

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 410

Full recommendation:

I wish to thank your Excellency for your letter dated 15 July 2009 in response to my letter of 23 August 2007, in respect to another case in which the accused juvenile offender had been sentenced to qisas. Your letter indicates that through efforts of the Judiciary, the case had entered the reconciliation case and that as a result of the victim's guardians giving their consent the execution had been stopped and the accused released. While I welcome this outcome, I remain concerned that such efforts 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. These 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inconsistent with the international legal obligations assumed by the Islamic Republic of Iran and should be promptly repealed.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 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" that 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.⁴

In *qisas* cases, the pardon or commutation of the sentence is based solely on the request of the victim or the victim's guardian.⁵ The accused are thus unable to request their own pardons or commutation, but there are a number institutions which can intervene to mediate cases of

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 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>

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 victim's next of kin, conflict resolution council branches and the Women and Children and Protection Office of the Judiciary.⁶ There is no readily available information that would indicate the number of cases concerning children that have been received, reviewed and adjudicated by these institutions. However, the Government of the Islamic of Iran noted that the State was not intervening in cases of *qisas*, which “is only possible on the basis of the request of the owners of the blood”.⁷ Ultimately, if the victim's next of kin does not grant pardon in exchange for *diya*, the sentence must be executed, 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 pronounce 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”.⁸ 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”.⁹ 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”.¹⁰ 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”.¹¹ In recent years, reports indicated that courts have been selective in applying Article 91 and its note.¹² 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 death penalty sentences for those under the age of 18, and the reforms introduced by the Islamic Penal Code have not

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>

⁷ 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>

⁸ 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/>

⁹ 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/>

¹⁰ See OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

¹¹ 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>

¹² 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.¹³

Since 1990, Iran has executed more juvenile offenders than any other country in the world, with the total of those executed more than doubling the total number of juvenile offenders executed by countries which constitute the next nine countries that continue to execute minors.¹⁴ 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 2020.¹⁵¹⁶ 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.”¹⁷

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.¹⁸ Executions of child offenders continue to be conducted 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.

Recommendation Status:

This recommendation has **NOT** been implemented.

¹³ Iran Human Rights and ECPM, Annual Report on the Death Penalty in Iran 2019, 34. <https://www.iranhr.net/en/reports/22/>

¹⁴ Amnesty International, “Executions of Juveniles Since 1990 as of November 2019” accessed April 25, 2020, <https://www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf>

¹⁵ <https://iranhr.net/en/articles/4727/>

¹⁶ 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

¹⁷ 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>

¹⁸ 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>