

CHILD EXECUTION IN IRAN AND ITS LEGALITY UNDER THE ISLAMIC LAW

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Abstract

This essay aims to examine the Islamic law which justifies the child execution in Iran. After introducing basic concepts, data and definitions, the essay evolves

around the international treaties which ban such executions. Further it focuses on the Islamic Penal Code of Iran, which entered into force after the Islamic Revolution in 1979. Iranian Legal system differentiates between “Hokm-e-E’dam” which are the cases where the penalty is the execution and “Qesas”, retribution in kind, which is the penalty for murder. “Qesas” cases are excluded from the category of execution according to Iranian law but as in both cases the state puts the convicts to death, international law does not recognize this distinction as valid. Further the essay briefly highlights challenges towards a reform in Iranian legislation, what has been done so far in this regard and which realistic strategies should be implemented to facilitate change toward removing systematic obstacles to juvenile justice. The last part presents some suggestions and recommendations to the children’s rights defenders who fight for achieving the goal of abolishing capital punishment against children.

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“Mom, they want to execute me. I see the gallows. Mother save me! I want to see you, for God’s sake save me!”

Last words of executed juvenile Delara Darabi to her mother (SCE, 2009)

1. Introduction

In all regions, governments have ratified relevant international treaties that ban execution of child offenders—people convicted of crimes committed when they were under the age of 18- and some changed their domestic law to enforce the ban (Amnesty International, 2007). Yet Iran was left behind, representing a state known as the top executioner of juvenile offenders in the global ranking by having executed more child offenders than any other country in the world since 1990 and being responsible for 73% of all juvenile executions worldwide since 2004 (International Campaign for HR in Iran, 2008). By June 2009 Iran executed 33 child offenders and had at least 160 juveniles waiting on death row for different reason such as homosexuality, apostasy, sex outside of marriage, and involving in street fights which led to a murder (SCE, 2009)¹.

It is cruel and inhuman to apply the death penalty even to adults let alone to those convicted of crimes committed under the age of 18. Moreover because of children's immaturity, vulnerability, impulsiveness, and capacity for rehabilitation they should never face the execution, no matter how severe is the crimes of which they have been convicted. Instead the principle of maximizing the child offenders' potential to be able to reintegrate into the society should be enforced by the law. Mary Robinson, former UN High Commissioner for Human Rights emphasizes this aspect by pointing out her concerns on the 1st of August 2002 about scheduled executions of two juvenile offenders in the US: "The overwhelming international consensus that the death penalty should not apply to juvenile offenders stems from the recognition that young persons, because of their immaturity, may not fully comprehend the consequences of their actions and should benefit from less severe sanctions than adults. More importantly, it reflects the firm belief that young persons are more susceptible to change, and thus have a greater potential for rehabilitation than adults" (UN News Centre). Yet the Iranian Juvenile Justice has a strong focus on punishment. According to Winter and Branken (2005) report:

"Some judges and prosecutors could not understand the idea of restorative justice even when it was explained by national experts. They constantly referred to the importance of punishment as a regulator of societal behavior. The term responsibility was understood only in the

¹ For over a decade Iran has had the highest number of child executions in the world, nevertheless it is impossible to know the actual number of juveniles which have been executed in Iran since 1979. There are many obstacles to investigate the juvenile death penalty in Iran. The government has repeatedly limited the activities of human rights defenders and activists, lawyers, journalist and children's rights activists. They have been called for interrogation, threatened or harassed by the authorities. The government has refused to grant permission to hold events or rallies against death penalty and executions has not been reported in the press. Also there has been no transparency and accountability of the reports and documents presented by the state. Accordingly overall figures are not available. (Amnesty International, 2007)

context of penal responsibility and never understood in terms of taking responsibility for offences committed. The notion of guilt and punishment was therefore far more important than the notions of taking responsibility and making reparation.”

Only recently the professionals and officials of the justice system have started to consider the importance of the non-punitive measure for child offenders. Also there has been a growing general agreement among some Iranian politicians and professionals to ban the death penalty for people under the age of 18 as well as a developing movement among citizens, human rights defenders, theological experts and religious leaders in this favor; nevertheless it is still very difficult to abolish it. The main legal obstacles to the abolishment of the child execution in Iran are: the low age of criminal responsibility and retribution according to the Islamic law (Shari'a). According to Christian Volkmann, former representative of UNICEF in Iran, domestic and international support is essential to reach the juvenile justice reform in Iran which would consequently lead to the necessary legal changes in the national law. He believes the current environment is favorable for such activities as the Iranian authorities themselves have initiated to harmonize the national and international legal standards with the Act of Formation of Juvenile Courts. (Afshin-Jam and Danesh, 2009)

The Iranian Judiciary presented the Act of Formation of juvenile Courts bill to the Parliament (Majles) in 2004, initially entitled the Law on the Establishment of Children's and Juvenile's Court in around 2001 when the draft law was introduced² (Amnesty International, 2007). The bill, considered an important stage and the basis for ongoing reform of the juvenile justice, though it neither abolishes the death penalty for adolescents nor raises the age of criminal responsibility, but it gives judges the possibility to re-assess the mental maturity of the juvenile offenders and avoid issuing death sentences in the first trial. Since the ultraconservative forces are resisting against the bill it has not yet been approved by the Parliament. Accordingly strong national and international support will be required to create the necessary momentums and political priorities for the approval of the bill. Moreover the new bill will not be sufficient to reduce the number of executions due to the wide room given for the interpretation of the national law to the Iranian judges and their punitive approach. As a result the efforts towards the approval of the legal reforms should be followed by a sustained attempt to change some fundamental concepts in Iranian Jurisprudence (Afshin-Jam and Danesh, 2009). As 47% of Iran's population is below the age of 18, those who care about Iran and Iranians should consider it as an important area of concern (Statistical Centre of Iran, 2006 cited in SCE, 2009).

