



**Australian Government**  
**Refugee Review Tribunal**

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# Country Advice

## Iran

### Iran – IRN35857 – Adultery – Sentence – Reprieve – Commute

10 December 2009

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**1 Deleted**

**2 I understand maximum penalty for adultery is death. Is there any information that the sentence is more likely to be carried out or commuted for some Iranians than for others?**

No information was found in the sources consulted on a whether a sentence for adultery is more likely to be carried out or commuted for some Iranians than for others.

According to reports the law on adultery is interpreted differently by the presiding judge, resulting in an arbitrary justice system. Given the arbitrariness of the justice system no information was found to suggest that the applicant's family profile would influence the severity of a sentence for adultery or make it less likely to be commuted.

It has been suggested that the appeal process for sentences in many crimes punishable by death allows for no, or only a limited, possibility for a reprieve or to commute the sentence. However, in 2002 the Head of Judiciary declared a moratorium on death by stoning. Sources have reported that, despite the moratorium, death sentences for adultery continue and on occasions are carried out. Nevertheless, sources have also reported cases where the sentence has been commuted by the Head of Judiciary and with the efforts of human rights defenders and international pressure or when a person had repented.

In relation to punishment<sup>1</sup> for adultery in Iran, a Danish fact-finding mission to Iran in August-September 2008 noted that presiding judges interpret the Penal Code differently resulting in an arbitrary justice system. Sharia law is used in the strict, traditional and religious areas of Iran and less often in Tehran and the bigger cities.<sup>2</sup> An Amnesty International report, dated January 2008, stated that the Penal Code gives Iranian judges, who are all male, the right to hand down a sentence of death by stoning on his "documented

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<sup>1</sup> The different types of punishment for adultery are set out in the Penal Code. See: Amnesty International 2008, *Iran: End executions by stoning*, January, AI Index MDE 13/001/2008, pp.20-21/Art.82-97 – Attachment 2.

<sup>2</sup> Danish Refugee Council & Danish Immigration Service 2009, *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc: Fact finding mission to Iran 24th August – 2nd September 2008*, April, p.24 – Attachment 1.

‘knowledge’ which could be his subjective interpretation of the case” in cases of alleged adultery.<sup>3</sup>

Amnesty International outlined the appeal process in all death sentences as follows:

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

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

Under Article 24 of the Penal Code, the Supreme Leader has the power to grant pardons or to reduce or commute sentences, on the recommendation of the Head of the Judiciary, “in accordance with Islamic principles”...

This appears to mean that for many types of crimes punishable by death in Iran, there is no, or only very limited, possibility of pardon or commutation by the state, particularly for those who have not confessed to their alleged crime.<sup>4</sup>

In addition, sources have reported that the Head of Judiciary in December 2002 declared a moratorium on death by stoning.<sup>5</sup> A moratorium on public executions was also reportedly issued by the Head of Judiciary in February 2008 although executions are still carried out in public.<sup>6</sup>

Despite the moratorium on stoning, courts still pass sentences of death by stoning for adultery and on occasions carry them out.<sup>7</sup> A May 2009 *ABC News* article noted that five Iranians

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<sup>3</sup> Amnesty International 2008, *Iran: End executions by stoning*, January, AI Index MDE 13/001/2008, pp.5-6 – Attachment 2.

<sup>4</sup> Amnesty International 2008, *Iran: End executions by stoning*, January, AI Index MDE 13/001/3008, p.6 – Attachment 2.

<sup>5</sup> Danish Refugee Council & Danish Immigration Service 2009, *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc: Fact finding mission to Iran 24th August – 2nd September 2008*, April, p.25 – Attachment 1; International Federation for Human Rights (FIDH) 2009, *Iran: Death Penalty: A state terror policy*, April, p.40 – Attachment 3; Amnesty International 2008, ‘Iran: Amnesty International – Stop Action: Further Information on UA 33/08 (MDE 13/033/2008, 6 February 2008): Death penalty/stoning: Sentence of death by stoning overturned for two sisters’, 22 October, AI Index MDE 13/157/2008 Public – Attachment 4.

<sup>6</sup> International Federation for Human Rights (FIDH) 2009, *Iran: Death Penalty: A state terror policy*, April, p.5 – Attachment 3.

