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FAX COVER SHEET

TO: Betina Douglas
FROM: Francine Pickup
Middle East Program

IRAN (27)

DATE: 9 July 1997

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Dear Betina,

Please find enclosed the relevant section of the Iranian Penal Code on adultery, in particular I draw your attention to Article 88. In relation to your question about whether the girl will be forced to marry on return to Iran, I am afraid we cannot comment on this, as it does not fall within our mandate.

I hope this information is useful.

Best wishes,

Francine Pickup

issuing judge was complacent, he is responsible for paying compensation. If the mistake or complacency has resulted in tarnishing a reputation of a person, he/she should be rehabilitated.

Article 59 - The following actions are not offences:

- a) the actions made by parents, legal guardians of minors and insane people in order to correct or safeguard them, provided such actions are appropriate for correcting and safeguarding them.
- b) every legitimate medical action or operation which is done by the approval of the patient, his/her parents or guardians or their legal representative. Such actions must be made with due consideration of scientific, medical and governmental regulations. In emergency cases the approval is not necessary.
- c) the accidents caused as a result of performing [physical] sports, provided the accident is not caused by violation of rules of that sport and the regulations do not violate the rules of Islamic Jurisprudence.

Article 60 - If the medical doctor has obtained approval of the patient or his/her parent prior to operation or examination, the medical doctor is not responsible for any defect of limb, financial loss or loss of life. In emergency cases, the medical doctor is not responsible [for such losses].

Article 61 - If whilst defending one's life, honour, chastity, property or freedom against any immediate or imminent aggression, one makes an action which is an offence, provided all of the following conditions are met, one will not be prosecuted and punished.

- a) the defence is proportionate to danger or aggression.
- b) the action is not excessive.
- c) calling the governmental forces is not possible immediately, or calling them is not effective in repelling the aggression or danger.

Note - Defending someone else's life, honour, chastity, property or freedom is permissible provided he/she cannot defend his/herself.

Article 62 - Resistance against security forces whilst performing their duties is not considered to be defence. But if these forces exceed their duties and there are reasons to believe their actions would cause loss of life or injury or violation of honour or chastity, defence is permissible.

Book II - Islamic Punishments (Penance)

Chapter 1 - Penance for adultery

Article 63 - Adultery is [defined as] sexual intercourse of a man with a woman who is inherently prohibited to him even if it is anal intercourse, other than the cases where intercourse is made under mistaken identity.

Article 64 - Penance is carried out if the adulterer or adulteress is adult, sane and consenting as well as being aware of the matter and its sentence.

Article 65 - If a woman or a man is aware that he/she is committing adultery whilst the other party is not aware and believes that this action is permissible, only the informed party will be sentenced to penance for adultery.

Article 66 - If the man or the woman who has committed adultery claims that he/she had made a mistake unknowingly, and if there is the likelihood that the claim is true, the claim will be accepted without resorting to witness and oath and the penance will become null.

Article 67 - If the adulterer or adulteress claims he/she has been forced to commit adultery, the claim will be accepted provided there is no proof to [believe] otherwise.

Section 2 - Means of proving adultery in court

Article 68 - If a man or woman confesses to adultery four times in front of the judge, he/she will be sentenced to penance. If the confession is made on less than four occasions, the sentence will be according to Ta'zir [punishment].

Article 69 - The confession is valid provided the confessor is adult, sane, willing and at liberty [while confessing].

Article 70 - The confession must be explicit or be made in such a manner that there is no reasonable doubt to believe otherwise.

Article 71 - If a person confesses to adultery and subsequently denies it, if the sentence for the confessed adultery is execution or stoning to death, the subsequent denial renders the penance of execution or stoning to death void. Otherwise [i.e. when the penance is not execution or stoning to death] the penance will stay.

Article 72 - If a person confesses to adultery which is punishable by penance and subsequently the person repents, the judge can ask for his/her pardon from the Spiritual Leader, or the judge can execute the penance.

