

Legal Research Series

***The Death Penalty for Drug Crimes in Iran:
Analysis of Iran's International Human Rights Obligations***

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Executive Summary

This legal research analysis belongs to a series of studies on human rights in Iran authored by the Human Rights in Iran Unit. The Human Rights in Iran Unit in the School of Law at the University of Essex focuses on the Islamic Republic of Iran's compliance with international human rights law. Each study tackles a distinct topic to measure international obligations against domestic law and practice and to identify underlying or systemic problems. The Unit seeks to provide an accessible account of the breadth and complexity of violations in Iran from the standpoint of international law, which may serve scholars, practitioners and anyone concerned with human rights in Iran.

This study considers the Islamic Republic of Iran's compliance with its obligations under international human rights treaties with respect to the death penalty for drug crimes. The relevant treaties to which Iran is a State party are the International Covenant on Civil and Political Rights (ICCPR), which includes the right to life under Article 6, and the Convention on the Rights of the Child (CRC), which includes the right to life under Article 37.

Iran has the greatest *per capita* executions worldwide of which the majority are carried out for drug crimes. The beginning of 2014 saw a surge in the use of the death penalty in Iran with 21 executions officially acknowledged by the Iranian authorities, as well as 19 additional executions reported through reliable sources. More officially acknowledged executions took place in one week of January 2014, than during the whole month of January 2013. The majority of these were for alleged drug crimes. The death penalty is prescribed for a wide range of drug-related crimes, including simple possession, and it is mandatory in many instances. In practice, the death sentence is often carried out without a fair trial and without any serious opportunity for appeal or clemency.

The Islamic Republic of Iran has been subject to significant criticism from a human rights perspective for its use of the death penalty to punish drug crimes. To date, the United Nations, NGOs and civil society, as well as the media have primarily focused on the concern that drug crimes do not meet the required threshold of 'most serious crimes,' which under international law may be punishable through the deprivation of life, and that prosecution falls short of fair trial requirements. The detailed legal research and analysis of this study concludes that at least six legal bases exist for the violation by Iranian law of Article 6 of the ICCPR. The analysis reveals that Iran's death penalty for drug crimes is contrary to international law in a more fundamental manner than usually understood, due to the compound and cumulative effect of the relevant violations, and the nature of the death penalty as a serious and irreversible punishment.

The analysis demonstrates that the death penalty for drug crimes in Iran violates a number of key legal requirements of Article 6 of the ICCPR:

1. **Lawfulness, non-arbitrariness** – Iran's use of executions by hanging to death in public places is contrary to the prohibition against arbitrariness, which extends to inappropriateness and unjustness.
2. **Mandatory death penalty** – Iran's mandatory capital punishment for drug crimes is contrary to the right to life, as it does not permit consideration of whether this exceptional form of punishment is appropriate in the specific circumstances of each offender's case.

3. **‘Most serious crimes’** – The very wide range of Iranian drug crimes subject to the death penalty, including simple possession beyond certain levels, does not meet the threshold under international law of constituting the ‘most serious crimes.’
4. **‘Conformity’ requirement** – Iranian law and practice relating to public executions and inhuman and degrading punishment, as well as fair trial guarantees during a state of emergency, appear to be contrary to the requirement that the death penalty is non-derogable and consistent with other provisions of the ICCPR.
5. **Fair trial guarantees** —The cases in which persons are executed for drug crimes may often violate a wide range of fair trial guarantees connected to the right to life, such as access to a court, a proper legal defence, an independent judiciary, the right of appeal, as well as an absence of coerced confessions.
6. **Clemency** – While Iranian law provides an opportunity for clemency (i.e. the right to seek pardon or commutation of the sentence), those persons convicted of drug crimes are usually executed within a timeframe that is considered too short to effectively provide for that right.
7. **Non-retroactivity** – Recent amendments to the Iranian drugs legislation may have introduced the possibility of applying the death penalty for a crime or sentence to which such punishment did not apply at the time of the actual offence, and this violates the principle of non-retroactivity under the right to life.
8. **Exception for persons under the age of 18 years** – Juveniles under the age of 18 years convicted of drug crimes may be subjected to execution, as they have been recently for other crimes, which is in violation of obligations under the ICCPR and UN Convention on the Rights of the Child (CRC).

In light of these violations of international human rights law, this legal analysis concludes that the death penalty for drug crimes in the Islamic Republic is not in compliance with Iran’s obligations under the ICCPR and also the CRC. It is necessary for Iran to resolve these violations and fulfil the legal requirements of its treaty obligations. These findings are consistent with the basis for calls for Iran to adopt a moratorium on the death penalty especially for drug crimes, expressed through recommendations in Iran’s Universal Periodic Review before the UN Human Rights Council and by relevant Special Rapporteurs for human rights, and more generally by the UN General Assembly.

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1. Introduction

This study primarily analyses the relevant domestic and international law. It does not focus on the documentation of violations in practice and, where necessary, independent research of other credible organisations is drawn upon for information on the situation in Iran. The study seeks to answer the question of whether Iran is in breach of its obligations under international human rights law in relation to the application of the death penalty to drug offences. This requires the analysis of the content and interpretation of the relevant provisions enshrined in the human rights treaties to which Iran is a party.

Out of nine core international human rights treaties,¹ Iran is a party and legally bound by five of them,² namely:

- the International Convention on the Elimination of All Forms of Racial Discrimination;³
- the International Covenant on Civil and Political Rights (hereinafter “the ICCPR” or “the Covenant”);⁴
- the International Covenant on Economic, Social and Cultural Rights;⁵
- the Convention on the Rights of the Child (hereinafter “the CRC”);⁶ and
- the Convention on the Rights of Persons with Disabilities.⁷

For the purposes of this study, the ICCPR and the CRC are of most relevance as both explicitly address the issue of the death penalty.⁸ The ICCPR applies to “everyone” and the CRC focuses specifically on children as defined therein.⁹ Due to its broader *ratione personae* application,¹⁰ the ICCPR serves as the primary source for this analysis. Iran has made no

¹ The list of all core universal human rights treaties is available at the OHCHR website:

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>> accessed on 22 August 2012

² Iran has ratified all five. See the UN Treaty Collection:

<<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>> accessed on 22 August 2012

³ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

⁴ International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

⁵ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

⁶ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3; Iran is also a party to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, UN Doc A/RES/54/263

⁷ UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, UN Doc A/RES/61/106, Annex I

⁸ See Article 6(2) of the ICCPR and Article 37(a) of the CRC. It should be pointed out that an instrument entirely dedicated to the abolition of the death penalty was drafted under UN auspices: the 2009 Second Optional Protocol to the International Covenant on Civil and Political Rights aims at the abolition of the death penalty. However, Iran is not a party to this treaty.

⁹ See Article 1 of the CRC

¹⁰ The term “everyone” shall be, according to Article 2(1) of the ICCPR, read to include “all individuals within its [State party’s] territory and subject to its jurisdiction.” In para. 10 of the General Comment No. 31, the Human Rights Committee specified that “the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party.” Simply said, foreigners who are on the Iranian territory are protected by the

reservations to the ICCPR and thus is bound by all its provisions.¹¹ Since Article 6 of the ICCPR on the right to life is the only Covenant Article explicitly addressing the death penalty, this analysis primarily examines Iran's application of the death penalty for drug offences in terms of its obligations under Article 6.

Section two of this study analyses the situation in Iran concerning the death penalty for drug crimes. This includes consideration of the Iranian Government's use of the death penalty in the global context and a review of the relevant Iranian national laws. The third section sets out the key requirements of Article 6 of the ICCPR, addressing each distinct limitation on the death penalty for drug-related crimes under international human rights law and particularly Article 6 of the ICCPR, and then against Iranian law and practice concerning the death penalty for drug crimes.

As regards legal sources and interpretation, the analysis relies principally on international human rights treaties.¹² The ICCPR, to which Iran is a party, is in focus, and its interpretation by the relevant treaty body, the UN Human Rights Committee, through the Committee's general comments, concluding observations and views on individual complaints under the Optional Protocol. General Comments, for example, are accepted as authoritative or persuasive interpretations of the provisions in UN human rights treaties.¹³ The *travaux préparatoires* serve as a supplementary means of interpretation. Further sources are other UN documents, UN resolutions of various bodies and organs,¹⁴ including of the General Assembly, the UN Human Rights Council, and reports of the Council's Special Procedures, such as Special Rapporteurs. Judgments of the International Court of Justice of relevance are referenced.

The study will not extensively use customary international law as a source of obligation for Iran.¹⁵ Although some authors consider the right to life to be a rule of customary international law, or even *jus cogens*,¹⁶ this is not the case for the abolition of the death penalty. Abolition can increasingly be considered a regional custom in Europe, although the European Court of Human Rights has been so far reluctant to expressly come to such a conclusion.¹⁷ Yet based on the current number of retentionist States worldwide, one cannot consider the prohibition of the death penalty to amount to a rule of customary international law.¹⁸ In respect of the right

ICCPR. This is particularly important because a significant percentage of persons annually executed for drug-related offences are, as already stated, foreigners, in particular from Afghanistan.

¹¹ See supra, the link to the UN Treaty Collection website

¹² As a source of international law, see Statute of the International Court of Justice, 18 April 1946, Article 38(1)a. This study focuses only on international human rights law and does not examine any obligations related to the death penalty under international humanitarian law or other branches of international law.

¹³ Nowak M., U.N. Covenant on Civil and Political Rights: CCPR commentary (Kehl: N.P. Engel 2nd ed. 2005), para. 6 of Introduction; see also the International Law Commission on reservations to treaties.

¹⁴ In particular, resolutions and documents of the General Assembly and of the Human Rights Council.

¹⁵ Supra, ICJ Statute, Article 38(1)b

¹⁶ See e.g. Rodley N., *The Treatment of Prisoners under International Law* (OUP 3rd ed. 2009), pg. 297; See also e.g. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 23 December 1992, UN Doc E/CN.4/1993/46, para. 678

¹⁷ primarily because the wording of Article 2 of the ECHR allows the death penalty; Amnesty International in its written intervention before the ECtHR in the case of *Soering* argued that the widespread abolitionist practice of European states should abrogate the limitation on the right to life in Article 2(1) of the European Convention on Human Rights. However, the ECtHR stated that the introduction of the 6th Protocol to the Convention as a traditional method of amending the provisions of the ECHR replaced the need for the abrogation of the limitation in Article 2(1) of the ECHR. See *Soering v UK*, ECtHR, Appl. No. 140338/88, 1989, para.103. However, in *Öcalan*, the ECtHR revisited its position.

¹⁸ See e.g. supra, Rodley, *Treatment of Prisoners*, pg. 280

to life *stricto sensu*, there is no need to rely on customary international law insofar as Iran is a State party to the ICCPR and CRC. Potential breaches of various parts of Article 6 of the ICCPR, on which this study focuses, are examined not only against reported facts, but also against new Iranian domestic legislation on narcotic drugs, as well as against relevant reported facts. Specifically, this paper examines whether the Iranian Anti-Narcotics Law as amended in 2011 meets the standards of Article 6 in the field of capital punishment for drug-related crimes.

2. Iran and the Death Penalty

2.1. Global Context and Statistics

According to a report of the UN Secretary-General, as at 31 December 2008, 95 states had abolished the death penalty both *de facto* and *de jure* for all crimes in all circumstances. Eight countries were abolitionists for ordinary crimes, 47 were *de facto* abolitionists and 47 were retentionists.¹⁹ The latest statistics from the international human rights organization Amnesty International from August 2012 show that 97 states are complete abolitionists, eight states are abolitionists for ordinary crimes, 36 are abolitionists in practice and 57 are retentionists.²⁰

Based on national laws and state practices, Harm Reduction International's 2012 Global Overview identified 33 states prescribing the death penalty for drug offences *de jure*.^{21,22} According to Amnesty International, 27 out of these 32 states are retentionists and 5 are abolitionists in practice.²³ Harm Reduction International instead divides these states into high, low and symbolic application states.²⁴ The overwhelming majority of executions for drug offences takes place in only six states, i.e. the high application states.²⁵ Iran is among them. Of the 33 states in the 2012 Global Overview, 23 are also party to the ICCPR, including Iran. Yet Iran is one of only three states (along with China and Vietnam) that are party to the ICCPR and also a high application state for the death penalty for drug crimes. The fact that the majority of states parties to the ICCPR who retain the death penalty for drug crimes fall beneath the category of high application speaks to their interpretation of their international obligations.

¹⁹ Report of the Secretary-General: Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, 18 December 2009, UN Doc. E/2010/10, pp. 60 – 62

²⁰ Amnesty International (hereinafter "AI"), Death Penalty: Abolitionist and Retentionist Countries, available at: <<http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>> accessed on 14 August 2012

²¹ Gallahue P. et al. (HRI), The Death Penalty for Drug Offences: Global Overview 2012 - Tipping the Scales for Abolition, 2011, pg 5.

²² For the definition of the term "drug-related crimes", see section on Iranian national legislation.

²³ These countries include Sri Lanka, Lao PDR, Myanmar, South Korea and Brunei-Darussalam.

²⁴ High application states: China, Iran, Viet Nam, Saudi Arabia, Malaysia, Singapore; Low application states: Indonesia, Kuwait, Thailand, Pakistan, Egypt, Yemen, Syria, Taiwan; Symbolic application states: Oman, Qatar, United Arab Emirates, India, USA, Gaza, Bangladesh, Bahrain, Myanmar, Lao PDR, South Korea, Sri Lanka, Brunei-Darussalam, Cuba; Insufficient data: North Korea, Libya, Sudan, Iraq. For more details on all these countries, see e.g. supra Gallahue, The Death Penalty for Drug Offences: Global Overview 2011, pp. 25-40.

²⁵ This terminology is used by the HRI and inspired by Johnson D. T. and Zimring F. E., The Next Frontier: National Development, Political Change, and the Death Penalty in Asia (OUP 2009)

Generally, it is extremely difficult to obtain accurate statistics on the number of executions in various countries. In some states, such as China, it is even a state secret.²⁶ However, based on numerous sources,²⁷ it can be said that Iran occupies second place after China for number of persons executed for drug offences annually and first place *per capita*.²⁸ In fact, China and Iran are the only two countries with executions counted in hundreds in 2011²⁹ and have been in the top five States for death penalty usage in the past five years.³⁰ Since the beginning of 2014, a surge in the use of the death penalty in Iran was recorded with 21 executions officially acknowledged by the Iranian authorities, as well as 19 additional executions reported through reliable sources. More officially acknowledged executions took place in one week of January 2014, than during the whole month of January 2013.³¹

One may also look at the relevant statistics from another perspective. It is well-documented that there is a global trend towards a complete abolition of the death penalty across states. According to the UN, the number of retentionists between 1979 and 2009 decreased from more than a hundred to less than 50 states.³² Nevertheless, in almost the same period, the number of states which introduced the death penalty for drug offences rose from 10 to more than 30.³³ Statistics also show a sharp increase in the number of executions for drug offences in Iran between 2008 and 2011.³⁴

While there is some minor variation in the figures across sources, it is a reasonable estimate that more than 600 people were executed in Iran in 2011. Regarding statistics on Iran, it should be noted that the Iranian Government does not provide comprehensive statistics on the issue of capital punishment. Iran often refuses to make such statistics available, as made clear in statements by different Iranian officials. For example, Judge Fazel, head of the General Court in Fars province, stated according to the Islamic Republic News Agency that “since it is inappropriate to make daily statements to the public about executions (...) and to provide detailed information regarding the cases, court officials prefer that not all of them be reported.”³⁵ As a contrast, various bodies and organs of the UN have called upon all states to publish information on the number of persons sentenced to capital punishment and on those

²⁶ Gallahue P. (HRI), *The Death Penalty for Drug Offences: Global Overview 2011 - Shared Responsibility & Shared Consequences*, 2011, pg. 25

²⁷ See e.g. supra 2009 Report of the Secretary-General on Capital Punishment, pp. 20 – 21; See also AI, *Death Sentences and Executions in 2011*, March 2012, AI Index ACT 50/001/2012, pg. 55

²⁸ UK Foreign & Commonwealth Office, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, pg. 251

²⁹ According to Amnesty International, China’s estimated executions are in thousands annually

³⁰ AI, *Top 5 Executioners in 2011*, available at: <<http://www.amnesty.org/en/death-penalty/top-5-executioners-in-2011>> accessed on 15 August 2012

³¹ Amnesty International, News, *Iran hangs 40 people in two weeks amid surge in executions*, 16 January 2014, <https://www.amnesty.org/en/news/iran-hangs-40-people-two-weeks-amid-surge-executions-2014-01-16> accessed on 20 January 2014

³² Supra, 2009 Report of the Secretary-General on Capital Punishment, pg. 19

³³ Hood R. and Hoyle C., *The Death Penalty: A Worldwide Perspective* (OUP 4 ed. 2008), pg. 137

³⁴ Supra, Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011*, pg. 26, according to which Iran executed six times more people for drug offences in 2010 compared to 2008; See also supra, AI, *Death Sentences and Executions in 2011*, pg. 35

