



# On certain crimes and punishments in Iran

*Report from Fact-finding mission to Teheran and Ankara*

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## **Overview of fact-finding reports etc. published in 2004 and 2005**

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Political conditions, the security situation and human rights conditions in  
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Political conditions and human rights conditions etc. in **Libya**  
November 2004: 4

Joint British-Danish Fact-Finding Mission to Baghdad and Amman on Conditions in  
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## **Introduction and terms of reference**

It has long been the wish of the Danish Immigration Service (DIS) to undertake a visit to Iran to update background material for use in dealing with asylum applications from Iranian citizens. Since the British immigration authorities in the Home Office had the same wish, it was agreed in the middle of 2004 that joint mission to Iran would be undertaken.

In connection with visa applications at the Iranian Embassy in Copenhagen, it became clear that the Iranian authorities did not consider a joint British-Danish mission a good idea. This resulted in the British delegation being refused a visa for Iran.

The DIS then decided in consultation with the Danish Embassy in Teheran to carry out the mission alone, since the Danish part of the delegation had received a visa.

The delegation visited Teheran from 22-27 January 2005 and received very valuable help from the Danish Embassy, which had prepared a meetings programme and prepared the logistics. From 27-29 January 2005, the delegation was in Turkey to discuss the situation with UNHCR's office in Ankara.

The mission sought to fulfil the following terms of reference:

*“Building on previous cooperation in fact-finding missions, the Country Information and Policy Unit (CIPU) of the UK's Immigration and nationality Directorate and the Documentation and Research Division of the DIS have agreed to conduct a joint fact-finding mission this autumn to gather information about the situation in Iran.*

*Due to the fact that for many years Iranian asylum seekers in the UK and Denmark constitute a major part of the total number of asylum seekers and that the decision-making has as a necessary prerequisite and intimate knowledge of Iranian society and in particular how criminal law is implemented, a mission to Iran is viewed as the most appropriate way to obtain the necessary information.*

*As far as possible, the fact-finding team will gather information on the implementation of Sharia law, in particular with reference to:*

- the actual punishment for adultery and the extent to which sentences are served;*
- whether the conditions of Sharia law regarding testimony and evidence in adultery cases are actually implemented;*
- whether the bribing of witnesses and judges is common;*
- the actual punishment, if any, for conversion from Islam to Christianity and the extent to which the sentences are served;*
- whether the possible punishment for conversion actually differs with regard to which church is involved;*

- *the actual punishment, if any, for alcohol consumption;*
- *the actual punishment, if any, for participation in demonstrations abroad against the Iranian Government;*
- *the actual punishment, if any, for homosexuality and to which extent the sentences are served;*
- *whether the conditions of Sharia law regarding testimony and evidence in cases of homosexuality are actually implemented;*
- *other information that may become apparent that is relevant to the case-processing of asylum applications by Iranian citizens to the UK and Denmark*

*During its visit to Iran the delegation will try to obtain statistical material on those court cases where Sharia law has been applied, i.e. how many Iranian citizens in recent years have served sentences resulting from the abovementioned violations of Sharia?*

*With the expected assistance of the British and Danish Embassies in Teheran, the delegation wants to contact sources in the relevant Iranian ministries, for example the Ministry of Justice, and in the court system. Further, the delegation wants to gather information from representatives of independent organisation and journalists as well as from researchers and teachers at law faculties in universities in Teheran. In this context, the delegation will be very interested to contact the independent lawyer Mrs Shirin Ebadi and her staff.*

*Finally, the delegation wants to have meetings with representatives of relevant Embassies who would be expected to have information about the Iranian judicial system and legal practice.”*

The aim of the mission was therefore to illuminate the human rights situation in Iran, but only to investigate certain selected problems that are often adduced in case management in the DIS and the Refugee Service. Regular reports are issued on the human rights situation in Iran, including from the UN, Amnesty International, Human Rights Watch etc. If a more detailed description of the situation in Iran is required, we refer to these reports that are also included in the DIS's background material and which form the basis for the treatment of asylum applications from Iranian citizens.

## **Sources**

The “*Organisation for defending Victims of Violence*” (ODVV) was founded at the end of Iran's war with Iraq when the need arose for an organisation that could help those Iranians affected by the war. Subsequently, the organisation has developed into a leading human rights organisation in Iran. The main purpose of the organisation is to provide assistance to exposed groups in Iranian society such as women, children, refugees, minorities that have encountered problems, been subjected to violence in the home, substance abuse etc. The organisation's head office is in Teheran and citizens can turn to it for help. ODVV has contact with a number of lawyers that take action on behalf of the organisation in cases of breaches of human rights. The organisation's

aim is also to educate judges and police in human rights. Such courses are financed by the UNDP, EU and western embassies, amongst others. The board of ODVV is appointed by the Iranian government.

The “*Islamic Human Rights Organisation*” which was founded in 1995, has the task of monitoring whether human rights are upheld in Iran. The organisation was founded by the supreme leader of the judicial system, who holds observer status on the board of the organisation. On a number of occasions, the organisation has criticised the Iranian authorities’ relationship with human rights. In 2003, the EU Commission commended IHR’s work for improving human rights in Iran.

“*Two female defence lawyers with many years’ experience of court cases in Teheran*” wanted their identities withheld in the report. Both had acted for many years in court cases in Teheran for clients accused of “moral” crimes. The lawyers were used, amongst others, by some western embassies in Teheran for statements on human rights conditions.

“*Mohammad Javad Shariat Bagheri, Director General of the Iranian judicial system’s international department*” had worked as a judge before taking up his current position. He is referred to as the official representative for the Iranian authorities and was only used as a source for the most technical questions on the judicial system, penal law and practice.

“*Mr Javdan, director for the consular office in the Iranian foreign ministry*” brought two legal colleagues with special knowledge of Iranian penal law and practice to the meeting. They are used as a source in the more technical questions on the judicial system, penal law and practice. Statements on demonstrations abroad were also included since these involve Iranian embassies and the foreign ministry.

As well as these, UNHCR (Teheran and Ankara), IOM (Teheran) and UNICEF (Teheran) were consulted. Western embassies were also consulted to a limited extent.

## **The Iranian judicial system**

### ***Sources***

*Mohammad Javad Shariat Bagheri, Director General of the Iranian judicial system’s international department* reported that the judicial system is independent of government, including the Ministry of Justice. The judicial system is directly under the control of Khomeini, the “supreme leader”. Since 1999, the senior director of the judicial system has been Mahmoud Hashemi Sharudi, who has carried out a number of reforms. For example, a real prosecuting authority was reintroduced in 2002 and a number of state advocates have since been appointed. According to the source, there are the following courts in Iran:

The various courts:

1. Public courts: a) criminal courts b) civil courts
2. Revolutionary courts
3. Religious courts
4. Military courts
5. Administrative courts

6. Appeal courts
7. The Supreme Court

The source explained in relation to the distribution of case areas in the Iranian courts that the public courts deal with cases concerning adultery, homosexuality, the consumption of alcohol, religious conversion, breaches of clothing rules etc.

