

The Death Penalty in Iran

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Abstract. Iran is probably the country with the world's highest rate of execution. The death penalty can be imposed for a broad range of crimes although most cases involve drug-related crimes or murder. The number of executions declined in the mid-2010s following amendments to drug legislation but the reduction was only temporary. In cases of murder, the family of the victim participates in the penalty phase, with the right to insist on capital punishment unless the perpetrator provides 'blood money'. Iran is one of the few countries to permit public executions. It also allows execution of individuals who were under the age of 18 at the time of the crime. Iran is in quite flagrant conflict with international legal obligations it has assumed with respect to capital punishment.

Key words. Iran, Islam, Shariah, juvenile, narcotic drugs

International attention focussed on imposition of the death penalty in Iran following the wave of 'Women-Life Freedom' protests that roiled Iran following the murder of Jina (Mahsa) Amini in September 2022. Four protesters were executed and many more faced prosecution for capital charges relating to their political activities. Iran has also resumed the practice of public executions in a few cases, including one of the anti-government demonstrators (Together Against the Death Penalty, 2023, p.50-51). Several United Nations human rights experts issued a statement condemning prosecutions for capital offences relating to peaceful demonstrations and legitimate political protest (UN Office 2022, Stop sentencing). They also expressed concern about the sentencing to death of a musician, Saman Yasin, for 'waging war against God', known as *moharebeh*, by means of songs criticising the government (UN Office 2022, Iran: UN experts).

For the year 2022, Iran is reported to have conducted 582 executions, amounting to well more than half of the global total (Together Against the Death Penalty, 2023, p.13). With a population estimated at about 88 million, this means the rate of executions in Iran was 6.61 per million. Two other countries in the Middle East region, Egypt and Saudi Arabia, also make extensive use of capital punishment. However, the rate of execution in Egypt is about 0.76 per million. In Saudi Arabia, it is about 0.55 per million. The number of executions in the People's Republic of China is not known, but it would need to be in excess of 9,000 per annum in order to compete with Iran, and this number does not seem to be realistic. In a resolution adopted in January 2023, the European Parliament declared that 'Iran has the world's highest number of executions per capita' (European Parliament, 2023, para.G).

Whether Iran is in first or second place globally in executions per capita, it is certainly one of the worst practitioners of capital punishment. Moreover, its rate of execution has been on the increase. The 2022 figure is a dramatic increase over the previous year, when 314 executions were recorded, and 2021, when the number was estimated at 246 (UN Secretary-General 2020, p. 15). This is completely at odds with the global trend, which has shown a constant reduction in total executions for the last several years.

The evolution of Iran's death penalty practice

The United Nations began tabulating statistics on the death penalty in the early 1970s. Member States were asked to complete a questionnaire with information about national law and practice on the subject. This information was presented in reports on the status of capital

punishment issued by the Secretary-General every five years. The first such report, published in 1975, included Iran on its list of 'retentionist' States (UN Secretary-General 1975, p. 10). Iran was hardly alone. According to the Secretary-General, at the time only nine Member States were abolitionist by law with another three that were abolitionist 'by custom', having conducted no executions for at least 40 years. Some 101 Member States retained the death penalty (UN Secretary-General 1975, para.10). In the next 45 years, the picture changed dramatically. According to the 2020 report of the Secretary-General, fewer than 30 States continue to conduct executions; nearly 170 are abolitionist either in law or in practice.

Iran signed the International Covenant on Civil and Political Rights on 4 April 1968 and ratified it on 24 June 1975. Two years later, Iran submitted its initial report on compliance with the treaty to the Human Rights Committee, the body charged with monitoring and implementation of the Covenant. Responding to questions from members of the Committee when the initial report was presented, in 1978, its representative said the number of death sentences handed down and executed had been decreasing continuously (UN Human Rights Committee 1978, Report, para.323). The representative of Iran said that in the previous year one death sentence had been pronounced by a military tribunal and carried out, involving a retired army general who had been convicted on a charge of espionage, and only six death sentences had been rendered by ordinary courts in cases which had all involved murder accompanied by kidnapping, rape or exceptional cruelty (UN Human Rights Committee 1978, Summary record, para.13). The regime of the Shah was known for its brutality but it seems it made only infrequent use of the death penalty.