³⁵ Islamic Republic News Agency, “Judge Acknowledges Hiding Executions from the Public”, 12 May 2007, available at: <<http://www.iranrights.org/english/document-343.php>> accessed on 16 August 2012; For more information see e.g. AI, *Addicted to Death: Executions for Drugs Offences in Iran*, December 2011, AI Index MDE 13/090/2011, pg. 22

already executed.³⁶ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions reaffirmed this and further highlighted that such numbers must be “broken down by the offence for which the person was convicted.”³⁷

While the Iranian Government does not provide statistics on the use of the death penalty, the UN³⁸ and some non-governmental organizations (NGOs) provide credible statistics through their own research. According to Amnesty International, 360 executions were confirmed by judicial or state-licensed media sources in 2011. Amnesty International added to the statistics another 274 executions throughout the same year, arguing that these numbers are from reliable sources.³⁹ In total, it brings the number to 634 reported executions in 2011. Similarly, according to Iran Human Rights’ annual report, at least 676 executions took place in Iran in 2011.⁴⁰ Hands Off Cain in its global database on the death penalty presents lower numbers and claims that Iran executed 503 persons in 2011.⁴¹

These credible sources generally conclude that executions for drug offences constitute more than three quarters of the total number of executions in Iran,⁴² certain high-level officials from the Iranian Government confirmed this. For example, in 2011 at the UN, Dr. Javad Larijani, the Secretary General of the Iranian Judiciary's High Council for Human Rights and key adviser to the Iranian Supreme Leader stated that “[m]ore than 74 per cent of executions in Iran are stemming from drug trafficking related crimes.”⁴³ According to some of the most reliable sources providing death penalty statistics, Iran executed more than 450 people for drug-related offences in 2011. Such a high number of executions for drug offences is not comparable to any country in the world. Complete accuracy of the data on this issue⁴⁴ cannot be ensured, and the lowest possible estimate has been used here; however, credible human rights NGOs believe that many more executions, not officially acknowledged, take place in Iran.⁴⁵

It has been documented that Iran is a country with one of the most serious drug addiction problems in the world and that it annually seizes between a third and a half of the world seizures of heroin.⁴⁶ Alongside its high drug consumption rate in-country, one of the highest around the globe, Iran is also a key transit country for drug trafficking across its borders with

³⁶ ECOSOC Res. 1989/64, Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, 24 May 1989, para. 5; See also UN General Assembly Res. 65/206, 21 December 2010, para 3(c); See also Commission on Human Rights Res. 2005/59, 20 April 2005, para. 5(c)

³⁷ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Transparency and the Imposition of the Death Penalty, 24 March 2006, UN Doc E/CN.4/2006/53/Add.3, pg. 2

³⁸ The UN publishes its statistics on death penalty primarily in designated quinquennial reports of the Secretary-General. It makes them relatively outdated. The last available data are for the period of 2004 - 2008

³⁹ Supra, AI, Death Sentences and Executions in 2011, pg. 35

⁴⁰ Iran Human Rights, Annual Report: Death Penalty in Iran 2011, 4 March 2012, available at: <<http://iranhr.net/IMG/pdf/Binder2.pdf>> accessed on 16 August 2012, pg. 2; Iran Human Rights emphasized in the report that the Iranian authorities constituted a key source for these statistics.

⁴¹ The Hands Off Cain Database, Iran, 2011, available at: <<http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=23&nome=iran>> accessed on 16 August 2012

⁴² Amnesty International: 77 %; Iran Human Rights: more than 80 %; UK Foreign Office: 85 – 90 %

⁴³ United Nations Radio, “Number of executions in Iran can be reduced, says official”, 16 November 2011, available at: <<http://www.unmultimedia.org/radio/english/2011/11/>> accessed on 29 November 2012

⁴⁴ See e.g. supra Hood and Hoyle, The Death Penalty: A Worldwide Perspective, pg. 3

⁴⁵ Supra, AI, Death Sentences and Executions in 2011, pg. 35

⁴⁶ US Department of State’s Bureau for International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report: Volume I, March 2012, pg. 267

Afghanistan and Pakistan towards Western Europe.⁴⁷ The capital punishment for drug offences is sometimes cited by the Iranian authorities as an instrument to combat drug consumption and drug trafficking. The growing number of executions for alleged drug offences in recent years in Iran has not been matched by a reduction in drug use or drug trafficking.⁴⁸ No evidence suggests that it is a deterrent to drug-related crimes.⁴⁹ This was even reaffirmed by Dr. Larijani, who stated that “there is a big question: Did this harsh punishment [capital punishment for drug offences] bring the crimes down or not? In fact, [it] did not bring it down.”⁵⁰

According to NGO reports, a significant number of those executed for alleged drug offences in Iran are Afghan nationals and persons from ethnic and religious minorities.⁵¹ As an Amnesty International report notes, it is difficult to offer a precise account of the individuals on death row for drug-related offences due to a dearth of information on death row inmates in general, however existing reports indicate that “many come from disadvantaged or marginalized communities – people living in poverty who come from the majority Persian-speaking community, Afghan nationals, and those from Iran’s ethnic or religious minorities such as ethnic Baluch and the Kouresunni, a small community of Sunnis from the mainly-Shi’a Azerbaijani minority.”⁵²

2.2. Iranian national legislation

The Iranian Government does not provide information which could be measured against the above statistics. The wording of Iranian national legislation, however, establishes the terms for the imposition of capital punishment in practice.

Iranian Anti-Narcotics Law and the definition of drug-related crimes

The clarification of the definition of “drug crimes” or “drug-related crimes” informs the scope of the issues analyzed in this study. “Drug crimes” and “drug-related crimes” are used as synonyms. There are various definitions of drug (related) crimes both at the international level⁵³ and in the domestic legislation of various countries.⁵⁴ These definitions cover a variety

⁴⁷ For more information, see UNODC’s World Drug Reports of 2010 and 2011

⁴⁸ See supra, AI, Addicted to death, pg. 38

⁴⁹ See e.g. supra, Hood and Hoyle, The Death Penalty: A Worldwide Perspective, pp. 139, 347

⁵⁰ United Nations Radio, “Number of executions in Iran can be reduced, says official”, 16 November 2011, available at: <<http://www.unmultimedia.org/radio/english/2011/11/>>

⁵¹ See e.g. supra, AI, Addicted to Death, pp. 25 - 27

⁵² Supra, AI, Addicted to Death, p.25. See also Iranian Human Rights Documentation Center joint statement, <http://www.iranhrdc.org/english/news/1000000194-joint-statement-on-international-day-against-the-death-penalty.html#.UuA6lPbFJn4>.

⁵³ For example, the United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (UN-CTS) defines drug related crimes as “all intentional acts that involve the cultivation; production; manufacture; extraction; preparation; offering for sale; distribution; purchase; sale; delivery on any terms whatsoever; brokerage; dispatch; dispatch in transit; transport; importation; exportation; possession or trafficking of internationally controlled drugs.” For a more detailed definition, see e.g. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 20 December 1988, United Nations, Treaty Series, vol. 1582, p. 95, Article 3(1)

⁵⁴ Drug crimes as defined in national legislation of various countries and the threshold for the imposition of the sentence of death significantly vary from country to country. See Report of the Secretary-General: Capital

of categories of crimes with a wide range of motives.⁵⁵ This analysis does not elaborate on or examine the possibilities of defining drug (related) crimes under international law. For the purposes of this study, it is sufficient to focus on the Iranian national legislation when determining the scope and content of the definition. In other words, the inquiry is driven by what Iran understands under the term “drug (related) crimes.” Such crimes will be further limited only to those for which Iranian national legislation prescribes capital punishment. This list of crimes will form the term “drug (related) crimes” for the purposes of this study.

The Iranian Constitution provides safeguards that “[t]he dignity, *life*, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law [emphasis added].”⁵⁶ In other words, based on the Iranian Constitution, national legislation must identify all crimes for which the death penalty is imposed, including drug-related crimes. These crimes are, indeed, defined under Iranian national legislation. Concretely, the Iranian Anti-Narcotics Law of 1988 as amended in 1997 and 2011 (hereinafter “the Anti-Narcotics Law”)⁵⁷ criminalizes a wide range of activities related to drugs.⁵⁸ The Anti-Narcotics Law provides a clear overview of the drug crimes for which the death penalty is imposed and thus serves as a basis for this analysis.

Both the 1997 amendments and the 2011 amendments of the Anti-Narcotics Law can be generally understood as responses by the Iranian Government to the growing drug problem in Iran. In recent years, Iran has intensified its efforts to combat drug trafficking.⁵⁹ These amendments impose stricter sanctions for drug-related crimes and expanded the number and variety of drug-related crimes for which the death penalty is imposed.⁶⁰ The 2011 amendments also introduced the death penalty for the possession of new categories of drugs.⁶¹ The Anti-Narcotics Law seems to allow for even further expansion of the list of drugs, possession of which is punished by death, since it stipulates that, if passed by the Parliament, this list can be extended to other non-medical drugs affecting mental activity (i.e. non-medical psychotropics).⁶²

The Anti-Narcotics Law, including the 2011 amendments, imposes the death penalty for 17 drug-related offences.⁶³ Drug crimes in Iran subject to the death penalty range from criminal offences such as manufacturing and trafficking, to simple personal possession. No distinction is made in the law between drug-related crimes such as for example armed smuggling, or transportation across a border of more than 30 grams of narcotics. In particular, with regard to

punishment and implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty, 8 June 1995, UN Doc E/1995/78, para. 55

⁵⁵ Gallahue P. and Lines R. (IHRA), *The Death Penalty for Drug Offences: Global Overview 2010*, pg. 10

⁵⁶ Article 22 of the Iranian Constitution

⁵⁷ English translation of the 2011 version of this Law available at the University of Essex’s Human Rights in Iran Unit website, see www.essex.ac.uk/hri accessed on 12 November 2012

⁵⁸ See Article 1 of the Anti-Narcotics Law; See also supra, AI, *Addicted to death*, pg. 15; See also Interim report of the Secretary-General on the situation of human rights in Iran, 14 March 2011, UN Doc A/HRC/16/75, para. 12

⁵⁹ See e.g. supra, 2011 Interim report of the Secretary-General on human rights in Iran, para. 12; See also supra, AI, *Death Sentences and Executions in 2011*, pg. 35

⁶⁰ For the summary of these changes, see e.g. supra, AI, *Death Sentences and Executions in 2011*, pg. 35; See also supra, AI, *Addicted to Death*, pp. 14-15

⁶¹ Such as methamphetamine among others, see amendments to Article 8 of the Anti-Narcotics Law

⁶² See Articles 4 and 8 of the Anti-Narcotics Law

⁶³ See Articles 2, 4(4), 5(4), 5(5), 5(note), 6, 8(6), 9, 11, 12, 18, 26, 35 and 40 of the Anti-Narcotics Law; For the complete list, see also AI, *Addicted to death*, Appendix 1, pp. 45 - 46

a person who commits one of the following crimes for the first time, the Anti-Narcotics Law stipulates that:

Article 8

“Anyone who imports, manufactures, produces, distributes, exports, sends, deals in, puts on sale, keeps or stores, conceals or carries heroin, morphine, cocaine and other chemical derivatives of morphine and cocaine and also Lysergic acid diethylamide (LSD), methylenedioxy-methylamphetamine (MDMA or ecstasy), Gamma Hydroxybutyric acid (GHB), Flonitrazepam, methamphetamine (glass) (...) shall be sentenced to the following punishments, taking into account the amount of said drugs: (...) 6. More than thirty grams, death penalty...”⁶⁴

and that

Article 4

“[a]nybody who smuggles in or out, produces, distributes, deals in or puts on sale bhang, Indian hemp juice, opium and opium juice or opium residue (shireh) and non-medical psychotropics (...) shall be sentenced to the following punishments, taking into account the quantity of said materials: (...) 4. More than five kilograms, death penalty...”⁶⁵

The Anti-Narcotics Law links the death penalty with other drug-related crimes, for some of which it is necessary to meet the condition of reaching a certain threshold of quantity. These crimes include: armed smuggling of drugs,⁶⁶ smuggling of drugs into prisons, barracks or rehabilitation centers,⁶⁷ hiring or supporting activities to commit crimes under the Anti-Narcotics Law,⁶⁸ being head of the gang or the network,⁶⁹ placing drugs in a locality in an attempt to accuse another person of a crime mentioned in the Anti-Narcotics Law,⁷⁰ and forcing children or mentally-ill persons to commit any crime mentioned in the Anti-Narcotics Law.⁷¹ Furthermore, the Anti-Narcotics Law imposes the death penalty on someone who is repeatedly convicted of a certain drug-related crime, such as cultivation of “poppies or cannabis for the purpose of producing narcotic drugs.”⁷²

2.3. International (human rights) treaties in Iranian legislation

Binding force. An international human rights treaty becomes legally binding on a particular State upon ratification or accession of such a treaty by the respective State.⁷³ This is one of the core principles for the implementation of international law. The Iranian Civil Code integrates international treaties into national legislation by stating that “[t]reaty provisions

⁶⁴ Article 8(6) of the Anti-Narcotics Law

⁶⁵ Ibid, Article 4(4)

⁶⁶ Ibid, Article 11

⁶⁷ Ibid, Article 12

⁶⁸ Ibid, Article 18

⁶⁹ The Anti-Narcotics Law does not provide any details as to the meaning of “gang” or “network”. See Article 18 of the Anti-Narcotics Law

⁷⁰ Ibid, Article 26

⁷¹ Ibid, Article 35

⁷² Ibid, Article 2(4); For other crimes, see Articles 5(4), 5(5), 5(note), 6, 9, 40 of the Anti-Narcotics Law.

⁷³ Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Arts. 11, 14, 15 and 26

which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and other governments, shall have the force of law.”⁷⁴

Iran ratified the ICCPR before the establishment of the Islamic Republic. With respect to the ICCPR, the IRI has neither denounced, derogated from, nor attached any reservations to the Covenant since the 1979 Revolution. This simply means that the IRI is bound by the ICCPR; the State’s submission of periodic reports to the treaty-monitoring bodies has already confirmed this commitment.

The general rules of interpretation applicable to the ICCPR apply also to Iran. International treaties are to be interpreted in accordance with the basic interpretation rules of international law found in the Vienna Convention on the Law of Treaties (VCLT).⁷⁵ The VCLT stipulates that an international treaty shall be interpreted in good faith and based on the ordinary meaning of the terms in the treaty, on the context and on the object and purpose of the treaty, and on the subsequent practice as agreed by the states parties to that treaty.⁷⁶ Although Iran is not a party to the VCLT, the VCLT in general and also the above-mentioned interpretation rules in particular are often referred to as a codification of customary international law.⁷⁷ Iran is therefore bound by these rules not through the treaty obligation, but through custom. Accordingly, Iran must interpret Article 6 of the ICCPR in line with the interpretation rules contained in the VCLT. Treaty bodies, which are groups of independent experts, are most suited to interpret their respective treaties in line with such interpretation rules. These interpretive rules should be also supplemented *inter alia* with the *travaux préparatoires* and circumstances of the conclusion of the treaty.⁷⁸

Although not binding, the annual UN General Assembly resolution on international cooperation against the world drug problem also reaffirms an international commitment to carry out efforts to combat drug crimes “in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action on human rights.”⁷⁹

3. Key Requirements of Article 6 of the ICCPR

This section examines the relevant key requirements of Article 6 of the ICCPR. The precise obligations under the ICCPR are established for Iran’s application of the death penalty to drug-related crimes, and whether Iran may stand in violation of any such requirements.

Article 6 of the ICCPR reads as follows (emphasis added):

1. Every human being has the *inherent right to life*. This right shall be protected by law. No one shall be *arbitrarily deprived* of his life.

⁷⁴ Civil Code of the Islamic Republic of Iran, 1928, available at:

<<http://www.unhcr.org/refworld/docid/49997adb27.html>> accessed on 21 August 2012, Art. 9

⁷⁵ Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331

⁷⁶ Article 31 of the VCLT; See also Report of the International Law Commission, May – August 2012, UN Doc A/62/10, p. 80

⁷⁷ See e.g. Case Concerning the Territorial Dispute (Libya v. Chad), ICJ, 1994, para. 41

⁷⁸ Article 32 of the VCLT

⁷⁹ United Nations, General Assembly Resolution A/RES/67/193, 23 April 2013, para. 2

2. In countries which have not abolished the death penalty, sentence of death may be imposed *only for the most serious crimes* in accordance with the law in force *at the time of the commission of the crime* and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a *final judgment rendered by a competent court*.

[...]

4. Anyone sentenced to death shall have the *right to seek pardon or commutation* of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by *persons below eighteen years of age* and shall not be carried out on *pregnant women*.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 6 requirements relate to the “application” of the death penalty, which encompasses both the “imposition” of the sentence and “carrying out” of the death penalty, (as referred to in paragraphs (2) and (5)).⁸⁰ The “imposition” refers to the legal act of handing down a sentence to death, whereupon the actual execution may be lawfully “carried out.” Article 6 paragraph (5) in particular illuminates this distinction: there is an absolute ban on a death sentence being handed out to persons under the age of eighteen, whereas pregnant women may be sentenced to death but the sentence may only be carried out, implicitly, when they are no longer pregnant.

