

# IRAN

## I. INTRODUCTION

### 1. The Legal Framework

#### 1.1. The Constitution

Iran has a population of over 65 million people comprised of Persians, Azeris, Kurds, Baluchs, Lors, Arabic-speaking tribes and clans, different religious communities and foreign immigrants, mainly from Afghanistan and Iraq.<sup>1</sup>

Following the Islamic revolution in 1979, a new Constitution was adopted in the same year, which was modified and amended in 1989.<sup>2</sup> Iran is an Islamic Republic.<sup>3</sup> The Constitution guarantees equality before the law, civil and political rights, such as the right to life, freedom from torture and fair trial rights and economic, social, and collective rights.<sup>4</sup> These rights are granted in accordance with Islamic principles.<sup>5</sup> The Constitution also provides for the right of access to justice and the right to petition by way of submitting a complaint in writing to the *Majlis* (the Parliament).<sup>6</sup> Iran has two co-existing systems of law, namely the law of Islamic lawyers (Islamic *mujtahids*) and codified positive law.<sup>7</sup>

The judiciary is comprised of ordinary, military and revolutionary courts of first instance and appeal courts.<sup>8</sup> The highest court is the Supreme Court. It does not have the power to review the constitutionality of laws or the power to hear petitions

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<sup>1</sup> See Core Document forming part of the reports of States Parties: Islamic Republic of Iran, UN Doc. HRI/CORE/1/Add.106, 15 July 1999, para.1-12.

<sup>2</sup> The Constitution of the Islamic Republic of Iran, 1979, as amended in 1989.

<sup>3</sup> Article 1 of the Constitution. Article 2 stipulates that "the Islamic Republic is a system based on belief in: 1) the One God (as stated in the phrase "There is no god except Allah"), His exclusive sovereignty and right to legislate, and the necessity of submission to His commands; 2) Divine revelation and its fundamental role in setting forth the laws; ...4) the justice of God in creation and legislation; ...6) the exalted dignity and value of man, and his freedom coupled with responsibility before God; in which equity, justice, political, economic, social and cultural independence, and national solidarity are secured by recourse to: c) negation of all forms of oppression, both the infliction and submission to it, and of dominance, both its imposition and its acceptance." Article 3 provides lists among the State Goals "securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law."

<sup>4</sup> See Chapter III, Articles 19-42 of the Constitution. Article 14 of the Constitution provides that the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran."

<sup>5</sup> Article 20 of the Constitution provides that: "All citizens of this country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria." See also Article 4 of the Constitution: "All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to other laws and regulations, and the wise persons of the Guardian Council are judges in this matter."

<sup>6</sup> Articles 34 and 90 of the Constitution respectively.

<sup>7</sup> In the preamble, as well as Articles 2, 4, 57, 72, 110 and 170 of the Constitution, the Islamic Republic of Iran appears as a state of Islamic jurists, but alongside the dominant Islamic law elements there are articles such as 1, 6, 56, 59, 78-83, 87-89, 159, 161, 166 and 169, which bind the state to a form of modern legalism.

<sup>8</sup> According to the Law on Establishment of Ordinary and Revolutionary Courts. See Core Document, supra, paras.37-48.

concerning violations of rights.<sup>9</sup> The Guardian Council, which consist of six *faqih*s (Islamic jurists), appointed by the leader, and six jurists, elected by the *Majlis* from among Muslim jurists proposed to the *Majlis* by the non-elected Head of the Judiciary, examines the acts of the *Majlis* with a view to safeguarding the rules of Islam (in accordance with Islamic *Shia* jurisprudence) and the Constitution.<sup>10</sup> The Guardian Council examines all legislation passed by the *Majlis* and returns it thereto for review if it finds any inconsistency with its understanding of principles of Islam and the Constitution.<sup>11</sup> In case of a difference of opinion between the *Majlis* and the Guardian Council on the compatibility of a bill (passed by deputies) with Islamic rules or constitutional provisions, the Council for Assessing the Interest of the Islamic Regime (CAIIR) - or Expediency Council- shall decide.<sup>12</sup> All 34 members of the CAIIR – among them the Head of the Judiciary Power – are appointed by the Leader.<sup>13</sup>

There is also a Court of Administrative Justice that has the power to investigate complaints, grievances and objections with respect to government officials, organs, and statutes.<sup>14</sup> Military courts are competent to investigate crimes committed by members of the Army, Gendarmerie, police, security forces and the Islamic Revolution Guards Corps, in connection with military or security duties.<sup>15</sup> In the Iranian judicial system, beside the ordinary, revolutionary and military courts, that are within the jurisdiction of the Judiciary, the administration Regulation of the clerical (ecclesiastic) courts decreed on 27 July 1990 by the Leader established an independent judicial body for clerics offences.

The Constitution recognises the independence of the judiciary.<sup>16</sup> There are safeguards against the transfer and dismissal of judges who are, however, personally liable for any moral or material loss suffered by an individual as the result of a fault or an erroneous judgment.<sup>17</sup> An important role is played by the Head of the Judiciary who holds a wide range of powers, including the appointment of judges, often exercised by means circulars/decrees (*Bakkshnameh*) for the attention of judges, police, heads of judicial areas and prison organisations, etc.<sup>18</sup> According to Article 2 of the Duties and Powers of the Head of the Judiciary Act (27 February 1999), the Head of the Judiciary is considered to be a judicial office. Furthermore, the Head of the Judiciary can at any time ask for the revision of a judgment duly rendered, including final ones, if he believes that it is contrary to Islamic laws.

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<sup>9</sup> See Article 161 of the Constitution.

<sup>10</sup> Article 91 of the Constitution.

<sup>11</sup> Article 94 of the Constitution and Article 72 of the Constitution which provides that the *Majlis* may not enact any laws contrary to the principle and rules of the official faith of the country or the Constitution.

<sup>12</sup> Article 112 of the Constitution.

<sup>13</sup> The Leader is a religious scholar appointed by the Council of Expediency (Khobegran). The first leader of the Islamic Republic of Iran was Ayatollah-Al-Ozma Imam Khomeini. The selection, qualification and attributes as well as the functions and authorities of the leader are laid down in Chapter VIII of the Constitution.

<sup>14</sup> Article 173 of the Constitution.

<sup>15</sup> Article 172 of the Constitution.

<sup>16</sup> See Article 156 of the Constitution and Chapter Eleven on the judiciary in general. The leader exerts a considerable influence over the judiciary (see on its wide-ranging powers Article 110 of the Constitution), thereby limiting their effective independence.

<sup>17</sup> See Articles 156, 164 and 171 of the Constitution respectively.

<sup>18</sup> See Article 158 of the Constitution.

