



## **Islamic Republic of Iran's Compliance with International Covenant on Civil and Political Rights Treaty**

### **Suggested List of Issues Prior to Reporting**

#### **Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

#### **The World Coalition Against the Death Penalty**

#### **Iran Human Rights**

#### **Impact Iran**

and

#### **ECPM**

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty**, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

**Iran Human Rights (IHR)** is a non-profit NGO with its base in Oslo, Norway. IHR has active and supporting members in Iran, North America and several European countries. IHR is committed to promote the human rights in Iran, through reporting, monitoring and advocacy. Reporting about the death penalty in Iran has been the main focus of IHR in the past 10 years. Because of its sources inside Iran, IHR is able to produce accurate reports about the death penalty in Iran. Besides the death penalty, promoting due process and rule of law, and defending the human rights defenders constitute the core activities of IHR.. IHR is member of the Steering Committee of the World Coalition Against the Death Penalty and member of Impact Iran.

**Impact Iran** represents a coalition of non-governmental organizations that draw attention to the situation of human rights in Iran, and encourage the Iranian government to address concerns expressed by the international community and international human rights bodies. Impact Iran promotes Iranian civil society efforts to engage with the wider UN human rights system, alongside various intergovernmental processes aimed at strengthening rights protections in Iran. Impact Iran's focus emanates from the belief that the sustainability of efforts to promote respect for human rights in Iran hinges on the capacity of Iranian civil society to effectively engage with and participate in the range of UN processes that promotes accountability and encourages implementation of Iran's international human rights obligations.

**ECPM (Together Against the Death Penalty)** is a French non-governmental organisation that fights against the death penalty worldwide and in all circumstances by uniting and rallying abolitionist forces across the world. The organisation advocates with international bodies and encourages universal abolition through education, information, local partnerships and public awareness campaigns. ECPM earned its legitimacy as a unifying group of the abolitionist movement because of its strong sense of ethics and values. ECPM is the organiser of the World Congresses against the death penalty and a founding member of the World Coalition Against the Death Penalty. In 2016, ECPM was granted consultative status with ECOSOC.

## EXECUTIVE SUMMARY

1. Iran has failed to uphold its obligations under the International Covenant on Civil and Political Rights (ICCPR) and has not made the necessary changes to its legal system that would allow for the abolition of capital punishment or for its compliance with the Covenant. The new Islamic Penal Code (IPC) adopted in 2013 retains the death penalty for almost all of the offenses that were punishable by death under the old IPC, including the obligation for judges to pronounce punishments on the basis of authoritative Islamic sources and authentic *fatwa* that can carry a mandatory death penalty.<sup>1</sup> In Iran the application of the death penalty is not limited to the most serious crimes. For example, the death penalty is an available sentence for some same-sex consensual sexual relations, drug-related offenses, and vaguely defined offenses such as *moharebeh* (waging war against God) and *ifsad-fil-arz* (corruption on earth).
2. Members of impoverished and marginalized minority groups are disproportionately represented among people executed for drug offenses and for affiliation with a political party or a banned group in Iran.
3. Death penalty practices lack transparency. Some executions are carried out in secret, including without notification of the family or attorney of the person scheduled to be executed. Moreover, some executions are never officially reported.
4. In contravention of Article 6(5) of the ICCPR, Iran routinely executes juvenile offenders. Since 1990, Iran has executed more juvenile offenders than any other country in the world, and the number is more than double the total number of juvenile offenders executed by countries which constitute the next nine countries that continue to execute minors.<sup>2</sup> Under the IPC, judges have discretion to grant alternative punishment to minors and individuals who committed crimes while under 18 years of age, but Iran's judges have continued to sentence juveniles and juvenile offenders to death.<sup>3</sup> Iran also executes people who are under the age of 18.
5. Additionally, Article 7 of the ICCPR bans torture and cruel, degrading and inhumane punishments, yet Iran continues to hold public executions.<sup>4</sup> The primary means of execution in public executions is by hanging, where the victim dies of suffocation and strangulation and it takes several minutes for death to occur.<sup>5</sup> State authorities continue to torture suspects and convicts, often to extract forced confessions that are used for political purposes. The Iranian Penal Code describes several execution methods, including hanging, firing squad, crucifixion, and stoning. Iranian authorities have used hanging as the main method of execution, and it has been the only method used since 2010. A June 2019 directive by the Head of the Judiciary, however, gives a detailed description of how authorities should implement executions by hanging, stoning, and crucifixion. Additionally, the January 2020 Report of the Special Rapporteur on the situation of human rights in Iran notes the poor condition of prisons and detention centers, along with the

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<sup>1</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 17.

<sup>2</sup> Amnesty International, "Executions of Juveniles Since 1990 as of November 2019," accessed April 25, 2020, <https://www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf>

<sup>3</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 16.

<sup>4</sup> *Id.* at 27.

<sup>5</sup> *Ibid.*

continued use of prolonged solitary confinement, unreasonable limits on visitation rights, and lack of medical treatment.