2. International law

² The draft law can be viewed in Farsi at: <http://www.spk-gov.ir/NEWS.asp?ItemID=5928>

For the purposes of this essay, the definition of child and its rights are necessary. According to the United Nations Convention on the Rights of the Child (1989), a child is defined as “a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. Children’s rights are defined in various ways, covering a broad spectrum of civil, cultural, economic, social and political rights. Synoptically and according to Child Rights Information Network (2007), the rights could also be categorized as the right of empowerment, that is, advocating for children as autonomous people under the law; the right of protection, that is, claiming on society and the state for protection from risks perpetrated on children because of their dependency; economic, social and cultural rights, which are related to the conditions that are essential to meet basic human needs, access to education, housing, food, work, health; environmental, cultural and developmental rights, which include the right to live in safe and healthy environments and the right to cultural, political and economic development. Apart from physical and collective rights, children have individual rights that “allow them to grow up healthy and free” (Calkins, 1972). These rights are: ownership over one’s body, freedom of speech, freedom of thought, freedom from fear, freedom of choice and the right to make decisions.

The United Nations Convention on the Right of the Child was the first international legally binding instrument addressed to children, proposed to the United Nations on the 20th of November 1989 (UNICEF). It has been the result of the growing awareness that children need special care and protection and helps comply with the standards for basic human rights for everyone under the age of eighteen. The state parties which sign and ratify the CRC agree to provide the necessary changes in their legislation. For example Yemen raised the minimum age to 18 for imposition of the death penalty under its Penal Code in 1994 and China improved its criminal its criminal law to ban the death penalty for child offenders in 1997 (AI, 2007). According to Clarisa Bencomo, researcher on children’s rights in the Middle East at Human Rights Watch (2008), “Everywhere else, countries are moving to end this abhorrent practice, but in Iran the numbers of death sentences seem to be increasing.”

Iran ratified the International Covenant on Civil and Political Rights (ICCPR)- which states in Article 6, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age”- in 1975 without reservations, and Convention on the Rights of the Child (CRC) in 1994, which explicitly excludes child offenders from the death penalty in Article 37, “Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age”. However the government stated that it “reserves the right not to apply any provisions or articles of the Convention that are incompatible with the Islamic Laws and the international legislation in effect” (AI, 2007). Furthermore in a letter to the United Nations on 8th of May 2006, the government of Iran again confirmed its commitment to both CRC and ICCPR conventions (UN, 2006).

With regard to the reservation, the Convention can hardly provide any protection to children in Iran when it is hierarchically inferior to the internal law. It could be implemented to justify the execution of child offenders and is incompatible with the very object of the CRC (Schabas, 1996). The Committee on the Rights of the Child responded to the reservation by expressing its concerns that “Broad and imprecise nature of the State Party’s general reservation potentially negates many of the Convention provisions and raises concerns as to its compatibility with the object and purpose of the Convention”. Accordingly the Committee recommended that “the state party expedite this study and use the findings to review the general nature of its reservation with a view to narrowing and, in the long term, withdrawing in accordance with the Vienna Declaration and Program of Action” (Concluding Observations: Iran, 2000).

Iran ratified the ICCPR without any reservations when it was the monarchy of Mohammad Reza Pahlavi. Nevertheless it is an established principle of international law that a state is bound by the treaties entered into force by previous government. Accordingly, despite the change of regime, the Islamic republic of Iran is bound by all obligations of pre-revolution Iran. Moreover Iran could not withhold itself to abide to ICCPR which has been signed and ratified by the former Iranian monarchy as no successive government altered its position namely no reservations has been issued. Therefore Iran is fully responsible for breaching Article 6 of the ICCPR. (SCE, 2009)

Iran is also a state party to the Universal Declaration of Human Rights (UDHR) since 1948 and The Cairo Declaration on Human Rights in Islam (CDHRI). The latter is a declaration of the member states of the Organization of the Islamic Conference (OIC), which asserts Islamic Shari’a as its single source and gives an overview on the Islamic perspective of human rights (SCE, 2009). Representatives of the Islamic Republic of Iran have been criticizing the UDHR for its universality, indivisibility and its perceived failure to consider the cultural and religious context of non-Western countries. In 1981, Saeid Rajaie-Khorasani, the Iranian representative to the United Nation, has gone so far as considering the UDHR to be a secular concept of the Judeo-Christian origin which is inconsistent with the Islamic law and could not be implemented by Muslims (Littman, 1999).

