



**The Execution of Women in Iranian Criminal Law: an Examination of the
Impact of Gender on Laws Concerning Capital Punishment in the New Islamic
Penal Code**

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An Examination of the Impact of Gender on Laws Concerning Capital Punishment in the New Islamic Penal Code

In recent years, most campaigns against death sentences in Iran have pertained to death sentences against women. Though public opinion in Iran generally supports capital punishment, we have witnessed frequent efforts in the past decade by human rights activists, journalists, artists, and defense lawyers to save women sentenced to death. Notwithstanding the fact that the number of women executed in recent years has been fewer than men, death sentences against men have attracted less attention from the public and civil activists than those against women with similar convictions. This special attention is perhaps rooted in the circumstances of the women sentenced to death. Such circumstances include, on one hand, the social status of these women, and on the other, gender bias and discrimination embedded within the penal code and civil laws pertaining to capital punishment. As such, an analysis of the penal laws with particular attention and sensitivity to gender issues could be a step towards a better understanding of this phenomenon.

Currently, the Islamic Penal Code (1991) is the basis for issuance of verdicts in criminal cases in Iran. However, with ratification of the revised Code, i.e., the Islamic Penal Legislation by the Islamic Consultative Assembly and subsequent approval of the said legislation by the Council of Guardians on 28 Dey 1390 (18 January 2012), and given that the Islamic Penal Code (1991) is only valid until the end of 1390 (March 2012), the newly approved legislation will soon, following due administrative processes, replace the current 'Islamic Penal Code.'

While this commentary looks at the history of capital punishment and the enforcement of such verdicts in the Iranian judicial system, it will also review and examine various aspects of the execution of women under the new 'Islamic Penal Legislation' and compares it to the [outgoing] 'Islamic Penal Code.'

The History of Capital Punishment in the Iranian Penal System

A cursory review of the history of penal laws in Iran reveals that although after the victory of the Arabs over the Sassanid Empire, execution orders were issued based on Islamic laws and in Shari'a courts, it was customary during certain dynastic periods, including the Mongols and towards the end of the Qajar era, that civil judges would issue such orders based on the instructions of the rulers and/or custom.¹

During the Qajar era, crimes such as murder and sexual assault—which both carried the death penalty—were reviewed by civil courts. However, during the ministry of Amir Kabir during the

¹ Bertold Eshpöler, *History of Moguls in Iran*, translated by Mahmud MirafTAB, *Entesharat-e Elmi va Farhangi* [Scientific and Literary Publications], 3rd Ed., Tehran, 1386 [1989], p. 377

reign of Nasser-ed-din Shah Qajar and the reforms implemented thereon in both Shari'a and civil courts, the rate of executions declined.²

The first judicial restructuring in Iran after the victory of the Constitutionalists was based on the law of 'Principles of Judicial Systems,' ratified 21 Rajab 1329 (Lunar calendar), 26 Tir 1290 (Solar calendar) [18 July 1911]. Based on this system, the task of adjudicating crimes, which according to Islamic laws carried punishments of execution or *Qisas* [retribution], was given to a 'Special Criminal Court'—a Shari'a court. The verdicts issued by this court at the time were final and binding, and non-appealable.³ During this period, rulings were issued under both Shari'a and civil codes, with the Shari'a judges maintaining supremacy.

During the reign of Reza Shah Pahlavi, fundamental changes in the Iranian judicial system ensued, including the separation of religion and state, inevitably affecting judicial matters, and leading to changes in certain laws. Notwithstanding the changes, based on Islamic laws, crimes such as murder, adultery, and sodomy still carried the death penalty. However, as a result of further amendments aimed at the secularization of the judicial system, some of these laws were changed.

Ali Akbar Khan-i Davar (1885-1936), Minister of Judicial Affairs [in the government of] Reza Khan announced the establishment of the new Ministry of Justice on 23 Ordibehesht 1306 [14 May 1927], the Shari'a courts outside the aegis of the Ministry of Justice were completely shut down, and those under the auspices of the Ministry would solely review claims concerning marriage and divorce. Davar further announced that henceforth judges could not use their religious ideologies as the basis for their rulings, and that verdicts must be based on codified laws sanctioned by the Ministry of Justice.⁴

For instance, based on Article 207 of the General Penal Code [1926]: "In the cases of sodomy, adultery with married women, incest, and sexual assault, should the crime be proven through Shari'a criteria" the penalty is execution.

This law, however, was amended in Ordibehesht 1307 [1928]. Based on the amended law, adultery with married women, for instance, carried six months' to three years' imprisonment, and was only legally prosecutable pending private a complaint [with standing], i.e., complaint by a husband or a wife.

In 1931, pursuant to Article 22 of the [Islamic] Shari'a courts, all laws and regulations pertaining to judgments based on Shari'a law—[in effect] from 1329 (Lunar calendar) [1911] until 14

² The British Ambassador to Iran at the time wrote to Palmerston, that: "In all fairness, during the reign of Muhammad Shah and two governments of Amir Nezam Amir Kabir, death penalty rarely occurred; only murderers suffered such fate." Letter by Mrs. Scheel to Palmerston, dated 15 January 1850—Fereydoun Adamiyat, *Amirkabir and Iran*, 7th Ed., *Entesharat-e Kharazmi* [Kharazmi Publications], Tehran, 1362 [1983], p. 316. Also, Mohammad Zarang, *Tahavol-e Nezam-e Qaza'i Iran, az Mashroote ta Soghoote Reza Shah* [Evolution of the Iranian Judicial System—from Constitution to the fall of Reza Shah], Islamic Revolutionary Documentation Centre, Tehran, Autumn 1381 [2002], 1st Ed., Vol. I, p. 113

³ Zarang, Mohammad, *Tahavol-e Nezam-e Qaza'i Iran, az Mashroote ta Soghoote Reza Shah*, Islamic Revolutionary Documentation Centre, Tehran, Autumn 1381 [2002], 1st Ed., p. 170

⁴ Agheli, Bagher, *Davar va Adliyeh* [Davar and the Judiciary], *Entesharat-e Elmi* [Scientific Publication]

Khordad 1308 [4 June 1929] (Solar calendar)—were abrogated and replaced by the Shari'a Courts' Precedents and Codes (19 Azar 1310) [11 December 1931].⁵

Despite efforts during this period to secularize the penal code, executions remained a dominant form of punishment under the law.⁶ Such verdicts were issued, predominantly in security offences⁷, murders⁸, and in some cases (at the discretion of the courts and based on circumstances) for armed robbery and conspiracy.⁹ Many other crime categories that previously carried the death penalty in Shari'a courts, however, underwent amendments, and children under 18 also became fully exempt from capital punishment.¹⁰

Amendments to the General Penal Code (23 Dey 1304) [13 January 1926] and further modifications thereof—up until 1973—removed the death penalty for sexual offences. Under the provisions of the amended Code, punishments for offences such as 'sexual assault on women through forcible means and threat' and 'sodomy' carried sentences of three to 10 years of imprisonment¹¹; and married men or women who had sexual relations outside marriage would be sentenced to six months to 3 years of correctional imprisonment.¹²

The Establishment of the Islamic Republic and Issuance of Execution Verdicts According to Shari'a

Subsequent to the victory of the Islamic Revolution in 1979, Islamic precepts became the basis of judgments in criminal cases. Even though the first Islamic Penal Code, known as the 'Law of *Hudud* and *Qisas*' [limits and retribution], was ratified 3 Sharivar 1361 [25 August 1982], the courts issued verdicts based on Islamic *fatwas* [religious decrees] and Islamic principles even prior to adoption of the Islamic laws, particularly in cases leaning towards the death penalty. During this period, the courts were divided and in disagreement over the question of which laws governed. On one hand, laws prior to the revolution, such as the General Penal Code (1926) and its amendments (1973) were referenced, and on the other, and in light of Article 167 of the Constitution (1979)¹³, the courts were given discretion to base their rulings on Shari'a principles and Islamic precepts.¹⁴

According to Afroz Maghzi, Attorney-at-Law, prior to adoption of the Islamic Penal Code, the courts neglected to limit themselves to the General Penal Code particularly when ruling on political cases; on the contrary, under such general labels as *Muharibih* [waging war], and/or *ifsad-i Fil Arz* [Sowing Corruption on Earth] adopted from religious sources, the courts proceeded

⁵ Zarang, Mohammad, *Tahavol-e Nezam-e Qaza'i Iran, as Mashroote ta Soghoote Reza Shah*, Islamic Revolutionary Documentation Centre, Tehran, 1381 [2002], 1st Ed., Vol. I, p. 358

⁶ Article 7 of the [Iranian] General Penal Code (1926)

⁷ Articles 60, 66, 70, 73, 75, & 82 of the General Penal Code (1926)

⁸ Article 170 of the General Penal Code (1926)

⁹ Article 224 of the General Penal Code (1926)

¹⁰ Article 33 of the General Penal Code (1926)

¹¹ Article 207 of the General Penal Code (1926)

¹² Article 212 of the General Penal Code (1926)

¹³ Article 167 of the Constitution prescribes: "The judge is bound to endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic *fatawa*. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgment."

¹⁴ Author's interview with Afroz Maghzi, Attorney at Law

to issue execution orders or long-term prison sentences. Such verdicts, contrary to legal principles that require rulings to be substantiated by codified laws, were not referenced to any articles of law.¹⁵

The introduction of the ‘Provision of *Qisas*’ raised the disapproval of jurists, ministry judges, and supporters of the National Front of Iran. However the objections and the call for a demonstration by the National Front on 25 Khordad 1361 [15 June 1982] proved futile. Ayatollah Khomeini, the leader of the Islamic Republic of Iran, declared those opposing this law ‘apostates,’ and noted that that they have opposed the ‘text’ of the Quran. Furthermore, Ayatollah Golpayegani, a *marja taqlid* or ‘point of imitation,’ issued a *fatwa*, indicating: “Should any Muslim deny the law of *Qisas*, he is considered an apostate, for he has denied the text of the Quran and its precepts.”¹⁶

Ultimately, the law of ‘*Hudud va Qisas*’ and provisions thereof were adopted on 3 Shahrivar 1361 [25 August 1982]. This compilation, along with the ratification of a trial period for the law of *Ta`zirat* [discretionary], was completed in 1983 in a period of five years, and came into effect in 1991. This code, approved under the title of the ‘Islamic Penal Code’ (1991), was initially adopted for a five-year trial period, and was subsequently renewed for 5- and 10-year periods. Under this code, parameters of crimes carrying the death penalty expanded beyond what was prescribed in the previous code, the General Penal Code (1926), thus resulting in gender discrimination whereby, consequently, there was an increase in the number of death sentences delivered against women.

The last renewal of the trial period for the ‘Islamic Penal Code’ was in 2010, and the enforcement period of this code is currently in effect until the end of 1390 [March 2012].

Adoption of the New Islamic Penal Code: Reassessment of Penal Laws with No Fundamental Adjustments

The legislation for a new Islamic Penal Code was put on the agenda in 2007 in an effort to end the ‘trial period’ and to finalize the enforcement of the Islamic Penal Code. The news of the final ratification and adoption of the [new] Code was announced by the Council of Guardians on 8 Bahman 1390 [28 January 2012].

This legislation that was submitted to the government by the judiciary was approved on 20 Aban 1386 [11 November 2007] by the Ministers’ Council, and its general terms were subsequently adopted on 18 Tir 1387 [8 July 2008] by the Legal Commission of the 7th Islamic Consultative Assembly.¹⁷

¹⁵ Ibid

¹⁶ Nayyeri, Mohammad Hossein, Law of *Qisas*, Radio Zamaneh, 6 Khordad 1390 [27 May 2011]. Link dated December 2011: <http://www.radiozamaneh.com/node/6480>

¹⁷ Ratification of general terms of the legislation of the Islamic Penal Code by the Assembly’s Legal Commission, Mehr News, 18 Tir 1387 [8 July 2008]. Link dated December 2011: <http://www.mehrnews.ir/NewsPrint.aspx?NewsID=712711>

This legislation, which at the time contained 428 articles, was addressed in general platform of the Assembly and its general terms were ratified¹⁸ by the Assembly members.¹⁹ Finally, the Code was ratified at the General Assembly on 25 Azar 1388 [16 December 2009] with 737 articles and 204 notes, and the members gave affirmative votes to a five-year trial period for the Code. The legislation was subsequently submitted to the Council of Guardians on 9 Dey 1388 [30 December 2009], which highlighted 178 Shari'a and legal errors in the new Code on 11 Dey 1389 [1 January 2011].²⁰

On 2 Mordad 1390 [24 July 2011], subsequent to the correction of errors, the Assembly's Legal and Judicial Commission submitted the legislation to the Council of Guardians for the second time. This time, the Council of Guardians returned the legislation to the Assembly noting 12 Shari'a and legal errors²¹, which were corrected, and thus the legislation was approved by the Council of Guardians to replace the existing Islamic Penal Code.