Limitations on the right to life. The right to life in Article 6 of the ICCPR enjoys special status among the Covenant rights since it is the only right in the Covenant explicitly designated as ‘inherent.’ The UN Human Rights Committee has defined the right to life as “the supreme human right”⁸¹ which can neither be derogated from⁸² nor restricted in a traditional sense.⁸³ The third sentence of Article 6(1) clearly shows that the right to life is however not an absolute right.⁸⁴ The qualification that deprivation of life shall not take place “arbitrarily” allows for exceptions to the right to life. The only specific exception mentioned explicitly in Article 6 is the death penalty, referred to in four out of six paragraphs of the article.⁸⁵ The use of the word “arbitrarily” in Article 6(1) indicates that there may be other exceptions to the right to life as well.⁸⁶

⁸⁰ In *Damjanovic v. the Federation of Bosnia and Herzegovina*, Human Rights Chamber for BiH, 5 September 1997, Case No. CH/96/30, the Chamber stated, referring to Article 2 of the Second Optional Protocol to the ICCPR, that “the word “application” [of the death penalty] covers both the imposition and carrying out [i.e. the execution] of the death penalty”. See para. 36 of the Chamber’s decision on the merits

⁸¹ HRC, General Comment No. 6: Article 6 (Right to Life), 30 April 1982, para. 1

⁸² Article 4(2) of the ICCPR

⁸³ Cf. e.g. Article 18(3) and 19(3) of the ICCPR

⁸⁴ Cf. freedom from torture, see e.g. Article 7 of the ICCPR

⁸⁵ During the drafting of the ICCPR, agreeing on the wording of the provisions related to the death penalty was an extremely lengthy process. For more information see e.g. See Schabas W., *The Abolition of the Death Penalty in International Law* (CUP 3rd ed. 2002), pp. 45 – 93

⁸⁶ *Ibid*, pg. 47

The ICCPR permits the death penalty under certain circumstances. The limited scope of lawfulness for the death penalty was reaffirmed by the ICCPR's treaty body, the UN Human Rights Committee, which stated that "[w]hile [...] States parties [to the ICCPR] are not obliged to abolish the death penalty totally they are obliged to limit its use."⁸⁷ The UN Human Rights Committee and international experts point out that the wording of sub-sections (2) and (6) of Article 6 suggests that abolition, though not mandatory, is a preferred option and is the ultimate and desired goal in the field of human rights.⁸⁸

The question is whether all the necessary requirements for the death penalty under Article 6 of the ICCPR are fulfilled when Iran applies it as a punishment for drug-related crimes. Based on the wording of Article 6 and its interpretation by the UN Human Rights Committee, supported by other relevant UN organs and international experts,⁸⁹ this study identifies eight key requirements of Article 6 of the ICCPR relevant to the Iranian Government's application of the death penalty to drug crimes:

1. Lawfulness, arbitrariness
2. Mandatory death penalty
3. 'Most serious crimes'
4. 'Conformity' requirement
5. Fair trial guarantees
6. Clemency
7. Non-retroactivity
8. Exception for persons under the age of 18 years

The key requirements of Article 6 contain both substantive and procedural requirements relating to either the imposition or carrying out of the death penalty. In fact, all the requirements of Article 6 listed above relate to a certain extent to the imposition of the death penalty, and most are also related to the Iranian national law imposing the death penalty. All the key requirements of Article 6 are elaborated upon and analyzed below concerning the Iranian law and practice on the death penalty for drug offences. The key requirements are interrelated but also stand alone, and a violation of any of the eight requirements will lead to a violation of Article 6.

3.1. Lawfulness, arbitrariness – Public executions

The wording of Article 6 of the ICCPR clearly indicates that a State may apply the death penalty only if it is prescribed by domestic law. This is reflected in the phrases in Article 6 that the right to life "shall be protected by law"⁹⁰ and capital punishment shall be imposed only "in accordance with law."⁹¹ In other words, States parties to the ICCPR have to respect the principle of lawfulness (i.e. legality), which requires them to put in place a legal framework regulating capital punishment.⁹² If a State did not prescribe the death penalty by

⁸⁷ Supra, HRC, General Comment No. 6, para. 6

⁸⁸ Ibid, para. 6; See also supra, Nowak, CCPR Commentary, pg. 134; See also supra Schabas, Abolition of the Death Penalty, pp. 47 and 64

⁸⁹ In particular supra, Nowak, CCPR Commentary, pp. 138 – 149; and supra, Rodley, Treatment of Prisoners, pp. 297 - 306

⁹⁰ See the second sentence of Article 6(1) of the ICCPR

⁹¹ See Article 6(2) of the ICCPR

⁹² HRC, General Comment No. 6 stipulates that "the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

law, its imposition would amount to an extra-legal execution and would violate Article 6 of the ICCPR.

The term ‘arbitrarily’ in Article 6(1) is broader than merely the concept of lawfulness⁹³ and plays a crucial role in two different but interrelated contexts. A substantial debate is reflected in the ICCPR’s *travaux préparatoires* as to whether a *closed* list of explicit exceptions to the right to life should be included in Article 6. It was decided that the term “arbitrarily” be used instead, because such term can be interpreted to implicitly provide for an *open* list of exceptions to the right to life.⁹⁴ Second, more importantly for the purposes of the requirements of Article 6, the term ‘arbitrarily’ encompasses requirements which every exception to the right to life, including the only explicit one (i.e. the death penalty) has to meet. Although there was no consensus on the meaning of the term in the ICCPR’s drafting process,⁹⁵ Schabas has summarized the opinions of various delegations on the scope of the term. According to the States during the treaty’s negotiation, the term ‘arbitrary’ meant “fixed or done capriciously or at pleasure; without adequate determining principle; depending on the will alone; tyrannical; despotic; without cause upon law; not governed by any fixed rule or standard.”⁹⁶ In short, the term ‘arbitrarily’ meant both illegally and unjustly.⁹⁷ It therefore covers not only the requirement that the death penalty must be prescribed by law, but it appears also to include *inter alia* the guarantee of due process of law, the concept of justice of laws, the quality of laws, and the prevention of abuses in the name of law.⁹⁸ This interpretation is supported by the UN Human Rights Committee which stated that for Article 6 arbitrariness “include[s] elements of inappropriateness, injustice and lack of predictability.”⁹⁹

The principle of arbitrariness is closely linked to and constitutes an integral part of other key requirements of Article 6, especially those related to the mandatory death penalty and to fair trial guarantees. Both of those latter issues are considered in more detail below, and therefore need not be considered in any detail under arbitrariness. A further issue which is relevant to the general principle of arbitrariness, including the elements of inappropriateness and injustice, and that is not developed elsewhere, is that of public executions. The principles of lawfulness and arbitrariness primarily relate to the *imposition* of the death penalty. However, the principle of arbitrariness may be relevant also to the *execution* itself.¹⁰⁰

There are good reasons to consider that the practice of public executions leads to a violation of the prohibition of arbitrariness. The UN Human Rights Committee has stated that such

⁹³ The HRC stated that “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly”. See *Van Alphen v. The Netherlands*, HRC, 15 August 1990, Comm. No. 305/1988, para. 5.8.

⁹⁴ However, there were some views, particularly from the UK, that the term „arbitrary“ is an imprecise and undefined standard and that the ICCPR should set more detailed standards compared to the UDHR and not duplicate it. See the *travaux préparatoires* of the ICCPR, UN Docs E/1371; E/CN.4/350; E/CN.4/694/Add.2; A/C.3/SR.562, para. 9

⁹⁵ Boyle K., *The Concept of Arbitrary Deprivation of Life*, In Ramcharan B. G. (ed.), *The Right to Life in International Law* (Martinus Nijhoff Publishers 1985), pg. 225

⁹⁶ *Supra*, Schabas, *Abolition of the Death Penalty*, pg. 73

⁹⁷ UN Secretary General, *Annotations on the text of the draft International Covenants on Human Rights*, 1 July 1955, UN Doc A/2929, pg. 30, para. 3

⁹⁸ Throughout the drafting process of the Covenant, some delegations argued that the term “arbitrarily” equals only “without due process of law” (i.e. illegally); See UN Docs A/C.3/SR.816, para. 10; A/C.3/SR.811, para. 18

⁹⁹ *Supra*, *Van Alphen v. The Netherlands*, para. 5.8

¹⁰⁰ For example, an execution of a woman shortly after giving birth or of an insane person may be in line with paras. 2, 4, 5 and 6 but still can be arbitrary and thus violate Article 6. See *supra*, Schabas, *Abolition of the Death Penalty*, pg. 100

public executions are contrary to human dignity.¹⁰¹ Schabas has suggested that human dignity is linked to arbitrary deprivation of life through the ICCPR's preamble.¹⁰² The issue of public executions and Article 6 is also closely connected to the prohibition of torture and ill-treatment under Article 7 of the ICCPR. For example, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recently stated:

The prohibition of torture and cruel, inhuman or degrading treatment and the strict adherence to safeguards constitute absolute limits on the use and enforcement of the death penalty. ... The Special Rapporteur finds that ... most conditions under which capital punishment is actually applied renders the punishment tantamount to torture. Under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment. ... The Special Rapporteur calls upon retentionist States ... [t]o refrain from carrying out executions in public or in any other degrading manner...¹⁰³

There are therefore concerns that public executions may be inconsistent with the prohibition against arbitrary deprivation of life under Article 6(1) and against torture or ill-treatment under Article 7 of the ICCPR.

The above law must be applied to Iran and the context of drug offences. The Anti-Narcotics Law does provide details on the offences for which the death penalty shall be imposed.¹⁰⁴ Therefore, *prima facie*, Iran fulfills the requirement of *lawfulness* and does not necessarily violate Article 6 in this regard. On the other hand, this cannot be said with regard to the prohibition of *arbitrariness*. It is questionable whether the death penalty for drug offences in Iran does not “include elements of inappropriateness, injustice and lack of predictability”. In order to measure whether the death penalty is an appropriate punishment for drug-related crimes, it is necessary to take into account *inter alia* the severity of crimes for which a country imposes the death penalty, and practice of other States in this regard.

Public executions may lead to a violation of arbitrary deprivation of life, due to the public nature leading to elements of inappropriateness and injustice, and also the prohibition against torture and cruel, inhuman or degrading punishment. The UN, NGOs and media have reported numerous cases of public executions in Iran.¹⁰⁵ While executions are normally held in prisons, it has been reported that a public execution was held in a sports stadium,¹⁰⁶ and others are held in public parks.¹⁰⁷ It is reported that the increasing economic difficulties in Iran are

¹⁰¹ HRC, Concluding observations: Nigeria, 24 July 1996, UN Doc CCPR/C/79/Add.65, para. 286 (“Public executions are also incompatible with human dignity.”)

¹⁰² Supra, Schabas, Abolition of the Death Penalty, pp. 101 – 102. Preamble of the ICCPR provides that “[human] rights derive from the inherent dignity of the human person”.

¹⁰³ Note by the Secretary-General, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (9 August 2012), A/67/279, paras. 75, 76, 80(c).

¹⁰⁴ See sub-chapter on Iranian Anti-Narcotics Law

¹⁰⁵ See e.g. HRC, Concluding observations: Iran, 3 August 1993, UN Doc CCPR/C/79/Add.25, para. 8; Dehghan S. K., “Iran’s public executions in the spotlight”, The Guardian, 12 June 2012, available at: <<http://www.guardian.co.uk/world/iran-blog/2012/jun/12/iran-public-executions>> accessed on 21 November 2012; See also Dehghan S. K., “Iran public execution outrages human rights groups”, The Guardian, 22 July 2011, available at: <<http://www.guardian.co.uk/world/2011/jul/22/iran-public-execution-human-rights>> accessed on 21 November 2011; See also e.g. International Federation for Human Rights (FIDH), Iran/death penalty, A state terror policy, April 2009, pp. 38 – 39; See also e.g. supra, Gallahue and Lines, The Death Penalty for Drug Offences: Global Overview 2010, pg. 15 – 16

¹⁰⁶ International Campaign for Human Rights in Iran, Photo of the Day: Public Execution in a Sports Stadium in Iran (16 January 2012) available at <http://www.iranhumanrights.org/2013/01/photo_day/>.

¹⁰⁷ New York Times, Iran Resorts to Hangings in Public to Cut Crime (20 January 2013) available at <<http://www.nytimes.com/2013/01/21/world/middleeast/iran-resorts-to-hangings-in-public-to-cut>>

leading to more violent crime, and this is one reason for the Government's increasing use of public executions.¹⁰⁸ The Universal Periodic Review recommendations for Iran in 2010 requested that it respect the minimum standards set forth in the ICCPR and CRC with regard to inhumane and public executions.¹⁰⁹ The UN Office of the High Commissioner for Human Rights recently stated that it "condemned the rise in public executions in Iran, stating they add to the already cruel, inhuman and degrading nature of the death penalty and have a dehumanizing effect on the victim and those who witness the execution."¹¹⁰

The UN Office for the High Commissioner for Human Rights also noted that in 2012, 55 public executions were carried out,¹¹¹ despite a reported 2008 prohibition against public executions.¹¹² Persons executed during the reported public executions were usually convicted of other crimes than those related to drugs.¹¹³ Persons convicted of drug-related crimes were often executed in prisons.¹¹⁴ However, the Iranian judiciary has admitted public executions for drug trafficking,¹¹⁵ and there have been reports of public executions for serious drug offences.¹¹⁶ Such public executions are permitted under the Anti-Narcotics Law if deemed appropriate.¹¹⁷ Based on all these considerations, it is possible that Iran violates Article 6(1) of the ICCPR in the context of public executions for drug crimes.

In addition, the absence of fair trial standards in death penalty cases may be an arbitrary deprivation of life under Article 6(1) as well as contrary to the fair trial standard in Article 6(2).¹¹⁸ This is also connected with the practice of forced confessions which occurs in Iran.¹¹⁹

[crime.html?_r=0](http://www.iranhr.net/spip.php?article2717)>; Iran Human Rights, Seven Executions In Iran: Four Executions In Public, 17 February 2013, available at <[Lhttp://www.iranhr.net/spip.php?article2717](http://www.iranhr.net/spip.php?article2717)>.

¹⁰⁸ Iran Human Rights, Seven Executions In Iran: Four Executions In Public, 17 February 2013, available at <[Lhttp://www.iranhr.net/spip.php?article2717](http://www.iranhr.net/spip.php?article2717)>; New York Times, Iran Resorts to Hangings in Public to Cut Crime (20 January 2013) available at <http://www.nytimes.com/2013/01/21/world/middleeast/iran-resorts-to-hangings-in-public-to-cut-crime.html?_r=0>.

¹⁰⁹ Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran, Human Rights Council, 14th Sess., March 15, 2010, U.N. Doc. A/HRC/14/12, paras. 90(39), 91(10).

¹¹⁰ OHCHR, UN human rights office condemns execution of Iranian juvenile (22 January 2013), available at <<http://www.un.org/apps/news/story.asp?NewsID=43980&>>.

¹¹⁰

¹¹¹ Ibid.

¹¹² Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran, Human Rights Council, 14th Sess., March 15, 2010, U.N. Doc. A/HRC/14/12, Para. 73.

¹¹³ Such as rape, murder, or political crimes

¹¹⁴ See e.g. Amiri-Moghaddam M., "11 Executions in Iran Today – Five Public Hangings, Netherlands Aid", 27 May 2011, available at: <<http://www.nl-aid.org/domain/human-rights/11-executions-in-iran-today-five-public-hangings/>> accessed on 21 November 2012

¹¹⁵ See e.g. Iran Human Rights, "Public Executions, Amputation And Flogging In Iran- 81 Executions In 10 Days- IHR Urges The International Community To React", 17 November 2012, available at: <<http://iranhr.net/spip.php?article2645>> accessed on 21 November 2012; See also e.g. Iran Human Rights, "Two Prisoners hanged- One In Public And One In The Prison. 27 Official And 47 Unofficial Executions In One Week In Iran", 13 November 2012, available at: <<http://iranhr.net/spip.php?article2638>> accessed on 21 November 2012

¹¹⁶ See e.g. Hands Off Cain, Iran: Two hanged publicly for drug trafficking (referring to national media reports), 16 November 2012 (Those hanged were convicted respectively of possession of 85 kilograms of opium and 10 kilograms of concentrated heroin, and 2800 grams of concentrated heroin.), available at <<http://www.handsoffcain.info/news/index.php?iddocumento=16312495>>.

¹¹⁷ Articles 9 and 11 of the Anti-Narcotics Law

¹¹⁸ See sub-chapter on fair trial guarantees where it is argued that a violation of Article 14 is simultaneously a violation of Article 6(2). *Pinto v. Trinidad and Tobago*, HRC, 20 July 1990, Comm. No. 232/1987, Individual opinion of Mr. Wennergren; See also Report of the Special Rapporteur on extrajudicial, summary or arbitrary

The practice of Iranian revolutionary courts delivering judgments in death penalty cases can be labeled as summary executions, which, in turn, is an example of arbitrary deprivation of life. The UN and NGOs have reported numerous examples of such cases considered to be summary executions.¹²⁰

In sum, considering the term ‘arbitrarily’ as defined above by the UN Human Rights Committee, Iran appears to violate Article 6(1) of the ICCPR through the lack of due process of law, and the element of ‘inappropriateness’ and ‘injustice’ of arbitrary deprivation of life as prohibited therein. It should be pointed out that this section provided only some examples of how the principle of arbitrariness is applied *vis-à-vis* the death penalty for drug offences in Iran.

