

**On  
the Death  
Penalty  
in Iran**

CAHIERS DE L'ABOLITION  
#2

#### **Acknowledgments**

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# On the death penalty in Iran



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## FOREWORD

By **Shirin Ebadi**

*Lawyer and human rights activist, Nobel Peace Prize 2003.*

The death penalty violates the right to life, and all countries must abolish this dreadful punishment. Human rights demands this.

A large number of countries, especially in Europe, have removed the death penalty from their penal arsenal. Unfortunately, despite public pressure and the application of a moratorium in several countries, this punishment is still in force elsewhere. This sentence, the severest of all, is sometimes applied for minor offenses or acts which by themselves are not crimes. Thus, in the Islamic Republic of Iran, sexual acts between men are punishable by death, even though it is well known that some states recognise gay marriage by law.

The goal of punishment is to reform the offender. Death eliminates this possibility. Moreover practice has proven that the death penalty has no effect on crime rates but only contributes to the spread of violence in society. Finally, the most serious issue that the death penalty raises is that it is impossible to repair a judicial error.

For it to be abolished worldwide, the lawyers of all countries who are opposed to this practice must come together to speak out: *"No to the death penalty!"*

Given the statistics of executions in some countries, especially in China, Iran and Sudan, many people argue that the universal abolition of the death penalty is an impossible dream. We nonetheless strive to keep this dream in mind, while acting pragmatically. Let us not forget that many of mankind's achievements started this way. Two hundred years ago, the abolition of slavery and the independence of a country like India were dreams. But the dreams of yesterday have become reality today.

The greater the efforts of those who believe in abolition, the earlier the dream will come true. There is no time to waste: each day people are sentenced to death and lose their right to life. Hand in hand, let us break the chain of death and make this dream a reality.

## INTRODUCTION

# Origin and Objectives of the *Cahiers de l'abolition* on the Death Penalty in Iran

By Raphaël Chenuil-Hazan

Director-General of Together against the Death Penalty (ECPM),  
Vice President of the World Coalition against the Death Penalty.

*“My hope is that on the day of retribution, with all due respect to the adversary, the effusion of His forgiveness will spare my shoulders the burden of fault.”*  
Ghazal 332,5, *Divân*, Hâfez de Chiraz

### I. Why dedicate a *Cahier de l'abolition* to Iran?

Iran is the country with the highest rate of executions *per capita* in the world, i.e. relative to the number of its inhabitants. Three hundred executions have been claimed by the Iranian authorities for 2013, but in their latest annual report on the death penalty in Iran,<sup>1</sup> Together against the Death Penalty (ECPM) and Iran Human Rights (IHR) pinpoint more than 687 executions in that same year.

The law of the Islamic Republic of Iran provides for extensive application of the death penalty, both at the level of charges punishable by death and offenders who may be sentenced to death (for example minors). The death penalty is incurred for violent crimes, sexual abuse (incest, fornication, adultery and homosexual relationships), acts that qualify as acts of rebellion, *efsad fil-arz* or *mohârebeh*.

Iranian authorities use the death penalty in a completely opaque manner. The judicial system, based on the principles of Islam, is not transparent and official data on this subject are rare and incomplete. Activists and defenders of human rights cannot operate in the open and it is very difficult to access reliable, accurate and detailed information

<sup>1</sup> ECPM and IHR, Rapport annuel sur la peine de mort en Iran, [Annual Report on the Death Penalty in Iran] 11 March 2014, available in French at [www.abolition.fr](http://www.abolition.fr).

on the legal reality of the death penalty in this country. The criminal policy of the Islamic Republic of Iran, established in 1979, trivialises the use of the death penalty by giving it considerable play in the repressive arsenal. Extensive application of the death penalty and a lack of transparency in the Iranian judicial system are the main reasons for the need to devote an issue of this journal specifically to Iran, highlighting the unique aspects of the death penalty in this country.

This issue of the *Cahiers de l'abolition* has three goals:

- To provide as complete and informative a tool as possible to a very broad audience;
- To present, above and beyond current events, a detailed and multidimensional analysis of the legal, social and political reality of the death penalty in Iran;
  - To confront the perspectives of various actors (academics, lawyers, sociologists, journalists, officials from international organisations, stakeholders involved in human rights) in Iran and outside the country.

Many hopes were raised with the election of Hassan Rouhani as President of the Islamic Republic of Iran, on the 14th June 2013. He himself then spoke of a “*victory of moderation over extremism*”. Beyond figures (so difficult to obtain) and beyond facts, it is a question of understanding the political and judicial systems that constitute one of the most rigid and systematic applications of the death penalty today.

President Rouhani's position is certainly a difficult one. Indeed, because of the sway of the Supreme Leader of Iran, Ali Khamenei, of the Guardian Council of the Constitution and the Iranian Parliament (*Majles*), in the hands of the most conservative, it is not easy to implement ambitious reforms. Some however, particularly among the Iranian diaspora in Europe and North America, regret the lack of change and the immobility of the regime on human rights. Others continue to want to believe in the will of the President to overhaul Iranian society and improve the human rights situation in the country. In any event, the lack of significant progress is, in some respects, reminiscent of the presidency of Mohammad Khatami (1997-2005), where there was much hope but the only result was his taking control of the most conservative marginal groups of the Iranian government.

This *Cahier* presented many challenges. Our aim is to strengthen communication both with human rights stakeholders in Iran and with all international actors concerned by this issue. Our hope is to help Iran in its reforms, while helping the world to better understand the country's situation. A further ambition is to discuss and exchange ideas, leaving aside religious, ethnic, historical and political divides. As two Persian proverbs express it: “*a true wise man is one who learns from everyone*” and “*doubt is the key to all knowledge*”.

## II. What is a *Cahier de l'abolition* ?

The mission of ECPM is to gather, unite, strengthen all actors of civil society engaged in the field of human rights, parliamentarians, politicians, legal professionals, etc., and to work for political change to succeed, locally and globally, in the abolition of the death penalty. We believe that the mission of awareness and education of the largest possible number of people on the question of abolition, in retentionist as well as abolitionist countries, is the core of our work.

A scientific journal was necessary for this. This issue devoted to Iran is thus part of the collection *Cahiers de l'abolition* (CAB), an independent journal that studies and reflects upon the abolition of the death penalty. The goal of the CAB is to be a source of debate and knowledge on the death penalty. It puts forward the multiple and complex issues of the realities of the death penalty around the world and helps understand them. It is about broaching, in a serious and rigorous manner, thematic and geographic issues that affect the core of abolitionist debates.

Because the death penalty is the ultimate denial of human rights. Because in working to abolish the death penalty, we deeply change the perception of human rights in society. Because human life is a universal value and respect of one's own dignity transcends all cultural and religious specificities. Because over and above differences in perspective, one must find areas of convergence which bolster all arguments against the death penalty, rather than focusing on the particularities of a given country or society, as this tends to relativise the possibility of abolition. Confronting different views is a means to get one step closer to the truth. The CAB addresses the essence of human rights: the right to life!

PART I

Legal  
perspectives



# The Death Penalty in the Judicial System

By **Nasrin Sotoudeh**  
lawyer, Sakharov Prize 2012.

The investigation procedure of crimes punishable by death and the criminal procedural rules that govern this action are totally inadequate and ineffective. The probability of error is very high, especially in the investigation of political crimes, where the plaintiff is the State. Such cases are handled with particular severity.

## I. Crimes punishable by death

Firstly, I believe it is necessary to clarify what I mean by “death penalty”. In this short article, I will apply this expression to all sentences resulting in the death of the convicted person, regardless of the method of execution, which can be by hanging, shooting, stoning, etc. The Islamic Penal Code (IPC) divides crimes punishable by death into three categories:

### 1) **Talion** (*qisas*)

The perpetrators of crimes who cause the death of their victim are in turn sentenced to death.<sup>2</sup>

### 2) **Prescribed penalties** (*hudud*)

These are the other crimes for which the death penalty is envisaged, such as:

- adultery (committed by a married woman);
- sexual relations between men;
- rape;
- sexual assault on a prepubescent child;
- sexual relations with a close relative;
- armed robbery;
- third repeated offence of theft;
- insult to the Prophet of Islam;
- insulting reference to the Twelve Imams;
- *moharebeh*,<sup>3</sup> which falls under political crimes.<sup>4</sup>

<sup>2</sup> IPC (2013), Article 381.

<sup>3</sup> The qualification of *moharebeh*, a term generally translated as “war against God”, usually refers to crimes that are a reflection on society as a whole, such as acts of terrorism or armed attacks against civilians. In Iran, it has been notably used against armed opposition and separatist groups, but also against common criminals and even political opponents after 2009 (TN).

<sup>4</sup> IPC (2013), Articles 224, 262, 278-279 and 2870.

Note that in the New Islamic Penal Code (NIPC), the following crimes are also frequently punishable by death:

- injury to the physical integrity of persons;
- crimes against the internal or external security of the country;
- the dissemination of false information;
- economic crimes;<sup>5</sup>
- arson and sabotage;
- dispersal of toxic and hazardous substances or microbial agents;
- the establishment of corruption and debauchery centres.

### 3) **Discretionary sentences** (*tazirat*)

This category includes drug trafficking. The law punishes by death a person who is in possession of at least thirty grams of heroin or its derivatives.<sup>6</sup>

## II. The courts and criminal proceedings

The types of courts, the procedural system and the number of investigating magistrates vary depending on the crimes listed above.

### 1) **The trial court**

**a)** The provincial Criminal Court composed of five magistrates responsible for the investigation of murders and crimes under the *hudud*;<sup>7</sup>

**b)** The revolutionary court consisting of a magistrate who is responsible for the investigation of several political crimes, including that of *moharebeh* and drug trafficking;<sup>8</sup>

**c)** The special court for clerics, consisting of a magistrate who is responsible for the investigation of all crimes committed by a cleric including crimes that are punishable by death.<sup>9</sup>

### 2) **The supreme courts**

The supreme courts have the power to annul the sentences given in the investigation of crimes punishable by death. These are:

**a)** The Court of Cassation composed of three judges who are responsible for the investigation of political crimes, such as the *moharebeh* and drug trafficking;

<sup>5</sup> Literally, “offenses against the economic order of the country” (TN).

<sup>6</sup> Law against drugs and its annexes, amended in 2010-2011, Article 8.

<sup>7</sup> Article 4, paragraph 1 of the law of 1994 organising the General and Revolutionary Courts

<sup>8</sup> Although not all jurists are in favour of the legal status of the Revolutionary Court and the philosophy that governs its existence, according to Article 5 of the law of 1994 that organises the General and Revolutionary Courts, the investigation of a large number of crimes, including political ones and those related to drug trafficking, takes place in this court.

<sup>9</sup> This court was constituted in accordance with the statutes of public prosecution and special courts for the clergy, adopted in 1990 under the supervision of the Rahbar, or “Supreme Leader”, and without following the normal legal channels.

b) The Supreme Court composed of five judges who are responsible for the investigation of crimes within *qisas* and *hudud*.<sup>10</sup>

These elements call for the following remarks:

- The investigation of crimes punishable by death is carried out by a number of magistrates which varies with the nature of the crime. The investigation of crimes within *qisas* requires the intervention of five magistrates in the trial court and five others in the court of cassation, which makes a total of ten judges. For political crimes such as *moharebeh*, only one magistrate in the trial court and three on appeal are required. This means that a total of four magistrates investigate the case of the accused.
- The rulings of the Revolutionary Court are transmitted to three chambers that are specifically responsible for the appeal. This is very surprising and is contrary to the principles of impartiality and non-intervention in proceedings.
- In drug trafficking cases, although the decision is made by a single magistrate in the trial court, only the prosecutor's validation is required for the sentence to be applicable, without the accused having the opportunity to appeal. Therefore, in this case, only one magistrate hands down the sentence.

During the demonstrations that followed the presidential elections of 2009, the judicial system managed to accomplish the execution of one of my clients in this way. His case, of a political nature, was coupled with a drug trafficking charge. It was claimed that he was in possession of drugs. The judge only investigated the accusation of drug trafficking against my client, without going into the political part of the prosecution. He sentenced him to death and ordered the sentence to be carried out.

Therefore, the methods used by the judiciary system to investigate crimes punishable by death vary according to the qualifications to which the crime corresponds. The sentence may be given by a number of magistrates varying between one and ten. In addition, this sentence also depends on luck and circumstances.

In such a judiciary system, magistrates enjoy great freedom of action: it is possible for a judge to pronounce a death sentence simply on the basis of his informed opinion.

### III. The death penalty for minors

The death penalty for minors under 18 years of age, which various countries have fully repealed in accordance with international conventions, is a particularly sensitive issue. In Iranian law, the age of criminal responsibility is 8 years and 9 months for girls and 14 years and 6 months for boys.<sup>11</sup> Upon reaching this age people are considered responsible for their acts in the same way as adults and may therefore be punishable by death. Nevertheless, the actions of human rights activists obtained some progress on the question in the IPC voted in 2012. According to the provisions of this new IPC:

<sup>10</sup> Article 233 of the Procedural Code for General and Revolutionary Courts in criminal cases from 1999 to 2000.

<sup>11</sup> Respectively 9 and 15 years, according to the lunar Muslim calendar (TN). See IPC (2013), Articles 146 and 147.

- The application of the judge's informed opinion is now subject to the existence of clear elements in the case. Therefore, in the absence of these elements, the judge cannot simply rely on a sufficient understanding of the facts of the case.
- The judge has the option to seek the opinion of a medical expert to assess the intellectual maturity of an accused minor under 18 years of age.<sup>12</sup>

Naturally, this Code, despite international conventions, has not repealed the death penalty for minors under 18 years old.<sup>13</sup> In addition, the new provisions are simply words on paper: minors are still executed without the judge asking for the opinion of a medical expert to assess their intellectual maturity. And yet resorting to specialist doctors would save many adolescents from execution. In Iran there are at present over 160 individuals awaiting execution who were under 18 at the time of their crime. Obviously, according to the fundamental principles of law, these convicted people should have their case reopened in the framework of the NIPC because it is less severe than the previous code. Human rights activists are currently concentrating their work on this issue and trying to ensure that the NIPC is indeed applied and that everything be done to ensure that it is the case.

### IV. Operation of the Revolutionary Court

The Revolutionary Court is one of the strictest judicial bodies, it also has the largest number of capital cases within its scope. In fact, according to the authorities of the Islamic Republic of Iran, most cases concluded by death sentences are linked to drug trafficking, which falls within the jurisdiction of this court.

The features of this court are as follows:

- Conducting a defence before the Revolutionary Court is particularly difficult. In fact, in many cases, the rights of the defence are ignored, and in these courts lawyers are persistently exposed to threats and lawsuits. At present, a large number of lawyers working in the Revolutionary Court have been tried and convicted by the same court, some serving prison sentences.
- The activity of the Revolutionary Court consists essentially of closed meetings. This entails that for many of the cases it investigates, even the defendant's closest relatives are prohibited from attending its deliberations.
- Many of the rights of the defendant, whether major or minor, are violated. For example, the Revolutionary Court can fail to officially notify its decision to the convicted person. However, this notification is particularly important because it marks the start of a limited period of time during which the decision taken can be contested before it is finally confirmed. Indeed, Iranian law states that the verdict of the Revolutionary Courts can be

<sup>12</sup> 13 IPC (2013), Article 91, § 1.

<sup>13</sup> See Leila Alikarami's article, "The issue of minors and death penalty under Iran's Criminal Code" (pp. 72-78).

appealed within twenty days. By law, this period starts at the date of notification of the decision to the convicted person.<sup>14</sup>

In some cases, instead of notifying its decision according to the rules, the Revolutionary Court contacts the convicted person - which is illegal - and asks the person to send a request to the court to be informed of the verdict and, if authorised, the deliberation. This despite the fact that the formalities for notification of the decision are laid down in Iranian law: it is the court's responsibility to send a copy of its decision to the defendant's home or place of residence. It can happen in these circumstances that the defendant, instead of sending this request, asks the court to send, in accordance with the law, a copy of the decision. This is an opportunity for courts which have not fulfilled their legal obligations to start the countdown period during which appeal of the verdict can be made at the time when the convicted person was contacted by phone. After twenty days of this statutory period, the court considers the verdict final and transmits it for implementation. Thus the court, by failing to fulfil its legal obligations, violates the accused's rights.

Referring to the principles of law, human rights activists demand the removal of this Revolutionary Court. However, the new Code of Criminal Procedure, which is not yet applicable, has introduced some changes, including the following three:

- The Revolutionary Court, during the investigation of crimes punishable by death, meets at first instance in the presence of three judges,<sup>15</sup> contrary to one in the code currently in force, regardless of whether the crimes are political or related to drug trafficking.
- Political crimes and crimes of the press are investigated in public and in the presence of a jury in the criminal court.<sup>16</sup> Unfortunately, the downside of this change is that the concept of political crime has not been defined.
- The new code emphasises the right to a lawyer.<sup>17</sup> However, there are two circumstances in which this right is limited:
  - For political crimes, the interrogator has the ability to prevent the defendant, during the first week of his detention, from meeting with a lawyer.<sup>18</sup>
  - For the category of crimes that Iranian law describes as "*crimes against security*", the investigating judge can declare that the documents relied on by the court are not freely accessible.<sup>19</sup>
- These reforms have been implemented, but are still insufficient. More than ever, human rights activists must continue their hard work for the establishment of fair procedures.

<sup>14</sup> Procedural Code of the General and Revolutionary Courts in criminal cases from 1999-2000, Article 236.

<sup>15</sup> New Code of Criminal Procedure of 2013, Article 297.

<sup>16</sup> *Ibid.*, Article 305.

<sup>17</sup> *Ibid.*, Articles 5 and 190.

<sup>18</sup> *Ibid.*, Article 48, § 1.

<sup>19</sup> *Ibid.*, Article 191.

# Capital punishment in a criminal policy founded on the trivialisation of extreme measures<sup>20</sup>

By Pejman Pourzand  
Doctor of Law.

As symbol of the criminal justice system in its most radical and extreme form, capital punishment, over and above its purely legal aspect, carries significant political weight. In consequence, it cannot be objectively studied without being placed within a specific historical context. In effect, the evolution of capital punishment in contemporary Iran is closely bound to two major political upheavals: the constitutional revolution of 1906 and the Islamic revolution of 1979.

In 1925, when the Constituent Assembly elected Reza Khan Pahlavi emperor of Persia, the country was but a shadow of its former self. Stripped of its territories and on its knees at the mercy of foreign powers, under the reign of the Qajars<sup>21</sup> Persia had sunk into one of the darkest chapters of its long history. The imperial edict of 15 August 1906 put an end to the absolute monarchy, but failed to stem the chaos that was devastating the country. Reza Shah re-established the *de facto* absolute monarchy, yet, acting in his capacity as an enlightened despot, he did not fail to fulfil the objectives that were the driving force behind constitutional revolution,<sup>22</sup> including moves to equip Persia with legislation worthy of the name to be applied across the entire empire, and to abolish the system of capitulations.<sup>23</sup> Modern Iran's first Penal Code (PC) was thus adopted in 1925, but this was not to be the last. As soon as the regime born of the 1979 revolution came to power, it adopted another code, with the old system being deemed contrary to Islam. In effect, the PC of 1925 maintained mention of *sharia* in Art. 1, despite it having very little real influence on any provisions.<sup>24</sup>

<sup>20</sup> Only the French version shall be considered binding.

<sup>21</sup> Sovereigns of the Qajar dynasty who reigned over Persia from 1876 to 1925.

<sup>22</sup> Mr Adjoudani, *Le Constitutionnalisme à l'iranienne [Iranian Constitutionalism]*, Tehran, Nashr-e Akhtarân, 4th ed., 2004, p. 441, pp. 405 et seq.

<sup>23</sup> The regime of capitulations consisted in reducing or sometimes even removing power from the Iranian judicial system in favour of consular jurisdictions. In doing so, diplomatic representatives of foreign States were granted direct intervention in all legal proceedings concerning nationals of their respective countries. For further information on this subject, see A. Matin-Daftari, *La suppression des capitulations en Perse [The Abolition of Capitulations in Persia]. L'ancien régime et le statut actuel des étrangers dans l'Empire du « Lion et Soleil » [The Old Regime and the Current Status of Foreigners in the 'Empire of the Lion and Sun']*, Paris, PUF, 1930.

<sup>24</sup> On this subject, cf. M. Rahami's "La sécularisation des peines dans le système pénal de la République islamique d'Iran" ["The Secularisation of Punishment in the Islamic Republic of Iran's Criminal Justice System"], in *Mélanges offerts au Prof. M. Achouri*, Tehran, SAMT, 2004, p. 22.

Two key periods came before and after the crucial date of 1979, making it necessary to adopt a diachronic approach throughout this study. Iran's criminal justice system underwent profound changes from one period to the next: death sentences were no longer handed down in the name of the Shah, but in the name of a Republic that aspired to be Islamic. In addition to this superficial change, fundamental shifts were occurring on three fronts: legality in criminal proceedings (I), an axiological approach (II) and the function of punishment (III). The first was relativised, the second reconstructed and the third readjusted.

## I. The relativisation of legality in criminal proceedings

Above and beyond confrontations between capital punishment supporters and detractors, it follows that in a repressive system - in this case both authoritarian and retentionist - capital punishment should, according to common sense, remain an extreme measure, with factors liable to trivialise the process being neutralised. Among these factors, the most reprehensible remains the calling into question of legality in criminal proceedings. As legality of criminal proceedings weakens, so judicial arbitration grows, serving as fertile ground for the abuse of capital punishment. It is clear that on this point, the aforementioned periods displayed directly opposing approaches.

The PC of 1925, reaffirming Article 12 of the supplement to the Constitution of 1906, devotes Articles 2 and 6 to legality in criminal proceedings. Qualifications based on traditions and customs that were often vague and varied from one region to the next were eradicated, as were religion-based qualifications. The arbitrary powers of judges were suddenly confronted with a steadfast desire to strive to see criminal justice responses restricted to legal offences alone. The capital punishment that was once so wide-spread under the Qajars was thus restricted to a few cases provided for by the law. Judges were now bound by the legally-recognised offences in force and were prevented from inventing outlandish new sentences or replacing one sentence with another. Neither the anecdotes that recount Reza Shah's cruelty - irrespective of their historical accuracy - nor the fact that he removed some of his opponents by extra-judicial means detract from the aforementioned facts.

With the dawning of the Islamic regime, the principle of legality in criminal proceedings was shrouded in an inextricable fog. Despite being recognised by the Constitution (Art. 36 and 167) and incorporated into the new Penal Code (NPC) adopted in 2013 (Art. 12), legality in criminal proceedings still did not occupy its rightful place. The weakening of the principle of legality, the harmful consequences of which were notably apparent in the proliferation of capital punishment, was essentially due to the bipolarity of normative sources (legislative + religious) as emphasised by the aforementioned

Art. 167.<sup>25</sup> This article orders judges to rule based on reliable Islamic sources in cases where substantive law is lacking. Although this provision does not completely exclude legality in criminal proceedings, it nevertheless gives it very relative value. Studies show that while doctrinal efforts to minimise the impact of Art. 167 and to re-establish full legality in criminal proceedings resulted in stagnant casuistry,<sup>26</sup> affirmation of legality in criminal proceedings by consultative bodies<sup>27</sup> remained powerless in the face of laws that expressly rejected it. Under Art. 220 of the NPC: “Art. 167 shall apply in the cases of *hodoood* that go unmentioned in this Code”. We can assume that Book 2 of the NPC devoted to the *hodoood* category has been deliberately left incomplete, thus allowing the judge to determine the missing criminal offences based on *sharia*. Under this system, despite not being mentioned in the PC, witchcraft may be punishable by death,<sup>28</sup> with the same being applicable to those convicted of recidivist alcohol consumption. Looking a little further, one can also cite the Regulation aimed at the Courts and Public Prosecutor departments reserved for the clergy, amended in 2006. Under Art. 42, “court decisions must be justified by and based on substantive and *sharia* law”. In addition, in some exceptional cases “where neither *sharia* nor the law provide a specific sentence, the judge may rule based on his own opinion”. Save a very complicated interpretation, it is rather clear that under this system, legality in criminal proceedings has more to do with legal literature than with the legislative field.

It should however be mentioned that the weakening of legality does not only stem from the use of extra-legislative sources, but is also triggered by the elasticity of some offences. One concrete example of this is the concept of “corruption on Earth”, an offence under Art. 286 and punishable by death - ambiguous and ill-defined, this offence cannot be pinned down in any substantial, concrete terms. Covering a vast array of different behaviours, Art. 286 defines less an independent offence than it does a collection of infractions along with aggravating circumstances: spreading untruthful information, disrupting economic order, spreading poison, germs or dangerous products, establishing centres of corruption and prostitution, destruction or arson, physical bodily harm, etc. When these acts combine to create serious disruption of public order, generate a general atmosphere of insecurity or provoke considerable damage to physical safety or to public or private goods, they fall under the classification of corruption on Earth. The problem arises from the fact that terms such as “serious” and “considerable” are left as subjective

25 The problem lies more in the regime's constitutional structure and legislative policy than it does in Islamic law. The latter embodies legality in criminal proceedings via the principle of *Qubh-e Aqab bilâ bayân*, at least for more heavily-sanctioned infractions. A. Q. Oudah, *Droit pénal islamique [Islamic Criminal Law]*, translated into Persian by N. Ghorban-nia, et al., T. 1, Tehran, *Djahad-e daneshgahi*, 1993, p. 189-190. Cf. Mohaghegh Damad, *Les règles de feqh en matière pénale [The Rules of Fiqh in Criminal Matters]*, Tehran, *Markaz-e nashr-e oloum-e aslami*, 2001, p. 15

26 Dj. Tasmasebi, “L'article 167 de la Constitution et l'application de la loi en matière pénale” [“Article 167 of the Constitution and the Application of the Law in Criminal Matters”], in A.-H. Nadjafi (dir.), *Encyclopédie des sciences criminelles [Encyclopaedia of Criminal Sciences]*, t. II, Tehran, *Mizan*, 2013, p. 102 et seq. See also, A. Zeraat, *Code pénal islamique, Brèves annotations [Islamic Penal Code, Brief Annotations]*, Tehran, *qoqnoos*, p.69.

27 See also the Advisory Opinion of 28/6/1993, Legal Bureau of Judicial Power (n°1372/4/7 - 7/2530) which states: “in cases not covered by the law, the judge must acquit the defendant even if the behaviour is forbidden under *Sharia*”.

28 A. Zeraat, *op.cit.*, p. 37.

adjectives that remain without further clarification.<sup>29</sup> In light of this, Article 286 can serve as a legal basis to justify the death penalty in any context or case. But this excess of repression can also be explained by the Islamic Republic's axiological approach.

## II. The reconstruction of an axiological approach

In terms of criminal policy, the revolution of 1979 triggered expansion,<sup>30</sup> with the number of offences rising considerably, especially those punishable by death. The latter shot up to one hundred, with approximately two thirds being carried out outside of the PC.<sup>31</sup> The emergence of offences brought about by new elements and factors such as new technology or offences against the environment only partially explains the sharp rise in figures that has marked the last three decades. This phenomenon of growth mainly stems from the reconstruction of an axiological approach. In the Islamic State, offences extended to behaviours demonstrated in a strictly private domain without - as long as one retains an objective view of the situation - being aimed at threatening public order.

Reading through the PC of 1925, the consistent difficulty of dealing with the axiological approach displayed by Islamic lawmakers emerges. Under Art. 7, lawmakers broke reprehensible acts down into the following categories: crimes, major infractions, minor infractions and offences. Within this four-tiered structure, capital punishment was reserved for those guilty of committing certain crimes, those that threatened imperial legal interests and whose violation would seriously impact public order (such as voluntary homicide, Art. 170 or espionage for a foreign power, Art. 63). Since the Islamic regime has come into power, lawmakers have rejected the classic criteria used to determine the gravity of sentences, turning instead to *sui generis*<sup>32</sup> classification. In contrast to the *hodoood*, a restricted number of offences taken from *sharia* and of an immutable nature (both in definition and in the penalties they incur), the *taa'zirat* is an open category into which new offences may be incorporated by lawmakers exercising discretionary power. In addition, the *qisas* category (talion) concerns intentional attacks on the physical safety of an individual and the *diyât* which, of a purely financial nature, corresponds more to compensation and damage for physical injury than a true criminal fine. The problem with this system is that the gravity of incurred sentences relies less on the real seriousness of

29 See M.-D.J. Habibzadeh, “Incrimination de la corruption sur terre dans le projet de loi portant le nouveau Code pénal” [“Incrimination of Corruption on Earth in the Bill relating to the new Penal Code”] in *Community of Pioneer Lawyers*, <http://www.vokalayepishro.com/?sn=news&pt=full&category/d=&lang=&id=779>. See also H. Chambayati, *Droit pénal special [Special Criminal Law]*, offence against State security, Tehran, 2009.

30 On the expansion strategy, cf. M. Delmas-Marty, *Les grands systèmes de politiques criminelles [The Major Systems of Criminal Policies]*, translated into Persian by A.-H. Nadjafi, (*nezâmhâ-ye bozorg-e siyâsat-e djenâi*), 2nd ed., 2014 (pending publication).

31 A. Paknahad, “La traumatologie de la peine capitale en droit iranien” [“The Traumatology of Capital Punishment in Iranian Law”], in A.-H. Nadjafi (dir.), *Encyclopédie des sciences criminelles [Encyclopaedia of Criminal Sciences]*, t. II, Tehran, *Mizan*, 2013, p. 1050

32 Cf. J. Kousha, *Essai sur la peine à la lumière du droit pénal français et iranien [Essay on Sentencing in Light of French and Iranian Criminal Law]*, thesis, Montpellier, 1996.

the social values that have been threatened than they do on their belonging to a specific category. For example, while the *hodood* generally include the most serious sentences, a high proportion of the offences they cover may have no impact whatsoever on public order: repeated intercrural male homosexual sex (*tafkhez*) for the fourth time can lead to capital punishment (under Art. 122 of the PC of 1991) despite it being difficult to pretend that the act affects legal rights to the extent that it justifies such severity.

The fact that lawmakers issue severe punishment for behaviours which, even if one were to consider them immoral, hold no danger to society, has particularly negative consequences. By reducing the legitimacy of a criminal provision to its basic legal nature or worse still, by creating a parallel axiological register alongside that which has been unanimously accepted by *vox populi*, lawmakers simply undermine the validity of criminal provisions, and in doing so, the repressive system as a whole.<sup>33</sup>

How to explain this? The answer can be found in the fact that the current political structure sees in the criminal system the ultimate method of maintaining an axiological break with the preceding period, deemed immoral, decadent and westernised. In doing so, the quest for an Islamic panacea directly results in the positioning of religion and divine authority among the highest values possible - values whose protection requires repressive measures that may extend to death. Thus, blasphemy of the prophets (*sabb on-nabi*) still incurs the sentence of capital punishment (Art. 262).<sup>34</sup> In some cases, the same holds true for apostasy. It should however be noted that apostasy no longer features in the NPC. Can decriminalisation therefore be assumed? The more likely explanation is that those responsible for drafting the NPC deemed it more beneficial to remain silent on some offences likely to discredit Iran, a country whose image has been sufficiently tarnished on an international scale thanks to the damning reports from the UN's Special Rapporteur. This deliberate silence, therefore, cannot point to decriminalisation, because under the aforementioned Art. 220, magistrates are called on to directly apply *sharia* law where the PC is found lacking. Consequently, the offence of apostasy remains intact and its apparent abolishment superficial. Along the same lines of thought, readers will not be surprised to hear that the law of 26 May 2009 pertaining to computer-related crimes devotes an entire chapter (Chapter 4) to crimes against decency and public morals, in which the sharing of pornographic information by computer-related means is punishable by death in cases where the author does so as a source of income and acts as part of an organised group (Art. 14 §3).<sup>35</sup> The heightened attention given to good moral values may explain the importance awarded to the concept of atonement, which leads us to take a closer look at how the functions served by punishment have been readjusted.

<sup>33</sup> On the subject of the legitimacy of provisions and their axiological validity, cf. M. Van de Kerchove and F. Ost, *Jalons pour une théorie critique du droit [Foundations for Critical Theory of Law]*, Brussels, Publications des Facultés universitaires Saint-Louis, 1987, p. 274.

<sup>34</sup> On the subject of *sabb on-nabi* cf. R. Khomeyni, *Tahrir-ol-vasileh*, t. 4, Tehran, Jame-ye modarresin, 2004, p.207 et seq.

<sup>35</sup> OJ n° 18742, 17 ed. 1388

### III. Readjusting the function of punishment

Despite “the appearance of growing international consensus in favour of the abolition of capital punishment”,<sup>36</sup> the latter remains one of the authorised exceptions to the right to life. Art. 6§2 of the International Covenant on Civil and Political Rights<sup>37</sup> illustrates this point, as does the repressively extensive number of States that provide for the death penalty, among them some of the most democratic countries in the world (United States, India, Japan). While modern criminal law does not exclude capital punishment, it nevertheless carefully restricts its use to its assigned function, with the sole aim being to execute the convicted person. This precision becomes important when one remembers that for centuries capital punishment fulfilled vindictive and expiatory functions as well. Today, it is understood and accepted that no suffering other than the suffering that is inherent to the act of dying itself, may be inflicted on the convicted individual,<sup>38</sup> which explains the efforts that have been made over the last few decades to find the quickest and least painful execution methods possible. It should also be noted that international law includes the prohibition of torture within *jus cogens* norms, which cannot be subject to any exception.<sup>39</sup>

The PC of 1925 put a stop to the corporal punishment that was widespread under the Qajar dynasty as well as methods of execution that were varied and imaginative, reaching the same scales of indignity that inspired them. In stripping capital punishment down to its essential function, the code removed from it any parallel function. Under the Islamic Republic, criminal justice seems to have returned to a past state that one would have hoped banished for good.

In addition to this atonement aspect, a vindictive function exists here as detailed by the NPC's third book reserved for the *qisas*. From an analytical point of view, intentional homicide, even when premeditated, does not consistently incur capital punishment. Although it is possible and even usual that the murderer be executed, this results less from a decision taken by a legal authority than it does from the will of the plaintiff. The *qisas-e nafs* legal institution pertaining to the execution that the victim's successors may inflict on the murderer, despite seemingly being a penal measure, is fundamentally a subjective right. It is a prerogative (a right in rem) which is passed on by succession (Art. 348) and

<sup>36</sup> A. Conte & R. Burchil, *Defining Civil and Political Rights. The Jurisprudence of the United Nations, Human Rights Committee*, London, Ashgate, 2009, p. 148.

<sup>37</sup> On the subject of Art. 6 cf. W. Schabas, “Article 6”, in E. Decaux, *Le Pacte international relatif aux droits civils et politiques - commentaire article par article [The International Covenant on Civil and Political Rights - An Article-By-Article Commentary]*, Economica, 2011. Cf. also P. Pourzand, “La dialectique des obligations étatiques liée au droit à la vie dans l'espace juridique onusien” [“The Dialectic of State Obligations Relating to the Right to Life in the UN Legal Sphere”], *Revue de la recherche juridique [Review of Legal Research]*, n° 3, 2013, p. 1145 et seq.

<sup>38</sup> In the same line of thought, the Statute of the International Criminal Court specifies that the acceptance of torture “does not include pain or suffering arising only from, inherent in or incidental to, lawful penalties.” Cf. Art. 7 §2-e of the Statute of Rome adopted in July 1998.

