

*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

<p><b>MS. SHAMILA (DELARA) DARABI HAGHIGHI</b> <b>IRANIAN CITIZEN, ARBITRARILY DETAINED, UNFAIRLY TRIED AND CONDEMNED TO DEATH AND</b> <b>IMMINENTLY AT RISK F EXECUTION BY THE GOVERNMENT OF IRAN</b></p>
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(edited version)

*Submitted* by

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## **1 About the Project on Extra-legal Executions 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 13 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**

Most of 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. Ms. Darabi's father has verified details and provided additional information.

Legal texts quoted in this document were translated into English by the author from original texts in Farsi.

### 3 Summary

Ms. Delara Darabi Haghghi, an Iranian citizen, born on 21 September 1986 [30.06.1365] in Rasht and currently detained on death row in the women's ward of Rasht Prison, is at imminent risk of execution by hanging. She was detained at the age of 17 on 28 December 2003. In 2005 and 2006 two junior courts convicted her of the 'intentional homicide' of her father's elderly cousin, Mrs. Mahin Darabi Haghghi, and sentenced her to the mandatory *qisas-e-nafs* death penalty. She was convicted in the absence of any reliable evidence that she had even physically participated in the fatal stabbing of the victim, much less premeditated such an act. Her conviction is put in doubt by credible evidence that her male friend at the time of the killing, Amir Hossein Sotoudeh, had committed the murder in the process of stealing the victim's money and jewelry. Ms. Delara Darabi was a minor at the time the crime was committed, but her status as a minor was consistently ignored throughout the entire proceedings. Her trial was blighted by a series of violations of internationally recognized standards relating to fair trials and criminal justice. She cannot seek commutation of her sentence or pardon from the judicial or state authorities since, under the Islamic laws of Iran, that prerogative belongs solely to the victim's heirs and they have so far insisted on her execution.

Following the sentence of death passed in summer 2006, Ms. Delara Darabi's appeals were rejected, after grossly inadequate reviews, by two appellate bodies: the Supreme Court and the so-called Discernment Chambers of the Supreme Court in February and April 2007 respectively. In early May 2007, as a last resort, her lawyer sought the intervention of the Head of the Judiciary. Ayatollah Shahroudi is empowered to annul any conviction at any time if he finds it 'clearly contrary to *Shari'a*'. Mr. Shahroudi has so far not responded to the request.

Despite an unprecedented public outcry inside Iran and protests by the international human rights community for almost two years, the Iranian authorities seem to be unwilling to review Ms. Darabi's clearly wrongful conviction, preferring instead to leave her fate in the hands of the children of the victim. The result is that Ms. Darabi will either be put to death at some later date in a summary and probably clandestine fashion, or else held on death row indefinitely. The harsh and inhuman conditions of Rasht prison are undermining Ms. Darabi's deteriorating physical and mental health, and her lawyer and father have been requesting that the authorities transfer her to another prison. To date these pleas have also been disregarded.

## **4 The facts of the case**

Shamila (Delara) Darabi Haghighi was born on 21 September 1986 [30.06.1365] into an upper middle-class family in Rasht in Gilan province in northern Iran. She is the second eldest of four sisters. At the time of her arrest in December 2003, she was in her last year of high-school/pre-university education. She was an accomplished painter and art teacher. She also wrote poetry and played the piano.

### ***4.1 Arrest (28 December 2003)***

Ms. Darabi was arrested on 28 December 2003 [07.10.1382] at 22:30 pm in her home in Rasht after her own father called the police and reported that his daughter might have been involved in the murder of his elderly paternal cousin, Mrs. Mahin Darabi Haghighi. A short while earlier, Mr. Saeed X, reportedly a rejected marriage suitor of Ms. Darabi, had contacted Ms. Darabi's father suggesting that his daughter and a young man named Amir Hossein Sotoudeh were responsible for the murder of Mrs. Mahin. Mr. Saeed X had learned of the murder himself earlier that day when Ms. Darabi had contacted him, and asked him to go to Mrs. Mahin's house to fetch a purse that she had left there unintentionally.

Shocked and mortified not only by the news of his cousin's murder, and his daughter's supposed involvement in her death, but also by the revelation that she has been friends with two boys without his knowledge (Amir Hossein and Saeed X), Ms. Darabi's father refused to talk to his daughter or even to hear her side of the story. Instead, he immediately called the police in the belief that it was best to 'deliver his daughter into the hands of justice'. It was a decision that he soon came to regret.

Ms. Darabi (17), Mr. Sotoudeh (21) and Mr. Saeed X were all arrested and questioned by police. [see **Note 1**] Mr. Saeed X was released shortly after. Reportedly he too was indicted but subsequently acquitted. It is not known what charges he faced.

### ***4.2 False confession of murder (29 December 2003)***

In December 2003, the General Court of Rasht, which was responsible for handling murder cases, lacked a prosecution service and therefore a single judge investigated, prosecuted and tried the case. [see **Note 2**] The day after Ms. Darabi's arrest, the police notified the General Court of Rasht and the case was assigned to Chamber 10, headed by judge Mohammadpour who also performed the roles of investigator and prosecutor.

### Note 1. Arbitrary arrest and mandatory pre-trial detention of murder suspects in Iran

Published court cases and media reports on cases of murder indicate that under Iran's current criminal system, 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. It is clear that the judiciary tolerates or even encourages these abusive methods, since the police who make the arrests and the detectives who investigate cases act 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 325] 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' shall be subject to mandatory detention until the end of their trial. [Article 35 a].

### Note 2. Iran's prosecution-less General and Revolutionary Courts (1994-2002)

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, became 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 had investigated after brief summary proceedings that tended to follow a routine script, with perfunctory regard for any challenges made by the defense. At the time Delara Darabi was arrested, the customary procedure upon the discovery of a murder was that the police would notify 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 goveh qazayieh*] conducted their investigations under the direct supervision of the judge to whom the case was assigned. 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 system without a separate prosecutor for certain crimes, including illicit heterosexual intercourse homosexual intercourse (*zina va lavat*), and crimes committed by children. [Article 3-3 of the 2002 Revised Law for the Establishment of General and the Revolutionary Courts].

Chamber 10 was not authorized to handle a case in which the defendant was a child. Iran lacks comprehensive legislation with respect to management of minors in the criminal system, but the law does require that all defendants less than 18 years of age should be tried in a Children's Court. [see **Note 3**] In Ms. Darabi's case, judicial authorities disregarded the fact that she was 17 years of age when the offence was committed, and that she should have been under the jurisdiction of a Children's Court.

On arrival at the police station Ms. Darabi and Mr. Sotoudeh were immediately interrogated by police detectives in the absence of parents or legal counsel. About an hour and a half after her arrest, in a confession that she later retracted, Ms. Darabi made statement to the effect that she had murdered Mrs. Mahin by stabbing her repeatedly.<sup>1</sup> In the confession which was taken under conditions which breached international standards and later retracted, she reportedly said:<sup>2</sup>

I met Amir Hossein [Sotoudeh] two months ago. We decided to get married but Amir Hossein had no money. We went to Mahin's house to steal her jewelry and money so that we could get married and leave Rasht. We neither intended nor planned to murder her. Then, while we were there, Amir Hossein struck Mahin with a bat from behind. I was caught by surprise and panicked. Also, I was not in control of myself because before arriving at Mahin's house Amir Hossein had given me some pills to stay calm. When Amir Hossein shouted orders at me to get a knife from the kitchen I complied, and when he shouted that I should stab Mahin with the knife, I did what he said. After Mahin's lifeless body fell to the ground, Amir Hossein went to her safe and emptied it into his back-pack. I was in a state of panic and when we left I forgot to take my purse.

On the day following their arrest and Ms. Darabi's confession in the police station, Ms. Darabi and Mr. Sotoudeh were taken to the Rasht General Court, where they were asked to repeat their confessions before the duty judge, Judge Mohammadpour of Chamber 10 who thereafter took charge of the case.

There are clear signs that Ms. Darabi was in no fit state to make a statement. Her lawyer, Mr. Khoramshahi, told journalists that in the text of her confession to the police on the night of her arrest she had said: '...[Amir Hossein] gave me pills to calm me down. As a result I am still dizzy and confused'. The court record states that in her confession before the duty judge the following day she said: 'I am not able to write [my statements] down, I ask you to please write

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<sup>1</sup> *Ham-Mihan* newspaper, 9 June 2007 [19.03.1386], *Mas'ala idamhaye zir-e 18 sal dar Iran* ("Under 18-years-of-age Executions by Emadedin Baghi).

<sup>2</sup> *Iran* newspaper, 24 December 2005 [03.10.1384], *Man faqat tamashachi budam* ("I was only a spectator").

them down yourself”.<sup>3</sup> Nobody, neither lawyer nor parent, was present to inform Ms. Darabi of the consequences of her statement.