Article 73 - A pregnant, single woman will not be sentenced to penance, unless it is proven by one of the means mentioned in this law that she has committed adultery.

Article 74 - Adultery, having the penance of stoning to death or the penance of one hundred lashes, will be proven by the testimony of four just men or three just men and [i.e. together with] two just women.

Article 75 - If the penance for adultery is one hundred lashes, it will also be proven by the testimony of two just men together with four just women.

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Article 76 - The testimony of women alone or their testimony alongside the testimony of one just man will not be proof of adultery. But the penance of false accusation of adultery will be executed on them.

Article 77 - The testimony of witnesses should be clear, vagueless and should be documented by [personal] observation. Conjectural testimony is not valid.

Article 78 - If the witnesses describe specification of adultery, there should be no discrepancy in their description such as time, place etc. If there are discrepancies in the description of the witnesses not only the adultery is not proven, but also the witnesses will be sentenced to penance of false accusation of adultery.

Article 79 - The witnesses should testify one after another without lapse of time between their testimonies. If some of the witnesses do not testify and some others so not attend to testify whilst other witnesses have testified, the adultery will not be proven. In this case the testifying witnesses will be sentenced to penance of false accusation of adultery.

Article 80 - The penance for adultery, other than in those cases mentioned in the later articles, should be executed forthwith.

Article 81 - If the adulterer or adulteress repents prior to the testimony [of the witnesses], the penance will be void. But if he/she repents after the testimony, the penance will not be void.

Section 3 - Different kinds of penance for adultery

Article 82 - In the following circumstance the penance for adultery is execution and there is no difference between young and old or between adultery with a married or unmarried woman.

- a) adultery with blood relations who are within the prohibited degree of marriage.
- b) adultery with step-mother. The adulterer will be executed.
- c) adultery of an non-Muslim man with a Muslim woman. The adulterer will be executed.
- d) Rape. The adulterer will be executed.

Article 83 - In the following circumstances the penance for adultery is stoning to death:

- a) adultery of a married man, that is a man who has a permanent wife and has had sexual intercourse with her whilst she has been sane and can have sexual intercourse with her whenever he so wishes.
- b) adultery of a married woman with an adult man. A married woman is one who has a permanent husband and the husband has had sexual intercourse with her whilst she has been sane and she can have sexual intercourse with her husband.

Note - Adultery of a married woman with a minor results in penance by lashes.

Article 84 - An old adulterer or an old adulteress who has conditions of marriage [as mentioned above separately], prior to being stoned to death will receive lashes.

Article 85 - In a recoverable divorce during the legal period of abstention, the man or woman is regarded to be married. Whilst in irrecoverable divorce, they are regarded to be unmarried.

Article 86 - The adultery of a man or a woman who has a permanent wife or husband, but due to travel, imprisonment or other extraneous circumstances he or she has no access to his wife or her husband, will not be subject to penance or stoning to death.

Article 87 - If a married man commits adultery prior to consummation [not clear how in the text], he will be sentenced to penance by lashes, shaving his hair and banishment for one year.

Article 88 - The penance for adultery of an unmarried woman or an unmarried man is one hundred lashes.

Article 89 - If prior to the execution of penance, adultery is recommitted and the penances are the same, they will not be repeated [i.e. only one penance is executed]. But if there are different penances for different adulteries, for example the penance of one adultery is lashes and for another one it is stoning to death the penance of lashes will be executed. [syntax error is within the text].

Article 90 - If a woman or a man commits several adulteries and after each one she/he is punished, on the fourth occasion the adulterer/adulteress will be killed.

Article 91 - The execution of stoning to death or execution [punishment] will be stayed during pregnancy or lochia. Also after delivery if the child has no guardian and because of it the child's life is in danger the penance will not be executed. But if a guardian is found for the child the penance will be executed.

Article 92 - if execution of penance of lashing of a pregnant or nursing woman will cause harm to the foetus or the baby, the execution of penance will be postponed until there is no danger to the foetus or to the child.