<sup>39</sup> International Criminal Tribunal for the former Yugoslavia (ICTY), *Furundžija* judgment, Aff. N°. IT-95-17/1-T, 10 December 1998, § 144, 148. Cf. also Ch. Bassiouni, *Introduction to International Criminal Law*, Leiden, Nijhoff Publishers, 2013, p. 802 et seq.

can be either accepted or rejected by the successors. In effect, he or she may choose alternative compensation: to accept blood money (*diyyeh*) or to forgive (Art. 347). Judges often appeal to successors to accept the blood money and not to request death. This means that the State acts as an intermediary between the individual who has committed the offence and the victim's survivors who sometimes take a very active role in the execution (e.g. by removing the stool from under the feet of the convicted individual or by pushing him/her off the cliff or building).<sup>40</sup>

To conclude, one may note that the recognition of private justice – which is not limited to *qisas*<sup>41</sup> – has plunged the Iranian criminal justice system into a profound and protean obsolescence of which the death penalty is but a single facet.

<sup>40</sup> Conversely, the victim's survivors may occasionally grant forgiveness. In April 2014 in the northern region of Iran (Mazandaran), a mother whose son had been fatally wounded forgave his murderer as the executor was leading him up the scaffold. Recounted in great detail in the papers, the country was deeply moved by the story. <http://www.theguardian.com/world/2014/apr/25/interview-samereh-alinejad-iranian-mother-spared-sons-killer>

<sup>41</sup> K. Kalantari, "La justice pénale privée en droit iranien" ["Private Criminal Justice in Iranian Law"], in *Mélanges offerts au prof. M. Achouri*, op.cit., p. 83 et seq.

## Lawyers in Death Penalty Cases

By Hossein Raeesi

*Defence lawyer for persons sentenced to death.*

All Iranian lawyers, just after the verdict is pronounced, have frequently heard a magistrate say to a person who is condemned to death: "We have resolved the issue of the offence you have committed. Now, if God forgives you the rest of your sins, you will escape hell." The prison administration employees frequently have the same attitude towards prisoners awaiting execution. This is one of the reasons why lawyers complain bitterly about the Iranian criminal system.

Nonetheless, the features of this system please the judges who perform their duties within the judiciary. The law of the 4th May 1981 (§ 5), which sets the conditions for the recruitment of judges, is based on Article 163 of the Constitution,<sup>42</sup> making competence in religious law a necessary criterion for recruitment. According to the Constitution and the law on the recruitment of judges they must be in possession of the *ejtehad*.<sup>43</sup> If the judge is not a *mujtahid*, his appointment is subject to the permission of the *Velayat-e faqih*<sup>44</sup> or the *Rahbar*.<sup>45</sup> This right of authorisation was delegated by the latter to the head of the judicial authority who currently exercises it. For this reason, this class of judges is called "authorised". Naturally, the system used is based on Islamic penalties, i.e. prescribed penalties (*hudud*), retribution (*qisas*), blood money (*diyyah*) and discretionary penalties (*tazirat*).<sup>46</sup> The death penalty is an integral and inseparable part of the laws of the *Sharia*.

Let us now leave substantive law aside.<sup>47</sup> The Islamic Criminal Procedure is too basic and traditional to be applicable as such. However, academic collaboration between university professors and heads of the judicial authority (mostly clerics) on the one hand, and pressure from human rights activists and the completely inadequate application of international human rights texts (that the Iranian state has nevertheless committed to comply

<sup>42</sup> Constitution, Article 163 "The conditions and qualifications to be fulfilled by a judge will be determined by law, in accordance with the criteria of Feqh". The complete text of the Constitution is available at <http://fis-iran.org/en/resources/legaldoc/constitutionislamic>.

<sup>43</sup> Interpretative effort of sacred texts from which jurisprudence is taken (TN).

<sup>44</sup> Guardian of jurisprudence (TN).

<sup>45</sup> Supreme leader (TN).

<sup>46</sup> These are the four types of penalties provided for by traditional Islamic law depending on the offence committed. The *Hudud* are automatic penalties laid out in the Koran; *Qisas* is the equivalent of *Talion*; *Diyyah* or "blood money" is financial compensation that the family of the victim may accept in lieu of *Qisas*; finally, *Tazir* is punishment meted out at the judge's discretion (TN).

<sup>47</sup> Substantive law defines all rights and obligations of individuals, while procedural law determines how to assert these rights.

with), on the other hand, have created a criminal procedure which contains elements from religious law and some procedural fairness standards. This ratified procedure is now in force. The rules of Iranian criminal procedure, similar to those of substantive law, are strongly influenced by Islamic requirements and present specific features that are unique in the world. They are established by reference to the basic Islamic requirements. In such a system, the death penalty is widespread and common. Criminal judges are often “forced” to pronounce death sentences, by stoning in particular, even when they have no preference for this type of penalty. Thus, at the conclusion of a case in which I defended three women between 2009 and 2011, the judge made it clear that he had been obliged to pronounce a death sentence. These women were charged with handling drugs. The three of them had young children and came from families belonging to the poorest classes of society. None of them had a criminal record. Yet, for the only reason that substantive law with respect to drugs does not take extenuating circumstances into account, the judge was “unwillingly” obliged to pronounce this verdict.

This situation repeated itself when I was working on a case of voluntary manslaughter. In the presence of a *qasamah*,<sup>48</sup> the judge had no absolute certainty, from what he knew of the case, as to the guilt of the accused. Yet, despite his doubts on the merits, he was forced by the existence of *qasamah* to impose a penalty of *qisas-e-nafs*.<sup>49</sup>

The rest of this article explains some provisions of the Code of Criminal Procedure (CCP) and judicial proceedings that result in the death penalty in Iran.

## I. Criminal proceedings leading to the death penalty

I once defended a woman, Shadi, who was accused of having extra-marital sexual relations. She was arrested when she was on a trip for a few days with a man other than her husband. She never admitted to having sexual relations with this man, but the five judges of the court were convinced that a man and a woman traveling together would inevitably end up having sexual intercourse. The accused was sentenced to stoning on the basis of this assumption. On learning that his wife might be stoned, the husband, who nevertheless resented her, was outraged by the verdict. He got in touch with me, asking me to do everything possible to save his wife. In his opinion, stoning was an extravagant and totally disproportionate sentence for the charges against Shadi. Whilst defending her on appeal, I argued in court that the judges in the first trial, without any justification, had only considered the assumption of a sexual relation. At the end of the procedure Shadi had escaped stoning but she had been very close to being executed and this case remained etched in my memory.

In this case, it appears that Shadi was sentenced to stoning in virtue of unverified assumptions by the judges, based on appearances. The exercise of justice needs more

48 A group of fifty people from the victim's family (TN).

49 Death sentence pronounced by virtue of *qisas*, that is, the law of Talion (TN).

than such conjectures to establish a crime. It needs absolute proof. But in Iran, the admissibility of evidence in favour or against the accused only depends on the goodwill of the judge. This is explained by the fact that *Sharia* considers justice to stem from God and His Prophet. The judge is therefore their representative on Earth.<sup>50</sup> Since Iranian laws reflect this Islamic perspective on justice, they give a great deal of credit to the religious intelligence of the judge. The NIPC<sup>51</sup> places this above all other evidence. This may produce an increase in death sentences pronounced without sufficient evidence. In criminal matters, the two most important legal texts are the IPC and CCP. Both codes are shaped around religious principles for the identification of a crime (considered a religious fault) and the construction of evidence (based on reasoning under religious law). Both of them establish, in the same way, a classification of crimes and evidence for various criminal categories. The only difference between these codes is that the CCP gives more details about evidence under religious law. Evidence of a general nature is also addressed, but in both categories the religious aspect is clear. Confession, which is primarily a moral or religious practice, is therefore very important at all stages of the procedure, starting from the investigation up until judgment. This is important also during questioning for e.g. drug offenses and financial crimes, which are punishable by death.

It is clear that in the context of the Iranian judicial system, all crimes have a divine aspect, a general aspect and a particular aspect. The divine aspect consists of the violation of the provision of *Sharia*.<sup>52</sup> Evidence is divided into two categories: elements within religious law and others. Thus, under pressure from a *qasamah*, a death sentence (*qisas-e-nafs*) is easily pronounced.

Another case in which I defended a man accused of murder illustrates this perfectly. During a brawl between a group of nineteen people and another of twelve, a man from the first group was killed with a stone that hit him in the head. The family of the victim identified a member of the second group as the murderer because he had fled from the neighbourhood soon after the incident. The court had no evidence to convict him, but the very fact of his presence in the neighbourhood at the time of the brawl and his subsequent flight were enough to raise the court's suspicion. Therefore the family of the victim was asked to present fifty men before the court who were willing to swear that this person was the killer. Fifty men were sworn in and the court sentenced the accused to *qisas-e-nafs*.

In the penal system, as illustrated in the examples above, the use of the death penalty and its application are very questionable and decided in the absence of procedural standards or clearly identified methods. During my twenty years of practice in all Iranian courts, I have witnessed two different situations: those who deserve the penalty (if it

50 M. Moghtadai, *Justice in Islam*, Qom, 1997-1998, pp. 9 and 11. When he wrote this book, the ayatollah Moghtadai was in a high position in the Iranian judicial system.

51 Islamic Penal Code (2012-2013), Articles 211, 212 and 213.

52 CCP (1999-2000), Article 2; New Code of Criminal Procedure (June 2014), Article 8. Available at [www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html](http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html).



is not death) but escape it, like the father who only spent a year in prison for killing his daughter; and those who, on the contrary, have been wrongly convicted and executed, including some of my clients!

To clarify this point, let us consider the laws that deal with voluntary manslaughter and drug cases, and the penalties prescribed (*Hudud*) which lead to the greatest number of death sentences. The evidence for the most serious crimes - such as voluntary manslaughter, drug trafficking, rape, sexual crimes and other crimes punishable by death - is gathered without any rational method and applied to the crime or to the establishment of proof. Thus, in a case of voluntary manslaughter, the judge may rely on his own conviction to pronounce a verdict of *qisas-e-nafs*.<sup>53</sup> In drug cases, the accused has no right to appeal a death sentence. One must only send the file to the office of the Attorney General or to the office of the President of the Court of Cassation for the order of execution to be issued.<sup>54</sup> The Attorney General acts as the representative of society against the accused. He is not an appellate judge and his office is not an appeal court. Therefore, the study of the most serious cases that today give rise to the largest number of death sentences is vitiated by serious violations of the principles of procedural fairness.

Having defended several people in these courts, I have witnessed botched investigations that were conducted without consideration for the defence, and sometimes even without a lawyer. I have also attended investigations in the provincial courts of cassation. The running of the ordinary courts - particularly public hearings, in the presence of a jury and with the right to counsel - makes the likelihood of compliance with the principles of fairness of the procedure higher.

## II. Judicial proceedings leading to the death penalty

In this setting, by judicial proceedings we mean the way in which the criminal sector of the judicial system interprets the law and investigates cases in order to apply the death penalty. We know that the death penalty is used in cases that the Iranian State and judiciary regard as the most serious, and is done so to root out "corruption" from society through application of prescribed punishments (*hudud*). This way of thinking prevails at all stages of the procedure that a case follows. In Iran, all those who are destined to become magistrates and receive specialised training to achieve this are religious people, or at least, flaunt their religion. It is interesting to note that Iran is among the few countries that have established special yearly courts for their judges. In this way judges can be dismissed for various reasons, including corruption and ethical lapses.<sup>55</sup> It appears that the investigation and interrogation procedures are influenced, on the

53 IPC (2013), Articles 312 and 313.

54 Law against drugs (1997-1998), Article 32.

55 To illustrate these situations, see the statement in Farsi by the head of the judicial authority at [www.afkarnews.ir](http://www.afkarnews.ir).

one hand, by the weakness of the laws of criminal procedure and, on the other, by the judicial procedures effectively applied by the officers conducting the interrogation, the prosecutor and the courts.

For example, the CCP does not allow lawyer involvement between the arrest of the accused and the issuance of the indictment for all criminal cases, particularly the most serious ones and those that affect national security.<sup>56</sup> This code firmly rejects any intervention of the lawyer in the process of investigation. In my experience, in the first days of their detention, those arrested by the police or security services are always victims of bullying, torture, humiliation and generally terrible detention conditions. Naturally, they do not have the faintest idea of what their rights are and the officers intimidate them and put pressure on them until they confess. On entering detention the accused is not notified of his right to contact a lawyer to talk with him about the case, to be silent or to speak with his family. The prisoners are eventually informed of their rights by their fellow inmates or by their families, when the latter take on their case.

The conditions in which the trial is conducted are more satisfactory than those of police interrogation. During the trial, the accused has the right to counsel, who, however, takes on the case at a time when all the evidence against his client has already been gathered. In court, the lawyer can only use the national laws to defend his client. In my experience, although Iran is a signatory to the Convention on the Rights of the Child<sup>57</sup> and the International Covenant on Civil and Political Rights<sup>58</sup> - conventions that, once signed, become equivalent to Iranian laws<sup>59</sup> - if the lawyer attempts to rely on these texts to defend his client, the court ignores his rationale. I have tried many times, always in vain. In conclusion, during the judicial proceedings and especially for the most serious crimes, the accused is completely unaware of his rights. At the end of such a trial, the verdict is anything but fair.

Another important point is the fact that both parties do not have the same opportunities to express their views. The plaintiff as well as the prosecutor may intervene in the case and the plaintiff has the unconditional right to a specialised lawyer. The prosecutor and the lawyer send a representative to the court. This role is usually assigned to a magistrate, the deputy public prosecutor. Any accused risking the death penalty also has a lawyer, but the lawyer is not on a par with his counterpart and the prosecutor. In murder cases, and particularly when public opinion is on the side of the prosecutor and the plaintiff's lawyer, the position of the accused and his lawyer is particularly fragile. In addition, if the accused is poor, he will be assigned a court-appointed lawyer. The defence provided by court-appointed lawyers is not comparable to that of lawyers chosen by the

56 CCP (1999-2000), Article 128.

57 Available on [www.ohchr.org](http://www.ohchr.org).

58 Ibid.

59 "Treaty stipulations which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and other government, shall have the force of law" (Civil Code, Article 9).

accused. Furthermore, there is a high possibility that the court will choose a lawyer who does not have the capacity or the will to ensure proper defence.

In a case in which I was defending a young man accused of rape, the Vice-President of the Court of Cassation had written with a green pen on the last page of the record: “*To be given priority,*” even though nothing justified this. The 13<sup>th</sup> Chamber of the Court of Cassation, in which the judges are clerics, did not take into account the specific elements of the case. I argued that the woman who had accused the man in the first place subsequently acknowledged, in her testimony, that the rape had not taken place. The court sentenced the young man to death, citing the prescribed punishments (*hudud*). The sentence was executed in 2012.<sup>60</sup>

Finally, considering the previously mentioned cases and the numerous drug trafficking cases I have had to plead, one can conclude that the investigation and the trial in appeal and cassation are not conducted in accordance with the relevant international procedural standards. There is no possibility of appeal against a death sentence in drug cases. In some cases, I have even witnessed life imprisonment sentences being changed to death sentences on appeal. The law against drugs, passed in 1997-1998, gives the prosecutor in drug cases a more important role than usual (Article 32). In fact, during the proceedings, it assigns equivalent rights to those of an advisory authority or an appeal court, even though the prosecutor is not impartial!

Therefore, the judicial authority is not independent and judicial proceedings, in fact, give no guarantee of fairness. Death sentences are pronounced and executed even when there are grounds for doubt.

<sup>60</sup> I still have the court's sentence and the testimony of the woman who accused him of rape.

## International Legal Standards and Capital Punishment in the Islamic Republic of Iran

By **Ahmed Shaheed**

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Islamic Republic of Iran.

### I. Background

Concern about the situation of human rights in the Islamic Republic of Iran is not new. In 1984 the United Nations Secretary General appointed the first independent-expert to monitor and report on the situation of human rights in Iran and to establish a dialogue with the Iranian government in order to address concerns. The United Nations appointed three experts, commonly known as a country-specific Special Procedure or Rapporteur, over the next eighteen years, during which time the UN human rights mechanisms experienced varying degrees of cooperation from the Iranian government.<sup>61</sup> Two country-specific Rapporteurs were allowed a total of five visits in nearly two decades, for example, but during the same period, Iran rejected all other requests for visits from both country-specific Rapporteurs and thematic special procedures tasked with monitoring the situation of certain human rights globally.<sup>62</sup> The government of Iran also failed to provide adequate responses to the UN human rights mechanisms on the situation of myriad rights it pledged to observe upon ratifying five international human rights treaties.

In 2002, the Iranian government renewed its commitment to cooperation by issuing a standing invitation to all the UN Special Procedures and by establishing a dialogue with the international community. This ultimately led the former UN Human Rights Commission to abstain on its discussions about the situation of human rights in Iran; effectively ending the existing country mandate. The thematic Special Procedures undertook five visits at the invitation of the Iranian government in the following three years, but no Special Rapporteur has been granted a visit since 2005, including the Working Group on

<sup>61</sup> <http://www.iranhrdc.org/english/news/features/3410-table-of-un-special-rapporteurs-and-representative-involvement-in-iran.html#.U48xQBZ8tuY>

<sup>62</sup> <http://shaheedoniran.org/human-rights-at-the-united-nations/human-rights-monitoring-mechanisms/un-human-rights-council/the-special-procedures/>

Enforced or Involuntary Disappearances (UNWGEID) which was initially granted a visit in 2004. That visit was delayed at the request of the Iranian government, that has ignored five annual reminder letters requesting the scheduling of the visit: in 2009, 2010, 2011, 2012 and 2013. As of early 2014, the government of Iran had yet to set a date for the visit.<sup>63</sup>

Six years later, twenty-two members<sup>64</sup> of the United Nations Human Rights Council agreed that increasing concern about the situation of human rights in the country warranted special attention and voted to establish a new country mandate. Several member states cited Iran's lack of cooperation with the UN human rights mechanisms as a reason for voting for the UN resolution that reestablished the new mandate.<sup>65</sup>

My work to advance the responsibilities of this mandate has predominantly focused on the victims of insufficient human rights protection and the legal impediments to addressing pressing human rights concerns. As in the case of my predecessors, Iran's attitude towards the country mandate is contentious. The Iranian government rejects the legitimacy of the mandate, and cooperation has been fitful. Unlike my predecessors, however, my work benefits from the advent of a multitude of inexpensive forms of communication. The technology allows individuals that live in Iran or that have recently left the country to impart information with reduced risk of retaliation.

Whenever available, I examine and report on information communicated to me by the Iranian government in response to my appeals for clarity, additional information, or remedy in individual cases or with regard to alarming trends. The Internet also allows me to examine existing laws, monitor legislation, statements, and reports issued by the Iranian government; to monitor media reports emanating from Iran; and to receive information from non-governmental organizations and their advocates located inside and outside Iran on a wide range of issues, including the widespread use of capital punishment in the country.

## II. Right to life protections in the Islamic Republic of Iran

The emphasis on 'human rights' has reinforced the moral impetus behind the abolitionist movement. Its underpinnings emanate from the Universal Declaration of Human Rights

<sup>63</sup> A/HRC/25/75; Report of the Secretary General on the situation of human rights in the Islamic Republic of Iran, § 38.

<sup>64</sup> <http://shaheedoniran.org/english/human-rights-at-the-united-nations/human-rights-monitoring-mechanisms/un-human-rights-council/testtest/>

<sup>65</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10888&LangID=E>. The Iran mandate is the first country specific Special Procedure to be established by the Human Rights Council.

(UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which declares that every human being has the inherent right to life and mandates that safeguards against its arbitrary deprivation be codified in law.

As the UN appointee tasked with investigating and reporting on the human rights situation in Iran, I assert that there is no more urgent or moral imperative than addressing the Iranian government's frequent and widespread use of capital punishment, which is, in many ways, a symptom of the deteriorating human rights crisis in the country. My alarm is compounded by widespread reports of its use as a tool for silencing dissent, punishing internationally-protected practices or activities; by frequent reports of the absence of fair trial standards, and by the fact that a majority of capital punishment offences do not meet the "most serious" crime standards under international law.

### 1) Most Serious Crimes

A compromise struck between a few abolitionist countries and a large number of retentionist states during the drafting of Article 6 restricted the applicability of capital punishment to the "most serious crimes". The article stops short of declaring which crimes meet this standard, but the UN Economic and Social Council later asserted that "in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences."<sup>66</sup>

In 2006, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions further narrowed the interpretation of "most serious crimes" by calling for the elimination of the death penalty for economic and drug-related crimes, and suggested its proscription for actions relating to moral values -including adultery, prostitution and sexual orientation. The following year, the UN Human Rights Committee, which monitors compliance with the ICCPR and provides guidance to states on the implementation of the Covenant, underscored this point, stating that drug trafficking was not a capital offense.

Iran has executed at least 1,539 individuals since 2011, including 687 individuals in 2013, resulting in the highest known *per capita* level of executions globally.<sup>67</sup> While Iran retains the death penalty for crimes such as recidivist alcohol consumption, adultery, consensual homosexual sex, and recidivist lesbian sexual activities, drug offenses continue to account for a majority of capital punishment cases. This includes at least 955 executions since 2011, for offenses such as drug manufacturing, trafficking, and personal possession, without an effective right of appeal. Iranian authorities often assert that these measures are necessary due to its shared border with Afghanistan, which is

<sup>66</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>

<sup>67</sup> Iran Human Rights Documentatin Center, "IHRDC - Chart of Executions by the Islamic Republic of Iran: 2013," Iran Human Rights Documentation Center, [http://www.iranhrdc.org/english/publications/1000000225-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2013.html#.U2pmT17\\_SIK](http://www.iranhrdc.org/english/publications/1000000225-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2013.html#.U2pmT17_SIK).

the source of hundreds of kilograms of drugs annually exported to the West, and has demanded recognition and gratitude for its system of punishment.<sup>68</sup>

Furthermore, offenses characterized as “enmity against god” (*moharebeh*) and “corruption on earth” (*efsad fil-arz*) were recently expanded in the Iranian Penal Code, which was adopted in 2012. The old Penal Code technically restricted these crimes to armed activity or insurrection. However, the new Penal Code expands the scope of activities subject to capital punishment. This includes such things as “publishing lies” and “damaging the economy of the country”, neither of which meet “serious crimes standards” under international law.

Iran is also one of only 13 countries that continues to impose and carry out mandatory death sentences for certain drug-related crimes.<sup>69</sup> Mandatory death penalty sentences undermine the ability of judges to uphold the “serious crimes” standards by adhering to the principle of mitigation. The principle of mitigation mandates that judges consider all relevant mitigating factors and to exercise discretionary power in deciding if crimes meet the threshold of an intentional act with lethal or other extremely grave consequences. Mandatory death penalty may also amount to a violation of Article 6.4 of the ICCPR which states that everyone sentenced to death shall have the right to appeal for pardon or commutation of the sentence, a right declared to be a non-derogable right under Article 4 of the Covenant.

## 2) Juvenile executions

International law also excludes juveniles, the mentally ill, pregnant women and the elderly from being subject to the death penalty. Iran leads the world in executions of juvenile offenders. The Iranian Government has participated in three reviews by UN human rights bodies in the last four years. Two of these reviews have resulted in calls for the Iranian Government to abolish the death penalty for juveniles in law.

However, the Iranian Penal Code retains the execution of juvenile offenders for *moharebeh* or crimes qualifying for *qesas* (or “law of equality of punishment”) under *shari’a* law, as long as the judge deems the child to have understood the nature and consequences of her or his crime. Girls over the age of 9-lunar-years and boys over the age of 15-lunar-years qualify for execution in these cases.<sup>70</sup> Today, more than a hundred juvenile offenders are reportedly on death row, and it has been reported that Iran executed at

68 “Javad Larijani: Be Grateful for Iran’s High Execution Rate,” International Campaign for Human Rights in Iran, 5 March 2014, <http://www.iranhumanrights.org/2014/03/larijani-executions/>.

69 “Death Penalty for Drug Offences Global Overview 2012: Tipping the Scales for Abolition,” Harm Reduction International, 2013, <http://www.ihra.net/contents/1290>

70 “Codifying Repression: Death Penalty for Child Offenders,” Human Rights Watch, 29 Aug 2012, <http://www.hrw.org/node/109622/section/6>.

least three children in 2011, one of them in public, and at least one juvenile has been executed in 2014.

## 3) Arbitrary Executions

Article 6 of the ICCPR also safeguards against the arbitrary deprivation of life, and reminds states that the death penalty may not be imposed if particular aspects of the Covenant are violated. The Human Rights Committee interpreted this to mean that all capital trials must observe the fair trial provisions of the ICCPR, for example, or the death penalty may not be imposed. This includes the right to be promptly informed of one’s charges, and to the presumption of innocence; the right to legal counsel of one’s choosing and to sufficient time to prepare a legal defense. It also includes the right to a hearing in the presence of an independent and impartial tribunal, as well as the right to an appeal.

The vast majority of over 400 individuals that have submitted interviews to me since 2011 have reported serious violations of their due process rights. They often reported being held for periods ranging from a few weeks to several years without charges; and that they were subject to severe and frequent psychological and physical torture during interrogations for the purposes of extracting confessions. Most individuals also reported being deprived of adequate access to a lawyer of their choosing and often describe hasty trials where their guilt appeared to be assumed by the tribunal.

## 4) Execution Methods

A number of execution methods have been identified as unacceptable under international law. Stoning, for example, is considered to be cruel and inhuman; particularly as the size of the stones is often limited in order to prolong suffering and death. The Human Rights Committee also determined that the use of the gas chamber constitutes cruel, inhuman and degrading treatment and found public executions to be “incompatible with human dignity”. They also concluded that public executions add to the “already cruel, inhuman and degrading nature of the death penalty that have a dehumanizing effect on the victim and those who witness the execution”. These elaborations are contested by a number of countries, including Iran.

Hanging is the most common method of execution used in Iran. These executions often entail, “suspension hanging” and “short drop hangings”. Suspension hangings typically involve the slow suffocation of the convicted during which a crane slowly elevates them by the neck. Short drop hangings are typically implemented by placing the convicted on a car or stool, which then drives away or is kicked away; respectively. Public displays of these forms of execution are also frequent. In 2013, at least 57 individuals were publicly hanged (one of whom was pardoned after surviving the execution), including at least 28 women. A number of individuals were reportedly convicted in the absence of fair trial standards and executed for the crimes of “enmity against God” (*moharebeh*), and “corruption on earth” (*efsad fil-arz*) or for “acting against national security”.

Iran's new Penal Code also retains stoning as a method of execution for individuals convicted of adultery, and maintains amputation and crucifixion for other crimes, such as "enmity against God". The Iranian Government's response to significant international pressure about its use of stoning, especially in cases of adultery, has been deeply unsettling. Iranian representatives have described stoning as humane, stating that the prolonged nature of stoning allow for men who are buried up to the waist, and for women who are buried up to their chests to dig themselves out and therefore escape from their punishment. They have asserted that this possibility renders the punishment humane, and therefore stoning should be considered neither cruel nor as a death penalty.

#### 5) **Particularly vulnerable populations**

I have also found that members of Iran's ethnic and religious minority communities are particularly vulnerable to the violation of their right to life. Extreme poverty and a lack of economic opportunities characteristic of provinces occupied by Iran's ethnic minorities such as the Kurds and the Baloch make alternative sources of income such as drug-trafficking and smuggling particularly attractive. Iranian law regards smuggling of items outside of narcotics as crimes punishable by several months of detention or a fine equal to the value of the seized commodities. However, in my report to the Human Rights Council last year, I highlighted allegations about the indiscriminate killing and wounding of dozens of porters that smuggle commodities such as tea, tobacco and fuel across the border in order to earn a living.

Members of Iran's Arab, Azeri, Baloch, and Kurdish communities that advocate for the advancement of civil, political, and cultural rights also appear to be frequently prosecuted for national security crimes. And even though religious communities – as communities – often shy away from politics, they are often seen by the Iranian Government through a political and "national security" lens. Religious converts, Baha'is, Christians and other religious minorities are routinely charged with espionage and acting against national security, for example. They are often accused of conspiring with the Islamic Republic's foreign "enemies", of collusion against the government by "organizing" gatherings or house churches; and they are usually tried in Revolutionary Courts, which are effectively national security courts.

## **Conclusion**

International law is clearly moving towards abolition of the death penalty, and international custom is also becoming increasingly abolitionist, with more governments regarding the death penalty as being inconsistent with human rights standards. Arguments in favor of retaining the death penalty often appear to rely on unproven allegations, such as its deterrent effect, or focus solely on the argument that the decision to abolish or retain

capital punishment remains within national sovereignty. Additional arguments relying on religious or cultural grounds appear to be criticized when investigated in-depth, and have not prevented other nations from abolition.

This is reflected in the growing opposition to the death penalty by a majority of members of the UN General Assembly. Last year, in 2013, the UN General Assembly adopted the resolution on a moratorium on capital punishment with record support from 111 of the UN's 193 member states. Vigilance by the international community and human rights defenders must continue to advance the abolitionist movement globally. We must also continue to support efforts to ensure that retentionist countries live up to their obligations to restrict who it is permissible to execute and under what conditions.

Iran's use of capital punishment for offenses and activities not deemed to be serious crimes, or crimes at all under international law; the execution of protected individuals, such as juveniles; and the widespread and often arbitrary nature of the application of the death penalty warrant serious international consternation and calls for an immediate moratorium on the death penalty in Iran.

PART II

**Specificities  
in the application  
of the death penalty**

# The International Community's Withdrawal from Iran's Drug War

By Patrick Gallahue

Former head of the "death penalty" project,  
International Harm Reduction Association (IHRA)

Iran's prolific use of the death penalty is causing its drug control partners to disengage from cooperative law enforcement activities and is causing some governments to reconsider how far they are willing to go in the international war on drugs.

## I. Iran's War on Drugs

Iran is, and always has been, a prominent actor in the war on drugs. Once a prolific opium-producing country, Iran is now one of the most trafficked byways for illicit opiates. While Iran managed to successfully dislodge its own opium-cultivation after the revolution of 1979, its neighbours have had less success. By the 1980s, most of the opium cultivation that had previously taken place in Iran had moved to Pakistan and Afghanistan.<sup>71</sup> Thriving on instability, Afghanistan took Burma's place as the world's largest opium supplier during the turbulent 1990s.<sup>72</sup> Production further increased in the years after the US invasion<sup>73</sup> as "Afghanistan accounted, on average, for 88 per cent of global opium production" between 2005 and 2010, according to the United Nations Office on Drugs and Crime (UNODC).<sup>74</sup>

If Afghanistan is credited for cultivation of most of the world's heroin, Iran can claim most of its seizures. In 2011, Iran seized 23 tons of heroin – accounting for 33 per cent of global heroin seizures.<sup>75</sup> Turkey was a distant second with 13 tons or 16 per cent of global seizures. Illicit trafficking is not simply limited to heroin. A burgeoning market for amphetamine-type stimulants is appearing in the Islamic Republic of Iran.

71 United Nations Office on Drugs and Crime (UNODC), World Drug Report 2012 (United Nations publication, Sales No. E.12.XI.1), June 2012, p. 76, [http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR\\_2012\\_web\\_small.pdf](http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf)

72 World Drug Report 2012, (n 3), p. 76, [http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR\\_2012\\_web\\_small.pdf](http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf)

73 Ninety-five per cent of opium production continues to take place in the most insecure regions of the country. United Nations Office on Drugs and Crime and the Islamic Republic of Afghanistan Ministry of Counter Narcotics, Afghanistan Opium Survey 2011, (December 2011), p. 89

74 World Drug Report 2012 (n 3) p. 76, [http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR\\_2012\\_web\\_small.pdf](http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf)

75 Ibid, p. 29, [http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR\\_2012\\_web\\_small.pdf](http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf)

The drug war has never been fought in isolation. Various partners take on different roles in the control of illegal narcotics internationally, not the least of which is financial and technical aid. Drug control assistance includes both large financial donations as well as material assistance in the form of body scanners, drug sniffing dogs, drug testing kits, night-vision goggles, vehicles, and more. This aid is provided bilaterally from individual states as well as through agencies of multilateral organizations like the UNODC. For example, the U.K.'s Foreign Minister reported that, 'Between the financial years 2000-01 and 2008-09 the Foreign and Commonwealth Office has spent approximately £3,025,000 on counter-narcotics assistance in and with Iran.'<sup>76</sup> For its part the UNODC helps build Border Liaison Offices between Afghanistan, Iran and Pakistan – in addition to aiding in other capacities, much of which is done with aid from European governments.

Though it has made little dent in the amount of drugs flowing through Iran, this aid has resulted in hundreds, if not thousands, of major arrests. For example, the Iranian Government has acknowledged that drug-sniffing dogs have helped seize more than 33 tons of different drugs, equivalent to almost eight per cent of all seizures in 2010.<sup>77</sup> Drug-sniffing dogs were provided and trained by the French Government.<sup>78</sup> The embassies of Germany and Hungary also organised a study visit for Iranian authorities to Police Academy dog training centres in Hessen, Germany and Dunakeszi, Hungary in late 2010.<sup>79</sup>

While these cooperative programmes are celebrated in some forums, many donors are showing discomfort with the potential consequences of this aid, namely the facilitation of sanctions prescribed by Iran's draconian criminal justice system. The Iranian government's approach to drugs includes corporal punishment, the death penalty and violations of due process.

## II. The Death Penalty and the War on Drugs

In October 2012, three U.N. human rights experts – the U.N. Special Rapporteurs on Iran, Ahmed Shaheed, on extrajudicial executions, Christof Heyns, and on torture, Juan Méndez – expressed their concern and "outrage" at the rise in unlawful executions in

76 HC Deb, 28 April 2009, c1205W. This includes money contributed through UNODC, <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090428/text/90428w0015.htm#09042855000313>

77 UN Office on Drugs and Crime Bulletin (27 June 2011) 'Iran's anti-narcotics dog capacities continuously enhanced by UNODC', <http://www.unodc.org/islamicrepublicofiran/en/irans-anti-narcotics-dog-capacities-continuously-enhanced.html>

78 République française, 'Cooperation against drug trafficking, A new step in the cooperation between France and Iran against drug trafficking' (undated) available at; [http://www.ambafrance-ir.org/article.php3?id\\_article=617](http://www.ambafrance-ir.org/article.php3?id_article=617) (Date of last access: 1 December 2012)

79 United Nations Office on Drugs and Crime, IRNI50 - Integrated border control in the Islamic Republic of Iran - Phase I 2010 Annual Project Progress Report (copy on file with author), [http://books.google.fr/books?id=HB9PuEhHahQC&pg=PA53&dq=United+Nations+Office+on+Drugs+and+Crime,+IRNI50&hl=fr&sa=X&ei=hd7DU5K\\_Nael0AXpuYG4Dg&ved=0CCMQ6AEwAA#v=onepage&q=United%20Nations%20Office%20on%20Drugs%20and%20Crime%2C%20IRNI50&f=false](http://books.google.fr/books?id=HB9PuEhHahQC&pg=PA53&dq=United+Nations+Office+on+Drugs+and+Crime,+IRNI50&hl=fr&sa=X&ei=hd7DU5K_Nael0AXpuYG4Dg&ved=0CCMQ6AEwAA#v=onepage&q=United%20Nations%20Office%20on%20Drugs%20and%20Crime%2C%20IRNI50&f=false)

Iran.<sup>80</sup> The announcement followed the execution of Saeed Sedighi, a young man who was convicted of drug-related charges following a 15-minute legal proceeding in which he was allowed to meet with his lawyer only minutes before his trial.<sup>81</sup> Sedighi was executed with nine others.

Executions have always fluctuated widely in Iran and what numbers are known tend not to be complete as some executions are held in secret. Nevertheless, it is beyond dispute that recent years have witnessed a steep increase.