### Note 3. Definition of child status, the imposition of the death penalty on children, and Children’s Courts in Iran

In Under the Islamic laws of Iran, the age of criminal responsibility is determined by the ‘*Shari’a*-based age of maturity’ [*buluq-e shar’i*]. [Article 219-2 Criminal Procedure Code of Iran (1999), Article 49-1 Islamic Criminal Code of Iran (1996/99)]. The *Shari’a*-based age of maturity, defined in Article 1210 of the Civil Code, is 9 lunar years (8 years and 9 months) for a girl, and 15 lunar years (14 years and 6 months) for a boy. The Criminal Procedure Code of Iran (1999) provides that children below these ages, and also persons under 18 on the date at which a crime is committed should be tried in Children’s Courts [Article 220]. Judges in these courts receive a ‘special permission’ [*eblaq-e vijeh*] to preside in children’s cases but there are no regulations as to how this group of judges is selected. The provisions in the law relating to prosecution of children [Articles 219-231] are sketchy, and fall far short of international requirements. These special provisions do not apply to persons who are not legally children according to *Shar’ia* criteria (i.e. girls aged 9-18 and boys aged 15-18), since Article 220 provides that though such minors are to be tried in Children’s Courts there treatment with regard to procedure ‘shall be on the basis of general provisions’.

The new law for the Establishment of General and Revolutionary Courts passed in 2002 which re-instituted the prosecution service for these courts also directed that all crimes punishable by ‘*qisas-e-nafs* (retribution for life), *qisas-e-ozv* (retribution for limb), execution, stoning, crucifixion and life imprisonment’, including those allegedly committed by children below the *Shari’a*-based age of majority as well as those under 18, should be tried in the Provincial Criminal Courts. Cases which had initiated prior to 2002 and are referred back for retrial, however, continue to follow the pre-2002 procedure of prosecution, investigation and trial by single judge courts.

Under Iran’s criminal law, the imposition of death penalty is only prohibited for those who have not reached the *Shari’a*-based age of maturity. In recent years the Iranian authorities have publicly claimed that ‘all executions of persons who had committed crimes under the age of 18 have been halted’. In fact a number of children under 18 years of age have been executed, and a considerable number have been held in custody until they passed the age of 18 and then

<sup>3</sup> *Etemaad* newspaper, 31 January 2006 [10.11.1384], *Rowzaneye omid baraye dokhtr-e javan-e mahkum be idam—Delara: man qatel nistam* (“Glimmers of hope for young girl on death row—Delara says I am not guilty”).



executed. Since 2003 the authorities have also made reference to a ‘draft bill for the abolition of capital punishment for those aged under 18’. This draft bill is a fiction. The draft to which they are apparently referring does not abolish the death penalty for persons under 18 who commit *Hoddud* and *Qisas* crimes. [see Article 33 of the Draft Bill for the Establishment of Children’s and Juvenile Courts [*layehey tashkil-e dadgah-e atfal va nojavanan*]]

Mr. Sotoudeh was also interrogated, apparently cursorily. Knowing that he would face a death sentence if he confessed to inflicting any knife wounds to the victim, he categorically denied any participation in the stabbings. He only admitted some responsibility for the blows to the victim’s head. According to Ms. Darabi’s lawyer, in his initial confession Mr. Sotoudeh said: ‘The person we were visiting [Mahin] was sitting and I pushed her. She fell and hit her head against the wall and then started screaming’. Ms. Darabi, meanwhile, stated: ‘Amir Hossein was standing behind Mahin and then started hitting her with a wooden bat’. Ms. Darabi’s lawyer has criticized the court’s failure to investigate these contradictory statements and in particular the coroner’s report which suggested that the killer must have been right-handed.<sup>4</sup> Ms. Darabi was left-handed.

#### Note 4. The right to legal representation in Iran

Despite a constitutional guarantee of the right to legal representation in all courts of law (Article 35 of the Constitution), Iran’s law lacks measures to ensure that this right is implemented. The Iranian Criminal Procedure Code is divided into four distinct stages: ‘investigation’ (Chapter 1), ‘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 the right to refuse a suspect’s request for legal counsel. [Articles 127-128]. The right to have a defense lawyer is only stipulated explicitly in Chapter 2 which deals with the trial itself. 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 case-file until the investigation is ended and a date for trial has been set. Even then, their access is limited to viewing the file on the court premises. [Article 185-187] There are no provisions to ensure a lawyer can diligently and fearlessly present a meaningful defense on behalf of their clients.

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<sup>4</sup> *ibid.*

### ***4.3 Charged with murder (29 December 2003)***

On 29 December 2003, despite the lack of any evidence other than the confession and Mr. Sotoudeh's statement, which themselves contained substantial discrepancies, Judge Mohammadpour charged Ms. Darabi with 'intentional homicide'. Mr. Sotoudeh was only charged with 'complicity in murder'. Both were also charged with burglary and conducting an 'illicit relationship'. A day later, Mr. Mohammadpour conducted a so-called re-enactment of the crime based on Ms. Darabi and Mr. Sotoudeh's remarks. There are reports that the re-enactment was video-taped but the case file includes no record of it. Indeed, the case file reportedly includes no records of any medical tests performed on Ms. Darabi, nor any records of any criminal or forensic investigation of the crime scene or the murder weapons.<sup>5</sup>

A few days after Ms. Darabi was charged, she was transferred from police custody to the Women's Ward of Rasht Prison, where she was held alongside convicted adult prisoners, as she has been ever since. From this point on, she was allowed to contact her family and consult a lawyer. When Ms. Darabi's father visited her in Rasht prison he became convinced that his daughter was innocent. He encouraged her to write to the judge and tell him the truth, and hired a lawyer for her. [see **Note 4**] A lawyer by the name of Mr. Ghavas, who practiced in Rasht, represented her in the first trial proceedings and at the subsequent Supreme Court appeal. Since the Supreme Court's first decision in September 2005, Ms. Darabi has been represented by Mr. Abdolsamad Khorramshahi, a lawyer from Tehran.<sup>6</sup>

### ***4.4 Repudiation of the false confession (January 2004)***

Ms. Darabi repeatedly wrote to Judge Mohammadpour retracting her initial confession and describing what she could remember about the incident. In respect to her earlier statement, she wrote:<sup>7</sup>

1. I confessed in order to save Amir Hossein from the death penalty because I had feelings for him. Before the interrogations, Amir Hossein had begged me to save his life. He also said that because I was under eighteen, I would not receive a death sentence if I took responsibility for the murder. He assured me that even if I received the death penalty, I would be able to receive pardon from the victim's heirs because I was their relative. He even said that because I was a girl and weak I would be unable to tolerate torture and interrogation and would therefore have to admit to committing the murder anyway.

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<sup>5</sup> See above note 3.

<sup>6</sup> *Iran* newspaper, 25 December 2005 [4.10.1384], *Ebham-e nazariyeh pezeshk-e qanuni dar eteham-e Delara* ("Forensic Organization's opinion in Delara's accusation ambiguous").

<sup>7</sup> See above notes 2 and 3.

2. I also decided to save Amir Hossein because I felt rejected by my family. When my father was heard about the incident, he immediately handed me to the police without even hearing my side of the story.

3. Furthermore, when I decided to give a false confession I was not in a normal state of mind. I was under the influence of the sedatives that Amir Hossein had made me take on the day of the incident. Even during the re-enactment of what happened, I tried to act out all that Amir Hossein had done to the victim.

Emphasizing that she was now in a sound frame of mind and aware of her mistake, Ms. Darabi went on to explain what she remembered about the incident:<sup>8</sup>

4. I became acquainted with Amir Hossein a month-and-half ago. He associated with a group of delinquent youths, but I thought that he was better than them and we went out with each other. Amir Hossein took me to Mahin's house under false pretenses. He told me that a friend of his had gotten hold of the title deeds of Mahin's house, and that he knew that the documents had been stolen. He insisted that I accompany him to Mahin's house so that he could inform her of this in person. He wanted me to make sure that we went there when no one else was visiting. Before going there, he also forced me to take some sedatives and gave me a cigarette.

5. When we got to her house, Mahin went to the kitchen to put in her dentures and brought us refreshments. Then, out of the blue, Amir Hossein said to me 'Let's rob her things'. I thought he was joking. But he insisted and soon I realized that he was serious. He also said I had to help him. I felt dizzy and sick. I froze in fear and could hardly open my mouth to speak. Then, Mahin joined us. Amir Hossein was watching me closely. I tried to alert Mahin about what was going on. But my voice trembled and Mahin could not understand what I was mumbling.

