

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 413

Full recommendation

I would respectfully reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party.

Assessment using Impact Iran human rights indicators¹

A. Take steps to bring its legislation in compliance with Article 6 of the International Covenant on Civil and Political Rights.

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

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.”²

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.³ For example, the death penalty may be applied in some cases of adultery,⁴ for certain cases of consensual same-sex intercourse between men⁵ or for vaguely

¹ CCPR.6.1.S.1; CCPR.6.5.S.1; CRC.37.1.S.2
CCPR.6.2.P.1; CCPR.6.5.P.1
CCPR.6.2.O.2; CCPR.6.5.O.1

² 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>

³ 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>

⁴ 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/>

⁵ 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/>

defined offences such as *moharebeh* (“enmity against god”)⁶ and *efsad-e fel-arz* (“corruption on earth”) that do not necessarily involve intentional killing.⁷ The Human 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.”⁸ 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 *nulla poena sine lege* (principle of legality).

In November 2017, the law on drug trafficking was amended 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.⁹ 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.¹⁰

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. Iran does not have any administrative processes or independent human rights monitoring mechanisms in place to ensure the prohibition of capital punishment.

Between January 2015 and December 2018, the Islamic Republic of Iran reportedly executed at least 2,303 people.¹¹ Reports received by OHCHR indicated a decrease in the number of executions between 2017 and 2018 (437 in 2017 compared to 207 in 2018 for the same period).

¹² On the other hand, ECPM and Iran Human Rights reported at least 273 executions in 2018,

⁶ 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/>

⁷ 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/>

⁸ 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>

⁹ Drug trafficking law, arts. 8 and 45

¹⁰ 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.

¹¹ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1305732019ENGLISH.PDF>

¹² Report of the UN Secretary General on the situation of human rights in the Islamic Republic of Iran, February 2019,

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F40%2F24&Language=E&DeviceType=Desktop>

280 executions in 2019, and 267 in 2020.¹³ In 2019, Iran had the second highest number of reported executions, behind China.^{14 15 16}

OHCHR continues to receive reports indicating that death sentences are issued after proceedings that do not respect due process and fair trial standards.^{17 18} The NGOs Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran and Human Rights Activists in Iran, documented numerous violations of fair trial in the Islamic Republic of Iran as provided under Article 14 of the ICCPR. These include violations of the right to legal counsel and to choose a lawyer, the right to appeal, the use of arbitrary arrests, the use of forced confessions as evidence, and a lack of independence of the judiciary.¹⁹

The Islamic Republic of Iran has not taken all necessary steps to prohibit executions that are inconsistent with accepted standards of international human rights law. The Islamic Republic of Iran has also not yet taken significant steps to amend its legislation to comply with Article 6 of the International Covenant on Civil and Political, except for initial amendments to the law on drug trafficking.

B. Take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child.

The Islamic Penal Code (2013)²⁰ establishes the age of criminal responsibility at 9 lunar years for girls and 15 lunar years for boys.²¹ 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

¹³ ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

¹⁴ <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

¹⁵ See more: Abdorrahman Boroumand Center <https://www.iranrights.org/projects/omidmap>

¹⁶ See more: Human Rights Activists in Iran <https://www.en-hrana.org/wp-content/uploads/2019/10/Annual-Report-of-Executions-2019.pdf>

¹⁷ See the report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran available from www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ListReports.aspx; and [A/73/299](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/A/73/299)

¹⁸ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/021/53/PDF/G2002153.pdf?OpenElement>

¹⁹ Abdorrahman Boroumand Center (ABC), Iran Human Rights Documentation Center (IHRDC), Impact Iran, Human Rights Activists in Iran, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICS%2fIRN%2f42313&Lang=en

²⁰ 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/>

²¹ Article 1210, note 1

for girls and 15 lunar years for boys. Reportedly, four convicted child offenders were executed in 2019 in the Islamic Republic of Iran.²²

In *qisas* cases, the pardon or commutation of the sentence is based solely on the request of the victim or the victim's guardian.²³ 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.²⁴ 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”.²⁵ 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.

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”.²⁶ 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”.²⁷ 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”.²⁸ 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

²² <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

²³ 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>

²⁴ 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>

²⁵ 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>

²⁶ 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/>

²⁷ 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/>.

²⁸ See OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

choose whether to seek medical advice or not”.²⁹ In recent years, reports indicate that courts have been selective in applying Article 91 and its note.³⁰ 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 effectively removed this type of punishment from legislation. The death penalty is still being issued and carried out for *qisas* cases.³¹

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.³² Iranian authorities executed 6 juvenile offenders (people who were under the age of 18 when committing a crime) in 2018, 4 in 2019, and 4 in 2020.^{33 34} According to Iran Human Rights’ reports, at least 63 juvenile offenders were executed between 2010 and 2020 in Iran.³⁵

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.³⁶ 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 all necessary steps to prohibit executions that would be inconsistent with accepted standards of international human rights law, nor has it taken steps

²⁹Report 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>

³⁰ Amnesty International, <https://www.amnestyusa.org/press-releases/irans-hypocrisy-exposed-as-scores-of-juvenile-offenders-condemned-to-gallows/>

³¹ Iran Human Rights and ECPM, Annual Report on the Death Penalty in Iran 2019, 34. <https://www.iranhr.net/en/reports/22/>

³² Amnesty International, “Executions of Juveniles Since 1990 as of November 2019” accessed April 25, 2020, <https://www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf>

³³ <https://iranhr.net/en/articles/4727>

³⁴ https://iranhr.net/media/files/Rapport_iran-GB.pdf and https://iranhr.net/media/files/Rapport_iran_2019-GB-BD.pdf

³⁵ <https://iranhr.net/en/articles/4727>

³⁶ 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>

to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child.

Recommendation Status:

This recommendation has **NOT** been implemented.