## 1.2. Incorporation and status of international law in domestic law

Iran has ratified the following relevant human rights and international humanitarian law treaties:

- Genocide Convention (14 August 1956)
- Geneva Conventions (20 February 1957)
- International Covenant on the elimination of all forms of racial discrimination (29 August 1968)
- International Covenant on Civil and Political Rights (24 June 1975)
- International Covenant on Economical, Social and Cultural Rights (24 June 1975)
- Convention Relating to the Status of Refugees (28 July 1976)
- Convention of the Rights of the Child (13 July 1994)

Article 9 of the Civil Code provides that "Treaties concluded between the Iranian Government and other governments in accordance to the Constitution shall have the force of law." The status of international treaties in Iranian law is still a matter of debate in post-revolutionary Iran.<sup>19</sup> In general, the Guardian Council believes that the obligations of International law are valid only in so far as they are consistent with the criteria of Islamic law. The Islamic state can only ratify "un-Islamic" international standards by virtue of the interest of the Islamic system as a necessity (*Maslahat-e Nezam*).<sup>20</sup> According to the government, "the legal department of the judiciary, which comprises a number of highly qualified judges, has issued an advisory opinion (No. 7/1669 dated 19 October 1992) arguing that direct reference to provisions of international instruments may be made in judicial proceedings."<sup>21</sup>

## 2. Practice of Torture: Context, Occurrence, Responses

### 2.1. The practice of torture

There have been continuous reports of the use of torture from the early days of the Islamic government up to the present.<sup>22</sup> Torture is reportedly used as a means of political oppression, to extract confessions and information, and as a form of punishment.<sup>23</sup> There have also been a considerable number of enforced disappearances, especially in late 1998 and early 1999.<sup>24</sup> Victims of acts of torture and ill-treatment have been mostly political opponents of the regime, such as intellectuals, critical clerics and students, those accused of having committed

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<sup>19</sup> According to Article 77 of the Constitution, international treaties and agreements must be approved by the Islamic Consultative Assembly, Majlis (see Article 72 of the Constitution). They become binding following approval by the Council of Guardians and the signing by the President (Article 125 of the Constitution). See, regarding the process of reception of international norms in the Iranian legal system, Beigzadeh, Ebrahim, "Intégration des normes internationales en droit iranien," in Delmas- Marty, Mireille, (ed.), *Criminalité économique et atteintes à la dignité de la personne*, Vol.VI, Europe- Pays d' Islam, Ed. MSH, Paris, 1999, pp. 286-298.

<sup>20</sup> Articles 110 and 112 of the Constitution.

<sup>21</sup> See Core Document, supra, para. 82.

<sup>22</sup> See, Annual Reports of Amnesty International and Human Rights Watch for this period.

<sup>23</sup> See Amnesty International, 2001 Report, Iran.

<sup>24</sup> See, Interim Report on the situation of Human Rights in the Islamic Republic of Iran prepared by the Special Representative of the Commission on Human Rights, UN Doc.A/55/363, 8 September 2000, paras. 59-62.

common crimes and members of religious and ethnic minorities.<sup>25</sup> The main perpetrators have reportedly been officers of the gendarmerie and the police, members of the Intelligence service, the Islamic Revolution Guards Corps and prison personnel.<sup>26</sup>

Iran has over the years imposed and executed a large number of corporal punishments, such as flogging and amputations, as well as death penalties by stoning.<sup>27</sup>

### 2.2. Domestic Responses

Iran has set up three governmental bodies for the protection of human rights, namely the Human Rights Commission of the *Majlis*,<sup>28</sup> which has to date not played any significant role in the protection of human rights; the Department of Human Rights, established in 1991 by the Ministry of Foreign Affairs<sup>29</sup> and the Islamic Human Rights Commission.<sup>30</sup> The Human Rights Commission was set up in 1994. Its activities include receiving and following up communications, organising human rights educational programmes and raising public awareness. The Commission has reportedly raised the problems of human rights violations in several reports to government agencies and in public statements.<sup>31</sup>

In 2000, the Head of the Judiciary reportedly issued a circular to judges in which he enumerated various types of conduct that will no longer be tolerated, and mentioned that "torture, inhuman treatment of the suspects and defendants and violations of their human dignity was forbidden."<sup>32</sup>

While the government of President Khatami and the pro-reformist 6<sup>th</sup> *Majlis* have since 1997 proposed and introduced a number of measures aimed at political and judicial reform which would also have a positive impact on the protection of human rights, only few of these proposals have been put into practice, largely due to the opposition of the Guardian Council.<sup>33</sup>

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<sup>25</sup> See *ibid.*, para.53.

<sup>26</sup> See on this, the annual reports on the situation of human rights in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, <http://www.unhcr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>.

<sup>27</sup> See on this, the annual reports of the Special Representative, *ibid.* and annual reports of Amnesty International and Human Rights Watch. For the role of torture in the post revolutionary Iranian political system, see also, Ervand Abrahamian, *Tortured Confessions - Prisons and Public Recantations in Modern Iran*, University of California Press, 1999.

<sup>28</sup> See, on the right to petition, Article 90 of the Constitution. This Commission was re-activated in 2001, see UN Doc. A/56/278, para.102.

<sup>29</sup> This department deals with human rights matters in foreign affairs, such as the EU/Iran human rights dialogue.

<sup>30</sup> See Core Document, *supra*, paras.83-90.

<sup>31</sup> Situation of human rights in the Islamic Republic of Iran, Interim report prepared by Maurice Copithorne, Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran in accordance with a decision taken by the Economic and Social Council at its substantive session of 2001, UN Doc. A/56/278, 10 August 2001, paras. 99-101.

<sup>32</sup> Report on the situation of human rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights, Mr. Maurice Danby Copithorne, pursuant to Commission resolution 2000/28, UN Doc. E/CN.4/2001/39, 16 January 2001, para.31. This decree does not include corporal punishments which are seen as just and continue to be applied.

<sup>33</sup> See on this point the latest report of Special Representative, UN Doc. E/CN.4/2002/42, 16 January 2002.

Iran has not ratified the Convention against Torture and its legal system does not contain a prohibition or adequate safeguards against torture. In recognition of this lacunae, the Iranian Parliament (*Majlis*) drafted a new Bill on Torture,<sup>34</sup> an initial version of which was adopted by the *Majlis* on 5 March 2002.<sup>35</sup> The Council of Guardians rejected the bill on 9 June 2002 on the grounds that it was not in accordance with the principles of Islamic law and doctrine. After reconsideration of the Bill by the Legal Affairs Committee of the *Majlis*, the *Majlis* adopted the Bill again on 15 December 2002. However, the bill was rejected for a second time by the Guardian Council on 8 January 2003.<sup>36</sup>

Presently, a draft is pending in the *Majlis*. However, given the present power struggle between reformist and conservatives, many observers believe that the bill will not be approved by the Guardian Council.<sup>37</sup>

### 2.3. International Responses

The examination of the practice of the Islamic Republic of Iran by human rights bodies is limited since it is not a party to the Convention against Torture. However, its laws and practices relating to torture have come under scrutiny by the Human Rights Committee, the Special Rapporteur on Torture and the Special Representative of the Commission of Human Rights on the situation of human rights in the Islamic Republic of Iran.

In 1993, the Human Rights Committee, in considering Iran's second report, expressed its concern: "about the many cases of extrajudicial executions, disappearances, torture and ill-treatment of persons deprived of their liberty that have been brought to its attention and which are described, *inter alia*, in the last report of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran (E/CN.4/1993/41). Furthermore, the Committee considers that the application of measures of punishment of extreme severity, such as flogging, lapidation and amputation, is not compatible with the provisions of article 7 of the Covenant. It also has serious questions about requiring repentance from detainees as a condition of their release from custody."<sup>38</sup>

The Committee on the Rights of the Child has stated that: "In light of article 37 (a) of the Convention, the Committee is seriously concerned that persons who committed crimes while under 18 can be subjected to corporal punishment under Note 2 of article 49 of the Islamic Penal Law, or can be subjected to a variety of types of cruel, inhuman or degrading treatment and punishment such as amputation,

<sup>34</sup> "The Implementation Proposal for Article 38 of the Constitution of the Islamic Republic of Iran".

<sup>35</sup> On 9 March 2003, the *Majlis* also ratified a bill to take the necessary steps to eventually adopt the UN Convention against Torture.

<sup>36</sup> See on parliamentary activities <http://www.majlis.ir/> (in Persian). The Bill has now been returned to the *Majlis*, who may choose to revise the Bill again, with a view to its eventual re-submission to the Council of Guardians, or they may refer the Bill instead to the un-elected Council of Expediency, which is headed by the former Iranian President Mr. Rafsanjani, for decision.

