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Re: *Qisas, Diya*, and the Death Penalty in Iran

Complaint submitted to:

Morris Tidball-Binz
UN Special Rapporteur on extrajudicial summary or arbitrary executions

Javaid Rehman
UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Iran Human Rights (“IHRNGO” or the “Complainant”) brings this Complaint because the current practice of *qisas*, or “retribution-in-kind” execution, violates the internationally protected human rights of people in Iran, including their right to life, their right to be free from cruel and inhuman punishment, and their right to equality under the law.

The Complainant

IHRNGO is a non-profit human rights organization dedicated to abolishing the death penalty within Iran. Based in Norway, the organization unites a network of Iranian and non-Iranian human rights defenders and tracks considerations such as the rights of ethnic and religious minorities, women, children, and human rights defenders inside Iran. Because of its connections, it is one of the leaders in collecting information and reporting executions that occur there. IHRNGO is a member of the World Coalition against the Death Penalty’s steering committee.¹

The Alleged Victims

The current *qisas* execution system jeopardizes the rights of all people in Iran, but specifically discriminates against women, low-income individuals, and ethnic and religious minorities accused of murder. For example, Baluch prisoners accounted for 30% of all executions across the country, while only representing 2-6% of Iran’s population.² Ethnic minorities are often also religious minorities, and amongst the socio-economically marginalized groups in Iran and are thus often doubly or triply affected under discriminatory applications of the law.

¹ Iran Human Rights, *About Us*. Also available online at <https://iranhr.net/en/about/>.

² IRAN HUMAN RIGHTS (IHRNGO) AND ECPM, ANNUAL REPORT ON THE DEATH PENALTY IN IRAN 2022, 9 (Apr. 2023), https://iranhr.net/media/files/Rapport_iran_2022_PirOr2V.pdf [hereinafter 2022 Report].

At least 1,861 *qisas* executions were carried out between 2010 and 2021.³ In 2022 alone, Complainants identified at least 288 incidents of *qisas* executions for murder, representing a sharp increase over the last year and the highest number in recent history.⁴ Thus, the alleged victims here are numerous. However, given the distinct possibility that victims and their families may face retribution were they to be publicly identified or singled-out, Complainant requests an exemption from the requirement that this Communication identify specific individuals. Instead, this Complaint is focused on the practice of *qisas* as a whole and the human rights violations it has and continues to visit on murder victims, perpetrators, and their families.

State Agents Responsible

Head of Judiciary

Supreme Court

The Criminal Courts

The Revolutionary Courts

The Islamic Consultative Assembly

Guardian Council

The Prosecutor's Criminal Tribunal and Implementations Unit

The Office of the Prosecutor

Summary

Quranic Origins of Qisas and Diya

The 2013 Law of Islamic Punishment, sometimes referred to as the Iranian Penal Code (“*IPC*”), derives principles from Islamic law and codifies them in the form of a criminal code.⁵ The *IPC* is made up of five books, and the subjects of each book are different Islamic justice principles, including the two that form the subject of this Complaint, *qisas* and *diya*.⁶ The source of the principle of *qisas*, often translated as retribution-in-kind, is said be derived from the following verse of the Qur’an:

We ordained for them in the Torah, “A life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth—and for wounds equal retaliation.” But whoever waives it charitably, it will be atonement for them. And those who do not judge by what Allah has revealed are ‘truly’ the wrongdoers.⁷

³ 2022 Report, at 60.

⁴ 2022 Report, at 59.

⁵ 2022 Report at 28, 92.

⁶ 2022 Report at 29, 32, 92.

⁷ Qur’an 5:45 (the Clear Qur’an, tr. Dr. Mustafa Khattab).