The 1979 revolution that brought with it a bloodbath of capital punishment. Special courts known as Islamic Revolutionary Tribunals were established throughout the country 'to try persons who had held positions of authority under the government of the Shah'. Judicially ordered executions by these courts began in February 1979 (UN Commission on Human Rights 1983, para. 15). Amnesty International estimated that 4,568 executions had been conducted in the first three years of the revolution (UN Commission on Human Rights 1983, para. 20). In 1985, a United Nations expert mandated by the Commission on Human Rights estimated some 7,000 executions had taken place in the Islamic Republic of Iran between 1979 and the end of 1985. He noted that 'while the number of reported executions reached several thousands per annum in the period 1979-1981, their number in the past three or four years had been considerably lower. Thus, in 1984 there had been some 500 executions, and in 1985 some 470. This trend appears to have continued during 1986.' (UN Commission on Human Rights 1987, para.44) The Commission's Special Representative said some experts believed the figure was much higher.

The 2013 report of the Truth Commission on Iran devoted a chapter to the subject of executions during the 1980-1988 period in which, it said, 'countless' numbers of prisoners were executed. During this period, the main victims of the death penalty were political opponents of the regime and not members of drug gangs or individuals prosecuted for morality-related crimes. The Truth Commission heard evidence 'from families who were formally notified of their loved ones' executions and on occasion saw the body; prisoners who saw cellmates being summoned for execution; prisoners who heard gun shots and counted the coups de grâce; and prisoners who were subjected to mock execution in which they witnessed others being shot'(Iran Tribunal 2013, p.32).

The executions reached a climax in the second half of 1988 when mass executions took place numbering, according to various estimates, anywhere from 2,500 to 30,000. It is unlikely the actual number will ever be known. Many of the killings were in fact 'extrajudicial executions', in that they were not carried out pursuant to judgments of a court but were simple murders of detained individuals by State agents (Amnesty International 2017). Strictly speaking, extrajudicial executions do not fall within the rubric of capital punishment.

When Iran's second periodic report was being examined by the Human Rights Committee, in 1992, vice-chairman Omran El Shafei said the Committee had 'reliable information from a number of sources which indicated that in 1992 there had been 301 executions, 164 of which had been for political reasons. Moreover, following the demonstrations that had taken place in several cities throughout the country in May 1992, nine persons had been put to death while a further 10 were currently awaiting execution merely because they had participated in those events.' (UN Human Rights Committee 1993, Summary record, para.16). In its observations on Iran's second periodic report, the Human Rights Committee 'deplored' the high number of death sentences pronounced and of executions in Iran, 'many of which resulting from trials in which the guarantees of due process of law had not been properly applied'. The Committee referred to imposition of the death penalty for crimes of an economic nature, for corruption, for adultery, and for crimes that do not result in loss of life 'as being contrary to the Covenant'. It also objected to executions that took place in public (UN Human Rights Committee 1993, Comments, para. 8).

Iran was again recognised as 'retentionist' in the reports of the United Nations Secretary-General issued in 1980, 1985, 1990, and 1995, but no further information was provided, presumably because Iran had not responded to the requests for information (UN Secretary-General 1980, Annex, p.2; 1985, Annex p.5; 1990, Annex I, p.18; 1995, Annex II, p. 31). In 2000, the Secretary-General began referring to sources of information about the death penalty other than what was actually provided by cooperative Member States. Iran then appeared on a table of States that had executed more than 20 people during the five-year survey period. Iran was in second place, with 505 executions, well behind the People's Republic of China, with 12,338. The study also estimated the number of executions per capita. Iran was in tenth place, after Singapore, Saudi Arabia, Sierra Leone, Turkmenistan, Kyrgyzstan, Jordan, China, Belarus, and Kazakhstan (UN Secretary-General 2000, Table 2, p. 27). In the 2005 study, Iran remained in second place overall; the number of executions had climbed to 604 while those of China had been cut in half. Iran had climbed to fourth place for executions per capita, after Singapore, Saudi Arabia and Jordan (UN Secretary-General 2005, Table 2, p. 13). By 2010, Iran's executions over the five-year period exceeded 1,000. It was still far behind China but well ahead of Saudi Arabia, which was in third place with 423 executions. Saudi Arabia was in first place in terms of executions per capita, just slightly ahead of Iran (UN Secretary-General 2010, Table 2, p. 21).

