

Submission to the UN Universal Periodic Review
Seventh session of the UPR Working Group of the Human
Rights Council February 2010

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

Capital Offenses in the Islamic Republic of Iran

September 2009

I.	Sources: codified and uncodified law	1
II.	Capital offenses	1
1.	Qisas capital crimes (three offenses)	1
2.	Huddud capital crimes (31 offenses)	3
3.	Ta'zirat capital crimes (97 offenses)	4
III.	Capital offenses abolished	5
IV.	Conclusion	5
V.	Appendices – ELEI's documents for further reference	6

Executive Summary

Since its foundation in 1979, the Islamic Republic of Iran has extended criminal provisions so that there are now at least 131 capital offenses. In the same period, it has removed the death penalty for just three offenses. Most provisions concerning the death penalty are set out in the criminal code and related legislation, but for some offenses, such as apostasy, the death penalty is imposed on the basis of Islamic jurisprudential texts. The new Draft Islamic Criminal Code, currently in the legislative process, retains all but one capital offense and adds several new capital offenses.

The vast majority of capital offenses are non-lethal acts, including many acts which, according to internationally recognized human rights standards, should not be criminalized at all. “Intentional killing” entails, with just a very few exceptions, a mandatory death sentence, including for juvenile offenders. The definition of “intentional killing” in Iranian law is dangerously broad, leading to scores of death sentences and executions each year that would be considered manslaughter or second-degree murder in other, more conventional, legal systems. Capital drug offenses, which also account for numerous death sentences and executions every year, are not limited to major trafficking, but include possession of fixed quantities of narcotics, which are calculated cumulatively in the case of repeat offenses.

The actual number of executions is a state secret. Of the 560 executions that ELEI was able to record from public sources since January 2008, “intentional killing” and drug offenses accounted for nearly 80%.



Cooper Station, P.O.Box 316, New York, NY 10276-0316, USA
t: 212 260 7460 f: 267 295 7391 e: pELEI@irainc.org u: www.irainc.org/pELEI

The Project on **Extra-Legal Executions in Iran (ELEI)** was established by the Iranian Refugees' Alliance Inc, a non-governmental organization working from the US since 1995, to collect and analyze data on capital crimes, judicial proceedings in capital cases, and judicial executions in Iran that violate binding international legal standards on capital punishment.

I. Sources: codified and uncoded law

1. The Constitution of the Islamic Republic of Iran declares the Shi'a Twelver *Ja'fari* school of Islam as the official religion of Iran, and *shari'a* (Islamic law) as the origin of all national law enforceable in courts, including criminal law. The Constitution makes *shari'a* applicable irrespective of whether the offenses were incorporated into statute or not. Several statute laws explicitly guarantee that unlegislated *shari'a* law is also applicable in courts.
2. The main criminal statute in the Islamic Republic of Iran is the Islamic Criminal Code of 1991/96 (hereafter referred to as "the 1991/96 ICC"), which was largely drawn from Ayatollah Ruhollah Khomeini's book of Islamic jurisprudence *Tahrir al-Wasileh* (Commentaries on the Vehicle).¹ A new Draft Islamic Criminal Code issued by leading Islamic jurists in November 2007 (hereafter, the 2007 Draft ICC), which is currently in the legislative process, is drawn largely from that source as well.²
3. In addition to the 1991/96 ICC, nine shorter pieces of legislation on specific areas also include capital offenses for a variety of economic, press, narcotics, morality, audio-visual and computer crimes, as well as various crimes committed by members of the armed forces.

II. Capital offenses

4. At least 131 capital offenses exist in three classes of crime: *qisas*, *huddud*, and *ta'zirat* (each of which are defined below). A detailed table of capital crimes under each class, and their basis in statute law, if any, has been compiled by ELEI in the **Table of Capital Offenses in the Islamic Republic of Iran and their Sources in Statute Law and Islamic law**. The table also shows which capital crimes were retained, omitted or newly added to the 2007 Draft ICC. Since the authorities do not provide information on the number of death sentences or executions, or for which offenses, we cannot know death penalty is applied for how many of these offenses in practice.