6. Iran's failure to ensure the rights of equal protection under the law and due process under the law provides the most significant roadblock to Iran meeting its obligations under Article 14 of the ICCPR.<sup>6</sup>
7. Human rights defenders speaking out in opposition to the death penalty continue to face harassment, arrest, and even prison sentences for their peaceful anti-death penalty advocacy.
8. Finally, the State facilitates arbitrary killings by retaining the *qisas* death penalty for murder in the Islamic Penal Code. *Qisas* refers to retribution in kind for murder and is one of the most common charges the State used against individuals who were executed in 2019. Under *qisas*, the family of the murder victim can demand a death sentence as retribution, can demand blood money (*diya*), or can grant forgiveness to the person accused of committing the murder. Iranian authorities contend that because *qisas* is a private right, the State is powerless to deny or control it.
9. In its third cycle Universal Periodic Review in 2020, Iran only partially accepted 2 recommendations of 40 that were made relating to the death penalty.

## **Iran fails to uphold its obligations under the International Covenant on Civil and Political Rights**

### **I. The State fails to protect members of the lesbian, gay, bisexual, and transgender community from harassment, persecution, violence, and discrimination. (Concluding Observations paragraph 10)**

1. In its 2011 Concluding Observations, the Committee noted that Iran maintains legislation that provides for or could result in discrimination against, and prosecution and punishment of, individuals based solely on their sexual orientation or gender identity.<sup>7</sup> The Committee also noted that Iran lacks legislation to prohibit discrimination on the basis of sexual orientation, which makes individuals in the lesbian, gay, bisexual, and transgender community vulnerable to harassment, persecution, and violence from state authorities and private parties.<sup>8</sup>
2. Articles 233 through 240 of Iran's Islamic Penal Code criminalizes same-sex consensual relations. Under these articles, the death penalty is imposed upon a male who is the "passive" party in homosexual acts or is a non-Muslim engaged in an act with a Muslim man. Men who do not fall under either of these categories and women engaged in same-sex sexual intercourse are punished with 100 lashes. The Islamic Penal Code also specifies that women punished three times for engaging in sexual activity may be sentenced to death on the fourth occasion.<sup>9</sup>

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<sup>6</sup> *Id.* at 21.

<sup>7</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 10.

<sup>8</sup> *Ibid.*

<sup>9</sup> OutRight Action International, *Small Media, and Impact Iran, Violations of the Rights of individuals in Iran based on their Sexual Orientation, Gender identity and Gender Expression* (Nov. 2019), ¶ 3.

3. In June 2019, when asked by a journalist, “Why are homosexuals executed in Iran because of their sexual orientation?” Iranian Foreign Minister Mohammad Javad Zarif responded, “Our society has moral principles. And we live according to these principles. These are moral principles concerning the behavior of people in general. And that means that the law is respected and the law is observed.”<sup>10</sup>
4. **Suggested questions relating to the protection of rights of LGBTI individuals:**
  - What steps have Iranian authorities taken to ensure that people do not face criminal prosecution on account of their sexual orientation or gender identity? During the reporting period, has any person been charged, tried, or sentenced for violating the provisions of the Islamic Penal Code that criminalize sexual intercourse between persons of the same sex? Please provide details about these cases, including their outcomes.
  - What regulations and policies are in place to protect the rights of LGBTI individuals?
  - How do authorities monitor and document acts of harassment, persecution, violence, and discrimination perpetrated against LGBTI individuals? Please provide any data collected regarding such acts over the reporting period.

**II. The State does not limit the death penalty to the most serious crimes. (Concluding Observations paragraphs 12, 23)**

5. In its 2011 Concluding Observations, the Committee expressed deep concern about “the wide range and often vague definition of offences for which the death penalty is applied.”<sup>11</sup> The Committee also expressed concern that article 225 of the draft Penal Code “is aimed at making the death penalty mandatory for convicted male apostates.”<sup>12</sup>
6. The Committee recommended that Iran “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’”<sup>13</sup> and revoke article 225 of the draft Penal Code.<sup>14</sup>
7. Iran continues to sentence people to death for crimes that do not meet the threshold of “most serious crimes.” The number of crimes punishable by death is among the highest in the world. Charges such as adultery, incest, rape, sodomy, insulting the Prophet Mohammed and other great Prophets, possessing or selling illicit drugs, theft for the fourth time, premeditated murder, fraud, economic corruption related crimes and human trafficking as well as vaguely defined offenses such as *moharebeh* (waging war against God), *ifsad-fil-arz* (corruption on earth) are capital offenses. The crimes that most commonly result in the death penalty include

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<sup>10</sup> Alistair Walsh, *Iran defends execution of gay people*, Deutsche Welle, Dec. 6, 2019, <https://www.dw.com/en/iran-defends-execution-of-gay-people/a-49144899>.

<sup>11</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 12.

<sup>12</sup> *Id.* ¶ 23.

<sup>13</sup> *Id.* ¶ 12.

<sup>14</sup> *Id.* ¶ 23.

murder, drug possession, drug trafficking, rape and sexual assault, *moharebeh*, and *ifsad-fil-arz*.

8. The Iranian Parliament adopted in August 2017 a long-awaited amendment to the country's drug law, subsequently approved by the Guardian Council in October 2017. Though the newly amended law has increased the quantity of drugs required to impose a mandatory death sentence, it still retains mandatory death sentences for a wide range of drug-related offenses, contrary to international law. The amendment has been applied retroactively and has resulted in a decrease in the number of executions for non-violent drug-related offenses, although Iran continues to sentence to death and execute individuals – albeit at a lower rate - on charges related to the possession or traffic of narcotics.

