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**Follow-up and implementation of the Vienna Declaration
and Programme of Action**

Written statement* submitted by the Verein Sudwind Entwicklungspolitik, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 August 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).



Islamic Republic of Iran's penal code's deep and constant conflict with international human rights law

Iranian penal code's deep and constant conflict with international human rights law

The Iranian penal code is in deep and constant conflict with international human rights law where type and intensity of punishments are concerned. In practice, in most cases the principle of 'proportional justice' is basically ignored as the punishments are extremely harsh and as they challenge the objectives of punishment such as rehabilitation and deterrence.

Iran's penal code structure

The Iranian Penal Code, called the New Islamic Penal code, was reviewed and amended by the Islamic Parliament, afterwards vetted by the Islamic Guardian Council and in force since 27 May 2013. The code includes four types of punishments for natural persons: 1- Hodud, 2- Qisas, 3- Diyat and 4- Ta'zirat

Hodud are punishments for crimes which its type, amount and quality are prescribed by Shari'a crimes as follows:

- Zina (illicit or unlawful¹ sexual intercourse)
- Livat (Sodomy and homosexual acts between men)
- Mosahaqa (Homosexual acts between women)
- Qavvadi (Pimping)
- Qazf (Defamation, unfounded accusation of unlawful sexual intercourse)
- Sabb-al-nabi (Insulting the prophet)
- Shorb-e-khamr (Alcohol consumption)
- Serqat (Theft)
- Moharaba (Enmity against God/waging war against God)
- Baqy (Rebellion)
- Efsad-fel-arz (Corruption on earth)

Qisas or the law of retaliation is the punishment to which the criminal shall be sentenced and is equal to his/her crime. This is based upon the maxim of "an eye for an eye, a tooth for a tooth and a life for a life". However if a victim or the next of kin decides to exercise their right to forgive the offender, they can still ask for blood money (Diya). In this case, the judge could still decide to sentence the offender.

Diya or blood money is the monetary compensation prescribed by Shari'a for the crime. In cases in which an unintentional accident has occurred and as its consequence, a person is injured or dead, a liability for blood money is created. Blood money is also applicable if someone has intentionally caused somebody else's injury or death but a sentence of retaliation is not possible to be pronounced, such as when the offender is forgiven by the victim or the next of kin.

Finally, Ta'zir is the chastisement or punishment which its type and amount is not determined by Shari'a but left to discretion of the judge, such as imprisonment, fine and lashes; but the number of lashes must be less than the number stipulated for Hadd punishment. In principle all forbidden or sinful acts, even if they do not constitute Hadd offences, homicide or bodily harm, are punishable under the Shari'a. An important function of Ta'zir is to provide grounds for the punishment of those who have committed Hadd crimes or crimes against persons but cannot be sentenced for procedural reasons (e.g. because of uncertainty, or pardon by the victim's next of kin, or lack of legally required evidence) or for the punishment of those who have committed acts that resemble these crimes but do not fall under their

¹ Unlawful sexual relation indicates a relation out of marriage

legal definitions. Instances of such acts are misappropriation not amounting to theft and defamation on other grounds than forbidden sexual intercourse.

Type and intensity of punishments

Death penalty

The extremely high rate of death penalty in Iran is probably one of the most echoed international concerns. Drug related crimes, possession and trafficking in particular, are the charges most commonly used against those executed in Iran². A law prohibiting the use of drugs was passed in December 2010 and entered into force on 4 January 2011. Article 18 of this law prescribes death penalty for drug trafficking and large-scale trade and states that death penalty is mandatory in cases of detention or trafficking of various drugs for amounts greater than those prescribed by law. Persons convicted of these offenses are not allowed to exercise their right to appeal to a higher court, as required by international law.

Death penalty however, does not limit solely to drug-related crimes. The majority of the offences punished by death penalty are among Hadd offences and are violations of claims of God. Zina (illicit sexual intercourse) and homosexual activities are among them. Other non-serious conducts punished by death penalty are insulting the prophet and alcohol consumption at the third time.