The revolutionary courts deal with matters of national security, terrorism, improper pronouncements on Khomeini and the supreme leader, espionage and narcotics-dealing. According to the source, 99% of the revolutionary court's cases involve drug crime.

The religious courts deal with cases in which Islamic priests and other religious persons have broken the law.

The military courts deal with cases concerning military personnel, including members of the revolutionary guard, Basij and the like, who have broken the law.

The Appeal Courts and Supreme Courts function as instances of appeal.

All sources stressed that all sentences passed in the first instance can be appealed against to an Appeal Court. This also applies to sentences passed in absentia. All cases of a certain importance, including those in which a sentence of death or other corporal punishment has been passed, can be the subject of appeal to the Supreme Court. The Supreme Court must always be consulted in cases of the death penalty, irrespective of any appeal. In some cases, a Supreme Court decision can be overruled by the supreme head of the judicial system.

In all larger towns there are courts that deal with cases in the first instance. In all provincial capitals there are Appeal Courts. The Supreme Court sits in Teheran.

Courts of first instance have a single judge. Appeal Courts have a collegiate of three judges and the Supreme Court has a varying number of judges depending on the nature of the case involved.

### ***Judges and their training***

*Mohammad Javad Shariat Bagheri, Director General of the Iranian judicial system's international department* reported that all judges in the various courts can have two different educational backgrounds. The normal educational background is a legal qualification from a university. Around 90% of judges have a university education in law. Around 10% of judges have theological training from a priests' seminary. Irrespective of educational background, all prospective judges must go through a one-year judicial training course ending with an examination before they are allowed to practise. The course is designed to give its participants the skills to carry out the office of judge in a correct manner.

*"Two female defence lawyers with many years' experience of court cases in Teheran"* pointed out that around 40% of judges in civil courts had a theological background. There are also female judges, and after the Islamic revolution there are once again more of these. Corruption exists among Iranian judges. It is thus not wholly unheard

of that judges can be bribed. This also applies to the Appeal Court and perhaps also to the Supreme Court. Bribery cases are almost always cases with a financial element, in which both parties have a considerable financial interest in the result of the case. One of the lawyers had been involved in a case in which the other party had bribed the judge to rule in his/her favour. The judge then retired, so that it was no longer possible to appeal against his ruling. The judge then tried to become a barrister. This attempt was rejected by the bar council because of suspicion of bribery. It was the source's opinion that the sum of the bribe would have to be considerable, since a judge in such a case would risk exposure in the Appeal Court or Supreme Court because of a suspicious judgment. In some cases, the general inspectorate of the judicial system has issued warnings to judges suspected of taking bribes. In cases concerning adultery and the like, bribery is largely non-existent since judgements in such cases attract a great deal of national and international scrutiny, so the risk of a judge being exposed would be greater.

The *Organisation for defending Victims of Violence's international division* reported that all Iranian judges today are instructed in human rights. Some Iranian judges travel abroad, including to the European Court of Human Rights in Strasburg and to the UN's Human Rights Commission in Geneva, to learn about human rights. These courses are financed by the UNDP, EU, the Danish Embassy and others.

*Various western Embassies in Teheran* reported that they each had special projects for instructing Iranian judges in human rights, amongst other things.

*IOM in Teheran* confirmed that theologically trained judges have to pass an examination in civil and criminal law before they are permitted to practise.

## **Adultery and other sexual intercourse between persons who are not married to each other**

### ***Legal basis***

Sexual intercourse between a man and a woman, who are not married to each other, including adultery, is a crime under Iranian law which is punishable by death under certain conditions.

§ 63 of the penal code defines the crime. §§ 68-75 deal with evidential requirements. §§ 18-106 deal with the execution of the sentence.

### ***Evidential requirements***

Interpretation of § 105 in particular has been ambiguous. The foreign ministry, for example, in a memorandum of 11 June 1999, reported the following: "The crime is considered proven if the judge finds that this is the case, on the basis of his knowledge of Islamic law, c.f. article 105. This rule, which has no direct background in the Koran, is an expression of the fact that the judge is given considerable discretionary powers. The rule does not give an individual judge completely free hands, since it requires that the ruling is reasoned. This reasoning will normally have a background in existing legal norms".

*UNHCR in Ankara* added that the judge's knowledge was considered sufficient evidence for a death sentence to be passed.



It is also the case however that § 105 does not come under the chapter on evidential requirements in the penal code but comes under the chapter on the execution of the judgement. Nor does the wording of § 105 indicate that the paragraph has anything to do with evidential requirements. The wording is as follows; “(Where) public or private rights (are violated), by stating his reasons, the judge can make a judgement according to his knowledge (of Islamic law). Execution of penance where public rights are violated does not require any person’s request, but where private rights are violated, the execution of the penance must be at the request of the plaintiff”.

Since a correct understanding of § 105 is significant for the extent to which it is possible for Iranian courts to pass death sentences for adultery etc., this problem was raised by the delegation with all the sources:

**Sources**

*Mohammad Javad Shariat Bagheri, Director General of the Iranian judicial system’s international department* reported that the judge’s knowledge of Islamic law or the circumstances of the case could never replace the evidential requirements laid down in the penal code. The necessary evidence was either that both parties confessed to the crime in front of the judge on four separate occasions (§ 68), or that four men or three men and two women had been eye witnesses to the crime and given testimony to this effect before the judge (§ 74). No Iranian court could pass a death sentence for adultery or the like unless this evidential requirement was fulfilled. Where there was any error in the court of first instance, the Appeal Court or Supreme Court could redress this. Not only are these evidential requirements laid down in the penal code, they date back to Mohammed himself and were laid down in the Koran.

*Mr Javdan, director for the consular office in the Iranian foreign ministry* reported that investigations into cases of illegal sexual congress required a complaint from a private individual. The police would never initiate such an investigation unless the crime took place in public. This is laid down in the Administration of Criminal Justice Act § 43. The necessary evidential requirement was either the parties’ confessions or at least three men and two women’s testimony. The judge’s own knowledge was not sufficient proof. A judge could only pass a death sentence in such cases when there was either confessions or testimony. Sexual congress that is illegal under Iranian law, but which was committed abroad cannot be prosecuted in an Iranian court.

The *Organisation for defending Victims of Violence’s international division* reported that it is very difficult to prove sexual crimes in court. A death sentence is conditional upon witnesses or confessions. The judge’s discretion was not sufficient evidence. A complaint from a private individual who feels offended is required before a court can deal with such a case. It could happen that the court of first instance came to an erroneous conclusion. The condemned person can however lodge an appeal within 20 days with the Appeal Court. The Supreme Court always examines cases where a death sentence is passed. No death sentence may be carried out before the Supreme Court has sanctioned it.