<sup>37</sup> Information provided by Dr. Hassan Rezaei, Max Planck Institute for Criminal Law, Freiburg. See also Islamic Republic News Agency at [www.irna.com](http://www.irna.com).

<sup>38</sup> Concluding observations of the Human Rights Committee: Iran (Islamic Republic of), UN Doc. CCPR/C/79/Add.15, 3 August 1993, paras. 10 and 11.

flogging and stoning, which are systematically imposed by judicial authorities. Concurring with the Human Rights Committee (CCPR/C/79/Add.25), the Committee finds that application of such measures is incompatible with the Convention."<sup>39</sup>

In a joint appeal issued on 3 September 2000, the Special Rapporteur on Torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran: "expressed concern regarding the application of corporal punishments which entail torture, such as flogging, and which are incompatible with international instruments."<sup>40</sup>

On a more general note, the Special Representative observed that "he believes the legal system and particularly the judiciary to be in desperate need of repair. Only when the judiciary as a whole, including its related agencies, accepts as pre-eminent value the dignity of the individual can there be progress in making human rights a reality for Iranians. The Special Representative urges the Government to expedite a thoroughgoing reform of the judiciary."<sup>41</sup>

The Working Group on Enforced or Involuntary Disappearances stated in 2002 that it "continues to be concerned that little has been done to clarify the more than 500 outstanding cases (of reported disappearances, the majority of which occurred between 1981 and 1989) ... The Working Group wishes to remind the Government of its responsibilities under article 13 of the Declaration to conduct thorough and impartial investigations for as long as the fate of the victim remains unclarified. The Working Group wishes to remind the Government of Iran of its obligation to take all measures necessary to prevent further cases of disappearances, to investigate all outstanding cases and to bring perpetrators to justice."<sup>42</sup>

## II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

Article 38 of the Constitution provides that "All forms of torture for the purpose of extracting confession or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this article is liable to punishment in accordance with the law." Article 39 states that: "All affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished in accordance with the law, whatever forms they may take, are forbidden and liable to punishment."<sup>43</sup>

Furthermore, article 578 of the Islamic Penal Code (IPC) 1996 provides that: "if any of the juridical or non-juridical authorities and employees inflicts corporal harm and torment upon an accused in forcing him to confess, he shall, in addition to being subject to *Qesas* (retribution) or payment of blood money as the case may be, be

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<sup>39</sup> Concluding observations of the Committee on the Rights of the Child: Iran (Islamic Republic of), UN Doc. CRC/C/15/Add.123, 28 June 2000, para. 37.

<sup>40</sup> See Special Representative, 2002 Report, *supra*, Annex VI, para.11.

<sup>41</sup> See Special Representative 2001 Report, *supra*, para.139.

<sup>42</sup> Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/2002/79, 18 January 2002, paras.172 and 173.

<sup>43</sup> Translation taken from International Constitutional Law, University of Würzburg, Germany, [http://www.oefre.unibe.ch/law/icl/ir00000\\_.html](http://www.oefre.unibe.ch/law/icl/ir00000_.html).

sentenced to a term of six months to three years in prison. If somebody orders in this respect, only the person who has issued the order shall be sentenced to the said imprisonment. Where the accused dies as a result of corporal harm and torment, the perpetrator shall be subject to the penalty for homicide; the person ordering the corporal harm and torment shall be punished for ordering an act of homicide."<sup>44</sup> Article 129 of the Penal Procedure Code provides that the investigating judge shall not resort to compulsion and duress when interrogating a defendant.<sup>45</sup>

Finally, Article 163 of the Executive Regulation for Prison Organisation and Correction Centres, 2001, stipulates an absolute prohibition of verbal abuse, corporal punishment and cruel and humiliating treatment of detainees.<sup>46</sup>

In the absence of an express definition of torture, the bill against torture tabled by a group of parliamentarians mentioned above includes a definition of torture. However, following its rejection by the Guardian Council, the bill is currently under review. There have also been concerns about the definition of torture used in the bill, as it contains a list of acts that are considered to constitute torture.<sup>47</sup>

As other rights, torture is to be defined in conformity with Islamic criteria. Therefore, the punishments prescribed by the *Shari'a*, called *hudud*, such as flogging, amputation, cross-amputation and stoning, as codified in the Islamic Penal Code, are, contrary to international standards, not considered to constitute torture or inhuman and degrading punishment.<sup>48</sup>

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<sup>44</sup> In this article, contrary to Article 38 of Constitution, which expressly prohibits all forms of torture, the word torture (= *Shakandjeh in persian*) is not used. The wording used *azar va aziate badani* denotes corporal harm and torment. The reason of this discrepancy between the Constitution and the Penal code, as precedence of the Guardian Council and the most valid Fatawa show, is that according to some Islamic traditions the spiritual harm is not recognized in Islamic law as harm is defined as corporal and material harm only. Documents of the Islamic Assembly, No. 580, 31.08.1989

<sup>45</sup> Penal Procedure Code of Iran (PPC), (Procedure Code of Public Courts & Revolutionary Tribunals in Criminal matters), Official Gazette No.15911, 10 October 1999.

<sup>46</sup> Article 163 ERPOCC, 2001: "Any irascibility, insulting, expressing indecent words, or corporal punishing and cruel, hard and humiliating behaviours in prison are absolutely prohibited."

<sup>47</sup> Article 1 of the Act reads: "the cases mentioned herein are examples of torture and the use of them is prohibited. 1) Any kind of inflicted physical discomfort for the purpose of getting a confession or not; 2) Keeping a prisoner in solitary confinement or putting more than one prisoner in solitary confinement cells; 3) Blindfolding the prisoner 4) Blindfolded interrogation; 5) Interrogation at night; 6) Making the prisoner face the wall during interrogation; 7) Sleep deprivation of the prisoner; 8) Psychological inflicted on the prisoner; 9) Insulting, belittling and humiliating the prisoner during interrogation; 10) The use of drugs to induce confessions or the increase or decrease of medication of ill prisoners; 11) The denial of access of sick prisoners to proper medical attention; 12) The use of loudspeakers or playing tapes which put the prisoner under mental duress; 13) Holding prisoners in unsuitable and uncomfortable noisy places; 14) Keeping the prisoner hungry and thirsty and in unhygienic conditions and depriving the prisoner from the use of suitable hygienic facilities; 15) Inappropriate classification of prisoners and keeping young and petty crime prisoners in the same cells as professional and dangerous criminals; 16) Stopping daily access of the prisoner from fresh air; 17) Not allowing the prisoner access to legal publications and books; 18) Not allowing the prisoner weekly visitations or the use of the telephone to get in touch with his family; 19) Psychological pressure on the prisoner by putting pressure on his family; 20) Not allowing access to legal aid; 21) Not allowing prisoner to hold religious ceremonies, i.e. praying; 22) Interrogation of prisoner other than the reason of arrest. Clause 1) the term prisoner mentioned here includes those who are under arrest and in custody and those who are convicted of crimes. Clause 2) those who after prosecution are found guilty and are convicted to lashing are not included in this article." See for the text of the bill in Persian [www.majlis.ir](http://www.majlis.ir).

<sup>48</sup> See second book of the IPC. *Hudud* crimes are *zina* (unlawful sexual intercourse), homosexuality, lesbianism, facilitating unlawful sexual intercourse, apostasy, drinking alcohol, armed fight against God and causing decay on earth, including highway robbery and theft. Punishments for *zina* discriminate between men and women. Whereas the lower body of men is to be covered in a ditch when being stoned, women are to be covered up to breast. See Article 102 IPC.

### III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

#### 1. The substantive law: Criminal offences and punishment

The Islamic Penal Code of 1996 (IPC) does not contain a specific offence of torture in line with Article 1 of the Convention against Torture. However, Article 578 IPC stipulates that the crime of using torture to extract a confession carries a punishment from six months to three years imprisonment. According to the same article, torture resulting in the death of the accused carries the same punishment as homicide, i.e. the death penalty unless otherwise provided for by law.

