

Submission to the UN Human Rights Committee

by

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

Death Penalty Concerns (Article 6, and Articles 7 and 15 in conjunction with Article 6)

Questions recommended for inclusion in the list of issues for the consideration of the 3rd Periodic Report of the Islamic Republic of IRAN

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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.

I. Concerns regarding the legal framework of the death penalty (Articles 6 and 15)

Question 1. What is the status of the Covenant within the hierarchy of legal norms in the State party? What measures has the State party taken to ensure that new death penalty legislation is compatible with the Covenant and to revise non-compatible legislation?

Question 2. Constitutional and legislative provisions make unlegislated religious law, including capital offenses and methods of execution, applicable in courts. How does the State party justify the compatibility of unlegislated crimes and punishments with the principle of lawfulness, and the restriction that death sentences may be imposed only in accordance with the law in force at the time of the commission of the crime (Articles 15 and 6(2) of the Covenant)?

The Constitution of the Islamic Republic of Iran does not acknowledge the status or applicability of the International Covenant on Civil Political Rights [hereinafter the Covenant]. Nor does criminal legislation with death penalty provisions enacted in the past three decades acknowledge or incorporate effectively the provisions of the Covenant. Recently proposed new legislation, including the new Bill of the Islamic Criminal Code (*Layehe-ye Qanun-e Mojazat-e Islami*) have been drafted solely on the basis of the State party's interpretation of Islamic law. In the long list of sources that the drafters of the new Islamic Criminal Code report that they have consulted, the closest reference to international instruments such as the Covenant, to which the Islamic Republic of Iran is a State party, is 'the internet'. The pre-draft survey of the current Islamic Criminal Code carried out by the Judiciary's Centre for Islamic Jurisprudential Research, which it described as a 'pathological study', did not include even a remote reference to compatibility with the provisions of the Covenant in the long list of issues it analyzed.¹

The Constitutions of the Islamic Republic of Iran declares *shari'a* (the Shi'a Twelve-Imam *Ja'fari* school of Islam also referred to as *Imamiyeh*) as the origin of all national law enforceable in courts, including criminal law.² The Constitution makes *shari'a* applicable irrespective of whether or not prescribed offenses or punishments were incorporated into statute law. Article

¹ The official website of the Judiciary's Centre for Islamic Jurisprudential Research [*Markaz-e tahqiqat-e fiqhi qoveye qazayieh*] which drafted the main part of the new Bill of the Islamic Criminal Code lists the following in the sources used in 'the pathological study' of the present Islamic Criminal Code: 1- Islamic Jurisprudential [*fiqhi*] books consisting of deductive, essentialist and traditionalist texts, *hadith*, and *istifta'at*, 2- Legal books consisting of almost all criminal law sources relevant to topics of the Islamic Criminal Code, 3- Articles consisting of almost all criminal law sources relevant to topics of the Islamic Criminal Code, 4- University teaching texts, 5- Binding rulings [of the Supreme Court], 6- Advisory Opinions from the Legal Bureau [of the Judiciary], 7- Inquiries submitted by courts to the Center for Islamic Jurisprudence Research of the Judiciary and religious inquiries [*istifta'at*] submitted to the offices of high-ranking clerics [*Mara'je*], 8- Digital databases like Dictionary of Islamic Jurisprudence by Grand Ayatollah Gulpayegani, The Concise Jurisprudence of the House of Prophet [*Jame-e fiqh-e ah-e bayt*], Treasure of Islamic Jurisprudential and Judicial Rulings [*Ganjineh-ye araye fiqhi-qazayi*], and 9- The Internet. Available at <http://www.feghegaza.com/node/282> <last visited 20 May 2010>

² Constitution (1989), Articles 12 and 4.

167 explicitly states that in the absence of provisions in statute law the judge ‘shall deliver his judgment on the basis of authoritative Islamic sources and authentic *fatwa*’.³ Several statute laws also explicitly guarantee that unlegislated *shari’a* law retains its status as applicable law.⁴

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 provided for 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, in ten other related shorter pieces of legislation [explained below] and in the Implementation Procedure Code for Sentences of Qisas, Stoning, Killing, Crucifixion, Execution, and Lashing (*Ayin-nameh nahveye ijraye ahkam-e qisas, rajm, qatl, salb, idam va shalaq*).

A variety of other capital crimes (like apostasy) and execution methods (like beheading) derive from *shari’a* law and are imposed by judges on the basis of authoritative Islamic jurisprudential texts, primarily the treatise *Tahrir al-wasileh* (Commentaries on the vehicle) written in the 1960s by the late Ruhollah Mousawi Khomeini (Grand Ayatollah, 1902-1989), the Islamic Republic of Iran’s first *valiye faqih* [Religious Supreme Ruler].⁵

The current 1991/96 Islamic Criminal Code consists of five volumes: 1. General provisions, 2. *Huddud* [singular form: *hadd*] (divinely defined 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 *huddud*, *qisas* and *diyyat* volumes were mainly copied from respective chapters of Ayatollah Khomeini’s jurisprudential treatise, *Tahrir al-wasileh*. The *ta’zirat* section was devised on the basis of Islamic criteria and the *fatwas* of influential high-ranking Shi’a clerics, primarily Ayatollah Khomeini.⁶

³ Constitution (1989), Article 167: The judge is bound to endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic *fatwa*. He cannot, on the grounds of the silence or deficiency of the law on a particular matter, or its brevity or its contradictory character, refrain from admitting and examining cases and delivering judgment.

⁴ The Criminal Procedure Code for General and Revolutionary Courts (1999), Article 214; the Amended Law Concerning Formation of Public and Revolutionary Courts (2002), Article 9; The Islamic Criminal Code (1991/96), Article 597.

⁵ *Tahrir al-wasileh* (Commentaries on the vehicle) is Ayatollah Khomeini’s (1902-1989) most comprehensive treatise. It consists of his commentaries on Ayatollah Seyyed Abul-Hassan Isfahani’s (1867-1946) book *Wasilat-al-nijat* (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. There are at least two known Farsi translations, by Ali Islami and by Seyyed Mohammad Baqer Mousavi Hamedani. Both translations are published in four volumes by the Qhom Theological Seminary. The Encyclopedia of the World of Islam describes *Tahrir al-wasileh* as ‘one of the best practical jurisprudential texts’ and ‘the only one addressing the entire range of topics in Islamic jurisprudence’.

⁶ The Iranian Constitution entrusts ultimate power into the hands of the *velayat-e faqih*, or supreme religious leader. Article 5 of the 1989 Constitution states that in the absence of the twelfth Shi’a Imam, or Mahdi, all political and

All but the last volume (*ta'zirat*) of the current Code was passed in 1991 on a trial basis for five years. The trial term has since been extended six times, in 1996 for ten years and since 2006 for one-year terms. A new Draft Bill of Islamic Criminal Code drawn up mainly by the Judiciary's Centre for Islamic Jurisprudential Research [*Markaz-e tahqiqat-e fiqhi qoveye qazayieh*]⁷ 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 Code, with some significant modifications, for a trial period of five years. The Code has been under a process of vetting for compatibility with Islamic law by the Guardian Council since 30 December 2009 [09.10.1388].⁸

Some capital offenses that were previously absent from the 1991/1996 Islamic Criminal Code, including apostasy, witchcraft, blasphemy and heresy, were added in the 2007 Draft. Execution methods of stoning and crucifixion that existed in the 1991/1996 Code were also retained in the 2007 Draft. However, following international criticism of the new additions, the Islamic Consultative Assembly decided to remove from the Code all explicit references to the punishment of stoning as well to the much criticized capital crimes of apostasy, heresy and adultery so that these crimes and their penalties reverted back to the status of unlegislated *shari'a* law. The version of the Code passed by the Assembly on 16 December 2009 thus states that for 'all *huddud* offenses not specified in the Code' judges shall, pursuant to Article 167 of the Constitution, proceed on the basis of 'fatwas issued by the Supreme Leader or by an official appointed by him'.⁹ The Guardian Council has so far not objected to these alterations in the context of its vetting of the Code for compatibility with Islamic law.¹⁰

legal power emanates from a 'just jurist' whose leadership has been recognized by the majority of the Iranian people.