1. *Qisas* capital crimes (three offenses)

5. *Qisas* (literally, "retaliation") is defined in the 1991/96 ICC as a punishment "equivalent to the crime, which God has prescribed for *jinayat* (murder or bodily harm)."³ *Qisas-e nafs* ("retaliation with a life") is the Islamic term for capital punishment in *qatl-e amd* ("intentional killing") and is considered a right conferred to the heirs of the victim. Prosecution, continuation of trial and execution of a *qisas* sentence are conditional upon the will of the heirs.
6. Under Islamic law as it relates to offenses of murder in Iran, the term "intentional killing" carries a meaning quite different to its customary and internationally accepted sense in this

¹ *Tahrir al-Wasileh* (Commentaries on the Vehicle) written by the late Ayatollah Ruhollah Khomeini (1902-1989) was a commentary on Ayatollah Seyyed Abul-Hassan Isfahani's (1867-1946) book *Wasilat-al-Nijat* (Vehicle to Salvation). It was written in Arabic during his exile years in Turkey in the 1960s.

² For the history and description of the Islamic Penal Code see ELEI's working paper No. 1, 2009.

³ 1991/96 ICC, Article 14.

context. The *UN Special Rapporteur on extrajudicial, summary or arbitrary executions* has stated that “the term [‘intentional’] should be equated to premeditation and should be understood as deliberate intention to kill.”⁴ In the *qisas* murder laws of Iran, however, the briefest momentary “intent” on the part of the perpetrator is sufficient to establish the element of “intention” in murder. Intentionality is also considered proven if the perpetrator commits an act which is “typically lethal”.⁵ The same approach is reproduced in Articles 311-2 of the 2007 Draft ICC.

7. Whether or not an act is “typically lethal” is generally determined by the weapon used in the killing. Any killing resulting from bladed instruments, firearms, sharp or heavy stones, or blows to the head or other vital parts is considered to have resulted from a “typically lethal act” and is therefore considered to be “intentional.” Since most killings are committed with such blow or objects,⁶ especially knives, many crimes which might under other systems be treated as manslaughter or second degree murder are automatically subject to *qisas* death sentences. This anomalous interpretation of intentionality is the single most significant factor in the large number of executions of juvenile offenders (at least 42 in the past decade), and the large number of juvenile offenders being held on death row (currently at least 138).⁷
8. Defenses recognized in the law such as “insanity” and “self defense” (including defense of honor) are extremely narrowly defined or applied in a restrictive and discriminatory manner. Since *qisas* is considered a right conferred by God to the murdered victim’s heirs, the death sentence is mandatory once a conviction for “intentional killing” has been obtained. No regard whatsoever is given to any mitigating characteristics of the offense or the offender which might justify a sentence other than death.
9. The actual number of executions is a state secret and the authorities permit only a proportion of death sentences and executions to be reported in the public media. Of 560 publicly reported executions recorded by ELEI since January 2008, 217 (39%) were *qisas* executions.⁸ While the total number is not known, official rates reported for intentional murder incidents and trials suggest that very high numbers of *qisas* death sentences are being handed down, and presumably carried out.⁹ According to the founder of the Society to

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

⁵ Article 206 of the 1991/96 ICC: “Murder is intentional in the following instances: a) where the murderer intends to kill a particular person or unspecific person(s) within a group by perpetrating an act which results in death regardless of whether the act is typically lethal or not; b) where the murderer intentionally perpetrates an act which is typically lethal, even if s/he did not intend to kill the person; c) where the murderer does not intend to kill and the act perpetrated by him is not typically lethal by its nature, but lethal for the victim due to conditions like sickness, old age, disability, or infancy, etc., of which the murderer is aware.”

⁶ For example, of 19 killings that took place in Tehran in one month, eight (42%) were committed with a knife, four (21%) with blunt objects such as metal rods or stones, three (25%) with rope, two (11%) with firearms and two (11%) by pushing the victim from a high place. Etemaad Meli newspaper, *هر ۳۹ ساعت یک جنایت در پایتخت (One murder every 39 hours in the capital)*, 26 August 2006 [05.06.1375].