*Two female defence lawyers with many years’ experience of court cases in Teheran* reported that in cases of adultery and other illegal sexual congress between a man and a woman it is only confession before the judge or four male witnesses, or three male

and two female witnesses that are sufficient for a conviction. It is wholly out of the question that the judge's knowledge or discretion could replace confession or testimony. It is a condition for passing judgment that intercourse was completed.

*Islamic Human Rights Commission* said that there are three types of evidence in cases of illegal sexual congress:

- both parties' personal confessions in the courtroom
- eye witnesses
- doctor's certificates

The judge's knowledge can also be included in the evidence but cannot replace confessions and testimony. The relevant doctor's certificates in the case can only be documentation confirming that the male party's sperm was in the female party's vagina. Since, according to information, the sperm cannot be traced more than 20 minutes after completion of intercourse, a doctor's declaration is conditional upon the couple being caught in the act and soon afterwards examined by a doctor. In practice it is almost impossible to prove illegal sexual congress. The sentences that have actually been passed in such cases are therefore based on confessions.

### ***Punishments***

*Mohammad Javad Shariat Bagheri, Director General of the Iranian judicial system's international department* reported that the punishment for illegal sexual congress is stoning or 100 strokes of the whip. A moratorium is in force on stoning and none has taken place for the past three years.

*Mr Javdan, director for the consular office in the Iranian foreign ministry* reported that even if in future whipping sentences were still passed, these are actually seldom carried out. As a rule, they are converted to fines instead.

The *Organisation for defending Victims of Violence's international department* reported that prostitutes naturally risk punishment for illegal sexual congress, including the death penalty. The Supreme Court converted 95% of death penalties and instead ordered prison sentences or whipping unless the case was dismissed and the condemned person released.

### **Illegal relationships**

An illegal relationship is a relationship between a man and a woman who are not married to each other and where there is no proof that a sexual relationship has taken place. For example if the persons in question kiss each other or lie together without having intercourse.

### ***Legal basis***

§§ 627-28 of the penal code prescribes up to 99 lashes of the whip or from 10 days to two months prison.

### ***Sources***

The *Organisation for defending Victims of Violence's international department* reported that the normal punishment for having an illegal relationship is detention for 24 hours.

## **Homosexuality**

The penal code defines sodomy in § 108 (sexual intercourse between men). § 110-113 prescribe the punishments, including the death penalty for sodomy and §§ 114-120 describe the burden of proof. §§ 120-126 describe further punishments/pardons for sexual relations between men.

Under the penal code, homosexuality between men is a serious crime and, if there is the necessary evidence or confessions, it can incur the death penalty. According to § 114, the necessary proof is confessions to the judge or the testimony of four men. § 120 also prescribes "...That the judge can make a decision in accordance with his own knowledge that is based on general knowledge and judgement."

### **Sources**

*Two female defence lawyers with many years' experience of court cases in Teheran* reported that if the judge had detailed knowledge of the homosexuality, this knowledge could be sufficient testimony to pass judgement.

*The Islamic Human Rights Commission* reported that homosexuality practised in privacy is not punished. If, on the other hand, it took place in a public place and created annoyance, it could be prosecuted. The punishment would be either whipping or a fine. This is conditional however upon the evidential requirements being fulfilled.

*UNHCR in Ankara* reported that the judge's knowledge of the circumstances of the case in cases of homosexuality could be sufficient evidence.

## **Consumption of alcohol**

### **Legal basis**

According to §§ 165-175 of the penal code, the punishment for consuming intoxicating drink is 80 lashes. After having been convicted three times for this, a fourth conviction could result in the death penalty.

### **Sources**

*Mr Javdan, director for the consular office in the Iranian foreign ministry* reported that the public consumption of alcohol could result in a fine or detention for 2-3 days. Even though in theory the offence can incur a whipping, this punishment is no longer applied in practice.

The *Organisation for defending Victims of Violence's international department* reported that the public consumption of alcohol is a crime. The consumption of alcohol in private homes is, in practice, not considered a crime any longer.

*The Islamic Human Rights Commission* reported that the authorities today take a relaxed attitude to alcohol consumption. Only if consumption causes a public disturbance will prosecution be likely.

## Conversion from Islam to another religion

### *Legal basis*

The Iranian penal code does not state that converting from Islam to another religion (apostasy) is a punishable offence. According to § 36 of the Iranian constitution, judgement and punishment may only be passed and executed by a competent court and in accordance with the law. § 167 states however that “A judge shall be required to try to find out the verdict of every lawsuit in codified law, if he fails to find out, he shall render a verdict on the matter under consideration based on authentic Islamic sources or authoritative Fatwas. He may not refrain from dealing with the case and rendering a judgement on the pretext of silence, inadequacy or brevity of or contradiction in codified law”. The immediate contradiction between the constitution’s § 36 and § 167 make the legal basis uncertain.

Despite the fact that apostasy is not mentioned in the penal code, it is mentioned in the Iranian Press Act’s § 26. “Anyone offending Islam and its holy places in the press and where this involves apostasy, will be judged for apostasy. If this does not involve apostasy, the person/s concerned will be judged by a religious court in accordance with the penal code”. The punishment for apostasy is not mentioned in the Press Act. In § 9 of the law on elections to Islamic councils and mayoralties, it states that candidates convicted of apostasy cannot stand for election. Apostasy is also mentioned in the Koran, but no mention is made of punishment.

The deceased Ayatollah Khomeini wrote following a fatwa (Tarjomeh Tahrir ol Vasileh: Understanding and interpretation of means and/or methods) “A national apostate will be caused to repent and in case of refusing to repent will be executed. And it is preferable to give a three-day reprieve and to execute him on the fourth day if he refused”. According to another dissertation by Khomeini (A clarification of Questions) the necessary proof in order to convict and punish for apostasy is that the accused admits that he has converted and that two men confirm this. A revolutionary court used Khomeini’s dissertation to condemn a person that had converted from Islam to Bahai, to death. The Supreme Court overturned the judgement on the grounds that the revolutionary court had no jurisdiction in the case.

### *Sources*

*Mohammad Javad Shariat Bagheri, Director General of the Iranian judicial system’s international department* reported that the Iranian judicial system had no knowledge of cases concerning conversion from Islam to another religion. No one would be condemned for converting from Islam to another religion. There were however a few cases concerning proselytising (active missions) where Christian missionaries tried to convert Muslims to Christianity.

*Mr Javdan, director for the consular office in the Iranian foreign ministry* reported that he was unaware that there were any cases concerning apostasy. A condition for any sentence being passed for this is that the accused admitted to the judge that he/she had converted. Without a complaint, the Iranian police would not investigate cases of conversion on their own initiative.

The *Organisation for defending Victims of Violence's international department* reported that there were very few cases of apostasy. In theory, the death penalty was a possibility, but in practice this was almost impossible, since a condition for such a sentence would be that the accused admitted in court having converted from Islam to another religion. If this occurred, he/she would normally be regarded as insane and could therefore not be condemned to death. It was however easier to sentence someone for proselytising, where the evidential requirements demanded witnesses and not confessions. The source was unaware of any current cases where Christian missionaries were accused of having tried to convert Muslims to Christianity, but in the years following the revolution there had been such cases.