In 2007, Amnesty International reported at least 317<sup>82</sup> executions. The following year, it estimated about 346<sup>83</sup> and by 2009, it reported the Iranian Government had executed at least 388.<sup>84</sup> In 2010 – the year after the Green Revolution – human rights monitors began to document a significant increase in the number of people killed by the government, including more than 650 in 2010.<sup>85</sup> There were credible reports of at least 676 executions in 2011.<sup>86</sup> The majority of people put to death are drug offenders and their proportion of the total number of people executed has increased. The U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions wrote that ‘executions for drug-related offenses in the Islamic Republic of Iran reportedly increased six-fold from 2008 to 2010 and currently comprise between 85 and 90 per cent of the state’s total executions.’<sup>87</sup> And for its troubles, these killings have had no impact on the drug trade in Iran. The Secretary General of the Iranian High Council for Human Rights stated that, ‘More than 74 per cent of executions in Iran are stemming from drug trafficking related crimes. Whether

80 Office of the High Commissioner for Human Rights, Press Release, ‘UN Special Rapporteurs outraged with recent executions in Iran’, 23 October 2012, <http://shaheedoniran.org/english/dr-shaheeds-work/press-releases/un-special-rapporteurs-outraged-with-recent-executions-in-iran>

81 Amnesty International, 165/12 Index: MDE 13/066/2012 Iran, 19 October 2012, <https://www.amnesty.org/es/library/asset/MDE13/066/2012/es/cc9c27cd-212b-45f4-b6d3-7adfe2b398b5/mde130662012en.html>

82 Amnesty International (15 April 2008) Death Sentences and Executions in 2007. ACT 50/001/2008, <http://www.amnesty.org/en/library/info/ACT50/001/2008/en>

83 Amnesty International (24 March 2009) Death Sentences and Executions in 2008. ACT 50/003/2009, [https://www.amnesty.de/files/reader\\_Death-Sentences-and-Executions-2008.pdf](https://www.amnesty.de/files/reader_Death-Sentences-and-Executions-2008.pdf)

84 Amnesty International (29 March 2010) Death Sentences and Executions in 2009, ACT 50/001/2010, <http://www.amnesty.org/fr/library/info/ACT50/001/2010/en>

85 UK Foreign and Commonwealth Office (March 2011) Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report, p. 204, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32907/accessible-hrd-report-2010.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32907/accessible-hrd-report-2010.pdf). There are varying estimates on this. For additional data with individual reports, see Iran Human Rights, Annual Report of the Death Penalty in Iran in 2010, available at: <http://iranhr.net/spip.php?article1984> (last accessed 28 February 2011). Official versus unofficial executions must be distinguished. See: Amnesty International (28 March 2011) Death Sentences and Executions in 2010, ACT 50/001/2011, p. 5, <http://www.amnesty.org/fr/library/asset/ACT50/001/2011/en/ea1b6b25-a62a-4074-927d-ba51e88df2e9/act500012011en.pdf> The report identifies more than 252 executions but adds (p. 26), ‘Amnesty International received credible reports of more than 300 other executions which were not officially acknowledged, mostly in Vakilabad Prison, Mashhad. Most were of people convicted of alleged drugs offences.’ Amnesty International detailed credible reports of many of the same instances as outlined by Iran Human Rights.

86 Iran Human Rights, Annual Report 2012 (1 March 2012), <http://iranhr.net/2012/03/annual-report-on-the-death-penalty-in-iran-at-least-676-executions-in-2011>

87 Harm Reduction International, The Death Penalty for Drug Offences: Global Overview 2011 (London, 2011), 2012, <http://www.ihra.net/contents/1080>

it is correct or not, there is a big question: “Did this harsh punishment bring the crimes down or not?” In fact, [it] did not bring it down.’<sup>88</sup>

Though legally irrelevant, it would at least provide some reassuring publicity if the smugglers suffering these sanctions were high-level kingpins. However, as is common with the drug trade, mules typically represent the lowest level targets in the value chain. Many of these people are young and vulnerable. There are even credible, though unconfirmed, reports of minors being executed in Iran.<sup>89</sup> In addition, the U.S. State Department reported that, ‘Exiles and human rights monitors alleged that many persons supposedly executed for criminal offenses such as narcotics trafficking were actually political dissidents.’<sup>90</sup>

All this has created a considerable problem for Iran’s partners in drug control, including European states opposed to the death penalty in all circumstances and the UNODC, an agency of the United Nations, which has human rights hardwired into its charter.

### III. The status of the death penalty in International Law

The death penalty’s status in international law is ever-shifting and evolving. There is discussion whether capital punishment for any offence is compatible with current international human rights standards as there has been growing support for the position that capital punishment violates the prohibition of cruel, inhuman or degrading treatment or punishment, as enshrined in U.N. and regional human rights treaties. While such an argument is still subject to some debate, it is quite clear that under international human rights law, the death penalty is subject to certain limitations, as articulated in multilateral human rights treaties. One significant restriction is enshrined in Article 6(2) of the International Covenant on Civil and Political Rights, which states that the death penalty may only be applied for what the treaty terms ‘most serious crimes’.<sup>91</sup> Iran became a party to the ICCPR in 1975.<sup>92</sup>

Over the past three decades U.N. human rights bodies have made it abundantly clear that they do not believe drug offenses meet the threshold of a ‘most serious crime.’ The U.N. Human Rights Committee, the body of independent experts mandated with

88 United Nations Radio, Number of executions in Iran can be reduced, says official, 16 November 2011, <http://www.unmultimedia.org/radio/english/2011/11/number-of-executions-in-iran-can-be-reduced-says-official>

89 Iran Human Rights, Annual Report on the Death Penalty in Iran 2011, 4 March 2011. Two reported cases include Afghan citizens Vahid Moslemi and Mohammad Nourozi, who were juveniles when they were arrested. According to the rights group, [http://www.abolition.fr/sites/default/files/rapport\\_iran\\_2012-gb-bd-270212.pdf](http://www.abolition.fr/sites/default/files/rapport_iran_2012-gb-bd-270212.pdf) “Human Rights and Democracy Activists in Iran” (HRADI) Iran Human Rights was unable to confirm the ages of the victims.

90 US Department of State, Country Reports on Human Rights Practices: Iran, 24 May 2012, <http://www.state.gov/j/drl/rls/hrrpt/2011/nea/186425.htm>

91 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

92 See UN Treaty Collection, available at: <http://treaties.un.org/Pages/UNTSONline.aspx?id=1> (date of last access: 25 November 2012)



monitoring the implementation and interpretation of the Covenant, concluded in its 2005 report on Thailand<sup>93</sup> and 2007 report on the Sudan<sup>94</sup> that drug trafficking was an offense that ‘cannot be characterized as the most serious’.<sup>95</sup> This view has been supported by the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions;<sup>96</sup> the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;<sup>97</sup> U.N. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>98</sup> The UNODC has also voiced its disapproval of the death penalty for drug offences in stating, ‘As an entity of the United Nations system, UNODC advocates the abolition of the death penalty and calls upon Member States to follow international standards concerning prohibition of the death penalty for offences of a drug-related or purely economic nature.’<sup>99</sup>

What’s worse, Iran is a case study in the limits of repressive approaches. Contrary to the belief that harsher drug laws prevent drug use, Iran has become a major consumer country as well. UNODC writes ‘the highest prevalence rates for opium and heroin use are in Afghanistan and the Islamic Republic of Iran.’<sup>100</sup> The agency adds, ‘Prevalence of opiate use, including the smoking of opium, in Pakistan is similar to that in Western Europe, while in the Islamic Republic of Iran it exceeds that of Western Europe by a factor of four or five.’<sup>101</sup> This has resulted in one of the incongruences of the Iranian drug policy: its relatively strong support for harm reduction interventions to prevent the spread of HIV and other blood-borne viruses – a critical component of ensuring the right to health for peo-

ple who use drugs<sup>102</sup> – while also being an aggressive violator of human rights in its criminal justice policies. After all, the government makes available opioid substitution services as well as needle and syringe exchange programmes, including in prisons.<sup>103</sup> However if a ‘harm reduction approach’, entails a commitment to human rights,<sup>104</sup> the Iranian Government’s draconian approach cannot be considered compatible with its health interventions. If anything, these cruel laws only jeopardise the success of the country’s public health programmes by driving vulnerable people away from its life-saving services.

#### IV. The drug control regime on notice

It is becoming more difficult for international partners like UNODC to view events in Iran as disconnected from their support. Non-governmental organisations such as Harm Reduction International,<sup>105</sup> Amnesty International,<sup>106</sup> Human Rights Watch,<sup>107</sup> Ensemble contre la peine de mort, Penal Reform International<sup>108</sup> and Iran Human Rights have all, at various points, raised concerns about international aid facilitating unlawful executions. These calls have been reinforced by the European Parliament, which passed a resolution in 2010 that called ‘on the [European] Commission to develop human rights guidelines governing international funding for drug enforcement activities.’<sup>109</sup> The resolution stressed that the European Commission must ensure that drug control programmes in receipt of aid ‘do not result in human rights violations, including the application of the death penalty’ and stressed ‘that the abolition of the death penalty for drug-related offences should be made a precondition for financial assistance, technical assistance, capacity-building and other support for drug enforcement’.<sup>110</sup>

93 UN Human Rights Committee (8 July 2005), Concluding observations: Thailand. CCPR/CO/84/THA, § 14, <http://www.refworld.org/docid/43f2ff76a.html>

94 UN Human Rights Committee (29 August 2007) Concluding observations: Sudan. CCPR/C/SDN/CO/3, § 19, <http://www.refworld.org/docid/46e516f52.html>

95 R. Lines, A ‘most serious crime’?—The death penalty for drug offences and international human rights law, *Amicus journal*, 21

96 UN Commission on Human Rights (24 December 1996) Extrajudicial, summary or arbitrary executions: report by the Special Rapporteur, submitted pursuant to Commission on Human Rights Resolution 1996/74, E/CN.4/1997/60, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G97/100/51/PDF/G9710051.pdf?OpenElement>; UN Human Rights Council (29 January 2007) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, § 51–52, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/105/00/PDF/G0710500.pdf?OpenElement>; HRC (18 June 2010) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Communications to and from governments, A/HRC/14/24/Add.1, pp. 45–46.

97 UN Human Rights Council (14 January 2009) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/10/44, § 66, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf>

98 UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (6 August 2010) A/65/255, § 17, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/477/91/PDF/N1047791.pdf?OpenElement>

99 UNODC, ‘Drug control, crime prevention and criminal justice: A Human Rights perspective Note by the Executive Director, UN Doc. E/CN.7/2010/CRP.6–E/CN.15/2010/CRP.1’, 3 March 2010, [http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_19/E-CN15-2010-CRP1\\_E-CN7-2010-CRP6/E-CN15-2010-CRP1\\_E-CN7-2010-CRP6.pdf](http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_19/E-CN15-2010-CRP1_E-CN7-2010-CRP6/E-CN15-2010-CRP1_E-CN7-2010-CRP6.pdf)

100 World Drug Report 2012 (n 3), iv, [http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR\\_2012\\_web\\_small.pdf](http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf)

101 *ibid.*, p. 86

102 D. Barrett and P. Gallahue, Harm Reduction and Human Rights, 2011, *INTERIGHTS Bulletin* 16 (4) 188-194, [http://www.interights.org/userfiles/TortureHealth\\_Edition\\_web.pdf](http://www.interights.org/userfiles/TortureHealth_Edition_web.pdf)

103 Global State of Harm Reduction 2012, Harm Reduction International, August 2012, <http://www.ihra.net/contents/1242>

104 See: Harm Reduction International, ‘A position statement from Harm Reduction International,’ available at: <http://www.ihra.net/what-is-harm-reduction> (Date of last access: 17 November 2012).

105 Harm Reduction International, ‘Complicity or Abolition? The Death Penalty and International Support for Drug Enforcement,’ 2010; Harm Reduction International, ‘Partners in Crime’ (n 44), <http://www.ihra.net/contents/570>

106 Amnesty International, Addicted to death: Executions for drugs offences in Iran, 15 December 2011, <http://www.amnesty.org/en/library/info/MDE13/090/2011>

107 Human Rights Watch, ‘Iran: Donors Should Reassess Anti-Drug Funding Prosecutions of Drug Offenders Violate Rights, Result in Frequent Executions,’ 21 August 2012, <http://www.hrw.org/de/node/109588>

108 Harm Reduction International, Human Rights Watch, Penal Reform International, ‘Briefing: The Death Penalty and International Support for Drug Enforcement,’ 22 October 2010, <http://www.ihra.net/contents/796>

109 European Parliament (16 December 2010) Resolution on the ‘Annual Report on Human Rights in the World 2009’ and the European Union’s policy on the matter (2010/2202(INI)), § 65, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2010-0489> See also: European Parliament (8 May 2008) Resolution on the ‘Annual Report on Human Rights in the World 2007’ and the European Union’s policy on the matter (2007/2274(INI)) P6\_TA (2008)0193, §143, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0193+0+DOC+XML+V0//EN>

110 *ibid.*

More recently, the institutions of the United Nations have devoted considerable attention to the issue as well. In 2012, UN Secretary General Ban Ki-moon, wrote in a report to the UN Human Rights Council:

Donor States and international organizations that provide support to drug-control projects in retentionist States need to ensure that such assistance does not facilitate and legitimize the use of the death penalty in cases that would not be acceptable in accordance with international standards and safeguards.<sup>111</sup>

This was followed by an August 2012 report by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, who warned, 'Where the death penalty is imposed in violation of international standards, this assistance may amount to complicity and should lead to indirect legal or other responsibility on the part of the assisting party.'<sup>112</sup>

In response, both the U.N. and donor states have taken action, which has mainly centred on the development of human rights guidance for counter-narcotics funding. For example, the Foreign and Commonwealth Office of the United Kingdom produced a set of guidelines for its Overseas Security and Justice Assistance, which requires agency staff to evaluate thematic human rights risks, including the death penalty, in advance of providing aid to certain projects.<sup>113</sup> If risks are identified, steps are required to mitigate that risk. UNODC also created its own risk monitoring processes in a 2012 paper, which includes an option to suspend or withdraw aid in extreme circumstances.<sup>114</sup>

The Iranian Government, however, has tested the force of such guidance documents. Iran Human Rights reported that in 2013, the Iranian authorities executed 331 people for drug offences.<sup>115</sup> Thus drug control partners are increasingly disengaging from Iran. In 2011, Ireland suspended its aid to the U.N.'s drug control program in Iran because the

government felt it "could not be party" to funding the death penalty.<sup>116</sup> This was followed by Denmark and the U.K.<sup>117</sup>

Iran may have set an important precedent. While it is now a case study in what governments are not willing to tolerate in the war on drugs, Iranian authorities are hardly alone in imposing the death penalty for drugs. Human rights activists raised similar concerns about Viet Nam—where the U.N. Office on Drugs and Crime is also active—after 30 people were sentenced to death for heroin trafficking.<sup>118</sup> Iran is probably the worst offender in its comparatively extreme use of capital punishment for drugs. However, these recent experiences have highlighted a dilemma for the international community that is not exclusive to Iran. If governments spend millions of dollars cracking down on drugs in countries where drug offences are punishable with death, how can donors be assured that their aid is not leading to the executions of some of these people ?

The simple answer is that they can't.

111 UN Human Rights Council, Question of the death penalty: Report of the Secretary-General, 2 July 2012, A/HRC/21/29, § 26-27, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-29\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-29_en.pdf)

112 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/67/275, 9 August 2012, § 68, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/457/80/PDF/N1245780.pdf?OpenElement>

113 HM Government, Overseas Security and Justice Assistance, Human Rights Guidance, December 2011, <https://www.gov.uk/government/publications/overseas-security-and-justice-assistance-osja-guidance>

114 UNODC and the Promotion and Protection of Human Rights: Position Paper, May 2012. The report adds, 'a country actively continues to apply the death penalty for drug offences, UNODC places itself in a very vulnerable position vis-à-vis its responsibility to respect human rights if it maintains support to law enforcement units, prosecutors or courts within the criminal justice system ... At the very least, continued support in such circumstances can be perceived as legitimizing government actions. If, following requests for guarantees and high-level political intervention, executions for drug-related offences continue, UNODC may have no choice but to employ a temporary freeze or withdrawal of support'. See [https://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_Human\\_rights\\_position\\_paper\\_2012.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Human_rights_position_paper_2012.pdf)

115 This represents a decrease from the previous year but is still totally unacceptable for Iran drug control partners in Europe and at the U.N.

116 RTE News, Government ceased anti-drug programme funding over Iran death penalty fears, 8 November 2013, <http://www.rte.ie/news/2013/1108/485366-ireland-anti-drug-iran>

117 The Copenhagen Post, Denmark ends Iranian drug crime support, 9 April 2013. Additional documents on file with author, <http://cphpost.dk/news/denmark-ends-iranian-drug-crime-support.4898.html>

118 Reuters, U.N. urged to freeze anti-drug aid to Vietnam over death penalty, 12 February 2014, <http://in.reuters.com/article/2014/02/12/vietnam-un-narcotics-idINDEEA1B0FL20140212>

# Ethnic Minorities and the Death Penalty in Iran – the case of the Kurds

By Taimoor Aliassi

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## I. The death penalty in Iran: a repressive tool against minority and ethnic claims?

Despite signs of openness after the election of President Rouhani last year and the Geneva agreement on Iran's nuclear program, the human rights situation of ethnic minorities such as Kurds, Balochis, Arabs, Turkmen and Azeris continue to worry human rights defenders, the UN and the international community.

Despite multiple demands from various UN Treaty Body committees, Iran refuses to provide appropriate and accurate statistical data concerning members of ethnic minorities and executions.<sup>119</sup> They nonetheless appear over-represented in the number of people executed. Since the election of President Rouhani in June 2013, more than 468 prisoners have been executed.<sup>120</sup> For instance out of the 63 prisoners executed in the last 50 days, 21 were Kurds.<sup>121</sup> Moreover, the Iranian Supreme Court has recently confirmed the death sentences of 33 Kurdish activists who are at imminent risk of execution.<sup>122</sup>

Most of the hangings carried out against members of ethnic minorities appear to have been politically motivated. According to the UN and various credible international NGOs documenting human rights violations in Iran, out of 947 political prisoners, 392 belong to the Kurdish minority.<sup>123</sup> Virtually all political prisoners belonging to ethnic communities in

119 CERD Concluding observations of the Committee on the Elimination of Racial Discrimination: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/IRN/CO/18-19&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/IRN/CO/18-19&Lang=En), accessed in June 2014

120 Aliassi, Taimoor 2013. "Malgré les signes d'ouverture, l'Iran de Rouhani exécute à tour de bras". *Le Temps*, December 17: [http://www.letemps.ch/Facet/print/Uuid/265722ca-6672-11e3-8a31-04bab4b7fdbe/Malgré\\_les\\_signes\\_douverture\\_Iran\\_de\\_Rouhani\\_exécute\\_à\\_tour\\_de\\_bras](http://www.letemps.ch/Facet/print/Uuid/265722ca-6672-11e3-8a31-04bab4b7fdbe/Malgré_les_signes_douverture_Iran_de_Rouhani_exécute_à_tour_de_bras)

121 See <http://hawlati.co/انگاه‌های‌ش‌روئی/42692>, Accessed on May 9, 2014

122 Iran: Halt Execution of 33 Sunnis : <http://www.kmmk-ge.org/?p=587> , accessed on May 11, 2014

123 United4Iran, Accessed on May 10, 2014: <http://united4iran.org/political-prisoners-database/search-results/?fields%5B-name%5D=&fields%5B10070%5D%5B%5D=10075&fields%5B11000%5D%5B%5D=&fields%5B10130%5D%5B%5D=&fields%5B10340%5D%5B%5D=> , see also the 17th March Report of Dr. Shaheed, annex II

Iran have been convicted on vague charges related to national security such as "gathering and colluding against national security", "spreading propaganda against the system" and "Mohareb" or enmity against God.<sup>124</sup>

But before further analysis, it is necessary to briefly present the main ethnic groups in Iran with a focus on the Kurds. As mentioned above, Iran is a multi-ethnic and multi-religious state composed primarily of Persians, Kurds, Balochis, Azerbaijanis, Turkmen and Ahwaz-Arabs.<sup>125</sup>

**The Kurds.** Kurdistan; "the country of the Kurds", is divided across Iran, Turkey, Iraq and Syria. Iranian Kurdistan covers an area of 111,705 km<sup>2</sup>, comprising the four western provinces of Kermanshah, Ilam, West Azerbaijan and Kordestan, in North West Iran. The population is estimated at between 8 and 10 million people. Most of the Kurds are Muslim: 66% Sunni, 27% Shi'a and the others are: Yarsan, Yazidis, Qadiriyya, Naqeshbandiyya, Christian and Jewish.<sup>126</sup> Iranian Kurdistan, like Turkmenistan, Ahwaz and Balochistan, suffers from a high level of unemployment and the discriminative policy of "the gozinesh". According to the UN Committee on Economic, Social and Cultural Rights, the Iranian 1995 Selection Law based on Religious and Ethical Standards known as the "gozinesh" impairs equality of opportunity and treatment in employment for members of ethnic and religious minorities.<sup>127</sup>

**The Ahwazi Arabs** live mostly in Khuzestan province, an area covering 89,000 km<sup>2</sup>. The number of Iranian Arabs is estimated at between 2 and 4 million people. The majority of Ahwazi Arabs are Shi'a Muslims (70%) and Sunni Muslims (30%) according to UNPO.<sup>128</sup> Although Ahwaz is known for its abundance of rivers and rich deposits of oil, it is one of the poorest parts of the country. In fact, the Ahwazi region is facing an environmental crisis due to a governmental project to build a massive complex of dams to divert the Karun and Karkheh, the two main rivers of Ahwaz, to central Iran.<sup>129</sup> Moreover, during the eight years of the Iran-Iraq war (1980-1988), the Iranian army planted more than 20 million landmines in Khuzestan and Kurdistan that seriously hamper the daily life of civilians, particularly farmers, nomads, shepherds and traders.<sup>130</sup>

124 March 2014 Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran : <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/march-2014-report-of-the-special-rapporteur/print/>, accessed on June 14, 2014

125 Unrepresented Nations and Peoples Organization, "Alternative Report to CESCR on Iran 2013", March 2013, available at <[http://www2.ohchr.org/English/bodies/cescr/docs/ngos/UNPO\\_Iran\\_CESCR50.pdf](http://www2.ohchr.org/English/bodies/cescr/docs/ngos/UNPO_Iran_CESCR50.pdf)>, see also: <Unrepresented Nations and Peoples Organization> p. 3. Accessed May 15, 2013

126 UNPO 2014. <http://www.unpo.org/members/7882> , accessed in June 2014

127 Concluding observations on the second periodic report of the Islamic Republic of Iran, adopted by the Committee during its fiftieth session (29 April-17 May 2013) [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/IRN/CO/2&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/IRN/CO/2&Lang=En), accessed in June 2014. See also: <http://www.kurdpa.net/farsi/index.php?cat=idame&id=11108>

128 See <http://www.unpo.org/members/7857>, accessed in June 2014

129 Ahwaz Human rights Organization 2014: <http://www.ahwazhumanrights.org/en/stories/408>, accessed in June 2014.

130 Köhli, Armin, Kurdish Landmines Plight Across and Along the Borders , April 2008, available at <<http://maic.jmu.edu/journal/11.2/focus/kohli/kohli.htm>>

**The Baloch. Balochistan;** “the country of the Baloch” is presently spread over the three states of Iran, Afghanistan and Pakistan. The Iranian part covers 347,190 km<sup>2</sup>. The Balochi people are mostly Sunni and their number is estimated at 7.9 million. Sistan-Baluchistan is also reportedly the poorest of Iran’s provinces, facing social, economic and political marginalisation.<sup>131</sup>

**The Iranian Turkmen** live along the northern edges of Iran, just south of the Turkmenistan border. This region is also called Turkmen Sahra and includes parts of Golestan, Razavi Khorasan and North Khorasan. The Turkmen are Sunni Muslims and number approximately two million. Unemployment in the Turkmen region is over 40% according to the Representative of the Société pour les peuples menacés.<sup>132</sup>

**The Azerbaijanis.** The so called “Southern Azerbaijan” is home to an estimated 18-20 million people. Iran’s ethnic Azeris are virtually all Shi’a Muslims and inhabit the country’s northwestern provinces which border Turkey, Armenia, and the Republic of Azerbaijan. They face severe discrimination and deprivation of linguistic and cultural rights.<sup>133</sup>

Despite the numerical importance of these ethnic constituents of Iran, only the Persian-Shiite group holds state power, and Article 1 of the Constitution of the Islamic Republic of Iran (hereafter Iran) declares the Twelver Shi’a School of Islam the formal religion of the state.<sup>134</sup>

The current government maintains the policies of its predecessors and adheres to a system of governance based on the ideology of one country, one nation, one language and one religion. These elements can be seen as favoring systemic and systematic discrimination against and repression of all ethnic nationalities and religious minorities in the country. Governmental participation by members of ethnic nationalities or religious minorities such as Kurds, Sunni Balochs, or Baha’is is severely restricted, preventing such individuals from assuming the presidency or occupying any significant governmental position.<sup>135</sup>

131 Balochista People Parti Website: <http://www.ostomaan.org/articles/human-rights/8438>, accessed in June 2014.

132 Side event at HRC 26th session on Iranian minorities: <http://www.kmmk-ge.org/?p=594>, accessed in June 2014

133 Rudaw net 2014: <http://rudaw.net/english/middleeast/iran/10012014>, accessed in June 2014.

134 Nayyeri, M. Hossein, “New Islamic Penal Code of the Islamic Republic of Iran: An overview”, March 2012, available at <[http://www.essex.ac.uk/hri/documents/HRIU\\_Research\\_Paper-IRI\\_Criminal\\_Code-Overview.pdf](http://www.essex.ac.uk/hri/documents/HRIU_Research_Paper-IRI_Criminal_Code-Overview.pdf)>, accessed in May 2013.

135 Concluding observations of the Human Rights Committee of the ICCPR on Consideration of reports submitted by States parties under article 40 of the Covenant, Islamic Republic of Iran : [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRN/CO/3&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRN/CO/3&Lang=En), p. 8, accessed in June 2014.

## II. The unfulfilled commitments of Rohani to promote ethnic rights

During his election campaign, President Rohani made 10 written commitments to promote ethnic rights. For instance, he committed to changing the authority’s security approach towards ethnic minorities, to allowing mother-tongue education, to nominating governors from the same ethnic origin as the province and to increasing the budget of deprived and poor provinces.<sup>136</sup>

But one year has passed and none of President Rohani’s promises in respect to ethnic minorities has materialized. None of the four governors nominated in Kurdistan in December 2013 are of Kurdish origin, and the situation is the same in other minority areas.<sup>137</sup>

The budgets allocated to Kurdish and Arab provinces were the lowest of the country and the Kurdish and Arab representatives in the Iranian Parliament have threatened to resign in protest.<sup>138</sup>

The security approach of the new cabinet not only has not improved, it has worsened. The number of extra-judicial killings of Kurdish border couriers has doubled; there have been 28 incidents in the last three months involving the death of 13 border couriers.<sup>139</sup>

In respect to the promotion of more cultural rights and education in mother-tongue languages for ethnic groups, this has not materialized. Instead, more cultural activists have been arrested and executed. In January this year, a famous Arab teacher and poet Mr Hashem Shaabani, founder of the NGO Al Hawar (Dialogue) was executed.<sup>140</sup> In November 2013, four other cultural activists from the same community were executed for “acting against national security”, *moharebeh* and *efsad fil-arz*.<sup>141</sup> And in the same period three Kurds were executed for *moharebeh* and for “attempting to overthrow the Government”.

136 See <http://www.trtpersian.com/trtworld/fa/newsDetail.aspx?HaberKodu=55ae321a-614e-444c-930a-4538ff107c89>, accessed on April 24, 2014

137 See <http://www.kurdpa.net/farsi/index.php?cat=idame&id=13047>, accessed in May 2014

138 See <http://www.kurdpa.net/farsi/index.php?cat=idame&id=13343>, accessed in May 2014

139 The KMMK-G’s report on indiscriminate killings of Kurdish kulbaran (border couriers) by Iranian security services for the period of November 2013 to February 2014 : <http://www.kmmk-ge.org/?p=569>. See also the report of UNSR at: <http://shaheedoniran.org/wp-content/uploads/2013/10/N1350031.pdf>

140 Spike in Iran executions seen politically motivated: <http://www.reuters.com/article/2014/04/04/us-iran-idUSBREA330VH20140404>, accessed in May 2014

141 <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/march-2014-report-of-the-special-rapporteur/print/>

### III. Vague charges and executions: a way of silencing ethnic minorities

In Iran, there are also prisoners from dominant Shi'ite-Persian group facing execution for religious security violations. But the members of ethnic minorities, particularly Kurds, Arabs and Balochis are the most frequent targets because of concerns related to their national aspirations.<sup>142</sup> According to the UN Independent Expert on minority issues, Ms. Rita Izsák: “the number of cases of individuals belonging to minorities being sentenced for their activities related to their minority rights is a cause for serious concern” and according to the UN Special Rapporteur’s latest report, ethnic rights defenders constitute the majority of detainees in Iran.<sup>143</sup>

Political prisoners belonging to ethnic minorities are often convicted on vague charges related to “Mohareb” or enmity against God. According to Article 279 and Article 286 of the Iranian New Penal Code, the crime of Mohareb “waging war [against God],” is punishable by death. The Iranian Judicial authorities use the crime of Mohareb for the following crimes:

drawing arms to take life or property, committing rape,<sup>144</sup> terrorizing people, robbery and smuggling,<sup>145</sup> “armed rebellion”, “spreading corruption”, “crimes against the security of the State, spreading lies, operating or managing centers of corruption or prostitution, damaging the economy of the country, destruction and terror, insecurity and damages to public and private property and people, use of toxic and other dangerous substances”.<sup>146</sup>

In respect to the application of Mohareb, the judge has discretion to determine and to carry out one of the four following punishments: crucifixion for three days, amputation, banishment, and death.<sup>147</sup> In 2013, 29 executions for crimes of Moharebeh and corruption on earth took place.<sup>148</sup>

<sup>142</sup> Spike in Iran executions seen politically motivated:

<http://www.reuters.com/article/2014/04/04/us-iran-idUSBREA330VH20140404>, accessed in May 2014

<sup>143</sup> March 2014 Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran: <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/march-2014-report-of-the-special-rapporteur/print/>, accessed in June 2014

<sup>144</sup> Iran Penal Code (2013), Art. 279.

<sup>145</sup> Id., Art. 281. Death Penalty Worldwide (citing UN Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, October 2013 report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/october-2013-report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-islamic-republic-of-iran-2/> - sect3c, Oct. 22, 2013.).

<sup>146</sup> Iran Penal Code (2013), Art. 286; United Nations, Situation of Human Rights in the Islamic Republic of Iran: Report of the Secretary-General, U.N. Doc. A/68/377, Sept. 10, 2013, ¶ 14. Death Penalty Worldwide (citing UN Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, October 2013 report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/october-2013-report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-islamic-republic-of-iran-2/#sect3c>, Oct. 22, 2013.).

<sup>147</sup> Iran Human Rights and Together Against the Death Penalty, Annual Report on the Death Penalty in Iran – 2013 (2013) (forthcoming), 25.

<sup>148</sup> Int'l Fed. for Human Rights, Iran: Political Opponents Face Execution, Jan. 12, 2010, accessed on May 10, 2014, <http://www.refworld.org/docid/4b66e3a51a.html>.

The concept of Mohareb is very complex, intricate, and opaque, its scope is broadened in practice from warring against God to warring against the government, therefore including acts such as “efforts to deconstruct the system”, “organizing offenses”, “arson and rioting” and “rising against righteousness”.<sup>149</sup>

In some cases, the Iranian judicial authorities hang the prisoners belonging to minorities in accordance with tribal traditions. On the 25<sup>th</sup> of October 2014, the Judicial authority of Sistan-Balochistan hanged 16 Balochi prisoners in what a local prosecutor called a “reciprocal action” for an attack by Balochi insurgents that had killed 14 border guards the previous day.<sup>150</sup> This method of revenge killing by the Iranian government has often been used in response to clashes with armed forces.<sup>151</sup>

### Conclusion

The increase in executions of members of ethnic minorities despite the change in government shows that the policy of silencing the vocal members of ethnic minorities by execution will continue despite repeated calls from the UN to the Iranian authorities to establish a moratorium on the death penalty and despite Rohani’s stated will to reduce discrimination against minorities.

One could consider that his continuing failure to do so shows that power is not in the hands of elected governments in Iran but in those of the clergy, who are in charge of all military forces and have the right to veto the decisions of the presidency and parliament.

The support of the international community is strongly needed to put pressure on Iran to halt executions and the repression of ethnic minorities in Iran.

<sup>149</sup> Int'l Fed. for Human Rights, Iran: Political Opponents Face Execution, Jan. 12, 2010, accessed on May 9, 2014, <http://www.refworld.org/docid/4b66e3a51a.html>.

<sup>150</sup> See <http://www.gulf-times.com/region/216/details/387182/surge-in-iran-executions-%E2%80%99bid-to-weaken-rohani%E2%80%99>, accessed on May 8, 2014

<sup>151</sup> See <http://www.ostomaan.org/articles/human-rights/17431>, accessed in May 2014.

# Religious Minorities and the Death Penalty in Iran the Case of the Bahá'í Religious Minority

By Diane Ala'i

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## I. Historical background

Iran is composed of 89% Shia Muslims, 10% Sunnis and 1% other religious minorities. As of 2003, of the 700,000 non-Muslims, there are 300,000 – 350,000 Bahá'ís, 150,000 – 200,000 Christian Armenians, 40,000 Assyro-Chaldeans, 10,000 – 15,000 Protestants, 25,000 – 30,000 Jews and 10,000 Zoroastrians currently residing in Iran.<sup>152</sup> Article 13 of the Iranian Constitution stipulates that Zoroastrian, Jewish, and Christian Iranians are the only recognized minorities who are free “within the limits of the law”, to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.<sup>153</sup> Since religious practices are effectively limited to these three religions, other religious minorities are essentially stripped of the freedom to practice their religions, and the persecution of members of these communities is legitimized. Under Article 14 of the Iranian Constitution “the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.”<sup>154</sup> This vague conditionality in Article 14 justifies persecution of non-Muslims who are judged to be engaged in conspiracy or activity against Islam.

In this paper, we will mainly focus on the killing and execution of the Bahá'í religious minority given that we do not have first hand knowledge of the executions of other religious minorities in Iran.

<sup>152</sup> Ghanea-Hercock, Nazila, Commission on Human Rights - Sub-Commission on Promotion and Protection of Human Rights: Ethnic and Religious Groups in the Islamic Republic of Iran, E/CN.4/Sub.2/AC.5/2003/WP.8 (May 3, 2003), available at [http://ap.ohchr.org/documents/E/SUBCOM/other/E-CN\\_4-SUB\\_2-AC\\_5-2003-WG\\_8.pdf](http://ap.ohchr.org/documents/E/SUBCOM/other/E-CN_4-SUB_2-AC_5-2003-WG_8.pdf)

<sup>153</sup> Iran Const. Art. 13

<sup>154</sup> Iran Const. Art. 14

## II. The Bahá'ís – Iran's largest non-Muslim religious minority

The Bahá'í Faith was founded by Bahá'u'lláh (1817-1892) in the mid-nineteenth century in Iran. At the core of its belief is the understanding that all of the world's great religious systems root out from the same divine source, in a process of spiritual evolution adapted to the social context in which they appear. Among its teachings are the equality of men and women, the elimination of extremes of wealth and poverty, the harmony of science and religion, but also first and foremost, that humanity is one single race and that the day has come for its unification. A worldwide community of some five million Bahá'ís, representative of most of the nations, races and cultures on earth, is working to give Bahá'u'lláh's teachings practical effect.