3.2. Arbitrariness – Mandatory death penalty

The principles of lawfulness and non-arbitrariness are closely related to the question of whether the death penalty can be imposed *mandatorily* for certain offences under national legislation and whether this *per se* constitutes a violation of international human rights law. In *Thompson v St. Vincent and the Grenadines*, the UN Human Rights Committee clearly stated that “a system of mandatory capital punishment would deprive the author of (...) the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her case.”¹²¹ Thus, such a system itself leads to a violation of Article 6(1) of the ICCPR.¹²² In *Carpo et al. v The Philippines*, the UN Human Rights Committee summarized its previous jurisprudence by stating that “mandatory imposition of the death penalty constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant's personal circumstances or the circumstances of the particular offense.”¹²³ Although the Special Rapporteur on extrajudicial, summary or arbitrary executions was reluctant to explicitly refer to a violation of Article 6(1), he nevertheless in his 2007 report mentioned that “[m]aking the death penalty mandatory for certain crimes (...) is illegal under international human rights law”¹²⁴ and that “individualized sentencing by the judiciary is required in order to prevent (...) the arbitrary deprivation of life.”¹²⁵

The imposition of the mandatory death penalty in national legislation cannot ensure that every single case is adequately individually examined, because only the judiciary can take into account all relevant factors of an individual case even if the national legislation precisely and

executions, 31 January 1983, UN Doc E/CN.4/1983/16, pg. 15; For the discussion on the issue, see also supra, Schabas, *Abolition of the Death Penalty*, pg. 101.

¹¹⁹ Human Rights Watch. [Iran: Detainees Describe Beatings, Pressure to Confess](http://www.hrw.org/news/2009/07/08/iran-detainees-describe-beatings-pressure-confess) (8 July 2009) available at <<http://www.hrw.org/news/2009/07/08/iran-detainees-describe-beatings-pressure-confess>>; Ervand Abrahamian, *Tortured Confessions: Prisons and Public Recantations in Modern Iran*, Berkeley, CA: University of California Press, 1999, p. 285.

¹²⁰ See sub-chapter on the fair trial guarantees.

¹²¹ *Eversley Thompson v. St. Vincent and the Grenadines*, HRC, 18 October 2000, Comm. No. 806/1998, para. 8.2; For HRC’s earlier case law on the issue, see in particular *Lubuto v. Zambia*, HRC, 31 October 1995, Comm. No. 390/1990

¹²² *Kennedy v. Trinidad and Tobago*, HRC, 26 March 2002, Comm. No. 845/1998, para.7.3

¹²³ *Jaime Carpo et al. v. Philippines*, HRC, 9 May 2003, Comm. No. 1077/2002, para. 8.3; See also *Pagdayawon Rolando v. Philippines*, HRC, 8 December 2004, Comm. No. 1110/2002, para. 5.2

¹²⁴ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 29 January 2007, UN Doc A/HRC/4/20, para. 66

¹²⁵ *Ibid*, para. 4

narrowly defines the offences for which the death penalty shall be mandatorily imposed.¹²⁶ The ICCPR requires individualized sentencing by a competent court for the imposition of the death penalty.¹²⁷ In this regard, the principle of proportionality has to be respected between the death sentence in an individual case and the circumstances of the crime in that case.¹²⁸ The mandatory death penalty prescribed by national legislation does not allow for proportionality to be assessed on a case-by-case basis and therefore constitutes *arbitrary* deprivation of life under Article 6(1) of the ICCPR.¹²⁹

It is important to note that, in the absence of the *possibility* of assessing proportionality in any case through the mandatory nature of the death penalty, all imposition of the death penalty becomes arbitrary, whether or not it might have been proportionate if the case had been assessed. This is because it was imposed automatically and *regardless* of the circumstances of that case. It has already been noted that the term “arbitrarily” encompasses the concept of inappropriateness and injustice. The Anti-Narcotics Law with its mandatory death penalty for various drug-related crimes cannot guarantee justice, since it prevents the assessment of whether in some cases the death penalty may be disproportionate, and thus imposes an arbitrary deprivation of life. Furthermore, since the mandatory death penalty lacks individualized sentencing it may also be seen to violate fair trial guarantees.¹³⁰ It is also widely recognized that the mandatory death penalty constitutes a breach of the prohibition of cruel, inhuman and degrading treatment or punishment.¹³¹ As the Special Rapporteur for torture or cruel, inhuman or degrading treatment or punishment recently stated, “the mandatory death penalty, a legal regime under which judges have no discretion to consider aggravating or mitigating circumstances with respect to the crime or the offender, violates due process and constitutes inhumane treatment.”¹³²

The Iranian Anti-Narcotics law imposes the mandatory death penalty for certain drug-related crimes. Under Article 4 and 8 of the Anti-Narcotics Law cited above, the death penalty is mandatory for crimes when a certain quantity of a listed drug is reached.¹³³ Note 1 in Article 8 and the Note in Article 4 however qualify this, indicating that the fulfillment of certain conditions may lessen the punishment. Yet in general, when the quantity exceeds one hundred grams of a listed drug in Article 8 and twenty kilos of a listed drug in Article 4, the death penalty is mandatory. It is clear from the wording of the Anti-Narcotics Law that the death penalty is also mandatory for certain other drug-related crimes even without considering the

¹²⁶ See supra the 2007 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 56 ; See also the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 22 December 2004, UN Doc E/CN.4/2005/7, para. 63

¹²⁷ Article 6(2) and Article 14(5) of the ICCPR; See also supra the 2007 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 62

¹²⁸ Ibid, para. 61

¹²⁹ See e.g. supra, *Thompson v. St. Vincent*, para. 8.2; See also supra *Kennedy v. Trinidad and Tobago*, para. 7.3

¹³⁰ See e.g. *Litigating against the Death Penalty for Drug Offences: An Interview with Saul Lehrfreund and Parvais Jabbar*, 2010, *International Journal on Human Rights and Drug Policy*, Vol. 1, pg. 54

¹³¹ See e.g. supra the 2004 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 80; See also e.g. supra, *Litigating against the Death Penalty for Drug Offences: An Interview with Saul Lehrfreund and Parvais Jabbar*, 2010, *International Journal on Human Rights and Drug Policy*, Vol. 1, pp. 56 - 57

¹³² Note by the Secretary-General, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (9 August 2012), A/67/279, paras. 59.

¹³³ The threshold for the death penalty could be reached cumulatively. In other words, small quantities but more often in a possession of a person may also lead to the sentence of death. See e.g. R. Lines (IHRA), *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*, 2007, pp. 10-11

quantity of drugs. These crimes include “armed smuggling of narcotic drugs” or being “the head of the [drug] gang or the network.”¹³⁴ In addition, the mandatory death penalty may be imposed on a person who is repeatedly in possession of a small quantity of an illicit drug, which cumulatively reaches a prescribed quantity of the same drug.¹³⁵ Since both the UN Human Rights Committee and the Special Rapporteur stated that national legislation imposing the mandatory death penalty violates international human rights law *per se*,¹³⁶ the Anti-Narcotics Law is contrary to the requirement of the non-imposition of the mandatory death penalty in Article 6(1) of the ICCPR.¹³⁷

3.3. ‘Most serious crimes’

The term “most serious crimes” raises a core legal question as to whether Iran violates the substantive part of Article 6. In this section, it will be examined whether drug offences can be understood to fall under the category of the most serious crimes. In other words, the question is whether Iran violates this key limitation on the imposition of the death penalty contained in Article 6(2) of the ICCPR.

The term “most serious crimes” is not defined in the ICCPR. During the drafting process, countries discussed the possibility of including a full list of offences for which the death penalty could not be imposed. It was however decided to use the expression “the most serious crimes” instead.¹³⁸ The United Kingdom criticized the proposal to include this phrase in Article 6 because the meaning differs from country to country.¹³⁹ In practice, the inclusion of the expression in question into the wording of Article 6 of the ICCPR gave States some discretion and an opportunity to claim primacy over the interpretation of the most serious crimes.

The phrase “the most serious crimes” in Article 6 must have a common or objective meaning for State parties and it is not left to each individual State to determine. To consider otherwise would be against the applicable rules of interpretation from the VCLT including the object and purpose of the treaty. Considering that the UN Human Rights Committee is the most appropriate and qualified body to authoritatively interpret the provisions of the ICCPR, the first place to look for the meaning of this phrase is General Comment No. 6 on the right to life. However, this General Comment provides only that “the expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure”¹⁴⁰ and says nothing about the category of offences it should include.

As the General Comment on Article 6 does not list any of “the most serious crimes”, other guidance from the UN Human Rights Committee needs to be considered, such as concluding

¹³⁴ See the wording of Articles 11 and 18 of the Anti-Narcotics Law

¹³⁵ See Article 6 of the Anti-Narcotics Law; See also Lines R., A “Most Serious Crime”? – The Death Penalty for Drug Offences and International Human Rights Law, 2010, *Amicus Journal*, Issue 21, pg. 22

¹³⁶ See supra the 2007 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 54

¹³⁷ See e.g. supra, FIDH, Iran/death penalty: A state terror policy, pg. 23; The imposition of the death penalty is also sometimes considered as being contrary to the prohibition of cruel, inhumane or degrading treatment or punishment, See e.g. supra, the 2004 and 2007 reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions

¹³⁸ See supra, Schabas, *Abolition of the Death Penalty*, pp. 305, 310 - 311

¹³⁹ UN Doc E/CN.4/SR.149, para. 35

¹⁴⁰ HRC, General Comment No. 6, para. 7

observations and views on individual complaints.¹⁴¹ In its 2007 Concluding Observations on Sudan, the Committee explicitly stated that “the imposition ... of the death penalty for offences which cannot be characterized as the most serious, including ... drug trafficking ..., is incompatible with article 6 of the Covenant”.¹⁴² In its Concluding Observations on Thailand, the Committee was concerned that “the death penalty is not restricted to the ‘most serious crimes’ within the meaning of article 6, paragraph 2, and is applicable to drug trafficking.”¹⁴³ In this context, the Committee recommended Thailand to “review the imposition of the death penalty for offences related to drug trafficking”.¹⁴⁴ With respect to Kuwait, the Committee expressed “serious concern over the large number of offences for which the death penalty can be imposed, including ... drug-related crimes”¹⁴⁵ and recommended that Kuwait “eliminate the violations of article 6, paragraph 2 involved in maintaining in its legislation the death penalty for offences that cannot be considered the most serious crimes within the meaning of the Covenant.”¹⁴⁶ In Concluding Observations on Sri Lanka, the Committee listed certain offences for which Sri Lanka imposed the death penalty, including “drug related offences” and continued by indicating that some of the crimes listed do not seem to fall under the most serious crimes in Article 6(2) of the ICCPR.¹⁴⁷ The Committee thus has made clear in these various cases that drug trafficking falls outside the scope of the most serious crimes under Article 6(2) of the ICCPR.

The UN Human Rights Committee used less direct wording in relation to drug crimes in Concluding Observations on Kuwait and Sri Lanka compared to those on Thailand and Sudan. While the Committee referred to a broader category of crimes when reviewing Kuwait and Sri Lanka, it did not explicitly state that drug-related crimes do not fall under the category of the most serious crimes and/or that the imposition of the death penalty for drug-related crimes violates Article 6(2) of the ICCPR. The Human Rights Committee only twice in issuing of concluding observations, i.e. in cases of Sudan and Thailand, explicitly acknowledged that the death penalty for ‘drug trafficking’ constitutes a violation of Article 6(2) because drug trafficking cannot be considered the most serious crime. It is important to differentiate between ‘drug trafficking’ and the much broader category of ‘drug-related crimes’ which includes drug trafficking and many other offences. Significantly, the Committee’s views have focused on the narrower and more serious offence of drug trafficking, and yet it still has not in these cases accepted it as “the most serious crimes” for Article 6 purposes. In Iran, the death penalty is prescribed for a much broader range of drugs offences than just drug trafficking, including simple possession, and a much broader range than other States with death penalty.

The “most serious crimes” threshold may also be clarified by the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by UN Economic and Social Council (ECOSOC)¹⁴⁸ and endorsed by the UN General Assembly.¹⁴⁹ The first

¹⁴¹ HRC jurisprudence on this issue has not been found

¹⁴² HRC, Concluding observations: Sudan, 29 August 2007, UN Doc CCPR/C/SDN/CO/3, para. 19

¹⁴³ HRC, Concluding Observations: Thailand, 8 July 2005, UN Doc CCPR/CO/84/THA, para. 14

¹⁴⁴ Ibid

¹⁴⁵ HRC, Concluding Observations: Kuwait, 27 July 2000, UN Doc CCPR/CO/69/KWT, para. 13; See also

HRC, Concluding Observations: Kuwait, 18 November 2011, UN Doc CCPR/C/KWT/CO/2, para. 14

¹⁴⁶ Ibid

¹⁴⁷ HRC, Concluding Observations: Sri Lanka, In Report of the Human Rights Committee, 3 October 1995, UN Doc A/50/40, para. 449

¹⁴⁸ ECOSOC Res. 1984/50, 25 May 1984, Annex: Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty

¹⁴⁹ UN General Assembly Res. 39/118: Human rights in the administration of justice, 14 December 1984, OP 2

principle of the Safeguards establishes that the scope of the most serious crimes “should not go beyond intentional crimes with lethal or other extremely grave consequences.”¹⁵⁰ According to the 1995 report of the Secretary-General on capital punishment, the first principle in the Safeguards implies “that the offences should be life-threatening, in the sense that this [lethal or other extremely grave circumstances] is a very likely consequence of the action.”¹⁵¹ In light of this clarification, and taking into account the requirement of “a very likely consequence”, drug offences will not generally reach this threshold. The 2001 report of the Secretary-General on capital punishment had criticized the wording of the first principle in the Safeguards as being vague and lacking specificity. The report suggested a more specific interpretation of the first safeguard by stating that the term ‘most serious crimes’ “could be restricted to crimes that result in the death of another person as a direct consequence of a malicious and intended action of another party.”¹⁵² Drug-related crimes clearly do not fall into this category. Furthermore, even if the argument that selling drugs leads to a loss of life were made, the confiscation of drugs before they can be sold “means that the person sentenced to death could not have sold the drugs, nor could anyone else – and no lives have been lost.”¹⁵³

The Special Procedures of the UN Human Rights Council constitute another source to assist interpretation of the most serious crimes in Article 6. The UN Special Rapporteur on extra-judicial, summary or arbitrary executions stated that the most serious crimes are crimes “where it can be shown that there was an intention to kill which resulted in the loss of life.”¹⁵⁴ Drug offences do not seem to reach this threshold since the intention of someone who is involved in drug trafficking, drug distribution, manufacturing, cultivation or, in the case of Iran, even the possession of certain quantity of drugs¹⁵⁵ is likely not to kill but rather to generate income.¹⁵⁶ In fact, the Special Rapporteur himself emphasized that drug trafficking does not fulfill the criterion of the crime with the intention to kill resulting in the loss of life.¹⁵⁷ Furthermore, in a number of reports to the Human Rights Council, the Special Rapporteur affirmed that, based on the Concluding Observations of the Committee, drug-related offences fall outside the category of the most serious crimes.¹⁵⁸ In so doing, the Special Rapporteur broadened the category of crimes which the Committee used in its Concluding Observations, since he repeatedly referred to “drug-related offences” instead of “drug trafficking.” The Special Rapporteur reaffirmed this broadened scope in his written communication to the Government of China when he stated that drug-related crimes “do not fall within the “most serious crimes” requirement, as interpreted by international human rights

¹⁵⁰ Supra, 1984 ECOSOC Safeguards on the death penalty, para. 1

¹⁵¹ Report of the Secretary-General: Capital punishment and implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty, 8 June 1995, UN Doc E/1995/78, para. 54

¹⁵² Report of the Secretary-General: Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, 29 March 2001, UN Doc E/CN.15/2001/10, para. 144

¹⁵³ Schabas, Abolition of the Death Penalty.