<sup>7</sup> International Federation for Human Rights (FIDH) 2009, *Iran: Death Penalty: A state terror policy*, April, pp.40-41 – Attachment 3; Amnesty International 2008, ‘Iran: Amnesty International – Stop Action: Further Information on UA 33/08 (MDE 13/033/2008, 6 February 2008): Death penalty/stoning: Sentence of death by stoning overturned for two sisters’, 22 October, AI Index MDE 13/157/2008 Public – Attachment 4.

have reportedly been stoned to death over the last four years. At least one of the Iranians had been convicted of adultery.<sup>8</sup>

Cases have also been reported where women have not only been sentenced for adultery but also sentenced for taking part in the murder of their husbands.<sup>9</sup> One of these women was reportedly hanged in May 2009.<sup>10</sup>

There have been cases where the sentence has been commuted by the Head of Judiciary and with the efforts of human rights defenders and international pressure or when a person has repented.

In November 2009 Amnesty International reported that a man and a woman were acquitted in a retrial after their convictions for adultery were “quashed” by the Head of Judiciary. In this case two “human rights defenders and lawyers” had attempted to become the couple’s legal representatives in January 2009. However, they were prevented from doing so by prison and judicial officials. The Head of Judiciary reviewed the case and then sent it for retrial. In the retrial the couple was represented by a lawyer and were acquitted and released.<sup>11</sup>

One case concerned a woman, an ethnic Kurd, who had her sentence of stoning to death commuted to 100 lashes by the Head of Judiciary in January 2009. The woman was represented by a volunteer lawyer.<sup>12</sup> The woman was said to have been abused, tortured and forced into prostitution by her husband. The woman was convicted as an accessory to the murder of her husband and for adultery. She was sentenced to eight years imprisonment for being an accessory to murder and stoning to death for adultery. The woman had spent 11 years in prison before the stoning verdict was commuted.<sup>13</sup>

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<sup>8</sup> ‘Adulterer stoned to death in Iran’ 2009, *ABC News*, 5 May <http://www.abc.net.au/news/stories/2009/05/05/2561683.htm> – Accessed 9 December 2009 – Attachment 5.

<sup>9</sup> Amnesty International UK 2009, ‘Iran: Amnesty campaign for eight women at risk of being stoned to death’, 9 March [http://www.amnesty.org.uk/news\\_details.asp?NewsID=18097](http://www.amnesty.org.uk/news_details.asp?NewsID=18097) – Accessed 9 December 2009 – Attachment 6.

<sup>10</sup> Amnesty International 2009, ‘Iran: Further information on death penalty / stoning’, 29 May, AI Index MDE 13/050/2009 <http://www.amnesty.org/en/library/asset/MDE13/050/2009/en/cb2cd894-c574-43ff-b28b-5bd3d1938769/mde130502009eng.html> – Accessed 9 December 2009 – Attachment 7.

<sup>11</sup> Amnesty International 2009, ‘Iran: Further Information: Stoning sentence quashed in Iran’, 13 November, AI Index MDE 13/122/2009 <http://www.amnesty.org/en/library/asset/MDE13/122/2009/en/35094f82-d278-48d1-9d5b-c129fd526587/mde131222009en.html> – Accessed 8 December 2009 – Attachment 8.

<sup>12</sup> Women Living Under Muslim Laws (WLURL) 2009, ‘Kobra Najjar’s stoning sentence has been converted into one hundred lashes’, 20 January [http://www.wluml.org/english/newsfulltxt.shtml?cmd \[157\]=x-157-563442](http://www.wluml.org/english/newsfulltxt.shtml?cmd [157]=x-157-563442) – Accessed 23 January 2009 – Attachment 9.

<sup>13</sup> Tait, Robert & Hoseiny, Noushin 2008, ‘International: Eight women and a man face stoning in Iran for adultery’, *The Guardian*, 21 July – Attachment 10; ‘Iranian woman to be whipped not stoned for adultery: report’ 2009, *Agence France Presse*, 20 January – Attachment 11; Women Living Under Muslim Laws (WLURL) 2009, ‘Kobra Najjar’s stoning sentence has been converted into one hundred lashes’, 20 January [http://www.wluml.org/english/newsfulltxt.shtml?cmd \[157\]=x-157-563442](http://www.wluml.org/english/newsfulltxt.shtml?cmd [157]=x-157-563442) – Accessed 23 January 2009 – Attachment 9.

