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OUTLIER: IRAN AND ITS USE OF THE DEATH PENALTY

Dr. Ahmed Shaheed and Faraz Sanei¹

For several years now the right to life has been under heavy assault in the Islamic Republic of Iran. The country has followed a familiar but troubling pattern regarding the use of the death penalty. It has consistently ranked second in the world in the number of executions carried out (behind China),² and first in executions per capita. More recently, the upward trend in executions that began in 2010-11 has reached alarming levels not seen in more than two decades.³ In 2015, alone, human rights organisations tracking the number of executions in Iran documented at least 966 executions, with over 65 percent of these executions related to non-violent drug crimes. In that same year, Saudi Arabia, Pakistan and Iran accounted for around 90 percent of all executions in the world (excluding China), helping reverse a global trend that had seen a constant reduction of death penalty cases worldwide during the past 25 years.⁴

United Nations rights bodies have repeatedly called on authorities in Iran to curb their use of the death penalty, and urged officials to institute a moratorium on the death penalty. The latest such appeal came from UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, in April 2016, when he called on Iranian authorities to institute a moratorium on the use of the death penalty altogether.⁵

1 Dr. Ahmed Shaheed was the United Nations Special Rapporteur on the situation of human rights in Iran. His mandate was established in 2011 and ended on 31 October 2016. Faraz Sanei is the Legal Advisor to Dr. Ahmed Shaheed and the director of the Human Rights in Iran Unit at the City University of New York (Brooklyn College). Sanei was the Iran researcher at Human Rights Watch from 2010-15.

2 Although the number of executions carried out annually in China is a state secret, human rights organisations estimate that the country executes “thousands” of prisoners per year. Unlike Iran, however, it is believed that the number of executions, and the crimes that carry the death penalty, have actually decreased in the past few years.

3 <https://www.amnesty.org/en/latest/research/2016/04/death-sentences-executions-2015/>

4 <https://www.amnesty.org/en/latest/research/2016/04/death-sentences-executions-2015/>. Amnesty International stopped publishing estimates on the number of prisoners executed in China in 2009.

5 <http://shaheedoniran.org/english/human-rights-at-the-united-nations/human-rights-monitoring-mechanisms/high-commissioner-office/zeid-calls-for-an-end-to-executions-for-drug-offences-in-iran/>

Commissioner Zeid's request, like many before him, centered on two particularly egregious aspects of the death penalty in Iran: 1) the execution of juvenile offenders, or individuals under 18 years of age when they committed an offense; and 2) use of the death penalty for crimes not considered "most serious." Both types of executions are strictly prohibited under international law.

Iran's continuing and blatant disregard for the right to life of juvenile and non-violent drug offenders, combined with the sharp rise in the number of executions in recent years, makes it, in many ways, an international outlier when it comes to use of the death penalty. Behind the harrowing numbers are the countless faces and stories of the "other" victims, only a portion of which have been documented by human rights groups.

The number of executions in Iran began to rise noticeably around 2010-11 during the second term of former President Mahmoud Ahmadinejad. This rise coincided with significant changes to the country's Anti-Narcotics Law which expanded the list of drug-related crimes that carried the death penalty to include non-violent offenses, and severely limited the right of appeal for certain death sentences. The numbers have been equally troubling for juvenile offenders on death row, with at least 12 reportedly hanged in 2014-15—the highest such number at any time during the past five years. Today, Iran is the number one executor of juvenile offenders despite recent amendments made to its penal code to address this issue, and remains one of only a handful of countries that still carries out such executions.

INTRODUCTION: A BRIEF LOOK AT THE NUMBERS

There is a lack of transparency on the part of the Iranian government regarding the number of executions carried out in the country and details surrounding the circumstances in which they take place. Provincial branches of Iran's judiciary and other official government sources often announce executions *ex post facto*, but there is no comprehensive and systematic effort on the part of government officials to provide public information regarding each and every execution taking place in the country.

Despite this lack of transparency, human rights organisations, including Amnesty International, have been providing annual statistics on the number of executions believed to have taken place in Iran since at least 1998. These organisations rely on a wide array of sources to corroborate their numbers, including official government announcements, unnamed government sources, sources inside the prisons (including prisoners), lawyers, family members, local newspapers, and other information. They are, to the extent possible and safe, transparent with the methodology they use. According to statistics provided by these organisations, the number of prisoners executed by prison authorities over the past 10 years (and beyond) far exceeds those acknowledged by official government sources. One such organization has reported at least 5,500 executions in Iran between 2005 and 2015, with at least 91 recorded in the first year and 966 in the last.⁶ The Iranian government disputes the validity of these numbers and only acknowledges those officially announced on provincial judiciary websites. Yet there are reasons to be skeptical about the official numbers.

In his March 2016 report to the UN Human Right Council, the United Nations Special Rapporteur on Iran (“Special Rapporteur”) relied on statistics from a number of human rights organisations suggesting that between 966–1,054⁷ executions had taken place in 2015, the highest rate in over 10 years.⁸ At least 694 individuals were reportedly executed by hanging between 1 January 2015 and 15 July 2015, including at least 10 women and one juvenile.⁹ Execution rates reached extremely alarming rates from April 2015 to June 2015, resulting in an average of four executions per day during that time period.¹⁰

As in previous years, the majority of the executions in 2015—at least 65 percent—were for drug-related offences. Twenty-two percent of the

6 See generally <http://www.iranhrdc.org/english/english/publications/human-rights-data/chart-of-executions/index.1.html>.

7 <http://www.iranhrdc.org/english/publications/human-rights-data/chart-of-executions/1000000564-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2015.html>; <https://www.iranrights.org/>; <http://iranhr.net/en/>.

8 <http://www.iranhrdc.org/english/publications/human-rights-data/chart-of-executions/1000000564-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2015.html>; <https://www.iranrights.org/>; <http://iranhr.net/en/>; <https://www.amnesty.org/en/countries/middle-east-and-north-africa/iran/>

9 <https://www.amnesty.org/en/latest/news/2015/07/irans-staggering-execution-spree/>.

10 <http://www.iranhrdc.org/english/publications/human-rights-data/chart-of-executions/1000000564-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2015.html>

remaining executions carried out in 2015 were for *qesas-related crimes* (i.e. retributive justice for murder) and six percent were for rape.¹¹ The overwhelming majority of executions in Iran are carried out by suspension hanging which usually leads to a slow and painful death as a result of strangulation. This method of execution has been condemned by UN rights bodies and human rights organisations as a form of inhumane torture.¹² At least 33 of the executions in 2015 reportedly took place in public areas such as city squares, where the general population, including children, could witness them in plain sight.¹³

Notably, only around 220 of the executions carried out in 2015 were announced, or officially acknowledged, by government sources.¹⁴ In their response to a public statement of 8 May 2015 issued by the special rapporteurs on summary executions and Iran which condemned the upsurge in executions, authorities denied that some of these executions had taken place and had requested specific details or proof of their occurrence.¹⁵ Human rights organizations have published the identities of the majority of those alleged to have been executed this and last year, along with the names of the detention centers where the capital sentences were reportedly implemented.¹⁶

THE LEGAL BASIS FOR CAPITAL PUNISHMENT

The 1979 Islamic Revolution ushered in a new legal era in Iran that led to a revamping of criminal legislation and the court system. Under the leadership of Ayatollah Ruhollah Khomeini, the founder and first Supreme Leader of the Islamic Republic, lawmakers drafted a constitution that declared the Ja'fari (Ithna Ashari), or Twelver Shia school of jurisprudence, the official state religion, and shari'a law a primary source of applicable law. A revolutionary council set up at

11 Ibid.

12 <http://www.un.org/apps/news/story.asp?NewsID=40788#.V-g475MrjR0>

13 <https://www.amnesty.org/en/latest/news/2015/07/irans-staggering-execution-spre/>

14 <http://www.iranhrdc.org/english/publications/human-rights-data/chart-of-executions/1000000564-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2015.html>