Gender Discrimination in the New Islamic Penal Code

Similar to the Islamic Penal Code currently referenced for judicial rulings in criminal cases, the New Islamic Penal Code is ostensibly unbiased, i.e., does not carry any special considerations based on the offenders' gender, and even in particular crimes such as homosexuality²², which carries the death penalty for men, considers a lesser punishment for women. However, gender discrimination against women becomes more apparent within the layers of the Code; more specifically, the instances where women are subject to the death penalty remain unchanged in this Code.

Ages of Criminal Responsibility, the Most Prevalent Form of Gender Discrimination in the Code

The most prevalent form of gender discrimination in the Islamic Penal Code is the 'age of criminal responsibility.' This issue, regardless of repeated objections, remains unchanged [in the new Code].

The current Islamic Penal Code rests judicial responsibility on the age of maturity as determined by Shari'a.²³ As such, once the person reaches the age of maturity, according to Shari'a²⁴, he or she, young or old, will be regarded equally when sentenced. Meanwhile there is no reference to the 'age of criminal responsibility' in any articles of the law in the Islamic Republic Judiciary

¹⁸ The general terms of this legislation was passed in the Assembly on 19 Shahrivar 1387 [9 September 2008], with 196 Yes, 7 No, and 2 Divided, from a total of 220 members present.

¹⁹ The General Terms of the Islamic Penal Legislation Ratified by the Assembly, Fars News, 19 Shahrivar 1387 [9 September 2008]. Link dated December 2011: <http://www.farsnews.com/newstext.php?nn=8706190583>

²⁰ JameJam on line, Saturday 11 Dey 1389 [1 January 2011]. Link dated December 2011: <http://www.jamejamonline.ir/newstext.aspx?newsnum=100832019194>

²¹ The Latest Statement of the Guardian Council re Islamic Penal Legislation, Iranian Students News Agency (ISNA), 10 Dey 1390 [31 December 2011]. Link dated December 2011: <http://isna.ir/ISNA/NewsView.aspx?ID=News-1921699&Lan=P>

²² Article 239 of the Islamic Penal Legislation prescribes 100 lashes for lesbianism (subject to *Hadd*), while Article 233 of the legislation concerning sodomy (subject to *Hadd*) carries the death penalty for both active and passive perpetrators, regardless of circumstances.

²³ Article 49 of the Islamic Penal Code: Children committing crimes are not judicially responsible. Note 1: Definition of 'Child' is one who has not reached the age of maturity according to Sharia.

²⁴ Interview with Mohammad Mostafaei, Attorney at Law, Execution of Children in Iran, Radio Zamaneh, 20 Esfand 1389 [11 March 2011]. Link dated December 2011: <http://www.radiozamaneh.com/society/humanrights/2011/03/11/2445>

Laws, and the ministry's judges are thus left to their own interpretation of religious criteria, and also to the provisions of Article 1210 of the Civil Code²⁵, which determine the age of maturity for girls as 9 Lunar years, and boys as 15 Lunar years.

The new Islamic Penal Code also considers judicial responsibility based on the 'age of maturity.'²⁶ The difference, however, is that [this Code] has clearly defined that the age of maturity for girls and boys are "9 and 15 full Lunar years respectively."²⁷

While the lawmakers have referenced the Islamic Shari'a, no unified interpretation of this provision can be found among the clerics. According to some 'points of imitation,' namely Ayatollah Sanei, 13 is the age of maturity. Yet, others, including Ayatollah Mohammad Hadi Maarefat, are of the opinion that "Just as the 'age' of maturity is different for the sexes [i.e., 9 and 15], so it should be for other affairs such as worship, business and trade, the [law of] *Huddud*, and so on."²⁸

Moreover, academic research by religious scholars on this subject indicates: "There is no specification of 'age' in any of the [Quranic] verses; rather there is repeated guidance to look for inherent and natural evidence [in a person] to determine the age of maturity."²⁹ According to Ayatollah Maybodi: "Maturity is an organic and natural phenomenon, and legislator cannot force or impose it, and declare a nine-year-old girl to be mature regardless."³⁰

Contrary to such specificity on age of maturity, i.e., 9 and 15, Article 78 of the new law concerning children and youth who commit offences under the law of *Ta'zir*, exempts the offender from execution if s/he was 9-15 at the time of the offence.

Mohammad Mostafaie, who defended many children and youth sentenced to death, criticized the existing 'ambiguity' in this section of the Code. He said: "Lawmakers should not approve and adopt laws where there is ambiguity, i.e., to specify on the one hand the age of 18 for criminal responsibility, while, on the other, claim age of maturity for girls to be nine full Lunar years, and for boys 15 full Lunar years."

Mostafaie interprets these changes as an indication that even the judicial authorities in Iran are concerned about execution of children below 18 years of age, as such they specify the age of maturity for criminal responsibility to be 18. However, to consider the Shari'a criteria, so as to

²⁵ Article 1210 of Iran's Civil Code, specifically note 1 of the said article, defines the age of maturity for boys as 15 full Lunar years, and girls as 9 full Lunar years. Given that there were doubts as to whether or not this reference could also be used for judicial responsibility, the Judicial High Council was consulted. The said Council subsequently confirmed the interpretation of the ages noted to pertain also to judicial responsibility, although later there were different views and opinions on this subject, such as the order to stay execution sentences for persons under 18 by Ayatollah Shahroudi, and the legislation to establish Junior Courts suggested by the Judiciary in 2005. Nonetheless, the interpretation of the Judicial High Council was referenced for many of years. To this day, the said interpretation is cited by many, and many consider it valid. Baghi, Emaddidin, *Dalaili Feghhi va Hoghoogi Man'i Eedam-i Zir-i 18 Sal* [Legal and Sharia Reasons Against Execution of Persons Under 18], Defending Prisoners' Rights Society (DPRS) website <http://www.dprs.ir/ShowNews.php?4496>

²⁶ Article 145 of the Islamic Penal Legislation: "Minors are not judicially responsible."

²⁷ Article 146 of the said Code

²⁸ Mehrizi, Mehdi, *Shakhsiyat va Huquqi Zan dar Islam* [Integrity and Rights of Women in Islam], Entesharat-i Elmi va Farhangi [Scientific and Literary Publications], Tehran 1386, p.400

²⁹ Hosseinkhah, Maryam, *Dokhtar-i Noh Sali Koodak Ast, Mojazatash Nakoneed* [Nine-year-old girl is a child, do not punish her], Change for Equality website, 10 Mehr 1385 [2 October 2006]. Link dated December 2011: <http://we-change.org/spip.php?article75>

³⁰ Maybodi, Fazel, *Boloq az Did-i Feghhi va Karshenasi* [Question of Maturity from a religious and academic view], Farzaneh Journal, No. 5-2, pp. 27-28

satisfy the Council of Guardians, the clerics specified that the age of maturity under Shari'a was nine full Lunar years for girls, and 15 full Lunar years for boys.³¹

According to Article 78 of the new Code, the maximum penalty for children and youth, ages 12-15 Lunar years, who commit an offense under the laws of *Hudud* or *Qisas*, is “three months to one year in a correctional and educational detention center,” or “warning and signed undertaking not to repeat the offence.”³² Children below 12 Lunar years who commit such offenses are referred to social workers and undergo psychological assessments, and on such bases are referred to educational and cultural institutions to study or learn a skill, and/or put under the care of an individual or a legal entity based on the best interest of the child.³³

However, under the laws of *Hudud* and *Qisas*, minors 15-18 years of age who commit an offense could still be sentenced to death. The only way minors are spared the execution order is for the court to determine that they “are not mentally fit, developed or matured.” To make such an assessment, the court can avail itself of the “expert views of the coroner’s office,” or any other means it may deem fit. Essentially, as also mentioned in the press release issued by the organization Justice for Iran: “the only chance [for acquittal] is if [the minors] manage to prove that they were mentally unfit or incapable of understanding that the nature of their action was against the law.”³⁴

It is noteworthy, however, that even in the face of such amendments in the Code, exemption from execution for minors 15-18 is only with regards to boys and that the age of maturity for girls still remains nine years, insofar as the main criteria for criminal responsibility is maturity under Shari'a.³⁵

The only provision for revoking execution orders against minors can be found in Article 90 of the new Code, which indicates: “in crimes under the laws of *Hudud* and *Qisas*, concerning mature individuals below 18 years of age, should the person be unaware or unfit to understand, or should there be any doubt as to the person’s mental ability to comprehend the consequence of the act, punishments befitting the individual based on the circumstances and age will be issued against the accused.”

A note in this Article adds: “To determine the maturity and understanding [of the offender], the court can avail itself of the expert views of the coroner’s office, or any other means it may deem fit.”

In fact, instead of the law banning the execution of children and youth below 18 years of age, as per its obligation as a signatory to the Convention on the Rights of the Child³⁶, and that of the

³¹ Mahin Gorji’s interview with Mohammad Mostafaei, Iran has the highest rate for execution of minors, Radio Farda, 8 Aban 1387 [29 October 2008]. Link dated December 2011: http://www.radiofarda.com/content/t7_Iran_Execution_Teenagers_Mostafaei/470927.html

³² Article 78.2 of the Islamic Penal Legislation

³³ Article 78 of the Islamic Penal Legislation

³⁴ Justice for Iran press release. Link dated December 2011: <http://justiceforiran.org/ipc-draft/>

³⁵ Author’s interview with Shadi Sadr, Attorney at Law

³⁶ Convention on the Rights of the Child, Article 37: “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

International Convention on Civil and Political Rights³⁷, it leaves the decision to the discretion of the judge.

Leaving the decision to the discretion of the judge could be considered advantageous, as it gives the power to the judge not to issue the death penalty. However, considering the case history of death sentences issued against children, this arrangement does not look promising—given that within the existing framework of the law in the Islamic Republic of Iran, judges already had the discretion not to issue death sentences against children below 18 years of age.

Mohammad Mostafaei considers citations of the Convention on the Rights of the Child³⁸ to be the most effective solution at the moment: “By referencing Article 37 of the Convention on the Rights of the Child, which is not opposed to by the Council of Guardians, judges can stop execution of children below 18 years of age.”³⁹

In another interview, Mostafaei notes: “I have never witnessed a judge referencing an article in the Convention. In fact, Convention on the Rights of the Child is considered law in our country, but the ministry’s judges never cite it.”⁴⁰

On the other hand, the discretion for “assessing maturity and mental development” has been available to the judges in the past, and the ministry judges have had the choice to cite sanctioned laws to avoid issuing the death penalty against minors. In 2009, for instance, in the case of Mohsen Eftekhari, the judge in Branch 71 of the Criminal Court in the Province of Tehran was able to rely on the “lack of maturity” of the 16-year-old Nosrat who was sentenced to death for committing murder, and acquit the accused instead.⁴¹

The ruling judge, who was one of the five judges on the case, declared: “At the time of the murder, Nosrat did not have a mature mind.” The judge substantiated his ruling by a *fatwa* from Ayatollah Makarem Shirazi, who, in response to a judge some years earlier, had stated: “You should consider carefully the maturity of mind.”

