



Iran

End executions by stoning

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'In Iran, stoning a person to death is not against the law. Using the wrong stone is.'

Amnesty International

'The size of the stone used in stoning shall not be too large to kill the convict by one or two throws and at the same time shall not be too small to be called a stone.'

Article 104 of Iran's Islamic Penal Code

1. Introduction

"I am ready to be hanged, but they should not stone me. They could strangle you and you would die, but it is very difficult to have stones hitting you in the head."

Khayrieh, one of several women in jail in Iran awaiting execution by stoning¹

Jafar Kiani was stoned to death on 5 July 2007 in the village of Aghche-kand, near Takestan in Qazvin province.² He had been convicted of committing adultery with Mokarrameh Ebrahimi, with whom he had two children and who was also sentenced to death by stoning.

The stoning was carried out despite a stay of execution ordered in his case and in defiance of a moratorium on stonings reportedly issued in 2002 by the Head of the Judiciary. It was the first officially confirmed stoning since the moratorium,³ although a woman and a man are known to have been stoned to death in Mashhad in May 2006.⁴ There are fears that Mokarrameh Ebrahimi may yet suffer the same fate.⁵ She is in Choubin prison, Qazvin province, apparently with one of her two children.⁶

Execution by stoning, a punishment prescribed in Iran's Penal Code, is a particularly grotesque and horrific practice. Amnesty International opposes the death penalty in all circumstances and believes that stoning is specifically designed to increase the suffering of victims. Iranian law prescribes that the stones are deliberately chosen to be large enough to cause pain, but not so large as to kill the victim immediately. It is a punishment meted out specifically for adultery by married men and women, an act that is not even a crime in most countries of the world, and the majority of those sentenced to death by stoning are women.

While Amnesty International recognizes the right of governments to bring to justice those who commit crimes, it opposes the death penalty in **all** cases as a violation of the right to life and the ultimate form of cruel, inhuman and degrading punishment. It takes no position on the cultural, religious or political values that underlie a particular system of law, but it does insist that laws and judicial procedures conform to internationally recognized human rights standards and that governments abide by their international human rights obligations.

As Iran is a state party to the International Covenant on Civil and Political Rights (ICCPR), the government is legally bound to observe the provisions of this treaty and to ensure that they are fully reflected in the country's laws and practices relating to human rights. Death by stoning violates Articles 6 (right to life) and 7 (prohibition of torture and cruel, inhuman or degrading treatment or punishment) of the ICCPR.

The UN Safeguards guaranteeing protection of the rights of those facing the death penalty call for a reduction of offences punishable by death to only the most serious crimes.⁷ These have been clarified in several UN resolutions, including Resolution 2005/59 of the Commission on Human Rights, which calls on states to ensure that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences. It also says that the

death penalty should not be imposed for non-violent acts such as sexual relations between consenting adults, nor should it be a mandatory sentence. The UN Human Rights Committee has emphasized that “the death penalty should be a quite exceptional measure”.⁸

Even when the death penalty is restricted to exceptionally serious crimes, international human rights bodies have clearly stated that execution should not be by stoning.⁹

Despite this, women and men in Iran are still being put to death for consensual sexual acts, and the country still has one of the highest rates of executions in the world. By the end of October, Amnesty International had recorded more than 250 executions since the beginning of 2007, far exceeding the 177 executions recorded in 2006.

On 1 October 2006, a group of Iranian human rights defenders, lawyers and journalists, led by lawyer Shadi Sadr and journalist Asieh Amini, whose reporting of stonings inspired the idea, launched the Stop Stoning Forever campaign to abolish stoning in law and practice. Other organizers in Iran include Mahboubeh Abbasgholizadeh. They were spurred into action by the reported stonings in Mashhad in May that year and by a letter sent in June 2006 to a woman prisoner, Ashraf Kalhori, giving her 15 days notice of her execution by stoning (see Chapter 4). On 10 October 2006, the fourth World Day against the Death Penalty, Amnesty International's Secretary General, Irene Khan, expressed Amnesty International's support for the campaign and its organizers, and publicly called on the Iranian authorities to abolish stoning immediately.

Since the campaign began, five people have been saved from stoning (see Chapter 5). Others have been granted stays of execution, and some cases are being reviewed or retried. Nine women and two men are known to be under sentence of execution by stoning (see Chapter 4). However, the campaign has faced repression and its supporters have been intimidated and harassed.

Amnesty International is calling on the Iranian government to abolish immediately and totally executions by stoning and to impose a moratorium on the death penalty pending the repeal or amendment of the Penal Code. All existing sentences of execution by stoning should be commuted.

Amnesty International also opposes the criminalization of consensual adult sexual relations conducted in private, and urges the Iranian authorities to review all relevant legislation with the aim of decriminalizing consensual adult sexual relations conducted in private.

2. How stonings are imposed

Iranian law

Iran's Penal Code distinguishes five types of crime. These include *hodoud* (crimes against divine will, for which the penalty is prescribed by Islamic law and cannot be altered) and *ta'zir* (crimes that incur discretionary punishments applied by the state that are not derived from Islamic law), both of which provide for the death penalty for certain crimes.¹⁰ Article 83 prescribes execution by stoning for the *hodoud* offences of adultery committed by a married man or a married woman. Under Iranian law, adultery can only be proved by the testimony of eyewitnesses (the number required varying for different types of adultery), a confession by the defendant (repeated four times), or the judge's "knowledge" that the adultery has taken place.¹¹

The Penal Code is specific about the manner of execution and types of stones that should be used. Article 102 states that men will be buried up to their waists and women up to their breasts for the purpose of execution by stoning. Article 104 states, with reference to the penalty for adultery, that the stones used should "not be large enough to kill the person by one or two strikes; nor should they be so small that they could not be defined as stones". This makes it clear that the purpose of stoning is to inflict terrible pain in a process leading to slow death.

In December 2002, the Head of the Judiciary, Ayatollah Shahroudi, reportedly sent a directive to judges ordering a moratorium on execution by stoning and for alternative punishments to be used instead. However, legal provision for execution by stoning remains in place and in September 2003 a law was passed listing regulations for the implementation of particular sentences, including stoning.

On 21 November 2006, the then Minister of Justice, Jamal Karimi-Rad, denied that stonings were being carried out in Iran, a claim repeated on 8 December 2006 by the Head of the Prisons Organization in Tehran. There is strong evidence to suggest that this is not true.

There are, however, some indications that discussions are taking place inside the Iranian clerical and judicial establishment about the removal of the penalty of stoning from the Penal Code. Senior members of the Shi'a clergy have made statements that stoning should not be implemented in modern Iran. Grand Ayatollah Montazeri,¹² for example, has stated that adultery is very difficult to prove according to Islamic law, on the grounds that it must be witnessed in person by four people, a condition that is almost impossible to fulfil. He has also stated that in cases where an individual has confessed to adultery, the penalty should be commuted if they withdraw their confession, and that if implementing a stoning sentence would damage the reputation of Islam, then it should not be carried out.¹³ Grand Ayatollah Sane'i gave a *fatwa*

(religious ruling) in 2007 in which he stated that stonings and amputations should not be carried out during the continuing absence (occultation – *ghaybat*) of the 12th Imam.¹⁴

However, the debate still has a long way to run. In September 2007, the Secretary General of Iran's Human Rights Headquarters (Setad-e Hoquq-e Bashari) and Deputy Head of the Judiciary, Mohammad Javad Larijani, stated that "stoning is neither torture nor an incongruous punishment" and that it is less severe than other types of execution "because in stoning the defendant has a chance to survive". However, he added that in practice stoning no longer happens in Iran and that the case in Takestan (see above) was a mistake by the judge.¹⁵ In an earlier interview in July 2007 following the stoning of Ja'far Kiani, he had stated: "With regards to human rights, we have signed about four important documents and not one is against stoning. The westerners oppose stoning sentences based on the interpretations that they have of these laws and their contents. For example, they say that this is torture, not punishment, or they say this punishment is not proportional to the committed action or they say there is humiliation in this punishment; these are all opinions."

In July 2007, the temporary approval by the Majles (parliament) of the Penal Code expired. At first, the Majles refused to renew it further on the grounds that a large number of deputies believed that a definitive version should be submitted for their consideration. After some discussion with the Judiciary it is believed that the Penal Code was renewed for a further year, and the Judiciary was instructed to present a new bill within three months. In a letter dated 5 October 2007, Amnesty International urged the Head of the Judiciary to seize this opportunity to revise the Penal Code and to remove the penalty of stoning from the statute book once and for all as a first step towards total abolition of the death penalty. Amnesty International also urged that the punishment of execution by stoning for adultery by married people not be replaced by another lethal punishment, or by one that amounts to torture or cruel, inhuman or degrading treatment or punishment. In November 2007, Alireza Jamshidi, the spokesperson for the Judiciary, said that it was anticipated that the new Penal Code would contain a reform of the law on stoning, so that in the event of it being expedient, the penalty of stoning in individual cases would be suspended on the proposal of the Public Prosecutor, and with the agreement of the Head of the Judiciary.¹⁶ He also said that the new Penal Code had been approved by the cabinet and had been sent to the Majles for approval. At the time of writing, however, it had not yet been approved.¹⁷

Amnesty International welcomes these moves towards reform and urges the Iranian authorities to ensure that the new Penal Code neither permits stoning to death nor provides for execution by other means for adultery.

