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Iran: The legal penalty imposed on a married man who committed adultery with a married woman, including the procedure, standard of proof required for conviction and current sentencing practices

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The offence of adultery is regulated by articles 63 through 107 of the Islamic Penal Code of Iran (Belgium Sept. 2002, 9). If convicted of adultery under these provisions, the penalty for married men and women is usually death by stoning (IPS 13 Jan. 2003; AFP 4 Jan. 2003; BBC International 28 Dec. 2002) in public (AI Bawaba 22 May 2001). According to article 88, in the case of an unmarried man or woman, the penalty for adultery is one hundred lashes (FIDH Aug. 2003, 8). However, article 82 provides that if the man-married or unmarried-is a non-Muslim and he commits adultery with a Muslim woman, his punishment shall be death (ibid.).

In performing the execution by stoning, article 102 of the Penal Code requires that men be buried in a pit up to their waist and women be buried in a pit up to their breasts (AI 12 Jan. 2004; IPS 13 Jan. 2003; AFP 4 Jan. 2003; BBC International 28 Dec. 2002). Onlookers are then asked to throw at the adulterers (IPS 13 Jan. 2003), stones which according to Section 104 of the Code, are "not [to] be large enough to kill the person by one or two strikes, nor should they be so small that they could not be defined as stones" (AI 12 Jan. 2004; see also IPS 13 Jan. 2003; AFP 4 Jan. 2003 and BBC International 28 Dec. 2002; Iran Press Service 27 Dec. 2002). If the individual manages to climb out of the pit as the stones are being thrown, he or she is acquitted (IPS 13 Jan. 2003; BBC International 28 Dec. 2002; Iran Press Service 27 Dec. 2002).

The standard of proof that is required for a conviction of adultery in Iran is, according to a September 2002 report by the Belgian Office of the Commissioner General for Refugees and Stateless Persons, very strict, thereby resulting in few stoning penalties (Belgium Sept. 2002, 9). Specifically, accusations of adultery can only be brought forth by blood or marital relatives unless the adultery took place in public, and the only acceptable forms of proof are testimonies and confessions (ibid.). Articles 74 through 81 of the Penal Code provide that

[f]our testimonies by four men (or three men and three women) can constitute valid proof. The testimonies must be parallel (observed in the same way) and at the same point in time. Otherwise they are not admitted by the judge. This principle is strictly applied. The witnesses must also be 'fair' (be honest persons), to prevent the possibility of someone being too easily condemned on the basis of false testimonies (ibid.; see also IPS 13 Jan. 2003).

The testimony of a female carries half the weight of the testimony of a male (Al Bawaba 22 May 2001).

Articles 68 through 72 of the Penal Code regulate the admission of confessions into court (Belgium Sept. 2002, 9). The Belgian report indicates that confessions can only be made to judges, as those made to the police have no legal worth (ibid.). Article 69 of the Penal Code provides that the person who confesses to adultery must be "of age, competent and free to choose and must have a reason to do it," otherwise the confession will not be admitted into court (ibid.). A person can, at any time, renounce previously made confessions, so long as he or she has not made his or her fourth confession (ibid.).

According to the Belgian report,

[o]nly the four witnesses or four confessions can be used as evidence of adultery. The 'wisdom of the judge' or a report by a government employee (police agent, Bassij, etc.) does not count as sufficient evidence. The arrangements in this regard are very strict (ibid.).

Before a death sentence by stoning can be handed down, the convicted adulterer is required to meet several conditions, including:

- the individual must be of age;
- the individual must be mentally healthy;
- the individual must have acted of his or her free will;
- the individual must have had knowledge that adultery was prohibited;
- the individual must have resided with the individual with whom the adultery was committed and have had unhindered access to him or her, and
- the individual must be physically healthy (ibid., 10).

Once these conditions are met and a death sentence by stoning is handed down, the Supreme Court is required by article 233 of the Public Courts and Revolutionary Courts Procedural Law, to confirm the death penalty before it can be executed (ibid.). If the Supreme Court does not confirm the penalty or if an appeal is filed, the death penalty cannot be carried out (ibid.). According to the 2002 Belgian report,

[i]n most cases the Supreme Court does not confirm the death penalty but almost always refers the case back to another court of the same instance, which reviews the case. During the review of the case, the charge of 'adultery', which carries a Hadd punishment [punishments provided for in Sharia law that cannot be changed], is often commuted to 'illicit relations', for which a Ta'azirat punishment [punishments imposed by parliament that can be changed] can be pronounced. (ibid.).

The law as it relates to adultery has been in place since 1979 (AFP 4 Jan. 2003; IPS 13 Jan. 2003; Iran Press Service 27 Dec. 2002), but according to a

news report by Agence France Presse published in January 2003, "in practice, the punishment [of stoning] is seldom ordered, given that even some prominent conservatives have blasted the practice as backward" (4 Jan. 2003).

In late December 2002, Ayatollah Mahmood Hashemi-Shahroodi, the head of the Iranian Judiciary, issued a directive to all judges ordering them to stop issuing death by stoning for adultery, and instead, to issue alternative punishments (IPS 13 Jan. 2003; AFP 4 Jan. 2003; Iran Press Service 27 Dec. 2002; BBC International 28 Dec. 2002). It is unclear whether this meant that other forms of the death penalty could be handed down as punishment for adultery (IPS 13 Jan. 2003). Reports that other forms of execution have been handed down as punishment for adultery since the imposition of Shahroodi's directive, could not be found by the Research Directorate among the sources consulted. Although several weeks prior to Shahroodi's directive to judges a bill had been introduced into the Iranian parliament to abolish the penalty of death by stoning for adultery (IPS 13 Jan. 2003), as at 12 January 2004, no legal measures had been implemented to amend any of the articles of the Islamic Penal Code that regulate adultery, including those that provide for the penalty of death by stoning (AI 12 Jan. 2004). More recent information on whether any legal measures concerning the penalty for adultery have been implemented, could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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Internet sites, including: BBC, *Country Reports on Human Rights Practices for 2003*, Dialog/WNC, European Country of Origin Information Network (ECOI), Human Rights Watch (HRW), Integrated Regional Information Network (IRIN), *The Iranian*, Iran News Watch, Radio Free Europe/Radio Liberty (RFE/RL), United Kingdom - Immigration and Nationality Directorate (IND), United Nations High Commissioner for Human Rights (UNHCHR), United Nations High Commissioner for Refugees (UNHCR).

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