As noted explicitly in the verse above, retribution is not mandatory, however; victims may instead seek a *diya* (“blood money”) compensation payment or may instead choose to forgive the offender and forgo punishment altogether.⁸ *Diya* is said to originate from from the following verse:

In the law of retaliation there is life for you—O you who are
endowed with intelligence so you may restrain yourselves.”⁹

While the concepts of *qisas and diya* did not originate with the IPC, Iranian law embellishes and codifies them in ways that violate established principles of international law.¹⁰ This Complaint examines those Iranian criminal laws concerning *qisas* and *diya* to demonstrate the conflicts between those principles as they exist in the IPC and international human rights law in the hopes that the Iranian government will depart from these practices.

Definitions of Qisas and Diya in the IPC

Qisas is defined in the IPC as the main punishment for intentional bodily crimes against life, limbs, and abilities, where the punishment is equivalent to the harm caused.¹¹ It is the subject of Book 3 of the IPC.¹² *Diya* is defined as “a monetary amount under holy *shari’a* which is determined by law and shall be paid for unintentional bodily crimes against life, limbs, and abilities or for intentional crimes when for whatever reason *qisas* is not applicable,” and is the subject of Book 4 of the IPC.¹³

Uniquely, *qisas* and *diya* are a synthesis of both criminal and tort law. While the judiciary is responsible for carrying out the criminal trial and implementing the sentence in *qisas* cases, Iranian law treats them as private disputes between two civil parties, where the state facilitates the resolution of the dispute.¹⁴ Thus, the state determines whether the requisite criminal intent was present, but the ultimate sentence is in the hands of the victim or their next-of-kin.¹⁵ *Qisas*, therefore, is explicitly an individual right, according to Article 419 of the IPC.¹⁶ This means that

⁸ 2022 Report at 61.

⁹ Qur’an 2:178-179 (the Clear Qur’an, tr. Dr. Mustafa Khattab).

¹⁰ 2022 Report at 28, 32.

¹¹ See Iranian Law of Islamic Punishment [hereinafter IPC], art. 16.

¹² See IPC, art. 289-447.

¹³ IPC, art. 17. See also IPC, art. 448-727.

¹⁴ ARZOO OSANLOO, FORGIVENESS WORK 43 (2020). See also 2022 Report at 92.

¹⁵ Notably, next-of-kin (*awliya-ye dam*, literally “custodians of the blood”) does not include a spouse. A spouse can never request *qisas*, regardless of whether it is a husband or a wife. ARZOO OSANLOO, FORGIVENESS WORK 53 (2020). See also 2022 Report at 14-15, 41, 45.

¹⁶ 2022 Report at 92.

individuals, instead of the State, are the ones who elect, are present at by law, and ultimately carry out, public *qisas* executions, or choose *diya* and/or to forgive.¹⁷

Intent under the IPC

Article 289 of the IPC describes that there are three levels of intent for crimes: “intentional,” “quasi-intentional,” and “pure error.” Troublingly, however, the IPC definition of intent is sweepingly broad.¹⁸ For instance, under the IPC, intentional crimes occur where the perpetrator intends to commit a crime (regardless of whether the act would not usually cause a crime) against a person or group thereof, and quasi-intentional crimes occur where the perpetrator intends to commit an act that usually causes a crime (even though he may not have intended to commit a crime), but is aware that such actions usually cause a crime.¹⁹ Additionally, the IPC builds in what is sometimes referred to in Western legal schemas as an “eggshell skull” doctrine, where intent will be found if a usually non-lethal action is committed against a person with a known frailty, and the action resulted in death.²⁰

The example of the crime of murder shows how this formulation of intent is particularly problematic. Under the IPC, murder will be found to be intentional (*ghatl-e amdy*) where: (1) the murderer has the intent to kill another person (regardless of whether it was a specific individual or a group); (2) the murderer does not have the intent to kill another person but commits an act which is typically lethal, or (3) the murderer has no intent to kill and the action is not fatal, but due to the condition of the victim (youth, disease, etc.) is lethal, and the murderer was aware of that condition. Thus, critically, where a murderer intentionally commits an action that is inherently lethal, *even if he does not intend to kill the victim*, such killing will fall under the IPC’s definition of intentional murder.²¹ There is no grading or sorting by degree in the IPC to divide intentional murder into

¹⁷ See ARZOO OSANLOO, FORGIVENESS WORK 136 (2020). The victim’s next-of-kin literally put a noose over the perpetrator’s head and pull the lever to trigger the gallows themselves. See also 2022 Report at 14, 15, 45.

