

Urgent Appeal to

Special Rapporteur on extrajudicial,
summary or arbitrary executions

Working Group on Arbitrary
Detention

Special Rapporteur on the independence
of judges and lawyers

Special Rapporteur on violence
against women

c/o

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On Behalf of

KHADIJEH (SHAHLA) JAHED
IRANIAN CITIZEN, ARBITRARILY DETAINED, UNFAIRLY TRIED AND CONDEMNED TO DEATH &
IMMINENTLY AT RISK OF EXECUTION BY THE GOVERNMENT OF IRAN

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The Project on Extra-Legal Executions in Iran

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1. About the Project on Extra-legal Executions in Iran and the author

The Project on Extra-legal Executions in Iran is a branch of the Documentation Center of the Iranian Refugees' Alliance Inc.. The Iranian Refugees' Alliance is a registered non-profit organization based in the USA which works to preserve and promote the human and civil rights of Iranian refugees and asylum seekers nationally and internationally. Its Documentation Center collects and analyzes data on human rights issues in Iran and also maintains a library of Iran-related refugee case-law. The Alliance represents individuals before the United Nations High Commissioner for Refugees (UNHCR) and international human rights tribunals. It also supports other refugee advocates by submitting briefs on behalf of their clients and/or providing documentation in support of their clients' claims.

The Project on Extra-Legal Executions is an effort by the Alliance's Documentation Center to collect and analyze data on capital crimes, judicial proceedings of capital crimes, and judicial executions in Iran that violate binding international legal standards on capital punishment.

The author of this submission has been the director of Iranian Refugees' Alliance and its Documentation Center for 14 years. In addition to researching and authoring reports and articles on the conditions of Iranian refugees, she has done legal casework for numerous individual Iranian refugees before national tribunals and represented many of them before the UNHCR and the European Court of Human Rights.

2. Sources

The factual accounts presented in this submission were gathered as accurately as was possible from domestic Farsi language media. References are provided wherever the information concerns essential facts.

Legal texts quoted in this document are translated to English by the author from their original Farsi texts.

3. Summary

Ms. Khadijeh (Shahla) Jahed, a citizen of Iran, born on 12 May 1969 [22.02.1348] in Tehran and presently detained on death row in Evin Prison, is at imminent risk of execution by hanging. On 21 January 2008, Ms. Jahed's lawyer told the press that he has unconfirmed information that the Office of the Judiciary Head has officially endorsed Ms. Jahed's death sentence and that her file has been forwarded to the Unit for Enforcement of Sentences.

Ms. Jahed has been in detention since 24 October 2002 [02.08.1381]. For the first eleven months she was detained on an apparently phony 'fornication' charge and bail order. Subsequently she was charged with 'intentional homicide' and remained in custody for another nine months of pre-trial detention until a grossly unfair trial which took place on 6 June 2004 [17.03.1383]. Ms. Jahed was convicted of 'intentional homicide' and sentenced to the mandatory *qisas-e-nafs* death penalty. The Supreme Court confirmed her sentence on 28 December 2004 [08.10.1383] after a clearly inadequate review.

Ms. Jahed was convicted of the 'intentional killing' of Mrs. Laleh Saharkhisan, the 32-year-old wife of the well-known footballer Nasser Mohammadkhani. Ms. Jahed was arrested merely on the basis of the revelation that she and Mr. Mohammadkhani had been having a secret, but under Iran's laws legal, 'temporary marriage' affair for four years prior to the murder. Her conviction was essentially based on a confession extracted from her under torture after eleven months of indefinite arbitrary incommunicado detention. She later retracted the manifestly false confession. Until shortly before the trial, she was denied access to legal counsel, and her defence was subsequently undermined by limited access to the evidence and witnesses and no consideration whatsoever of their defenses. Her trial was marked by numerous other violations of internationally recognized safeguards for fair trial and of Iran's own national laws.

Following the confirmation of her death sentence by the Supreme Court in December 2004, Ms. Jahed's appeals were rejected three times by the Discernment Chambers of the Supreme Court, an appeal body established in 2002 and abolished in 2007. She was denied any access to mechanisms which might provide commutation of her sentence or pardon. Under Iran's Islamic *qisas* murder laws, the prerogative of mitigating a sentence belongs exclusively to the victim's family, who have so far insisted on her execution. Ms. Jahed is now at imminent risk of being hanged for a crime that she did not commit. On the basis of past experience, she may be executed at any time with little or no notice whatsoever.

4. The facts of the case

Khadijeh (Shahla) Jahed was born on 12 May 1969 [22.02.1348] in Tehran, the capital city of Iran. She grew up in a middle-class family with eleven siblings. After high-school and college she became a hospital nurse in or around 1989. She left her employment as a nurse in or around 1998.

4.1 Her affair with a well-known footballer

In 1998 [1377], Ms. Jahed began a secret but steady love affair with Mr. Nasser Mohammadkhani, a well-known Iranian footballer. Ms. Jahed had been infatuated with Mohammadkhani since girlhood and had met him once when she was thirteen. She contacted him again in 1998 [1377]. Mohammadkhani was by then married and had two sons but they began a relationship. Soon after, he rented an apartment for Ms. Jahed where they spent much time together. Under the Iranian Islamic marriage laws their affair was legal since married men in Iran are entitled to have as many ‘temporary’ sexual affairs as they want with women provided that the women are single and provided also that they write down (or at least privately cite) religious temporary marriage vows. They kept the affair secret in order to protect Mohammadkhani’s marriage and also because of the negative stigma still attached to polygamy in many sectors of the Iranian society. The relationship was known to only a few of Mohammadkhani’s friends.

4.2 The murder of Laleh Saharkhizan

On 9 October 2002 [17.07.1381], the body of Mrs. Laleh Saharkhizan, Mr. Mohammadkhani’s 32-year-old wife and the mother of his two sons, was found stabbed to death in their house in Ketabi Square, an affluent neighborhood of Tehran. Her body was found at about 2 pm when her sons, 12-year-old Ali and 9-year-old Erfan returned from school. One of the boys entered the house through an open window when their mother failed to open the door. Their father, Mr. Mohammadkhani, was in Germany at the time. With the help of their school bus-driver, the boys alerted the police, who arrived shortly after.

Under the criminal justice system of Iran, the police are ‘functionaries’ of the judiciary. They must inform judicial authorities promptly of any crimes that they discover, and any investigations thereafter are conducted under the direct control of judicial authorities. In 2002 the court that dealt with murder cases operated without a separate prosecution service, so a single judge investigated, prosecuted, and tried such cases. (see **Note 1**)

Note 1: Iran's General and Revolutionary Courts operate without a Prosecution Service from (1994 to 2002)

In 1994 [1373] the court system in Iran was reorganized. The post of prosecutor was abolished in all General and Revolutionary courts. The prosecutor's responsibilities were transferred to the trial judge who, as a consequence, was directly involved with every aspect of the pre-trial proceedings, including the interrogation of suspects and witnesses, the charging of suspects, and decisions about whether or not they should be remanded in custody or released pending trial. The same judge also handed down the verdict on the cases he investigated after brief summary proceedings that as clearly demonstrated in the publicized 'trial' of Khadijeh (Shahla) Jahed run through a pre-scripted course, with perfunctory regard for any challenges made by the defense. At the time that Khadijeh Jahed was arrested, the customary procedure, upon the discovery of a murder, was that the police informed the duty judge of the criminal division of the General Court. From this point onward, the police, in their role as 'functionary of the judiciary' [*zabete qoveh qazayieh*] conducted their investigations under the direct supervision of the investigation/prosecution/trial judge that the case was assigned to. A new law passed in 2002 [1381] re-instituted a prosecution service at General and Revolutionary Courts, but in most provinces, these prosecution offices did not start to operate until 2004. The new law, however, retained the old prosecution-less system for certain crimes, including for illicit heterosexual intercourse and homosexual intercourse (*zina va lavat*) and for children's crimes. [Article 3-3 of the 2002 Revised Law for the Establishment of General and the Revolutionary Courts].

Note 2: Arbitrary Arrest and Mandatory Pre-Trial Detention of Murder Suspects in Iran

Published court cases and media reports on murder incidents indicate that in Iran's present criminal system, arrested murder suspects are routinely detained incommunicado until such time as they confess or prove their innocence, or until a more promising suspect is found. Confessions are routinely obtained under duress or torture. Clearly the judiciary acquiesces or orders these abusive methods, since the police who make the arrests and the detectives who investigate cases are acting strictly as 'functionaries of the judiciary.' The Islamic Criminal Procedure Code of 1999 [1378] itself explicitly provides that murder suspects can be detained for up to six days without charge 'for the purpose of obtaining testimony' [Article 32-5] obviously without access to legal counsel or indeed any contact with the outside world. The Code further explicitly states that suspects who are charged with 'intentional homicide' are subject to mandatory detention until the end of their trial. [Article 35-a].

Soon after the police's arrival at the house where Laleh Saharkhizan's body was found, Seyyed Qasim Hosseini Koochkamareyi, the clergy judge heading Chamber 1601 of the General Court of Tehran and notorious for imposing numerous death sentences also arrived. A week later, as Mr. Koochkamareyi 'left the country for a pilgrimage to Mecca,' the case was transferred to Chamber 1154 headed by Mr. Fakhredin Jafarzadeh, who for the next two years investigated, prosecuted and tried it.

Because of her husband's status as a football celebrity, Mrs. Saharkhizan's murder drew immediate and intense attention. Reporters persistently sought information about the case from the authorities and highlighted their lack of progress. In 2005, Mehdi Ebrahimi, a reporter for the *Iran* newspaper who had closely pursued the case from day one, published a book entitled *Kart-e Qermez* ('The Red Card') which documented the criminal proceedings.¹ In 2006, film-maker Mahnaz Afzali produced a documentary with the same title 'The Red Card' which included some courtroom footage from Ms. Jahed's trial.²

4.3 Thirty suspects detained

As Mr. Jafarzadeh later confirmed to the press due to the prominence of the case, he asked the Judiciary Head for a 'special instruction' [*eblaq-e vizha*] which would give him 'a free hand in dealing with the suspects.'³ This was duly granted. According to one of the detectives involved, 'of the eighty or so persons who were questioned in connection with the murder, thirty were arrested and held on suspicion of murder. Eventually three of these proved worthy of further investigation.'⁴

On 13 October 2002 [21.07.1381] it was announced that Ali Amirian, named as prime suspect, had been arrested in Shiraz and transferred to Tehran. A resident of Shiraz, Ali Amirian had been in Tehran temporarily when the murder happened. He became a prime suspect when a taxi-driver reported to the police that one day before the murder a passenger had 'kept boasting to him about Nasser [Mohammadkhani].' Mr. Saharkhizan, the deceased's father, identified Ali Amirian from a police sketch as a man whom he had hired to sort out a business matter in Tehran. In the process of this business, Ali Amirian had been instructed to contact his daughter, the murder

¹ *Kart-e Qermez* ('The Red Card'), book by Mehdi Ebrahimi, 2005 [1384] Payam Rashedan Publications.

² *Kart-e Qermez* ('The Red Card'), documentary film by Mahnaz Afzali, 2006, Time code 01:07:35:13 to 01:08:47:13, Dialogue and Spotting lists available at <http://www.smediaint.com/documentary/d16.html>.

³ 'The Red Card' (book), above note 1, p 140.

⁴ *Iran* newspaper, October 2003 [16.07.1382], *Az suye sarhang Kashfi elam shod: nagoftehayeh parvandehe qatl-e Nasser Mohammadkhani* ('Colonel Kashfi reveals new elements of Nasser Mohammadkhani's spouse's murder case').

victim Mrs. Laleh Saharkhizan. Ali Amirian was interrogated by police detectives and by Investigator/Prosecutor/Judge Jafarzadeh. Ali Amirian had no ostensible motive for murder and was able to establish firm alibis right away, but Mr. Jafarzadeh decided to keep him in prolonged detention. As noted in the text of the verdict, he was finally released ‘unconditionally on 20 November 2002 [29.08.1381] after spending about forty days in detention.’ Amirian was also named as ‘the fourth defendant’ in the June 2004 trial of Khadijeh Jahed and the verdict subsequently stated that ‘charges’ against him in connection with ‘involvement in the murder of Mrs. Saharkhizan were finally formally dropped.’⁵

Another woman who was arrested, detained and named as the ‘third defendant’ in the trial was identified only as Ms. Zahra. She became a suspect because she was attending the memorial ceremonies despite the fact that she was not a relation or friend of the deceased. At these memorial ceremonies, on more than one occasion she left a singer’s audiotape in which a song entitled *Longing* had been circled in pen. The *Iran* newspaper reporter Ebrahimi revealed later on that photographs indicated that Zahra had been a close friend of wealthy woman named Sheila whom Mohammadkhani had once rejected. In the following years she had been harassing, bribing and threatening Mohammadkhani in an attempt to induce him to marry her, even as his second wife.⁶

Ms. Zahra was eventually released on bail. Unspecified charges against her for ‘involvement in the murder of Mrs. Saharkhizan’ were formally dropped during the July 2003 trial of Khadijeh Jahed. She was however sentenced to two counts of fine and confiscation of her satellite dish for possession of alcoholic beverages and the dish which were discovered inside her home at the time of her arrest.⁷

4.4 Ms. Jahed’s arrest

Approximately two weeks after the murder, one of Mr. Mohammadkhani’s friends who knew about his affair with Ms. Jahed revealed the matter to Mr. Jafarzadeh. On the basis of this information, Mr. Jafarzadeh ordered Ms. Jahed arrested and detained incommunicado as yet another ‘murder suspect on 24 October 2002 [02.08.1381].’ She was arrested at her apartment and detained in the Detention Center of the Department to Combat Social Corruption [*bazdashtgah moavenat mobarezeh ba mafased ijtimayi*] in Vozara Street. As usual, from the

⁵ Khadijeh (Shahla) Jahed’s 17 June 2004 verdict printed in ‘The Red Card’ (above note 1, appendix, p 236).

