

Iran's 2013 'Islamic Penal Code' – one year on
Drewery Dyke

Overview

In May 2013 a revised version of Iran's Islamic Penal Code (IPC) came into force. Iran's judiciary, parliament and higher legislative bodies, notably the Guardian Council¹, had agreed to amendments to the parts of the IPC that are based on Islamic Law, or Sharia. Another part of the IPC containing laws that are discretionary² remained substantially unchanged.

This essay will examine whether the revised Code has brought any changes to long-term patterns in respect to the use of the death penalty in Iran? What is the emerging evidence, a year after the introduction of the revised IPC?

This assessment, which excludes political developments occurring during the introduction and implementation of the revised IPC, reviews recent trends with respect to drug offences, murder and sexual conduct-based criminality.

Iran has never publicised its use of the death penalty, but human rights groups monitoring over the decades since the establishment in 1979 of the Islamic Republic demonstrate that for decades most of those judicially executed in Iran were convicted of murder³.

In recent years, notably since the entry into force of the 2011 Anti-Narcotics Law (see below), human rights groups estimate approximately 50-75% of all executions are now in connection with drug trafficking. Speaking in May 2011, the Head of Iran's High Council for Human Rights⁴, Mohammad Javad Larijani said that almost three quarters of all executions in Iran are of convicted drug offenders⁵.

Murder convictions account for around 20-25%; violent crime, including rape, varies between 10-15% while other convictions, including 'enmity against God' (see below) and others still not known, range between 5-10%.

At a glance – Iran's revised Penal Code

The IPC provides for the death penalty for acts with lethal consequences, usually intentional or unintentional murder, including by juvenile offenders - those accused of committing a capital offense while under the age of 18 – but it does not address drug offenses. The IPC also provides the death penalty for non-lethal but violent crimes including rape; non-lethal or repeated acts, some of which, such as adultery or other consensual sexual relations (both same and different sex) or the 'crime' of insult of the Prophet of Islam', do not amount to internationally recognisable criminal offenses.

The IPC – both the previous and revised version - also contains laws that provide for flogging and amputation, such as for repeated acts of theft, both of which are considered torture under international human rights treaties to which Iran itself is a state party. Other provisions, some of which are also punishable by death, undermine due process rights by containing vaguely worded or sweeping provisions, such as the 'crime' of 'enmity against God' or 'sowing corruption on Earth'. Provisions defined as 'crimes against God', usually rooted in moral conduct are not eligible for pardon or commutation despite these being internationally recognised legal principals.

The IPC allows judges to base verdicts on non-codified law, such as an interpretation of Islamic law. This is in contravention to the United Nations' human rights treaties to which Iran is a state party. For example, the state may prosecute for apostasy by using the provision that allows for prosecution of non-codified law.

The code also contains a concept known as *elm-e qazi* (knowledge of the judge), which allows the judge to use 'his' (for at least two decades or more there have not been any women judges in the criminal courts)

¹ The Guardian Council is a higher review body that ensures that legislation passed by parliament and agreed with the intermediary, Expediency Discernment Council of the System, or Expediency Council, conforms to Islamic law and Iran's Constitution.

² This part of the IPC came into force in 1996. It addresses crimes against national security, crimes against property and crimes against people, covering themes including theft, fraud, forgery, insult and a wide range of other offenses. For more information, see: Iran Human Rights Documentation Center (IHRDC), Islamic Penal Code of the Islamic Republic of Iran – Book Five, May 1996 (translated June 2013), <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000351-islamic-penal-code-of-the-islamic-republic-of-iran-book-five.html>

³ See successive annual reports on Iran issued by Amnesty International, such as those between the mid-1980s and late 1990s.

⁴ The High Council for Human Rights is a body under the auspices of the judiciary. One of its main functions is to provide rebuttals to international criticism of Iran's human rights record.

⁵ Citation taken from Amnesty International, *Iran: Addicted to Death – Executions for Drugs Offenses in Iran*. 2011 <http://www.amnesty.org/en/library/asset/MDE13/090/2011/en/0564f064-e965-4fad-b062-6de232a08162/mde130902011en.pdf>

‘insight’, or personal intuition not clearly based on objectively verifiable evidence. Finally, the IPC contains discriminatory laws that give, in instances, less value to, for example, non-Muslims or testimony provided by women.