*Two female defence lawyers with many years' experience of court cases in Teheran* reported that conversion from Islam to Christianity would not normally be punished by Iranian courts. The police would not independently initiate the investigation of such cases. One condition for a conviction in a case of apostasy was that the accused admitted his/her guilt in court. Without an admission, it was impossible to convict. It was however possible to convict and sentence in the case of active attempts to convert Muslims to Christianity, where there was sufficient evidence.

### **Breach of clothing rules**

The Iranian clothing rules for women are based on the Koran, which states that a woman should cover her hair and neck completely, wear a dress that does not reveal the shape of her body, and wear long trousers and socks. The clothing rules do not apply when a woman is alone together with her husband, father, sons, nephews, servants and young male children. The clothing rules are mentioned in the penal code.

#### ***Legal basis***

§ 628, section 1 of the penal code stipulates that women that show themselves in public places without Islamic clothing should be sentenced to from 10 days to two months imprisonment or a fine.

#### ***Sources***

UNHCR in Ankara stated that they had noted that the clothing rules were strictly enforced in Bam, where UNHCR workers had assisted in the aftermath of the earthquake in 2004.

*Mr Javdan, director for the consular office in the Iranian foreign ministry* reported that the clothing rules were no longer rigorously enforced. The authorities accepted women wearing make-up. The delegation could see for itself, according to the source, how women were dressed in Teheran.

(The delegation noticed in its visit to Teheran that women wore scarves/veils outdoors. Often the scarf was worn so far back that much of the hair could be seen. Many of the women had dyed hair and wore make-up). Some women in restaurants took off their scarves to arrange their hair.

*UNHCR in Teheran* reported that in the winter season 2003-2004 it was possible for female skiers in ski-resorts to ski without any headdress. This had however been

changed in the current season and women had to cover their heads again. Not necessarily with a scarf, but with a cap, for example.

## **Demonstrations and other activities in country of residence directed against the Iranian regime**

### *Sources*

*Mr Javdan, director for the consular office in the Iranian foreign ministry* reported that an Iranian citizen who had taken non-violent action abroad, e.g. participated in demonstrations against the Iranian government would not be punished when returning to Iran. The significance of such persons to the security of the Iranian state was so insignificant that resources would not be used to prosecute them. For example, a number of members of Mujaheddin Khalq, one of the biggest opposition organisations abroad, returned to Iraq without being punished or persecuted.

The *Organisation for defending Victims of Violence's international department* reported that, insofar as the demonstration was organised by one of the big opposition groups and the asylum seeker had participated in the actual organisation, the person in question could risk legal persecution when returning to Iran. If the demonstration was an individual manifestation on the part of the asylum seeker, the person would not risk punishment upon returning to Iran.

## **Return to Iran by Members of Mujaheddin Khalq (MKO)**

### *Sources*

*UNHCR in Teheran* reported that 58 members of the Iranian opposition organisation MKO had voluntarily returned to Iran. Their return was organised by ICRC. UNHCR had no information indicating that these persons had been legally persecuted.

*UNHCR in Ankara* reported that non-profiled members of Mujaheddin Khalq had returned to Iran but had no information indicating that these persons had been persecuted or legally persecuted.

The *Organisation for defending Victims of Violence's international department* reported that many members of Mujaheddin Khalq had returned to Iran without experiencing problems of a penal character.

*IOM in Teheran* confirmed that members of Mujaheddin Khalq had returned to Iran, mainly from Iraq. The source was not aware that they had been subjected to any reprisals. IOM had monitored the return of a number of failed asylum seekers from the UK. According to the source, none had been persecuted.

## Annex

### Selected parts of the Iranian penal code

#### THE ISLAMIC PENAL CODE <sup>1)</sup>

Adopted on 30 July 1991 with subsequent revisions

1)

- a.) Published in the official newspaper no. 13640 dated 1 January 1992
- b.) Law on extension of trial period for the Islamic penal code, adopted 3 March 1997

§ 1: Trial period for the Islamic penal code, approved by the Islamic Parliament's Legal Committee on 30 July 1991, extended for 10 years.

#### 2. BOG HODUD <sup>1), a)</sup>

#### 1<sup>st</sup> Section: Zena, if punishment is decreed by God and set out in the Koran (Illegitimate intercourse) <sup>b)</sup>

##### 1<sup>st</sup> chapter: definition of "zена" and consequences thereof

- § 63 Illegitimate intercourse consists of intercourse between a man and a woman which is by nature forbidden <sup>c)</sup>. This applies to anal intercourse and to intercourse as a result of a mistake <sup>d)</sup>.
- § 64 Illegitimate intercourse is only punishable if the male and female participants are legally adults, of sound mind and free will <sup>2)</sup> and that they understand their action and the punishment for it <sup>3)</sup>

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1) Comment no. 7/5973 of 1<sup>st</sup> February 1986 (comment from Supreme Court's legal specialist committee, when there is disagreement between two judges on a law in the lower courts. The comments are not binding but judges follow them in their rulings. Translator): The penal code rules concerning "hodud" (punishment set by God. Translator) and "ghesas" (punishment for manslaughter. Translator) are formulated specifically. These sentences cannot therefore be passed with reference to similar crimes.

Comment no. 7/8204 of 25<sup>th</sup> January 2003: It applies to all Hodud crimes that if witness testimony and the accused person's confession do not conform to rules, no sentence can be passed. The court must pass sentence with regard to the case's documents, including the accused person's confession. If there is insufficient evidence for the crime, the accused must be acquitted.

2) Judgement no. 16 of 20<sup>th</sup> January 1995: Condition 2: With regard to illegitimate intercourse of an incestuous nature it should be noted that the parties' original explanations and the description of the situation shows that it is not proven that the accused woman acted voluntarily and agreed to what took place. The conditions laid

down in the Islamic penal code's § 64 that are necessary for a conviction for illegitimate intercourse are therefore not fulfilled.

- 3) Judgement no. 14 of 27<sup>th</sup> October 1998, sequences 21/77. It is noted that the accused denies having illegitimate intercourse. He has explained that he entered "sigheh" (Time limited wedding: Translator) with Fatimeh.....(the rest is not translated, translator)

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**TRANSLATOR'S REMARKS**

- A. Hodud is the legal term for punishments, or crimes, if the punishment is decreed by God and laid down in the Koran, and the punishment cannot be reduced or changed by a judge. All punishments mentioned in 2<sup>nd</sup> book "Hodud" are punishments decreed by God. "Hodud" is a plural description. The singular is "hadd". "Hodud" does not include manslaughter, which is dealt with in the penal code's 3<sup>rd</sup> book: Ghesas.
- B. See under § 63
- C. "Zena" is often translated incorrectly as "adultery". The correct interpretation in the translator's opinion is "illegitimate intercourse" and this includes adultery and also intercourse between a mother and her son, a father and his daughter, between siblings, between a woman and her son-in-law, between a man and a woman who are not married to each other nor married to others.
- D. "Intercourse as a result of a mistake" can for example include a situation where a man has intercourse with a sleeping woman in the belief that she is his wife.