⁷ See tables of minors who were executed in the past decade or currently on death row in *FIDH, Iran: death penalty*, <fidh.org/IMG/pdf/Rapport_Iran_final.pdf>, April 2009, pages 30 and 50-60.

⁸ The complete breakdown is: 36% drug offenses, 39% *qisas*, 12% *moharebeh* and *ifsade-fil-arz*, 10% *zina* and *lavat*., and 3% unspecified. For further information see *Database of Publicly Reported Executions in Iran* available at < irainc.org/ELEI>.

⁹ According to the Statistical Center of Iran, a yearly average of 1,836 new “intentional murder” cases were filed with

Protect Prisoners (*Anjoman Hemayat az Zendanian*), at least 1,363 prisoners convicted of “intentional killing” were languishing on death row Iran’s prisons in July 2003.¹⁰

2. *Huddud* capital crimes (31 offenses)

10. *Hadd*, (plural: *huddud*. Literally, “boundary or limit”) is a punishment for which “*shari’a* has fixed the measure, the degree and the method.”¹¹ It is thus by definition unchangeable, irreducible and mandatory. *Huddud* capital crimes consist of three subcategories:
11. **a) Sex crimes:** These include seven offenses under *zina* (illicit heterosexual sex) including male and female adultery, rape, intercourse with stepmother and relatives with whom marriage is forbidden, and intercourse between a Muslim man and a non-Muslim woman, three under *lavat* (penetrative male homosexual sex) including consensual intercourse, rape, and intercourse with minors, one under *tafkhez* (non-penetrative male homosexual sex) when the ‘active party’ is non-Muslim and the ‘passive party’ is Muslim, and also two under necrophilia. The 2007 Draft ICC retains and incorporates all ten capital sex offenses, but leaves the necrophilia offenses uncodified, as before. The only capital offense reduced to lashes by the Draft 2007 ICC is for an unmarried ‘active party’ in the offense of adult *lavat*. The ‘passive party’ is still condemned to death whether married or not, and the ‘active party’ would still be executed on the fourth conviction.¹²
12. **b) Crimes against the state and religion:** These include five offenses under *moharebeh* and *ifsade-fil-arz* (literally, “fighting God’s ordinances” and “corruption on earth”). They also include two under *irtidad* (apostasy), witchcraft, heresy and blasphemy which, although not included in the 1991/96 ICC, have always remained applicable under Islamic jurisprudence. These offenses have been inserted in the 2007 Draft ICC, but it seems likely that they will again be removed in response to wide international criticism. They will nevertheless remain fully applicable, as they are today. The 2007 Draft ICC also creates several new offenses under *moharebeh* and *ifsade-fil-arz* such as the distribution of dangerous poisonous and microbiological matters “on an extensive level” and the establishment of prostitution and corruption centers “on an extensive level.”¹³
13. **c) Recidivism:** These include a fourth conviction for non-capital *zina* (fornication), *tafkhez*, *mosaheqeh* (female homosexual sex), *qazf* (unfounded accusation of *zina* or *lavat*), *sirgat* (theft), renewed *irtidad* (apostasy), bestiality, necrophilia, and a third conviction of drinking alcohol. With the exception of necrophilia and bestiality, which remain uncodified in statute law, the 2007 Draft ICC retains all the other six capital crimes in this subcategory. Drinking is punished on the fourth conviction and not the third.

the police from 2000 to 2004, and a yearly average of 5,126 cases in the same period, including retrials and cases from previous years were resolved in the lower courts; data from sci.org.ir/portal/faces/public/sci/sci.mahsulatvakhadamat/sci.paygah.

¹⁰ Emadeddin Baghi, ایران گزارشی از يك پژوهش جامعه شناختي و حقوقي در دست اجرا درباره اعدام هاي ۲۷ سال گذشته در (A report on a socio-legal study on executions in the past 27 years), 4 January 2007, < emadbaghi.com/archives/000850.php>.

¹¹ 1991/96 ICC, Article 13.

¹² 2007 Draft ICC, Article 221-9.

¹³ 2007 Draft ICC, Article 228-10.