2.1. Validity of Iran’s Reservation to CRC

Making reservations multilateral treaties is accepted by international law and human rights treaties have a very high rate of reservations. However not wholly remaining abide to the scope of an instrument by reservations weakens the general effectiveness of the main purpose of international human rights law, which is protection of individuals. Therefore states have been frequently called on by human

rights advocates to avoid making reservations and if they have been made, to reduce their extent or revoke them totally. (Schabas, 1996)

Iran's reservation has been the subject of criticism by many states being considered so far reaching as to represent a total denial of ratification. The arguments are as follows:

- The Vienna Convention on the Law of Treaties (VCLT), which administers the standards for treaty ratification, interpretation and cancellation, was opened for signature in 1969 and came into force in 1980 and has been ratified by ninety-four nations. Article 19 of the Vienna Convention permits a party to enact a reservation when signing a treaty unless the ratified treaty negates reservations or "the reservation is incompatible with the object and purpose of the treaty". Further Articles 20 and 21 formulates the rules for acceptance or rejection of a reservation and the following consequences for the state party. (Bradley, 2002) Article 51(2) of the CRC (1989), which states "A reservation incompatible with the object and purpose of the present Convention shall not be permitted" is also a reflection of Article 19 of the VCLT.

Iran is a state party to VCLT, thus shall abide by its framework of reservations. According to the Committee on the Rights of the Child, which inspects implementation of the CRC, amorphous and broad nature of Iran's reservation on the CRC makes it incompatible with the very object and purpose of the treaty and therefore should be removed or never applied as a legal justification for child executions (AI, 2007).

- By executing juvenile offenders Iran is violating a peremptory norm (AKA jus cogens), which is considered the underlying principles of international law with such importance to the international community that all states should abide by them in all conditions. The Vienna Convention on the Law of treaties defines a peremptory law as "a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of international law having the same character" (AI, 2007).

According to Article 53 of the VCLT, "a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law". Norms which are frequently considered as peremptory or jus cogens norms in treaties are for example the prohibitions of genocide, aggressive use of force, slavery and torture (Streib, 1998). The prohibition on the use of the death penalty against child offenders also attained the status of a peremptory norm due to the universal ratification of treaties illegalizing such practices and almost worldwide halt in executing of juvenile offenders (Bradley, 2002). The Human Rights Committee considers

reservations that offend peremptory norms/jus cogens as incompatible with the object and purpose of a treaty (Schabas, 1996). Therefore Iran is disallowed to avoid fulfilling its commitment and by doing so, puts its very nature of the ratification of the CRC into question.

- It is also argued that Iran's reservation is invalid due to the fact that the prohibition of executing child offenders is not only a treaty norm, but is also a matter of customary international law (Bradley, 2002). According to a Human Rights Watch report (2008), in 1994 the UN Human Rights Committee declared provisions in the Covenant that are norms of customary international law may not be the subject of reservations, including the execution of children. Further it is asserted in the report that "The prohibition on the juvenile death penalty is absolute in international and customary law, and applies even in times of war". Amnesty International (2007) argues that the exclusion of child offenders from execution has become a rule of customary international law since it has been so widely enforced in law and practiced.

3. Iranian Law and the Death Penalty

The Islamic Penal Code of Iran based on an interpretation of Shari'a law, should be studied carefully, in order to understand the foundations of Iran's justification of the execution of child offenders. Without taking any position on the Iranian legislation or Penal Code as such, there are many issues which should be taken into account when comparing international law and Iranian legislation especially with the willingness of the Iranian authorities to put their interpretation of the divine laws of Islam beyond and above any international commitment. One of the very first topics of consideration would be the definition of "child" according to the CRC, compared to the Islamic law (Shari'a). According to Article 1 of the CRC a child is considered as every human being under the age of 18 while according to Shari'a the criteria for adulthood is not solely a child's age, but a child's maturity (Hashemi, 2007).

The Islamic Penal Law was approved by the Islamic Consultancy Parliament on 30 July 1991 and ratified by the High Expediency Council on 28 November 1991 (MEHR, 1996). Sharia's law is the body of Islamic laws that combine the teachings of the Qur'an, Sunna (habitual practice), and Hadith (oral teachings) as the guiding principle of governance along with Islamic jurisprudence by the leadership of each branch of the Islamic community or Umma (Price, 1999). In Iran the system of governance is based on the Twelver Ja'fari School of Sh'ite Islam and in the absence of the Twelfth Imam, the Supreme Leader of the community is the Vali Fagih meaning Guardianship of the Jurist (SCE, 2009). Article 4 of the Iranian Constitution specifically states "all civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria".

Under the Islamic Penal Code of Iran, the death penalty is applicable for an extremely wide range of crimes. There are five types of crimes according to Iranian Criminal Code: *hodoud*, *qesas*, *diyeh*, *tazir* and deterrent punishment³ (MEHR, 1996). Capital punishment is provided for certain *hodoud* and *tazir* crimes, and under *qesas* for murder. *Hodoud* punishments constitute crimes against divine will, mentioned in Qor'an , while *qesas* punishments are equivalent to the crime corresponding to "an eye for an eye", and *tazir* punishments are not mentioned in Islamic law and are therefore left to the discretion of the judge and applied by the state. All will be discussed in length later throughout the essay.

3.1. Age of Responsibility

Before embarking on exploring the identifications of the crimes by Iranian Penal Code, it would be necessary to have a deeper insight into the definition of child and criminal maturity according to the Islamic law.

