

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/37/68 para 82

Full recommendation:

The Special Rapporteur remains troubled by the continuing large number of executions, including of juvenile offenders, and reiterates her call on the Government to introduce a moratorium on the use of the death penalty and to prohibit and refrain from the execution of juvenile offenders in all circumstances. The Special Rapporteur further urges the Government to undertake a special review of the cases of persons on death row for crimes committed when they were under the age of 18, with a view to commuting or quashing their death sentences altogether.

Assessment using Impact Iran human rights indicators ¹

A. The Special Rapporteur reiterates her call on the Government to introduce a moratorium on the use of the death penalty and to prohibit and refrain from the execution of juvenile offenders in all circumstances.

As of February 2021, the Islamic Republic of Iran has not introduced a moratorium on the use of the death penalty.

The Islamic Penal Code (2013)² establishes the age of criminal responsibility to be of 9 lunar years for girls and 15 lunar years for boys.³ However, the age of responsibility for *ta'zir* crimes (crimes for which specific penalties are not provided under Islamic law, giving the judge discretion to decide the sentence that is to be imposed) is 18. For *ta'zir* crimes, convicted children are sentenced to correctional measures. In contrast, criminal responsibility for crimes punishable under *hudud* (punishments established 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.

The law on the “Protection of Children and Adolescents”,⁴ adopted in June 2020, provides alternative punishments for persons under the age of 18, except for crimes under *qisas* and *hudud*. In such cases, sentences that are already established under the Islamic Penal Code prevail.⁵

¹ CCPR.6.5.S.1 ;CRC.6.1.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 The law adopted on May 12, 2020 : <https://shenasname.ir/laws/6788>

⁵ Article 25 of the law of “Protection of Children and Adolescents”.

In cases regarding *qisas*, the pardon or commutation of the sentence is based solely on the request of the victim or the victim's guardian. This deprives the child defendant of his or her right to seek pardon or commutation of the sentence by the State.⁶ There are a number of institutions that can intervene in order to mediate cases of children sentenced through *qisas*. This mediation is notably used to convert *qisas* sentences 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.⁷ There is no readily available information that would indicate the number of cases received, reviewed and adjudicated by these institutions.

The prohibition on the imposition of 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 a reasonable doubt, that the accused was 18 or older at the time of the offence.⁸ Executions of child offenders continue to be conducted in the Islamic Republic of Iran.

Iranian authorities executed 6 juvenile offenders in 2018, 4 in 2019 and 4 in 2020.⁹

There is no readily available information that might indicate the existence of steps taken by the Government to repeal all laws imposing the death penalty against child offenders.

B. The Special Rapporteur further urges the Government to undertake a special review of the cases of persons on death row for crimes committed when they were under the age of 18, with a view to commuting or quashing their death sentences altogether.

Article 91 of the Islamic Penal Code, revised in 2013, allows judges to pronounce alternative sentences in circumstances where the juveniles “do not realise the nature of the crime committed or its prohibition, or if there is uncertainty about their full mental development, according to their age”.¹⁰ The Article further adds that “the court may ask for the opinion of forensic medicine or resort to any other method that it sees appropriate in order to establish the full mental development [of the accused]”. In 2017, a number of UN special procedure mandate holders

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 Ibid.

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

¹⁰ Article 91, 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/>

considered the 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

Over the years, several executions of child offenders have been commuted in Iran, however, these reports are rare.¹³

In the January 2020 report, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran wrote that “he continues to monitor the situation of child offenders on death row, and has 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”.¹⁴

The Government of the Islamic Republic of Iran has not engaged in a comprehensive process to commute or quash the death sentences that were issued to persons currently on death row regarding crimes committed when the person was under the age of 18 years.

Recommendation Status:

This recommendation has **NOT** been implemented.

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 For more, please see: Abdorrahman Boroumand Center for Human Rights in Iran -

<https://www.iranrights.org/projects/omidmap>

¹⁴ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, https://www.ohchr.org/Documents/Countries/IR/Report_of_the_Special_Rapporteur_on_the_situation_of_human_rights_in_the_Islamic_Republic_of_IranA4361.pdf