¹⁵⁴ The 2007 Report of the Special Rapporteur on extrajudicial summary, or arbitrary executions, para. 53; The Special Rapporteur added that this interpretation of most serious crimes is based on detailed examination of the jurisprudence of the major UN bodies responsible for interpreting these provisions; See also Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 29 May 2009, UN Doc A/HRC/11/2/Add.1, pg. 187

¹⁵⁵ See Article 8 of the Anti-Narcotics Law

¹⁵⁶ Cf. supra, Gallahue and Lines, The Death Penalty for Drug Offences: Global Overview 2010, pg. 10

¹⁵⁷ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Communications to and from Governments, 1 June 2010, UN Doc A/HRC/14/24/Add.1, pg. 46

¹⁵⁸ See e.g. supra the 2007 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 51

bodies, for imposition of the death penalty.”¹⁵⁹ Furthermore, in written communication to Thailand, the Special Rapporteur explicitly referred to the crime of drug possession as falling outside the category of the most serious crimes.¹⁶⁰ The Special Rapporteur on extra-judicial, summary or arbitrary executions was not the only Rapporteur who discussed the interpretation of the term “most serious crimes.” In 2009, the Special Rapporteur on torture, referring to the Committee’s General Comment No. 6 and to the 2006 Report of the Special Rapporteur on extra-judicial, summary or arbitrary executions, clearly stated the view that “drug offences 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.”¹⁶¹

The question of the death penalty was also discussed on numerous occasions in the UN Commission on Human Rights, which the UN Human Rights Council replaced in 2006. Neither the Council’s nor the former Commission’s resolutions are legally binding documents. They may however provide evidence of State parties’ interpretation of the scope of Article 6. In the 2004 resolution on the question of death penalty, the Commission urged “all States that still maintain the death penalty [t]o ensure that the notion of ‘most serious crimes’ does not go beyond intentional crimes with lethal or *extremely grave consequences* and that the death penalty is not imposed for *non-violent acts*.”¹⁶² Drug-related crimes cannot usually be considered violent and thus such an understanding of the most serious crimes disqualifies drug-related crimes from falling under this category. The interpretation of the term “most serious crimes” by the Commission and the Council, political bodies whose membership consists of UN Member States, adds a State perspective to the Committee’s views on interpretation of Article 6.

International human rights law with the various means of interpretation mentioned above is not necessarily the only possible manner of determining whether drug crimes fall outside the category of the most serious crimes under Article 6(2) of the ICCPR. The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances offers an additional perspective on this issue. Article 3(1) of the 1988 Convention provides for a broad definition of what constitutes drug crimes. When referring to the crimes defined in Article 3(1), the 1988 Convention uses the expressions ‘grave’ and ‘serious’ but not ‘the most serious.’¹⁶³ This suggests that none of the drug crimes should be considered a most serious crime.¹⁶⁴

In 2011, Iran was considered by the UN Human Rights Committee for its periodic review under the ICCPR. Although the issue of the death penalty for drug offences was discussed in news media and NGO parallel reports had criticized Iran for such practices,¹⁶⁵ the Committee

¹⁵⁹ Supra, 2010 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Communications to and from Governments, pg. 45

¹⁶⁰ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum : Summary of cases transmitted to Governments and replies received, 17 March 2005, UN Doc E/CN.4/2005/7/Add.1, para. 271

¹⁶¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 June 2009, UN Doc A/HRC/10/44, para. 66

¹⁶² UN Commission on Human Rights Res. 2004/67: Question of the Death Penalty, 21 April 2004, para. 4(f); This resolution was adopted by 29 votes to 19, with 5 abstentions. This is not as persuasive as those resolutions adopted unanimously.

¹⁶³ Article 3(4)a and 3(7) of the 1988 Convention; For the exception, see Article 3(5) of the 1988 Convention which refers to “particularly serious crimes” which may constitute “the most serious crimes”.

¹⁶⁴ For more information, see Lines R., A “Most Serious Crime”? – The Death Penalty for Drug Offences and International Human Rights Law, 2010, Amicus Journal, Issue 21, pg. 24

¹⁶⁵ See various shadow reports made available for the Committee members before the review of Iran in 2011, available at: < <http://www2.ohchr.org/english/bodies/hrc/hrcs103.htm> > accessed on 22 November 2012

did not explicitly mention drug related crimes in any connection with the prohibition of the death penalty under Article 6(2) of the ICCPR. The Committee only stated that it was concerned about the “the extremely high and increasing number of death sentences ... the wide range and often vague definition of offences for which the death penalty is applied.”¹⁶⁶ The Committee recommended Iran to “revise the Penal Code to restrict the imposition of the death penalty to only the ‘most serious crimes,’ within the meaning of Article 6, paragraph 2, of the Covenant and the Committee’s general comment No. 6.”¹⁶⁷ As discussed above, the Committee has not provided comprehensive guidance as to what constitutes the most serious crimes, either in its concluding observations or in General Comment No. 6.

Also in the context of the 2011 review of Iran, the third periodic report of the Iranian Government submitted to the UN Human Rights Committee stated that the “death sentence is only applied for certain crimes.”¹⁶⁸ Although the Iranian Government used the phrase “certain crimes” instead of “the most serious crimes”, it may indicate a subtle recognition of the obligation under Article 6(2) of the ICCPR to impose the death penalty only for “the most serious crimes,” or at least of an obligation to limit the scope.

The UN Human Rights Committee was more specific in its Concluding Observations following the review of Iran in 1993. Although the Committee did not explicitly mention drug offences, it considered that Iran was in violation of the ICCPR when imposing the death penalty “for crimes of an economic nature ... or for crimes that do not result in loss of life.”¹⁶⁹ One may consider various drug-related crimes categorized in the Iranian Anti-Narcotics Law to be of economic nature, such as production, import export, distribution and trafficking of drugs. In fact, drug-related crimes listed in the Anti-Narcotics Law do not in most cases lead to a loss of life.¹⁷⁰ There may be various reasons for this different treatment of death penalty and drug crimes in the 1993 and 2011 periodic reports, including the greater range of human right concerns to be addressed in 2011 and a focus on issues concerning the 2009 election protests.

In determining the scope of the most serious crimes, the UN Human Rights Committee in its Concluding Observations on various countries explicitly referred to drug trafficking as falling outside such scope without mentioning other drug-related crimes. This raises the question of whether drug-related crimes as defined in the Iranian Anti-Narcotics Law, such as production or possession of drugs, fall outside the category of the most serious crimes. Drug trafficking is clearly a more serious crime than most other drug-related crimes, and thus it is likely that the less serious crimes defined in the Anti-Narcotics Law also do not reach the threshold of the most serious crimes.

The Special Rapporteurs have also made clear that drug-related crimes as an entire category of crimes cannot reach the threshold of the most serious crimes. The Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the situation of human rights in Iran, on the independence of judges and lawyers, and on torture and other cruel, inhuman or degrading treatment or punishment have jointly stated on Iran that: “We, however, regret that execution

¹⁶⁶ HRC, Concluding observations: Iran, 29 November 2011, UN Doc CCPR/C/IRN/CO/3, para. 12

¹⁶⁷ Ibid

¹⁶⁸ HRC, Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : 3rd periodic reports of States parties : Iran, 31 May 2010, UN Doc CCPR/C/IRN/3, para. 276

¹⁶⁹ See supra, HRC, 1993 Concluding observations on Iran, para. 8

¹⁷⁰ See sub-chapter on the Iranian Anti-Narcotics Law

is common practice for people charged with drug-related offences, which do not amount to the most serious crimes.”¹⁷¹ Therefore, the death penalty cannot be imposed for any of the crimes defined in the Iranian Anti-Narcotics Law. Similarly, both the ECOSOC Safeguards and the resolutions of the UN Human Rights Council and the former Commission suggest that the Anti-Narcotics Law is not in line with Article 6(2) of the ICCPR with regard to all drug-related crimes for which it imposes the death penalty.

Generally, the UN Human Rights Committee as a treaty body entrusted with the function to authoritatively interpret the provisions of the ICCPR, in conjunction with all other relevant UN bodies referred to above, have rejected almost every possible crime, except intentional murder, as falling into the category of the most serious crimes under Article 6(2) of the ICCPR.¹⁷² Thus it is relatively safe to conclude that the imposition of the death penalty for any possible drug-related crime in and of itself constitutes a violation of Article 6. Therefore, the Anti-Narcotics Law with its 17 drug-related crimes for which the death penalty can or must be imposed is incompatible with the notion of “the most serious crimes” in Article 6 of the ICCPR. In other words, for all drug-related crimes as defined in the Anti-Narcotics Law, international human rights law requires that the death penalty cannot be imposed, and so Iran violates Article 6(2) of the ICCPR.

3.4. ‘Conformity’ requirement

The wording of Article 6(2) of the ICCPR explicitly requires that the national law on which the death penalty is based shall not be “contrary to the provisions of the present Covenant and the [Genocide] Convention”. In the UN Secretary General’s 1955 Annotations to the Bill of Rights, the record of discussions which produced the ICCPR and ICESCR, it was noted that this requirement should serve as a tool for States to measure whether they adopt and use unjust national laws for the imposition of the death penalty.¹⁷³ It is a substantive requirement linked with other rights of the ICCPR.¹⁷⁴ The Genocide Convention¹⁷⁵ is not relevant for the purposes of this study.

The ‘conformity’ provision requires that national legislation on the death penalty must be in line with other provisions of the ICCPR. There are two key reasons for the conformity requirement. First, as already stated, Article 6 cannot be derogated from, which means it imposes an obligation on States to have national legislation on the death penalty in line with *all* the provisions of the ICCPR even in time of public emergency and derogation.¹⁷⁶ Second, it has the practical effect of emphasizing the protection of other rights in the case of a serious and irreversible punishment such as the death penalty. Among some of the most relevant provisions against which the national legislation imposing the death penalty may be examined are Articles 2 (non-discrimination), 7 (prohibition against torture), 9 (right to liberty), 10 (humane treatment of persons deprived of their liberty), 14 (right to fair trial), 15 (non-

¹⁷¹ OHCHR, Iran: UN experts condemn public execution of juvenile and reiterate call for immediate halt on death penalty, available at <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11415&LangID=E>> accessed on 10 February 2012.

¹⁷² 2007 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 52

¹⁷³ *Supra*, Secretary General’s Annotations to the Draft Covenants, pg. 30, para. 8; the draft at that time referred to the Bill of Rights rather than the ICCPR.

¹⁷⁴ *Supra*, Nowak, CCPR Commentary, pg. 139

¹⁷⁵ UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277

¹⁷⁶ Cf. Article 4 of the ICCPR

retroactivity of crimes) and 26 (equality before the law). While Articles 2, 9, 10, 14 and 26 can be generally derogated from, they shall be for the purposes of examining national legislation on the death penalty considered non-derogable. The ‘conformity’ requirement thus goes beyond a general obligation arising from the ICCPR as a binding treaty for States Parties which have to adapt their national legislation to be in conformity with the ICCPR.¹⁷⁷

The Anti-Narcotics Law may raise questions regarding its compliance with the prohibition of torture or cruel, inhuman or degrading treatment or punishment in the sense of Article 7, and human dignity in the sense of Article 10 of the ICCPR. The UN Human Rights Committee stated that “when the death penalty is applied ... it must be carried out in such a way as to cause the least possible physical and mental suffering.”¹⁷⁸ The Anti-Narcotics Law allows for the death penalty for certain drug-related crimes to be carried out in public,¹⁷⁹ which may be according to the Committee “incompatible with human dignity.”¹⁸⁰ During its 1993 review of Iran, the Committee “deplore[d] the number of executions that have taken place in public”¹⁸¹ but did not express if such practice was contrary to Article 7 of the ICCPR. However, when an execution in public is combined with hanging as a method of execution typical for drug offences in Iran,¹⁸² this combination may be considered inhuman or degrading since it causes both unnecessary mental (the element of public execution) and physical (the act of being hanged) suffering. When a person is hanged, particularly from a crane as is a common practice for public executions, it cannot be ensured that unnecessary suffering is avoided. When the neck is not immediately broken, it takes much longer before the person is suffocated to death. Furthermore, it can also be argued that the lack of information regarding a precise date, time and place of execution, which is an oft-reported practice in Iran,¹⁸³ may lead to ill-treatment contrary to Article 7.¹⁸⁴ For the purposes of the present discussion of Article 6, it should be noted that when Article 7 or 10 are breached in a death penalty case, it does not consequently lead to a violation of Article 6.¹⁸⁵

It is likely also that Iran’s laws and practice on states of emergency, including for the 2009 election protests, may be contrary to the conformity requirement. It appears that there was either a *de jure* or *de facto* derogation of fair trial guarantees during the 2009 protests, particularly in the Revolutionary Courts, which led to implementation of the death penalty.

This “conformity” requirement will be relevant in particular with regard to Article 14, which is dealt with in the following section on fair trial guarantees. The “conformity” requirement changes the understanding and the applicability of Article 14, which must be considered non-derogable in the context of the death penalty.

¹⁷⁷ See Article 2(2) of the Covenant; See also HRC, General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, UN Doc CCPR/C/21/Rev.1/Add.13, especially para. 4

¹⁷⁸ HRC, General Comment No. 20: Article 7, 10 March 1992, para. 6

¹⁷⁹ Article 9 and 11 of the Anti-Narcotics Law

¹⁸⁰ HRC, Concluding observations: Nigeria, 24 July 1996, UN Doc CCPR/C/79/Add.65, para. 282

¹⁸¹ HRC, Concluding observations: Iran, 3 August 1993, UN Doc CCPR/C/79/Add.25, para. 8

¹⁸² Supra, AI, Death Sentences and Executions in 2011, pg. 37

¹⁸³ See e.g. supra, the 2006 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Transparency and the Imposition of the Death Penalty, para. 35; See also e.g. supra, AI, Addicted to Death, pg. 5; and AI, Death Sentences and Executions in 2011, pp. 36, 37

¹⁸⁴ Ibid, para. 32; See also Lyashkevich v Belarus, HRC, 3 April 2003, Comm. No. 887/1999, para. 9.2

¹⁸⁵ For the discussion of this issue, see the sub-section on fair trial guarantees

3.5. Fair trial guarantees

Article 6(2) requires that the death penalty “can only be carried out pursuant to a final judgment rendered by a competent court.” This expression read together with the “conformity requirement”¹⁸⁶ and with the prohibition of arbitrary deprivation of life¹⁸⁷ links the limitations on the death penalty under Article 6 with fair trial guarantees under Article 14 of the ICCPR. It should be borne in mind that these guarantees apply, similar to other requirements already examined above, at the time of the *imposition* of the death penalty and not at the time of the *execution*.

The previous section noted that national legislation on narcotic drugs based on which the death penalty is imposed must, even in time of public emergency, be in line with fair trial guarantees under Article 14 of the ICCPR.¹⁸⁸ This was reaffirmed by the UN Human Rights Committee when it stated that “as Article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14 and 15.”¹⁸⁹

In a number of death penalty cases, the UN Human Rights Committee has reaffirmed that a violation of fair trial procedural guarantees under Article 14 leads also to a breach of Article 6(2).¹⁹⁰ The Committee has summarized its previous jurisprudence in General Comment No. 32 and stressed that “[t]he imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant).”¹⁹¹ Therefore, Article 14 is embedded in limitations on the imposition of the death penalty through the wording of Article 6(2) and thus Article 14 guarantees constitute an integral part of Iran’s obligations. The *de facto* inclusion of Article 14 guarantees in the key requirements of Article 6 may raise the question of why other Articles of the ICCPR relevant to the application of the death penalty are not included in the test through the ‘conformity’ requirement as elaborated above. The rationale of the Committee for giving Article 14 such a unique position stems from the wording of Article 6(2) which suggests that breaches of other provisions of the ICCPR have to be directly linked to the imposition of the capital punishment in order to also constitute a breach of Article 6.¹⁹²

The wording of the last sentence of Article 6(2) of the ICCPR (i.e. final judgment, competent court) clearly shows the importance of fair trial guarantees in death penalty cases. These guarantees are of significant importance in death penalty cases due to the punishment’s

¹⁸⁶ Article 6(2) of the ICCPR; See sub-chapter 2.6 of this paper

¹⁸⁷ Article 6(1) *in fine* of the ICCPR; See supra, Rodley, Treatment of Prisoners, pg. 306; See also supra, Secretary General’s Annotations to the draft covenants, pg. 30, para. 3

¹⁸⁸ See e.g. supra, Rodley, Treatment of Prisoners, pp. 300 - 301

¹⁸⁹ HRC, General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, UN Doc CCPR/C/21/Rev.1/Add.11, para. 15; See also HRC, General Comment No. 32: Article 14, 23 August 2007, UN Doc CCPR/C/GC/32, para. 6

¹⁹⁰ See e.g. Mbenge v. Zaire, HRC, 25 March 1983, Comm. No. 16/1977, para. 17; See also Kurbanov v. Tajikistan, HRC, 6 November 2003, Comm. No. 1096/2002, para. 7.7; See also Pinto v. Trinidad and Tobago, HRC, 20 July 1990, Comm. No. 232/1987, paras. 12.5 and 12.6

¹⁹¹ Supra, HRC, General Comment No. 32, para. 59

¹⁹² Supra, Nowak, CCPR Commentary, pg. 144

serious and irreversible character.¹⁹³ As early as 1982, in its General Comment No. 6, the Committee listed minimum fair trial guarantees which have to be observed in death penalty cases. These included “the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal.”¹⁹⁴ In its General Comment of 2007 on Article 14 of the ICCPR, the Committee provided further details on various fair trial guarantees related to the death penalty.¹⁹⁵ In fact, the wording of Article 14 of the ICCPR *per se* provides a comprehensive list of guarantees to be observed in death penalty cases.¹⁹⁶ The Committee has simultaneously referred to a breach of Article 6 in death penalty cases where it found violations of Article 14 paragraphs (1) on public trials,¹⁹⁷ (2) on the presumption of innocence,¹⁹⁸ (3)(a) on being informed of charges,¹⁹⁹ (3)(b) on preparing an adequate defence,²⁰⁰ (3)(d) on legal defence in court,²⁰¹ (3)(e) on examining witnesses,²⁰² (3)(g) on being compelled to testify²⁰³ or (5) on the right to appeal.²⁰⁴