Although the current prognosis is especially grim, there have been a few encouraging signs of progressive reforms in recent years. In its most recent report to the United Nations Human Rights Committee, Iran described changes to its legislation that brought 'a serious reduction in the issuance and execution of the death penalty' (UN Human Rights Committee 2021, para.24). Iran said that the new New Islamic Penal Code, adopted in 2013, has taken 'a big step forward' by abolishing the death penalty for criminal offenses other than murder that were committed by minors, an inaccurate description of the law (UN Human Rights Committee 2021, para.36). It also claimed that implementation of the death penalty by stoning had been stopped since 2007 (UN Human Rights Committee 2021, para.28).

Crimes subject to the death penalty

More than 80 distinct offences in Iranian law provide for application of the death penalty. According to the Islamic Penal Code of 2013, the death penalty may be imposed for three categories of crime, *qisas* (retribution in kind), *hudud* or *hadd* (crimes for which punishments are mandated and fixed) and *ta'zir*. The death penalty is possible as a *qisas* crime in the case of murder, in which case the relatives of the victim participate in determining the punishment. The *hudud* crimes for which capital punishment is specifically allowed comprise

a range of sexual offences as well as three vaguely worded crimes that have political dimensions. Article 136 of the 2013 Penal Code authorises imposition of the death penalty in the case of a fourth conviction for a *hudud* offence, apparently regardless of its gravity. Drug-related crimes are punished as *ta'zir*, where the punishment is left to the discretion of the judge. The Special Rapporteur of the Human Rights Council estimated that for the year 2020 the death penalty was imposed for murder in 211 cases, for drug-related offences in 25 cases, for *moharebeh*, *efsad-e fel-arz* and *baghy* in 15 cases, and for rape in 12 cases. He also said that one person was executed for a sixth conviction on the crime of alcohol consumption (UN Human Rights Council 2021, para.46).

The 2013 Code specifies punishment of death for several sexual offences: incest, intercourse with a step-mother, intercourse of a non-Muslim man with a Muslim woman, rape, adultery, sodomy and other homosexual acts by men (arts.224, 225, 234). Lesbian activity (*musaheqeh*) appears to be subject to flogging but not to the death penalty (art 238), and there is no evidence of women being sentenced to death or executed for homosexual acts (Sato and Alexander, 2021, p.42). In the case of *tafkhez*, defined as 'putting a man's sex organ (penis) between the thighs or buttocks of another male person', the death penalty is imposed if the 'active party' is a non-Muslim and the 'passive party' is Muslim. The prurient language in the Code goes so far as to specify that 'penetration that does not reach the point of circumcision shall be regarded as *tafkhez*' (art. 236). The distinction between active and passive parties is an innovation of the 2013 Code. This new 'leniency' benefitting the 'passive' participant was apparently a subject of controversy in the Guardian Council when the law was being drafted (Karimi and Bayatrizi, 2019, p.418, 423).

Use of the death penalty to repress gays and Lesbians has attracted a great deal of attention internationally. A study produced by Monash University states that since 2004, Iran has carried out at least 79 executions for same-sex sexual offences, although the majority of these involved rape rather than consensual acts. The study noted five executions involving homosexual acts between 2015 and 2020, all of them for rape (Sato and Alexander, 2021, p.42-45). According to a report from the Human Rights Activists News Agency, in February 2022 Mehrdad Karimpour and Farid Mohammadi were sentenced to death for 'forced sexual intercourse between two men' and hanged in a prison in the northwestern city of Maragheh (Associated Press 2022). In September 2022, human rights experts of the United Nations called upon Iran to halt the executions of two women sentenced to death 'in relation to their support for the human rights of LGBT people'. The experts 'were informed that the charges concerned speech and actions in support of the human rights of lesbian, gay, bisexual, and trans and other gender-diverse (LGBT) persons who face discrimination in Iran based on their sexual orientation and gender identity' (UN High Commissioner 2022, UN experts). A European Parliament resolution charges that 'the death penalty is disproportionately applied to LGBTIQ+ people' (European Parliament 2023, para. G).

In July 2019, at a press conference in Tehran, a reporter from German tabloid *Bild* asked the Iranian foreign minister: 'Why are homosexuals executed in Iran because of their sexual orientation?' Mohammed Javad Zarif replied: 'Our society has moral principles. And we live according to these principles. These are moral principles concerning the behaviour of people in general. And that means that the law is respected and the law is obeyed.' The German Foreign Minister, Heiko Maas, who was present in Tehran at the time, was criticised for his failure to react (Walsh, A., 2019; UN Human Rights Council 2021, para.49).