**9. Suggested questions relating to the scope of the death penalty:**

- What measures have Iranian authorities taken to limit crimes that are eligible for the death penalty to the most serious crimes as defined by the Human Rights Committee in General Comment 36 (2018)?
- What proportion of death sentences handed down during the reporting period have been for crimes that did not involve an intentional killing committed by the person sentenced to death?

**III. The State applies the death penalty in a discriminatory manner. (Concluding Observations paragraph 2)**

10. In its 2011 Concluding Observations, the Committee noted with concern “the high rate of State executions in ethnic minority areas.”<sup>15</sup> Ethnic minorities, especially Kurds and Baluchis, continue to be over-represented in death penalty statistics. Impoverished and marginalized minorities have been over-represented among those executed for drug offenses, and half of those executed between 2010 and 2018 for affiliation with a political party or a banned group were Kurds, while a quarter were Baluchis and over one-tenth Arabs.<sup>16</sup>

11. In 2018, the Special Rapporteur on Iran proposed that Iranian authorities “conduct an impartial and objective investigation confirming the number of persons from minority communities who have been executed. Without prejudice to the outcome of such an investigation, if the numbers of executions from minority communities are disproportionate, then the Special Rapporteur recommends that the Government conduct further investigations and inquiries as to the reasons for such disproportionate numbers and take appropriate remedial action.”<sup>17</sup>

**12. Suggested question relating to executions of ethnic minorities:**

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<sup>15</sup> *Id.* ¶ 12.

<sup>16</sup> Abdorrahman Boroumand Centre, Association for Human Rights in Kurdistan of Iran-Geneva, Iran Human Rights, ECPM, Impact Iran, World Coalition Against the Death Penalty, *Death Penalty in Iran: Joint Stakeholder Report for the 34<sup>th</sup> Session of the Working Group on the Universal Periodic Review* (March 2019), ¶ 42.

<sup>17</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, (27 Sept. 2018), UN Doc. A/73/398, ¶ 29.

- Please share disaggregated data on death sentences and executions by ethnicity, and explain the steps the State Party has taken to investigate and address the reported disproportionate high rate of executions of persons belonging to ethnic minorities.

#### **IV. The State's death penalty practices lack transparency.**

13. Some executions are carried out secretly, without notification of the person's the family or attorney. Many defendants' lawyers are not informed about the schedule execution before it is carried out, despite a requirement in Iranian law. Many people are denied a last visit with their family the day before the execution.
14. Some executions are neither announced nor reported officially at all. Between 2014 and 2019, an average of only 40% of all executions had been announced by the official Iranian media.<sup>18</sup>

#### **15. Suggested questions relating to transparency:**

- Please clarify the State policy regarding notification of families of persons to be executed and notification of lawyers representing those persons.
- What is the State policy regarding publication of information and data on executions?
- Please provide comprehensive data on death sentences and executions since the last review, disaggregated by gender, ethnicity, types of crimes, and age of the defendant at the time of the offense.

#### **V. The State fails to protect the rights of children by continuing to execute minors and by sentencing people to death for crimes committed while under 18 years of age. (Concluding Observations paragraph 13)**

16. In its 2011 Concluding Observations, the Committee expressed grave concern about the continued execution of minors and the imposition of the death penalty for persons who committed a crime while under 18 years of age.<sup>19</sup> The Committee recommended that Iran immediately end the execution of minors and amend the draft juvenile crimes investigation act and the Bill of Islamic Criminal Code to abolish the death penalty for crimes committed under the age of 18, and commute all existing death sentences for people on death row who had committed a crime while under the age of 18.<sup>20</sup>
17. The IPC still permits the death penalty for juveniles.<sup>21</sup> From 1990 to November 2019, Iran executed more juvenile offenders than any other nation in the world.<sup>22</sup> Juvenile executions have continued beyond 2019: Iran Human Rights (IHR) reported that juvenile offender Shayan

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<sup>18</sup> Abdorrahman Boroumand Centre, Association for Human Rights in Kurdistan of Iran-Geneva, Iran Human Rights, ECPM, Impact Iran, World Coalition Against the Death Penalty, *Death Penalty in Iran: Joint Stakeholder Report for the 34<sup>th</sup> Session of the Working Group on the Universal Periodic Review* (March 2019), ¶ 23.

<sup>19</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 13.

<sup>20</sup> *Ibid.*

<sup>21</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 8.

<sup>22</sup> Amnesty International, "Executions of Juveniles Since 1990 as of November 2019," accessed Apr. 25, 2020, <https://www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf>.

Saeedpour was executed on April 21, 2020 for a crime committed when he was under 18 years of age.<sup>23</sup> Iranian authorities also executed Majid Esmail-Zadeh on April 18, 2020.<sup>24</sup> He was sentenced to death for a murder allegedly committed when he was under 18 years of age. According to Majid Esmail-Zadeh's family he was innocent, but they could not afford to hire a good lawyer.<sup>25</sup> Danial Zeinolabedini, a juvenile offender on death row, was killed reportedly after being beaten up by the prison guards.<sup>26</sup> Danial had been transferred to solitary confinement following a riot in Mahabad Prison (Western Iran) triggered by detainees' fear of the spread of Covid-19 in prison.<sup>27</sup>

18. Articles 146 and 147 of the IPC provide that persons who are not mature are not criminally responsible.<sup>28</sup> The IPC sets the age of maturity for girls at 9 lunar years (or 8.7 years), and at 15 lunar years (or 14.6 years) for boys, meaning any child over these ages may be sentenced to death.<sup>29</sup>