⁶ ‘The Red Card’ (book), above note 1, p 77.

⁷ Ibid, p 132 and Khadijeh (Shahla) Jahed’s 17 June 2004 verdict printed in ‘The Red Card’ (above note 1, appendix, p 236).

first moments of her arrest and detention, Ms. Jahed was subjected to interrogation by Mr. Jafarzadeh as well as by the police detectives without legal counsel, and without any contact whatsoever with a lawyer. Police searched her apartment and seized, among other things, her personal appointment book. Ms. Jahed had been very careful to protect her partner's reputation. Now every detail of their confidential relationship was suddenly exposed to unrelenting scrutiny, including Mr. Mohammadkhani's serious opium habit, and her occasional illegal purchases of opium for him. [see **Note 2**]

4.5 Phony bail order and indefinite detention

The Islamic criminal law system of Iran stipulates that a murder suspect can be detained for up to six days of interrogation, after which the detainee must be released or charged with murder. [see **Note 2**] Although there was no incriminating evidence against Ms. Jahed and no confession, Mr. Jafarzadeh decided to extend her detention indefinitely until she confessed to the murder on the grounds that Ms. Jahed was 'irrationally and sinfully in love with Mr. Mohammadkhani.'⁸ A year later, when Mr. Jafarzadeh did finally charge Ms. Jahed with 'intentional homicide' based on her false confession, he told a reporter who asked why it had taken eleven months to obtain a confession from Ms. Jahed:

From the first moment [of her arrest] I told Shahla that she was the murderer. This was why I kept her in detention for so long: so that with the help of God and the special instructions that Ayatollah Shahroudi, the Head of the Judiciary, had issued to me, we could freely conduct an extensive investigation and solve the case.⁹

Mr. Jafarzadeh was in an awkward position. This was a high-profile case under the media spotlight, but by the end of the sixth day of detention, Ms. Jahed had still not confessed. In the absence of sufficient evidence to place a murder charge, Mr. Jafarzadeh charged Ms. Jahed with conducting an 'illicit relationship and fornication,' an offense that is punished by 100 lashes. Mr. Mohammadkhani was also subsequently charged with 'illicit relationship and adultery,' an offense that is punished by stoning to death. These proved to be groundless charges, of which the two were immediately acquitted at trial when they merely declared that they had been citing

⁸ Ibid, p 138.

⁹ *Iran newspaper, 7 October 2003 [15.07.1382], Qazi parvande dar goftegu ba Iran: motaham-e parvande-e qatl-e hamsar-e Nasser Mohammadkhani ta yek mah digar mohakemeh mishavad* ('Iran interviews murder case judge: the accused in murder of Nasser Mohammadkhani's spouse will be tried by next month').

religious vows privately prior to intercourse and thus were thus in a legitimate Islamic temporary marriage.¹⁰

In fact, illicit relationship and fornication offenses are not subject to pre-trial detention, and defendants are released pending trial at most on bail. In this case too, Mr. Jafarzadeh himself issued Ms. Jahed on 30 October 2002 [08.08.1381] a ‘bail order numbered 226.’¹¹ But then he continually refused to permit Ms. Jahed’s family to post her bail. As a result, Ms. Jahed remained in detention. In late winter 2002 [1381], when Ms. Jahed found an opportunity to talk to a reporter, she complained:

I am tired of this situation. It is hell here. My bail is 20 million *Tuman* [approximately 20,000 US dollars] and the charge against me is nothing serious and concerns only things that I have done for Nasser. But Judge Jafarzadeh ... refuses to accept the property title deeds that my family wants to post for as surety for my bail and has said that ‘no deed’ would be acceptable for Shahla.¹²

Sixteen months after Ms. Jahed’s arrest, Ms. Jahed’s father also expressed his frustration at the judiciary’s obstruction:¹³

I have repeatedly taken the title deeds to post for the 20 million *Tuman* bail that has been set for her, but the Judge would not accept it, saying that Shahla is a murderer.

Nearly a year after Ms. Jahed’s arrest and detention, on 6 October 2003 [12.07.1382], Mr. Jafarzadeh, talking to the same reporter, confirmed that there had been deliberate judicial obfuscation:¹⁴

Until a week ago, Shahla had a pre-trial bail order, although she herself was under the impression that she had a pre-trial mandatory detention order. But fortunately, now ... I have finally notified Shahla that she was charged with murder [which has a mandatory pre-trial

¹⁰ Iranian law allows men to marry up to four permanent wives and keep as many ‘temporary’ wives as they wish, many Iranian men who practice polygamy, especially, through ‘temporary marriage’ prefer to keep it secret because of the negative stigma attached to it, and because such relations might well not be welcomed by the first wife. Temporary marriages are not required to be registered so a claim that ‘religious vows’ were cited by the couple before entering into marriage is usually considered sufficient. The only condition that must be met is when the temporary ‘wife’ is a virgin, her father’s consent must be obtained.

¹¹ Khadijeh (Shahla) Jahed’s 17 June 2004 verdict printed in ‘The Red Card’ (above note 1, appendix, pp 215 and 236).

¹² ‘The Red Card’ (book), above note 1, p 67.

¹³ Ibid, p 163.

¹⁴ Ibid, p139.

detention order]. When Shahla found out that she could have posted bail and could have been released, she was very upset.

When, after two weeks of incommunicado detention and interrogation, no confession had been extracted from Ms. Jahed, Mr. Jafarzadeh ordered the arrest of Mr. Mohammadkhani on 9 November 2002 [17.08.1381]. For the following two weeks, during which time he too was reportedly subjected to midnight interrogations. Mr. Mohammadkhani's detention was also used to apply psychological pressure on Ms. Jahed to produce a confession.

Mr. Mohammadkhani did not, at this stage, incriminate Ms. Jahed. Distressed by his detention, Ms. Jahed told Mr. Jafarzadeh, 'If you release Nasser, I will admit to murder.'¹⁵ Mr. Mohammadkhani was released two days before the memorial ceremony to mark the fortieth day since the death of his wife. But, on this occasion Ms. Jahed refused to admit to committing murder though she did eventually take this step approximately eleven months later when Mr. Mohammadkhani was once again detained.

Other methods used to force a confession included a two-month period solitary confinement, the use of informant inmates, prison phone tapping, detention and interrogations of family members and acquaintances.¹⁶ About two months after her arrest, Ms. Jahed was transferred from the Department to Combat Social Corruption to Evin prison.

Shortly after this Mr. Mohammadkhani, who was under opprobrium from his relatives and friends because of the clandestine extramarital affair, changed his attitude to Ms. Jahed and began to make statements which incriminated Ms. Jahed. On 29 February 2003 [09.11.1381], accompanied by his wife's family, he appeared at the police homicide office for a meeting with Ms. Jahed. During this meeting, which lasted five hours, he insisted that Ms. Jahed had murdered his wife. Another meeting was held on 2 March 2003 [13.11.1381] for three hours between Ms. Jahed and Mohammadkhani accompanied by three footballing colleagues. In this meeting, the court verdict quotes from him as saying that 'Shahla is the only person who could have murdered Laleh.'¹⁷

Another six months elapsed, and Ms. Jahed still refused to confess. On 13 August 2003 [22.05.1382] Mr. Jafarzadeh decided to re-arrest Mr. Mohammadkhani. This time Mr. Mohammadkhani stated that Ms. Jahed 'might have had a copy of the keys to his house and

¹⁵ Ibid, p 82.

¹⁶ Ibid, p 43.

¹⁷ Ibid, pp 47 and 53.

might have secretly entered the house when the family was not there.’¹⁸ Then a photograph of Mr. Mohammadkhani, blindfolded, handcuffed and shackled appeared in the press. This not only distressed Ms. Jahed but also his numerous fans, some of whom publicly protested at the humiliation of the national sports hero.¹⁹

4.6 False confession

On 4 October 2003 [12.07.1382], just five days before the first anniversary of Mrs. Saharkhizan’s death, it was for the first time arranged for Mr. Mohammadkhani and Ms. Jahed to meet in private. When they brought Ms. Jahed to the Detective Bureau (*idareh-e agahi*), Mr. Mohammadkhani was ‘sitting in a corner, blindfolded and handcuffed.’ Ms. Jahed was reminded that the death anniversary of Mrs. Saharkhizan was in five days and the embarrassment caused by Mr. Mohammadkhani’s absence in that event. The two were left to talk supposedly privately in a yard behind the police building, but as Mr. Jafarzadeh announced at the trial, ‘everything was recorded with hidden cameras.’²⁰ There, Mr. Mohammadkhani pleaded with Ms. Jahed to confess to the murder so that he would be released and ‘not be subjected to any further public embarrassment by failing to attend his wife’s memorial anniversary.’ Ebrahimi, the *Iran* newspaper reporter, gave the following account: ²¹

When they re-entered the building, Shahla was crying. She told Captain Ehsanifar: ‘I am not concerned at all about your evidence. Even if you kill me, I would not say anything if I do not want to. But just out of the love that I have for Nasser, I want to tell the truth now. I killed Laleh.

Ms. Jahed was then given ‘a confession form’ in which she wrote down her confession. The following excerpt of this alleged confession was included in the text of the June 2004 verdict:²²

On Tuesday 16.07.1381 [the night of the murder], as usual when I wanted to call Nasser, I first called his house so that if they answered I could tell this [that his family is ok] to Nasser when I call Germany and make him happy. I do not know if I called the house or the deceased’s mobile. They were at home. When I called again at dusk, no one answered.

¹⁸ Ibid, p 109.

¹⁹ Ibid, p. 96.

²⁰ *Sharq* newspaper, 9 June 2004 [20.03.1383], *Gozarash sevomin jaleseh dadgah* (‘Report on third day of trial’).

²¹ ‘The Red Card’ (book), above note 1, p. 125.

²² Ibid, Khadijeh (Shahla) Jahed’s 17 June 2004 verdict printed in ‘The Red Card’ (above note 1, appendix, pp 226-228).

Nasser had recently changed his house key. In the past it had happened when Nasser returned from a trip his wife would be in Qatar and the house key was with his friend Alireza. I do not know why he had changed his house key, but I got a copy so that if it happened that Nasser did not have his key with him, I could surprise him [by providing him a copy] . But I did not tell him.

At night the deceased was not at home, and I had a sense that she would not return. [...] I went up there. I do not know why I was scared. I sniffed Nasser's clothing which was hung in his room. A short while later, I became quite sure that they would not return. I attempted to leave but heard sounds from the neighbor's house.

Then suddenly, I heard the voices of Nasser's children. I hid in a corner of the dining room behind the curtain between a cupboard and the heater. I am petite and could fit in there, but I was very scared. I think before they arrived, I called Nasser in Germany on my mobile phone. The deceased was accompanied by her friend Mehnush. Mehnush hit her youngest child and he cried. They sat together and there I learned one thing from the deceased (the *Qafileh* Prayer). She was explaining it to Mehnush. Mehnush's mobile rang once and she spoke to someone and even joked about something. I do not know if it was then or later that her phone rang again [...]. It was midnight, twelve o'clock or one, I do not know. Mrs. Saharkhizan, the mother of the deceased, rang. Laleh said: 'Mother do not worry. Mehnush is with me,' and added that she had been fasting that day or the previous day but that at noon she had woken up hungry and ended her fast. (On 17/7/1381 she was not fasting either because she ate something in the morning.) I do not know how I spent the night— whether I was asleep or awake. In the morning, Mehnush said goodbye to Laleh and even asked if she could use her mascara and she replied 'Of course, go and use it.' They left.

Laleh's kids left too and she lay down in bed. I went [to her bedroom] and saw that she was awake. I wanted to leave the house, but she was awake. I waited and wished I could leave. I ran and then hid again. I think she came out and looked around. I was scared. I got a knife from the kitchen. I do not know what happened next. She was in bed, probably still awake. I picked up an object—I do not know what it was. Wood, I do not know. I hit her once on the head. She jumped up and said, 'Oh they have come!' No, she said 'Oh, they have finally come!' I was not holding the knife. It was down under the bed. When she lunged at me and grabbed my hair, struggling, I took hold of the knife and stabbed her once in the stomach, but not very forcefully. I cannot remember whether I struck the right side or the left side. She screamed and tried to free herself. She held the knife. I wanted to escape but she dragged me to the floor and prevented my escape. She tried to take away the knife from me. She stretched out her hands. I said 'Let go' but she was holding on tightly. I was positioned

on top of her. I sat on her chest. I asked: 'Where do you want me to telephone for you?' She said I should call 110 [the emergency ambulance service?] and asked who I was. I said that I was an addict. She asked how I had entered. I did not answer. She asked what I wanted. I told her money. She said 'I have one hundred thousand Tuman in my purse. Let's go so I can give it to you.' I asked her where it was. She said it was downstairs. Then she screamed.