In its 2014 report to the Human Rights Council pursuant to the Universal Periodic Review mechanism, the government stated that '[a]postasy, witchcraft and blasphemy are not criminalised in Iran's penal laws' (UN Human Rights Council 2014, para.47). Nevertheless, a form of blasphemy, known as *sabb-e nabi* or 'swearing at the prophet', is punishable by death

under the New Islamic Penal Code (art. 262). According to the Special Rapporteur, two individuals were informed that they had been sentenced to death in April 2021 for *sabb-e nabi* (UN Human Rights Council 2021, para.52). The New Islamic Penal Code also provides for the death penalty where an individual has already been convicted three times of any *hudud* or *hadd* crime (art.136). These can include theft, alcohol consumption, and false accusations of sexual offences. The non-governmental organisation Iran Human Rights said it had been told by a defence lawyer of an individual sentenced to death for a sixth conviction of consuming alcohol. Its report of the execution was confirmed in the state-run newspaper *Khorasan*. The victim was executed in the presence of his lawyer in Mashhad Central Prison on 8 July 2020 (Together Against the Death Penalty, 2020, p.54-55). The Special Rapporteur also expressed concern that another man potentially faces the death penalty in an alcohol consumption case in Tehran after the prosecution requested such a sentence in June 2021 (UN Human Rights Council 2021, para.50).

The *hudud* crimes of *moharebeh* ('enmity against God'), *baqy* (*Rebellion*) and *efsad-e-fel-arz* ('corruption on earth') have been described by the Special Rapporteur as 'vague and broadly formulated'. He said they 'have been used to sentence individuals to death for participation in protests, for other forms of dissent or where there is a lack of evidence for the accusations'. In 2020, at least 15 individuals were executed for *moharebeh*, *baqy* or *efsad-e-fel-arz* (UN Human Rights Council 2021, para.53). Article 286 of the New Islamic Penal Code states that *baqy* and *efsad-e fel-arz* may include offenses against the internal or international security of the State, arson and destruction of properties, distribution of poisonous and bacterial and dangerous materials, and establishment of, or aiding and abetting in, places of corruption and prostitution, on a scale that causes severe disruption in the public order of the state and insecurity, or causes harsh damage to the bodily entity of people or public or private properties, or causes distribution of corruption and prostitution on a large scale.

The Special Rapporteur described as 'an emblematic case' the dissident and AmadNews founder Ruhollah Zam. He was convicted of *efsad-e fel-arz* in July 2020. The Special Rapporteur said the 'conviction and sentence relate to information shared on AmadNews considered to have helped inspire protests and which concerned the involvement of prominent officials in corruption'. Condemning the execution, the Special Rapporteur said he was 'deeply disturbed that it has been used to threaten and further repress freedom of expression, including of journalists' (UN Human Rights Council 2021, para.55). According to the Secretary-General, individuals have been sentenced to death for *efsad-e-fel-arz* based upon charges that they disrupted the country's economy (UN Secretary-General 2019, para.10).

Drug-related prosecutions

It appears that about half of the executions carried out in Iran are for crimes that do not involve killing or have lethal consequences. In its fourth periodic report to the Human Rights Committee, Iran said that most of the death sentences in Iran were due 'to the existence of large-scale drug trafficking and smuggling, which is often carried out through terrorist operations and carrying of semi-automatic firearms and during a dreaded security project'. Iran described changes to its legislation that brought 'a serious reduction in the issuance and execution of the death penalty' (UN Human Rights Committee 2021, para.24). The amendments, which entered into force in November 2017 with retroactive application, may have been in response to pressure from European governments and from the United Nations Office for Drugs and Crime. They considerably increased the quantities for which death sentences could be imposed, raising the threshold to possession of 50 kg of opium (from 5 kg) and 2 kg of heroin (from 30 g). Moreover, a mandatory death penalty was replaced with a prison term of up to 30 years for non-violent drug-related offences.