Drugs and the death penalty

The 2011 amendments to Iran’s Anti-Narcotics Law set out 17 drug related offenses punishable by death, including by introducing new crimes aimed at addressing the burgeoning growth of synthetic, non-medical psychotropic drugs. The law, however, removed the right to an effective appeal by making lower court decisions subject only to a review – or confirmation – by the Prosecutor General or the Supreme Court.

The table below, citing data from international human rights groups, shows that the total number of executions continues to climb. Drug offenses constituted 43% of death penalty cases in 2009 and, as shown by the table, that percentage peaked in 2011. Campaigners have, in part, attributed the decline to human rights groups’ campaigns targeting the UN body assisting Iran with its drug trafficking control programme. In 2013, both Ireland and Denmark withdrew their financial support for the UN’s drug programme in Iran.

Iran – executions and percentage of drug-related offenses ^a				
Year	Acknowledged	Reported	Total no. of executions	Percentage drug offenses (acknowledged / reported)
2010	253	300	553	68% / 80%
2011	360	274	634	Up to 80% ^b
2012	314	230	544	71% of the officially acknowledged executions
2013	369	335	704	48% ^c

^a Human rights bodies such as Amnesty International and Iran Human Rights both use an ‘official’ figure of those executed, taken from sources within Iran and a ‘reported’ figure, taken from a basket of reliable sources outside Iran.

^b This formula is used in Amnesty International’s 2012 annual report, covering events in 2011, in the Iran chapter. See: <http://www.amnestyusa.org/sites/default/files/air12-report-english.pdf>

^c This figure is derived from data given in Iran Human Rights’ Annual Report on the death penalty-2013, March 2014, <http://iranhr.net/2014/03/report-death-penalty-iran-2013/>

Acts with lethal consequences

Punishment for the act of intentional or unintentional murder in the amended IPC remain defined, as previously, in terms of personal dispute usually between two parties and punished by a retributive act – a life for a life - or a cash fine paid by the family of the person convicted to the family of the victim. The execution of the person (s) convicted is entirely in the hands of the family of the person killed.

The 2013 IPC introduced greater nuance on the question of intent in respect to an act with lethal consequences. While appearing to introduce more safeguards there is nonetheless a tendency to treat the act as ‘intentional-like’.

Likewise, provisions relating to juvenile offenders appear to extend the application of the death penalty to them, by stating that if they are cognisant of the act, then the full force of the law applies.

Iran’s interpretation of Islamic law and its resulting codified law aims to absolve the state of the responsibility of the punishment - a judicial killing. It only provides the locus of the resolution of the dispute between two parties. It has also provided, through the provision of paying *blood money*, for the freeing of a person sentenced for having murdered someone.

Human rights groups argue that this approach to a violent act with lethal consequences is flawed. By conceptualising the ‘dispute’ as personal and allowing for a payment of money in lieu of a meaningful punishment in line with international practice, it places a ‘price’ on the value of human life that richer convicted perpetrators may be able to meet over poorer ones. As ability to pay will not be shared equally amongst those sentenced, life and death may come down to a family’s ability to pay.

Sexual conduct, acts and relationships

Consensual sexual acts, whether between people of the opposite sex, or between men, and women, are protected by human rights law and standards. They cannot validly be made the subject of criminal law let alone being subject to the death penalty. Despite this, the enacted version IPC did not result in the decriminalisation of such consensual acts. Conversely, the death penalty for ‘illicit sex’ remains in the Penal

Code where consensual sexual acts – whether heterosexual or between individuals of the same sex – are referred to.

The IPC criminalises sexual relations in the following four categories, providing both the death penalty and flogging as the relevant punishments:

- Adultery, a specific definition of fornication or penetrative sex between a man and woman;
- Sodomy, a defined form of penetrative sexual relations between two men;
- Non-penetrative foreplay; and
- Lesbianism.

International human rights law and standards assert that when undertaken freely in private or discreetly such acts are, in themselves, an exercise of individuals' right to freedom of expression, association and assembly, privacy, and liberty. Its criminalisation is also a form of discrimination.

Stoning in the IPC

Death penalty and human rights campaigners in Iran have, for many years, campaigned on behalf the approximately 10-12 women who currently remain in prison having been sentenced to stoning in previous years. The amended IPC continues to keep stoning as an option, but provides alternatives.