14. Since *hadd* crimes are claims of God, they do not require a private complainant for prosecution (*qazf* is the only exception). A wife or husband who has been found guilty of adultery is put to death even if their spouse has made no complaint or has opposed the death sentence. The only mitigating circumstance for a *hadd* death sentence is “repentance,” which only applies to persons whose crimes have been proven in court on the basis of their own confessions. Even then, the judge has the discretion to propose the granting of a pardon or to implement the death sentence.¹⁴
15. Of 560 publicly reported executions recorded by ELEI since January 2008, 66 (12%) were *mohareb* and *ifsad-e fil-arz* and 58 (10%) were *zina* and *lavat*. Four men were stoned to death or hanged for adulterous *zina*.¹⁵

3. Ta’zirat capital crimes (97 offenses)

16. Iranian law defines *ta’zir* (plural: *ta’zirat*. Literally “chastisement”) as punishment imposed for “an act or an omission that is prohibited in the sacred Islamic *shari’a*.” *Ta’zir* punishments are not specified in *shari’a* and are left to “the discretion of the Islamic judge”. Islamic jurists generally agree that *ta’zir* is a “lesser” punishment than *hadd* and Iranian law states that *ta’zir* is a punishment “such as imprisonment, fines and lashes, the degree of which shall be less than *hadd*”.¹⁶ Yet, the death penalty is applied to many offenses classified as *ta’zir*, usually on the pretext that the gravity of the offense makes it “tantamount” to the *hadd* crime of *moharebeh*, or *ifsad-e fil arz*, or both.
17. Altogether there are 97 *ta’zir* capital offenses. Eight are provided for in the *ta’zirat* section of the 1991/96 ICC and 29 in seven shorter pieces of legislation. They span a wide range, from acts with potentially lethal consequences, such as attempting to assassinate the Leader,¹⁷ to economic crimes such as counterfeiting currency,¹⁸ morality crimes such as extensive distribution of obscene/pornographic audio-visual materials,¹⁹ and public order crimes such as providing improperly baked breads to strike at the regime.²⁰ There are also 13 capital offenses in the Anti-Narcotic Drugs Law of 1997, and 49 further offenses in the Law Concerning Punishments for Crimes Committed by Members of the Armed Forces of 2003.
18. As admitted by the authorities, in practice, most *ta’zirat* capital sentences are imposed under the Anti-Narcotic Drugs law of 1997. Drug-related capital offenses are not limited to trafficking, cultivation, manufacturing, importing and exporting, as is typically the case in states that impose the death penalty for drug-related crimes. People in possession of illicit drugs exceeding certain amounts are also executed, and where the individual has multiple

¹⁴ 1991/96 ICC, Articles 72, 126, 132, and 182.

¹⁵ Database of Publicly Reported Executions in Iran available at < irainc.org/ELEI >.

¹⁶ Criminal Procedure Code for General and Revolutionary Courts, Article 2 and 1991/96 ICC, Article 16. It should be also noted that the law also criminalizes a range of actions which are not prohibited *per se* according to Islamic law but are required to “protect public order and welfare”. [Article 17]

¹⁷ 1991/96 ICC, Article 515.

¹⁸ Law Concerning Increase of Penalties for Bill Counterfeiters and Persons who Import, Distribute or Pass Counterfeit Bills, Article 1.

¹⁹ Law Concerning Punishment of Persons Involved in Illicit Audio-Visual Activities (2008), Article 3a.

²⁰ Law Concerning Increase of Penalties for Speculators and Profiteers (1988), Article 5.5.

convictions, the narcotics are calculated cumulatively, with the death penalty applied if the total quantity of narcotics reach the stated threshold.