I do not know what happened, but I stabbed her two more times in the neck. I was mad and out of control. I did not know what I was doing. I got up and cleaned the place with a wet towel. I removed the bedspread and covered the bed with the bedspread from the other room. I turned the mattress because a drop of blood had spilled on it. I tried cleaning it but was unable to do so. I washed her hands and moved her body towards Mecca.

In the last moments, I asked her for forgiveness, and I cried and told her that people said she was a good woman. She said, 'Have mercy on my mother.' Then I removed the dresser drawers in both rooms. I scattered the contents of Nasser's wardrobe and the kids' wardrobe. I messed up all the sewing stuff, though I was not at all aware that the sewing machine had fallen to the floor or broken. I had become mad. I wrapped the towel and some children's clothing that I had used to clean up, as well as the bedspread, ring, watch, and an ankle chain that I had taken into a shawl, and then into a plastic bag. I left and went to the flat in Zafar. All the time these things were in the trunk of my car.

At 4 pm I drove past Nasser's house and was praying that she was alive. I noticed that there was a crowd and left. Late at night—ten o'clock or eleven—I threw them away in Mirdamad Street on top of some garbage that was already there. [...]

I had found cigarettes among the things that I had scattered about. There were three and I lit them. I left one in the porch on the windowsill. I put another in an ashtray. I cannot remember where I put the other one—maybe in the same ashtray. I did not even know how to light them. I turned the gas stove on in order to light the cigarettes. I poured water on them to remove the marks of my lips. There were several telephone numbers next to the telephone. [...] I dialed a long-distance number. A woman answered. I paused a few moments and hung up. I do not know why I did this, maybe to hide Laleh's time of murder and make people think that she was calling her relatives. [...] I threw the knife away in the same place. I threw away the keys on the highway.

After her confession, Ms. Jahed was asked to confess once again before Mr. Jafarzadeh at 20:30 pm. Later that night, she was also taken to the murder scene to re-enact the murder because, as Mr. Jafarzadeh told the Iran reporter, 'you should not postpone today's work until tomorrow.'

The so-called scene re-enactment took place from 12:30 am to 3:00 am. In the absence of a court photographer, the Iran Newspaper reporter and his photographer were invited to participate.²³

On the following day, 5 October 2003 [13.07.1382], Ms. Jahed and Mr. Mohammadkhani were taken to court to be formally charged by Mr. Jafarzadeh. A group of reporters and photographers were present and a photograph of Ms. Jahed sitting before the judge was printed, along with detailed reports. In addition to the purchase of narcotics and burglary, Ms. Jahed was charged with ‘intentional homicide’ and put under a mandatory detention order.²⁴ When Ms. Jahed subsequently retracted her confession, Mr. Jafarzadeh insisted that he had charged her not on this date but a week previously on the basis of his own ‘scientific findings.’²⁵ It was also reported that in the 5 October session, Mr. Mohammadkhani was also charged with ‘illicit relationship and adultery,’ ‘consumption of illegal drugs’ and also, inexplicably, with ‘accessory to murder.’²⁶

Mr. Jafarzadeh, who was responsible for trying the case in the subsequent trial was legally obligated not to make public prejudicial statements, but nevertheless, made repeated pronouncements about Ms. Jahed’s guilt to the press. For example, one paper printed the following interview:²⁷

Reporter: How do you assess Shahla’s personality?

Jafarzadeh: She is very clever, and in love with Nasser Mohammadkhani. She loves him immensely, but it is a kind of love that is irrational and sinful (*qir-e shar’i*) and ultimately caused this woman to murder Laleh.

Reporter: Did she plan the murder?

Jafarzadeh: Shahla claims she committed this crime unpremeditatedly and decided to commit the murder the night before the crime took place.

Reporter: What is the police and judicial opinion?

²³ ‘The Red Card’ (book), above note 1, pp 114 and 12.

²⁴ *Entekhab* newspaper, 6 October 2003 [14.07.1382], *Ba i’tirafat-e howlnak-e Shahla raz-e qatl-e hamsar-e Nasser Mhammadkhani fash shod* (‘Shahla’s horrid confession reveals the murder mystery of Nasser Mohammadkhani’s spouse’).

²⁵ Khadijeh (Shahla) Jahed’s 17 June 2004 verdict printed in ‘The Red Card’ (above note 1, appendix, p 226).

²⁶ ‘The Red Card’ (book), above note 1, p 22.

²⁷ *ibid*, p. 138

Jafarzadeh: We proceed with justification. In the view of the court and the police, Shahla committed this murder with premeditation. Confidential information in the file shows that Shahla believed that Laleh was a barrier in her path which she had to eliminate. But she claims that she had gone to Nasser's house the night of the incident and committed the crime only spontaneously.

According to press reports, following her first confession on 4 October 2003, Ms. Jahed was interrogated almost on a daily basis for another two weeks. This is also clear from the text of the verdict in which her story is repeated several times, each time with new or altered details. The verdict itself notes that the last interrogation was videotaped. Portions of this tape and the re-enactment session were played at the trial and caused considerable distress for the victim's family.

Once interrogations were over and Ms. Jahed had returned to Evin prison, it was reported on 27 October 2003 [05.08.1382 it] that Ms. Jahed's trial would begin in the first week of December 2003 [The second week of 10.1382].²⁸

4.7 Retraction of the false confession

On 18 November 2003 [27.08.1382] it was reported that Ms. Jahed had retracted her confession. As Ms. Jahed has stated publicly on various occasions, including in court, her confession was made under duress. She had been distressed when Nasser Mohammadkhani's photograph in handcuffs appeared in a sports magazine, that she wanted Mr. Mohammadkhani released from detention in order to attend his wife's memorial anniversary, and that she had heard that Mr Mohammadkhani had had a heart attack. She also stated that she had repeatedly been tortured by various police detectives in order to extract a confession.²⁹

Ms. Jahed has insisted, as indeed she did in her pre-confession statements, that she has been at her mother's house on the night before the murder. She stated that on the morning of the murder, she left her mother's house at 8:30 am and went to the apartment in Zafar Street that Mohammadkhani had rented for her. She picked up two checks that he had left for her and went to the bank and cashed the checks. Then, she had gone to the shop of a friend of

²⁸ *Iran* newspaper, 27 October 2003 [05.08.1382], *Hafteh dovum-e Azar mah sal-e jari bargozar mishavad, nakhostin jaleseh residegi be parvande qatl-e hamsar Nasser Mohammadkhani* ('Trial of Nasser Mohammadkhani's spouse murder case starts the second week of Azar').

²⁹ *Etemaad* newspaper, 7 June 2004 [18.03.1382], *Shahla bayad dar meydan-e Azadi idam shaved* ('Shahla must be executed in Azadi Stadium'), 07 June 2004, *Moruri bar parvande qatl hamsar-e Nasser Mohammadkhani* ('A review of Mr. Mohammadkhani's spouse's murder').

Mohammadkhani and then to her own niece's school. She returned to her mother's house around noon and after a short stay, returned to her Zafar apartment.³⁰

Ms. Jahed has repeatedly asserted that she was beaten, injured and verbally abused by police detectives. For example, three days after the start of the trial, on 12 June 2004 [23.03.1382], one newspaper reported the following interview:³¹

Reporter: With regard to the torture that you claimed you were subjected to in the Detective Bureau, did you report them to Judge Jafarzadeh?

Shahla: On 18 November 2003 [27.08.1382] the Judge told me that if I had a complaint about harm inflicted at the Detective Bureau, I should report them. That day they took me to the Prosecutor's Branch known as Majid Matin Rasekh. I stated that they had beaten me but that I had no complaint. However, the prosecutor told me that I should write down that I had not been tortured and therefore I did not have a complaint. I only wrote: 'I do not have a complaint.' Also, that day when they wanted to hand me to the Vozara detention center, I was refused admission by the authorities there because of my poor physical condition.

In the court footage featured in Mahnaz Afzali's documentary 'The Red Card', Ms. Jahed addressed the judge as follows (English translation from the original Farsi dialogue):³²

'Judge: What I asked and what you confessed are all documented in the case-file.

Shahla: But there are things that are not written down [in the casefile]. Ehsanifar [one of the detectives] said the judge doesn't officially order [us] 'go beat up this person'. In fact, I did ask [Ehsanifar] why didn't he get a written order from the judge [to beat me]? But he said they [judges] won't write it down 'go beat that person.' Hence the lack of evidence. Obviously, my words as a person are [worthless to you]. So, if you want to kill me, go ahead.'

'Shahla: I confessed under mental and physical pressure. [broken footage] Sir, the Detectives Bureau itself has a proverb that 'a rooster brought there is made to lay eggs.' Then how can you not expect that when a woman is taken there [to the Detective's Bureau] she would not lay an ostrich egg?'

³⁰ 'The Red Card' (book), above note 1, pp. 187, 203, 220-221.

³¹ *Vaghaye Etefaghiye* newspaper, 12 June 2004 [23.03.1382], *Nemidunam qatel-e Laleh che kasi hast?* ('I do not know who has murdered Laleh?').

³² 'The Red Card' (documentary film), 2006, Time code *00:16:53:11 to 00:17:09:01, 00:20:05:17 to 00:20:15:10, and 00:16:53:11 to 00:23:52:11*, Dialogue and Spotting lists available at <http://www.smediaint.com/documentary/d16.html>.

‘Yes, I admit that I confessed, and I will do it again if you [judge] send me to the Detective’s Bureau again. [If that happens] I will admit that I also killed the husband of [Azam] Qaleh-Shiran [another death-row prisoner convicted of murdering her husband], I admit that I killed that telephone stalker of [Akram] Qavi-Del [another death-row prisoner convicted of murdering her telephone stalker], I admit that I killed that step-child of that Hojati step-mother [another death-row prisoner convicted of killing her step-child], and that man Qeydi, I admit killing him too, I admit to committing all the killings and all the terrorist attacks.’

Ms. Jahed also later told reporters and the court that she had fabricated her murder story based on the following:

- Newspaper reports which included considerable detail and even a diagram of the murder scene,
- Her previous knowledge of the deceased’s flat gained from the many occasions that she had gone there to clean it so that ‘when Laleh returned after a long absence she would not notice that Mr. Mohammadkhani has not been home,,’
- Information that Mr. Mohammadkhani himself had given her before her arrest and during periods that she had permission to use the prison phone and had called him regularly,
- Coaching and leading questions by police detectives and the judge, and
- Information she had received from the deceased’s family in the Detective Bureau.

During the first twelve months that she had been in detention, Ms. Jahed had not had any visitation rights. She had also not been permitted to make phone calls for the first five months of her detention. Following the retraction of her confession, she was again banned from making phone calls and was again subjected to interrogation.

4.8 A three-day trial

On 26 January 2004 [06.11.82] it was reported that a new trial date was set for 6 June 2004 [17.03.83].

As Ms. Jahed has told reporters, her repeated requests during her long detention to have a lawyer had consistently been refused.³³ Ms. Jahed was only allowed to have legal counsel shortly before the announcement of the trial date. Through her father, she retained two lawyers: Messrs.

³³ *Vaqaye Etefaqiye* newspaper, 12 June 2004 [23.03.1382], *Nemidanam qatel-e Laleh che kasi ast?* (‘I don’t know who has murdered Laleh?’).

Bahman Shafaqi and Abdolsamad Khorramshahi. Since the conclusion of her appeal on 28 December 2004, Abdolsamad Khorramshahi has continued to represent Ms. Jahed alone. [see **Note 3**]

Mr. Khorramshahi met Ms. Jahed for the first time on 18 January 2004 [28.10.1382].³⁴ Ten days prior to the trial too, he told a reporter that he ‘had only been permitted access to read the two volume case-file at the court in the course of six sessions over the preceding month.’ He added that he had been permitted to visit Ms Jahed in prison just twice, each visit for two hours, and that he was hoping to visit her once more before the trial.³⁵

On 5 February 2003 [16.11.1382] Ms. Jahed’s family received permission for the first time from Mr. Jafarzadeh to visit her in prison for the first time.³⁶

Note 3: The right to legal representation in Iran

Despite a constitutional guarantee of the right to legal representation in all courts of law (article 35), Iran's legislation lacks guarantees of the actual implementation of this right. Pre-trial representation is not even referred to in the texts of applicable law.

The Iranian Criminal Procedure Code is divided into four distinct sections: ‘investigation’ (Chapter 1), ‘actual trial’ (Chapter 2), ‘appeal’ (Chapter 3) and ‘post-appeal’ (Chapter 4).

Chapter 1 grants the judge (or his functionaries) the right to interrogate a suspect upon arrest and if the suspect happens to request his or her lawyer, the right to refuse the suspect’s request. [Articles 127-128]

The right to have a defense lawyer is only stipulated explicitly in Chapter 2 which deals with the actual trial. The law says that all defendants in capital cases will be given a court appointed lawyer if they cannot afford one (though an exception is made in the case of capital sex-related crimes where the defendant has the right to refuse representation).

Lawyers cannot access their client’s casefile until the investigation is ended and a date for trial is set. Even then, their access is limited to viewing the file on the court premises. [Article 185-187] There are no provisions to guarantee that lawyers are entitled diligently and fearlessly to present a meaningful defense for their clients even from that stage forward.

³⁴ *Yase-No* newspaper, 18 January 200 [29.10.1382], *Motaham be qatl-e Laleh Saharkhizan hanuz inkar mikonad* (‘The accused still denies Laleh Saharkhizan’s murder’).

³⁵ above note 1, pp. 173-174.