⁷ The Judiciary's Center for Islamic Jurisprudential Research (*Markaz-e tahqiqat-e fiqhi qoveye qazayieh*) was established in 1996 [1375] in the Judiciary 'to facilitate and materialize the objectives of Article 167 of the Constitution.' The Center has so far published thirteen volumes of Advisory Jurisprudential Opinions on Criminal and Civil Matters (*Majmu'ay-e nazariat-e mashverati fiqhi dar omur-e kayfari va huquqi*) and a Compact Disc titled Treasure of Islamic Jurisprudence-Judicial Rulings (*Ganjineh Araye Fiqhi-Qazayi*) containing more than twenty thousand *istifta'ye fiqhi* (Islamic jurisprudence inquiries) from *maraje' taqlid* (high ranking clerics to imitate/follow) and more than fourteen thousand legal topics. See *Shenasnameh marakez pajuheshi hawzah elmiyeh qom* ("List of Qhom theological seminary research institutes"), <www.hawzah.net/per/shenaseh/TheCenter-12.aspx.htm>.

⁸ Bill of 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>.

⁹ 2009 Bill of Islamic Criminal Code, Articles 220-221.

¹⁰ The Guardian Council's views on Article 1-425 of the Bill of Islamic Criminal Code issued on 19 January 2010 [29.10.1388], available at: <http://tarh.majlis.ir/?Report&RegId=127&dore=8>

II. Concerns regarding the scope and the scale of death penalty (Article 6)

Question 3. In view of the State party's admission that the death penalty is still imposed for non-lethal crimes such as narcotics trafficking and adultery (CCPR/C/IRN/3, 273) and the existence of dozens more non-lethal capital crimes in the State Party's criminal system, including crimes of a political, religious, moral, economic, audio-visual, and internet-related nature, and crimes of public disturbance, drug possession, and human trafficking, how does the State party justify the proliferation of non-lethal capital offenses in its criminal system in terms of compatibility with Article 6(2) of the Covenant, which states that the scope of crimes subject to the death penalty should be restricted to the 'most serious crimes' and should under no circumstances extend beyond intentional crimes with lethal or other extremely grave consequences?

Question 4. The State party's murder (*qisas*) laws define 'intentional homicide' to include the briefest momentary 'intent' on the part of the perpetrator and, in the absence of intent, any act which is considered as 'typically lethal' including any involuntary killing resulting from bladed instruments, firearms, sharp or heavy stones, or blows to the head or other vital parts. This interpretation of intentionality is a significant factor in imposing the death sentence in a large number of killings that under other systems would be treated as manslaughter or second-degree murder. How does the State party justify this excessively broad interpretation of 'intentionality' in terms of the Covenant and international jurisprudence, which restrict the imposition of the death penalty only to intentional lethal offenses, and which equate the term 'intentional' to premeditation and a deliberate intention to kill?

Question 5. The State party admits that its legislation dictates the mandatory imposition of the death sentence for 'intentional homicide' (CCPR/C/IRN/3, 276) and for capital *huddud* offences (CCPR/C/IRN/3, 284). Publicly reported executions indicate that nearly 40% of executions carried out in 2008-09 were for 'intentional homicide'. How does the State party reconcile its precluding the possibility of imposing any lesser sentence with the Covenant, which requires individual sentencing on a case by case basis to prevent arbitrary deprivation of life?

Question 6. The standards and practice with regard to evidence in death penalty cases under the State party's criminal system rely to an excessive degree on defendants' confessions and the judge's poorly substantiated impressions, which carry more weight than evidence obtained with contemporary tools and techniques of criminal investigation. Confessions are routinely obtained in the pre-charge or pre-trial phase of the proceedings during which time suspects are held incommunicado and are therefore most vulnerable to acts of torture. In 'intentional homicide' judges reportedly resort to the manifestly unreliable institution of oath-taking

(*qasameh* - relatives of defendant or the victim swearing *en masse* that the defendant is guilty or innocent) in 50% of cases. How does the State party reconcile its rules of evidence with the prohibition on arbitrary deprivation of life, and the requirement that guilt must be proven beyond reasonable doubt in strict application of the highest standards for gathering and assessment of evidence?

Question 7. Please provide detailed information on the mechanisms in place to deal with complaints of torture allegedly perpetrated by public officials before suspects are charged when detainees are held in incommunicado detention and are thus most vulnerable to abuse and confessions are routinely extracted under torture. Please explain to what extent these mechanisms are independent. How can the State party justify the legal provision that murder suspects can be detained for up to six days without charge and without access to legal counsel 'for the purpose of obtaining testimony' [Article 32-5 of the Islamic Criminal Procedure Code of 1999]?

Question 8. The State party's current and pending legislation retain the death penalty for juveniles who commit 'intentional homicide' or capital *huddud* offenses. Reported executions and death sentences imposed on juveniles indicate that the majority of sentences are imposed for unpremeditated involuntary killings, which under the State party's *qisas* laws are classed as 'intentional homicide'. In view of the fact that abolition of the death penalty for juveniles is an international standard that is entirely unambiguous and universally supported, how does the State party justify its persistent retention of the death penalty for juveniles?

Question 9. Please provide comprehensive statistics on the number of executions per year since the second periodic report (1992) including data on the alleged crime(s), the age of the defendant at the time of the alleged crime, the jurisdiction that issued the death penalty, whether commutation or pardon was considered, the place of execution (specifying whether in prison or in public), and the method of execution.

Question 10. Please provide comprehensive statistics on all prisoners currently on death row, including data on the alleged crime(s), the age of the defendant at the time of the alleged crime, the jurisdiction that issued the death penalty, whether commutation or pardon was considered, the place of expected execution (specifying whether in prison or in public), and the prescribed method of execution.

1) Proliferation of Capital Offenses

Since its foundation in 1979, the Islamic Republic of Iran has been extending criminal provisions so that there are now at least 133 capital offenses. The majority of these crimes are set out in the criminal code and ten other related shorter pieces of legislation, but as noted above, for some

offenses, such as apostasy, the death penalty is imposed on the basis of Islamic jurisprudential texts. Four pieces of legislation that are currently pending introduce twenty-five new capital crime titles.

Capital offenses exist in three classes of crime: *Qisas* (four offenses), *Huddud* (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** [see Appendix I]. The table also shows which capital crimes were retained, omitted or newly added to the new Bill of the Islamic Criminal Code (both the initial 2007 draft bill and the 2009 pre-vetted 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 *jinayat* (intentional murder or bodily harm)'.¹¹ *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 to the heirs of the victim. Prosecution, continuation of trial and execution of a *qisas* sentence are conditional upon the will 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".¹² 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. In the absence of intent to kill, intentionality is also considered proven if the perpetrator commits an act which is considered as 'typically lethal'.¹³

The decision of whether or not an act is 'typically lethal' 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 with such blow or objects,¹⁴ especially knives, many killing incidents which might under other systems be treated as manslaughter or second-degree murder are automatically

¹¹ 1991/96 Islamic Criminal Code, Article 14.

¹² 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.

¹³ 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 unspecified 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 lethal for the victim due to conditions like sickness, old age, disability, or infancy, etc., of which the murderer is aware."

¹⁴ 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].