Finally, very problematic are the two crimes against God which rely on political grounds of public and Islamic Republic of Iran's security. Those two include Moharaba (enmity against God) and Baqy (rebellion), under which Iranian authorities have prosecuted political dissidents. The new code expands the range of these politically established crimes in a very vague and broad manner. Their definition usually covers innumerable types of political exercise of rights, and judges are given the material to easily suppress any act that goes against the will of the authorities on the pretext of protecting God's claims.

Moharaba, 'enmity against God' or otherwise translated as 'waging war against God' is defined in article 282 of the new penal code. According to this new code, the Hadd punishment for Moharaba is one of the following punishments:

- (a) The death penalty (hanging)
- (b) Crucifixion
- (c) Amputation of right hand and left foot
- (d) Banishment³

Baqy (armed rebellion) on the other hand was newly added to the new code. It was used to be under the same definition as Moharaba in the previous code but it was divided and was given a separate definition. Article 286 and 287 are the two articles that are supposedly added to prevent further incidents with the same nature of post 2009 election events. They are both categorised under the chapter of "Baqy and corruption on earth".

A simple analysis of cases indicates that these punishments are most commonly used on ethnic and religious minorities and discriminated groups such as Kurds, Arabs and Balouchs⁴.

The above-mentioned are classified under Hadd offences punishable by death penalty. But there exist a few Ta'zir offences which are penalized by death penalty as well. Those are mentioned in various laws and include: Spying, in case the offender is a member of the armed forces, and gross economical offences which threaten the economy such as money laundering and extensive banknotes forging etc.

Stoning

Another extremely controversial area of the new penal code is the punishment of "stoning to death". This sentence existed in the previous code and was retained in the new code⁵ despite numerous claims by the officials during the preparation phase of the penal code that stoning is completely wiped off the penal image of the IRI.

Flogging

²See for instance : <http://iranhr.net/wp-content/uploads/2014/03/Rapport-iran-2014-GB-030314-bd-e.pdf>

³Article 282 of the new penal code

⁴See for instance : <http://iranhr.net/wp-content/uploads/2014/03/Rapport-iran-2014-GB-030314-bd-e.pdf> pages 18-20

⁵Article 225

One of the other punishments in the Islamic penal code amounting to torture and established for “non-serious crimes” is flogging. Flogging is mainly prescribed for Hadd offences whose number of lashes is already defined by the Islamic jurisprudence to 74 lashes and beyond. Less than this number, flogging is no longer Hadd-related, but becomes a punishment whose amount could be defined by the judge due to the nature of crime and is Ta’zir and not Hadd.

Dismemberment

Dismemberment is one of the other torturous practices prescribed by the Islamic penal code. It is done by the amputation of limb or foot, and constitutes a punitive reaction to two Hadd. Those include the offences of theft and Moharaba (enmity against God).

Recommendations

Sudwind recommends the government of the I.R. Iran to:

- Declare a moratorium on all executions; ban public executions, including stoning; and limit capital punishment to offences considered to be most serious crimes under international law
- Prohibit the execution of juveniles, as prescribed by international law, and that authorities consider commuting all capital sentences for juveniles currently facing a death sentence
- Proscribe the use of all forms of corporal punishment, including flogging and amputation; investigate all allegations of custodial deaths and allegations of torture in custody in a transparent manner consistent with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and accede to the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, along with the Optional Protocol thereto
- Address impunity, to facilitate accountability, to provide redress for human rights violations and strengthen the rule of law, all of which are required to effectively promote respect for human rights in the country
- Strengthen effective safeguards against human rights abuses, to establish an effective national human rights mechanism that is compliant with the Paris Principles, in order to ensure that violations of human rights are investigated and sufficient remedies are provided
- Explicitly define actions that constitute crimes against national security, and encourages the Government to ensure that peaceful activities that are considered to be protected by freedom of expression, association and assembly are not criminalized.