¹⁸ 2022 Report at 29, 93.

¹⁹ Intentional acts are defined as occasions “[w]hen the perpetrator, by doing something, has the intention of committing a crime against a certain person or persons or an unspecified person or persons of a group, and in the act, the intended crimes or the like to occur, whether the committed act usually causes the occurrence of those crimes or the like or not.” Quasi-intentional crimes, however, occur “[w]hen the perpetrator intentionally does something that usually causes crimes or the like, even though he does not intend to commit those crimes or the like, and he is aware and that act usually causes those crimes or the like.” Pure error is defined as a situation where the perpetrator is sleeping or unconscious, the crime was committed by a minor or insane person, or the death was the result of an accident, like when someone has the intention of hunting and kills a person instead of the animal they were hunting. See IPC, art. 290-292.

²⁰ IPC, art. 290(P).

²¹ 2022 Report at 93.

sub-categories of degree from greatest culpability (first-degree murder) to lesser ones (second-degree) that consider the circumstances surrounding the action.²²

The breadth of the IPC's definition of intent has significant consequences for those accused of *qisas*-level crimes. Once there is a finding of intent, under the IPC, Iranian judges possess no discretion in sentences, as judges cannot alter *shari'a*-prescribed punishments, such as *qisas*, once they have deemed the actions of the defendant meet the elements of the crime.²³ Only the victim's next-of-kin have the power to change the outcome. The law also provides no timeline for the implementation of *qisas* sentences: often, those sentenced sit in prison in an uncertain timeline, often with little notice of when an execution will take place (or when it will be called off at the last moment).²⁴

An additional issue with the *qisas* framework is its inherently discriminatory nature. The IPC explicitly exempts the following situations or people from the mandatory death sentence of *qisas*: (a) father and paternal grandfather of the victim (IPC, art. 301); (b) a man who kills his wife and her lover in the act of adultery (IPC, art. 302); (c) Muslims, followers of recognized religions, and "protected persons" who kill followers of unrecognized religions or "non-protected persons" (IPC, art. 301); (d) killing of a person who has committed a *hudud* offense punishable by death (IPC, art. 302); and (e) killing a rapist (IPC, art. 302).²⁵

Diya

If there is no finding of intent, and the injury or death is determined to be the result of an unintentional act, the punishment shifts from *qisas* to *diya*. There is, however, an additional wrinkle to the relationship between the two, as *diya* may, by the victim or their family's choosing, replace *qisas* and effectively allow the crime to be "pled down" even if there is a finding of intent.²⁶ Put differently, in any *qisas* crime, a compensatory "blood money" payment may replace the taking of a life or a limb, but only if the next of kin forego their right of retribution.²⁷ Thus, if the procedural elements for proving intent are not met for *qisas*, or if the victim requests it, *diya* will be imposed instead.

Diya, however, applies differently to victims and perpetrators of different genders and socioeconomic levels. As to women, the IPC makes it clear that in the event a woman is killed,

²² IPC, art. 550. *See also* 2022 Report at 93.

²³ IPC, art. 550. *See also* 2022 Report at 58.

²⁴ *See* ARZOO OSANLOO, FORGIVENESS WORK 127, 129 (2020). *See also* 2022 Report at 57.

²⁵ *See* 2022 Report at 32.

²⁶ *See* ARZOO OSANLOO, FORGIVENESS WORK 52 (2020). *See also* 2022 Report at 61.

