

THE IRAN NOTES

The Iran Notes is a series of short thematic briefing notes produced by FIDH and LDDHI to analyze the key aspects and root causes of Iran's ongoing human rights crisis.
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جامعه دفاع از حقوق بشر در ایران
(عهدو دفرانسون بین المللی جامعه های حقوق بشر)
League for the Defence of Human Rights in Iran



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DEATH PENALTY: A STATE KILLING MACHINE

The use of the death penalty by the Iranian authorities is inconsistent with Iran's obligations under international human rights treaties to which it is a state party, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

Death penalty prescribed for a broad range of crimes

Capital punishment is prescribed for numerous offenses that do not meet the threshold of "the most serious crimes," in a manner that is inconsistent with Article 6 of the ICCPR [1]. Presently, there are at least 84 capital crimes in various laws [2]. These include: political offenses; sex-related offenses; religious offenses; cyber-crimes; drug-related offenses; and economic offenses.

Political offenses are codified in the Islamic Penal Code (IPC) and include: 1) *Moharebeh*, which Article 279 of the IPC defines as "taking up arms against life, assets or honour of the people or with intent to intimidate them in a way that causes insecurity [...]." *Moharebeh* includes banditry, robbery, and armed smuggling; 2) "Spreading corruption on Earth," which Article 286 of the IPC defines in terms that are so vague and overly broad that can be arbitrarily interpreted by judges. Spreading corruption on Earth is frequently invoked to impose the death penalty in cases that may have political implications, such as economic offenses and cyber-crimes; and 3) "Insurrection," which Article 287 of the IPC defines as staging an "armed uprising against the Islamic Republic of Iran."

Sex-related offenses include fornication in cases of incest; fornication with a stepmother; extramarital sexual relations between a non-Muslim man and a Muslim woman; fornication by force (i.e. rape, although the equivalent Persian word is not mentioned in the law); adultery; and same-sex relations. In addition, both men and women can be subject to capital punishment for adultery, defined as extramarital sexual relations, which is punishable by stoning. Article 225 of the IPC allows the replacement of stoning with alternative methods of execution upon the approval of the Head of the Judiciary, "if it is not possible to perform stoning."

Certain **same-sex conduct** is punishable by death. Lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) individuals can face capital punishment. "Lesbianism" (Article 239 of the IPC) is punished by 100 lashes for the first three convictions and by death on the fourth conviction. In the case of "sodomy" (Article 233), the "active party" is sentenced to death only if he is married or the sexual act is not consensual. The "passive party" in consensual sex receives a death sentence whether he is married or not, but not if the sexual act is not consensual. The death penalty is also imposed on a non-Muslim "active party" who engages in either consensual or non-consensual same-sex acts with a Muslim party (Article 234). Intercrural sex, i.e. sexual conduct between two men without penetration, is punished with 100 lashes for the first three convictions, and death for the fourth conviction (Article 136) [3].

Religious offenses, including apostasy (*ertedad*) and heresy, are punishable by death, based on Article 167 of the Constitution [See below, *Arbitrary legal basis, unfair trials, public executions*], but they are not mentioned in the IPC. The only religious "capital crime" mentioned in the IPC is "cursing the Prophet" (*sabb-e nabi*) (Article 262). Apostasy is mentioned only in Article 26 of the 1985 Press Code. Neither the IPC nor the Press Code define apostasy or its punishment. However, under the *sharia*, the punishment for apostasy is death. While most executions on charge of apostasy or other religious offenses occurred in the 1980s, a number of individuals have been found guilty of committing religious offenses and executed in more recent years.

Certain **cyber-crimes** can be punished by death, pursuant to Article 3 of the 2008 Audio-visual Offenses Law. This law prescribes the death penalty for "spreading corruption on Earth" for "producers of obscene products by force, producers of such products intended for sexual abuse, and principal producers of those products." Under Article 4 of the Law, persons who use such products to blackmail others "to fornicate with them" should be sentenced to death for the offense of rape under Article 224 of the IPC.

Various **drug-related offenses** punishable by death are prescribed by the 1997 Anti-Narcotics Law. Amendments to this law, adopted in October 2017, drastically raised the threshold required to impose the death penalty for possession of opium and cannabis from five to 50 kilograms; and for possession of heroin, morphine, cocaine or their derivatives from 30 grams to two kilograms. In addition, a 2015 amendment to the Criminal Procedure Code grants defendants the right to appeal against death sentences for drug-related crimes, a right of which they had been previously deprived. As a result of these legislative amendments, the total number of drug-related executions decreased significantly in recent years, reaching a low of 30 recorded executions in 2019 [See below: *Death penalty in numbers*].