Unfair trials

Under international human rights law, those suspected of or charged with crimes punishable by death are entitled to the strictest observance of all fair trial guarantees at all stages of the legal proceedings, including during the investigation stage, as well as to certain additional safeguards. The UN Human Rights Committee has stated that the death penalty should only be handed down after a trial that observes all of the procedural guarantees for a fair hearing.¹⁸ Any death sentence imposed after a trial that does not conform to all fair trial guarantees would amount to arbitrary deprivation of the right to life.

In Iran, serious failings in the justice system commonly result in unfair trials, including in capital cases. These failings include: lack of access to legal counsel and to a lawyer of one's

choice; ill-treatment in pre-trial detention; allowing confessions extracted under duress to be used in proceedings; the use of detention centres run by various intelligence organizations;¹⁹ denial of the right to call defence witnesses; failing to give adequate time to the defence to present its case; and imprisoning defence lawyers if they protest against unfair proceedings.²⁰

For example, a defendant's right to legal counsel is one of the key safeguards for a fair trial, enshrined in international law,²¹ and applies to all stages of the judicial process. In Iran, however, owing to an extremely restrictive interpretation of the law, defendants in practice only have the right to a lawyer **after** investigations are complete and they have been formally charged. This results in prolonged periods of incommunicado detention as well as interrogation without the presence of lawyers, both of which facilitate the use of torture or other ill-treatment to obtain confessions.²² In addition, judges are permitted to exclude lawyers from trial sessions in cases that relate to national security or "corruption". Therefore, it is possible in some cases, such as those in which defendants are accused of prostitution, that people sentenced to execution by stoning could be denied access to a lawyer at all stages of their detention, trial and sentencing.

In cases of alleged adultery, the Islamic Penal Code gives judges the right to sentence the accused to death by stoning even when the crime has not been proved according to the same

UNFAIR TRIAL OF HAJIEH ESMAILVAND

Hajieh Esmailvand,²⁵ a 35-year-old Iranian Azerbaijani woman from Jolfa in north-west Iran, was convicted in April 2004 after an unfair trial on charges of adultery and being an accomplice to the murder of her husband. She was sentenced by Branch 3 of the Jolfa Public Court to five years' imprisonment for involvement in the murder, and to execution by stoning for adultery.²⁶ She later wrote to judicial authorities that she had only confessed under duress, that she had not confessed to adultery and that she denied complicity in the murder. She also stated that she was an [Azerbaijani Turkic] speaker and not adequately literate, and did not know the meaning of "penetration". According to Asieh Amini, the journalist whose reports on stoning inspired the Stop Stoning Forever Campaign and who investigated the case, Hajieh Esmailvand told the court that the murderer had tried to rape her, but had not been able to carry out the act of rape. However, later in the court proceedings she had signed a piece of paper that constituted her confession to adultery. She spent the next few years in jail not knowing her sentence as she did not know the meaning of the word "*rajm*" (stoning). After spending five years in prison, the stoning was scheduled for 1 September 2004 at the prison in Jolfa. Leaflets were reportedly published and distributed in Jolfa by the local judiciary, inviting the public to participate. However, the judge responsible for implementing the sentence found flaws in the case and her execution was temporarily suspended. Following international pressure, including by Amnesty International, the sentence was eventually commuted and her case sent back to Branch 1 of Jolfa criminal court for retrial. She was released on bail in September 2006 and finally acquitted of adultery after a retrial on 9 December 2006. After her release her lawyers planned to seek to overturn her conviction of the charge of being an accomplice to murder.

Penal Code's standards and requirements. Article 105 gives the judges – who in Iran are all men – the absolute right to condemn the accused to death by stoning solely on the judge's documented "knowledge" which could be his subjective interpretation of the case.²³ This clearly violates fair trial provisions of the ICCPR that Iran has ratified, including the right to equality before courts, the right to be presumed innocent, and the right to be tried by a competent, independent and impartial tribunal.²⁴

Under the Law on Appeals²⁷ and the Code of Criminal Procedures²⁸ all death sentences are subject to appeal, which must be lodged within 20 days of the verdict. If the sentence is confirmed on appeal, the case is sent to the Supreme Court for consideration. If a fault is found with the conviction or sentence by the appeal court or the Supreme Court, the case is usually sent back to a lower court for retrial.

If the Supreme Court confirms the death sentence, the defendant can lodge an objection, and another branch of the Supreme Court, sitting as the discernment or review body,²⁹ will review the case. Otherwise, the verdict is sent to the Head of the Judiciary, who reviews the case before sending it to the judge responsible for implementing verdicts. The Head of the Judiciary has the power to issue a stay of execution.

Under Article 24 of the Penal Code, the Supreme Leader has the power to grant pardons or to reduce or commute sentences, on the recommendation of the Head of the Judiciary, "in accordance with Islamic principles". This phrase appears to exclude *hodoud* cases,³⁰ where the right to pardon is not viewed as lying within the realm of the state. However, in the case of adultery, "sodomy," same-sex sexual conduct without penetration, and lesbianism, if the person has confessed to the crime and repented (publicly sought forgiveness from God), then the judge in the case has the power to seek a pardon from the Supreme Leader or to insist on the implementation of the verdict.³¹

This appears to mean that for many types of crimes punishable by death in Iran, there is no, or only very limited, possibility of pardon or commutation by the state, particularly for those who have not confessed to their alleged crime. This contravenes Article 6(4) of the ICCPR which states:

*"Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."*³²

The Amnesty and Clemency Commission,³³ which is part of the Judiciary, is empowered to recommend a pardon or reduction of a sentence for a range of crimes, including some carrying the death penalty. If accepted by the Head of the Judiciary, the pardon or reduction of a sentence takes effect on one of 11 days of national significance in Iran, such as the anniversary of the revolution or Islamic holy days.

Disproportionate impact on women

Women suffer a disproportionate impact of the punishment of death by stoning in Iran. One reason is that they are not treated equally before the law and courts, in clear violation of international fair trial standards. Within Iran's judicial system, the weight attached to the evidence of a man is equivalent to that of two women, and in cases dealing with some offences, including adultery, testimony by a woman alone or given jointly with just one man cannot be accepted as evidence.³⁴

Women are also particularly vulnerable to unfair trials because they are more likely than men to be illiterate and therefore more likely to sign confessions to crimes they did not commit.³⁵ In addition, women from ethnic minorities are less likely to be able to speak Persian – the official language of the court – so they often do not understand what is happening to them in the legal process or even that they face death by stoning. Women, who constitute a much smaller proportion of the workforce, and who cannot work without their husband's permission, are also likely to be poorer than men and thus unable to procure good legal advice.

Discrimination against women in other aspects of their lives also leaves them more susceptible to conviction for adultery. Women are allowed only one sexual partner in life, their husband, whereas men are allowed four permanent wives and an unlimited number of temporary (*sigheh*) wives. Men have an incontestable right to divorce, whereas women have only a limited right to divorce their husbands, leaving them free to marry another man. Many women have no choice over the man they marry and many are married at a young age.³⁶

Women face strict controls on their behaviour that are imposed and policed by the state, controls that are discriminatory and restrict their right to freedom of expression and movement. Despite such controls and some gender segregation, when women come into conflict with the law they are usually arrested, interrogated and judged by men³⁷ irrespective of the intimidation, harassment and fear that this may involve.

Poverty, drug addiction and domestic violence also play a part in making women more vulnerable to stoning than men. As shown by some of the cases below, married women are sometimes forced into prostitution by their husband to feed their drug habits or as a result of an abusive relationship. If arrested, they risk being charged with adultery and, if convicted, execution by stoning.

Finally, the very procedure specified for carrying out executions discriminates against women. Article 102 of the Penal Code states that, during stoning, the man shall be buried in a ditch up to near his waist and the woman up to near her chest. Article 103 states that if the condemned person manages to escape from the pit, they will not be stoned again if they had been sentenced after confession, but clearly it would be harder for a woman to escape than a man, since she would have been buried more deeply.

3. Executions by stoning

"The lorry deposited a large number of stones and pebbles beside the waste ground, and then two women were led to the spot wearing white and with sacks over their heads... [they] were enveloped in a shower of stones and transformed into two red sacks... The wounded women fell to the ground and Revolutionary Guards smashed their heads in with a shovel to make sure they were dead."

A reported witness account published by Amnesty International in 1987³⁸

In Iran, executions by stoning have always been few in comparison to executions by other methods, the vast majority of which are by hanging. Relatively few stonings were recorded by Amnesty International in the first few years immediately after the 1979 revolution. However, in 1986 at least eight people were stoned to death. Among them was a woman convicted of adultery and murder, who was first given 100 lashes and then stoned to death in April in Qom. Some have linked this to the passing of a law in 1986 which allowed the hiring of judges with minimal experience, bypassing the existing law on the qualification of judges, as long as they possessed either a high school diploma or were approved by the Supreme Judicial Council. This led to an increase in the number of judges from a traditional religious background.

