

Methods of Execution in the Islamic Republic of Iran

by

Project on Extra-Legal Executions in Iran (ELEI)

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Summary

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, provisions in respect of death sentences based on *qisas-e-nafs* (retribution-in-kind) grant the family of the deceased victim the right to exercise a measure of equivalence between the murder and the execution method.

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 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 deleted when a new Code, currently in the legislative process, is passed in response to international criticism. They will however also remain fully applicable under *shari'a*.

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 by sword and throwing off a height are known to have been imposed and carried out too.

Iranian officials have asserted that the judiciary has declared 'moratoriums' on stoning and on holding any executions in public since 2002 and 2008 respectively. These assertions are, however, belied by the facts, since, as this publication documents, many sentences of execution by stoning and public hanging have continued to be passed and carried out after those dates.

I. Sources: codified and uncoded law

The multiplicity of sources of law has resulted in a situation where only some of the methods of execution envisaged in the Islamic Republic of Iran are actually provided for in statute law. These are referred to as ‘legislated methods’ and are listed in the 1991/96 Islamic Criminal Code (*Qanun-e Mojazat-e Islami*)– [hereafter ICC], which is the main criminal statute law in Iran, 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*)– [hereafter 2003 Implementation Code].¹ A variety of other methods derive from *shari’a* law and are imposed by judges on the basis of authoritative Islamic jurisprudential texts.

An overview of the 1991/96 ICC and *shari’a* law sources are provided in Working Paper No. 1. The 2003 Implementation Code was issued on 18 October 2003 by the Judiciary Head, Mahmoud Hashemi Shahroudi (Ayatollah), who was appointed to the post 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 1991 Implementation Code].² Directives issued by judicial authorities indicate that prior to 1991 implementation of executions was governed primarily by regulations issued in 1928 [1307] during the first Pahlavi royalist regime.³

Prior to the establishment of the Islamic Republic of Iran in 1979, executions were carried out pursuant to the Procedure Code Concerning Implementation of the Death Sentence (*Ayinnameh raje be ijraye hokme idam*) passed by the Iranian parliament in 1964 [1343]. Article 1 of this law limited the method of execution exclusively to hanging and restricted the location of execution to ‘a private section inside prison’. Executions imposed under military jurisdiction were carried out by firing squad shootings.⁴

¹ 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).

² 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 Branches of the Supreme Court passed on 11 July 1989 [20.04.1368].

³ See for example Directive 63/12/B/Sh dated 3 May 1984 [13.02.1363] issued by Ayatollah Mousawi Ardebili, Head of the Supreme Judicial Council, citing Article 3 of the 1928 [1307] Regulation Concerning Implementation of the Sentence of Death (*Nizamnameh raje be ijraye hokme idam-1307*) as the basis for empowering the Council to issue execution warrants. Articles 1 and 5 of the 1928 legislation limited the method of execution to hanging but allowed executions to be carried out publicly.

⁴ Law on Military Trial and Punishment (1939) (*Qanun-e dadrasi va kayfar artesh-1318*), Article 296.

II. Judicial execution methods in law

The Islamic criminal laws of Iran distinguish three types of death penalty: *Qisas* (retaliatory death penalty for murder), *Huddud* (divinely prescribed fixed punishments), and *Idam* (judicial execution for other capital crimes). Appendix I (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. The following paragraphs provide a summary description of each of the execution methods applied for each of the three classes of death penalty.

A. *Qisas* (retaliatory death penalty for the crime of ‘intentional’ homicide)

Qisas (literally, ‘retaliation’) is defined in ICC 1991/96 (Volume II. *Qisas*) as a mandatory punishment that is ‘equivalent to the crime which God has prescribed for *jinayat* (intentional killing or bodily harm).’ When it is applied as a capital punishment for ‘intentional killing (or killing)’ it is called *qisas-e-nafs* (retaliation in life). When applied for intentional bodily harm it is called *qisas-e ozv* (retaliation in bodily organs). *Qisas*, whether *nafs* or *ozv*, is considered to be a right that should be granted to the victim or to the victim’s next of kin (or heir).⁵ In this text, *qisas* only refers to *qisas-e nafs* (retaliation in life).

Since *qisas* is regarded a right conferred upon the victim’s heir, it is not commutable or pardonable by the state. The ‘sovereignty’ of the heir in the matter of *qisas* is so absolute that prosecution, the continuation of trial, and finally the execution or relinquishment of a *qisas* sentence are all dependent upon the will of the heir.⁶ Court trials and execution rites are canceled or postponed when the heir (or their legal proxy) are absent. As described later, the heir is also granted the right to choose a method of execution which is equivalent to the original murder, and to implement the sentence personally.

⁵ The Quran (*Al-Isra* 17:33) states: ‘Nor take life - which Allah has made sacred - except for just cause. And if anyone is slain wrongfully, we have given his heir authority (to demand *qisas* or to forgive): but let him not exceed bounds in the matter of taking life; for he is helped (by the Law).’ The Arabic word translated as ‘authority’ is *sultana* [*waman qutila mathlooman faqad jaAAalna liwaliyyihi sultan*] which literally means sovereignty, as exercised by a monarch.

⁶ 1991/96 ICC, Articles 14, 205, 257, 261, and 227-30.

A. **Shari'a-based execution method in *qisas*: beheading with a sword**

Studies published by Iran's Judiciary and Qhom Theological Seminary note that Islamic jurists have expressed different views on permissible types of weapon in *qisas* death sentences. A widely-held view in both schools of Islam (Shi'a and Sunni) maintains that the weapon in *qisas* is the sword and that the mode is beheading.⁷ While some contemporary Shi'a clerics in Iran have insisted on the sword as the obligatory weapon of *qisas* others have recognized more 'modern' weapons and modes of execution. Furthermore, an Islamic scholar in Qhom confirms that a 'considerable number of jurists considers it possible that *qisas* may be carried out with a weapon and mode equivalent to that with which the murder was committed.'⁸

In *Tahrir al-wasileh*, Ruhollah Mousawi Khomeini identifies the sword and 'similar [bladed] instruments' as the weapon of *qisas* but with the proviso that they should not be 'blunt' or 'poisonous'. He also restricts the mode of *qisas* to 'severing the head' and prohibits the 'mutilation of the culprit'.⁹ The terms 'sword' and 'beheading' are not used explicitly in Iran's statute law, but in their elaboration on the implementation of *qisas*, both the 1991/96 ICC and the 2003 Implementation Code impose prohibitions on the use of 'a dull or blunt weapon' and the 'mutilation of the culprit'.¹⁰ Such references clearly suggest that bladed instruments are indeed permitted, if not recommended, as lethal weapons of execution.

Like the 1991/96 ICC, the new 2007 draft Islamic Criminal Code [hereafter 2007 draft ICC] also affirms that 'mutilation' is 'forbidden and illegal'. The 2007 draft ICC even adds a new provision which subjects the perpetrator of mutilation to a *ta'zir* imprisonment of 91 days to six months.¹¹ As such, it implicitly acknowledges that *qisas* executions may include killing with a

⁷ Shi'a sources cited include: Mohammad Javad Hosseini Ameli (d. 1622 A.D.), *Mefteh ol-Falah* (in Arabic), vol. 11, pp 112, 133, cited in *Selseleh pajuhesh-haye fiqhi-huquqi-bayesteh-haye fiqhi ijrave qisas* (Jurisprudential-Legal research series no. 7: Jurisprudential prescripts of implementing *qisas*) published by the *Moavenat Amuzeshi Goveh Qazayieh* (Educational Division of the Judiciary), 2008 [1387], p 127; Ayatollah Seyyed Abolghasem Khoi [d. 1992 A.D.], *Mabani Takalomat ol'Menhaj* (in Arabic), 132/2, cited in Seyyed Fatah Mortazawi, *Sharhe qanune mojazat eslami (manabe fiqhi) jelde dovum qisas* (Jurisprudential basis of the Islamic Criminal Code, second volume, *qisas*), first print 2002 (1381), Majd publishing, p 139. A Sunni source cited is: Abdolrahman Jaziri, *Ketab, al-fiqh ala al-mazahib al-arbayat* (in Arabic), cited in *Selseleh pajuhesh-haye fiqhi-huquqi-bayesteh-haye fiqhi ijrave qisas* (see earlier citation), p 126.

⁸ Mohammad Ibrahim Shams Natari, *Baresi tatbiqi mojazat idam* (A Comparative Study of Death Penalty), Qhom Islamic Seminary-Islamic Propagation Bureau (*hawzeh elmiyeh Qhom, daftare tabliqate Islami*) 1999 [1378], p 316.

⁹ *Tahrir al-wasileh*, issues 4/319/11 and 4/317/9.

¹⁰ 1991/96 ICC, Article 263 and 2003 Implementation Code, Article 16.

¹¹ Draft ICC of 2007, Article 323-24.

sword or bladed instrument.

B. Additional state-sanctioned *qisas* execution methods

In addition to permitting beheading with a sword in *qisas* death sentences, in his *Tahrir al-wasileh*, Ruhollah Mousawi Khomeini also concedes that ‘it is not far from possible that *qisas* can also be implemented with an instrument easier than the sword such as shooting the culprit’s brain with a bullet or electrocution’.¹² A collection of consenting and dissenting *fatwas* by Iran’s Shi’a *maraja’ taqlid* (influential high-ranking) in this regard is provided in Appendix III. While some clerics have disagreed with Ayatollah Khomeini by insisting on the sword as the obligatory weapon of *qisas*,¹³ others have issued *fatwas* in which they recognize additional instruments such as hanging by the gallows.¹⁴ This latter group interpret the notion of ‘the sword’ in Islamic jurisprudence as a means to an end, merely referring to the easiest and swiftest weapon.¹⁵

While all *qisas* executions and the methods of their implementation have not been reported publicly, research by ELEI confirms that publicly reported *qisas* executions have been carried out by hanging from the gallows. However, it also confirms that this method did not find legal character in Iran’s Islamic criminal system until 1991, when the first set of death penalty implementation regulations was issued. Article 18 of the 1991 Implementation Code stated that ‘if the death sentence does not specify a particular method of execution, the person condemned to death shall be hanged from the gallows and suspended for an hour from the scaffold unless his death becomes certain, after which s/he shall be brought down from the scaffold.’ The provision was expanded and amended in the 2003 Implementation Code as follows:¹⁶

Qisas-e-nafs (retaliation death penalty for murder), *qatl* (killing in *hadd* capital offenses) and *idam* (judicial execution in other crimes) may be carried out by hanging from the gallows, shooting by firearms, electrocution, or another method determined by the sentencing judge. Note: if a specific execution method is not specified in a sentence of *idam*, *qisas* or *qatl*, the condemned shall be hanged on the gallows.

Clearly, in both provisions, judges are still afforded the option of choosing methods ‘other’ than

¹² See above note 12.

¹³ See Grand Ayatollah Mirza Javad Tabrizi’s [d. 2006] fatwa in Appendix III.

¹⁴ See *fatwas* of Grand Ayatollahs Nasser Makarem Shirazi, Seyyed Abdolkarim Mousavi Ardebili, Hossein Nouri Hamadani and Mohammad Fazel Lankarani in Appendix III.

¹⁵ *Selseleh pajuhesh-haye fiqhi-huquqi-bayesteh-haye fiqhi ijraye qisas* (see earlier citation), p 138, and Natari p 317.

¹⁶ 2003 Implementation Code, Article 14.

the three methods of hanging, electrocution or shooting. Beheading with a sword is one clear *shari'a*-based option in *qisas* death sentences. Other unspecified methods are also rendered possible should the heirs to the slain choose them as their right to 'equivalence' of weapon and mode of *qisas* described in subsection 4.

C. Right of heirs to carry out *qisas* personally

Iranian statute law explicitly recognizes the right of the heirs to implement *qisas* personally. Article 265 of the ICC 1991/96 states: 'Pursuant to the imposition of the *qisas* sentence and the Supreme Leader's affirmation, the heirs of the victim can implement the *qisas* personally or by appointing a proxy.' A similar provision exists in the 2003 Implementation Code.¹⁷

Because *qisas* executions are usually carried out behind closed doors inside prison compounds, the only witnesses are the heirs of the slain, judicial authorities, and occasionally the condemned person's lawyer. Therefore, what goes on during these rites does not usually become public knowledge. There are, however, occasional reports that the heirs have personally put the noose around the neck of the condemned, or kicked the bench, or even pulled the rope. On 1 May 2009, the uncle of the 23-year-old Delara Darabi told reporters that prison staff who had witnessed his niece's hanging told him that the deceased's elderly daughter had personally put the noose around Delara's neck.¹⁸ 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 insisted on pulling the rope and doing this herself despite the fact that she lacked the strength to do this effectively.¹⁹

D. The right of heirs to equivalence of weapon and mode

Iranian statute law is not clear as to the extent to which the heir's 'sovereignty' over a *qisas* execution extends to equivalence (*momaseleh*) of weapon and mode. In his analysis of capital punishment in Iran, Mahmoud Akhoundi, a well-known and widely published contemporary

¹⁷ 1991/96 ICC, Article 265 and 2003 Implementation Code, Article 15.

¹⁸ *Etemaad* newspaper, 2 May 2009 [01.02.1388], *Hokm-e qisas-e Delara Darabi ijra shod* (Delara Darabi's *qisas* sentence carried out), <www.etemaad.ir/Released/88-02-12/default.htm>. Wrongfully convicted of intentionally killing her father's cousin in 2004 at seventeen years of age after an unfair trial, Delara Darabi was hanged secretly on 1 May 2009.

¹⁹ *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 gallows rope'), <www.sarmayeh.net/ShowNews.php?43744>

legal scholar, contends that equivalence in *qisas* is integral to the Iranian legal system and describes it as providing further options to the list of permissible execution methods in this system.²⁰

Discussions published by Iran's judiciary conclude that the majority of early Shi'a jurists did not consider equivalence of weapon and mode as permissible,²¹ but a minority did insist that heirs of the victim had the right to kill the condemned person with precisely the same weapon and method as used in the original murder. The only constraints they recognized were on 'execution' by acts that are forbidden in Islam, for example 'by rape or sodomy or drowning in wine'.²² Consequently, if the victim was, for example, suffocated by forceful pouring of wine down the throat, the heirs can 'pour a liquid such as water or vinegar down the condemned's throat until s/he suffocates'.²³

Iran's contemporary leading clerics, including the late Ruhollah Mousawi Khomeini, do not entirely reject the right of heirs to equivalence. *Tahrir al-wasileh's* provisions on weapons and methods of *qisas* suggest that any sharp bladed weapon or any other 'customary' weapon that does not cause 'suffering in excess of that inflicted by the sword' is permissible. Furthermore, Ayatollah Khomeini adds that even when the heir exceeds the limits, s/he 'is liable only to *ta'zir*,' which is discretionarily imposed, and as noted above, is a nominal punishment.²⁴

The right of heirs to a measure of equivalence in the matter of the weapon is, indeed, affirmed clearly by Ayatollah Seyyed Mahmoud Shahroudi, the Islamic Republic's third Judiciary Head (1999-2009). In a 1988 article entitled 'Legal ruling on administration of anesthesia in corporal

²⁰ Mahmoud Akhoundi, *Ayin dadresi kayfari* (Criminal Procedure Code), vol. 5, 2005 (1384), Majd publication, chapter titled *Idam dar nizame kafari Iran* (Capital punishment in the criminal system of Iran). After counting seven specific methods of execution (shooting, hanging, stoning, throwing from a high place, killing with a sword, collapsing a wall and burning to death), he adds: 'Since *qisas* must be implemented with the method by which the deceased was murdered, the number of execution methods amounts to eight.'