Some **economic offenses** are considered to be capital crimes under certain provisions of the IPC and other specific laws. Article 286 of the IPC prescribes the death penalty for the "disruption of the economic system of the state." Similarly, Article 526 of the IPC prescribes capital punishment for the forgery of domestic notes or other financial deeds and bonds or their import with the intent of disrupting the economic conditions or the political and societal security. Articles 1 and 2 of the 1990 Law for the Punishment of Disrupters of the National Economic System prescribe the death penalty for certain offenses, which include, but are not limited to: disrupting the monetary or exchange system through major acts of smuggling; disrupting the distribution of staple diets through overpricing on a macro level or speculating; and disrupting the production system.

Arbitrary legal basis, unfair trials, public executions

In many cases, judges have extensive powers to impose the death penalty on the basis of *sharia*, based on Ayatollah Khomeini's book, *Tahrir ul-Vassileh*. Such practice is institutionalized by Article 167 of Iran's Constitution, which stipulates that in the absence of any "codified laws" judges must deliver their judgments "on the basis of authoritative Islamic sources and authentic *fatwa*."

In addition, capital cases are adjudicated by a criminal justice system that is plagued by numerous violations of defendants' right to a fair trial [4]. Many death sentences are imposed after proceedings that fall far short of international fair trial standards. Defendants in cases involving capital offenses are routinely sentenced to death on the basis of vague charges and "confessions," which are usually made under torture or other ill-treatment during pre-trial detention. Defendants who face charges for offenses that are punishable by death are often denied access to lawyers of their choosing.

Over the past couple of decades, executions have been regularly carried out by hanging within prisons. Executions in public have been frequently carried out by hanging prisoners using a rope tied to construction cranes or gallows on the streets or public squares. Article 283 of the IPC also foresees crucifixion as a punishment for *moharebeh*, and it is at the judges' discretion to choose this method.

Many death row prisoners are notified of their impending execution a day before, when they are moved to solitary confinement. This practice is contrary to Rule 35 of the Rules of Procedure for the Implementation of Qisas and Death Sentences, which requires that prisoners be notified 48 hours prior to their execution to enable them to request meetings with the desired persons.

Death penalty in numbers

For decades, the large number of executions has placed Iran at second rank on the list of the world's top executioners, after China. Up until 2017, Iran ranked first in per capita executions, and returned to that rank again in 2022, with a spike in the number of executions that reached an eight-year high in 2023. All figures are the minimum known and the real figures are likely higher, because the authorities do not publish official statistics on death sentences and executions.

Executions in Iran, 2009 – 2023 (as of 15 November) [5]

Year	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Total	389	553	634	544	704	743	977	567	507	253	251	267	333	582	702
Drug-related	166	172	488	351	325	367	630	290	230	25	30	25	126	256	399
In public	N/A	N/A	50	63	44	50	58	32	31	14	13	1	0	2	4
Juveniles	5	1	7	1	11	13	4	7	4	7	4	4	2	6	2

Children and the death penalty

Iran has also been the world's top executioner of children for several decades, in breach of the country's obligations under Article 37 of the CRC [6]. Authorities have frequently imposed the death penalty against minors and have executed them when they turned 18 or, occasionally, before. From 2009 to November 2023, at least 78 executions of juvenile offenders were reported. As of February 2023, at least 85 child offenders remained on death row.

Women and the death penalty

Iran is considered as one of the leading executioners of women worldwide, with over 172 women executed between 2010 and 2021. A large number of women and girls were executed in the early 1980s and then during the prison massacres of 1988 for political activities and affiliation with political organisations. In addition, many women convicted of retributory death penalty (*qisas*) for killing their husbands were victims of domestic violence or child marriage.

Honor killings have always targeted women as a result of the application of Article 301 of the IPC, which provides a reprieve from death penalty for "fathers and paternal grandfathers" for the killing of their female children or grandchildren. Article 302(e) of the IPC allows men to kill their wives without fearing the death penalty, as it stipulates: "A husband who catches his wife and her lover in the act of adultery and kills them, shall not be sentenced to retribution (*qisas*) and payment of blood money."

Women have been more frequently subjected to stoning [See above, *Death penalty prescribed for a broad range of crimes*] than men, because married women involved in extramarital relations can be charged with adultery, but married and unmarried men can be charged with adultery only if they are involved in extramarital relations with married women. Otherwise, they would be charged with fornication, which is punishable with 100 lashes for the first three convictions and with death on the fourth conviction.