In terms of juveniles in Iran's justice system, a minor is considered "a person who has not reached the age of maturity as specified by Islamic jurisprudence". In Iran, the start of full criminal responsibility and thus the beginning of adulthood is linked to the end of puberty. Under the civil law the age of criminal responsibility for girls is 9 and 15 for boys, suggesting that anyone above or at these ages can be sentenced to death. Article 49 of the Penal Code states "Minors, if committing an offence, are exempted from criminal responsibility. Their correction is the responsibility of their guardians or, if the court decides by centre for correction of minors" (AI, 2007). Officials of the Iranian government and judiciary have repeatedly denied the execution of children by justifying some executions on the basis that the child was over 18 at the time of the execution. (SCE, 2009)

Judges possess a broad and strong authority in the Iranian courts and could act as prosecutor, jury, and arbiter. Holding absolute power, allows them to decide over maturity of the offenders and consider a minor mature enough to face an adult sentence. Even in practice judges are overwhelmed with the case and might not be able to investigate such matters thoroughly and carefully (Zar Rokh, 2007). Execution of Delara Darabi in secrecy in May 2009 (SCE, 2009), and 16-year-old Atefeh Rajabi Sallaleh, based on a falsified document making her 22 years of age, in August 2004 (AI, 2007), are examples of the abuse of the extreme power granted to the Iranian judges making them eligible of being the only source of interpretation of Islamic law.

In accordance with legal provisions in Iran, in line with the age of puberty which is sexual maturity, the girl child reaches adulthood at 9 and years of age and the boy at

³ See Article 12-20 of the Islamic Penal Code.

15 years, thus considered criminally responsible for their actions.⁴ Some scholars have questioned using the age of puberty as the determining factor for age of penal responsibility due to the fact that it has not been referenced in Qur'an rather the identifies the age of maturity as the criterion for punishment (Holy Qur'an, AN-NISA, Verse 6, cited in SCE 2009). They argue that other deciding factors such as the age of mental maturity must be considered.⁵

Being affected by biological and external factors any individual might reach puberty at a different age and scientifically it is not possible to prove that a girl reaches the age of puberty at 9 and a boy at 15. Nevertheless reaching the age of puberty and sexual maturity is a condition for responsibility in respect of prayer and fasting which become obligatory for a Muslim person at this age. However the principle is natural maturity and the age has been set by Shari'a, merely in order not to miss the virtues, even if a person does not reach puberty at the determined age. Therefore the age of puberty cannot be extended to the sphere of penal affair. (Baghi, 2007)

The table presented here demonstrates the age of eligibility for different legal acts according to Iranian Civil and Penal Code (SCE, 2009). According to Shirin Ebadi, Iranian Nobel Peace Prize holder:

“One of the problems with child rights is that in Iran the definition of a child for each matter is different. For example if Mohammadreza Turk, who was executed because of murder at the age of 16, wanted to obtain a passport to leave the country, he would have had to obtain his father's permission. On one hand Iran's law states that until the age of 18 a person is not mature enough to leave the country but when it comes to penal laws, unfortunately, it states that the child should be held responsible for his actions and therefore faces the death penalty”. (ibid)

⁴ This Six-year age gap between the age of responsibility for girls and boys introduces one of many gender-based discriminations existing in the Iranian Civil and Penal Code.

⁵ In this relation Ayatollah Montazeri is among the Islamic canonists who regard mental maturity instead of sexual maturity or puberty as the criterion for implementation of death penalty. According to him “Maturity means the power of understanding financial benefit and loss, and that is the condition for absence of minority for financial possession, [but] it is not a condition for implementation of hodoud and qesas, however mental maturity meaning the power to distinguish and to understand bad and good, prohibition and necessity, is the condition for penal responsibility. Thus, if an individual is not mature in that sense, hodoud shall not be implemented on them. Maturity in this sense is normally inherent with and ascertainable by examining the indications of puberty, unless otherwise proved. It is clear that the condition for other hodoud and punishments is knowledge of prohibition. Thus if there are claims of lack of knowledge of an action being prohibited in cases that are likely by the wise, as is normally the case with the newly pubescent people, it would not be possible to implement the hodoud and that would be a case of stopping the punishment at the slightest hesitation or doubt, based on a fundamental hadith from Prophet Muhammad that is invoked in Islamic penal laws.” (Baghi, 2007)

Legal Act	Age of Eligibility
National Military Service	18
Obtaining Passport	18
Driving License	18
Real Estate Transactions	18
Opening Bank Account	18
Personal Property Transfer	18
Voting	18
Employment	18(above 15 conditional)
Marriage - Boy	15
Marriage - Girl	13
Death Penalty – Boy	14.5 years (15 Lunar years)
Death Penalty – Girl	8 years 8 months (9 Lunar years)

According to the chart above, the age requirement for penal responsibility is far lower than the legal age set for other criteria. How can a person be held eligible to fully comprehend the consequences of his or her criminal action, if the same person is not mature enough to be held responsible as a driver until the age of 18? And above all why should sexual maturity be the criterion for punishment and not rational maturity?