According to Iran's report to the Human Rights Council, 'in practice, the execution is only for heads of drug trafficking gangs, armed smuggling, or those who abuse children and people with mental disabilities for smuggling of high amounts of narcotics' (UN Human Rights Council 2019, National report, para.85). However, the amended law retained mandatory death sentences for a wide range of drug-related offences, particularly if the accused or one of the participants in the crime used or carried weapons and intended to use them against law enforcement agencies. It applies to exporting, sending, purchasing, transporting, possessing, hiding or making available for sale more than 5 kg of 'industrial' drugs, such as heroin, morphine or cocaine, as well as chemical derivatives of morphine and cocaine. The Secretary-General of the United Nations noted that the 'death penalty can still be imposed for leaders of drug trafficking cartels, anyone who has used a child in some way to traffic drugs, or anyone facing new drug-related charges who had previously been sentenced to execution or to 15 years to life imprisonment for drug-related offences' (UN Secretary-General 2019, Situation, September, paras.10-11).

The immediate impact of the amendments was quite dramatic. According to the United Nations, 207 persons were executed in the first nine months of 2018 compared to 437 during the same period in 2017 (UN Human Rights Council 2018, para. 15). The number of executions for drug-related offences dropped to 8 from 221. In October 2018, the Deputy Chairman of the Parliamentary Judiciary Commission stated that the death sentences of 15,000 individuals had been commuted (UN Secretary-General 2019, Situation, February, para.5). Despite the reforms, within a few years the number of executions for drug-related crimes began to climb. 'Worryingly', wrote the Special Rapporteur, 'in 2021, the number of individuals executed for drug-related offences already outstrips the figure for 2020 (UN Human Rights Council 2021, para.51). In 2022, the Secretary-General reported that of 251 executions conducted in the first half of the year, 86 were for drug crimes, 'which continues the worrying trend of an increase in drug-related executions observed since 2021' (UN Secretary-General 2022, para. 4),

As early as 1992, Iran signalled the importance of the death penalty in dealing with drug crimes (UN Commission on Human Rights 1993, para. 52). It has reacted to criticism from the Special Rapporteur with a spirited defence. Iran has pointed out that it is not alone in applying the death penalty for drug crimes, noting its role as a deterrent (UN Human Rights Council 2018, Comments, pp. 5-6). In fact, there is no evidence that capital punishment has a deterrent effect that is measurably greater than lengthy terms of imprisonment. This has even been acknowledged by the Iranian authorities. 'The truth is, the execution of drug smugglers has had no deterrent effect', Mohammad Baqer Olfat, deputy head of judiciary for social affairs, was quoted saying by the semi-official Tasnim news agency. 'We have fought full-force against smugglers according to the law, but unfortunately we are experiencing an increase in the volume of drugs trafficked to Iran, the transit of drugs through the country, the variety of drugs, and the number of people who are involved in it.' Olfat said he had suggested to the judiciary chief that rather than the death penalty, traffickers should serve long prison terms with hard labour (Reuters 2016).

Murder, *qisas* and *diya*

The majority of executions in 2020 and 2021 have been for murder charges. Sentenced on the basis of *qisas*, the executions are supported by the family of the victim, who will have refused to accept *diya* (compensation in the form of 'blood money') from the perpetrator, if this has been offered. It is said that in most murder cases the *diya* is accepted by the victim's family members (Together Against the Death Penalty 2021, p.14). Then the offender may be released after 3 to 10 years of detention and payment of 'blood money'. Iran has explained that the judiciary, 'through compromise and consultations and even religious guidance and in some

cases financial assistance to the victim's family, tries to gain the consent and forgiveness of victim's heirs, and has also achieved many successes so far. Official policy of the country's judiciary is to decrease the incidence of crime, especially the occurrence of serious crimes, and consequently reducing the number of death sentences.' (UN Human Rights Committee 2021, para.25) An Iranian representative told the Human Rights Committee that 'when the victim's family acted as a private claimant, it was helping to safeguard society against murderers, as well as applying the principle of Islamic retribution. Nevertheless, the legal system encouraged the victim's family to forgive the murderer, in which case the death penalty would not be applicable.' (UN Human Rights Committee 1993, para.31)

The role of *diya* has been criticised as discriminatory, in that 'a wealthy offender can effectively buy freedom in a way which is not open to poor offenders'. The amount of *diya* can be less for female victims than for male victims, and less for non-Muslim victims than for Muslim victims, with further discrimination between recognised religious minorities (*dhimmah*) and non-recognised minorities.' (UN Human Rights Council 2021, para.63). *Qisas* constitutes a mandatory punishment if the victim's family refuses *diya*, with the consequence that mitigating factors such as the offender's age, the circumstances of the crime, or his or her previous character cannot be taken into account. This renders it arbitrary and inconsistent with international human rights law.