²⁷ 2022 Report at 61.

her *diya* is half of that of a man's.²⁸ Further, ethnic and religious minorities make up a large portion of Iran's poorest.²⁹ Notions of *diya* further discriminate based on their socioeconomic status because not all perpetrators are able to afford a *diya* amount demanded by the victim's next-of-kin.³⁰ The State determines the minimum indicative amount of *diya* each year.³¹ As of the time of this writing, a full *diya* is 9 million Iranian tomans (approximately 18,000 euros).³² However, no relationship between the State-mandated *diya* amount and the agreed upon amount is required: it can be less than the indicative amount, or many times more than it. Further, although the *diya* negotiations are between the private parties and the court must approve the settlement: it is not part of the actual judicial ruling.³³

Alternative Punishments

When the IPC was revised in 2013, alternative sanctioning provisions were included, which allow judges to apply different sanctions in lieu of or in addition to *qisas*.³⁴ However, these provisions do not eliminate *qisas* in-kind retribution. Furthermore, judges have wide discretion, which leads to disparate and unpredictable results.³⁵ Most concerning, a judge is powerless to provide alternative sentences unless the victim's next-of-kin elects forbearance. Moreover, the Iranian government does not encourage forbearance, despite numerous internal surveys within Iran that show that forbearance or forgiveness is the preferred (and most common) outcome of the community.³⁶ Instead, it leans on victims' families to choose public executions in order to use

28 IPC, art. 550.

29 RIGHTS DENIED: VIOLATIONS AGAINST ETHNIC AND RELIGIOUS MINORITIES IN IRAN, CEASEFIRE CENTRE FOR CIVILIAN RIGHTS, CENTRE FOR SUPPORTERS OF HUMAN RIGHTS AND MINORITY RIGHTS GROUP INTERNATIONAL 29-30 (Mar. 2023), <https://minorityrights.org/app/uploads/2024/01/rights-denied-violations-against-ethnic-and-religious-minorities-in-iran.pdf>. Notably, some of the main ethnic groups in Iran are also religious minorities, who are therefore doubly discriminated against. *Id.*

30 2022 Report at 62.

31 2022 Report at 61.

32 *Diya Rate for Year 1402 (2023) Has Been Announced*, EKHTEBAR, March 15, 2023, available at <https://www.ekhtebare.com/%D9%86%D8%B1%D8%AE-%D8%AF%DB%8C%D9%87-%D8%B3%D8%A7%D9%84-%DB%B1%DB%B4%DB%B0%DB%B2-%D8%A7%D8%B9%D9%84%D8%A7%D9%85-%D8%B4%D8%AF/>. This amount is different for crimes committed during the sacred Islamic months of Muharram, Rajab, Dhu al-Qadah and Dhu'l-Hijjah, where the *diya* amount is increased by one third. See IPC, art. 385.

33 See ARZOO OSANLOO, FORGIVENESS WORK 43, 52 (2020).

34 ARZOO OSANLOO, FORGIVENESS WORK 65 (2020). See also IPC, art. 37-85. The alternatives include Reduction and Exemption from Sanctions (Art. 37-39), Deferred Judgment (Art. 40-45), Suspended Sentencing (Art. 46-55), Half Release (Art. 56-57), Conditional Release (Art. 58-63), and Substitution for Prison Sanctions (Art. 64-85).

35 2022 Report at 41.

36 2022 Report at 62, 93, 96.

those killings as intimidation and to stoke fear of government retribution. As long as the government continues to promote *qisas* executions for its own ends, these alternative sentences cannot be effectively employed.

Recommendations

Complainants recommend that the Iranian government take the following courses of action:

1. Add gradations to the definitions of intent, specifically as they apply to intentional murder.
2. Encourage judges to issue alternative punishments to *qisas*, like long-term imprisonment instead of execution.
3. Eliminate the list of individuals exempted from *qisas* sentences.
4. Equalize the value of *diya* for women and men.
5. Cap maximum *diya* values where *diya* is accepted in lieu of *qisas*.
6. Subsize *diya* in intentional crimes to equalize the opportunity of people of varying socioeconomic levels to pay *diya* instead of being forced to accept *qisas*.

