

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 420

Full recommendation:

I respectfully urge your Excellency's Government to take all measures necessary to comply with the commitments it has undertaken under international law. These measures were, in my view, accurately reflected in the recommendations issued by the United Nations Committee on the Rights of the Child, which called on the Islamic Republic of Iran in January 2005 (See CRC/C/15/Add. 254, 28 January 2005, at par. 30).

CRC/C/15/Add. 254, 28 January 2005, at par. 30: The Committee urges the State party to take the necessary steps to immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, to take the appropriate legal measures to convert them into penalties in conformity with the provisions of the Convention and to abolish the death penalty as a sentence imposed on persons for having committed crimes before the age of 18, as required by article 37 of the Convention.

Assessment using Impact Iran human rights indicators¹

The Islamic Penal Code (2013)² establishes the age of criminal responsibility at 9 lunar years for girls and 15 lunar years for boys.³ 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. 6 convicted juvenile offenders were reportedly executed in 2018, and 4 were executed in 2019.^{4 5}

In *qisas* cases, the execution of the sentence is solely based on the request of the victim or the victim's guardian.⁶ The accused is unable to request their own pardon or commutation, but there are a number 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

¹ CCPR.6.5.S.1; CRC.37.1.S.2

CCPR.6.5.P.1

CCPR.6.5.O.1; CCPR.6.5.O.2

² 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/>

³ Article 1210, note 1

⁴ ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

⁵ <https://iranhr.net/en/articles/4727>

⁶ 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>

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.⁷ 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 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”.⁸ Ultimately, if the next of kin of the victim 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.

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”.⁹ 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”.¹⁰ 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”.¹¹ 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”.¹² In recent years, reports indicate that courts have been selective in applying Article 91 and its note.¹³ 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).

In general, the current Iranian legal framework permits the issuance of the death penalty for those under the age of 18, and the reforms introduced by the Islamic Penal Code have not

⁷ 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>

⁸ 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>

⁹ 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/>

¹⁰ 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/>.

¹¹ See OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

¹² 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>

¹³ Amnesty International, <https://www.amnestyusa.org/press-releases/irans-hypocrisy-exposed-as-scores-of-juvenile-offenders-condemned-to-gallows/>.

effectively removed this type of punishment from legislation. The death penalty is still being issued and carried out for *qisas* cases.¹⁴

Since 1990, Iran has executed more juvenile offenders than any other country in the world. The total number of juveniles executed in Iran more than doubles that of the next nine countries who also execute minors.¹⁵ According to Iran Human Rights' reports, at least 63 juvenile offenders were executed between 2010 and 2020.¹⁶ Iranian authorities executed 5 juvenile offenders (people who were under the age of 18 when committing a crime) in 2017, 6 in 2018 and 4 in 2019.¹⁷ In its January 2020 report, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran stated that he 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."¹⁸

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.¹⁹ Executions of child offenders continue to be performed in the Islamic Republic of 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.

The Islamic Republic of Iran has not taken the necessary steps to immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, has not taken the appropriate legal measures to convert them into penalties in conformity with the provisions of the Convention, and has not abolished the death penalty as a sentence imposed on persons for having committed crimes before the age of 18.

Recommendation Status:

This recommendation has **NOT** been implemented.

¹⁴ Iran Human Rights and ECPM, Annual Report on the Death Penalty in Iran 2019, 34. <https://www.iranhr.net/en/reports/22/>

¹⁵ Amnesty International, "Executions of Juveniles Since 1990 as of November 2019" accessed April 25, 2020, <https://www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf>

¹⁶ <https://iranhr.net/en/articles/4727>

¹⁷ ECPM, Iran Human Rights, https://iranhr.net/media/files/Rapport_iran-GB.pdf and https://iranhr.net/media/files/Rapport_iran_2019-GB-BD.pdf

¹⁸ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F61&Language=E&DeviceType=Desktop>

¹⁹ 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>