6. I was sitting next to her on the couch when Amir Hossein suddenly struck her on the head from behind with a wooden bat. I screamed and begged him to stop. But he covered Mahin's mouth with his hand and continued struggling with her. The couch broke. The bat fell from his hands. He kept shouting at me to get the bat and hit Mahin. I was scared and

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<sup>8</sup> See above note 2, *Etemaad* newspaper, 31 January 2007 [11.11.1385], *Divan-e Ali Keshvar hokm-e Deara ra tayid kard* ("Supreme Court confirms Delara's Qisas sentence"); *Etemaad* newspaper, 29 January 2006 [08.11.1384], *Jozyiat-e parvandeje jenayat-e Delara dokhtar-e danshamuz-e mahkum be idam: dar sahneh-ye qatl-e zan-e servatmand che gozasht?* ("Criminal file details of death row girl student Delara: what happened in the murder of the rich lady"); *Etemaad* newspaper, 30 January 2006 [09.11.1384], *Delara dokhtar-e daneshamuz mahkum be idam: qatel rast-dast bud, man chap-dast hastam* ("Delara, death row girl student says 'Killer was right-handed—I am left-handed'").

felt that if I did not obey him he would kill me too. I took the bat but swung it so that it just hit the wall. Amir Hossein was furious. He released Mahin, ran to the kitchen and came back with a knife. The knife was small. It broke the second time that he stabbed Mahin. He threw the knife on the floor and brought a bigger one from the kitchen. He shouted at me furiously to help him. He put the knife in my hands and said I had to stab Mahin too. I stabbed Amir Hossein instead, once in the back, and the knife fell to the floor from my hands. I was weak and I hardly injured him. He became even more furious and kept cursing at me. He grabbed the knife and stabbed Mahin repeatedly until she was dead. Then he forced me to put the knives and the bat in his bag. He dragged me to the bathroom and washed my hands and face. He got the key to the safe from Mahin's bag and emptied all the money and the gold into his bag and dragged me out of the apartment with him. I was crying and shaking the whole time.

7. After we left I realized that I had left my purse there. When Amir Hossein refused to go back and get it, I asked Saeed, my former suitor, to get the purse. Saeed agreed and brought the purse. Amir Hossein and I waited for him in the street. When he returned with the bag I was still crying and screaming. Amir Hossein forced me to take more sedatives. We separated and then Saeed contacted my father and informed him of the incident.

#### ***4.5 The murder charge stands***

Judge Mohammadpour of Chamber 10 of the Rasht General Court decided to disregard the letters out of hand and went on to indict Ms. Darabi for 'intentional homicide' as well as for burglary and conducting an illicit relationship. The fact that Ms. Darabi had never admitted to any premeditation or deliberate intention, even in her false confession, did not reduce the charge she faced even to non-capital murder. [See **Notes 5 and 6**]

The minor injury that Mr. Sotoudeh had sustained on his torso as a result of Ms. Darabi's thrust with the knife stab remained an unresolved issue. In his initial confession, Mr. Sotoudeh had said: 'while Delara was holding the knife, it slipped and struck my back'.<sup>9</sup> However, some time after his initial confession Mr. Sotoudeh changed his statement. He now not only admitted that Ms. Darabi had stabbed him, but claimed that she had tried to kill him too. He later lodged an official complaint to this effect. When Ms. Darabi was summoned to answer the complaint, she denied it

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<sup>9</sup> See above note 3.

and insisted on the account she had already given in the letters withdrawing her confession. Some time later Mr. Sotoudeh, after consulting a lawyer, withdrew his complaint against Ms. Darabi.<sup>10</sup>

#### **4.6 First trial (6 December 2004 and 9 February 2005)**

The first session of Ms. Darabi and Mr. Sotoudeh's trial reportedly took place on 6 December 2004 [16.09.1383] almost a year after their arrest and detention. The second session, two months later, on 9 February 2005 [21.11.1383]. Both sessions were reportedly closed to the public. In the first session, it was reported that Ms. Darabi's lawyer was absent, and that Ms. Darabi told the judge that she would not speak without her lawyer present, but the trial was not adjourned. The lawyer had reportedly arranged with the judge to postpone the session due to his inability to attend, but the judge had ignored this agreement and went on to hold the session. Ms. Darabi's parents, who had been told by the lawyer that the session was cancelled, did not attend that session of the trial either. It was at the beginning of the second session that the victim's four children expressed their wish that Ms. Darabi should receive the *qisas* death sentence.<sup>11</sup>

It was reported that Ms. Darabi again insisted on her innocence:

I was only a spectator. Amir Hossein deceived me into admitting that I committed the murder. He knew that I had feelings for him. Before going to Mahin's house he gave me some pills to accompany him in the murder. After the crime also, when we were going to be interrogated, he again gave me pills.

On 26 February 2005 [08.12.1383] Judge Mohammadpour of Chamber 10 of the Rasht General Court convicted Ms. Darabi of 'intentional homicide' and sentenced her to the mandatory punishment of death or *qisas-e-nafs*. Mr. Sotoudeh was found guilty of complicity in murder and sentenced to ten years' imprisonment. [See **Note 7**] The grounds for the verdict were later reported as: 'the accused's clear confession during the preliminary investigation, her unjustified claims concerning deception by Amir Hossein, the discovery of the body and the knives and the baseball bat, and the coroner's report'. The two were also convicted of burglary and conducting an 'illicit relationship other than fornication' and sentenced to seven months' imprisonment and 63 lashes.<sup>12</sup> [see **Note 9**]

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<sup>10</sup> *Etemaad* newspaper, 30 January 2006 [09.11.1384], *Delara dokhtare daneshamuz-e mahkum be idam: qatel rast dast bud man chap dast hastam* ("Delara, death row girl student says 'Killer was right-handed but I am left-handed'").

<sup>11</sup> See above note 3.

<sup>12</sup> See above note 1.

#### Note 5. Proof of murder under Iran's *Qisas* laws

Article 231 of the *Qisas* section of the Islamic Criminal Code (1996) 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 information provided by the authorities themselves all 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 it conflicts with the physical evidence—judges will still rely on a confession, or use it as a basis for 'judge's knowledge'.

Article 232 provides that **confession** of intentional homicide, even if made only once before the presiding 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]. The testing of these qualifications is left to the discretion of the ruling judge.

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

Articles 239-256 of the Islamic Criminal Code provide that an **oath** may be accepted when legal evidence is lacking but where 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 despite the fact that they may not have witnessed the murder or have any direct knowledge of the matter.

The only conditions that are stipulated for **judge's knowledge** are that it should be obtained through 'customary methods' [*mota'aref*] and that 'the grounds for it should be expressed' [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 6. The definition of intentional homicide in Iran's *Qisas* laws, and the 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 *tazirat* (disciplinary punishments). Of the three types of murder recognized in the Code, i.e. intentional [*amd*], quasi-intentional [*shibh-e amd*], and unintentional [*khata*] homicide, the last two are defined in the *diyyat* section, while 'intentional homicide' is defined in the *qisas* section. 'Intentional homicide' is a killing where:

- a) the murderer intends to kill a specific person or unspecified persons within a group by perpetrating an act which results in death regardless of whether the act is intrinsically lethal;
- b) where the murderer intentionally perpetrates an act which is intrinsically lethal, 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 lethal under normal circumstances, but can be considered lethal due to the victim's vulnerability (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 where significant elements such as premeditation and deliberate intention to kill are missing, the murder can still be categorized as 'intentional'. Published cases and numerous media reports of murders 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 meet international standards in this respect. In fact several of the exceptions run quite contrary to international standards by exempting 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, and 'legitimate self-defense' [Articles 61 and 629] is rarely applied, even in cases of women protecting themselves from sexual assault.

#### 4.7 *The Appeal to the Supreme Court (March 2005)*

Mr. Sotoudeh reportedly did not appeal against his sentence, but Ms. Darabi's lawyer submitted a comprehensive appeal to the Supreme Court within the required time. [see **Note 8**] Chamber 33 of the Supreme Court reviewed her appeal. Six months later, on 4 September 2005 [13.06.1384], the Supreme Court returned Ms. Darabi's case to the lower court for revision because it had found a deficiency in the investigation of 'the sedatives consumed by Delara during the murder'.<sup>13</sup> Reportedly, the Supreme Court ruled that apart from the deficiency referred to, the lower court's verdict was 'essentially correct'.<sup>14</sup>

By the time the case arrived back at the lower court for revision six months later, Mr. Mohammadpour had already left Chamber 10. The case was therefore taken up by his replacement, Mr. Yari. Almost two years after the start of the case, Mr. Yari decided that since she was less than 18 years of age at the time of the offence, the proceedings against Ms. Darabi should be referred to a chamber which had the 'special permission' to preside over juvenile cases. Mr. Yari thus submitted the case to Mr. Javidnia at Chamber 107 of the General Court of Rasht.<sup>15</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions Philip Alston wrote to the Iranian authorities concerning the case of Ms. Darabi on 9 January 2006, raising in particular the fact that she was a minor. The Iranian government's 17 January 2006 reply to the UN Special Rapporteur stated: 'According to information received from the Judiciary of the Islamic Republic of Iran, Ms. Darabi's legal counsel appealed to the Supreme Court and raised the issue of her age at the time of the crime. On this basis the Supreme Court has overturned the sentence and has referred it to the Juvenile Legal Center for due consideration'.<sup>16</sup> It appears that the Iranian government's reply was not accurate. Sources who provided information to the media, including judges involved in the case, consistently stated that the Supreme Court's decision was confined to the deficiency regarding investigation of the sedative pills taken by Ms. Darabi. It was not the Supreme Court's decision to refer the case to the Children's Court.