3.2. Towards Reform

Many Islamic scholars in Iran challenge its current laws and policies with regard to juvenile executions based on religious grounds. For instance Ayatollah Saanei, who does not consider the age of puberty as the sole factor in deciding maturity and accordingly questions the application of death penalty to juvenile offenders, and 2009 presidential candidate, Mehdi Karroubi, who seeks “an end to the execution of minors accused of serious crimes”, are among the many religious figures who have declared their objections. Even the head of Iranian judiciary, Ayatollah Hashemi Shahroudi, has publically asserted his disapproval of the death penalty for child offenders and has established a moratorium on this issue. Going even further, the Iranian philosopher and theologian Abdolkarim Soroush asserted that “disregard of rational criteria and of the necessity for the harmony of religious understanding and rational finding is a breach of religious responsibility”.

In 2003, Ayatollah Shahroudi, the head of Iranian judiciary, issued a circular letter to all judges asking them to stop issuing death penalties on offenders under the age of 18. Although the judges suspended issuing and implementation of such sentences for a while, they disregarded the circular letter later and continued issuing such

sentences arguing that it did not have validity and strength of a law. Finally in 2004 the judiciary submitted the Act of Formation of Juvenile courts to the government of Khatami and consequently to the Parliament known as 7th Majlis. As the basis for the ongoing juvenile justice reform in Iran, it has won extensive approval in its first reading in August 2006. However it has not yet gained the final approval since the Council of Guardians considers, in particular Article 2 and paragraph 3 of Article 33, which prohibits Qesas death sentences, in contradiction with Islamic canon (Baghi, 2007).

According to the experts the draft law has a number of deficiencies which fall into five areas: “confusion over which courts have jurisdiction in juvenile cases; the procedure to stop an execution; the right to appeal; the granting of pardons; and the distinction between *qesas* and the death sentence” (AI, 2007). Despite these weaknesses, it reflects an ongoing internal debate and opens up the possibility of reform. It has been a result of extensive pressure from international human rights groups and local activists alike, that the Iranian Parliament has approved the legislation and has urged the legislators to excogitate the issue. Ali Shahrokhi, head of Parliament judiciary committee, a cleric and lawmaker asserted “The issue of juvenile executions has preoccupied us. We are not indifferent to world public opinion about this matter, and we are trying to find a solution” (Sassih, 2009).

As emphasized by Christian Salazar Volkmann, former representative of UNICEF in Iran, because of the exceptional political and social power of religious leaders in Iran, all efforts to reform juvenile justice should be accompanied by an outreach towards religious leaders. Since Shi’a Islam permits the interpretation of religious doctrine more than other Islamic branches, giving a very high value to religious reasoning *Ijtihad*, it enables the religious leaders to relate the principles of Qur’an to contemporary social problems. This religious reasoning also opens rooms for interaction with new social situations and different belief systems in a rather more open-minded and flexible way. As a matter of fact, *Ijtihad* could open up opportunities for cooperation between Iranian religious leaders and children’s rights defenders. As long as there are a few tolerant and open-minded religious scholars in high positions, the children’s rights defenders should try to engage more with religious leaders through dialogue, even though interaction seems increasingly difficult due to the polarized political environment of the country. (AI, 2007)

4. Hodoud Crimes

Hodoud crimes are regarded as crimes against God. They are not open to plea-bargaining or reducing the punishment and are not subject to pardon by the

Supreme Leader⁶. Amnesty International (2007), categorizes capital offences under hodoud crimes as follow: adultery by married people; incest; rape; fornication for the fourth time by an unmarried person, having been punished for each previous offence; drinking alcohol for the third time, having been punished for each previous offence; sodomy; same-sex sexual conduct between men without penetration (*tafkhez*) for the fourth time, having been punished for each previous offence; lesbianism for the fourth time, having been punished for each previous offence; fornication by a non-Muslim man with a Muslim woman; and false accusation of adultery or “sodomy” for a fourth time, having been punished for each previous offence; being at enmity with God (*mohareb*) and being corrupt on earth (*mofsed fil arz*)⁷.

Hodoud crimes are subject to interpretation, providing judges with an excessive degree of discretion in deciding whether a particular crime should be punished by death rather than imprisonment or other penalties and therefore are open to manipulation.

5. Qesas-e Nafs (Retribution in Kind)

Qesas cases, meaning crimes against individuals whereby a victim is injured or killed are subject to retaliation or “retribution in kind”, meaning that in case of murder, the family of the victim has the choice to ask for the criminal to be put to death or choose to forgive the perpetrator by acceptance of the payment of *diyeh* (*blood money*) as their preferred method of retribution. Iranian Judiciary differentiates between qesas and execution claiming that either the execution of the alleged offender or his complete release remains with the next of kin and is a private matter. The state only facilitates the communication between the families of the culprit and the victim, enacts and implements the final decision. As the Supreme Leader cannot grant pardon for such crimes, implementation of such punishments is an infringement of Article 6.4 of the ICCPR to which Iran is obliged to uphold (see footnote 6). (AI, 2007)

6. Tazir Crimes

⁶ This could be considered as violation of Article 6.4 of ICCPR (1966), which states “anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

⁷ The law of hodoud also provides for the death penalty as one of four possible punishments for those convicted of being “mohareb” or “mofsed fil arz”. See Article 183 of The Islamic Penal Code for the exact definition of these words in the Penal Code and 186-188 for further clarifications.