Article 570 IPC prescribes the following punishment for the violation of constitutional rights, including torture, by public officials: "Any of the government officials and authorities who unlawfully negates personal liberty of the people or deprives people of the rights granted to them by virtue of the Constitution shall, in addition to being discharged from his position and deprived of government positions for a period of three to five years, be sentenced to a term of six months to three years in prison."

A public official who inflicts a punishment on a convicted person that is either harsher than the one imposed by the judgment or not imposed by any judgment is punishable by retribution and *diya* (see below) if applicable or is subject to a punishment between six months and three years' imprisonment.<sup>49</sup> Authorities, government or army officers or others that detain or imprison or violently detain a person in an unofficial location without a legal basis or outside of the scope of the detention act, will be sentenced to one to three years imprisonment or a fine of 6 to 18 Million *Rials* (\$754 to 2,261).<sup>50</sup> Judicial or other officers who, contrary to the law, take a person into custody, initiate criminal prosecutions or convict and sentence a person, are liable to a punishment of permanent dismissal from their judicial post and five years ban of serving in governmental positions.<sup>51</sup> If the perpetrator of any of the above-mentioned acts threatened the detained person with murder or inflicted corporal harm, including where the perpetrator exceeded any lawful punishment of *qesas* or *diya* that might have been imposed on the detained person, he/she will be liable to a term of imprisonment ranging from one to five years and dismissal from governmental services.<sup>52</sup>

In accordance with general principles of *Shari'a* law, the infliction of bodily injury, including battery, homicide and murder, is punishable by way of just retribution and *diya* (blood-money) provided that such acts have been inflicted intentionally for *qesas* cases or quasi-intentionally or negligently in *diya* cases. The intentional infliction of bodily harm is liable to retribution, i.e. a punishment that mirrors the injury inflicted by the perpetrator.<sup>53</sup> The same applies to intentional homicide which includes the commission of such acts that, even though not carried out with the intention of killing the victim, are capable of doing so.<sup>54</sup> An order or threat to kill

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<sup>49</sup> Article 580 Islamic Penal Code (IPC).

<sup>50</sup> Article 583 IPC.

<sup>51</sup> Article 575 IPC.

<sup>52</sup> Article 578 IPC.

<sup>53</sup> Article 14 IPC. See for the modalities of the execution of such punishment, articles 272 to 293 IPC.

<sup>54</sup> Articles 205 and 206 IPC. See for the circumstances under which retribution might be exercised, Articles 219 to 226 IPC, and for the modalities of its enforcement, articles 257 to 265 IPC.

another person does not exempt the perpetrator from liability to retribution. The person coercing the perpetrator into killing or giving orders to do so is liable to a punishment of life imprisonment.<sup>55</sup>

The victim of the infliction of bodily harm, or his or her relatives where the victim dies or is incapable of exercising his or her rights, has the choice to demand the infliction of the same injury on the perpetrator if the offence was committed intentionally, to accept *diya*<sup>56</sup> where the injury was inflicted intentionally, quasi-intentionally or negligently, or to forgive the perpetrator. However, where a man kills a woman, the guardian of the victim will have to pay half of the full amount of blood money due before he/she can demand retribution.<sup>57</sup> No such prior payment has to be made if the victim was a man. If the victim or his/her relatives accept *diya* or forgives the perpetrator, the state may impose a prison sentence on the perpetrator, ranging from three to ten years in case of murder and from three months to two years in case of infliction of bodily harm.<sup>58</sup>

The Criminal Code provides for different sentences between Muslims and non-Muslims who are subject to harsher punishments for some offences. While the law provide for *qesas* between Muslim and non-Muslims,<sup>59</sup> there is no clear provision as to whether non-Muslims may claim *diya*. According to relevant *fatwas* issued pursuant to Article 167 of the Constitution, non-Muslims may claim *diya* but it is only a small percentage (800 *Derham*) of the *diya* due to Muslims (10,000 *Derham*).<sup>60</sup>

Rape is subject to *hudud* punishments, i.e. strict punishments prescribed by *Shari'a* law and subject to rigid rules of evidence. Rape of a woman and a man are governed by separate provisions, which in both cases lay down the death penalty as punishment.<sup>61</sup> Finally, in the case of irascibility, insulting and expressing indecent words, the perpetrator will be punished in accordance with Article 608 of the IPC.

Accomplices to a crime are in principle liable to the same punishments as the principals but may receive a milder punishment depending on the level of their contribution.<sup>62</sup> An attempt is only punishable if the acts committed constitute in themselves a criminal offence.<sup>63</sup>

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<sup>55</sup> Article 211 IPC.

<sup>56</sup> See for details on *Diya*, infra, IV, 1.3.

<sup>57</sup> Article 258 IPC.

<sup>58</sup> Article 208 IPC (murder) and Article 269 IPC (infliction of bodily harm). These are *Ta'zir* punishment, i.e. those that not prescribed by *Shari'a* law. See for the various types of punishments Article 12 IPC. It may only be imposed in case of infliction of bodily injury if the crime violates societal order, causes terror or if it is likely to be repeated.

<sup>59</sup> Article 210 IPC 1996. Non-Muslim in the Islamic law terminology includes only Christians, Jews, and Zoroastrians. Other religious minorities have no legal position. They are recognised as combatants against Islam and their life and property is not protected by law.

<sup>60</sup> See for *Fatwa*, Khomein Rouhollah, *Tahrir al-Vasileh* [Commentary on *Shia* jurisprudence], Dar al-elm Press, Qom, 1983, p. 559. See also Judgment of Division 20 of the Supreme Court, Nr. 26 dated 1990.12.7.

<sup>61</sup> Article 82 (d) IPC for the rape of a woman and Articles 108 to 113 for the rape of a man (chapter on homosexuality).

<sup>62</sup> Article 42 and 43 IPC. See also Articles 212-218 IPC on the rules for accomplices in murder cases and Articles 332-339 for cases of infliction of bodily harm.

<sup>63</sup> Article 41 IPC.

An act liable to punishment pursuant to the Islamic Penal Code will not be considered as a criminal offence if the act was committed following an order of a competent superior *and* did not contravene the *Shari'a*.<sup>64</sup> However, if the crime was committed following an unlawful order of a public authority, the superior and the subordinate are liable to the punishment prescribed by law. Where the subordinate carried out the unlawful order in the justifiable belief that it was lawful he or she will only be sentenced to payment of *diya* or a fine.<sup>65</sup>

Disciplinary punishments are imposed pursuant to Article 576 of the IPC and Article 4 of the Judges Competence Proceeding Act 1997, which provides various disciplinary sanctions up to permanent dismissal from judicial occupations and all state services.

## 2. The Procedural Law

### 2.1. Immunities

There are no amnesty or immunity laws for those responsible for torture.

### 2.2. Statutes of Limitation

There are no statutes of limitations for *hudud* and *qesas* crimes. *Ta'zir* offences carrying a maximum punishment of more than three years' imprisonment or a fine exceeding Rls 1,000,000 (\$126) are subject to prescription after the expiry of ten years from the time when the crime was committed or, if no judgment was pronounced against the alleged offender, from the date when the first prosecution was made.<sup>66</sup> The prescription period for offences carrying a term of imprisonment of less than three years or a fine up to a maximum level of Rls. 1,000,000 is five years.<sup>67</sup> For all other offences that are not punishable by imprisonment or fines, a limitation period of three years apply.<sup>68</sup>

### 2.3. Investigations

#### 2.3.1. Criminal Investigations

Any person who asserts that he or she has directly observed and witnessed a crime may notify the authorities who initiate an investigation if such an assertion is deemed sufficient and convincing enough to do so. A torture survivor or relatives of torture victims can lodge a complaint as a private plaintiff<sup>69</sup> and petitioner about alleged acts

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<sup>64</sup> Article 56 (1) IPC. The same principle applies pursuant to Article 56 (2) IPC where the commission of the act was necessary to comply with/implement a higher-ranking law.