As requested by the Supreme Court, Judge Javidnia sought the Forensics Organization's opinion on the sedatives that Ms. Darabi had consumed at the time of the crime. These, according to Ms. Darabi's lawyer, included clorazepan.<sup>17</sup> According to publicly available information, clorazepan

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<sup>13</sup> *Iran* newspaper, 31 December 2005 [10.10.1384], *Baraye bare dovum Delara-ye chap-dast sahne jenayat ra bazsazi mikonad* ("Left-handed Delara re-enacts crime scene for the second time").

<sup>14</sup> See above note 1.

<sup>15</sup> *Iran* newspaper, 24 December 2005 [03.10.1384], *Man faqat tamashachi budam* ("I was only a spectator").

<sup>16</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 27 March 2006, E/CN.4/2006/53/Add.1, p. 111.

<sup>17</sup> See above note 14.



belongs to the benzodiazepine family of depressants (which includes valium, temazepam and the notorious ‘date rape drug’, rohypnol). They are used therapeutically to produce sedation, induce sleep, relieve nervousness, tension, anxiety and muscle spasms, and to prevent some types of seizures by slowing the central nervous system. In general, benzodiazepines act as hypnotics (soporifics) in high doses, and as sedatives in low doses.

Yet, according to Ms. Darabi’s lawyer, the Forensic Organization, a part of the judiciary, surprisingly concluded that ‘there is no scientific reason or evidence that she was not responsible for her actions’. He points out that the Forensic Office presented its conclusion ‘without even mentioning the name of the drug in question, the dosage consumed, the known effects of the drug, or the subject’s apparent symptoms’. Nor was his request to have the issue investigated by a panel of ‘physicians, psychiatric doctors and pharmaceutical experts’ granted.<sup>18</sup> After the Forensic Organization’s opinion was issued, Judge Javidnia himself said that he could have sent the amended case-file back to the Supreme Court for a final ruling, but that he had decided not to do so because he had found other ‘deficiencies’ and ‘questionable matters’ in the proceedings. He therefore granted Ms. Darabi a ‘new trial’ in his Children’s Court.<sup>19</sup>

#### Note 7. Punishment for accessory to murder in Iranian law

Prior to 1991, the criminal law of Iran included no provision for punishing complicity in murder, nor for punishing a murderer whose victim had no heirs, or whose victim’s heirs had waived the *qisas* sentence. In 1991 [1370], when the first edition of the *hoddud* and *qisas* laws of Iran (1982 [1361]) was revised, a provision was adopted to punish an accessory to murder with ‘three to fifteen years’ imprisonment’. This provision was retained in Article 207 of the *Qisas* section of the 1996 Islamic Criminal Code which consolidated all the *hoddud*, *qisas*, *diyat* and *ta’zirat* criminal laws under one title. Also, for cases where the victims had no heirs or where the heirs waived the *qisas* punishment of the perpetrator, the 1991 revised *hoddud* and *qisas* laws prescribed three to ten years’ imprisonment as a deterrent to further offending by the perpetrator or others, and where the act was deemed to disrupt public order, propagate fear. In this case, an accessory to murder would be sentenced to one to five years’ imprisonment. [Article 208] In 1996, a similar article was added to the *ta’zirat* section of the Islamic Criminal Code in a form which slightly expanded the circumstances in which such punishment could be applied. [Articles 207, 206 and 612].

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<sup>18</sup> See above note 3.

<sup>19</sup> See note 15.

#### Note 8. The **Supreme Court: the appeal body for all Qisas crimes**

In Iran's criminal justice system, the Supreme Court is the appeal body for *qisas* crimes [crimes against life (*nafs*) and crimes against the body (*ozv*)] The defendant or the plaintiff can appeal a decision within 20 days. 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, disqualified witnesses or false testimony, unlawfulness of a verdict, and lack of jurisdiction on the part of the judge or the court'. The Supreme Court's review will result in the confirmation or revocation of the verdict. Revocation entails one of the following three consequences: 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 [Articles 233, 236, 240, 264 and 265 of the Criminal Procedure Code (1999)].

#### **4.8 New trial in the Children's Court (29 December 2005 and 15 June 2006)**

Ms. Darabi's second trial was conducted in two sessions, a public one on 29 December 2005 [08.10.1384] and a closed one on 15 June 2006 [25.03.1385]. At this 'new trial' Judge Javidnia relied mainly on the woefully flawed findings of the first court (Chamber 10) and particularly on Ms. Darabi's initial improperly obtained and subsequently retracted confession. He conducted hardly any new investigations of his own, and there was no indication that this court differed in any way from an adult court. In the public session that lasted five hours, on the 29 December 2005, some of the matters repeatedly covered:<sup>20</sup>

- Judge Javidnia announced that the Forensic Organization's 'findings' did not support Delara's claim that the sedatives had adversely affected her state of mind and behavior either during or after the incident. (see above)
- Saeed X, Ms. Delara's rejected suitor, testified that after the incident, he too had given Delara sedative pills that had been prescribed for him following a suicide attempt.
- Despite the fact that Judge Javidnia (as he himself conceded) was not charged with considering the morality charges concerning 'illicit relations', he questioned Ms. Delara

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<sup>20</sup> *Ibid.*

in an aggressive fashion on the subject and expressed condemnation of her ‘moral character’.

- Judge Javidnia also made the unexpected claim that Delara had martial arts training. Delara refuted the allegation and insisted that she had never received martial arts training and that what the judge had heard from her fellow inmates was untrue. She explained that after being transferred to prison she had found herself amongst criminals and murderers and had trained in martial arts in order to protect herself.
- Delara’s lawyer stated that all the evidence pointed to Mr. Sotoudeh as the murderer and not Delara and that according to the false confession, after Mr. Sotoudeh attacked the victim and struck her in the head, he covered the victim’s mouth so that she would not scream. Mr. Sotoudeh was behind the victim. The fatal stab wounds were inflicted posterior to the victim’s lung. Mr. Sotoudeh was standing behind the victim while covering her mouth so that she would not scream, therefore making it unlikely that Delara could have inflicted them. Delara is left-handed and according to the coroner’s report the victim sustained 14 stab wounds. If Mr. Sotoudeh had been standing between Delara and the victim (as they initially stated in their false confessions), the wounds should have been inflicted to the left side of the victim rather than on the right. All 14 wounds were struck with consistent force and were 2-3 centimeters deep. He stated ‘It is unlikely that a girl of Delara’s strength and stature would be able to inflict such wounds with the same force handling the weapon in the opposite direction.’ Yet, the judge refused Delara’s lawyer’s request to cross-examine Mr. Sotoudeh.
- Both Delara and her lawyer requested a crime reenactment. Before adjourning the trial, Judge Javidnia announced that ‘a crime reenactment would be conducted in the next session to remove any doubts about the incident’.

About a month later, Judge Javidnia told a reporter that he was ‘still investigating the significance of Delara’s left-handedness, her martial arts skills or lack thereof, the effects of the clorazepan, her moral character, and her relationship with her former suitor and with Amir Hossein’. He added that a deadline for the conclusion of the investigation was set for 6 March 2006 [15.12.1384] and again confirmed that after reviewing the results of the investigation, ‘a crime reenactment by Delara and Amir Hossein would follow’.<sup>21</sup>

Despite the set deadline and repeated assertions that a crime reenactment would be carried out, the second session of the trial took place more than three months later on 15 June 2006 [25.03.1385], with no crime reenactment. It had been expected that the session would be open,

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<sup>21</sup> *Iran newspaper*, 21 January 2006, [01.11.1384], *Zarbolajal baraye ebham-zedayi parvande Delara az suye qazi Javidnia tayin shod* (“Judge Javidnia sets urgent deadline for clarifications in Delara’s case”).

but the judge refused admittance to the courtroom to reporters or even to Ms. Darabi's parents. As a result, few details have been reported concerning this session. One paper disclosed that 'appropriate authorities had confirmed that Delara was left-handed and that she had not received any martial arts training'.<sup>22</sup> Several papers reported that both Delara Darabi and her lawyer had again requested a crime reenactment. Ms. Darabi rejected the accusation of her 'illicit relationship' and insisted that 'as an art teacher she chatted with the male students in her class but maintained nothing more than a simple friendship with them'.<sup>23</sup>

A few weeks later, on or around 3 July 2006 [12.04.1385], Judge Javidnia of Chamber 107 of the Children's Court of Rasht again convicted Ms. Darabi of 'intentional homicide' and sentenced her to the mandatory penalty of death or *qisas-e-nafs*.<sup>24</sup> Mr. Sotoudeh's previous conviction and sentence were also confirmed. On the matter of crime reenactment, the judge reportedly wrote in the verdict: 'it was refused because the accused would never re-enact the real scene'.<sup>25</sup> One journalist who pursued the case confirmed that once again judgment had been rendered without conducting any forensic tests. She stated that 'Neither any blood nor any finger-prints from the scene or the murder weapons were ever tested'.<sup>26</sup>

#### Note 9. 'Illicit relations' and punishment thereof

Other than *zina* crimes (extra-marital sexual intercourse), Iran's Islamic Criminal Code also criminalizes a wide range of other relations including hand-shaking, kissing, socializing and even telephoning between men and women who are not related to each other by blood or marriage. These acts are categorized under the term 'illicit relations' in the *Ta'zirat* section of the 1996 Islamic Criminal Code of Iran and are punishable by 'lashing from one to ninety-nine strokes' as determined by the judge. [Article 637]. An additional 'ten days to two months imprisonment' or 'one to 74 lash strokes' can also be inflicted if the act in question has been committed publicly and/or considered 'offensive to public morality'. [Article 638].