§ 65 Where a man or a woman are aware that intercourse with the other is illegitimate, but the other party is not aware of this and believes that intercourse is legitimate, only the person who is aware of this can be sentenced for illegitimate intercourse.

§ 66 If a man or a woman who has had intercourse asserts that they did it by mistake and in ignorance, and if it is probable that this assertion is true, the assertion will be accepted without witnesses and without that person swearing an oath. There will be no punishment.

§67 If the male participant in illegitimate intercourse or the female participant asserts that he/she was against the intercourse, this assertion will be accepted unless the opposite can be proven.

**2<sup>nd</sup> Chapter: Rules of evidence in court for illegitimate intercourse**

§ 68 If a man or woman admits four times to a judge that he/she has had illegitimate intercourse, that person will be sentenced for illegitimate intercourse. If that person admits fewer than four times, the penalty will be reduced.

§ 69 The confession is valid only if the accused is an adult, of sound mind and has freely made a decision to confess.

§ 70 The confession must be clear and appear reasonable and truthful.



- § 71 If a person admits to illegitimate intercourse and later denies it – if this is a matter of illegitimate intercourse that involves the death penalty or execution by stoning – the punishment will be waived. Where this is not the case, a denial after admission will not lead to the punishment being waived.
- § 72 If a person admits and later repents of an illegitimate intercourse that is subject to corporal punishment, the judge can either make a request to Vali Amr (leader of Iran’s judicial system, translator) for clemency, or sentence the accused to corporal punishment.
- § 73 A woman with no spouse but who is pregnant cannot be punished for illegitimate intercourse, exclusively because of her pregnancy, unless it can be proven according to this law’s rules of evidence that she has committed illegitimate intercourse.
- § 74 Irrespective of whether it is punishable by death through stoning or by whipping, illegitimate intercourse must be proven by four male, righteous witnesses or three male, righteous witnesses and two female righteous witnesses.
- § 75 If an act of illegitimate intercourse is only subject to punishment by whipping, this can be proven by two male, righteous witnesses and four female righteous witnesses.
- § 76 Three female witnesses alone and one male righteous witness do not prove illegitimate intercourse. On the contrary, the above witnesses will receive corporal punishment according to the law on false accusation of illegitimate intercourse.
- § 77 Witness testimony must be clear, unambiguous and based on personal observations. Testimony based on assumptions is not valid.
- § 78 When witnesses testify about the details of what they have observed, there must be no divergence in their testimony with regard to time, place etc. If there are contradictory details in their testimony, illegitimate intercourse cannot be proven and the witnesses will be sentenced to corporal punishment for false accusations of illegitimate intercourse.
- § 79 Witnesses must testify in an unbroken sequence. If any of the witnesses testify and the others fail to testify, illegitimate intercourse is not proven. In such cases the witness will receive corporal punishment for false testimony on illegitimate intercourse.

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Translator’s remarks

- c. Vali Amr is the head of Iran’s judicial system, and is authorised by the spiritual leader (Khamenei) to pardon people sentenced under certain laws, including § 72. Pardons are given under certain conditions.

§ 80 The punishment for illegitimate intercourse is carried out immediately, with the exception of circumstances in the following §§.

§ 81 If a man or a woman repents before witnesses testify, the punishment is waived. The punishment is not waived if the person in question repents after witnesses have testified.

### **3rd Chapter: Punishments for various types of illegitimate intercourse**

§ 82 The punishment for the following types of illegitimate intercourse is death and no difference applies between young and old, married or unmarried:

- a. Illegitimate intercourse with a close relative “moharem nesbi” (family members or certain close relatives, translator)
- b. Intercourse with a stepmother, which is punishable by death for the person initiating intercourse.
- c. Illegitimate intercourse between a non-Muslim and a Muslim woman is punishable by death for the male participant.
- d. Illegitimate intercourse committed by a man against an unwilling woman is punishable by death for the man who committed illegitimate intercourse with a woman against her will.

§ 83 The punishment for illegitimate intercourse under the following circumstances is execution by stoning:

- a. Illegitimate intercourse committed by a married man, i.e. a man who is married to his wife in a lasting marriage and has had intercourse with his wife when she was of sound mind and he had the opportunity to have intercourse with her when he wished.
- b. Illegitimate intercourse between a married woman who is permanently married to her husband, where the husband has had intercourse with his wife when she was of sound mind and she has the opportunity to have intercourse with her husband.

Section (1): illegitimate intercourse between a married woman and a non-adult (boy) is punishable by whipping.

§ 84 An old man or an old woman who commits illegitimate intercourse will be punished by whipping followed by execution by stoning.

§ 85 A “rajii divorce”<sup>f)</sup> before the end of the “eddeh period”<sup>f)</sup> does not mean that the spouses are not married. But a “baen divorce”<sup>f)</sup> means that the spouses are no longer married.

§ 86 If illegitimate intercourse is committed by a man or woman who is in a permanent marriage but who no longer has contact with his/her spouse

because of travel, imprisonment or similar legal reasons, this is not punishable by execution by stoning.

- § 87 A married man who commits illegitimate intercourse without penetration will be sentenced to whipping, head-shaving and banishment for one year.
- § 88 The punishment for illegitimate intercourse committed by an unmarried man or woman is 100 lashes of the whip.
- § 89 If a person is convicted of illegitimate intercourse and his/her punishment has not been carried and that person commits illegitimate intercourse again, if the punishment is the same as the previous punishment, the punishment is not repeated. But if the two sanctions are different, e.g. if one is whipping and the other is execution by stoning, the whipping will be carried out before the execution by stoning.

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Translator's remarks

A "Rajii divorce" is a type of divorce where a husband can reinstate a marriage simply by seeing his divorced wife within a period of 3 months ("eddeh period"). A "baen divorce" is definitive and cannot be annulled by the former spouses seeing each other.

- § 90 If a man or a woman commits illegitimate intercourse several times and are punished each time, that person will be executed after the fourth conviction.
- § 91 A woman will not be punished during pregnancy or during the childbirth period. Likewise, after she has given birth, if the child has no guardian and there is a danger that the child will die, the woman will not be punished. But if a guardian is found for the child, the punishment will be carried out.
- § 92 If whipping constitutes a danger for a woman's delivery or for the infant, the execution of the punishment will be delayed until there is no longer any risk.
- § 93 If a sick person or a menstruating woman is sentenced to execution or death by stoning, the sentence will be carried out, but if the person is sentenced to whipping, the sentence will be postponed until the sickness or menstruation is over.