15 <http://en.humanrights-iran.ir/news-22714.aspx>

16 <http://iranhr.net/2015/06/iran-25-prisoners-transferred-for-execution-international-community-maintains-its-silence/>; <http://iranhr.net/2015/06/mass-executions-continue-11-executed-in-ghezelhesar-prison/>; <http://www.iranhrdc.org/english/publications/human-rights-data/chart-of-executions/1000000564-ihrc-chart-of-executions-by-the-islamic-republic-of-iran-2015.html>

the time abolished most of the country's existing laws, including the penal code, and declared it un-Islamic. In the absence of a codified set of criminal laws, revolutionary courts administered justice based on their own interpretation of shari'a law. Hundreds of political prisoners and alleged criminals were sentenced to death by ad hoc revolutionary courts for crimes such as *moharebeh* ("enmity against God") and *efsad-e fel arz* ("sowing corruption on earth").¹⁷

By 1991, lawmakers had unified several separate and standalone pieces of legislation into a comprehensive penal code, officially called the Islamic Penal Code, and approved it for a five-year trial period which was later renewed for five and ten-year periods.¹⁸ Eight years later they approved a new Criminal Code of Procedure. Along with the Law Establishing General and Revolutionary Courts, the two codes serves as the primary body of substantive and procedural law related to the administration of justice in all criminal matters.¹⁹ Revolutionary courts, which operate under the guise of the Judiciary, have jurisdiction to try cases involving national security, drug trafficking, and several other "high profile" crimes.²⁰

Iran's newly amended penal code came into effect in May 2013 for an experimental period of 5 years. According to Human Rights Watch, in the lead-up to the ratification and adoption of the new code Iranian authorities constantly referred to its provisions as proof of Iran's serious efforts to comply with international human rights standards. In November 2011, during a two-day review of Iran's rights record before the United Nations Human Rights Committee in Geneva, representatives from the Iranian delegation repeatedly referred to the reformed code as a remedy to the committee's numerous concerns regarding troubling provisions in the old code.

If properly implemented, the revised penal code will address some of the problems raised with the Iranian government by the human rights mechanisms, and address some of the concerns raised by member states during Iran's 2010 and 2014 Universal Periodic Reviews.

17 Human Rights Watch, *Codifying Repression*, August 2012, <https://www.hrw.org/report/2012/08/28/codifying-repression/assessment-iran-new-penal-code>.

18 *Ibid.*

19 *Ibid.*

20 *Ibid.*

Despite the government's claims, however, the Islamic Penal Code retains many of the most serious problems that plagued the previous law, especially when it comes to use of the death penalty, and continues to violate Iran's legal obligations. In a report published in 2012, Human Rights Watch identified some of these fundamental problems, including retention of the death penalty for juvenile offenders and for crimes considered not to be "most serious" under international law, among others.²¹

In meetings held between the Special Rapporteur and representatives of nongovernmental organisations in Geneva in March 2016, sources close to Iran's Judiciary informed him that the government had begun another round of review of the penal code in anticipation of the termination of the five-year trial period. According to local media reports, which confirm the news, the review may lead to a comprehensive overhaul and amendment of the Islamic Penal Code. It is not clear, however whether this process will lead to major substantive improvements in the law, including additional limits on the use of the death penalty.

Crimes that Carry the Death Penalty

Iran's penal code, which comprises several hundred articles, is divided into five "books," or sections that deal with general penal provisions, and four specific categories of punishments referenced in shari'a law. These categories include: a) *hadd* or *hudud* (pl.), loosely defined as "crimes against God," the punishments for which, including degree, type and implementation, are specified and fixed in shari'a law and cannot be altered by judges;²² b) *qesas*, retributive justice reserved for crimes that cause death or injury, such as murder; and c) *ta'zir*, or punishments for criminal acts that do not have specific or fixed sentences or penalties under shari'a law but are considered to be in conflict with shari'a law or state interests ("discretionary crimes"). A fourth category addresses the issue of *diyeh*, a monetary fine or compensation to victims in the form of "bloody money" for intentional or unintentional acts that cause death or injury.

21 Ibid.

22 Shari'a law is generally comprised of rules regarding what is religiously acceptable, discouraged and prohibited for Muslims which are found in the text of the Quran (the holy book of Islam) and the hadith (the sayings of the Prophet Muhammad).

Individuals convicted of *hudud* crimes that carry the death penalty are generally not allowed to seek a pardon or have their sentences commuted, in contravention of international law.²³ In contrast, *qesas*, or retribution in kind (“eye for an eye”) crimes, are generally imposed by the judiciary in cases where a victim sustains injury, serious bodily harm or death as a result of action by the perpetrator. Examples of *qesas* crimes include murder, manslaughter, and assault. Under Iranian law, the charge of murder, which qualifies the perpetrator for retribution in kind (*qesas-e nafs* by way of hanging) punishment, can apply in cases where the defendant intentionally engaged in action considered inherently lethal which then led to or was a contributing cause of the victim’s death, even if he did not intend to kill the victim.²⁴

While the judiciary is responsible for carrying out the trial and implementing the sentence in *qesas* cases, Iranian law effectively treats these disputes as private causes of action between two civil parties where the state facilitates the resolution of the dispute. In the case where the perpetrator’s actions lead to death, the victim’s survivors retain the right to claim retribution in kind (i.e. demand the defendant’s death, or *qesas-e nafs*, by hanging), pardon the killer, or accept compensation (also known as “blood money” or *diyeh*) in exchange for giving up the right to claim retribution.

The third category or punishments codified in ‘Book Five’ of the Islamic Penal Code are known as *ta’zir*, or discretionary punishments. *Ta’zir* punishments cover crimes for which shari’a law assigns no fixed and specific punishments, but which authorities consider criminal activity that must be prohibited and punished.²⁵ The identification and definition of specific *ta’zir* crimes, and the method of the punishments used against perpetrators committing these offenses, is left to the discretion of the authorities. Judges may only convict

23 International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 6(4). Examples of *hudud* crimes automatically carrying the death penalty include insulting or cursing the Prophet of Islam, Muhammad, or other “great prophets” (*sabb al-nabi*), consensual heterosexual sex between adults (*zina*) or same-sex relations between adult men (*lavat*, or sodomy), incestuous relationships (*zina ba maharem-e nesbi*), rape (*zinayeh beh onf* or *lavat-e beh onf* in cases of rape between males) armed rebellion (*baghi*), “corruption on earth” (*efsad-e-fel-arz*), and “enmity against God” (*moharebeh*). See, e.g., Islamic Penal Code, Book 2, arts. 221–88.

24 See, e.g., Islamic Penal Code, Book 3, arts. 204–93.

25 These prohibitions might be based on general principles of shari’a law or other state interests.

and sentence defendants to *ta'zir* punishments pursuant to articles of the penal code or other standalone pieces of legislation. *Ta'zir* punishments usually include flogging, imprisonment, internal exile, and/or deprivation of certain social rights upon release such as the right to employment or participation in political and public affairs, but rarely death.²⁶ There are, however, certain *ta'zir* crimes which carry the death penalty. Examples include serious military, economic and terrorism-related crimes under standalone legislation.²⁷

Perhaps the most controversial piece of standalone legislation not specifically identified as related to *hudud* punishments is the Anti-Narcotics Law passed by the Expediency Discernment Council in 1997, and amended in 2010.²⁸ The 2010 amendments expanded the list of non-violent drug offenses, and the minimum thresholds for production, possession and/or trafficking, that qualify defendants for death by hanging. It also paved the way for the Judiciary to do away with several layers of judicial review for death sentences, thereby fast-tracking the prosecution, sentencing and execution of alleged offenders from the time of arrest. Partly as a result of this legislative change, the number of drug-related executions soared between 2010 and 2015, accounting for well more than half of the executions taking place in the country.