The Bahá'í community of Iran, like the worldwide Bahá'í community, is diverse. It represents a cross from virtually every ethnic group, culture, profession and social or economic class. They come from every religious background, Christian, Muslim, Jewish, Zoroastrian, as well as from non-religious backgrounds. It should be noted that in stark contrast to Shia Islam whereby believing individuals can deny their faith while they are at the risk of significant persecution under the principal of *Tagiyaa* (a form of religious dissimulation), Bahá'ís do not hide their religion. When asked in forms or during interrogation or elsewhere about their religion, they will not deny their faith. From the beginning of the revolution, the Iranian government launched a systematic campaign of religious persecution against the Bahá'ís.

Persecution of this community can be divided into different stages: in the early stages, more than 200 Bahá'ís were killed and at least 1,000 were imprisoned solely because of their religious belief. In the early 1990s, the government of Iran shifted its focus to social, economic and cultural restrictions aimed at blocking the development of Iran's Bahá'í community. These measures varied from depriving the Bahá'ís of their livelihood and destroying their cultural heritage to preventing Bahá'í youth from accessing higher education. In recent years, while government has intensified its social and economic and cultural pressure on the Bahá'ís, it has also started a campaign of incitement to violence against the Bahá'í in the media and elsewhere.

### III. Executions and killings of the Bahá'ís

Since the beginning of the Islamic Republic of Iran more than 200 Bahá'ís have been executed, killed, stoned or burnt to death solely because of their religious beliefs.<sup>155</sup> According to a report published by the International Federation for Human Rights this is the highest number of executions in comparison with any other religion in Iran.<sup>156</sup> A large majority of those killed were executed by the Iranian government solely for their religious belief. It is also worth noting that nearly half of the Bahá'ís executed in Iran since 1979 have been elected members of national and local governing bodies of the Bahá'í community, known as Spiritual Assemblies.<sup>157</sup> This shows that the Iranian government anticipated that by eliminating the leadership of the Bahá'í community, the majority of Bahá'ís would succumb to pressures to leave the Faith. Among those executed were also ten Bahá'í women who were hanged in the city of Shiraz in 1983 after having refused to recant their faith. Their charge was teaching the Bahá'í tenets to Bahá'í children. Mona Mahmudnejad, one of the women, was 16 years old at the time of her arrest and 17 when she was put to death. In addition to these killings, 15 missing Bahá'ís are also presumed dead.

### IV. Lack of Judicial Recourse

As stated earlier, since religious practices are effectively limited to those religions recognized under Article 13 of the Iranian Constitution, Bahá'ís are stripped of their freedom to worship. Moreover, since belief in the Bahá'í Faith is considered heresy, any involvement in the Bahá'í Faith is then considered as “engaging in conspiracy or activity against Islam” under Article 14 of the Constitution.<sup>158</sup> This is reflected in the charges that are brought against members of the Bahá'í community throughout Iran, such as “propaganda activities against the regime in the interest of the Bahá'í sect” and “propaganda against the holy regime of the Islamic Republic of Iran”, considered criminal offences. In fact, in the light of recent verdicts, Iran’s judiciary considers “membership in... the misguided Bahaist sect” as such an offence. Furthermore, Iranian courts have since made clear that this constitutional exclusion makes them “unprotected infidels” in the Iranian justice system. Thus despite the fact that arrests and imprisonment on religious grounds are a violation of international human rights law, this qualification provides impunity from prosecution for crimes against Bahá'ís.

Not only is membership in the Bahá'í Faith a prosecuted crime, the Bahá'ís are not

<sup>155</sup> For a complete list see <http://news.bahai.org/documentlibrary/TheBahaiQuestion.pdf>

<sup>156</sup> Iran/death Penalty A State of Terror Policy, at 32 see [https://www.fidh.org/IMG/pdf/Rapport\\_Iran\\_final.pdf](https://www.fidh.org/IMG/pdf/Rapport_Iran_final.pdf)

<sup>157</sup> The Bahá'í faith has no clergy. Its institutions perform many of the functions restricted to clergy in other religions and are the functional element of the Bahá'í community life. Members of these institutions are elected at the local, national, and international levels.

<sup>158</sup> See the above text of the Iranian Constitution, Article 14

granted protection under the law. In 1993, for example, an Iranian penal court nullified the death sentence for two Muslim brothers who had been convicted of kidnapping a 60-year-old Bahá'í man, forcing him to sign over the deed to his house, and then murdering him. The court ruled that because the man was “a member of the misguided and misleading sect of Baháism,” the murderers were not subject to the traditional retaliatory punishment for murder. The court also voided the possibility of so-called “blood money” payment to the murdered man’s family, citing jurisprudence that “No blood-money is payable to infidels, unless they are protected non-believers.”<sup>159</sup>

### V. Religious Minorities and Apostasy

Although apostasy is considered a crime, the Islamic Penal Code does not stipulate punishment for it. Under Article 167 of the Constitution, in the absence of any codified law, [a judge] must deliver his judgement on the basis of authoritative Islamic sources and authentic *fatwa*.<sup>160</sup> The use of *fatwas* as a source of law is also affirmed in Article 214 and it has indeed been invoked by judges in the past to issue death sentences in apostasy cases on the basis of the views of Ayatollah Khomeini.<sup>161</sup>

Christian converts are amongst the groups frequently charged with apostasy and have faced the death penalty as a result. In the recent case of Christian Pastor Youcef Naderkhani, the Supreme Court sustained the apostasy charge and maintained that apostasy is a valid criminal charge in Iran. The Supreme Court specifically referred to the scholarship of Ayatollah Khomeini as the source of the law.<sup>162</sup> Iranian Bahá'ís have also faced apostasy charges in Iran. Mr. Mahrami, a Bahá'í from Yazd was arrested in 1995 and

<sup>159</sup> See also Shirin Ebadi, Bahaï Killers Escape Prosecution, Center for Supporters of Human Rights, (Feb 19, 2014), <http://cshr.org.uk/en/free-tribune-of-lawyers/bahai-killers-escape-prosecution>:

Article 488 of the Islamic Penal Code states: “Blood money is an amount specified in the sacred Shari’a [religious law] for unintentional crimes leading to loss of life, injury, or damage or for intentional crimes for which there is no statutory punishment.” The rate of blood money changes each year with inflation. In 1392 [2013], the leader of the Islamic Republic of Iran has conveyed to the head of Judiciary that the amount of blood money is 1.140 billion Rials [approximately \$38,000] for male Muslims, which would be different for non-Muslims which is legally less. However, owing to international pressure, amendments were made to the Islamic Penal Code, Article 554, which now states: “According to the sovereign opinion of the Supreme Leader, blood money for the recognized religious minorities in the Constitution of the Islamic Republic of Iran is the same amount as for the Muslims.” Therefore, the blood money given for the murder of Jews, Christians, and Zoroastrians is equivalent to the blood money given to a Muslim. However, the important point is that because “The Bahá'í Faith” is not considered, in the Constitution of the Islamic Republic of Iran, to be a recognized religion, if a Bahá'í is murdered or injured, no blood money is paid. Therefore, based on the laws promulgated in the Penal Code of the Islamic Republic of Iran, the followers of the Bahá'í Faith in Iran, numbering about 350,000, are at serious risk because, through misuse of the unjust rules that have been ratified, the followers of this religion face constant horrible danger.

<sup>160</sup> Iran Const. Art. 167

<sup>161</sup> Iran Const. Art. 214. According to Article 214 of the Iranian Constitution “where there is no corresponding law against the issue at hand, [the court] must proceed to issue a verdict substantiated on reliable religious sources and/or reliable *fatwa*”. See also International Federation of Human Rights, Iran/death Penalty A State of Terror Policy, (April 2009) available at [http://www.fidh.org/IMG/pdf/Rapport\\_Iran\\_final.pdf](http://www.fidh.org/IMG/pdf/Rapport_Iran_final.pdf) [hereinafter Iran/death Penalty A State of Terror Policy]

<sup>162</sup> Supreme Court Says No Apostasy Execution if Pastor was Never Muslim and Repents, International Campaign for Human Rights in Iran, (2001), <http://www.iranhumanrights.org/2011/07/nadarkhani-no-execution-if-not-muslim-and-repents/>

was sentenced to death on apostasy charges.<sup>163</sup> Although Mr. Mahrami was a lifelong Bahá'í, the apostasy charge apparently came about because a civil service colleague, in an effort to prevent Mr. Mahrami from losing his job,<sup>164</sup> submitted an article to a newspaper stating that he had converted to Islam. When it later became clear to Iranian authorities that Mr. Mahrami remained a member of the Bahá'í community, he was arrested and charged with apostasy for allegedly converting from Islam to the Bahá'í Faith. On 2 January 1996, he was sentenced to death by the revolutionary court, a conviction that was later upheld by the Iranian Supreme Court.<sup>165</sup> His sentence was later commuted to life imprisonment after an international outcry and widespread media attention to his case. Mr. Mahrami was held in a government prison in Yazd under harsh physical conditions for ten years and passed away in prison in 2005, allegedly from unknown causes.<sup>166</sup> Furthermore, as explained above, Iran is a majority Shia Muslim country. Thus, a large majority of Iranian Bahá'ís have Muslim backgrounds and have been accused of apostasy as a result.

## VI. Violence with Impunity

The killing of Bahá'ís on purely religious grounds has taken on new forms and has intensified in recent years. Although no Bahá'í have been executed since 2005, there has been a new trend in violent attacks and killings of Bahá'ís in Iran. Since 2005, at least nine Bahá'ís have been murdered or have died under suspicious circumstances, including the shooting and killing of Mr. Rezvani in Bandar Abbas in August 2013. Although he had been repeatedly threatened by intelligence officials and his killing was unusual, the government declared his death a suicide, a fact contested by his attorney. In a more recent development, three Bahá'ís were stabbed in their home in the city of Birjand by an unidentified intruder. All three were seriously injured. A common denominator among these suspicious attacks and killings is the impunity with which they are carried out. In all cases, whether the attacks have been sanctioned by an order from the intelligence ministry or come as a result of incitement, the government has refrained from investigating and prosecuting those who are responsible. Indeed, the Bahá'í International Community is not aware of a single instance of someone being prosecuted for such crimes – much less being convicted or imprisoned.

<sup>163</sup> Bahá'í World News Service – Bahá'í International Community, “Wrongly imprisoned Bahá'í dies in Iranian jail, (Dec. 19, 2005) available at <http://news.bahai.org/story/415>

<sup>164</sup> Mr. Mahrami served in the civil service but at the time of his arrest was making a living installing venetian blinds, having been summarily fired from his job like thousands of other Bahá'ís in the years following the 1979 Iranian revolution.

<sup>165</sup> Bahá'í World News Service – Bahá'í International Community, “Wrongly imprisoned Bahá'í dies in Iranian jail, (Dec. 19, 2005) available at <http://news.bahai.org/story/415>

<sup>166</sup> Id and See also Mehrangiz Kar, Iranian Bahais and Historical Responsibilities of the President, Iran Wire, (Feb. 2014), <http://iranwire.com/features/5872/> (available only in Farsi)

## Conclusion

The aim of the Iranian government has always been the elimination of the Bahá'í community in Iran, but its strategy has changed over the years. It initially started with the physical elimination of the Bahá'ís through the death penalty in the 1980s. However, because of the international outcry these killings raised, it then turned to slowly suffocating the community through social, economic and cultural pressures in the 1990s, following secret instructions endorsed by the Supreme Leader himself.<sup>167</sup> While the latter strategy is still in effect, it has been coupled in recent years with a widespread campaign to incite hatred and violence towards members of the Bahá'í community in Iran, allowing for killings to resume, perpetrated currently in total impunity by unknown individuals or entities.

<sup>167</sup> Bahá'í World News Service, The 1991 memorandum on “The Baha'i Question” <http://news.bahai.org/human-rights/iran/yaran-special-report/feature-articles/the-1991-memorandum-on-the-bahai-question>



# Women and the Death Penalty in Iran

By **Sanaz Alasti**<sup>168</sup>

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Co-director of the same Centre

Iran's secular criminal justice system was formed under the Pahlavi Dynasty and its two monarchs, Reza Shah (1925-1941) and Mohammad Reza Shah (1941-1979). The first Penal Code of Iran was ratified in 1926.<sup>170</sup> Based on Iran's Penal Code, in addition to murder the death penalty was used to punish drug trafficking and offenses against public security. Under the rule of Mohammad Reza Shah, a small number of women were executed, mostly for murder.<sup>171</sup>

The punishment system in Iran is currently based on the Twelve Imami Shii version of the *sharia* Law. This system formed in the early 1980s during the tenure of the Ayatollah Ruhullah Mosavi Khomeini.<sup>172</sup> In 1983, the first Islamic Penal Statute was ratified (Statute of Retaliation and Prescribed Punishments). Based on this Statute, capital punishment became applicable for crimes outlined in the Holy Quran and tradition. The Islamic Penal Code provides death penalty for more than fifteen different crimes. Under the Islamic criminal justice system of Iran 123 females were hanged in Iran between 1980 and 1999, in addition to 171 executions by shooting and eight by stoning.<sup>173</sup> Through the 1990s, reported female executions were rare but have been rising since 2000.<sup>174</sup> Although women have been put to death in Iran, they constitute only a fraction of death row inmates. There is overwhelming evidence that the death penalty is employed against men and not women.

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<sup>170</sup> Sanaz Alasti, *Cruel and Unusual Punishment: Comparative Perspective in International Conventions, the United States and Iran*, p 55, Florida, US: Vandephas Publishing (2008) and <http://blogs.loc.gov/law/2013/09/laws-of-iran-global-legal-collection-highlights>

<sup>171</sup> Women and the Death Penalty in Modern Iran, from: <http://www.capitalpunishmentuk.org/iranfem.html>

<sup>172</sup> Sanaz Alasti, *supra*, note 3, p 58.

<sup>173</sup> Boroumand Foundation Report, <http://www.iranrights.org/>

<sup>174</sup> Women and the Death Penalty in Modern Iran, *supra*, note 4.

Although we do not have complete or accurate data for death sentences imposed upon female offenders and execution of women in Iran, research has documented all executions of female offenders from 2008 to 2013. From January 2008 to January 1, 2014 there were 79 executions of women. This constitutes 2.4% of the total executions, i.e. 3,173 people.<sup>175</sup>

Female offenders are unlikely to be arrested for murder. For example Iran's Statistical Center report of 2004 shows that out of 58241 people arrested for violent crimes (mainly crimes against persons) only 2719 of them were women.<sup>176</sup> If women are unlikely to be arrested for murder, extremely unlikely to be sentenced to death, and almost never executed, this necessarily indicates sex bias in the criminal justice system of Iran. Female trials in Iran sometimes attract heightened attention. Judges are a little more reluctant to mete out the death penalty to a woman than to a man. Iranian criminal justice officials look at women as being less violent, and do not consider death row a suitable place for them.

The lack of complete data concerning women executed in Iran precludes any precise analysis. However, we do have complete data and did collect some accurate data for all female offenders executed from 2008 to the present in Iran.<sup>177</sup> The annual execution pattern for female offenders from 2008 to the current death penalty era represents about 2.4% of all executions. A total of 79 women were executed from January 1, 2008, through January 1, 2014. The typical annual rate is between 1 to 4 percent of all executions. Each year has seen at least four executions of female offenders, but wide fluctuations from four to thirty executions, in 2013, have occurred over the past decade (please refer to Figure 1). These fluctuations and the high rate of female executions is explained by changes in Iranian criminal justice policies such as stiffer sentencing for mandatory drug related crimes, and 'get tough on crime' approaches after the June 14 presidential election in Iran. Iran has recently experienced a dramatic increase in the death penalty for women. These executions come after the government's launch of a campaign targeting murderers, drug traffickers and others cast as a threat to national security. It has resulted in a wave of arrests, with police raiding working-class neighbourhoods in Tehran and other cities. Those arrested are paraded in public, often in humiliating postures.

<sup>175</sup> Chart of Executions by the Islamic Republic of Iran, from: <http://www.iranhrdc.org>, and Annual Report on the Death Penalty in Iran, from: <http://iranhr.net>

<sup>176</sup> Please see: <http://www.amar.org.ir>

<sup>177</sup> It is important to note that many individuals executed in Iran are identified by initials only or not identified at all.

## I. Capital Crimes in Iran

The obvious beginning point is the legislative decision to designate a crime as being eligible for the death penalty in the first place. The death penalty in Iran is applicable to an overly broad range of crimes in addition to murder: incest, rape, sex between a non-Muslim and a Muslim female; adultery, sodomy; other homosexual acts after the fourth conviction, drinking liquor after four convictions, brandishing weapons to create fear, defamation of sanctities,<sup>178</sup> drug trafficking in large amounts, Corruption on Earth,<sup>179</sup> fornication (fourth conviction), false accusation of unlawful intercourse (fourth conviction), and *hadd* theft (fourth conviction).<sup>180</sup>

In Iran the legislature has approved capital punishment in three different categories:

### 1) Prescribed Punishments (*hodoud*)

- The punishment for fornication (fourth conviction) and fornication between a non-Muslim and a Muslim female is capital punishment for the non-Muslim man as stated in the Holy Quran. Article 136 of Iran's new Penal Code provides that if the act of lesbianism is repeated three times and punishment is enforced each time, the death sentence will be issued the fourth time.<sup>181</sup>
- *Moharebeh* (Resorting to arms to frighten people) is defined as an act of robbery by a group of armed men within the territory of the Islamic State that creates anarchy under which the property, privacy, safety, dignity, and religious values of the people are violated. The crime is regarded as a war against God and his messenger. Although some *Shia* scholars<sup>182</sup> are against the use of the death penalty for women charged with *moharebeh*, the Iranian laws do not take gender into consideration when it comes to this crime. Many female members of political dissident groups were executed in the 1980s for committing this crime. In one recent example, Zahra Bahrami was initially arrested for participating in protests against the regime, and was charged with national security offenses and being a member of the Kingdom Assembly of Iran. However she was eventually sentenced to death for drug trafficking.
- Capital punishment based on the prescribed punishments is also imposed for adultery, incest and, rape.

178 Islamic Penal Code of Iran, Art 262 (2013) [In Farsi].

179 Corruption on Earth crime is a vague definition. Under the Islamic Penal Code of Iran, Corruption on Earth is not a crime, but is used to qualify crimes that include waging war against the Prophet and God, setting ablaze a mosque, destroying state property during civil unrest, and any criticism of state (crimes against public order).

180 Sanaz Alasti, supra, note 3, pp 59-60.

181 Islamic Penal Code of Iran, Art 136 (2013). [In Farsi]

182 Hossein Ali Montazeri, *Memoirs of Ayatollah Montazeri*, Vol. I, p. 622, from: <http://www.amontazeri.com/farsi/khaterat/html/0558.htm>

Regarding charges, when women have been sentenced to death for victimless crimes such as adultery, there is a higher likelihood of their being released from death row than for murder, especially if it is killing their partner or a family member. For instance, Sakineh Mohammadi Ashtiani, a mother of two, was convicted of adultery and sentenced to death by stoning. Her story received an avalanche of coverage in the international media and among human rights groups. As a result, in January 2011 her stoning sentence was suspended, and then in March 2014 she was pardoned for good behavior.

2) **Retaliation** (*qisas*) is imposed for Murder, as explained in Article 290 of the Penal Code. The second main capital crime for female offenders is murder. Domestic homicide (the killing of relatives and sexual intimates) tends to be the most common crime committed by women on death row. This seems to indicate that the murder of a husband is taken more seriously than other murders, and that women who have murdered their husbands are more likely to be sentenced to death. For instance, Farzaneh Moradi (26 years old) was hanged in the prison of Isfahan on March 4, 2014. She was convicted of murdering her husband, to whom she had been married at the age of 15. Farzaneh's daughter is 10 year old and had not seen her mother since she was arrested six years ago.<sup>183</sup>

3) **Discretionary punishments** (*ta'azir*) are the third category of punishments that provide for capital punishment. For example Iran's criminal justice system uses capital punishment for drug trafficking<sup>184</sup> in large amounts. Statistics show that 48% of women executed between 2008 and 2013 were convicted for drug trafficking, 18% for murder, 32% unknown, and just a small portion of them for adultery and terrorism. The preceding indicates that, despite international condemnation of executions for non-murder crimes, the majority of executions of women are for drug trafficking (please refer to Figure 2).<sup>185</sup>

## II. The Role of Women Within the Death Penalty Process

Patterns of women sentenced to death show that the ages of the seventy-nine female offenders who were executed in Iran between 2008 and 2013 ranged from twenty-three to fifty-four years of age, but that the majority of the women were in their 20s and 30s. Tehran had the most female executions, followed at a distance by Oroumieh and Za-

183 Farzaneh Moradi, A 26 year young woman, was hanged this morning, Iran Human Rights (March, 2014), From: <http://iranhr.net/2014/03/farzaneh-moradi-a-26-year-young-woman-was-hanged-this-morning>

184 Anti Narcotics Drug Act, 1988 [In Farsi].

185 Annual Reports on the Death Penalty in Iran, from: <http://www.worldcoalition.org>, Chart of Executions by the Islamic Republic of Iran <http://www.iranhrdc.org>, and Boroumand Foundation Report, <http://www.iranrights.org/>



and buried him in the yard.<sup>197</sup> Although the Islamic Penal Code outlaws the execution of certain offenders under the age of 18, this does not apply in the case of murder (*qisas*) and prescribed punishments (*hodoud*).

However Article 91 of the new Islamic Penal Code of Iran clearly states that juveniles may be sentenced to death if they ‘understood’ the crime they committed. However, the wording is sufficiently vague to allow for a call for the suspension of the death penalty if the accused is deemed lacking in reason or intellectual maturity. Based on recent changes to Iran’s Penal Code, Razieh’s lawyer requested a retrial from the Supreme Court on the basis that she had been under 18 and did not understand the consequences of her acts, the court however refused.

Despite this case, in accordance with a directive issued by Ayatollah Mahmoud Hashemi-Shahrudi, Head of Iran’s Judiciary from 1999 to 2009, judges cannot issue the death sentence for juveniles. If trial court judges base their ruling on current statutes, it will be reversed in the Supreme Court. All death sentences must be upheld by the Iranian Supreme Court before they can be carried out.

Similar to the Penal Codes of Western countries, the criminal justice system of Iran is apparently unbiased against women, i.e., does not carry any special considerations based on the offender’s gender. According to Article 20 of Iran’s Constitution, all members of the nation, both men and women, shall receive equal protection under the legal system ... in conformity with Islamic criteria. This final phrase has had a significant impact on Iran’s criminal justice system, and has increased gender inequality and injustice. In some cases, the Islamic Penal Code of Iran provides lesser punishment to women as compared to men for the same crime, for example the act of homosexuality (sodomy) is punishable by death for men, while women receive 100 lashes. However, gender discrimination against women becomes more apparent in stoning cases. When defendants are sentenced to stoning,<sup>198</sup> victims who can dig themselves out and escape from the hole during the stoning, even if they had confessed to their crime, it results in pardon. The escape is considered to indicate withdrawal of the confession.<sup>199</sup>

Men stoned to death are buried to the waist, while women are buried deeper, to prevent the stones from hitting their breasts. It is therefore more difficult for women than for men to escape. That is why in Islamic countries fewer men have been stoned than women.

197 Justin Rohrlich, *Iranian Child Bride at ‘Imminent Risk of Execution’*, *Vice News* (June 2014), from: <https://news.vice.com/article/iranian-child-bride-at-imminent-risk-of-execution>

198 In Islam stoning (*rajm*) is one of the original punishments laid out in the *hodoud* (*Hodoud* are punishments where the nature, the quantity and quality are determined by *sharia*) and is the prescribed penalty for adultery.

199 Sanaz Alasti, *Comparative Study of Stoning Punishment in the Religions of Islam and Judaism*, Vol. 4 *Justice Policy Journal* (Spring 2007).

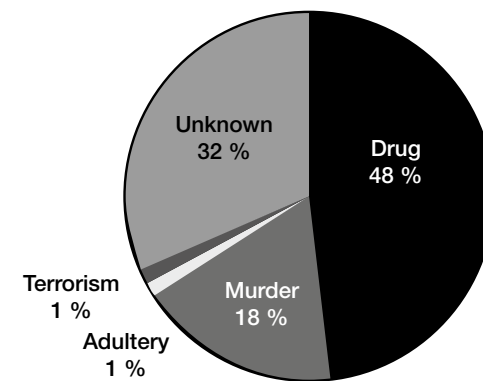
Thus what first appears to favour women in fact has a negative impact as they have less likelihood to be pardoned.<sup>200</sup>

In general, the death sentence rate and death row population remain much lower for women than for men in Iran and many other countries. Female offenders are unlikely to be arrested for murder, only very rarely sentenced to death, and almost never executed. Iranian authorities do not announce executions of women offenders to avoid international and public attention. Death sentences against men have attracted less attention from the public and civil activists than those against women with similar sentences. Women, juveniles, people from ethnic, religious and racial minorities, mentally ill or retarded defendants, and foreign nationals are more vulnerable. Therefore, prejudice and discrimination draw more attention to the death row inmates from these groups.

With a few rare exceptions, the death penalty effectively applies only to men. Women are condemned to death in secular criminal justice systems only if they blatantly defy feminine stereotypes and thus forfeit the protection that being a woman otherwise affords. Nonetheless, Iran’s capital punishment system in particular is constructed in such a way that it allows and even encourages gender discrimination in sentencing processes and the imposition of punishment of certain capital cases, thereby depriving female defendants of an equal right to life.

**Graphic 1**

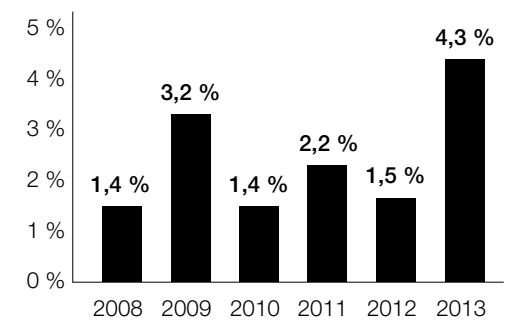
(January 1, 2008 – January 1, 2014)



200 *Id.*

**Graphic 2**

(January 1, 2008 – January 1, 2014)



# The Issue of Minors and the Death Penalty under Iran's Criminal Code

By Leila Alikarami

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## Introduction

Rasoul is not the first juvenile to be kept in limbo for several years and still face execution, and he certainly will not be the last. There are currently over 160 juveniles on death row in Iran.<sup>201</sup> Rasoul Holoumi, now 22, was sentenced to death in October 2010 for the alleged killing of a boy during a group-fight in 2009, when he was 17 years old. Rasoul could be hanged at any time at the request of the victim's family as they have been granted the right of *qesas* (retribution-in-kind) by the Islamic Criminal Code of Iran. Rasoul was at risk of being executed on 4 May this year, but he temporarily survived after the victim's family agreed to forgive him upon the receipt of 3.5 billion Rials (equivalent to US\$135,323) as *diyeh* or blood money, i.e. compensation paid to the family of the victim.<sup>202</sup> Although Rasoul's family have transferred the deeds of their house and farms to the victim's family, he is still at risk of execution at any time, as his family assets were not enough to cover the requested compensation.<sup>203</sup> Despite the fact that Iran is party to various international conventions including the Convention on the Rights of the Child, which prohibits capital punishment for people under the age of 18, minors continue to be executed in Iran.

This article aims to examine juvenile execution under Iran's Criminal Code in order to highlight the extent to which its provisions are in contrast with international norms on protecting the right to life. To analyze juvenile execution, it is first necessary to give some background on Iran's legislation and political system as well as to identify who is considered a child under Iran's legislation.

<sup>201</sup> Situation of human rights in the Islamic Republic of Iran, Report of the Secretary-General, A/69/306, 12 August 2014.

<sup>202</sup> According to Article 17 of Iran's Criminal Code (2013), *diyeh* or blood money is financial punishment determined by a judge during sentencing.

<sup>203</sup> For detailed information on Rasoul's case see: Iran: Youth facing threat of hanging amid disturbing rise in juvenile executions, available from: <http://www.amnesty.org/en/for-media/press-releases/iran-youth-risk-hanging-amid-disturbing-rise-juvenile-executions-2014-07-15>.

## I. Shari'ah law as the Overruling System

After the Revolution of 1979, of an 'ideological and Islamic nature', the political and legal system was changed in Iran. According to Article 1 of the new Constitution, ratified in the same year (and amended in 1989), Iran is an Islamic Republic with the Twelver Ja'fari school of Shi'ism as the official religion of the State. According to the Constitution, the Islamic Republic is based on Islamic principles which are mainly stipulated in Article 2.<sup>204</sup> Consequently, previous secular laws were abolished and new laws, which were considered to be more compatible with Islamic principles, were introduced. These changes also led to the closure of the juvenile courts, which had been established in 1959. The jurisdiction for dealing with all juvenile crimes in Iran before the revolution was given to the Children's Court by the 1959 Young Offenders Court Act. An experienced judge and a number of social workers were involved in the legal proceedings involving children. The Reform and Training Center for the detention, reform and discipline of child offenders was established in 1966.<sup>205</sup> With the closure of the Children's Court after the 1979 Revolution, crimes committed by children came under the jurisdiction of the general courts. However, the new Code of Criminal Procedure ratified in 2014 has recognized the establishment of the Children Courts and given them authority to handle crimes committed by juveniles.<sup>206</sup> Although Iran has signed and ratified<sup>207</sup> the Convention on the Rights of the Child, priority is given to the Islamic principles as mentioned in Iran's reservation for the CRC: The Convention on the Rights of the Child, including a preamble and 54 articles, is ratified as follows and the accession of the Government of the Islamic Republic of Iran to it is authorized, on the condition that if its provisions on any issue and at any time are in conflict with the internal laws and Islamic tenets, they shall not be binding for the Government of the Islamic Republic of Iran.<sup>208</sup>

<sup>204</sup> Article 2 [of the Constitution] stipulates that the Islamic Republic is a system based on belief in:

- 1) Monotheism (as stated in the phrase "There is no god except Allah"), His exclusive sovereignty and right to legislate, and the necessity of submission to His commands;
- 2) Divine revelation [to the Prophet] and its fundamental role in setting forth the laws;
- 3) The return to God in the Hereafter, and the constructive role of this belief in the course of man's ascent towards God;
- 4) The Justice of God in creation and legislation;
- 5) Continuous leadership and perpetual guidance, and its fundamental role in ensuring the uninterrupted process of the revolution of Islam;
- 6) The exalted dignity and value of man, and his freedom coupled with responsibility before God; in which equity, justice, political, economic, social, and cultural independence, and national solidarity are secured by recourse to:
  - a) Continuous leadership of the holy persons, who enjoy the necessary qualifications, exercised on the basis of the Koran and the Tradition [Sunnah] - peace be upon them all;
  - b) Science and arts and the most advanced results of human experience, together with the effort to advance them further;
  - c) Negation of all forms of oppression, both its infliction upon others, and subjecting others to it; and of dominance, both its imposition and its acceptance. The English text of the Constitution is available at [http://www.servat.unibe.ch/icl/ir00000\\_.html](http://www.servat.unibe.ch/icl/ir00000_.html). Accessed 6 August 2014.

<sup>205</sup> A. Abghari, Introduction to the Iranian Legal System and the Protection of Human Rights in Iran, London, Biddles Ltd King's Lynn, 2008, p.145.

<sup>206</sup> Code of Criminal Procedure, Article 298.

<sup>207</sup> According to Article 9 of Iran's Civil Code for a treaty to be applicable in Iran, it must first be signed by a representative of the Iranian government; secondly, it must be debated and ratified by the Iranian Parliament and then approved by the Guardian Council. Once it is published in the official Gazette, it has the force of domestic law.

<sup>208</sup> [http://www.schrr.net/spip.php?page=sarticle&id\\_article=2531](http://www.schrr.net/spip.php?page=sarticle&id_article=2531).

Therefore, as is clear from this reservation, Islamic law is above all other internationally recognized legislation, and international norms and standards are applicable in Iran only as long as they are not in contradiction with Islamic principles.

## II. Juvenile Execution

To understand the issue of juvenile execution under Iranian law it is first necessary to determine who is considered [legally] a child, and what the minimum age of criminal responsibility is under the Iranian Criminal Code.

### 1) The Age of Criminal Responsibility

After the 1979 revolution, the previously applicable Criminal Code of 1974 was revoked;<sup>209</sup> the new Islamic Criminal Code defines a minor as “a person who has not reached the age of maturity as stipulated by Islamic jurisprudence”.<sup>210</sup> However, there is no clear definition for maturity under Islamic law. According to Islamic jurisprudence, the criterion for adulthood is not merely a child’s age, but a child’s puberty (*buluq*). As a result, the age of maturity differs across Islamic countries. Some jurists believe that, according to Islamic jurisprudence, “a minor child is a person who has not attained puberty and maturity (*roshd*)”.<sup>211</sup> In their view, both of these conditions, one of which, *buluq*, involves physical growth while the other, *roshd*, relates to mental development, are necessary in considering a child a mature individual.<sup>212</sup> Iranian legislation adopts the ideas of those Islamic jurists who set the threshold for maturity at 15 for boys and 9 for girls. Article 1210 (1) of Iran’s Civil Code stipulates that: The age of maturity for a male is 15 complete lunar years and 9 complete lunar years for a female.<sup>213</sup> In relation to the issue of the child’s criminal responsibility, Article 49 of the 1991 Islamic Criminal Code states: “[Minors], if committing an offence, are exempt from criminal responsibility. Their correction is the responsibility of their guardians or, if the court decides, by a centre for the correction of minors.”<sup>214</sup>

Despite accepting, as in the past, the ages of 9 and 15 as the start of criminal responsi-

bility for girls and boys respectively, the Criminal Code of 2013 has attempted to create a practical solution to avoid problems associated with the accepted current age of criminal responsibility. It has therefore adopted a dual system that accepts 18 and a gradual scale of criminal responsibility for *crimes punishable by ta'zir*<sup>215</sup> and 9 and 15 as the ages of criminal responsibility for *hudud*<sup>216</sup> and *qesas*.<sup>217</sup> Through the requirement of maturity in addition to the accepted age of criminal responsibility, legislators have attempted to provide a practical solution so that judges can avoid issuing capital punishments in the case of *hudud* and *qesas*. Article 91 in this regard states that:

In respect to crimes punishable by *hudud* and *qesas*, if the offenders, who are under 18 years old but who have attained the age of maturity, do not understand the nature of the committed crime or its prohibition, or if there are doubts about their mental development and maturity, then, according to their age, they shall be awarded one of the punishments provided for in this chapter.

Note—In order to determine mental development and perfection, the court may ask for the opinion of forensic medicine specialists, or employ other means which it deems appropriate.<sup>218</sup>

According to the new penal code, legally “mature” individuals under eighteen (i.e. boys between the ages of fifteen and eighteen and girls between the ages of nine and eighteen) who are convicted of *hudud* and *qesas* crimes may be exempted from adult sentences—including the death penalty—only if it is established that they were not mentally mature and developed at the time of committing the crime, and could not recognize and appreciate the nature and consequences of their actions. Thus, this provision gives judges the discretion to decide whether a child has understood the nature of the crime and therefore whether he or she can be sentenced to death. It is important to note that cases where minors are sentenced to *qesas* represent the vast majority of juvenile execution cases.