In cases of tazir, crimes against society, there is only one crime for which the execution is mentioned in Article 513 of the Penal Code: “cursing the Prophet [of Islam]”. The death penalty is also provided for crimes covered in the Anti-Narcotics Law amended in 1997 by the Expediency Council. Unlike hodoud and qesas, punishments for tazir are open to pardon. (AI, 2007)

7. Harsh Realities of Unjust Trials

Child offenders are considered and treated no differently than adults from arrest to execution in Iranian judicial system. Most minors on death row in Iran were involved in group fights whereby the person responsible for the crime taken place could not be easily identified. By occurrence of an offence, whoever is arrested by the state police forces is taken to the police station for temporary detainment and interrogated for hours or days. Arrests in this way violate Article 3, 11 and 12 of Universal Declaration of Human Rights. Defendants are permitted to obtain a lawyer only after interrogations are complete and they have been formally charged in a first trial. Further to absence of juvenile courts and specialized judges, appeals are permitted up to a specific point and it is very difficult to get permission to present new evidence once appeals have already been exhausted. Delara darabi, could have been discharged from the crime of murder as the lawyer had new evidence from autopsy. Likewise, Soghra Najafabadi, who had spent 18 years in prison, could not be awarded an appeal despite of her new lawyer’s request for a new trial. (SCE, 2009)

According to Amnesty International (2007) the serious failings in Iranian justice system which result in unjust trials include: “lack of access to legal counsel and to a lawyer of one’s choice; ill-treatment in pre-trial detention; allowing confessions extracted under duress to be used in proceedings; the use of detention centres outside the official prison system; denial of the right to call defence witnesses; failing to give adequate time to the defence to present its case; and imprisoning defence lawyers if they protest against unfair proceedings.”

Beside harsh prison conditions including restricted access to daily provisions, family visits and medical care, reports indicate that juvenile inmates are often abused or raped by cellmates (while being confined to cells occupied by adults), or prison officials. The reports also present several cases whereby juveniles have faced severe physical and psychological tortures in order to confess. Furthermore, the death sentences are carried out by using inhumane method of public hanging which is not only terrorizing for the witnesses, but also causes the victim to suffer a slow

and painful death, struggling for air. It takes up to fifteen minutes till asphyxiation takes place. (SCE, 2009)

8. Conclusion

There is no doubt that child execution in Iran, is in breach of international treaties, namely the CRC and ICCPR, it is party to and is illegal. These instruments are part of international customary law. Nevertheless Shari'a's influence in the Civil and Penal Code of Iran is so profound, that it seems unlikely for Iran to completely abandon the imposition of this brutal and inhumane punishment on juvenile offenders.

However according to the reports there is an emerging movements among human rights defenders, Iranian civil society, and some legal and theological experts and Islamic scholars in favor of putting an end to this brutality. The Islamic Republic has asserted its willingness to take the interpretation of the law in a new dimension by the draft Juvenile Crimes Investigation Act. The Iranian government remains also responsible to reduce the causes of crime among juveniles by facilitating educational campaigns for youth, and reinforce rehabilitation and socialization mechanisms. As Clarisa Bencomo, researcher on children's rights in the Middle East stated "Killing people for crimes committed as children provides neither justice nor safety for Iranian society"(HRW, 2008).

The international community, apart from continuing to express real concerns on the issue, could provide practical support and supervision for example through collaboration among institutions and human rights defenders within or outside Iran. Countries such as Germany with strong juvenile rehabilitation programs could host individuals or groups of lawyers and human rights activists to create a coalition to assist juvenile offenders.

Last but not least, considering the fact that the system of governance of the 5 countries⁸ which continue to carry out child execution, is based on Shari'a; and since Islam and its Shari'a are so deep-seated and ingrained cultural principles among Islamic nations, success in the abolishment of juvenile execution cannot be achieved without a continuous engagement to find consensus over principles of Islam and the universal children's rights.

⁸ These countries are: Iran , Saudi Arabia, Sudan, Yemen and Nigeria.

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Appendices

Appendix A

Summaries of ten cases compiled by Baghi (2007)

Ali Nourmohammadi

Ali Nourmohammadi was 16 when he killed one of his cousins in a fight. He was sentenced to qesas by Branch 24 of General Court of Kermanshah, which has no jurisdiction over juvenile cases. All the other defendants in the case were over 18. Two others involved in the fight, Ali Nourmohammadi's uncle and another cousin, were sentenced to diyeh for injuring Ali. The sentences were confirmed by Branch 6 of Kermanshah Appeal Court.

Rasoul Safari

Rasoul Safari was sentenced to qesas by Branch 1 of the General Court of Gilangharb on 7 September 2005 for a killing committed when he was 17. On 19 March 2006 Branch 33 of the Supreme Court found the verdict deficient.

According to reports, on 5 November 2004 Rasoul Safari had gone to the mountains with two friends. That evening, the man who was subsequently killed went to the mountains with a friend intending to frighten Rasoul Safari and his friends as a joke. They scared the three friends by throwing stones and howling like a wild animal. The three hurried from the mountains, but the man followed them and, with his head and face hidden, attacked them with a club (gorz). This led to a fight between the man and the three friends, during which Rasoul Safari allegedly killed the man with a stab to the stomach.