³⁶ *Sharq* newspaper, 5 Feb. 2004 [16.11.1382], *Molaqat ba Shahla* (‘Visitation with Shahla’).

The trial which began on 6 June 2004 [17.03.1383], that is, close to twenty months after Ms. Jahed's arrest and detention, took place over three consecutive half-days, with the last day being held *in camera* 'to try chastity-related charges.' Since the media was allowed in the courtroom for the first two days, several newspapers reported in detail the course of the trial.

Mr. Jafarzadeh had acted as investigator and prosecutor up to that point. Now, in trying the case, he flouted every court-room procedural rule stipulated in the 1999 Criminal Procedure Code of Iran. For example, the law gives the defendant the right to call witnesses,³⁷ but when Ms. Jahed's lawyers asked the judge to summon those whose allegations were relied on by him to testify against their client as well as all persons who had not been questioned by him so far but could verify Ms. Jahed's whereabouts at the time of the murder, the judge responded that 'the defendant was alone when she committed the murder, there are no real summonable witnesses to this crime.'³⁸

Only Ms. Jahed's brother Mostafa, who was in the courtroom, was called to the witness stand. Apparently, when Mostafa was detained shortly after Ms. Jahed's arrest and had been asked about Ms. Jahed's whereabouts, he had said that Ms. Jahed was staying at their mother's the night before the murder, and that he had seen her early in the morning and close to noon on the day of the murder. Mostafa then revealed in court that following his sister's 'confession,' the 'detective in charge' had summoned him to go to the Detective Bureau and give a statement that she had not been home that night 'or else the judge would sentence him to two years' imprisonment also.'³⁹ Mr. Jafarzadeh, however, chose not to take Mostafa's testimony into consideration, or indeed those of her mother given before the trial. He also refused to question several other persons who could potentially have verified Ms. Jahed's whereabouts.

At the opening of the trial Ms. Jahed's lawyers requested the judge's recusal, on the grounds of his numerous public statements indicating Ms. Jahed's supposed guilt. Their objection was dismissed out of hand. Iranian law explicitly prohibits judges from making pre-trial substantive comments,⁴⁰ but Mr. Jafarzadeh's response to questions about his behaviour was to pronounce: 'I

³⁷ Article 191 states 'whenever the defendant or the plaintiff requests examination of person (s) present in court, even if they were not summoned previously, the court shall conduct the necessary examination.'

³⁸ ISNA News Agency, 6 June 2004 [17.03.1383], *Qazi dadgah-e qatl-e hamsar-e Nasser Mhammadkhani khatab be motaham: chera be mobil-e Laleh zang mizadi? Motaham: Chun negaran-e Nasser mishodam* ('Court Judge of Mohammadkhani's spouse's murder case asks the defendant: why would you call Laleh's mobile phone? Defendant: because I worried about Nasser').

³⁹ above note 1, p. 198.

⁴⁰ Article 46-d of the 1999 Criminal Procedure Code states that when the trial or investigation judge 'has previously expressed a substantive opinion on a criminal matter,' he should 'recuse himself from ruling or investigating the case or else the parties can request his recusal.' Article 210 states that 'the trial judge

hereby declare that I categorically repudiate any of the details so far attributed to me in the press.’ In the verdict too Mr. Jafarzadeh added: ‘In accordance with article 49 of the Criminal Procedure Code, this court has dismissed the lawyer’s objection by way of a judicial ruling (Order no. 392-26/3/63 [15 June 2004]).’

Mr. Jafarzadeh’s improper conduct continued throughout the brief trial. He not only addressed Ms. Jahed as ‘the murderer’ and bombarded her with accusatory remarks but also made strongly worded personal attacks against her. This approach was reflected in the text of his verdict. For example, one section of the verdict states:⁴¹

During the court’s sessions, the defendant has tried to influence public opinion by pretending to cry, laugh, vomit, faint and so forth. She has also tried to pretend that she has literary talent by reading romantic and other poetry in court. Yet in those of her diary notebooks that have been found, there is not a single line of literary value or a single stanza of poetry. Her daily appointment book merely consists of information about the people visiting at her house at various hours of day and night and also her debts and loans to various people or purchases of opium for which she used the code name ‘rice.’ According to information received by the court too, for some time prior to the sessions of the court, she had been strolling about memorizing poetry ... so that she could recite them in court and influence the opinion of journalists who represent public opinion. When she recited poetry for Nasser in the closed session of the court on 10 June 2004 [21.03.83], Nasser said to her that it was all lies that she had learned in prison.

The irregularity persisted to the close of the trial. The criminal procedure code requires that the trial should ‘conclude immediately following the defendant’s and his or her lawyer’s final defense’ [Article 193-5], but the judge permitted the lawyer for the victim’s family to close the trial, overruling objections by the defense.

Ms. Jahed’s lawyers were not only denied access to their client until shortly before the trial but were also effectively prevented from conducting any independent pre-trial investigation of physical evidence or any witnesses. During the trial sessions, Mr. Jafarzadeh continually obstructed their effort to present exculpatory evidence because, as stated in the verdict, in his view ‘no defense was possible’ in Ms. Jahed’s case:⁴²

should not publicly express his opinion on the defendant’s guilt or innocence until the end of the trial and the issuance of the verdict.’

⁴¹ Khadijeh (Shahla) Jahed’s 17 June 2004 verdict printed in ‘The Red Card’ (above note 1, appendix, pp 232-33).

⁴² Ibid, p. 235.

Concerning the objection that the court has not provided a proper atmosphere for the defense, it should be noted that the court has no duty to create the proper atmosphere for the defense to present their case. The manner and content of the defense is entirely up to Mr. Lawyer's own skills and knowledge and taste ... In any event too, the court is of the view that for this case, no defense was possible even at the outset. The client has clearly confessed to every detail of murdering the late Laleh. But then for some reason, in court she has denied committing the murder. Yet, the film of the re-enactment, which was played at the deceased's family's request, has shown that Ms. Jahed freely and voluntarily demonstrated her own acts and how she committed the murder.

The court also dismissed out of hand Ms. Jahed's allegations of torture at the hands of police detectives. Several journalists present at the trial wrote about these allegations:

'Despite the judge's numerous questions, Shahla never admitted entering the flat. Nor did she admit the murder. She insisted that she confessed because she was subjected to physical and emotional harm. She said that if she had been Pinocchio during the re-enactment of the crime, she would have grown a very long nose. She added that after what she had experienced, she would agree with the saying that even a rooster would lay eggs in the Detective Bureau. She singled out Detective Ehsanifar who harmed her a great deal. ... At one point when the judge whispered to Shahla to adjust her *Hijab* scarf to ensure full covering, she said: 'I was waiting for this remark from you just to remind you about the day that Ehsanifar pulled away my *Hijab*, and said that I need not a *Hijab*. Five or six other huge men were also present. They too shouted insults and curses at me, things that people would not even say to a brothel madam. They beat me. Where were you then? I confessed so that I would not be returned to the Detective Bureau. At that point, I was willing to confess to any other murders and terrorist acts too''.⁴³

Judge: You have claimed that officers beat you but then you denied it. Yet I referred your complaint to the Prosecutor's Office, and you told the assistant prosecutor that you were not beaten.

Shahla: No, that is incorrect. I told the assistant prosecutor that I was beaten but that I do not want to complain because I do not bear hatred and grudge against people. I wanted to free myself from interrogations night and day in the Detective Bureau.⁴⁴

⁴³ Gisoo Faghfour, womeniniran.org, 7 June 2004 [18.03.1383], *Man i'tiraf kardam na jenayat* ('I made a confession not commit a crime').

⁴⁴ *Iran* newspaper, 7 June 2004 [18.03.1383], *Mashruh-e mohakemeh Shahla be eteham-e qatl* ('Details of Shahla's murder trial').

‘During trial Shahla said: ‘Three of my toenails were pulled out. I had them in my purse until yesterday. I wanted to show them today, but yesterday when I was feeling sick, I gave my purse to the officers and they were taken from my purse’.’⁴⁵

Courtroom footage featured in the 2006 documentary ‘The Red Card’ showed that in response to Ms. Jahed’s repudiation of his confession Mr. Jafarzadeh challenge first consisted of reciting in Arabic a legal rule in Islamic law known as ‘the rule of confession’ (*qa’ada iqrar*). This rule stipulates that in private lawsuits (*haq-ol-nas*), including proceedings for ‘intentional homicide’, confessions made by sane defendants are binding on them (*iqrar al-uqla ala anfusahum jayez*). His next challenge was to play the video-tape of Ms. Jahed’s scene re-enactment during which he kept repeating parts of the dialogue for the audience, causing outbursts of rage and cursing against Ms. Jahed by the victim’s family.⁴⁶ All that the re-enactment shown however was no more than an unconvincing performance by a distressed and exhausted woman who kept fumbling to figure out her next act.

A few days following the trial, on 16 June 2004, a daily newspaper wrote that according to a female member of the sixth parliament, ‘Following Shahla’s letter to the parliament’s women’s fraction, we pursued the case and concluded that Shahla could not be the murderer and that she must have been the victim of a conspiracy.’⁴⁷

4.9 Verdict

On 20 June 2004 [31.03.1383] a 23-page guilty verdict dated 17 June 2004 [28.03.1383] was given to the family of the victim and to the defendant’s lawyers. Several papers printed parts of the verdict. Ebrahimi, the *Iran* newspaper reporter borrowed the deceased’s father’s copy of the verdict and later on printed it in full as an appendix to his book ‘The Red Card’.

Ms. Jahed was convicted of ‘intentional homicide’ and sentenced to death in accordance with the following articles of the Islamic Criminal Code of Iran (1996/99): 105, 205, 206, 207, 219, 231, 232, 233. [See **Note 4 and 5**]. The evidence used to convict her is stated to be the ‘judge’s knowledge’ [231-4] and the defendant’s ‘confession’ [231-1].

⁴⁵ *Iran* newspaper, 9 June 2004 [20.03.1383], *Ede’ahaye jadid-e Shahla dar sevomin ruz-e mohakemeh* (‘Shahla’s new claims at 3rd day of trial’).

⁴⁶ ‘The Red Card’ (documentary film), 2006, Time codes 00:23:59:05 to 00:24:02:09 and 00:41:03:01 to 00:42:53:10, Dialogue and Spotting lists available at <http://www.smediaint.com/documentary/d16.html> 00:23:59:0

⁴⁷ *Iran* newspaper, 16 June 2004 [27.03.1383], *Nameh-e Shahla Jahed be feraksion-e zanan* (‘Shahla Jahed’s letter to women’s fraction’).

Note 4: Evidence of murder in Iran's *Qisas* laws

Article 231 of the *Qisas* section of the Islamic Criminal Code (1996/99) provides four mutually exclusive ways of proving 'intentional homicide':

1- Confession, 2- Testimony, 3- Oath [*qisameh*], and 4- Judge's knowledge [*elm qazi*].

Published case-law, media reports of murder cases and the admission of the authorities themselves confirm that 'confession' is the most commonly used proof in murder cases in Iran. When a confession becomes problematic, for example because the defendant repudiates the confession or when there are discrepancies with physical evidence, judges will still rely on a confession, or use it as a basis for 'judge's knowledge.' A considerable number of 'oath' cases have been reported by the media too.

Article 232 provides that **confession** of intentional homicide, even if made only once before the ruling judge is sufficient to prove intentional homicide. There are no provisions in Iranian law to qualify a confession other than that the person making the confession should be 'of sound mind, mature, exercising their free will with intent' as opposed to being 'a lunatic, a drunkard, a child, mentally disabled, or lacking intent, such as a person who is absent-minded, a joker, or a sleeping or unconscious person' [Article 233]. Determination of these qualifications is left to the discretion of the ruling judge.

Article 237 stipulates that intentional homicide is proven also exclusively by the **testimony** of two males. Women's testimony, even that of a large number of women, is not accepted in intentional homicide. For the two other types of unlawful killing ('quasi-intentional homicide' and 'mistaken homicide'), the testimony of a single woman is not accepted on its own, though the testimony of two or more women are accepted if accompanied by the testimony of at least one man.

Articles 239-256 of the Islamic Criminal Code provide that **oath** is accepted when legal evidence is lacking but when there is a strong suspicion based on some incriminating indications [*lowth*]. In that case the victim's family is first asked to have fifty of their male agnatic relatives to 'take an oath' that the suspect is guilty of intentional homicide without having witnessed or having any direct knowledge of the murder.

The only conditions that are stipulated for **judge's knowledge** are that it should be obtained through 'customary methods' [*motearef*] and that 'the grounds for it should be stated' [Article 105]. 'Customary methods,' as explained by judicial authorities, are 'ways in which people regularly obtain knowledge' as opposed to, for example, 'soothsaying' or 'dreaming.'