<sup>65</sup> Article 57 IPC.

<sup>66</sup> Article 173 (a) PPC.

<sup>67</sup> Article 173( b) PPC.

<sup>68</sup> Article 173 (c) PPC.

<sup>69</sup> See Article 9 PPC: "A person who shall sustain losses and/or damages due to commission of a crime, or who shall be entitled to certain rights including retaliation or attribution of a commission of adultery, and who shall claim for such rights, the same shall be termed as petitioner (private plaintiff) and/or claimant." Translation of PPC was obtained through Iran World at [www.iranworld.com](http://www.iranworld.com).

of torture, either in person or through their lawyer, to the Court or judicial officials.<sup>70</sup> They may also complain to the State Chief Inspectorate.<sup>71</sup> A detainee has to bring a complaint in a closed letter to the Director of the prison in question who is in turn is obliged to bring the complaint to the attention of the competent authorities.<sup>72</sup>

The Inspectorate is responsible for the prosecution<sup>73</sup> and exercises supervision over all government department and agencies, the armed forces and law enforcement.<sup>74</sup> Investigations are carried out by judicial officials.<sup>75</sup>

Criminal offences are divided into those that are prosecuted *ex officio*, i.e. *Shari'a* crimes and those concerning public order, and those prosecuted following a complaint by the claimant, the latter of which are for private claims relating to retribution and claims for damages.<sup>76</sup> Therefore, while criminal offences such as murder and inflicting bodily harm are investigated following a complaint, offences such as extracting confession by means of torture are to be prosecuted even in the absence of a complaint. Prosecution is mandatory and may only be suspended in specified circumstances.<sup>77</sup>

The judicial officials are to notify the competent judicial authority upon receiving information about the commission of a crime.<sup>78</sup> In cases of flagrant offences, they are to carry out a preliminary investigation immediately.<sup>79</sup> A judge is competent to carry out investigations and may assign judicial officials, which might include a specifically appointed judicial interrogator, to conduct investigations by direct order and under his/her supervision.<sup>80</sup> The judge and the judicial interrogator shall proceed

<sup>70</sup> Articles 69 to 71 PPC. The complaint has to include certain particulars, i.e. the full name, the father's name, and address of the plaintiff, the subject of the complaint, the date and the place where the crime was committed, the financial losses and damages sustained and claimed by the plaintiff, the particulars and address of the defendant or suspect, if possible, and proofs and evidence, as well as names, particulars and the addresses of witnesses and informed persons, if possible.

<sup>71</sup> See Article 174 of the Constitution.

<sup>72</sup> See Article 202 of the Executive Regulation of Prison Organisation and Correction Centres, 2001.

<sup>73</sup> Article 3 PPC.

<sup>74</sup> See Article 17 PPC. See on the Chief Inspectorate the Law on the Establishment of the State Chief Inspectorate passed on 10 November 1981.

<sup>75</sup> Article 15 PPC: "The bailiffs of justice administration are officials and officers which, under the supervision of and through being trained by the judicial authority shall proceed to expose and detect crimes, to embark on preliminary investigations, to conserve and keep intact evidences and proofs of the crime, to forestall and restrain the defendant from fleeing and/or absconding, to serve notices and processes, and to execute judgments and sentences, in compliance with the law. Such officials and agents shall be as follows: 1. Islamic Republic of Iran Disciplinary Force; 2. Jail governors and assistants to the same in charge of prisoners' affairs; 3. Officers and agents of *Basij* Resistance Force affiliated with Islamic Revolution Guards Corps which shall be considered as the bailiffs of justice administration, in compliance with specific rules and regulations, and within the limits of tasks and obligations assigned to the same; 4. Other armed forces in cases where National Security Supreme Council shall totally or partially transfer the tasks and duties of the Disciplinary Force to the same as bailiffs of justice administration to the same; 5. Officials and agents which shall be considered as bailiffs of justice administration, in compliance with specific rules and regulations, and within the limits of obligations and tasks assigned to the same."

<sup>76</sup> Article 4 PPC.

<sup>77</sup> Article 6 PPC: "Criminal prosecution and execution of punishment and sentence, which shall initiate in compliance with the law, shall not be suspended, except under the following circumstances: 1. death of the defendant or the judgement debtor in case of private punishments; 2. remission by the complainant or petitioner in case of remittable crimes; 3. convicts eligible to be pardoned; 4. repealing and abrogation of the legal punishment; 5. a thing judicially acted upon; 6. prescription of a deterrent penalty."

<sup>78</sup> Article 18 PPC.

<sup>79</sup> Articles 18 and 19 PPC. See for the definition of flagrant crimes, Article 21 PPC.

<sup>80</sup> Article 27 PPC.

to investigate with utmost impartiality.<sup>81</sup> They shall gather and collect conclusive proofs, evidences, circumstantial evidence and traces of offences.<sup>82</sup> Measures specified in the Code of Penal Procedure that shall be carried out include the inspection of the scene of crime in the presence of witnesses and informed persons<sup>83</sup> and the questioning of witnesses.<sup>84</sup>

With respect to medical examinations, Article 88 of the Code of Penal Procedure provides: "To examine and inspect the corpse, the wounds and injuries, signs and marks of battery and assault, physical lesions, psychological harm, and/or other medical examinations and inspections, the judge shall invite a trustworthy coroner."<sup>85</sup> The suspect may be taken into detention in cases of serious crimes or where it is likely that the suspect will either tamper with evidence and influence witnesses or abscond following his/her release.<sup>86</sup>

The court shall, if it is established that no further investigations are required and if no accusation is made against the defendant or the alleged offence shall not be judged as a crime or offence, pass an acquittal judgment or issue a writ of *nolle prosequi* (writ of non-prosecution).<sup>87</sup> Such a decision is final except in those cases where they concern specifically defined crimes, such as crimes punishable by the death penalty, crimes punishable by Islamic punishments laid down in the Koran or retaliation, crimes for which blood money is payable, if the money in question is at least one-fifth of the full amount and for other offences for which the punishment exceeds a term of imprisonment of three months.<sup>88</sup> The private plaintiff is entitled to request a reconsideration of a case on several grounds specified by law.<sup>89</sup> The appeal will be heard by competent appeal courts.<sup>90</sup> The Court may reopen an investigation.<sup>91</sup> Where the Court finds no reason to terminate a case, it shall convene a hearing in order to consider the case and pass judgment.<sup>92</sup>

There is no specific law on victim and witness protection during criminal proceedings. Victims acting as private plaintiffs enjoy a number of procedural rights, such as specifying witnesses and other types of evidence during the investigation.<sup>93</sup>

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<sup>81</sup> According to the wording of Art 39 PPC.

<sup>82</sup> According to Article 40 PPC.

<sup>83</sup> Article 78-81 PPC.

<sup>84</sup> Articles 148-172 PPC.

<sup>85</sup> The judge may also ask an expert physician or several physicians to carry out the examination.

<sup>86</sup> Article 32 PPC. See 33-37 PPC for procedure. Article 36 PPC provides that the issuance of a detention order shall be dependent upon a request extended by the plaintiff in those cases where the offence committed directly affects personal rights.

<sup>87</sup> Article 177 PPC.

<sup>88</sup> Article 232 PPC.

<sup>89</sup> Articles 239 and 240 PPC. One such ground is that the judge did not consider the proofs and documents which were presented

<sup>90</sup> Article 233 PPC. For the most serious offences, the Supreme Court will be competent

<sup>91</sup> See on the various decisions the court may make, Articles 251 et seq. PPC.