²¹ Mohammad Fazel Lankarani [d. 2007], *Al-qisas*, p. 308, cited in *Selseleh pajuhesh-haye fiqhi-huquqi - bayesteh-haye fiqhi ijrave qisas* (Islamic jurisprudential-legal research series no. 7: Islamic jurisprudential prescripts of implementing *qisas*) published by the *Moavenat amuzeshi goveh qazayieh* (Educational Division of the Judiciary), 2008 [1387], p 114.

²² Sheikh Mohammad Hassan Najafi [d. 1849], *Javaher ol' Kalam*, p 299, cited in *Selseleh pajuhesh-haye fiqhi-huquqi-bayesteh-haye fiqhi ijrave qisas* (see earlier citation), p 116.

²³ Shahid os-Sani [Zayn od-Din ben `Ali ben Ahmad, martyred 965 A.H./1557 A.D.], *Masalek ol-Efham fi Sharh-e Sharaye' el-Eslam* (in Arabic), vol 15, p 236 and Mohaqeq Ardebili [Mulai Ahmad Ardebili, d. 993 A.H./1577 A.D.], *Majma al-qayedeh va al-borhan* (in Arabic), vol. 14, p 133, both cited in *Selseleh pajuhesh-haye fiqhi-huquqi - bayesteh-haye fiqhi ijrave qisas* (see earlier citation), p 117.

²⁴ *Tahrir al-wasileh*, Issue 4/319/11.

punishments,' Mr. Shahroudi contends that in *qisas* executions anesthesia is incompatible with the protected 'right of heirs to equivalence'. He further concludes that in *qisas* 'equivalence in the actual pain and suffering [by the condemned], insofar as it is intrinsic to murder or injury, is a right conferred to the victim [in *qisas* of body organs] or the heirs [in *qisas* of life].'²⁵

Given the constitutional provision which empowers judges to rule on the basis of any authoritative Islamic source and any authentic *fatwa*, judges may refer to such sources and order death sentences to be implemented with methods which have equivalence to the murder. In a recently reported *qisas* death sentence ordered to be carried out 'with a sword', the method was apparently imposed on the basis of equivalence with the murder weapon. This sentence was announced by the Office for Public Affairs of the General and Revolutionary Prosecutor of Tehran on 25 February 2008. It reportedly provided that 'Shahin, a 19-year-old youth, was sentenced to death with a sword for intentionally killing Ali during a street fight'.²⁶ Daily newspapers described the incident as a brawl over an accusation by Shahin that Ali had been harassing his sister. After Ali and his nephew Meysam attacked Shahin, he fetched his martial art sword and threatened to use it. As Ali and his nephew continued to attack Shahin in order to disarm him of the sword, Ali was struck in the groin and this caused his eventual death by bleeding.²⁷

Another recent case demonstrating the possible consequences of an injured party's insistence on carrying out *qisas* by means of equivalent weapons and modes, concerns a blinding sentence issued on the same principle. In this case the condemned, Majid Movahedi, after being spurned in marriage, had blinded his former university classmate, Ameneh Bahrami, by throwing a pitcher of sulfuric acid at her face. The verdict, as quoted in a daily paper, stated that: 'In view of the plaintiff's petition in which she has requested to pour acid in the defendant's eyes in person, and the finding that the defendant is guilty, it is sentenced that drops of acid be poured in Majid's eyes by Ameneh up to the amount that the defendant is blinded.'²⁸ This sentence was upheld in

²⁵ Seyyed Mahmoud Hashemi Shahroudi, *Hokm-e bihes kardan-e a'za hengam-e ijraye kayfarhaye jesmani* (Legal ruling concerning administration of anesthesia during implementation of corporal punishments), *Majaleh fiqh-e ahl-e bayt* (Journal of Shi'a jurisprudence), 1988 [1377], no. 15, <www.islamicfeqh.com/magazines/Feqh15f/115.htm>.

²⁶ Radio Zamaaneh, 25 February 2008 [04.12.1386], *Qisas-e yek motaham ba shamshir* ('Qisas with a sword for a convict'), available at <www.zamaaneh.com/news/2008/02/print_post_3946.html>.

²⁷ *Etemaad* newspaper, 14 December 2008 [24.09.1387], *Zoodtar edamam konid, digar taqat nadaram* ('Execute me sooner, I cannot tolerate it any longer'), <www.magiran.com/ppdf/3291/p0329118440151.pdf> and *Etemaad-Meli* newspaper, 14 December 2008 [24.09.1387], *Qatl baraye defa az khahar, motaham baraye bar-e dovum be qisas mahkum shod* ('Murder to defend sister, defendant condemned to *qisas* a second time'), <www.magiran.com/ppdf/5061/p0506108130141.pdf>.

²⁸ *Etemaad* newspaper, 03 February 2009 [15.11.1387], *Tayide hokme koor kardane pisare asidpash* ('Acid thrower's blinding sentence upheld'), <www.etemaad.ir/Released/87-11-15/97.htm>.

March 2009 by Branch 33 of the Supreme Court and subsequently approved by the Judiciary Head, Mr. Shahrudi, despite initial efforts to persuade the victim to demand blood money instead of retribution ‘because such a sentence would cause much bad publicity for Iran.’²⁹

B. Huddud — divinely prescribed fixed punishments)

Huddud (singular *hadd*) are divinely prescribed fixed punishments.³⁰ They are by definition unchangeable, irreducible and mandatory. An early famous Islamic jurist, Meqdadibn Abdollah Seyouri al-Heli, characterized *huddud* as punishments intended to ‘inflict corporal pain and suffering.’³¹ With the exception of two *huddud* punishments consisting of amputation of limbs, non-capital *hadd* offenses are punished by 75 to 100 lashes and/or by shaving of the head or exile. Capital *hadd* offenses are punished by six different methods of execution, five of which are intended to kill the condemned by means of slow brutality and torture. Capital *huddud* apply to a range of sexual offenses as well as offenses against religion and state security. Repeated offending involving non-capital *hadd* offenses may also be punished by death. [see Table of Capital Offenses in the Islamic Republic of Iran and their Sources in Statute Law and Islamic law].

The following subsections explain the *shari’a*-based execution methods for capital *hadd* offenses as well as the ‘modern’ methods of execution which the Islamic Republic of Iran has adopted in the interest of preventing defamation of Islam and the Islamic state.

A. Shari’a-based execution methods: *Qatl* (killing) by four methods, plus stoning and crucifixion

In Islamic law, the majority of capital *hadd* offenses are punishable by the death penalty termed as *qatl* (literally, killing or slaying). The standard weapon for carrying out *qatl* is the sword (*qatl-e bel seif*), which was considered as the swiftest lethal weapon in early Islam. In some *qatl* sentences, the question of whether or not beheading is the only mode by which the condemned

²⁹ *Etemaad* newspaper, 12 March 2009 [22.12.1387], *Pesar-e asidpash be zudi koor mishavad* (‘Acid thrower to be blinded soon’) available at <http://etemaad.ir/Released/87-12-22/97.htm> and Thomas Erdbrink, Washington Post, ‘Woman blinded with acid invokes Islamic retribution,’ December 13, 2008, <www.washingtonpost.com/wp-dyn/content/article/2008/12/13/AR2008121302147.html?hpid=topnews>

³⁰ 1991/96 ICC, Article 13 states: ‘*Hadd* is a punishment for which ‘*shari’a* has fixed the measure, the degree and the method.’

³¹ Meqdadibn Abdollah Seyouri al-Heli [d. 826], *Al-tanqih al-ray-ei*, vol. 4, p. 327, cited in Mohammad Ibrahim Shams Natari, *Baresi tabiqi mojazat idam* (‘A Comparative Study of Death Penalty’), Qhom Islamic Seminary-Islamic Propagation Office (*hawzeh elmieh Qhom, daftare tabliqate Islami*) 1999 [1378], p83.

might be killed with a sword is disputed among jurists. Relying on certain sayings and actions of the Prophet and the Imams, some assert, for example, that the capital offense of intercourse with relatives with whom marriage is prohibited is punishable by one blow of the sword wherever and however deep it strikes and subsequently imprisonment until death.³² Ayatollah Mousavi Ardebili, the Islamic Republic's first Judiciary Chief and an instrumental figure in drafting of Iran's Islamic criminal laws, stated in a Friday sermon in 1990 that a person convicted of *lavat* (penetrative male homosexual intercourse) should be killed with a sword – either by cutting off the neck or by splitting in two from the head.³³ The sayings and actions of the Prophet and the Imams have also been invoked to punish *lavat* by various other *qatl* methods described below, as well as the method of stoning to death.³⁴

For male and female adultery, the death penalty prescribed on the basis of the sayings and actions of the Prophet and the Imams is exclusively by the method of stoning.³⁵ Another offense, *moharebeh* (insurrection against God's ordinances) is punishable both either *qatl* (with a sword) or by crucifixion, as prescribed in Quranic verses.³⁶

The 1991/1996 ICC of Iran (Volume 3 - *Huddud*) follows the Islamic law (*shari'a*) by prescribing *qatl* (killing/slaying) for death penalties under *huddud* but does not indicate explicitly what method of execution should be used. For the offense of *lavat* (male homosexual intercourse), for example, Article 110 of the ICC 1991/96 states: 'the *hadd* for penetrative *lavat*

³² Shaikh Muhammad bin al-Hassan al-Hurr al-Aamili [d. 1692], *Wasayel al-shia*, vol. 18, p 385, cited in Abbas Zeraat, *Sharhe qanune mojazat-e islami- bakhsh huddud*, p 123.

³³ Ayatollah Mousavi Ardebili who was appointed by Ayatollah Khomeini as the first Judiciary Chief expounded these punishments in a Friday prayers sermon:

For homosexuals, men or women, Islam has prescribed the most severe punishments; of course, in the case of men it is on the basis of consensus [of Muslim jurists], while in the case of women it is on the basis of established precedent. Do you know how homosexuals are treated in Islam? After it has been proved on the basis of *Shari'ah*, they should seize him, they should keep him standing, they should split him in two with a sword, they should either cut off his neck or they should split him from the head. He will fall down. ... After he is dead, they bring logs, make a fire and place the corpse on the logs, set fire to it and burn it. Or it should be taken to the top of a mountain and thrown down. Then the parts of the corpse should be gathered together and burnt. Or they should dig a hole, make a fire in the hole and throw him alive into the fire. We do not have such punishments for other offences.

BBC Summary of World Broadcasts, May 21, 1990, IRAN MUSAVI-ARDEBILI CALLS FOR SEVERE PUNISHMENTS FOR HOMOSEXUALS, DRUG USERS.

³⁴ *Ibid*, chapter on *huddud*, cited in Abbas Zeraat, p 225.

³⁵ *Ibid*, chapter on *huddud*, cited in Abbas Zeraat, p 141.

³⁶ The *Qu'ran* (5:33) and (5:34).

is *qatl* (killing) and the method of killing shall be chosen by the *shari'a* judge.' In making that choice, judges will rely on Islamic treatises like Ruhollah Mousawi Khomeini's *Tahrir al-wasileh* which stipulates: 'In choosing the mode of execution for the person who gives or receives *lavat*, the Islamic judge is authorized either to behead him with a sword, or throw him off a cliff or any high place with bound hands and feet, or burn him in fire, or stone him. It is said that [the judge] can also collapse a wall over his head irrespective of whether he is the active or the passive party. Regardless of the method of the executions, it is even permissible to burn his corpse in fire.'³⁷

A study on the death penalty published by Qhom Theological Seminary classifies all *hadd* methods of execution according to their offenses as follows:³⁸

1. **Stoning (*rajm*)**: male or female adultery (*zina-ye mohsen va mohseneh*), and penetrative homosexual intercourse (*lavat*).

2. **Crucifixion (*salb*)**: insurrection against God's ordinances (*moharebeh*).

3- **Killing with a sword**: heterosexual intercourse with relatives with whom marriage is prohibited, heterosexual rape (*zina-ye be onf*), male non-Muslim's intercourse with Muslim female, penetrative homosexual intercourse (*lavat*), insurrection against God's ordinances (*moharebeh*), apostasy (*irtidad*), and repeated non-capital *hadd* offenses;

4- Throwing from a mountain with bound hands and feet: penetrative homosexual intercourse (*lavat*).

5- **Burning in fire**: penetrative homosexual intercourse (*lavat*);

6- **Collapsing a wall over the condemned**: penetrative homosexual intercourse (*lavat*);

The author, a widely published clerical scholar, notes that the cruelest methods of execution are assigned to sexual offenses because the 'divine lawgiver' regards them as offenses that 'weaken and eventually destroy morality, the principal pillar of society.'³⁹ As an indication of the utmost reprehensibility of 'the abhorrent offense of *lavat*', he cites the saying of the first Imam that 'if there is a person who deserves to be stoned twice, that person is one who has committed *lavat*.'⁴⁰

³⁷ *Tahrir al-wasileh* issue 4/199/5.

³⁸ Mohammad Ibrahim Shams Natari, *Baresi tatbiqi mojazat idam* (A Comparative Study of the Death Penalty), Qhom Islamic Seminary-Islamic Propagation Office (*Hawzeh elmieh Qhom, daftare tabliqate Islami*) 1999 [1378], p 247.

³⁹ *Ibid*, p 90.

⁴⁰ *Ibid*, p 92, quote cited from Shaikh Muhammad bin al-Hassan al-Hurr al-Aamili [d. 1692], *Wasayel al-shia* (in Arabic), *Hadd al-lavat*, p. 420.

Ayatollah Shahroudi, Iran's Judiciary Head from 1999 to 2009, reiterates in his discussion concerning administration of anesthesia during corporal punishments that 'in *huddud* punishments such as lashing, stoning and certain *qatl* sentences, and where the harshness of the punishment is intentional as in burning in fire or throwing from a height, anesthesia should not be administered to the offender, who must also be prevented from administering it to themselves.'⁴¹

Of the six *hadd* execution methods, four (stoning, throwing from a high place, beheading with a sword and crucifixion) are known to have been carried out in the Islamic Republic of Iran. [see below, Section III]. The Iranian authorities do not report all executions. Nor do they provide official figures on numbers and forms of execution. Therefore it is as yet unclear whether or not the two other *hadd* execution methods, burning and collapsing a wall, have also been carried out.