Section (1) Menstruation will not prevent the carrying out of a punishment.

- § 94 If there is no prospect of a sick person recovering and the religious judge finds it acceptable that the sick person is punished, the person in question will be whipped once with a whip that consists of 100 strands, even if every strand does not touch the convicted person's body.
- § 95 If a person who has been sentenced to a punishment becomes insane or turns his/her back on Islam, the punishment will not be waived.
- § 96 Whipping punishments must not be carried out when it is very warm or very cold.

§ 97 Punishments may not be carried out in areas belonging to the enemies of Islam.

#### **4<sup>th</sup> Chapter: Methods of carrying out punishments**

§ 98 If a person is sentenced to several punishments, these must be carried out so this it is not impossible to carry out the remaining punishments. For example, if a person is sentenced to whipping and death by stoning, the whipping will be carried out first followed by death by stoning.

§ 99 If a person commits illegitimate intercourse and this is proven through that person's confession, death by stoning will be carried out through the judge casting the first stone followed by other persons. If the proof consists of witness testimony, the witnesses will cast the first stone after the judge followed by other persons.

Section (1): The absence of the religious judge or witnesses and their failure to cast the first stone will not prevent the carrying out of the punishment and the punishment will be carried out under any circumstances.

§ 100 A man who has committed illegitimate intercourse will be whipped in a standing position with no other clothing than a cloth covering his abdomen. Whipping will be carried out strongly over the whole body with the exception of the head, face and penis. A woman who has committed illegitimate intercourse will be whipped in a sitting position with her clothing closed around her.

§ 101 It is proper that the religious judge informs the populace of the time for carrying out the punishment and it is necessary that at least three believers are present when the punishment is carried out.

§ 102 Death by stoning for a man is carried out whilst he is buried to the waist and for a woman whilst she is buried up to her breasts.

§ 103 If a person condemned to death by stoning succeeds in fleeing and the evidence of the person's crime consists of witness testimony, the person will be returned to the hole to be stoned to death. But if the evidence for the person's crime is confession, he shall not be returned.

§ 104 The stones used for death by stoning must not be so large that the condemned person is killed after one or two blows. Nor may the stones be so small that they cannot be described as stones.

Section (1): If a person sentenced to whipping flees, that person shall be returned under any circumstances to be whipped.

§ 105 The religious judge (the judge, translator) can deal with cases concerning God's law and human law<sup>(1)</sup> and sentence to God's punishment (hadd,

translator) in accordance with his own knowledge. To sentence to punishment with God's punishment in cases concerning God's law is not conditional upon a victim's application, but in cases concerning human law, punishment is conditional upon a victim's application.

§ 106 Illegitimate intercourse committed on holy days, including religious festivals, in the month of Ramadan and on Fridays and in holy places, including mosques, is punishable by the punishment decreed by God and laid down in the Koran ("hadd", translator) and furthermore by a punishment set by the judge.

§ 107 It is not necessary for the witnesses to be present during the carrying out of a death sentence by stoning, but their absence does not mean the punishment is waived. But if they flee, the punishment is waived.

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Translator's remarks:

f1 The translator puts forward his comments on this rule, because the direct translations for "God's law" and "human law" are inadequate for the original meaning which are Arabic-Islamic expressions. The translator's remarks in this context are not an interpretation of these legal expressions.

"God's law" or "enfal" (the Islamic-legal expression) includes values that are not created by the work of humans. For example areas of land in the mountains, mines, (goldmines etc), inheritance without heirs (the inheritance falls to the "common treasury", the Islamic expression for the state treasury). The common treasury is also part of "enfal". Cases concerning God's law also include prayer and fasting and also illegitimate intercourse and homosexual intercourse.

"Human law" includes values that are created by humans, including money, buildings etc. In cases concerning breaches of "human law (or rights, translator) a specified person or persons must have suffered injury or loss.

There is a further term "public rights" which is not mentioned in this paragraph. Public rights include the government of a country.

f2 The translator puts forward his comments on "(the judge's) knowledge" because the original expression "Elm" (knowledge) refers to the extent of the judge's knowledge of whether the crime took place based on the evidence. The expression does not relate to the judge's assessment" of the penalty. The penalty in the crimes in question, insofar as these are proven, is "Hadd" or decreed by God and the judge has no power to reduce or change the penalty.

The translator's remarks on this are not an interpretation of the legal expressions.

## **2<sup>nd</sup> section: Lavat, if the punishment is decreed by God**

### **(homosexual intercourse between men)**

#### **1<sup>st</sup> chapter: Definition and consequences of homosexual intercourse between men**

§ 108 "Lavat" is intercourse between men, irrespective of whether there has been penetration or the rubbing of thighs against each other.

§ 109 Both the person who is the active participant in intercourse and the person who is the object of the intercourse will be sentenced to "hadd" (singular for "hodud" i.e. punishment set by God, see 2<sup>nd</sup> book. Translator).

- § 110 Punishment for homosexual intercourse between men, if there has been penetration, is death. The method of execution is decided by the religious judge.
- § 111 Homosexual intercourse is subject to the death penalty only if both the participant in intercourse and the person who is the object of the intercourse are adults, of sound mind and acted of their own free will.
- § 112 If an adult man of sound mind engages in intercourse with a person who is not an adult, the adult man will be killed. The person who is the object of the intercourse and was a willing participant will be whipped with up to 74 lashes.
- § 113 If two male persons who are not adults commit intercourse, they will be whipped with up to 74 lashes, unless one of them was unwilling.

**2<sup>nd</sup> chapter: Evidence in court of homosexual intercourse between men**

- § 114 A man's homosexual intercourse is proven if he confesses four times before a religious judge.
- § 115 If a man confesses fewer than four times, he will not receive the death penalty. The penalty will be reduced.
- § 116 The confession is valid only if the accused is an adult, of sound mind and has freely made a decision to confess.
- § 117 Homosexual intercourse must be proven by four male, righteous witnesses to the intercourse.
- § 118 Homosexual intercourse cannot be proven by fewer than four male, righteous witnesses and the witnesses can suffer corporal punishment for false accusation.
- § 119 Female witnesses alone, or supplemented with a male witness, cannot prove homosexual intercourse.
- § 120 The religious judge can make a decision in accordance with his own knowledge that is based on general knowledge and judgement.
- § 121 The punishment for two men rubbing thighs against each other and the like, without penetration, is 100 lashes for each participant.
- § 122 If contact with thighs and the like is repeated three times and this is punished each time, the punishment after four times is death.
- § 123 If two men who are unrelated are found undressed without reason under a blanket (sheet, cover etc., Translator) both will be punished with up to 99 lashes.

- § 124 If a person kisses another person on the grounds of lust, he shall be punished with up to 60 lashes.
- § 125 If a person commits homosexual intercourse or rubs his thighs against another man or the like, and he repents before witnesses testify, the punishment is waived. If he repents after witnesses have testified, the punishment will stand.
- § 126 If a person commits homosexual intercourse or rubs s thighs against another man or the like, and this is proven through his confession, and after confession he repents, the judge can request the spiritual leader’s permission for a pardon.