In another case, reported in May 2009, a woman involved in an adultery case was not stoned because she had repented.<sup>14</sup>

According to the FIDH report dated April 2009, since a stoning in May 2006 human rights lawyers and journalists had documented 11 cases of people facing stoning sentences. The report stated that, as of the 2008 summer, seven had been reprieved due to “efforts by human rights defenders and international pressure.”<sup>15</sup> Amnesty International has also mentioned that campaigning has won reprieves from stoning.<sup>16</sup>

Also, it may be of interest that sources state that an unmarried person in an adulterous relationship would usually be sentenced to 100 lashes.<sup>17</sup>

### List of Attachments

1. Danish Refugee Council & Danish Immigration Service 2009, *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc: Fact finding mission to Iran 24th August – 2nd September 2008*, April.
2. Amnesty International 2008, *Iran: End executions by stoning*, January, AI Index MDE 13/001/2008.
3. International Federation for Human Rights (FIDH) 2009, *Iran: Death Penalty: A state terror policy*, April.
4. Amnesty International 2008, ‘Iran: Amnesty International – Stop Action: Further Information on UA 33/08 (MDE 13/033/2008, 6 February 2008): Death penalty/stoning: Sentence of death by stoning overturned for two sisters’, 22 October, AI Index MDE 13/157/2008 Public. (CISNET Iran CX212934)
5. ‘Adulterer stoned to death in Iran’ 2009, *ABC News*, 5 May <http://www.abc.net.au/news/stories/2009/05/05/2561683.htm> – Accessed 9 December 2009.
6. Amnesty International UK 2009, ‘Iran: Amnesty campaign for eight women at risk of being stoned to death’, 9 March [http://www.amnesty.org.uk/news\\_details.asp?NewsID=18097](http://www.amnesty.org.uk/news_details.asp?NewsID=18097) – Accessed 9 December 2009.
7. Amnesty International 2009, ‘Iran: Further information on death penalty / stoning’, 29 May, AI Index MDE 13/050/2009

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<sup>14</sup> ‘Adulterer stoned to death in Iran’ 2009, *ABC News*, 5 May <http://www.abc.net.au/news/stories/2009/05/05/2561683.htm> – Accessed 9 December 2009 – Attachment 5.

<sup>15</sup> International Federation for Human Rights (FIDH) 2009, *Iran: Death Penalty: A state terror policy*, April, pp.41-42 – **Attachment b**.

<sup>16</sup> Amnesty International 2008, *Iran: End executions by stoning*, January, AI Index MDE 13/001/2008 pp.12-13 – **Attachment c**.

<sup>17</sup> International Federation for Human Rights (FIDH) 2009, *Iran: Death Penalty: A state terror policy*, April, p.11 – **Attachment b**; Amnesty International 2008, *Iran: End executions by stoning*, January, AI Index MDE 13/001/2008 p.21/Art. 88 – **Attachment c**.

<http://www.amnesty.org/en/library/asset/MDE13/050/2009/en/cb2cd894-c574-43ff-b28b-5bd3d1938769/mde130502009eng.html> – Accessed 9 December 2009.

8. Amnesty International 2009, 'Iran: Further Information: Stoning sentence quashed in Iran', 13 November, AI Index MDE 13/122/2009  
<http://www.amnesty.org/en/library/asset/MDE13/122/2009/en/35094f82-d278-48d1-9d5b-c129fd526587/mde131222009en.html> – Accessed 8 December 2009.
9. Women Living Under Muslim Laws (WLUML) 2009, 'Kobra Najjar's stoning sentence has been converted into one hundred lashes', 20 January  
[http://www.wluml.org/english/newsfulltxt.shtml?cmd \[157\]=x-157-563442](http://www.wluml.org/english/newsfulltxt.shtml?cmd [157]=x-157-563442) – Accessed 23 January 2009. (CISNET Iran CX219001)
10. Tait, Robert & Hoseiny, Noushin 2008, 'International: Eight women and a man face stoning in Iran for adultery', *The Guardian*, 21 July. (FACTIVA)
11. 'Iranian woman to be whipped not stoned for adultery: report' 2009, *Agence France Presse*, 20 January. (FACTIVA)