19. Article 91 of the IPC, introduced through the revision of the IPC in 2013, grants judges discretion to impose the death penalty or an alternative punishment on a minor defendant, based on the judge's determination of the minor's maturity at the age of the offense and the nature of the offence.<sup>30</sup> Importantly, while the IPC provides for alternative punishments for juveniles, offences punishable by *qisas* (retribution in kind) and *hudud* (punishments under Islamic law (*Shari'a*) that are mandated and fixed by God) are exceptions to this "alternative punishments" rule, and almost all juvenile offenders executed over the past 7 years were sentenced to death based on *hudud* and *qisas* charges.<sup>31</sup>

## 20. Suggested questions relating to juvenile executions:

- What measures has the State taken to ensure that the alternative punishment provisions in Article 91 of the IPC apply to *hudud* and *qisas* offences? Will the State amend the IPC to prohibit imposition of the death penalty for persons who are convicted of committing a crime while under 18 years of age?
- What measures will the State take to ensure that no person is executed for a crime committed when they were under 18 years of age?

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<sup>23</sup> Iran Human Rights, "Iran: Juvenile Offender Executed This Morning," accessed Apr. 25, 2020, <https://www.iranhr.net/en/articles/4204/>.

<sup>24</sup> *Possible Juvenile Offender Hanged In Iran*, Iran Human Rights, 18 Apr. 2020, available at <https://iranhr.net/en/articles/4200/>.

<sup>25</sup> *Executed juvenile offender Majid Esmailzadeh was tortured to confess*, Iran Human Rights, accessed May 8, 2020, <https://iranhr.net/en/articles/4233/>.

<sup>26</sup> Iran Human Rights, "Death row juvenile offender killed by prison guards," Apr. 2, 2020, <http://iranhr.net/en/articles/4178/>.

<sup>27</sup> Office of the High Commissioner for Human Rights, *UN rights experts appalled by Iran's execution of child offender*, Apr. 21, 2020,

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25812&LangID=E>.

<sup>28</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 19.

<sup>29</sup> *Id.* at 19, 20.

<sup>30</sup> *Id.* at 16.

<sup>31</sup> *Id.* at 19; see Section VI of this document for further discussion of the *qisas* death sentence.



- Until the IPC is amended to remove the possibility of juvenile executions, will the State direct judges to refrain from sentencing people to death for offenses committed while below age 18?
- Please provide data about the number of juveniles in detention, the number of juveniles under sentence of death, and the number of people under sentence of death for crimes committed while under the age of 18.

**VI. The State conducts executions in public, in violation of Article 7 of the ICCPR. (Concluding Observations paragraph 12)**

21. In its 2011 Concluding Observations, the Committee noted that Iran continues the practice of public executions.<sup>32</sup> In May 2015, the United Nations Special Rapporteur on the situation of human rights in Iran criticized an increase in executions and drew attention to reports of public executions.<sup>33</sup> The Special Rapporteur noted, “Executions staged in public have a dehumanising effect on both the victim and those who witness the execution, reinforcing the already cruel, inhuman and degrading nature of the death penalty.”<sup>34</sup> The Committee recommended that Iranian authorities prohibit the use of public executions.<sup>35</sup>
22. An especially concerning aspect of public executions is the presence of minors at executions.<sup>36</sup> In 2015, the High Council for Human Rights of the Iranian Judiciary stated that “public executions take place only in some limited and special circumstances, including incidents which distort public sentiment, to act as a deterrent to decrease the number of drug-related crimes. It should also be noted that the mentioned sentences are provided to avoid the presence of minors at the scene of executions.”<sup>37</sup>
23. Despite these assurances, photos show that children are frequently present at public executions.<sup>38</sup> The time and place of public executions are often publicized prior to the execution, and executions take place in public spaces and residential areas in front of hundreds of individuals.<sup>39</sup> There is no evidence that officials take measures to prevent children from witnessing public executions.<sup>40</sup>

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<sup>32</sup> Office of the High Commissioner for Human Rights, “UN rights experts condemn recent upsurge in executions in Iran, many of them unreported,” accessed April 25, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15937&LangID=E>.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 12.

<sup>36</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 38.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

## 24. Suggested questions relating to public executions:

- Please provide data concerning the number of public executions over the reporting period, along with measures taken by authorities to ensure that children do not witness executions.
- What policies are in place to regulate whether and under what circumstances the media may document public executions?
- What measures is the State taking to end the practice of public executions?

