

Concluding Observation Human Rights Committee CCPR/C/IRN/CO/3 para 12

Full recommendation:

The State party should consider abolishing the death penalty or at least revise the Penal Code to restrict the imposition of the death penalty to only the “most serious crimes”, within the meaning of article 6, paragraph 2, of the Covenant and the Committee’s general comment No. 6 (1982) on the right to life. It should ensure that, whenever it is imposed, the requirements of articles 6 and 14 of the Covenant are fully met. It should also ensure that everyone sentenced to death, after exhaustion of all legal avenues of appeal, has an effective opportunity to exercise the right to seek pardon or commutation of sentence from the relevant authorities. The State party should furthermore prohibit the use of public executions, as well as stoning as a method of execution.

Assessment using Impact Iran human rights indicators ¹

A. The Islamic Republic of Iran should consider abolishing the death penalty or at least revise the Penal Code to restrict the imposition of the death penalty to only the “most serious crimes”

In its latest General Comment on Article 6, the Human Rights Committee explicitly stipulated that the term “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 Habibollah Lafiti, Ehsan (Esma’il) Fattahian and Sherko Moarefi were convicted for their membership and/or activities on the behalf of a prohibited Kurdish armed group, without substantial proof that they were directly involved in “the most serious crime,” which therefore may constitute arbitrary deprivation of life.³

The death penalty continues to be applied in the Islamic Republic of Iran to a wide range of offences that do not meet the threshold of “most serious crimes,” in other words, crimes that do not involve intentional killing,⁴ in contravention with article 6 of the International Covenant on Civil and Political Rights. For example, the death penalty may be applied in some cases of

¹ CCPR.6.2.S.1; CCPR.6.4.S.1; CCPR.7.1.S.1; CCPR.14.3.S.4; CCPR.14.3.S.4; CCPR.6.2.P.1; CCPR.6.4.P.1; CCPR.7.1.P.1; CCPR.14.3.P.2; ; CCPR.14.3.P.2; CCPR.6.2.O.2; CCPR.6.4.O.1; CCPR.7.O.1; CCPR.14.3.O.3; CCPR.14.3.O.3

² UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html>

³ UN Human Rights Committee (HRC), *General comment no. 36, Article 6 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html>

⁴ Human Rights Committee, general comment No. 36 (2018) on the right to life

adultery,⁵ for certain cases of consensual same-sex intercourse between men⁶ or for vaguely defined offences such as *moharebeh* (“enmity against god”)⁷ and *efsad-e fel-arz* (“corruption on earth”).⁸ In 8 July 2020, Morteza Jamali was executed in Mashhad Central Prison after he was convicted of alcohol consumption for the fourth time.⁹ In April 2021, two men were sentenced to death for insulting the prophet.¹⁰

In November 2017 an amendment made to the law on drug trafficking entered into force, replacing the mandatory death penalty with a prison term of up to 30 years for non-violent drug-related offences and increased the quantity of drugs required for a death sentence to be imposed. However, mandatory death sentences for numerous drug-related offences were retained and transformed a number of crimes into capital crimes for first-time offenders in specific circumstances.¹¹ In 2019, reportedly 30 individuals were executed on drug-related charges.¹² The Human Rights Committee has consistently underscored that drug-related offences do not meet the threshold of “most serious crimes” and that the death penalty should not be applied to them.¹³

Despite the existence of several means and mechanisms that accept complaints regarding the violation of rights in Iran, such as the Judge’s Disciplinary Court, the Article 90 Parliamentary Commission and, in general, any appeals courts including the Supreme Court, there is little evidence to suggest that these complaints are properly investigated and adjudicated. Iran does not have any administrative processes or independent human rights monitoring mechanisms in place that ensure the prohibition of capital punishment.

Between January 2015 and December 2018, the Islamic Republic of Iran reportedly executed at least 2,303 people.¹⁴ Reports received by OHCHR indicated a decrease in the number of executions between 2017 and 2018 (437 in 2017 compared to 207 in 2018).¹⁵ On the other hand,

⁵ Islamic Penal Code, articles 136 and 225, English translation, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁶ Islamic Penal Code article 234, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁷ Islamic Penal Code article 279, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁸ Islamic Penal Code article 286, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁹ <https://iranhr.net/en/articles/4312>

¹⁰ <https://iranhr.net/en/articles/4710/>

¹¹ Drug trafficking law, articles 8 and 45.

¹² ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

¹³ CCPR/C/PAK/CO/1, para. 17; CCPR/C/THA/CO/2, para. 17; CCPR/C/KWT/CO/3, para. 22; A/71/372, para. 48; and Human Rights Committee, general comment No. 36.