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 (at least 234 in 2008-09, 36% of all executions) including juvenile offenders (at least 42 in the past decade), and the large number of juvenile offenders being held on death row (as of April 2009 at least 138).¹⁵

Hadd, (plural: *huddud*. Literally, 'boundary or limit') is a punishment for which '*shari'a* has fixed the measure, the degree and the method'.¹⁶ 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, is the only exception). Therefore, for example in the offense of adulterous *zina*, a wife or husband who has been found guilty of adultery is put to death even if their spouse has made no complaint or has opposed the death sentence. The only mitigating circumstance for a *hadd* death sentence is 'repentance,' which only applies to persons whose crimes have been proven in court on the basis of their own confessions. Even then, the judge has the discretion to propose the granting of a pardon or to implement the death sentence.¹⁷ *Huddud* capital crimes consist of thirty-one offenses in three subcategories of heterosexual and homosexual sex crimes, crimes against the state and religion and recidivism. The *huddud* crimes of *moharebeh* and *ifsad-e fil arz* (literally, 'enmity with God's ordinances' and 'corruption on earth') are undetermined in the scope of offenses they can encompass and in addition to their classical definition of armed robbery also extend to offenses related to armed and unarmed dissident political activity. The new Bill of the Islamic Criminal Code has extended *ifsad-e fil arz* to cover offenses such as the distribution of dangerous poisonous and microbiological matters 'on an extensive level' and the establishment of centers of prostitution and corruption 'on an extensive level'.¹⁸

Ta'zir (plural: *ta'zirat*. 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'. 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*, or *ifsad-e fil arz*, or both.

Altogether there are 97 *ta'zir* capital offenses. Eight are provided for in the *ta'zirat* section of the 1991/96 Islamic Criminal Code and 29 in eight other shorter pieces of legislation. They span a wide range, from acts with potentially lethal consequences, such as attempting to assassinate the Leader,¹⁹ to economic crimes such as counterfeiting currency,²⁰ morality crimes such as

¹⁵ See tables of minors who were executed in the past decade or currently on death row in *FIDH, Iran: death penalty*, <fidh.org/IMG/pdf/Rapport_Iran_final.pdf>, April 2009, pages 30 and 50-60.

¹⁶ 1991/96 Islamic Criminal Code, Article 13.

¹⁷ 1991/96 Islamic Criminal Code, Articles 72, 126, 132, and 182.

¹⁸ 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.1 of Appendix I.

¹⁹ 1991/96 Islamic Criminal Code, Article 515.

²⁰ Law Concerning Increase of Penalties for Bill Counterfeiters and Persons who Import, Distribute or Pass Counterfeit Bills, Article 1.

extensive distribution of obscene/pornographic audio-visual materials,²¹ and public order crimes such as providing improperly baked breads to strike at the regime.²² There are also thirteen capital offenses in the Anti-Narcotic Drugs Law of 1997, and 49 further offenses in the Law Concerning Punishments for Crimes Committed by Members of the Armed Forces of 2003. Three new proposed laws concerning ‘psychological’ public disturbance, arms smuggling and possession of arms, and further amendments to anti-narcotics legislation has introduced eighteen more new *ta’zir* capital offenses.

The authorities admit that in practice most *ta’zirat* capital sentences are imposed under the Anti-Narcotic Drugs law of 1997. Drug-related capital offenses are not limited to trafficking, cultivation, manufacturing, importing and exporting, as is typically the case in states that impose the death penalty for drug-related crimes. People in possession of illicit drugs exceeding certain amounts are also executed, and where the individual has multiple convictions, the narcotics are calculated cumulatively, with the death penalty applied if the total quantity of narcotics reach the stated threshold.

In 1993, the UN Human Rights Committee said in its concluding observations on Iran’s second periodic report (CCPR/C/79/Add.25, ¶¶ 8, 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 should 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, ¶ 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 results in high numbers of *qisas* death sentences and executions (CCPR/C/IRN/3, ¶ 276).

The State party also fails to mention numerous other non-lethal crimes for which the death penalty can be imposed including rape, homosexual intercourse, apostasy, and 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]

2) Mandatory Sentencing

Iranian legislation dictates mandatory sentencing for *qisas* (four offenses) and *huddud* (31 offenses). Mandatory death sentences, which are prohibited under international human rights law, 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

²¹ Law Concerning Punishment of Persons Involved in Illicit Audio-Visual Activities (2008), Article 3a.

²² Law Concerning Increase of Penalties for Speculators and Profiteers (1988), Article 5-5.

this prohibition on mandatory sentencing and has concluded that in death penalty cases, individualized sentencing by the judiciary is essential in order to prevent cruel, inhuman or degrading punishment, and the arbitrary deprivation of life.²³

In its third periodic report, the State party admits that in the criminal system of Iran 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, ¶ 276). Furthermore, reports show that even when there has been no ‘owners of blood’, the State party has still applied the death penalty mandatorily without any regard to the circumstances of the individual. As stipulated in the Islamic Criminal Code [Article 266], in the absence of the ‘owners of blood’, the decision whether or not to prosecute and to impose the death penalty lies entirely with the Prosecutor. In 2006, 27-year old homeless woman who called herself Soheila and said that she had ‘hepatitis and AIDS’ was prosecuted for ‘intentional homicide’ of her five-day old baby. In the absence of the baby’s father, whom Soheila had left seven months earlier for his drug addiction, the Tehran Prosecutor stood as the ‘owner of the blood’ and sought the *qisas* death penalty. 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.²⁴ On 7 March 2008, the *Special Rapporteur on extrajudicial, summary or arbitrary executions* appealed to the Iranian authorities on her behalf.²⁵ 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.²⁶ Her real identity, Khorshid Qasemi, was revealed after her family saw her photograph in newspapers and read that she was executed.²⁷

The State party also admits that in the criminal system of Iran any consideration of a lesser sentence by judges is only permitted for ‘deterrent or taazir punishments’ (CCPR/C/IRN/3, ¶ 284) and not for *huddud* crimes. As stipulated in the Islamic Criminal Code *huddud* are punishments for which ‘*shari’a* has fixed the measure, the degree and the method,’ thereby being by definition unchangeable, irreducible and mandatory.

²³ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, 29 January 2007, ¶¶ 54-62, 66.

²⁴ *Aftab-e-Yazd* newspaper, 20 October 2009 [29.07.88], *Madar-e sangdel idam mishavad* (“Cruel mother will be hanged”).

²⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/8/3/Add.1, 30 May 2008, p 235.

²⁶ *Etemaad* Newspaper, 21 October 2009 [30.07.88], *Soheila va 4 mard sahangah-e diruz be dar avikhteh shodand* (“Soheila and four men hanged yesterday morning”).

²⁷ 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”).

3) 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 *huddud* crimes Iranian legislation dictates separate *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 defendants' 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 of all mitigating factors.²⁸ 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.

For *qisas* ('intentional homicide') and *huddud* 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*].²⁹ The new Bill of Islamic Criminal Code extends the first three methods to all crimes [Article 159].

Article 232 of the 1991/96 Islamic Criminal Code provides that confession of intentional homicide, even if made only once before the ruling judge is sufficient to prove intentional homicide. Articles 68 and 114 state that a four-fold confession of a man or a woman 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 levels of 'confession' are prescribed for other *huddud* 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 ruling judge.

The relatively small number of published court cases, media reports, information from lawyers representing *qisas* and *huddud* defendants, and the admission of the authorities themselves confirm that 'confession' is the most favored and commonly used proof. In 'intentional killing', the Islamic Criminal Procedure Code of 1999 [1378] itself provides explicitly that upon 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].

²⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/51/457, 7 Oct. 1996, ¶ 111.

²⁹ 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*).