<sup>22</sup> *Etemaad* newspaper, 17 June 2006 [27.03.1385], *Delara dar entezar-e hokm-e dadgah: tabrayeh ya qisas* ("Delara waiting for the court's verdict, acquittal or *qisas*"), ISNA Agency, 16 June 2006 [26.03.1385], *Dovomin jaleseh residegi be parvande Delara bargozar shod* ("Second Court session held for Delara's case").

<sup>23</sup> *Etemaad Melli* newspaper, 17 June 2006 [27.02.1385], *Akharin jaleseh mohakemeh Delara be eteham qatl zan 65 saleh bargozar shod: sahneh qatl ra bazsazi konid* ("Last session of Delara's trial for alleged murder of 65-year-old woman: Plea for a crime scene reenactment").

<sup>24</sup> See above note 1.

<sup>25</sup> See above note 1.

<sup>26</sup> APN News Agency, [08.10.1385], *Akharin vaziyate parvande Delara Darabi dokhtare 20 saleh mahkum be edam* ("Latest developments in Delara's Darabi's case, the 20-year-old girl on death row").

#### 4.9 Appeal to Supreme Court (July 2006)

On 24 July 2006 [02.05.1385], it was reported that Ms. Darabi's lawyer, Mr. Abdolsamad Khoramshahi, had filed an appeal on her behalf to the Supreme Court.<sup>27</sup> On 20 September 2006 [29.06.1385], Ms. Darabi's lawyer told reporters that the appeal had been once again assigned to the Chamber 33 of the Supreme Court, and that it would be reviewed in the following months.<sup>28</sup> In his interviews with the media, Mr. Khoramshahi stated some of his objections as follows:<sup>29</sup>

- The confessions in the case file, which were relied upon in the verdict, are not consistent with the facts of the case. They were extracted in the first days of Delara's detention while she was in deep shock, highly impressionable, under the influence of sedatives, and without access to legal representation.
- According to Amir Hossein's statement, he was standing behind the victim and held her while Delara stood behind him and repeatedly stabbed the victim from that position. Given that Delara is left-handed, it could be expected that the stab wounds would have been inflicted on the victim's left side rather than her right side as is the case. This suggests that Amir Hossein's statement is false.
- Delara is small and weak, this raises the question of why she would strike the victim rather than her stronger male friend.
- With the sedatives in her system, it would have been very difficult for Delara to deliver the 14, or as some say 16 stab wounds that the victim sustained according to the autopsy report.
- According to Delara, while Amir Hossein was stabbing the victim, Delara tried to stab Amir Hossein to stop him. But due to her lack of strength, Amir Hossein sustained only a superficial wound. Nonetheless, after they were arrested, Amir Hossein himself lodged a complaint against Delara for his stabbing. Although he later withdrew his complaint, this evidence is still on record. This has not been considered at any stage.

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<sup>27</sup> ISNA agency, 24 July 2006 [02.05.1385], *Vakil-e Delara erayeh layehet eteraz fi hokm-e qisas baraye movakelash khabar dad* ("Delara's lawyer submits objection to her client's qisas sentence").

<sup>28</sup> ISNA agency, 20 September 2006 [29.06.1385], *Khoramshahi khabar dad: parvande Delara be divan-e ali keshvar erja shod* ("Khoramshahi reports Delara's file in Supreme Court").

<sup>29</sup> *Etemaad* newspaper, 16 January 2007 [26.10.1385], *Parvande Delara diruz dar divane ali keshvar baresi shod* ("Yesterday Delara's case reviewed in Supreme Court"), *Etemaad* newspaper, 25 February 2007 [06.12.1385], *Five Judges to review Delara's Case Again*; ISNA News Agency, 30 December 2005 [09.10.1384], *Vakil-e Delara: jaleseh badi dadgah pas az bazsazi mojadad sahneh qatl bargozar khahad shod* ("Delara's Lawyer: next court session to be held after murder reenactment").

- Despite the Judge’s declaration that he would conduct a crime reenactment, it was never performed. A reenactment of the crime scene would produce strong evidence to suggest that Delara was not the killer.
- The Forensic Organization’s opinion on the sedatives consumed by Delara was issued improperly and is unscientific. A proper opinion, based on consultation with physicians, psychiatrists and pharmaceutical experts, was never produced.

On 15 February 2007 [26.11.1385], despite numerous flaws in the lower court’s verdict, the Supreme Court confirmed Ms. Darabi’s *qisas-e-nafs* death sentence.<sup>30</sup>

#### ***4.10 Appeal to the Discernment Chambers of the Supreme Court (25 February 2007)***

On 25 February 2007 [06.12.1385], Ms. Darabi’s lawyer filed an appeal with the Discernment Chambers of the Supreme Court [*Sho’ab-e tashkhis-e divan-e ali-ye keshvar*].<sup>31</sup> [see **Note 10**]

On 25 April 2007 [05.02.1386], Ms. Darabi’s lawyer confirmed that the five judge bench of the 7<sup>th</sup> Branch of the Discernment Branches of the Supreme Court confirmed Ms. Darabi’s *qisas-e-nafs* sentence, and that her case had been subsequently sent to the Judiciary Head office for his final official permission to carry out the death sentence. Ms. Darabi’s lawyer added that:<sup>32</sup>

The judges of the Discernment Branch rejected our appeal very quickly, simply by reviewing the initial [lower court] verdicts, and with no regard to the flaws pointed out in my submission.

#### **Note 10. *Shari’a* bodies with powers to annul verdicts**

According to Clause 2 of Article 18 of the 2002 Revised Law for the Establishment of Public and Revolutionary Courts, a convicted person or the prosecutor can, within a month following 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*], which sits as a bench of five Supreme Court judges. This body can annul a judgment if it finds it ‘manifestly unlawful’. According to clause 1 of this article ‘manifestly unlawful’ means ‘against the certainties of the law or, where the law is silent on a matter,

<sup>30</sup> ISNA agency, 16 February 2006 [27.11.1385], *Khoramshahi khabar dad: tayd hokm qisas Delara dar divane ali keshvar* (“Khoramshahi reports Delara’s qisas sentence confirmed by Supreme Court”).

<sup>31</sup> *Etemaad* newspaper, 25 February 2007 [06.12.1385], *Panj ghazi bare digar parvande Delara ra baresi mikonand* (“Five Judges to review Delara’s Case Again”); above note 3.

<sup>32</sup> *Etemaad* newspaper, 25 April 2007 [05.02.1386], *Hokm-e qisas-e dokhtar-e naqash bare digar tayid shod* (“Qisas Sentence of Girl Painter Confirmed Again”).

against the certainties of *fiqh*' [Islamic jurisprudence comprised of the legal rulings of high-ranking Muslim scholars, and 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 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 states: The decisions of the *Sho'ab Tashkhis* are final and not open to appeal unless the Judiciary Head finds the judgment to be against the *Shari'a* [the 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, those of the Imams also]. If this happens, he will refer the case to the appropriate authority. However, in February 2007 [11.1385], Article 18 of the 2002 Revised Law for the Establishment of General and the Revolutionary Courts was again revised, abolishing the *Sho'ab Tashkhis* and limiting the grounds for annulment to clear contravention of the *Shari'a*. Such a ruling is subject to a final ruling of the Judiciary Head. The *Sho'ab Tashkis* will reportedly be completely abolished once their back-log of past cases is cleared.

#### ***4.11 Final plea to the Judiciary Head (May 2007)***

On 9 May 2007 [19.02.1386], it was reported that Ms. Darabi's lawyer had written to the Judiciary Head, Ayatollah Shahroudi, requesting a stay of execution and a further review of his client's case by his Office [see **Note 11**]. He reportedly wrote that:<sup>33</sup>

Delara made one confession during the first days of her detention during the preliminary investigation and since then there has been no evidence to corroborate her confession ... In fact, for the past three years she has insisted that her confession was false and that she is innocent. Obviously, the crime reenactment, which was promised by the ruling judge but not implemented, would have contributed further evidence in order to reveal the truth.