³⁷ International Convention on Civil and Political Rights, Article 6.5: “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”

³⁸ On 19 Dey 1372 [9 January 1994], the Iranian Majlis became signatory to this Convention. According to Mohammad Mostafaei: “Iran joined the Convention conditionally, although this ‘condition’ is not acceptable, because it has not clearly specified its terms. Conditional acceptance cannot be an abstract term, and such ‘conditions’ should not be such to impose on the right of individuals. As I was reviewing the reports of the Majlis and the Guardian Council, I came across the comments of the Guardian Council concerning the Convention. In a letter addressed to the Majlis, the Guardian Council writes: “You have accepted all the Articles of this Convention (on the Rights of the Child,) but in the future you might say that some of these Articles are contrary to Sharia and we thus not accept it. Therefore, you need to be specific and clearly state which Articles you will not adhere to, because the number of such Articles are increasing.” It goes on to say: “Articles 12.1, 13.1, 13.2, 14.1, 14.3, 15.2, 16.1, 29.1(d) are contrary to the Sharia.” This means that the said notes of the articles are not according to the Sharia and thus cannot be referenced. Other existing articles in the Convention, according to Article 9 of the Civil Code, which states: “Provisions and Conventions adopted based on the Constitution between the government of Iran and other governments are considered law, and must be abided by, and the courts are bound to uphold them. Among Articles that the courts must uphold (pursuant to Article 37 of the Convention on the Rights of the Child) is that, in essence, persons below the age of 18 should not be sentenced to death.” Kouhyar Goudarzi and Tara Sepehrifar’s interview with Mohammad Mostafaei, Committee of Human Rights Reporters, 9 October 2008

³⁹ Mahin Gorji’s interview with Mohammad Mostafaei, Iran has the highest rate of execution of minors, Radio Farda, 8 Aban 1387 [29 October 2008]. Link dated December 2011: http://www.radiofarda.com/content/17_Iran_Execution_Teenagers_Mostafaei/470927.html

⁴⁰ Kouhyar Goudarzi and Tara Sepehrifar’s interview with Mohammad Mostafaei, Committee of Human Rights Reporters, 9 October 2008. Link dated December 2011: <http://chrr.biz/spip.php?article2528>

⁴¹ Acquittal of a minor in a first degree murder for lack of maturity, *Etemaad* Newspaper, 1 Ordibehesht 1388 [21 April 2009]. Link dated December 2011: <http://www.etemaad.ir/Released/88-02-01/97.htm>

For his ruling, the judge further made reference to a *fatwa* by Ayatollah Sanei who increased the age of maturity for girls from 9 to 13. The judge declared: “Based on this *fatwa*, the age of maturity for boys can also be raised.” Eftekhari’s judge also referred to the set age of 18 for the right to marry and conduct business as stated in the Iranian Civil Code.

The new Islamic Penal Code could somehow be considered as a means to promote such approach and practices among the judges to use their discretion in rendering judgment on the “maturity and mental development” [of the defendants]; meanwhile, the Code imposes no obligation, by any measure, on the judges to do so. In fact, by using phrases such as ‘could,’ the lawmakers have left the decision entirely up to the judges. On the other hand, the law has not made the ‘expert views of the coroner’s office’ mandatory, and has left it again to the discretion of the court to determine the maturity [of the defendant] ‘as it may deem fit.’ Hence, once again the Code has left the option open to the judges as to whether or not to issue death sentences against minors who commit offenses, subject to *Hudud* and *Qisas*.

Similar to the above recommendation, it was previously suggested in Article 33 of the legislation for Children and Youth Court⁴², which, has yet to be approved by the Majlis. At the time of the review of the legislation by the Majlis, Rosa Gharachorlou⁴³, Attorney-at-Law and Assistant Professor at the Faculty of Law, noted that the discretionary nature of determinations of the age of criminal responsibility as per the legislation raises concern and questions as to the reform and remedial goals of this law. She claims: “With respect to assessing judicial maturity, there are no criteria and/or standards set forth either in this legislation or in other laws. The only standard is to refer the minor to an expert at the coroner’s office for psychological assessment.”

The manner in which mental competence is determined, and the necessity of obtaining and reviewing such assessment by the court is vital, inasmuch as this legislation has made the exemption of minors from execution in offenses under the laws of *Hudud* and *Qisas* subject to determinations that they are ‘mentally immature and unfit.’ In fact, notwithstanding offenses involving drugs and controlled substances, any other crime that carries a death sentence is under *Hudud* and *Qisas*.

Under the new Islamic Penal Code, first-degree murder is punishable by execution, and sexual relationships outside marriage and/or sexual intercourse with the same sex (considering specific circumstances of the encounter and its repetition), as well as robbery (if repeated four times, and after enforcement of *Hadd* three times), and [conviction under] *Ifsad-i Fil Arz* [Sowing Corruption on Earth]—all subject to *Hadd*—also carry the death penalty. Furthermore, one of the penalties prescribed for *Muharibih* [waging war against God] is execution, also enforced under *Hadd*.

⁴² The legislation for establishment of Children and Youth Courts were submitted from the government to the Majlis in 2001. Subsequent to the review of the Bill by the expert commissions of the Majlis, the legislation has been reviewed several times in the past decade in the General Assembly; however, it has not yet been ratified.

⁴³ Hosseinkhah, Maryam, *Ekhelaf-i Nazar-i Qozzat dar bareyi Mojazat-i Koodakan* [Differences of views of the ministry judges concerning penalizing children], *Etemaad* Newspaper, 21 Tir 1386 [12 July 2007]. Link dated December 2011: <http://magiran.com/npview.asp?ID=1442319>

According to the above classification, and considering that the new Islamic Penal Code has exempted the execution of minors 15-18 only with regards to offenses under the law of *Ta'zir*, there are still no other restrictions imposed in executing minors other than the offense of 'Insulting the Prophet.' In fact, it is only with regards to drug-related offenses that children can potentially be protected from execution, subject to the judge prosecuting the offense under the law of *Ta'zir*.

Currently there are at least 143 cases of minors under 18 facing the death penalty.⁴⁴ Shirin Ebadi, Attorney at Law, and Nobel laureate, states: "The highest execution orders issued⁴⁵ against minors are as a result of *Qisas-i Nafs* [retribution for life], and unless and until minors are exempt from execution under *Qisas*, there will not be a considerable change from the status quo. Offenses concerning drugs and sexual matters are the primary reasons for the death penalty, next to murder."⁴⁶

This issue is particularly worrisome when it comes to girls, inasmuch as—other than *Qisas*, which equally places both males and females at risk of execution—girls are more venerable when it comes to offenses under the law of *Hadd*. Sexual relationships outside marriage (adultery) are among offenses that under the new Islamic Penal Code can potentially result in the death penalty, albeit under specific circumstances. For instance, adultery, particularly when the offender is married, carries the death penalty. As such, considering the high rate of [female] children married under the age of 18 in Iran, and the statistics showing the number of prostitutes being married, causes a great concern for the higher risk of young girls facing capital punishment for having sexual relationships outside marriage.

Atefeh [Sahaaleh] Rajabi, a 16-year old girl who was executed on 24 Mordad 1383 [14 August 2004] on charges of prostitution, in the village of Neka, in the northern regions of Iran, is one such example of young girls forced into the cycle of prostitution by their unfortunate socio-economic circumstances, only to be sentenced to death under the law.⁴⁷

At the time of her execution, Atefeh was 16.⁴⁸ Subsequent to four convictions under 'morality offenses,' she was sentenced to death. At a young age, Atefeh was arrested on numerous occasions for 'morality offenses,' and was sentenced each time to flogging x 100 under the law of *Hadd*. On her first arrest, Atefeh was 13 years old. At her fourth arrest, it was said that she was detained as a result of a petition signed by locals pertaining to her 'moral corruption, and sexual relations with men not [while] having been married to them.' In a report concerning the issue,

⁴⁴ Report of Amnesty International re Situation of Human Rights in Iran, 2011. Link dated December 2011: <http://www.amnesty.org/en/region/iran/report-2011#section-64-13>

⁴⁵ Ebadi, Shirin, Meeting of Defenders of Human Rights Centre, 5 Azar 1387 [25 November 2008]

⁴⁶ Amini, Asieh: "In 2007-8, out of 17 cases where execution order was carried out against minors below the age of 18, 9 cases were retaliation for life, 2 sexual assault, 1 sodomy, and 2 drug trafficking." Meeting of Defenders of Human Rights, 5 Azar 1387 [25 November 2008]

⁴⁷ A ministry judge sentenced two men 50 and 45, who had sexual relationship with affection, to flogging under the law of *Hadd*. Radio Farda 9 Mehr 1383 [30 September 2004]. Link dated December 2011: <http://www.radiofarda.com/content/article/325352.html>

⁴⁸ The judicial authorities of Neka stated her age as 22, whereas Atefeh's father, who learnt about the fate of her daughter after the execution order was carried out, in an interview with Zananeh Iran website showed his own birth certificate in which Atefeh's birth was registered 1366 [1987]. He confirmed that his daughter was only 16. Atefeh Rajabi's profile can be found on Boroumand Foundation website. <http://www.iranrights.org/farsi/memorial-case--3134.php>

Amnesty International stated: “It was claimed that the petition was signed by the locals in Neka; however, all signatures were those of police officers.⁴⁹”

According to journalists and human rights activists, Atefeh Sahaaleh [Rajabi] suffered from mental health issues. Subsequent to issuance of the execution order, a petition was signed by 43 locals of Neka asking for the stay of execution due to Rajabi’s ‘mental disability and developmental challenges.’ In her statement of defense, Atefeh wrote: “There are medical documents which prove that I suffer from mental weakness and nervous disorder. At times during the day I lose my mental ability... Please, your honor, listen to my plea for freedom.”⁵⁰

Leyla Mafi is another case of a girl under 18 facing execution for prostitution. At 17, Leyla was arrested by the police at a brothel, and shortly after, in May 2004 she was sentenced to death on charges of ‘incest.’⁵¹ She was convicted by the court for ‘morality offenses,’ to wit: ‘running a brothel, acts of prostitution, and giving birth to an illegitimate child.’

Leyla was forced into prostitution by her mother at age eight. From age 10, Leyla was repeatedly raped by her brothers.⁵² At 12, Leyla’s mother forced her into a contracted marriage for money to an Afghan man whose mother also forced Leyla to prostitution. At 12 and 14, Leyla was arrested for prostitution, and each time received 100 lashes under the law of *Hadd*. Subsequent to separating from the Afghan man, Leyla’s family sold her to a 55 year-old married man, upon which she was again forced into prostitution. During this period, Leyla gave birth three times—all the while suffering from mental health issues. According to *Etemaad* Newspaper, after a number of assessments, social workers reported that Leyla’s mental ability was that of an 8 year-old.⁵³

Subsequent to an international campaign initiated by Shadi Sadr, Attorney at Law and Women’s Rights Activist, to save Leyla [from execution], the Supreme Court acquitted Leyla from charges of ‘incest,’ thus revoking her execution order on 27 March 2005; she was also acquitted from charges of ‘running a brothel,’ for which she had been sentenced to five years’ imprisonment. The court, however, convicted her for ‘providing means of moral corruption and prostitution by way of readiness for sexual acts,’ for which she received three and a half years’ imprisonment, in addition to 100 lashes for ‘adultery.’ The court further ordered her to live in a women’s rehabilitation centre for a period of eight months.⁵⁴

Convictions Carrying the Death Penalty

Article 1 of the new Islamic Penal Code pertains to charges punishable under ‘*Hudud, Qisas, Diyyat, Ta`zirat*, security and moral offenses, conditions and exemptions of judicial responsibility,

⁴⁹ Report of Amnesty International pertaining to the execution of children in Iran, Tir 1383 [July 2004]. Link dated December 2011: <http://www.iranian.com/main/blog/sce-campaign-13>

⁵⁰ Ibid

⁵¹ Leyla Mafi’s Execution Order Overturned, *Zanan-i Iran*, 4 Tir 1384 [25 June 2005]. Link dated December 2011: <http://mag.gooya.com/politics/archives/032132.php>

⁵² Leyla Mafi Awaiting Appeal Decision, *Zanan-i Iran*/Asieh Amini, 22 Farvardin 1383 [10 April 2004]. Link dated December 2011: <http://zanan.iran-emrooz.net/index.php/?zanan/more/430/>

⁵³ Report of Amnesty International re execution of minors in Iran, 13 Tir 1383 [3 July 2004] <http://www.iranian.com/main/blog/sce-campaign>

⁵⁴ Ibid

and provisions thereof. All offenses that carry the death penalty according to Iran’s laws and regulations are defined and explained in this section of the Code.