## VII. The State subjects people suspected of crimes and convicted of crimes to torture and other cruel, inhuman or degrading treatment. (Concluding Observations paragraphs 14, 19)

25. In its 2011 Concluding Observations, the Committee expressed concern about the widespread use of torture and cruel, inhuman, or degrading treatment in detention facilities, particularly with respect to people accused of national security-related crimes and people tried in Revolutionary Courts—treatment which in some cases has resulted in death.<sup>41</sup> The Committee also expressed concern that courts have used coerced confessions as the primary evidence to obtain convictions.<sup>42</sup> The Committee recommended that Iran “ensure that an inquiry is opened in each case of alleged torture and cruel, inhuman or degrading treatment in detention facilities” and “ensure that no one is coerced into testifying against themselves or others or to confess guilt and that no such ‘confession’ is accepted as evidence in court.”<sup>43</sup>
26. The Iranian Constitution (Article 38) bans all forms of torture and forced confessions, but authorities widely use torture against suspects following arrest and in the pre-trial phase to extract confessions.<sup>44</sup> The State appears to use torture on suspects for a wide-variety of charges, including drug offences, rape, murder, and political or security-related charges.<sup>45</sup> Iran Human Rights reports cases in which people have confessed to committing crimes only to be absolved of the charges. For example, in 2014, a man who confessed to a murder was absolved shortly before his scheduled execution—the man was reported to have said “when I was charged for the murder I was beaten so much that I thought if I don’t confess to the murder I will die as a result of the beating.”<sup>46</sup>
27. In death penalty cases, confessions are the State’s most common means for proving guilt.<sup>47</sup> The State has a 40-plus year history of televising confessions on State-run broadcasts, and those confessions are often extracted through physical or physiological torture, lengthy solitary

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<sup>41</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 14.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 22.

<sup>45</sup> *Ibid.*

<sup>46</sup> Iran Human Rights, “Proved Innocent 48 Hours Before Execution - Had Been Tortured to Confess,” accessed Apr. 24, 2020, <https://www.iranhr.net/en/articles/1038/>.

<sup>47</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 23.

confinement, and threats regarding the gravity of the sentence awaiting the accused.<sup>48</sup> Such confessions are sometimes aired on public television prior to the trial, especially in cases involving political opponents or activists.<sup>49</sup> Televised confessions are used not only by judges as the main basis for a sentence, but also by the State as a political tool to justify executions and other heavy sentences imposed on activists and political opponents.<sup>50</sup>

28. In its 2011 Concluding Observations, the Committee expressed concern about poor conditions in detention facilities, in particular in Evin Prison, sections 350, 2A, 209 and 240. The Committee also expressed concern about the use of solitary confinement, unreasonable limits on family visits, and the reported denial of medical treatment to many people living in Ward 350/Correctional Facility 3 of Evin Prison.<sup>51</sup> The Committee recommended that Iranian authorities “take immediate steps to establish a system of regular and genuinely independent monitoring of places of detention,” and “systematically include human rights training . . . in the training of law enforcement, prison and judicial officials.”<sup>52</sup>
29. People detained at Evin Prison continue to be the subject of cruel and inhumane treatment, including severe beatings, solitary confinement, and lack of medical attention.<sup>53</sup> The January 2020 Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran provides a harrowing assessment of the human rights concerns arising from conditions in the State’s prisons and detention centers. In the report, the Special Rapporteur details continuing concerns regarding the State’s publicizing of forced confessions, prolonged use of solitary confinement (particularly at Evin Prison), denial of access to medical care, or medical treatment being made conditional upon confession and restrictions on family visitation as a means of punishment.<sup>54</sup>
30. **Suggested questions relating to use of torture, forced confessions, and inhumane detention conditions:**
- What is the State doing to: (a) investigate and remediate each case of alleged torture and cruel, inhuman, or degrading treatment in detention facilities; and (b) hold accountable the perpetrators of such acts?
  - What measures is the State taking to ensure that any person accused of a crime has access to counsel during all phases of investigation and interrogation and to ensure that no official uses torture or cruel, inhuman, or degrading treatment to extract confessions or other incriminating testimony?

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<sup>48</sup> *Id.* at 24.

<sup>49</sup> *Ibid.* (emphasis added).

<sup>50</sup> *Ibid.*

<sup>51</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 19.

<sup>52</sup> *Ibid.*

<sup>53</sup> Amnesty International, *Justice is an Alien Word: Ill-Treatment of Political Prisoners in Evin Prison*, May 15, 2014, accessed Apr. 24, 2020, <https://www.boroumandfoundation.org/library/document/2614>.

<sup>54</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, U.N. Doc. A/HRC/43/61 (Jan. 28, 2020), <https://undocs.org/en/A/HRC/43/61>.

- How will the State ensure that no such coerced or forced “confession” is accepted as evidence in court, except against a person accused of torture or other ill-treatment as evidence that the “confession” or other statement was made?
- Will the State take immediate steps to establish a system of regular and genuinely independent monitoring of places of detention, with the aim of ensuring that conditions of detention conform to articles 7 and 10 of the ICCPR, and to Mandela Rules?
- Please describe the extent to which the State provides systematic training to law enforcement, prosecutors, investigators, prison officials, and judicial officers regarding human rights as a standard component of curricula, covering the topics of the prohibition of torture, effective interrogation techniques, conditions of detention and the treatment of detainees.

