

Ninth Term – Fourth Year

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Islamic Republic of Iran

Islamic Consultative Assembly (“Majless” or Parliament)

Single Deliberation

Bill Reforming* the Death Penalty [Prescribed] in the Law for the Fight against Illicit Drugs

Sent to the following commissions:

Main Commission: Judicial and Legal

Secondary Commissions: National Security and Foreign Policy; Councils and State Internal Affairs; Cultural

[Office of the] Vice-Presidency for Laws

The General Administration for Codification of Laws

* The word “reform” has been selected as the translation of the Farsi term “eslah,” where, from a strictly legal standpoint, “amendment” would be a more appropriate term. The reasons are twofold: First, the substance of the amendment indicates the intent to alter and improve upon the existing law; second, the Islamic Consultative Assembly’s advisory body charged with reviewing the proposed bill, the General Administration for Codification of Laws, has taken it to be a “reform” of the law rather than an “amendment,” therefore suggesting that the term “amendment” be used instead. Please see below, the section entitled: “Attachment to the General Administration for Codification of Laws’ Opinion” “Statement of reasons and documentation for the conflict.”

In the Name of God

Honorable President of the Islamic Consultative Assembly

The following Bill, signed by 21 [Majless (Parliament)] members, is respectfully submitted so that it may go through the legal process.

Introduction (justifications):

Whereas the death penalty for drug traffickers will encompass a considerable number of the country's drug traffickers and transporters - given the country's proximity to production centers of various types of illicit drugs, on one hand, and the ever-increasing global production and use, on the other – and this will cause the families of the convicted to suffer increasing serious social ills;

Whereas many of those sentenced to death are individuals who, due to poverty and life's financial difficulties, have been taken advantage of by the drug mafia, some without complete knowledge of the law, and are trapped [and used] by domestic as well as foreign groups; and,

Whereas the death penalty for drug traffickers and transporters has been assigned in terms of the quantity [of drugs involved], causing transporters to be arrested and preventing the law from reaching trafficking groups;

Now therefore, in accordance with Article 45 of the Law Amending the Law for the Fight against Illicit Drugs of November 26, 2010, issued by the Expediency Council, authorizing the Islamic Consultative Assembly to amend said Law, the following amendment is proposed.

[Signatories:] Abdi, Sameri, Amir Abbas Soltani, Dehqani, Rostamian, Mahjub, Assadi, Kashani, Qara Seyyed Rumiani, Ekhtiari, Abolfazl Abutorabi, Motahari, Mohammadzadeh, Azizi Faressani, Neku, Ali Mohammad Ahmadi, Tabesh, Negahban Eslami, Mohammad Reza Amiri, Ghazanfarabadi, Pashang.

Title of the Bill:

**Reforming the Death Penalty [Prescribed] in the Law for the Fight against
Illicit Drugs**

Single Article. The death penalty prescribed by the Law for the Fight against Illicit Drugs of October 25, 1988 and subsequent amendments thereto, issued by the Expediency Council, is replaced by life imprisonment except in cases of armed trafficking.

Note. This law also applies to convicted felons sentenced to death awaiting execution.

Islamic Consultative Assembly's Presiding Board

In line with the Islamic Consultative Assembly's Internal Rules of Procedure and the Law on the Codification and Revision of the Country's Laws and Regulations of June 15, 2010, Article 4, the [Office of the] Vice-Presidency for Laws regarding the Bill Reforming the Death Penalty in the Law for the Fight Against Illicit Drugs is hereby respectfully submitted.

Vice-President for Laws

Opinion of the General Administration for Codification of Laws

Honorable Vice-President for Laws

In line with the Law on the Codification and Revision of the Country's Laws and Regulations of June 15, 2010, Articles 4(2) and 4(4), this General Administration's opinion is submitted as follows:

1. Submission History:

Article 134. Has not previously been submitted.

Was previously submitted in open session _____ dated _____, and rejected on _____ in _____ Assembly, _____ Committee (subject of Principle 85 of the Constitution), and now can/ cannot be proposed to the Assembly again:

With substantial changes

Upon written request of 50 representatives (conditional upon Assembly approval)

Prior to expiration of six months

Without substantial changes

Upon expiration of six months

Upon written request of fewer than 50 representatives

2. Implementing the Law on the Codification and Revision of the Country's Laws and Regulations Article (4)(2):

In the previous bill, legal writing and literary editing Was adhered to.

Was adhered to (implementing expert opinion).

Was not adhered to. Reasons for non-observance are attached.

3. From the Assembly's Internal Rules of Procedure standpoint (procedurally):

a) Article 131

1) Minimum number of signatures (15 individuals) Does have

Does not have

2) Specific subject and title: Does have

Does not have

3) Reasons for the necessity to prepare and propose [the bill] in the introduction:

Does have

Does not have

4) Content in conformity with the subject and the title: Does have

Does not have

b) Article 142

The proposed bill contains One subject/ More than one subject, and proposing the same as A single article/ Multiple articles, Does not present/ Does present, an issue.