If Ayatollah Shahroudi also refuses to annul Ms. Darabi's conviction, the only option left to save her from death would be a pardon from the victim's heir [see **Note 12**]. As reported, the victim's heirs have already affirmed their demand for Ms. Darabi's *qisas*. While Ms. Darabi has not appealed to them for a pardon, a number of third parties, including celebrity figures, have approached the victim's heir appealing for mercy, unfortunately to no avail.<sup>34</sup>

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<sup>33</sup> *Etemaad* newspaper, 9 May 2007 [19.02.1386], *Darkhast az rayis-e qova'a qaza'ieh baraye tavaqof-e hokm-e qisas-e Delara* ("Judiciary Head Asked to Stay Delara's *Qisas* Sentence").

<sup>34</sup> *Etemaad* newspaper, 13 February 2007 [24.11.1386], *Talash-e 2 honarpisheh sarshenas baraye bakhshish Delara*, ("Two famous actors seek pardon for Delara").

In the meantime, there is no recourse which would permit a challenge to Ms. Darabi's detention, and she could remain in prison in judicial limbo for years to come. If Mr. Shahroudi rejects her appeal and gives his permission for her execution, she could be executed at any time with extremely short notice, or with no notice at all. [see **Note 13**]

#### ***4.12 Inhuman prison conditions, attempted suicide, and lashing sentence***

Since her incarceration in the Women's Ward of Rasht Prison, Ms. Darabi's physical and mental health has progressively deteriorated due to overcrowding, unsanitary conditions, a poor diet, restricted visitation rights and inmate tension. Earlier, in February 2007, Ms. Darabi reportedly attempted suicide. Since then, judicial authorities have ignored repeated pleas from her lawyer and her family that she should be transferred to a different prison.<sup>35</sup>

On 17 May 2007 [27.02.1386], it was reported that Ms. Darabi's lashing sentences for 'illicit relations' had been confirmed by the appeal court and was thus enforceable.<sup>36</sup> On 12 June 2007 [22.03.1386], it was reported that Mr. Sotoudeh had withdrawn his appeal concerning his sentence to lashing and imprisonment for illicit relations and burglary. The report stated that Mr. Sotoudeh had never objected to his ten-year imprisonment sentence for accessory to murder.<sup>37</sup>

#### **Note 11. The Role of the Judiciary Head in *Qisas* death sentences**

The 1996 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. At this stage, if the condemned person has also filed their annulment petition with the judiciary Head's Office, his or her case might be reviewed more seriously and annulled if it is found to be 'clearly against *Shari'a*.'

<sup>35</sup> *Etemaad* newspaper, 23 January 2007 [03.11.1385], *Delara dar zindan dast be khodkoshi zad*, ("Delara attempted suicide in prison"), *Etemaad-e-Meli* newspaper, 23 January 2007 [03.11.1385], *Delara dar zindan khodkoshi kard* ("Delara attempted suicide in prison").

<sup>36</sup> *Sharq* newspaper, 17 May 2007 [27.02.1386], *Parvande-e Delara ruye miz-e rayis-e qoveh-e qaza'ieh* ("Delara's case on Judiciary Head's table")

<sup>37</sup> *Etemaad* newspaper, 12 June 2007 [22.03.1386], *Hamdast-e Delara mahkumiyatash ra paziroft* ("Delara's accomplice admits his sentence").



**Note 12. Qisas sentences are uncommutable and unpardonable by the state**

Under the Islamic criminal law of Iran, *qisas* sentences are considered rights which may be held by individuals 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 with the state. Heirs can forgo their right to *qisas* and instead request *diyyeh* (blood-money) or they can 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 13. The law on implementation of death sentences in Iran**

The *Implementation Code for Qisas Sentences, Stoning, Crucifixion, Execution, and Flogging*, and the law on the implementation of death sentences, issued in November 2003 [09/1383], require only a 48-hour minimum notification of a death warrant [article 7], which is provided only to the prisoner's lawyer, and not to 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 execution to be carried out [article 7-g], and they are even permitted to carry out the execution themselves [article 15]. However, even these minimal rules are frequently disregarded. In April 2007, twenty-year-old Mohammad Mousawi was secretly executed in Shiraz, without notice to his lawyer or parents, for the accidental killing of a man when he was sixteen. His parents and subsequently his lawyer only discovered that he had been executed when another inmate telephoned his parents to come to Shiraz's Adel-abad prison. The prison authorities' explanation for failing to notify them was: 'We did not tell you because we knew you would become too upset at the execution ceremony'. [*Etemaad-e Melli* newspaper, 8 June 2007 [18.03.1386], *Nojavani ke dar 16 salegy mortakeb qatl shodeh bud dar shiraz idam shod, o ta abad sheshm be rah didan madar mand* ("Youngster who committed murder when 16 was hanged in Shiraz without saying good-bye to mother").

## 5 Statement of claims

UN human rights bodies have underlined the international human rights standards which must be respected in countries which, 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 below 18 years of age;
- The obligation 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;
- The obligation to provide an effective remedy to persons who are wrongfully sentenced to death or have received the death penalty following an unfair trial.
- Such countries are also enjoined 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 an international treaty which sets out non-derogable safeguards and restrictions on the 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 an obligation to ensure that its death penalty laws do not breach 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. With regard to capital punishment, 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.

Iran also became a party to the Convention on the Rights of Child (CRC) on 13 July 1994 which explicitly prohibits the imposition of capital punishment for offences committed by persons below 18 years of age.

In Ms. Darabi's case, the death sentence is not only in clear violation of the CRC, but the criminal proceedings against her have also been marked by numerous violations of the 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, 26 and CRC article 37(a)*

Ms. Darabi 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.

**Article 6 (2)** of the ICCPR states that in countries which have not abolished the death penalty, ‘sentence of death may be imposed only for *the most serious crimes*’. 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*’.<sup>38</sup> Furthermore, the defendant’s 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 all mitigating factors*.<sup>39</sup> In addition, paragraph 4 of the UN Death Penalty Safeguards states that the 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 emphases added]

The most striking 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 a murder can still be categorized as ‘intentional’ even where such crucial criteria as premeditation and deliberate intention to kill are not fulfilled [see **Note 6**]. As Ms. Darabi’s case illustrates, 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 methods of proof stipulated in the *qisas* laws of Iran [see **Note 5**], individually or even in concert, do not meet the international standard that guilt must be proven *beyond reasonable doubt*. In Ms. Darabi’s case, her guilt was proven solely on the basis of her confession, which was apparently obtained under compulsion and while she was sedated. Neither her parents nor her lawyer were present when she made the statement during the late hours of the night after her

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<sup>38</sup> 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.

<sup>39</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/51/457, 7 Oct. 1996, at par. 111.

arrest. What is more, her confession was admitted as evidence despite the fact that there were significant discrepancies that called its validity into question, and despite the fact that the defendant retracted the statement. The number and depth of the stab wounds reported by the coroner was not consistent with Ms. Darabi's initial confession. Despite the lack of any forensic examinations of the crime scene or the murder weapons, there remains strong evidence implicating Ms. Darabi's male friend, Mr. Amir Hossein Sotoudeh as the assailant, yet the judge consistently excluded Mr. Sotoudeh from any serious investigation.

The judicial authorities accepted that Mr. Sotoudeh was involved in the murder, but throughout the long criminal proceedings they consistently favored Ms. Darabi's improperly obtained and subsequently retracted confession, while refusing seriously to scrutinize the evidence of Mr. Sotoudeh's involvement in the crime. The most likely explanation for this attitude is gender-bias. From the moment of Ms. Darabi's arrest, the police and the judges, who are by law also in charge of upholding Iran's Islamic 'morality laws' impugned Ms. Darabi's 'immoral character' because it was obvious that she had social relations with the opposite sex. It appears that Ms. Darabi's supposedly tainted 'moral character' sealed her fate shortly after her arrest in violation of Article 26 of the ICCPR which guarantees the right to non-discrimination.

**Article 6 (1)** of the ICCPR states that no person shall be arbitrarily deprived of life. The UN Human Rights Committee has repeatedly stated that mandatory capital sentencing deprives 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*.<sup>40</sup> In his latest January 2007 annual report 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 the judge any discretion to evaluate possible mitigating circumstances and reduce the sentence appropriately. Once Ms. Darabi was found guilty of 'intentional homicide' she was automatically sentenced to death without any consideration of the circumstances of the case or even her age at the time of the incident. [see **Note 6**]

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

**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 ruled that any preponderant role granted to the victim’s family in deciding whether or not the penalty is carried out, in the context of negotiations for financial compensation (‘blood money’), to be contrary to the ICCPR.<sup>41</sup>

In violation of Article 6 (4) of the ICCPR, the Iranian state denies that it has any rights or interest with respect to persons subject to the *qisas* death sentence, stating that the prerogative belongs to the family of the victim who may choose to forgo the *qisas* death penalty entirely or accept monetary compensation [see **Note 12**]. When the *qisas* of a condemned person is put in the hands of the victim’s family, the more wealthy party is quite obviously placed at an advantage. A rich murderer has a greater chance 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. Darabi’s case, the victim’s children are known to be wealthy, and since her first court trial in December 2004 they have publicly expressed their shared determination to proceed with the death sentence. Ms. Darabi has not sought their pardon, as she believes that she is innocent, and the family has not withdrawn their request for her execution.