<sup>92</sup> Article 177 PPC.

<sup>93</sup> Article 73 PPC.

### 2.3.2. Other bodies

A torture survivor or relatives of a torture victim may also complain to the Human Rights Commission of the *Majlis* and the Islamic Human Rights Commission. Both bodies follow up such complaints and may refer them to the relevant authorities together with recommendations. However, none of these bodies have independent powers of investigation or of bringing prosecutions. Moreover, the Islamic Human Rights Commission reportedly has not specified in its reports the action it has taken in dealing with complaints.<sup>94</sup>

### 2.4. Trials

Members of the army, the gendarmerie, the police, and the Islamic Revolution Guards Corps are tried by military courts for crimes committed in connection with military or security duties and in public courts for common crimes or crimes committed while serving the department of justice in an executive capacity.<sup>95</sup> The accused will be tried in the court in the judicial area where the crime was committed.<sup>96</sup> Trials are public but courts have discretion to exclude the public in a wide range of cases.<sup>97</sup> Trials are inquisitorial.<sup>98</sup> The private plaintiff may make a request to the Court to summon additional witnesses and may ask the Court to proceed with questioning of witnesses during the trial.<sup>99</sup> The accused is deemed innocent and shall not be regarded guilty unless his/her guilt is proved by a competent court.<sup>100</sup> *Hudud* crimes (rape) require proof by strict means of evidence and crimes subject to retribution may be proven by a confession, witness statements, *qassāma*<sup>101</sup> and knowledge of the judge.<sup>102</sup> Punishment for *hudud* crimes and crimes subject to retribution (if retribution is exercised) are fixed by law but courts enjoy discretion in sentencing and suspending punishments in respect of other criminal offences.<sup>103</sup> The Leader may pardon or mitigate the sentences of condemned persons, within the scope of Islamic precepts, upon recommendation by the Head of the Judiciary.<sup>104</sup>

## 3. Practice

No statistics about the number of complaints brought in relation to torture and ill-treatment are available. According to the Special representative for Iran, the Islamic Human Rights Commission has dealt with a number of cases involving torture. There is however a lack of information as to whether these complaints resulted in

<sup>94</sup> 2001 Interim Report of the Special Representative, *supra*, para. 100.

<sup>95</sup> Article 172 of the Constitution.

<sup>96</sup> Article 54 PPC.

<sup>97</sup> Article 188 PPC including cases where an open trial would disturb national security.

<sup>98</sup> Articles 193 et seq. PPC.

<sup>99</sup> Articles 191 and 196 PPC.

<sup>100</sup> Article 37 of the Constitution.

<sup>101</sup> A procedure applicable where there is prima facie evidence based on circumstantial evidence in which the accuser and the accused have to swear on oath that the crime has (not) been committed (by the person accused of it). See Articles 239-256 IPC.

<sup>102</sup> See Articles 231 to 257, IPC.

<sup>103</sup> See Article 213 PPC.

<sup>104</sup> Article 110 (11) of the Constitution.

investigations and prosecutions. The rationale for the drafting of the new bill on the prevention of torture was apparently the large number of complaints that had been received by Parliament from victims of torture.<sup>105</sup> There are, however, several factors which make bringing complaints difficult. Defendants in criminal cases are often held *incommunicado* in illegal detention centres run by various government law enforcement agencies.<sup>106</sup> When they are brought before a judge, torture survivors may refrain from complaining out of fear of repercussions and further torture in the absence of effective protection and harassment of human rights lawyers.<sup>107</sup>

As investigations are carried out in *camera*, little information is available as to what action is taken by the investigation bodies, if any. Investigations into the disappearances and suspicious deaths of intellectuals and prominent dissidents, reportedly at the hands of officials of or close to the Ministry of Information (Security) had been dragging on for years.<sup>108</sup> Medical evidence is often difficult to obtain as detainees who allege to have been tortured have reportedly been denied access to medical examination in several instances.<sup>109</sup> Moreover, in several cases, persons who were executed reportedly bore signs of torture but no action was taken to investigate these cases.<sup>110</sup>

A further factor is the absence of a clear distinction between prosecutor and judge and the lack of genuine independence of judges. While efforts have been made to strengthen the independence of the judiciary, the UN Special Rapporteur on the Independence of Judges and Lawyers has voiced concern about a statement attributed to the First Deputy of the Head of the Judiciary, Hojjatoleslam val Moslemin Hadi Marvi, who reportedly stated that "Judges must obey the Supreme Leader and have no independence in judgment."<sup>111</sup> Given the lack of independence, judges are not known to have taken a pro-active stance in holding perpetrators of torture accountable. Confessions elicited through torture are not admissible in court.<sup>112</sup> However, several cases have been documented, especially before revolutionary courts, in which the courts completely disregarded such allegations and

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<sup>105</sup> <http://www.iranmania.com/news/>.

<sup>106</sup> See 2001 Reports of the Special Representative, *supra*, UN Doc. E/CN.4/2001/39, para.47 and UN Doc. A/56/278, para.30. According to the second report, the Head of the National Prisons Organisation had declared that all non-official detention centres had been brought under the control of his organisation.

<sup>107</sup> See for examples of treatment of lawyers, 2001 Report of Special Representative, UN Doc. E/CN.4/2001/39, paras.36-44.

<sup>108</sup> See, 2000, Report of Special Representative, UN Doc. E/CN.4/2000/35, paras.58-61.

<sup>109</sup> See for example Amnesty International, *Iran: Violations of Human Rights 1987-1990*. The study of medical reports from examinations of 35 Iranian refugees in Denmark during 1984-97, Majid Azadi & Morten Ekstrøm, *Medical documentation of torture in Iran*, IRCT, Torture, Volume 9, Number 2, 1999, 36-38, indicates that most of the refugees were neither medically examined nor adequately treated after torture.

<sup>110</sup> Reza Afshari, *Human Rights in Iran, The Abuse of Cultural Relativism*, University of Pennsylvania Press, 2001.

<sup>111</sup> See Report of the Special Rapporteur on the Independence of the Judiciary, UN Doc. E/CN.4/2001/65, para.116.

<sup>112</sup> See Article 38 of the Constitution, *supra*. See also Art 194 PPC: "If the defendant shall explicitly and clearly confess to and/or admit the commission of the crime in such a manner that there shall remain no doubt, and if the indications, conjectures and proofs shall confirm the commission of the crime by the defendant, the court shall proceed to pronounce the appropriate judgment. However, if the defendant shall deny the charges and/or accusations or if he shall remain silent, or if the confessions made by the defendant shall be dubitable and uncertain, or if they shall contradict other evidences and reasons, the court shall inquire and interrogate the witnesses, the informed and the defendant anew and shall reconsider other proofs and evidences."

did not call for further investigations to establish the truth and/or prosecute those accused of torture.<sup>113</sup>

There have hardly been any prosecutions and trials of those accused of perpetrating acts of torture as almost complete impunity is enjoyed.<sup>114</sup> In the first case of its kind, following an indictment in 1999 as a result of a direct intervention of President Mohammed Khatami, a Military Court tried the former commander of the intelligence and security division of the Tehran police, Gholamreza Naqdi and three of his officers on charges of ordering torture, ordering unlawful detention in solitary confinement and whipping prisoners. The charges followed a complaint by a group of Tehran district majors and senior officials detained in connection with a corruption case. While Naqdi was acquitted in relation to the torture charges, the three officers were convicted of using force to extract confessions. Subsequently, the appeal court confirmed the verdict against Naqdi and sentenced the other defendants to various terms of imprisonment, the maximum sentence being five months imprisonment.<sup>115</sup>

15 former officials of the Ministry of Intelligence were convicted in January 2001 for the murder of three writers and two political activists in 1998 (three officials were sentenced to death; five to life imprisonment and seven to terms of imprisonment ranging from two to ten years). The Supreme Court later overturned the verdict and ordered the case to be re-examined.<sup>116</sup>

#### **IV. CLAIMING REPARATION FOR TORTURE**

##### **1. Available Remedies**

###### **1.1. Constitutional Law**

The Constitution provides a right of access to court but not a right to reparation for human rights violations, including torture, with the exception of such a violation by a judge who incurs personal liability.<sup>117</sup> A claim against a judge could therefore be brought in those cases where a judge orders investigation measures amounting to torture. It could also be brought in relation to the imposition of corporal punishments that violate the right to freedom from torture. As these rights are to be interpreted in accordance with Islamic law, a claim for reparation for corporal punishment is, at least presently, unlikely to succeed unless based on procedural errors made in imposing such punishment.