Human rights organizations have extensively documented the systematic use of incommunicado detention and torture in the State party's criminal system to obtain confessions of guilt in political cases. This is also the case in ordinary crimes. 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, after eight years' detention 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 a false unrelated charge of illicit relation with Mohammadkhani and a phony bail order. Jahed repudiated her confession repeatedly and added that if she was again taken to the Detective's Bureau she would again confess to all other murders as well, as shown in her publicized court footage.³⁰ Abdullah Farivar, a 50 year old music teacher, who was sentenced to stoning in 2005 and eventually executed by hanging on 19 February 2009 [01.12.1387] in Sari for adulterous *zina* was convicted on the basis of a three-fold confession obtained by torture during his incommunicado detention by the Intelligence Bureau of the Law Enforcement Forces [*idareh etela'at niruye entezami*] from 7 February 2008 [19.11.83] to 28 February 2008 [10.12.83]. The order for the detention, he said came from the Second Chamber of the Provincial Criminal Court of Mazandaran, the same court that tried the case. He was convicted despite repudiating his confessions at trial on 23 August 2005 [1.6.84] and 17 December 2005 [26.9.84], stating that they were obtained under torture.³¹ Confessions allegedly extracted under torture are also commonly referred to in the relatively small number of published court cases in which defendants repudiate 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 also exclusively by the testimony of two males. Women's testimony, even that of a large number of women, is not accepted in intentional homicide. Article 74 states that *zina* is proven by testimony of four just men or three just men and two women and Article 117 states that *lavat* is proven only with testimony of four just men. Article 189 states that *moharebeh* is proven with testimony of two just men. Witness testimony is hardly ever reported as a method 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'.³² *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 new Bill of Islamic Criminal Code defines 'judge's *elm*' as "certainty [*yaqin*] derived from clear

³⁰ 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.

³¹ 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 Stop Stoning Campaign, available at <www.meydaan.com/Showarticle.aspx?arid=762> (last viewed 22 Feb 2009).

³² Ayatollah Muqtada'ie (former Prosecutor General and Head of the Supreme Court), *Elm-e qazi* ("Judge's Certainty"), available at <www.dadsetani.ir>.

perceptions in a matter before the judge”.³³ The said provision also makes the judge’s reliance on any actual investigative evidence such as ‘expert opinion’ or ‘scene examination’ completely discretionary.³⁴ Article 211 adds that if judge’s *elm* remains clear to him in spite of contradicting ‘other legal evidence’ [confession and testimony] 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 relatively 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 obtained during interrogation become problematic during the proceedings, for example because the defendant repudiates the confession or it conflicts with physical evidence. The recently publicized stoning verdict of 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 her one-page 10 September 2006 verdict, stated:³⁵

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 and 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 branch 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 [i.e. Respectively, articles of the Islamic Criminal Code defining *zina*, its exclusive stoning punishment as, and judge’s *elm* as one of its methods of proof] of the criminal code, 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 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 agnatic relatives to ‘take an oath’ that the suspect is guilty of ‘intentional homicide’ without having witnessed or having any direct

³³ 2009 Bill of Islamic Criminal Code, Article 210.

³⁴ 2009 Bill of Islamic Criminal Code, Note to Article 210.

³⁵ Copy of original verdict available at: <www.iranrights.org/english/attachments/doc_1123.pdf>, English translation available at: <www.iranrights.org/english/document-1453-1824.php?searchtext=c2FraW5laA%3D%3D>.

knowledge of the murder. If that condition cannot be fulfilled, a 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 agnatic relatives ‘take an oath’ that he is not guilty.³⁶

According to a 1998 study by the Judiciary on reasons for annulments of judgments by the Supreme Court, the archaic institution of oath-taking has been 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’.³⁷ This conclusion is supported in frequent reports of *qasameh* convictions or acquittals in daily newspapers. Most recently, 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] reverted the case back to the same lower court [Chamber 1156 of the General Criminal Court], the judge has decided to proceed with oath-taking, ‘requesting the deceased’s heirs to introduce fifty family members to the court’.³⁸

4) Juvenile Executions

The Iranian government denies that it executes child offenders. Since 2005 the government has also claimed that a ‘legal ban on under-aged capital punishment’ is pending ratification by the parliament.³⁹ In their third periodic report, the State party responds in similar terms by misleadingly conflating the age of criminal responsibility with the age of special civil protection for children which is up to eighteen 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, ¶¶ 297-98)

³⁶ 1991/96 Islamic Criminal Code Articles 239-256. *Qasameh* is also retained in the new Bill of the Islamic Criminal Code.

³⁷ 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.

³⁸ 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”).

³⁹ 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 crimes 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 under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft bill on Juvenile Courts, which is at present before parliament for ratification.”

The facts of the matter are very different. Current law explicitly allows the imposition of the death penalty on juvenile offenders. Pending legislation also includes provisions that implicitly permit the imposition of the death penalty on juvenile offenders. 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 exhortation that *huddud* and *qisas* punishments are not revocable or changeable. By retaining these provisions, the draft Juvenile Crimes Investigation Act which has been pending before the Islamic Consultative Assembly since 2005, and the new Bill of Islamic Criminal Code currently under vetting for compatibility with Islamic law by the Guardian Councils, retain the juvenile death penalty for *huddud* and *qisas* crimes. [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 imposed and, in some cases, carried out, on juveniles.⁴⁰ The State party has rarely responded to the *Special Rapporteur’s* communication and the 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* in the case of Behnam Zare, it was not denied that the person in question 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 following 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’.⁴¹ 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.⁴²

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’.⁴³ In May 2008, the Working Group adopted a decision (No. 4/2008), declaring the detention of Ms. Delara Darabi by the Iranian authorities arbitrary and in contravention of the Covenant and asked the Iranian Government to remedy the

⁴⁰ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2, 27 May 2009, ¶¶ 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.

⁴¹ See the communication 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

⁴² *Etemaad* newspaper, 27 August 2008 [06.06.1387], *Pesar-e Shrazi be jorm-e qatl dar 15 salegy be dar avikhteh shod* (“Shirazi boy hanged for committing murder at age 15”).

⁴³ OpinionNo.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](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/13/PDF/G0910713.pdf?)>.

situation of Ms. Darabi.⁴⁴ 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’.⁴⁵

5) High Number of Executions and Death Sentences

The actual number of death sentences and executions is a matter shrouded in state secrecy. In response to numerous requests by UN human rights bodies, the State party has persistently failed to provide information on the true numbers of executions, death sentences and the crimes for which death penalty was applied. Nor does the State party maintain a system of court case reporting or make any provision for public information on the matter.

In the first decade of the Islamic Republic, Iranian judicial officials did report most executions through the mass media, apparently because of the supposed retributive and deterrent effects that such reports would provide. 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, has been censoring death penalty news in the mass media. Their analysis apparently found 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.⁴⁶ Since then, successive Heads of the Judiciary have issued directives in order to control the reporting of death penalty news.

Despite the secrecy surrounding the true scale of death sentences and executions, judicial officials have publicized some executions, and have carried out some public executions apparently for their supposed retributive and deterrent effect. Executions recorded by ELEI in 2008-09, mostly from official media sources, yield the following statistics:⁴⁷

⁴⁴ *ibid.*

⁴⁵ *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”).

⁴⁶ 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, ¶ 92. The official 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 said:

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.

⁴⁷ Database of Publicly Reported Executions in Iran available at < irainc.org/ELEI>.

Execution reported mostly in official mass media 2008-09

	<i>Qisas</i>	<i>Huddud</i> [<i>moharebeh</i> and <i>ifsad, zina</i> and <i>lavat</i>]	<i>Ta'zirat</i> (drug offenses)	Unspecified	Total
2008	129 (46%)	60 (21%) [32 (11%), 28 (10%)]	81 (29%)	12 (4%)	282
2009	105 (30%)	86 (24%) [43 (12%), 43 (12%)]	167 (46%)	2 (0%)	360
Total	234 (36%)	146 (23%) [75 (12%), 71 (11%)]	248 (39%)	14 (2%)	642

Of 642 publicly reported executions recorded by ELEI in 2008 and 2009, 234 (36%) were *qisas*, 75 (12%) were *mohareb* and *ifsad-e fil-arz*, 71 (11%) were *zina* and *lavat*, while 248 (39%) were drug-related offences, and 14 (2%) were carried out for unspecified offenses.

The true numbers of executions are not known, but other crime-related data reported by official sources indicate that the number of death sentences imposed is at least several times more than the number of reported executions.

