

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 471

Full recommendation:

I therefore urge your Excellency's Government to take all necessary measures to guarantee that no one is executed on the basis of a judgment finding him or her guilty of moharebeh, that all death sentences imposed on charges of moharebeh are reviewed, and that the death penalty is no longer imposed on charges of moharebeh.

Assessment using Impact Iran human rights indicators¹

A. The right not to be deprived of life arbitrarily.

Article 22 of the Constitution of the Islamic Republic of Iran stipulates “The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.”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 Judges have discretion to punish a crime of *moharebeh* with the death penalty, crucifixion, amputation of the right arm and the left leg, or banishment.⁴ Although allowing for the death penalty, the definition of *moharebeh* suggests that it also includes offences that do not involve intentional killing, which therefore cannot be considered as “most serious crime” under international law and cannot receive the death penalty.⁵ Additionally, terms such as ‘terror’, ‘atmosphere of insecurity’ or ‘national security’ are not defined under the Islamic Penal Code. Further, under Article 220 of the Islamic Penal Code and Article 167 of the Iranian Constitution, a judge may 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 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

¹ CCPR.6.2.S.1

CCPR.6.2.P.1

CCPR.6.2.O.2

² Constitution of the Islamic Republic of Iran, English translation, <https://www.refworld.org/docid/3ae6b56710.html>

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/>

⁵ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/I_Global/CCPR_C_GC_36_8785_E.pdf

not reasonably foreseeable.”⁶ The lack of precision and clarity concerning crimes of *moharebeh* provides judges with broad interpretive discretion and does not satisfy the principle of *nulla poena sine lege* (principle of legality).

The Article 90 Commission of the Parliament investigates 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 death penalty complaints, from *moharebeh* convictions, that are received and investigated by the Article 90 Commission.

The death penalty on charges of *moharebeh* still occur in the Islamic Republic of Iran. In 2018, reportedly 38 individuals were executed on charges of *moharebeh*, corruption on earth and rebellion.^{8 9}

Recommendation Status:

This recommendation has **NOT** been implemented.

⁶ 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 https://iranhr.net/media/files/Rapport_iran_2019-GB-BD.pdf

⁹ See more : One Person’s stories Abdorrahman Boroumand Center, <https://www.iranrights.org/search?query=moharebeh>