Article 93 - If a sick person or a woman having excessive or undue menstruation is sentenced to execution, or stoning to death, the penance will be executed, but if the penance is lashes the execution of the sentence will be postponed until the sick is recovered and undue menstruation is stopped.

Note - Menstruation does not prevent the penance being executed.

Article 94 - If there is no hope for the recovery of the sick person and the judge deems it appropriate for penance to be executed, a bunch of twigs or scrouges consisting of one hundred scrouges or twigs will be struck only once to the body of the condemned, although not all of the twigs or scrouges may strike the body.

Article 95 - If a person who is condemned to penance becomes an apostate [a born Muslim who changes his/her religion] or insane, the penance will not be valid.

Article 96 - The penance of lashes should not be executed in either very cold or very hot weather.

Article 97 - The penance cannot be executed in the land of enemies of Islam.

Section 4 - Manner of execution of penance

Article 98 - If a person is sentenced to several penances the arrangement of execution of each one of them should be made in a manner as not to prevent the execution of the next penance. Therefore if someone is sentenced to [both] lashes and stoning to death, first the penance for lashes should be executed followed by stoning to death.

Article 99 - If adultery of a married person is proven by his/her confession, the first stone is cast by the judge followed by others. If adultery is proven by testification of witnesses, the witnesses cast the stones first followed by the judge and then others.

Note - If the judge or witnesses do not attend [the stoning] or do not cast the stones, the penance is still valid and should be executed.

Article 100 - The penance of lashes for an adulterer is executed whilst he is standing and only his privy parts are covered. The lash will strike his body, other than his face or hand, severely. The adulteress will receive lashes whilst she is sitting and her cloth is tied to her body.

Article 101 - It is appropriate that the judge informs people of the time of execution of penance and it is necessary that more than three pious people are present during the execution of penance.

Article 102 - During stoning the stoned man is buried into a pit up to his waist and the stoned woman up to her breast.

Article 103 - If during stoning the stoned person flees from the pit and his/her adultery was proven by his/her confession, he/she will not be returned to the pit. But if his/her adultery was proven by the testifying of the witnesses, he/she will be returned to the pit for the stoning to be executed.

Note - If a person who is sentenced to lashes flees, he/she will be returned for execution of the penance [disregarding whether the adultery was proven by his/her confession or testimony of witnesses].

Article 104 - The stone should not be big enough to kill the person by one or two strikes, neither should it be so small that it cannot be called a stone.

Article 105 - [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 the public rights are violated does not require any person's request, but when private rights are violated the execution of the penance must be at the request of the plaintiff.

Article 106 - If adultery is committed during sacred periods such as religious festivities, the month of Ramadan, Fridays, or at holy places such as mosques, apart from penance, Ta'zir will also be executed.

Article 107 - Presence of witnesses during execution of stoning to death is necessary although in their absence the penance can also be executed. But if the witnesses escape, the penance will be void.

Chapter 2 - Penance for sodomy

Section 1 - Definition and reasons of penance for sodomy

Article 108 - Sodomy is sexual intercourse of males, whether it is of foreplay nature or consummation is made.

Article 109 - Both the active and passive parties will be sentenced to penance.

Article 110 - If consummation is made, the penance for sodomy is execution. The manner of execution is at the discretion of the judge.

Article 111 - Sodomy will result in execution provided both the active and passive parties are mature, sane and consenting.

Article 112 - If a mature man sodomizes a minor, the active party will be executed and provided that the passive party was consenting he will receive up to seventy four lashes.

Article 113 - If a minor sodomises another minor, each will receive up to seventy four lashes unless one of them was forced to commit sodomy [in which case he will not be punished].

Section 2 - Means of proving sodomy in the court

Article 114 - Penance for sodomy [should have been sodomy alone] will be proven to the judge by four times confession of the [accused person].