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<sup>113</sup> See Amnesty International, Report 2001, Iran.

<sup>114</sup> In November 2000, the Head of the Judiciary reportedly circulated a letter to all judges according to which torture was forbidden and: "the infringement of the rules and regulations on the rights of suspects and defendants would lead to prosecution and, upon conviction, to permanent dismissal. The heads of departments and courts were to ensure that the contents of the letter are enforced." See 2001 Report of Special Representative, *supra*, para.31. However, there are no indications of a marked change in the subsequent practice of the said authorities concerning investigation and prosecution of torturers.

<sup>115</sup> See Interim Report on the situation of Human Rights in the Islamic Republic of Iran prepared by the Special Representative of the Commission on Human Rights, UN Doc. A/54/365, 21 September 1999, para. 36 and Reuters, *Iran court upholds jail sentence for police chief*, 27 February 2000.

<sup>116</sup> See Amnesty International, Report 2002, Iran.

<sup>117</sup> Article 171 of the Constitution reads: "Whenever an individual suffers moral or material loss as the result of a default or error of the judge with respect to the subject matter of a case or the verdict delivered, or the application of a rule in a particular case, the defaulting judge must stand surety for the reparation of that loss in accordance with the Islamic criteria, if it be a case of default. Otherwise, losses will be compensated for by the State. In all such cases, the repute and good standing of the accused will be restored."

It is a matter of debate, and has not to date been clarified by any case law, whether Article 34 of the Constitution, which guarantees the right of access to courts, provides a basis to hold the state itself liable for the acts of the judiciary.<sup>118</sup>

### 1.2. Civil Law

Article 1 of the Civil Liability Act, 1960 stipulates a general obligation to redress damages resulting from the unlawful and culpable infliction of personal injury.<sup>119</sup> Public officials are personally responsible for any such damages inflicted. The public authorities in question shall only be responsible where the damage resulted from defective equipment and appliances.<sup>120</sup> The State is vicariously liable unless the act in question was undertaken to secure public welfare in accordance with the provisions of the law.<sup>121</sup> If the harm was inflicted in lawful defence, the tortfeasor will not be responsible for any losses, provided that the losses are proportionate to the defence.<sup>122</sup> Damages are awarded for pecuniary and non-pecuniary harm.<sup>123</sup> If the injured party dies, losses that can be claimed by relatives of the victim comprise all expenses relating to the death, especially the burial costs. They also include medical expenses and the loss resulting from the lack of working capacity of the victim in those cases where death is preceded by a prolonged period of ill health. If the victim was legally bound to support a third party which has been deprived of such right as a result of the death, the tortfeasor is liable to pay a reasonable amount on a recurring basis for such period of time that the tortfeasor would normally have been alive and legally bound to support the third party.<sup>124</sup>

A claim for compensation can be made to the public or revolutionary courts of first instance in the court within whose judicial jurisdiction the defendant has his/her

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<sup>118</sup> See Seyyed Mohammad Hashemi, *The Iranian Constitutional Law*, Vol.2, Shahid Beheshti University Press, Tehran, 1993, pp.546 and 547.

<sup>119</sup> It reads: "Any person who without legal authorization willfully or as a result of negligence causes harm to someone's life, health, property, freedom, good name, commercial reputation, or any other right he is entitled to according to the law, which leads to material or non material losses, is accountable for redressing the damage resulting from that act."

<sup>120</sup> Article 11 Civil Liability Act: "Employees of government, municipalities and their affiliated institutions who as a consequence of performing their duties or willfully as a result of negligence cause losses to other persons, are personally responsible for the losses incurred. But if the losses incurred are not the result of their action and relate to defects of equipment and appliances used by the said organization, the responsible organization shall be held accountable for redressing damage."

<sup>121</sup> *Ibid.*: "But in case of the acts of sovereignty, if due to exigencies certain measures have been taken to secure public welfare in accordance with the provisions of law, and consequently certain losses have been inflicted on individuals, the government shall not be held responsible for indemnification."

<sup>122</sup> Article 15 Civil Liability Act.

<sup>123</sup> See Article 1 Civil Liability Act, *supra* and Article 2 Civil Liability Act: "Should the Court find that the acts of the respondent have resulted in the loss, of a material nature or otherwise, sustained by the claimant, the court shall order the guilty person to compensate the losses/damages." See also Article 10: "In case the private or family prestige or credibility of a person has been affected he shall be entitled to demand indemnity from the offender. If the degree of importance of such loss and the nature of offence necessitates, the court may upon having established the offence, decide in addition to indemnification to eliminate the cause which have given rise to such loss, such as enforcing the offender to apologize or publish the judgement in the press or the like." While the Guardian Council holds the view that damages only encompass material damages and not moral damages, following the traditional understanding of *fiqh* (Islamic jurisprudence) in Islamic Law, it has now been generally accepted that both material and moral damages can be awarded pursuant to the Civil Liability Act.

<sup>124</sup> Article 6 Civil Liability Act.

residence.<sup>125</sup> There is no time limit for bringing civil suits. The plaintiff has to present a petition which must contain, *inter alia*, the relief sought and its value (unless it is not possible to determine the value or the relief sought is non-pecuniary); the obligations and grounds on which the plaintiff considers him/herself entitled to make the demand; and the evidence by which the plaintiff intends to prove his/her claim.<sup>126</sup> Moreover, revenue stamps have to be affixed to the petition, the amount of which depends on the relief sought.<sup>127</sup> The plaintiff carries the burden of proving the infliction of the injury, the causal connection and the damages incurred.<sup>128</sup> The plaintiff may use a confession, written documents, oral testimony, circumstantial evidence or oaths in proving his/her case.<sup>129</sup> The law provides that the Court shall, in addition to examining the evidence adduced by the parties to the case, carry out any investigation or measure that is necessary to establish the truth.<sup>130</sup> Given this wide discretion, the Court may also order a medical examination of the torture survivor or an autopsy where the torture victim has died as a result of torture. As a general rule, examination of a case shall be suspended if its examination depends upon proving a claim, the consideration of which is within the jurisdiction of another court.<sup>131</sup> However, this rule does not apply to pending criminal proceedings. Consequently, the award of a civil claim is independent of the outcome of a criminal case. The scope of loss and the particulars, including the amount of compensation, is to be determined by the court in light of the circumstantial evidence.<sup>132</sup> Costs of proceedings are to be awarded to the plaintiff provided that he/she proves that the losses suffered arose directly from the failure of the defendant to provide the relief sought.<sup>133</sup> Expenses that are not necessary to the claim will not be awarded.<sup>134</sup> The scope of loss and the particulars, including the amount of compensation, is to be determined by the court in the light of the circumstantial evidence.<sup>135</sup>

### 1.3. Criminal Law

A person who sustains losses and/or damages as a result of a crime, or who is entitled to *diyya* under the *Shari'a* law of retribution,<sup>136</sup> may file a private claim as part of criminal proceedings.<sup>137</sup> Victims of crimes resulting in personal injury or, in case of death, the relatives of the victim, are entitled to claim *diyya* instead of retribution.<sup>138</sup>

<sup>125</sup> See Articles 10 of the Public and Revolutionary Court Procedure Act (Book I, Civil Cases), 2000 (PRCPA).