### 2) The Practice of Juvenile Execution

The Iranian government has always denied performing child executions and insisted that the law sets 18 as the criminally liable age for capital punishment.<sup>219</sup> However, in many cases, it has been observed that convicted children are kept in prison until reaching eighteen and are then executed. Therefore, by adopting this policy, Iran has tried to

209 Under the Criminal Code of Iran (1926) the age of criminal responsibility for minors ranged from 12 to 18. According to Article 34 of the aforementioned law, a child younger than 12 years old was not criminally liable, because she/he was considered to be “an undiscerning minor” (*saqir-e qeir-e momayez*) and had no criminal responsibility. However, minors aged between 12 and 15 who committed a crime were held responsible to some extent and either placed under their parents’ custody with due discipline and commitment to moral education and care, or were assigned to a juvenile detention facility. Article 36 of the Code considered a gradual scale of criminal responsibility for non-adult discerning minors between the ages of 15 and 18: these individuals were to be imprisoned in a house of correction for no more than five years. The revised Criminal Code of Iran (1974) adopted the same age brackets for criminal responsibility, i.e. 12–15 years and 15–18 years. Children younger than 12 were acquitted from criminal responsibility. Between 15 and 18, the children were entitled to a special criminal investigation regime if they were suspected of having committed a crime.

210 Islamic Criminal Code (1991), Article 49. See also Article 304 of the Code of Criminal Procedure.

211 S. Ebadi, *The Rights of the Child: A Study on Legal Aspects of Children’s Rights in Iran*, Tehran, UNICEF, 1994, p. 23.

212 Ibid.

213 Iran’s Civil Code Article 1210 (1) amended on 5 November 1991.

214 Islamic Criminal Code (1991), Article 49.

215 According to Articles 18 and 19 of Iran’s Criminal Code, *ta’azir* has not been specified in the Shari’ah but has been codified in the Iranian legal system. *Ta’azir* can assume the form of imprisonment, fines or flogging less severe than *hadd*.

216 According to Article 15 of the Criminal Code *Hadd* (pl. *hudud*) is a punishment that has been specified in the Shari’ah.

217 According to Article 16 of Iran’s Criminal Code *qesas*, retaliation in kind, is a punishment that should be equal to the crime. Broadly akin to “an eye for an eye”, it applies to cases where a victim is killed or injured. Only the family of the victim can forgive the offender and accept compensation (*diyeh*). It is therefore equivalent to the Western notion of ‘talion law’.

218 Islamic Criminal Code (2013), Article 91.

219 For instance, former President Ahmadinejad claimed that Iranian law does not allow for the execution of juvenile offenders in an interview with the New York Times, published on 26 September 2008.

<http://www.iranhumanrights.org/2008/09/ahmadinejad-misrepresents-iranian-law-on-juvenile-executions/>

justify its failure to recognize for every child the right to life guaranteed under the CRC. By such acts Iran is not only in breach of the prohibition of child executions but it is also thereby imposing double punishment on children. The crime was committed when the offender was under 18 years of age. In addition to facing the prospect of execution, they must also wait several years to reach the age of eighteen. Hence, instead of lifting the execution punishment for children, they are adding the supplementary sentence of imprisonment. 'The death row phenomenon' induces debilitating and inhuman psychological conditions.<sup>220</sup> Rasoul's case mentioned above is an illustration of this. Another important issue to be taken into account is the fact that *qesas*, which constitutes the majority of child execution cases, is considered by the State as a private dispute between two parties. Hence, the State claims that it does not have any role in pardoning or granting amnesty, as this is up to the victim's family. However, there is no de-facto difference between a person being executed as a result of *qesas* or as a result of a *hokm-e'edam* (death sentence), mostly applied in cases of homosexuality and rape. Although the victim's family has the power to forgive or accept compensation instead of reattributing the crime, the executions carried out as a result of *qesas* are nevertheless facilitated by the Iranian State.

It should be noted that these *qesas* verdicts are founded on the Iranian version of Shari'ah laws, within a specific political and cultural context. The capital punishment and execution of minors has its foundation in, and is prescribed by, Islam and Shari'ah law. Although many Islamic scholars would claim that this is not necessarily the correct interpretation nor correct practice of Shari'ah, the latter is used by the authorities in their interactions with the public as a pretext for justifying executions<sup>221</sup>.

It is also worth mentioning the gender discrimination aspects of *qesas* i.e. the different age of criminal responsibility for boys and girls discussed above and *diyeh* or monetary compensation. According to the Iranian Criminal Code, a woman's life is worth half of a man's in terms of the compensation –known as blood money- paid to the family of the murdered individual.

## Conclusion

There are some improvements in the new Criminal Code. Juvenile execution is abolished for *ta'zir* crimes and juvenile offenders charged with *hudud* or *qesas* crimes have the chance of evading executions as the death penalty is no longer mandatory for these offences if the judge determines the juvenile did not have the requisite mental maturity. Although this provision may be considered to be a positive step towards rescuing children from harsh punishment, the ambiguity of the term "mental development and

<sup>220</sup> Soering v UK (1989) 11 EHRR 439.

<sup>221</sup> Some Islamic countries like Morocco and Tunisia have abolished juvenile executions.

perfection" and the means for ascertaining it may still put children at risk of being held criminally responsible for crimes committed under the age of 18. Therefore, despite the announcement of the Iranian authorities on abolishing child executions, under the new Penal Code, there remains the possibility of the application of *hudud* and *qesas* punishments against people under 18 years old, so obviously it has not been abolished. In addition, contrary to some assertions, the new Code, like the old one, clearly discriminates between boys and girls.

One should take into consideration that, as the Shari'ah does not set a particular age for maturity, the Iranian judiciary system could easily follow the view of those jurists who consider both *buluq* and *roshd* as conditions for maturity and set eighteen as the age of criminal responsibility. Iran has ratified the Convention on the Rights of the Child (CRC), according to which "a child means every human being below the age of eighteen years..."<sup>222</sup> One may therefore argue that Iran has an international obligation to set a common minimum age of criminal responsibility for girls and boys alike. Moreover, it is necessary for Iranian legislation to distinguish between the age of criminal responsibility and the age of criminal maturity and therefore to consider an intermediate step between these two important stages during which a child or child offender may be prosecuted under special criminal procedures for juveniles. There are also some obstacles that need to be addressed in order to prepare the ground for the eradication of child execution from Iran's legal system. Among these, one can mention: lack of political will and atmosphere, lack of proper legislation to support child offenders, contradictory laws in Iran's legal system, lack of an independent judiciary, the absence of consensus among jurists on the prohibition of child execution and the minimum age for criminal responsibility under Islamic law. Therefore, the new Penal Code can only be considered a first step towards abolishing juvenile execution in Iran. Legislation should be amended further and more positive steps should be taken by Iranian authorities to eradicate juvenile executions from law and practice.

<sup>222</sup> The Convention on the Rights of the Child, Article 1.

# The Death Penalty for the “Sexual Crime of Homosexuality”

By Hossein Alizadeh

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International Gay and Lesbian Human Rights Commission (IGLHRC)

The Islamic Republic of Iran is one of just five countries in the world where consensual same-sex conduct can be punished by death under national law.<sup>223</sup> The updated version of the Iranian Penal Code, also known as the Islamic Penal Code, which went into effect in May of 2013,<sup>224</sup> contains extensive language on penalties for various forms of intimate acts between members of the same sex. Articles 233 through 261 of the new Islamic Penal Code lay out various scenarios (in great detail) of same-sex “criminal acts” between two men or two women, of acts involving a third party member who facilitates the sexual encounter between same-sex individuals, and of acts where a person accuses an individual of having sexual relations with another member of the same-sex.<sup>225</sup> The authors of the new Islamic Penal Code went out of their way and used great imagination to list various types of intimate same-sex acts between two people (whether consensual or not) and the corresponding punitive measure for each. Situations covered include foreplay and full anal penetration between two men, two men or two women sleeping naked under the same blanket, and “homosexual behaviors (such as intimate touching or lustful kissing).”<sup>226</sup> The law takes cognizance of each person’s status and role in the act and assigns differentiated punishments. The penalty is determined based on the role of each individual in the sexual act (sodomizer as opposed to sodomized), the nature of the sexual act (penetrative as opposed to non-penetrative anal sex), the individual’s marital status,<sup>227</sup> and even his or her religion (Muslim<sup>228</sup> as opposed to non-Muslim).<sup>229</sup> The differentiation indicates a stronger concern with acts that are perceived to be counter to the individual’s assigned gender role (e.g. a man being sodomized), especially if he is Muslim.

223 <https://unfe.org/criminalization-map?locale=en>

224 <http://rc.majlis.ir/fa/news/show/845002> , Articles 233 – 261.

225 Ibid., Articles 233 – 261.

226 Ibid., Article 237.

227 Ibid., Article 234.

228 Ibid., Article 234(1).

229 Ibid., Article 236.

## I. Whether consensual, coerced or forced, it doesn’t matter!

Although the Iranian Penal Code occasionally addresses the question of free will in same-sex behaviors, the determination of legal punishment, including the death penalty, for these acts does not hinge on whether or not the act was consensual. For example, Article 234 stipulates that for anal intercourse, “punishment for the sodomized is execution in all cases,”<sup>230</sup> whereas the same article of law only demands the death sentence for the sodomizer if the sex “was coerced or forced,” or if the sodomizer is married with a wife who is willing and able to have anal sex.<sup>231</sup> The first stipulation of the same law, however, explains that if the sodomizer is a non-Muslim having sex with a Muslim, he should be executed.<sup>232</sup> Similarly, Article 236 requires 100 lashes for non-penetrative and intercrural sex<sup>233</sup> between two men, regardless of whether the act is consensual, coerced, or forced. However, the stipulation for this article also states that any non-Muslim man who sodomizes a Muslim man during non-penetrative or intercrural sex must be executed.<sup>234</sup> When it comes to punishment for two women having sex with one another, the law indicates that each woman’s religion and sexual role, as well as the element of coercion or mutual consent, are all meaningless factors.<sup>235</sup> In other words, two women who are found to be having sex with each other, should be punished by 100 lashes,<sup>236</sup> no matter what.

## II. Better to rape than to be sodomized

To be sure, allegations of rape or sexual assault should always be investigated and perpetrators should be brought to justice with all judicial guarantees and without recourse to the death penalty. In this case, Iran imposes the death penalty for consensual same-sex relations—merely based on the sexual position of the individuals involved, their marital status, and their religious beliefs—in violation of Iran’s international obligations. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) - which Iran ratified in 1975 - states, “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant.”<sup>237</sup> The Second Optional Protocol of the ICCPR<sup>238</sup> goes even

230 Ibid., Article 234.

231 Ibid., Article 234.

232 Ibid., Article 234(1).

233 According to the English Encyclopedia, intercrural sex is defined as “a type of non-penetrative sex, in which a male places his penis between his partner’s thighs (often with lubrication), and thrusts to create friction. To see the original definition, go to <http://www.encyclo.co.uk/define/Intercrural%20sex>

234 Ibid., Stipulation for Article 236.

235 Ibid., Article 240.

236 Ibid., Article 239.

237 <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

238 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>



further and specifically aims “at the abolition of the death penalty.” Although the Iranian government has not signed the Second Optional Protocol, the fact that over 80 countries worldwide thus far are parties to this treaty is testimony to the growing desire in the international community to eliminate the death penalty as a form of punishment, even for the most serious crimes. Furthermore, the consideration of an individual’s marital status and his or her religious affiliation in determining the penalty for same-sex acts, particularly in regards to the death penalty, is a flagrant violation of Article 2 under the ICCPR, which requires State Parties “to respect and to ensure to all individuals within its territory and subject to its jurisdiction [these rights]... the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>239</sup>

### III. Abusive investigative methods

Under the Iranian Penal Code, a coerced sexual act – although certainly a heinous crime – is punishable by death. This seems to stand against the spirit of Article 6(2) of the ICCPR. The Iranian legal system has a history of using the “anal rape” argument to justify the execution of those who were minors at the time of an alleged act.<sup>240</sup> In some cases, the government’s allegation of rape for cases that could not be independently verified has sufficed for imposition of the death penalty.<sup>241</sup> Iranian law enforcement agents and their designated religious militia – known as *Basijis* – are known to use extra-judicial and intrusive methods to persecute citizens who are suspected of same-sex behavior. The *Basijis* use unlawful techniques such as warrantless surveillance, raids of private gatherings without evidence of criminal behavior, detention without charge, severe beating, verbal abuse and intimidation, and prolonged arrest without any charge or without allowing access to legal counsel.<sup>242</sup> Although Article 241 of the Islamic Penal Code specifically bans any violation of privacy and the surveillance of individuals suspected of private and victimless same-sex acts,<sup>243 244</sup> many gay men and lesbians have reported

that their privacy is often violated by government agents and *Basiji* militias, and that they are frequently subjected to unlawful surveillance and search.<sup>245</sup> Furthermore, several of those who have been arrested and detained have been mistreated and tortured until confessing their involvement in same-sex acts.<sup>246</sup> In addition, the Iranian Penal Code declares that in the absence of admissible incriminating evidence, the judge can use his personal “knowledge” to determine the occurrence of a crime—including same-sex acts—by the defendant(s).<sup>247</sup> Given the frequent abuse of defendants’ rights resulting from widespread irregularities and lack of due process in the Iranian court system, the Iranian judiciary’s use of the death penalty against those charged with anal rape is especially troubling.

As the United Nations Human Rights Committee states in its Concluding Observations for the third periodic report of Iran under the ICCPR (CCPR/C/IRN/3), Iranian authorities “should repeal or amend all legislation which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity. It should ensure that anyone held solely on account of freely and mutually agreed sexual activities or sexual orientation should be released immediately and unconditionally.”<sup>248</sup> As long as the government in Tehran continues to criminalize consensual same-sex acts and use cruel, inhuman, and degrading forms of punishment, ranging from lashes to execution, against those found guilty in this regard, the international community cannot and should not be silent.

239 <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

240 <http://iglhr.org/content/iran-young-man-executed-alleged-sex-crime>

241 <http://iglhr.org/content/iran-reported-executions>

242 <http://iglhr.org/content/iran-joint-open-letter-iranian-president-rouhani>

243 <http://rc.majlis.ir/fa/news/show/845002>, Article 241

244 Notably, this law was recently updated. Article 102 of the new Code of Criminal Procedure, which passed in March of 2014, also ensures the protection of a citizen’s privacy and forbids investigation into private acts. Specifically, it states, “Prosecution and investigation in cases of zina (fornication), lavaat (sodomy) and [cases involving] other forms of lewd behavior is prohibited. Any kind of interrogation from any person is disallowed, except in cases in which the offense occurs in the view of others and in public, and/or if there is a private party complainant. In these cases, prosecution and investigation is allowed only [in compliance] with the conditions and circumstances that are evident by the judge.” This article also includes three stipulations. The first claims, “In offenses of zina, lavaat, and offenses [relating to] other lewd behavior, whenever a private complainant does not exist in a case, and if, in the beginning [of the trial], the accused wants to confess, the judge should advise the accused to cover his or her guilt and not confess.” The second stipulation states, “A judge is required to mention the consequences of legally inadmissible testimony to the witnesses.” Finally, the third stipulation claims, “For offenses mentioned in this article, if the victim is mentally incapacitated, the parent or legal guardian has the right to file a complaint.

A parent or legal guardian also has the right to file a complaint for an adult victim who is under eighteen years of age.” To see this Article as written originally (in Persian), go to <http://www.teribon.ir/archives/260402/%D9%85%D8%AA%D9%86-%D8%A9%D8%A7%D9%85%D9%84-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%AC%D8%AF%D8%B3%D8%AF-%D8%A2%D8%8C%D8%8C%D9%86-%D8%AF%D8%A7%D8%AF%D8%B1%D8%B3%DB%8C-%DA%A9%DB%8C%D9%81%D8%B1%DB%8C.html>

245 For an example of this, see the section entitled, “annex 2: case summaries for March 2014 Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran”, <http://shaheedoniran.org/english/dr-shaheeds-work/latest-reports/march-2014-report-of-the-special-rapporteur>

246 *Ibid.*, Annex 2.

247 <http://rc.majlis.ir/fa/news/show/845002>, Articles 211-213.

248 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsieXFSudRZs%2fX-1ZaMqUUOS%2fToSmm6S6YK0t4yT9B73L17SA%2feiYbnx2cIO3WOO1YqEMTBg8uMHZzpeXwy-MOLwCLLxzMK2fpd8zvxOHOVZsw>

PART III

**The role of civil  
society and the  
impact of national  
and international  
public opinion  
regarding the death  
penalty**

# Public Executions in Iran: A Practice Unfit for a Modern Society

By **Tabassom Fanaian**

*Professor and research psychologist, member of Iran Human Rights (IHR)*

And **Mahmood Amiry-Moghaddam**

*President and founder of IHR*

## Introduction

Public executions are among those traditions which modern societies try to abolish. There is a long history of employing such methods to punish criminals, but it has gradually become understood that public execution actually generates violence in society.<sup>249</sup> Exhibiting such scenes to the public has negative psychological effects at both individual and societal levels.<sup>250</sup> However implementing change and new approaches to criminality take too long, especially in certain regions of the world prone to economic, social and political crises.<sup>251</sup> In addition to dispositional and situational factors, when execution is enforced by religious laws, public execution can also be considered as the preaching of one of God's commands. In such cases, the conflict between religion and modernity creates an environment hostile to the exercise and respect of human rights.

It is important to note that in modern times, public executions have mainly been demonstrations of power by undemocratic regimes. The target group of such demonstrations of power is not only those who are involved in "criminal" acts, but also dissidents, critics and anyone who might be tempted to challenge authority. Public executions and other horrifying public punishments are among the totalitarian regimes' most effective instruments for spreading fear in society.

249 <http://gjs.appstate.edu/media-coverage-crime-and-criminal-justice/public-executions>

250 <http://www.hastingsonlawquarterly.org/archives/V19/I2/Blum.pdf>

251 <http://inspirasi.co/books/1375800152.pdf> and [http://www.knolsearch.com/ebook/-qUwMyLkZyuunF\\_DDKdEs-Ch5Os8vgESkvh3p1qpFEWVUWaKelvB\\_tTZcIlopCM0qIFkKRd7koD2hDLarZsmHsg/The-Politics-of-Atrocity-and-Reconciliation%253A-From-Terror-...-Inspirasi.co.html](http://www.knolsearch.com/ebook/-qUwMyLkZyuunF_DDKdEs-Ch5Os8vgESkvh3p1qpFEWVUWaKelvB_tTZcIlopCM0qIFkKRd7koD2hDLarZsmHsg/The-Politics-of-Atrocity-and-Reconciliation%253A-From-Terror-...-Inspirasi.co.html)

## I. History and incidence of public executions in Iran

Public executions were very rare before the Islamic revolution in Iran. Following the establishment of the Islamic Republic in 1979, public punishments such as flogging, amputation and death by different methods such as stoning, crucifixion and hanging were included in the Iranian Penal Code. Public hanging is the most common type of public death sentence and has been practiced from the early days of the Islamic Republic. However, there are no exact statistics of how many people were executed publicly in the 1980s and 1990s. With the emergence of new human rights NGOs during the last decade, monitoring of the death penalty has improved. Iran Human Rights (IHR) is one of the organizations publishing detailed annual reports on the death penalty in Iran.

IHR's recent annual reports (2011-2013) show that Iran, with an average of 600-700 confirmed executions every year,<sup>252</sup> is the country with the highest number of executions per capita. An overview of these reports shows that roughly 90% of all executions have taken place inside prisons, with only 10% carried out in public. However, with about 60 public executions every year, Iran is probably the country in the world with the highest number of public executions. According to Amnesty International death penalty reports, in 2013 public executions were also carried out in three other countries besides Iran: North Korea, Saudi Arabia and Somalia.<sup>253</sup>

## II. Methods of public execution

In most cases, public executions are carried out using cranes. The prisoners are either hoisted up or the object they are standing on is removed from underneath them. Most often, the prisoners die of suffocation and strangulation and it often takes several minutes before death occurs. Because of this, public executions must be considered torture as well as a death sentence. In the case of *qisas* (retribution for murder), a member of the victim's family is encouraged to carry out the public execution.

## III. The Iranian authorities' aim in public executions

Iranian authorities officially claim that public executions lower crime rates because when potential criminals witness a public execution they are dissuaded from their crimes. Thus the authorities use public executions to teach the rest of society a lesson by depicting the consequences of certain acts; they also consider public executions as a sign of

252 <http://goo.gl/IO9neE> , <http://goo.gl/zzTfKn> , <http://goo.gl/GUWQhX>

253 <http://goo.gl/H4exaa>

the power of the State to control crime and provide citizens with safety and security.<sup>254</sup> However, there is no evidence showing that the Iranian authorities' use of the death penalty in general, and public executions in particular, has lessened the incidence of crime in society. Various trends in public executions in the post revolutionary history of Iran are visible, based both on location and frequency. According to annual execution reports by IHR<sup>255, 256</sup> there was a significant decrease in the number of public executions in 2008-2009. This decrease was due to a directive from the Head of the Judiciary at the time, Mahmoud Hashemi Shahroudi, to limit public executions.<sup>257</sup> However the number of public executions grew in subsequent years, seeming to indicate that the reasons behind them went beyond the usual public order claims.

Further research by IHR shows that the number of executions decreases radically every year in the weeks prior to and following the Iranian new year (21st March), and rises significantly every year in July.<sup>258</sup> According to our study, there is a correlation between political events and executions in Iran. The research demonstrates that the peak of executions occurs in the weeks prior to July 9th (18 Tir) which is the anniversary of a major political uprising in Iran. It is clear that Iranian authorities choose specific dates for carrying out public executions in a coordinated manner, with the purpose of spreading fear in society and prevent repeat riots on anniversaries. Our study also shows that the number of executions drops to a minimum in the two weeks preceding Parliamentary and Presidential elections, when the international community has its focus on Iran and Iranian officials need to attract voters. The coordinated rise and fall of the number of the executions indicates that they are used by Iranian authorities to control political crises. This is a recognizable pattern in totalitarian States who misuse power to retain their domination over society.<sup>259</sup>

#### IV. Who makes the decisions? The judiciary or the government?

Iran is a theocratic State and its laws are based on *sharia*. This creates legal difficulties as public executions are endorsed but the application of such decisions is left up to the judges based on circumstances and the common good.<sup>260</sup> Justifying this power in the name of the common good has resulted in inconsistency in jurisprudence on the issue of public executions. The first problem is defining the common good and the second

254 <http://ebrat.ir/?part=mobile&inc=news&id=45044>

255 <http://goo.gl/fIXqsb>

256 <http://goo.gl/HYPtNu> & <http://goo.gl/9d4O1M>

257 <http://www.tabnak.ir/pages/?cid=5778> & Public execution banned

258 <http://iranhr.net/2013/07/relationship-between-political-events-and-the-death-penalty-trends-in-iran/>

259 <http://www.hastingsconlawquarterly.org/archives/V19/I2/Blum.pdf>

260 <http://mardomsalari.com/template1/Article.aspx?AID=3530#23623>

is whether the judge on the case finds public execution in favor of the common good. In addition to this inconsistency, there is legal ambiguity concerning public executions; there is no explicit legal statement on public punishment in Islamic penal code,<sup>261</sup> and the decision on whether the execution should be public or not is left to the *sharia* judges (appointed by the Judiciary). However, according to the law setting out the responsibilities and authorities of governors (who are the direct representatives of government and not the Judiciary), the Counsel for the Security of the Province (headed by the local governor) is specifically responsible for public order and tranquility.<sup>262</sup> This means that alongside the Judiciary (represented by local judges), the government (represented by the local governor) has the authority to decide whether an execution should be carried out in public or not. For example in 2014, the governor of Sistan and Baluchestan Province (Southeastern Iran) had initially disagreed with the public execution of three -alleged-terrorists in his province.<sup>263</sup> A decision which was changed later (possibly due to political pressure from other bodies) and the prisoners were finally hanged in public. This shows that there are different reasons and factors that can affect the decision of carrying out an execution publically; with the site of execution varying from crime scene to main city square or offender's home area.<sup>264</sup> This means that although the Judiciary makes the initial decision for carrying out an execution in public, according to the law, the government could prevent it if they so wished. In conclusion, the Judiciary and the government are both equally responsible for the high numbers of public executions in Iran.

#### V. Charges behind public executions

Traditionally, cases involving violent offences or which receive extensive media attention are chosen for public executions. In recent years however, a significant portion of public executions have been for drug-related charges.

According to the 2012 IHR annual report on the death penalty<sup>265</sup> the main charges for public execution in Iran were rape (42%) followed by drug related charges (33%). This shows very clearly that punishment for sexual assault is taken very seriously.<sup>266</sup> This is noteworthy in a theocratic State which tends to strictly control sexual morals, and demonstrates its control by most often choosing to execute sexual offenders publically. When it concerns people sentenced to public execution on drug charges, the amounts at play vary widely: from 30g of narcotics for personal use to smuggling a large cargo of

261 <http://www.aseanweekly.com/article/391.html>

262 <http://rc.majlis.ir/fa/law/show/94932>

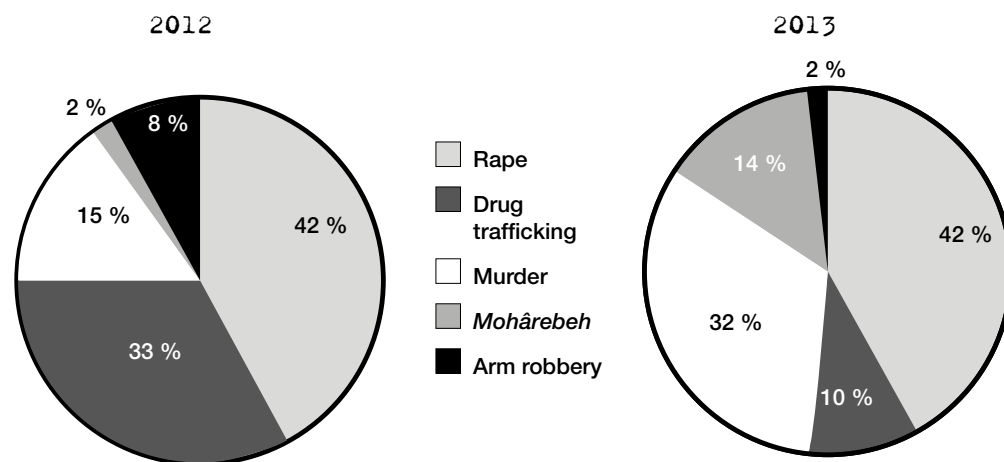
263 <http://asrehamoon.ir/vdcjvaei.uqevmzsfu.html>

264 <http://www.khabaronline.ir/detail/177795/society/judiciary>

265 [http://iranhr.net/wp-content/uploads/2013/04/FINAL-Rapport\\_iran\\_2012-GB-250313-HD.pdf](http://iranhr.net/wp-content/uploads/2013/04/FINAL-Rapport_iran_2012-GB-250313-HD.pdf)

266 <http://www.tebyan.net/newindex.aspx?pid=213296>

## Public Executions in Iran – Charges



drugs by vehicle.<sup>267</sup> If one compares the charges in the 2012 and 2013 reports, one sees the same percentage for sexual assault charges (42%). The main difference between the charges justifying public executions in 2012 and 2013 is between drug related charges and murder charges. The number of public executions for drug related charges in 2013 was only 10% (down from 33% in 2012) and public executions for murder charges increased to 32% (from 15% in 2012). This is in keeping with the changes in the total number of executions: in 2013 one notes a relative decrease in the number of drug-related executions and a dramatic increase in the number of executions for *qisas* (retribution for murder).

This change could be due to the strong pressure on Iranian authorities by the international community to reduce executions based on drug related charges.<sup>268, 269, 270, 271</sup> It seems that the relative decrease in the number of drug-related executions has been compensated for by public *qisas* (retribution) for murder. From one perspective, Iranian authorities are controlling the violence (homicide in society) by increasing the number of public executions or public retribution which in many cases is carried out by the families of murdered individuals, that is to say by ordinary citizens. In this way the authorities punish murders occurring outside the framework of the law, and substitute instead voluntary murders within the framework of the law.

267 <http://dadiran.ir/Default.aspx?tabid=4630&articleType=ArticleView&articleId=32607>

268 <http://goo.gl/CCOR4R>

269 <http://iranhr.net/2013/04/denmark-stops-aid-to-irans-fight-against-drug-trafficking/>

270 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11415&LangID=E>

271 <http://me-fd.org/un-finances-irans-bloody-war-on-drugs/>

## VI. Public executions and society

Witnessing public executions has short and long term psychological effects on individuals and the society as a whole.<sup>272, 273</sup> Some of the relatively immediate and visible effects of public executions have recently been reported by official Iranian media. These include execution games - by children;<sup>274, 275, 276</sup> several children died while playing at re-staging an execution scene they had witnessed.

Thus one sees that public executions not only bring legitimized violence to ordinary citizens, this also spreads to children.

In recent years the Iranian community has paid increasing attention to the negative effects of public executions on society, from psychological, social and even religious aspects. There is an ongoing debate among Iranian jurists and judicial officials on the beneficial and deleterious features of public executions.<sup>277, 278</sup> Some have asked the Islamic clergy whether public executions are necessary. Legal and religious experts are mainly against public executions: they consider it harmful for children to witness executions and of little use in swaying witnesses. They further fear that public executions will tarnish their reputation internationally.<sup>279</sup> Six “*mujtahid*” (Islamic diligents) have given *fatwas* in answer to the people’s requests. They generally believe that public execution is not a religious necessity and that adults can/should prevent children and adolescents from watching. Moreover, they believe that if public executions project a negative view of Islam, it is a sin and should therefore be banned.<sup>280</sup>

One should note that the Iranian community has enthusiastically mounted several campaigns against the death penalty and public executions. A recent campaign launched by LEGAM (lit. “bridle”) called “Step by Step to Stop the Death Penalty”<sup>281</sup> is working to abolish the death penalty in Iran alongside other advocacy groups, and considers that banning public executions would be a first step towards abolition.<sup>282</sup>

272 <http://escholarship.org/uc/item/0f13k805#page-8>

273 <http://cad.sagepub.com/content/26/4/453.short>

274 <http://www.peykeiran.com/Content.aspx?ID=69170>

275 <http://goo.gl/NVcLzP>

276 <http://goo.gl/nzQy3Z>

277 <http://www.khabaronline.ir/detail/177795/society/judiciary>

278 <http://etemadnewspaper.ir/Released/91-11-17/229.htm>

279 <http://goo.gl/BrPIZR>

280 [http://www.jamaraman.ir/fa/NewsContent-id\\_36903.aspx](http://www.jamaraman.ir/fa/NewsContent-id_36903.aspx)

281 <https://www.facebook.com/karzar.legam/info> & LEGAM

282 <http://goo.gl/aMxEyb>

## VII. The role of civil society and the international community

There is much room for hope that there will be a new wave of citizens wishing to participate in the abolition of the death penalty. Education could facilitate and accelerate the creation of abolitionist campaigns, based on a modern approach to the fight against crime which would force the Iranian authorities to change their practices. It appears that the international community has been highly effective in pressuring Iran and its officials on the subject of the death penalty, thereby demonstrating that Iran is sensitive to and takes into account international reactions.<sup>283</sup> When the Head of the Judiciary gave the order to halt public executions in 2008, pressure from the international community was mentioned as one of the reasons.<sup>284</sup> This is why it is imperative for the international community to continue to monitor human rights violations and, to the fullest extent possible, to call for the lifting of sanctions against Iran in exchange for improvements to the human rights situation in the country.

Lastly, it is important to stress that it is the President and the government, alongside the Judiciary, who are responsible for the high number of public executions in Iran. The recently elected Iranian government, led by Mr. Hassan Rouhani, could play an important role in putting an end to public executions nationwide, by exercising his power through the intermediary of local governors.

<sup>283</sup> <http://www.bkhabar.com/module/news/25895#.U-JvmcccSM9>

<sup>284</sup> <http://ebtekarnews.com/Ebtekar/News.aspx?NID=27494>

## The Media and the Death Penalty

*Interview with Reza Moini*

*in charge of the NGO Reporters Without Borders (RWB) for Iran, Tajikistan and Afghanistan.*

**In this interview, Reza Moini discusses the core issue of access to information in Iran and how the death penalty is portrayed by the Iranian media. Central to this issue is the question of freedom of expression and freedom of the press in the Islamic Republic of Iran, which is to say a highly political issue.**

### **What can you say about the situation of the Iranian press and media today?**

**Reza Moini:** This is indeed an essential question to be able to understand the issues behind access to information. First of all it is necessary to know which kind of media we are talking about, and to have an idea of their number in Iran. According to a very recent statement of the Iranian Minister of Culture and Islamic Guidance, Ali Jannati, there are about 6,600 media in Iran (written press, radios, televisions, online press...) that are authorised by the Iranian government. In this statement the Minister fails to mention the fact that nearly 500 information media (newspapers, press agencies, websites) are actually completely controlled by the Guardians of the Revolution, and many others are also under the yoke of other institutional bodies. The judicial system, for example, controls 17 media, and this constitutes a true strike force. In this context, it is difficult to talk about media pluralism. The only positive point is the access to the Iranian newspapers and to the media of the diaspora, in any case for those able to circumvent censorship.

The extent of freedom of the press and media has gradually narrowed over time. There was greater freedom of expression from 1979 to 1981 and from 1997 to 2000. From 1979 to 1981: just after the Revolution and before the purge of the 1980s (during the bloody repressions, at least twenty journalists were executed, in particular Ali Asgar Amirani, Simon Farzami, Nasrollah Arman, Said Soltanpour and Rahman Hatefi-Monfared). From 1997 to 2000: a reformist press had appeared in 1997 in the aftermath of President Khatami's election. Things began to deteriorate starting from the statement made by the Supreme Leader Ali Khamenei, on the 20th April 2000, according to which the media were the "enemy's base". As a result, 21 newspapers were banned. On the 20th April 2000, Khamenei indeed gave the order to use repression. Since then, more than 300 media, designated as "foreign enemies inside the country" have been closed down; thousands of pages have been censored and more than 500 journalists and netizens have been arbitrarily arrested, tortured and given very harsh sentences.

Radio and television are completely controlled by the government in Iran. They are an instrument of propaganda, repression and stigmatisation of intellectuals who must en-

ture systematic attacks. The regularly aired programme “20h30” is under total control of the Iranian Ministry of Intelligence and the intelligence services of the Guardians of the Revolution. It is not possible to respond to the accusations made in the context of such programmes, and much less to file a complaint against the authors of such accusations. Iran has been connected to the Internet since the mid-1990s. The network is wholly in the hands of the *mullahs*, although some Iranian Internet users circumvent filtering. The regime regularly accuses social networks of being instruments in the service of Western powers, allegedly plotting against the regime. Therefore, anything that deviates from the official line is automatically considered “political” and, as such, filtered or monitored.

### **Is there an editorial press? Do people read it?**

R. M. : In the Iranian political context, all media must strictly adhere to a number of directives that are issued in particular by the High Council of National Security. These directives are numerous and aim, in practice, to prevent debate on political issues such as Iran’s nuclear energy, the situation of political captives in prison or the death penalty. This High Council is not the only political body that issues such directives. There are actually ten others, including the prosecutor’s office and the Ministry of Intelligence. In this context, questioning public executions in the media is strictly prohibited, insofar as the Iranian authorities consider this an opposition to the political line of the Supreme Leader on the matter and the principles of Islam.

Despite these circumstances, there is an editorial press in Iran, but it is strictly controlled. Some of these media, specialising in economic, commercial or technical issues, but which maintain close ties (or clientelism) with the government, can be considered editorial.

### **What is the legislation on media in Iran?**

R. M. : The first law on the press dates back to 1985 (the first law that was passed after the Revolution). It was then amended in April 2000 by the fifth elected Parliament (Conservative). The law was amended again in 2008, and all media, including *online* information media, must abide by its rules. There is also a law regarding Internet crimes, in force since 2008. The latest measure taken was the creation of a media authority, whose aim is simply to further nationalise and make use of the profession of journalism.