Article 115 - If the confession is done on less than four times the confessor will not be subject to penance but will be punished according to the Ta'zir [i.e. punishment is at discretion of the judge].

Article 116 - Confession is valid provided the confessor is mature, sane, at liberty and has intention [to confess].

Article 117 - The penance for sodomy [should have been sodomy alone] will be proven by the testimony of four just men who have witnessed committing of the sodomy.

Article 118 - Sodomy will not be proven by testimony of less than four just men. The witnesses themselves will be subject to penance for false accusation of sexual intercourse.

Article 119 - Testimony of women does not prove sodomy. Whether such testimonies are alone or alongside testimony of men [not clear how many men].

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**LAW OF HODOUD AND QASAS
[PUNISHMENT AND RETRIBUTION]
AND PROVISIONS THEREOF**

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HODOUD AND PROVISIONS THEREOF

CHAPTER ONE
PUNISHMENT FOR FORNICATION

Article 81 - Fornication means the copulation of a man with a woman not lawful to him, even if from behind, with the exception of doubtful cases.

Article 82 - Fornication involves Had (10) [punishment] in cases where the fornicator meets the following qualifications: puberty, common sense, free will, knowledge.

Therefore, fornication by a person who has not obtained puberty, who is of unsound mind or is under duress, or by the one who fornicates with a woman by mistake or marries a woman who was legally prohibited to him due to lack of knowledge of law and fornicates with her, shall not involve Had [punishment].

Note 1: If a man or woman does not know the illegitimacy of marriage with another, but presumes its probability and without asking the stipulation of law marries such person and makes entry, he/she shall be condemned to Had [punishment].

Note 2: In case a woman knows the illegitimacy of copulation with a man but the man has no knowledge and regards entry with such woman as lawful and makes entry, only the woman will be condemned to punishment and not the man; if the man has the knowledge

and the woman is unaware, only the man will be condemned to punishment for fornication and not the woman.

Article 83 - If a man or woman who fornicated together claims mistake or absence of knowledge, if there exists the likelihood of the claim of the claimant being true, such claim will be accepted without testimony and oath and the punishment will be quashed.

Article 84 - If a woman claims to have been put under duress to fornicate, her claim will be accepted if there exists no certainty contrary to it.

MEANS OF PROVING FORNICATION IN COURT

Article 85 - If a man or woman confesses four different times to having committed fornication, he or she will be condemned to punishment for fornication; if the confession is less than four times, the punishment involved will be Ta'azir [lesser punishment].

Article 86 - The confession is valid only when the confessor has the following qualifications:

Maturity, common sense, free will and intention.

Article 87 - The confession should be clear or open so that a contrary logical likelihood may not be deduced.

Article 88 - If someone makes a confession to fornicate and then denies it, the punishment is not quashed unless he confesses to fornication involving stoning to death or killing

and then denies it, in which case the punishment of stoning to death or killing is quashed.

Article 89 - If someone confesses to having committed fornication involving Had [a lesser punishment] and repents thereafter, the Sharia judge may pardon him or enforce punishment.

Article 90 - If a woman having no spouse becomes pregnant, her mere pregnancy will not involve punishment unless her fornication is proved by one of the methods set forth in this law.

Article 91 - Fornication is proved with the testimony of four righteous men or three righteous men together with two righteous women, whether it involves Had Jald (11) [punishment by the lash] or stoning to death.

Article 92 - In cases where fornication involves only Had Jald [punishment by the lash], it is also proved with the testimony of two righteous men together with four righteous women.

Note: Testimony of women alone or together with that of one righteous man does not prove fornication but such witnesses shall be subject to punishment for Qazf (12) [defamation].

Article 93 - The testimony of witnesses must be clear and without any doubt.

Article 94 - The testimony of the witnesses must be based on observation; conjectural testimony is not valid.

Article 95 - If the witnesses describe particulars to which they testify, it must not be contrary insofar as the time, place and the like is concerned. In case of contradiction between the witnesses, fornication is not proved but the witnesses shall be subject to punishment for Qazf [defamation].