According to this new Code, offenses have been divided into four⁵⁵ categories of: *Hadd*⁵⁶, *Qisas*⁵⁷, *Diyyih*⁵⁸, and *Ta`zir*.⁵⁹ Certain offenses under *Hadd*, *Qisas*, and *Ta`zir* carry the death penalty as a means of punishment, and in most instances such punishment is not subject to clemency, or modification to a lesser or alternate form of punishment.⁶⁰

1. Sexual Relationships Outside of Marriage

1.1 Adultery

The new Islamic Penal Code considers any sexual relationship outside of marriage a crime, for which punishment has been set. According to the new Code, sexual relationship between a man and a woman outside of marriage is ‘adultery,’⁶¹ and is punishable subject to *Hadd*.

Punishments under *Hadd* could be 100 lashes,⁶² or, in some cases, execution. Moreover, conviction of *Zina* [adultery] under *Hadd*, can result in the death penalty on the fourth conviction.⁶³

Pursuant to Article 225 of the new Code, the following sexual offenses are among those that are punishable by death:

- a) Adultery with one’s consanguineous relative, i.e., sister, mother, maternal and paternal aunt, maternal and paternal grandparent, niece and nephew or their children;
- b) Adultery with one’s stepmother, in which case the adulterer shall receive the death penalty;
- c) Adultery between a non-Muslim man and a Muslim woman, in which case the adulterer (non-Muslim man) shall receive the death penalty;
- d) Forcible rape, in which case the rapist shall receive the death penalty.

⁵⁵ In both existing Islamic Penal Code and Islamic Penal Legislation—submitted by the government to the Majlis in 2007—‘Deterrent Punishments’ were included in the Code.

⁵⁶ Article 15 of the Legislation defines *Hadd* as a punishment that its degree and type is specified in the Sharia.

⁵⁷ Article 16 of the Legislation defines *Qisas* as primary punishment for premeditated crimes with intent to injure, wound, mutilate or murder.

⁵⁸ Article 17 of the Legislation defines *Diyyih* as ‘monetary fine or blood money’ prescribed by Sharia concerning unintentional crimes of inflicting injuries, wounds, and/or causing mutilation or death, or crimes with intent in categories not specified under *Qisas*.

⁵⁹ Article 18 of the Legislation defines *Ta`zir* as punishment for offences not specified under *Hadd*, *Qisas*, or *Diyyih*, but pertaining to violations against Sharia and/or state regulations.

⁶⁰ Article 45 of the Legislation indicates: “In crimes under the law of *Ta`zir* (levels 6-8), the court is given discretion, under specified terms, to suspend sentences in part or in whole from 1-5 years.” Exceptions to this discretion, however, as defined in Article 45.5 are: “retaliation for life, conspiracy in a premeditated murder, *Muharebeh* [waging war], and *Afsad-i Fel Ard* [corrupts on earth].”

⁶¹ Article 222 of the Islamic Penal Legislation defines *Zina* [adultery] as: “Sexual intercourse between a man and women who are not married to each other. According to note 1 of this article, “Intercourse is when the head of man’s sexual organ penetrates in woman’s body from front or back.”

⁶² Article 228 of the Islamic Penal Legislation defines *Zina* under the law of *Hadd*: “In the event that the adulterer is unmarried, [punishment] flogging x 100. Article 231 of the said legislation indicates: “Should a man or a woman admit to four times adultery, s/he is sentenced to 31 to 74 lashes under the law of *Ta`zir* (level 6). The provisions of this article also pertain to *Lavat* [sodomy], *Tafkhyz* [rubbing of one man’s sexual organ against thighs and buttocks area of another man], and *Musahegeh* [lesbianism].

⁶³ Article 135 of the Islamic Penal Legislation

The most significant revision in the new Code is the omission of stoning for *Zina-yi Muhseneh* [sexual intercourse between married man and women outside their own marriage]. Not only has the punishment of stoning been omitted in the new Code; there is no reference to *Zina-yi Muhseneh* in general.

According to Shadi Sadr, however, the fact that there is no reference to *Zina-yi Muhseneh* in the new code does not mean death by stoning is abolished in the judicial laws of Iran. Indeed, *Zina-yi Muhseneh* remains a crime, albeit one for which no punishment is specified. [In such instances,] the Ministry's judges are given the authority under the Constitution to exercise their own discretion in delivering verdicts of death by stoning by referencing Shari'a sources, in the absence of codified law.⁶⁴

According to Article 167 of Iran's Constitution, "The judge is bound to endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic *fatwa*. He cannot refrain from admitting and examining cases and delivering his judgment on the pretext of the silence or deficiency of law in the matter, or its brevity or contradictory nature."

Furthermore, statements made in this regard by the members of the Majlis suggest that the intention is to avoid making reference to stoning, and not to abolish it. Ali Shahrokhi, Head of the Judicial and Legal Commission of the Islamic Consultative Council has stated: "In reviewing the Islamic Penal Legislation, the Judicial Commission of the Majlis came to the conclusion that it is in the best interest of the regime if certain [penalties] under the law of *Hudud*, namely stoning, are not referenced in the Code."

Shahrokhi has claimed that the reason for the Judicial and Legal Commission's decision to 'not reference' stoning in the new Code was "the limiting parameters embedded in Islam for enforcing stoning, and the seldom occurrence of such punishment."⁶⁵

Ahmad Ghabel, a religious scholar and a reformist, is of the view that based on the new Code judges are given full authority to issue the death penalty by stoning, inasmuch as 'the [religious] common view' is in agreement. According to Ghabel: "So long as the lawmaker shrugs responsibility, this issue will remain unresolved. If lawmakers were to officially ratify [the provisions of stoning], there would be uproar against the members of the Majlis and those of the Council of Guardians. However, in this fashion, [the lawmaker] defers [the responsibility] to the '*ulama* [clergy] and the 'points of imitation.' Indeed, no one has the power to challenge such sources—especially when the quoted '*ulama*, and/or 'points of imitation,' who have authorized and established the 'common view,' are long gone, thus there is no one to be held accountable."⁶⁶

⁶⁴ Author's interview with Shadi Sadr

⁶⁵ Stoning is omitted from the Islamic Penal Code, Radio Farda, 2 Tir 1388 [22 June 2004]. Link dated December 2011:

http://www.radiofarda.com/content/f10_Islamic_Penal_Code_Parliament/1760544.html

⁶⁶ Islamic Penal Legislation and stoning: Omission or Displacement, Radio Farda, 11 Khordad 1388 [31 May 2004]. Link dated December 2011: http://www.radiofarda.com/content/F7_Stoning_Iran/1743987.html

Shadi Sadr is of the view, however, that “the new Islamic Penal Code gives at least some power to the lawyers, when defending clients sentenced to stoning, to argue that unless the punishment is specified in the Code, it cannot be imposed—as per Article 2 of the new Code, albeit in contradiction to Article 167 of the Constitution. Nonetheless, the new Code has created a doubt, which is an improvement to the absolute form existing in the Islamic Penal Code (1991).”

She further adds: “Considering the variety and diversity of *fatwas* available, reference to Islamic Shari’a makes judgment at best arbitrary, and is a setback to tribal years where there was no standard law protecting the public equitably.”⁶⁷

The provisions of *Zina-yi Muhseneh* are omitted in the new Islamic Penal Code, while in the previous draft of the new Code—ratified by the government on 20 Aban 1386 [11 November 2007], and submitted to the Majlis for review on 20 Azar [11 December] of the same year—it was clearly stated that punishment for sexual relations between a man and women under ‘*Ihsan*’ [married to others]⁶⁸ is by ‘stoning.’⁶⁹ Furthermore, Articles 221.16 and 221.17 of the said draft specified the conditions for enforcing the sentence of stoning.”

Article 83 of the current Islamic Penal Code, similar to the previous draft of the bill, prescribes death by stoning for *Zina-yi Muhseneh*, subject to *Hadd*. Conditions for the proof of a crime and the enforcement of a penalty are no different than they are in the newly ratified draft.⁷⁰

In fact, the only major modification in the [2007] draft of the Code pertaining to stoning was the possibility of changing the form of capital punishment from stoning to execution, or alternatively, 100 lashes. In later drafts, however, all references [to stoning] were omitted, and there is no mention of [stoning] in the current draft.

Note 4 of Article 221.5 of the [2007] draft stated: “In the event that the crime is proven based on *Bayeneh-i Shar’i* [Shari’a merits], but the enforcement of stoning under the law of *Hadd* should create disturbance and prove damaging to the regime, the verdict of stoning, subject to the recommendation of the prosecutor in charge and the endorsement of the Head of Judiciary, could be changed to execution; otherwise, the penalty should be modified to 100 lashes.”

Maryam Kianersi, Attorney-at-Law, explains: “*Bayeneh-i Shar’* [Shari’a merits] refers to ‘witness[es], or personal admission,’ i.e., if there are any eye-witnesses, or if there is admission

⁶⁷ Author’s interview with Sahdi Sadr, 23 January 2012

⁶⁸ According to Article 221.6 of the Islamic Penal Legislation—draft submitted by the government to the Majlis: “*Ihsan* is defined as a man or a woman in a permanent marriage to a mature individual [other than one another], who, with a sane mind, has had sexual intercourse with each other, and who can have intercourse with their own spouses if and when they wish. Article 221.7 of the said draft clarifies that conditions such as traveling, imprisonment, menstruation, parturition, sexually transmitted diseases, and infectious diseases that can harm the other, such as AIDS, syphilis, etc. exempts the party from *Ihsan*.”

⁶⁹ Article 221.5.e of the draft legislation.

⁷⁰ The conditions defined in Article 86 of the Islamic Penal Code for stoning, and notes ‘a’ and ‘b’ of Article 83, are similar to conditions defined in the draft submitted by the government, the difference, however, is in Article 221.7 of the [draft] legislation where the conditions of exemptions from *Ihsan* is more explicitly defined.

the sentence to stoning would be modified to execution. Otherwise, if the evidence is only ‘the judge’s knowledge,’ the judge is given discretion to modify the verdict to 100 lashes.”⁷¹ Of course all such modifications were to be considered in situations where, as per the comments of Alireza Jamshidi, the Judiciary spokesman, “The enforcement of stoning is ‘not in the best interest’ [of the regime].”⁷² Just as Mousa Ghorbani, a member of the Majlis, calls the reasons for the modification of stoning laws in the new Code, a “lesson learned.”⁷³

Notwithstanding the omission [in the new Code] of notes concerning stoning and conditions of its enforcement from the section of the law pertaining to *Zina*, references to stoning in Articles 172⁷⁴, and 198⁷⁵ clearly show that stoning has not been abolished in the Iranian laws under the new Code.

The mere fact that the new Code makes references to penalties for sexual relations ‘not punishable by stoning’⁷⁶, i.e., *Zina-yi Ghayr-i Muhsen* [adultery with unmarried woman], is in and of itself evidence that there are distinguishing features between *Zina-yi Muhseneh* and *Zina-yi Ghayr-i Muhseneh* in the new Code.