After drug-related executions, *qesas-e nafs*, or death for the crime of murder, generally accounts for the second highest number of executions in Iran. Rape has been the most common *hadd* crime for which the death penalty has been used.

26 See, e.g., Islamic Penal Code, Book 5, arts. 498 to 728. In recent years, the vast majority of political opponents, rights activists and other prisoners of conscience peacefully exercising their fundamental rights have been sentenced to imprisonment by Iran's revolutionary courts under Part 1 of 'Book 5' entitled "Offenses against the National and International Security of the Country."

27 For example, under the Armed Forces Offenses Act of 2003, civilians may be executed for spying and military personnel hanged for crimes such as undermining the security of the state, assisting the enemy, or dereliction of duty: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=iran#f95-3>.

28 Anti-Narcotics Law (1988; amended in 1997 and 2010) (hereinafter "Anti-Narcotics Law"). While there is a legal debate surrounding whether the sharia foundations of the Anti-Narcotics Law were based in *hudud* or *ta'zir* interpretations of the crime, it is clear that neither the Quran nor the hadith specifically discuss the issue of illicit drugs. Discussions surrounding reform of the drug laws leading to a significant reduction in the use of the death penalty provide further proof that many lawmakers, including religious scholars, view drug-related issues as falling under the category of *ta'zir*, and not *hudud*, punishments.

The Age of Criminal Responsibility

As in most other countries, children in Iran cannot be held criminally liable for their actions or omissions.²⁹ Yet while Iran is a signatory to both the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) which strictly define children as anyone under the age of 18, its government has steadfastly refused to adopt this definition in its domestic law because it contradicts the state's interpretation of shari'a law.³⁰ Prior to the 2013 amendments to the Islamic Penal Code, Iranian law absolved juveniles of criminal responsibility but defined the term 'child' as one who has not yet reached the age of maturity according to shari'a law.³¹ Because the older version of the penal code did not define what is meant by the "age of maturity" and there is no unified interpretation of maturity, or *bolugh*, in shari'a law, criminal court judges relied on text of the 1991 Civil Code, which defined the "age of maturity" as nine lunar years (eight years and nine months per the solar calendar) for girls and 15 lunar years (14 years and seven months) for boys.³²

Apparently in response to mounting international criticism of its practice of executing juvenile offenders, Iranian officials initiated piecemeal measures to address the issue.³³ In 2003 and again in 2008, then former head of Iran's judiciary, Ayatollah Mahmoud Hashemi Shahroudi, issued circulars instructing judges not to issue death sentences for any person convicted of a crime under 18 years of age. Local judges reportedly refused to abide by the circular, arguing that

29 Islamic Penal Code, art. 146.

30 When Iran signed the CRC in 1994 it inserted a general reservation "not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect." The reservation is considered so overly broad and imprecise that it defeats the object and purpose of the treaty and one of its fundamental notions—the definition of a child as anyone who is under 18 years of age. No such reservation exists, however, to the ICCPR because Iran signed and ratified it prior to the Islamic Revolution in 1979. Article 6(5) of the covenant states that Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age..."

31 Human Rights Watch, *Codifying Repression*, August 2012, <https://www.hrw.org/report/2012/08/28/codifying-repression/assessment-irans-new-penal-code>.

32 Civil Code of November 1991, art. 1210. For a discussion of prevailing debates over puberty and criminal responsibility in Iran, see the article by Iranian human rights defender Emad Baghi, "The Issue of Executions of Under-18s in Iran," July 2007, <http://www.emadbaghi.com/en/archives/000924.php>

33 Human Rights Watch, *Codifying Repression*, August 2012, <https://www.hrw.org/report/2012/08/28/codifying-repression/assessment-irans-new-penal-code>.

it was in conflict with the provisions of the penal code.³⁴ In July 2006, the Iranian parliament gave an initial reading to a draft Juvenile Crimes Investigation Act that officials said would end executions for juvenile offenders, but which actually allowed judges' discretion to sentence juvenile offenders to death.³⁵ Lawmakers never adopted the law but some of its provisions ultimately made their way into the newly amended penal code in 2013.³⁶

The 2013 amendments to the Islamic Penal Code provide a definition to the "age of criminal responsibility" for the first time, but explicitly peg it to the age of maturity under shari'a law.³⁷ In effect, therefore, nothing has changed under the new penal code with regard to the age of criminal liability. As before, criminal court judges can hold girls above nine lunar years, and boys under 15 lunar years, criminally responsible for their actions or omissions, including for crimes which carry the death penalty.³⁸ In addition to maturity, judges must determine whether the accused was "of sound mind" and whether he or she willingly committed the criminal act or omission in question.³⁹

The amendments to the penal code do, however, provide a legal mechanism by which girls between the ages of 9 and 18, and boys between 15 and 18, may be absolved of criminal liability. Article 91 of the penal code requires a judge to assess the mental capacity of juvenile offenders before issuing a death sentence to determine if they understood the consequences of their actions at the time they committed *hudud*-related crimes, like adultery, or *qesas*-related crimes such as murder. This article allows the court to rely on "the opinion of a forensic doctor or other means it deems appropriate" to

34 International Campaign for Human Rights in Iran, "Half Measures: Juvenile Executions under Iran's New Penal Code," February 27, 2012, <http://www.iranhumanrights.org/2012/02/new-penal-code-commentary/>.

35 The amended code would have allowed, but not required, judges to reduce a sentence of death or life imprisonment against juvenile defendants ages 15 to 18 to a term of imprisonment ranging from two to eight years in a juvenile correctional facility. Another article of the draft law made clear that reduction of sentences in *qesas* and *hudud* crimes shall be applied only when the judge determines that "the complete mental maturity of the defendant is in doubt." Human Rights Watch, *The Last Holdouts: Ending the Juvenile Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan, Yemen*, September 2008, <http://www.hrw.org/sites/default/files/>.

36 Human Rights Watch, *Codifying Repression*, August 2012, <https://www.hrw.org/report/2012/08/28/codifying-repression/assessment-irans-new-penal-code>.

37 Islamic Penal Code, art. 147.

38 Those under the age of maturity can still be sentenced by judges to a series of correctional and rehabilitation measures. Islamic Penal Code, art. 148.

39 Islamic Penal Code, arts. 149-51.

establish whether a defendant understood the consequences of his or her actions, but otherwise fails to specify how such a determination is to be made.⁴⁰ Reports by human rights organisations, including Amnesty International, suggest there is wide variance throughout the country in terms of how judges applied Article 91.⁴¹

In January 2015, Iran's Supreme Court issued a ruling requiring that all courts retroactively apply the new amendment for cases adjudicated prior to 2013 if juvenile defendants petition for a retrial of their capital sentences.⁴² Despite this, during the reporting period leading up to his March 2016 report to the UN Human Rights Council, the Special Rapporteur received reports suggesting that some juvenile offenders on death row had not taken advantage of this new ruling, in part, because they were unaware of its existence. He also received reports indicating that the Supreme Court had rejected several petitions for retrial and affirmed the death sentences of at least six juvenile offenders, one of whom was executed in 2015.⁴³ Based on these reports, the Special Rapporteur expressed his concern that the criteria used by courts to assess mental capacity, especially when the crime occurred years ago, vary widely and are inconsistently applied by courts throughout the country.⁴⁴

One area of concrete improvement in the amended penal code is the prohibition on the execution of juvenile offenders for *ta'zir* crimes. Under the new amendments, judges are instead required to sentence juvenile offenders found guilty of these crimes to a variety of correctional and rehabilitation measures depending on the nature of their crime and age range.⁴⁵ Although the majority of juvenile offenders executed in Iran in the past decade have been hanged for crimes of murder (*qesas*) and rape (*hadd*), the change is still a positive step in the

