

## Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/40/67 para 75(a)

### Full recommendation:

*Pending implementation of the aforementioned recommendations, and without prejudice to the binding obligation enshrined in the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights to not sentence children to death and to not execute child offenders, the Special Rapporteur recommends that the judiciary: (a) Require courts to comprehensively assess mental development in all cases in line with article 91 of the Penal Code, and to always seek expert advice from the relevant child development, psychology, psychiatry, and social service fields as well as from the Iranian Legal Medicine Organization, with a view to ensuring that the child is exempted from the death penalty.*

### Assessment using Impact Iran human rights indicators<sup>1</sup>

Article 91 of the Islamic Penal Code, revised in 2013, allows judges to give alternative sentences in circumstances where the juveniles “do not realise the nature of the crime committed or its prohibition, or if there is uncertainty about their full mental development, according to their age”.<sup>2</sup> The Article further adds that “the court may ask for the opinion of forensic medicine or resort to any other method that it sees as appropriate in order to establish the full mental development [of the accused]”. In 2017, a number of UN special procedure mandate holders considered the ongoing executions of child offenders in the Islamic Republic of Iran as “conclusive proof of the failure of the 2013 amendments to stop the execution of individuals sentenced to death as children”.<sup>3</sup> In 2019, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran found that the aforementioned assessment of the mental development of the accused at the time of the offence was “arbitrary and inconsistent, and at the sole discretion of the judge, who can choose whether to seek medical advice or not”.<sup>4</sup> The Legal Medicine Organization has reportedly repeatedly ignored past medical records of mental disorders to issue their opinion on a child’s maturity.<sup>5 6 7</sup>

<sup>1</sup> CCPR.6.5.S.1; CRC.6.1.S.2; CRC.37.4.S.1;CCPR.6.5.P.1; CRC.37.4.P.1; CCPR.6.5.O.1; CCPR.6.5.O.2; CRC.37.4.O.2

<sup>2</sup> Article 91, Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>3</sup> See OHCHR News, [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E)

<sup>4</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F40%2F67&Language=E&DeviceType=Desktop>

<sup>5</sup> Amnesty International, <https://www.amnesty.org/en/latest/news/2020/04/iran-execution-of-young-man-vengeful-and-cruel>

<sup>6</sup> OHCHR News, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24581&LangID=E>

<sup>7</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F40%2F67&Language=E&DeviceType=Desktop>

Over the years, several executions of child offenders have been commuted in Iran, however, these reports are rare.<sup>8</sup> In the January 2020 report, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran wrote that “he continues to monitor the situation of child offenders on death row and has received information that there are at present at least 100 individuals who have been sentenced to death for crimes committed when they were under 18 years of age”.<sup>9</sup>

The prohibition on the imposition of the death penalty on children is widely considered to be *jus cogens* under international law and represents a violation of Articles 6(5) of the International Covenant on Civil and Political Rights and 37(a) of the Convention on the Rights of the Child. The Human Rights Committee has explicitly stipulated that the death penalty cannot be imposed if it cannot be proven, beyond a reasonable doubt, that the accused was 18 or older at the time of the offence.<sup>10</sup>

In light of the above, the Iranian judiciary has not required courts to comprehensively assess mental development in all cases in line with Article 91 of the Penal Code, and has not always seek expert advice with a view to ensuring that the child is exempted from the death penalty. Additionally, the Iranian Legal Medicine Organization has reportedly failed to take into account a child’s medical history in their advice.

Recommendation Status:

This recommendation has **NOT** been implemented.

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<sup>8</sup> For more, please see: Abdorrahman Boroumand Center for Human Rights in Iran - <https://www.iranrights.org/projects/omidmap>

<sup>9</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, [https://www.ohchr.org/Documents/Countries/IR/Report\\_of\\_the\\_Special\\_Rapporteur\\_on\\_the\\_situation\\_of\\_human\\_rights\\_in\\_the\\_Islamic\\_Republic\\_of\\_IranA4361.pdf](https://www.ohchr.org/Documents/Countries/IR/Report_of_the_Special_Rapporteur_on_the_situation_of_human_rights_in_the_Islamic_Republic_of_IranA4361.pdf)

<sup>10</sup> UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html>