

Death penalty in Iran: an inhuman practice looking down on international law

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Abstract

Since 1948 and the adoption of the Universal Declaration of Human Rights, the international legislation has seen several treaties and conventions adopted to regulate the practice of the death penalty and even its abolition. Iran is one out of the 34 countries that still use the capital punishment as a tool of justice and is situated right behind China regarding the number of executions. In light of the recent execution of the wrestler Navid Afkari, which did not fail to arouse sharply negative reactions from the international community, it is now necessary to re-characterize international law to remind these countries that they cannot shun the system without facing actual sanctions.



Over the last twenty years, a clear trend emerged worldwide in reducing the practice of death penalty. Officially, 108 states have abolished the capital punishment over all crimes, 7 have abolished it for common law crime¹, and 49 states are currently respecting a moratorium² on executions in law or fact. Even if more than two-third of world countries have abolished it in law or practice, capital punishment is still an ongoing practice in more than 35 states³. It includes countries such as China, the United States of America or the Islamic Republic of Iran, the latter being among the states which uses this sanction the most in practice. The problem also lies around the fact that the justifications for the condemnations are vague and questionable, based on the fact that the Iranian judiciary system is biased and lacks transparency.

Death penalty in Iran: a tangible reality

On the 12th of September 2020, all eyes were on Iran, which was seriously shamed on the world stage due to its arbitrary practice of the death penalty. On this day, the 27-year-old wrestler Navid Afkari was executed over the murder of an officer during a wave of anti-government protests back in 2018. Reactions quickly poured in on social media as well as from states' officials and international organisations. The EU spokesperson expressed its disagreement over this event in reminding that the EU is opposed to the death penalty under all circumstances and in every case without exception, while insisting on the cruelty of that sanction which strongly denies human dignity⁴.

According to Karem Mousavi, the prosecutor general of the Fars province, the capital punishment would have been applied "in regard to the insistence of the victim's family". However, the condemnation of N. Afkari was still the subject of controversies due to the release of information asserting that the wrestler was tortured into making a confession. Indeed, he even declared in a vocal message recorded in prison: "If I am executed, I want you to know that an innocent person fought with all his strength to be heard, and was still executed"⁵.

N. Afkari's two brothers, Vahid and Habib, were also sentenced to 56 years and 24 years of prison as well as 74 lashes each for the same homicide case. It would seem that the two brothers also have been subjected to poor treatments and a speedy trial. The United Nations, Amnesty International and the

¹ A common law offence is a criminal offence in the sense that it is prohibited by a legislative or regulatory text.

² A moratorium is a legal term which designates the decision to grant a standstill or a voluntary suspension of an action. A moratorium is considered *de facto* if it cancels an execution that is on hold for at least ten years, and is considered "in law" if it results from a judicial decision.

³ Vie Publique. (2018). *La peine de mort dans le monde*. [online] Available at: <https://www.vie-publique.fr/eclairage/19492-la-peine-de-mort-dans-le-monde#:~:text=%C3%80%20ce%20jour%2C%20selon%20le,soit%2014%20pays%20au%20total> [Accessed 26 Sept. 2020].

⁴ Union Européenne. (2020). *Iran : déclaration du porte-parole concernant l'exécution de Navid Afkari*. [online] Available at: https://eeas.europa.eu/delegations/niger/85387/iran-d%C3%A9claration-du-porte-parole-concernant-lex%C3%A9cution-de-navid-afkari_fr [Accessed 26 Sept. 2020].

⁵ Amnesty International. (2020). *Iran. L'exécution en secret du lutteur Navid Afkari est une "parodie de justice"*. [online] Available at: <https://www.amnesty.org/fr/latest/news/2020/09/iran-secret-execution-of-wrestler-navid-afkari-a-travesty-of-justice/> [Accessed 26 Sept. 2020].

Advocates for Human Rights have all denounced these hasty and secret decisions that totally disregard the most fundamental human rights.

The execution of Navid Afkari is unfortunately not a one-time incident. Iran is indeed one out of the 34 countries that still exercise capital punishment. It is notably one of the countries with the highest number of executions, situated right behind China. According to Amnesty International, at least 251 executions took place in Iran in 2019, while only 196 of them were for people accused of murder⁶. 13 of these executions were even held in public with the aim of deterring new infractions, but the underlying goal is also to sow terror and prevent potential riots. A study from Iran Human Rights⁷ even shows that there is a strong correlation between political events and the executions happening in the country. Indeed, the report shows a peak in the use of this practice in the weeks preceding the 9th of July, which is the anniversary date of the students' protest of 1999 and, on the contrary, a strong decrease around the elections⁸.

