

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 371

Full recommendation

As we have explained in previous communications to your Excellency's Government, the imposition of the death sentence on charges of "mohareb" is highly problematic. We are concerned that this charge, which according to our information in Iran is directed mainly against political dissidents, critics of the Government and persons accused of espionage, might not be sufficiently well defined to satisfy the very strict standards of legality set by Article 6(2) of the Covenant for the imposition and carrying out of the death penalty. In order for the sentence of death to be imposed "in accordance with the law", the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not so punishable. (See the communications of 31 August 2006 concerning the imposition of the death penalty against Ali Motirijeh and others (reproduced in A/HRC/4/20/Add.1, pages 165f), of 26 July 2007 concerning the imposition of the death penalty against Abdolwahed (Hiwa) Butimar and Adnan Hassanpour (reproduced in A/HRC/8/3/Add.1, pages 210f), and of 18 July 2008 in the cases of Farzad Kamangar, Ali Heydariyan and Farhad Vakil.

Assessment using Impact Iran human rights indicators¹

In its latest General Comment on Article 6 of ICCPR, the Human Rights Committee explicitly stipulated that the phrase "the most serious crimes" must "be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death [...], although serious in nature, can never serve as the basis, within the framework of Article 6, for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, [...], cannot justify the imposition of the death penalty."²

The crime of *moharebeh* ("enmity against God") is defined under Article 279 of the Islamic Penal Code (2013) as "drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity."³ It is left to the discretion of the judge to punish a crime of *moharebeh* with either the death penalty, crucifixion, amputation of the right arm and the left leg, or banishment.⁴ Although carrying the death penalty, the definition of *moharebeh* suggest that it also includes offences that do not involve intentional killing, which therefore

¹ CCPR.6.2.S.1
CCPR.6.2.P.1
CCPR.6.2.O.2

² https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

³ Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁴ The Islamic Penal Code (2013), Articles 282 and 283, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

cannot be considered as “most serious crimes” under international law.⁵ Additionally, terms as such ‘terror’, ‘atmosphere of insecurity’ or ‘national security’ are not defined under the Islamic Penal Code. The lack of precision and clarity around what can constitute a crime of *moharebeh* grants judges wide and discretionary interpretative powers.

Further, under Article 220 of the Islamic Penal Code and Article 167 of the Iranian Constitution, a judge has a responsibility to strive to refer to Islamic law – namely authoritative Islamic sources and *fatwas* (a ruling on a point of Islamic law given by a recognized authority) – to convict and sentence individuals to crimes and punishments not explicitly codified by the law.

The category of *moharebeh* as it exists in Iranian law thus does not satisfy the principle of *nulla poena sine lege* (principle of legality). The Human Rights Committee explicitly stipulated that the imposition of the death penalty cannot “be based on vaguely defined criminal provisions, whose application to the convicted individual would depend on subjective or discretionary considerations the application of which is not reasonably foreseeable.”⁶

The Article 90 Commission of the Parliament is in charge of investigating complaints from citizens made against the operations of the Parliament itself, the executive and the judiciary.⁷ There is no readily available information indicating the number of complaints following the imposition of the death penalty on charges of *moharebeh* received and investigated by the Article 90 Commission.

The death penalty on charges of *moharebeh* still occur in the Islamic Republic of Iran. According to Abdorrahman Boroumand Center for Human Rights in Iran, from the beginning of 2016 through the end of 2020, *moharebeh* was a charge against 81 persons put to death. Acts for which *moharebeh* capital sentences were implemented include armed robberies of supermarkets, armed theft of ten kilograms of gold, wielding cold weapons against women in a community, and collaboration with opposition groups.⁸

Recommendation Status:

This recommendation has **NOT** been implemented.

⁵⁵ General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

⁶General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

⁷ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

⁸ Research conducted by the Abdorrahman Boroumand Center for Human Rights in Iran