A wide range of UN and other bodies and organizations have reported that Iran violates various fair trial guarantees with respect to cases of death penalty for drug offences.²⁰⁵ In relation to Article 14, such allegations usually relate to: a denial of access to court,²⁰⁶ denial of any kind of legal or consular assistance;²⁰⁷ conviction by the Revolutionary Courts (which cannot be considered independent and impartial tribunals, which do not provide for the possibility for the accused to prepare a defense, and which in general violate due process of law);²⁰⁸ and denial of the right to appeal.²⁰⁹ The lack of these guarantees may be intensified by the fact that many persons sentenced to death and executed are foreigners and members of

¹⁹³ Kalin W., “Death is different” – The Death Penalty and the Right to a Fair Trial, In Tomuschat S., Lagrange Ch., Oeter E., Right to Life (Martinus Nijhoff Publishers 2010), pg. 21

¹⁹⁴ Supra, HRC, General Comment No. 6, para. 7; See also Safeguard 5 and 6 of the 1984 ECOSOC Safeguards on the death penalty

¹⁹⁵ Supra, HRC, General Comment No. 32, in particular paras. 10, 17, 35, 38, 51 and 59

¹⁹⁶ In *Earl Pratt and Ivan Morgan v. Jamaica*, HRC, 6 April 1989, Comm. No. 210/1986, para. 15, the HRC stated that “in capital punishment cases, States parties have an imperative duty to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant”

¹⁹⁷ *Kurbanov v. Tajikistan*, HRC, 6 November 2003, Comm. No. 1096/2002, paras. 7.6 and 7.7

¹⁹⁸ *Ruzmetov v. Uzbekistan*, HRC, 16 April 2006, Comm. No. 915/2000, paras. 7.3 and 7.6

¹⁹⁹ Supra, *Kurbatov v. Tajikistan*, paras. 7.3 and 7.7

²⁰⁰ *Rayos v. Philippines*, HRC, 27 July 2004, Comm. No. 1167/2003, para. 7.3

²⁰¹ *Shakurova v. Tajikistan*, HRC, 26 April 2006, Comm. No. 1044/2002, paras. 8.5 and 8.6

²⁰² Supra, *Ruzmetov v. Uzbekistan*, 7.5 and 7.6

²⁰³ Ibid, 7.3 and 7.6

²⁰⁴ *Anthony B. Mansaraj et al., Gborie Tamba et al., Abdul Karim Sesay et al. v. Sierra Leone*, HRC, 30 July 2001, Comm. Nos. 839/1998; 840/1998 and 841/1998, paras. 5.2 and 6.1

²⁰⁵ See e.g. supra, HRC, 1993 Concluding observations on Iran, para. 8; See also e.g. OHCHR news, “UN Special Rapporteurs outraged with recent executions in Iran”, 23 October 2012, available at: <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12688&LangID=E>> accessed on 25 November 2012; OHCHR, UN experts call for a moratorium on death penalty in the Islamic Republic of Iran (2 February 2011) available at

<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10700&LangID=E>>. See also e.g. supra Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011*, pg. 10

²⁰⁶ Supra, AI, *Addicted to death*, pg. 33

²⁰⁷ Ibid, pg. 5 - 6

²⁰⁸ Supra, HRC, 1993 Concluding observations on Iran para. 12; See also e.g. supra, Gallahue, *The Death Penalty for Drug Offences: Global Overview 2011*, pg. 10; See also supra, AI, *Addicted to death*, pp. 32 - 33

²⁰⁹ Supra, AI, *Addicted to death*, pg. 16; See also supra, AI, *Death Sentences and Executions in 2011*, pg. 37

minorities.²¹⁰ These fair trial concerns lead in particular to violations of paragraphs (1), (3)(b), (3)(d) and (5) of Article 14 and thus to violation of Article 6.

Some of these violations stem also from the Iranian Government's violation of Article 6 also through national legislation. Article 128 of the Iranian Code of Criminal Procedures may, if read restrictively, lead to a denial of access to a lawyer and thus through Article 14(d) to a violation of Article 6.²¹¹ Moreover, the Anti-Narcotics Law does not seem to guarantee the right to appeal in all cases because it provides that "the death sentences issued by virtue of this act shall be final and enforceable after the endorsement of the chairman of the Supreme Court or the prosecutor general."²¹² Amnesty International has reported that all death sentences for drug-related crimes are passed for endorsement to the prosecutor general instead of the Supreme Court.²¹³ The mere fact that the Anti-Narcotics Law allows for the possibility of the state prosecutor general, who is clearly not an independent judge, *per se* to confirm the sentence of death, raises concerns with regard to the right to appeal and most likely leads to a violation of Article 14(5) and consequently Article 6.

In sum, it should be pointed out that it is extremely difficult to confirm the scope of violations of fair trial guarantees in cases of the death penalty for drug offences in Iran. Although various NGOs provide information on individual cases of denial of fair trial guarantees, one lacks full information on this issue in Iran. It is clearly a difficult task to monitor whether legal assistance or even access to court were provided in a case which resulted in an execution of a person because there is often no one to bring such case to the attention of the international community, since the person who should primarily be an applicant was executed. There are however strong grounds to believe that fair trial is a problem in Iran including for death penalty cases. This sub-section therefore only highlighted possible breaches of fair trial guarantees by Iran, which may, as elaborated upon above, simultaneously lead to a violation of Article 6. It is clear that the lack of information both to the families of a victim and to the outside world provided by the Iranian Government on death penalty cases is at the heart of the challenge of establishing the scope of fair trial violations. Yet, the very secrecy surrounding the imposition, as well as the carrying out of the death penalty, may in and of itself lead to a breach of Article 14(1) and thus Article 6.²¹⁴

3.6. Clemency

Article 6(4) obliges States parties to the Covenant to introduce "the right to seek pardon or commutation of the sentence."²¹⁵ This clearly does not mean that there is a duty to give clemency in all cases but rather a right for all not to be deprived of such a possibility.²¹⁶ The

²¹⁰ Supra, AI, Death Sentences and Executions in 2011, pp. 35 – 36; See also supra, AI, Addicted to death, pp. 25 – 27, 33

²¹¹ Article 128 (note) of the Code of Criminal Procedures provides that "[i]n instances where the case has a confidential aspect (...) the presence of a lawyer during the investigation stage shall depend on court permission."

²¹² Ibid, Article 32 [emphasis added].

²¹³ Supra, AI, Death Sentences and Executions in 2011, pg. 37

²¹⁴ See supra, the 2007 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Transparency and the Imposition of the Death Penalty

²¹⁵ See also Safeguard 7 of the 1984 ECOSOC Safeguards on the Death Penalty; Safeguard 8 adds that "[c]apital punishment shall not be carried out pending (...) proceeding relating to pardon or commutation of the sentence."

²¹⁶ In para. 13 of the Concluding Observations: Uganda, 4 May 2004, UN Doc CCPR/CO/80/UGA, the HRC stated that "[i]t finds incompatible with the Covenant that that the death penalty (...) [is] without the possibility (...) to seek pardon or commutation of the sentence."

question therefore arises as to whether this provision gives rise to any direct obligation on States. In *Chisanga v Zambia*, the Committee considered the State's approach of issuing amnesty on an unequal or discriminatory basis to violate Article 6(4).²¹⁷ This still does not spell out any direct obligations except the necessity of issuing amnesties without distinction in similar cases. The wording of the second sentence of Article 6(4) suggests that it refers to national legislation which should allow for the possibility of issuing "amnesty, pardon or commutation of sentence" on a non-discriminatory basis.²¹⁸ However, in this regard the Committee seems to take a rather cautious approach regarding direct and concrete obligations of States. For example, in *Kennedy v Trinidad and Tobago*, the Committee stressed that "the wording of article 6, paragraph 4, does not prescribe a particular procedure for the modalities of the exercise of the prerogative of mercy."²¹⁹ States parties to the Covenant can decide by themselves on such modalities.²²⁰ There have been, however, cases when the reluctance of States led to a violation of Article 6(4), such as no responses from the Government to several requests of the claimant to grant her/him pardon.²²¹

Although it was argued that it is to a certain extent questionable whether Article 6(4) spells out any direct obligations on States parties, one may look at this provision from a perspective of indirect obligations. Since persons who were convicted and are about to face the death penalty have the right to seek pardon or commutation, the execution cannot take place immediately after the imposition of the death penalty by means of an enforceable judgment. In other words, States parties shall allow for some time before execution so that the right to seek pardon and commutation can be effectively exercised.²²² The Special Rapporteur on extrajudicial, summary or arbitrary executions went even further and, although without explicitly relying on Article 6(4) of the ICCPR, recommended that states incorporate a minimum period of six months into their national legislation in order to ensure adequate time for persons sentenced to capital punishment to prepare petitions for clemency.²²³ The right to appeal dealt with in the sub-section on fair trial guarantees has similar implications.

With regard to possible direct obligations under Article 6(4) of the ICCPR, the Iranian Anti-Narcotics Law does provide for the possibility of granting pardon in mitigating circumstances.²²⁴ The wording of the relevant provision in the Anti-Narcotics Law does not seem to be discriminatory. Although one may question the role of the Amnesty and Mitigation of Penalties Commission and the Supreme Leader's Office in this regard, the lack of information on the issue does not permit a clear conclusion on whether Iran violates direct obligations under Article 6(4) of the ICCPR. It was reported however that Iran often executes people for drug offences soon after their conviction, and clearly before the recommended

²¹⁷ *Webby Chisanga v. Zambia*, HRC, October 2005, Comm. No. 1132/2002, para.7.5; In this case, amnesty was issued for "prisoners who had been on death row for more than ten years." The applicant had been on death row for eleven years but he had not been issued amnesty. The Committee held that this "deprived the author of an effective remedy in relation to his right to seek amnesty or commutation as protected by article 6, paragraph 4, together with article 2 of the Covenant."

²¹⁸ Nowak refers to the prohibition of discrimination with regard to certain groups of people as well as specific crimes in this context. See Nowak, CCPR Commentary, pg. 146

²¹⁹ *Supra*, *Kennedy v Trinidad and Tobago*, para. 7.4

²²⁰ *Ibid*

²²¹ *Chikunova v. Uzbekistan*, HRC, March 2007, Comm. No. 1043/2002, para.7.6

²²² Nowak, CCPR Commentary, pg. 150; See also ECOSOC Res. 1996/15, 23 July 1996, para. 5

²²³ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 25 January 1996, UN Doc E/CN.4/1996/4, para. 553

²²⁴ Article 38 of the Iranian Anti-Narcotics Law; See also *supra*, 3rd periodic report of Iran before the HRC, paras. 283-284; According to this report, the Islamic Penal Code provides for pardon or commutation.

period of six months,²²⁵ and thus may violate the indirect obligations stemming from Article 6(4) of the ICCPR.

3.7. Non-retroactivity (*nullus crimen, nulla poena sine lege*)

The principle of non-retroactivity is reflected in the expression of Article 6 that capital punishment must be inflicted only “in accordance with the law in force at the time of the commission of the crime”²²⁶ which mirrors the idea of the prohibition of an *ex post facto* law in the context of criminal justice.²²⁷ It should be noted that the provision in question duplicates Article 15 of the ICCPR,²²⁸ which offers an extended provision of these guarantees, and both Article 6 and 15 cannot be derogated from in a state of emergency.²²⁹ The existence and necessity of this provision under Article 6 may be questioned because the requirement of non-retroactivity in death penalty cases must be guaranteed through Article 15 of the ICCPR in any case. This is even supported by the ‘conformity’ requirement elaborated upon in the following sub-section. One reason for this inclusion is to highlight the special importance of non-retroactivity of criminal laws in death penalty cases.

Due to the lack of information on judicial proceedings in individual death penalty cases in Iran, including on the content of the judgments of the Iranian Revolutionary Tribunals, it cannot be conclusively examined whether Iran violates the principle of non-retroactivity. This relates particularly to the newly introduced 2011 amendments of the Anti-Narcotics Law, which broadened the imposition of the death penalty to new drug-related crimes. It is unclear whether Iran abides by the non-retroactivity requirement, or whether the State uses the 2011 amendments as a tool to convict and execute persons for drug-related crimes not subject to the death penalty (mandatory or otherwise) before 2011.

3.8. Exception for persons under the age of 18 years

Article 6(5) of the ICCPR explicitly mentions two categories of people who cannot be executed, namely persons below eighteen years of age and pregnant women.²³⁰ As regards persons under the age of eighteen, Article 6(5) stipulates that the death sentence cannot “be imposed for crimes committed” by those persons. In comparison, the death sentence cannot be “carried out on pregnant women.”²³¹ This sheds light on the difference in interpretation of obligations of States parties to the ICCPR in terms of the prohibition of the death penalty for pregnant women and persons under the age of eighteen. While persons cannot be even

²²⁵ See e.g. OHCHR, UN Special Rapporteurs outraged with recent executions in Iran, 23 October 2012, available at <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12688&LangID=E>>; International Campaign for Human Rights in Iran, “More Secret Group Executions in Mashad Prison, Despite Concerns Raised by UN Secretary General Report”, 17 March 2011, available at: <<http://www.iranhumanrights.org/2011/03/secret-executions-march>> accessed on 23 November 2012

²²⁶ See the first sentence in Article 6(2) of the ICCPR; See also HRC, General Comment No. 6, para. 6

²²⁷ See a proposal made by Brazil during the *travaux préparatoires*, UN Doc SOA/17/1/01

²²⁸ During the *travaux préparatoires*, this was pointed out by a number of delegations that abstained or voted against the proposal to include such provision under Article 6.

²²⁹ See Article 4(2) of the ICCPR

²³⁰ Similarly see Safeguard 3 of the 1984 ECOSOC Safeguards on the Death Penalty. In para. 8 of the General Comment No. 24, the HRC affirmed that the prohibition of execution of pregnant women and children constitutes a rule of customary international law; Similarly see Sub-Commission on Human Rights, Res. 2000/17: The death penalty in relation to juvenile offenders, 17 August 2000.

²³¹ See Article 6(5) of the ICCPR, emphasis added.

sentenced to death for crimes committed when they were under the age of eighteen years, pregnant women can be sentenced but their execution is prohibited. The verb “carried out” also suggests that pregnant women can be executed after giving birth.²³² In other words, strictly speaking the enforcement of the capital punishment can be postponed according to the birth of a child.²³³

As it has not been reported that Iran executes pregnant women,²³⁴ this section will further focus primarily on persons below eighteen years of age. This group of people is protected against the death penalty not only under the ICCPR, but also under the UN Convention on the Right of the Child (CRC). Article 37 of the CRC reflects Article 6(5) of the ICCPR and stipulates that “[n]either capital punishment nor life imprisonment shall be imposed for offences committed by persons below 18 years of age.” A careful reading of both the Articles and *travaux préparatoires* of the ICCPR suggests that, although Article 37 is better phrased than Article 6(5), both prohibit the imposition of the death penalty on someone who was under the age of eighteen at the time of committing an offence notwithstanding the fact that he/she can be over eighteen at the time of arrest²³⁵ or trial.²³⁶ This interpretation of Article 6(5) has been reaffirmed by the Committee.²³⁷ In short, the death penalty can neither be imposed nor carried out on anyone who, though having reached the age of eighteen years, was under eighteen at the time of commission of the drug offence.²³⁸

It should be pointed out that Iran has made a general reservation to the CRC in relation to Shari’a law, which reduces the scope and applicability of its obligations.²³⁹ It is questionable whether this reservation is valid, considering the object and purpose of the CRC.²⁴⁰ A number of States objected to the reservation made by Iran as being incompatible with the object and purpose of the treaty, and communicated to the Secretary-General that they do not consider the reservation admissible. Austria, for example, stated that it “considers this reservation as not affecting any provision the implementation of which is essential to fulfilling the object and purpose of the [Convention].”²⁴¹ There is an ongoing debate on the consequences of invalid reservations in international law,²⁴² which may have been resolved by the UN International Law Commission’s 2011 Guide to Practice on Reservations to Treaties.²⁴³ The issue of invalid reservations does not have to be discussed in this paper since the only

²³² See the *travaux préparatoires* of the ICCPR, UN Doc E/CN.4/SR.311, para. 7; See also supra, Rodley, Treatment of Prisoners, pg. 324

²³³ Nowak, CCPR Commentary, pg. 147

²³⁴ According to Amnesty International, among those executed in Iran is only a very small number of women in general. See supra, AI, Addicted to death, pg. 27

²³⁵ See the *travaux préparatoires* of the ICCPR, UN Doc A/C.3/SR.815

²³⁶ Rodley, Treatment of Prisoners, pg. 322; See also the *travaux préparatoires* of the ICCPR, UN Doc A/C.3/SR.820

²³⁷ Clive Johnson v. Jamaica, HRC, November 1998, Comm. No. 592/1994, para. 10.3

²³⁸ For more information, see e.g. supra, Schabas, Abolition of the Death Penalty, pp. 134 - 135

²³⁹ The reservation reads as follows: “The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect.”