**VIII. The State fails to provide people accused of crimes with equal protection and due process under the law. (Concluding Observations paragraphs 17-18, 21-22)**

31. In its 2011 Concluding Observations, the Committee expressed concern about the use of general and blanket arrest warrants, which do not contain the names of the accused and are not based on a judge’s review of evidence.<sup>55</sup>
32. The Committee also expressed concern about the average length of pretrial detention, and about the absence in article 33 of the Code of Criminal Procedure of a limit to the amount of time a court can order somebody to remain in detention by law enforcement officers.<sup>56</sup> Additionally, the Committee expressed concern about reports that individuals are held in incommunicado detention in unacknowledged detention centers.<sup>57</sup>
33. The Committee recommended that Iranian authorities “ensure that arrest warrants contain the names of the accused and are based on a judge’s review of material evidence.”<sup>58</sup> The Committee further recommended “all necessary measures to ensure that pretrial detention is not excessively long,” and “immediate steps to eliminate incommunicado detention.”<sup>59</sup>
34. In 2019, Amnesty International published reports documenting Iranian State authorities’ use of incommunicado detention of women’s human rights defenders who had campaigned against the State’s mandatory *hijab* laws. The report identified a pattern of at least 6 such cases since April 2019; at least one human rights defender was subject to enforced disappearance for 11 days in July 2019.<sup>60</sup>
35. In its 2011 Concluding Observations, the Committee also expressed concern about frequent violations of fair trial guarantees, especially in the Revolutionary Courts and the Evin Prison

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<sup>55</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 17.

<sup>56</sup> *Id.* ¶ 18.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Id.* ¶ 17.

<sup>59</sup> *Id.* ¶ 18.

<sup>60</sup> Amnesty International, “Iran: Cruel campaign to extract propaganda ‘confessions’ from protesters against compulsory veiling,” accessed April 26, 2020, <https://www.amnesty.org/en/latest/news/2019/07/iran-cruel-campaign-to-extract-propaganda-confessions-from-protesters-against-compulsory-veiling/>.

Court.<sup>61</sup> The Committee recommended that Iranian authorities “ensure that all legal proceedings are conducted in full accordance with article 14 of the Covenant” and “ensure that judges, in interpreting legislation and in relying on religious principles, do not reach verdicts that are in contravention of the rights and principles laid down in the Covenant.”<sup>62</sup>

36. Both the Constitution and the Criminal Procedure Code address a suspect’s right to a lawyer generally.<sup>63</sup> A note in the Criminal Procedure Code, however, severely limits the right to counsel in serious criminal cases and cases involving charges commonly used against political prisoners, requiring the person accused of a crime to select counsel from a list of attorneys approved by the Head of the Judiciary.<sup>64</sup> As more fully explained below, the Head of the Judiciary is not an impartial or independent arbiter. Under this rule, the person accused of a crime cannot access an attorney of their choosing during the critical investigation phase, when the person is at risk of torture and coerced confessions.<sup>65</sup> IHR reports that none of the convicted persons in any of the death penalty cases it has researched had access to a lawyer in the initial phase following their arrest.<sup>66</sup>
37. The Revolutionary Courts are responsible for most of the death sentences issued and carried out in the last 10 years and their judges are known for abusing their powers, including routinely denying individuals access to attorneys.<sup>67</sup> There are no independent mechanisms for ensuring independence and accountability within the judiciary, and in particular, within the Revolutionary Courts.<sup>68</sup>
38. In its 2011 Concluding Observations, the Committee expressed concern that the independence of the judiciary is not fully guaranteed and is compromised by undue pressure from the Executive, including the Office for Supervision and Evaluation of Judges, as well as senior clerics and high-ranking government officials who exert pressure on judges before trials.<sup>69</sup> Additionally, the Committee expressed concern that judges have used *Shari’a law* and *fatwas* to reach a verdict that was in contravention of the rights and principles as laid down in Article 14.<sup>70</sup> The Committee recommended that Iran “take immediate steps to ensure and protect the full independence and impartiality of the judiciary.”
39. The Constitution includes several articles that recognize due process, including the independence of the judiciary, but in practice the judiciary is neither impartial nor

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<sup>61</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 21.

<sup>62</sup> *Id.* ¶¶ 21-22.

<sup>63</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 21.

<sup>64</sup> *Ibid.*

<sup>65</sup> The Foreign Policy Centre, *Iran Human Rights Review: Due Process*, eds. Tahirih Danesh and Mahmood Amiry-Moghaddam (fpc.org.uk: The Foreign Policy Centre, 2017), 22, <https://fpc.org.uk/wp-content/uploads/2017/02/IHRR-Due-Process.pdf>.

<sup>66</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 22.

<sup>67</sup> *Ibid.*

<sup>68</sup> European Parliament Resolution 2019/2993(RSP), ¶ G, Doc. P9\_TA(2019)0112 (Dec. 19, 2019), [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0112\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0112_EN.pdf).

<sup>69</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee, adopted by the Committee at its 103rd session (October 17 – November 4, 2011)*, U.N. Doc. CCPR/C/HRV/CO/3, ¶ 22.

<sup>70</sup> *Ibid.*

independent.<sup>71</sup> The Head of the Judiciary is selected by and must report to the Supreme Leader.<sup>72</sup> Additionally, all judges selected by the Head of the Judiciary as well as the Supreme Court Chief Justice are selected based on their ideological affiliation and political background.<sup>73</sup> Iran's judiciary thereby operates as an extension of the Supreme Leader's political authority.<sup>74</sup>

40. This lack of independence is particularly concerning because judges are permitted to make a determination of guilt in the absence of confessions or eyewitness testimony based exclusively on the judge's opinion, known as *elm-e qazi* or "knowledge of the judge."<sup>75</sup> While *elm-e qazi* is supposed to derive from evidence, IHR notes instances in which judges have applied *elm-e qazi* arbitrarily.<sup>76</sup> Further, because Iranians are not equal before the law, the application of legal procedures in Iran are arbitrary and not uniformly applied. For example, men have more rights than women, Muslims have more rights than non-Muslims, and *Shia* Muslims have more rights than *Sunni* Muslims.<sup>77</sup>