In Azar 1389 [December 2010] Amnesty International issued a report indicating that from the establishment of the Islamic Republic in 1979 to date, Iran has carried out the verdict of stoning against 77 individuals. According to this report, in all likelihood the true numbers of stoning cases in Iran are higher than reported, inasmuch as Amnesty International was unable to obtain reports of possible stoning cases between 1979 to 1984. Notwithstanding the fact that in 2002, Mahmoud Shahroudi, Head of the Judiciary in Iran at the time ordered a stop to stoning in a circular memorandum, since then at least five men and one woman have been stoned to death, and another two men and one woman [originally] sentenced to stoning have been hung. The circular was subsequently suspended in 2008, and the spokesman of the Judiciary announced that the circular had no legal validity and that the ministry judges could ignore it.⁷⁷

Since 2008⁷⁸, Iran has not carried out a sentence of death by stoning⁷⁹. However, according to Amnesty International’s most recent report, there are at least 15 cases of prisoners, 10 of whom

⁷¹ Conversation with Maryam Kianersi regarding the ratification of the new Islamic Penal Legislation: Execution vs. Stoning, 1 Mordad 1387 [22 July 2008]. Link dated December 2011: http://radiozamaaneh.com/alavi/2008/07/post_226.html

⁷² Restrictions on Stoning Under the New Islamic Penal Legislation, B.B.C. Persian, 22 Aban 1386 [13 November 2007]. Link dated December 2011: http://www.bbc.co.uk/persian/iran/story/2007/11/071113_mf_stoning.shtml

⁷³ *Rajm Bad-amoozi Daarad, be Edaam Tabdil Shavad* [Stoning: a lesson learnt, best to change to execution], *Donya-e Eqtesad* Newspaper, Wednesday 20 Shahrivar 1387 [10 September 2008]. Link dated December 2011: http://www.donya-eqtesad.com/Default_view.asp?@=121105

⁷⁴ Article 172: “Repentance after admission does not quash the verdict, unless pertaining to crimes punishable by stoning or execution, in which case, at any point, even at the time of enforcement, the verdict is quashed, and instead—for adultery or sodomy—100 flogging, or a verdict of imprisonment under the law of *Ta’zir* is issued.

⁷⁵ Article 198: “Standard of evidence in all crimes is testimony of two men, unless concerning *Zina* [adultery], *Lavat* [sodomy], *Tafkhyz* [rubbing of one man’s sexual organ on and around another man’s thighs or buttocks area], or *Mushegheh* [lesbianism], which require testimony of four men. Proof of adultery would require testimony of two men and four just women, unless adultery is punishable by execution or stoning (under *Hadd*), in which case evidence would require testimony of at least three men, and two just women.

⁷⁶ Article 228 of the [Islamic Penal] Legislation: Subject to *Hadd*, punishment for *Zina* when the adulterer is unmarried is flogging x 100.

⁷⁷ Report of Amnesty International re Iran, Death by Stoning, Azar 1389 [December 2010]. Link dated December 2011:

<http://www.amnesty.org/en/library/asset/MDE13/095/2010/2n/311d231f-1048-4da7-9713-4c57a71924ed/mde130952010fa.pdf>

⁷⁸ British Foreign Office annual report on Human Rights in Iran for 2010. Link dated December 2011: <http://iran.net/spip.php?article2018>

are women, who have received verdict of death by stoning and are awaiting enforcement. Another woman, Maryam Ghorbanzadeh, who was initially sentenced to stoning and whose verdict was subsequently modified from stoning to execution, is currently on death row. Also, Sakineh Ashtiani, who was sentenced to stoning in 2006, was close to being stoned in 2010. Subsequent to a widespread international campaign for stay of her sentence, however, the verdict of stoning against her was stayed. Nonetheless, the sentence against her has not been rescinded, and Sakineh could still be subject to death by stoning.

The campaign entitled the ‘No to Stoning,’ initiated in Iran on 9 Mehr 1385 [1 October 2006], succeeded in saving 13 women and 2 men from imminent stoning. Death sentences against a number of these individuals have been stayed, while other cases are under review or sent for *de novo* hearing. According to available data, most of those sentenced to stoning are men. Though seemingly there is no gender bias in the laws pertaining to stoning, i.e., “the law prescribes stoning for ‘adultery between married man and women [not to each other]’ regardless of gender,” in most instances, married men can take refuge in ‘multiple-wives’ laws⁸⁰ available to them, and thus evade charges of adultery. According to Iran’s laws, men can concurrently take four permanent wives⁸¹ while having countless number of temporary⁸² ones. In light of this law, a married man, when arrested for adultery, can claim that he had [privately] recited the *Sigheh* [the verse pertaining to temporary marriage contract], but failed to register the marriage. Furthermore, many married men who commit adultery carry on with their affairs under the pretext of having multiple wives (permanent or temporary) and in so doing evade any legal scrutiny or punishment. Meanwhile, a married woman could potentially be subject to stoning after a single incident of adultery, and the law fails to leave any door open for her to avoid the consequences.

Moreover, divorce laws and limitations imposed upon women, among other factors, push women to face execution by stoning. According to the laws in Iran, a man can divorce his wife by simply going to court and complying with certain provisions, i.e., the payment of *Mehriyyih* [marriage portion], and *Ujratu’l-Mithl* [cost of maintenance] whenever he desires.⁸³ He can finalize a divorce by payment of her marriage portion, if he so desires, without any obligation to prove any wrongdoing on the part of his wife.⁸⁴ According to the note to Article 1133, women are also given

⁷⁹ Amnesty International annual report on Human Rights in Iran for 2011. Link dated December 2011: <http://www.amnesty.org/en/region/iran/report-2011#section-64-13>

⁸⁰ Even though Iran’s Civil Code does not directly make reference to polygamy for men, the existence of laws concerning conditions of polygamy for men confirms the systematic endorsement of polygamy for men by the law. Article 1048 of the Civil Code: Intercourse with two sisters is forbidden, even by marriage. Article 1049 of the Civil Code: No man should marry the daughter of his brother-in-law [wife’s brother], or that of his sister-in-law [wife’s sister], unless with permission from his own wife. Article 900 of the Civil Code: Two categories of heirs are entitled to take one-quarter of the estate as their share: The wife or wives, provided that the husband has died without offspring. Article 901 of the Civil Code: Share of one-eighth belongs to the wife or wives, provided the husband left behind offspring.

⁸¹ According to Zahra Arzani, Attorney at Law: “None of the above articles make specific reference to the number of wives a man can have at a given time. However, given that the laws of marriage and divorce were written based on *Figh-i Emaamiyyih* [laws of the Imam], and the common religious view is that every man can marry four wives—in permanent marriage, with no mention of the number of temporary wives—effectively a Shia [Muslim] man can have four wives. As such, omitting Article 23 [from the Code] does not remove polygamy: Change for Equality website. Link dated December 2011:

http://www.zanankordestan.com/index.php?option=com_content&view=article&id=480:--23-----&catid=3:articles&Itemid=60

⁸² Articles 1075-1078 of the Civil Code expound on the conditions of temporary marriages as well as many other articles of the law, i.e., laws concerning inheritance, marriage portion, alimony, and divorce make reference to temporary marriage.

⁸³ Article 1133 of the Civil Code

⁸⁴ *Be Kodam Qavaneen Mo’tarezeem?* [To which laws are we objecting?], Change for Equality website. Link dated December 2011: <http://1million4equality.info/spip.php?article1935>

the right to divorce provided that one of the conditions noted in article 1119 are met. Furthermore, women are given the right, under Article 1129⁸⁵ (husband's refusal to pay allowance) and Article 1130⁸⁶ (difficult and undesirable conditions), to request divorce from the court. However, conditions noted in these articles are not easily proven and in some cases it could take years [before divorce is granted]. Considering these laws, a man desiring to establish a sexual relationship with a woman other than his wife, even if he does not wish to avail himself of the multiple wives options before him, could easily divorce his wife and marry another, or even have sexual relations with another woman without marrying her (which does not carry a punishment of stoning). However, due to difficulties imposed on women to obtain divorce, they are most likely to be charged and convicted of *Zina-yi Muhseneh*, if they are not happy in their marriages, or have sexual desires towards a man other than their husbands, and face death by stoning.

Notwithstanding convictions that carry the death penalty by stoning, the most common sexual convictions [against men] that could carry capital punishment by execution are charges of 'rape and sexual assault.' [Statistics] in 2010 show that 9%⁸⁷ of the men executed were convicted of 'sexual assault by forcible means,' and 1% convicted of 'unchaste behaviour,' possibly another form of sexual contact outside marriage.

1.2 Homosexuality

Under the new Islamic Penal Code sexual relationships between two men or two women are subject to the law of *Hadd*, which under certain conditions is punishable by death. Iran is one of seven countries whose laws prescribe death by execution for consensual homosexual relations. Other countries in which homosexuals are subject to execution are: Mauritania, Nigeria, Saudi Arabia, Somalia, Sudan, and Yemen.

According to the new Islamic Penal Code, in a homosexual relationship between two men, the passive party will be sentenced to death regardless, and active party, if by *Unf* [forcible means], *Ikrah* [duress], or if married⁸⁸, will be executed.⁸⁹ The Islamic Penal Code (1991) prescribed execution for *Lavat* [sodomy].⁹⁰ Even though the new Code has not made any amendments

⁸⁵ Article 1129 of the Civil Code: If the husband refuses to pay the 'cost of maintenance' to his wife, the wife can refer to the judge applying for divorce and the judge will compel the husband to divorce her. The same stipulation will be binding in a case where the husband is unable to provide for the maintenance of the wife.

⁸⁶ Article 1130 of the Civil Code: Should the continuation of the marriage causes difficult and undesirable conditions, the wife can refer to a judge and request divorce, and upon proof of difficult and undesirable conditions, the judge can force the husband to divorce his wife. If this cannot be done, then the judge has the power to grant divorce. Note: Difficult and undesirable conditions noted in this article refers to hardship and conditions under which wife would suffer. The following conditions, if proven, are considered 'difficult and undesirable' by a competent court: 1- If the husband abandons his marriage and family for a period of 6 successive or 9 periodic months in a span of one year without a reasonable excuse; 2- Husband's addiction to drugs or alcohol harmful to the marriage and family, and his refusal or inability to give up the habit within a period determined by a physician—if the husband does not follow through with his promise, or after rehabilitation, returns to drugs or alcohol—the wife will be granted divorce; 3- Confirmed sentence of the husband to 5 or more years imprisonment; 4- Physical abuse or any continuous misbehavior by the husband that would make life unbearable for his wife; 5- Husband's suffering from untreatable or physical condition that would interfere with marriage and family life.

⁸⁷ Iran Human Rights' annual report on executions in 2010. Published 23 February. Link dated December 2011: <http://iranhr.net/spip.php?article2001>

⁸⁸ Article 233.2 of the Legislation defines married man as: "Having a permanent and mature wife; he himself is mature and of sane mind; as a mature person has had intercourse with his wife, and can have intercourse with her again when he wishes."

⁸⁹ Article 233 of the Islamic Penal Legislation

⁹⁰ Article 109 of the Islamic Penal Code: "In case of sodomy both active and passive parties will be condemned under the law of *Hadd*."

regarding the passive party, it has slightly improved conditions for the active parties, inasmuch as it has provided provisions allowing them to avoid execution, particularly if they are unmarried.

According to the new Code, if an active party is not a Muslim, and the passive party is Muslim, punishment for the active party is execution.⁹¹ In the event that sexual contact is by penetration of the head of man's sexual organ, or if one man rubs his sexual organ on and around thighs and/or buttocks of another man⁹², if the active party is non-Muslim and the passive party is Muslim, the active party will be condemned to death.⁹³

The primary punishment for lesbianism under the new Code is 100 lashes⁹⁴, and just as in the Islamic Penal Code, "If a female is convicted of lesbianism three times, and punishment is enforced each time (under the law of *Hadd*), the death sentence will be issued the fourth time."⁹⁵

The definition of *Musaheqeh* [lesbianism], however, has slightly been modified in the new Code, and according to Shadi Sadr, based on this definition it is very difficult to prove lesbianism.

The original Islamic Penal Code defined *Musaheqeh* as "homosexuality of women by genitals."⁹⁶ The new Code defines *Musaheqeh* as "placing female genitalia on the genitalia of the same sex."⁹⁷

Sadr, a notable activist with years of experience in the field of women's rights who has defended many men and women sentenced to death is of the opinion that with the new modification in the Code concerning punishment and execution of homosexuals, there will be less arrests and issuance of verdicts under the law of *Hadd*, or execution for homosexuality. Sadr [indicated that] during her years of active involvement, she has never come across a case of [execution for] lesbianism and is not aware of any.