Data from the Statistical Center of Iran indicate that there are, on average, 1,800 new ‘intentional homicides’ each year, and more than 5,000 trials each year.⁴⁸ 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 therefore spared execution.⁴⁹ This public information suggests that there are probably hundreds, if not thousands, of *qisas* death sentences passed every year. In July 2003, the founder of the Society to Protect Prisoners (*Anjoman Hemayat az Zendanian*) said that at least 1,363 prisoners convicted of ‘intentional killing’ were languishing on death row in Iran’s prisons.⁵⁰ The Society was closed down by the authorities in 2009.

Figures mostly from international sources for years prior to 2005 suggested an average of 1,000 executions per year for drug-related convictions.⁵¹ In September 2006, the General Prosecutor of

⁴⁸ According to the Statistical Center of Iran, from 2000 to 2004 a yearly average of 1,836 new ‘intentional homicide’ cases were filed with the police and a yearly average of 5,126 cases including retrials and cases from previous years were resolved in the lower courts, <sci.org.ir/portal/faces/public/sci/sci.mahsulatvakhadamat/sci.paygah>.

⁴⁹ 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>.

⁵⁰ Emadeddin Baghi, *Gozarashi 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>.

⁵¹ For example, in 2005 the *Economic Cooperation Organization Drug Control Coordination Unit (DCCU)* stated that Iran has executed more than 10,000 narcotics traffickers in the last decade (available at <www.ecodccu.org/English/coutry_profiles/iran/Iran2005.htm>). Another article published in 2003 stated that Iran had executed over 10,000 narcotics traffickers in the last decade, usually by hanging, and some 800 people were on death row for narcotics offenses (*Sammi, William A., “Drug Abuse: Iran’s Thorniest Problem”, The Brown Journal*

Mashad, a city of 2.5 million near the borders of Afghanistan, announced that 500 prisoners were on death row for drug related crimes in that city's prison alone.⁵² On 9 August 2009 it was reported that the new Judiciary Head Ayatollah Sadeq Larijani had written a confidential letter to the Supreme Leader requesting his consent to carry out the executions of 1,120 prisoners, most of whom had been convicted of drug related offences.⁵³ Following this report, prisoners in Mashad's Vakilabad prison informed an NGO about a series of group executions of alleged drug-offenders inside the 'security ward' of that prison. According to this information, thirteen individuals were executed on 5 October 2010, ten individuals were executed on 12 October, ten individuals were executed on 26 October, eleven individuals were executed on 9 November, and nine individuals were executed on 30 November. The prisoners were reportedly executed with only a few hours' notice.⁵⁴ While these executions have not so far been reported officially, another NGO recorded 132 executions from official sources carried out for drug-related offenses in the space of nine months from 21 March 2010 to 22 December 2010.⁵⁵ In view of the harsh laws against drug offences [see section II.3.b of Appendix I] and the rate at which 'drug smugglers and distributors' are reported to be arrested (over 17,000 individuals per month),⁵⁶ it can be inferred that the number of death sentences imposed on drug-offenders and the number of executions must indeed be in the thousands.

In their third periodic report, the State party provides a wide range of detailed statistics on matters as trivial as the monthly break down for the number of 'voice boxes of Judiciary officials' or the number of 'unauthorized eavesdropping' prosecutions. Yet, the State party does not address in any way 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 issued pardoned a total of 742 'death penalty victims

of World Affairs 9, no. 2 (Winter/Spring 2003): pp 283-99). The official Chinese news agency said in November 1995 that a senior Iranian official had advised his Chinese hosts that, since 1989, some 4,000 persons had been executed for drug offences in the Islamic Republic of Iran (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, ¶ 43).

⁵² Iran Student News Agency (ISNA), 16 Sep. 2006 [26.06.1387], *Vojude 500 motaham mavad mokhader mahkum be idam dar mashad* (500 narcotic drug convicts are on death row in Mashad), <khorasan.isna.ir/NewsView.aspx?ID=News-61295>.

⁵³ The Green Voice of Iran, *Nameh-e mahramaneh Larijani be rahbar baray idam-e 1,120 zendani* ("Larijani's confidential letter to the Leader to carry out execution of 1,120 prisoners"), <www.irangreenvoice.com/article/2010/aug/08/6124>.

⁵⁴ International campaign for Human rights in Iran (ICHR), 3 November 2010, More Secret Executions in Mashad: 23 Executed in October, <www.iranhumanrights.org/2010/12/twenty-executions-vakilabad/print/>, and 8 December 2010, 20 More Executions in Mashad Amidst Continued Silence from the Judiciary, <www.iranhumanrights.org/2010/10/executions-vakilabad/print/>.

⁵⁵ Human Rights House of Iran, *190 more'd ijraye hokm idam dar sal 1389 az negahe amar* ("Statistical analysis of 190 executions in 1389"), <www.rahana.org/archives/33061/print/>.

⁵⁶ The head of the anti-drug police said that in the first five months of 1389, as many as 1,895 narcotics smuggling gangs had been identified and disbanded, leading to the arrest of 88,219 narcotics smugglers and distributors. Kayhan newspaper, 7 September 2010 [16.06.1389], *Inhidam-e 1,895 band-e qachaq-e mavade mokhader dar sal-e jari* ("Disbanding 1,895 narcotics smuggling bands this year"), <www.kayhannews.ir/890616/15.htm#other1506>.

[sic]' [CCPR/C/IRN/3, ¶ 294]. This extremely high number of death sentences pardoned in a single year is itself a clear indication of the large numbers of death sentences being imposed for drug-related offences, which is the main class of offence which the law deems pardonable.

III. Concerns regarding cruel, inhuman or degrading treatment in implementation of death sentences (Article 7 in conjunction with Article 6)

Question 11. The State party has sanctioned nine methods of execution under the 2003 Implementation Code (hanging, shooting by firearms, electrocution, stoning, crucifixion) and Article 167 of the Constitution (killing with a sword, throwing from a high place, burning to death, and collapsing a wall over the condemned). Please provide statistics on the number of executions by each of these methods. Please comment on the compatibility of each method with the prohibition against torture and cruel, inhuman, or degrading punishment in Article 7 of the Covenant.

Question 12. Hanging from the gallows is the State party's commonly used method of execution. Please explain why this method has been given preference over the method of lethal injection which is widely considered to be less cruel. Please provide the protocol(s) used in carrying out hangings in private and in public. Please comment how the State party is complying with the prohibition against torture and cruel, inhuman, or degrading punishment in Article 7 of the Covenant which requires executions to be carried out in such a way as to cause the least possible physical and mental suffering.

Question 13. Given that Iranian officials have since 2002 repeatedly announced the existence of a moratorium on stoning issued by the former Judiciary Head Mahmoud Hashemi Shahroudi (1999-2009) but have never identified this document or disclosed its actual content, please provide a copy of the said document. Please provide detailed information on all cases whose stoning punishments have been affected under this moratorium.

Question 14. Article 221-5 of the 2007 Draft Islamic Code reinstated stoning as the sole punishment for female and male adulterous *zina*. Note 4 of this article allowed conversion of stoning to execution by hanging or one-hundred lashes for a narrowly defined group of stoning convicts where 'stoning inflicted harm upon the system or brought it into disrepute'. Apparently the basis of this provision was a *fatwa* issued by the Supreme Leader. These provisions were however removed when the Bill was passed by the Islamic Consultative Assembly on 16 December 2009. Instead, Articles 220-221 of the passed Code state that for 'all *huddud* offenses not specified in the Code,' judges, pursuant to Article 167 of the Constitution, shall act on '*fatwas* issued by the Supreme Leader or by an official appointed by him'. Please comment how the latter provision guarantees the protection against torture and cruel, inhuman, or degrading punishment in Article 7 of the Covenant?

Question 15. In the application of *qisas* death sentences, please explain to what extent the family of the deceased can determine the weapon and mode by which the convict is executed and what is the relevance of legal provisions such as the prohibition on the use of ‘a dull or blunt weapon’ or ‘mutilation of the culprit’ [Article 263 of the Islamic Criminal Code and Article 16 of the Implementation Code]?