During the trial, Rasoul Safari denied the charge and said: "I did not carry out a killing. The confessions I made were [made] under ...torture."

Behador Khaleqi

Behador Khaleqi was sentenced to qesas on 31 June 2005 by Branch 1 of Saqqez General Court for a killing committed when he was 16. The sentence was confirmed on 13 March 2006 by Branch 27 of the Supreme Court.

According to details given in the verdict, on 7 May 2005 Behador Khaleqi and some friends were involved in a drunken fight with another group during which someone was killed.

Naser Qasemi

Naser Qasemi, a resident of Siyah Kamar Sofla, near Mahidasht, Kermanshah, was only 15 years old at the time of the killing for which he was convicted. He has been in prison facing execution for more than eight years, during which he has been sentenced to death on no less than three occasions.

According to the court verdict, on 20 August 1999 Naser Qasemi went with his uncle to a farm to steal maize. The owners noticed them and tried to stop them. In the fight, the uncle's gun allegedly fell to the ground and Naser Qasemi fired it. One person died. The uncle escaped but Naser Qasemi was arrested.

Naser Qasemi was tried in October or November 1999 and sentenced to payment of diyeh. Branch 37 of the Supreme Court ruled that this verdict contravened Islamic law, and subsequently Branch 29 of Kermanshah General Court sentenced Naser Qasemi to qesas. The Supreme Court then found the verdict deficient because of the lack of a confession. Branch 33 of Kermanshah General Court sentenced him to qesas again, and Branch 37 of the Supreme Court confirmed the sentence.

At the stage of seeking permission for execution, the Assistant Public Prosecutor of the Supreme Court ruled that the investigation should have been conducted by the children's court and sent it there for investigation. Subsequently, Branch 106 of Kermanshah Criminal Court (Children) again sentenced Naser Qasemi to qesas.

The relatives of the victim want 70 million riyals as diyeh which Naser Qasemi's family cannot raise.

Ali Mahin Torabi

Ali Mahin Torabi, from Karaj, faces execution for the killing of a schoolmate named Mazdak during a playground fight in Bani Hashemi High School in February 2003. Ali Mahin Torabi was 16 years old at the time.

A Juvenile Court in Karaj sentenced Ali Mohin Torabi to qesas on 30 October 2003 and on 8 June 2004; Branch 27 of the Supreme Court upheld the sentence. Ali Mahin Torabi is in Reja'i Shahr prison in Karaj awaiting execution.

Amir Chalehchaleh

At the age of 17, Amir Chalehchaleh and two of his brothers became involved in a fight with another group during which a young person was killed. Amir was arrested and initially confessed but later denied that he had been the killer. He was sentenced to qesas.

In his appeal, Amir Chalehchaleh refuted his confession and identified one of his brothers as the killer. The brother had been released on bail and subsequently disappeared. The court rejected Amir Chalehchaleh's appeal and sentenced him to qesas.

The Supreme Court initially rejected the verdict on account of deficiencies in the investigation and the prosecution case, but subsequently confirmed it. However, the Head of the Judiciary has sent the case twice to the Discernment Branch of the Supreme Court, whose decision is awaited.

Rasoul Eyvatvandi (or Ayoutvandi)

Rasoul Eyvatvandi was 17 when he shot dead one of his friends in an act of revenge. He was sentenced to qesas, which was confirmed by the Supreme Court.

Reza Alinejad

Reza Alinejad is at risk of execution for a killing committed when he was 17 years old. The incident happened on 26 December 2002 in a street in Fasa, a city near Shiraz in central Iran. Reza says that two men – Esmail Daroudi and Mohammad Firouzi – attacked him and his friend, Hadi Abedini with a martial arts weapon. He says he pulled out a pocket knife during the struggle and accidentally stabbed and killed Esmail Daroudi.

Mohammad Firouzi reportedly admitted that he and Esmail Daroudi had started the fight and that Reza Alinejad and his friend had been forced to defend themselves because they could not escape. Reza Alinejad and Hadi Abedini, were reportedly injured in the attack and needed hospital treatment. An eyewitness also said that Reza Alinejad had acted in self-defence. Despite these testimonies, Reza Alinejad was sentenced to qesas for murder by Section 6 of the Provincial Court in Fasa on 4 October 2003.

In December 2004 the Supreme Court rejected the death sentence, accepting that Reza Alinejad had acted in self-defence. The judge acknowledged that the instigators of the dispute were Esmail Daroudi and Mohammad Firouzi, that they had attacked and injured Reza Alinejad and Hadi Abedini, and that the stabbing by Reza Alinejad had not been intentional.

The Supreme Court sent the case back to another lower court for investigation. The case was heard by Branch 101 of Fasa Provincial Criminal Court, which on 15 June 2005 sentenced Reza Alinejad to death again. It concluded that Reza Alinejad could have fled the scene and had therefore acted unreasonably. On 9 May 2006, the Supreme Court upheld the death sentence.

Reza Alinejad has been detained in Adelabad Prison in Shiraz since his arrest in 2002.

Nabavat (or Nabout) Baba'i

In 2002 or 2003, a game between 17-year-old Nabavat Baba'i and another youth, Zabihollah Qasemian, turned serious after Zabihollah allegedly broke a light on Nabavat Baba'i's motorbike and fled into a nearby shop. Nabavat Baba'i followed him in and

allegedly threw a metal rod at his head, injuring him. Delays in getting Zabihollah to hospital contributed to his death.