In 1995 Amnesty International received reports that as many as 10 people may have been stoned to death that year. In May 2001, an unnamed woman was reportedly stoned to death after she was convicted of adultery and "corruption on earth" for having appeared in pornographic films. She had been convicted of murdering her husband and adultery. In July the same year, Maryam Ayoubi, aged 30, was reportedly stoned to death in Evin Prison in Tehran.³⁹ At least two people were reportedly executed by stoning in 2002.

Over the years, however, Amnesty International has learned of others who have been sentenced to death by stoning, but has been unable to clarify whether the sentences were carried out. For example, Ferdows B and Sima were reportedly sentenced to death by stoning in 2001.⁴⁰ Although a woman named only as Sima reportedly had her stoning sentence quashed by the Head of the Judiciary in October 2004,⁴¹ it is not clear if this is the same woman and no information has been received about the fate of Ferdows B nor the charges she faced. On 8 January 2004, *Iran* newspaper reported that a criminal court in the city of Qazvin had sentenced an unnamed man to 80 lashes and 10 years' imprisonment to be followed by execution by stoning.⁴²

The first execution by stoning reported following the 2002 moratorium was in May 2006 in Mashhad. Abbas H and Mahboubeh M were said to have been executed in Beheshteh Reza cemetery, part of which was cordoned off before more than 100 members of the Revolutionary Guards and Bassij Forces carried out the stoning.⁴³ Abbas H and Mahboubeh M were reportedly washed and dressed in shrouds, as if they were already dead, and then put in holes that had been dug in the ground. Following a reading from the Qur'an, those present began to stone

Abbas H and Mahboubeh M, who reportedly took over 20 minutes to die. They were said to have been convicted of murdering Mahboubeh M's husband, and of adultery. Mahboubeh M also reportedly received a 15-year prison sentence, which according to Iranian law should have been served before she was executed by stoning.

The horror of such executions was described in July 2006 by a former prisoner, a fellow inmate of a woman known as Zahra who was stoned to death in prison in the late 1990s.⁴⁴ She said that she had been befriended by Zahra, a round-faced woman with dark eyes and short hair, in the run-up to Zahra's trial. She reported that after Zahra returned from court, she was exhausted by the flogging she had received but relieved because she had been told she would be released the next day. The prisoners celebrated. The next day, however, Zahra was executed:

"When Zahra was led out of our quarters, with all her hopes and dreams of being released, she was directed to a solitary confinement where her stoning sentence would be carried out. It was there that she realized what was about to take place. There, she was given an Islamic atonement ritual and after reading some words of the Qur'an she was placed in a special ditch with only her head and neck sticking out.

"In the corner of the room they had piled up some stones... In the middle of this act, Zahra had struggled her way out of the ditch but the observing judge had ordered the guards to return her to the ditch. All this time, her deaf son Javad had been witnessing the act.

"At the end, a man named Taghi, using a cement block, struck the last blow. And then it was all over...

"Zahra left us with many untold words but her memory as a woman, a human being and a mother will remain with all of us. We all make mistakes in our lives, and although she had committed an immoral act, such punishment in my opinion, and most others, is barbaric and should be abolished."

4. Awaiting execution

At least nine women – Iran, Khayrieh, Kobra N, Fatemeh, Ashraf Kalhori, Shamameh Ghorbani, Mokarrameh Ebrahimi, Leyla Ghomi and Hajar – are at risk of being stoned to death, along with two men – Abdollah Fariva and an unnamed Afghan national – according to information received by Amnesty International.

- 1) **Iran**, a Bakhtiari woman, was reportedly talking to the son of a neighbour in the courtyard of her house when her husband attacked her with a knife. She was left bleeding and unconscious on the floor. While she was unconscious, the young man allegedly killed her husband with the same knife. When police interrogated her about the killing, Iran reportedly confessed to adultery with the son of her neighbour. She later retracted her confession. A court in the city of Khuzestan, south-west Iran, sentenced her to five years' imprisonment for being an accomplice in the murder of her husband, and to execution by stoning for adultery. The verdict was upheld by the Supreme Court in April 2006. Her lawyer petitioned the Discernment Branch of the Supreme Court to revoke the sentence, citing legal deficiencies. In June 2007 it was announced that Branch 13 of the Discernment Branch had overturned the stoning sentence and sent her case back for retrial before a criminal court in Khuzestan. The retrial is not known to have taken place. She is detained in Sepidar prison in Ahvaz city.
- 2) **Khayrieh** was sentenced to death by Branch 3 of Behbahan Court in Khuzestan for being an accomplice to murder and to execution by stoning for adultery. She reportedly suffered violence at the hands of her husband and began an affair with a relative of her husband, who then murdered her husband. Khayrieh confessed to adultery but denied any involvement in her husband's murder. The sentence was upheld, and the case has reportedly been sent to the Head of the Judiciary for permission to carry out the execution.
- 3) **Kobra N**, who is in Tabriz prison in north-west Iran, was sentenced to eight years' imprisonment for being an accomplice to the murder of her husband, and execution by stoning for adultery. She was allegedly forced into prostitution by her husband, a heroin addict who was violent towards her. In 1995, after a severe beating by her husband, she told one of her regular customers that she wanted to kill her husband. The customer allegedly murdered her husband after Kobra N took him to an arranged meeting place. He was sentenced to death, but was pardoned by the victim's family on payment of *diyeh* ("blood money"). Kobra N has reportedly written to the Amnesty and Clemency Commission to ask for her sentence of execution by stoning to be commuted, and is awaiting a reply.
- 4) **An unnamed Afghan man** is at risk of execution by stoning in Mashhad for the rape in 2003 of his 16-year-old sister-in-law.⁴⁵ The initial sentence was repealed by Branch 41 of the Supreme Court, but another court in Mashhad sentenced him to stoning again. This sentence was also repealed and the case was sent for retrial in Mashhad. A third sentence of stoning was issued and this was upheld on 20 February 2007 by the General Board of the Supreme Court. The decision accepted the right of the judge to use his knowledge to determine the case because the man had confessed only three times, not four.

5) **Fatemeh** was sentenced to execution by stoning for having an “illicit relationship” with a man named Mahmoud and to death for being an accomplice to his murder. She was sentenced by Branch 71 of the Tehran Province Criminal Court in May 2005. Her husband was sentenced to 16 years’ imprisonment for being an accomplice to the murder of Mahmoud. The case is being examined in the Supreme Court. According to a May 2005 report in the newspaper *E'temad*, there was an altercation between Mahmoud and Fatemeh’s husband. Fatemeh confessed to tying a rope around Mahmoud’s throat, which resulted in his strangulation. She says that she intended merely to tie his hands and feet after he was unconscious and hand him over to the police.

6) **Ashraf Kalhori**, a mother of four, was sentenced to death by stoning for adultery and to 15 years’ imprisonment for taking part in the murder of her husband. According to Ashraf Kalhori, the killing was accidental, but police accused her of having an affair with her neighbour and encouraging the attack. She reportedly confessed to adultery under police interrogation, but later retracted her confession. She was scheduled to be stoned before the end of July 2006 but her execution was stayed temporarily by the Head of the Judiciary, Ayatollah Shahrودي.⁴⁶

7) **Shamameh Ghorbani** (also known as Malek), an Iranian Kurd, was sentenced to execution by stoning for adultery by a court in Oromieh in June 2006. Her brothers and husband reportedly murdered a man they found in her house, and she too was nearly killed when they stabbed her. In November 2006, it was reported that the Supreme Court had rejected the sentence of stoning and ordered a retrial, citing incomplete investigations in the case. It is believed that Shamameh Ghorbani confessed to adultery in court, believing that this would protect her brothers and husband from prosecution for murder. Under Iranian law, a murder may not be punished if committed defending one’s honour or that of relatives. In a letter to Branch 12 of the Criminal Court, Shamameh Ghorbani is reported to have said, “Since I am a rural, illiterate woman and I didn’t know the law, I thought that if I confessed to a relationship with the dead man, I could clear my brothers and husband of intentional murder. I said these untrue words in court and then understood I had done myself an injury.”

8) **Abdollah Fariva** was reportedly sentenced to death by stoning. He was arrested in November 2004 following a complaint filed by a man who accused him of having an illegal affair with his daughter. Abdollah Fariva, a musician, had reportedly been tutoring a young girl and having a sexual affair with her since she was 16 years old. He claims he initially confessed, three times in a three-week period, because he was scared of the police investigators. According to the Penal Code, four confessions constitute proof of guilt. However, Abdollah Fariva wrote to the court stating that he never confessed for the fourth time. He also said that because his wife has medical problems that prevent sexual relations, he had engaged his young pupil in a *sigheh* (temporary marriage) and that therefore his affair with her was legal and not adulterous.