Question 16. Given that public executions are still carried out in Iran and given the non-binding nature of Judiciary Head’s directives, irrespective of whether they completely ban public executions or not (paragraph 289 of State party’s report), please comment on the compatibility of the State party’s retention of public executions in law with Article 7 of the Covenant.

Question 17. The State party’s regulations require a minimum of 48 hours for notification of the execution date. It is also frequently reported that executions are carried out with no notice at all. The convict’s right to visitation, food, water and to make a testamentary will are also restricted. In *qisas* executions, the State party’s regulations allows the ‘heirs of the blood’ to carry out the death penalty personally. Please comment how the said legal provisions and reported practices in carrying out executions are compatible with Article 7 of the Covenant.

Question 18. The State party’s regulations allow the judicial authority in charge of the implementation of death sentence to refuse the release of an executed convict’s remains to the relatives [Article 18 of the Implementation Code]. Reports show that this refusal also extends to information about and access to burial sites. Relatives of thousands of political prisoners who were executed summarily and secretly in summer of 1988 in Tehran’s Evin and twenty other prisons are still refused any information about the burial sites of their executed relatives. Please comment how the State party’s legal provisions and reported practices are compatible with Article 7 of the Covenant.

1) Execution Methods

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. 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. Furthermore, certain forms of state-sanctioned murder are carried out with virtual

impunity. In such cases, the judicial system has formally condoned killings carried out by slow and brutal torture.

Protocols concerning execution methods and rites are to some extent defined in the Implementation Procedure Code for Sentences of *Qisas*, Stoning, Killing, Crucifixion, Execution, and Lashing [hereafter, the 2003 Implementation Code]⁵⁷ which was issued on 18 October 2003 by Mahmoud Hashemi Shahroudi (Ayatollah) who served as Judiciary Head from September 1999 to September 2009. A similar code of implementation had been issued in 1991 by Mohammad Yazdi (Ayatollah), 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*) [hereafter, the 1991 Implementation Code].⁵⁸

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. Explicit references to two other execution methods, namely crucifixion and stoning, do exist in the Islamic Criminal Code, but are likely to be removed when a new Code, currently in the legislative process, is passed in response to international criticism. As reiterated by the Commission for Judicial Affairs of the Islamic Consultative Assembly [*comesiyon-e omur-e qazayi-e majles-e shoraye islami*],⁵⁹ which has proposed the removal of these particularly cruel methods of execution 'due to international sensitivities,' they remain 'irrevocable and fully applicable under *shari'a* law'.⁶⁰

Since the Iranian authorities do not provide information and figures on all death sentences or executions, it cannot be determined if, when and how often each method has been imposed and applied. Most publicly reported executions in Iran over the past thirty years have been 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' 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.

⁵⁷ 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).

⁵⁸ No. 1/2697/4, 21 May 1991 [31.02.1370], issued pursuant to Article 28 of The Law on Establishment of Criminal Courts One and Two and Chambers of the Supreme Court passed on 11 July 1989 [20.04.1368].

⁵⁹ Under Article 85 of the Constitution, the Islamic Consultative Assembly can delegate the passing of legislation to its Commissions provided that the legislation is implemented on a trial basis, the duration of which is voted by the full Assembly.

⁶⁰ See for example *Khabar* newspaper, *Sangsar hokmi qabele hazf nist* ("Stoning not abolishable"), 29 June 2009 [08.04.1388], <http://www.khabaronline.ir/news.aspx?id=11659>.

Since 2002 Iranian officials have repeatedly told UN bodies that the former Judiciary Head, Mahmoud Hashemi Shahroudi (Ayatollah), had issued a directive declaring a ‘moratorium’ on stoning. Most recently, 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.⁶¹ Iranian representatives even stated that the so-called directive was ‘intended as an interim measure until the passage of new laws’.⁶² These assertions are, however, belied by the facts, since, sentences of execution by stoning and public hanging have continued to be passed and carried out by state officials. The directive referred to was never made public, and moreover, in 2003 Mr. Shahroudi himself reissued instructions on how stoning sentences should be implemented [Articles 22 and 23 of the 2003 Implementation Code]. In 2007, under his stewardship, the Judiciary’s Centre for Islamic Jurisprudential Research [*markaz-e tahqiqat-e fiqhi qoveye qazayieh*] 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 221-5].

The only new provision in the Draft Bill of Islamic Criminal Code which was inserted in Note 4 of Article 221 merely gave 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’.⁶³ The basis of this provision is apparently a *fatwa* issued by the Supreme Leader.⁶⁴ So far two individuals with stoning sentences are known to have been executed by hanging instead of by

⁶¹ Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, 1 October 2008, A/63/459, ¶ 12.

⁶² *ibid.*

⁶³ 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 *bayineh* (evidence other than the condemned person’s own confession).⁶³ Otherwise it shall be converted to one hundred lashes.

⁶⁴ *Ganjineh araye fiqhi-qazayi* (“Treasury of Islamic Jurisprudence and Judicial Rulings”), published by *Markaz-e tahqiqat-e fiqhi qoveh qazaiyeh* (Research Center for Islamic Jurisprudence of Judicial Branch). question 4189 quoted in *Majmuyeh araye fiqhi dar omur kayfari* (“Digest of Islamic jurisprudential rulings in criminal matters”), vol. 3, 2nd ed, 2003 [1382], p 44.

stoning, apparently on the basis of this *fatwa*.⁶⁵ Another two who in addition to stoning sentences for adultery were also sentenced to death by hanging for ‘intentional homicide’ and *lavat* were also executed by the latter method.⁶⁶

Following international criticism, the Islamic Consultative Assembly decided to remove all explicit references to the punishment of stoning [as well as explicit references to some other *huddud* crimes such as apostasy and blasphemy] from the Draft Bill of Islamic Criminal Code. Eventually, the version passed by the Assembly on 19 December 2009 stated that for ‘all *huddud* 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’s or by an official appointed by him’. [Articles 220-221]

The *qisas* laws of Iran have provisions which in addition to letting the heirs of the deceased to implement the death sentence [see below] also implicitly reflect the Islamic principle of equivalency between a murder and its punishment, and allow the heirs of the deceased a measure of choice in having the death penalty implemented with methods which have some supposed comparability with the murder itself. This is 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’.⁶⁷

2) Public Executions

In the criminal laws of Iran, the option of carrying out executions publicly is provided for explicitly 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

⁶⁵ 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 parvandej 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>.

⁶⁶ 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, 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. 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>.

⁶⁷ 1991//96 Islamic Criminal Code, Article 263 and 2003 Implementation Code, Article 16.

provided implicitly in the law. The 2003 Implementation Code 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’.⁶⁸ Following a surge in the number of public executions in the second half of 2007, in January 2008 former Judiciary Head Mahmoud Hashemi Shahroudi (1999-2009) issued a directive to control public executions more tightly, and to ban publication of photographs of executions.⁶⁹ The number of reports of executions held in public has decreased significantly since the 2008 directive but they have certainly continued, as is affirmed by the publication of execution photographs, a practice which has also continued.⁷⁰

In its third periodic report, the State party explicitly admits that ‘[o]n the basis of the directive of 9 Bahman 1386 by the Head of the Judiciary, implementation of death sentence in public will only take place with the agreement of the Head of the Judiciary and due to social exigencies’.⁷¹ However, the State party fails to mention the non-binding nature of the Judiciary Head’s directive and the fact that public executions are still legally sanctioned under the Islamic criminal system of Iran.

3) 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.⁷²

⁶⁸ 2003 Implementation Code, Articles 7, 10, 13, 15 and 19.

⁶⁹ Directive [no. m/11317/86] issued on 29 January 2008 [09.11.1386] printed in *Majmoye bakhshnamehaye ghoveh ghazayieh 1385 va 1386* (Digest of Directives Issued by the Judiciary 2006-2008), pages 236-7.

