

## Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/20/22/Add.4 para 41

### Full Recommendation:

*In a press release issued on 22 September 2011, the Special Rapporteur, jointly with the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, issued a press statement in which they condemned the public execution of the juvenile Alizera Molla-Soltani, expressed concern at the high frequency of drug related executions (see above JUA 20/09/2011 Case No. IRN 12/2011) and reiterated their call for an immediate moratorium on the death penalty particularly in drug related and juvenile cases.*

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

There is currently no standing moratorium on the death penalty in Iran.

The death penalty continues to be applied in the Islamic Republic of Iran to a wide range of offences that do not meet the threshold of “most serious crimes”, in other words, crimes that do not involve intentional killing, in contravention with Article 6 of the International Covenant on Civil and Political Rights.<sup>2 3</sup> For example, the death penalty may be applied in some cases of adultery,<sup>4</sup> for certain cases of consensual same-sex intercourse between men<sup>5</sup>, adultery, rape, incest, alcohol consumption, military espionage, disruption of the economic system, drug related offenses or for vaguely defined offences such as *moharebeh* (“enmity against god”)<sup>6</sup> and *efsad-e fel-arz* (“corruption on earth”) that do not necessarily involve intentional killing.<sup>7 8 9</sup> The Human

<sup>1</sup> CCPR.6.2.S.1

CCPR.6.2.P.1 CCPR.6.2.O.2 CCPR.6.5.O.1; CRC.6.1.S.1; CRC.6.1.P.1

<sup>2</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.htm>

<sup>3</sup> ICCPR Article 6(2): <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>4</sup> Islamic Penal Code (2013), Articles 136 and 225, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>5</sup> Islamic Penal Code (2013), Article 235, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>6</sup> Islamic Penal Code (2013), Article 279, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>7</sup> Islamic Penal Code (2013), Article 286, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>8</sup> The subject of “*Qisas*” is mentioned in the third book of the Islamic Penal Code, which covers Articles 289 to 537, Articles 301 to 311 (Chapter 3 in Part I, Book III), and Articles 381 to 385 (Chapter II in Book III).

<sup>9</sup> The subject of “*Hudud*” is mentioned in the second book of the Islamic Penal Code, which covers Articles 217 to 288. Among the crimes under this “title” that could lead to the death penalty are: Adultery (Chapter 1, Section 1 of the Second Book), Articles 224 and 225. Sodomy (Chapter 2, Part 1 of the Second Book), Articles 234 and 236. Insult to the Prophets (Chapter 5, Section 1, Book 2), Article 262. Theft for the fourth time (Chapter 7, Part 1 of the second book), Article 278. Moharebeh (War against God) (Chapter 8, Part 1 of the Second Book), Article 282. Corruption on Earth (Chapter 9, Section 1 of the Second Book), Articles 286 and 287.

Rights Committee explicitly stipulated that the imposition of the death penalty cannot “be based on vaguely defined criminal provisions, whose application to the convicted individual would depend on subjective or discretionary considerations the application of which is not reasonably foreseeable.”<sup>10</sup> The lack of precision and clarity around what can constitute a crime of *moharebeh*, for instance, grants judges broad discretion in interpretation and does not satisfy the principle of legality.

In its latest General Comment on Article 6, the Human Rights Committee explicitly stipulated that the term “the most serious crimes” must “be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death [...], although serious in nature, can never serve as the basis, within the framework of Article 6, for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, [...], cannot justify the imposition of the death penalty.”<sup>11</sup>

Additionally, international law and human rights treaties determine the age of criminal responsibility at 18 years and older, with those below 18 years constituting juveniles.<sup>12</sup> The laws in the Islamic Republic in Iran differ significantly from these international standards. The Islamic Penal Code (2013)<sup>13</sup> establishes the age of criminal responsibility at 9 lunar years for girls and 15 lunar years for boys.<sup>14</sup> However, the age of responsibility for *ta'zir* crimes (crimes for which fixed penalties are not provided in Islamic law giving the judge discretion as to the sentence imposed) is 18 years for all children. For these crimes, convicted children are sentenced to correctional measures. In contrast, criminal responsibility for crimes punishable by *hudud* (punishments fixed by God) or *qisas* (punishment or retribution in kind), which carry mandatory punishments such as death, is maintained at the age of “maturity” that is 9 lunar years for girls and 15 lunar years for boys. The Islamic Penal Code does include one limitation on the possibility of issuing the death sentence to those under the age of 18. Article 91 allows judges to issue alternative sentences in circumstances where the juveniles “do not realize the nature of the crime committed or its prohibition, or if there is uncertainty about their full mental development, according to their age”.<sup>15</sup> The Article further adds that “the court may ask the opinion of forensic medicine or resort to any other method that it sees appropriate in order to establish the full mental development”.<sup>16</sup> In 2017, a number of special procedure mandate holders described