B. Additional state-sanctioned *hadd* execution methods

For almost three decades, Iranian civil society, international human rights NGOs and UN human rights bodies have criticized the Islamic Republic of Iran for retaining the cruel and inhuman methods of execution prescribed in *hadd* death sentences in law, in particular the punishment of stoning, and for carrying out such punishments. While the Iranian authorities have consistently dismissed such criticisms as ignorance or western secularist imperialism, they are also keenly aware that such practices severely damage the international image of Islam and the Islamic system of Iran. As a result, the judiciary has endeavored, in 'the interests of the Islamic system', to adopt other methods of execution for *hadd* death sentences by resorting to 'secondary rulings'. These secondary rulings consist of a collection of *fatwas* by selected *maraja' taqlid* [prominent Islamic clerics worthy to be followed] and express opposite opinions on the matter. These *fatwas* can be viewed in Appendix IV. Relying on *fatwas* that *qatl* death sentences can be implemented with alternative methods, sentencing judges and judicial officials in charge of enforcement of sentences have been permitted the choice of carrying out these sentences by methods such as hanging from the gallows.

The following real case cited by a judge in the Bureau for Enforcement of Sentences confirms the judges' prerogative to determine whether a *qatl* sentence is performed by methods such as hanging from the gallows or by the prescribed *shari'a*-based method. In the case at issue, the sentencing judge was, indeed, provided two opposite *fatwas* each of which supported one of the said methods.

⁴¹ Seyyed Mahmoud Hashemi Shahroudi, *Hokme bihes kardan aza hingame ijraye kayfarhaye jesmani* (Legal judgment on the administration of anesthesia during implementation of corporal punishments, *Majaleh fiqh ahle bayt* (Journal of Islamic jurisprudence), 1988 [1377], no. 15. <www.islamicfeqh.com/magazines/Feqh15f/115.htm>.

When the *hadd* death sentence does not specify a particular method killing

Excerpts from Reza Masoudifar's (judge and university lecturer) book '*Huddud* and its ways of execution at Iranian courts of law', 2007 [1386], pp 86-87.

In one instance [regarding a *qatl* sentence for the offense of *lavat*] where I was responsible for the carrying out of the [*qatl*] sentence as the judge supervising enforcement of sentences, the written verdict did not specify the method of *qatl* ... As there were five choices for the method of *qatl*, I returned the case back to the court which had issued the sentence and requested that one of the methods be specified. Subsequently, the presiding judge issued the following request seeking the opinions of *foqaha* [Islamic clerical scholars] as well as some *mara'je taqlid* [prominent Islamic clerics worthy to be followed]:

Your Excellency Grand Ayatollah [name redacted in original]:

In case no. 3/77/2083 a person convicted of penetrative homosexual intercourse with a minor was condemned to the *hadd* of *qatl* and the sentence was upheld by the Supreme Court. In view of the fact that carrying out the sentence by killing with a sword, burning, throwing from a high place and collapsing a wall over the condemned person might be taken advantage of by enemies of Islam and might generate propaganda against the sacred Islamic regime, would it be possible to carry out the sentence by hanging or shooting? I respectfully solicit your *shari'a*-based opinion in this regard. Judge of Branch 3 of the General Court of [location deleted in original]

In response, Ayatollah Bahjat issued the following reply:

In the name of God - The methods specified for implementing *huddud* sentences are obligatory. The Inquiries Division of the Office of His Excellency Ayatollah Bahjat.

Meanwhile, Ayatollah Makarem Shirazi issued the following reply:

In the name of God – Answer: Given the assumption of harm in your inquiry in implementing the sentence, it is possible to carry out the execution with another method like hanging or killing by bullet. I wish you success in your work. 11 April 1999 [22.01.1378] – Nasser Makarem Shirazi

After receiving the latter opinion, the inquiring judge issued the following order:

Greetings. Pursuant to your inquiry dated 15 February 1999 [26.11.1377] and based on His Excellency Ayatollah Makarem Shirazi's *fatwa*, the *qatl* sentence for the condemned shall be carried out by hanging inside the prison compound with due consideration of regulations for implementation of executions. I wish you success in your work. Judge of Branch 3 of General Court [location deleted in original].

As noted in Section II, ‘hanging from the gallows’ was initially given legal character in 1991 as a permissible method of execution. Shooting with firearms and electrocution were also officially adopted in 2003 as additional methods of implementing *qisas*, *qatl* and *idam* death sentences.⁴² This option of substitution, however, does not abolish the *shari’a* methods of execution. It is a tactical maneuver that grants extensive discretion to judges, and this arrangement is maintained in the 2003 Implementation Code, which stipulates that judges can still determine ‘another method’ of execution.⁴³

Nor does the option of substitution include those *hadd* offenses for which the method of execution is defined solely and exclusively as death by stoning (*rajm*), i.e. male and female adultery. Although stoning has been the most vehemently criticized of all execution methods, it remains the only one for which no alternative has yet been officially adopted in the Islamic Republic of Iran. Some prominent clerics and officials assert that the founder of the Islamic Republic, Ruhollah Mousawi Khomeini, decreed in 1981 that judges should choose other methods of execution if stoning defamed Islam.⁴⁴ However, this is not consistent with the fact that Ayatollah had a leading role in the passing of the first *huddud* laws of Iran in 1982, which prescribed stoning as the sole and exclusive punishment for male and female adultery.⁴⁵ Nor did the 1991 revision of the *huddud* law of Iran provide any alternative punishments to stoning.⁴⁶

The documentary evidence shows that official readiness to explore alternatives to stoning emerged in 1998, following the screening, at a session of the UN Commission of Human Rights, of an actual execution by stoning of four men in Iran.⁴⁷ Confronted with this gruesome exhibition, the then President Seyyed Mohammad Khatami personally requested his ministers

⁴² 2001 Implementation Code, Article 18 and 2003 Implementation Code, Article 14.

⁴³ 2003 Implementation Code, Article 14.

⁴⁴ Ayatollah Seyyed Mohammad Mousawi Bojnourdi, a former member of the now abolished High Judicial Council, alleges that in 1981 when he told Ayatollah Khomeini about the international reaction to stoning he was instructed by him to inform judges not to issue stoning sentences and to choose other methods to punish the culprits. See *Iran* newspaper, 15 August 2001 [25.04.1380], *Ayatollah Boroujerdi ozv pishin shoraye ali qazayi: Imam dastur dadand dar nahvey-e ijray-e ahkami ke mojab vahn-e islam mishavad tajdidnazar shavad* (‘Ayatollah Bojnourdi former member of High Judicial Council: Imam ordered revision in method of implementing sentences which bring Islam into disrepute’), <www.iran-newspaper.com/1380/800524/html/politic.htm> and *Etemaad Meli*, 6 June 2009 [16.03.1388], *Ayatollah Bojnourdi: Qazi ke ba vojood shobhat hokm sangsar dadeh bayad qisas shavad* (‘Judge who issued stoning sentence despite doubtful evidence shall be punished with *qisas*’), <news.political-articles.net/Group/women/2009/June/wom00012.htm>.

⁴⁵ 1982 Law concerning *Huddud* and *Qisas*, Article 100.

⁴⁶ 1991 ICC, Article 82.

⁴⁷ Parts of that video can be viewed at <www.iran-e-azad.org/stoning/video.html>.

and advisors to investigate alternatives to stoning.⁴⁸ Later on, as the ten-year trial period for the first four volumes of the 1991/96 ICC approached expiry in 2000, the judiciary also began to explore the opinions given by selected *mara'je taqlid* including that of the Supreme Leader's Ayatollah Khamenei. Some of these opinions, which were compiled by the Judiciary, are provided in Appendix IV.

After years of deliberation, in August 2007 a representative of the Judiciary's Centre for Islamic Jurisprudential Research [*markaze tahqiqat fihi qoveye qazayieh*], the actual author of the 2007 draft ICC, announced that high-ranking clerics had opposed and rejected the removal of *rajm* (stoning) from the list of criminal punishments.⁴⁹ Nevertheless, the *fatwas* of two influential clerics, the Supreme Leader, Ayatollah Ali Khamenei and Ayatollah Nasser Makarem Shirazi, finally permitted a change from stoning sentences to other methods of execution when 'there is a valid excuse.' [see Appendix IV]

Consequently, when in November 2007 the new 2007 draft ICC was finally submitted to the Islamic Consultative Assembly, it still retained stoning as the *shari'a*-based punishment for male and female adultery. The draft retained the provisions describing how stoning should be implemented. The draft also made the offences of adulterous necrophilia and homosexual necrophilia punishable by stoning despite the fact that these had not been included in the 1991/96 ICC.⁵⁰ The 2007 draft ICC provided a clause consistent with the Supreme Leader's *fatwa* which reads as follows:

⁴⁸ Hossein Mehrpour, *Vazifeh doshvar-e nizarat bar ijray-e qanun-e asasi 1379-1384* (The difficult task of supervision over implementation of the Constitution 2000-05), letter dated xx June 1998 [13.03.1377] to the Office of the President entitled *dar morede laqv-e mojazate rajm* ('On abolishing stoning'), pp 807-10. Mehrpour, a long time representative of the Islamic Republic of Iran before UN human rights bodies, also served as an advisor to President Khatami and led the Committee to Ensure and Supervise Implementation of the Constitution. Keenly aware that stoning in particular and death penalty in general are irrevocable in the Islamic criminal system of Iran, he proposed to 'replace stoning with *qatl* (killing) in the Islamic Criminal Code'. He further proposed to discourage judges from issuing sentences on the basis of 'judge's knowledge', which he guaranteed 'would make such incidents very rare, if not impossible.' Under Iran's Islamic law, proving an act of adultery requires one of the three following mutually exclusive evidences: 1) testimony of four witnesses, 2) four-fold confession of the guilty party, and 3) judge's knowledge. It is argued that stoning will become a rare occurrence if judges stick to the first two which evidently are stringent requirements.

⁴⁹ Mitra Zarabi, 4 August 2007 [13.05.1386], *Qadimitarin jorm-e bashari* ('The oldest human crime'), <www.iranbar.org/far01p74.php>. Hojattoleslam Fathi, the representative of the Judiciary's Islamic Jurisprudence Research Centre is quoted as saying 'in regard to *rajm* (stoning), the Center conducted research and examined the problems in administering it and by requesting *fatwas* from leading clerics (*mara'je*) we aimed at removing *rajm* from our criminal punishments but unfortunately this matter was rejected [by leading clerics].'

⁵⁰ Draft ICC of 2007, Articles 221-5-e and 221-16 and 221-17; *Tahrir al-wasileh*, issue 4/247/4; and the 2007 draft ICC, Article 221-3. The draft is available at <www.iranbar.org/ph21k.php>.

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 non-Muslim male and 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.

...

Clause 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).⁵¹ Otherwise it shall be converted to one hundred lashes.

Thus, stoning sentences can still be carried out where it does not threaten the system. The draft ICC of 2007 is still in legislative process but at least two persons who had been sentenced to stoning have been instead hanged inside prison compounds,⁵² apparently on the strength of the Supreme Leader's abovementioned *fatwa*. Information available on stoning sentences carried out since 2000 also indicate that these have been carried out privately rather than publicly, in contrast to the standard practice over the preceding two decades. [see Section III]

⁵¹ Few cases would be considered eligible to have their stoning death sentence commuted to one hundred lashes since, unsurprisingly, and as admitted by judicial officials, few persons accused of adultery are prepared to appear before a judge on four separate occasions and confess to adultery when the penalty is death by stoning.

⁵² 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 Branch 71 of Tehran Province Criminal Court, see Fars News, 20 June 2006, *Motaham-e radif-e dovum janjalitarin parvandehe 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 Branch 2 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. See 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>.

C. The ‘moratorium on stoning,’ - myth or reality?

In early December 2002 the European Union (EU) opened another round of dialogue with Iran in which the declared aim was to improve political and economic relations, and as part of this process, Iran was expected to improve its human rights record. ‘Stoning of women’ was raised as a major concern. Shortly after this, the EU was given credit for ‘ending stoning in Iran’ in spite of serious doubts voiced by the human rights community in Iran as to the validity of this claim. The ‘moratorium on stoning’ were used as evidence to substantiate this ‘achievement’ which was also supposedly corroborated by a statement by the Judiciary Head, Ayatollah Shahroudi.⁵³

It soon transpired that this was indeed another false dawn. In 2003 Ayatollah Shahroudi, a conservative member of the clergy (noted for his comment that ‘social vice and deviance are due to a failure to implement *huddud* penalties’) explicitly ruled out any suggestion that stoning would ever be abolished in Iran.⁵⁴ Just a few months later, he even reinforced the practice by reissuing instructions on how to implement stoning sentences, in the 2003 Implementation Code draft.

Since then, Iranian state officials too have occasionally referred to a ‘directive’ supposedly issued by Mr. Shahroudi to stop imposing or implementing stoning sentences but have never disclosed its content or date. There is no evidence of any such directive in the ‘Digest of Directives’ published periodically by the judiciary. In fact, the four directives relating to the punishment of stoning issued by Mr. Shahroudi during his term (1999 to 2009) contain no more than technical instructions or recommendations to judges should they decide to exercise their discretionary right to suggest a pardon for any narrowly eligible group of persons among those

⁵³ See for example Agence France Presse, 10 December 2002, ‘Complex road ahead as EU kicks off ambitious bid to engage Iran’, and 29 December 2002, ‘Iran ends executions by stoning’; Associated Press, 23 December 2002, ‘EU calls first human rights talks with Iran a success’, and 29 December 2002, ‘Iran’s senior clerics say death by stoning could be stopped.’

⁵⁴ On 3 February 2003, the Iranian press reported that the Judiciary Head Ayatollah Mahmoud Hashemi Shahroudi had defended executions by stoning when visited by the EU Commissioner for External Relations Chris Patten. According to *Hamshahri* newspaper, Shahroudi told Patten:

The punishment of stoning is not imposed just on women. In our criminal system, this punishment also applies to men within the limits established by the law. This law which is derived from *Shari’a* is implemented to protect the rights of married couples and to strengthen the institution of the family. Whether or not a stoning sentence is implemented is up to the *Shari’a* judge. At present the Islamic Republic is trying to determine a substitute punishment for these kinds of offenses.