By empowering the victim’s heirs exclusively to implement or pardon a *qisas* death sentence, Iranian authorities have also been subjecting Ms. Darabi 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 or to have her pardoned at any time 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, and very often no notice at all. [see **Note 13**]

**Article 6 (5)** of the ICCPR states that ‘sentence of death shall not be imposed for crimes committed by persons below eighteen years of age’. **Article 37(a) of the CRC** also requires states to ensure that capital punishment shall not be imposed ‘for offences committed by persons below 18 years of age’.

A death sentence was passed on Ms. Delara Darabi despite the unquestioned fact that at the time of the incident she was seventeen years old. She was sentenced to death because under Iran’s laws, girls above the age of 8 years and nine months are no longer considered children and if

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<sup>41</sup> 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).

they are deemed to have committed a crime, they are subject to the same punishments as any adult, in violation of Article 6(5) of the ICCPR and Article 37(a) of the CRC. [see **Note 3**]

## 5.2 *Arrest and pre-trial detention, violation 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—to prevent flight, for example, interference with evidence, or the recurrence of crime.<sup>42</sup> Mere suspicion that a person has committed a crime is *not* sufficient in itself to justify detention pending investigation and indictment.<sup>43</sup>

Iran’s national laws on arrest, detention for interrogation and remand pending trial, in particular for murder suspects, do not meet the standard of ‘lawfulness’ set by the ICCPR. In breach of Article 9 (1) of the ICCPR, the law of Iran legally sanctions detention in police custody without charge for six days for the purpose of interrogation [see **Note 2**].

In Ms. Darabi’s case, her father’s call to the police stating that his daughter may have been involved in a murder entailed a terrible succession of consequences. She was subjected to interrogation following arrest in the late hours of the night, and was denied the right to have her family or a lawyer present. The police obtained a confession of murder from Ms. Darabi in a matter of hours and this enabled the judge to charge her with ‘intentional homicide’ unusually promptly. No meaningful investigations were conducted thereafter.

**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, and for any other stages of the judicial proceedings, and, should occasion arise, for execution of the judgment’. Furthermore, the Human Rights Committee states that ‘[p]re-trial detention should be an exception and as short as possible’.<sup>44</sup> The Committee has

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<sup>42</sup> Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, (Views adopted on 21 Jul. 1994), p. 12.

<sup>43</sup> 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.

<sup>44</sup> Human Rights Committee General Comment 8, par. 3.

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 the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful’.

Ms. Darabi was promptly charged but this promptness was of little significance since, in ‘intentional homicide’ cases, arrest and remand are mandatory, and, in violation of ICCPR Articles 9 (3) and (4), these charges ruled out any possibility of Ms. Darabi challenging the lawfulness of her pre-trial detention even after she had retracted her confession.

The length of Ms. Darabi’s pre-trial detention was unreasonable. 38 months elapsed from initial police detention to the Supreme Court’s final confirmation [see below, Table 1- *Ms. Darabi’s chronology of criminal proceedings*]. During this period of three years, the authorities undertook no serious investigations, which might have exculpated (or indeed, reliably inculpated) Ms. Darabi, and yet, in violation of Article 9 (3) ICCPR, the law afforded her no mechanism by which she could challenge the lawfulness of her prolonged pretrial detention.

**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’.

Many forms of arrest and detention that are unlawful under international law are considered lawful under Iranian law. But there are no provisions for awarding compensation to victims even in those very limited circumstances which Iranian law does recognize as being unacceptable. The sole response to abuses such as ‘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 Islamic Criminal Code].

Even this remedy, however, 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, no investigator, prosecutor or judge who had held a suspect in detention without proper grounds for several years would be likely to acquit that person at trial and thereby expose himself to prosecution for unlawful detention. In Ms. Darabi’s case, her detention order was issued during the period that the criminal system of Iran lacked a discrete prosecution service. The judges who issued her detention order and/or extended it were those who also charged, indicted and tried her. The guilty verdicts they imposed on Ms. Darabi also conveniently guarantee their immunity from any prosecution arising from their poor professional conduct of the proceedings.

### 5.3 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’.<sup>45</sup> 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 a 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 a person, or of his/her 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’.<sup>46</sup>

As one of the essential elements of the concept of a fair trial in a democratic society, the right to a ‘public trial’ is a right which is of significance not only for the parties, but also for the general public. Public scrutiny of the administration of justice is an important safeguard of the general standards of such proceedings. Article 14 (1) does concede 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, none of which are applicable to the proceedings against Ms. Delara. 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’. Furthermore, the public status of a trial covers not only public hearings, but also requires full publication of the judgment ultimately rendered in the case. Judgments in trials - criminal or otherwise - must be made public except in certain narrowly defined circumstances.<sup>47</sup>

As the record shows Ms. Darabi was deprived of her right to a public trial. Iranian law provides judges with broad discretion to close a trial to the public on loosely defined grounds such as when that the cases involve ‘indecent acts and crimes against morality’, ‘family matters or, in private suits, if requested by the parties’, or where they ‘disturb security or religious sentiments’ [Article of the 188 Criminal Procedure Code (1999)]. Ms. Darabi’s two trials each consisted of

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<sup>45</sup> Communication No. 272/1988, *A. Thomas v. Jamaica* (Views adopted on 31 Mar. 1992), para. 13.

<sup>46</sup> Communication No. 289/1988, *D. Wolf v. Panama* (Views adopted on 26 Mar. 1992), par. 6.6.

<sup>47</sup> Human Rights Committee General Comment 13, par. 4.



two sessions. Both trials were entirely closed to the public, but in her second trial, the judge did not even to allow Ms. Darabi's parents to enter the court room. Ms. Darabi's appeal reviews did not include a hearing, were closed to the public and to the defense, and were conducted in secrecy.

Iranian law explicitly prohibits any publicity about a case before 'the judgment is confirmed' [Article 188-1]. For this reason journalists and reporters cannot write about the progress of a trial. The defendant's family, lawyer and even the involved authorities are not at liberty to talk about the case before confirmation of judgment. The reason that some cases are reported at all stages of proceedings is often because the involved authorities themselves breach the nondisclosure requirement and start broadcasting about pending cases in a limited and biased way.

It is only thanks to the occasional compassion and courage of some defendants' families and/or their lawyers that in the past few years considerable information has become available for certain cases. However, even this information has not encompassed all the essential details of the case, such as hearing transcripts and the actual content of defense submissions or even the judgments. In Iranian law there is no system for the publication or reporting of judgments, and access to judgments is restricted only to the defendant's lawyer or to the defendant themselves. Members of the public cannot request copies of judgments, and lawyers are reluctant to share judgments with third parties or the public. Lawyers are not given access to view the entire evidence, for example footage of crime reenactment, and are merely permitted to take notes from the case-file which must remain on the court premises.

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.<sup>48</sup> 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 accused's rights at any stage of the prosecution.<sup>49</sup>

In Iran, the independence of courts is compromised by the very constitutional provisions under which the courts themselves are founded. 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 goes on to describe how

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<sup>48</sup> Communication No. 387/1989, *Karttunen v. Finland*, (Views of 23 October 1992), par. 7.2.

<sup>49</sup> Human Rights Committee General Comment 13, par. 15.

the courts are vested with authority to ‘dispense and enact justice and to implement punishment according to Islam’.

There is no equality of arms between the prosecution and the defense in Iran’s criminal system, as Ms. Darabi’s case dramatically illustrates. 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. Judges may decline to call witnesses, to accept testimony, to order tests or forensic investigations suggested by the defense without having to provide any justification for their refusal to do so.

Worse still, Ms. Darabi was tried during a period when Iran’s criminal system had no discrete prosecution service. In this regard, the tribunal that tried and convicted Ms. Darabi was the same body that charged, investigated and prosecuted her, thus ensuring an absolute lack of impartiality. Ms. Darabi could certainly not expect the trial judge to hear, or even less likely to investigate, her accusations that he had violated her rights during the investigation/prosecution stage. Furthermore, there are strong indications that Ms. Darabi was also treated in a discriminatory manner because of her gender. The concurrent charge of ‘illicit relations’ suggests that an important motive in their investigation, prosecution and condemnation of this girl was their antipathy to her ‘moral’ character on the basis of Islamic criteria.