²⁴⁰ See Article 19(c) of the VCLT and Article 51(2) of the CRC; The Committee on the Rights of the Child raised concerns over the compatibility of the reservation made by Iran with the object and purpose of the CRC. See Concluding observations: Iran, 31 March 2005, UN Doc CRC/C/15/Add.254, paras. 6 and 7

²⁴¹ See Status of the UN Convention on the Rights of the Child, UN Treaty Collection, available at: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#34> accessed on 3 November 2012

²⁴² See e.g. Goodman R., Human Rights Treaties, Invalid Reservations and State Consent, 2002, AJIL, Vol.96:531

²⁴³ Yearbook of the International Law Commission, 2011, vol. II, Part Two.

provision in the CRC²⁴⁴ which explicitly refers to the capital punishment also mirrors Article 6(5) of the ICCPR. Thus the prohibition of the imposition of the death penalty for persons under the age of eighteen as an obligation of Iran under international law remains covered by the ICCPR. In other words, even considering the reservation as valid would not reduce any obligations of Iran under international human rights law in the area of the death penalty.

Iran is one of the few countries globally, if not the only, to execute children. This in and of itself leads to a violation of international law, in particular Article 6(5) of the ICCPR.²⁴⁵ As stated above, the Iranian Government does not provide any statistics on the number of persons executed, including executions of children. Iranian authorities have claimed that persons under the age of eighteen are not executed in Iran at all since it is prohibited by law.²⁴⁶ However, the UN and various NGOs have reported individual cases of executed juveniles,²⁴⁷ while Iranian national legislation does seem to give judges the possibility of imposing the death penalty on persons under the age of eighteen.²⁴⁸ However, based on statistics from Amnesty International and the International Federation for Human Rights, it appears Iran may not have executed any person below the age of eighteen for drug offences between 1999 and 2009.²⁴⁹ Furthermore, the new 2012 Iranian Penal Code theoretically has abolished the possibility of sentencing a child to death for drug-related crimes.²⁵⁰

The above-mentioned positive statistics do not cover cases of persons already on death row who, although above the age of 18, committed a drug-related crime at the time when they were below such age.²⁵¹ This may lead to a violation of Article 6(5) of the ICCPR, as indicated by the UN Human Rights Committee during the periodic review of Iran in 2011.²⁵² Iran clearly was until recently in violation of Article 6(5) of the ICCPR based on its practice of convicting juveniles to the death penalty for drug-related crimes, even if such persons have not been executed. It should however be recognized that such practice may have changed with the introduction of the new 2012 Penal Code, and reliable information is not available from the Iranian Government on the execution of juveniles to make the assessment.

²⁴⁴ Article 37(a) of the CRC

²⁴⁵ See e.g. supra, the 2007 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 63; See also supra, FIDH, Iran/death penalty: A state terror policy, pg. 27

²⁴⁶ See e.g. The New York Times, "An Interview With President Mahmoud Ahmadinejad", 26 September 2008, available at: <http://www.nytimes.com/2008/09/26/world/middleeast/26iran-transcript.html?pagewanted=all&_r=0> accessed on 4 November 2012; See also supra, 3rd Period Report of Iran before the HRC, paras. 297-298

²⁴⁷ OHCHR, UN human rights office condemns execution of Iranian juvenile, 22 January 2013, available at <<<http://www.un.org/apps/news/story.asp?NewsID=43980&>>. AI, Iran: The last executioner of children, June 2007, AI Index MDE 13/059/2007, pp. 19 - 25

²⁴⁸ See Articles 145 and 146 of the new 2012 Iranian Penal Code according to which the criminal responsibility engages in "puberty" which is 15 lunar years for boys and 9 lunar years for girls; See also Article 90 of the new Penal Code; See also Nargess Tavassolian, "Half Measures: Juvenile Execution Under Iran's New Penal Code", International Campaign for Human Rights in Iran, 27 February 2012, available at:

<<http://www.iranhumanrights.org/2012/02/new-penal-code-commentary/>> accessed on 23 November 2012; See also e.g. FIDH, Iran/death penalty: A state terror policy, pp. 27 - 28

²⁴⁹ FIDH, Iran/death penalty: A state terror policy, pp. 29 - 30

²⁵⁰ Article 87 of the new Penal Code; Cf. Article 90 of the new Penal Code; See also Human Rights Watch, "Iran: Proposed Penal Code Deeply Flawed: Proposed Amendments Would Violate Rights of Accused", 29 August 2012, available at: <<http://www.hrw.org/news/2012/08/29/iran-proposed-penal-code-deeply-flawed>> accessed on 23 November 2012

²⁵¹ See e.g. supra, AI, Addicted to death, Appendix 4; See also supra, AI, Iran: The last executioner of children, pp. 34, 36, 38; See also supra, AI, Death Sentences and Executions in 2011, pg. 38

²⁵² Supra, 2011 Concluding observations on Iran, para. 13

4. Conclusion

It appears that Iran convicts and executes persons for drug-related crimes routinely. This practice has been widely reported by the UN as well as by international and national NGOs and media. Iran is a State party to and thus bound by the ICCPR. Article 6 of the ICCPR explicitly deals with the issue of the death penalty and permits its application. However, Article 6 prescribes certain limitations especially on the imposition but also on the carrying out of the death penalty. Iran, as a party to the ICCPR, must abide by all such limitations.

This legal analysis set out eight key requirements of Article 6 of the ICCPR relevant to Iran's use of the death penalty for drug crimes. These limitations were examined one by one against the Iranian Anti-Narcotics Law and the practices of Iran in application of the death penalty for drug-related crimes. The legal research and analysis demonstrates that Iran is in violation breach of at least six of those limitations prescribed by Article 6. Iran violates the principle of non-arbitrariness, the prohibition of the mandatory death penalty, the "conformity" requirement, fair trial guarantees, the right to clemency, and most obviously, the limitation that the death penalty can be imposed only for the most serious crimes.

Iran needs to review its Anti-Narcotics Law and prohibit the death penalty for all crimes stipulated therein, and must stop executing persons for drug-related crimes. Only after such changes can Iran abide by its obligations under Article 6 of the ICCPR. This is consistent with calls on the Iranian Government to adopt a moratorium on the death penalty, especially for drug crimes, which have been made in the recommendations for Iran's 2010 Universal Periodic Review before the UN Human Rights Council²⁵³ and by relevant Special Rapporteurs for human rights,²⁵⁴ and more generally by the UN General Assembly.²⁵⁵

²⁵³ Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran, Human Rights Council, 14th Sess., March 15, 2010, U.N. Doc. A/HRC/14/12, Para. 92(20).

²⁵⁴ E.g. see OHCHR, UN experts call for a moratorium on death penalty in the Islamic Republic of Iran (2 February 2011) available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10700&LangID=E>.

²⁵⁵ UNGA resolution, Moratorium on the use of the death penalty, A/RES/67/177 (20 December 2012); UNGA resolution, Situation of human rights in the Islamic Republic of Iran, A/RES/67/182 (20 December 2012).

5. Annex: Anti-Narcotics Law (unofficial translation from Persian)

Annex 2: Anti Narcotics Law of 1997 (as Amended on 8 November 1997 by the Expediency Council)

Article 1: The following acts are considered as crimes and the perpetrator shall be sentenced to the punishments prescribed in this law.

- 1- Cultivating poppies are absolutely banned and cannabis cannot be cultivated for the purpose of production of narcotics and non-medical psychotropics.
- 2- Importing, exporting and producing of any kind of narcotics and non-medical psychotropics.
- 3- Keeping, carrying, purchasing, distributing, hiding, transiting and selling narcotic drugs and non-medical psychotropics.
- 4- Setting up or running places for the use of drugs and non-medical psychotropics.
- 5- Using drugs in any form or manner except for cases provided by law.
- 6- Production, manufacturing, purchasing, selling, preserving equipments and facilities related to the production and use of Narcotics and non-medical psychotropics.
- 7- Causing to escape or giving protection to drug and non-medical psychotropics offenders and perpetrators who are under prosecution or have been arrested.
- 8- Destroying or concealing evidence of offender's crimes.
- 9- Placing Narcotics or the equipments and tools of using Narcotics and non-medical psychotropics in a place to condemn somebody else.

Note 1: Narcotics in this law refers to all substances which have been identified in the Executive By-law on the list of Narcotics approved in 1338 (1959) and its amendments or have been identified and announced by the Ministry of Health, Treatment and Medical Education.

Note 2: The non-medical psychotropic related crime shall be subject to investigative regulations related to drug related crime.

Article 2: Anybody who cultivates poppies or cannabis for the purpose of producing narcotic drugs shall be sentenced, in addition to his crop being destroyed, to the following punishments for each time according to the amount of his cultivation:

- 1- The first time, a fine from ten to hundred million Rials in cash.
- 2- Second time, a fine from fifty to five hundred million Rials in cash, plus 30 to 70 lashes.
- 3- Third time, a fine from hundred million to one billion Rials in cash, plus 1 to 70 lashes together with two to five years of imprisonment.
- 4- Fourth time, death penalty.

Note: In case it is proved that the cultivation of poppy or cannabis has taken place under the instruction of the landlord(s) or the tenant or their legal deputies, the instructor who was the cause (of the crime), if he is in a higher position than the agent, shall be sentenced to the punishments prescribed in this article, and the agent who took the charge of cultivation shall be condemned to a fine in the amount of ten to thirty million Rials in cash and fifteen to forty lashes.

Article 3: Anybody who stores, conceals, carries the seeds or capsules of poppy or flowering or fruiting top of cannabis shall be sentenced to a fine in the amount of one million to thirty million Rials cash as well as to one to seventy lashes. In the case of flowering or fruiting top of cannabis, the intention of producing narcotics or psychotropics from them must be established.

Article 4: Anybody who smuggles in or out, produces, distributes, deals in or puts on sale bhang, Indian hemp juice, opium and opium juice or opium residue (shireh) and non-medical psychotropic, which the list will be ratified by the parliament, shall be sentenced to the following punishments, taking into account the quantity of said materials:

- 1- Up to 50 grams, a fine up to four million Rials in cash, plus up to fifty lashes.
- 2- More than fifty grams up to five hundred grams, a fine from four million to fifty million Rials in cash, plus twenty to seventy four lashes and three years of imprisonment if the court considers appropriate.
- 3- More than five hundred grams to five kilograms, a fine from fifty million to two hundred million Rials in cash, plus fifty to seventy four lashes and three to fifteen years of imprisonment.
- 4- More than five kilograms, death penalty and confiscation of property, raised from that crime

Note: If it is established that the perpetrator of the crime under paragraph 4 of this article has committed the crime for the first time and has not succeeded in distributing or selling narcotic drugs and also the amount is twenty kilos or less than that, the court while compiling the related conditions, will sentence him to life imprisonment plus seventy four lashes and confiscation of property, excepting the provision of the normal living cost for his family.

Article 5: Anyone who keeps, conceals, carries opium and other drugs mentioned in article 4 shall be sentenced to the following punishments, taking into consideration the quantity of the drugs.

- 1- Up to fifty grams, a fine up to three million Rials in cash, plus up to fifty lashes.
- 2- More than fifty grams up to five hundred grams, a fine up to five to fifteen million Rials in cash, plus ten to seventy four lashes.
- 3- More than five hundred grams up to five kilograms, a fine from sixty million to two hundred million Rials in cash plus forty to seventy four lashes and two to five years of imprisonment.
- 4- More than five kilograms up to twenty kilograms, a fine from sixty million to two hundred million Rials in cash, plus fifty to seventy four lashes and five to ten years of imprisonment, and in the event of recidivism for the second time, in addition to the above punishments and instead of the fine, the confiscation of property raised from that crime and for the third time, death sentence and confiscation of property excepting the provision of the normal living cost for his family.
- 5- More than twenty kilograms up to one hundred kilograms, in addition to the punishments mentioned in article 4, instead of each kilogram two million Rials fine in cash will be added and in case of recidivism, death sentence and confiscation of property raised from that crime
- 6- More than one hundred kilograms, in addition to the fine payment in cash and lashes mentioned in articles 4 and 5, life imprisonment and in case of recidivism, death sentence and confiscation of property raised from that crime.

Note: If the perpetrators of the above crimes have acted in chains and the substances are meant to be used inside the country, then they shall be under the punishments mentioned in article 4. and in case that one of the above conditions does not exist, then they shall be sentenced to the punishments of this article.

Article 6: The punishment of the perpetrator of the crimes mentioned in paragraphs 1,2 and 3 of the articles 4 and 5 shall be increased for the second time to one and a half of the punishments set forth in each paragraph, and for the third time to twice as much as the punishments prescribed in each paragraph and in subsequent instances two and a half, three and a half ... times as much as the punishments provided for in each paragraph.

The punishment of whipping for the second time onwards shall be seventy-four lashes at the maximum.

In the instances mentioned above, if as a consequence of recidivism of the crime the total of the narcotic drugs amounts to more than five kilograms, the perpetrator of the crime will be sentenced to death penalty and confiscation of property and in case of recidivism from the crimes mentioned in articles 4 and 5 or the paragraphs in article 5, the amount exceeds five kilograms, will be sentenced to the punishments of paragraph 4 of article 5.

Article 7: In case the perpetrator of the crimes mentioned in article 4 and 5 is an employee of the government, governmental companies, or government affiliated agencies, organizations and companies, and he is not, according to employment laws, subject to dismissal from government services, he shall be sentenced, for the first time to six months, for the second time to one year of dismissal from government services, and for the third time to permanent expulsion.

Article 8: Anyone who imports, produces, distributes, exports, deals in, puts on sale, keeps or stores, conceals and carries (or transports) heroin, morphine, codeine, methadone and other chemical derivatives of morphine, cocaine and also chemical extract of hashish or hashish oil, LSD, MDMA GHB, Flonitrazepam and methamphetamine and other non-medical psychotropics which the list will be ratified by the parliament, shall be sentenced to the following punishments, taking into account the amount of said drugs:

- 1- Up to five centigrams, a fine from five hundred thousand Rials to one million Rials in cash and twenty to fifty lashes.
- 2- More than five centigrams up to one gram, a fine in the amount of two million to six million Rials cash, plus thirty to seventy lashes.
- 3- More than one gram up to four grams, a fine in the amount of eight million to twenty million Rials in cash and two to five years of imprisonment and thirty to seventy lashes.
- 4- More than four grams up to fifteen grams, a fine in the amount of twenty to forty million Rials in cash, plus five to eight years of imprisonment, and thirty to seventy four lashes.
- 5- More than fifteen up to thirty grams, a fine in the amount of forty million to sixty million Rials fine in cash and ten to fifty years of imprisonment and thirty and seventy four lashes.
- 6- More than thirty grams, death penalty and confiscation of property, raised from the crime

Note 1: If it is established that the perpetrator of the crime under paragraph 6 of this article has committed it for the first time and has not succeeded in distributing or selling the drugs and in case the amount does not exceed one hundred grams, with the compilation of conditions or the non-establishment of the fact that he meant to distribute or sell it inside the country considering the quality and the transiting route, the court will sentence him to life imprisonment and confiscation of the property raised from the crime.

Note 2: In all the above cases, if the accused is an employee of the government or governmental companies or government-affiliated companies and establishments, he shall be sentenced, in addition to the punishments mentioned in this article, to permanent dismissal from government services.

Article 9: The punishment of the perpetrator of the crimes set forth at paragraphs 1 to 5 of the article 8, shall be for the second time one and a half of and for the third time twice as much as the punishment mentioned in each paragraph.

The punishment of whipping for the second time onwards shall be seventy four lashes at the maximum.

In the fourth time if the total of the narcotics as a result of repetition reaches thirty grams, the offender is considered as corrupter on earth and shall be sentenced to death penalty.

The death sentence, if deemed appropriate, shall be carried out on the premises of his residence and public.

In case the total of the narcotics in the fourth time as a result of recidivism does not reach thirty grams, the offender shall be condemned to a fine of forty to sixty million Rials in cash, with ten to fifteen years of imprisonment, plus thirty to seventy four lashes.

Article 10: (Omitted)

Article 11: The punishment of armed smuggling of narcotic drugs and non-medical psychotropics, subject matter of this act, shall be death penalty, and the death sentence, if deemed appropriate, shall be carried out on the premises of the offender and in public.

Article 12: Anyone who smuggles narcotic drugs and non-medical psychotropic into prisons, barracks, or rehabilitation centres for addicts, he shall be sentenced, as the case may be, to the maximum punishments mentioned in articles 4 to 9, and in case the offender is a government employee, he shall also be condemned to permanent expulsion from government services. In the event that as a consequence of negligence or omission of the persons in charge, narcotic drugs are smuggled into such centres, the failing officers shall be sentenced, as the case may be, to the punishment of:

- a) Demotion;
- b) Temporary dismissal;
- c) Permanent dismissal.