40 Islamic Penal Code, art. 91, note.

41 <https://www.amnesty.org/en/documents/mde13/3112/2016/en/>

42 <http://www.rrk.ir/Laws/ShowLaw.aspx?Code=2460>

43 <https://www.amnesty.org/en/documents/mde13/3112/2016/en/>

44 Ibid.

45 The penal code provides that children who are between the ages of nine and 15 when they commit *ta'zir* crimes may be subject to a series of minor correctional and rehabilitation measures, including strict supervision by parents or other legal guardians, referral to social workers, limitations on their freedom of movement, or transfer to a correctional facility between three months to one year. It provides harsher penalties for children who are between 15 to 18 years when they commit *ta'zir* crimes, including monetary fines and transfer to a correctional facility up to five years (depending on the severity of the crime).

right direction because the vast majority of all the executions carried out by authorities since 2010 have involved drug possession and trafficking crimes which are effectively considered *ta'zir* crimes. On the other hand, in his March 2016 report the Special Rapporteur expressed concern regarding reports that at least one juvenile offender was sentenced to death on drug charges.⁴⁶

The Anti-Narcotics Law

Iran's Anti-Narcotics Law, initially adopted by the Expedience Discernment Council in 1988 and amended in 1997 and again in 2010, codifies the death penalty for a range of drug crimes, including non-violent drug related offences, which do not amount to "most serious" crimes under international standards.⁴⁷ The 1988 law created a central regulatory agency, the Drug Control Headquarters, to coordinate all drug-related activities in the country, and effectively established mandatory death sentences for anyone meeting the very low threshold requirements for possession of banned substances—the inherent assumption being that anyone possessing more than the threshold amounts is a bona fide "drug trafficker" and not merely a user or an addict.

Under the 1988 law, anyone found in possession of more than 5 kilograms of hashish or opium, or more than 30 grams of heroin, codeine, methadone or morphine, received a death sentence. Recidivist offenders found in possession of amounts that cumulatively added up to these amounts would be charged with the *hudud* crime of *efsad-e fel arz* ("corruption on earth") and receive a mandatory death sentence, as would those convicted for a fourth time of growing poppies or cannabis for the purpose of drug production. Armed trafficking of the substances specified in the law was also punishable by a mandatory death sentence. The law also effectively criminalized

46 <http://shaheedoniran.org/wp-content/uploads/2016/03/SR-Report-HRC2016FE.pdf>. Reports regarding recent death sentences given to juvenile offenders generally revolve around disputes regarding the actual age of the defendant at the time of arrest.

47 Anti-Narcotics Law. The Expediency Discernment Council, a body set up by a decree of Ayatollah Khomeini in 1988 in order to resolve disputes between Parliament and the Guardian Council, vets legislation for conformity with the Constitution and shari'a law. The council was not formalized in the Constitution until later in 1989 and has no legislative power pursuant to it. Amnesty International, *Addicted to Death: Executions for Drug Offenses in Iran*, December 2011, <https://www.amnesty.org/en/documents/mde13/090/2011/en/>.

drug addiction.⁴⁸ The implementation of the law triggered an instant rise in the number of drug prosecutions and convictions in the country, and along with them executions, including public hangings, of convicted “drug traffickers.”⁴⁹

The Expediency Discernment Council amended the law in November 1997.⁵⁰ The new law maintained the death sentence for some drug-related offences including smuggling more than 5 kilograms of opium, cannabis or grass into the country; buying, keeping, carrying or hiding more than 5 kilograms of opium and other specified drugs upon the third conviction; and smuggling into Iran, dealing, producing, distributing or exporting more than 30 grams of heroin, morphine, cocaine or their derivatives. Armed drug smuggling continued to receive a mandatory death sentence. Although the law continued to recognize drug addiction as a crime, it allowed addicts (legally defined as those not meeting the minimum production or possession thresholds laid out in the law) to go to legally recognized rehabilitation centres and protected them from prosecution while there. It also excluded them from the death penalty for trafficking of drugs by providing for cash fines and flogging sentences instead.⁵¹

In 2010, authorities announced a new approach to their anti-narcotics strategy, which included revisions to the Anti-Narcotics Law that had reportedly been pending for some years and on which the UN Office of Drugs and Crime (UNODC) provided advice.⁵² The law, which came into effect in January 2011 and expanded the list of drug crimes punishable by death to 17, introduced the death penalty for trafficking or possession of more than 30 grams of specified synthetic, non-medical psychotropic drugs,⁵³ and for recruiting or hiring people

48 Amnesty International, *Addicted to Death: Executions for Drug Offenses in Iran*, December 2011, <https://www.amnesty.org/en/documents/mde13/090/2011/en/>.

49 Amnesty International, *Iran: Violations of Human Rights 1987-1990*, (Index: MDE 13/21/90), 1 December 1990, <http://www.amnesty.org/en/library/info/MDE13/021/1990/en>.

50 Amnesty International, *Addicted to Death: Executions for Drug Offenses in Iran*, December 2011, <https://www.amnesty.org/en/documents/mde13/090/2011/en/>.

51 Amnesty International, *Addicted to Death: Executions for Drug Offenses in Iran*, December 2011, <https://www.amnesty.org/en/documents/mde13/090/2011/en/>.

52 Chair of the Dublin Group, *Country Report on Iran to the Dublin Group*, 27 May 2011, <http://register.consilium.europa.eu/pdf/en/11/st10/st10815.en11.pdf>.

53 Anti-Narcotics Law, art. 8.

to commit any of the crimes under the law (or organizing, running, financially supporting, or investing in such activities, in cases where the crime is punishable with life imprisonment).⁵⁴ The amended law mandates a death sentence for the “heads of the gangs or networks” without providing a definition for what is meant by a “gang” or “network.”⁵⁵ It also continues to provide measures for the rehabilitation and reform of drug addicts, rather than criminalizing them, but allows prosecution and sentencing of addicts to imprisonment, fines or flogging if they failed to be rehabilitated.⁵⁶

On 11 October 2010, then Prosecutor General Gholam-Hossein Mohseni-Ejei, announced that new measures had been taken to speed up the processing of drug-related cases, including by referring all such cases to his office for review instead of an appellate court.⁵⁷ The Prosecutor General exercised this authority pursuant to Article 32 of the Anti-Narcotics Law, which provided that death sentences passed under the law are subject to confirmation by either the Supreme Court or the Prosecutor General. The Judiciary exercised this authority despite requirements in Iranian law which generally require all death sentences to be subject to appeal by the country’s Supreme Court.⁵⁸ Around the same time as the amended law went into effect, human rights organisations and the Special Rapporteur began to document a noticeable increase in the number of drug-related executions, including of non-violent offenders, in the country. In 2015 alone, for example, 65 percent of the over 500 prisoners executed were hanged for drug-related offenses.⁵⁹

Changes to the country’s Criminal Procedure Code (CPC) in 2015 have since done away with Article 32 of the Anti-Narcotics Law and reinstated the right to appellate review by the Supreme Court for all drug-related death sentences, but many other draconian provisions

54 Anti-Narcotics Law, art. 18.

55 Anti-Narcotics Law, art. 18. It should be noted that because death sentences under the Anti-Narcotics Law are effectively *ta’zir* punishments, it is possible for the convicted to seek, and receive, a pardon or a commutation of their sentence.

56 See, e.g., Anti-Narcotics Law, art. 16.

57 Amnesty International, Addicted to Death: Executions for Drug Offenses in Iran, December 2011, <https://www.amnesty.org/en/documents/mde13/090/2011/en/>.

58 Amnesty International, Addicted to Death: Executions for Drug Offenses in Iran, December 2011, <https://www.amnesty.org/en/documents/mde13/090/2011/en/>.