**3<sup>rd</sup> section: Mosahegheh (Lesbian intercourse, translator)**

- § 127 “Mosahegheh” is lesbian intercourse between women with their genitals.
- § 128 The evidential rules in court for lesbian intercourse are the same as for homosexual intercourse between two men.
- § 129 The punishment for lesbian intercourse is 100 lashes for each participant.
- § 130 A person is punished for lesbian intercourse if she is adult, of sound mind and acted of her own free will.

Section (1): With regard to punishment for lesbian intercourse, no difference is made between the person who is the active participant and the person who is the object of the intercourse and likewise no difference is made between a Muslim woman and a non-Muslim woman.

- § 131 If lesbian intercourse is repeated three times and this is punished each time, the punishment after four times is death.
- § 132 If a person commits lesbian intercourse, and she repents before witnesses testify, the punishment is waived. If she repents after witnesses have testified, the punishment will stand.
- § 134 If a person commits lesbian intercourse, and this is proven through her confession, and after confession she repents, the judge can request the spiritual leader’s permission for a pardon.
- § 135 If two women who are unrelated are found undressed without reason under a blanket (sheet, cover etc., Translator) both will be punished with under 100 lashes. If the crime and punishment are repeated, each participant will be punished with 100 lashes after the third time.

**4<sup>th</sup> section: Procuring**

- § 135 Procuring consists of the gathering and connecting of two or more persons with a view to carrying out illegitimate intercourse or homosexual intercourse.

§ 136 Procuring is proven by two admissions, on condition that the person in question is an adult, of sound mind, acting of his/her own free will and with intent.

§ 137 Procuring is proven by the testimony of two male, righteous witnesses.

§ 138 The punishment for procuring is 75 lashes and banishment from the area for between 3 months and one year for men and only 75 lashes for women.

### **5<sup>th</sup> section: Ghazf (accusing another person of illegitimate intercourse or homosexual intercourse, translator)**

§ 139 “Ghazf” is accusing another person of illegitimate intercourse or homosexual intercourse.

§ 140 The punishment for a man or woman who accuses another person of illegitimate intercourse or homosexual intercourse is 80 lashes.

Section 1: The carrying out of the punishment for “ghazf” is conditional upon the wishes of the person accused of this.

Section 2; If a person accuses another person of an act other than illegitimate intercourse or homosexual intercourse; for example lesbian intercourse and other illegitimate acts, that person will be punished with up to 74 lashes.

§ 141 “Ghazf” must be clear and unambiguous and the person making the accusation must be aware of what the expression means, even if the hearer does not know the meaning of the expression.

§ 142 If a person says to his/her legitimate child “You are not my child”, that person will be punished for “ghazf”. Likewise, if a person says to another’s legitimate child, “You are not his/her child”, that person will be punished for “ghazf”.

*(5<sup>th</sup> chapter continues up to § 164. But the continuation is not translated, translator)*

### **6<sup>th</sup> Section: Alcoholic drinks**

**(The punishment for drinking these is decreed by God)**

#### **1<sup>st</sup> chapter: Consequences of drinking alcoholic drinks**

§ 165 The drinking of alcoholic drinks is a punishable offence, irrespective of amount, whether one becomes intoxicated or not, whether the drink is unmixed or diluted, it is still an alcoholic drink.

Section 1: Beer is regarded as wine, and even if one is not intoxicated by it, it is punishable to drink it.



Section 2: It is “haraam” (forbidden under Islamic rules, translator) to drink grape juice that is distilled, either of itself or by fire or the warmth of the sun etc. But it is not punishable.

**2<sup>nd</sup> chapter: Conditions for punishment for drinking alcoholic drinks**

§ 166 The drinking of alcoholic drinks can be proven against a person who is adult, of sound mind, with free will and the person is aware that the drink is alcoholic and forbidden by Islamic law.

Section 1: If a person who has drunk wine (alcoholic drink, translator) asserts that he/she was unaware of the rule and if it is probable that his assertion is true, that person will not be punished.

Section 2: If a person knows that it is forbidden under Islamic rules to drink wine and does so nonetheless, that person will be punished even if he/she is unaware that such drinking is punishable.

§ 167 If a person is in a desperate situation and in order to save life or treat a serious illness he/she drinks the necessary amount of wine, he/she will not be punished.

§ 168 If a person confesses twice to having drunk wine, he/she will be punished.

§ 169 A confession is only valid if the person confessing is an adult, of sound mind, acting of his/her own free will and the action was intentional.

§ 170 If wine-drinking is to be proven, this can only occur through the testimony of two male, righteous witnesses.

§ 171 If one male, righteous witness testifies that a person has drunk wine and the other testifies that the person threw up wine, the offence is proven.

§ 172 There must be no inconsistency in witness testimony on the drinking of wine with regard to time, place etc. But if one witness testifies that genuine alcoholic drink was drunk and the other witness testifies that it was a certain type of alcoholic drink, the offence is proven.

§ 173 Confession or witness testimony will lead to punishment only if the person who has drunk is not excused because of his/her state of mind.

§ 174 Drinking alcoholic drink is punishable by 80 lashes for men or women.

Section (1): Non-Muslims will only be punished with 80 lashes if they drink in public.

§ 175 Anyone who produces, obtains, sells, transports and offers alcoholic drink will be sentenced to prison from six months to two years. If a person obtains

equipment for the use of alcoholic drink as a result of a request, incitement or deceit, that person shall be sentenced to up to 60 lashes.

**3rd chapter: Method of carrying out punishment decreed by God**

§ 176 Men are whipped in a standing position, undressed apart from covered genitals and women are whipped in a sitting position with closed clothing.

§ 177 The punishment is carried out when the convicted person is no longer intoxicated.

§ 178 If a person has drunk several times and he/she has not been punished, it is sufficient to punish that person once for all the offences.

§ 179 If a person drinks several times and is punished once, that person will be executed after the third time.

§ 180 If a person who has been sentenced to a punishment becomes insane or turns his/her back on Islam, the punishment will not be waived.

**4<sup>th</sup> Chapter: Conditions for waiving punishment for the use of alcoholic drinks or pardons for this offence**

§ 181 If a person who has drunk alcoholic drink repents before witnesses testify, the punishment is waived. The punishment is not waived if the person in question repents after witnesses have testified.

§ 182 If a person who has drunk alcoholic drink confesses and then repents, the judge can request the spiritual leader's approval for a pardon, or carry out the punishment.

**7<sup>th</sup> Section: Armed fighting and depravity (or corruption, translator) on earth**

**1<sup>st</sup> chapter: Definitions**

§ 183 Anyone bearing arms in order to create fear and anxiety and to threaten the population's freedom and security is an armed fighter (or militant, translator) and the depraved of the earth.