Finally, Iran is also one of the leaders in terms of execution of persons who were minors at the time of the alleged crime. Each year there are several juvenile executions; seven in 2018, four in 2019 and already two in 2020⁹. Yet, the international community agrees over the fact that applying capital punishment to minors is a barbaric act which violates the most fundamental human rights.

The Iranian Penal Code: an opaque and cruel judicial system

The Islamic Republic of Iran does not have a penal code in the French sense of the term, but rather a set of texts that determine the procedures to be followed by magistrates. Islamic penal laws are divided into two parts; the Islamic Criminal Code, which is based on Sharia laws and serves as a legislative basis, and the Majlis, a code of penal procedure voted by the Iranian Parliament.

While murder remains the principal crime punishable by capital sentence, Iran provides for an extensive application of the death penalty, meaning that many other charges are punishable by death. The death penalty is thus incurred for drug trafficking according to certain criteria, but also in the case of homosexual relations, even consensual, or for acts qualified as political rebellion. For example, the crime of *moharebeh* (enmity towards Allah) is used to prosecute and sentence political opponents to death under the guise of a religious crime.

The types of courts, procedures and the number of investigating magistrates vary according to the type of crime. In the case of homicides, five magistrates intervene in the first instance, followed by five others in

⁶ Amnesty International. (2019). *En Iran*. [online] Available at: <https://www.amnistiepdm.org/en-iran.html> [Accessed 26 Sept. 2020].

⁷ Iran Human Watch is an impartial and politically independent organization aimed at defending human rights and is based in Oslo in Norway. Its main goal is to create an abolitionist movement in Iran to raise awareness on the wrongdoings of the death penalty.

⁸ Iran Human Rights. (2013). *Relationship between political events and the death penalty trends in Iran*. [online] Available at: <https://iranhr.net/en/articles/982/> [Accessed 26 Sept. 2020].

⁹ La peine de mort dans le monde. (2020). *La peine de mort et les mineurs, homosexuels et apostats*. [online] Available at: <https://peine-de-mort.net/mineurs.php> [Accessed 26 Sept. 2020].

cassation, while only four magistrates investigate the case of the accused of political crimes. Magistrates also profit from great freedom of action, and the possibilities for appeal are extremely limited. A judge may therefore pronounce a death sentence hastily, by simply following his or her enlightened opinion. This explains why many executions took place only a few weeks after the arrest of the accused, as in the case of Navid Afkari.

Under Iran's Islamic Penal Code, boys over 15 lunar years old and girls over nine lunar years old guilty of violent crimes or certain other crimes punishable by death penalty may be sentenced to death on the same basis as adults. These executions are considered to be cases of *qesâs* (reparations) rather than *edam* (executions), making them justifiable according to the Iranian authorities. Fortunately, the work of human rights activists has enabled modifications to the new Iranian Penal Code voted in 2012, requiring that the judge's opinion be subject to the presence of clear evidence in the file of the accused, and granting the possibility to seek the opinion of a doctor regarding the maturity of the accused.

However, it is difficult to access reliable information and data on the judicial reality in Iran. There is no evidence that the improvements described above are actually being implemented, as procedures remain unclear and the authorities minimise the scale of executions. Furthermore, the media are controlled by the government, and journalists reporting on the death penalty risk dismissal. According to numerous testimonies collected over the years, it is nevertheless certain that detainees awaiting trial are regularly victims of torture and ill-treatment¹⁰. The presumption of innocence is rarely respected and confessions obtained under duress are systematically withheld.

Iran between elusion and negation of international law

From the point of view of international law, Iran has not signed the Second International Protocol on Civil and Political Rights of 15 December 1989, aiming at the abolition of the death penalty¹¹. The country is therefore legally entitled to apply the death penalty. However, having ratified¹² the International Covenant on Civil and Political Rights (ICCPR) in force since 23 March 1976, Iran is required to comply with certain regulations on the practice of the death penalty. These are detailed in Article 6 of the ICCPR. Paragraph 1¹³ of this article makes it clear that an individual cannot be “arbitrarily” deprived of his or her life. The second paragraph specifies that:

“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

¹⁰ ADENA, N. (2019). 40 years of torture - Report on torture in Iran. *irannewswire.org*. [online] 11 Jan. 2019. Available at: <https://irannewswire.org/40-years-of-torture-in-iran-report/> [Accessed 26 Sept. 2020].