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

they have convicted of *huddud* offences which carry mandatory sentences of stoning.⁵⁵ Identical directives had been issued prior to 1999 by Mohammad Yazdi, Mr. Shahroudi's predecessor.⁵⁶

Unfortunately, rumors about a moratorium were taken at face value despite the lack of any corroborating evidence. The supposed moratorium was even praised in the reports of UN human rights bodies and human rights groups.⁵⁷ 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.⁵⁸

This has encouraged Iranian officials to go on exploiting the international community's over-optimistic expectation that the death penalty (and stoning in particular) would be abolished for the offense of adultery. This resulted in a dangerous gap in international scrutiny and criticism, and helped to reinforce the Iranian state's unresponsiveness to concerns on stoning. It has drawn attention away from the provisions of the draft ICC of 2007 on stoning, which were drafted under Mr. Shahroudi's stewardship. The new draft code appears to confirm that there never was a directive to end stoning in Iran, and makes it clear that the Iranian judicial authorities disingenuously misinformed the OHCHR when they stated that the so-called directive was 'intended as an interim measure until the passage of new laws.'⁵⁹

⁵⁵ *Majmuyeh bakhshnamehaye qoveh qazayieh vol. 2 1368-1381* (Digest of Directives Issued by the Judiciary, vol. 2, 1989-2002), published by *Moavenat Amuzesh va Tahqiqat Goveh Qazayieh* (Education and Research Division of the Judiciary), Qhom, 2003 [1382] and *vol 3 1382-84* (2003-5). Directive no. 1/80/16472 issued on 18 November 2001 [27.08.1380] and Directive no. 1/82/10392 issued on 17 September 2003 [26.06.1382] request that sentencing judges send their proposals for pardon of eligible convicts to the office of the Judiciary Head rather than to the Supreme Leader. Directive no. 1/80/8813 issued on 4 August 2001 [13.05.1380] recommended that sentencing judges propose a *ta'zir* punishment when they submit a proposal for pardon of eligible convicts. Directive no. 1/80/16472 dated 4 October 1999 [25.07.1378] request sentencing judges to state the reason for requesting pardon as well as the details of the case. [For an English language version of the Directives see Appendix V]

⁵⁶ See for example, Directive 70/5859/m dated 28 March 1992 [08.01.1371] in *Majmuyeh bakhshnamehaye qoveh qazayieh 1368-1381*.

⁵⁷ Attributing differing dates to the so-called directive, a range of human rights activists and NGOs, particularly at the international level, as well as UN human rights bodies, have been referring to it in their reports. See for example, a 2008 UN report which states that the directive is 'dated January 2002' (Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, 1 October 2008, A/63/459) while an Amnesty International report says the directive is 'dated December 2002' (*Iran, end executions by stoning*, January 2008, MDE 13/001/2008). Yet, neither report refers to the actual content of the directive.

⁵⁸ Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, 1 October 2008, A/63/459, par. 12.

⁵⁹ *ibid.*

C. *Idam* (judicial execution) for other capital offenses

There are a number of death penalty offenses which have no basis in *qisas* or *huddud*. These offences, which include narcotics offenses, are listed in the *ta'ziraat* section of the 1991/96 ICC (Volume IV) and in about a dozen other related legal provisions [see Working Paper No. 2]. The penalty for these offences is referred to as *idam*, which means 'judicial execution'. Like the *qisas* and *qatl* death sentences mentioned earlier, the 2003 Implementation Code provides that *idam* can be implemented by 'hanging from the gallows, shooting with firearms, and electrocution' as well as by 'another method determined by the sentencing judge'. *Idam* executions for which information has been made public have been carried out either by shooting with firearms (earlier years) or by hanging from the gallows.

III. Judicial execution methods in practice

As described in Section II, the criminal system of the Islamic Republic of Iran provides nine specific methods of execution and legitimizes further unspecified methods in *qisas* death sentences. The following subsections provide information on implementation and examples on each of the nine execution methods.

A. Shooting with firearms, hanging, and electrocution

As noted above, execution methods in *idam* sentences include; shooting with firearms, hanging and electrocution. These methods also constitute alternative options for *qisas* and all *hadd* death sentences, with the exception of stoning, for which an alternative has not yet been formally provided for in statute law but was implemented by hanging recently in exceptional cases on the basis of the Supreme Leader's *fatwa*.

The protocol for **shooting with firearms** is not described in any official texts even though it was the most common method of execution in the 1980s and is still occasionally carried out.⁶⁰ While Islamic texts such as Ruhollah Mousawi Khomeini's *Tahrir al-wasileh* suggest a single bullet to the head, the method actually used in the Islamic Republic of Iran seems to be shooting by a firing squad.

Photographs of executions carried out in the months immediately following the 1979 Islamic revolution show that prisoners were bound to a post or a ladder by the wrist before they were shot.⁶¹ In shooting executions carried out publicly, groups of prisoners stood against a wall or free in the open, often with bound hands. The firing squad stood or kneeled opposite the prisoners at close range and sometimes outnumbered them.⁶² Accounts of group executions provided by political prisoners of the 1980s indicate that the first round of shooting was followed

⁶⁰ See for example: *Jomhuri Eslami* newspaper, 12 October 1981 [30.07.1360], *96 amel-e terror, infjar va tazahorat-e moslahaneh tirbaran shodand* ('96 agents of terror, explosion and armed demonstration executed by firing squad'). For a recent execution by shooting, see *Jomhuri Eslami* newspaper, 27 January 2008 [07.11.1386], *Bijeh-e Esfehaneh tirbaran shod* ('Bijeh of Esfehan executed by firing squad'), http://www.jomhourieslami.com/1386/13861107/13861107_jomhuri_islami_06_goonagoon.HTM.

⁶¹ For examples see *Kayhan* newspaper 11 April 1979 [22.01.1358], available at <http://golshan.com/nemayeshgaah/jenayat/s098.html>; 7 April 1979 [18.01.1358], <http://golshan.com/nemayeshgaah/jenayat/s112.html>; 4 April 1979 [15.12.1357], <http://golshan.com/nemayeshgaah/jenayat/s097.html>.

⁶² For examples see <http://golshan.com/nemayeshgaah/jenayat/s029.html>, <http://golshan.com/nemayeshgaah/jenayat/s030.html>, <http://golshan.com/nemayeshgaah/jenayat/s059.html>, and photographs by Iranian photographer Jahangir Razmi of an execution in Kurdistan on 27 August 1979 <http://online.wsj.com/public/resources/documents/info-iranpics0611-28.html>.

by a single shot at close range, probably in the head of the prisoner, in case the initial volley had failed to kill them.⁶³

According to publicly available information, executions by shooting declined rapidly in the 20th century in countries which still retained the death penalty. British scientist, Harold Hillman who won the 1997 Ig Nobel prize for peace for his report ‘*The Possible Pain Experienced During Execution by Different Methods*,’ notes that when the UK Royal Commission on Capital Punishment (1949-1953) discussed shooting as a possible alternative to hanging it was immediately rejected on the grounds, *inter alia*, that ‘it does not possess even the first requisite of an efficient method, the certainty of causing immediate death’. Those giving evidence to the Commission frequently emphasized that any method of execution should be rapid, clean, and dignified.⁶⁴

The protocol for **hanging from the gallows** is not defined in any official texts of the Islamic Republic of Iran either, even though hanging has been the most common method of execution in Iran during the past two decades. In practice, hangings take place either inside prison compounds or publicly in areas such as town squares. Prisoners are usually blindfolded, and their hands are always bound behind their back. In public executions prisoners also frequently appear foot-shackled.

Accounts of hangings inside Iran’s prison compounds and official photographs indicate that the method used is the ‘short drop’ whereby a low platform on which the prisoner is made to stand is kicked out.⁶⁵ Using little or no drop, the ‘short drop’ method aims at killing with slow asphyxiation by the tightening of the noose, causing the condemned to struggle and suffer for some time. Public hangings in Iran, as evidenced in photographs and films, are carried out by

⁶³ M. Raha (Monireh Baradaran), *Haqiqat-e Sade, Khaerati az zendanya-ye zanen-e Jomhuri Islami* (‘Simple Truth; Memoirs from women’s prisons in Islamic Republic’), vol. 1, p 44.

⁶⁴ Harold Hillman, *The possible pain experienced during execution by different methods*, Perception, 1993, vol. 22, pp 745-758, p 745. Originally appointed in 1864, the task of the Royal Commission on Capital Punishment was defined as ‘. . . to inquire into the Provisions and Operation of the Laws now in force in the United Kingdom, under and by virtue of which the Punishment of Death may be inflicted upon persons convicted of certain crimes, and also into the manner in which Capital Sentences are carried into execution, and to report whether any, and if any what alteration is desirable in such Laws, or any of them, or in the manner in which such sentences are carried into execution.’

⁶⁵ A picture captured from a State Television broadcast footage of 12 condemned men as they were about to be hanged in Tehran’s Evin prison is available at: www.kamangir.net/2007/07/22/mass-execution/>. See also Robert Tait, *Iran hangs 30 over ‘US plots’*, The Observer, 19 August 2007, www.guardian.co.uk/world/2007/aug/19/humanrights.iran>, and Reuters, 22 July 2007, Iran hangs 16 convicted criminals: official, www.reuters.com/article/idUSHOS24128820070722>. A short clip of the hanging is available at <www.youtube.com/watch?v=ZDb3maMMn3A&feature=related>

‘suspension hanging’ with mobile crane and recovery truck jibs. Like the ‘short drop’, the manner of death in ‘suspension hanging’ is also slow and agonizing. Available imagery clearly shows that the condemned’s suffering is also often prolonged because the loop of the noose is too loose or the knot is positioned in front or the sides of the neck.⁶⁶ The more common and ‘humane’ form of hanging is known to be the ‘long drop’ or ‘measured drop’ (based on the prisoner's weight) which, if implemented correctly, aims at rapid death by fracture-dislocation of the neck.⁶⁷

‘In all cases’ of hanging, British scientist Hillman notes, the face becomes engorged and then cyanosed, the tongue protrudes and violent movements of the limbs occur, the prisoner may urinate and defecate and the heart may continue to beat for up to 20 minutes after the drop.⁶⁸ According to publicly available information, countries which still retain the death penalty have increasingly substituted the method of execution by lethal injection which until recent years has been believed to be the most ‘humane’ method.⁶⁹

ELEI could not find any information on the protocol for **electrocutions** in Iran or examples of the use of that method.

B. Killing with a sword (beheading and splitting in two)

As described in Section II, the sword is the *shari'a*-based weapon of execution for *qisas* death

⁶⁶ A graphic public hanging of two men and one woman on 14 July 2007 [23.04.1386] by a crane winched up slowly to suffer a lingering death can be viewed at <http://kamangir.net/2007/07/21/execution-in-the-islamic-republic-very-graphic/>. According to *Iran* newspaper of 15 July 2007 [24.04.1386] the woman named Hurriyeh and the two young men named Reza and Farhad were convicted of intentionally killing Hurriyeh’s husband, brother-in-law and parents-in-law on 16 April 2007 [20.01.1387]. Branch 12 of the Provincial Criminal Court of Tabriz, in East Azerbaijan also sentenced each of them to 173 lashings. They were hanged in the Pishghadam square in the Maralan district of Tabriz in front of more than 5,000 spectators. Photographs of another wretchedly flawed public hanging concerning two teenagers in Mashad on 19 July 2008 can be viewed at: <http://taatamata.wordpress.com/2009/09/18/global-protests-july-19-to-commemorate-hanging-of-2-iranian-teens/>.

⁶⁷ Scientific studies acknowledge the difficulty of knowing how much pain a person being executed experiences, or for how long, because many of the signs of pain are obscured by the procedure or by physical restraints. Nevertheless, it is established that death by asphyxia is much slower than by fracture-dislocation. This is because in asphyxiation the noose only occludes the jugular veins and carotid arteries, but the vertebrae protect the vertebral and spinal arteries which also supply blood to the brain. See Harold Hillman, *The possible pain experienced during execution by different methods*, Perception, 1993, vol. 22, pp 745-753, p 746.

⁶⁸ Ibid.

⁶⁹ According to Amnesty International, USA introduced execution by lethal injection almost 30 years ago, applying it for the first time in 1982. Since then, lethal injection was adopted by China, Guatemala, the Philippines, Taiwan and Thailand. The Philippines subsequently abolished the death penalty in June 2006,

sentences as well as for all *hadd* capital offenses apart from male and female adultery which are punished exclusively by stoning (though as indicated above, recently, in some exceptional cases persons convicted of adultery have been hanged on the basis of the Supreme Leader's secondary ruling]. While in *qisas* the mode of killing is beheading, for some *hadd* offenses the sword can be used differently.

The protocol for killing with a sword is not described in any official texts of the Islamic Republic of Iran. While ELEI has not found any *qisas* sentences reported to have been carried out with a sword, as noted in Section II.a.4 a sentence of death by the sword was recently issued for a young man who had allegedly caused another man's death by fatally injuring him with a martial arts sword. Publicly available evidence, however, shows that executions by beheading and sentences of beheading have been carried out and imposed for the *hadd* offenses of *moharebeh*, *lavat* and *zina*. The following are some of the examples found in Iran's daily papers:

- a) On 25 May 2009 the daily newspaper *Quds* reported that an unidentified man was sentenced to death by beheading by Branch five of the Provincial Criminal Court of Khorasan Razawi for alleged sexual assault of one girl and four boys aged nine to twelve.⁷⁰
- b) In 2003, the daily *Seday-e Edalat* reported that an unidentified man who had reportedly received two hanging death sentences for two counts of murder and three beheading death sentences for three counts of rape was publicly beheaded with a sword in the southeastern province of Sistan Baluchestan.⁷¹
- c) In 2001, the daily newspaper *Jomhuri Islami* reported that Kahim Rakhshani, an Afghan, was publicly beheaded in the southeastern city of Zabol reportedly for 'armed robbery, rape and kidnapping.'⁷²
- d) On 11 August 1990 the daily newspaper *Kayhan* reported that Hamid Abnus was lashed 74 times and publicly beheaded in the streets of Qhom for kidnapping and raping eight girls aged six to eight,⁷³
- e) On 24 February 1990, a BBC broadcast quoting an opposition party stated that after beheading two people in Hamadan, officials paraded their headless bodies around the city

⁷⁰ *Quds* newspaper, 25 May 2009, [04.03.1388], *Amele azar-e kudakan be qat-e garden ba shamshir mahkum shod* ('Child molester sentenced to beheading by the sword'), <www.qudsdaily.com/archive/1388/html/3/1388-03-04/page8.html#2>.

⁷¹ Agence France Presse, 13 May 2003, 'Iranian beheaded, eight hanged in wave of executions.'

⁷² Associated Press, 18 June 2001, 'Afghan man beheaded in Iran.'

⁷³ *Kayhan* newspaper, 11 August 1990 [20.05.1369].

on a mobile crane and placed their severed heads on display at the tomb of Bu-Ali Sina [Avicenna].⁷⁴

- f) On 14 February 1990, the daily newspaper *Kayhan* reported that Gholamhassan Golzar who was convicted of bank robbery and attempted murder was beheaded in a public square in Hamadan after receiving 148 lashes and three *qisas* bodily injuries.⁷⁵
- g) On 2 January 1989, the daily newspaper *Jomhuri Islami* reported: ‘Based on the verdict of Hamedan’s Criminal Court One, three well-known hooligans in Nahavand were beheaded for the despicable act of *lavat*. The sentence ... was carried out before thousands of the local residents and the criminals were killed after each receiving 80 lash strokes ... Hamedan’s head of Justice Administration said yesterday morning: according to Article 141 of the Law Concerning *Huddud* and *Qisas*, the *Hadd* for *lavat* is *qatl* and the method of its implementation is determined by the *shari’a* judge. The *shari’a* judge decided that in this case the the method should be beheading.’⁷⁶

Sentences of beheading by the sword have also been documented in the few court cases published by the judiciary. For example, in 1992, Penal Court 1 in Ardebil sentenced Shahdad, a male of unspecified age, to beheading by the sword for raping (*lavat-be-onf*) a four year old boy.⁷⁷ In the same year in another *lavat-be-onf* case an unspecified lower court condemned one of the four defendants ‘to beheading by the sword in a big town square’. The sentence, as noted in the written verdict, was issued based on Ruhollah Mousawi Khomeini’s ‘*fatwa* in page 423 of *Tahrir al- wasileh*’.⁷⁸

C. Burning to death, throwing from a high place, and collapsing a wall over the condemned person

As described in Section II.b, in the criminal laws of Iran, the *hadd* offense of penetrative *lavat*, in addition to the punishment of killing with a sword and stoning, can also be punished by burning to death, throwing the condemned from a high place, and collapsing a wall over the condemned person. The protocols for implementing these execution methods are not described in any official texts.

