

## Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 386a

### Full recommendation:

*Merely taking gradual measures to decrease the carrying out of death sentences against offenders who were juveniles is an utterly inadequate approach to complying with your Excellency's Government's obligations under international law, which can only be fulfilled by immediately stopping all executions for crimes committed by persons who were not aged 18 at the time of the offence. Laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran and should be promptly repealed.*

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

The Islamic Penal Code (2013)<sup>2</sup> establishes the age of criminal responsibility at 9 lunar years for girls and 15 lunar years for boys.<sup>3</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", which is 9 lunar years for girls and 15 lunar years for boys. Reportedly, four convicted child offenders were executed in 2019 in the Islamic Republic of Iran.<sup>4</sup>

In cases of *qisas* (retribution-in-kind) for murder, Articles 386 to 416 of the Islamic Penal Code (2013) provide a range of punishments. The responsibility for choosing the punishment is placed on the victim's family or next of kin by the state. They can choose retaliation by the death penalty, accept monetary compensation called *diya* (blood money) or to forgive the defendant. Where the next of kin choose retribution, the victim's next of kin or their representative must be present at the execution.<sup>5</sup> According to Iran Human Rights, the next of kin are also encouraged to carry out the executions themselves<sup>6</sup> and have received several reports of family members

<sup>1</sup> CCPR.6.5.S.1; CRC.37.1.S.2  
CCPR.6.5.P.1  
CCPR.6.5.O.1

<sup>2</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>3</sup> Article 1210, note 1

<sup>4</sup> <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

<sup>5</sup> Article 43(ch) of Regulation 9000/27863/100, 17 June 2019 "Regulations on the Enforcement of *hodud*, death penalty, amputation, *qisas* of life, body parts and injury, *diyat*, flogging, exile, loss of country, compulsory residence and prohibition of residence in certain places or areas" <https://rc.majlis.ir/fa/law/show/115267>

<sup>6</sup> <https://iranhr.net/en/articles/4726>

conducting executions, with the last case taking place in March 2021 where a daughter carried out her mother's execution.<sup>7</sup>

This process effectively deprives the child of their right to seek pardon or commutation from the State.<sup>8</sup> 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. These institutions include a reconciliation commission, a working group tasked to support mediation with the victim's next of kin, conflict resolution council branches and the Women and Children and Protection Office of the judiciary.<sup>9</sup> There is no readily available information that would indicate the number of cases received, reviewed and adjudicated by these institutions.

Additionally, Article 91 of the 2013 Islamic Penal Code 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>10</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>11</sup> In 2017, a number of special procedure mandate holders described 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>12</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>13</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>14</sup> Executions of child offenders continue to be performed in the Islamic Republic of

<sup>7</sup> <https://iranhr.net/en/articles/4668/>

<sup>8</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>9</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>10</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>11</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/>.

<sup>12</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>13</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>14</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>

Iran. 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.

Recommendation Status:

This recommendation has **NOT** been implemented.