⁷⁰ See, for example, *Kargozaran* newspaper, 14 July 2008, [24.04.1387], *4 mahkum dar mala am idam shodand* (“4 convicts executed in public”); Radio Farda, 11 July 2008 [21.04.1387], *Naqze bakhshnameh qoveh qazayieh: idam 4 nafar dar mala am* (Judiciary Directive Breached: four executed publicly); IRNA, 20 May 2009 [09.03.1388], *3 nafar az avamel-e dakhil dar bombgozari Zahedan mojazat sodand* (“Three involved in bombing punished”).

⁷¹ Third Periodic Report of the Islamic Republic of Iran on the International Covenant on Civil and Political Rights Department of Human Rights (October 2009), par 289.

⁷² See, for example, the cases of Sasan Al-e Kena’n who was executed at 4.00 am in Kordestan province, Islamic Republic of Iran. Later that day, his mother arrived at the prison to visit her son and was told to go the judiciary’s local offices. Only then was she informed that Sasan Al-e Kena’n had been executed earlier that morning. She was told “not to make a fuss” and to bury him quickly. On 22 April 2007, twenty-year-old Mohammad Mousawi was secretly executed in Shiraz for the accidental killing of a man when he was sixteen without notice to his lawyer or parents. His parents and subsequently his lawyer found out that he had been executed when a cell-mate telephoned his parents to come to Shiraz’s Adel-abad prison, where 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. *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”].

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 they have reason to bear a grudge against the convicted person.⁷³

The 2003 Implementation Code states that private visitation with family before execution is prohibited [article 9] and supervised visitation 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 heirs [article 10-3]. Clearly, these minimal rights are, of course, entirely disregarded where a prisoner is made aware of his or her execution only moments before it is carried out, and where relatives are informed 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 burial sites as well. More than two decades after the abrupt and unanticipated execution of thousands of political prisoners in the summer 1988 in Tehran’s Evin prison and twenty other prisons throughout Iran, their relatives are still refused information about the whereabouts of their loved ones’ remains.⁷⁴

In its third periodic report, the State party provides no information on how it implements death sentences.

⁷³ For example, 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. 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>.

⁷⁴ 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>).

IV. List of All Questions

Question 1. What is the status of the Covenant within the hierarchy of legal norms in the State party? What measures has the State party taken to ensure that new death penalty legislation is compatible with the Covenant and to revise non-compatible legislation?

Question 2. Constitutional and legislative provisions make unlegislated religious law, including capital offenses and methods of execution, applicable in courts. How does the State party justify the compatibility of unlegislated crimes and punishments with the principle of lawfulness, and the restriction that death sentences may be imposed only in accordance with the law in force at the time of the commission of the crime (Articles 15 and 6(2) of the Covenant)?

Question 3. In view of the State party's admission that the death penalty is still imposed for non-lethal crimes such as narcotics trafficking and adultery (CCPR/C/IRN/3, 273) and the existence of dozens more non-lethal capital crimes in the State Party's criminal system, including crimes of a political, religious, moral, economic, audio-visual, and internet -related nature, and crimes of public disturbance, drug possession, and human trafficking, how does the State party justify the proliferation of non-lethal capital offenses in its criminal system in terms of compatibility with Article 6(2) of the Covenant, which states that the scope of crimes subject to the death penalty should be restricted to the 'most serious crimes' and should under no circumstances extend beyond intentional crimes with lethal or other extremely grave consequences?

Question 4. The State party's murder (*qisas*) laws define 'intentional homicide' to include the briefest momentary 'intent' on the part of the perpetrator and, in the absence of intent, any act which is considered as 'typically lethal' including any involuntary killing resulting from bladed instruments, firearms, sharp or heavy stones, or blows to the head or other vital parts. This interpretation of intentionality is a significant factor in imposing the death sentence in a large number of killings that under other systems would be treated as manslaughter or second-degree murder. How does the State party justify this excessively broad interpretation of 'intentionality' in terms of the Covenant and international jurisprudence, which restrict the imposition of the death penalty only to intentional lethal offenses, and which equate the term 'intentional' to premeditation and a deliberate intention to kill?

Question 5. The State party admits that its legislation dictates the mandatory imposition of the death sentence for 'intentional homicide' (CCPR/C/IRN/3, 276) and for capital *huddud* offences (CCPR/C/IRN/3, 284). Publicly reported executions indicate that nearly 40% of executions carried out in 2008-09 were for 'intentional homicide'. How does the State party reconcile its precluding the possibility of imposing any lesser sentence with the Covenant, which requires individual sentencing on a case by case basis to prevent arbitrary deprivation of life?

Question 6. The standards and practice with regard to evidence in death penalty cases under the State party's criminal system rely to an excessive degree on defendants' confessions and the judge's poorly substantiated impressions, which carry more weight than evidence obtained with contemporary tools and techniques of criminal investigation. Confessions are routinely obtained in the pre-charge or pre-trial phase of the proceedings during which time suspects are held incommunicado and are therefore most vulnerable to acts of torture. In 'intentional homicide' judges reportedly resort to the manifestly unreliable institution of oath-taking (*qasameh* - relatives of defendant or the victim swearing *en masse* that the defendant is guilty or innocent) in 50% of cases. How does the State party reconcile its rules of evidence with the prohibition on arbitrary deprivation of life, and the requirement that guilt must be proven beyond reasonable doubt in strict application of the highest standards for gathering and assessment of evidence?

Question 7. Please provide detailed information on the mechanisms in place to deal with complaints of torture allegedly perpetrated by public officials before suspects are charged when detainees are held in incommunicado detention and are thus most vulnerable to abuse and confessions are routinely extracted under torture. Please explain to what extent these mechanisms are independent. How can the State party justify the legal provision that murder suspects can be detained for up to six days without charge and without access to legal counsel 'for the purpose of obtaining testimony' [Article 32-5 of the Islamic Criminal Procedure Code of 1999]?

Question 8. The State party's current and pending legislation retain the death penalty for juveniles who commit 'intentional homicide' or capital *huddud* offenses. Reported executions and death sentences imposed on juveniles indicate that the majority of sentences are imposed for unpremeditated involuntary killings, which under the State party's *qisas* laws are classed as 'intentional homicide'. In view of the fact that abolition of the death penalty for juveniles is an international standard that is entirely unambiguous and universally supported, how does the State party justify its persistent retention of the death penalty for juveniles?

Question 9. Please provide comprehensive statistics on the number of executions per year since the second periodic report (1992) including data on the alleged crime(s), the age of the defendant at the time of the alleged crime and his or gender, the jurisdiction that issued the death penalty, whether commutation or pardon was considered, the place of execution (specifying whether in prison or in public), and the method of execution.

Question 10. Please provide comprehensive statistics on all prisoners currently on death row, including data on the alleged crime(s), the age of the defendant at the time of the alleged crime and his or her gender, the jurisdiction that issued the death penalty, whether commutation or

pardon was considered, the place of expected execution (specifying whether in prison or in public), and the prescribed method of execution.

Question 11. The State party has sanctioned nine methods of execution under the 2003 Implementation Code (hanging, shooting by firearms, electrocution, stoning, crucifixion) and Article 167 of the Constitution (killing with a sword, throwing from a high place, burning to death, and collapsing a wall over the condemned). Please provide statistics on the number of executions by each of these methods. Please comment on the compatibility of each method with the prohibition against torture and cruel, inhuman, or degrading punishment in Article 7 of the Covenant.

Question 12. Hanging from the gallows is the State party's commonly used method of execution. Please explain why this method has been given preference over the method of lethal injection which is widely considered to be less cruel. Please provide the protocol(s) used in carrying out hangings in private and in public. Please comment how the State party is complying with the prohibition against torture and cruel, inhuman, or degrading punishment in Article 7 of the Covenant which requires executions to be carried out in such a way as to cause the least possible physical and mental suffering.

Question 13. Given that Iranian officials have since 2002 repeatedly announced the existence of a moratorium on stoning issued by the former Judiciary Head Mahmoud Hashemi Shahroudi (1999-2009) but have never identified this document or disclosed its actual content, please provide a copy of the said document. Please provide detailed information on all cases whose stoning punishments have been affected under this moratorium.