9) **Mokarrameh Ebrahimi** faces execution by stoning for adultery with Ja’far Kiani, who has already been stoned to death (see Introduction above). In mid-October 2007, her lawyer Sa’id Eghbali announced that her case had been sent to the Amnesty and Clemency Commission by the Office of the Head of the Judiciary.⁴⁷

10) **Leyla Ghomi** is believed to be held under sentence of stoning in Evin Prison in Tehran. Amnesty International has no further details about her case.⁴⁸

11) **Hajar** was reportedly sentenced to death by stoning for adultery by Branch 5 of the Mashhad General Court in September 2007. According to the report, a male co-defendant was sentenced to 100 lashes for fornication.⁴⁹

5. Campaigning wins reprieves

"On behalf of Stop Stoning Forever campaign, especially volunteer lawyers and women's movement activists in Iran, I would like to say our deep appreciation and many thanks for your great job about the stoning in Iran, during that first half of October [2006]. Please say our greetings to Irene Khan for her effective message. You know it is just the beginning of a long way in which we could not finish it without supporting all human rights activists around the world."

Shadi Sadr, Stop Stoning Forever Campaign e-mail to Amnesty International, October 2006

Since the Stop Stoning Forever campaign began, four women and one man have been saved from stoning – Hajieh Esmailvand, Soghra Mola'i, Zahra Reza'i,⁵⁰ Parisa A and Parisa A's husband Najaf. Another woman, Ashraf Kalhori, has had her stoning sentence temporarily stayed.

Hajieh Esmailvand was acquitted on 9 December 2006 of the charge of adultery for which she had been sentenced to execution by stoning. She had been released on bail in September 2006 pending a retrial.

Parisa A was arrested in April 2004 after police in Shiraz raided a brothel where she was working and arrested those present, including her husband **Najaf**. He had allegedly forced Parisa into prostitution as the family was poor and he was unemployed. During initial interrogations, Parisa and her husband confessed to adultery, but said that their family's poverty had forced them to do what they had done.

During her trial at Branch 5 of Fars Province Criminal Court, Parisa retracted her confession of adultery. However, both Parisa and Najaf were convicted of adultery and sentenced to death by stoning on 21 June 2004. The sentence was upheld by Branch 32 of the Supreme Court on 15 November 2005.

Parisa's lawyer, Gholam Hossein Ra'isi,⁵¹ a lawyer and human rights activist who is part of the Volunteer Lawyers' Network that has taken up many of the cases of stoning sentences, lodged an objection against the stoning sentences with the Discernment Branch of the Supreme Court. On 8 November 2006, Branch 15 of the Supreme Court reviewed the cases. During the entire court session, Parisa was holding the hand of her three-year-old son. On 27 November, the Supreme Court changed the sentence to flogging for both Parisa and her husband. Parisa was released on 5 December 2006 after receiving 99 lashes.⁵² Najaf was reportedly sentenced to a period of exile to a different city.

Soghra Mola'i was sentenced to 15 years' imprisonment for being an accomplice to the murder in January 2004 of her husband Abdollah, and to execution by stoning for adultery.

During interrogation she said: "My husband usually tormented me. Nevertheless, I did not intend to kill him. On the night of the incident... after Alireza killed my husband, I ran away with him because I was scared to stay at home, thinking that my brothers-in-law would kill me." Alireza was sentenced to death for the murder and to 100 lashes for "illicit relations". In November 2007 it was announced that following a reinvestigation of her case by a court in Esfahan, she had been cleared of adultery and sentenced to 80 lashes for "illicit relations". After receiving the flogging, she was transferred to Varamin Prison near Tehran to serve the remainder of her prison sentence.

No details are known about the case of **Zahra Reza'i**. Ayatollah Shahroudi stopped the execution of **Ashraf Kalhori** (see above) temporarily after receiving a petition with signatures from over 100 Iranian women's rights activists and 4,000 concerned individuals.⁵³ However, she remains at risk. In an open letter, her lawyer Shadi Sadr wrote:

"It is a wonderful feeling to see people coming together to save the life of another human being. I should also say that it is a great pleasure for me, as her lawyer, to share my happiness with all of you who were with us and supported the effort to save her."

Campaigners targeted

The brave women and men in Iran who have campaigned against stoning have faced varying levels of harassment and intimidation, particularly those associated with the Stop Stoning Forever campaign.

For example, Asieh Amini, Shadi Sadr and Mahboubeh Abbasgholizadeh, another leading member of Stop Stoning Forever, were among 33 women arrested while protesting in March 2007 about the trial of five women's rights activists in Tehran.⁵⁴ They are likely to face trial, possibly on charges including "disturbing public order" and "acting against state security". In a radio interview with the Dispatches programme for the Canadian Broadcasting Corporation in October 2007, Asieh Amini referred to her arrest and said that one of her friends arrested at the same time had been interrogated about Asieh Amini's activities in the Stop Stoning Forever Campaign.⁵⁵ In November 2006, the website of Stop Stoning Forever, www.meydaan.com, was blocked by the authorities.

Asieh Amini, whose article about the covert stoning of Abbas H and Mahboubeh M in Mashhad in 2006 (see Chapter 3) prompted the launch of the campaign, has paid with her health for the stress caused by continuing to write about stonings. Her initial investigation inspired her to form a network of lawyers and others to campaign for abolition of the penalty and save the lives of those condemned to die by stoning. After she went in July 2007 to Takestan to report on and photograph the stoning of Jafar Kiani (see Introduction), she wrote, "There were bloody stones on the ground. I touched one and when I came home I could not move for hours". She then began suffering severe headaches and pain in her eyes, and subsequently became seriously ill and almost went blind.⁵⁶ She wrote in a blog:

"Who is to teach us what distance to keep from our cases... When you go along with a mother sitting by her son's scaffold, you don't think about these issues."



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From top: Mahboubeh Abbasgholizadeh, Shadi Sadr and Asieh Amini

6. Recommendations

Human rights defenders in Iran believe that international publicity and pressure, in support of local efforts, can help bring about change in the country. Amnesty International knows that campaigning can save lives and hopes that it will eventually persuade the Iranian authorities to abolish executions by stoning and bring their legal practices into line with their obligations under international law.

Towards that end, Amnesty International makes the following recommendations:

To the Majles (parliament)

- » Abolish immediately executions by stoning by ensuring that Article 83 of the Penal Code is repealed or amended, especially in the new Penal Code.
- » Review all relevant legislation with the aim of decriminalizing consensual adult sexual relations conducted in private.
- » Review all legislation in Iran under which a convicted person may be killed by the state, with the immediate aim of progressively restricting the scope of the death penalty, and with a view to the eventual abolition of the death penalty.
- » Revise Iranian legislation to ensure that anyone facing judicial execution by the state can seek pardon or commutation of their sentence, in line with Iran's obligations under Article 6(4) of the ICCPR.

To the Council of Guardians

- » Ensure that executions by stoning are not permitted under any legislation which comes before the Council for approval, such as the new Penal Code.

To the Head of the Judiciary

- » Ensure that the 2002 moratorium on all executions by stoning is reaffirmed and fully respected throughout the country until legislation is passed that bans such executions.
- » Overturn all stoning sentences that come before the Head of the Judiciary.

To the Supreme Leader

- ▶▶ Commute all death sentences that are sent for pardon and announce a moratorium on the death penalty with a view to abolishing it.

To the international community

- ▶▶ Press the Iranian authorities to abolish immediately the practice of execution by stoning and take other concrete measures to progressively reduce and then abolish the use of the death penalty in Iran.
- ▶▶ Press the Iranian authorities to revise legislation that criminalizes consensual sexual relations conducted in private to ensure that no one may be put to death, flogged or imprisoned on account of such relations.

APPENDIX 1:

'Campaign Against Stoning' by Asieh Amini

This article was originally carried on www.roozonline.com. It can be found on the Stop Stoning Forever website, www.meydaan.org.

One year and three months ago, a man and a woman were stoned to death in Behesht-Reza near Mashad. When we followed up and reported it, the authorities, including the late Karimi-Rad, Justice Department spokesman, denied it. Even our own friends and colleagues repeatedly reminded us that, following a directive issued by the Head of the Judiciary in 1381 (2002), there had not been any stonings in Iran.

While this indifference was going on, another convict in Ahwaz was told to get ready to be stoned to death.

We had gone to Ahwaz to meet with the woman's lawyer and family to see if there was any way we could save her. That's when we heard there was another woman in Jolfa in a similar predicament whose case is truly shocking. It would amaze anyone.

The woman in Jolfa had already been taken to be stoned once before. She was a smart woman who had read books on related laws while in prison, and who had reminded the judge, on the day of her execution, that her execution would have been illegal since she had not yet received a reply to her latest appeal. The judge was swayed to postpone the execution until the appeal was heard. The woman's elderly mother and her pro bono lawyers, publicized her case as they pursued legal remedies. Eventually, the sentence was overturned, she was re-tried and acquitted of adultery.

These events, which can be amply documented – and what document could be better than living witnesses were happening at a time when the authorities were denying them, and ordinary citizens doubted they could happen.

Why this campaign?

It was during these times that Stop Stoning Forever Campaign came to being. Our goals were to find cases, research them, help find attorneys who would vigorously represent the defence, activism and publicity, and, ultimately, freeing the convicts with an eye towards abolishing stoning altogether. Stoning is a cruel and backward punishment. We knew that raising awareness about an issue like stoning in the 21st century is not just about saving one life or changing one law. It will inevitably lead to examining other draconian or discriminatory laws in the court of public opinion. We expected other social, cultural, or even political institutions to rise up against it.

Founders of this campaign had previously been active in other human rights and women's causes. Their focus on stoning was initially seen as a struggle over something "that's not all that important".