⁷⁴ BBC Summary of World Broadcasts, February 24, 1990, ‘Pro-Tudeh Party radio reports beheadings in Hamadan.’

⁷⁵ *Kayhan* newspaper, 14 February 1990 [25.11.1368].

⁷⁶ As quoted in monthly publication of the National Council of Resistance of Iran, *Shora*, No. 51, page 289.

⁷⁷ Verdict no. 307 dated 25 June 1992 [04.03.1371], in *Gozideh araye dadgahhaye kayfary* (Selective rulings of criminal courts), compiled by Nur-Mohammad Sabri, 2002 [1381].

⁷⁸ Ruling no. 20/19/71, in *Elale naqze araye kayfari dar shoab divane ali kishvar* (Grounds for quashing judgments of criminal courts in the supreme court), compiled by Yadollah Bazgir, second print 1998 [1377].

ELEI has not found any reported cases of burning in fire or collapsing a wall. In one case where the conviction was overturned by Branch 27 of the Supreme Court on points of law (Ruling no. 91, 24 April 1995 [04.02.1374]), the ‘active party’ in *lavat* was sentenced to ‘execution with the bullet and burning of the corpse’.⁷⁹

However, death sentences and actual executions by throwing off a height have occasionally been reported by the press and also documented in the small number of published court cases. For example,

- a. On 2 January 2008 the daily newspaper *Quds* reported the Supreme Court’s confirmation of a sentence, imposed by Branch two of the Fars Provincial Criminal Court, that two young men identified as Tayyeb and Yazdan should be thrown from a high place for allegedly raping two male university students in April of 2007.⁸⁰
- b. On 18 July 2002 the daily *Norouz* [New Day] reported that Branch 53 of the General Court of Mashad sentenced a man convicted of raping and killing his nephew to two death sentences, a *qisas* death sentence and a death sentence of being thrown from a mountain.⁸¹
- c. On 25 October 1987 [04.08.1366] the daily *Kayhan* reported that three men in Hamadan identified as Ahmad, Soleiman and Iraj, convicted of murdering a boy and *lavat* and presented with the choice of being ‘beheaded by sword, the collapsing of a wall or being thrown off a mountain’ chose the latter method. The report states that they were publicly thrown off Hamadan’s Asadabad Darband mountain at an unknown date.⁸²

Court case examples of the imposition of death sentences by being ‘thrown from a high place’ for the offense of *lavat* include the following: verdict no. 73/7/28736 (1994), Branch five of Penal Court 1 of unspecified city,⁸³ verdicts nos. 75/7/15947 (1986) and 76/3/8239 (1987) by Branch Two and Seven of the General Court of Qhom,⁸⁴ an undated confirmation ruling of

⁷⁹ Cited in Abbas Zeraat, *Sharhe qanune mojazat-e islami- bakhsh huddud*, p 226.

⁸⁰ *Quds* newspaper, 2 January 2008 [12.10.1387], *Du javan-e shaytansefat be partab az bolandi mahkum shodand* (‘Two evil youngsters sentenced to being thrown off a height’), <http://www.qudsdaily.com/archive/1386/html/10/1386-10-12/page58.htm>.

⁸¹ *Norouz* newspaper, 18 July 2002 [27.04.1381], *Partab-e az kooh, mojazat dayee jenaytkar* (‘Throwing off a mountain: punishment for murderous uncle’).

⁸² *Kayhan* newspaper, 25 October 1987 [04.08.1366].

⁸³ Printed in *Qanun-e mojaat Islami dar ayineh ara-ye divan-e ali kishvar, huddud va jarayem-e khalaf-e akhlag-e hasaneh* (The Islamic Criminal Code as mirrored in rulings of the Supreme Court, *huddud* and offenses against moral virtues), compiled by Yadollah Bazgir, first print 1999 [1378]. As noted in the case, the lower court’s verdict was overruled on 24 May 1995 [14.02.1374] by Branch 26 of the Supreme Court in ruling No. 73/7/28736.

⁸⁴ Printed in *Ketabe mozakerat va araye hayate omumi divane ali kishvar sale 1376* (Deliberations and Rulings of

Branch 27 of the Supreme Court,⁸⁵ and another confirmation ruling by the same Branch of the Supreme Court (no. 95, 23 April 1995 [03.02.1374]).⁸⁶

D. Stoning (*rajm*)

As described in Section II.b, in the criminal laws of Iran stoning is prescribed as one of the five death punishments for penetrative homosexual intercourse (*lavat*) as well as for male and female adultery (*zina-e mohsen & mohseneh*).⁸⁷ Adulterous or homosexual necrophilia are also similarly punishable by stoning although presently absent from statute law.⁸⁸

The protocol for implementing stoning sentences is described in the 1991/96 ICC as burying the condemned in a trench— up to the waist for adulterous men and up to the chest for adulterous women—and then pelting them to death with stones that are not too large to kill in one or two strikes and not so small so that it could not be termed a stone. Identical provisions are stipulated in the 2003 Implementation Code and in *Tahrir al-wasileh*.⁸⁹ The 1991/96 ICC stipulates that if the condemned manages to escape the trench they shall be freed only if they were convicted on the basis of their ‘own confession in court’. Other evidence for obtaining adultery convictions are ‘testimony of witnesses’ (*bayineh*) and ‘judge’s knowledge’ (*elm-e qazi*).⁹⁰

While Islamic jurisprudence is clear on returning an escapee whose conviction has been based on ‘testimony of witnesses’, it does not address the fate of an escapee whose conviction has been established by ‘judge’s knowledge’. As stoning sentences in Iran have been issued mostly on the basis of ‘judge’s knowledge’, contemporary *mara’je taqlid* have issued *fatwas* to guide judges responsible for enforcement of sentences as to what they should do with such escapees. Ruling that ‘judge’s knowledge’ is tantamount to ‘testimony of witnesses’, both Ruhollah Mousawi

the General Board of the Supreme Court in 1997), *daftare motaleat va tahqiqate divane ali kishvar* (The office of studies and research Supreme Court), Tehran, 1999 [1378], pp 471-490. The verdict was quashed a second time by reiterative ruling no. 76/9/1115 of the General Board of the Supreme Court.

⁸⁵ Printed in Bazgir (see above note 86), pp 350-1. The location of the first instance court and the case number and date of the initial verdict are omitted. The condemned is introduced as an 18-year-old male accused of raping a 9 year-old.

⁸⁶ Cited in Abbas Zeraat, *Sharhe qanune mojazat-e islami- bakhsh huddud*, p 226.

⁸⁷ Articles 83a and 83 b, *Tahrir al-wasileh* [4/187/2].

⁸⁸ *Tahrir al-wasileh* 4/247/4 states: The *hadd* (fixed punishment) for *zina* with a dead woman is like the *hadd* for *zina* with a live woman. If the man had the status of *ihsan* (having undeterred opportunity to have intercourse with spouse) his *zina* is *mohsen* and the *hadd* is stoning.

⁸⁹ 1991/96 ICC, Articles 101-104, 2003 Implementation Code, Articles 22 & 23 and *Tahrir al-wasileh*, issues 4/193/2 and 4/193/5.

⁹⁰ 1991/96 ICC, Articles 103, 74, 105, and 120.

Khomeini and Ali Khamenei, the first and the present Supreme Leader, have condemned escapees whose convictions are based on ‘judge’s knowledge’ to be returned to the trench and stoned again until death.⁹¹

Prior to 1982, when stoning was still not codified in statute law, stoning sentences were issued by relying on Ruhollah Mousawi Khomeini’s treatise, *Tahrir al-wasileh*.⁹² The first reported stoning execution found by ELEI took place on 3 July 1980 in Kerman where two women and two men convicted of adultery and/or homosexual sex were reportedly stoned for fifteen minutes by five people until they were killed.⁹³ The largest public group execution by stoning reportedly took place on or around 26 April 1989 when thousands watched eleven men and women allegedly convicted of ‘spreading corruption on earth’ for running a ‘prostitution ring’ being stoned at a sport stadium in the city of Bushehr, a city on the southwestern coast of Iran.⁹⁴

For the first two decades of the Islamic Republic of Iran, ELEI has so far documented a further ninety stoning executions documented in official press reports and broadcasts as well as in the reports of international human rights NGOs and UN bodies.⁹⁵ Reported stoning executions were usually carried out in public places and in front of large audiences [see below]. The number of stoning executions during these years are however believed to be much higher, most importantly, due to the relatively large proportion of stoning cases documented in the collection of court cases published by the Judiciary and the proliferation of stoning related *fatwas* and advisory ‘legal opinions’ issued by *maraja taqlid* and judicial bodies.⁹⁶ Stoning executions in the first two

⁹¹ *Ganjineh-ye araye fiqhi-qazayi* (Treasure of Islamic jurisprudential-judicial rulings), published by *Markaz tahqiqate fiqhi goveh qazayieh* (Judiciary’s Islamic Jurisprudence Research Centre), questions 2523 and 4194, quoted in *Majmuyeh araye fiqhi-qazayi dar omur kayfari* (Digest of Islamic jurisprudential-judicial rulings in criminal matters), vol. 3, pp 51-2.

⁹² See for example the Guardian Council’s letter No. 6782 dated 20 December 1982 [29.09.1361] stating that whenever the old laws clearly contradict Ayatollah Khomeini’s treatises *Tahrir al-wasileh* and *Tozih al-Masaal* they should not be applied, in *Majmuyeh bakhshnamehaye shoraye ali qazayi 1359-1368* (‘Digest of High Judicial Council’s Directives 1980-1989’), vol. 1, pp 179-80.

⁹³ The New York Times, 4 July 1980, ‘Four in Iran executed by stoning.’

⁹⁴ Reuters, 26 April 1989, ‘Iranians watch as 11 prisoners stoned to death,’ quoting *Kayhan* newspaper. Four other members of the alleged ‘prostitution ring’ were also reported to have been executed by unspecified methods.

⁹⁵ See Database of Publicly Reported Executions in Iran available at www.irainc.org/elei/database.php.

⁹⁶ For *fatwas* see for example *Majmuyeh araye fiqhi dar omur kayfari* (‘Digest of Islamic jurisprudential rulings in criminal matters’), vol. 3, 2nd ed, 2003 [1382]. For published court cases see for example in *Qanun-e mojazat Islami dar ayineh ara-ye divan-e ali kishvar, huddud va jarayem-e khalaf-e akhlagh-e hasaneh* (‘The Islamic Criminal Code as mirrored in rulings of the Supreme Court, huddud and offenses against moral virtues’), compiled by Yadollah Bazgir, first print 1999 [1378].

decades also appear not always to have been carried out according to protocol. In particular, the rule that a stoning should be halted where the condemned person manages to remove themselves from the trench into which they have been placed seems generally to be ignored.

The stoning of three women and one man in Arak on 3 October 1990 [11.07.1369]

As told by witnesses to the daughter of one of the victims⁹⁷

On 2 October 1990 after weeks of pleadings, prison officials finally informed my father that we could visit my mother in prison for thirty minutes. My mother was arrested less than two months previously along with my aunt, my second cousin's wife, and their male acquaintance. In less than two months, all four were convicted of adultery and sentenced to stoning. I, the eldest of five children, was twenty-two years of age.

The next morning, when we visited my mother and aunt in prison, no one knew that they were going to be executed a few hours later. On the way back home on the bus with my siblings and cousins we passed Arak's famous Azadi Park. A section of it was being closed off with a red ribbon and trucks were unloading tons of stones. Suddenly, it struck me that what was before my eyes was my mother's place of execution. I cried hysterically for the bus driver to take me back, to no avail, of course. When I got home, an acquaintance called to inform me that the radio had just made the announcement that the four were going to be stoned to death in Azadi Park that afternoon.

At night, when my father returned home he was badly soiled with dust and dirt. 'They killed them,' was all that he said. Later on, I learned the details of that gory ceremony from my father and another relative who was also there. By 4 pm when the victims were brought to the site, a big crowd had gathered. My father and my seventeen-year-old brother were present in the crowd. My aunt's husband and two of their children, nine and eleven years old, were present too.

After the victims were brought to the scene, my mother noticed her son in the crowd. For the remaining hours of her life, as lash strokes tore her back and rocks hit her head and face, she cried my brother's name repeating: 'Take him away, he must not see this'.

For the first hour, the executioners chanted religious slogans, read aloud the verdicts and administered the victims' lashing sentences. My mother, her cousin's wife, and the man she was accused of befriending were each given between 75 and 155 lashes. When the lashing began my brother ran into the scene, crying and shouting condemnations and trying to stop the lashing. He was caught, beaten and thrown into a corner.

Next, the four women and the man were put into holes in the same clothes that they were arrested with. My aunt's husband desperately put a Koran in the hands of his nine-year old

⁹⁷ Iranian Refugees' Alliance's interview with N.M., 2005.

daughter and pushed her into the scene. She dragged herself towards the executioners and cried aloud: 'Please forgive my mother for the sake of her children, for the sake of my two year old sister who is being nursed by her mother'. She was picked up by the executioners and pushed back into the crowd.

Standing next to piles of stones and rocks and shouting 'Praise be to God', the executioners began throwing stones and rocks, aiming at the victims' protruding heads and faces. After about half an hour my mother's bloodied head drooped on the ground. She died from a stroke. She was thirty-seven-years old.

Stones and rocks continued to pile up on the ground around my aunt and the other two victims. Blood first trickled and then poured down their heads. Their heads jerked forcefully with the blows. They cried and shouted. My aunt managed to free herself from the hole more than once. She ran with her head jerking and screamed for forgiveness. But the executioners captured her and forced her back into the hole. The last time that she freed herself one executioner reached her and hit her on the head with a massive flat rock. Blood spurted out and brain spilled out of her gashed head. The executioners dragged her limp body and forced it back into the hole. The male victim also managed to pull himself out of the hole. His pants were caught in the hole and he ran off in his underwear, crying loudly for forgiveness. But he too was captured and forced back into the hole.

After about two hours of throwing stones and rocks, one of the executioners pulled out a handgun and shot a bullet in each of the victims' head and the ceremony ended. Spectators were covered with the dirt and soil dug out of the trenches that the victims were put in and blown throughout the ceremony. Soon spectators were dispersed. Four shapeless masses of bloody flesh with brains spilled out onto the ground and surrounded by a pile of stones and rocks were left behind.