The International Covenant on Civil and Political Rights limits the use of capital punishment, in States where it has not yet been abolished, to the 'most serious crimes'. There is no genuine debate about the fact that murder falls within this category. As for the *huddud* crimes punishable by death under the New Islamic Penal Code, including drug-related offences, these fail to meet the 'most serious' criterion. The Secretary-General of the United Nations considers that use of the death penalty for such crimes which do not involve intentional killing is not consistent with international law (UN Secretary-General 2019, Situation, February, para.3). According to the Human Rights Committee, the term 'most serious crimes' in the Covenant 'must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death, such as attempted murder, corruption and other economic and political crimes, armed robbery, piracy, abduction, drug and sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6 [of the International Covenant], for the imposition of the death penalty.' (UN Human Rights Committee 2018, para.35)

Public executions

Public executions were once common in many countries. However, in recent decades they have very largely disappeared as retentionist States have introduced measures to remove what are deemed the more barbaric features of the death penalty. Since the mid-1980s, there have been reports of hangings from cranes in Iran's urban areas, including those of political opponents (UN Commission on Human Rights 1987, para.45). Photographs of such hangings circulate widely (Together Against the Death Penalty 2023, p.68-69; Williams, S., 2023). They are carried out before large crowds where children may be present (UN Human Rights Council 2017, para.13). The United Nations Committee on the Rights of the Child has expressed concern 'about the negative impact of still-ongoing public executions witnessed by children, on their mental health and well-being' (UN Committee on the Rights of the Child 2016, para. 53). Responding to media attention and international pressure, Iran reduced the practice considerably in 2008, only to resume it following a wave of political protest. Iran then claimed that public executions only took place 'with the agreement of the Head of the Judiciary and due to social exigencies' (UN Human Rights Committee 2010, para.289). In 2011, 65 public executions were reported. By 2019, the number had declined very considerably and during the

COVID epidemic public executions appear to have stopped completely. The practice resumed in 2022 (Together Against the Death Penalty 2023, p.68-69).

The Human Rights Committee has condemned public executions as a form of cruel, inhuman or degrading treatment or punishment (UN Human Rights Committee 2018, para. 40). It has called upon Iran to prohibit the practice (UN Human Rights Committee 2011, Concluding observations, para. 12). But in its 2021 report to the Human Rights Committee, Iran defended the use of public execution. It insisted that public executions are not prohibited by international human rights instruments, saying the call from the Committee ‘does not appear to have a world-wide and customary international legal basis’. Iran claimed that ‘[g]iven that some instances of crime or hooliganism leading to murder have severely hurt public sentiment or led to widespread insecurity, the execution of the death penalty in public can have a serious deterrent effect on the recurrence of such crimes’ (UN Human Rights Committee 2021, para.28). There is a paradox in Iran’s position on public executions. The 2022 report of Together Against the Death Penalty notes a lack of transparency. More than 88 per cent of all executions, and 99 percent of those relating to drug crimes, were not announced officially (Together Against the Death Penalty 2023, p. 14). If public executions were really beneficial in terms of their deterrent effect, then why is Iran so secretive about most of them?

The family of the victim is not only required to attend executions for murder (*qisas*), it is encouraged to participate. According to Iran Human Rights, in 2021 two women were executed by their own children. In 2022, the wife and brother-in-law of Mehran Jafari carried out his hanging in Rajai Shahr prison (Together Against the Death Penalty 2023, p. 45).

Juvenile offenders

International law forbids imposition of capital punishment on persons who were under the age of 18 at the time of the offence. The rule appears in several treaties, notably the International Covenant on Civil and Political Rights which Iran ratified without any reservation. The prohibition on juvenile executions has also been recognised as a norm of customary international law (United Nations Commission on Human Rights 2000, PP8). The Special Rapporteur on Iran has stated that the prohibition ‘is widely considered to form part of the *jus cogens* category of norms of international law’ (UN Human Rights Council 2019, Report, para. 42).

Despite Iran’s international legal obligations, the 2013 New Islamic Penal Code authorises capital punishment for ‘mature people under eighteen years’ convicted of *hudud* and *qisas* offences unless the judge concludes that they ‘do not realise the nature of the crime committed or its prohibition, or if there is uncertainty about their full mental development’ (art. 91). However, according to the Special Rapporteur, ‘the criteria used by courts to assess mental capacity varied widely and were inconsistently applied by the courts across the country’ (UN Human Rights Council 2017, para.20). Despite reports of cases where this procedure was implemented and capital punishment averted, ‘the provision has not reduced or stopped the execution of child offenders. Over 50 child offenders have been executed since the provision was implemented’ (UN Human Rights Council 2021, para.58).