Death penalty against ethnic communities

The death penalty in Iran has often been used disproportionately against members of the ethnic communities, in a manner that is inconsistent with Iran's obligations under Article 5 of the ICERD [7]. The use of capital punishment in these cases has been based on *moharebeh*, spreading corruption on Earth, insurrection, and other vaguely worded crimes. Members of ethnic communities who have been targeted the most by executions for decades include: the Kurds in Western Iran; the Baluchis in Sistan and Baluchistan Province; and the Arabs in Khuzestan Province. Religious minorities whose members have been executed included: some groups of Sunni Muslims in Western Azerbaijan Kurdistan, and Sistan and Baluchistan Provinces; followers of the Shia Ahl-e Haq sect in Western Azerbaijan Province; and the Baha'i, especially in the 1980s. These groups have been subjected to extensive and protracted discrimination with regard to their political, civil, economic, social, and cultural rights, which has led to their engagement in anti-government activities. Rather than addressing their grievances, the authorities have responded with heavy-handed measures, including the large-scale implementation of the death penalty. Many drug-related executions have also claimed the lives of poor and

marginalised individuals and members of ethnic communities, in particular the Baluchis and the Kurds. Over 50 Kurdish individuals were executed between 1 January and 17 November 2021. In 2021, at least 70 Baluchi individuals were executed, accounting for 21% of all executions in the year and 44% of all drug-related executions; in 2022, at least 179 Baluchis were reportedly executed (including more than half on drug-related charges), accounting for one-third of all executions that year [8], whereas the Iranian Baluchis represent 3-4% of the total population.

Anti-government protesters face the death penalty

Protest participants have often faced the death penalty in Iran, especially in the 1980s [9]. More recently, protesters faced the death penalty in connection with their participation in several waves of large-scale demonstrations, in particular those from December 2017 to January 2018; in August 2018; in November 2019; and from September 2022 to early 2023.

An unknown number of protesters who participated in these anti-government protests were sentenced to death. Some of them were executed and some others remained on death row. On 14 September 2020, the lawyer of one protester, who was arrested during the August 2018 protests and later executed, reported that 30 such protesters were on death row at the time [10]. During the “Women, Life, Freedom” protest movement, which began in September 2022, more than 200 protesters faced charges of capital crimes. As of 15 November 2023, at least 175 were still facing such charges and at least 20 had been sentenced to death and were awaiting the outcome of their appeal. At least seven have been executed: two in 2022 and five in 2023 (one of them in public).

References

1. Article 6(2) of the ICCPR stipulates that in countries that have not abolished the death penalty, death sentences “may be imposed only for the most serious crimes,” a clause that the United Nations Human Rights Committee said should be interpreted “restrictively” only to include “crimes of extreme gravity involving intentional killing.”
2. FIDH-LDDHI, *No one is spared - The widespread use of the death penalty in Iran, Table of capital crimes in Iran*, pp. 51-57; <https://www.fidh.org/en/region/asia/iran/iran-death-penalty-violates-fundamental-rights-and-international-law>
3. For some of the relevant cases, see FIDH-LDDHI report, *No one is spared - The widespread use of the death penalty in Iran*, op. cit., p. 27.
4. See *The Iran Notes - Iran's judiciary as a tool of repression and fear*, FIDH-LDDHI, 29 September 2023; <https://www.fidh.org/en/region/asia/iran/the-iran-notes-iran-s-judiciary-as-a-tool-of-repression-and-fear>
5. Amnesty International annual reports; <https://www.amnesty.org/en/what-we-do/death-penalty/>; for figures from 1979-2008, *A State Terror Policy*, 28 April 2009, page 9; <https://www.fidh.org/en/region/asia/iran/A-State-Terror-Policy>
6. Article 37(a) of the CRC stipulates that capital punishment should not be imposed for offenses committed by persons below 18 years of age.
7. Article 5 of the ICERD guarantees the right of everyone, without distinction as to ethnic origin, to equality before the law, and notably “the right to equal treatment before the tribunals and all other organs administering justice.”
8. Balochcampaign, *Annual Report on Human Rights in Baluchistan and Baluch-populated Regions 2022*, p. 18; <https://shorturl.at/gvNQY>
9. FIDH, *A State Terror Policy*, April 2009; and FIDH, September 2013, *Iran: 25 years on, and still no justice: 1988 prison executions remain unpunished*; http://www.fidh.org/IMG/pdf/fidh_dddhi_report_25_years_on_and_still_no_justice_sept_2013.pdf
10. Radio Farda, *Navid Afkari's lawyer: 30 people are on death-row*, 14 September 2020; <https://www.radiofarda.com/a/navid-afkari-more-executions/30837657.html>