While not denying the fact that in general the punishment of *Hadd* is carried out against lesbians, Sadr added that the few cases of lesbianism that she has seen were in relation with female prisoners. One such case was that of the execution of a female prisoner charged with "moral corruption and sexual assault by forcible means." This woman was not executed primarily for lesbianism, but for sexual assault against another woman, and her case was depicted in Manijeh Hekmat's movie *Zendan-i Zanan* [Women's Prison] in 2000. Sadr further commented that some of the political prisoners of 1981 reported enforcement in prison of floggings under the law of *Hadd* with the pretext of lesbianism. "Another form of aggression against women inflicted upon political prisoners during that period," Sadr declared, "was torture and harassment at the hands of

⁹¹ Article 233.1 of the Islamic Penal Legislation

⁹² According to Articles 236, 237 and its note: In this form of sexual contact called *Tafkhyz*, if both active and passive parties are Muslims, each receive 100 lashes. Kissing and touching 'with lust,' or lying naked of a few persons of the same sex under one cover 'with lust, and without necessity' is also punishable by flogging, regardless of their gender.

⁹³ Note of Article 239 of the Islamic Penal Legislation

⁹⁴ Article 239 of the Islamic Penal Legislation

⁹⁵ Article 135 of the Islamic Penal Legislation

⁹⁶ Article 127 of the Islamic Penal Code

⁹⁷ Article 238 of the Islamic Penal Legislation

prison authorities for what ‘they perceived’ to be acts of lesbianism.” She added, however, that none of those allegations were ever grounds for the imposition of the death penalty.

In a report prepared by Justice for Iran, Monireh Baradaran, a political prisoner, shares an account of a young girl named Mitra in Evin prison in 1981 who underwent flogging for her romantic relationship with her cellmate Parvin.⁹⁸

The author’s personal observation from the Women’s Common Ward in Evin prison in Tehran is that notwithstanding some sexual contact among female prisoners—at times with the consent of both parties, and at other times forced by one party against another—the prison authorities never seriously reacted to such conduct, and the punishments were at best removing and transferring one female prisoner to another ward or prison.

The news reflected in the media also indicates that executions carried out under homosexual offenses are against men, and their charges are announced primarily as ‘*Lavat* [sodomy] through forcible means.’

In a 102-page report published on 15 December 2010 concerning homosexuals and other sexual minorities in Iran, Human Rights Watch states that “since trials concerning moral conduct in Iran are carried out in public, it is difficult to assess how many of those convicted and executed for homosexuality were in fact homosexuals.”

This report, based on statements from over 100 homosexuals, states: “Due to the lack of transparency, it cannot be ruled out that homosexuals sentenced to death for ‘sodomy through forcible means, or rape,’ were in fact those who had homosexual relationship by consent.”

Concerning statistics of homosexuals [in Iran], this report notes that inasmuch as such charges are conducted in camera, and also considering that homosexuals are often convicted under other charges, it is very difficult to obtain accurate data.⁹⁹ According to some human rights activists, from the onset of the Islamic revolution until now, there have been over 4,000 cases of execution of homosexuals, both male and female.¹⁰⁰

One of the most recent incidents of execution of homosexuals was the hanging of three men in the Province of Khuzestan on 13 Shahrivar 1390 [4 September 2011]. The Khuzestan Judiciary’s Public Affairs Office announced unequivocally that the death penalty against the three men was carried out pursuant to Articles 108 and 110 of the Islamic Penal Code.

⁹⁸ Author’s interview with Shadi Sadr, 23 January 2012

⁹⁹ Report of Human Rights Watch, *Iran: Tab`eez va Khoshoonat Aleyh-i Aghaliyathay-i Jensi* [Iran: Discrimination and Aggression Against Sexual Minorities], 15 December 2010. Link dated 2011: <http://www.hrw.org/news/2010/12/15-1>

¹⁰⁰ Iranian Homosexual Succeeded in Obtaining Asylum, BBC, 31 Ordibehesht 1387 [8 May 2008]. Link dated December 2011: http://www.bbc.co.uk/persian/iran/story/2008/05/080520_si-iranian-asylum.shtml

Article 108 of the Islamic Penal Code defines *Lavat* [sodomy], and Article 110 expounds that ‘sodomy by penetration is punishable by death.’ According to Faraz Sanei, researcher for the Human Rights Watch: “The executions were carried out while from 2005 until 2010, no one had been merely sentenced to death for ‘homosexuality.’”¹⁰¹

The last incident publically reported concerning the use of the death penalty in a case of homosexual relations between two consenting parties, was published in March 2005. Subsequent to the issuance of this verdict, however, there was no further coverage about the enforcement of this order.¹⁰² On 15 March 2005, *Etemaad* newspaper reported that the Criminal Court in Tehran convicted two men to death based on a video recording containing their sexual relationship. According to the said report, one of the men admitted to making the videotape in order to continue receiving money from the other man who paid him for the sexual encounter. Subsequent to the admissions of this man, the second man was summoned and both were sentenced to death. It appears that the execution order issued against them was based on charges relating to their sexual relationship. Moreover, on Sunday 13 November of the same year, *Kayhan* Newspaper reported the public hanging of two men, namely Mokhtar N. (24), and Ali A. (25) in Shaheed Bahonar Square in the city of Gorgan. Based on published reports, the government of Iran executed the two men for sodomy.¹⁰³

2. *Muharibih* [Waging War Against God]

Muharibih is another charge that carries the death penalty in the new Code.

Article 280 of the new Code defines *Muharibih* as: “Drawing weapons [on another] with the intent to kill, threats to one’s property or *Namoos* [a man’s honor], or causing fear and security risks in the society.”

According to Article 282 of the new Code, *Muharibih* is punishable by: execution, crucifixion, amputation of the right hand and the left foot, and banishment. Moreover, Article 284 rests the decision as to which punishment is best in each case upon the judge’s consideration of the ‘balance of justice.’

In the new Islamic Penal Code, the provisions of *Muharibih* have not changed significantly in comparison to the original Islamic Penal Code, and they remain as one of the most referenced laws for sentencing political prisoners to death.

In his October 2011 annual report on the situation of Human Rights in Iran, Ban Ki Moon, Secretary General of the United Nations, expressed great concern for Iran’s “exercise of death

¹⁰¹Report of Human Rights Watch concerning the situation of homosexuals in Iran, Radio Farda, 25 Azar 1389 [16 December 2010]. Link dated December 2011: http://www.radiofarda.com/content/f11_iran_human_rights_report_gays/2249627.html

¹⁰² Report of Human Rights Watch, *Iran: Hujoom be Manazel-i Shakhsi be Dalil-i “Bi Effati”* [Iran: Raiding Private Homes for “Unchaste Behaviours,” 27 March 2008. Link dated December 2011: <http://www.hrw.org/en/news/2008/03/27-2>

¹⁰³ Report of Human Rights Watch, *Iran: Du Eedam-i Digar baray-i Hamjensbazi* [Iran: Two Other Executions on Charges of Homosexuality], 21 November 2005. Link dated December 2011: <http://www.hrw.org/en/news/2005/11/21-1>

penalty with regards to charges of *Muharibih*” He stated: “Iran’s [Criminal] Code defines *Muharibih* as aggression using weapons.” The special report expressed concerns for Iran’s “illegal, arbitrary and summarily enforcement of executions, and for its failure, despite repeated requests, to explicitly and clearly define *Muharibih*.”¹⁰⁴

Subsequent to the 1979 Revolution in Iran, thousands upon thousands of Iranian political dissidents opposed to the Islamic Republic regime were executed for *Muharibih*.

In 1981, Iran’s Prosecutor-General, Ayatollah Qoddusi, issued a manifesto by which he ordered Iran’s judicial authorities to issue convictions under *Muharibih* against members and supporters of political parties and groups who refuse to hand in their weapons [or resist handing in their weapons]. Through adoption of the said manifesto as guideline, many members and supporters of dissident political parties, i.e., Mojahedin-e Khalq, Cherikhaye Fadayie Khalq, Komala, Democratic Party [of Iran], etc., were convicted of *Muharibih* and subsequently executed without having ever handled a weapon or participated in armed operations.

Similarly, a number of members and supporters of Iran’s [leftist] political parties such as *Paykar* and *Rah-i Kargar* who ‘never supported armed operations’ were also convicted and summarily executed by the Iranian judicial authorities for *Muharibih*. After the first wave of executions in the early years following the victory of the revolution, some members of certain political parties such as *Hezb-i Tudeh* [Tudeh party], *Sazman-i Fada’ian va Khalq (Aksariyyat)* [Organization of Iranian People’s Fadaeeian (majority)], who declared their support for the Islamic regime, were similarly sentenced to execution under *Muharibih*. According to Boroumand Foundation, between the period of 30 Khordad 1360 [20 June 1981] to 30 Khordad 1363 [20 June 1984] alone, at least 3,895 political prisoners, including 580 women, were executed.¹⁰⁵ Furthermore, some three hundred female supporters of *Sazeman-i Mojahedin-i Khalq* [Mojahedin], executed in 1988¹⁰⁶ are among other political activists against whom the death penalty was issued under *Muharibih*.¹⁰⁷

This pattern of execution under *Muharibih* continued in the ensuing years against men and women, albeit in comparison to the 1980s, the numbers fell considerably.

According to a report by the Iran Human Rights Organization, there were at least 38 cases of execution under *Muharibih* in 2010, and 13% of the executions were related to charges of ‘waging war against God.’¹⁰⁸

¹⁰⁴ Ban [Ki Moon]’s annual report on the Human Rights situation in Iran, stressing the issue of execution, BBC, 13 October 2011. Link dated December 2011: http://bbc.co.uk/persian/iran/2011/10/111013_u04_iran_humanrights.shtml

¹⁰⁵ Boroumand Foundation has reported the rate of executions in Iran as follows: In 1381, at least 322 female political prisoners were executed; in 1982, 83, and 84 the number of reported female executions were 123, 100, and 60 cases respectively.

¹⁰⁶ According to Human Rights organizations, namely Justice for Iran, at least 4,500 of political prisoners in Iran were executed for charges of *Muharebeh* in 1988.

¹⁰⁷ *Jenayat bee Uqoobat* [Inconsequential Crime]; first report/sexual torture against female prisoners during the 1980s. Report of Justice for Iran, published 2011. Link dated December 2011: <http://justiceforiran.org/cwp-1/>

¹⁰⁸ Iran Human Rights Organization: 2010 Annual Report on Executions, 23 February 2011. Link dated December 2011: <http://iranhr.net/spip.php?article2001>

Most of the individuals convicted of *Muharibih* were charged for membership in or collaboration with political groups opposed to the Islamic regime. In 2010, 13 individuals executed for *Muharibih* were charged with membership in *Jundullah*, 15 charged with membership in PJAK, 3 charged with membership in the 'Iranian Monarchist Group,' and one charged with membership in Mojahedin-e Khalq.¹⁰⁹

In its 2010 annual report on the situation of human rights in Iran, Human Rights Watch announced that since November 2009, Iran has at least executed 9 political prisoners, including one female, for *Muharibih*.

While some Shi'a scholars are against the use of the death penalty for women charged for *Muharibih*, differences of opinion exist among the 'points of imitation.'¹¹⁰ The Iranian laws, including the new Islamic Penal Code, do not take gender into consideration when it comes to *Muharibih*. In the 1980s, many female members of political dissident groups, i.e., the leftists and the Mojahedin, were executed for *Muharibih*. Even though the number of execution orders under *Muharibih* against female political activists has dropped, the practice has never stopped, and we have witnessed the issuance and enforcement of such verdicts in the recent years.