59 <http://www.iranhrdc.org/english/publications/human-rights-data/chart-of-executions/1000000564-ihrdc-chart-of-executions-by-the-islamic-republic-of-iran-2015.html>.

of the law remain in effect and continue to provide the legal basis for large numbers of drug-related executions in the country.⁶⁰ In his March 2016 report to the UN Human Rights Council, the Special Rapporteur also expressed his concern regarding the Judiciary's commitment to providing due process, including the right to appeal, to drug offenders on death row.⁶¹

In December 2015, 70 members of Parliament presented a bill that, if approved by the legislature and the Guardian Council, would reduce the punishment for non-violent drug-related crimes from death to life imprisonment. On 11 January 2016, the bill was introduced on the main floor of the parliament for review. While reserving judgement on the particulars of the bill (including the rights ramifications of life imprisonment for non-violent drug offenders), the Special Rapporteur has welcomed attempts to reduce the staggering number of executions in the country and voiced his appreciation for the government's willingness to reevaluate existing law with consideration for human rights obligations.⁶²

EXECUTING JUVENILE OFFENDERS

The juvenile death penalty is prohibited under international law, and the prohibition is absolute. Both the ICCPR and the CRC strictly prohibit capital punishment for persons under 18 at the time of the offense.⁶³ Iran ratified the ICCPR in 1975 and the CRC in 1994. Between 2007 and 2016, the UN General Assembly and other rights bodies and mechanisms, including the Special Rapporteur, have specifically called upon Iran to end the death penalty for juvenile offenders on numerous occasions.⁶⁴

60 <http://shaheedoniran.org/wp-content/uploads/2016/03/SR-Report-HRC2016FF.pdf>

61 <http://shaheedoniran.org/wp-content/uploads/2016/03/SR-Report-HRC2016FF.pdf>

62 <http://shaheedoniran.org/wp-content/uploads/2016/03/SR-Report-HRC2016FF.pdf>

63 International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 6(5); Convention on the Rights of the Child (CRC), Adopted November 20, 1989, 1577 U.N.T.S.3 (entered into force September 2, 1990), art. 37(a).

64 See, e.g., UN General Assembly, Resolution 62/168, Situation of human rights in the Islamic Republic of Iran, UN Doc. A/RES/62/168, March 20, 2008. This resolution called upon the Government of the Islamic Republic of Iran "to abolish, as called for by the Committee on the Rights of the Child in its report of January 2005, executions of persons who at the time of their offence were under the age of 18.

On 12 January 2016, the Committee on the Rights of the Child concluded its review of Iran's third and fourth periodic reports on the implementation of the provisions of CRC. The Committee expressed great concern about the ongoing execution of juvenile offenders, and called on the Iranian government to rescind general reservations that sanction judicial disregard of CRC provisions that are incompatible with Islamic laws. They also called on the Government to define children as anyone under the age of 18, in line with CRC standards, and to raise the age of criminal responsibility without discriminating between boys and girls.⁶⁵

A Troubling Trend

Despite Iran's clear international obligation not to sentence to death or execute juvenile offenders, its Iran's Judiciary has for years now sentenced hundreds, and hanged dozens, of juvenile offenders. Yet authorities maintain there has always been a prohibition on the execution of children under Iranian law. They justify their position by arguing that there is a specific definition of a "child" under shari'a law, that authorities do not hang children and only execute juvenile offenders after they reach 18 years of age, and that in the case of *qesas* crimes such as murder it is not the state that carries out executions but family members of the victim who exercise their right to determine whether the defendant should be put to death, pardoned and/or pay compensation in the form of blood money.⁶⁶

According to a report by Amnesty International, Iran had reportedly executed at least 73 juvenile offenders between 2005 and 2015 as of January 2016. The majority of the executions for juvenile offenders was for the crime of murder (63%), with an additional 8.2% for rape. Many juvenile offenders on death row spent an average of seven years in prison before execution.⁶⁷

65 Review of the Islamic Republic of Iran's Third and Fourth Periodic Reports on the Implementation of the Convention on the Rights of the Child, January 2016, CRC/C/IRN/CO/3-4.

66 After the execution of 17-year old Alireza Molla Soltani in September 21, 2011, for example, a spokesperson for the prosecution justified the public hanging by claiming that Molla Soltani was 18 years under the lunar calendar. The judiciary had sentenced Molla Soltani to death for the murder of a well-known champion of Iran's "strongest man" competition. UN: Expose Iran's Appalling Rights Record, Human Rights Watch news release, September 21, 2011, <http://www.hrw.org/news/2011/09/21/un-expose-iran-s-appalling-rights-record>.

67 <https://www.amnesty.org/en/latest/news/2016/01/irans-hypocrisy-exposed-as-scores-of-juvenile-offenders-condemned-to-gallows/>

The number of juvenile offenders reportedly hanged in 2014–15 was actually *higher* than at any time during the past five years, and the vast majority of these executions were never officially reported by the government. This despite the fact that these executions took place *after* the 2013 amendments to the penal code came into effect. Iran’s Judiciary hanged at least four juvenile offenders in 2015, 12 in 2014, eight in 2013, four in 2012, seven in 2011 and one in 2010. At least 160 others were awaiting the same fate on death row as of the report’s publication. The Special Rapporteur received unverified reports that at least one Afghan national awaiting execution for a drug-related offence was under 18 years of age at the time of his arrest.⁶⁸

Since the 2013 amendments of the Islamic Penal Code, Iran’s Judiciary has retried a fraction of the 160 or so juvenile offenders believed to be on death row. During its review session before the UN Committee on the Rights of the Child in January 2016, the Iranian government alleged that the death sentences of eight juvenile offenders had been commuted after they underwent a retrial based on Article 91 of the 2013 Islamic Penal Code.⁶⁹ In March 2015, Iran’s *Shargh* daily reported that the execution sentences of 10 juvenile offenders had been rescinded following retrials pursuant to Article 91. And in September 2015 the death sentence for another juvenile offender was withdrawn after a criminal court in Tehran applied the same article and commuted his death sentence to five years’ imprisonment.⁷⁰

As of January 2016, at least six juvenile offenders whose cases had been retried pursuant to an Article 91 review were reportedly found to have sufficient “mental growth and maturity” at the time of the crime and resented to death. At least one juvenile offender who was sentenced to death for the first time after the adoption of the 2013 amendments was sentenced in December 2015 on the grounds that there was “no doubt about his mental growth and maturity at the time of the commission of the crime.” He was 17 years old at the time of the commission of the crime.⁷¹

68 Ibid.

69 <https://www.amnesty.org/en/documents/mde13/3112/2016/en/>.

70 Ibid.

71 Ibid.

The Disturbing Narrative

Alireza Tajiki, now 19 years old, was scheduled to be executed on 15 May 2016 but authorities stopped the execution.⁷² Tajiki was sentenced to death in April 2013 after a criminal court convicted him of the alleged murder and rape of a friend. The police arrested Tajiki along with several other young men in May 2012. He was fifteen years old at the time of his arrest. It is believed that he is still in imminent danger of execution.⁷³

After his arrest, the authorities allegedly placed Tajiki in solitary confinement for 15 days and denied him access to a lawyer during the investigation phase. He was allegedly subjected to torture and other forms of ill-treatment, including beatings, floggings and suspension from his arms and legs, and forced to confess to the killing and rape of his friend. Despite later retracting his confession, a criminal court in Fars Province convicted Tajiki of murder and rape and sentenced him to death. In April 2014, a branch of the Supreme Court quashed the conviction and sentence due to lack of evidence and ordered the trial court to carry out further investigations. The Supreme Court also ordered the trial court to determine whether Tajiki had the requisite “mental growth and maturity” to understand the consequences of his actions pursuant to Article 91 of the penal code.⁷⁴

In November 2014, the trial court resentenced Tajiki to death after relying on the opinion of a medical expert who determined that the defendant had the requisite “mental maturity” during the commission of the crime. In its ruling, the lower court relied, once again, on Tajiki’s alleged forced confessions. In February 2015, the Supreme Court affirmed the lower court’s ruling in a one paragraph decision that relied on the principle of “knowledge of the judge,” a discretionary power allowing judges to determine guilt or innocence in the

72 It seemed that a social media campaign to save Tajiki may have played a role in the authorities’ decision.

73 <https://www.amnesty.org/en/documents/mde13/4060/2016/en/>.