<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>

<sup>11</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>

<sup>12</sup> <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>13</sup> Article 146 and 147, 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>14</sup> Article 1210, note 1

<sup>15</sup> 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>16</sup> See 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/>.

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>17</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>18</sup> In recent years, reports indicate that courts have been selective in applying Article 91 and its note.<sup>19</sup> There were cases where, despite forensic reports confirming that the defendant was not “fully mature” at the time of the crime, the judge decided that the accused individual(s) were mature and the language of Article 91 did not apply to them, as they had previously been charged for criminal activities (e.g., robbery).

The appeal process for death sentence cases is covered by Chapter 4 of the Iranian Criminal Procedure Code (Articles 426 through 483), which specifies appeals processes for each type of charge. While any charge can be appealed, charges that carry the death penalty require approval by the Supreme Court for an appeal to be made.

Additionally, in *qisas* cases, the pardon or commutation of the sentence is based solely on the request of the victim or the victim’s guardian.<sup>20</sup> The accused is unable to request their own pardon or commutation, but there are a number of institutions that can intervene to mediate cases of children sentenced with *qisas*, notably in order to commute *qisas* into *diya* sentences (blood money). These institutions include a reconciliation commission, a working group tasked to support mediation with the next of kin victim, conflict resolution council branches and the Women and Children and Protection Office of the judiciary.<sup>21</sup> There is no readily available information indicating the number of cases concerning children that have been received, reviewed and adjudicated by these institutions. However, the Government of the Islamic Republic of Iran stated that the State was not intervening in the execution of the sentence in cases of *qisas*, which “is only possible on the basis of the request of the owners of the blood”.<sup>22</sup> Ultimately, if the victim’s next of kin does not grant pardon in exchange for *diya*, the sentence must be fulfilled, with no option for the accused, including children, to seek pardon or commutation from the State.

<sup>17</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>18</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>19</sup> Amnesty International, <https://www.amnestyusa.org/press-releases/irans-hypocrisy-exposed-as-scores-of-juvenile-offenders-condemned-to-gallows/>

<sup>20</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>21</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>22</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/en/A/HRC/40/67>

For example, Mr. Alireza Molla-Soltani was born in December 1993 was sentenced to qisas (retribution-in-kind) for murder. He was 17 years old when he was publicly executed on 21 September 2011. Following his execution, Ali Rezvanmanesh, the Judiciary's representative told news reporters that: "According to Sharia, Alireza was not a minor, since the lunar calendar is used in Sharia and the years are shorter."<sup>23</sup>

In November 2017, the law on drug trafficking was amended<sup>24</sup> to replace the mandatory death penalty with a prison term of up to 30 years for non-violent drug-related offences and increase the quantity of drugs required for a death sentence to be imposed. However, mandatory death sentences for numerous drug-related offences were retained and a number of crimes were transformed into capital crimes for first-time offenders in specific circumstances.<sup>25</sup> This amendment represents an improvement in the legal framework as it has reduced the number of executions for crimes not amounting to the "most serious crime", but it remains insufficient as it only reduces and does not eliminate the number of drug convictions once can receive the death penalty for. The Human Rights Committee has consistently underscored that drug-related offences do not meet the threshold of "most serious crimes" and that the death penalty should not be applied to them.<sup>26</sup>

Despite the existence of several means and mechanisms that accept complaints regarding the violation of rights in Iran, such as the Judge's Disciplinary Court, the Article 90 Parliamentary Commission and, in general, any appeals courts including the Supreme Court, there is little evidence to suggest that these complaints are properly analyzed and adjudicated. The Islamic Republic of Iran does not have any administrative processes or independent human rights monitoring mechanisms in place to ensure the prohibition of capital punishment. Officials tasked with conducting inspections of detention centers, such as prison warders and prosecutors, are all considered part of the judicial structure, which could result in biased investigations into cases of mistreatment and arbitrary deprivation of life in detention facilities.<sup>27</sup>