The reason this campaign was not initially taken seriously had several reasons. One was that the number of cases involved was small. Two, it seemed as if this was a single injustice against women and not legally very broad. Third, some people felt why challenge a law that is not supposed to be enforced anyway?

Fourth, there were some who felt stoning was not a cause for legal activism but a matter of prevailing social customs that consider sexual indiscretions unforgivable. Needless to say, these “customs” typically leave a thousand loopholes for men to escape the charge of adultery. In other words, the fourth group believed that as long as there are people in society who are willing to throw stones at an adulterer, or even are willing to witness it as a public ritual, then that lends some legitimacy to stoning as a punishment.

There were more than a few objections but we were aware of the issues. For example, we’ve known all along that when you fight against something like stonings, just as the law needs to be changed, so do certain underlying social power bases that go with it. A case in point: why is it that in countries like Pakistan, Afghanistan or Iraq, it is not the law or law enforcement who carries out stonings, but these stonings, like all other honour killings, are the wish and will of the local men? Furthermore, the more tradition and custom enters the equation, the more anti-woman the formula gets. Why is it then, in Pakistan, for instance, the punishment for a man who rapes a woman is to let the victim’s male relatives rape one of the rapist’s female relatives? These are matters of masculine honour which punish any sexual indiscretion by women according to a traditional patriarchal order.

In any case, the Stop Stoning Forever Campaign was formed and carried on for several reasons.

First, the severity of the act embodies “cruel and unusual punishment” prior to a preordained death. Even if someone escapes this fate, you can’t expect them to escape the psychological trauma that follows them for the rest of their lives (not to mention the social stigma). Stoning convicts are typically some of the neediest, most destitute people in society. It’s hard to ignore them and still call yourself a woman’s rights, or human rights, activist.

Second, despite popular belief, even though number of stonings in Iran is small, and even though among them there are men to be found, the path to their end almost always involves gender discrimination against women.

The nightmare that is the life of a stoning defendant is a tunnel of horrors through which a woman has lived, all her life, unable to choose her spouse, unable to get a divorce, precluded from equal inheritance, subjected to her husband’s polygamy, deprived from sexual freedoms, financially dependant, unworthy of her children’s custody, etc. She stands at the end of this tunnel. Are there not people, especially women, who know this tunnel well, and who walk the halls of the legal system, that can help these victims?

This aid, this comfort, does not, in any way, condone what is referred to as “infidelity”. This is support for a human being’s right to choose his or her fate, regardless of gender. This is support for equality under law. It is also a reflection of the need to reform social institutions to benefit women.

Women’s rights activism in our predominantly visual culture needs visual arguments. The image of half-burying someone alive and stoning them to death is a compelling picture.

One cannot read Hajieh’s story and not feel compassion for her. When you read Mokarrameh’s story, you’ll no doubt appreciate the case for allowing young girls to choose their own spouses. This campaign tries to delve into the lives of the men and women who are victims of stonings and reveal the bigger picture to society. We want to follow their stories and study the relationship between their particular lives and the place women have in society.

Today, the result may be the knowledge that a person's life was taken under a barrage of stones. But, these events were happening before away from the scrutiny of public opinion. Once we shine a light on such acts, in a world where international treaties demand respect for human dignity, someone has to answer for such acts. This time, what heretofore was reported as "sharia justice", and was recorded in death certificates as "execution without resistance", can come into public view.

And what about those who ask, "Shall we allow spousal infidelity to pass in silence?" The answer to them is that the purpose of our campaign is not to argue criminal justice aspects of infidelity. The focus here is on punishment – the punishment itself – not its relationship to the crime. Whether we consider infidelity a crime, in conscience or in law, a torturous punishment is illegal and unacceptable. Further legal arguments are beyond the scope of our concerns at the moment.

One of the strangest arguments is that so long as there are people who are willing to throw the stones, and so long as infidelity is unacceptable in our society, nothing will change. Laws do not reflect the wishes of a few hundred people who throw stones at others. Laws must protect the society as well as the safety of individuals. Laws must be in step with civilized norms of our times. Laws must lead societies away from violence and criminality.

If women like Mahboubeh or Mokarrameh had had the right to separate from spouses with whom life under the same roof had become unbearable, had they had some legal refuge in their predicaments, there would not have been infidelity, nor spouse killing. There would not have been any stonings.

Another incredible aspect of these legal proceedings is the inconsistency and inequity of judgments. A woman who was pimped by her husband receives the same sentence as the woman who followed her own heart's desire. A woman who was in another town at the time of her husband's murder, and who never confessed to an inappropriate relationship, is given the same sentence as the woman who was found living with her husband's killer in another town.

Human rights protect every individual. When a woman from the lowest rungs of society enjoys the same legal protections as everyone else, then we can say we are moving towards equal rights.

APPENDIX 2:

Code of Punishment for Adultery in Iran

Adultery is a capital offence in the Islamic Republic of Iran and punishable by flogging, hanging, and stoning. The following is a translation of the articles of the Islamic Penal Code of Iran that pertain to the legal punishments for adultery.

The Islamic Penal Code

Book II – Hodoud (Shari'a-based Punishments)

Section I – Shari'a-based Punishment for Adultery

Chapter 1 – Definition and Reasons for Adultery Punishment

Article 63 – Adultery is defined as the intercourse between a man and a woman whose intercourse is inherently forbidden "haraam", even if it is from behind, other than those cases where the person has had a doubt [i.e., mistaken identity].

Article 64 – Adultery is punished when the adulterer is mature, sane, and acting by free will and is also aware of the offence and its punishment.

Article 65 – If a man or a woman is aware that the intercourse with the other party is forbidden, and the other party is not aware, thinking that the intercourse is legitimate, then only the party who has been aware that the intercourse is forbidden shall be sentenced to the punishment.

Article 66 – If a man or a woman who have had intercourse together claim mistake and unawareness, then in the case that the claimant deems honest, then the claim is accepted without oath and witness and the punishment is annulled.

Article 67 – If an adulterer claims that s/he has committed adultery under duress, her/his claim is accepted if the contrary is not believed to be true.

Chapter 2 – Methods of Proving Adultery in Court

Article 68 – If a man or woman confesses to adultery four times before the judge, s/he will be sentenced to the adultery punishment and if they confess less than four times, then s/he will be punished by *Ta'zir*. [*Ta'zir* refers to the punishments that are not defined by Sharia and it is left to the Sharia judge to specify it by sentence to imprisonment, cash fine, or flogging in which case the number of lashes must be less than *hodoud*.]

Article 69 – The confession is valid when the confessor has the virtues of maturity, sanity, willingness, and liberty.

Article 70 – The confession must be explicit or appear to be not inconsistent with the case.

Article 71 – If a person confesses to adultery and then denies it, if the adultery is to be punished by killing or stoning, then the denial annuls the punishment of killing and stoning. Otherwise, with the denial after the confession the punishment is not annulled.

Hadd: refers to any punishment defined by the Sharia. *Hodoud* is the plural.

Zina or adultery: defined as intercourse between a man and a woman whose intercourse is inherently forbidden "haraam", even if it is from behind, other than those cases where the person has had a doubt [ie mistaken identity]. (Article 63 of the Islamic Penal Code of the Islamic Republic of Iran, ratified in 1991.)

Tafkheez: defined as rubbing the genitals against thighs and buttocks of the other person and it is punished by 100 lashes if there is no penetration. (Article 112, *ibid*.)

Qazf: defined as accusing a person of adultery or anal sex. It is punishable by 80 lashes. (Article 139, *ibid*.)

Qavvadi or pimping: is defined as gathering and connecting two or more people for adultery or homosexual sex. (Article 135, *ibid*.) It is punishable by 75 lashes and three months to one year of living in exile and for a woman the punishment is only 75 lashes. (Article 138, *ibid*.)

Ta'zir: refers to the punishments that are not defined by Sharia and it is left to the Sharia judge to specify it by sentence to imprisonment, cash fine, or flogging in which case the number of lashes must be less than *Hadd*.

Article 72 – If a person confesses to the type of adultery that is punishable and then repents, the judge can either ask the Head of Judiciary for clemency or carry out the punishment.

Article 73 – A woman who does not have a husband, shall not be punished for becoming pregnant unless her adultery is proven by one of the methods mentioned in this law.

Article 74 – Adultery, when punishable by either flogging or stoning, can be proven by the testimony of either four just men, or three just men and two just women.

Article 75 – If adultery is punishable by flogging, then it could also be proven by the testimony of two just men and four just women.

Article 76 – The testimony by women alone or along with the testimony of a just man does not prove adultery but the witnesses will be subject to the punishment for false accusation (Qazf) as specified by the law [Qazf is defined as accusing a person of adultery or anal sex. It is punishable by 80 lashes (Article 139)].

Article 77 – The testimony of the witnesses must be clear and without ambiguity and based on observation and testimony based on conjectures is not credible.

Article 78 – If the witnesses describe the specifics of the subject of testimony, there should be no discrepancy in their descriptions in terms of the time, place, and such. In case of discrepancy among witnesses' testimonies, then not only the adultery is not proven but the witnesses will be sentenced to punishment for false accusation (Qazf).