Furthermore, there is an additional restriction, and a significant one, based on Article 24 of the Constitution according to which the freedom of the press is conditional on compliance with Islamic law: “*All publications are free to express opinions except when it is detrimental to the fundamental principles of Islam or the Islamic moral codes. The interpretation and detailed definition of this article will be specified by law.*” There is no indication of the content of these “*fundamental religious principles*”, nor one covering the *Islamic moral codes*. Article 6 of the Constitution goes even further and adds the idea of “*decrees*”: “*Newspapers are free provided they do not disturb the foundations and the decrees of Islam.*” Doctors in Islamic law do not agree on the meaning of the expression “*disturbing the foundations of Islam*”. This formulation is therefore very vague and open to multiple interpretations that are restrictive in terms of freedom of information.

Thus, there are no independent media in Iran. Any press or broadcast media outside the scope of the regime is considered subversive and opposed to the regime. Freedom of the press and of information is considered by nature opposed to the regime. Iran is still one of the most repressive countries in the world in terms of freedom of information: it ranks 173<sup>rd</sup> out of 180 countries according to the 2014 world ranking of freedom of the press established by RWB.

### **Do the Iranian media raise the issue of the death penalty and executions? If so, how? To what extent can it do so in a transparent and impartial manner?**

R. M. : Between 1979 and 1989, the Iranian media reported the mass executions in the country, with the aim of spreading terror among the population. Under the influence of the government, the media adopted the theory that considers the death penalty as a preventive measure against insecurity and offences, and effective in the fight against drug trafficking.

The problem, beyond the press and the media, is how the death penalty is perceived. For almost thirty-six years, only executions were envisaged to solve problems. However, these executions have shown the limits of their effectiveness and people, without even being activists for the abolition of the death penalty, are now wearied of seeing all these people die.

Furthermore, Iranians have more access to foreign media (BBC, TV5, etc.) and Iranian newspapers write more and more about the issue of forgiveness by the victims and the application of the law of Talion (*qisas*) that, in my opinion, turns the families of victims into murderers. But emphasizing forgiveness and criticising *qisas* is dangerous, as shown by the example of the daily newspaper *Aseman* (lit. “sky”). This newspaper was suspended - at the order of the Tehran court for the media, after a complaint lodged by the deputy prosecutor of Tehran - for having published, on the 18<sup>th</sup> February 2014, an article in which a political man and university professor spoke against “*the inhuman law of qisas*”. The day after the publication of this article, the conservative media and those close to the Guardians of the Revolution, led by Fars News and Tasnim, described this opinion as an “*insult to the sanctity of Islam*”. It should also be noted that, since the accession to power of Hassan Rouhani, fewer photos of executions have been observed in the “reformist” media. Perhaps this could be a playing card for Iranian abolitionists.

### **Do the Iranian media allow abolitionist activists to share their views in their newspapers?**

R. M. : Nowadays, part of the Iranian media is trying to call into question public executions by attempting to circumvent censorship, taking the perspective of daily life and individual cases. Most journalists are against the death penalty and its implementation, and a wide majority are opposed to public executions. However this does not mean that abolitionist activists in Iran have access to the media. The issue of the death penalty must also be seen in the Iranian context. Public debate on this subject is banned as well

as any abolitionist campaign. Any criticism uttered against the Islamic regime, regardless of the level of this criticism, can be interpreted as an attempt to “*disturb the precepts or the commandments of Islam*” (cf. Article 6 of the Constitution).

### **Can Iranian journalists face the death penalty in Iran for exercising their profession? On what legal basis?**

**R. M. :** Iranian journalists can actually risk prison or a death sentence by merely exercising their profession. One of the laws justifying the detention of journalists and the application of capital punishment to their case is the law of 2008 on Internet crimes. RWB has gathered information about more than 200 journalists and cyber-activists arrested since 2000, and analysed the reasons for their conviction: for 67 of them, the sentence was given for “*acting against national security*”, the other reasons being those of “*publicity against the regime*” or “*insults against clerics or regime officials*”.

Among the charges used to justify the imposition of the death penalty are “*action against national security*”, *moharebeh* or espionage. This is the case, for example, of the Kurdish journalist Adnan Hassanpour. He was arrested in January 2007 and was working for the weekly newspaper *Asou*, until the Ministry of Culture and Islamic Guidance banned the publication in August 2005. In early 2007, he was accused of collaboration with foreign countries and espionage for corresponding with a representative of *Voice of America*. He was charged with *moharebeh* and lodged an appeal. The Tehran Supreme Court upheld his conviction in October 2007 and then cancelled it in August 2008 due to procedural irregularity. After several revisions of his trial, he was sentenced in July 2009 to ten years imprisonment. It is largely thanks to his lawyer’s dedication, Mr. Saleh Nikbakht, that he escaped the death penalty. The year 2008 was particularly difficult for Iranian journalists and bloggers since a dozen of them were convicted of *moharebeh*. With 53 journalists and netizens imprisoned, Iran remains one of the five largest prisons in the world for information professionals. The country is also the first prison in the world for female journalists and netizens. The justice system, an accomplice of the Guardians of the Revolution and the Ministry of Intelligence, scorns the rights of information professionals. The promises of President Hassan Rouhani to release all political prisoners went unheeded. His silence only facilitates this repression against freedom of information.

## **Public Opinion on the Death Penalty**

By **Emadeddin Baghi**

Theologian, journalist and writer, founder of the association “*For the Right to Life*”, Human Rights Prize of the French Republic 2005, Martin Ennals award 2009.

### **Introduction**

Public opinion,<sup>285</sup> both in its development and its expression, is built on political, social and psychological foundations and within a specific collective space. It determines the level of economic development and also the level of democratisation, democratic governance and the national and regional social factors of a specific country. In theory, public opinion is closely related to democratic systems, freedom of the media, civil institutions and political parties. It is not equal to the sum of individual opinions. In certain circumstances, the content of public opinion must comply with the models conveyed by popular culture, while differing depending on whether one is in the city or in the countryside, in poor or wealthy neighbourhoods or in an agricultural or industrial work environment. These different cultural and societal markers are mobilising vehicles and are inseparable from the shaping of public opinion. Iran is no exception to this rule.

Demonstrations of public opinion can take many varied forms (slogans, symbols, gestures like a clenched fist, gatherings in the streets, passive resistance and work slowdowns in the civil service). But public opinion needs the media to be able to exist. Furthermore, it cannot develop without pressure groups. The degree of influence of such groups on public opinion depends on their financial power, their importance in terms of organisation and human resources, the mechanisms of clientelism and redistribution (financial aid, loans, gifts, etc.) they implement, the existence of legal provisions or practices promoting a particular group and their use of advertising. The pressure groups are of a precarious nature and they partly shape public opinion but are not the only factors that determine it. The media, political parties, pressure groups and social networks each reveal a facet of public opinion that in turn influences them. In order to better understand public opinion in Iran, one must resort to several methodological tools such as surveys, press and media content analysis and the statistical and qualitative analysis of text messages (sms) that are the modern vehicles of public opinion. In the context of this article,

<sup>285</sup> This concept was theorised for the first time at the end of the 19th century and in the beginning of the 20th century by the jurist, philosopher and sociologist Jean-Gabriel Tarde (1843-1904), in his book *L’opinion et la foule* (1901) [Opinion and the Crowd]. This author is considered as one of the first thinkers of modern criminology. In *L’opinion et la foule*, he discusses the birth of public opinion and the role of the press in guaranteeing the proper functioning of a democracy.



we will focus on the analyses of surveys conducted through the Internet and the analyses of text messages exchanged between Iranians, taking into account the difficulty that surveys may encounter on site.

## I. Specific features of public opinion in the Iranian political and social context

Before presenting a typology of bodies, institutions, groups and demonstrations of public opinion based on their position in relation to the death penalty, it is necessary to bring to mind a number of elements specific to the Iranian situation.

Demonstrations that criticise or oppose the positions of the Iranian state are prohibited. They are allowed (including those of the reformist current) only to the extent that they serve state policy. Moreover, pressure groups that can express themselves through social networks do not necessarily reflect public opinion, and this divergence misleads many observers.

Due to the weakening of Iranian civil society following the surge of arrests after the 2009 elections, it is difficult to speak of public opinion today. Civil society is under pressure, under the yoke of prohibitions imposed by security forces and in an atmosphere where civil institutions are not functioning as they should. Similarly, when human rights organisations or unions develop political activities, these structures become more vulnerable and it becomes more difficult for them to ensure their role as vehicles of public opinion. Public opinion has started to become visible at political events (such as elections) or during executions or floggings. But the candidates for the 2009 presidential elections, even though they defended civil rights, made no commitments on the death penalty for fear of offending the more traditional segments of society or, perhaps, because of a lack of personal convictions. Only one candidate in the 2009 presidential election, Mehdi Karroubi, expressed his views on the need to put an end to the execution of minors.<sup>286</sup> In this political context, Iranian opposition to the death penalty should be analysed both in the public sphere and the political sphere. Politically, the rejection of the death penalty by part of the opposition is, I believe, a political calculation, a means to exploit an issue which, among others, enables them to oppose the political ideals prevalent in Iran today. To further develop the subject, it is necessary to go beyond a dreamer's "human rightist" vision and to use the death penalty issue to create the conditions for true debate, since many people today are not at all convinced of the importance of abolition.

The fluctuating and passive nature of mass gatherings at public executions does not enable us to conclude without question that the Iranian public opinion is in favour of the

<sup>286</sup> See Delphine Minoui, "La sentence de mort pour les mineurs fait débat en Iran" [The death penalty for minors is subject to debate in Iran], *Le Figaro*, 8th May 2009, available in French at [www.lefigaro.fr](http://www.lefigaro.fr).

application of capital punishment and public executions. At the very least, these gatherings show that there is no strong opposition to the death penalty. In order to know with certitude what the public opinion about the death penalty is, we need to analyse surveys, text messages and the press.

## II. What is the role of the press in the evolution of public opinion in Iran?

First of all, it is important to remember that the press run in Iran is limited compared to the Iranian population (around 80 million inhabitants according to latest estimates).<sup>287</sup> In Iran, the total number of non-government newspapers sold (not those published) is under 100,000 copies.<sup>288</sup> The press is one of the vehicles of Iranian public opinion but it does not address the issue of the death penalty and does not comment on it.<sup>289</sup> This indifference of the press increases that of public opinion and the elite, which in turn strengthens that of the press. In the light of this dialectical relationship or vicious circle one should question the real causes of the indifference of the press with respect to capital punishment. State restrictions and censorship are a substantial reason for this indifference but they are not the only explanation. The movement in favour of the abolition of the death penalty is struggling to take root in public opinion because the social groups that could support it do not take action. This mobilisation, when it exists, is more an expression of a trend or a wider opposition of the media against the State, and the people who take action do not really know the problems linked to the death penalty and therefore cannot discuss it in depth. Moreover, this mobilisation is virtual and is not embodied in the public space, civil institutions or the Iranian local press. Finally, the voices heard in Iran are the most powerful ones, that is, those of the retentionists.

## III. Public opinion and the death penalty: analyses of cyber surveys and text messages

In Iran the security threats are so significant that it is difficult to carry out independent surveys. It must also be noted that in this country, most government surveys are confidential. That is why we have opted, in terms of methodology, for an analysis through two assessment channels: Internet-user surveys and text messages exchanged on mobile phones.

With nearly 80 million inhabitants the exchange of text messages in Iran is frequent. These text messages can be divided into two categories: personal or related to a spe-

<sup>287</sup> See [www.indexmundi.com/iran/demographics\\_profile.html](http://www.indexmundi.com/iran/demographics_profile.html).

<sup>288</sup> Non-government magazines and newspapers are no longer included in this figure.

<sup>289</sup> However, it continues to delight in reporting each execution, thus promoting the number of visitors to the site of public executions.

cific political or social event. For the Iranian New Year (*Nowruz*) of the 21<sup>st</sup> March 2014, Iranians sent nearly 16 billion text messages during the first two weeks of the new year.<sup>290</sup> In 2014, on days with no specific event, the number of text messages exchanged daily amounted to 200 million.<sup>291</sup> These text messages contain news, advertisements, jokes or criticism of the country's economic situation.

Five thousand text messages were randomly selected and analysed over several days during which executions had taken place. Result: not even one of them mentioned the executions or commented them, even though the number of executions has steadily increased. In a country where, on average, more than one person a day is executed, the abolition of the death penalty does not interest text messages users.

Even though they are only partially reliable because of their partisan nature, official surveys can help us better understand the viewpoints encountered in Iranian public opinion on the issue of the death penalty. In this analysis, three surveys are taken into account.

- The first, conducted in August 2001 in Tehran, was carried out by the Student Survey Centre of Iran on a sample of 600 people and another of 150 people attending congregational prayers and mosques.<sup>292</sup> 52% and 63% of the respondents believed that public punishment (flogging and executions respectively) had a deterrent and preventive effect. 46% of respondents in the first sample were opposed to the punishments, saying that they convey a violent vision of Islam.

- The second was conducted in July 2008 by the Department of Justice of Qom, on a sample of 400 people (half of them having attended a public execution, the other half chosen at random). This survey, despite the partisan and inductive nature of its questions,<sup>293</sup> shows that having attended a public execution has no significant impact on the acceptance or rejection of the practice of public executions.<sup>294</sup> 56% of respondents in the first group were not opposed to the idea of attending other executions, more than 77% were in favour of the application of the death penalty for cases of adultery or sodomy and 66% support the execution of drug traffickers.<sup>295</sup> Nearly 44% of respondents in the first group believed that they would no longer attend executions because of their depressing nature, because it was a waste of time, because of the inhumanity of the punishment or the negative impact that these executions could have on children and adolescents.

290 See <http://farsnews.com/printable.php?nn=13920117000800> (in Farsi).

291 See <http://namabourse.com/fa/print/7980> (in Farsi).

292 ISPA (Student Survey Centre of Iran), *Studies about the beliefs and opinions of Iranian society*, Ed. Jahad-Daneshgahi, Tehran, 2006, p. 468. The results of this survey were not published.

293 The aim of this survey was to show that the population of Qom supported the death penalties handed down by the tribunals. It must be put into perspective however because of possible respondent self-censorship.

294 Justice department of Qom, *Essay on the situation of the death penalty*, Ed. Bahman, Qom, 2008, pp. 14-15.

295 *Idem*, pp. 189-192 and 219-222. These results, that are more favourable to the death penalty in Qom, can also be explained by the religious mentality of the city, whilst the first survey was conducted in Tehran where the mentality is more open. The city of Qom is one of the primary centres of Twelver Shiism in the world.

- The third survey was conducted on the Internet between 2009 and 2012 in five phases on a sample of 897 people (see Box I). This survey, conducted over a longer period and in a freer space, shows that the majority of respondents are against the application of the death penalty in Iran (62%) and against public executions (66%). 62% of respondents are not willing to attend a public execution. 40% are undecided as to the deterrent effect of the death penalty. This indecision can be explained by the insecurity and fear of being a victim of violence. Another interesting marker: those Iranians who declared their opposition to capital punishment predominantly reside abroad. This survey must also be put into perspective because the majority of respondents are opposed to the Iranian regime, some being radical opponents to the regime.

#### IV. The influence of public opinion in judicial processes

Public opinion has quite an influence on judicial processes, sometimes with a counter-productive effect for convicted people. To show that the Iranian State was not swayed by pressure from opponents and media outside its territory, the Iranian government did not hesitate, three years ago, to execute more than forty people in a single week, in response to the first conviction of Iran by the United Nations General Assembly on the subject of the death penalty. In this way, the Iranian State intended to demonstrate its will not to back down on the issue.

Domestic public opinion, in its various forms, can play a role in the judicial processes and the drafting of legislation. Some cases of stoning and the bill on family are two examples of this. By being expressed in the local press, public opinion can also have positive leverage. The use of pressure from the international press, meanwhile, can be a double-edged sword as shown in the case of Delara Darabi.<sup>296</sup>

#### Conclusion

No substantive discussion and no change can take place as long as society and Iranian public opinion remain indifferent to the death penalty in the country. Yet, today, according to the analysis of a variety of surveys, nearly half of Iranian society is in favour of public executions. This makes the implementation of public awareness campaigns in the different levels of society more than necessary. Without confronting the authorities, these campaigns can take the form of debates in the scientific and religious communities or

296 On the 1st May 2009, the Iranian authorities executed Delara Darabi in the central prison of Rasht. She was executed even though she was under 18 years of age when she committed the alleged crimes. Al had been leading a campaign for her release since 2006. See "Delara Darabi: 'Oh mother, I can see the noose'", available at [www.independent.co.uk](http://www.independent.co.uk).

in universities and religious seminaries (*hawza*), educational workshops on human rights and arguments and reasoning contradicting the social necessity of the death penalty. The aim of such campaigns is to prepare the defenders and the different social groups to participate in substantive discussions.

The cause of the abolition of the death penalty will not make progress in Iran unless the economic situation and the social and cultural environment (law of Talion) evolve. A recent survey shows that Iranians are primarily concerned with unemployment, the high cost of living, economic problems, drug addiction and poverty<sup>297</sup> (see Box II). The push for abolition is proving lengthy and full of obstacles but also full of hope for the human rights activists who have taken up this challenge.

## Box I

**Survey conducted on the Internet on the application of the death penalty in Iran and public executions (in five stages between 2009 and 2012, on a sample of 897 people).**

### Division by place of residence

Place of residence	In Iran			Abroad			Unknown	Total
Number	403			311			183	897
Percentage	44,93			34,67			20,40	100
Place of residence	Tehran	Provinces	Unknown	Afghanistan	Iraq	Other		
Number	181	201	21	22	4	285		
Percentage	44,91	49,88	5,21	7,07	1,29	91,64		

### Division according to sex

	Men	Women	Unknown	Total
Number	633	99	165	897
Percentage	70,57	11,04	18,39	100

### Question 1: "I am in favour of the application of the death penalty in Iran"

	Absolutely in favour	in favour	No opinion	Against	Absolutely against	I don't know	Total
Number	164	82	11	115	439	86	897
Percentage	18,28	9,14	1,23	12,82	48,94	9,59	100
	27,42		1,23	61,76		9,59	100

### Question 2: "I am in favour of the public execution of the death penalty"

	Absolutely in favour	in favour	No opinion	Against	Absolutely against	I don't know	Total
Number	111	21	1	53	541	170	897
Percentage	12,38	2,34	0,11	5,91	60,31	18,95	100
	14,72		0,11	66,22		18,95	100

### Question 3: "I am ready to attend a public execution"

	Absolutely in favour	in favour	No opinion	Against	Absolutely against	I don't know	Total
Number	93	19	1	41	521	222	897
Percentage	10,37	2,12	0,11	4,57	58,08	24,75	100
	12,49		0,11	62,65		24,75	100

### Question 4 "The death penalty has a deterrent and preventive aspect"

	Absolutely in favour	in favour	No opinion	Against	Absolutely against	I don't know	Total
Number	91	45	1	9	398	353	897
Percentage	10,15	5,02	0,11	1,00	44,37	39,35	100
	15,17		0,11	45,37		39,35	100

<sup>297</sup> National social council and ISPA, The spread of social pathologies according to Iranians, 2014 (not published).

## Box II

Survey by the National Social Council and the Student Survey Center in Iran (ISPA 2014) on the main social problems (on a sample of 27,507 people answering an open question on the three main societal problems in Iran, according to the respondents).

Themes	Replies	
	Number	Percentage
Unemployment	5737	20,9
The high cost of living and economic problems	4653	16,9
Drug addiction	2775	10,1
Poverty	1824	6,6
The difficulty of getting married	1479	5,4
Housing and rents	1087	4,0
Improper way of wearing the Islamic veil	1008	3,7
Promiscuity	762	2,8
Social injustice	722	2,6
Culture	715	2,6
Alcoholic beverage consumption	552	2,0
The weakening of family foundations	556	2,0
The lack of recreation	474	1,7
The lack of social morality	465	1,7
Disorder	442	1,6
Insecurity	413	1,5
Favouritism («string pulling»)	344	1,3
Lies	339	1,2
Corruption and annuitants	338	1,2
Lack of piety	333	1,2
Political problems	316	1,1
The loss of trust	245	0,9
Despair, loneliness and depression	234	0,9
Hygiene, the state of hospitals, lack of medicines	233	0,8
Education	197	0,7
Waste	163	0,6
The lack of freedom	94	0,3
Prohibited satellite TV, debauchery	92	0,3
Pollution	86	0,3
Children	77	0,3
The indifference of the regime towards the people	65	0,2
Traffic and traffic jams	50	0,2

Illiteracy	46	0,2
Social security and health insurance	45	0,2
Drought	42	0,2
Societal drift	36	0,1
Runaway girls and the problems experienced by women	34	0,1
The lack of protection of local production	31	0,1
Social pathology	28	0,1
Lack of information	27	0,1
The only child, the demographic problem	22	0,1
Emigration to the big cities	20	0,1
Job insecurity	19	0,1
Family planning	18	0,1
Agricultural issues	17	0,1
Internet	16	0,1
City management	15	0,1
The vice squad	14	0,1
Other	207	0,8
<b>Total</b>	<b>27507</b>	<b>100</b>

# The Abolitionist Movement in Iran

By Ali Shirzadi

Iranian journalist and filmmaker

*“Killing one person means killing an entire population. The killing of a human being is both the source and propagator of violence and has no relationship to kind-heartedness, a caring society, and the benevolence of the Creator. It is hence necessary to stop the spread of crime, felony as well as executions as soon as possible.”<sup>298</sup>*

## Introduction

One cannot address the issue of opposition to the death penalty and its application in Iran without taking into account the societal and political developments in the country, including those that affect civil society organisations. When considering that very few book reviews on the death penalty have been published in Iran, that public opinion is monitored and more concerned with economic and social issues which burden daily life and that there is no strong reaction from the intellectual elite about the application of the death penalty, can one really speak of an abolitionist movement in Iran? Who are the opponents of the death penalty who go against the ideals of Iranian political and judicial institutions? What kind of dialogue can civil society organisations opposing the death penalty expect to have with these authorities? Which vehicles must be used to raise awareness and to increase the significance and influence of associations without leading to confrontation with the Iranian government? These questions are the milestones of a realistic but also prospective train of thought on the necessary structuring of the abolitionist movement in Iran.

## I. Key figures and activist groups against the death penalty in Iran

First of all, it is important to contextualise the sensitive issue of mobilisation for the abolition of the death penalty, and the forms it can take in Iran. In fact there is no opposing front to the death penalty as such, but only key figures that emerge. It is therefore difficult to speak about an organised and structured force against the death penalty in the country. The only activities organised in this area and arising from civil society are the result of the Association for the Right to Life (see Box III, p. 109), founded in 2005 by Emadeddin

<sup>298</sup> Quotation from Emadeddin Baghi, see <http://www.emadbaghi.com/archives/2008/12/000998print.php> (in Farsi)

Baghi after his release from prison. The latter is also responsible for the creation of another organisation, the Association for the Defence of Prisoners' Rights in Iran.<sup>299</sup>

Among the key figures in the fight against the death penalty in Iran are Dariush Forouhar<sup>300</sup> and Hossein Bagherzadeh.<sup>301</sup> H. Bagherzadeh is one of the oldest abolitionist activists who has expressed his views on the death penalty in many articles.

A year ago, some influential figures with different backgrounds also agreed to form a group called Legam (lit. “bridle”): this group is quite popular and is composed of figures from the world of politics, art and human rights such as Simin Behbahani (writer and poet), Parvin Fahimi<sup>302</sup> (human rights activist), Jafar Panahi<sup>303</sup> (filmmaker), Babak Ahmadi (writer and translator), Fariborz Raisdana (economist and political activist), Mohammad Maleki (political activist and former president of the University of Tehran), Alireza Jabbari (writer and translator), Mohammad Nourizad<sup>304</sup> (writer and filmmaker) and Esmail Moftizadeh (lawyer). Today, Legam resembles more a think tank than a truly active organisation, it is nonetheless an interesting and innovative initiative in the framework of awareness in Iranian society on the issue of the death penalty through artistic channels.

## II. Leverage and constraints met by the opponents of the death penalty in Iran

Once more it is necessary to discuss the socio-political specificities of the country to be in a position to consider useful leverage in favour of the abolition of the death penalty in Iran. In current Iranian society it would be more appropriate to use an information campaign as a last resort.<sup>305</sup> More attention must be paid to the attempts to unite society (acceptance by mentality), to disseminate ideas that we believe are right about the Talion and the death penalty, through scientific and academic means and to promote an intellectual debate... all this accompanied by effective and concrete actions. We must trigger

<sup>299</sup> In 2005, this association received the Human Rights Prize of the French Republic.

<sup>300</sup> Dariush Forouhar was murdered in November 1998 by agents of the Ministry of Intelligence and was not able to leave traces of his work.

<sup>301</sup> See [www.iranglobal.info/taxonomy/term/70](http://www.iranglobal.info/taxonomy/term/70) (in Farsi)

<sup>302</sup> Sohrab A'rabi's mother who was among the victims of the green movement in 2009.

<sup>303</sup> Jafar Panahi started his career as an assistant to the filmmaker Abbas Kiarostami. The filmmaker then pursued his career by showing the inequality and the absence of freedom in Iranian society through his films: *The Circle* (Golden Lion in Venice) in 2000 and *Crimson gold* in 2003 (“Un Certain Regard” Jury Award in Cannes) were banned by the Iranian government. *Offside* (Silver Bear in Berlin) in 2006 was also banned. In 2009, Jafar Panahi was arrested by the authorities whilst protesting against Ahmadinejad. In 2010, the filmmaker was charged with propaganda against the Islamic Republic and was imprisoned. He was invited to Cannes to form part of the official jury but was retained by the Iranian authorities in the prison of Evin.

<sup>304</sup> For more information, his website is available in English and Farsi at <http://nurizad.info/?tag=mohammad-nourizad>.

<sup>305</sup> From a methodological perspective, it must be noted that there are only a few critical articles and interviews in Iran about information campaigns.

what Emadeddin Baghi calls a “*change in the software*”, i.e. a change of what is portrayed as a just punishment. Without an improvement in the way things are perceived, nothing will change in practice and behaviours will remain unaltered.

In addition, politicising the issue of the death penalty does not favour the convicted. Sometimes the biggest favour one could do for them is not to be present in person, but rather to ensure another form of presence (more discreet, for example through intermediaries, if one’s presence could harm the convicted person).

Sometimes an information campaign is also started by a particular group, or is perceived as such. Its targets are of an ideological or political nature and it has a persuasive effect with respect to the defence of human rights and the fight against the death penalty. It is extremely important to take this into account in an Iranian context where suspicion over this type of campaign is amplified. In this context, the cyber space is a double-edged sword, and exchanging messages is not in itself a positive and real opinion movement likely to truly fuel the socio-political debate in Iran.

The constraints and harassment incurred by individuals who speak out in Iran against the application of the death penalty are an obstacle to the shaping of this opposition to the capital punishment. Some opponents of the death penalty who have expressed their views in the press have suffered numerous attacks from the regime and its supporters, such as Emadeddin Baghi after the publication in August-September 1999 of his article “Edam va Qisas” (“Execution and Punishment”). The article caused a scandal at the time and the newspaper *Neshat* which published it was closed down. The author was accused of apostasy<sup>306</sup> and was imprisoned. The editor-in-chief and managing editor of the publication were also given prison sentences. Emadeddin Baghi is an emblematic figure of the abolitionist movement in Iran. He has devoted several studies to the death penalty, particularly a book on the abolition of the death penalty in accordance with *Sharia* and Iranian laws,<sup>307</sup> and another on the issue of the execution of minors.<sup>308</sup> He has based his writings on thorough study of the religious texts and comparative studies on the concepts of *qisas*, forgiveness, and alternative penalties, pondering whether traditional interpretation is compatible with the sociocultural context of contemporary Iran. In this way he has attempted an innovative interpretation of Islam that could promote remedial law<sup>309</sup> in replacement of punitive law.

306 E. Baghi was condemned to 7 and a half years in prison. This sentence was reduced to three years on appeal. Since serving his prison sentence he has published numerous articles as well as three books devoted to the death penalty.

307 Haq e-Hayat (The Right to Life), Vol. 1

308 Idem, Vol. 2. Both volumes were translated into Arabic and were published through an Arab information network on human rights based in Cairo.

309 According to E. Baghi, this remedial law is found in the Koran and in the remedial nature of the *qisas*, particularly in the Surah “The Cow”, in verse number 179.

### III. What kind of dialogue on the death penalty is possible in Iran between NGOs and state authorities?

No type of confrontation with the authorities is beneficial to actions in favour of human rights: in this case, efforts for the abolition of the death penalty. On the contrary, to defend themselves, the authorities will call into question the independence of these actions and will find links with political parties if not intelligence services. The only possible benefit of such actions would be to give the authors a kind of credibility as opponents to the authorities in the eyes of public opinion, especially outside the country. Based on experiences garnered by the association “For the Right to Life”, an independent civil organisation may very well act within the legal framework and meet representatives of the authorities while maintaining a critical attitude. Thus, this association was able to work with the reformative branch of the regime that sees no fundamental problem in it. It has also chosen not to go public regarding most of its actions: the authorities could indeed interpret this as a form of mockery and would react accordingly.

The perception of dialogue with the Iranian authorities is a problem in itself since any exchange with the government in Iran is interpreted as a shift in favour of the political positions of the power in place. On the contrary, dialogue with the legal authorities to resolve problems is an adequate and useful initiative. This requires a new change in the way things are perceived.

### Conclusion

The abolitionist movement must be better structured and organised in Iranian civil society. Until then, this movement will only take the form of ephemeral emotional waves without fundamental implications, and could even be counter-productive to the targeted objective. Campaigns against the death penalty are organised to cause a stir around cases of condemned prisoners, particularly in the press. But this mobilisation quickly gives way to disillusionment. Moreover, to cope with this situation, grass-roots activities must be developed and the empowerment of non-governmental organisations must be reinforced and favoured so that they can act as a safeguard against any authoritarian or repressive drift. This step is necessary before concentrating efforts on the Iranian political system. The abolitionist movement is therefore a big challenge in Iran. One must trigger citizen activism, put an end to activists’ isolation, raise awareness in the civil society and help it embrace the fact that individuals in their society enjoy a fundamental right: the right to life.

### The Association “For the Right to Life”

This association is based in Iran where it is currently active. It was founded in 2005 by Emadeddin Baghi<sup>310</sup> and is supported by a number of lawyers and defenders of human rights. In order to not offend the authorities’ sensitivity, the association has chosen not to create a website.

“For the Right to Life” aims to change the public’s and politicians’ opinions with respect to the death penalty in order to lay the foundations of a true social movement. In this context, the association pursues four objectives:

1. to help society and the judicial branch put an end to the vicious circle of violence and raise awareness as to the reduction of executions in society.
2. to criticise the prevalence of a culture of violence.
3. to conduct studies on the issue of the death penalty.
4. to try and persuade the plaintiffs not to ask for the execution of the guilty party or parties.

These actions are implemented by five different committees, including a legal committee (responsible for providing support to death row prisoners), a support and forgiveness committee and a sociocultural committee (responsible for developing artistic actions to denounce violence and capital punishment). In addition to its activities on the domestic front, the association has also participated in international conferences. It has attracted the attention of organisations that defend and promote human rights abroad,<sup>311</sup> and maintains close ties with Together against the Death Penalty (Ensemble contre la peine de mort - ECPM).<sup>312</sup>

The association “For the right to life” was able to continue its support to death row prisoners and the victims’ families after the events of 2009 and 2010 (various demonstrations in the country and executions of anti-governmental demonstrators), but with more restrictions.

<sup>310</sup> For more detailed information, see <http://www.emadbaghi.com/en/>

<sup>311</sup> As can be read in Véronique Gaymard’s article, “Emadeddin Baghi, le combattant contre la peine de mort en Iran” [Emadeddin Baghi, the opponent of the death penalty in Iran], Radio France internationale, 12th June 2013, available in French at [www.rfi.fr](http://www.rfi.fr).

<sup>312</sup> ECPM will publish Emadeddin Baghi’s next book.

## The International Abolitionist Movement

By **Mani Mostofi**  
Lawyer, Director of Impact Iran

Internationally based civil society can impact the Islamic Republic of Iran’s behavior in individual death penalty cases and the issue of the death penalty as a whole in Iran. This is particularly true in some of the more extreme forms of capital punishment in Iran, including juvenile executions, stoning, politically or religiously motivated executions, and drug crime executions. International advocates tend to be most effective when working in tandem with domestic campaigns and lawyers. As these advocates have greater access to media, foreign governments, and United Nations bodies and operate in relatively unrestricted environments, they are able to garner broad international attention around the state’s death penalty practices. They also can use social media and new media campaigning to amplify domestic debates in Iran and help shape evolving public opinion.

### I. Raising Individual Cases

When it comes to individual cases, lawyers and the domestic human rights community have long considered international partners and international media as one of the available tools to defend the rights of people facing death sentences or imminent execution.<sup>313</sup> International efforts have resulted in defendants receiving verdicts other than death, stays of executions, and even pardons. Moreover, as prominent anti-death penalty lawyer Mohammad Mostafaei has argued, focusing on individual cases can be one the most effective methods for achieving broader death penalty abolition in Iran. Mostafaei explains:

*For years, human rights organizations have fought against the death penalty in Islamic countries [including Iran] and in India, but have got nowhere. They don’t understand that the only way to approach this is by saving lives, individual lives. If we save more lives as time goes by, then we will have limited the number of executions.*<sup>314</sup>

So what can international advocates do to try to save individual people from execution? One tactic advised by Iranian lawyers is to write to the Iranian government and judiciary directly to raise concerns about ongoing death penalty prosecutions or imminent exe-

<sup>313</sup> International Campaign for Human Rights in Iran, Video: Shirin Ebadi speaks (December 2011) at: <http://www.iranhumanrights.org/2011/12/nasrin-sotoudeh-2/>.

<sup>314</sup> IranWire, “Mohammad Mostafaei’s 10 Steps for Abolishing the Death Penalty,” (14 February 2014) at: <http://en.iranwire.com/features/4987/>.

ctions that violate international standards. Even though these communications are not public, the simple fact that there is some international attention and fear that the issue could become public has at times moved the judiciary to try to resolve cases in a way that does not involve the death penalty. Private communications are particularly effective when they come from other governments, UN human rights bodies, and large human rights NGOs like Amnesty International. International civil society thus can reach out to various actors and encourage them to express their concerns about a particular case or set of cases to authorities in Iran.

Another approach is to go public. By using media, international civil society actors can draw a lot of attention to individual cases thereby raising the stakes and reputational costs for Iranian authorities should they choose to go ahead with an execution. Once a case gains attention, a larger number of civil society groups, foreign governments and UN bodies will, and should, be motivated to write to Iranian authorities directly or raise public concerns. This can have a “snowball effect” as in the case of Christian pastor Yousef Naderkhani who faced the death sentence for apostasy. In Naderkhani’s case, what started as simple press statements by the International Campaign for Human Rights in Iran and some Iranian activist news sites, over time multiplied into dozens of human rights organizations, governments, churches, the Vatican, the UN Secretary General, and the Special Rapporteur on human rights in Iran all pressuring the government to dismiss charges. Naderkhani was soon after freed on lesser charges.<sup>315</sup>

Private communications and public expressions of concern pressure authorities to look for an alternative to death sentences such as dismissing a case or changing the charges. Pressure can also help mitigate the ill treatment and torture of detainees.

Knowing when to go public with an individual case and when to keep communication private is sometimes difficult. Some human rights lawyers and local advocates believe that at times naming and shaming Iran backfires. What they say is that avoiding a capital sentence in Iran often involves a level of negotiation with judicial authorities, as most capital offenses have mandatory sentences. However, if a case is taken public too soon, authorities are sometimes forced to defend Iranian laws and court verdicts instead of trying to look for a compromise.