In one recent example, Shirin Alamhouli, Kurdish Iranian prisoner accused of membership in Free Life of Kurdistan Party, a.k.a. PJAK, was executed on 9 May 2010 along with four male political prisoners. Ms. Alamhouli was a 28-year old Kurdish woman accused of placing a bomb in a car in an Islamic Revolutionary Guard Corps (IRGC) complex in Tehran. In letters she wrote in prison prior to her execution, she reported numerous incidents where she was subjected to physical and emotional torture at the hands of prison authorities. Physical tortures imposed upon her included repeated beatings using cable and electric batons. According to Alamhouli, she was forced to make confessions under duress caused by torture.¹¹¹

Zaynab Jalalian, a 27 year-old Kurdish Iranian is another example of a female sentenced to execution on charges of *Muharibih*, for involvement with the opposition group, PJAK. Verdicts of execution were issued against her in Azar of 1388 [December 2009]. In Azar of 1390 [December 2010], however, she received a pardon, on the basis of which her execution order was commuted to life imprisonment. The charge of *Muharibih*, however, continues to stand against her.¹¹²

A number of female participants in 2009 post-presidential election demonstrations, including Reyhaneh Haj Ebrahim Dabagh, Motahareh Bahrami, Farah Vazehan, and Maryam Akbari Mofrad who were arrested on the Day of Ashura in December 2009 were also charged with

¹⁰⁹ Ibid

¹¹⁰ *Khaterat-i Ayatollah Montazeri: az Maraje'i Taqleed-i Shia* [Memoirs of Ayatollah Montazeri, a Point of Imitation], Vol. I, p. 622. Link dated December 2011: <http://www.amontazeri.com/farsi/khaterat/html/0558.htm>

¹¹¹ 2010 annual report of Human Rights Watch, published in 2011. Link dated December 2011: <http://www.hrw.org/sites/default/files/reports/wr2011.pdf>

¹¹² *Hokm-i Eedam-i Zaynab Jalalian be Habs-i Abad Kahesh Yaft* [Zaynab Jalalian's Execution Order Reduced to Life Imprisonment]. Link dated December 2011: <http://radiozamaneh.com/news/iran/2011/12/18/9128>

Muharibih. They were initially sentenced to execution by a trial court; however, their sentences were later commuted by an Appellate Court to long prison terms.¹¹³

Previously, a number of activists for human rights and the rights of women such as Hana Abadi and Shiva Nazar Ahari were charged with *Muharibih*, but the court rejected the charges.

2.1 Sexual Assault Against Female Political Prisoners

Women who were hanged for *Muharibih* often suffered further punishments beyond their death sentences due to their gender.

The results of investigations by Justice for Iran indicate that “first-hand documents and testimonies” prove that virgin girls were subject to systematic¹¹⁴ sexual tortures and rape¹¹⁵, prior to execution. [These female prisoners] were sexually assaulted under the pretext of Shari’a *Sigheh* [temporary marriage].

Amnesty International also reported in 1987 that it had received a “considerable” number of reports indicating that young female political prisoners were forced into temporary marriages with members of the IRGC prior to execution, and were raped. The report further indicates that in some cases, subsequent to the execution of the prisoners, members of the IRGC have approached the families of prisoners to ‘offer the marriage portion’ for their daughters. Justice for Iran has stated in its report that in some cases such as Elaheh Daknama, in Adelabad, Shiraz; and Sima Matlabi, in Vakilabad, Mashhad, it was written on their bodies and their clothes that they were raped prior to hanging. Similarly, family of Mahnaz Yousefzadeh reported that evidence of sexual assault was apparent on their daughter’s body after execution.¹¹⁶

2.2 Execution of Pregnant Women Contrary to Law and Shari’a

Another gender-biased punishment imposed on women charged with *Muharibih* during the 1980s was the execution of pregnant women.

Article 6 of the by-law re: enforcement of punishments of *Qisas* [retribution], stoning, execution, crucifixion, hanging, and flogging has specifically banned execution of pregnant women.¹¹⁷ Both

¹¹³ *Zanan bee Morekhasi* [Women without Relief], Change for Equality, 25 Mordad 1390 [16 August 2011]. Link dated December 2011: <http://we-change.org/spip.php?article8394>

¹¹⁴ On the topic of systematic rape, Shadi Sadr, Director of Justice for Iran, in a conversation with Mardomak said: “Systematic rape in the prisons in the 80s does not mean that all female prisoners were subject to rape. What it means is that forms of sexual assault that existed were ordered and endorsed by the higher authorities, and with full knowledge of government officials. Specifically, we can talk about sexual assault against virgin girls before execution.” Shadi Sadr, *Tajavoz dar Zendanhay-i Dahe-yi 60 Sazman Yafteh Bood-i Ast* [Sexual Assaults in Prisons During the 80s were Systematic]. Mardomak, 2 Azar 1390 [23 November 2011]. Link dated December 2011: <http://www.mardomak.org/story/67176>

¹¹⁵ Justice for Iran reports: “According to [former] female political prisoners, sexual assault of political prisoners during the 1980s was not a common practice against all or majority of women, rather, for the most part, against girls who were being executed.”

¹¹⁶ *Jenayat bee Uqoobat* [Inconsequential Crime]; first report/sexual torture against female prisoners during the 1980s. Report of Justice for Iran, published 2011. Link dated December 2011: <http://justiceforiran.org/cwp-1/>

¹¹⁷ Article 6, By-law Re Enforcement of *Qisas*, Stoning, Execution, Crucifixion, Hanging, and Flogging: the sentence of execution, or retribution on life, shall not be carried out during women’s pregnancy and parturition. Following birth, subject to the endorsement of the

Article 91 of the Islamic Penal Code and Article 438 of the new Penal Code make references to the ban on the execution of pregnant women. Although the new Islamic Penal Code only makes reference to this ban under ‘retribution for life,’ the explanation as stated in the said by-law is the chief reference for this ban.

Despite the above reference [in the by-law], some of the reports concerning political prisoners executed in the 1980s indicate evidence of execution of pregnant women. Furthermore, families of the deceased prisoners have also confirmed the state of pregnancy of these women at the time of execution. For instance, in his memoirs published in 2011 in Paris, Aziz Zarei, father of Fattaneh Zarei who was executed in Iran in 2003, has testified that his daughter was eight months pregnant at the time of her execution.¹¹⁸

Furthermore, a report published in Sweden by the ‘Committee for the Defense of Human Rights in Iran’ lists by name, particulars and dates of execution of over 25 female political prisoners who were pregnant at the time of their execution.¹¹⁹

In his four-volume tome entitled ‘*Na Zistan, Na Marg*’ [Neither Life, Nor Death], dedicated to the accounts of tortures inflicted on political prisoners in the Islamic Republic’s prisons, a [former] political prisoner of the 1980s, Iraj Mesdaghi, has made references to the fact that pregnancies of political prisoners were never an obstacle to their execution.¹²⁰

3. *Baghi* [Armed Rebellion], and *Ifsad-i Fil Arz* [Sowing Corruption on Earth]

‘Sowing corruption on Earth’ is a phrase adopted from Shari’a law to refer to a person, or persons, considered to be *Mahdur-ul Dam* (those whose blood must be shed) and hence subject to execution according to Shari’a provisions. Based on Shari’a and Islamic laws, on which this charge is founded, whoever blocks the way on masses, plunders their possessions, commits a cruel and unusual crime on earth, engages in multiple and mass killings, or participates in conspiracy to plot against people’s lives or possessions is *Mahdur-ul Dam*.¹²¹

In the Islamic Penal Code (1991), the definitions and prescribed punishments for waging war against God and sowing corruption on earth were included in one chapter. Articles 183 to 196 of the Code defined many instances and examples of offenses covered under these two charges. The Code did not examine the charges of ‘sowing corruption on earth’ separately and independently. The new Code, however, has completely severed these two types of offenses, and defines

Coroner’s Office, reliable physician, and the judge or the prosecutor in charge of the case, should the enforcement of punishment cause risk to the health of the child or interfere with mother’s nursing the child, the punishment should be postponed until the child reaches the age of two.

¹¹⁸ *Yad-daasht Kun* [Make a Note]: Fattaneh was Pregnant When They Killed Her, Iraj Adibzadeh, Radio Zamaneh, 19 Dey 1390 [9 January 2012]. Link dated December 2011: <http://www.radiozamaneh.org/print/culture/khaak/2012/01/09/9790>

¹¹⁹ The Committee for the Defense of Human Rights in Iran-Sweden. Link dated December 2011: <http://www.komitedefa.org/sidor/sidan4.htm>

¹²⁰ Online access to the text of the book. December 2011: <http://www.khavar.com/IrajMesdaghi/Shekanja.htm>

¹²¹ Interview with Mohammad Dadkhah, Attorney at Law, *Aya Toleed Konandegan-i Filmhay-i Mustahjan ‘Mufsid-i Fil Arz’ Hastand?* [Are producers of pornographic films considered ‘Corrupts on Earth?’] Mitra Shojaei, Voice of Germany, 14 June 2007. Link dated December 2011: <http://www.dw-world.de/dw/article/0,,2609130,00.html>

Muharibih solely as: “drawing a weapon [on another] with intent to kill, threat to one’s property or *Namoos* [man’s honour], or causing fear and security risk in the society,” while broadening the scope of ‘sowing corruption on earth.’

According to the new Code, whosoever commits the following offenses is considered ‘corrupt on earth’ and will be sentenced to death:

- a widespread crime against masses;
- crimes against internal or external security;
- spreading rumors and uttering slander;
- financial malfeasance in the affairs of the State;
- arson and vandalism;
- spreading hazardous substances, such as poisons and biological agents;
- establishing brothels, or involvement in their operations, causing severe disturbances to public order; security risks or inflicting substantial physical harm to individuals, or damage to public or private property; widespread moral corruption and offenses.¹²²

This is the first time that the law makes direct reference to acts of “establishing brothels,” or “promoting moral corruption” in provisions of ‘sowing corruption on earth.’ Prior to the ratification of the new Code, particularly in early years of the establishment of the Islamic Republic, such charges were likewise being prosecuted under the provisions of ‘sowing corruption on earth,’ albeit in general terms.

3.1 Execution of Prostitutes under *Ifsad-i Fil Arz*

Even though in the early years of the establishment of the Islamic Republic, many political dissidents were executed under the combined charges of “waging war and sowing corruption on earth,” this law had another application which targeted only women.

During the period of 1979 to 1981, many prostitutes and those involved in the operation of brothels were hanged under the charges of ‘sowing corruption on earth.’ In fact, after the execution of the prominent leaders of the Shah’s regime, and those of the army and SAVAK, prostitutes were the first group that was subject to execution orders under the Islamic laws.

One of the first women executed by the Islamic Republic was Behjat Delara, who was killed on 16 Esfand 1357 [7 March 1979], less than a month following the victory of the revolution. Delara was executed for “unchaste behavior, prostitution, and operating a brothel.” According to the article published in *Ayandegan* Newspaper on 17 Esfand 1357 [8 March 1979], Delara was charged with “unchaste behaviour against minors, procurement and forcing minors to prostitution, and making a living therefrom.” Delara, along with five co-conspirators, “formed a gang of

¹²² Article 287 of the Islamic Penal Legislation

corrupt individuals who exploited naïve teenagers and forced them into prostitution and other misdemeanors.”¹²³

Shortly after, a wave of execution of well-known prostitutes in Tehran and other large cities began. One of the first to be convicted on charges of ‘corruption on earth’ was Sakineh Qasemi, a.k.a. Pari Bolandeh, who was executed on 12 July 1979.¹²⁴

According to *Keyhan* Newspaper, Branch One of the Islamic Revolutionary Court in Tehran convicted Sakineh Qasemi on charges of: “a lifetime of prostitution and corruption; trading young girls and perverting women; operating brothels and prostitution homes and causing the corruption of the new generation in this country,” and sentenced her to death.¹²⁵

On that same date [12 July 1979], Saheb Afsari (a.k.a. Sorayya Turkeh) and Zahra Mafi (a.k.a. Ashraf Four Eyes), two other well-known prostitutes, were convicted of similar charges and executed for ‘corruption on earth.’ A few short days after, on July 25th, another prostitute, Banoo Khorshid Safari, was similarly executed on charges of ‘corrupt on earth.’¹²⁶

Notwithstanding the decrease in number of the executions of prostitutes in the second and third decades of the Islamic Republic, this trend never completely stopped. The difference, however, was that during the early years of the revolution, the female prostitutes, in lieu of codified laws, were convicted as ‘corruption on earth’ under Shari’a laws, and subsequent to the codification of the Penal Code, charges of ‘adultery’ became the basis of their execution.¹²⁷