International Law and the Death Penalty

The International Covenant on Civil and Political Rights (“ICCPR”) is a multilateral treaty and is the preeminent source of international law protecting civil and political rights. Iran ratified the ICCPR on June 24, 1975, and is still a state party to the treaty and thus bound by its terms. Importantly here, states who have ratified the ICCPR are not permitted to “backtrack” and expand their use of the death penalty, nor are state parties to the ICCPR who had abolished the death penalty at ratification permitted to reintroduce it as a punishment for any crime.³⁷ Ultimately, according to the ICCPR, the death penalty should only be instituted fairly for the most serious crimes in non-arbitrary, non-discriminatory ways where procedural safeguards are closely followed, and cruel and inhumane methods are not used.³⁸ As apparent from an examination of the ICCPR, Iran’s use of *qisas* implicates Article 6 (right to life), 7 (cruel and inhuman punishment), 2 (equality under the law), and 26 (nondiscrimination) thereof and poses concerning human rights issues.

Article 6 of the ICCPR protects individuals’ right to life and by necessity their freedom from arbitrary deprivation of life by the state or private actors. The right to life is a non-derogable and universal right that serves as the “prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights.”³⁹ For this reason, the ICCPR and its

³⁷ CCPR/C/GC/36, general comment No. 36 (2019) on the right to life, [hereinafter General Comment No. 36], para. 35.

³⁸ General Comment No. 36, para. 3.

³⁹ General Comment No. 36, para. 2.

interpretive guidance strictly limit the application of capital punishment in states who have not abolished the death penalty, only permitting the death penalty as punishment for the “most serious crimes.”⁴⁰ This standard must be interpreted restrictively, with the UNHRC confirming only “crimes of extreme gravity involving intentional killing” suffice to impose capital punishment.⁴¹

Additionally important in this analysis is Article 6’s insistence that state parties are obligated refrain from arbitrarily depriving anyone in their borders of life. Arbitrary killing is any deprivation of life lacking a legal basis or otherwise inconsistent with life-protecting laws and the ICCPR.⁴² “Arbitrariness,” however, is not fully equated with “against the law” but is interpreted more broadly in accordance with principles of “reasonableness, necessity, [and] proportionality.”⁴³ In evaluating arbitrariness, the UN Human Rights Council (“UNHRC”) is concerned with “elements of inappropriateness, injustice, lack of predictability and due process of law.”⁴⁴

Any deprivation of life through the acts or omissions in violation of Article 6 of the ICCPR is, as a rule, arbitrary in nature.⁴⁵ As an example, mandatory death sentences that leave courts no discretion are deemed arbitrary in nature and a violation of Article 6.⁴⁶ Further, crimes that do not result directly and intentionally in the death of a victim can never serve as the basis for a death sentence.⁴⁷ Instead, state parties must consider the personal circumstances of the offender and the particular circumstances of the offense itself when determining whether to issue a death sentence, and these considerations must be in line with international standards.⁴⁸ The availability of pardon or commutation of an offender’s death sentence is not a suitable substitution for the required judicial discretion in applying capital sentences.⁴⁹ State parties must revoke any death sentences issued for crimes that do not meet this “most serious crimes” standard.⁵⁰

Lastly, Article 6 also address cases where a private individual is empowered to act with potentially lethal force. In such cases, the state is responsible for ensuring the force “actually complies” with Article 6 and if it does not, the state is responsible for any violations.⁵¹ To effectuate this obligation, Article 6 mandates that states limit the powers afforded to private actors that may result in lethal force and requires safeguards, namely employing strict, effective measures of monitoring, control and training in situations where a private actor may exert deadly force.⁵²