¹¹ Article 1 of the Second International Protocol on Civil and Political Rights abolishes the death penalty, stating that “1. No one within the jurisdiction of a State Party to the present Protocol shall be executed. 2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”

¹² On 24 June 1975, Iran ratified the International Covenant on Civil and Political Rights.

¹³ “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”.

Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court¹⁴.

This article resonates at a time when the execution of Navid Afkari follows confessions obtained under torture. The wrestler has seen his right to a fair and just trial under Article 6 (2) be withdrawn from him, if it is at all possible in a judicial system as little transparent as the Iranian one.

The methods used by Iran to obtain recognition of the wrestler's alleged acts are more than morally reprehensible as they constitute a violation of Article 7 of the ICCPR, which states that *"No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*¹⁵ Taken verbatim from Article 5 of the Universal Declaration of Human Rights (UDHR), adopted on 10 December 1948, this article puts an end to the practice of torture in all States Parties to the treaty. Iran had voted in favour of this declaration without, however, going to the end of its process, by not signing ultimately. By ratifying the ICCPR, Iran accepts the terms of Article 5 of the UDHR. As a result, the use of torture against Navid Afkari is reprehensible in the eyes of international law and, more generally, by the international community, which is the guarantor of the respect of international law.

In addition, as stated in Article 14, paragraph 2 of the same international covenant¹⁶, the principle of the presumption of innocence applies to all pending (non-)conviction in accordance with the law. While torture is immoral and cruel, its use on an innocent individual should convince even the most ardent proponent of its use that it is inherently inhuman.

Iran has also ratified the International Convention on the Rights of the Child (CRC). The country is therefore legally obliged to consider the under-18 years old as minors because they are children under international law. Accordingly, no person below 18 years of age at the time of the offence may be sentenced to death under Article 37(1)¹⁷ of the CRC and Article 6(5)¹⁸ of the ICCPR. Once again, by condemning many of its minors to death, Iran illustrates its unwillingness to apply the law that the country has imposed on itself. Indeed, the ratification of an international treaty requires a vote of the Parliament and thus induces a State will to tend towards a fairer law and practice of it, although the reality is quite different. By its actions, Iran denies the very existence of international law which the country has voluntarily committed itself to respect and to include in its practice of law at the domestic level. Torture and the death penalty are just two examples of the many human rights violations taking place in Iran and disregarding international law.

¹⁴ In line with Article 14 of the ICCPR, this tribunal has to be "independent and impartial" and should fairly hear the case of the accused.

¹⁵ On 13 July 1994, Iran ratified the Convention on the Rights of the Child.

¹⁶ *"2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law"*

¹⁷ *"1. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age"*

¹⁸ *"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."*

Conclusion

If the application of the death penalty is clearly an archaic and inhuman practice, it is also totally ineffective to deter crimes. Numerous studies show that the application of capital punishment is only encouraging a vicious circle of violence, since the states who still apply it as a judiciary sanction still have a criminal rate much higher than states who abolished it. For example, in Canada, the homicide rate dropped by 52% since the abolishment of the death penalty in 1976¹⁹. It has never been proven that the death penalty is more dissuasive than imprisonment, especially since it creates a lot of difficulties such as the irreversibility of the sentence in the case of a miscarriage of justice, or its arbitrary application that is often discriminatory. There is no perfect judiciary system, which means that countries still using the capital punishment face the risk of killing innocent people.

At last, it is now clear that we have much more effective alternatives that do not involve the death of the accused to punish criminality. Investing in mechanisms of protection, correction and rehabilitation remain the best chances to reduce recidivism. It is now time for countries like Iran, China or the United States of America to listen to the arguments of abolitionist movement and stop using capital punishment as an instrument for justice. Moreover, it is important to note that this also involves the responsibility of the international community to condemn and punish such behaviours since it comes from countries having accepted the legal authority of the UN.

¹⁹ Alter Justice. (2019). *La peine de mort : un aperçu de justice dans le monde et au Canada*. [online] Available at: https://www.alterjustice.org/dossiers/statistiques/peine_de_mort.html [Accessed 26 Sept. 2020].

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