The entire criminal proceedings were marked by extreme professional incompetence. Despite the gravity of the capital offence, the corresponding penalty for the prisoner, and the prolonged investigation period, neither the crime scene, nor the murder weapons were ever examined, analyzed or established properly. Even when the issue of Ms. Darabi’s sedated state was ordered to be investigated, almost two years after the incident, the Forensic Organization still failed to conduct any meaningful inquiry.

**Article 14 (2)** of the ICCPR guarantees the right to presumption of innocence. The criminal proceedings to which Ms. Darabi was subjected, including her mandatory pre-trial detention, obliterated even the appearance of any presumption of her innocence. In her case, the judges at all levels, including investigation, prosecution, trial and Supreme Court refused to seek, include, or investigate hard evidence which was potentially exculpatory. Instead, they seized upon the first incriminating trace, Ms. Darabi’s ‘confession’ which was obtained in unlawful circumstances, and presuming her guilt at the outset, 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.<sup>50</sup> 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’.<sup>51</sup> The above safeguards are, of course, meaningless if at trial lawyers cannot pursue diligently and fearlessly all available defenses or challenge the conduct of the proceedings, misinterpretation of law, and the law itself, if they believe it to be imprecise, unfair or against international law.<sup>52</sup>

The letter of Iran’s laws actually denies these rights. Like any other criminal suspect, Ms. Darabi did not have access to 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 case-file. 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, or the victim’s remains. Ms. Darabi herself was not examined promptly or properly to determine the extent and consequences of her sedation during the incident and at the time of her confessions, but also her lawyer’s request for a proper examination by real experts was also dismissed. So was Ms. Darabi’s lawyers’ request for a proper crime reenactment.

The first session of Ms. Darabi’s first trial took place without the presence of her lawyer, in spite of her objection. Ms. Darabi’s lawyers were not given the opportunity to examine any of the witnesses and experts at trial, not even Ms. Darabi’s co-defendant, Mr. Amir Hossein Sotoudeh who, according to Ms. Darabi’s account, is the primary suspect. Ms. Darabi’s lawyers’ oral and written defenses were similarly disregarded at all stages by the lower courts, by the Supreme Court and by the Discernment Chambers 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

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<sup>50</sup> Human Rights Committee General Comment 13, para. 9.

<sup>51</sup> Communication No. 480/1991, *Fuenzalida v. Ecuador* (Views adopted on 12 Jul. 1996), par. 9.5.

<sup>52</sup> Human Rights Committee General Comment 13, par. 11.

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'.<sup>53</sup>

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 when 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 the period when 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 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 coerced in other ways, and indeed such confessions are routinely admitted as evidence.

Ms. Darabi's case is a clear example of how Iranian citizens are denied the guarantees of Article 14(3). Ms. Darabi made an initial confession around midnight on the night of her arrest. She was clearly sedated by the drugs she had been forced to take in repeated doses that day. She was also fearful of torture, if not actually threatened with it. Neither her parents nor a lawyer were present at her interrogation. Nobody informed her of the real and deadly consequences of her confession, and she was certainly deceived by her male friend in this regard.

**Article 14 (3) (c)** provides that the accused shall be tried 'without undue delay'. The requirement of 'without undue delay' applies to all stages from the start of the trial through to final verdict. To make this right effective, a procedure must be available to ensure that the trial proceeds 'without undue delay', in first instance and also at appeal.<sup>54</sup>

In Ms. Darabi's case, her first trial was held twelve months after her arrest. This delay was not the result of any necessary investigation in the case. Then the trial itself took two months for no justified reason. Thus, her first verdict was issued fourteen months after her arrest. It took the Supreme Court another six months to 'demand' clarification of a mere 'deficiency', one that was in the end considered insignificant and with no bearing on its decision too. Her second verdict

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<sup>53</sup> Communication No. 330/1988, *Berry v. Jamaica*, (Views adopted on 4 July 1994), par. 11.7.

<sup>54</sup> Human Rights Committee General Comment 13, par. 10.

was issued ten months later and another eight months elapsed for the Supreme Court to confirm the decision again not because of any ongoing investigation due in the case. Altogether, it took an unjustified and excessive thirty-eight months for Ms. Darabi to receive a final judgment, one that was based solely on her confession at the night of her arrest, in violation of Article 14(3)© of the ICCPR.

	12 months	14 months	20 months	24 months	30 months	<b>38 months</b>	40 months	41 months
28 Dec. 2003 [07.10.1382]	6 Dec. 2004 [16.09.1383]	26 Feb. 2005 [08.12.1383]	4 Sep. 2005 [13.06.1384]	29 Dec. 2005 [08.10.1384]	3 Jul. 2006 [12.04.1385]	<b>15 Feb. 2007 [26.11.1385]</b>	April 2007 [.02.1386]	May 2007 [03.1386]
Arrest and detention	Start of 1 <sup>st</sup> trial	1 <sup>st</sup> lower court verdict	1 <sup>st</sup> Supreme Court decision	Start of 2 <sup>nd</sup> trial	2 <sup>nd</sup> lower court verdict	<b>2<sup>nd</sup> Supreme Court decision</b>	Discernment Chambers verdict	Petition to Judiciary Head

**Table 1 Ms. Darabi’s chronology of criminal proceedings**

**ICCPR Article 14 (5)** provides that everyone convicted of a crime shall have the right to have their conviction and sentence reviewed according to law by a higher tribunal. Procedures before review tribunals must 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 first instance judgment might not always meet that criterion*.<sup>55</sup> 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’.<sup>56</sup>

<sup>55</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc E/CN.4/1994/7 at paragraphs 113 and 404. [Emphasis added]

<sup>56</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/1997/60, par. 82. [Emphasis added]

Iranian law provides for Supreme Court review of death sentences only on the basis of the legal aspects of the case. The review is conducted *in camera* without a proper hearing [see **Note 8**]. In Ms. Darabi's case, the Supreme Court conducted both of her appeal reviews in secret and without a proper hearing. On both occasions, Ms. Darabi should have been tried from the outset in a Children's Court, but in its first review the Supreme Court failed even to note this clear violation of law, and it was left to a judge to notice this basic mistake and remedy it at a later date. In its second review, the Supreme Court neglected to note that the Forensic Organization had failed to respond properly to the Supreme Court's own request for an investigation of the repeated doses of sedative pills that Ms. Darabi had consumed on the day of the incident, and on the day upon which she made her incriminating statement.

The review carried out by the Discernment Chambers of the Supreme Court, currently in the process of abolition, also failed to 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 which means that they can only revise matters which are 'clearly against the law' or 'against the certainties of *fiqh*', a branch of Islamic jurisprudence mastered only by a class of judges in Iran who are not only clergy but hold the status of *mujtahid* [see **Note 8**]. In Ms. Darabi's case, her appeal was reviewed unreasonably quickly by Chamber 7 in a matter of weeks and the review dealt only with the lower court's judgments. Ms. Darabi's lawyer's submissions were not considered at all.

Finally, **Article 14 (4)** provides that in the case of juvenile persons, the procedure shall take account of their age and the desirability of promoting their rehabilitation.

In Iran, the minimum age at which a juvenile may be charged with a capital offence is in clear violation of this article. There are no special courts and procedures and no law governing procedures against juveniles that actually take into account 'the desirability of promoting their rehabilitation'. Juveniles are deprived of the guarantees and protection required in article 14 because such provisions are simply non-existent for any offenders.

## **6 Conclusion**

With a legal system providing for more than eighty capital offenses, 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 1) Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, 2) the Working Group on Arbitrary Detention, 3) the Special Rapporteur on the independence of judges and lawyers,

and 4) the Special Rapporteur on Violence Against Women take **urgent action**, jointly or separately, within their relevant mandates to:

1. Declare the Iranian Government in violation of Articles 6, 7, 14, and 26 of the ICCPR and 37 CRC for wrongfully, discriminatively and unlawfully charging and convicting Ms. Delara Darabi of capital murder, arbitrarily 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 and fairness and due process guarantees that should be expected of domestic tribunals, and from 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 commute Ms. Delara Darabi's capital punishment sentence, to take measures necessary for reparation of the violations suffered by Ms. Delara Darabi, to secure her immediate release, and to adopt sweeping legislative and other administrative reforms in order to ensure that the violations she has suffered are not inflicted upon other Iranian citizens. Such measures should include steps to abolish the *qisas* laws and to overhaul the criminal procedure code of Iran in order to bring them into conformity with the standards and principles set forth in the ICCPR to which Iran is a State Party, and in other relevant international instruments applicable to Iran.

The author will welcome an opportunity to answer any questions and to comment on any additional information provided by the Iranian government. She also recommends that the recipients of this urgent appeal request the official transcripts and documents pertaining to Ms. Delara Darabi's criminal proceedings from the Iranian State.

Respectfully submitted,

Deljou Abadi

date: July 30, 2007