafar Reshadati, 2009 [1388], Payam Rashedeh p 454-456.

would be exempted from both *qisas* and *diyyeh*, but the question of whether or not the perpetrators believed [that the victims were *mahdoor-ol-dam*] does not require proof, because this is a matter of the heart. [The perpetrator's belief in this case] is substantiated by the fact that there was no animosity between the defendants and victims, and the acts were committed with no motive other than fighting corruption'.[130] One of the two Supreme Court judges from Chamber 31 who had issued the ruling wrote in his response:[131]

> The essential characteristic of such murders and the compatibility of the perpetrators' acts with judicial-legal provisions [killing in the belief that the victim is *mahdoor-ol-dam*] is a normal and routine matter for judicial tribunals, in particular, the Supreme Court. In past years, many cases where the perpetrators claimed that they killed their victims in the belief that they were *mahdoor-ol-dam* have been reviewed by the Chambers and the General Board of the Supreme Court. In the rulings issued in these cases, the killings were found to be 'quasi-intentional' in accordance with note 2 of article 295 of the Islamic Criminal Code, and accordingly the sentences imposed were for payment of *diyyeh* because the killers' belief in the *mahdoor-ol-dam* status of their victims was established even though the *mahdoor-ol-dam* status of the deceased could not be proved.

In a significant number of cases male defendants, including civilian, have easily benefited from the *mahdoor-ol-dam* exemptions, but it appears that female defendants never benefit from this mitigation of sentence, even when they have directly experienced or witnessed assaults and attempted rape. The widely publicized cases of wrongfully convicted female defendants, Afsanah Norouzi (pardoned in 2005 by the deceased's family after seven years of detention) and Fatemeh Haqiqat-Pajouh's (hanged in 2008 after 7 years of detention), prove this point conclusively:

> Afsaneh Norouzi was sentenced to the *qisas* death penalty on 24 October 2000 [03.08.79] by Chamber one of Kish's General Court for intentional killing of Behzad, a high-ranking security and intelligence officer acquainted to her husband through business, in July 1997 [16.04.76]. She was convicted despite solid expert and forensic evidence, including a police detective report confirming the attempted rape. The Kish Court's judgment no. 3370 said: "Even if rape was true, defense has not been proportional to murder [sic], the accused could have extricated herself with only one or few [knife] stabs … if an attack can cease with a minimal defensive act, one must resort to that and not intentionally expose herself to rape and then embark on defending herself … there is no justification for the victim's murder."[132] Following Chamber 16 of the Supreme Court upheld her death sentence and she was asked on 23 October 2003 to sign her death warrant, the then Judiciary Head Ayatollah Shahroudi stayed her execution. In January 2005, Afsaneh Norouzi was granted a retrial, which she hoped would establish her claim of legitimate self-defense and exonerate her. But trial proceedings were suddenly circumvented when judicial officials announced that the deceased's family had

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[130] Nemat Ahmadi and Qolam-Ali Riyahi (lawyers), *Qatl-haye mahfeli-ye Kerman* ("Gang murders of Kerman"), printed in *Hafiz* monthly journal, Issue 22, January 2005 [Dey 1384], pp 86-89.

[131] Reza Farajolahi (Assistant Judge of Chamber 13 of Supreme Court), *Pasokh be yek shobheh, Qatl-haye mahfeli-ye Kerman* ("Responding to an ambiguity: Gang murders of Kerman"), printed in *Hafiz* monthly journal, Issue 25, March 2005 [Esfand 1384], pp 63-65.

[132] *Zanan* magazine no. 106, Feb. 2004 [10.82], Sina Qanbarpour, *Afsanehe defa'ye mashru' ba "tardid" [rayis-e quvveh-ye qazaiyyeh] be payan nazdik shod* [The myth of legitimate defense is reaching its end by [Judiciary Head's] "doubt"].

forgone her *qisas* in exchange for an exorbitant sum of *diyyeh*. After spending 2760 days in detention, Afzaneh Norouzi was eventually released on 28 February 2005 [07.11.83] as a forgiven murderer.[133]

Fatemeh Haghighat-Pajouh, was sentenced to death at an unknown date by Chamber 1601 of Tehran General Court for the intentional killing of her 'temporary' (*siqeh*) husband, Mohammad [surname], in spring 2002. She was convicted despite a credible claim that she had caught the deceased during an attempt to rape her daughter from a previous marriage, who was 15 years old at the time. A few weeks after the Supreme Court upheld her sentence, the official media announced that she was scheduled to be executed on 11 October 2004 [22.07.83]. Thanks to a letter that her daughter Zahra wrote to then Judiciary Head Shahroudi, Haghighat-Pajouh's execution was stayed at the last minute. In one of their few responses to *UN Special Rapporteur on extrajudicial, summary or arbitrary executions*, on 27 May 2005 Iranian authorities assured the *Special Rapporteur* that Haghighat-Pajouh case was 'referred to an appellate court of the Tehran local judicial authority to reinvestigate deficiencies of the case and it is under consideration for a final decision' and made a legally impossible claim that the awaited 'final decision' included 'a probable clemency order by the Head of the Judiciary'.[134] Contrary to the optimistic response, the Supreme Court upheld Haqiqat-Pajouh's *qisas* death sentence on 17 February 2007 [25.12.85]. On 26 November 2008, Fatemeh Haqiqat-Pajouh was hanged in Evin prison alongside nine men. After the execution, Zahra, who persistently supported her mother's allegations, told RFE/RL's Radio Farda: "I was asleep. I woke up with a start and found Mohammad on top of me. He ripped my clothes. I couldn't scream. He closed my mouth with his hand. Then, my mother came and pulled Mohammad off me and took him outside".[135]