Between 2000 and mid-2017, the Abdorrahman Boroumand Center for Human Rights in Iran has documented around 8,200 executions.<sup>28</sup> Between January 2015 and December 2018, the Islamic Republic of Iran reportedly executed at least 2,303 people<sup>29</sup>. Reports received by OHCHR indicate a decrease in the number of executions between 2017 and 2018 (437 in 2017 compared to 207 in 2018 for the same period).<sup>30</sup> On the other hand, Ensemble Contre la Peine de Mort

<sup>23</sup> Iran Human Rights Annual Report on the Death Penalty 2011, <https://iranhr.net/en/reports/9/>

<sup>24</sup> Radio Free Europe/Radio Liberty: <https://www.rferl.org/a/iran-death-penalty-quietly-abolished-drug-crimes/28853642.html>

<sup>25</sup> Drug trafficking law, arts. 8 and 45

<sup>26</sup> CCPR/C/PAK/CO/1, para. 17; CCPR/C/THA/CO/2, para. 17; CCPR/C/KWT/CO/3, para. 22; A/71/372, para. 48; and Human Rights Committee, general comment No. 36.

<sup>27</sup> HRANA: <https://www.en-hrana.org/unusual-inspection-ward-3-rajai-shahr-prison>

<sup>28</sup> Abdorrahman Boroumand Center for Human Rights in Iran [https://iranhr.net/media/files/Rapport\\_iran\\_2019-GB-BD.pdf](https://iranhr.net/media/files/Rapport_iran_2019-GB-BD.pdf)

<sup>29</sup> Amnesty International, <https://www.amnesty.org/download/Documents/MDE1305732019ENGLISH.PDF>

<sup>30</sup> Report of the Secretary General on the situation of human rights in the Islamic Republic of Iran, February 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/028/77/PDF/G1902877.pdf?OpenElement>

(ECPM) and Iran Human Rights reported at least 280 executions in 2019, compared to 273 in 2018. Of these 280 executions, 4 were of juvenile offenders.<sup>31 32 33 34</sup> In the first half of the last decade, the number of executions for drug related crimes had grown exponentially, to the point that in 2015, at least 638 people were executed under the drug law.<sup>35</sup> After the 2017 amendment of the Anti-Narcotics Law, there was a significant decrease in executions, however, several hundred people are still executed per year. In 2019, at least 30 people were executed under the drug law.<sup>36</sup>

The prohibition of imposing 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 reasonable doubt, that the accused was older than 18 years old at the time of the offence.<sup>37</sup> Executions of child offenders continue to be performed in the Islamic Republic of Iran. According to Iran Human Rights, Iran was the only country to carry out juvenile executions in 2020, with four executions recorded.<sup>38</sup> There is no readily available information that might indicate the existence of steps taken by the Government to repeal laws imposing the death penalty against child offenders.

Despite some legislative changes, particularly with regards to juvenile executions and drug-related crimes, there is no standing moratorium on the death penalty in Iran. Yearly execution figures put Iran at the top of the list of countries that violate Article 6(1) of ICCPR, which ensures that all people have the right to life.<sup>39</sup> Furthermore, The Islamic Republic of Iran continues to execute individuals who committed a crime while under the age of 18 as well as individuals accused of certain drug crimes.

#### Recommendation Status:

This recommendation has **NOT** been implemented.

<sup>31</sup> ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

<sup>32</sup> Amnesty International, <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

<sup>33</sup> See more: Abdorrahman Boroumand Center <https://www.iranrights.org/projects/omidmap>

<sup>34</sup> See more: Human Rights Activists in Iran <https://www.en-hrana.org/wp-content/uploads/2019/10/Annual-Report-of-Executions-2019.pdf>

<sup>35</sup> ECPM: [https://www.ecpm.org/wp-content/uploads/Rapport\\_iran-2015.pdf](https://www.ecpm.org/wp-content/uploads/Rapport_iran-2015.pdf)

<sup>36</sup> ECPM: <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

<sup>37</sup> UN Human Rights Committee, 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>

<sup>38</sup> <https://iranhr.net/en/articles/4727>

<sup>39</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>