When relatives of the victims went to bury them, the authorities said that they could not bury them in the public cemetery and that they had to bury them in the graveyard for the 'damned' [usually reserved for executed communists, and for people of the Baha'i faith]. They were also not allowed to wash their bodies, or shroud them, or to hold burial or memorial ceremonies for them. After paying one million *tuman*, the victims' families managed to bury them in an out of the way section of the public cemetery. The authorities did not permit the bodies to be buried next to each other, even those of the two sisters. A relative who was involved in burying my mother and aunt later on told me: 'When we buried them, we could not tell your mother and aunt apart.'

Since 1999, ELEI has documented nine stoning executions, all carried out privately without advance public announcement or spectators. In most cases these executions became unofficially known before officials admitted that they had taken place.⁹⁸ The secret stoning of Mahbubeh M.

⁹⁸ In 2001 Maryam Ayubi and an unnamed woman were stoned in Evin prison in Tehran. In 2006 Mahbubeh M. and

and Jafar H., exposed by journalist Asieh Amini [see below], the dozens of pending stoning cases exposed in recent years by the campaign *Stop Stoning Forever* all indicate that the actual number of executions carried out secretly in recent years is higher than this.⁹⁹

Clearly, stoning is an egregiously brutal form of execution. Extrapolating by analogy with serious head injuries sustained in road traffic accidents, British scientist Hillman states that stoning 'is likely to result in the slowest death of any of the methods used.'¹⁰⁰

Abbas H. were stoned in Mashad. In 2007 Jafar Kiani was stoned in Ghazvin. In 2009 three men were stoned in Mashad and one man identified as Vali Azad was stoned inside the Lakan prison in Rasht.

⁹⁹ Ashraf Kalhori (f, Tehran, plea for pardon pending), Kobra Najari (f, Tabriz, pardoned and commuted to 100 lashes), Kheyriyeh Valania (f, Ahvaz, execution pending), Hajieh Esmailvand (f, Jolfa, acquitted on retrial), Parisa A. (f, Shiraz, 99 lashes on reduced conviction by the Discernment Branch of Supreme Court), Najaf A. (m, Shiraz, same as Parisa A. plus 5 years of exile), Zahra Rezai (f, Karaj, acquitted on retrial), Soghra Molaie (f, Varamin, 80 lashes on reduced conviction at retrial), Mokarameh Ebrahimi (f, Ghazvin, pardoned after husband Jafar Kiani stoned to death), Shamameh Qhorbani (f, Orumiyeh, 100 lashes on reduced conviction at retrial), Azar Kabiri (f, Karaj, retrial pending), Zohreh Kabiri (f, Karaj, retrial pending), Rahim Mohammadi (m, Tabriz, execution pending), Kobra Babayi (f, Tabriz, execution pending), Leila Ghomi (f, Tehran). Iran A. (Ahvaz, retrial pending), Gilan Mohammadi (f, Esfahan), Gholamali Eskandari (m, Esfahan), Afsaneh R. (f, Shiraz), M. Kh. (f, Mashad), ? Hasheminasab (f, Mashad). Azam Khanjari (f, Tehran).

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

¹⁰⁰ See above footnote 75, p. 748.

Secret stoning execution misreported by officials as Idam

The case of Mahbubeh M. and Abbas H. as reported by independent journalist, Asieh Amini¹⁰¹

While investigating a rumor concerning the stoning of a man and woman in a cemetery in Mashad in May 2006, Asieh Amini, an independent journalist, found local judicial officials astounded when she told them about the rumor, stating ‘We did not authorize the press to write about stoning. We are sure that they wrote *idam* (judicial execution). How did you find out about it?’ Indeed, as Amini subsequently discovered, the local newspaper *Shahrara* had reported the execution as ‘*idam*’ without mentioning the method or actual location of the execution.

Mashad’s judicial officials, including Judge Farahani, former head of Branch 28 of the Provincial Criminal Court of Mashad, who issued the stoning sentences, refused to give any interviews about ‘sentences of stoning.’ Amini therefore resorted to acquaintances, cemetery employees, and the state-appointed lawyer for one of the defendants. Fourteen months later she revealed the disturbing story of distant relatives Mahbubeh M. and Abbas H. who had been arrested in 2005 on suspicion of killing Mahbubeh’s husband, Mohammad, in 1997 and who had subsequently confessed to having had adulterous relations before 1997. In addition to sentences of stoning imposed, Abbas was also sentenced to *qisas* for murdering Mohammad, and Mahbubeh to fifteen years’ imprisonment for accessory to murder.

Although her death certificate (no. 471, 7 May 2006 [17.02.1385]) states that Mahbubeh’s cause of death was ‘lawful killing’ (*qatl-e qanun’i*), the coroner’s report stated the cause was ‘brain hemorrhage and related symptoms due to impact by a blunt object’. Examining Mahbubeh’s court verdict (no. 1731041, 22 September 2005 [31.06.1384]) in the office of her state appointed lawyer, Fayeghe Tabatabai, Amini verified that Mahbubeh’s death sentence was quite clearly entered as ‘stoning’. The lawyer stated ‘Unfortunately, I was not notified about any developments [i.e. the date of execution], but newspapers reported that she had been executed’.

Not much is known about Abbas H. and his family. But in the eight months between verdict no. 1731041 and the actual stoning, Mahbubeh’s four children visited her in prison. No one knows why the imminent stoning of the couple was not publicized before it happened but it is possible that the family were hoping for a pardon, or did not anticipate the speed with which it was to be carried out. Perhaps the fear was that if the stoning sentences received any publicity, the surviving family would be forever stigmatized as ‘*sangsari*’ [those who were stoned to death].

¹⁰¹ Asieh Amini, July 2007, *Parvandehey Sang-een* (‘Stone-heavy cases’), Zanan Magazine, No. 145, <www.zanan.co.ir/social/001027.html>.

Amini found Mahbubeh's grave in Mashad's Behesht Reza Cemetery. Her epitaph states: 'Mother, you have been my hope and love, the cause of my happiness, my consolation and my comfort in despair, ...'

E. Crucifixion (*salb*)

As noted in Section II.b, crucifixion appears in the criminal laws of Iran as one of the four punishments for the *hadd* offense of *moharebeh & ifsad-e fil-arz* (insurrection against God's ordinance & corruption on earth).¹⁰² The protocol for crucifixion is described in the 1991/96 ICC as binding the condemned person to a cross for three days. If the condemned person was still alive at the end of this period, s/he would not be killed. Identical provisions are stipulated in the 2003 Implementation Code and in *Tahrir al-wasileh*.¹⁰³

Since the 1991/96 ICC provides four optional punishments for the said offense, including 'killing' (*qatl*), it appears that death sentences are routinely imposed by *qatl* rather than crucifixion. ELEI has found no reported instances of execution by crucifixion. However, in a 17 June 1998 [27.03.1377] directive issued by Ayatollah Mohammad Yazdi, the Judiciary Head from 1989 to 1999, reference is made to images of actual crucifixion execution(s) broadcasted by foreign media.¹⁰⁴

IV. The debate over whether or not grotesquely cruel methods of execution should be incorporated into statute law

When *shari'a*-based criminal legislation was first introduced in 1982 in the form of the Law Concerning *Huddud* and *Qisas*, some of the traditional Islamic methods of execution such as beheading, throwing from a high place, burning alive, and crushing under a wall were not incorporated into statute law. Stoning to death (the punishment specified for male and female

¹⁰² 1991/96 ICC, Article 190.

¹⁰³ 1991/96 ICC, Article 195; 2003 Implementation Code, Article 24 and *Tahrir al-wasileh*, issues 4/241/5 & 4/241/9.

¹⁰⁴ Directive no. 1/77/2814 of 17 June 1998 [27.03.1377], *Majmuyeh bakhshnamehaye qoveh qazayieh 1368-1381* (Digest of Judiciary's Directives 1989-2002), p 444. Acknowledging that such imagery is detrimental to the interests of the Islamic Republic of Iran, the directive requests all judicial organizations to consult the secretariat of the judiciary when sentences involving such methods are finalized, and to adopt proper ways of implementation so that 'enemies and anti-revolutionaries' are prevented from taking advantage of such executions to bring disrepute upon Iran's justice system.

adultery and one of the five possible forms of capital punishment for *lavat*) and crucifixion (one of the four possible punishments for *moharebeh*) were, however, explicitly incorporated into the 1982 law, and were also included in the 1991/96 ICC.

The authors of the draft ICC of 2007 proposed removing crucifixion from the statute books. Stoning was initially retained in the draft and was later removed by the Commission for Judicial Affairs of the Islamic Consultative Assembly [*comision omure qazayi majles shoraye islami*].¹⁰⁵ The national and international press reported this as the abolition of stoning in Iran, but the effect of removing stoning from statute law is merely cosmetic, as the Consultative Assembly itself has admitted. As in the years before 1982, stoning sentences can still quite legally be imposed under *shari'a* law and carried out because Article 167 of the Constitution makes provision for this.

The Islamic Consultative Assembly's comments on the removal of execution by stoning from the new draft of the Islamic Criminal Code

Excerpts of an interview by the newspaper Khabar [News] with Amin Hossein Rahimi, Spokesperson for the Commission for Judicial Affairs of the Islamic Consultative Assembly:¹⁰⁶

Q: Mr. Rahimi, is it correct that this punishment [stoning] was removed from statute and confined to *shari'a* due to international sensitivities?

A: Yes, we certainly have paid a high price in this regard, and this was one of the Commission's reasons for taking this step. To clarify, I should point out that this punishment is imposed in Saudi Arabia more frequently than in Iran. But because it does not appear in their legal code, nobody criticizes [Saudi Arabia] which has thus escaped the scrutiny of countries that talk about human rights. This is despite the fact that their *shari'a* is not very different from our *shari'a*, and they also adhere to God's law.

Q: So, this was one reason why the punishment was restricted to *shari'a*. Were any other changes introduced in relation to this punishment?

A: I should point out that this punishment is a divine punishment and therefore still enforceable. In our meetings we agreed that a number of other *huddud* punitive sentences which, like stoning, are exceptional and only rarely applied, should be removed from statutory

¹⁰⁵ Under by 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.'

¹⁰⁶ *Khabar* newspaper, *Sangsar hokmi qabele hazf nist* ('Stoning not abolishable'), 29 June 2009 [08.04.1388], <http://www.khabaronline.ir/news.aspx?id=11659>.

law. According to Article 167 [of the Constitution] if judges cannot not find a statutory basis for their decision, they should rely on *mara'je taqlid's fatwas* as their point of reference.

Q: So, it is possible that individual jurists might form different opinions, leading to different sentences?

A: Yes, we in the Commission thought about this, and reached the conclusion that because leading jurists might make different rulings, the Supreme Leader's *fatwa* alone should be followed.

Q: Punishments of this kind deprive the person of his or her life, so is there any possibility of somehow decriminalizing these offenses?

A: No, these sentences cannot even be commuted because they are enshrined in the Qur'an.

Q: How often is this punishment carried out in our country?

A: Fortunately, because we live in an Islamic country where families still provide a solid foundation, these cases are rare—perhaps one every two or three years, when the stringent preconditions for such sentences have been satisfied.

Excerpts of an IRNA News Agency interview with Ayatollah Ali Shahrokhi, Chairperson of the Commission for Judicial Affairs of the Islamic Consultative Assembly:¹⁰⁷

In the deliberations over the draft, the Commission for Judicial Affairs of the Islamic Consultative Assembly concluded that in order to protect the interests of the system, some Islamic *huddud* punishments, including stoning, shall not be incorporated into statute law.

Islam is strict about enforcing *huddud* punishments, including stoning. But the stringent conditions of proof set by Islam mean that it is rarely possible to impose this kind of punishment. This is why the Judicial Commission concluded that it was not necessary to incorporate all of the *huddud* into statute law.

However, the draft code stipulates that where God's *huddud* punishments are not stipulated in statute law, valid Islamic sources must be relied on.

Other *huddud* punishments removed from the draft code are penalties relating to apostasy, and the amputation of limbs.

¹⁰⁷ IRNA, 22 June 2009 [01.04.1388], *Rayis comision-e qazayi: sangsar az layehh mojazat islami hazf shod* ('Stoning deleted from Bill of Islamic Criminal Code'), <www.irna.ir/View/Fullstory/Tools/PrintVersion/?NewsId=557572>

Excerpts of an interview by Khabar newspaper with Mohammad Dehghan, Member of the Commission for Judicial Affairs of the Islamic Consultative Assembly:¹⁰⁸

Q: Mr. Dehghan, it appears that the Judicial Commission of the Assembly met yesterday to discuss changes in the stoning law and, according to the IRNA news agency, decided to abolish the law.

A: No, no, this would be a completely wrong account of the meeting.

Q: Apparently [IRNA] interviewed Ayatollah Shahrokhi, the head of the Commission.

A: I am sure they misunderstood his remarks. The claims are not true at all. It would be quite illogical to abolish stoning as a punishment.

Q: So, abolishing or modifying [stoning] was not even discussed?

A: No, discussions did not touch on this because stoning is a divinely prescribed punishment. No one has the right to abolish or modify divinely prescribed *huddud* laws.

Q: As you know, imposing a stoning sentence on a person is difficult and the preconditions for this are not easily met.

A: The divinely prescribed punishment [*hadd*] of stoning is a very severe sentence which is rarely imposed or carried in our country. Therefore, in the new code drafted by the judiciary and the Judicial Commission of the Assembly it was decided that these *huddud* [punishments] are not fitted to statute law and should therefore be consigned to *shari'a* law.

Q: So, is it fair to say that the issue was not resolved, but merely transferred from one source to another?

A: Yes, we are not authorized to make such a decision because *shari'a* law does not permit that.

Q: Can you explain what consigning such a law to *shari'a* law means in practice?

A: The sentence of stoning can be imposed only under *shari'a* law and not under statute law. There is no disagreement about *huddud* in *shari'a* law. Going back from statute law to *shari'a* law means respecting the mother law. Court judges will follow *shari'a* law when passing sentence.

¹⁰⁸ *Khabar*, 24 June 2009 [03.04.1388], *Hazf-e sangsar az qavanin momken nist* ('Removing stoning from the law impossible'), <www.khabaronline.ir/news-11356.aspx>.

...

Q: As you know, imposing stoning sentences has provoked international reaction. Is this why stoning was shifted from statute law to *shari'a*?

A: We are all aware that, unfortunately, international responses are not positive on this matter. They do not realize that this is an ordinance from our holy Book. Members of the Judicial Commission of the Assembly held meetings with judicial system experts precisely for this purpose—to ensure that this punishment is not included in statute law and is returned to *shari'a*. Past and present misunderstandings about our country still disregard the fact that we are implementing God's punishments.

V. Public executions

Public executions were banned by law in 1964 under the regime of Mohammad Reza Shah, but were reinstated in the Islamic Republic of Iran, and were carried out in all three categories of *qisas*, *huddud* and *idam* death sentences.