In addition to adhering to the guidance of Article 6 of the ICCPR, state parties who still employ the death penalty must also follow Article 7, which prohibits some methods of execution as in

40 General Comment No. 36, para. 33.
41 General Comment No. 36, para. 35.
42 General Comment No. 36, para. 11.
43 General Comment No. 36, para. 12.
44 General Comment No. 36, para. 12.
45 General Comment No. 36, para. 17.
46 General Comment No. 36, para. 37.
47 General Comment No. 36, para. 35.
48 General Comment No. 36, para. 37.
49 General Comment No. 36, para. 37.
50 General Comment No. 36, para. 35.
51 General Comment No. 36, para. 15.
52 General Comment No. 36, para. 15.

violation of Article 7's ban on cruel, inhuman, or degrading treatment or punishment.⁵³ Particularly relevant here is that public executions are contrary to Article 7.⁵⁴ Additionally, failure to provide individuals facing a death sentence with timely notification of the date of execution and extreme delays in implementing the sentence also plainly contravene Article 7.⁵⁵ A violation of Article 7 renders an execution arbitrary in nature and also therefore violates Article 6.

Further, the ICCPR makes it clear that the laws (including those related to the death penalty) cannot be discriminatory, both facially and/or as applied. Article 26 delineates the basic right to equality before the law and defends against facial discrimination: it confirms that a state party's legislation may not be discriminatory in nature; in other words, the protection against state discrimination extends beyond those rights enumerated in the ICCPR and applies to all state party rulemaking.⁵⁶ Article 2 of the ICCPR focuses on equal application of the law and mandates that the death penalty must not be "imposed in a discriminatory manner" and requires all state parties to accord the rights within the ICCPR to "all individuals...without distinction of any kind."⁵⁷ Thus, information suggesting that "members of religious, racial or ethnic minorities, indigent persons or foreign nationals are disproportionately likely to face the death penalty" implicates concerns under both Article 2 and 26 of the ICCPR.⁵⁸

The Facts and Alleged Violations in Iran's Approach to the Death Penalty

Qisas executions, as currently provided for in the IPC and promoted by the Iranian government, violate the letter and spirit of ICCPR and overall notions of human rights in multiple ways. Complainants urge Iran to act to bring its legal system in line with international human rights norms and its international treaty obligations.

Iran's Application of the Death Penalty is Arbitrary in Violation of Article 6

Iran's legal conception of *qisas* is a state policy that, in violation of the ICCPR, encourages the impermissibly arbitrary deprivation of human life on a systematic scale. After a finding of intent, a *qisas* sentence hands over to the victim's family both the discretion to impose and the responsibility to carry out executions. This practice guarantees arbitrary and non-uniform applications of the death penalty within Iran, as there can be no articulable, consistent standard for the imposition of the death penalty when, for example, each of those convicted of intentional murder faces a different judge and executioner. Some may find themselves forgiven, others may instead bear responsibility to repay *diya* (assuming they can afford to), while others will instead face the death penalty—all determined by untrained individuals who are unconstrained by legal standards and not answerable for inappropriate exercises of their discretion. Thus, with regard to the imposition of the death penalty, there is no way to predict who will face death at the hands of their fellow citizens and who will escape such punishment. Indeed, outsourcing executions to

53 General Comment No. 36, para. 40.

54 General Comment No. 36, para. 40.

55 General Comment No. 36, para. 40.

56 HRI/GEN/1/Rev.1, general comment No. 18 (1989) on non-discrimination, para. 12.

57 Human Rights Watch, *Iran Religious and Ethnic Minorities: Discrimination in Law and Practice, The Legal Framework* (Sep. 1997), Vol. 9, No. 7(E), <https://www.hrw.org/reports/1997/iran/Iran-04.htm>.