74 Ibid.

absence of conclusive evidence.⁷⁵

Mohammad Ali Zehi, an Afghan national held in Shiraz's Adel Abad Prison in Fars Province, is reportedly at risk of execution for involvement in drug trafficking despite the fact that the law now prohibits execution of juvenile offenders for *ta'zir* crimes. His family and lawyer allege that he was under 18 years of age at the time of the crime, but due to his undocumented status in Iran and his lack of access to an original birth certificate from Afghanistan he was unable to provide any official documentation to prove that to the revolutionary court which sentenced him to death in 2008. The court relied on confessions that were allegedly obtained under torture and other forms of ill-treatment during the two months he was held in a police station without access to his family and a lawyer.⁷⁶

Following the adoption of the latest amendments to the CPC in June 2015, which revoked Article 32 of the Anti-Narcotics Law, Zehi requested a retrial of his case which was granted by Branch 26 of the Supreme Court in November 2015. As of January 2016 it was not yet clear whether the Supreme Court has referred his case for retrial to a juvenile court.⁷⁷

The harrowing stories of Tajiki and Zehi are typical of the dozens of juvenile offenders on death row. But they are the "lucky" ones.

On 12 October 2015, Iran's judiciary executed Fatemeh Salbehi who was reportedly 17 years old when she was sentenced to death for the alleged murder of her husband.⁷⁸ Salbehi was married to her husband at the age of 16.⁷⁹ Following her initial trial, she was granted a reeval-

75 Ibid. The Islamic Penal Code allows judges to rely upon their "knowledge," not only in resolving issues related to applicable laws, but also in determining issues of fact and evidence. Articles 211-12 of the penal code states that "knowledge of the judge" comprises certainty derived from presentable evidence in connection with an issue before the judge." The existence and practice of this provision appears to violate the right to a fair trial under ICCPR article 14, by in effect making the judge a witness for the prosecution and therefore able to introduce evidence against the defendant. This violates the rights of every defendant to a "competent, independent and impartial tribunal' and to be able to "examine, or have examine, the witnesses against him."

76 <https://www.amnesty.org/en/documents/mde13/3112/2016/en/>.

77 <https://www.amnesty.org/en/documents/mde13/3112/2016/en/>

78 <http://www.amnestyusa.org/news/press-releases/execution-of-two-juvenile-offenders-in-just-a-few-days-makes-a-mockery-of-iran-s-juvenile-justice-sy>.

79 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16611&LangID=E>; <http://iranhr.net/en/articles/2341/>

uation of her case based on Article 91 of the penal code. According to the expert opinion of the State Medicine Organization, Salbehi was found to suffer from severe depression at the time of her husband's murder, a finding that could have possibly qualified her for alternative punishment under the penal code. But in May 2014, the court in Fars province reevaluated her case in a court session lasting only three hours (which focused on Salbehi's level of religious conviction) and upheld the previous death sentence.⁸⁰

Iranian authorities reportedly executed three other juvenile offenders in 2015: Javad Saberi, Samad Zahabi and Vazir Amroddin. Saberi was reportedly executed in April 2015 for murder. Sources report that he was suffering from serious mental illness for which he had previously been hospitalized. They also indicated that he had received 30 lashes on 16 June 2013 for possession of crystal meth, a synthetic drug. Amroddin was an Afghan national who was convicted with his brother. He was reportedly executed in Bandar Abbas prison.⁸¹ Zahabi was secretly hanged in Kermanshah's Dizel Abad prison in October 2015 for allegedly shooting a fellow shepherd during a fight over grazing rights. He was reportedly 17 years old at the time of the alleged murder. According to reports, Zahabi was never informed of his right to request a retrial from the Supreme Court pursuant to Article 91 of the penal code.⁸²

At least one other juvenile offender was executed for drug-related offences since the passage of Article 91. Janat Mir, an Afghan national, was hanged in Esfahan's Dastgard Prison in April 2014. There is no information available about his exact age at the time of arrest, but his family says he was 14 or 15 years old when he was executed.

EXECUTING DRUG OFFENDERS

Article 6(2) of the ICCPR states that "In countries which have not abolished the death penalty, a sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the

80 <http://www.amnestyusa.org/news/press-releases/execution-of-two-juvenile-offenders-in-just-a-few-days-makes-a-mockery-of-iran-s-juvenile-justice-sy>.

81 <https://www.amnesty.org/en/documents/mde13/3112/2016/en/>

82 <https://www.amnesty.org/en/documents/mde13/3112/2016/en/>.

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time of the commission of the crime.”⁸³ The Human Rights Committee, the UN body which authoritatively interprets the covenant, has said that the death penalty should be a “quite exceptional measure.”⁸⁴ The ICCPR also provides that “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.”⁸⁵ The UN Human Rights Committee has, repeatedly, found that drug-related offenses do not meet the criterion of “most serious crimes.”⁸⁶

In 2007 a summary by the UN Special Rapporteur on extrajudicial or arbitrary executions stated:

*The conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies ... is that the death penalty can only be imposed in such a way that it complies with the stricture that it must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill, which resulted in the loss of life.*⁸⁷

Under this legal regime, “most serious” crimes should not include activities that amount to the peaceful exercise of fundamental rights such as the right to free expression/speech, assembly, association or religion (or are so vaguely and broadly worded as to also criminalize such activities). Neither should activities that may not necessarily be considered a fundamental right under international law, but should probably not amount to a crime—and certainly not one that carries the death penalty—such as consuming or addiction to alcohol or illicit drugs, and consensual sexual relations between adults.

83 International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

84 Ibid.

85 ICCPR, art. 6(4).

86 UN Human Rights Committee (July 8, 2005), Concluding Observations: Thailand, CCPR/CO/84/THA, para. 14; UN Human Rights Committee (August 29, 2007), Concluding Observations: Sudan, CCPR/C/SDN/CO/3, para. 19. For an in-depth analysis of the use of the death penalty for drug-related offenses, see generally Amnesty International, *Addicted to Death*, December 2011, at 16, available at <https://www.amnesty.org/en/documents/mde13/090/2011/en/>. The UN Human Rights Committee is currently in the process of updating its General Comment to Article 6 and providing more clarity and guidance on what qualifies as a “most serious” crime. The final draft of the General Comment is expected to be published at a later date.

87 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 29 January 2007, UN Doc. A/HRC/4/20, para. 53.

In 2009, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reminded states that, under international law, death sentences for drug-related crimes should be abolished and those already passed should be commuted to prison terms.⁸⁸ Other authorities, including the UN High Commissioner for Human Rights and the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, have also maintained that the imposition of the death penalty for drug crimes violates international law.⁸⁹ The latter has noted that, in his view, “drug offenses do not meet the threshold of most serious crimes. Therefore, the imposition of the death penalty on drug offenders amounts to a violation of the right to life, discriminatory treatment and possibly ... their right to human dignity.”

The UN Secretary General and the Special Rapporteur both expressed concern in 2011 about the high level of executions for drug-related offences. In October 2011, the UN Human Rights Committee recommended that Iranian authorities consider abolishing the death penalty or at least revise the penal code to restrict the imposition of the death penalty to only the “most serious crimes.”⁹⁰

Between January 1989 and July 1990, about a year after the passage of the first Anti-Narcotics Law, over 1,100 people were reportedly executed for drug offences. Large numbers of convicted traffickers were often executed on the same day in different towns.⁹¹ Many executions were carried out in public – deemed to constitute cruel, inhumane and degrading punishment, in contravention of Iran’s legal obligations. The alleged perpetrators were often hanged from cranes

88 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 29 May 2009, UN Doc. A/HRC/11/2/Add.1.

89 The latter has said that “the imposition of the death penalty on drug offenders amounts to a violation of the right to life, discriminatory treatment and possibly ... their right to human dignity.” Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 January 2009, A/HRC/10/44, para. 66.

