

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 404

Full recommendation:

Although the death penalty is not, per se, prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. It is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. As Article 14(5) of the ICCPR provides, "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Since the Head of the Judiciary has ordered a review of Mr. Haddadi's case, no execution should be carried out before the completion of the review.

Assessment using Impact Iran indicators¹

A. Since the Head of the Judiciary has ordered a review of Mr. Haddadi's case, no execution should be carried out before the completion of the review

Mohammad Reza Haddadi has been in prison since 2002. He is accused of committing murder while stealing a car in Kazerun, along with three other people when he was aged 15. Haddadi had initially pleaded guilty but later explained that his two co-defendants had coerced him into confessing by promising him money to take the blame for the murder, telling him that he would not receive the death penalty as he was underage.² Both co-defendants were over the age of 18 at the time of the crime and received prison sentences. But Mohammad Reza Haddadi's *qisas* (retribution) death sentence was upheld by the Supreme Court in July 2005.³ While he has not been executed, as of August 19th, 2020, Mr. Haddadi was still in imprisoned and on death row for a crime he allegedly committed when he was a juvenile, contrary to international law⁴. As of this date, his case was still under the review of the Supreme Court.⁵ Since the trial, the execution of Mr. Haddadi has been postponed and canceled at least six times.⁶

¹CCPR.6.2.S.3

CCPR.6.3.P.4

CCPR.6.1.O.1

CCPR.14.3.S.4; CCPR.14.3.S.4;CCPR.14.3.P.2; CCPR.14.3.P.2;CCPR.14.3.O.3; CCPR.14.3.O.3

² Iran Human Rights: <https://iranhr.net/en/articles/4392/>

³ Iran Human Rights: <https://iranhr.net/en/articles/3747/>

⁴ See, for example Article 6 of the ICCPR and Article 37 (A) of the CRC.

⁵ Iran Human Rights: <https://iranhr.net/en/articles/4392/>

⁶ <https://www.amnesty.org/en/latest/campaigns/2018/10/death-penalty-iran/>

B. All restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences

In General Comment 36, 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.”⁷

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,⁸ in contravention of Article 6 of the International Covenant on Civil and Political Rights. For example, the death penalty may be applied in some cases of adultery,⁹ for certain cases of consensual same-sex intercourse between men,¹⁰ drug related offences or repeated occurrences of drinking alcohol, or for vaguely defined offences such as *moharebeh* (“enmity against god”)¹¹ and *efsad-e fel-arz* (“corruption on earth”).¹²

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 increasing the quantity of drugs required for a death sentence to be imposed. However, mandatory death sentences for numerous drug-related offences remained and a number of crimes were transformed into capital crimes for first-time offenders in specific circumstances.¹³ In 2019, reportedly 30 individuals were executed on drug-related charges.¹⁴ 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.¹⁵

On the issue of access to justice in capital punishment cases, Article 35 of the Constitution of the Islamic Republic of Iran 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,

⁷ UN Human Rights Committee, 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>

⁸ UN Human Rights Committee, 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>

⁹ Islamic Penal Code (2013) articles 136 and 225

¹⁰ Islamic Penal Code (2013) article 235

¹¹ Islamic Penal Code (2013) article 279

¹² Islamic Penal Code (2013) article 286

¹³ Drug trafficking law, articles 8 and 45.

¹⁴ ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

¹⁵ 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.

according to Article 35 of the Iranian Constitution a lawyer will be provided.¹⁶ 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.”^{17 18}

However, the right to access a lawyer of one’s choice is limited by a note to Article 48 of the 2015 CCP¹⁹ 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.²⁰ 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 allegedly paid government officials to appear on the list, raising questions as to their ability to fairly represent their clients.²¹

The CCP provides for free legal assistance in both the pre-trial and trial phase for those accused of crimes which carry the death penalty.²² However, In May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the Code of Criminal Procedure. The amendment 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.^{23 24} Such an amendment would further restrict access to legal counsel during the phase of investigation.