58 General Comment No. 36, para. 44.

victims' families is the *precise opposite* of procedures that would ensure a restrained, predictable application of the death penalty in line with the ICCPR. This jettisons notions of an independent and impartial imposition of the death penalty, which is required under ICCPR Article 6. Moreover, there is no training provided and no safeguards afforded where a victim's next-of-kin is exercising their right of *qisas*. Executions are not carried out by trained state professionals, but by individual citizens, in contravention of the ICCPR.

The troubling human rights issues implicated by this arbitrary imposition of the death penalty are significantly compounded by the fact that the IPC does not distinguish between degrees of intentionality in the context of criminal killings. Instead, it so broadly defines legal notions of "intent" that *unintentional* killings are treated the same as premeditated murder, and each equally carries the threat of the death penalty. Such cases represent unnecessary applications of the death penalty and additional violations of the ICCPR, which mandates that the death penalty be reserved for "the most serious crimes," and should categorically not be imposed for unintentional killings.⁵⁹ Imposing the death penalty on such offenses constitutes facial and *per se* inappropriate, unreasonable, and disproportionate applications of the death penalty. Even crediting the notion that the death penalty is necessary to deter murder, as the Iranian government maintains, no such need for deterrence exists in the case of an unintentional killing. Iran's *qisas* practice is thus unaligned with international norms and the requirements of the ICCPR.

Complainants have also received information that specifically in the cases of perpetrators who are poor, undereducated, and under-resourced, the Iranian government leans on victims' families to elect *qisas* to allegedly encourage public executions to deter crime. The government has disbanded organizations like the Imam Ali Popular Relief Society, who advocated for forgiveness instead of death. Instead, the government pushes to retain *qisas* as a tool for intimidation of the populace.

Qisas Executions are Cruel and Inhuman in Violation of Article 7

Qisas executions are cruel and inhuman in three main ways. First, the executions are carried out by the next-of-kin of the victims, which is cruel to them when executions should be the purview of the state. Second, because the implementation of a *qisas* death sentence has no deadline or even recommended timeline after appeals are exhausted, perpetrators are not informed of execution dates or often held for lengthy periods of time while they anticipate their deaths. Lastly the executions are public and often by hanging from cranes, where prisoners are pulled up or the object they are standing on is removed from under them, causing death by strangulation that takes several minutes to complete. These events are contrary to Article 7 of the ICCPR.

Iran's Application of the Death Penalty is Discriminatory in Violation of Articles 2 and 26

Articles 2 and 26 of the ICCPR requires that its signatories not discriminate in their imposition of the death penalty. However, Iran discriminates against multiple classes of citizens when it comes to the imposition of the death penalty, including and especially low-income citizens, minorities or followers of religions other than Islam, and women.

⁵⁹ General Comment No. 36, paras. 33–35;

When paired with the concept of acceptance of *diya* in lieu of *qisas*, the death penalty under legal theories of *qisas* is much more likely to be imposed on the socioeconomically disadvantaged because that population is less able to pay an extraordinarily high *diya* required to avoid the imposition of the death penalty. This disproportionately affects ethnic and religious minorities, which make up Iran's poorest residents. Not only can a *diya* demand extend well beyond the reach of the average perpetrator's family, the government does not establish any upper limits for *diya*. Moreover, because an agreement to accept *diya* in lieu of *qisas* is an extra-judicial contract under Iranian law (as opposed to a judge-mandated sentence), a victim's family may demand an amount that is many times greater than the recommended amount set by the State. Faced with astronomical monetary demands, many economically disadvantaged minorities are forced to accept *qisas*, rendering it a false choice for those without the means to satisfy the *diya* payment.