¹⁴ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1305732019ENGLISH.PDF>

¹⁵ Report of the Secretary General on the situation of human rights in the Islamic Republic of Iran, February 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/028/77/PDF/G1902877.pdf?OpenElement>

Ensemble Contre la Peine de Mort (ECPM) and Iran Human Rights reported at least 280 executions in 2019, against 273 in 2018.^{16 17 18 19}

The Islamic Republic of Iran has continued to implement death penalties throughout 2020,²⁰ notably against protesters, dissidents and members of minority groups,²¹ most recently with the execution of the journalist Ruhollah Zam on December 12, 2020.²² Although there are no readily official and available data on the number of detainees in death row in Iran, a number of NGOs reported a significant number of individuals currently in prison and sentenced to the capital punishment for crimes that are not “the most serious” under international standards.^{23 24} There is no readily available information that might indicate that the Government of the Islamic Republic of Iran has planned to commute pending death sentences.

B. The Islamic Republic of Iran should ensure that, whenever it is imposed, the requirements of articles 6 and 14 of the Covenant are fully met.

As described above, the Islamic Republic of Iran does not ensure that whenever the death penalty is imposed the requirements of article 6 of the Covenant is fully met. Additionally, the Islamic Republic of Iran does not guarantee that all individuals sentenced to the death penalty have access to legal assistance of one’s choosing, although such right is protected under Article 14 of the Covenant.

Article 35 of the Constitution of the Islamic Republic of Iran ostensibly guarantees the right to legal defence, which also ensures the right to choose a lawyer. In the event that a party to a lawsuit is unable to secure legal counselling, according to Article 35 of the Iranian Constitution a lawyer will be provided.²⁵ Additionally, Article 190 of the revised Code of Criminal Procedure (CCP) protects the right of a suspect to “be accompanied by a lawyer during the preliminary investigations”. Similarly, Article 48 of the CCP permits the accused to “demand the presence of a lawyer from the beginning of his/her detention.”^{26 27} According to Iran Human Rights, every

¹⁶ ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

¹⁷ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

¹⁸ See more: Abdorrahman Boroumand Center <https://www.iranrights.org/projects/omidmap>

¹⁹ See more: Human Rights Activists in Iran <https://www.en-hrana.org/wp-content/uploads/2019/10/Annual-Report-of-Executions-2019.pdf>

²⁰ See for instance: Iran Human Rights Documentation Center, <https://iranhrdc.org/ihrdc-chart-of-executions-by-the-islamic-republic-of-iran-2020/>

²¹ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/07/iran-two-kurds-executed-amid-increasing-use-of-death-penalty-as-weapon-of-repression/>

²² OHCHR News, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26603&LangID=E>

²³ United For Iran’s Prison atlas, <https://ipa.united4iran.org/en/prisoner/>

²⁴ ECPM & IRH, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

²⁵ Constitution of the Islamic Republic of Iran http://www.iranchamber.com/government/laws/constitution_ch03.php

²⁶ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

²⁷ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

death row prisoner the non-profit has been in contact with has testified to being subjected to torture in order to admit to their criminal charges. This is not only limited to those with political or security-related charges. Almost all prisoners who were arrested for drug-related offences have been kept in solitary confinement and subjected to physical torture during the investigation phase following their detention, all while being denied access to a lawyer.²⁸

However, the right to access a lawyer of one's choice is limited by a note to Article 48 of the 2015 CCP²⁹ for individuals facing charges for certain offences, such as those related to national security and organised crime. In such cases, the individual must select their legal counsel during the preliminary investigative phase, from a limited list of lawyers approved and announced by the Head of the Judiciary.³⁰ In 2018, the Judiciary published the list of approved lawyers which only had 20 names listed for all of Tehran. However, many of these lawyers reportedly have close ties with the security forces or paid to appear on the list after speaking with government officials, thus suggesting that due process in Iran is threatened and the independence and neutrality of the Judiciary is questionable.³¹

Although the CCP guarantees the right to free legal assistance for those without adequate financial resources, the applicability of this right is different in the pre-trial and trial phases.³² The CCP ensures access to free legal assistance during the investigation phase in cases where the accused faces charges other than those punishable by severe punishments, such as the death penalty or life imprisonment. However, in May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the Code of Criminal Procedure, which would allow the prosecution to delay access to a lawyer for 20 days, with a possibility of extending such delay to the whole duration of the investigation, in cases related to national security, terrorism or financial corruption.^{33 34} Such amendment would further restrict access to legal counsel during the phase of investigation.