In the criminal law of Iran, the option of carrying out executions is only referred to explicitly in the case of stoning executions prescribed for adulterous *zina*. Article 101 of the 1991/96 ICC and Article 21 of the 2003 Implementation Code require the presence of at least three devout Muslims during the stoning but also give the sentencing judge and the judge responsible for the implementation of the sentence the discretion to inform the public in advance of the stoning. The draft ICC of 2007 also retains this provision but the discretion to announce the stoning in advance is restricted to the judge responsible for the implementation and not the sentencing judge.¹⁰⁹

For all other capital crimes, including *huddud*, *qisas* and *idam* offences, the law implicitly provides the option of public executions. The 1991 and the 2003 Implementation Code both refer 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'.¹¹⁰ The Implementation Code directs that if a judge does not specify the method of execution, the condemned person shall be put to death by hanging, but does not indicate whether an execution should be carried out privately or publicly if the judge does not specify a location for the execution.

Studies published by Islamic scholars and the judiciary present varying interpretations on

¹⁰⁹ Draft ICC of 2007, Article 221-15.

¹¹⁰ 2003 Implementation Code, Articles 7, 10, 13, 15 and 19.

whether or not early Shi'a jurists considered public implementation of punishments (death as well as other corporal sentences) obligatory (*vajeb*), permissible (*mojaz*) or recommended (*mostahab*).¹¹¹ *Fatwas* issued by Iran's contemporary *mara'je taqlid* generally permit or recommend public implementation of sentences, particularly when the crime has already become public or the publicity of the punishment serves the Islamic duty of *nahye az monkar* [forbidding evil deeds]. However, public executions are also discouraged if they are likely to bring Islam or the Islamic state into disrepute.¹¹²

Recent announcements by judicial authorities concerning public executions confirm that the decision to hold an execution in public is discretionary and that the decision concerning the location of the execution, where not stipulated in the sentence, is made by the body responsible for implementation of the sentence, currently the Prosecution Office [*dadsara*].¹¹³ Thus, on 10 July 2007, Alireza Jamshidi, spokesperson for the judiciary, announced the imminent execution of twenty 'hooligans' and added that the decision as to whether the executions would be carried out privately or publicly rested with the Tehran General Prosecutor.¹¹⁴

Following a surge in the number of public executions in the second half of 2007, in January 2008 Judiciary Head Mahmoud Hashemi Shahroudi issued a directive to control public executions more tightly and to ban publication of execution photographs.¹¹⁵ The ban on publication of photographs reversed Mr. Shahroudi's earlier ruling (2003 Implementation Code) which

¹¹¹ For example, Mohammad Ibrahim Shams Natari from Qhom's Islamic Seminary maintains that Shi'a texts indicate that all *huddud* death sentences and other punishments were implemented publicly in the era of the Prophet and the Imams (above note 12, pp 267-69) whereas others like Gholamreza Noferesti from Qhom's Mofid University maintain that Islamic jurisprudence offers no legal grounds for considering public implementation of sentences either obligatory or recommended, though it does support principle of the presence of a few devout and trustworthy persons (see Gholamreza Noferesti, 2002 [1381], *Tabyin fiqhi-huquqi ijrave alani kayfar* ['Jurisprudential-legal interpretation of public implementation of punishments'], abstract available at <http://www.nahad.ir/payannamehdini/Detail.php?code=22179&lan=farsi&uniID=15>).

¹¹² See the reply of the *Moavenat amuzeshi goveh qazayieh* (Educational Division of the Judiciary) to an inquiry made by Khuzestan's Justice Administration in this connection entitled *Mabani fiqhi-huquqi ijrave alani kayfar* ('Jurisprudential-Legal principles in public implementation of punishments') which comprehensively discusses early jurisprudence as well as contemporary *fatwas*, available at <http://hvm.ir/print.asp?id=26753>.

¹¹³ Implementation of sentences was carried out by a division called the Unit for Enforcement of Sentences between 1995 and 2002, but the Prosecution Office (*dadsara*) resumed this role after its reinstatement in 2002.

¹¹⁴ Fars News Agency, 10 July 2007 [19.04.1386], *Jamshidi: 20 tan az ashrrar bezudi idam mishavand* ('Jamshidi: 20 hooligans will soon be executed'), <www.farsnews.net/newstext.php?nn=8604190160>.

¹¹⁵ Directive [no. m/11317/86] issued on 29 January 2008 [09.11.1386] printed in *Majmoye bakhshnamehye ghoveh ghazayieh 1385 va 1386* (Digest of Directives Issued by the Judiciary 2006-2008), pages 236-7. For an English translation of the full text see Appendix V.

permitted photographs to be published ‘on an exceptional basis when the Judiciary Head or officials authorized by him considered their publication expedient.’¹¹⁶ Numerous press reports incorrectly referred to ‘a ban on public execution’ while Shahrudi’s directive merely authorized unspecified ‘judicial authorities’ to decide for themselves whether a public execution is ‘socially expedient’, and to seek the opinion of the Judiciary Head in this matter.

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. On 10 July 2008 four men, including an Afghan national, who were allegedly involved in several murders, were hanged in Chamran Square in the southern city of Borazjan. A photograph of the hanging was published by the official news agency Eram.¹¹⁷ On 30 May 2009, three men convicted of ‘*moharebeh and ifsad-e fil-arz*’ for alleged involvement in bombing incidents were hanged publicly near a mosque in Zahedan.¹¹⁸

VI. Procedures for executions

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.¹¹⁹

¹¹⁶ 2003 Implementation Code, Article 20.

¹¹⁷ *Kargozaran* newspaper, 14 July 2008, [24.04.1387], *4 mahkum dar mala am idam shodand* (‘4 convicts executed in public’); and Radio Farda, 11 July 2008 [21.04.1387], *Naqze bakhshnameh qoveh qazayieh: idam 4 nafar dar mala am* (Judiciary Directive Breached: four executed publicly), <www.radiofarda.com/content/f4_execution_Bushehr_decree/455751.html>.

¹¹⁸ IRNA, 20 May 2009 [09.03.1388], *3 nafar az avamel-e dakhil dar bombgozari Zahedan mojazat sodand* (‘Three involved in bombing punished’).

¹¹⁹ See, for example, the cases of Sasan Al-e Kena’n who was executed at 4.00 am in Kordestan province, 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-*

In *qisas* death sentences, the 2003 Implementation Code requires the presence of ‘the heirs of the blood’ at the execution [article 7-g]. As noted in section xx, 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.¹²⁰

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 of 1988 in Tehran’s Evin prison and twenty other prisons throughout Iran, many of their relatives are still refused information about the whereabouts of their loved ones’ remains.¹²¹

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’].

¹²⁰ 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>.

¹²¹ 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>).

VII. Conclusion

While international law still does not unconditionally prohibit capital punishment, the trend in law and practice is for its abolition. In the case of states that retain capital punishment, in addition to serious restrictions on the offences for which the death penalty can be given, human rights law also imposes an obligation to use methods of execution which minimize pain and suffering.

The Universal Declaration of Human Rights, the foundation for human rights law, is premised upon the recognition of ‘the inherent dignity and ... the equal and inalienable rights of all members of the human family.’¹²² The state of Iran has made a solemn and public promise to comply with the terms of the International Covenant on Civil and Political Rights (ICCPR).¹²³ The ICCPR does not prohibit capital punishment but the prohibition against torture and cruel, inhuman, or degrading punishment in the ICCPR does apply to the manner in which executions are carried out.

The U.N. Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, approved by the Economic and Social Council in 1984, provides that where capital punishment occurs, it shall be ‘carried out so as to inflict the minimum possible suffering.’¹²⁴ The Human Rights Committee, a body of experts that monitors state compliance with the ICCPR, has stated that when the death penalty is applied, ‘it must be carried out in such a way as to cause the least possible physical and mental suffering.’¹²⁵ The Committee has also instructed that executions must not be carried out by stoning.¹²⁶ In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty ‘to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately’.¹²⁷

Public executions, as noted by the UN Human Rights Committee, are ‘incompatible with human

¹²² ‘Preamble,’ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

¹²³ ICCPR, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

¹²⁴ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984), safeguard 9.

¹²⁵ ICCPR, General Comment 20, U.N. HRC, 44th Session, U.N. Doc ccpr/c/21/Add.3 (1992), p. 6.

¹²⁶ Concluding Observations of the Human Rights Committee: Yemen (CCPR/CO/84/YEM), 9 August 2005, para.15.

¹²⁷ Resolution 2005/59 of the UN Commission on Human Rights, para.7(i).

dignity.’¹²⁸ The Committee has called on states to refrain from public executions.¹²⁹ In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty ‘to ensure that, where capital punishment occurs, it... shall not be carried out in public or in any other degrading manner’.

In the clearest possible violation of all these standards, judicial executions not only are taking place in Iran at a rate of at least one a day,¹³⁰ but they are manifestly violating the obligation to inflict the minimum possible pain and suffering. Iran is unique among the nations of the world in retaining a repellent gallimaufry of cruel, inhuman and arbitrary execution methods, some deliberately designed to impose extensive pain and suffering on the condemned. Similarly, unique features are the vindictive institution of *qisas* execution which allows the heirs of a murder victim to re-enact the brutality of the original murder, and also laws which effectively give state sanction to extrajudicial killing.

The more grotesque and floridly mediaeval methods such as beheading, burning, crucifying and throwing the condemned off a mountain, or collapsing a wall onto them have been largely substituted with the gallows. However, some of those methods such as throwing from a high place have been used in recent history and they all can still be implemented at a judge’s discretion. Official assertions that stoning executions (*rajm*) have ended in Iran do not match the facts. Stoning remains legally applicable, particularly for male and female adultery, and *rajm* executions still take place clandestinely.

Hanging is the most common method of execution in Iran, but the methods of hanging used, in public and inside prisons, are slow, painful and degrading. The Islamic Republic of Iran not only has the highest per capita rate of executions, but also carries them out with a brutality and squalor that is unparalleled around the globe.

¹²⁸ Concluding observations of the Human Rights Committee: Nigeria, UN document CCPR/C/79/Add.65, 24 July 1996, para.16.

¹²⁹ Concluding observations of the Human Rights Committee: Democratic People’s Republic of Korea, UN document CCPR/CO/72/PRK, 27 August 2001, para. 13.

¹³⁰ A conservative estimate based on the 285 executions from 1 January 2009 to 30 August 2009 that were reported publicly.

I. Appendix I- 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 IPC	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

II. Appendix II- *Fatwas* by state approved leading clerics (*mara'je taqlid*) on additional methods of *qisas* execution

***Fatwas* of Grand Ayatollah Ruhollah Khomeini [d. 1989]:**

4/317/11: *Qisas*, whether it be killing or [amputation of] body parts shall not be implemented with a blunt instrument or one which causes the culprit more suffering than the sword, such as, for example severing his neck or body part with a saw. If this occurs, [the perpetrator] shall not be liable to *qisas*, but he has sinned and shall be liable to *ta'zir*. Therefore, *qisas* shall not be carried out with instruments other than the sword or a similar [bladed] instrument and it is conceivable that *qisas* might also be implemented with an instrument that is easier than the sword, such as shooting the culprit in the brain with a bullet, or electrocution. If it is decided to implement *qisas* with the sword, it shall only be used to sever the head, even if the murder was not committed with a sword and, for example, the victim had been drowned, or burned, or hit with a stone. Nor is it permissible to mutilate the culprit.

4/314/9: When *qisas* is implemented it is a more appropriate and safe practice for the Leader of the Moslems [*vali moslemeen*] or his deputy to appoint two just, intelligent and pious witnesses to observe the procedure so that if conflict should occur between the executor of *qisas* and the relatives of the culprit, they may be witnesses at the scene, and they may also examine the instrument which the executor of *qisas* intends to use to kill the culprit in order to ensure that it is not poisoned in a manner which would infect the body, or cause it to disintegrate, and thereby interfere with respect for the remains during ablution and burial. If it is revealed that the instrument used was poisoned with a substance not permitted in *qisas* implemented on a pious man, the judge shall prevent its use and if it has already been used, the judge shall sentence the perpetrator to *ta'zir* [discretionary punishment determined by the judge].

Source: *Tahrir al-wasileh*, Volume 4, pp 314 and 317.

***Fatwas* of Grand Ayatollahs Mohammad Taqi Bahjat [d. 2009], Lutfollah Safi Golpayegani [1920-], Nasser Makarem Shirazi [1927-], Seyyed Abdolkarim Mousavi Ardebili [1926-], Hossein Nouri Hamadani [1926-], Mohammad Fazel Lankarani [d. 2007], and Mirza Javad Tabrizi [d. 2006]:**

Question: Explain the following regarding the instrument of *qisas*:

- A- Is the sword obligatory in implementation of *qisas-e-nafs* or is it possible to use instruments and equipment that in terms of their speed and ease in extinguishing the soul are similar or superior to the sword (such as a gunshot or electrical equipment)?
- B- If presently no one is willing to carry out beheading with the sword, what should be done?
- C- What is the ruling on implementing *qisas* by “hanging”?

Answers:

Grand Ayatollah Mohammad Taqi Bahjat [d. 2009]:

- A- Killing with an instrument that is not sharp, or which achieves the objective by means of delay and with suffering is not permissible. Killing with anything other than an object which resembles sharp iron and is less painful, such as a bullet, for example is not clearly permissible.
- B- Human participation is not a requirement [for implementation of *qisas* by beheading].
- C- Already answered.

Grand Ayatollah Lutfollah Safi Golpayegani [1920-]:

- A- Whenever it is possible to implement *qisas* with the sword it must be done with the sword and if that is not possible, it should be with a bullet. The status of electric equipment is dubious.
- B- This [lack of persons to implement beheadings] is considered a situation where the sword cannot be used, for which the ruling was explained in question A.

C- This is also dubious.

Grand Ayatollah Nasser Makarem Shirazi [1927-]:

A to C – Under present circumstances, other methods including hanging can be used.

Grand Ayatollah Seyyed Abdolkarim Mousavi Ardebili [1926-]:

Apparently ‘the sword’ is not obligatory, and execution by any method by which the culprit feels pain and suffering is sufficient.

Grand Ayatollah Hossein Nouri Hamadani [1926-]:

A- No, it is not obligatory, and using other instruments and equipment is not a problem.

B- Clear from the previous answer.

C- If it is easier than the sword it is not a problem, and the opinion of the Islamic judge in charge of implementing the sentence should be applied.

Grand Ayatollah Mohammad Fazel Lankarani [d. 2007]:

Since *qisas* shall be implemented by customary acts without excessive suffering, the said method is not a problem.

Source: *Ganjineh Araye Fiqhi-qazayi* (Treasury of Jurisprudence and Judicial Rulings), question 267, cited in *Selseleh pajuhesh-haye fiqhi-huquqi-bayesteh-haye fiqhi ijrayer qisas*, pp 139-40.

Note: The dates of these *fatwas* are unspecified.

Grand Ayatollah Mirza Javad Tabrizi [d. 2006]:

“whenever *qisas* is implemented with an instrument other than the sword, a forbidden act has been committed, and the perpetrator deserves *ta’zir*.”

Source: Mirza Javad Tabrizi, *Al-qisas*, p. 253, cited in *Selseleh pajuhesh-haye fiqhi-huquqi-bayesteh-haye fiqhi ijrayer qisas* p.132.