In light of this dynamic, international civil society groups should develop strong working relations with the lawyers, local human rights advocates, and families involved in individual death penalty cases. The goal should be to assess when to escalate an advocacy campaign into a public and worldwide campaign. Usually it is best to do this when an execution is imminent or when it becomes fairly clear that judicial authorities are set on pursuing a capital sentence. The latter scenario can arise at any stage in the judicial

315 International Campaign for Human Rights in Iran, “Unprecedented Death Sentence for Christian Pastor on Charge of Apostasy,” (7 December 2010) available at: [www.iranhumanrights.org/2010/12/khanjani-nadarkhani-apostasy/](http://www.iranhumanrights.org/2010/12/khanjani-nadarkhani-apostasy/); International Campaign for Human Rights in Iran, *Cost of Faith* (16 January 2013) available at: [http://www.iranhumanrights.org/wp-content/uploads/Christians\\_report\\_Final\\_for-web.pdf](http://www.iranhumanrights.org/wp-content/uploads/Christians_report_Final_for-web.pdf)

process. As a rule of thumb, it is best for international civil society to begin pressuring the government before a final high court verdict, i.e., early in the proceedings or between appeals. In such cases, a campaign can result in lesser verdicts and even dismissal of charges. When there is a final verdict, often the best that can be done is to have an execution stayed or indefinitely delayed. Even so, international campaigns can be impactful.

## II. Chipping Away at the Death Penalty in Iran

In recent years, with the ever-increasing execution rate, international human rights groups and UN human rights bodies have nearly unanimously called on Iran to impose a moratorium on the death penalty.<sup>316</sup> This is a position that must be sustained if Iran is going to change its laws and practice. However, international advocates have so far been most successful in targeting particularly egregious death penalty practices. Human rights groups have managed to galvanize sustained international pressure—through foreign governments, the UN, and the media—on Iran’s use of juvenile executions and stoning. Stoning and juvenile executions soon became central areas of concern for a host of foreign governments engaged in human rights dialogue with Iran.<sup>317</sup> Moreover, UN institutions such as UNICEF began working directly with Iranian lawmakers to draft policies that would limit or restrict capital punishment for juvenile offenders.<sup>318</sup>

Neither stoning nor juvenile executions have been abolished or abandoned in entirety. However, it is clear that Iranian authorities have tried to mitigate the laws and practices associated with these punishments in response to and as a way of lessening international criticism. The newly amended Penal Code narrows the set of crimes for which juvenile offenders can face capital charges.<sup>319</sup> Additionally, authorities also tried to remove stoning from the Penal Code until the Guardian Council, a body charged with reviewing

316 SEE: Un Secretary-General, Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, A/HRC/25/75, (11 March 2014) <http://shaheedoniran.org/wp-content/uploads/2014/03/2014-SG-Report.pdf>; Ravina Shamsadani, Spokesperson for the Office of the UN High Commissioner for Human Rights, “Iran: UN human rights office urges death penalty moratorium amid spike in executions,” (21 February 2014) available at: <http://www.un.org/apps/news/story.asp?NewsID=47198#.VBGS1mRdXIo>; Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “Iran: UN experts condemn public execution of juvenile and reiterate call for immediate halt on death penalty,” (17 April 2014) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11415&LangID=E#s-thash.aquE3tOu.dpuf>

317 See: Report of the Working Group on the Universal Periodic Review, Islamic Republic of Iran (15 March 2010) at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/IRsession7.aspx>; NB: Iran received 11 recommendation from UN Member states regarding abolition of juvenile executions and 3 regarding stoning.

318 UNICEF, Annual Report 2012 for Iran (Islamic Republic of), (2013) at: [http://www.unicef.org/about/annualreport/files/Iran\\_COAR\\_2012.pdf](http://www.unicef.org/about/annualreport/files/Iran_COAR_2012.pdf); Nargess Tavassolian, “Half Measures: Juvenile Execution Under Iran’s New Penal Code,” (27 February) at: <http://www.iranhumanrights.org/2012/02/new-penal-code-commentary/>.

319 See: Islamic Penal Code of Iran (2013). Iran Human Rights Documentation Center, Islamic Penal Code of the Islamic Republic of Iran – Book Five Translation (January 2013) available at: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000351-islamic-penal-code-of-the-islamic-republic-of-iran-book-five.html>



draft laws to ensure compliance with Iran's Constitution and Islamic law, reinserted it.<sup>320</sup> Nevertheless, there has not been a confirmed stoning in Iran since 2010, although about eleven men and women are still on "stoning row."<sup>321</sup>

Through the efforts of international advocates, Iran's drug offense executions, which violate the most serious crimes provisions in Article 6 of the ICCPR,<sup>322</sup> are also primary human rights concerns globally.<sup>323</sup>

These efforts help highlight another tool available to civil society based outside Iran. International civil society is becoming increasingly effective at identifying international institutions and corporations that play a role in human rights violations in Iran and pressuring these international actors to cease behavior that facilitates abuses.<sup>324</sup> This approach has been applied to limiting Iranian drug offense executions. Advocates have been able to trace Iran's anti-narcotics policies to capacity building programs facilitated by the United Nations Office on Drugs and Crime (UNODC) and funded by EU member states.<sup>325</sup> Rights groups have begun pressuring EU states and the UNODC to reassess their support for these policies in light of the high rate of illegal drug executions, resulting in at least some EU governments suspending funding to UNODC's Iran program.<sup>326</sup>

UN institutions have played a vital role in human rights discourse around Iran. UN bodies have done a lot to raise the profile of human rights in Iran both globally and with the domestic audience. The government's cooperation with UN bodies, including the Special Rapporteurs on Iran and summary executions, has been poor.<sup>327</sup> But urgent appeals about pending executions issued by these Special Rapporteurs as part of a larger international effort have correlated with delayed implementation on several occasions.

320 Human Rights Watch, "Iran: Proposed Penal Code Retains Stoning," (3 June 2012) at: <http://www.hrw.org/news/2013/06/03/iran-proposed-penal-code-retains-stoning>

321 Amnesty International, Death Penalty in 2013 (March 2014) and Death Penalty in 2012 (10 April 2013) both available at: <http://www.amnesty.org/en/death-penalty/numbers>; Amnesty International, "End execution by stoning in Iran," (30 April 2010) at: <http://www.amnesty.org/en/appeals-for-action/end-execution-stoning-iran>

322 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston UN Human Rights Council, 29 May 2009, A/HRC/11/2/Add.1, page 188, at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.2.Add.1.pdf>.

323 Amnesty International, Addicted to Death, (2001) at: <http://www.amnesty.org/en/library/asset/MDE13/090/2011/en/0564f064-e965-4fad-b062-6de232a08162/mde130902011en.pdf>; Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, "'Stop the executions' – UN rights experts alarmed at the sharp increase in hangings in Iran" (22 January 2014) at: <http://shaheedoniran.org/english/dr-shaheeds-work/press-releases/stop-the-executions-un-rights-experts-alarmed-at-the-sharp-increase-in-hangings-in-iran/>.

324 One example is the recent cooperate responsibility campaign aimed at satellite providers. See: Human Rights Watch, "Letter to Eutelsat Regarding Iranian Government's Jamming of Satellite Broadcasts," (25 June 2010) at: <http://www.hrw.org/news/2010/06/23/letter-eutelsat-corporation>

325 Human Rights Watch, "Iran: Donors Should Reassess Anti-Drug Funding," (21 August 2012) at: <http://www.hrw.org/news/2012/08/21/iran-donors-should-reassess-anti-drug-funding>.

326 Ibid, RTE News, "Government ceased anti-drug programme funding over Iran death penalty fears" (8 November 2013) at: <http://www.rte.ie/news/2013/1108/485366-ireland-anti-drug-iran/>.

327 UN Secretary-General, Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, A/HRC/25/75 (11 March 2014) at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A\\_HRC\\_25\\_75\\_AUV.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_75_AUV.doc); NB: UNSG notes Iran's low response to communications by UN Special Procedures.

### III. Broadening the Concept of "International"

International advocates working on Iran have traditionally been based in Europe and North America and have relied on the willingness of Western governments to express concerns over human rights in Iran to elevate their message. While this strategy has at times been effective, there is increasing value to broadening advocacy targets.

Iran is particularly sensitive to criticism emanating from the global south. For example, during Iran's first round Universal Periodic Review (UPR), it accepted nearly all recommendations made by Latin American, African and Asian states, while rejecting nearly two-thirds of those by Western States and Eastern Europe.<sup>328</sup> Most Latin American states are abolitionist and many, such as Brazil, Argentina, Uruguay, Venezuela, and Ecuador, have good relations with Iran. These countries should be considered primary targets for advocacy.<sup>329</sup> Ecuador and Uruguay, for example, have called on Iran to impose a moratorium on the death penalty from the floor of the Human Rights Council despite being hesitant to vote for the Council's resolutions on human rights in Iran.<sup>330</sup> Brazil famously told Iranian authorities that they would offer asylum to Sakineh Mohammadi Ashtiani, a woman facing stoning for adultery, and recommended that Iran impose a moratorium on executions during the 2010 UPR.<sup>331</sup>

An often overlooked strategy is to intervene in the case of foreign nationals on death row. Iranian authorities execute dozens of foreign nationals a year, mostly Afghans but also other nationalities.<sup>332</sup> Under the Vienna Convention on Consular Relations, when Iran or any country arrests a foreign national, national authorities are expected to inform that person's embassy almost immediately so the government can visit their citizen, secure them a lawyer, and ensure that their rights are respected.<sup>333</sup> In practice Iran often does not do this and foreign nationals are charged, tried, and executed without their government's knowledge.<sup>334</sup>

328 See: Report of the Working Group on the Universal Periodic Review, Islamic Republic of Iran (15 March 2010) at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/IRsession7.aspx>; NB: During its 2010 UPR Iran accepted 76 recommendations made by UN member-states from Asian, African and Latin American region groups and only rejected 6. From the Western and Eastern European groups, Iran accepted 50 recommendation but rejected 78.

329 Amnesty International, Abolitionist and Retentionist Countries, at: <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>.

330 336 International Campaign for Human Rights in Iran, "Renewed: Special Rapporteur's Mandate Extended by a 22 to 5 Vote" (22 March 2012) at: [http://www.iranhumanrights.org/2012/03/hrc\\_renew/](http://www.iranhumanrights.org/2012/03/hrc_renew/).

331 Saeed Kamali Dehghan, Tom Phillips in Rio de Janeiro, and Rory Carroll, The Guardian, "Iran stoning woman offered asylum by Brazil's president Lula," (1 August 2010) at: <http://www.theguardian.com/world/2010/aug/01/iran-stoning-woman-brazil>; Report of the Working Group on the Universal Periodic Review, Islamic Republic of Iran (15 March 2010) at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/IRsession7.aspx>.

332 Amnesty International, Addicted to Death, (2001) at: <http://www.amnesty.org/en/library/asset/MDE13/090/2011/en/0564f064-e965-4fad-b062-6de232a08162/mde130902011en.pdf>.

333 Vienna Convention on Consular Relations, art. 36 (1963) at: [http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf)

334 Amnesty International, Addicted to Death, (2001) at: <http://www.amnesty.org/en/library/asset/MDE13/090/2011/en>

Internationally based advocates are in a good position to inform foreign governments and encourage them to intervene in death penalty cases involving their citizens in Iran. In one case, authorities allegedly wrongly arrested a citizen of the Philippines on a capital drug offense.<sup>335</sup> The Philippines embassy in Tehran was contacted by a human rights group based in New York and was able to secure the man legal assistance and his death sentence was commuted to life in prison.<sup>336</sup> Some advocates claim that, depending on the country, embassies located outside Iran, such as those in Europe, can be very effective at intervening in the cases of their citizens. The government of Afghanistan has tried to intervene on behalf of its citizens in the past, but not in a sustained and assertive enough manner.<sup>337</sup> International civil society can engage Afghan embassies in their home countries and encourage them to consistently intervene in individual cases and approach Iranian authorities about the ongoing practice of executing Afghan nationals for drug crimes or after unfair trials.<sup>338</sup>

#### IV. Advantages of International Civil Society Advocacy

In several areas, international civil society has advantages that domestic advocates lack. First, they can operate more freely than domestic advocates who constantly fear state persecution. International civil society is able to document, publish, and campaign more or less as they see fit. One example of this is the Norway-based NGO Iran Human Rights, which keeps a running account of all announced and unannounced executions in Iran.<sup>339</sup> The organization's website, like those of other human rights groups, is blocked in Iran, reflecting the fact that its content would be considered illegal and would not be allowed to operate domestically without great risk.<sup>340</sup>

Second, international groups have better and easier access to international institutions such as the UN, foreign governments, and international media, which allows them to amplify human rights concerns emanating from within Iran. In this regard, it was international rights NGOs and exiled human rights defenders such as Nobel Peace Prize winner Shirin Ebadi who were able to garner support at the Human Rights Council to create the

mandate on the Special Rapporteur on human rights in Iran.<sup>341</sup>

International civil society, however, has been most effective at building strong relationships with local advocates, movements, and NGOs. International efforts to limit stoning and juvenile executions, as discussed above, were in part successful because they mirrored domestic movement against these practices.<sup>342</sup> Domestic efforts such as the Campaign to Stop Stoning Forever and Society for Protection of the Rights of the Child, and the work of lawyers such as Mohammad Mostafaei and Nasrin Sotoudeh have helped heighten public displeasure with these practices and save people from execution.<sup>343</sup> At the same time, and in coordination with these domestic efforts, international human rights groups have started raising similar concerns globally. International advocates have often acted as partners to deliver information and messages that local actors would feed them.<sup>344</sup> The result has been that Iranian authorities faced international and domestic pressure simultaneously.

Today, many Iranian human rights activists including Ebadi are forced to live abroad, yet have maintained strong ties to local partners. The relationship between domestic and international NGOs has not always been so strong. Prior to the "reformist era" that began in 1997, human rights advocates maintained a guarded distance from international groups, fearing potential backlash from authorities if they were seen as too close to "foreigners." In the late 1990s and early 2000s, there was a slight opening in Iran's civil and political space allowing local advocates to build stronger relations with international human rights groups and engage more directly with UN mechanisms. But the crackdown on civil and political rights following the 2009 elections led to the closure of most major independent human rights NGOs and the arrest of many human rights defenders.<sup>345</sup> Much of the domestic human rights movements had to be relocated abroad. As a consequence, international human rights movements were formerly more in tune with realities in Iran and better connected to human rights defenders on the ground.

#### V. Risks of International Involvement

International anti-death penalty efforts aimed at Iran must take particular care not to make matters worse within Iran. As discussed above, coordination with lawyers and local advocates is important for ensuring that anti-death penalty efforts do not result in

/0564f064-e965-4fad-b062-6de232a08162/mde130902011en.pdf.

335 International Campaign for Human Rights in Iran, "Philippine National at Vakilabad Prison Appeals for Help" (17 November 2010) at: <http://www.iranhumanrights.org/2010/11/tamonde-appeals-help/>.

336 Ibid.; Magpet, "Request for Tamonde family visit to jailed Magpeteño in Iran under process," (15 January 2013) at: <http://home.magpet.gov.ph/blog/2013/01/15/request-for-tamonde-family-visit-to-jailed-magpeteno-in-iran-under-process/>.

337 Bethany Matta, Al Jazeera, "Iran executions anger Afghan families," (6 June 2013) at: <http://www.aljazeera.com/indepth/features/2013/06/201366102037670360.html>.

338 Ibid.; Amnesty International, Addicted to Death, (2001) at: <http://www.amnesty.org/en/library/asset/MDE13/090/2011/en/0564f064-e965-4fad-b062-6de232a08162/mde130902011en.pdf>.

339 See: Iran Human Rights, at: <http://iranhr.net/>.

340 Unpublished systems test on file with author.

341 International Campaign for Human Rights in Iran, Monitoring Iran, (12 March 2011) at: <http://www.iranhumanrights.org/2012/03/monitoring-iran-monitoring-iran/>.

342 See: Amnesty International, "Campaigning to end stoning in Iran," (15 January 2008) at: <http://www.amnesty.org/en/news-and-updates/report/campaigning-end-stoning-iran-20080115>; International Campaign for Human Rights in Iran, Video: Shirin Ebadi speaks (December 2011) at: <http://www.iranhumanrights.org/2011/12/nasrin-sotoudeh-2/>; The Guardian, Animation: One Iranian lawyer's fight to save juveniles from execution (27 March 2011) at: <http://www.theguardian.com/world/video/2012/mar/27/lawyer-fight-juveniles-execution-animation>.

343 Ibid.

344 Ibid.

345 For a brief overview of post-2009 repression of civil society and human rights defenders in Iran see: Human Rights Watch, 2011 World Report: Iran (2012) at: <http://www.hrw.org/en/world-report-2011/iran>.

further entrenching Iranian authorities in their positions. Strong relationships with local advocates are needed to attain the best information and to ensure international efforts reinforce or supplement local efforts.

Additionally, international anti-death penalty advocates should take care not to approach the issue with discourse that could turn away ordinary Iranians and bolster the government's lack of reform. As the anti-death penalty movement deals with issues of extreme violence, it is easy for discourse to devolve into negative portrayals of Iranian society as a whole.

## VI. Reaching the Public

With the rise of new media and the growing number of Iranian human rights defenders in the diaspora, international anti-death penalty advocates are in a good position to meaningfully impact public attitudes in Iran. Internet and satellite media in particular are effective ways to reach the Iranian public and build support for abolition and limits on the death penalty.

Despite strict restrictions on the Internet, Iranians are still very active online and on social media. Moreover, diaspora-based television and radio has entered a new era, with stations like BBC Persia and the UK-based Manoto producing high quality content for huge viewership inside the country.

These platforms allow for new and compelling ways to reach ordinary Iranians. Recently, online videos of public executions in Iran have gone viral and sparked public debate inside the country on the practice.<sup>346</sup> The International Campaign for Human Rights in Iran produced a music video against public executions featuring popular Iranian rapper Shahin Najafi, who is now based in Germany. The video received nearly half a million hits.<sup>347</sup>

# Annexes

- TERMS IN PERSIAN
- LATIN EXPRESSIONS
- ACRONYMS AND ABBREVIATIONS
- GLOSSARY
- CHRONOLOGY OF THE CONTEMPORARY HISTORY OF IRAN
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- INTERNATIONAL TREATIES SIGNED AND CONVENTIONS RATIFIED BY IRAN
- FUNDAMENTAL INSTRUMENTS NOT ADHERED TO BY IRAN
- AUTHOR BIOGRAPHIES

<sup>346</sup> Golnaz Esfandiari, Radio Free Europe Radio Liberty, "Disturbing Video Of Public Iranian Execution Sparks Debate," (6 March 2014) at: <http://www.rferl.org/content/iran-hanging-video-debate/25288201.html>.

<sup>347</sup> International Campaign for Human Rights in Iran, Video: Execution - Eedam (Okhtapus ft. Shahin Najafi & Majid Kazemi), (19 September 2013) at: <https://www.youtube.com/watch?v=EvSynsoeL4U>; NOTE: The total of nearly half a million hits is based on a compilation of multiple postings on the video, including YouTube and Radio Javan, with the latter found at <https://www.radiojavan.com/videos/browse/tag/shahin+najafi>.

## Terms in Persian

Farsi or Parsi is the main language in Iran. It is also called Persian. Terms followed by the sign ◊ are defined in the glossary.

**Bassidji** religious militia. ◊  
**Buluq** physical puberty.  
**Sharia** Islamic law. ◊  
**Diyah** (plural **diyat**) blood money. ◊  
**Efsad il-arz** corruption on earth. ◊  
**Ejtehad** effort to interpret sacred texts. ◊  
**Farsi**, Parsi Persian, Iranian language.  
**Fatwa** legal opinion on a particular issue. ◊  
**Feqh** legal opinion on Islamic sources and comments. ◊  
**Gozinesh** Iranian law on selection. ◊  
**Hadd** (plural **hudud**) prescribed penalty. ◊  
**Hawza** religious seminaries.  
**Hokm-e 'edam** death penalty.  
**Majles** Iranian Parliament. ◊  
**Moharebeh** war against God. ◊  
**Mullah** Muslim scholar in Persian (ulama in Arabic).  
**Mujtahid** a lawyer who can interpret a text on a point of law. ◊ Nowrouz Iranian New Year.  
**Qajar** dynasty of Iranian sovereigns (1876-1925). ◊  
**Qassameh** group of fifty people in the circle of friends and family of a victim.  
**Qisas** retribution. ◊  
**Qisas-e-na'is** death sentence pronounced according to the qisas. ◊  
**Qobh-e eqab-e bila bayan** prohibition to punish without previous warning (principle of legality in criminal law).  
**Rahbar, Rahbar-e enqelab** Supreme Leader, Supreme Leader of the Revolution. ◊  
**Roshd** mental development, child's maturity.  
**Sabb-on-nabi** vilifying the prophets. ◊  
**Ta'azir** (plural **ta'azirat**) discretionary sentence. ◊  
**Tafkhiz** homosexual intercrural intercourse.  
**Tagiyaa** form of religious dissimulation.  
**Velayat-e-faqih** guardian of jurisprudence. ◊

## Expressions in Latin

**de facto** concerning fact.  
**expressis verbis** in explicit terms (of law).  
**in fine** in the end, ultimately.  
**ipso facto** by that very fact or act, as an inevitable result.  
**jus cogens** compelling law.  
**per capita** per individual, per person.  
**sui generis** of its own kind, singular.  
**vox populi** voice of the people, public opinion.

## Acronyms and Abbreviations used

**AI** Amnesty International  
**BIHE** Bahà'i Institute for Higher Education  
**CCP** Code of Criminal Procedure  
**CEDAW** Convention on the Elimination of Discrimination Against Women  
**CERD** Committee on the Elimination of Racial Discrimination  
**CESCR** Committee on Economic, Social and Cultural Rights  
**CMCPM** Moroccan Coalition against the Death Penalty  
**CRC** Convention on the Rights of the Child  
**CSHR** Centre for Supporters of Human Rights  
**CSHR** Centre for Supporters of Human Rights, London  
**ECOSOC** Economic and Social Council  
**ECPM** Ensemble contre la peine de mort [Together against the death penalty]  
**EU** European Union  
**FIDH** International Federation for Human Rights  
**HRADI** Human Rights and Democracy Activists in Iran  
**HRC** Human Rights Campaign (American).  
**HRW** Human Rights Watch  
**IAEA** International Atomic Energy Agency  
**ICCPR** International Covenant on Civil and Political Rights, ratified by Iran in 1975  
**ICHRI** International Campaign for Human Rights in Iran  
**ICTY** International Criminal Tribunal for the former Yugoslavia  
**IGLHRC** International Gay and Lesbian Human Rights Commission  
**IHR** Iran Human Rights  
**IHRA** International Harm Reduction Association

**IHRDC** Iran Human Rights Documentation Centre  
**II** Impact Iran  
**IPC** Iranian Penal Code  
**IPCI** Islamic Penal Code of Iran  
**ISPA** Iranian Students' Polling Agency  
**KMMK-G** Association for Human Rights in Kurdistan of Iran-Geneva  
**LGBT** Lesbian, gay, bisexual and transgender  
**NIPCI** New Islamic Penal Code of Iran (voted in 2013)  
**OHCHR** Office of the United Nations High Commissioner for Human Rights  
**OJ** Official Journal  
**PMOI** People's Mojahedin Organization Of Iran  
**PRI** Penal Reform International  
**RWB** Reporters Without Borders  
**SPRC** Society for Protection of the Rights of the Child  
**TN** Translator's Note  
**UDHR** Universal Declaration of Human Rights  
**UKFCO** United Kingdom Foreign and Commonwealth Office  
**UNESCO** United Nations Educational, Scientific and Cultural Organisation  
**UNGA** United Nations General Assembly  
**UNHCR (HCR)** United Nations High Commissioner for Refugees  
**UNHCR** United Nations High Commissioner for Refugees  
**UNHRC** United Nations Human Rights Council  
**UNICEF** United Nations International Children's Emergency Fund  
**UNO** United Nations Organisation (or UN United Nations)  
**UNODC** United Nations Office on Drugs and Crime  
**UNPO** Unrepresented Nations and Peoples Organisation  
**UNR** United Nations Radio  
**UPR** Universal Periodic Review  
**WGEID** Working Group on Enforced or Involuntary Disappearances  
**YOCA** Young Offenders Court Act

## Glossary

**Ahwaz** An Arab from southern Iran, from a city called Ahwaz located on the banks of the Karun River in the middle of the province of Khuzestan. The *Ahwazi* Arabs are an ethnic minority\* in Iran.

**Apostasy** Public rejection of one's own faith. For a Muslim, the rejection of Islam either by publicly denying one's faith by insulting God or the prophets of Islam, or by professing heterodox dogmas. In Iran, according to Islamic law in force since the 1979 Revolution, those convicted of apostasy are punished by death.

**Assembly of Experts** This Assembly is composed of 86 clerics elected for eight years by direct universal suffrage. It elects and dismisses the Supreme Leader of the Revolution\* and has the power, in theory, to remove him from office.

**Ayatollah** Lit. "sign of God". One of the highest titles awarded to a member of the Shiite clergy. The ayatollahs are considered experts on Islam in the areas of Islamic jurisprudence, history, ethics and philosophy. They must first follow the teachings of one of the centres of Islamic learning and reach the stage of *ejtehad\** before becoming ayatollahs.

**Bahá'í** This dissident religious community of Shiite Islam claims to have seven million followers or bahá'ís in several countries, including 350,000 in Iran. The founder of Bahá'ísm is Hossein Ali Nuri, or Bahá'u'lláh, who died in 1892 near Haifa (Israel), where he is buried. The bahá'ís are a minority that is not officially recognised in Iran. Most of them live in Tehran. Since the 19th century, they have from time to time been the targets of persecution in this country. Persons belonging to the Bahá'í Faith still face discrimination and even the death penalty.

**Baloch** Member of an ethnic group present in Pakistan, Iran and Afghanistan. Baloch are present in the southeast of Iran and call themselves Hanafi Sunnis, although they have numerous specific beliefs and local cults. They speak Balochi, an Iranian language of the Indo-European family.

**Bassidji** Lit. "mobilised". The *Niruyeh Moghavemat Basji* ("mobilisation force of the resistance"), commonly known as *Bassidji*, is an Iranian paramilitary force founded by the Ayatollah Khomeini in November 1979 to recruit young volunteers from the popular classes for the elite troops to wage war against Iraq. The *bassidji* are currently under the tutelage of the Guardians of the Islamic Revolution\* and are responsible for the internal and external security of Iran.

**Sharia** Islamic canonical law governing religious, political, social and individual life, strictly enforced in some Muslim Countries. The countries where the *Sharia* is the most widely applied are Asia: Iran, Saudi Arabia, Pakistan, Indonesia, Afghanistan, Iraq, Yemen, Oman and the United Arab Emirates and Africa: Sudan, Nigeria and Mali.

**Death penalty** The death penalty or capital punishment is a sentence provided for by law resulting in the execution of a person convicted of an offence classified as a "capital crime". The death penalty is the ultimate

punishment in Iran. Iran has the highest rate of executions per capita, only second to China in terms of the total number of executions.

**Diyah (plural diyat)** Lit. “blood money”. Koranic term for an expiatory financial compensation that must be paid by the perpetrator of a homicide (or the perpetrator’s family) to the family of the victim or his/her successors according to Muslim religion. The rate and amount of this compensation vary according to the sex and religion of the victim: they are different for a Muslim man, a Muslim woman and a man or woman of another religion. The criminal must pay *diyah*: if he/she is dead, it is paid from his/her inheritance.

**Efsad fil-arz** Lit. “corruption on earth”. In the Penal Code of Iran (IPCI)\* it is defined as a crime against the state or Islam. Article 286 of the NIPCI gives the following definition: “Any person, who commits a crime with serious consequences for the physical integrity of people, internal or international security of the state, spreading lies, disrupting the economic system of the country, being responsible for arson and destruction of properties, spreading poisonous, bacterial and dangerous substances, or establishing, or helping to establish, a network of corruption or prostitution ring”. Such person shall be considered *mahdour-I-dam*, which means “deserving of death”. *Efsad fil-arz* is one of the offences punishable by death in Iran.

**Ejtehad** Deep thinking to interpret the founding texts of Islam, which develops the jurisprudence. In Shiism it is also the completion of religious studies.

**Execution:**

–**public** Execution taking place in a public place, in most cases by hanging. “Suspension hanging” causes the slow suffocation of the condemned person who is suspended and lifted slowly from the neck by a crane. “Short drop hanging” is carried out by placing the condemned person on a car that is then moved away, or a stool that is kicked away leaving the person dangling and brutally strangled. In both cases, agony can last a few minutes before death occurs. In the case of *qisas-e-nafs*\* (compensatory death sentence for homicide), a close relative of the victim is encouraged to participate in the public execution.

–**secret** Execution carried out secretly without being announced by the Iranian authorities or other official channels, without the families and lawyers even being informed beforehand. Iranian law stipulates, however, that the lawyer must be notified 48 hours before an execution.

**Expediency Discernment Council** The Expediency Discernment Council of the System was established by decree in 1988 to mediate, in the interest of the state, disputes between the Islamic Consultative Assembly and the Guardian Council of the Constitution. But the Constitution was amended in 1989 and the Council was given eleven tasks, the most important being to advise the Supreme Leader\* on major government policies. It is composed of 31 members appointed by the Supreme Leader: six clerics from the Guardian Council, heads of legislative, judicial and executive powers (the President of the Republic), the Minister concerned with the agenda and a dozen other figures.

**Fatwa** In Islam, a legal opinion on a particular issue given by a *Fagih*, an Islamic law specialist. Generally, a *Fatwa* is issued at the request of an individual or of a judge to resolve an issue where Islamic jurisprudence is

not clear. Contrary to widespread belief, a *Fatwa* is not necessarily a conviction. Rather, it is a religious opinion that may relate to various areas: tax rules, ritual practices or food.

**Feqh** Legal advice given by the jurists of Islam on Islamic commentaries and sources. There are several schools of *Feqh*, both Sunni and Shiite\*.

**Gozinesh** Selection procedure according to ethnic and religious standards, established by the Act of 1995. This procedure undermines the equality of opportunity and treatment in employment, particularly at the expense of ethnic and religious minorities seeking to work in the public sector or organisations receiving public funding.

**Green Movement** A political movement established after the Iranian presidential election in 2009, green being the symbol of Mir Hossein Mousavi’s campaign (reformist candidate, currently under house arrest). After the election, he became the symbol of unity and hope for those who sought the annulment of what they considered a fraudulent election. “Where is my vote” was a slogan widely used during the 2009 protests. Hundreds of people were killed or violently injured by the paramilitary militia of the *bassidjis*\*.

**Guardian Council of the Constitution** Council set up to ensure compliance of the decisions of the Islamic Consultative Assembly with the commandments of Islam and the Constitution. It is composed of six religious jurisconsults, whose appointment depends on the Supreme Leader\*, and six jurists, distributed among the various branches of law and elected by the Islamic Consultative Assembly from among the Muslim jurists presented at this assembly by the head of judicial power. The compliance of the texts adopted by the Islamic Consultative Assembly with the commandments of Islam must be assessed by a majority of all the members of the Guardian Council. All bills must obtain the approval of this Council. If a conflict is found, it must report to the Expediency Discernment Council\* who shall decide. The Guardian Council has gradually taken control of nominations for parliamentary and presidential elections.

**Hadd (plural Hudud)** Muslim legal term for the legal penalties prescribed by the Koran. The offences against morality that they enforce are seven in number: adultery, false accusation of this crime, alcohol consumption, theft, robbery, apostasy and rebellion. In the NIPCI, the *Hadd* penalty is fixed, mandatory and cannot be adjusted by the judge.

**High Council for Human Rights** In 2001, the Head of the Judiciary issued a directive concerning the establishment of the High Council for Human Rights to improve coordination between the relevant institutions in accordance with the duties assigned to the judiciary by the Constitution. The Council consists of representatives from different sectors of the judiciary and other national governmental organisations. It is responsible for reviewing malfunctions, complaints for violations of citizens’ rights and offering practical solutions in accordance with the law. The Council Secretariat reports its activities to the Head of the Judiciary and to those in charge of the competent organisations and ministries every six months. In 2007, the Council amended its statutes and increased the number of its members as well as the number of institutions competent on human rights.

**International Covenant on Civil and Political Rights (ICCPR)** An International Treaty adopted in New York on the 16<sup>th</sup> December 1966 by the United Nations General Assembly in its resolution 2200 A (XXI). The Covenant is supplemented by two protocols: one dated 16<sup>th</sup> December 1966 and the second prohibiting the death penalty dated 15<sup>th</sup> December 1989. Iran signed the ICCPR in 1968 and ratified it on the 24<sup>th</sup> June 1975.

**Iranian Constitution** The Constitution of the Islamic Republic of Iran was adopted in December 1979 by national referendum. The Constitution contains 14 chapters divided into 177 articles and was adopted by the Assembly of Experts. The essential principles of human rights are mentioned therein, such as the dignity of the human person, political and civil rights, prohibition of depriving individuals of their fundamental freedoms, minority rights, the principle of non-discrimination and equality before the law.

**Iranian judicial system** Since 1979, the judicial system in Iran is based on the Shia Islamic law. In an Iranian court, the judge has absolute power and acts as a prosecutor, jury and arbitrator. The system is based on investigation. However, according to Article 168 of the Constitution of Iran, in some cases involving the media, a jury is allowed to be the arbitrator. The head of the judiciary is appointed by the Supreme Leader\* and in turn appoints the president of the Supreme Court and the Attorney General. Public courts deal with civil and criminal cases. There are also revolutionary courts that have jurisdiction over certain types of crimes, such as crimes against national security, drug trafficking and acts involving the Islamic Republic. The decisions of the revolutionary courts are final, with no possibility of appeal. The decisions of the Special Court of the Clergy, which operates independently of the traditional judicial system and is accountable only to the Supreme Leader, are final and cannot be appealed. The Special Court of the Clergy judges crimes committed by clerics, although they have also been responsible for cases involving lay people.

**Iranian political system** Political life in Iran is based on an Islamic theocratic republic. According to the 1979 Constitution, promulgated by the Ayatollah\* Khomeini, all Iran's institutions and activities are based on the principles of *Sharia*\* and the theory of *velayat-e-faqih*\*. The president of the Republic is elected by direct universal suffrage for a term of four years, renewable once. The highest religious authority is the Leader of the Revolution\*. The Islamic structures of the institutional system are the following: the Assembly of Experts\*, the Guardian Council of the Constitution\*, the *Majles*\* or the Parliament and the Expediency Discernment Council of the System\*.

**Kurds** Ethnic group whose members are spread over several countries: Iran, Turkey, Iraq and Syria. In Iran, the Kurds are a minority mainly present in the north and the west. They speak similar dialects, all coming from Kurdish, an Indo-European language of the Iranian branch. Kurdish uses different alphabets (Latin, Cyrillic, Arabic, Persian) and has several variants. For a century, some Kurds have been fighting for self-determination so as to achieve political autonomy. In recent years, several journalists, students and militiamen of Kurdish origin have been sentenced to death for opposing the Iranian regime.

**Mahdi** Muhammad al-Mahdi was the twelfth and last Imam of Twelver Shiism and was "hidden" (that is, he mysteriously disappeared) in the 9<sup>th</sup>-10<sup>th</sup> century. This "hidden Imam" (*mahdi*) lives in an invisible world and will one day reappear permanently among men to seek justice. This messianic dimension of Shiism, with its

belief of salvation through suffering, was fuelled by the large number of Imams murdered, which resulted in a significant martyrology. He is the "saviour" awaited for by the Twelver Shiites who is expected to appear at the end of time. According to Shiism, the *Mahdi* will appear during the last days of the world's existence and will be a major sign of the end of time.