Article 96 - The witnesses must give their testimony without a gap of time. Therefore, if some of them testify and some fail to appear immediately or to testify, fornication is not proved but the one testifying shall be subject to punishment for Qazf [defamation].

Article 97 - If fornication is proved by testimony or confession, its punishment must be carried out immediately, with the exception of exceptional cases such as sickness or pregnancy.

Article 98 - If a fornicating man or woman repents before the giving of testimony, his/her punishment becomes void; if he/she repents after the giving of testimony, the punishment does not become void.

TYPES OF PUNISHMENTS FOR FORNICATION

Article 99 - Fornication involves killing in the following instances:

- a) Fornication with forbidden blood relations [incest].
- b) Fornication with father's wife.

- c) Fornication by a non-Muslim with a Muslim woman involves killing of the fornicator.
- d) Fornication by force and coercion involves killing of the coercing fornicator.

Note: In the above instances there is no distinction between young and old, married and unmarried.

Article 100 - Fornication involves punishment of Rajm (13) [stoning to death] in the following instances:

- a) Adultery by a married man, that is, a man having a permanent wife with whom he has copulated and may copulate with her whenever he wishes to do so, involves stoning to death.
- b) Adultery by a married woman, that is, a woman having a permanent husband with whom she has copulated and enjoyment with whom is possible, involves stoning to death if committed with a mature man.

Note 1: Adultery by a married woman with an immature person involves whipping and not stoning to death.

Note 2: Adultery by a man or woman having a permanent spouse who due to travel or imprisonment and the like, having a plausible excuse, has no access to his/her spouse, does not involve stoning to death.

Note 3: A Rij-yee [revocable] divorce (14), before the termination of the period of Eddeh (15), does not terminate the man or woman's being married. However, a Ba-en [irrevocable] divorce (16) terminates their being married.

Article 101 - Adultery by and old man or an old woman having the conditions of being married [revocable divorce] involves punishment of Jald (17) [whipping] before stoning him/her to death.

Article 102 - Punishment for fornication by a man or woman who is not qualified as being married is hundred (100) lashes.

Article 103 - A married man who commits adultery before intercourse [with his wife] will be condemned to punishment of Jald [whipping], shaving of head and exile for a period of one year.

Note: The aforementioned provisions do not recognize any distinction between fornication with a living or a dead woman.

Article 104 - The repetition of fornication before the enforcement of punishment does not involve the repetition of punishment unless the punishments are not of one type, e.g., some of them involve whipping while others involve stoning to death, in which case the fornicator shall be whipped before stoning to death.

Article 105 - If a man or woman commits fornication several times and is punished after each committal, such a person would be killed the fourth time.

Article 106 - During pregnancy or labour of a woman the punishment of killing or stoning to death is not carried out on her as well as after childbirth if the newborn does not have a supporter or it is feared that the baby would die; but

if there is a supporter, the punishment would be carried out on her.

Article 107 - If the enforcement of whipping is likely to cause abortion or harm to a suckling baby, the enforcement of whipping on a pregnant or nursing woman would be delayed until the danger of harm is terminated.

Article 108 - If a sick person or an excessively menstruating woman is condemned to killing or stoning to death, the punishment is carried out; if he or she is condemned to whipping the punishment must be postponed until the sickness is cured or the woman becomes clean of her excessive menstruation.

Note: The monthly period [of a woman] does not prevent the execution of punishment of Had [whipping].

Article 109 - If there is no hope for recovery of a sick person or the Sharia judge deems it advisable to enforce punishment by the lash, a whip or a wicker of hundred units should be hit at him only once even if all the units do not touch the body of the condemned person.

Article 110 - If a person condemned to punishment of Had becomes lunatic or apostate, the enforcement of punishment on him does not become void.

Article 111 - Punishment of Jald [whipping] must not be carried out in very hot or very cold weather.