Note 5: The definition of intentional homicide in Iran's *Qisas* laws and its mandatory death sentence

The Islamic Criminal Code of Iran (1996/99) divides crimes into four categories, *hoddud* (punishment prescribed in religious law), *qisas* (retribution), *diyyat* (money paid in lieu of criminal damages), and *ta'zirat* (disciplinary punishments). Of the three types of murder recognized in the Code, i.e. intentional [*amd*], quasi-intentional [*shibh-e amd*], and mistaken [*khata*] homicide, the last two are defined in the *diyyat* section and 'intentional homicide' is defined in the *qisas* section as follows:

a) where the murderer intends to kill a specific person or non-specific persons within a group by perpetrating an act which results in death regardless of whether the act is fatal by its nature or not; **b)** where the murderer intentionally perpetrates an act which is fatal by its nature, even if he did not intend to kill the person; **c)** where the murderer does not intend to kill and the act perpetrated by him is not generally fatal by its nature, but fatal by its nature for the victim due to their vulnerability by sickness, old age, weakness, or infancy, etc., and the murderer is aware of that. [Article 206 of the Islamic Criminal Code (1996/99)]

'Intentional homicide' is thus defined in such broad terms that even if significant elements such as premeditation and deliberate intention to kill are missing, the murder can still be easily categorized as 'intentional.' Published cases and numerous media reports of murder incidents show that the mere use of a deadly weapon such as a knife or a blow to the head is usually considered sufficient to call a murder 'intentional.'

Under the *qisas* laws of the Iran, any person who is found guilty of 'intentional homicide' is also mandatorily and indiscriminately sentenced to death. The law does not allow for any discretion on the part of the judge to evaluate possible mitigating circumstances and reduce the sentence. [Article 205 and 207] The ten exceptions stipulated in the Islamic Criminal Code which exempt perpetrators from prosecution or reduce their sentence to monetary compensation (*diyyeh*) do not satisfy international standards in this respect. In fact many exceptions are, quite contrary to international standards, applicable to pre-defined groups (such as fathers who kill their children, (Muslims who kill non-Muslims, husbands who kill adulterous wives etc). Others are rarely applicable due to their narrow interpretation under *fiqh* [Islamic jurisprudence]. For example, 'insanity' [Articles 51 and 221] is only a mitigating circumstance for people who are insane in the most permanent and florid sense of the word. 'Legitimate self-defense' [Articles 61 and 629] is rarely applied too, particularly in cases of women protecting themselves from sexual assault.

‘Judge’s knowledge’ included, for example, the allegations of a local butcher that when he visited Ms. Jahed to deliver meat, she would express to him ‘her hatred and extreme jealousy of the deceased.’ Two of Mr. Mohammadkhani’s friends alleged that Ms. Jahed had previously expressed to them the desire ‘to grab Laleh by her hair, throw her to the ground and tear her into pieces.’ An allegation by Mr. Mohammadkhani made during his second forty-day detention was that ‘in the past, Ms. Jahed had secretly hidden herself in [Laleh and Nasser’s] home and then later on described details of Nasser’s actions claiming that she had seen them in her dreams.’

There are also allegations relied on in the verdict that are neither related to the actual murder nor even have identified sources. For example, it is noted that at an unknown date ‘information was received via telephone’ from an unknown person from ‘the Melat Bank in Shariati Street’ that on 9 October 2002 [17.07.1381] a woman by the name of Khadijeh Jahed (Shahla) had at an unspecified date cashed a one million Tuman check from Mr. Nasser Mohammadkhani’s account in a ‘disturbed and nervous’ manner. An allegation that ‘when Mrs. Saharkhizan returned from a trip she would find objects like a hair pin or comb and would ask Mrs. Iran, their maid, about them and she too could not recognize them either, which indicates that those objects too were left in Laleh’s home by Ms. Khadijeh Jahed in order to disturb her married life with Nasser.’⁴⁸

‘Judge’s knowledge’ also included that Ms. Jahed’s appointment notebook was supposedly evidence of murder because in it she had referred to Mrs. Laleh Saharkhisan as ‘the enemy’ or ‘the old woman’ or ‘the idiot’ and had for example, written that ‘the enemy and her sons have gone to a particular place on a particular time’ and because ‘some initial words in the entry for the day of murder have been crossed out.’

Most notably, however, is what the ‘judge’s knowledge’ did not include - that is, forensic evidence and expert crime scene analysis. There is no forensic medical evidence whatsoever as to the time of death, the manner that the victim was struck, the sequence of stab wounds or the type of weapon used. Nor any of the forensic or crime scene evidence that was revealed later on to have been existed in the file and indicated that the crime was perpetrated with sexual defilement [see below]. The only expert information noted in the verdict is the coroner’s description of the thirty-seven stab wounds on the victim’s body, given verbatim. Yet the verdict does not even attempt to explain the inconsistencies and omissions between these wounds and Ms Jahed’s story or her so-called scene re-enactment [see below].

⁴⁸ Khadijeh (Shahla) Jahed’s 17 June 2004 verdict printed in ‘The Red Card’ (above note 1, appendix, pp 218 and 226).

The verdict notes in its conclusion that Ms. Jahed's confession was 'clear and plausible' since it contained 'all the details' and also that 'in the re-enactment of the murder scene the defendant herself described all the acts that she has performed during the murder.'

However, clearly exculpatory evidence, also mentioned in the text of the verdict, is arbitrarily dismissed. For example, Ms. Jahed had stated in her 'detailed' confession that she first struck the deceased on the head with a wooden object before fatally stabbing her three times in the neck and abdomen. The autopsy report mentions no blows to the head but also states that the deceased was stabbed thirty-seven times. Ms. Jahed had mentioned in her false confession, apparently from her previous knowledge of the place, that a 'blood spot' was transferred to the mattress in the victim's bedroom during the murder, an 'important detail' that was previously 'unknown even to police investigators and the judge,' that blood spot was never tested for its source or age.

In addition to capital murder, Ms. Jahed was also convicted of 'theft of a Rolex wrist watch, one women's ring, and one golden ankle chain' as well as 'the purchase of 100 grams of opium.' For these crimes she was sentenced to 'three years' imprisonment, seventy-four lashes,' and 'seventy-four lashes and a five million Rial fine' respectively. She was acquitted of 'conducting an illicit relationship and fornication', the charge for which she was denied bail for the first eleven months of her detention, on the grounds that 'during investigations the defendant claimed that temporary marriage religious vows had been made.' An abortion charge had also been made when Ms. Jahed stated at the trial that she has had a pregnancy terminated. She was acquitted of this charge since 'regardless of the credibility of the claim, under present legislation there are no punishments provided for the mother in such a case and because there was no claim for blood-money.'

As expected Mr. Mohammadkhani was acquitted on the charge of accessory to murder since 'there were no legal or Shari'a-based grounds in the file to prove the charge against him, and the accused has at all stages of the investigation denied knowledge of the murder of his wife by Ms. Jahed. Ms. Jahed in her confessions has also declared that Nasser neither knew nor had any role in the murder, and that until her confession on 4 October 2003 [12.07.1382] he was not aware that she had committed the murder.'⁴⁹

4.10 Post-trial appeals

Following the verdict, Ms. Jahed's lawyers lodged an application with the Provincial Appeal Court, protesting against Mr. Jafarzadeh's misconduct for publicly prejudicing the case before

⁴⁹ Khadijeh (Shahla) Jahed's 17 June 2004 verdict printed in 'The Red Card' (above note 1, appendix, p 226).

the trial, and they requested a re-trial. The 9th Chamber of the Appeals Court reportedly declared the objection ‘legally baseless’ because ‘the judge of the case has repudiated all statements attributed to him in the press.’⁵⁰

On 6 July 2004 [16.04.1383], Ms. Jahed’s lawyers appealed against her death sentence to the Supreme Court, the appeal body for all death sentences including *qisas-e-nafs*.⁵¹ [see **Note 6**]

On 28 December 2004 [08.10.1393] the 26th Chamber of the Supreme Court, with Judge Razizadeh presiding, confirmed Ms. Jahed’s conviction for ‘intentional homicide’ and her mandatory *qisas-e-nafs* death sentence.⁵² It was also reported that the Supreme Court’s grounds for confirmation of the verdict was that ‘this woman’s repudiations of her confession were also full of clear contradictions’ which shows that ‘her repudiations were false too.’⁵³

In January 2005, several daily newspapers reported that when Ms. Jahed’s file was transferred back to Chamber 1514 to be submitted to the Unit for Enforcement of Judgments, Mr. Jafarzadeh’s substitute, a judge by the name of Elahizadeh, had on his own initiative reviewed the file and found as many as ‘twenty errors and omissions’ in the investigation that proved Ms. Jahed’s innocence.⁵⁴ He subsequently wrote a letter to the Judiciary Head, the General State Prosecutor, and the Head of the Supreme Court to this effect. This letter was not published. However daily newspapers and a one-minute interview with Elahizadeh featured in the 2006 documentary ‘The Red Card’ provided the following excerpts:⁵⁵

1. Disregarding a wet towel found in the bathroom during crime scene inspection which indicated that the murderer might have showered,

⁵⁰ *Iran* newspaper, 24 July 2004 [03.05.1383], *Eteraz-e vakil-e Shahla pazirofteh nashod* (‘Shahla’s lawyer’s objection dismissed’).

⁵¹ *Iran* newspaper, 7 July 2004 [17.04.1383], *Eteraz-e qanuniye Shahla be ray-e dadgah* (‘Shahla’s legal appeal of the court verdict’).

⁵² *Iran* newspaper, 29 December 2004 [09.10.1383], *Hokm-e idam-e Shahla Jahed tay’id shod* (‘Shahla Jahed’s verdict confirmed’).

⁵³ *Iran* newspaper, 30 December 2004 [10.10.1383], *Joz’iyat-e ta’yid-e hokm-e idam-e Shahla* (‘Details of Shahla’s verdict confirmation’).

⁵⁴ *Etemaad* newspaper, 13 January 2005 [22.10.1383], *20 mored ibham dar parvande qatl-e hamsar-e Nasser Mohammadkhani* [‘Twenty ambiguities found in the murder case of Mohammadkhani’s spouse’].

⁵⁵ above note 50; *Iran* newspaper, 20 January 2005 [01.11.1383], *Namehyi mahramaneh ama alani* (‘A confidential but public letter’); *Hamvatan Salam* newspaper, 22 Jan. 2005 [01.11.1383], *Parvande-e Shahla bar-e digar ruye miz-e mohakeme* (‘Shahla’s case up for retrial’); and ‘The Red Card’ (documentary film), 2006, Time code 01:07:35:13 to 01:08:47:13, Dialogue and Spotting lists available at <http://www.smediaint.com/documentary/d16.html> (English translation from the original Farsi dialogue).

2. Lack of or inadequate investigation in regard to the coroner's report that a semen swab collected from the victim's vagina was positive which indicated that the crime might have been committed with sexual defilement (*hatk-e namus*) and would rule out the possibility that the murderer was female,
3. Disregarding the cigarette butt found near the window facing the street indicating the presence of an accomplice who kept watch,
4. Disregarding testimony of witnesses who stated that on the day of the incident a Mercedes Benz was roaming the streets around the victim's house,
5. As the defendant is right-handed most of the blows should have been inflicted on the victim's left side, whereas most have been inflicted on the right side, that is out of a total of 37 blows only thirteen has been inflicted on her left side,
6. Disregarding the inconsistency between the cuts on the victim's fingers which indicated that she must have struggled with the murderer and lack of any injuries on the defendant's body, whereas another suspect who was arrested in the earlier days following the incident and who had injuries on his hands estimated by the coroner to have been sustained close to the time of murder, was not investigated,
7. Lack of or inadequate investigation of one other suspect who when arrested had two paper notes with blood stains in his pocket,
8. Lack of or inadequate investigation of four other male suspects who were named by the victim's husband and younger child,
9. Disregarding the inconsistency between the murder instrument described by the defendant in her confession and the actual blows inflicted on the victim's body,
10. Admitting the defendant's confessions despite being obtained illegally a year after her detention.

In the conclusion of his interview in the 2006 documentary 'The Red Card', Judge Elahizadeh insisted that 'all of the above negates the possibility that a woman committed this murder.'⁵⁶

On 21 January 2005 [30.10.1383], Mr. Khorramshahi, the lawyer who continued representing Ms. Jahed post-appeal, filed an annulment petition on her behalf with the Discernment Chambers of the Supreme Court [*Sho'ab-e Tashkhis-e Divan-e Ali-ye Keshvar*] as provided by article 18-2

⁵⁶ 'The Red Card' (documentary film), 2006, Time code 01:07:44:06 to 01:08:47:13, Dialogue and Spotting lists available at <http://www.smediaint.com/documentary/d16.html>.

of the 2002 Revised Law for the Establishment of General and the Revolutionary Courts.⁵⁷ [see **Note 7**]

On 17 February 2005 [29.11.1383], it was reported that the Office of the Judiciary Head had dismissed Judge Elahizadeh's findings concerning Ms. Jahed's flawed investigation and wrongful conviction and stated that they considered his intervention 'unwarranted.'⁵⁸

Eight months later, on 24 October 2005 [02.08.1384], the five-judge bench of the 15th Chamber of the Discernment Chambers of the Supreme Court with Judge Shabiri presiding confirmed Ms. Jahed's *qisas-e-nafs* sentence. Her case was subsequently sent to the Unit for Enforcement of Judgments and subsequently to the Judiciary Head's Office for his final official permission to carry out the death sentence.⁵⁹

Five days later, on 29 October 2005 [07.08.1384], Ms. Jahed's lawyer reportedly wrote to the Judiciary Head, Ayatollah Seyyed Mahmoud Hashemi Shahroudi, requesting a stay of execution and a further review of his client's case by his Office.⁶⁰

Note 6: The Supreme Court: the appeal body for all *Qisas* crimes

In Iran's criminal justice system, the appeal body for *qisas* crimes [crimes against life (*nafs*) and crimes against the body (*ozv*)] is the Supreme Court. The defendant or the plaintiff can appeal a decision within 20 days of the verdict being passed. The Supreme Court's review is confined to points of law and there is no hearing unless the reviewing Chamber requires the parties and/or their lawyers' presence. Errors which can lawfully be reviewed include 'the judge's failure to consider the defense, reliance on inauthentic documents, on disqualified witnesses or false testimony, the verdict's inconformity with the law, judge's or the court's lack of jurisdiction.' The Supreme Court's review will result in the confirmation or revocation of the verdict. Revocation entails one of the following three consequences [Articles 233, 236, 240, 264 and 265 of the Criminal Procedure Code (1999)]:

⁵⁷ *Hamvatan Salam* newspaper, 22 Jan. 2005 [01.11.1383], *Parvandehe Shahla bar-e digar ruye miz-e mohakemeh* ('Shahla's case up for retrial').