Article 13: Anybody who uses his industrial, commercial service and residential units for storing, producing and distributing narcotic drugs and non-medical psychotropic or make them available to others for such purposes, and also when the proprietor's representative commits such acts on his permission or knowledge, the respective permit for and approval in principle concerning the operation of industrial units or the business license of the services and commercial unit shall be cancelled, and the unit(s) mentioned in this article shall be confiscated in favour of the government.

Article 14: Anybody who establishes or runs a place for the use of narcotic drugs and non-medical psychotropic, he shall be sentenced to a fine of five million to ten million Rials in cash, plus one to four years of imprisonment together with permanent expulsion from government services. The punishment for recidivism of this offence shall be two to four times as much as the first one.

Note: If the place mentioned in this article is producing commercial or service units, in addition to the punishment provided in this article, the approval of licence and the permit for operation of the producing unit and also the business license of the service and commercial unit shall be suspended for the period of one year, and in case of recidivism of the crime the unit shall be confiscated in favour of the government.

Article 15: Addicts are required to refer to governmental, private treatment and harm reduction centres and NGOs to undergo treatment and rehabilitation. The addicts who refer to the said centres and undergo treatments, will receive treatment and harm reduction certificates. These individuals will be exempted from prosecution if they don't use drugs openly after their treatment.

Note 1: the authorized centres mentioned in this Article, are assigned based on the by-laws prepared and ratified by the Ministry of Health, Welfare and Social Security during the three month period and its and ratification by DCHQ.

Note 2: the Ministry of Welfare and Social Security is obliged to cover the treatment and harm reduction costs of poor addicts. The expenses for treatment, medication and rehabilitation shall be provided by the Ministry for those poverty stricken addicts that use basic and hospital related costs under insurance. The government is required to foresee and supply the necessary funds in annual budget bills under this Note and Article.

Article 16: Drugs and psycotropic substances addicts under articles 4 and 8, including those under Article (15) whom do not have certificate and continue to abuse drug openly, will be kept in authorized governmental or private treatment and harm reduction centres for 1 to 3 months according to judicial order. . The extension for another three-month period by the request of the said centres is permitted. According to the reports of the mentioned centres and the judicial authorities, if the addict is ready to continue the treatment according to the Article 15 of this law, the treatment will be continued.

Note1: According to the mentioned centres' request and the judicial authority order, the addicts who are the subject of this Article, are required to implement caring duties after they leave these centres, these duties based on the Secretariat suggestion of the DCHQ and with cooperation of the relevant organization will be provided and ratified by the head of judiciary.

Note 2: the judicial authority can introduce the addict to one of the said centres mentioned in previous Article, for one time concerning the suspension of prosecution for 6 month period and taking the appropriate guarantee and warrant to deliver the said certificate mentioned in Article (15) of this law. The said centres are

required to report the treatment process to judicial authorities or its representative. If the prosecutor confirmed the treatment and, the case shall be kept on file by the issuance of the permanent prosecution, otherwise an action shall be taken in accordance with the content of this Article. The extension of the object of this note is permitted and shall be done by the said centres for another 3 months.

Note 3: The offender without justified excuse according to the said duties in note 2 shall be convicted to 91 days to 6 months imprisonment.

Article 17: The Iranian citizens who keep, transport or smuggle the said drugs of Anti Narcotics law, into or out of country, by any intention, will be banned to leave the country and their passport will be nullified for one to five years since the order is finalized and in case of recidivism they, will be banned to leave the country and their passport will be made null and void for five to 15 years. The issuances of the passport for Iranian citizen who have been sentenced of the said crimes out of the country are subject to the said prohibition mentioned in this Article.

Article 18: Anyone who hires people or manage and or organize their activity and or invest or financially supports the said activities to commit the crimes mentioned in this law, in cases that their punishment is life imprisonment, they convicted to execution and their property which earned through criminal action shall be convicted to the maximum punishment. The punishment of the head of the gang or the network is execution.

Article 19: Non-addicts who use the narcotic drugs and non-medical psychotropic shall be punished considering the type of drugs.

The use of drugs mentioned in article 4 will be sentenced to twenty to seventy four lashes and one million to five million Rials fine payment in cash.

The use of drugs mentioned in article 8 will be sentenced to fifty to seventy four lashes and two million to ten million Rials fine payment in cash.

Article 20: Anyone who imports equipment and instrument for the use or production of narcotic drugs and non-medical psychotropics or purchases and sells them, shall be sentenced to pay a fine of one million to five million Rials and ten to fifty lashes and also the confiscation of the equipment and instruments.

The instruments of those perpetrators keeping, hiding or carrying the instruments and equipments using Narcotics, will be confiscated and for each instrument an amount from hundred to five hundred thousand Rials fine should be paid or five to twenty lashes should be given. The antiques are exempted from this article.

Article 21: Anybody who protects or causes the escape of an offender subject of this act, who is under prosecution or cooperates in securing protection for him or in causing him to escape, shall be sentenced to one-fifth to one half of the punishment of the crime, the perpetrator of which he has caused to escape or to whom he has given protection.

In case of life imprisonment four to ten years of imprisonment and in case of death penalty, ten to fifteen years of imprisonment and thirty to seventy four lashes will be considered.

Note 1: In case the offender is among the first degree relatives of the convict, it will not be more than one tenth of the punishment of the first convict.

Note 2: In case the perpetrator is one of the disciplinary forces or the prison authorities and the authorities of the judicial officials, in addition to the above penalties, they will be expelled from the government services.

Article 22: Anybody who extends protection or causes to escape an offender under this act, in the process of arrest or after having been arrested, or gives protection to or causes to escape an offender subject of this act or cooperates in this, shall be sentenced to one half of the punishment of the convicted or that of the principal offender. In case of life imprisonment and death penalty, the perpetrator will be sentenced to ten to twenty years of imprisonment together with thirty to seventy four lashes.

Note 1: If the perpetrator of the offence is a member of the disciplinary or security forces or a prison guards or a member of the judiciary, he shall be sentenced to the punishment of the convicted or that of the principal offender as well as to permanent dismissal from government functions, except for the death penalty, in case the punishment shall be consisted of twenty five years of prison and permanent dismissal from government services.

Note 2: If the perpetrator of the crimes subject of this Law, who is not yet under prosecution, escapes or is given protection, the provider of protection or the person or the person who has caused the offender to escape shall be condemned to between one tenth to one fifth of the punishment of the principal offender. In case of life imprisonment and death penalty, the offender shall be sentenced to two to four years and four to eight years of imprisonment respectively.

Article 23: Anybody who intentionally destroys or conceals evidence of narcotic and non-medical psychotropics crimes shall be sentenced to one fifth to one half of the punishment of the principal offender. In case of life imprisonment the perpetrator of the crime shall be condemned to four to ten years' imprisonment, and in case of death penalty, he shall have to face eight to twenty years of imprisonment.

Article 24: Any member of village Islamic Councils has, as his duty as soon as he learns of cultivation of poppies or cannabis in the rural area, to notify the matter in writing to the alderman and the closest outpost or law enforcement units.

The heads of the outpost or law enforcement units are required to report, immediately and simultaneously, to their higher authorities in the country, province and state, and to be present, together with the alderman, district officer or the representative of the village Islamic Council, at the premises of the cultivation and destroy it and to draw up a process-verbal to be forwarded, along with the accused, to competent judicial authorities.

Note: If the cultivation of poppies or cannabis is discovered in urban areas, the members of the municipality, the police, or law enforcement units are required, as soon as they learn of the matter, to report it to the nearest Police station, or law enforcement units , and the concerned authorities shall take action together with the public prosecutor's representative, in accordance with the provisions of this article.

Article 25: If the persons referred to in article 24 and the note thereto refuse or fail, without any justifiable cause, to fulfil their duties, they shall be condemned for the first time to six months to one year of expulsion from government functions, and for the second time, to permanent dismissal from Government services.

Members of Islamic Councils also shall be, for the first time, for a period of six months up to one year, and for the second time, permanently divested of their membership of the Islamic Councils.

Article 26: Whoever places, in an attempt of accuse another person, narcotic and non-medical psychotropics drugs and the tools and equipment of their use in a locality, shall be sentenced to the maximum punishment attaching to the same offence.

Article 27: Anybody who, in an attempt to prosecute before judicial authorities intentionally, accuses another person, of any of the offences subject of this act, shall be sentenced to twenty to seventy four lashes.

Article 28: Any property earned through drug and non-medical psychotropics trafficking and the property belonging to escaping suspects, in case there are sufficient evidence justifying the confiscation, shall be confiscated by the Government. The said property shall not be subject to Principle 53 of the Constitution relating to public property.

Note: The vehicles which are confiscated from the smugglers during the armed conflicts, will be confiscated in the favour of the acting organization by the court.

Article 29: (amended on 17 Nov. 2001): The fines and other funds received through the enforcement of this act shall be imbrued into a centralized account that will be opened with the Ministry of Economic Affairs and Finance.

In order to provide the goals of the Anti-Narcotics campaign, the government considers some budget for the implementation programmes approved by the Drug Control Headquarters in the bill of budget annually.

Note: the approved budgets for each organization will be allocated by the organization of Programming and Management after drafting the description of projects and activities and also the approval of DCHQ and the agreements will be exchanged.

Article 30: Any vehicle transporting narcotic and non-medical psychotropics drugs shall be confiscated in favour of the government, and will be handed over to the organization in action with the approval of Drug Control Headquarters.

If the transportation of Narcotics has been done without the knowledge or permission of the owner of the vehicle, then the vehicle will be given back to the owner.

Note: All those who try to place and hide the Narcotics and non-medical psychotropics in the vehicles, will be considered as a Deputy in the crime and if no crime has happened, they will be sentenced to three to six months imprisonment and ten million to fifty million fine payment in cash.

Article 31: The accused who are not in a position to pay the entire or part of the cash fine under a sentence, shall have to be detained, in exchange of ten thousand Rials for each day in half-covered or uncovered prisons in occupational training centres. If during their stay in such centres, the behaviour of the convicted is satisfactory, at the discretion of the centre's authorities the amount will be increased to twenty five thousand Rials daily.

Note 1: the instalment of fine payment after the imprisonment period by the authority responsible for enforcing of awards, is dependent on receiving bails of the same amount and also a guarantee by a third party for not more than three years.

Note 2: The imprisonment period other than the fine payment will not be more than ten years anyhow.

Article 32: The death sentences issued by virtue of this act shall be final and enforceable after the endorsement of the chairman of the Supreme Court or the prosecutor general.

In other cases, should the sentence be deemed probable, by the chairman of the supreme court or the prosecutor general, to contravene the law or the religious canon, or that the judge who pronounced the sentence is not competent, the chairman of the supreme court or the prosecutor general will be entitled to revise or quash the sentence however the existence of such entitlement shall not bar the sentence from being final and enforceable.

Article 33: In order to prevent addiction and campaign against Narcotics and non-medical psychotropics of any kind, and their production, trafficking and use, as well as other instances mentioned in the present act, a headquarters, presided over by the president, shall be established, where all the related executive and juridical operations shall be centred. The members of this headquarters shall be consisted of the following:

1. The President
2. The Prosecutor General
3. The Minister of Interior
4. The Minister of Intelligence
5. The Minister of Health & Medical Education
6. The Minister of Education
7. Head of Islamic Republic of Iran Broadcasting (IRIB)
8. The Commander in chief of law enforcement forces
9. The Head of Tehran Islamic Revolutionary Court
10. The Head of Prison Organization
11. The Minister of Culture and Islamic Guidance

Note 1: The President can appoint a Representative to participate in the meetings of The Drug Control Headquarters.

Note 2: In order to prevent drug related crimes, the Government is entitled to allocate a budget and announce this budget to all the implementing organizations.

Article 34: Drug Control Headquarters is authorized to draft and compile executive by-laws in case of necessity.

Article 35: Anyone who forces children and teenagers under eighteen years of age according to the solar calendar and rationally interdicted people, to commit each of the crimes mentioned in this law or forced others in any way to use drugs or and non-medical psychotropics or inject the drugs compulsorily or entering the drugs into others bodies forcefully, shall be sentenced to the maximum of the same punishment one and half times more than which is applied for that crime and life sentence shall be convicted to death penalty. In other cases such as persuasion, the offender shall be considered as crime-assistance.

Article 36: In this law, wherever the properties of the perpetrator is confiscated the court is obliged to mention the detailed specifications of all the properties along with the detailed list of all those which are considered as exception in the sentence or the amended sentence. Any violation of this article subject to disciplinary action and conviction of degree 4 and above.

Note: the courts are obliged to forward a copy of all such sentences to the Drug Control Headquarters.

Article 37: The period of temporary confinement shall not last more than four months. If during this period, the sentence is not given, then the authority which has issued the arrest warrant must cancel the arrest warrant unless there are legal grounds and other strong evidence to sustain the arrest warrant. In this case, the reasons and evidence for continuation of the warrant should be mentioned.

Article 38: In case there are mitigating circumstances, the court can decrease the punishment to half of the minimum original penalty. If there is no minimum penalty, then the same punishment will be reduced to half. The decreasing rate for life sentences will be fifteen years and for the death penalty, the Amnesty and Mitigation of Penalties Commission will be requested to approve nullification of death sentence.

Note: If the convicted offenders cooperate with the Police or the relevant agency acting in that specific case, and their cooperation results in discovering [trafficking] networks, the court that has issued the sentence may agree with the request of the Police or the relevant acting agency based on related evidence and documents, to reduce the penalty to half of what has already been issued.

Article 39: In cases of aggravation of punishment resulting from recidivism, previous convictions or criminal records enforced according to the 1988 Anti-Narcotics Law shall also be taken into account.

Article 40: If a person knowingly and deliberately for the purpose of production or manufacture of narcotic drugs, produces, purchases, sells, preserves, transits, imports, exports or supplies Industrial and chemical substances such as Anhydride Acid, Antralylic Acid, Phenyl Acetic Acid, Acetyl Chloral, and other substances mentioned in the tables 1 and 2 annexed to article 12 of United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Convention of 1988, with later amendments, and also be involved in the import, purchase, produce, use and keeping of Codeine and Methadone, he/she will be convicted to the penalties prescribed in Article 5 of Anti-Narcotics Law, taking into account and in proportion to the amount of substances in question.

Article 41: Production, purchase, sale, dispatch and keeping, importing, exporting, using and transporting of the prohibited substances are exceptionally authorized for medical and industrial purposes upon permission of Ministry of Health, Treatment and Medical Education.

Note: Cultivation of the *Adonis Papaver Camino Frame ela fra* according to the demand of the Ministry of Health, Agriculture and DCHQ for medical use and alternative medicine is permitted.

Article 42: The Judiciary is authorized to keep some of the drug and non-medical psychotropics related inmates in specific camps (under regular or hard conditions) instead of keeping them in the prisons.

Within one year [after entry into force of this Law], the Government should provide necessary funds and facilities and approve the required regulations to provide and supervise these camps.

Note 1: The supervision of these camps will be with the Judiciary.

Note 2: The courts can specify confinement in the camps as the penalty instead of imprisonment.

Article 43: In order to identify the offenders subject of this law, the police and law enforcement, in partnership with officials of other countries and in the frame works of bi-lateral or multi-lateral agreements, are authorised to carry out backtracking of financial resources, finding entry and transit routes of illicit drugs into and out of country, and identify the tools and equipment, or place of cultivation, production, and manufacturing of illicit drugs. The controlled delivery operations within the national territories and outside the country shall be carried out through an operational plan at the request of Chief of Police authorized by the General Prosecutor. Upon completion of the investigations, the action reports shall be submitted to General Prosecutor or a judge that he may assign. Any change in the modus operandi of the operations is only permitted through written permission of the General Prosecutor.

Note 1: The identification and particulars of foreign country enforcement operatives in the operation plan shall be required. Seizure, total or partial replacement, cargo transportation permission subject of this article, take, keep, concealment, transport and carrying or delivery of the drugs and non-medical psychotropics or supplying and facilitating the required actions by enforcement officials is permitted through bi-lateral and multi-lateral legal agreements while complying with relevant Conventions through permission of the General Prosecutor.

Note 2: The competent judicial authorities in the courts of first instance whom investigate the suspects accused under this Article, are assigned by the General Prosecutor.

Article 44: The Ministry of Intelligence, while collecting necessary intelligence related to major regional and international organised crime networks, linked to crimes under this Law and within its legal jurisdictions, shall identify and chase the offenders through the order of the General Prosecutor or a judge that he may assign. The Ministry shall provide intelligence related services to law enforcement and other national competent authorities.

Article 45: The amendment of this Law is permitted by the Islamic Consultative Assembly (parliament).

Note: The list of drugs and non-medical psychotropics in addition to those indicated in this Law shall be approved by the Islamic Consultative Assembly through a Plan or Bill.

Amendments: The amendments under this Law in 15 areas were approved by the Expediency Council in an official meeting on Saturday, 31 July 2010. The Official Gazettes published the new Law on 14 December 2011.

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