Despite the existence of several mechanisms that ostensibly accept complaints regarding violations of citizens' rights, such as the Parliament's Article 90 Commission (established under

²⁸ <https://iranhr.net/en/articles/4732/>

²⁹ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

³⁰ The former CCP had conditioned the presence of a lawyer at the investigative stage on the permission of the judge in cases with a "confidential" aspect, cases where the presence of a party other than defendant would "corrupt" proceedings as determined by the judge, and in national security cases; See the March 17, 2017 report of the UN Special Rapporteur, Asma Jahangir, on fair trial in Iran (<https://undocs.org/en/A/HRC/34/65>)

³¹ "Iranian Lawyers Criticize Proposal to Deprive Defendants of Right to Choose Counsel," Human Rights Activists in Iran, June 6, 2018 (<https://www.iranrights.org/library/document/3443>)

³² Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

³³ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

³⁴ Amnesty International, www.amnesty.org/en/documents/mde13/0379/2019/en/ ; <https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>

Article 90 of the Constitution, offering a mechanism to citizens to file complaint against any of the three branches of power) and the Oversight Bodies for the exercise of Citizenship Rights in the country's provincial courts, there is no evidence to suggest that complaints to these bodies are independently reviewed and investigated.³⁵

In its 2019 Report to the Universal Periodic Review, the Islamic Republic of Iran stated that it adopted measures including “providing access to a lawyer and benefiting from legal advice” and added that “in the agreement with the centre of lawyers and legal advisers of the Judiciary and a number of bar associations, free judicial assistance is provided to prisoners” and that “social and judicial assistance units also provide legal counsel to prisoners.”³⁶

However, individuals accused of committing crimes against national security, including those that might be sentenced to the death penalty, are often denied access to a lawyer during the investigative stage of the judicial process. In the hundreds of cases of individuals arrested for political reasons or are suspected of committing ordinary crimes that the Abdorrahman Boroumand Center has investigated, all detainees were interrogated without the presence of an attorney.³⁷ Reports have shown a pattern of reported cases where prisoners remain incarcerated without proper access to legal representation during all stages of their trial procedure.^{38 39 40 41} In many reported cases, especially those involving charges of crimes against national security, defendants have reported seeing their lawyer for the first time on the day of their trial.^{42 43}

C. The Islamic Republic of Iran should also ensure that everyone sentenced to death, after exhaustion of all legal avenues of appeal, has an effective opportunity to exercise the right to seek pardon or commutation of sentence from the relevant authorities.

³⁵ Joint submission to the Human Rights Committee, Abdorrahman Center, Iran Human Rights Documentation Center (IHRDC), Impact Iran and Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICS%2fIRN%2f42313&Lang=en

³⁶ National Report, UPR 2019, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

³⁷ Abdorrahman Boroumand Center, joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IC_S_IRN_42313_E.pdf

³⁸ HRANA <https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>

³⁹ HRANA <https://www.en-hrana.org/arash-sadegh-golrokh-iraicis-lawyers-access-cases>

⁴⁰ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, https://www.ohchr.org/Documents/Countries/IR/Report_of_the_Special_Rapporteur_on_the_situation_of_human_rights_in_the_Islamic_Republic_of_IranA4361.pdf

⁴¹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, July 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/27/PDF/N2019027.pdf?OpenElement>

⁴² Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IC_S_IRN_42313_E.pdf

⁴³ Human Rights Watch <https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>

Article 34 of the constitution⁴⁴ guarantees the right of appeal and access to the courts for everyone, and thus all punishments in all courts (civil, criminal and revolutionary courts) are subject to appeal. In death penalty cases, approval by the Supreme Court is required for an appeal to be made. However, over the past few decades, rights groups have documented instances which indicate that aspects of the right to a fair trial in crimes that might be punished by the death penalty have not been respected in law and practice, such as the violation of the right to have a lawyer in all stages of the legal process⁴⁵ and the systematic use of torture during the investigation period.^{46 47}

Ensemble Contre la Peine de Mort (ECPM) and Iran Human Rights reported at least 280 executions in 2019. Iran is one of the countries with the most confirmed executions around the world.⁴⁸ The high number of death sentences issued every year in the Islamic Republic of Iran suggest that those sentenced to the death penalty, after exhaustion of all legal avenues of appeal, have not an effective opportunity to exercise the right to seek pardon or commutation of sentences from the relevant authorities.

D. The Islamic Republic of Iran should furthermore prohibit the use of public executions, as well as stoning as a method of execution.