The Human Rights Committee has deplored the fact that Iran continues to execute children and those who have committed a crime while under 18 years of age, ‘despite its previous recommendations and numerous criticisms by human rights treaty bodies’ (UN Committee on the Rights of the Child 2016, para.35). Iran stands virtually alone in its tolerance of the practice of juvenile executions. There have been countless statements and interventions at the international level aimed at convincing it to abandon the practice (UN Human Rights Council 2019, Report, para. 37). Nevertheless, according to the Secretary-General of the

United Nations ‘no progress has been observed’ (UN Secretary-General 2019, September, para.15).

Iran has referred to the ‘prevailing practice’ of children’s courts not to sentence to death persons under the age of 18 (UN Human Rights Committee 2009, para.297). Most if not all of the death penalty cases involving juvenile offenders appear to be convictions for murder where it is the family of the victim that insists upon execution. The authorities claim to make great efforts to convince the family of the victim to exercise clemency in the case of perpetrators who were juveniles at the time of the offence (UN Human Rights Council 2018, pp.6-7). Where they do not succeed, the vengeful spirit of the victim’s family prevails.

Amnesty International reported the execution, in 2019, of two cousins who were 17 at the time, following convictions for rape that occurred when they were 15 (Amnesty International 2020, p. 37). In August 2021, Sajad Sanjari was executed for a murder committed when he was 15 years old (UN Human Rights Council 2022, para.7). There may be as many as 85 persons who await execution for offences committed when they were under the age of 18 (UN Human Rights Council 2019, para.6). The Government of Iran has claimed that children under 18 are not subject to execution (UN Human Rights Council 2020, para.19). In practice, Iran appears to delay execution of juvenile offenders until they reach the age of majority (UN Secretary-General, 2019, para.16, n.10). But this is not compliant with the international norm which prohibits the death penalty for persons who were under 18 at the time of the offence.

Conclusions

Iran’s penchant for the death penalty is sometimes attributed to religious fundamentalism. The practice is thought to be conducted out of respect for inflexible sacred texts mandating capital punishment for certain offences. However, Iran’s alleged observance with religious strictures is inconsistent. For example, although Islamic law appears to require the death penalty in cases of apostasy, Iran does not even criminalise the phenomenon. Close to half of the executions are for drug-related offences, something that is not even contemplated by the religious texts. When Iran defends capital punishment before international bodies like the Human Rights Committee and the Human Rights Council, it does not generally rely upon religious arguments.

Iran’s enthusiasm for capital punishment has a regional dimension. According to the 2010 report of the Secretary-General on the global picture, of the 10 countries with the highest rates of execution per capita, seven were in the Middle East region: Saudi Arabia, Iran, Kuwait, Iraq, Libya, Jordan and Yemen (UN Secretary-General 2010, Table 4, p.24). By comparison, a decade earlier, in 2000, of the 10 countries with the highest rates of execution per capital, only two others, Saudi Arabia and Jordan, were in the region (UN Secretary-General 2000, p.27). In the 2015 report, the regional concentration was even more pronounced. Of the 10 States with the highest rates of execution per capital, only one, North Korea, was not in the Middle East or northeast Africa (UN Secretary General 2015, p. 19-20). In 2020, eight of the 10 leading States were in the region: Iran, Saudi Arabia, Somalia, Iraq, Jordan, Kuwait, Egypt and Yemen (UN Secretary General 2020, Table 3, p.15).

It is important not to confuse the regional aspect with religion. It has been pointed out that ‘[t]he diversity of practice would suggest there is little consensus among Islamic countries’ (Alasti, S. and Bronson, E., 2018, p.232). Of the 58 member States or observers in the Organisation of the Islamic Conference, one-third have abolished the death penalty in law and another 14 have a moratorium in place. Cherif Bassiouni wrote that ‘[i]t is mercy that is Islam’s hallmark because it is Allah’s foremost characteristic... How Muslim societies have managed

to stray so far from these and other noble characteristics of Islam can only be explained by reasons extraneous to Islam.’ (Bassiouni, M.C. 2004, p.176, 185)

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