Question 14. Article 221-5 of the 2007 Draft Islamic Code reinstated stoning as the sole punishment for female and male adulterous *zina*. Note 4 of this article allowed conversion of stoning to execution by hanging or one-hundred lashes for a narrowly defined group of stoning convicts where 'stoning inflicted harm upon the system or brought it into disrepute'. Apparently the basis of this provision was a *fatwa* issued by the Supreme Leader. These provisions were however removed when the Bill was passed by the Islamic Consultative Assembly on 16 December 2009. Instead, Articles 220-221 of the passed Code state that for 'all *huddud* offenses not specified in the Code,' judges, pursuant to Article 167 of the Constitution, shall act on '*fatwas* issued by the Supreme Leader or by an official appointed by him'. Please comment how the latter provision guarantees the protection against torture and cruel, inhuman, or degrading punishment in Article 7 of the Covenant?

Question 15. In the application of *qisas* death sentences, please explain to what extent the family of the deceased can determine the weapon and mode by which the convict is executed and what is the relevance of legal provisions such as the prohibition on the use of 'a dull or blunt weapon' or 'mutilation of the culprit' [Article 263 of the Islamic Criminal Code and Article 16 of the Implementation Code]?

Question 16. Given that public executions are still carried out in Iran and given the non-binding nature of Judiciary Head's directives, irrespective of whether they completely ban public executions or not (paragraph 289 of State party's report), please comment on the compatibility of the State party's retention of public executions in law with Article 7 of the Covenant.

Question 17. The State party's regulations require a minimum of 48 hours for notification of the execution date. It is also frequently reported that executions are carried out with no notice at all. The convict's right to visitation, food, water and to make a testamentary will are also restricted. In *qisas* executions, the State party's regulations allows the 'heirs of the blood' to carry out the death penalty personally. Please comment how the said legal provisions and reported practices in carrying out executions are compatible with Article 7 of the Covenant.

Question 18. The State party's regulations allow the judicial authority in charge of the implementation of death sentence to refuse the release of an executed convict's remains to the relatives [Article 18 of the Implementation Code]. Reports show that this refusal also extends to information about and access to burial sites. Relatives of thousands of political prisoners who were executed summarily and secretly in summer of 1988 in Tehran's Evin and twenty other prisons are still refused any information about the burial sites of their executed relatives. Please comment how the State party's legal provisions and reported practices are compatible with Article 7 of the Covenant.

V. Appendices

Appendix I- Table of Capital Offenses in the Islamic Republic of Iran, and their Sources in Statute Law and Islamic Law

Appendix II- Table of Juvenile Death Penalty Provisions in the Islamic Republic of Iran, and current and pending legislation

Appendix III- Table of Methods of Execution in the Islamic Republic of Iran

**Appendix I- Table of Capital Offenses in the Islamic
Republic of Iran, and their Sources in Statute Law and
Islamic Law**

(see attached document)

Appendix II- Table of juvenile death penalty provisions in the Islamic Republic of Iran, and current and pending legislation

Current law	Pending legislation	
<p>Islamic Criminal Code (1991/96) and the Civil Code (1991)</p>	<p>Draft Juvenile Crimes Investigation Act (pending before the Islamic Consultative Assembly since 6 February 2005 [18.11.1383])</p>	<p>Bill of Islamic Criminal Code (passed by the Islamic Consultative Assembly on 16 December 2009 [25.09.88] and currently under vetting by the Guardian Council)</p>
<p>Article 49 (Islamic Criminal Code)- Children, if committing a crime, are exempted from criminal responsibility ... Note – A child is a person who has not reached the age of religious puberty (<i>buluq-e shar'i</i>).</p> <p>Article 1210 (Civil Code)- Note 1: The age of puberty is 15 full lunar years for boys and 9 full lunar years for girls.</p>	<p>Article 2- Children who commit a crime are exempted from criminal responsibility ... Note – A child is a person who has not reached the age of religious puberty (<i>buluq-e shar'i</i>).</p> <p>Article 33(3)- Juveniles ages 15 to 18 are subject to the following punishments: ... (3) 2-8 years' holding in a juvenile correctional facility for crimes whose legal punishment is life-imprisonment or <i>idam</i> [n.b. a 6 July 2008 [16.04.87] opinion issued by the Research Center of the Consultative Assembly reiterates that this is applicable only in <i>ta'zirat</i> crimes and does not apply to <i>qisas</i> and <i>huddud</i> crimes].</p> <p>Article 35- In crimes in the jurisdiction of Provincial Criminal Courts [n.b. this includes all types of death penalty whether <i>ta'zirat</i>, <i>qisas</i> or <i>huddud</i>] when the perpetrator's mental maturity [<i>roshd va kamal aql</i>] is doubted the Children and Juvenile Court shall sentence him/her to one of the punishments provided in sub-articles 1, 2, or 3 of Article 33 of this law accordingly.</p> <p>Note: To determine mental maturity, the Children and Juvenile Court may either use the opinion of the medical examiner or use any other method it deems necessary.</p>	<p>Article 87- In crimes liable to <i>hadd</i> or <i>qisas</i> whenever mature persons who are still under the age of 18 are not aware of the nature or gravity of the crime committed or their mental maturity [<i>roshd va kamal-e aql</i>] is doubted, they shall be sentenced to punishments provided in this chapter in accordance with their age [n.b. fine, community service, house arrest, or detention in a correction facility].</p> <p>Note: To determine mental maturity, the court may use the opinion of the medical examiner or use any other method it deems necessary.</p> <p>Article 145- Non-pubescent (<i>na-baleq</i>) persons are exempted from criminal responsibility.</p> <p>Article 146- The age of puberty (<i>buluq</i>) for girls and boys is 9 and 15 full lunar years respectively.</p>

Appendix III- Table of Execution Methods in the Islamic Republic of Iran and their Sources in Statute Law and Islamic Law

	Method	Sources*			Offence and Class of Death Penalty
		1991/96 Islamic Criminal Code	2003 Implementation Code	Tahrir-al-wasileh	
1	Hanging		art. 14		As additional options for <i>qisas</i> and <i>qatl/hadd sentences</i> and in <i>idam</i> sentences
2	Shooting by firearms				
3	Electrocution				
4	Crucifixion	arts. 190 & 195	art. 24	4/241/5, 4/241/9	<i>Hadd</i> offense of <i>moharebeh</i> (insurrection against God)
5	Stoning	arts. 83, 101-104	arts. 22 and 23	4/187/1, 4/193/2 & 5, 4/247/4	<i>Hadd</i> offenses of <i>zina-e mohsen</i> or <i>mohsen-e</i> (consensual male or female adultery) and one of the options in <i>lavat</i> (penetrative male homosexual sex)
6	Killing with sword			4/314/9 & 4/317/11	<i>Qisas</i> and all <i>hadd</i> capital offenses except <i>zina-e mohsen</i> or <i>mohsen-eh</i> (male or female adultery)
7	Throwing from a height			4/199/5	<i>Hadd</i> offense of <i>lavat</i> (penetrative male homosexual sex)
8	Burning in fire				
9	Burying under a demolished wall				
10	Methods chosen by the heirs of the murdered	arts. 265, 263	arts. 15, 16	4/319/11	Provided they are customary and do not cause mutilation, torture or excessive torment
11	Extra-judicial methods	arts. 295-c 226		4/295/6	Legally sanctioned extra-legally sanctioned murder

* The Implementation Procedure Code for Sentences of *Qisas*, *Stoning*, *Killing*, *Crucifixion*, *Execution*, and *Lashing* (*Ayin-nameh nahveye ijraye ahkam-e qisas, rajm, qatl, salb, idam va shalaq*) was issued on 18 October 2003 [27.06.1382] by Judiciary Head Hashemi Shahroudi pursuant to Article 293 of the Criminal Procedure Code for General and Revolutionary Courts (1999). For description of other sources see Appendix I.