Article 499 of the revised Code of Criminal Procedure (2015) generally prohibits the execution of punishments, including execution, flogging and stoning, in public, but allows the judge or the prosecutor to order otherwise if deemed preventive.⁴⁹ The preventive effect, and supposed benefit, of public executions is considered common knowledge among judges who support such practice.⁵⁰

In 2008, then-head of the Judiciary, Ayatollah Shahroudi, issued a directive entitled the Public Prohibition of Execution,⁵¹ effectively banning public executions. However, directives and circulars are not considered as law. Public executions are still practiced in the Islamic Republic of Iran and every year a number of public executions are recorded. In 2019, 13 individuals were reportedly executed in public spaces in Iran.⁵²

⁴⁴ Constitution of the Islamic Republic of Iran, 1979 <https://www.wipo.int/edocs/lexdocs/laws/en/ir/ir001en.pdf>

⁴⁵ Human Rights Lawyer Sentenced to Prison Without Access to Counsel, Center for Human Rights in Iran. 11 May 2020: <https://iranhumanrights.org/2020/05/human-rights-lawyer-sentenced-to-prison-without-access-to-counsel/>

⁴⁶ Iran Tortures Prisoners to Death, Intimidates and Blackmails Families, Iran Human Rights Monitor 19 June 2020. <https://iran-hrm.com/index.php/2020/06/19/iran-tortures-prisoners-to-death-intimidates-and-blackmails-families/>

⁴⁷ See more: Joint submission to the Human Rights Committee, Abdorrahman Center, Iran Human Rights Documentation Center (IHRDC), Impact Iran and Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCS%2fIRN%2f42313&Lang=en

⁴⁸ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

⁴⁹ The Code of Criminal Procedure (adopted in 2013): < <https://shenasname.ir/laws/2327-keifari> >

⁵⁰ <<https://p.dw.com/p/12Y5C>>

⁵¹ Hamshahri Newspaper: < <https://www.hamshahrionline.ir/news/43036/>>

⁵² ECPM & Iran Human Rights, Annual Report on the Death Penalty in Iran, 2019, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

According to the latest regulations issued by the current head of the Judiciary in 2019, the presence of persons under 18 years of age at public executions is prohibited, unless the judge decides otherwise.⁵³

The Human Rights Committee has opined that public executions are contrary to Article 7 of the International Covenant on Civil and Political Rights⁵⁴ and therefore inevitably render the execution arbitrary in nature, thus a violation of Article 6.⁵⁵

Although in 2002 then-Head of the Judiciary Ayatollah Shahroudi issued a ban on stoning,⁵⁶ it remains as a punishment for act of adultery by a woman and a man who meet the condition of *ehsan*⁵⁷ under the Islamic Penal Code (2013).⁵⁸ In 2007, the Iranian judiciary confirmed that a man who had been convicted of adultery 10 years earlier was stoned to death in Qazvin province.⁵⁹ The practice reportedly further continued despite the issuance of the ban.^{60 61} In 2013 the spokesman for the Iranian Parliament's Justice Commission confirmed that while the Penal Code no longer prescribes stoning, it remains a valid punishment under *Shari'a* law, which is enforceable under the Penal Code.⁶²

The Human Rights Committee has explicitly stated that flogging, amputation and stoning are not compatible with the International Covenant on Civil and Political Rights (ICCPR).⁶³ The text of article 7 of the ICCPR allows for no limitation. Violation of *jus cogens* norms, such as the prohibition of torture or other ill-treatment, cannot be justified on the basis of inconsistent domestic laws.⁶⁴

Recommendation Status:

This recommendation has **NOT** been implemented.

⁵³ Note 2 of Article 43 of the regulation on the Execution of Hudud and Qisas Sentences (Adopted on June 17, 2019): < <http://rrk.ir/Laws/ShowLaw.aspx?Code=18022> >

⁵⁴ Human Rights Committee, CCPR/CO/72/PRK, para. 13, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/CO/72/PRK&Lang=en

⁵⁵ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 40, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

⁵⁶ European Parliament Report, 2003, <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2003-0334+0+DOC+XML+V0//EN>

⁵⁷ The condition of *ehsan* is described under Article 226 of the 2013 Islamic Penal Code, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁵⁸ Article 225, Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁵⁹ Radio Farda report: < https://www.radiofarda.com/a/f1_stoning_Iran/401521.html >

⁶⁰ Iran Human Rights, <https://iranhr.net/en/articles/603/>

⁶¹ Radio Farda report: < https://www.radiofarda.com/a/f7_Stoninig_3_men_in_Iran/479480.html >

⁶² Mohamadali Esfanani, in an interview with Fars News Agency that Radio Zamaneh reported it: < <https://www.radiozamaneh.com/53576> >

⁶³ UN Human Rights Committee (HRC), CCPR/C/79/Add.85, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/79/Add.85&Lang=en

⁶⁴ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 27 September 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/300/93/PDF/N1830093.pdf?OpenElement>