Additionally problematic is the fact that the State does not currently subsidize *diya* for people who have been convicted of intentional murder whose victims' next-of-kin elect *diya* but who do not have an ability to pay.⁶⁰ As of the end of March 2024, the Iranian monthly minimum wage is 115 million rials (approximately 2,531 euros).⁶¹ For the poorest, that means that a full *diya* constitutes more than six-and-a-half years' pay. When considering the cost of living in large cities, like Tehran, is far greater than minimum wage, it becomes apparent that for many, paying even the state-recommended *diya* value is completely out of reach. Moreover, Iranian laws punish debtors with imprisonment, including offenders with *diya* debts.⁶² Thus, whether someone can escape *qisas* for an intentional murder, for example, by being able to pay *diya*, is wholly dependent on their (or their family's) economic wherewithal. The result is therefore no surprise: individuals who receive *qisas* sentences and are executed as a result are largely from poor, disadvantaged areas often populated by minorities with little economic opportunity.

Iran further discriminates in its application of the death penalty by treating men and women differently for the purposes of *diya* amounts. The IPC establishes that the *diya* for a female murder victim is half of that for a male. The discriminatory consequences of this provision are as stark as they are unjust. Especially egregious is that in the case of an intentional murder of a Muslim woman by a Muslim man where the woman's family elects *qisas*, the murdered woman's family would nonetheless then have to pay *to the family of her murderer* a *diya* as compensation for the

⁶⁰ In 2016, Iranian lawmakers closed the gender disparity gap for automobile accidents only. Now, there are two separate rates of *diya*, one gender-neutral one for auto accidents, and the other gender specific for all other intentional deaths. See ARZOO OSANLOO, FORGIVENESS WORK 55 (2020). In certain circumstances of tortious homicide, where the defendant is male and the victim is female, there is a possibility of accessing state resources to pay the *tafazol* (difference between the male and female *diya* amounts). See note to Article 551. However, the closing of this gender disparity now facilitates exercise of *diya*, instead of facilitating forgiveness.

⁶¹ *Iran Increases Minimum Wage By 20% as Inflation Nears 50%*, IRAN INT'L, (Jan. 12., 2014) <https://www.iranintl.com/en/202401126020>.

⁶² There are governmental and non-governmental organizations that provide funds to families who cannot pay such debts, but families must know about them, petition for funds, and demonstrate financial needs. In addition, most of these funds can only be used for *diya* that arise from unintentional crimes, as opposed to *qisas* cases where *diya* is accepted in lieu of *qisas*. ARZOO OSANLOO, FORGIVENESS WORK 279 (2020).

loss of the Muslim man executed under the punishment of *qisas*. Put differently, the murdered woman's family would be required to pay half of a *diya* to the murderer's family to compensate them for his death in retribution for the woman's death.⁶³ This result is a perfect example of the contravention of the ICCPR's non-discrimination strictures regarding the death penalty. Conversely, by legally devaluing a Muslim woman's life to half of that of a Muslim man, Iran further renders the imposition of the death penalty less likely when the victim is a woman because the murderer is more likely to be able to afford the applicable *diya*. This practice fundamentally clashes with Articles 2 and 26 of the ICCPR.

Iran also discriminates with regard to the imposition of mandatory death penalties under *qisas* by exempting certain men from the death penalty in a variety of contexts. For instance, Iran will not execute fathers and paternal grandfathers in event they kill their child or grandchild, nor will Iran execute a man who kills his wife or her lover in the context of adultery. Iran also embraces religious discrimination by exempting from *qisas* Muslims who kill followers of unrecognized religions or "non-protected persons." The IPC is thus facially discriminatory and discriminatory as applied, and no justification is given for exempting certain perpetrators or treating some murder victims as less deserving of criminal justice than others, even assuming the death penalty were appropriate in the first place.

Conclusion

Iran must be encouraged to amend its criminal laws to align with accepted international standards with respect to *qisas* executions. As it stands, *qisas* executions are arbitrary, not limited to the most serious crimes, occur without proper safeguards, are imposed in discriminatory manner. We urge the Special Procedures to engage with the government of the Islamic Republic of Iran regarding *qisas* executions to remediate these significant concerns that threaten the right to life of all those living in Iran.