⁵⁸ *Iran* newspaper, 17 February 2005 [29.11.1383], *Rayis-e qoveh-e qaza'iyeh nameh-e bigonahi Shahla ra napaziruft* ('Judiciary Head rejects Shahla's innocence letter').

⁵⁹ *Iran* newspaper, 26 October 2004 [04.08.1383], *Hokm-e idam-e Shahla ta'yid shod* ('Shahla's death sentence confirmed').

⁶⁰ ISNA News Agency, 29 October 2005 [07.08.1384], *Vakil modafe Shahla Jahed az rayis-e qoveh-e qaza'iyeh khast ke parvandehe movakelash mojadadan baresi shavad* ('Shahla Jahed's lawyer demand another review of her client's file from Judiciary Head Sentence').

- a) acquittal of the defendant
- b) submission of the case to a different lower court chamber for retrial
- c) reversion of the case back to the lower court which issued the verdict for further investigation and elimination of specified deficiencies.

Note 7: *Shari'a* based annulment bodies

According to Clause 2 of Article 18 of the 2002 Revised Law for the Establishment of General and the Revolutionary Courts, the convicted person or the prosecutor can, within a month of a final judgment, lodge an 'annulment request' with the newly established appellate body called the Discernment Chambers of the Supreme Court [*Sho'ab-e Tashkhis-e Divan-e Ali-ye Kishvar*], sitting as benches of five Supreme Court judges. This body can annul a judgment if it finds it 'clearly unlawful.' According to clause 1 of this article 'clearly unlawful' means 'against the certainties of the law or, in case of the law's silence on the matter, against the certainties of *fiqh* [Islamic jurisprudence comprising of the legal rulings of high-ranking Muslim scholars derived from the *Shari'a*].

In theory, this body can not only annul a judgment but also issue its own judgment. However, in the four years that the *Sho'ab-e Tashkhis* have been in operation, all cases reported as annulled by this body were referred to lower courts for retrial.

Clause 2 of Article 18 further adds: The decisions of *Sho'ab-e Tashkhis* are final and not open to appeal unless the Judiciary Head at any time or in any way finds the judgment to be clearly against the *Shari'a* [sacred laws and ways of life prescribed by *Allah*, primary source for which is the *Koran* regarded as the spoken word of *Allah*, and the *Sunna* which refers to the words and actions of the Prophet and in Shi'a Islam also the Imams] in which case he will refer the case to the appropriate authority.

In February 2007 [11.1385], however, Article 18 of the 2002 Revised Law for the Establishment of General and the Revolutionary Courts was again revised to abolish the *Shoab Tashkhis*, limit the grounds for annulment to clear contravention of the *Shari'a*, and this can only occur on the basis of a final ruling of the Judiciary Head. *Sho'ab-e Tashkis* will reportedly be completely abolished when their back-log of past cases is cleared.

On 1 May 2006 [11.02.1384], it was reported that the Judiciary Head had granted Ms. Jahed's lawyer's request and once again referred her case back to the Discernment Chambers of the

Supreme Court.⁶¹ On 11 September 2006 [20.06.1385] it was reported that the 7th Chamber of the Discernment Chambers of the Supreme Court had again confirmed Ms. Jahed's 'intentional homicide' conviction and her death sentence.⁶²

Ms. Jahed's lawyer again petitioned the Judiciary Head for a stay of execution and a further review and on 22 November 2006 [01.09.1385] the Judiciary Head again referred the case back to the Discernment Chambers of the Supreme Court.⁶³ On 6 July 2007 [15.04.1386] it was reported that the 3rd Chamber of the Discernment Chambers of the Supreme Court once again confirmed Ms. Jahed's 'intentional homicide' conviction and her death sentence.⁶⁴

4.11 No hope for pardon

As Iranian law does not permit commutation of sentence or clemency by the state in the case of *qisas* death row prisoners, only a pardon by the victim's family could save Ms. Jahed. [see **Note 9**] The family in this case is the victim's parents, and her two sons, minors represented by their legal guardian, their father Mr. Mohammadkhani. The deceased's father has repeatedly confirmed to the press that he and his family insist on Ms. Jahed's execution.⁶⁵ In July 2007, it was also reported that he had hired a new lawyer to pursue and ensure that Ms. Jahed's death sentence is implemented.⁶⁶

On 21 January 2008, Ms. Jahed's lawyer told the press that he has unconfirmed information that the office of the Judiciary Head has officially endorsed Ms. Jahed's death sentence and that her

⁶¹ Iran newspaper, May 2006 [11.02.1385], *Parvande-e Shahla baraye dovumin bar dar divane ali kishvar* ('Shahla's case in Supreme Court for a second time').

⁶² ISNA News Agency, 11 September 2006 [20.06.1385], *Hokm-e nahayi parvande-e Shahla Jahed emza va ensha shod* ('Final verdict in Shahla Jahed's case issued and signed').

⁶³ Iran newspaper, 22 November 2006 [01.09.1385], *Dar yek eqdam-e bi-sabeqeh parvande Shahla baraye sevomin bar be hay'at-e tashkhis-e divan raft* ('In an unprecedented decision, Shahla's case sent to Discernment Branch of Supreme Court for a third time').

⁶⁴ *Etemaad* newspaper, 7 July 2007 [16.04.1386], *Hokm-e qisa-e Shahla baraye sevomin bar ta'yid shod* ('Shahla's *qisas* sentence confirmed for the third time').

⁶⁵ *Etemaad* newspaper, 8 July 2007 [17.04.1386], *Gofteguye telefuni ba Shahla Jahed: 'Dar parvande-e man razi hast'* ('Phone interview with Shahla Jahed: 'There is a mystery in my case file'); *Etemaad* newspaper, 7 July 2007 [16.04.1386], *Hokm-e qisa-e Shahla baraye sevomin bar ta'yid shod* ('Shahla's *qisas* sentence confirmed for the third time').

⁶⁶ *Etemad Meli* newspaper, 6 July 2007 [15.04.1386], *Vakil modafe parvande: 'baraye panjomin bar be hokm-e Shahla eteraz mikonam* ('Defense lawyer says 'I will object to Shahla's verdict for the fifth time').

file has been forwarded to the Unit for Enforcement of Sentences.⁶⁷ Based on past experience, Ms. Jahed could be executed at any time at extremely short notice or with no notice at all. [see **Note 10**]

Note 8: Role of the Judiciary Head in *Qisas* death sentences

The 1996/99 Islamic Criminal Code of Iran stipulates that before an execution is carried out, all *qisas* sentences must be officially endorsed by the Supreme Leader [Article 205, 212 and 219] but that the Supreme Leader can delegate this task to the Judiciary Head [Article 205]. Consequently, all *qisas* sentences are sent to the Judiciary Head's Office before implementation. It is at this stage that, if the condemned person has filed their annulment petition with this Office too, his or her case might be reviewed more seriously and annulled if it is found to be 'clearly against *Shari'a*.'

In recent years, Ayatollah Shahroudi, the Judiciary Head has stayed the death warrants of a number of death row prisoners, but in recent months several men and women on death row have been executed despite Mr. Shahroudi's interventions to stay their execution.

Jafar Kiani (m), who was sentenced to death for 'adultery' 11 years ago, was executed by stoning on 5 July 2007, despite a stay of execution ordered by Mr. Sharoudi twenty-four hours earlier. [Human Rights Watch, 11 July 2007, *Iran: Prevent stoning of condemned mother.*]

Fakhteh Samadi (f), 24 years old, who was sentenced to death for 'intentional homicide' of her employer in 2001, was executed on 18 October 2007 [26.07.1386] without official notice to her lawyer and while her lawyer's petition to Mr. Shahrudi was still under consideration. [*Etemad Meli*, 20 October 2007 [28.07.1386], Fakhteh's lawyer says he has not seen the official document ordering the suspension of the sentence, *vakil-e fakhteh: sanad maktub-e taviq hokm ra nadideham*]

Makvan Moludzadeh (m), 20-years-old, who was sentenced to death for allegedly raping a boy seven years earlier, was executed by hanging on 6 December 2007 [15.09.1386] without notice to his lawyer or family and despite his sentence being officially revoked by Mr. Shahroudi's Office. [*Etemad Meli*, 14 November 2007 [23.08.86], 20 year old youth's death sentence stopped by Judiciary Head, *az suye riyasat qoveh qazayieh hokm idam javan 20 saleh motefaqef shod*, DEUTSCHE WELLE, 6 December 2007, *Makvan's Attorney says Mahvan's execution against present laws of Iran*, *vakile makvan molidzadeh: idam makvan bar khalafe qavann jari iran surat gereft*, www.dw-world.de/dw/article/0,2144,2992086,00.html]

⁶⁷ *Khabar Varzeshi* newspaper [Sport News], 21 Jan. 2008 [1.11.1386], <http://www.khabars.net/detail.aspx?cid=144422>

Note 9: Qisas sentences are uncommutable and unpardonable by the state

Under Islamic criminal law of Iran, *qisas* sentences are considered rights of humankind so that once they are confirmed, the decision to inflict or mitigate *qisas* penalties can only rest with the heirs of the victim and not the state. Heirs can forgo their right to *qisas* and instead request *diyyeh* (blood-money) or merely pardon the convicted person without monetary compensation. [Article 219 and 257 of the Islamic Criminal Code (1996/99)]. Regardless of what the circumstances are, the state can neither pardon nor commute that sentence, nor grant clemency.

Note 10: The law on implementation of death sentences in Iran

The *Implementation Code for Qisas Sentences, Stoning, Crucifixion, Execution, and Flogging*, the law on the implementation of death sentences, issued in November 2003 [09/1383], requires only a 48-hour minimum notification of a death warrant [article 7], which is provided only to the prisoner's lawyer, and not the prisoner or his or her family [article 7-h]. Private visitation with family before execution is prohibited [article 9] and supervised visitation is refused if it 'delays the carrying out of the execution' [article 8]. Food and water can also be refused on the same grounds [article 12]. The prisoner's testamentary will is subject to censorship by the prison authorities before being passed on to the heirs [article 10-3]. The presence of the victim's heirs is compulsory for the carrying out of the execution [article 7-g], and they are even permitted to carry out the execution themselves [article 15]. Yet, in April 2007, twenty-year-old Mohammad Mousawi was secretly executed in Shiraz for the accidental killing of a man when he was sixteen without notice to his lawyer or parents. His parents and subsequently his lawyer discovered that he had been executed when a cell-mate telephoned his parents to come to Shiraz's Adel-abad prison, where the only explanation the prison authorities gave them for failing to notify them was: 'we did not tell you because we knew you would become too upset at the execution ceremony.' [*Etemaad Melli* newspaper, 8 June 2007 [18.03.1386], *Youngster who committed murder when 16 was hanged in Shiraz without saying good-bye to mother*, [nojavani ke dar 16 salegy mortakeb qatl shodeh bud dar shiraz idam shod, o ta abad sheshm be rah didan madar mand]

5. Statement of claims

UN human rights bodies have outlined relevant international human rights standards for implementation in countries like Iran which have not abolished the death penalty. These standards include the obligation not to impose the death penalty for offences committed by persons under below 18 years of age, not to impose the death penalty for any but the most serious crimes, to ensure that due process safeguards are applied to the highest standard in all death penalty legal proceedings, to provide an effective remedy to persons who are wrongfully sentenced to the death or have received the death penalty following an unfair trial, and to establish a moratorium on executions, with a view to abolishing the death penalty completely.

The UN International Covenant on Civil and Political Rights (ICCPR) adopted by the UN General Assembly in December 1966 is one of the international treaties that sets forth non-derogable safeguards and restrictions on death penalty, including Article 6 (restrictions on imposition of death penalty and the right to seek clemency), Article 7 (prohibition of torture and inhuman treatment), Article 9 (prohibition of arbitrary arrest and detention), Article 14 (minimum guarantees required for a fair trial), and Article 26 (the right to nondiscrimination).

Iran became a party to the ICCPR on 24 June 1975. As a party, the Iranian state has undertaken an obligation to ensure that its death penalty laws are in conformity with rights safeguarded in the ICCPR and that all defendants facing execution receive a trial that conforms to the highest standards of fairness required by this treaty. In regard to capital punishment cases, the UN Human Rights Committee has expressed that it *should not* be imposed in circumstances where there have been violations by the State Party of *any* of its obligations under the ICCPR.

In the instant case, Ms. Jahed's death sentence is not only in clear violation of the ICCPR but the criminal proceedings against her have also been marked by numerous violations of ICCPR from the moment of arrest and throughout the pre-trial, trial, and post-trial stages.