19. Of 561 publicly reported executions recorded by ELEI since January 2008, 204 (36%) were for drug-related offenses. In the years prior to 2005, figures derived mainly from international sources suggest an average of 1,000 executions per year for drug offenses.²¹ In September 2006, the General Prosecutor of Mashad, a city of 2.5 million near the borders of Afghanistan, announced that 500 prisoners were on death row in that city's prison for drug-related crimes alone.²²

III. Capital offenses abolished

20. In the 30 years of its existence, the Islamic Republic of Iran has abolished the death penalty for just three of the offenses it put in place. The sentence of death originally prescribed in the first *Ta'zirat* law of 1992 for doctors and midwives who performed late abortions was downgraded to payment of blood-money in the *Ta'zirat* law of 1996 (Volume 5 of the 1991/96 ICC). The repeal of Article 18 of the 1988 Anti-Narcotic Drugs Law in 1997 removed the death penalty for two offenses relating to repeat convictions for deliberately causing another person to be addicted to heroin or similar substances.

IV. Conclusion

21. Countries that have not abolished the death penalty are required by international standards to restrict the death penalty to only "the most serious crimes," a definition which is to be interpreted in the most restrictive and exclusive terms. Standards require that the death penalty should only be considered in cases where the crime is intentional (in the sense of clearly premeditated), and results in lethal or extremely grave consequences. It should never be imposed on persons who were below 18 years of age at the time of the offense and never mandatorily on adults. States are required to repeal legislation which imposes capital punishment for economic, non-violent or victimless offenses.
22. In the clearest possible violation of all these standards, judicial executions are still taking place in Iran at a rate of at least one a day,²³ including juvenile offenders, for crimes that hardly ever constitute "the most serious crimes." Although it is not possible to find out how many of the existing 131 capital offenses lead to executions and/or death sentences, the egregious proliferation alone is an egregious violation of international standards. The authorities continue to pass new criminal legislation with death penalty provisions and impose capital punishment for offenses not codified in statute law. The new 2007 Draft ICC will impose the death penalty as broadly and relentlessly as the 1991/96 ICC.

1. ²¹ In 2005 the Economic Cooperation Organization's Drug Control Coordination Unit (DCCU) stated that Iran had executed more than 10,000 narcotics traffickers in the preceding decade <ecodccu.org/English/coutry_profiles/iran/Iran2005.htm>.

²² Iran Student News Agency (ISNA), *وجود ۵۰۰ متهم مواد مخدر محکوم به اعدام در مشهد* (500 narcotic drug convicts are on death row in Mashad), <khorasan.isna.ir/NewsView.aspx?ID=News-61295>, 16 Sep. 2006 [26.06.1387].

²³ Based on 285 executions from 1 January 2009 to 30 August 2008 reported publicly.

23. While trying to placate the international community's concerns with unfounded claims of progress, such as imposing so-called moratoriums on stoning and public executions,²⁴ the Iranian State authorities continue to insist that the death penalty "is a domestic legal matter which can only be discussed in the parliament and legislative bodies of the country in question."²⁵ Immediately after the U.N. General Assembly voted with a vast majority in favor of a global moratorium on the death penalty on 18 December 2007, the Secretary of the Human Rights Headquarters of Iran's Judiciary, Mohammad Javad Larijani, called the initiative "part of the West's wanton attempts to export to other countries ideological issues of their own particular interest."²⁶
24. For its part the international community's responsibility is to be unbending in its criticism and condemnation of the Islamic Republic of Iran's extra-legal death penalty laws and practices. It must strengthen existing mechanisms or establish new ones in order to oblige the Islamic Republic of Iran immediately to impose a genuine moratorium on executions, and to take genuine steps toward full abolition of the death penalty.

V. Appendices – ELEI's documents for further reference

1. Working paper No. 1, 2009, Capital Offenses in the Islamic Republic of Iran
2. Working paper No. 2, 2009, Methods of Execution in the Islamic Republic of Iran

available at <http://irainc.org/ELEI>

²⁴ For a discussion of the so-called moratoriums see ELEI's working paper No.2, 2009, Methods of Execution in the Islamic Republic of Iran, available at <irainc.org/ELEI>.

²⁵ Iranian Students New Agency, موضع ما نسبت به قطعنامه تعلیق موقتی مجازات اعدام روشن است, (*Larijani: Our position towards the [U.N.] Moratorium on the Death Penalty is clear*), <isna.ir/ISNA/NewsView.aspx?ID=News-1056545>, 22 December 2007 [01.10.1386].

²⁶ *ibid.*