ELEI supports all proper legal measures to commute death sentences to other non-lethal sentences, including measures which take account of the circumstances in which a killing took place, including provocation. The idea at the root of the State Party's *mahdoor-ol-dam* concessions is not about making concessions to a killer's intrinsic human frailties but rewarding killers for the belief that some citizens intrinsically deserve to die for reasons of conscience or private acts. Criminalizing acts such as private sexual practice or religious beliefs and statements and executing people for such so-called crimes are already incompatible with the State Party's international obligations. It is doubly indefensible to allow murderers to use these as a pretext for killing. The State Party's *mahdoor-ol-dam* provisions are discriminative as well in that they are used to commute the sentences of men but never, it appears, to commute death sentences imposed on women. The provisions render the law capricious, exempting perpetrators not just from the death penalty, but from almost any punishment appropriate to their action. Finally, the *mahdoor-ol-dam* provisions appear to be a factor in the pattern of impunity granted to members or former members of the security forces or paramilitary forces who kill civilians.

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[133] For details see, Deljou Abadi, *Iran: Too little, too late -- Afsaneh Norouzi's death sentence and pardon*, Amnesty International 13/05/2005 (REPORTS), MDE 13/023/2005, www.amnesty.org/es/library/asset/MDE13/.../mde130232005en.pdf.

[134] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, communications to and from governments, 27 March 2006, E/CN.4/2006/53/Add.1, p 90.

[135] RFE/RL's Radio Farda, November 26, 2008, Daughter Speaks Out Against Mother's Execution In Iran, http://www.rferl.org/content/Daughter_Speaks_Out_Against_Mothers_Execution_In_Iran/1353429.html. For further Information see, Amnesty International, UA 281/04 (MDE 13/040/2004, 07 October 2004) and follow-up (MDE 13/042/2004, 14 October 2004) and (MDE 13/031/2006, 28 March 2006), and CHINA, IRAN AND JAMAICA GO AGAINST TREND ON EXECUTIONS, 28 November 2008.

10. Please indicate what measures have been taken to investigate honor killings and effectively prosecute those responsible, especially in Kurdistan, West Azerbaijan, Sistan and Baluchistan, and Khuzistan provinces.

So-called honor killings of family members, usually girls and women, by other family members, usually males, are often the subject of prosecutions in the State Party. The perpetrators are usually proud of what they have done, and are supported in their actions by the legal heirs of the victim who have the right to decide the perpetrator's punishment and are, of course, the perpetrator's fellow family members. Perpetrators often confess to shocking and gruesome details of their killings. Iranian law enforcement and judicial officials admit that there are a myriad of loopholes in the Islamic *qisas* law of the State Party which result in disproportionately light punishment and sometimes no punishment at all.

The perpetrator can virtually walk free if he is the father or paternal grandfather of the victim. According to Article 220 of the Islamic Criminal Code, the father and paternal grandfather are automatically exempt from the *qisas* death penalty and only subject to *diyyeh* and *ta'zir*.[136] Since the victim is female, her *diyyeh* is half that of a man's. Payment of *diyyeh* is rescinded by the court if fellow family members waive their right to it or if the victim is found to be *mahdoor-ol-dam*. The *ta'zir* sentence imposed on the father can be as short as six months and in no case more than ten years. Other relatives are also likely to receive similarly disproportionate punishments because fellow family members decide whether they should receive the qisas death sentence or the payment of diyyeh or neither one and due to the discretionary nature of any additional or alternative custodial punishment which is in no case is more than ten years, and because of the *mahdoor-ol-dam* provisions. (see Appendix VIII- Table of maximum punishments for honor killings under the State Party's criminal system).

Honor killings are frequently reported in the mass media usually shortly after they are discovered by the police, but the ensuing court proceedings are rarely followed up and the results of the judicial proceedings tend to be reported briefly or not at all. On 22 January 2009 [03.11.87], the daily IRAN reported that a father who had killed his 26-year-old daughter in Tehran because of 'a strong suspicion that she was having improper relations with several young men after her husband's death' was sentenced to ten years' imprisonment. On 30 June 2005 [09.04.84], the daily *Etemaad* reported that a father who had killed his 19-year-old daughter in Karaj and buried her with the help of his son in their yard was sentenced to three years' imprisonment. The son was sentenced to one year. The father had said that he had killed his daughter because 'she had repeatedly ran away from home and dishonored him in the eyes of neighbors and relatives.'