<sup>126</sup> See Article 51 of the PRCPA.

<sup>127</sup> See Articles 53, Nr.1 and 61 of the PRCPA.

<sup>128</sup> Article 1257 Civil Code and Article 197 PRCPA.

<sup>129</sup> See Article 1258 Civil Code and for the various types of admissible evidence Articles 1259-1335 Civil Code.

<sup>130</sup> See Article 199 PRCPA and on the rules of evidence in hearings related to civil claims, Articles 194-201.

<sup>131</sup> Article 19 PRCPA.

<sup>132</sup> Article 3 Civil Liability Act.

<sup>133</sup> Article 520 PRCPA. Costs consist of legal expenses (legal expenses include expenses of pages submitted to the court and expenses of court's writs and judgements (Article 502 PRCPA) and are paid by affixing revenue stamps or depositing the required amount in the Treasury account (Article 503 PRCPA), lawyer's fees, and other expenses directly related to court proceedings and necessary to establish or defend the case, such as expert's fees and expenses related to local investigations (Article 519 PRCPA).

<sup>134</sup> Article 521 PRCPA.

<sup>135</sup> Article 3 Civil Liability Act.

<sup>136</sup> *Supra* III, 1.

<sup>137</sup> Article 9 PPC.

<sup>138</sup> See Articles 294 and 295 IPC for *diyya* in general, and Articles 257 to 268 IPC for *diyya* in case of homicide.

The amount of *diya* is fixed by law.<sup>139</sup> The *diya* due to compensate for the killing of a Muslim woman is half of that due for the killing of a Muslim man.<sup>140</sup> Non-Muslims are not entitled to *diya*. The *diya* is to be paid by the perpetrator or his close relatives in certain cases of negligent killing and some types of bodily harm as specified.<sup>141</sup> If the perpetrator flees, *diya* will be taken from his assets or are to be paid by his relatives. If the relatives are unable to pay, and this also applies for the cases specified above where they are obliged to do so, *diya* will be paid by the State.<sup>142</sup> The Islamic Penal Code also contains chapters elaborating upon the causal connection, both direct and indirect, between offence and damage that establish liability.<sup>143</sup>

The claimant is entitled to losses and damages sustained as a result of the commission of the crime, including lost profits and interest.<sup>144</sup> The claim for compensation has to be brought, together with supporting evidence, before the court proceedings in the criminal case are declared closed.<sup>145</sup> The procedure for claiming compensation is governed by the Civil Procedure Code.<sup>146</sup> The court will determine the claims for compensation while delivering the verdict in the criminal trial, unless the consideration of damages requires further investigations.<sup>147</sup> In such cases the court will first deliver the verdict in the criminal case and thereafter proceed to rule on the claim for civil damages.

## 2. Practice

No cases are known in which torture survivors or relatives of torture victims have sought and obtained reparation.

There are no statistics about the number of cases in which torture survivors claimed reparation and no cases are known in which torture survivors obtained reparation. In the absence of criminal prosecutions, victims of torture cannot avail themselves of the civil remedies available under criminal law. There are a numbers of factors that mitigate against bringing a claim based on the Civil Liability Act. For instance, fear of intimidation and harassment, the difficulty of obtaining evidence due to lack of timely access to medical examinations and lack of evidence furnished through criminal investigations, and the lack of independence of the judiciary.<sup>148</sup>

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<sup>139</sup> Articles 297 to 299 IPC, specifying *diya* for the killing of a Muslim man. See also Chapters IX to XIII, Articles 367 to 496 IPC for the *diya* payable for the injury of various organs and body parts, as specified. The amount of compensation depends on the nature and seriousness of injuries inflicted and normally ranges from less than \$1 to \$20,000 but can be higher in exceptional cases.

<sup>140</sup> Articles 300 and 301 IPC.

<sup>141</sup> Articles 304-307 IPC.

<sup>142</sup> Articles 312 and 313 IPC.

<sup>143</sup> See Chapters V to VIII, Articles 316-366 IPC.

<sup>144</sup> Article 9 PPC.

<sup>145</sup> Article 11 PPC.

<sup>146</sup> Ibid.

<sup>147</sup> Article 12 PPC.

<sup>148</sup> See supra III, 3.

## **V. GOVERNMENT REPARATION MEASURES**

No reparation or compensation scheme exists for victims of human rights violations, including torture, or for victims of crimes. There is one NGO, the Organisation for Defending Victims of Violence (ODVV), which established a rehabilitation programme for torture victims in 1999, the first of its kind in Iran.

## **VI. LEGAL REMEDIES IN CASES OF TORTURE COMMITTED IN THIRD COUNTRIES**

### **1. Prosecution of acts of torture committed in third countries**

Iranian law recognises the active personality principle.<sup>149</sup> Foreign nationals or Iran officials and diplomatic personnel who commit criminal offences in connection with the exercise of their duties are subject to Islamic criminal law.<sup>150</sup> The Islamic Penal Code allows the exercise of universal jurisdiction over crimes that are the subject of a special law or an international treaty requiring the prosecution of the offender if present in Iran.<sup>151</sup> Since Iran is not a party to the Convention against Torture, a perpetrator of torture could on this basis only be prosecuted for grave breaches of the Geneva Conventions of 1949 to which Iran is a party.

Immunity from criminal proceedings is granted in accordance with the Vienna Convention on Diplomatic Relations, 1961, which Iran ratified in 1965.

Extradition is carried out on the basis of extradition treaties.

There are no known cases in which Iranian courts exercised jurisdiction over crimes of torture committed abroad.

### **2. Claiming reparation for acts of torture committed in third countries**

Iranian courts have jurisdiction over lawsuits in a court within whose judicial jurisdiction the defendant has its residence, or, if the defendant is not domiciled in Iran, his or her temporary residence. Without permanent or temporary residence in Iran, in cases where the defendant own immovable property, the lawsuit must be instituted in the court within whose jurisdiction the immovable property is located. If none of these three grounds for jurisdiction are present, the plaintiff may institute proceedings in the court of the place of his or her residence.<sup>152</sup>

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<sup>149</sup> See Article 7 IPC; Article 57 PPC: "If an Iranian subject shall commit a crime outside Islamic Republic of Iran's territorial sovereignty, and the same shall be arrested in Iran, he shall be tried in a court in the judicial area of which he shall be arrested."

<sup>150</sup> Article 6 IPC.

<sup>151</sup> Article 8 IPC: "Regarding the offences which are the subject of a special law or international conventions according to which the offender will be prosecuted in the country where he or she is found, if the offender is found in Iran he or she will be prosecuted in accordance with the laws of the Islamic Republic of Iran."

<sup>152</sup> Article 11 PRCPA.

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In the cases when Iranian courts apply the active personality principle or exercise universal jurisdiction, the victim of the crime in question can file a claim for compensation as part of the criminal proceedings.<sup>153</sup>

Immunity from civil suits is granted in accordance with the Vienna Convention on Diplomatic Relations, 1961, which Iran ratified in 1965.

In November 1999, the Majlis passed a law that allows Iran's courts to hear suits on "any act by foreign governments violating international law" if it results in the death or injury of an Iranian citizen or financial losses. However, no precedents are known in which this law has been applied or in which Iranian courts have ruled on the scope of state immunity that applies in torture cases.

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<sup>153</sup> See *supra*, IV., 1.3.