Article 79 – The witnesses must testify one after another without any lapse of time. If some of the witnesses testify and then some other witnesses are not immediately present to testify or do not testify, then adultery is not proven. In this case, the witness will be subject to punishment for false accusation (Qazf).

Article 80 – The adultery punishment shall be executed immediately except for the cases described in the later articles.

Article 81 – If the adulterer repents prior to the testimony, then the punishment is annulled and if s/he repents after the testimony, then the punishment is not annulled.

Chapter 3 – Types of Adultery Punishment

Article 82 – The punishment for adultery in the following cases is killing and there is no difference between young and not-young and marriage-bound and not marriage-bound.

- a. Adultery with "*mahaarim*" [*Mahaarim* of a person are the relatives by blood or marriage who are within the prohibited degree of marriage such as one's siblings, parents, and in-laws.]
- b. Adultery with step-mother which shall constitute the killing of the adulterer.
- c. Adultery of a non-Muslim with a Muslim woman which will constitute the killing of the adulterer.
- d. Adultery by force and duress that will constitute the killing of the forcing adulterer.

Article 83 – The punishment for adultery in the following cases is stoning.

- a. Adultery of a marriage-bound man that is defined as a man who has a permanent wife and has had intercourse with her while being sane and can have intercourse with her whenever he so wishes.
- b. Adultery of a marriage-bound woman with an adult man, a marriage-bound woman is a woman who has a permanent husband and the husband has had intercourse with the woman when she was

sane and has had the opportunity to have intercourse with the husband, too.

c. Adultery of a marriage-bound woman with a minor constitutes flogging.

Article 84 – An old adulterer or an old adulteress who qualifies as marriage-bound shall be subject to flogging punishment prior to stoning.

Article 85 – Revocable divorce, prior to the end of the possible revoking period, does not disqualify a man or woman from being marriage-bound, but irrevocable divorce disqualifies them from being marriage-bound.

Article 86 – Adultery by a man or a woman when each has a permanent spouse but has no access to the spouse due to travel or imprisonment or similar reasonable excuses, shall not constitute stoning.

Article 87 – A married man who before penetration [into his wife] commits adultery shall be sentenced to flogging, having his head shaven, and one year of exile.

Article 88 – The adultery punishment for a man or woman who does not meet the marriage-bound conditions is one hundred lashes.

Article 89 – Repetition of adultery prior to executing the adultery punishment will not constitute repetition of the punishment if the punishments are the same, but if the punishments are of different types, like some constitute flogging and other constitute stoning, then flogging punishment shall be executed prior to stoning.

Article 90 – If a man or woman commits adultery several times and at each instance is punished, they will be killed upon the fourth instance.

Article 91 – During pregnancy and parturition bleeding the woman shall not be subjected to murder or stoning. Also after the childbirth if the infant has no guardian and there is a concern that the infant might die, the punishment will not be carried out, but if a guardian is found for the infant then the punishment shall be executed.

Article 92 – When a pregnant or breastfeeding woman is to be punished by flogging and there is concern for possible harm to the pregnancy or the breastfeeding infant, then the punishment will be delayed until the time that the punishment causes no such harm.

Article 93 – If a sick person or menstruating woman is sentenced to be murdered or stoned, the punishment shall be carried out but if sentenced to flogging then the punishment will be delayed until the sickness and menstruation is over.

Article 94 – If there is no hope for recovery of a sick person, or the Sharia judge (hakeme shar') deems appropriate that the punishment be executed during the sickness, then a bunch of one hundred lashes or whips will be inflicted once even if not all of them touch the body of the convict.

Article 95 – If the convict sentenced to punishment becomes insane or converts, the punishment shall not be annulled.

Article 96 – The flogging shall not be carried out in too cold or too hot weather.

Article 97 – The punishment cannot be executed in the land of the enemies of Islam.

Chapter 4 – How to Execute the Punishment

Article 98 – When a person is sentenced to multiple punishments, the order of carrying out the sentences must be such that none of them prevents another, therefore if someone is sentenced to flogging and stoning, first flogging and then stoning shall be carried out.

Article 99 – If adultery by a person, who meets the marriage-bound conditions, is proven by his/her confession, then at the time of stoning the first stone will be thrown by the Sharia judge and then by others, and if the adultery is proven by the testimony of witnesses, then first the witnesses will throw stones, then the Sharia judge, and then others.

Note – Absence or lack of action of the judge and witnesses in throwing the first stone shall not prevent carrying out the sentence and in any case the punishment must be executed.

Article 100 – The flogging punishment for an adulterer man shall be carried out as he is standing and wearing no clothing except to cover his genitals. Lashes must forcefully inflict his entire body except for his head, face, and genitals. An adulterer woman shall be flogged in a sitting position with her clothes bound to her body.

Article 101 – It is appropriate that the judge informs the public of the time of the punishment and it is necessary that a group of believers, not less than three people, be present when the punishment is carried out.

Article 102 – An adulterous man shall be buried in a ditch up to near his waist and an adulterous woman up to near her chest and then stoned to death.

Article 103 – In case the person sentenced to stoning escapes the ditch in which they are buried, then if the adultery is proven by testimony then they will be returned for the punishment but if it is proven by their own confession then they will not be returned.

Note – If the person sentenced to flogging escapes they shall be returned in any case.

Article 104 – The size of the stone used in stoning shall not be too large to kill the convict by one or two throws and at the same time shall not be too small to be called a stone.

Article 105 – The Sharia Judge can act upon his own knowledge in the cases of [defending] God's Rights (Haghollah) and People's Rights (Haghonnas) and carry out the punishment constituted by the God and it is necessary that he documents his knowledge. The execution of the punishment in case of God's Rights (Haghollah) is not contingent upon anyone's request but in case of People's Rights (Haghonnas) is contingent on the owner of the right.

Article 106 – Adultery during the holy times such as religious festivities and Ramadan and Friday and at holy places such as mosques will constitute flogging in addition to the regular punishment.

Article 107 – The presence of the witnesses is necessary when stoning punishment is carried out but the punishment shall not be annulled due to their absence but it shall be annulled with their escape.

APPENDIX 3:

Ritual of Stoning Punishment in Iran

The Directive on Implementation Regulations for Sentences of Retribution-in-Kind, Stoning, Murder, Crucifixion, Death Penalty, and Flogging

As described in Article 293 of the Ordinance on Procedures of the Revolutionary and Common Courts in Penal Matters

Chapter One Implementation of Sentences Leading to Taking of Human Life

First Topic Implementation Conditions

Article 1 – The preliminary court issuing the sentence, after the sentence is finalized and a copy of it is submitted to the condemned or their attorney as the case may be, is obliged to send a copy of the finalized sentence in a letter containing the necessary explanations along with the related documents for implementation to the judicial authority for sentence implementation.

Note – The judicial authority for sentence implementation refers to the unit for execution of penal sentences which is under the supervision of the public prosecutor or his deputy and in the areas where a court has not yet been established it is under the supervision of the chief of the judiciary or his assistant.

Article 2 – The retribution of life sentence will be executed after its confirmation by the primary court issuing the sentence and the granting of permission by the Muslim Affair Trustee [the Supreme Leader], and its confirmation by the Head of Judiciary with the permission of the heir(s) to the blood.

Article 3 – If one of the judicial authorities, as permissible by law, requests an appeal of the final sentence, then the execution of the sentence will be delayed until the final decision has been made in the case.

Article 4 – Except for the case of life retribution, if the person sentenced to the death penalty, killing, stoning, crucifixion, or limb amputation pleads for mercy after the final confirmation of the sentence but prior to its execution, then the execution of the punishment will be delayed by order of the court issuing the sentence until the result is announced by the Commission of Amnesty and Clemency. The above mentioned commission is obliged to urgently process the plea and notify the court of the result.

Article 5 – The advent of insanity, apostasy, sickness, or menstruation of the condemned will not prevent the execution of death penalty or life retribution. However, in the case of sickness, if the judicial physician or the reliable physician declares that the sickness is too severe to allow the ritual mandated by this directive to be carried out, and the judge who issued the preliminary sentence or the relevant prosecutor approves, then the execution of the sentence will be delayed until the impediment is removed.

Article 6 – During pregnancy and lochia (bleeding after childbirth), death penalty, adultery punishments (Hadd), and life retribution shall not be carried out. Similarly, after delivery, if execution of the sentence would harm the health of the child due to weaning from mother's breast milk, then by the discretion of the judicial physician or the reliable physician and approval of the judge issuing the sentence or the relevant prosecutor, the execution of the sentence will be delayed until the baby reaches the age of two years.