5.1. The 'intentional homicide' conviction and the Qisas death sentence, violations of ICCPR articles 6, 7 and 26

Ms. Jahed was charged and convicted of 'intentional homicide' and received a mandatory death sentence with no possibility of state pardon or commutation of her sentence, due to the stringencies of Iran's *qisas* murder laws. The *qisas* murder laws inherently conflict with international standards required of states which impose the death penalty for murder.

With respect to countries which have not abolished the death penalty, **Article 6 (2)** of the ICCPR states that 'sentence of death may be imposed only for *the most serious crimes*' and for countries

which impose the death penalty for intentional homicide, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions considers that the term intentional ‘should be equated to *premeditation* and should be understood as *deliberate intention to kill*.’⁶⁸ Furthermore, the defendants' guilt must be proven *beyond reasonable doubt*, in strict application of the *highest standards for the gathering and assessment of evidence*, and *after taking into account of all mitigating factors*.⁶⁹ In addition, paragraph 4 of the UN Death Penalty Safeguards states that death penalty may be imposed only when the guilt of the accused person ‘is based upon clear and convincing evidence *leaving no room for an alternative explanation of the facts*.’ [all emphasis added]

The first and foremost conflict between Iran’s *qisas* murder laws and international standards is the definition of intentional homicide. In the *qisas* laws of Iran, ‘Intentional homicide’ is defined in such dangerously broad terms that even if such crucial elements as premeditation and deliberate intention to kill are missing the murder can still be categorized as ‘intentional.’ [see **Note 5**] As evidenced in Ms. Jahed’s case, the mere use of a ‘deadly weapon,’ in her case a knife, was considered sufficient to call the murder indisputably ‘intentional.’ Whether the victim was killed with premeditation or not was irrelevant to intentionality.

The second conflict is the standard of proof used to secure ‘intentional homicide’ convictions. The four ways of proof stipulated in the *qisas* laws of Iran [see **Note 4**], individually or even in concert, do not meet the international standard that guilt must be proven *beyond reasonable doubt*. In Ms. Jahed’s case, her guilt was supposedly proven by her ‘confession,’ by various hearsay allegations not directly related to the actual murder and by the judge’s personal antipathy to her personality, beliefs and lifestyle. Her confession was obtained under compulsion after nearly year of arbitrary detention. Her lawyer was not present when she confessed. Her confession was implausible, could not be corroborated, and contradicted physical evidence. It should never have been admitted as evidence. All the allegations that constituted the ‘judge’s knowledge’ were mostly received out of court without any opportunity for the defense to examine and test them. They were, moreover, for the most part unrelated to the actual murder. The allegation which made up the ‘judge’s knowledge’ did not even amount to valid proof that Ms. Jahed wished any harm to the victim, much less proof beyond reasonable doubt that she had murdered her brutally and premeditatedly.

⁶⁸ Report of the Special Rapporteur on extra-judicial, summary or arbitrary executions on his mission to the USA, UN Doc. E/CN.4/1998/68/Add.3, 22 Jan. 1998, p. 7.

⁶⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/51/457, 7 Oct. 1996, at par. 111.

From the moment of Ms. Jahed's arrest and throughout the criminal proceedings, the judge, charged by law with upholding Iran's Islamic morality laws, impugned Ms. Jahed's personal beliefs, lifestyle and moral character as un-Islamic and sinful. While he repeatedly condemned her relationship with the deceased's husband, Mr. Mohammadkhani, his approach with regard to Mr. Mohammadkhani was very different. He never even considered him a direct or indirect suspect and never genuinely investigated him. On the contrary, he only detained and pressured him to collaborate in incriminating Ms. Jahed by any means possible.

In the absence of proper criteria for proof of murder in Iran's criminal system, and given the judges' total discretion to determine the validity of confessions and to choose whatever they wish as their evidential 'knowledge' [see **Note 4**], it seems likely that Ms. Jahed was condemned morally and her fate sealed from the moment that her secret affair with the deceased's husband was revealed, in violation of Article 26 of the ICCPR which guarantees the right to non-discrimination.

Furthermore **Article 6 (1)** of the ICCPR states that no one shall be arbitrarily deprived of his life. The UN Human Rights Committee has repeatedly stated that a system of mandatory capital punishment would deprive the condemned person of the most fundamental of rights, the right to life, without considering whether this exceptional form of punishment is appropriate *in the circumstances of his or her case*.⁷⁰ In his latest January 2007 annual reports to the Human Rights Council, Philip Alston, the United Nations' Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, emphasized that 'in death penalty cases, individualized sentencing by the judiciary is required to *prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life*,' pursuant to Articles 7 and 6 (1) of the ICCPR. [all emphasis added.]

Yet, under the *qisas* laws of Iran any person found guilty of 'intentional homicide' is mandatorily and indiscriminately sentenced to death in violation of Articles 6 (1) and 7 of the ICCPR. The law does not allow for any discretion on the part of the judge to evaluate possible mitigating circumstances and reduce the sentence appropriately. In the instant case, once Ms. Jahed was found guilty of 'intentional homicide,' she was automatically sentenced to death without any consideration of the particular circumstances of the case. [see **Note 5**]

Article 6 (4) of the ICCPR states that 'anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.' The UN Human Rights Committee has found any

⁷⁰ *Thompson v. Saint Vincent and the Grenadines* (806/1998), ICCPR, A/56/40 vol. II (18 Oct. 2000) 93 at para. 8.2.

preponderant role of the victim's family in deciding whether or not the penalty is carried out on the basis of financial compensation ('blood money') to be contrary to the ICCPR.⁷¹

The Iranian state denies that it has any rights or interest with respect to persons condemned to the *qisas* death sentence in violation of Article 6 (4) of the ICCPR. That prerogative belongs to the family of the victim who may choose to forgo the *qisas* death penalty gratuitously or for monetary compensation. [see **Note 9**] Obviously, when the *qisas* of a condemned person is put in the hands of the victim's family, the party who is richer is at an advantage. A rich murderer has more chances of receiving pardon from a poor victim's family because the latter is more likely to be in need of money. Conversely, when the victim's family is rich and not in need of financial compensation, they may become more inclined to refuse pardon. In Ms. Jahed's case, the victim's parents and two minor sons (represented by their father) are known to be well off and have publicly affirmed their unanimous intention for her death penalty to be carried out since the June 2004 verdict.

By empowering the victim's heirs exclusively to implement or pardon a *qisas* death sentence, Iranian authorities also have been subjecting Ms. Jahed and her family to torture in violation of Article 7 of the ICCPR. If holding a gun against someone's head in an interrogation room is torture, then permitting a victim's heirs to tantalize a prisoner for years with their power either to have her hanged at any time or to pardon her just as the noose is tied around her neck must constitute a form of torture. The cruelty of implementing a death sentence is increased in Iran because of the very short notice - no more than 48-hours and in practice, very often no notice at all. [see **Note 10**]

5.2. Arrest and pre-trial detention, violations of ICCPR article 9

Article 9 (1) of the ICCPR states that 'no one shall be subjected to arbitrary arrest or detention.' The UN Human Rights Committee has explained that the term 'arbitrary' in Article 9 (1) is not only to be equated with detention which is 'against the law,' but is to be interpreted more broadly to 'include elements of inappropriateness, injustice and lack of predictability and due process of law.' This, according to the Committee, means that remand in custody must not only be lawful but 'reasonable' and 'necessary' in all circumstances, for example, to prevent flight, interference

⁷¹ Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, *Yemen*, ICCPR, A/57/40 vol. I (2002) 73 at para. 83 (15).

with evidence or the recurrence of crime.⁷² Suspicion that a person has committed a crime is *not* sufficient to justify detention pending investigation and indictment.⁷³

It should be noted at the outset that even the letter of Iran's national laws on arrest, detention without charge, and detention on remand, in particular for murder suspects, do not meet the standard of 'lawfulness' set by the ICCPR. Contrary to Article 9 (1) of the ICCPR, the law in Iran allows arrest of persons on mere suspicion and legally sanctions their detention for six days without charge for the sole purpose of interrogation. [see **Note 2**] Given the extremely unsatisfactory standard of proof for murder, the law also sanctions charging of suspects with capital murder without reasonable cause and on evidence that is by international standards clearly inadmissible, for example, a single uncorroborated, improperly obtained and even retracted confession of the suspect. Once a suspect is charged with intentional homicide, the law also sanctions his or her mandatory pre-trial detention without any form of recourse to challenge the lawfulness of the detention. [see **Note 2**]

In Ms. Jahed's case, when the investigator/prosecutor/judge was informed that she was having a four-year-long secret affair with the deceased's husband, he instantly detained her for interrogation without the right to contact or have a lawyer present. Iranian law permitted the judge to extend her detention for a full six days without charge. [see **Note 2**]

Article 9 (2) of the ICCPR provides that 'anyone who is arrested shall be *promptly* informed of any charges against him.' **Article 9 (3)** of the ICCPR provides: 'It *shall not be the general rule* that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.' Furthermore, the Human Rights Committee in General Comments 8, par. 3 has stated that '[p]re-trial detention should be an *exception* and *as short as possible*.' The Committee has stated that pre-trial detention must not only be lawful but *must also be necessary and reasonable in the circumstances*. **Article 9 (4)** of the ICCPR provides that: 'Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.'

In Ms. Jahed's case, when the unacceptable six-day time limit on temporary detention of a murder suspect had expired without a confession, the investigator/prosecutor/judge extended her

⁷² Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, (Views adopted on 21 Jul. 1994), p. 12.

⁷³ Communication No. 305/1988, *Van Alphen v. the Netherlands*, (Views adopted on 23 Jul. 1990), Report of the HRC Vol II, (A/45/40), 1990, at 1151.

arbitrary detention indefinitely on a false charge of ‘fornication’ and a phony ‘bail order’ which he subsequently did not permit the family to post. The investigator/prosecutor/judge himself stated that it was the ‘special instructions’ that he received from the Judiciary Head that permitted him to take these unusual and clearly illegal steps.

Eleven months later, when Ms. Jahed was finally charged with ‘intentional homicide’ based on a false confession obtained under duress and torture, she was detained on remand mandatorily. As long as her charge remained ‘intentional homicide’ too, the law prevented her from challenging the lawfulness of her pre-trial detention, in violation of ICCPR Articles 9 (3) and (4). Less than a month later, when Ms. Jahed repudiated her confession too, the investigator/prosecutor/judge still refused to reconsider his order for her mandatory detention, as he continued to charge and indict her with capital murder. [see **Note 2**]

Nor was Ms. Jahed’s length of pre-trial detention reasonable. It took twenty months for her trial to take place. This delay had nothing to do with any meaningful or relevant investigation in the case. As the record shows, besides a general autopsy report of the deceased’s injuries, there was in fact hardly any investigation in the normally accepted sense of the word. The delay was occasioned by the length of time during which Ms Jahed refused to make a false confession. Yet, Ms. Jahed, denied access to legal advice and representation until a few months before her trial, was at no point able to challenge the lawfulness of her prolonged pre-trial detention, which violated Article 9 (3) of the ICCPR.

Article 9 (5) of the ICCPR provides that ‘anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.’

In Iran’s law many forms of unlawful arrest and detention are considered lawful, and even for the few forms of arbitrary detention that are considered unlawful, there are no provisions for awarding compensation to victims of such practices. The only remedy for ‘unlawful arrest, detention, prosecution and charge’ is the punishment of the responsible ‘judicial authorities’ by ‘permanent dismissal from judicial posts and a five-year bar from public office’ [Article 575 of the 1996/99 Islamic Criminal Code].

In fact, even this remedy was rendered ineffective during the period that prosecution was abrogated in the criminal system of Iran (the period in which the events of this case took place). As Iran’s own judicial authorities admit, an investigator/prosecutor/judge who had held a suspect for years in detention without proper justification would be highly unlikely to acquit that person at trial and thereby exposing himself to prosecution for unlawful detention. Because Ms. Jahed’s detention order was issued during the period when the criminal system of Iran lacked a discrete prosecution service, the investigator/prosecutor/judge who issued her bail order and then

arbitrarily held her in detention for eleven months simply by refusing her parents to post her bail enjoyed complete official impunity. The same investigator/prosecutor/judge who issued her mandatory detention order was the same official as the one who charged, indicted, tried and convicted her. Clearly, by issuing a guilty verdict for Ms. Jahed, Mr. Jafarzadeh also guaranteed his protection from any prosecution.

5.3. Investigation, trial and judgment, violation of ICCPR article 14

The UN Human Rights Committee has stated that in cases of capital punishment, State Parties have an *imperative duty to observe rigorously all the guarantees for a fair trial set out in article 14 of the ICCPR* and that this ‘obligation’ admits of ‘no exception.’⁷⁴ Paragraph 5 of the UN Death Penalty Safeguards states that the death penalty may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives *all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 [of the ICCPR]*.

Article 14 (1) of the ICCPR provides that ‘in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a *competent, independent and impartial tribunal* established by law.’