#### 41. Suggested questions relating to lack of due process:

- What measures has the State taken to ensure that all arrest warrants contain the names of the accused and are based on a judge's independent review of material evidence? Relatedly, will the State consider releasing detainees who have been held based on general and blanket arrest warrants, in the absence of evidence?
- What safeguards are in place to prevent authorities from subjecting suspects to incommunicado detention? What measures has the State taken to establish oversight and accountability to ensure compliance with fair trial standards?
- Will the State consider taking all necessary measures to ensure that pretrial detention is not prolonged in law and in practice, particularly through independent judicial supervision of detention and timely access to counsel?
- What steps is the State taking to ensure that all arrested persons are permitted access to legal counsel of their choice at all stages of the investigation and legal proceedings, and how does the State investigate and respond to allegations that people are being denied access to counsel?
- What procedures and policies are in place to ensure that all legal proceedings are conducted in full accordance with article 14 of the ICCPR, including guaranteeing (a) the right to legal assistance of one's own choosing, including for pretrial detainees; (b) the right to be informed promptly of the nature and cause of the criminal charges; (c)

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<sup>71</sup> The Foreign Policy Centre, *Iran Human Rights Review: Due Process*, eds. Tahirih Danesh and Mahmood Amiry-Moghaddam (fpc.org.uk: The Foreign Policy Centre, 2017), 6-7, <https://fpc.org.uk/wp-content/uploads/2017/02/IHRR-Due-Process.pdf>.

<sup>72</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 21.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Id.* at 23.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Id.* at 21.

the intervention and presence of lawyers in all cases, including during the investigation stage; (d) the presumption of innocence; (e) the right to a public hearing; and (f) the right to appeal a ruling?

- How does the State ensure and protect the full independence and impartiality of the judiciary, and guarantee that it is free to operate without pressure and interference from the executive and clergy?
- How does the State ensure that judges, in interpreting legislation and in relying on religious and other principles, do not reach verdicts that are in contravention of the rights and principles as laid down in the ICCPR?

**IX. The State targets human rights defenders advocating against the death penalty. (Concluding Observations paragraph 24)**

42. In its 2011 Concluding Observations, the Committee expressed concern “about continuing reports of harassment or intimidation, prohibition and forceful breaking up of demonstrations, and arrests and arbitrary detentions of human rights defenders. It notes with concern that human rights defenders and defence lawyers often serve prison sentences based on vaguely formulated crimes such as *mohareb* or the spreading of propaganda against the establishment.”<sup>78</sup> The Committee called on Iranian authorities to “ensure the prompt, effective and impartial investigation of threats, harassment, and assault on” human rights defenders, among others.<sup>79</sup>

43. Anti-death penalty advocates have faced harassment, arrest, and prison sentences for their peaceful anti-death penalty advocacy. These advocates include Narges Mohammadi (sentenced to 16 years in prison in 2016 for running an anti-death penalty campaign), Atena Daemi (sentenced to 14 years in prison in 2015, including for distributing anti-death penalty leaflets), and Nasrin Sotoudeh.<sup>80</sup>

**44. Suggested questions related to human rights defenders:**

- Please clarify whether under Iranian law peaceful advocacy against the death penalty can be considered collusion against national security or propaganda against the state.
- Please describe the steps Iran is taking to allow and facilitate a public and open debate on the question of the death penalty in Iran, including by creating an enabling environment for civil society actors to access information, engage in dialogue, and express their views freely.

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<sup>78</sup> *Id.* ¶ 24.

<sup>79</sup> *Ibid.*

<sup>80</sup> Abdorrahman Boroumand Centre, Association for Human Rights in Kurdistan of Iran-Geneva, Iran Human Rights, ECPM, Impact Iran, World Coalition Against the Death Penalty, *Death Penalty in Iran: Joint Stakeholder Report for the 34<sup>th</sup> Session of the Working Group on the Universal Periodic Review* (March 2019), ¶ 42.

<sup>80</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, UN Doc. A/73/398 (27 Sept. 2018), ¶ 49; Abdorrahman Boroumand Centre et al., *Fact Sheet on the death penalty in Iran*, Nov. 2019, 2, [http://impactiran.org/wp-content/uploads/2019/10/UPR34\\_Iran\\_FactSheet\\_Death.Penalty.pdf](http://impactiran.org/wp-content/uploads/2019/10/UPR34_Iran_FactSheet_Death.Penalty.pdf).

## X. The State indirectly encourages arbitrary killings by retaining the *qisas* death sentence for murder in the Islamic Penal Code.