The court sentenced Nabavat Baba'i to qesas, which was confirmed by the Supreme Court in 2006. The victim's father does not want retribution, but the victim's mother does.

Delara Darabi

Delara Darabi, aged 20, faces execution after being convicted of the murder of her father's 58-year-old female cousin Mahin in September 2003. Delara was 17 at the time of the crime.

Delara Darabi initially confessed to the murder, but later retracted her statement. She said that her boyfriend, Amir Hossein Sotoudeh, was the murderer and that she had admitted responsibility to protect him from execution, claiming that he had told her that as she was 17 she could not be executed.

Delara Darabi was initially sentenced to death by Branch 10 of the General Court in Rasht on 27 February 2005. In January 2006, the Supreme Court found "deficiencies" in the case and returned it to a children's court in Rasht for retrial.

Following two trial sessions in January and June 2006, Delara Darabi was sentenced to death for a second time by Branch 107 of the General Court in Rasht. Amir Hossein Sotoudeh was sentenced to 10 years' imprisonment for complicity in the murder. Both received sentences of three years' imprisonment and 50 lashes for robbery, and 20 lashes for an "illicit relationship". Delara Darabi's death sentence was confirmed by the Supreme Court on 16 January 2007.

Delara Darabi has been detained in a women's prison in Rasht since her arrest in 2003. Her detention conditions have been poor, and she has suffered from depression in prison. Her father has said that she is not fed properly and is treated badly by the prison staff. Delara Darabi has had only sporadic access to her family. Visitation rights are frequently denied and the family has sometimes been turned away on arrival.

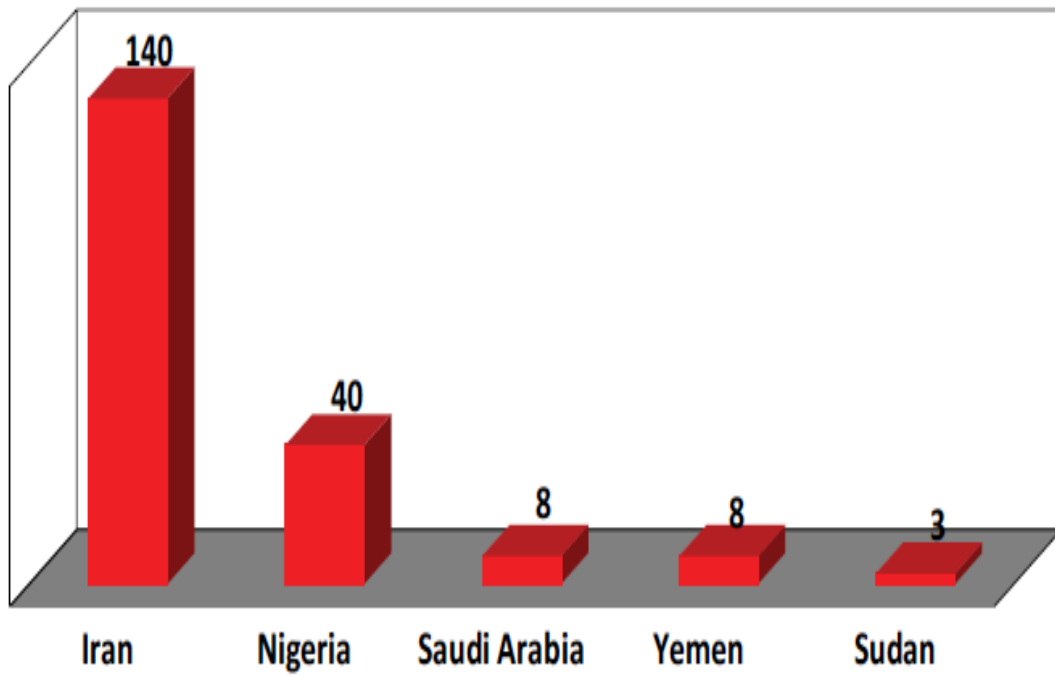
In January 2007 Delara Darabi attempted to commit suicide, but was saved when cellmates alerted prison officials. Prior to her suicide attempt, her family and lawyer made repeated requests that she be moved to another prison because of her deteriorating physical and mental state.

In March 2007 her lawyer, Abdolsamad Khoramshahi, told E'temad newspaper that he had filed an appeal against her death sentence, which will be heard by a different branch of the Supreme Court. On 5 April, it was reported that the file had been transferred from the Head of the Judiciary to the Supreme Court, but on 25 April it was reported that her death sentence had been further confirmed by Branch 7 of the Supreme Court, sitting as a sentencing discernment or review body, and that the verdict had been sent back to the Head of the Judiciary for consideration.

Appendix B

Compiled by Stop Child Execution (2009)

Children on Death Row (June 2009)



Children Executed since 2004

Country/Year	2004	2005	2006	2007	2008	Jun-09	Total
Iran	3	8	4	10	8	3	36
Saudi Arabia						2	2
Sudan		2					2
Pakistan			1				1
China	1						1
Total	4	10	5	10	8	5	42