**Majles** The Islamic Consultative Assembly of Iran, or Iranian parliament, represented by the Iranian legislature. It was formerly composed of 270 members but since the elections of the 18th February 2000 the number increased to 290. The members of the *Majles* are elected for four years by direct universal suffrage. Five seats are reserved to represent recognised religious minorities: Zoroastrians, Jews and Christians (mainly Armenians). It has the power to pass laws, approve or overturn the executive power, including the President. If a third of the members question the President of the Republic, the latter is then forced to justify himself before this Assembly within a month. If he is refused confidence by two thirds of the members, the Leader of the Revolution\* is informed and shall make the decision to dismiss him or not. However, this legislative power is exercised under the supervision of the Guardian Council\* and, *in fine*, of the Expediency Discernment Council of the System, which may grant itself legislative powers in exceptional circumstances.

**Majority** The age of criminal responsibility is the age at which a person is recognised by law as fully accountable. In the Iranian Civil Code, criminal responsibility is set at the age of 9 lunar years for girls and 15 lunar years for boys. The NIPCI maintains the death penalty for minors and grants the judge the power to assess whether a minor has understood the nature of his/her crime and if he/she was sufficiently mature at the time of committing the crime, and decide whether to apply this penalty or not.

**Marjaa** Lit. "source of imitation" or "source of tradition." A *Marjaa*, also known as *Marja-e Taqlid* is a jurist with the highest authority in Twelver Shiism. The *Marjaa* receives the title of Grand Ayatollah\*.

#### **Minorities:**

–**ethnic** Iran is an ethnic, linguistic and religious mosaic even though the Iranian ethnic group, Farsi language and Shia Islam have a large majority. Azeris, Turkmen, Kurds, Arabs and Baloch are ethnic minorities in Iran.

–**religious** Most Iranians are Twelver Shiites. Twelver Shiism is the official religion of Iran to which 90% of the population belongs. However, the country has numerous religious minorities: Sunni Muslims, Christians (Armenians and Assyrians), Zoroastrians, Jews, Bahá'ís, Babis, Yarsans (*Ahl-e Haqq*), Hindus, tribal religious minorities, etc.

**Moharebeh** Lit. "waging or engaging in a war against God", "being the enemy of God" or "enmity against God." This is a crime punishable by death in the Islamic Republic of Iran, which Article 279 of the IPCI defines as: "a person who takes up arms with the intent to harm the life, property or honour of people or to intimidate them, leading to an atmosphere of insecurity." The death sentence may be imposed in the case of *moharebeh*, but the judge has the possibility to impose an alternative sentence. This term was more widely used in Iran against armed separatist groups, but also against unarmed opponents after 2009, to designate crimes that impact society as a whole, such as acts of terrorism or armed attacks against civilians,.

**Moratorium** Provisional suspension of a law, which, in particular, enables to assess its utility. On the 19<sup>th</sup> November 2012, the Third Committee of the United Nations General Assembly passed a resolution calling on all Countries to establish a universal moratorium on executions with a view to eventually abolishing the death penalty.

**Mujtahid** A specialist in Islamic law, found eligible to practice *Ejtehad* or personal interpretation of an issue of Islamic law, while the rest of believers must rely on a religious authority.

**Pasdaran** Army of the Guardians of the Islamic Revolution (*Sepah-e Pasdaran-e Enghelab-e Eslami*), often called the Guardians of the Revolution (*Sepah-e Pasdaran*) commonly abbreviated as *Pasdaran*. Paramilitary organisation of the Islamic Republic of Iran directly controlled by the Supreme Leader\*, formed due to the collapse of the military and security forces. Founded by a decree of the Ayatollah\* Khomeini in May 1979, this militia was originally an ideological force in service of the new regime. It then gradually offset the regular army that was not trusted by the Supreme Leader; its role was consolidated during the war between Iran and Iraq. The Guardians of the Revolution are the largest economic influence group in Iran.

**Penal Code (IPC, IPCI, NIPCI)** The term Iranian Penal Code (IPC) or Islamic Penal Code of Iran (IPCI) refers to a set of texts collected under the name of Islamic criminal laws. They are now in force in Iran and were approved by the Parliament of Iran (*Majles*) on the 30<sup>th</sup> July 1991 and ratified by the Expediency Discernment Council on the 28<sup>th</sup> November 1991. These laws reflect the interpretation of the *Sharia*\* by the clerics in power, based on the *Jaafari* rite or the Twelver Shia school of jurisprudence. In particular, the IPCI provides for three types of punishments specified in the *Sharia*: the *Hudud*\* (crimes against God, such as alcohol consumption and adultery for which the *Sharia* assigns fixed and specific penalties, the *qisas*\* (retributive justice often reserved for murder) and the *diyah*\* (“blood money”) or victim compensation. It also provides for discretionary punishments (*taa'zirat*\*) that are not expressly stated in the *Sharia*. These laws also contain rules that organise the process of repression of an offence, i.e. the Code of Criminal Procedure. Most charges punishable by death are set out in the Islamic Penal Code. However, some charges, such as those related to drugs, are defined in other laws. The IPC has already been amended in January 2012 and the *Majles* finally adopted the New Islamic Penal Code (NIPCI) in April 2013. It was ratified by the Guardian Council of the Constitution and promulgated by the Government in May 2013.

**Qadf** Lit. “false accusation of sodomy”. Sodomite or adulterous act attributed to another person. For the act of sodomy, a death sentence will be imposed on the “active party” only if he is married or has forced the sexual act, but the “passive party” will be sentenced to death regardless of marital status. A non-Muslim “active party” who participates in a sexual act with a Muslim “passive party” will also be sentenced to death. The non-Muslim “active party” of a homosexual relationship that does not include penetration will also be sentenced to death. Lesbianism will be punished on the fourth offence if the accused persons are convicted and were punished by whipping for the first three offences.

**Qajar** This dynasty ruled Iran from 1876 to 1925. Its founder is Agha Mohammad Khan and his last representative is Ahmad Shah, overthrown in 1925. It was replaced by the dynasty Pahlavi Homayouni with Reza Shah from 1925 to 1941 and then Mohammad Reza Shah from 1941 to 1979.

**Qisas / qisas-e-nafs** Lit. “law of Talion”, “retribution”. Category of crimes which, according to the *Sharia*\*, involves injuries to a victim. If a person has intentionally maimed or killed another person, the victim (or the victim’s family) is entitled to retribution “equivalent” to the damage suffered. The sentence to be imposed on the perpetrator of the crime is equivalent to the crime committed (law of retribution). However, the victim (or the victim’s family) can forgive the author: in this case, the penalty is not executed but the perpetrator must nonetheless pay the victim with blood money (*diyah*\*) to compensate for the injuries or the death he is guilty of.

**Rahbar, Rahbar-e enqelab** Lit. “Supreme Leader (of the revolution)”. The Supreme Leader is the highest political and religious leader in Iran and is appointed by the Assembly of Experts\* for an indefinite term, possibly for life. The principles 109 and 110 of the Constitution determine the conditions, the powers and duties of this Leader.

**Rebellion** Article 287 of the NIPCI defines a “rebel” as a member of a group that campaigns for an armed uprising against the Islamic Republic of Iran. If the person uses a weapon, he/she will be condemned to death.

**Sabb-on-nabi** Lit. “vilifying the prophets”. Article 262 of the NIPCI imposes the death penalty for those who insult the Prophet Muhammad or any other prophet of Islam, or those who accuse the infallible Imams and the Prophet’s daughter, Fatima Zahra, or who practice the act of sodomy or fornication.

**Shiism** Shiism is one of the main branches of Islam. It is composed of all the communities who believe that the Prophet’s succession should have been passed down only to Alids, i.e. Ali (Muhammad’s cousin and son-in-law) and his descendants, the imams. It represents about 10% of Muslims in the world and is divided into many Twelver obediences (also called Imami), Ismailis (also called Seveners) Zaydis, etc.

– **Twelver** A branch of Shiism whose followers believe in the existence of the twelve imams (Ali and his eleven successors). The majority of Shiites are Twelver or Imami and recognise the authority of the twelve Imams as true guides inspired by a divine decree passed in favour of the descendants of Ali. The twelfth and last Imam, Muhammad al-Mahdi, is not dead but was “hidden”, that is, he mysteriously disappeared in the 9<sup>th</sup> - 10<sup>th</sup> century. This “hidden imam” (the *Mahdi*) is living in an invisible world and will one day reappear permanently among men to seek justice. The Twelver Shiites have faith in the return of the *Mahdi*. Twelver Shiism is the official religion in Iran. Major Shiite communities also live in Iraq, Lebanon, Azerbaijan and Bahrain.

**Special procedures / special rapporteurs** The special procedures are mechanisms related to the UNHRC to investigate and intervene on alleged violations of human rights around the world. These special procedures are represented by a person (special rapporteur or independent expert) or a working group. In June 2014 there were 51 such procedures: 37 thematic mandates and 14 country mandates. Holders of special procedure mandates have the ability to use all sources of information, including communications received from individuals or transmitted by NGOs. Their reports are made public so as to ensure that governments assume responsibility and cooperate. On the 24<sup>th</sup> March 2011, a resolution establishing the mandate of a special rapporteur on the situation of human rights in the Islamic Republic of Iran was adopted



by the HRC. On the 17<sup>th</sup> June 2011, the President of the HRC appointed Mr. Ahmed Shaheed, former Foreign Minister of the Maldives, as special rapporteur on the situation of human rights in Iran. Mr. Shaheed has officially carried out the mandate since the 1<sup>st</sup> August 2011, it was renewed in 2014. He is the first special rapporteur of the HRC for the situation of human rights in the Islamic Republic of Iran.

**Stoning** A form of execution used in pre-Christian times throughout the Mediterranean basin and in contemporary times in some Muslim countries. The penalty of stoning is written in the IPCI (Article 225 et seq.). However, courts may opt for an alternative to this death sentence, with the approval of the president of the court. The NIPCI favours stoning as a method of execution for those found guilty of adultery, and amputation and crucifixion for other crimes, such as “enmity against God”. In international law, stoning is considered a cruel and inhuman method, particularly because the size of the stones is often limited so as to prolong suffering and postpone death. According to the Iranian authorities, stoning is a humane punishment, since they believe that the long duration of stoning allows men, who are buried to the waist, and women, who are buried up to the chest, to dig themselves out of their hole and escape punishment.

**Ta’azir (plural Ta’azirat)** Offences of *Ta’azir* are all other offences for which a *Hadd\** or a *Qisas\** was not provided for by Islamic law. These offences are not listed restrictively in Islamic law textbooks. They mainly include offences related to endangering the security of the state or *moharebeh\** for which the death penalty may be imposed, or even flogging for “insulting a public official”, “illegal gathering” “sale of alcoholic beverages”, “disturbing public order” and “lying to the authorities.”

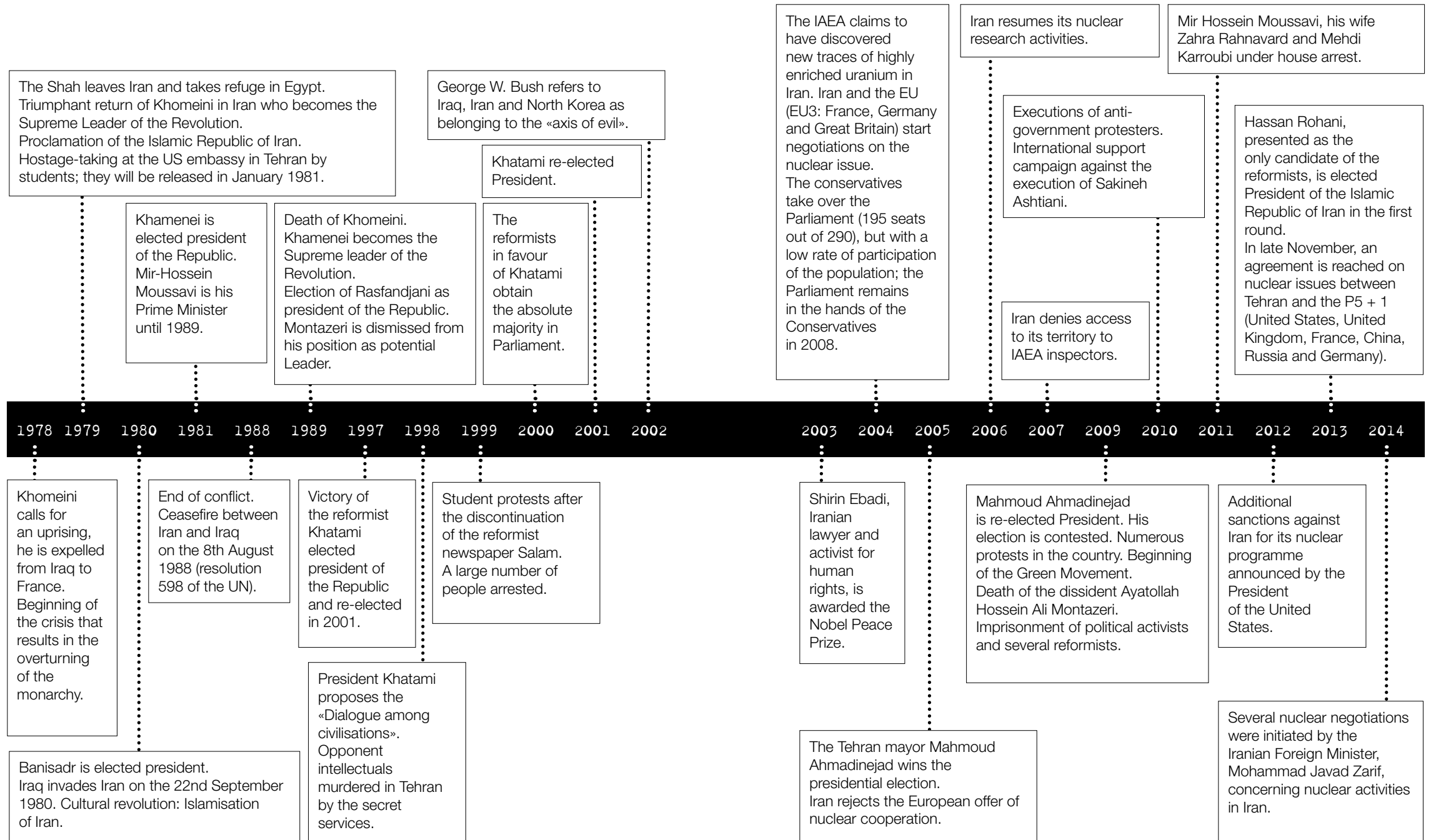
**The People’s Mojahedin Organisation of Iran (PMOI)** *Sazman-e Mojahedin-e Khalq-e Iran* in Farsi. Armed resistance movement to the regime of the Islamic Republic of Iran. Founded in opposition to the Shah, the PMOI remained active in Iran and outside, during and after the Islamic Revolution of 1979. It was led by Massoud Rajavi and since 1989 has been led from France by his wife, Maryam Rajavi. The organisation was placed on the list of terrorist organisations by the United States from 1997 to September 2012, by the Council of the European Union from 2002 to January 2009 and by the British Home Office until June 2008. The PMOI is a member of the National Council of Resistance of Iran, which claims to be fighting for the establishment of a democratic and secular system in Iran.

**United Nations Office on Drugs and Crime (UNODC)** Office of the United Nations Secretariat headquartered in Vienna, Austria. Founded in 1997 by the merger of the United Nations International Drug Control Programme (UNDCP) and the International Centre for International Crime Prevention of the United Nations (CICP), the UNDCP was originally called Office for Drug Control and Crime Prevention and renamed in October 2002. This office set up an agency in Tehran in July 1999. In 2010, the UNODC and the Government of the Islamic Republic of Iran developed a new programme of multilateral technical cooperation on drugs and crime for the period from 2011 to 2014.

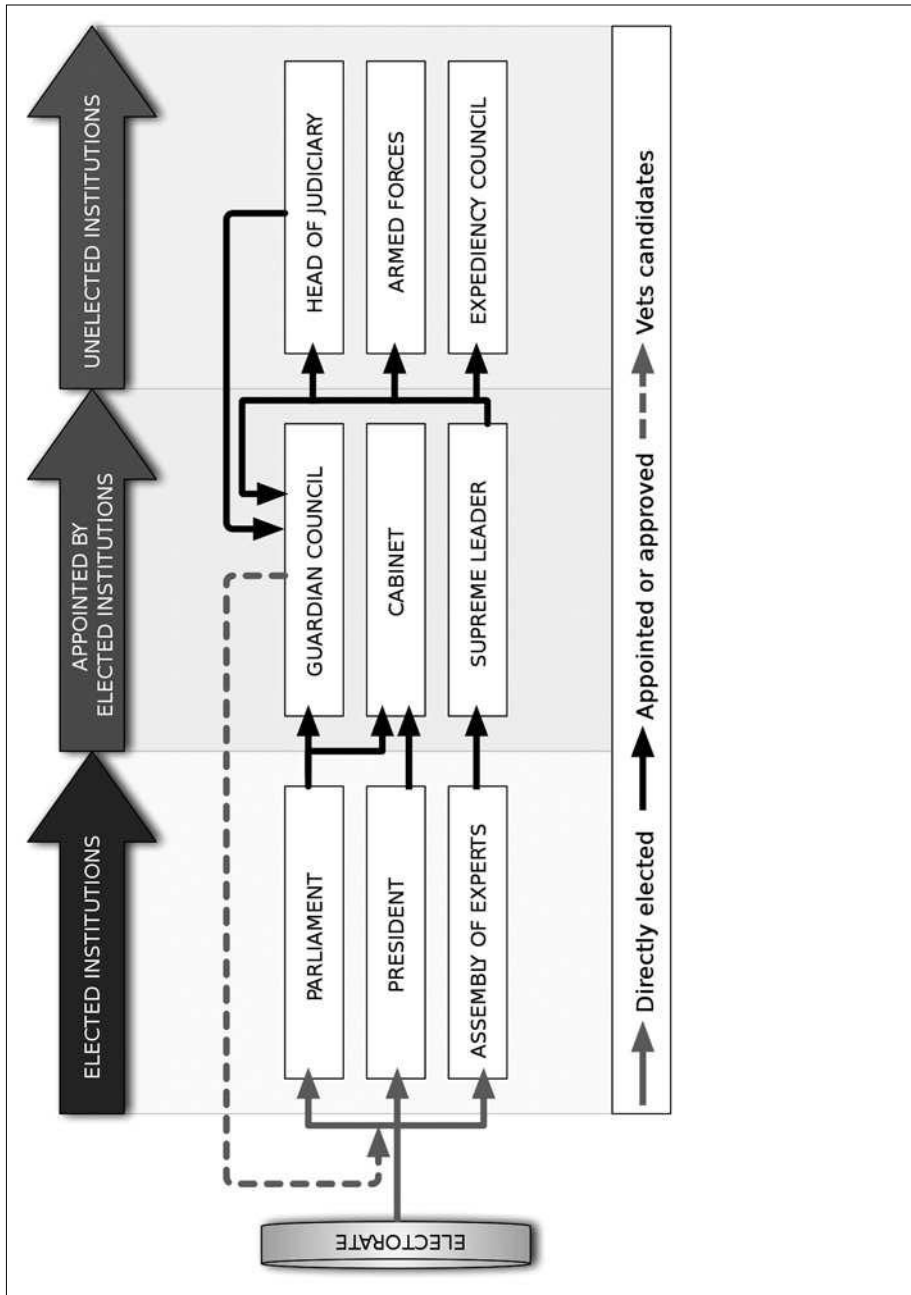
**Velayat-e-faqih** Lit. “tutelage of the jurisconsult” or “guardian of jurisprudence”. Theological principle developed by the Ayatollah\* Khomeini in the early 1970s and by Mohammad Sadeq al-Sadr, and imposed since the Islamic Revolution by the 1979 Constitution. It is a principle of clerical theocracy that advocates religious government and is founded on the fact that in the absence of the *mahdi\**, no power is legitimate

to govern men. Following this logic, Ayatollah Khomeini translated in political terms the concept of supreme authority. Hence, he defended the idea of a tutelage (*Velayat*), at the highest level of the state, of a “religious jurisconsult” (*Faqih*) appointed among his peers as the most competent and most capable of clerics and, as such, endowed with the supreme religious and political authority in Iran (thus bearing the title of *Rahbar\** or Supreme Leader of the Revolution). The 1979 Constituent Assembly decided to place a religious leader at the head of the nation. He was responsible for guaranteeing a kind of regency until the return of the last legitimate Imam: the Ayatollah Khomeini. Ali Khamenei was appointed after the death of the leader in 1989.

## Chronology of the Contemporary History of Iran



## The Iranian Political System



## International treaties signed and conventions ratified by Iran

Main universal instruments relating to human rights	Date of ratification, accession or succession
Convention on the Prevention and Punishment of the Crime of Genocide	14th August 1956
International Convention on the Elimination of All Forms of Racial Discrimination	29th August 1968
International Covenant on Economic, Social and Cultural Rights	24th June 1975
International Covenant on Civil and Political Rights (ICCPR)	24th June 1975
Convention relating to the Status of Refugees	28th July 1976
Convention on the Rights of the Child (CRC)	13th July 1994
CRC: Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	26th September 2007
Convention on the Rights of Persons with Disabilities	23rd October 2009

## Fundamental instruments that Iran does not adhere to

- International Covenant on Economic, Social and Cultural Rights – Optional Protocol
- ICCPR - Optional Protocols 1 and 2
- Convention on the Elimination of Discrimination against Women (CEDAW)
- CEDAW - Optional Protocol
- Convention against Torture
- Convention against Torture - Optional Protocol
- CRC - Optional Protocol on the Involvement of Children in Armed Conflict
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Convention on the Rights of Persons with Disabilities - Optional Protocol
- International Convention for the Protection of All Persons from Enforced Disappearances

## Author Biographies

### Diane Ala'i



Diane Ala'i has been the representative of the Bahà'i International Community to the United Nations in Geneva since 1992. As part of her duties, she has participated in numerous sessions of UN bodies such as the General Assembly (UNGA), the former Commission on Human rights, the Sub-Commission on Prevention of Discrimination and protection of Minorities and its working groups, the monitoring bodies of UN treaties and other bodies, including the Executive Committee of the High Commissioner of the United Nations for Refugees (UNHCR).

### Sanaz Alasti



Sanaz Alasti is the director of the Centre for Death Penalty Studies at the University of Lamar (Texas State University) and assistant professor of criminal justice at the same university. She is the author of several books on criminal law and comparative punishment practice. She has attended numerous conferences in the United States, the Middle East and Europe to discuss the arbitrariness of capital punishment.

### Taimoor Aliassi



Taimoor Aliassi is a UN representative of the Association for Human Rights in Kurdistan of Iran - Geneva (KMMK-G), created in 2006, which works for the respect of human rights. He is of Kurdish Iranian origin and is a Swiss citizen. He studied at the Graduate Institute in Geneva and is specialised in international law.

### Leila Alikarami



Leila Alikarami is a lawyer and human rights activist and holds a Master of Laws (LLM). She has mainly been working since 2001 on the issue of the rights of women and children. She is the Executive Director of the Centre for Supporters of Human Rights (CSHR). In 2009 she received the Anna Politkovskaya Award and has participated in a number of conferences abroad.

### Hossein Alizadeh



Hossein Alizadeh is the coordinator of the regional programme for the Middle East and North Africa for the International Gay and Lesbian Human Rights Commission (IGLHRC). He worked as head of communications for the IGLHRC while monitoring violations of LGBT rights in Iran and Iraq. He holds two master's degrees, one of them in International Relations from the University of Tehran.

### Mahmood Amiry-Moghaddam



Iranian-Norwegian neuroscientist and defender of human rights, Mahmood Amiry-Moghaddam, is the founder and spokesman of the association IHR. He received the Amnesty International Norway's human rights award in 2007 for his fight against violations of human rights in Iran. He is professor of Medicine and Director of the Laboratory of molecular neuroscience at the University of Oslo. Since 2011, he has been collaborating with ECPM for the publication of the annual report on the death penalty.

### Emadeddin Baghi



Emadeddin Baghi, a journalist who was imprisoned after the June 2009 elections, lives in Tehran and fights against the death penalty in his country. He is a theologian and writer and served several years of imprisonment for "*propaganda against the State*", for writing articles denouncing the executions in his country and claiming rights for prisoners. Since 2009, he has no right to leave Iran. Founder of the association "For the Right to Life", he was awarded the human rights prize of the French Republic in 2005 for his campaign for the abolition of capital punishment in Iran, and the Martin Ennals award in 2009, which rewards an individual's commitment in favour of human rights.

### Éric Bronson



Eric Bronson is an associate professor, director of the criminal justice programme and co-director of the Centre for Death Penalty Studies at the University of Lamar (Texas State University). He received his undergraduate degree in sociology at Western Kentucky University in 1996 and a master's degree in sociology from the same university in 1998. He received his doctorate in sociology at the University of Bowling Green in 2002.

### **Raphaël Chenuil-Hazan**



Raphaël Chenuil-Hazan is the director-general of ECPM and Vice President of the World Coalition against the Death Penalty and an active player in the Arab world, Africa and Asia. He has always been involved in the field of human rights and particularly in the fight against the death penalty. His deep commitment was strengthened after witnessing tragic events (public lynching and floggings). He also works with European diplomatic schools, particularly in France and Spain, and teaches at the University of Évry for the master in human rights and humanitarian law.

### **Shirin Ebadi**



Shirin Ebadi was, in 1974, the first woman to become a judge in Iran. She is particularly involved in the struggle for the rights of children and women in the Islamic Republic of Iran. Professor at the University of Tehran, she is also the lawyer of several political dissidents and activists. She is the first Muslim woman to receive the Nobel Peace Prize in 2003 for her struggle for peace and democracy.

### **Tabassom Fanaian**



Tabassom Fanaian is a graduate of the University of Oslo in political psychology and is pursuing her doctoral research in psychology of religion. She currently teaches psychology to students at the Bahà'i Institute for higher education (BIHE). Since February 2013, she has also been working as a researcher and translator at the NGO Iran Human Rights (IHR). Her academic research fields cover the subjects of theocracy, democratisation, political behaviour and social movements.

### **Patrick Gallahue**



Patrick Gallahue is the former head of the “death penalty” project at the International Harm Reduction Association (IHRA) which he joined in 2009. He is the author of articles and reports on the use of the death sentence for drug trafficking-related crimes, on the complicity of the technical support and development cooperation agencies in violations of human rights and on the connection between the battle against terrorism and the enforceability of rights, between the battle against drugs and humanitarian law and between the battle against terrorism and that against drug trafficking. He was formerly a journalist in New York and won several local and national awards. He holds a Bachelor's degree from Long Island University and a Master in International Human Rights Law from the University of Ireland in Galway.

### **Reza Moini**



Reza Moini is in charge of Iran, Tajikistan and Afghanistan for Reporters Without Borders (RWB). He has a deep knowledge of political persecution, violations of freedom of expression and executions in Iran.

### **Mani Mostofi**



Mani Mostofi is a lawyer and defender of human rights and a specialist of the Middle East. He served as director of Impact Iran (II), an advocacy coalition on human rights. He previously worked in NGOs, including as a researcher at HRW on migrant labour issues in Bahrain, and for the International Campaign for Human Rights in Iran. He has written several reports and conducted advocacy campaigns at the United Nations in Geneva and New York. He earned a master's degree in Middle Eastern Studies from the University of Texas (Austin), and a PhD in Law from the Law School of Fordham University.

### **Rose Parris Richter**



Rose Parris Richter is the Special Assistant to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran. Since 2012, she has also been the director of the human rights office of the Iran Section at the University of New York. This section works with the High Commissioner for Human Rights of the United Nations in order to support the mandate of the Special Rapporteur. She served as Special Advisor on issues of human rights and humanitarian and development issues in the Permanent Mission of the Republic of Maldives to the United Nations. She previously worked as a consultant of the permanent mission of East Timor to the United Nations. She studied biology at the Hawaii Pacific University as well as political science, labour law and international affairs at the universities of Cornell, Maryland and Long Island.

### **Pejman Pourzand**

Pejman Pourzand earned a PhD in Law from the University of Paris I. He began his university studies at the Faculty of Law of Tehran where he received his Bachelor's and a Master's degree in Criminal Law and Criminology. He pursued his studies in France with a Diploma of Advanced Studies (DEA) in criminal policy and under the supervision of Professor Mireille Delmas-Marty he wrote a thesis on criminal internationalisation and the interlinking of normative spaces (published in the *Librairie générale de droit et de jurisprudence* - LGDJ, in 2008, he was granted the thesis prize of the Varenne Foundation). Besides his field work experience at the Extraordinary Chamber in the Courts of Cambodia and at the International Criminal Court, he has taught at

the UNESCO Chair for Human Rights, Peace and Democracy and at the Faculty of Law of the University of Tehran-Beheshti. Since September 2010, he has been appointed to the chair for comparative legal studies and internationalisation of law as a research associate professor at the College de France and participates in on-going research projects. He is participating in the research project involving the College de France and the Ecole Normale Supérieure for the development of a dynamic mapping of changes in law.

### **Hossein Raeesi**



Hossein Raeesi graduated from the University of Shiraz in 1991 and is now a lawyer specialised in human rights and the defence of people sentenced to death. His office, originally based in Shiraz (Iran), was moved to Toronto (Canada). He is a member of the Human Rights Council and the Bar Association of the Province of Fars and founder of the Bar Association Nedayeh Edalat.

### **Ahmed Shaheed**



Ahmed Shaheed was the Foreign Minister of the Maldives from 2005 to 2007 and is an expert on foreign policy, diplomacy and human rights, especially in Muslim countries. He played a leading role in the democratic transition of his country. In August 2011 he became a Special Rapporteur of the United Nations on the situation of human rights in Iran. He is also a professor at the University of Essex and the City University of New York.

### **Ali Shirzadi**



Mohammad Ali Shirzadi is an Iranian journalist and filmmaker. In January 2012, he was imprisoned for five months in the notorious prison of Evin for filming an interview between Emadeddin Baghi and the Ayatollah Montazeri, which was broadcast on the Persian BBC in December 2009, shortly after the death of Montazeri. He was present at the 5<sup>th</sup> Congress against the death penalty in Madrid to represent the association “For the Right to Life” founded by Emadeddin Baghi.

### **Nasrin Sotoudeh**



Born in 1963 in a religious Iranian middle class family, Nasrin Sotoudeh studied law at Shahid Beheshti University in Tehran. After completing her studies in international law, she passed the Bar examination in 1995, but had to wait several years before being able to practice as a lawyer. She then began to defend cases of battered women and abused children. A close associate of Shirin Ebadi, she was arrested on the 4<sup>th</sup> September 2010 for “*spreading propaganda and conspiracy threatening state security.*” In October 2010, the International Campaign for Human Rights in Iran and many international organisations defending human rights joined forces to make a joint statement denouncing her arrest and calling for her immediate release. In January 2011, the Iranian authorities condemned her to eleven years in prison. She decided to start a hunger strike. On the 26<sup>th</sup> October 2012, the European Parliament awarded her the Sakharov Prize. On the 18<sup>th</sup> September 2013 she was pardoned and released.

# About ECPM



Founded in 2000, the association Together against the death penalty (ECPM) is today the cornerstone association in the fight against the death penalty. All over the world, ECPM campaigns for the abolition of the death penalty to mobilize and bring together new abolitionists, by acting with lawyers defending death row inmates, raising awareness in public opinion and promoting a humanist view of justice.

## The missions of ECPM

### Uniting abolitionists around the world

Every three years, ECPM organises the World Congress that brings together thousands of political representatives, civil society organisations, jurists and artists from abolitionist and retentionist countries to develop future strategies. In 2012, ECPM launched its first Regional Congress in Rabat for the Middle East and North Africa region (MENA). The next one, scheduled in 2015, will be devoted to Asia. Strasbourg 2001, Montreal 2004, Paris 2007, Geneva 2010, Madrid 2013 etc. Thanks to the fruitful discussions, large-scale media coverage and a high level of representation, the World Congress of ECPM has become the meeting place for the international community to unite abolitionist forces and think about future strategies together.

### Building the capacity of local actors and acting with them

Because the fight for abolition implies local victories, ECPM supports the formation of national and regional coalitions.

- Development of the Moroccan abolitionist movement in partnership with the Moroccan Organisation for Human Rights (Organisation marocaine des droits humains - OMDH) and the Moroccan Coalition against the Death Penalty (Coalition marocaine contre la peine de mort - CMCPM);
- Supporting actors of the MENA region in twelve target countries: Algeria, Morocco, Tunisia, Lebanon, Jordan, Egypt, Iraq, Palestinian Territories, Libya, Syria, Yemen and Iran;
- Structuring the abolitionist movement in Central Africa: organisation of training workshops (especially lawyers), lobbying and conferences in Cameroon, the Republic of the Congo, the Central African Republic, Kenya, Chad and Tanzania ([www.africabolition.org](http://www.africabolition.org));
- Supporting the creation of abolitionist parliamentary networks.

### Lobbying for universal abolition

The creation of the World Coalition against the Death Penalty was initiated in 2002 by ECPM that is now a founding member of its executive board. The Coalition ([www.worldcoalition.org](http://www.worldcoalition.org)) now has over one hundred and fifty members: NGOs, Bars, local authorities and trade unions around the world.

ECPM, together with the World Coalition and its partners, conduct lobbying and public mobilisation campaigns with policy makers: call for a universal moratorium on executions from the United Nations, World Day against the Death Penalty...

### Conducting judicial investigative missions

- Joint publication with Iran Human Rights (IHR) of the *Annual report on the death penalty in Iran*;
- *Voyage au cimetière des vivants (Trip to the cemetery of the living)*, the first report published in Morocco following an investigative mission on death row, in partnership with the Moroccan Organisation for Human Rights (OMDH);
- *Buried alive, a study of the death penalty in Tunisia*, a report following the investigative mission conducted on the country's death row;
- *999, the Death Penalty in the United States. A Polymorphous Torture*, an investigative mission in seven US States (California, Utah, Oklahoma, Texas, Mississippi, Tennessee and Pennsylvania);
- Investigative mission on the death row of the African Great Lakes countries (DRC, Burundi and Rwanda): this investigation was awarded the Human Rights Prize of the French Republic;
- Project for a similar investigative mission in Algeria.

### Educating and raising awareness on abolition

- Because even in abolitionist countries, raising awareness is a continuous struggle.
- Because abolition will be truly effective when every citizen will stop considering the death penalty a tool of justice.
- As a reminder that a justice that kills is administered mostly in a discriminatory manner, affecting the most vulnerable groups.
- To help young people understand what is at stake behind such a struggle for the most fundamental human right, the right to life.

### Taking action and creating educational tools

- Éduquer à l'abolition (Lessons in Abolition) is a programme intended for secondary school and high school students (over 5,000 students targeted since October 2009). ECPM provides tools (teaching guides, course modules...). Presentations are given with the participation of experts in the field, victims or families of victims of the death penalty.
- Sensitising public opinion as to the situation of minorities and vulnerable groups: participating in the Gay Pride at the Festival of Humanity...
- "On the way to universal abolition": this exhibition in French, English, Spanish and Arabic gives a comprehensive and historical view of the abolitionist process worldwide.
- *Le Journal de l'abolition (Abolition Journal)*, 10,000 copies distributed for free in partnership with *Ouest-France*.
- *Le Mail de l'abolition (Abolition Mail)*, monthly newsletter sent to over 30,000 people as a source of information about current affairs.
- [www.abolition.fr](http://www.abolition.fr), the reference website on the death penalty.
- On Facebook (Ensemble contre la peine de mort – ECPM) and Twitter (AssociationECPM) to exchange and find out the latest news.





ECPM  
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