4. Implementing the Law on the Codification and Revision of the Country's Laws and Regulations of June 15, 2010, Article (4)(4):

a) From the standpoint of the Constitution:

The proposed bill, generally, Does not conflict with the Constitution.

Does conflict with the Constitution. The conflicting article(s) and the reasons for the conflict are attached hereto.

b) From the standpoint of the Regime's general policies and the Outlook Document:

The proposed bill, Does not conflict with the Regime's general policies and the Outlook Document.

Does conflict with Regime's general policies and the Outlook Document. The reasons for the conflict are attached hereto.

c) From the standpoint of the Planning Law:

The proposed bill, Does not conflict with the Planning Law.

Does conflict with the Planning Law. The reasons for the conflict are attached hereto.

d) From the standpoint of the Assembly's Internal Rules of Procedure (substantively):

i) The proposed bill, Does not conflict with the Assembly's Internal Rules of Procedure.

Does conflict with the Assembly's Internal Rules of Procedure. The reasons for the conflict are attached hereto.

ii) Article 142. Principle 75 of the Constitution, Has been adhered to.

Has not been adhered to. The reasons for the conflict are attached hereto.

- iii) Article 185. Does not/ Does, amend or change the ratified plan and, does not/ does, require a 2/3 vote of the representatives.

One opinion page, attached hereto, is respectfully submitted.

General Director for Codification of Laws

5. From a crime prevention standpoint, the proposed bill, does/ does not, conflict with Principle(156)(5) of the Constitution.

The Judiciary Branch, Vice-President for Social [Affairs] and Crime Prevention

Attachment to the General Administration for Codification of Laws' Opinion

Statement of reasons and documentation for the conflict

1. In addition to substantive problems with the proposed bill that will follow, there are two procedural issues:
 - a) Approval of the bill's title will add a [separate,] independent law to penal laws, which is contrary to the Assembly's codification and revision policies. It would be more appropriate that the content of the bill be written in the framework of an "amendment" or an "annex" to existing laws.
 - b) What has been proposed in the bill, is replacing execution with imprisonment, and using the term "reform" is inappropriate.
2. There is no punishment entitled "Ta'zir-based execution" in the law or in Fiqh (Islamic jurisprudence). Further, based on the "at-ta'zir dun al-hadd" ("Ta'zir punishment is less than Hadd punishment"), given that in Hadd [punishments] there exist execution and the taking of life, a Ta'zir-based execution is not possible. Therefore, the death penalty provided for in the Law for the Fight against Illicit Drugs is in the realm of Hadd [punishment] and efsad-fel-arz ("spreading corruption on earth") and not in the realm of Ta'zir. Further, in dispensing Ta'zir punishment, the judge has discretion in choosing the extent of said punishment, whereas in many provisions of this Law, the death penalty is the only punishment provided, and therefore, the afore-mentioned death penalties cannot be replaced in that regard.

3. Assuming that the death penalty can be replaced by life imprisonment in the Law for the Fight against Illicit Drugs, the entire Law itself must be amended.
4. In certain cases, including Article 4(4), the death penalty has been reduced to life imprisonment if certain conditions are met. Therefore, changing all death penalties to life imprisonment creates problems for the aforementioned Law.
5. Article 9 of the Law states that the criminal is considered to be Mofsed-fel-arz (“one who spreads corruption on earth”) and the punishment provided is the death penalty, which, if changed to life imprisonment, would conflict with Islamic Penal Code, Article 286.
6. Articles 21, 22, and 23 of the aforementioned Law provide for [both] the death penalty and life imprisonment in accordance with the severity of the crime; eliminating the death penalty would undermine the legislators’ [intent].
7. Article 38 of the aforementioned Law [already] provides for the necessary mechanism to request a pardon and to reduce the death penalty.
8. In the event of final passage of the Bill, application of the Note thereof to convicted felons awaiting implementation of the sentence is possible, observing Islamic Penal Code Article 10(b).

The Opinion of the General Administration for Documents and Revision of Laws

Honorable Vice-President for Laws

In accordance with the Law on the Codification and Revision of the Country’s Laws and Regulations of June 15, 2010, Articles 4(1) and 4(3), this General Administration’s opinion is respectfully submitted as follows:

1. In implementing Article 4(1):

- a) Concerning the Bill submitted, there are no conflicting laws.
 there are conflicting laws as attached hereto.
- b) Concerning the Bill submitted, there are no related laws.
 there are related laws as attached hereto.

2. In implementing Article 4(3):

- Given [various] analyses conducted, legislation, is necessary in this matter.
 is not necessary in this matter.

Thirty two pages [consisting of] legal background and reasons for the necessity of legislation is respectfully submitted, attached hereto.

Documents and Revision of Laws General Director