Section 1. Anyone bearing arms against people, but because of lack of ability, does not create fear in anyone, is not an armed fighter.

Section 2: Anyone bearing arms as a result of personal or hostile motives against one or more defined persons and whose actions are not directed against the population in general is not an armed fighter.

Section 3: No differentiation is made between firearms and other weapons.

- § 184 Any person or group who takes up arms to fight armed fighters and the deprived of the earth is not an armed fighter.
- § 185 An armed thief or highwayman who uses weapons to disturb the population's security on the highways and creates fear and anxiety is an armed fighter.
- §186 One is an armed fighter if one is a member or adherent of a group or organisation carrying out armed uprising against the Islamic government and one is aware of the group or organisation's actions and one participates actively as a member or adherent in promoting the group or organisation's goals. This applies even if one is not active in the militant branch.
- Section 1. A united front that is formed from several different groups or persons is regarded as a unit.
- § 187 Any person or group who plans to overthrow the Islamic government and obtains weapons and explosives to this effect, and likewise persons who knowingly and wilfully provide them with effective economic means, equipment and weapons, is an armed fighter and the deprived of the earth.
- § 188 Anyone making himself available for an important post in a coup-government and his actions play an effective role in one way or another in the coup is an armed fighter and the deprived of the earth.

**2<sup>nd</sup> chapter: Evidential rules for armed fighters and the deprived of the earth**

- § 189 Armed fighting and depravity on earth is proven in the following ways:
- a. Through one confession, on condition that the person concerned is an adult, of sound mind and the confession was voluntary and intentional.
  - b. Through the testimony of two male, righteous witnesses.

Section 1: Witness testimony put forward by persons attacked by armed fighters to each other's advantage is not accepted.

Section 2: If a number of people are attacked by armed fighters, witness testimony is accepted from persons who say "We were not harmed".

Section 3: Witness testimony that does not come from a private complainant but which is put forward by persons who have been attacked and whose purpose is to prove that the attackers are armed fighters is acceptable.

**3<sup>rd</sup> chapter: Punishment for armed fighting and depravity on earth if the punishment is decreed by God**

*(§ 189 is repeated here incorrectly in the Danish version, Danish-English Translator)*

§ 190 Punishment for armed fighting and depravity on earth is one of the following:

1. Execution
2. Hanging
3. First the amputation of the right hand (or arm, translator), followed by amputation of the left foot (or leg, translator)
4. Banishment from the town <sup>g)</sup>

§ 191 It is the judge that decides which of the four sanctions is carried out, irrespective of whether the armed fighter has killed or wounded another person, or has taken possession of another's property, or has done none of these things.

§ 192 Punishment for armed fighting and depravity on earth is not waived through the forgiveness of victims.

§ 193 An armed fighter who is banished must be monitored and he/she may not associate with other persons.

§ 194 Banishment must last for at least one year, even if he/she repents after arrest. If he/she does not repent, he/she must remain in banishment.

§ 195 Armed fighters and the depraved of the earth are crucified in the following way:

- a. He/she must not be bound to the cross so that it leads to death.
- b. The person concerned may not remain in the cross longer than three days. If he/she dies in the course of the three days, he/she shall be taken down.
- c. If he/she survives the three days, he/she may not be killed.

§ 196 Amputation of the right hand (or arm, translator) and left foot (or leg, translator) is carried out in the same manner as the punishment for theft.

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Translator's remarks:

g) Banishment from the town is a direct translation of the Farsi expression "nafye balad", which is really Arabic. In this legal context the expression means "imprisonment".

### **17<sup>th</sup> section: Crimes against persons and children**

- § 623 Anyone causing a woman to abort by giving her medicine or using other means shall be sentenced to six months to one year in prison, and anyone who knowingly and deliberately encourages a woman to use medicine or other means thereby causing her to abort shall be sentenced to three to six months imprisonment, unless it can be proven that these actions were intended to save the mother's life.
- § 624 If a doctor or midwife or pharmacist or person working as a doctor, surgeon of pharmacist obtains abortion equipment, or assists an abortion, he/she shall be sentenced to two to five years imprisonment and obliged to pay compensation in accordance with the relevant rules.
- § 630 If a man observes that his wife is engaged in illegitimate intercourse with another man and he is aware that this is taking place with his wife's consent, he may kill both of them on the spot. If the woman is not consenting, he may only kill the man. Blows and wounds are treated in the same way as killing.
- § 632 If a person who has been given responsibility for a child refuses to return that child to its rightful parent/guardian, he/she shall be punished with three to six months imprisonment and a fine of between 150,000 to 300,000 tuman (1000 – 2000 DKK in 2005, translator).

### **18<sup>th</sup> Section: Crimes against public morals and customs**

- § 627 If a man and a woman who are not married to each other enter an illegitimate relationship or commit an immoral act other than intercourse, including kissing or lying together, they can be sentenced to up to 99 lashes. If this action is committed by force and against protest, only the person committing the act will be punished.
- § 638 If a person commits a "haraam" action in a public place ("haraam" means forbidden under Islamic rules, translator) that person shall be punished for this action and also be sentenced to 10 days to two months imprisonment, or up to 74 lashes. If the action in itself is not punishable, but it offends public morals, the offender will be sentenced to 10 days to two months imprisonment, or up to 74 lashes.

Section 1: Women who show themselves in public places without Islamic dress shall be sentenced to 10 days to two months imprisonment or a fine of between 5,000 to 50,000 tuman (35 -350 DKK in 2005, translator).

- § 639 The following persons shall be sentenced to from one to 10 years imprisonment. With regard to point a. the court can decide on the temporary closure of the place in question.
- a. Anyone who sets up or runs a centre for depravity (or "corruption", translator) or prostitution.

- b. Anyone who encourages the population to depravity or prostitution or facilitates this.

Section 1: If the abovementioned circumstances relate to procuring, the person in question shall be sentenced for the above circumstances and further punished for procuring.

§ 640 The following persons shall be sentenced to between three months and one year imprisonment and a fine of between 150,000 to 600,000 tuman (1,000 to 4,000 DKK in 2005, translator) and up to 74 lashes. The person in question shall be sentenced to one or two of the above punishments.

1. Anyone distributing, trading in, exhibiting to the public or producing or keeping for trade and distribution any writing, drawing, painting, publication, message, sticker, film, videotape or any other material that offends public morals and customs.
2. Anyone who personally or in any other way imports or exports the abovementioned effects to achieve the above objectives or in any other way assists or is responsible for trading in them or enriches him/herself by renting them out.
3. Anyone who in any other way gives out the above effects and places them at the disposal of the public.
4. Anyone who, with a view to encouraging trade in or spreading the above effects, advertises them or refers anyone to any person carrying out the above legal actions or to a place where these effects can be obtained.
5. Section 1: This rule does not apply to trading in effects that are used for scientific purposes or other reasonable objectives with regard to Islamic norms.