90 Secretary-General, The situation of human rights in the Islamic Republic of Iran: Note by the Secretary-General, A/66/374, 23 September 2011, <http://daccess-ddsnyun.org/doc/UNDOC/GEN/N11/512/18/PDF/N1151218.pdf?OpenElement>; The situation of human rights in the Islamic Republic of Iran: Report of the Secretary-General, A/66/361, <http://daccess-ddsnyun.org/doc/UNDOC/GEN/N11/499/42/PDF/N1149942.pdf?OpenElement>.

91 On one day in 1989, for example, 81 people were executed in several different cities throughout the country. On 11 March 1990, 38 convicted drug traffickers were hanged in 12 cities. Amnesty International, Iran: Violations Of Human Rights 1987-1990, (Index: MDE 13/21/90), 1 December 1990, <http://www.amnesty.org/en/library/info/MDE13/021/1990/en>.

in public squares.⁹²

As of 2015, Iran was one of 32 countries that still imposes executions for non-violent drug crimes, though only about 20 percent of these countries routinely execute drug offenders.⁹³ The rate of executions for drug offenses has once again peaked since the latest round of amendments to the Anti-Narcotics Law in 2010, with at least 65 percent of executions in 2015—or more than 600 prisoners hanged—for drug-related offenses⁹⁴ Despite an increasingly vociferous international outcry against the rise in executions, including of non-violent drug offenders, Iranian government officials steadfastly defend the country's decision as just and necessary.

The Government's Case

Iran's government argues that the sharp rise in drug-related executions is required in response to an increase in drug production, both domestic and from neighboring Afghanistan, a rise in trafficking breaching Iran's eastern borders, and a drug addiction and HIV epidemic in the country. Indeed, the statistics are worrying.

UNODC reported that the country continues to seize the largest quantity of opium in the world, citing a 13 percent increase in 2013 from the previous year.⁹⁵ Over the past 30 years, at least 3,700 police officers have been killed and tens of thousands injured in anti-narcotics operations, according to the UN agency.⁹⁶ Government officials reported that at least 255,000 individuals were arrested on suspicion of drug-related offenses from March 2011 to March 2012—a seven percent increase in the number of these arrests from previous years—causing a swell in the prison population of the country's 225 prisons to 250,000 inmates detained for drug-related offenses.⁹⁷ In 2015, First Deputy of the Judiciary,

92 Amnesty International, Iran: Violations of Human Rights 1987-1990, (Index: MDE 13/21/90), 1 December 1990, <http://www.amnesty.org/en/library/info/MDE13/021/1990/en>.

93 <http://www.economist.com/blogs/economist-explains/2015/04/economist-explains-28>.

94 Although there have been some reports and allegations that authorities have used trumped up drug charges to go after or silence political dissidents and other opposition figures, there has not been much evidence offered to support this claim.

95 https://www.unodc.org/documents/wdr2015/World_Drug_Report_2015.pdf.

96 <https://www.unodc.org/islamicpublicofiran/drug-trafficking-and-border-control.html>.

97 <http://old.ebtekarnews.com/Ebtekar/Article.aspx?AID=22162>.

Gholamhossein Ejei, noted that at least 70 percent of Iran's prison population is incarcerated for drug related offenses.⁹⁸

The drug trade has also had a profoundly negative impact on consumption and addiction in the country. In official and unofficial responses to the Special Rapporteur, government officials assert that there are an estimated 1.325 million Iranians who suffer from drug abuse, and that the "rate of prevalence" of drug abuse among the population of 15 to 64 year olds is 2.65 percent—one of the world's most severe addiction problems. The results of a national study conducted a few years ago suggest that opium, methamphetamines, crack and heroin are the most commonly used drugs, in that order. The study revealed that 90 percent of drug users are men, but the number of women addicts is believed to be on the rise in the past few years. Many of the areas worse hit by the addiction epidemic are provinces located in the periphery of the country, which are mainly populated by ethnic minority communities and suffer from some of the lowest socioeconomic indicators. Incidents of HIV/AIDS have also reportedly been on the rise, in part, due to intravenous drug use.⁹⁹

In the past few years Iran's highest ranking officials, including President Hassan Rouhani, have been quoted in the press defending Iran's record of executing drug offenders. Some high-ranking officials have defended Iran's record by saying that instead of chastising Iran the international community should praise its efforts because it is on the front line of the war on drugs and has made the world a safe and healthier place.¹⁰⁰

In its response to the Special Rapporteur's March 2016 report, the

98 <https://www.iranrights.org/newsletter/issue/65>; <http://www.irna.ir/fa/News/81661960/>; <http://www.ettelaat.net/12-juni/news.asp?id=65379>; <http://www.radiofarda.com/archive/news/20150628/143/143.html?id=27097531>; <http://fararu.com/fa/news/203814>.

99 Government figures also show that HIV rates have soared in recent years, with injecting drug users accounting for almost 70% of the country's 22,000 detected HIV cases in the last year or so. Information received by the Special Rapporteur.

100 During meetings with the Special Rapporteur in September 2015 in Geneva, Iranian officials, including the Permanent Representative in Geneva and a delegation that included members of the Judiciary, the High Council for Human Rights, the Ministry of Foreign Affairs and Chief of the Anti-Narcotics forces asserted that over at least 4,000 and as many as 10,000 individuals die annually as a result of drug abuse in the country. They reported that 12,000 police agents were also injured or killed in the past five years in more than 700 "armed clashes" to combat drug-trafficking.

government notes that no global consensus on the use of capital punishment exists, reasserts its belief that drug trafficking constitutes a “most serious” crime that allows use of the death penalty, maintains that all individuals sentenced to death for drug crimes receive fair trials and due process (including the right of appeal), and argues that despite the need to stand firm in the “war on drugs” Iran’s Judiciary often exercises discretion and judicial restraint in prosecuting these crimes and has pardoned, or commuted, thousands of death sentences in recent years.¹⁰¹ Additionally, it states that UNODC has repeatedly highlighted its appreciation for the country’s efforts and never raised concerns regarding execution of drug offenders in the country.¹⁰²

The “Other” Victims

Human rights activists and organisations have been fairly good at keeping track of the disturbing trends and figures behind the rise the execution of drug offenders in Iran—numbers that have helped focus the international community’s attention, and its criticism, on Iran’s use of the death penalty. But *who* are the hundreds of drug offenders executed every year, the thousands of others waiting a similar fate on death row in prisons throughout the country, and *what* are their stories?

The answers to these questions have been much more difficult to ascertain. There are several reasons for this. First, the sheer number of drug offenders on death row and the fast-tracking of drug cases by the Judiciary make it difficult for activists to cover their situation with the same breadth and depth that other groups receive. Second, the shame and stigma associated with drug offenders (and addiction) often has the effect of creating a shroud of secrecy surrounding their plight. This happens in two ways that sometimes interact with each other: the alleged perpetrators and their families do not reach out to activists or media outlets to publicize their cases, and the latter sometimes ignore these cases because there is a presumption that “public

101 In information submitted to Special Rapporteur, the government claimed that in calendar years 1391 (March 2012 to March 2013), 1392 (March 2013 to March 2014) and 1393 (March 2014 to March 2015), 600, 700 and 1000 cases of death sentences for drug crimes were commuted to life sentences, respectively. There is, of course, a legitimate question as to whether sentencing individuals meeting the minimum threshold requirements under the Anti-Narcotics Law to life imprisonment is, itself, unjust and a violation of Iran’s legal obligations.