The IPC provides for recourse to stoning (*rajm*) for adult, married adultery for both sexes. The article adds that if it is not possible to implement the sentence, the court issuing the final verdict can recommend, with the agreement of the Head of the Judiciary, that the convicted be executed or flogged 100 times.

Amnesty International has recorded a total of 77 instances of stoning of both women and men since 1979.⁶ The vast majority have been women. Apparently, in response to international pressures and sustained criticism from rights and women's groups inside Iran, the then Head of the Judiciary issued a circular in 2002 that called for a moratorium on the practice of stoning. Despite the circular, authorities executed at least five men and one woman by stoning following distribution of the circular. In 2008, the circular was revoked, officials noting that it was never legally binding and contravened provisions in the Penal Code.

The issue once again received considerable attention in 2010 and 2011 when campaigners publicised the case of Sakineh Mohammadi Ashtiani, a 43-year-old woman sentenced to stoning for adultery, alongside a conviction relating to murder. In the course of the international outcry over the case, one lawyer was targeted for arrest and fled the Iran; another, was arrested in Iran, in part for speaking to journalists about his client's case.⁷

Apparently, because of the international opprobrium shown over the case, judicial officials in East Azerbaijan province declared that the stoning sentence would be suspended, but she remains on death row, and there is legitimate fear that authorities may execute her by hanging instead.⁸ At the time of writing, she remains jail: she is required to remain in jail even if her other convictions are spent since she is not allowed to be 'released' until the stoning sentence is implemented.

Whither the death penalty in Iran?

This summary review is too short to consider the judicial and socio-political factors that inform the administration of justice in Iran. However, while hopes for meaningful death penalty reform were dashed following the May 2013 election of Hasan Rouhani, there have been sporadic anti-death penalty protests and there appears to be, as of August 2014, a small, emerging anti-death penalty constituency.

⁶ See: *Amnesty International: Iran - Executions by Stoning*, December 2010 (AI Index MDE 13/095/2010), <http://www.amnesty.org/en/library/asset/MDE13/095/2010/en/968814e1-f48e-43ea-bee3462d153fb5af/> and Maryam Hosseinkhah, *The Execution of Women in Iranian Criminal Law: an Examination of the Impact of Gender on Laws Concerning Capital Punishment in the New Islamic Penal Code*, May 2012, pp 17-18; <http://www.iranhrc.org/english/publications/legal-commentary/1000000102-the-execution-of-women-in-iranian-criminal-law.html>

⁷ For more information about the case of Sakineh Mohammadi Ashtiani, see: Amnesty International - *Iran: Sakineh Mohammadi Ashtiani: A life in the balance*, AI Index MDE 13/089/2010, September 2010; <http://www.amnesty.org/en/library/info/MDE13/089/2010>

⁸ For further information on this issue, see, Mohammad Hossein Nayyeri, *The Question of "Stoning to Death" in the New Penal Code of the IRI*, February 2012; <http://www.iranhrc.org/english/publications/legal-commentary/1000000059-the-question-of-stoning-to-death-in-the-new-penal-code-of-the-iri.html>

It remains to be seen whether the current decline in rate of executions related to drugs offences, and the corollary increase in executions for murder will remain. If it does, it would return Iran to the general pattern witnessed in the 1990s and the first decade after 2000.

International human rights groups argue that the application of the death penalty for both drugs and murder, in a context where unfair trial is common, impacts disproportionately against the poor as there is evidence that some poor have turned to petty drug trafficking to increase their income while the poor are less able to offer *blood money* in capital murder cases. As the economic sanctions imposed against Iran may appear to impact most on the poor, there may be merit in this argument.

Application of the death penalty to cases of consensual sexual relations looks set to remain limited. Pious political figures decry falling moral standards in Iran, but the changing internal and external context, where more are willing to speak out against the criminalisation of such cases renders them unpopular cases for judicial opprobrium. Above all, however, the political climate in Iran and its complex relationship with internal social factors and external campaigning will significantly inform the administration of justice in Iran and direct how courts use the death penalty.

In the short term, in the absence of domestic political or social change, Iran's rates of execution look set to remain amongst the highest in the world, though death penalty campaigners insist that progress can be achieved in the four years that remain of President Rouhani's administration.