A 2011 crime report published by the Islamic Republic of Iran's Police Forces defines honor-related killings (*qatl-haye monkerati*) as any killing where the motive was alleged to be personal or family honor, regardless of the victim's gender or their relationship with the perpetrator. The report lists factors contributing to *qatl-haye monkerati* as 'culture, moral beliefs, and strongly held ethnic and tribal mores'. It is further stated that in most cases, women who have

[136] Article 220: "'A father or paternal ancestor who kills his child is except from *qisas* and shall be sentenced to payment of *diyyeh* to the deceased's inheritors and to *ta'zir*."

transgressed social mores and attempted to engage in illicit 'un-Islamic' relationships are usually attacked by their relatives and killed brutally (repeated blows, burning, mutilation and decapitation). Statistics provided for the last decade show a minimum of 244 [2001] and a maximum of 398 [2008] *qatl-haye monkerati* in a year.[137] In 1389 [2010], of the 362 *qatl-haye monkerati*, 25% took place in the three provinces of Tehran (8.8%), Khuzestan (8.3%) and Fars (7.7%) respectively.[138]

Information specific to conventionally defined honor-killings, that is women and girls killed by relatives for *monkerati* reasons, is provided only for 1389 [2010]. The report states that of a total of 514 women and girls killed in 1389, as many as 353 were killed by their relatives. In 30% (106) of cases where women were killed by relatives, the motive was *monkerati*.[139]

Further information on legal extra-judicial executions in law and practice provided in **section i**.

i. Further examples of court proceedings in which honor killings were subjected to disproportionate punishments

In ruling no. 444 of 15 September 1991 [24.6.70], Chamber 26 of the Supreme Court upheld an unspecified junior court's verdict for a father who had confessed to killing his daughter because 'she was morally depraved'. The father was sentenced to payment of half a female *diyyeh* to the deceased's minor child from her first husband and also to six months' imprisonment. The mother of the deceased waived her entitlement to half of the female *diyyeh*.[140]

In ruling no. 48 of 6 March 1993 [15.12.71], Chamber 12 of the Supreme Court upheld an unspecified minor court's verdict for a father who had confessed to killing his daughter because she was raped by 'A' and 'B' and thereby injured his honor. The father was sentenced to payment of 'a female *diyyeh'* to the deceased's mother and four years' imprisonment.[141]

In ruling no. 571 of 15 December 1992 [24.09.71], Chamber 2 of the Supreme Court invoked the provisions concerning *mahdoor-ol-dam* in Ayatollah Khomeini's *Tahrir-ol-vasileh* to overrule the *qisas* death sentence imposed by an unspecified junior court on a 21-year-old man who had killed his female cousin by strangulation at the instigation of her husband and father and with her husband's alleged complicity, including an alleged promise that they would not claim *qisas*. The case came to court only because the husband, in his capacity as guardian of the victim's children,

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[137] The Islamic Republic of Iran's Police Forces, 25 July 2011 [04.05.90], *Gozaresh az kholaseh vaziyat-e jarayem-e jenayi dar keshvar* ("Report on Criminal Offenses in the Country"), p.11. <www.*news.police.ir/Images/News/AtachFile/4-5-1390/FILE6344729126842187 50.pdf*>.

[138] ibid, p.12.

[139] The motives for other killings of women by their relatives is stated as follows: 46% fights and disputes, 5.4% robbery, 5% drug addiction, 4% psychological disorders, and 9.6% other reasons.

[140] *Qatl-e Amd, Qanun-e Mojazat-e Islami dar Ayineh-ye Araye Divan-e Ali Keshvar (*"Intentional Homicide, the Islamic Criminal Code as Reflected in Supreme Court Rulings"), compiled by Yadollah Bazgir, volume I, 1997 [1376], Quqnus, pp 234-235.

[141] Ibid, pp 235-236.

did not keep his alleged promise and demanded *qisas* after the killing. The conclusion of the ruling said: [142]

> "The contents of the case-file show that family members [of the victim] were convinced that the victim … was conducting an illicit relationship. Consequently, in view firstly of the current strong existing religious morality that considers such acts as valid grounds and as an obligation to kill and execute, and the widespread nature of this culture in society, and secondly, in view of the standards derived from Islamic law and jurisprudence which consider illicit relations conducted by a husband or wife … as grounds for killing and execution in certain circumstances, it is highly possible that the killing was committed with the belief that the victim was *mahdoor-ol-dam*. Thereby, based on Islamic jurisprudence (*Tahrir-ol-vasileh*, vol, 2, page 11, issue 19 and page 554, issue 6, and article 226 of the Islamic Criminal Code, and etc.) the maximum applicable punishment is *diyyeh* and not *qisas* […] The appealed judgment is quashed and the case is referred for retrial to another criminal court in an adjacent district or province."

[142] ibid, pp 284-287.

List of Appendices