Second Topic

Ritual of Implementation

Article 7 – After receiving the final sentence and its implementation order from the court, the judicial authority in charge of sentence execution is obliged to notify the following individuals and authorities of the arrangements at least 48 hours prior to the time of sentence implementation and ask them to be present at the implementation place to perform their assigned duties:

- a. The judge who issued the preliminary sentence, if his presence is required by the law.
- b. The prison office chief or his deputy for making provisions for execution of the sentence and keeping order in the prison premises or cooperation with the enforcement officers for delivery of the prisoner in case the sentence is carried out outside the prison premises.
- c. The local law enforcement chief or his deputy.
- d. The judicial physician or the reliable physician (in the case where there is no local judicial physician) to examine the condemned and also provide opinion about their physical condition before the sentence is executed and to examine the corpse after it.
- e. A member of the clergy or discerning person for carrying out the religious rites, and if the condemned is a member of an officially recognized religion, the relevant religious leader's representative or their representative. In any case, absence of these people shall not prevent carrying out the sentence.
- f. The court clerk in order to read the sentence before implementation.
- g. The heirs to the blood of the slain or their attorney.
- h. The attorney of the condemned, absence of the said attorney shall not prevent the sentence implementation.
- i. The witnesses, in the case that their presence is required by the law.

Note 1 – If for some reasons, the presence of audience or special groups at the implementation place is not expedient, at the prosecutor's discretion, the law enforcement officers shall prevent their entry to the implementation place. In places where the prosecutor office (daadsara) has not been established, this is at the discretion of the head of the county (hozeh) judicial chief.

Note 2 – Providing [security for] the implementation place outside of the prison premises is the responsibility of the law enforcement forces.

Article 8 – Prior to the execution of sentence, the judicial physician or the reliable physician accompanied by the judicial authority for sentence implementation shall go to the condemned's prison, examine him/her and state an opinion. If the physical condition [of the condemned] is not an issue to prevent the sentence implementation, the judicial authority for sentence implementation will notify the condemned that they can request to meet certain people. In case such request is made, the requested people will be invited to the prison, given that granting the request does not delay the implementation of sentence.

Article 9 – Once the requested person or people are present, the prison chief or his deputy shall arrange their meeting with the condemned. The condemned has the right to convey anything in the presence or absence of the judicial authority for sentence implementation to the visitors verbally or in

writing. Only the prison chief or his deputy shall be present at the meeting and aware of the communication. An interpreter's service shall be used, if necessary.

Article 10 – The invited clergy or the discerning person shall take the following actions:

- Advise the condemned to repent.
- Advise the condemned to state their will if they have one.
- Advise the condemned about taking his/her own rites of body washing and shroud wrapping [the ritual for the Muslim corpse prior to burial] in the cases of life retribution and stoning.

Note 1 – Supervising the above is the responsibility of the judicial authority for sentence implementation and if necessary, then he, himself, will act to advise the condemned.

Note 2 – Where relevant, the law enforcement or prison officers will allow the condemned to take the washing ritual [of the dead] with lotus [Sidr] water, camphor water, and pure water and then, as it is prescribed by the rituals for the dead and according to the Sharia regulations, cover her/his body with three pieces of white shroud [in accordance with the Islamic ritual of wrapping a dead body, ie *takfeen* and *hanoot*]. In this case, after executing the sentence and death of the condemned punished by stoning or life retribution will be needless of washing ritual and new shroud (kafan) and Muslim prayer for the dead will be done for him/her and they will be buried in the Muslim's cemetery in the same condition, unless the condemned has not taken the washing ritual [of the dead] prior to execution of the sentence in which case the washing and other rituals of the dead will be performed for them.

Note 3 – If the condemned makes a will, upon the execution of sentence the aforementioned authorities shall send his/her writings and will, after the inspection and clearance by the judicial authority for sentence implementation, without delay to the specified address.

Note 4 – The expenses of executing the sentence in this article and its note shall be paid by the judiciary.

Article 11 – In case the condemned is non-Muslim, the required religious rites will be performed according to his/her religion prior to the execution of sentence. Absence of the relevant religious leader or his deputy will not prevent the sentence implementation.

Article 12 – If the condemned asks for food or drink, the officers are obliged to provide it except for when the request is made only to delay the execution of sentence. The discretion is with the judicial authority for sentence implementation.

Article 13 – In cases where the condemned is in prison and the sentence is carried out outside the prison, a minute shall be prepared and signed by judicial authority for sentence implementation, the prison chief or his deputy, the physician present, the court clerk and the local law enforcement chief or his deputy. The prison chief shall certify the identity of the prisoner and its correspondence with the details specified in the court sentence and sign it.

Third Topic

The Implementation Methods

Article 14 – The life retribution, killing, and execution may be carried out by hanging on gallows, firing squad, or electrocution or another method determined by the judge issuing the verdict.

Note – If there is no specification in the issued sentence about the method of execution, life retribution, or killing, then the condemned will be hanged.

Article 15 – The time of executing the sentence shall be the beginning of sunrise, unless the court has specified a certain time. The execution of the sentence, as the case may be, shall be done by the prison or law enforcement officers. But in the case of life retribution, the heir to the blood [of the slain] can personally perform retribution on the condemned or appoint a proxy [for this purpose].

Article 16 – Officers carrying out the sentence are obliged to carefully examine and inspect the implementation instruments, apparatus, and equipment and make sure that they are robust and ready for use to carry out the sentence. The aforementioned items shall not be such that they may inflict torture, torment or mutilation of the condemned in excess to what is required by the sentence. Moreover, the entire implementation process shall be performed by the expert individuals with ultimate calmness and without exercising violence.

Article 17 – The judicial authority for sentence implementation is charged with supervision of correct implementation and observation of the necessary rituals and non-delay and non-suspension. After observation of the mentioned rituals and conditions, the condemned shall be transferred under guard to the place of sentence implementation and then with the permission of the judicial authority for sentence execution, the court clerk shall read the sentence aloud and then with the order of the above mentioned authority, the content of the sentence shall be immediately carried out.

Note – If the person condemned to killing or stoning denies the charges before the sentence is carried out, and the case is subject to article 71 of the Islamic Penal Code [of the Islamic Republic of Iran, ratified in 1991], the sentence execution judicial authority shall order the execution of the sentence to cease and the judicial authority who issued the sentence will be notified.

Article 18 – After the sentence is carried out, if the judicial physician or the reliable physician certifies the death of the condemned, the corpse will be taken out of the place of execution and submitted to the coroner. If the condemned's relatives ask for the corpse, by discretion and order of the judicial authority for sentence implementation it will be submitted to them. Otherwise, [the condemned's corpse] shall be buried according to the legal and religious rites. In the latter case, all the expenses will be paid from the national treasury.

Article 19 – A minute will be taken of the sentence execution and signed by the judicial authority for sentence execution, the prison office chief or his deputy, the local law enforcement chief or his deputy if the sentenced is carried out outside the prison, the judicial physician or the reliable physician, the court clerk, the heirs to the blood or their attorney and the condemned's attorney (if present) and filed in the relevant dossier.

Article 20 – If deemed appropriate by the judicial authority for sentence implementation, the sentence implementation procedure will be filmed or photographed, as the case may be, by the prison authorities or law enforcement officers, and the films or photographs will be archived in the condemned's file, and news of the sentence execution and the type of crime and a summary of the court sentence shall be published in the newspapers. In exceptional cases where on the decision of the Head of Judiciary or the authorized officials acting on his behalf, photographs of the condemned during the sentence execution shall be published in the media for public information.

Fourth Topic

The Ritual Particular to Performing Stoning Punishment

Article 21 – On the discretion of the judge ordering the sentence, the implementation authority will in advance notify the public of the time of sentence execution and at any rate it is necessary that at least

three believers are present at the time of carrying out the punishment.

Article 22 – The law enforcement or prison officers are obliged to, as the case may be, first dig the place of carrying out the punishment as specified in the Article 102 of the Islamic Penal Code [of Iran] and provide some stones at the place, of the size specified in Article 104 of the same code. The judge in charge of carrying out the punishment shall initially inspect the above mentioned preparations and then, after approving it, issue the order for carrying out the sentence.

Article 23 – If the stoning sentence is based on the condemned's confession then at the time of execution, the sentencing judge will throw the first stone and then the other people. But if the condemnation is based on the testimonies of witnesses, then first the witnesses will throw stones, then the mentioned judge and then other people.

Note 1 – The sentencing judge refers to the judge who issued the preliminary sentence, unless the Discretion Branch of the High State Court has revoked the preliminary sentence and issued the stoning sentence in which case the Chair of the above mentioned branch or one of the members of the branch assigned by the Chair will throw the first stone.

Note 2 – Absence or inaction of the sentencing judge and witnesses to throw the first stone will not prevent the execution of the punishment and in any case the punishment will be carried out by the order of the sentence execution judge, unless the adultery has been proven by the testimony of witnesses and the witnesses escape during the execution of the sentence, or if the adultery is proven by confession and the condemned escapes from the pit in which they are put in, in which both cases the punishment is annulled and the sentence execution judge will order the implementation to be stopped. The case is the same if it is subject to article 71 of the Islamic Penal Code [of the Islamic Republic of Iran] ratified in 1370 [1991] and it shall proceed according to the note of article 17 of this directive.

Chapter Three

Implementation of Flogging Punishment

Article 27 – Flogging is implemented using a thread leather strap of the approximate length of one meter and the approximate width of 0.2cm.

Article 28 – The hands and feet of the condemned shall be bound to the place of the sentence execution as far as possible in order to prevent needless movements of the condemned that may cause infliction of lashes to the prohibited areas.

Note – The prohibited areas refer to head, face and genitals.