102 <http://shaheedoniran.org/wp-content/uploads/2016/05/Iran-Response-SR-HRC2016.pdf>

opinion” in the country is against drug offenders and the majority of Iranians believe they deserve the punishment they receive.¹⁰³

Sources (including Iranian media reports) suggest that the vast majority of those put to death for drug charges are not drug kingpins or cartel bosses, notwithstanding government allegations that the death penalty is solely used against the most “dangerous and violent” traffickers. And there is evidence to suggest that drug crimes, and drug prosecutions, disproportionately affect the poor and other vulnerable groups including members of Iran’s ethnic minorities and foreign nationals, especially Afghans.¹⁰⁴ Many of these individuals do not have adequate access to proper legal services. Notwithstanding laws that require defendants charged with crimes that carry the death penalty to have court-appointed lawyers if they do not have the means to secure legal counsel, human rights organisations continue to document cases where the most basic due process and fair trial rights have been denied defendants who are either waiting on death row or have already been hanged.¹⁰⁵ Although some prominent human rights lawyers have taken drug cases *pro bono*, the vast majority do not.

Despite the difficulties surrounding human rights documentation of individuals sentenced to death for drug crimes in Iran, there are accounts that provide some insight into what is happening to those on death row in Iran’s prisons for drug offenses. Disturbing reports in 2012 alleging that prison authorities in Vakilabad Prison, located in the northeastern city of Mashhad, were secretly carrying out hundreds of executions, mostly of alleged drug offenders, focused UN and international attention on such executions.¹⁰⁶ According to the International Campaign for Human Rights in Iran, which relied on sources inside the country (including prisons) for its report, Vakilabad Prison authorities executed at least 365 prisoners on 24

103 This argument is often cited in replies Iranian government officials provide to the reports of the Special Rapporteur, but given the restrictions and constraints surrounding human rights advocacy and media in the country it is difficult to determine how reflective, or accurate, the government’s narrative is regarding the public’s attitude towards drug offenders. See, e.g. Reply of the Government of Iran to the March 2016 report of the Special Rapporteur.

104 Amnesty International, *Addicted to Death: Executions for Drug Offenses in Iran*, December 2011, <https://www.amnesty.org/en/documents/mde13/090/2011/en/>. The Iranian ethnic minorities particularly affected by issues surrounding the drug trade are the Baluch who primarily live in Sistan and Baluchistan Province which borders Afghanistan and Pakistan to the west.

105 <https://www.hrw.org/news/2015/12/16/iran-bid-end-drug-offense-executions>.

106 <https://www.iranhumanrights.org/2012/01/irans-secret-hangings/#The Numbers of Secret Executions in Vakilabad>.

separate occasions from January 2010 to September 2011, including one woman and 16 foreign nationals.¹⁰⁷ The group also reported that five or more executions were carried out in the prison two or three times per week between October 2012 and February 2013.

A large number of foreign nationals are reportedly on death row for drug-related crimes. Afghan nationals, possibly including undocumented migrant workers and Afghans who had received refugee status and were lawfully residing and working in the country are reportedly the most affected. On 9 July 2013, the Afghan Embassy in Iran reported the execution of 12 Afghan nationals in Karaj and Esfahan prisons allegedly for drug-related offences. Other reports indicated that at least 80 bodies of more than 100 Afghan citizens executed for drug trafficking were returned to small villages along the Afghan-Iranian border in the first six months of 2013, and that an estimated 4,000 Afghan citizens were on death row for drug-related crimes in that year.¹⁰⁸ The Government of Afghanistan has urged the Islamic Republic of Iran to halt or suspend the execution of Afghans.¹⁰⁹ A United Nations report released in August 2015 cited at least 1,200 Afghan nationals who were believed to be on death row, most of them on drug-related charges. Of the 17 foreign nationals reportedly executed in 2015, 16 were Afghans.¹¹⁰

Other foreign nationals are also particularly vulnerable as they often do not speak Persian (the language used in legal proceedings), and are unfamiliar with the laws under which they are charged, have inadequate access to legal assistance and support, and are often forced to sign confessions. In May 2016, the Special Rapporteur received information suggesting that at least 100 foreign nationals, many from sub-Saharan African nations, were detained in Iran's Evin Prison.¹¹¹ Many were allegedly on death row or serving life imprisonment for drug-related charges. The Special Rapporteur has not been able to

107 The International Campaign for Human Rights in Iran was able to provide the identities of 101 of those executed.

108 <http://www.aljazeera.com/indepth/features/2013/06/201366102037670360.html>. Also of concern are reports of summary executions or arbitrary killings of Iranians, mostly members of Iran's Kurdish and Baluch ethnic minorities who live along Iran's western and eastern borders, respectively, and Afghan nationals.

109 <http://shaheedoniran.org/wp-content/uploads/2013/10/N1350031.pdf>

110 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 7 August 2015, A/70/304.

111 Information received by the Special Rapporteur.

independently verify the veracity of this information, but human rights organisations have previously documented cases where nationals of Nigeria and Ghana were executed on drug charges apparently without proper notification to the embassies of those countries, in violation of Iran's legal obligations.¹¹²

CONCLUSION: THE REAL TOLL

While the focus of this chapter has largely been on the convicted as victims of the death penalty—namely juvenile offenders and non-violent drug offenders—the physical, psychological, social, economic and diplomatic costs of capital punishment on Iranian society at large have been enormous, if not easily quantifiable. These costs, along with the increasing international attention given to Iran's use of the death penalty, have generated a vibrant internal debate within the country about capital punishment.

The stakeholders involved in these important discussions include relevant governmental agencies, officials and members of civil society directly working on death penalty issues in Iran. Each has contributed to the discussion from a specific vantage point. Some government officials, including members of the Judiciary such as the head of the High Council for Human Rights and judges who have sentenced hundreds of juvenile offenders and non-violent drug traffickers to death, have begun to question the efficacy and wisdom of executing so many. They have voiced their support for recent parliamentary efforts aimed at dramatically reducing the number of executions of non-violent drug offenders. Others have staunchly defended the practice as lawful and necessary.

Non-governmental organizations have also played a critical role in this internal debate. Islamic charitable organizations, such as the Imam Ali Society, have tirelessly worked, sometimes hand-in-hand

112 <https://www.iranhumanrights.org/2010/11/executions-foreign-nationals/>. Under the Vienna Convention on Consular Relations, to which Iran is a signatory, countries are required to allow nationals in their prison to communicate with their consular officials, including for the purpose of retaining counsel. Pursuant to the convention consular officers or their authorized representatives "shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation." Vienna Convention on Consular Relations, 1155 U.N.T.S. 331, 8 I.L.M. 679, entered into force Jan. 27, 1980, art. 11(1)(h).

with Judiciary officials, to save juvenile offenders on death row by convincing family members of murder victims to forgive the alleged perpetrator's sins and settle for "blood money." Reports suggest that their efforts have heightened societal sensitivity towards the plight of those convicted, given a voice to their families, and led to an increase in the number of such pardons in the last few years.

Journalists, sociologists and psychologists have uncovered the hidden or indirect costs of the death penalty on the public at large. During the past few years there have been disturbing reports of children who have accidentally killed themselves while reenacting scenes from public hangings, prompting some to question the prudence of this practice. Last but not least, human rights activists, including Narges Mohammadi who helped establish the domestic group LEGAM ("Step by Step Towards Abolition of the Death Penalty"), have more forcefully criticized the government's application of the death penalty as cruel and unjust, and called for abolition. But they have also paid the price for their peaceful activism, as revolutionary courts have prosecuted and convicted them for "crimes" such as "establishing and managing illegal groups," "collusion and gathering" and "propaganda against the state."

This increasingly vibrant debate at all levels of society, especially at a time when the numbers of executions in the country have sharply risen, is a welcome and promising development. Nonetheless, it is also clear that real and demonstrable change resulting in the maximum protection of the right to life cannot, and will not, happen in the absence of concrete government action. The road to reform, including the possible abolition of the death penalty in Iran, will likely follow a long and winding path. The government's steadfast refusal to institute a moratorium on the death penalty, despite strong evidence suggesting that many defendants on death row are denied basic due process and fair trial rights, supports this contention. Yet if Iran succeeds in abolishing the death penalty for juvenile offenders and non-violent drug offenders—defendants whose executions are strictly prohibited under international law—it will have undoubtedly taken a critical, and giant, step towards safeguarding the right to life.