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

¹⁶ Constitution of the Islamic Republic of Iran http://www.iranchamber.com/government/laws/constitution_ch03.php

¹⁷ 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_IJS_IRN_42313_E.pdf

¹⁸ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

¹⁹ 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_IJS_IRN_42313_E.pdf

²⁰ 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>)

²¹ “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>)

²² Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

²³ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

²⁴ 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/>

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 to ensure the prohibition of capital punishment.²⁵

Between January 2015 and December 2018, the Islamic Republic of Iran reportedly executed at least 2,303 people.²⁶ Reports received by OHCHR indicated a decrease in the number of executions between 2017 and 2018 (437 in 2017 compared to 207 in 2018 for the same period).²⁷ On the other hand, World Coalition against the Death Penalty (ECPM) and Iran Human Rights reported at least 280 executions in 2019, against 273 in 2018.^{28 29 30 31}

While the amendment of the law on drug trafficking reduced the number of offences punishable by the death penalty, the Islamic Republic of Iran still sentences a wide range of crimes with the capital punishment. In 2019, Iran was the second country with the highest number of reported executions, behind China.^{32 33 34 35}

The Government continues to carry out executions.^{36 37} Reportedly, a significant number of individuals are currently on death row in the Islamic Republic of Iran³⁸ with seemingly no prospect of commutation.

The Government, the Judiciary and the Parliament of the Islamic Republic of Iran have not removed the death penalty as punishment for all offences other than the most serious crimes and have not ensured that all individuals sentenced to death for offences other than intentional killing have their sentences commuted

²⁵ 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

²⁶ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1305732019ENGLISH.PDF>

²⁷ Report of the UN 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>

²⁸ ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

²⁹ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

³⁰ See more: Abdorrahman Boroumand Center <https://www.iranrights.org/projects/omidmap>

³¹ See more: Human Rights Activists in Iran <https://www.en-hrana.org/wp-content/uploads/2019/10/Annual-Report-of-Executions-2019.pdf>

³² <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

³³ See more: ECPM, Iran Human Rights https://iranhr.net/media/files/Rapport_iran_2019-GB-BD.pdf

³⁴ See more: Abdorrahman Boroumand Center <https://www.iranrights.org/projects/omidmap>

³⁵ See more: Human Rights Activists in Iran <https://www.en-hrana.org/wp-content/uploads/2019/10/Annual-Report-of-Executions-2019.pdf>

³⁶ United For Iran, <https://ipa.united4iran.org/en/prisoner/5328/>

³⁷ Center for Human Rights in Iran, <https://iranhumanrights.org/2020/12/three-baluch-prisoners-executed-three-others-in-imminent-danger-of-execution/>

³⁸ Radio Farda, <https://en.radiofarda.com/a/more-than-thirty-people-are-on-death-row-in-iran-says-afkari-s-lawyer/30840157.html>

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.”³⁹

However, as previously mentioned 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.⁴⁰ 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.^{41 42 43 44} 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.^{45 46}

In light of the above, the Islamic Republic of Iran has not ensured that all those sentenced to death can exercise their right to equal access to justice through adequate legal representation. Additionally, the existing legal aid programmes have not been effective in ensuring adequate and qualified legal representation for all.

Recommendation Status:

This recommendation has **NOT** been implemented⁴⁷

³⁹ National Report, UPR 2019, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

⁴⁰ 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_IJS_IRN_42313_E.pdf

⁴¹ HRANA <https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>

⁴² HRANA <https://www.en-hrana.org/arash-sadegh-golrokh-iraicis-lawyers-access-cases>

⁴³ 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

⁴⁴ 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>

⁴⁵ 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_IJS_IRN_42313_E.pdf

⁴⁶ Human Rights Watch <https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>

⁴⁷ For more, please see: Abdorrahman Boroumand Center <https://www.iranrights.org/newsletter/issue/79>