With regard to the concept of ‘**fair trial**’ in Article 14 (1) of the ICCPR, the Human Rights Committee has explained that it ‘must be interpreted as requiring a number of conditions, such as *equality of arms* and respect for the principle of adversary proceedings.’⁷⁵

As one of the essential elements of the concept of a fair trial in a democratic society, the right to a ‘**public trial**’ not only belongs to the parties, but also to the general public in order to ensure that the administration of justice is open to public scrutiny. Although Article 14 (1) includes some ‘exceptional circumstances’ where the press and the public may be excluded from all or part of hearings - for example for reasons of morals, public order (*ordre public*) or national security. The Human Rights Committee has stated that ‘a hearing must be open to the public *in general*, including members of the press, and must not, for instance, be limited only to a particular category of persons.’⁷⁶ Furthermore, the public status of a trial includes both the public nature of the hearings and the publicity of the judgment eventually rendered in a case. Judgments in trials - criminal or otherwise - must be made public except in certain narrowly defined circumstances.⁷⁷

⁷⁴ Communication No. 272/1988, *A. Thomas v. Jamaica* (Views adopted on 31 Mar. 1992), para. 13.

⁷⁵ Communication No. 289/1988, *D. Wolf v. Panama* (Views adopted on 26 Mar. 1992), par. 6.6.

⁷⁶ Human Rights Committee General Comment 13, par.6.

⁷⁷ Human Rights Committee General Comment 13, par. 4.

The ‘**impartiality**’ of the court implies that judges must not harbor preconceptions about the matter before them, and they must not act in ways that promote the interests of one of the parties.⁷⁸ In order to safeguard the rights of the accused under Article 14 (1), judges should have authority to consider any allegations made of violations of the rights of the accused during any stage of the prosecution.⁷⁹

In Iran, the independence of courts is compromised in the very Constitution itself. Article 156 of the Constitution describes the judiciary as ‘an independent power’ for ensuring justice, but Article 61 qualifies this independence by stating that: ‘The functions of the judiciary are to be performed by the courts of justice, which are to be formed in accordance with the *criteria of Islam*.’ The Article continues stating that the courts are vested with the authority to ‘dispense and enact justice and implement punishment *according to Islam*.’

The structure of the criminal system in Iran is also such that it is impossible for its courts to act independently and impartially. All parts of the system are controlled by the judiciary, including the Police, the Forensic Organization, the Prisons, the Prosecution Office and since 2001, a ‘Center for Legal Counseling.’ This was established by the judiciary to ‘put an end to the Bar Association’s monopoly on legal practice.’ This is despite the fact that Iran’s Bar Association actually enjoys very little independence due to strict controls already imposed by the judiciary.

There is no equality of arms between the prosecution and the defense in Iran’s criminal system. The defense is always disadvantaged not only by being excluded from all aspects of the preliminary investigations, but also because it is subject to arbitrary restrictions by trial judges in the preparation and presentation of their defenses, in calling witnesses, and in the consideration of the defense they submit. Ms. Jahed’s case presents a clear example of how the defense is left utterly outgunned by both the prosecution and the judge in any criminal proceedings.

Worst still, Ms. Jahed was tried during a period that Iran’s criminal system lacked even a discrete prosecution service. In this regard, the tribunal that tried and convicted Ms. Jahed was the same body as that which charged, investigated and prosecuted her case. There was no effort apparently to give even the appearance of impartiality. Ms. Jahed could certainly not expect the ‘trial’ judge to hear, much less investigate, her complaints about how he had violated her rights during the investigation/prosecution stage. Furthermore, there are strong indications that Ms. Jahed was also treated in discriminatory manner because of her gender. The authorities’ own statements

⁷⁸ Communication No. 387/1989, *Karttunen v. Finland*, (Views of 23 October 1992), par. 7.2.

⁷⁹ Human Rights Committee General Comment 13, par. 15.

suggest that an important motive in their investigation, prosecution and condemnation of this woman was their antipathy to her ‘moral’ character on the basis of Islamic criteria.

At the same time the entire criminal proceedings were marked by extreme professional incompetence. Despite the gravity of the capital offence and the corresponding penalty for the prisoner, and the prolonged investigation period, neither the crime scene, nor the victim’s injuries, nor the time of death, nor the murder weapons were ever examined, analyzed or established properly. Evidence of sexual activity inflicted on the victim prior to murder was initially concealed and then completely disregarded.

As to the right to a public trial and the publicity of the judgment, as the record shows most of Ms. Jahed’s trial was certainly held in public. However, the aim of the public status was apparently to expose the public to Ms. Jahed’s videotaped ‘confession’ and ‘murder scene re-enactment.’ The public trial hardly preserved the right of the parties or the public to scrutinize the administration of justice.

Article 14 (2) of the ICCPR guarantees the right to presumption of innocence. The criminal proceedings to which Ms. Jahed was subjected obliterated even the appearance of any presumption of her innocence. In her case, the investigation/prosecution/trial and Supreme Court judges even went so far as to refuse to seek, include, or investigate actual and potentially exculpatory evidence. Instead, they publicly declared her guilty right from the beginning and then focused their efforts to force her to confess in violation of **Article 14 (2)** of the ICCPR.

Article 14 (3) (b), (d) and (e) of the ICCPR guarantee the right of an accused person to have ‘adequate time and facilities’ for the preparation of their defense, to ‘defend’ themselves in person or through legal assistance during their trial and to ‘examine witnesses’ against them or on their behalf. In cases in which a capital sentence may be pronounced, the UN Human Rights Committee has emphasized that it is *axiomatic* that sufficient time is granted to the accused and his counsel to prepare a defense for the trial. What is ‘adequate time’ will depend on the circumstances of each case, but ‘the facilities’ must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with her lawyer.⁸⁰ In one case, the UN Human Rights Committee ruled that Article 14 (3) (e) of the ICCPR was violated where the domestic court had refused ‘to order expert testimony of crucial importance to the case.’⁸¹ The above safeguards are, of course, meaningless if at trial lawyers cannot pursue diligently and fearlessly all available defenses or challenge the

⁸⁰ Human Rights Committee General Comment 13, para. 9.

⁸¹ Communication No. 480/1991, *Fuenzalida v. Ecuador* (Views adopted on 12 Jul. 1996), par. 9.5.

conduct of the proceedings, misinterpretation of law, and the law itself, if they believe it to be imprecise, unfair or against international law.⁸²

The letter of Iran's laws actually denies these rights. Like any other criminal suspects, Ms. Jahed could not access a lawyer during the preliminary investigation stage of the proceedings, which is often where the guilt or innocence of the suspect is established based on their confession, and thus the most crucial stage in this system. Throughout this stage, she was detained incommunicado. At later stages too her lawyers were denied facilities and access to any evidence that could potentially exonerate her. In this case as in other criminal cases in Iran, the defendant's legal counsel did not even have full access to the casefile. They were restricted to taking notes from the file while reviewing it in the court premises shortly before the actual trial. Nor were they permitted to conduct their own independent examination of any part of the physical evidence such as the crime scene, murder weapons, and the victim's remains. Nor were Ms. Jahed's lawyers given the opportunity to examine witnesses and experts at the trial. The judge himself noted in the verdict that regardless of what the lawyers wanted to present to the court, 'the court is of the view that for this case, no defense was possible even at the outset.' Ms. Jahed's lawyer's written petitions were similarly disregarded without proper review by the Supreme Court and by the Discernment Chamber of the Supreme Court.

Article 14 (3) (g) guarantees the right not to testify against oneself or confess guilt. The UN Human Rights Committee has emphasized that the wording in this article 'must be understood in terms of the absence of *any direct or indirect physical or psychological coercion* from the investigating authorities on the accused with a view to obtaining a confession of guilt.'⁸³

The Constitution of Iran prohibits torture and the use of evidence obtained under torture [Article 38], the existing laws of Iran neither prevent nor provide any effective remedy in this regard. Iranian law does not recognize psychological torture and gives no definition of physical torture. Victims can theoretically request compensation for bodily injuries and death caused by physical torture inflicted upon them to extract a confession, but such complaints even if not dismissed out of hand by judges, would be more or less impossible to prove. As noted previously, suspects are detained incommunicado during the preliminary investigations, which is exactly the period that they are most vulnerable to torture and to direct or indirect physical or psychological coercion by the investigating authorities. Numerous reports concerning both political and regular detainees indicate that torture, threat of torture, and/or the possibility of prolonged detention are used routinely to extract confession from suspects who wish to exercise their right of silence, or who

⁸² Human Rights Committee General Comment 13, par. 11.

⁸³ Communication No. 330/1988, *Berry v. Jamaica*, (Views adopted on 4 Jul. 1994), par. 11.7.

do not confess their guilt during interrogation. Unlike the Constitution, the law and procedure code do not explicitly forbid the use of confessions which have been extracted under torture or are coerced in other ways, and indeed such confessions are routinely admitted as evidence.

Ms. Jahed's case itself is a perfect example of how effectively Iranian citizens are denied the protection of the guarantees contained in ICCPR Article 14 (3). She made a confession after eleven months of arbitrary incommunicado detention without any hope for release. A lawyer was not present at her interrogations. She was reportedly physically and verbally abused, but her interrogators also put her under mental duress by detaining and humiliating her lover, Mr. Mohammadkhani. Following the retraction of her false confession, she was reportedly referred to the Prosecutor's Office to complain about the torture she had been subjected to. The referral appears to have been disingenuous, since not only was she unable to access a lawyer or a medical examiner for the purposes of her complaint, but in addition the prosecutor instructed her to write down that she had not been tortured.

Article 14 (3) (c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered; all stages must take place 'without undue delay.' To make this right effective, a procedure must be available in order to ensure that the trial will proceed 'without undue delay,' both *in first instance and on appeal*.⁸⁴

In Ms. Jahed's case, her trial was held twenty months after her arrest. This is despite the fact that the delay had nothing to do with the procedures for investigation due in a murder case. As the record shows, besides a general autopsy report of the deceased's injuries conducted early on, there was hardly any other investigation related to the murder. Thus, the delay in Ms. Jahed's trial was apparently due simply in order to give time to obtain a confession from Ms. Jahed, in violation of Article 14 (3) (c) of the ICCPR.

Article 14 (5) ICCPR provides that everyone convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law. Procedures before review tribunals must of course take into account the fair and public hearing requirements of Article 14 (1). As to the substance of the review, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has emphasized that the right to appeal is aimed at ensuring *at least two levels of judicial scrutiny of a case, the second of which must take place before a higher tribunal*. The review undertaken by such a tribunal must be *genuine*. This, among other things, means that appeal proceedings *confined only to a scrutiny of issues of law raised by a*

⁸⁴ Human Rights Committee General Comment 13, par. 10.

*first instance judgment might not always meet that criterion.*⁸⁵ In 1997 the Special Rapporteur reiterated that appeal proceedings ‘must guarantee the right of review of both *factual and legal aspects of the case* by a higher tribunal, composed of judges other than those who dealt with the case at the first instance.’⁸⁶

Under Iran’s laws death sentences are reviewed by the Supreme Court only on the legal aspects of the case. The review is conducted *in camera* without a proper hearing. [see **Note 6**] In Ms. Jahedi’s case too, the Supreme Court conducted her appeal reviews *in camera* without a proper hearing. The Supreme Court disregarded numerous legal errors that her lawyers had raised, and reportedly confirmed Ms. Jahed’s conviction based on her false confession because in their view ‘this woman’s repudiations of her confession were also full of clear contradictions’ which shows that ‘her repudiations were also false.’

The review carried out by the Discernment Chambers of the Supreme Court, currently in the process of abolition, satisfy the requirements of a genuine appeal. Like the Supreme Court, the Discernment Chambers also conduct their reviews *in camera* without a proper hearing. Their review is based on a stringent criterion in which they can only revise matters which are ‘clearly against the law’ or ‘against the certainties of *fiqh*’ (Islamic jurisprudence) mastered only by a portion of judges in Iran who are not only clergy but hold the status of *mojtahid*. [see **Note 7**]

6. Conclusion

With a legal system providing for more than eighty capital ‘crimes,’ Iranians are at a higher risk of being detained for capital crimes than in any country in the world. Indeed, thousands convicted of ‘intentional homicide’ under the *qisas* laws of Iran are currently languishing on death-row. In view of the evidence submitted above, and the fact that female defendants in murder cases suffer additional discrimination because of their gender, it is requested that

the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,

the Working Group on Arbitrary Detention,

the Special Rapporteur on the independence of judges and lawyers, and

the Special Rapporteur on Violence Against Women

take **urgent action**, jointly or separately, within their relevant mandates to:

⁸⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc E/CN.4/1994/7 at paras 113 and 404.

⁸⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/1997/60, par. 82.

1. Declare the Iranian Government in violation of Articles 6, 7, 14, and 26 of the ICCPR for wrongfully, discriminatorily and unlawfully charging and convicting Ms. Khadijeh (Shahla) Jahed of capital murder, mandatorily and indiscriminately sentencing her to death, denying her the right to seek clemency or commutation of sentence from the state, arresting and detaining her arbitrarily, and extra-legally, trying her without the minimum in terms of objectivity, impartiality, fairness and due process guarantees expected of domestic tribunals, and subjecting her and her family to further cruelty due to the methods of execution in capital cases in general, and *qisas* death sentences in particular.

2. Request the Iranian Government immediately and permanently to revoke Ms. Khadijeh (Shahla) Jahed's capital punishment sentence, to take measures necessary for reparation of the violations suffered by Ms. Jahed, to secure her immediate release, and to adopt sweeping legislative and administrative reforms to ensure that the violations she has suffered are not inflicted upon other Iranian citizens - specifically, to abolish *qisas* laws and overhaul the criminal procedure code of Iran to bring them into conformity with standards and principles set forth in the ICCPR and other relevant international instruments.

The author will welcome an opportunity to answer any questions and to comment on any additional information provided by the Iranian government.

Respectfully submitted,

Deljou Abadi

Date: 23 January 2008