45. *Qisas* refers to retribution in kind for murder and is one of the most common charges the State used against individuals executed in 2019.<sup>81</sup> *Qisas* is mentioned in Islamic law (*Shari'a*) and the State considers it to be a private right that State authorities cannot deny or control.<sup>82</sup> As the IPC is based on *Shari'a*, it codifies murder as being punishable by *qisas*, and therefore the family of the murder victim can demand a death sentence as retribution, can demand blood money (*diya*), or can grant forgiveness to the person accused of committing the murder.<sup>83</sup> Thus, while the IPC does not specifically state that convicted murders are subject to the death penalty but rather to *qisas*, the State effectively places the responsibility of determining whether a person accused of murder should be sentenced to death and executed on the victim's family. *Qisas* death sentences are imposed on juvenile offenders according to *Shari'a*, where the age of responsibility is 8.7 years for girls, and at 14.6 years for boys.<sup>84</sup>
46. The IPC exempts the following situations or people from the mandatory death sentence of *qisas*: (a) father and paternal grandfather of the victim (IPC, Article 301); (b) a man who kills his wife and her lover in the act of adultery (IPC, Article 302); (c) Muslims, followers of recognized religions, and "protected persons" who kill followers of unrecognized religions or "non-protected persons" (IPC, Article 301); (d) killing of a person who has committed a *hudud* offence punishable by death (IPC, Article 302); and (e) killing a rapist (IPC, Article 302).<sup>85</sup> This law results in discriminatory treatment, for example, as Article 301 states "*qisas shall be established...if the victim is same and has the same religion as the culprit. Note: If the victim is Muslim, the non-Muslim status of the culprit shall not prevent qisas.*"
47. By continuing to codify *qisas*, the IPC indirectly encourages arbitrary killings by individuals. Experts also contend that IPC Articles 301 and 302 may be contributing to the uptick in the number of honor killings in Iran.<sup>86</sup> Moreover, family members of the murder victim must be present at the scene of the *qisas* execution, and because the State considers *qisas* as a private right pursuant to *Shari'a*, family members of the murder victim are encouraged to carry out the actual execution — IHR has received several reports where such family members have in fact conducted such executions.<sup>87</sup>
48. There have been at least 1,467 *qisas* executions between 2010 and 2019, with a dramatic increase in such executions beginning in 2013.<sup>88</sup> In 2018 and 2019, *qisas* executions were the most common category of executions, with an increase of 37 such executions between 2019 and 2018 (225 *qisas* executions were carried out in 2019, up from 188 in 2018).<sup>89</sup> Of these 2019 *qisas* executions, 68 were conducted in a single prison, 15 of the people executed were

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<sup>81</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 18 and 27.

<sup>82</sup> *Id.* at 56.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Id.* at 34.

<sup>85</sup> Iran: Islamic Penal Code Articles 301 and 302, Nov. 20, 1991, accessed Apr. 21, 2020, <https://www.refworld.org/docid/518a19404.html>.

<sup>86</sup> Iran Human Rights and ECPM, *Annual Report on the Death Penalty in Iran 2019* (2020), 18.

<sup>87</sup> *Id.* at 26.

<sup>88</sup> *Id.* at 34.

<sup>89</sup> *Ibid.*



women, 4 of the people executed were juveniles at the time of the offence, and 6 of the executions were public hangings.<sup>90</sup> To achieve a significant reduction in the use of the death penalty, Iran must change the *qisas* law and related practice.<sup>91</sup>

49. *Qisas* permits the murder victim's family to grant forgiveness to the offender. While being "against" *qisas* is considered a serious crime under Iranian law, Islam considers forgiveness a good deed.<sup>92</sup> The option to grant forgiveness without being subject to criminal prosecution for opposing *qisas* provides an opportunity for Iranians to counter the death penalty by promoting forgiveness. An increasing number of civil society groups and their sympathizers have promoted the "forgiveness movement," which has gained momentum over the past few years and has resulted in the removal of death sentences for 374 people on death row in 2019, up from 272 forgiveness cases in 2018, 221 cases in 2017, 232 cases in 2016 and 262 cases in 2015.<sup>93</sup> Indeed, the number of forgiveness cases in 2019 exceeded the number of *qisas* executions (374 forgiveness cases compared to 225 *qisas* executions).
50. *Qisas* also permits the murder victim's family to demand *diya* (blood money) rather than a retributive death sentence. The State determines the minimum amount of *diya*, but the IPC does not provide for a cap or upper limit, nor does the State currently subsidize the *diya* for people who have been convicted but who do not have an ability to pay.<sup>94</sup> The absence of an upper limit allows the victim's family to demand an amount that is many times greater than the minimum amount set by the State. As a result, an accused person may face discrimination based on their socio-economic status. Moreover, the absence of an upper limit operates as a bar to State subsidization of the *diya* for accused persons who cannot afford to pay.<sup>95</sup>
51. Arguments for retaining the *qisas* death sentence include the concern that if an accused person pays a *diya* or forgiveness is granted, a dangerous individual who committed murder will be released into the community after serving only a short prison sentence. It is believed that this concern inhibits some victim's families from choosing *diya* or granting forgiveness. Iranian authorities could alleviate this concern by requiring a prison term for any person who has been forgiven by the victim's family or who otherwise cannot afford to pay the *diya*.<sup>96</sup>

**52. Suggested questions relating to *qisas* executions:**

- Will the State consider amending the IPC to abolish the *qisas* mandatory death penalty for persons convicted of murder?
- What measures has the State taken to ensure that the *qisas* system does not result in the arbitrary deprivation of life for persons accused of murder?

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<sup>90</sup> Ibid.

<sup>91</sup> *Id.* at 54.

<sup>92</sup> *Id.* at 56.

<sup>93</sup> *Id.* at 37, 56.

<sup>94</sup> *Id.* at 56.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

- What policies and procedures are in place to ensure that the implementation of the *qisas* death sentence is not applied in a discriminatory manner?
- How is the State working to educate the public about the deed of forgiveness?
- Will the State consider establishing an upper limit on *diya* rates and subsidization of such rates?