III. Appendix III- *Fatwas* by state approved leading clerics (*mara'je taqlid*) on additional methods of *hadd* executions

Fatwas of Grand Ayatollah Lutfollah Safi Golpayegani [1920-]:

Question 1: In implementing punitive sentences where the Divine Lawgiver has determined a specific method—such as stoning or killing with the sword—please explain the following:

- A- Is the mode or weapon obligatory (in other words, in these instances is the Divine Lawgiver's goal the extinguishing of the soul, albeit with a modern instrument, or should the extinguishing of the soul necessarily take place with a particular instrument or method?)
- B- If these methods are obligatory but implementation of stoning or the punishments prescribed for *lavat* were not in the best interest of Islam and the sacred Islamic State—if, for example, they tarnish Islam and Muslims, and present a cruel image of Islam and the Islamic State, is it possible to change the method used to carry out a death sentence?

Answer:

- A- In some cases the method is obligatory and in others the cautionary principle requires that one should adhere to the specific mode prescribed in the ordinance.
- B- Changing the method is not permissible, and what tarnishes Islam and Muslims is Muslims who give in to unbelievers, abandon Islamic tenets and apply secular laws without prophetic provenance. These laws have governed the vast world of Islam for one thousand four hundred years. Unbelievers and foreigners have always misinterpreted them, but Muslims paid no attention to the unbelievers and foreigners.

Source: *Ganjineh araye fiqhi-qazayi* (Treasury of Islamic Jurisprudence and Judicial Rulings), published by *Markaz tahqiqate fiqhi qoveh qazayieh* (Research Center for Islamic Jurisprudence of Judicial Branch). question 68. quoted in *Majmuyeh araye fiqhi-qazayi dar omur kayfari* (Digest of Islamic Jurisprudence and Judicial Rulings in criminal matters), vol. 1, pp 183-4.

Question 2: In view of the fact that when the condemned escapes the execution pit s/he should be returned in adultery proven with *bayineh* (evidence other than the condemned person's own confession) in cases where the adultery is proven by confession, please specify whether it is permissible to change the stoning sentence to another mode of *qatl*?

Answer: Apparently conversion is not permissible, and stoning must be carried out. God is omniscient.

Source: *Jame-al-hokam*, Vol. 2, p 371, question 2156, quoted in *Majmuyeh araye fiqhi dar omur kayfari* (Digest of Islamic Jurisprudence and Judicial Rulings in criminal matters), vol. 3, p 45.

Fatwas of Grand Ayatollah Nasser Makarem Shirazi [1927-]:

Question 1: In implementing punitive sentences where the Divine Lawgiver has determined a specific method—such as stoning or killing with the sword—please explain the following:

- A- Is the mode or weapon obligatory (in other words, in these instances is the Divine Lawgiver's goal the extinguishing of the soul, albeit with a modern instrument, or should

the extinguishing of the soul necessarily take place with a particular instrument or method?)

- B- If these methods are obligatory but implementation of stoning or the punishments prescribed for *lavat* were not in the best interest of Islam and the sacred Islamic State—if, for example, they tarnish Islam and Muslims, and present a cruel image of Islam and the Islamic State, is it possible to change the method used to carry out a death sentence?

Answer:

- A- Apparently, the evidence is that it is obligatory. However, it can be changed on the basis of secondary rulings. In our era and times, and in many circumstances, choosing to apply *rajm* or the punishments for *lavat* is problematic.
- B- It is clear from the above answer.

Source: *ibid*

Question 2: In our era where in some cases carrying out the *hadd* of stoning is better to be avoided for national or international reasons, is it possible to change the mode of execution on the basis of secondary ruling? If this is the case, then what should be the approach to the option of escaping death by escaping from the pit in the case of a condemned person whose sentence has been given on the basis of confession?

Answer: Changing stoning to other modes of execution is not a problem. The condemned's option of escaping the pit is not compulsory. To be spared from death, such a condemned person can retract their confession.

Source: *Istifta-at-e jadid*, vol. 2, p 490-91, question 1403, quoted in *Majmuyeh araye fiqhi dar omur kayfari*, vol. 3, p 45.

Fatwas of Grand Ayatollah Seyyed Abdolkarim Mousavi Ardebili [1926-]:

Question: In implementing punitive sentences where the Divine Lawgiver has determined a specific method—such as stoning or killing with the sword—please explain the following:

- A- Is the mode or weapon obligatory (in other words, in these instances is the Divine Lawgiver's goal the extinguishing of the soul, albeit with a modern instrument, or should the extinguishing of the soul necessarily take place with a particular instrument or method?)
- B- If these methods are obligatory but implementation of stoning or the punishments prescribed for *lavat* were not in the best interest of Islam and the sacred Islamic State—if, for example, they tarnish Islam and Muslims, and present a cruel image of Islam and the Islamic State, is it possible to change the method used to carry out a death sentence?

Answer:

- A- Stoning is obligatory.
- B- If it is truly detrimental to Islam, the mode of implementation can be changed. However, Islamic ordinances shall not be tinkered with on the basis of fantasies.

Source: *Ganjineh araye fiqhi-qazayi* (Treasury of Islamic Jurisprudence and Judicial Rulings), published by *Markaz tahqiqate fiqhi qoveh qazayieh* (Research Center for Islamic Jurisprudence of Judicial Branch), question 68, quoted in *Majmuyeh araye fiqhi-qazayi dar omur kayfari* pp 183-4.

Fatwa of Grand Ayatollah Hossein Nouri Hamadani [1926-]:

Question: In implementing punitive sentences where the Divine Lawgiver has determined a specific method—such as stoning or killing with the sword—please explain the following:

- A- Is the mode or weapon obligatory (in other words, in these instances is the Divine Lawgiver’s goal the extinguishing of the soul, albeit with a modern instrument, or should the extinguishing of the soul necessarily take place with a particular instrument or method?)
- B- If these methods are obligatory but implementation of stoning or the punishments prescribed for *lavat* were not in the best interest of Islam and the sacred Islamic State—if, for example, they tarnish Islam and Muslims, and present a cruel image of Islam and the Islamic State, is it possible to change the method used to carry out a death sentence?

Answer:

- A- Killing with the said weapon is obligatory.
- B- It is not a problem if the Islamic ruler decides it to be expedient.

Source: *ibid*

Fatwas of Grand Ayatollah Mohammad Taqi Bahjat [d. 2009]:

Question 1: Is it possible to change a stoning sentence to different modes of *qatl* (killing)?

Question 2: What is the ruling if stoning cannot be carried out under any circumstances?

Answer:

1. It is not possible.
1. The Islamic judge shall impose a *ta’zir* (discretionary punishment) sentence.

Source: *Istifta-at from Ayatollah Bahjat*, no. 600, http://bahjat.org/fa/index.php?option=com_content&task=view&id=291&Itemid=45.

Fatwa of Grand Ayatollah Sheikh Javad Tabrizi [d. 2006]:

Question: In view of the criticism leveled at Iranians by enemies of Islam which incites the nations of the world to revolt against Iran, if someone is sentenced to stoning for adultery is there another way to administer the punishment so that it does not become an excuse for propaganda by the enemies of Islam?

Answer: *Rajm* is stoning. It is the punishment for adultery. It is obligatory to carry it out. God is omniscient.

Source: *Istifta-at jadid*, p. 426, question 1866, quoted in *Majmuyeh araye fiqhi dar omur kayfari*, vol. 3, p 44.

Fatwa of Grand Ayatollah Seyyed Ali Khamenehi [1939-, presently the Supreme Leader]:

Question: If a man or a woman is sentenced to stoning in court in accordance with Islamic criteria, can the method of *qatl* (killing) be changed from stoning or not, bearing in mind that the

enemies of the Islamic revolution are waiting for an excuse to tarnish the image of the sacred religion of Islam before the nations of the world nations by drawing attention to such sentences which are new and unusual to non-Muslims of the world, and are incompatible with the tastes and laws of such countries. Such enemies of the Islamic revolution embellish the details in their propaganda against the Islamic revolution in order to attack the revolution and Islam.

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

Source: *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.

Fatwa of Grand Ayatollah Haj Seyyed Ali Hosseini Sistani [1930-]:

Question: Is there a substitute punishment for stoning?

Answer: No, there is not.

Source: Questions and answers. *Huddud* and *Ta'zirat*, <http://sistani.org/local.php?modules=nav&nid=5&cid=848>

Fatwa of Grand Ayatollah Mohammad Fazel Lankarani [d. 2007]:

Question: Bearing in mind that in adulterous *zina*, when the offense has been proven with *bayineh*, if the culprit escapes the pit s/he can be returned so that the execution of the sentence can continue but in the case of a conviction based on confession this cannot be done, explain whether the sentence of stoning can be changed to another method of *qatl* (killing)?

Answer: There seems to be no grounds for conversion [of the stoning method].

Source: *Jame' al-masael*, vol. 2, p 436, question 1147, <http://www.lankarani.com/far/bok/view.php?ntx=038020>

IV. Appendix IV- Directives concerning stoning and public executions issued by the Judiciary Head, Ayatollah Shahroudi (1999-2009)

PUBLIC EXECUTIONS

1. No: **m/11317/86** Date: **29 January 2008** [09.11.1386]

Directive to all Heads of Justice Departments and General and Revolutionary Prosecutors throughout the country:

With regard to the implementation of death sentences, the following instructions shall be considered and acted upon accordingly:

1. All confirmed death sentences that are ready to be enforced shall be carried out with due consideration of the Judicial Branch's 5 May 1991 [15.02.1370] Procedure Code for the Implementation of Death Sentences, and shall be carried out inside the prison ... (other than in cases where it is appropriate that the sentence be carried out in public, and socially expedient as determined by the judicial authorities. In such cases the opinion of the Judiciary Head shall be sought prior to implementation.)

2. In consideration of Article 21 of the said Regulation,¹ a sufficient number of photographs shall be taken of the execution ceremony and placed only in the convict's records and file, and shall not be distributed to any organ of publication without permission from the Office of the Judiciary Head.

3. Publication of such photographs in any public media is hereby declared to be prohibited.

4. The General and Revolutionary Prosecutor of each district is responsible for the proper implementation of this directive.

Seyyed Mahmoud Hashemi Shahroudi
Judiciary Head

1. Article 21: The execution ceremony shall be photographed by prison authorities or law enforcement officers (depending on the circumstances) and the photographs shall be filed in the convict's records. News of the execution of sentence together with information about the nature of the crime and a summary of the court judgment shall be published in the press.

In exceptional cases where the Judiciary Head determines it to be necessary, a photograph of the convict during the execution of sentence may be published by the mass media in order to inform the public at large.

STONING

1. No: 1/80/16472

Date: 18 November 2001

[27.08.1380]

To the Head of the Justice Department of the Province of:

In consideration of reports received and files that have been sent to the Judiciary it is observed that some honorable judges are disregarding Directive no. 1/78/11095 dated [29.10.1378] concerning persons sentenced to *hadd* and eligible for pardon. Some judges are sending their requests for pardon directly to the Esteemed Supreme Leader's office, whereas, according to the said directive his Excellency had conferred this prerogative upon the Judiciary Head

A copy of this directive must be distributed, and all judicial units must be notified. Vigilance is required in respect of the proper application of this and previous directives, and any violations observed should be reported to the Administrative Infractions Review Committee and the Judges' Disciplinary Tribunal. Heads of judicial districts have direct responsibility for oversight on implementation of this directive. Seyyed Mahmoud Hashemi Shahroudi

Judiciary Head

2. No: 1/80/8813

Date: 4 August 2001 [13.05.1380]

To all Heads of Provincial Justice Departments

In view of the fact that the Esteemed Supreme Leader has conferred upon the Judiciary Head permission to grant pardon to convicts sentenced to the divine fixed punishments (*huddud*) referred to in Articles 72, 126, 132, and 182 of the Islamic Criminal Code, and considering that absolute pardon of such convicts, particularly in homosexual penetrative sex (*lavat*) where the victim is a minor or in heterosexual rape (*zina-be-onf*) or in female adultery (*zina-e-mohseneh*) or in case of repeat offenders (even if the court has established the offender's repentance) may encourage the offender or negatively influence society or cause inappropriate reactions by the victim's family, the Esteemed Supreme Leader was asked whether or not disciplinary punishments [*ta'zir*] can be imposed upon such convicts following their pardon (of their *hadd* punishment) and his Excellency replied as follows: "In the name of God, greetings, it seems that *ta'zir* for a person who has been pardoned from a divine fixed punishment [*hadd-e shar-i*] is within the sentencing judge's authority, and justified by the public nature of the crime and the obligation to respect the public interest. Therefore, *ta'zir* of a pardoned *hadd* convict is permissible but it is better that the measure of *ta'zir* is determined in a regulated and standardized way and I leave this issue to be dealt with by you."

This order must be dictated to all provincial judicial districts and the honorable court judges for their consideration when they submit proposals for pardon.

Seyyed Mahmoud Hashemi Shahroudi
Judiciary Head

Footnotes:

Article 72: If a person confesses to a form of *zina* punishable by *hadd* [fixed punishment] and s/he subsequently repents, the judge may either appeal to the Supreme Leader for a pardon for the condemned or carry out the *hadd* sentence.

Article 126: If *lavat* (penetrative male homosexual sex) and *tafkhez* (non-penetrative male homosexual sex) and similar offenses have been proven by the convict's own confession, after which the convict repents, the judge may appeal to the Supreme Leader for a pardon for the condemned.

Article 132: If a person who has committed *mosaheqeh* [female homosexual sex] repents prior to testimony of witnesses, the *hadd* is extinguished but if s/he repents after testimony, the *hadd* is not extinguished.

Article 182: If a person confesses to consumption of alcohol and subsequently repents, the judge may either request the Supreme Leader for his or her pardon, or carry out the *hadd* sentence.

3. No: 1/78/7168

Date: 4 October 1999 [25.07.1378]

To all judicial organs and Heads of Justice Departments

Pursuant to directive number m/5859/70 dated [08.01.1371] and in view of the fact that the Esteemed Supreme Leader has delegated implementation of Articles 72, 126, 182, 205, 266, 269 of the Islamic Criminal Code to me it is requested that:

1- In cases where the ruling judge requests the pardon of the condemned, the honorable judge shall state in the request the grounds for asking pardon along with the details of the case.

2- ...

3- ...

Seyyed Mahmoud Hashemi Shahroudi
Judiciary Head

Footnotes:

Article 72: If a person confesses to a form of *zina* punishable by *hadd* [fixed punishment] and s/he subsequently repents, the judge may either appeal to the Supreme Leader for a pardon for the condemned or carry out the *hadd* sentence.

Article 126: If *lavat* (penetrative male homosexual sex) and *tafkhez* (non-penetrative male homosexual sex) and similar offenses have been proven by the convict's own confession, after which the convict repents, the judge may appeal to the Supreme Leader for a pardon for the condemned.

Article 182: If a person confesses to consumption of alcohol and subsequently repents, the judge may either request the Supreme Leader for his or her pardon or carry out the *hadd* sentence.

...

...