Furthermore, on 23 Khordad 1386 [14 June 2007], the Islamic Consultative Assembly ratified a law by which those acting in pornographic films were also considered to be ‘sowing corruption on earth,’ facing the death penalty. The provisions of this law also included producers, directors, and cameramen involved in making such films. Furthermore, according to this legislation, the possession of 10 or more copies of one title of such films, would suggest that the individual is a ‘duplicator and distributor,’ thus subject to verdict of execution for sowing corruption on earth.¹²⁸ Even though the Council of Guardians rejected the said legislation, the practice of the Public Prosecutor of Tehran was to charge the distributors of pornographic films under ‘sowing corruption on earth by way of promoting prostitution,’ and call for their execution.¹²⁹

4. First Degree Murder

¹²³ Boroumand Foundation. Link dated December 2011: <http://www.iranrights.org/farsi/memorial-case--3602.php>

¹²⁴ Report of Amnesty International, London, on Human Rights under the Islamic Republic of Iran, 1980, pp. 163-167

¹²⁵ *Keyhan* Newspaper: *Be Hokm-i Dadgahhaye Enqelab-i Islami 3 Zan va 4 Mard Tirbaran Shodand* [The Islamic Revolutionary Courts Executed 4 Men and 3 Women by Firing Squad], 21 Tir 1358 [12 July 1979], No. 10755. *Keyhan* 2nd Quarter, No. 2, Tehran: *Keyhan* Publishing 1985. [pp.] 561-568

¹²⁶ Report of Amnesty International, London, on Human Rights under the Islamic Republic of Iran, 1980, pp. 163

¹²⁷ Author’s interview with Sahdi Sadr, 23 January 2012

¹²⁸ Approval of the Death Penalty for Producers of Pornographic Films, Radio Farda, 23 Khordad 1386 [13 June 2007]. Link dated December 2011: http://www.radiofarda.com/content/f2_Parliament_bill_death_penalty_portn/397493.html

¹²⁹ Arrest of Porn Stars in Tehran, BBC-Persian, 15 Esfand 1387 [5 March 2009]. Link dated December 2011: http://www.bbc.co.uk/persian/iran/2009/03/090304_si_pornstars_arrest.shtml

The new Islamic Penal Code will also issue the death penalty for first degree murder¹³⁰, referred to as *Qisas-i Nafs* [retribution for life].

As per Article 302 of the new Code, *Qisas* is permitted if the perpetrator is not the victim's father or of his/her paternal lineage. Other conditions for *Qisas* would require that the perpetrator be of sane mind and of the same religion as the victim.

According to Article 303 of the new Code, the burden of *Qisas* against the perpetrator is lifted if:

- Prior to his/her death, the victim had committed a crime which was punishable by 'death' under *Hadd*;
- If the victim deserved retribution for life, and is killed by a next of kin of one previously murdered by him/her;
- If the victim was an aggressor and was killed through lawful act of self-defense;
- If the victim was the wife of the perpetrator engaged in the act of adultery with another man. Under such circumstances, if the husband [perpetrator] were to murder the male adulterer also, he will not be subject to *Qisas*.

The exemption of fathers and grandfathers from punishment for killing their children, and the exemption of husbands catching their wives in a sexual act with another man will no doubt reduce the [official] rate of the death penalty. However, [such practices] promote unauthorized executions that subject women to death at the hands of family members, under pretense of 'honour killing.'

The law of *Qisas* carries another exception for men that could potentially be grounds for honour killings and wife killings. According to Article 383 of the new Code, where victim is female and perpetrator male, next of kin of the victims must pay half of the full *Diyyih* [blood money] prior to *Qisas*. Indeed, if a non-Muslim man kills a Muslim woman, he shall be executed without being entitled to *Diyyih*. However, if both perpetrator and victim are non-Muslims, the family of the victim is required to pay *Diyyih*, prior to enforcement of *Qisas*.

The new Code has added a note to this article based on which, "should the victim's next of kin choose to exercise his right to *Qisas*, but unable to pay the *Diyyih*, the blood money will be funded by the *Baytu'l-Maal* [religious endowment]."

Furthermore, according to Article 430 of the new Code, "should the person subject to *Qisas* be in detention, and the next of kin of the victim, due to their inability to pay the *Diyyih*, prolong the process of *Qisas* and leave the perpetrator in a 'suspended state,' the court would determine a period of time within which the next of kin could 'consider pardon, come to an agreement, or exercise their right to *Qisas*.' However, should the family fail to act within the allotted time, the perpetrator could be released on bail with surety until a final decision is made by the next of kin.

¹³⁰ Article 382 of the Islamic Penal Legislation

Notwithstanding the inherent gender discrimination in the provisions of *Qisas*, which would fully exempt men from penalty, or reduce their punishments, it must be noted that in most cases women are sentenced to death for murder of their husbands.

Although the law of *Qisas* does not take into account the motive for murder, research conducted by independent scholars in the field of women studies, journalists, and women's rights activists detained in the common wards in Iranian prisons show that the inherent gender bias in Iranian Civil Code, and the aggression inflicted upon women resulting from such double standards, are among numerous other factors for women murdering their husbands.

My extensive conversations in Evin prison in Tehran with a number of women sentenced to death for murdering their husbands indicate that in most instances these women were subject to arranged marriages at an early age, without the right to divorce to end their matrimonial life of aggression. Denials of the right to the custody of their children and their concerns over the future of their offspring are yet other reasons these women choose to stay in abusive marriages. On the other hand, these women suffer from various forms of physical, emotional and sexual abuse inflicted upon them [by their husbands] without any protection afforded to them by law. Furthermore, legal factors such as polygamy laws put tremendous emotional burdens on women. All such aggravating factors drive these women to attempt to murder their husbands.

Acknowledging that the law of *Qisas* is not inherently gender-biased and its provisions do not impose greater penalties on women, the prevailing discriminations in Civil and Criminal Codes indirectly put women at higher risk of execution, i.e., factors such as women's limitations in accessing resources, finances, awareness of the law, etc., result in their having fewer defense options available to them in legal proceedings, thus higher the chances that their rights as citizens are violated during detention (both before and after being sentenced to death).

5. *Sab-i Nabi* [Insulting the Prophet] and Robbery

Insulting the Prophet and robbery are among other crimes that potentially carry the death penalty. According to Articles 263, and 264 in the new Code, uttering profanities against the Prophet of Islam, Shi'a Imams, and Fatemeh (Prophet's daughter) and accusing them of adultery or sodomy is punishable by death.

The punishment for robbery on the fourth occasion after three¹³¹ convictions and punishments under *Hadd* is execution.¹³²

These two charges remain unchanged in the Code, and gender does not play a role in the prescribed punishment.

¹³¹ According to Article 279 of the Islamic Penal Legislation, robbery (subject to *Hadd*) is punishable the first time by cutting four fingers on the right hand; the second time by cutting the right foot of the robber (from the lower part of the ankle); and the third time carries the life sentence.

¹³² Article 279 of the Islamic Penal Legislation

6. Charges Concerning Drugs

According to the British Foreign Office annual report for 2010 on the situation of human rights in Iran, of 650 individuals who were executed, 590 of them were hanged on drug trafficking charges.¹³³

Death sentences for drug-related crimes are issued under the law of *Ta`zir* and based on the Amended Drug Control Laws (ratified 17 Aban 1376)[8 November 1997]. However, under certain circumstances, particularly concerning gang-related and drug trafficking conspiracy cases, provisions of ‘sowing corruption on earth’ could become the basis for death sentences.¹³⁴

The number of females executed on drug related charges is very low. However, women executed for such charges are often charged with buying or selling of small quantities of drugs, usually to supply their immediate families.

Of thirty-two women awaiting execution in October 2010 in Evin prison, eight were sentenced to death for drug-related charges. Amnesty International—which could only obtain information on three of the eight women—reported that “they are from poverty-stricken families who had no access to legal representation during their court proceedings. Husbands of these three women are either in jail or homeless as a result of their drug addictions and had left their children in the care of extended families due to their mothers’ arrests.”¹³⁵

[In her call against execution] Shirin Ebadi, supported by six human rights proponents, stated: “The Islamic regime uses a familiar practice for executing political prisoners under the pretext of common [drug-related] charges.”¹³⁶

The increased number of executions in Iran is pursuant to the enforcement of more severe penalties for drug-related charges. Subsequent to the modification and amendment of drug control laws by the Expediency Council, the amended provisions were endorsed by the leader of the Islamic Republic, Seyyed Ali Khamenei, and officially came to effect at the end of the month of Azar.

Zahra Bahrami, an Iranian-Dutch citizen, was arrested during the 2009 post-presidential election unrest and subsequently executed on 9 Bahman 1389 [29 January 2011]. Bahrami, who was arrested on the Day of Ashura in 2009 and detained in solitary confinement in the Evin’s notorious 209 Ward. After 10 months in solitary, and under duress during interrogations to make a

¹³³ British Foreign Office annual report on Human Rights in Iran dated 31 March 2011. Link dated December 2011:

<http://iran.net/spip.php?article2018>

¹³⁴ *Mahiyat-i Mojazat-i Eedam dar Jorm-i Ghaachaq-i Mavad-i Mokhader* [The Essence of Death Penalty in Drug Related Crimes], Legal Advisory and Parliament Affairs. Link dated December 2011: <http://www.hvm.ir/print.asp?id=26742>

¹³⁵ Amnesty International report, Iran Addiction to Death, 15 December 2011. Link dated December 2011:

<http://www.amnesty.org/en/library/asset/MDE13/090/2011/en/0564f064-e965-4fad-b062-6de232a08162/mde130902011en.pdf>

¹³⁶ Call by Nobel laureate Shirin Ebadi and six human rights organizations for the halt to executions in Iran, 16 February 2011. Link dated December 2011: <http://hrw.org/news/2011/02/16-0>

televised confession and accept heavy charges, she was executed under the pretext of drug charges before her court hearing for security related charges.¹³⁷

Shirin Ebadi commented [about Bahrami], saying: “For years now the Iranian authorities have arrested and prosecuted political dissidents under fabricated charges such as possession of alcohol, drugs, or even weapons. Considering the increase in number of executions, the judiciary’s lack of transparency and recent changes in the drug control laws, issuance of execution orders for political dissidents under such pretexts is of serious concern.”¹³⁸

A quick overview suggests that the revised Islamic Penal Code, soon to be the basis of criminal law in Iran, is not a step forward in eliminating gender discriminations, or lessening, let alone banning, verdicts of execution. In fact, most laws previously referenced in delivering verdicts of execution remain unchanged.

It is only in certain instances such as stoning, homosexuality, and the age of criminal responsibility that the new Code, by either adding or omitting certain provisions, has made elusive changes to the form of the penalty, particularly concerning verdicts of death penalty. The fact is, however, that in most instances the law has given discretion to the court. Although, some amendments may have lifted the certainty that existed previously in certain provisions, thus availing some defendants a better defense, the inevitable consequence that applications of the death penalty will become arbitrary cannot be denied.

Moreover, gender-related factors that place women in greater risk of facing the death penalty remain unchanged in the new Code.

Notwithstanding the fact that females face a greater risk of execution due to their age of criminal responsibility being lower [than for men], other instances such as adultery [both *Zina* and *Zinay-i Muhseneh*], murder, charges of corruption on earth and drug-related offenses also put women at a greater danger of facing execution due to the nature of provisions that exist in both Civil and Criminal Codes.

Moreover, with respect to crimes of murder, in addition to inherent gender discrimination concerning unofficial killings, including honor killings, the inequalities embedded in the Civil Code cannot be ignored as contributing factors, particularly with regards to spousal killing.

All things considered, it appears that by having made selected adjustments in the wording of certain provisions, the new Islamic Penal Code will continue to enforce the penal laws just as they were enforced before in the Islamic Republic of Iran.

¹³⁷ Two executions and 129 years’ imprisonment for female political prisoners in the last year. Hamideh Nezami, Radio Zamaneh, March 2011

¹³⁸ Call by Nobel laureate Shirin Ebadi and six human rights organizations for the stop of executions in Iran, 16 February 2011. Link dated December 2011: <http://hrw.org/news/2011/02/16-0>