Article 29 – When flogging punishment is performed in a closed area, the temperature must be mild and if performed in an open area, the temperature shall not be too cold or too hot. The flogging should be performed during the warmer hours of the day in cold regions and in cooler hours of the day in warm regions.

Article 30 – Implementation of flogging punishment in terms of vigorousness and weakness of lashes is as the following:

Flogging punishment for adultery (zina) and sexual contact without penetration (tafkheez) is more vigorous than that for alcohol consumption (shorbe khamr) and punishment for alcohol consumption is more vigorous than that of false accusation (qazf) and pimping (qavvadi).

Article 31 – Execution of flogging punishment shall be with respect to Article 300 of the Directive of General and Revolutionary Court Hearing Procedures in Penal Matters according to the regulations set by the Islamic Penal Code [of Iran].

Article 32 – Flogging of condemned females shall be performed as they are seated and have their clothes bound to their bodies.

Article 33 – Flogging of condemned males shall be carried out as they are standing, and in the cases of adultery, sexual contact without penetration (*tafkheez*) and alcohol consumption, have no clothing but to cover the genitals, and in the cases of pimping (*Qavvadi*) and false testimony (*qazf*), flogging is performed over regular clothing.

Article 34 – Flogging by *Ta'zir* [rather than *Hadd*] shall be performed according to article 288 of the Directive of General and Revolutionary Court Hearing Procedures in Penal Matters as follows:

a. Flogging is implemented as the condemned is lied flat on stomach and wears regular clothing and lashes are inflicted on the back of the body except for the head, face and genitals.

b. The flogging is implemented consistently and with medium severity.

Article 35 – This Directive has been approved by the Head of Judiciary in 35 articles and 7 notes in implementation of article 293 of the Directive of General and Revolutionary Court Hearing Procedures in Penal Matters ratified by the Legal and Judiciary Affairs Commission of the Islamic Parliament on September 19, 1997.

Head of Judiciary – Seyed Mamoud Shahroudi

Source of the Original Code in Farsi (Persian): <http://www.hoqouq.com/law/article87.html>

ENDNOTES

- 1** See Chapter 4 for more details of the case.
- 2** For more details, see *Iran: Amnesty International outraged at reported stoning to death and fears for victim's co-accused* (AI Index: MDE 13/083/2007), 7 July 2007.
- 3** The stoning was confirmed by Judiciary Spokesperson Alireza Jamshidi on 10 July 2007.
- 4** See Chapter 3.
- 5** On 11 July the Islamic Students News Agency reported that a judiciary official had said that the actions of the judge in the case were to be investigated by the Judges' Disciplinary Court.
- 6** On 29 July, *E'temad Melli* reported that her case had been sent to the Board of Monitoring and Follow Up, in the judiciary in Tehran.
- 7** Safeguard 1 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by UN Economic and Social Council Resolution 1984/50, states: "In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences."
- 8** General Comment No.6 on Article 6, para.7.
- 9** See, for instance, Concluding Observations of the Human Rights Committee: Yemen (CCPR/CO/84/YEM), 9 August 2005, para.15; and Resolution 2005/59 of the UN Commission on Human Rights, para.7(i).
- 10** The other three are: *qesas* (retribution), *diyeh* (compensation) and deterrent punishments, such as fines – see Articles 12-20 of the Penal Code.
- 11** This can include forensic or DNA evidence.
- 12** Grand Ayatollah Montazeri was Ayatollah Khomeini's designated successor until removed from this position in 1989, following his criticism of various policies, including the mass executions of 1988. Now in his eighties, he was under house arrest between 1997 and 2003.
- 13** www.rferl.org/featuresarticle/2007/07/a8dcbe4b-0e23-4822-8d65-e4b6ec23bd9a.html.
- 14** Shi'a Muslims believe that after the death of the Prophet Mohammad, he was succeeded by 12 Imams, beginning with his son-in-law Ali, and then by his descendants through the Prophet's daughter Fatima. The 12th Imam is believed not to have died but to have gone into hiding (or occultation), and will one day return to the world to regain his rightful position.
- 15** www.meydaan.org/stoning/showarticle.aspx?arid=373&cid=46.
- 16** <http://www.isna.ir/Main/NewsView.aspx?ID=News-1033254&Lang=P>.
- 17** Once legislation has been approved by the Majles, it passes to the Council of Guardians which checks for its conformity to Islamic law before approving it. In the event of a dispute between the Majles and the Council of Guardians, it passes to the Expediency Council, which can introduce legislation that is "in the interests of the system".
- 18** Human Rights Committee, General Comment No.6 on the right to life, para.7. See also Safeguard 5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty.
- 19** In April 2007, a new directive issued by the Head of the Judiciary granted four state bodies the right to run detention centres to hold those accused of crimes against national security: the Intelligence Ministry, the Intelligence Headquarters of the Islamic Revolutionary Guards Corps, the Law Enforcement agencies and the Counter-Intelligence Organization of the Armed Forces. Under the directive, the heads of these "security" detention centres are required to submit a monthly list of detainees' names to the Head of the Organization for Prisons and Security and Corrective Measures.
- 20** Report of the UN Working Group on Arbitrary Detention, 27 June 2003, E/CN.4/2004/3/Add.2.
- 21** For example, Article 14 of the ICCPR, Principle 18(3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 1 of the UN Basic Principles on the Role of Lawyers, and Safeguard 5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty.
- 22** The Commission on Human Rights has reminded governments that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture". The UN Special Rapporteur on torture recommended that incommunicado detention be declared illegal.
- 23** The judge's "knowledge" can include forensic or DNA evidence – for example, from paternity tests.
- 24** See Principles 2 and 6 of the UN Basic Principles on the Independence of the Judiciary, and Human Rights Committee, General Comment No.13, para.7.
- 25** See Amnesty International's Urgent Actions (AI Index: MDE 13/053/2004 and follow-ups).

- 26** Verdict No.128 dated 25 April 2000.
- 27** Article 19 of the Law on Appeals, 1993.
- 28** Article 232 of the Code of Criminal Procedures, 1999.
- 29** *Sho'be-ye tashkhis*.
- 30** Except where specified under the Penal Code, where certain kinds of offenders who have confessed and repented may be pardoned by the Supreme Leader on the recommendation of the judge in the case.
- 31** Articles 81, 126 and 133 of the Islamic Penal Code.
- 32** This refers to the right to seek pardon from the state. The state has the duty to guarantee the right to seek pardon, although it can take into account the wishes of the victim or the victim's family.
- 33** *Komisyon-e 'Afv va Bakhshoudegi*.
- 34** Report of the UN Working Group on Arbitrary Detention, 27 June 2003, E/CN.4/2004/3/Add.2.
- 35** In 2005, according to a report published by IRNA, the literacy rate of women between 15 and 49 was 75.2 per cent (men's literacy runs at over 80 per cent). However, this hides considerable provincial variation: in Sistan-Baluchistan province, which has the worst literacy rates, only 55.2 per cent of women were literate.
- 36** In 2002, the legal age of marriage for girls was raised from 9 to 13, but girls younger than this may still be married if their fathers apply to a court. The age of marriage for boys is 15.
- 37** Although there are some women police officers, women are limited in the roles they can fill in the judicial system.
- 38** *Iran briefing* (AI Index: MDE 13/008/1987).
- 39** AI Index: MDE 13/024/2001.
- 40** AI Index: MDE 13/006/2002.
- 41** She reportedly still faced 100 lashes for adultery and 15 years' imprisonment for being an accomplice in the murder of her husband.
- 42** AI Index: MDE 13/053/2004.
- 43** The Revolutionary Guards are Iran's armed forces and they run the paramilitary Bassij Forces.
- 44** www.meydaan.org/stoning/showarticle.aspx?arid=29&cid=46.
- 45** Report No. h/5657, 22 January 2007, by the Department of Judicial Procedure Unification and Publication of Deliberations and Rulings of the Supreme Court, as quoted by *Mavi*, 11 March 2007.
- 46** Amnesty International, Urgent Action, *Iran: Further information on imminent execution: Ashraf Kolhari* (AI Index: MDE 13/095/2006).
- 47** ISNA, 15 October 2007, <http://isna.ir/Main/NewsView.aspx?ID=News-1014781>.
- 48** <http://meydaan.com/Stoning/summary.aspx#11>.
- 49** *Qods* newspaper, 27 September 2007.
- 50** www.meydaan.com.
- 51** For an interview with Gholam Hossein Ra'isi about his work against stoning and on behalf of Parisa A and her husband Najaf, see www.meydaan.org/stoning/showarticle.aspx?arid=90&cid=46.
- 52** For more details, see Amnesty International's Urgent Action (AI Index: MDE 13/141/2006).
- 53** www.msmagazine.com/news/uswirestory.asp?ID=9829.
- 54** Thirty-one of the detainees were released without charge by 9 March. Mahboubeh Abbasgholizadeh and Shadi Sadr were released on bail of 200 million toumans (over US\$215,000) on 19 March. For more details, see Amnesty International's Urgent Actions (AI Index: MDE 13/028/2007 and MDE 13/031/2007).
- 55** See <http://www.cbc.ca/dispatches/thisseason/october.html> to download the podcast containing the interview.
- 56** www.iranian.com/main/2007/asieh-s-eyes.