

## Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/40/67 para 76(b)

### Full recommendation:

*Pending abolition of the death penalty for child offenders, the Special Rapporteur recommends that the Iranian Legal Medicine Organization, and other expert bodies called upon to conduct article 91 assessments: Afford the child offender the benefit of the doubt and deliver a finding of uncertainty when absolute certainty cannot be scientifically established, including if the assessment is not conducted immediately after the alleged offence. Establish and publish a methodology to conduct the assessment.*

### 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)<sup>4</sup> is 18 years. 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.

Article 91 of the Islamic Penal Code, amended in 2013, 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”.<sup>5</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>6</sup> However, there is no defined criteria for assessing “mental development”, which is left to the sole discretion of the judge. The court is not required to seek the opinion of experts from the Legal Medicine Organization state institution, or to request any other expert opinions to reach a

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<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> Ta'zir crimes are acts that are in violation of *Shari'a* laws and/or the Islamic Government's regulations. While the punishments for crimes under *hudud* or *qisas* are provided under *Shari'a* law, *ta'zir* crimes do not have codified and fixed penalties under *Shari'a* law, which are determined at the discretion of the Islamic Government .

<sup>5</sup> <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>6</sup> See <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>.

verdict. Judges have been assessing children and concluding that they were mentally developed without requesting an expert opinion at all.<sup>7</sup>

In January 2019, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran reported cases where judges asked questions “focused on whether the child knew it was wrong to kill” or concluded that the child was “mentally developed” as long as there was no evidence of mental health issues. The Special Rapporteur reported cases where “judges have also used measures such as assessing whether the defendant has grown body hair to confirm mental development”. Some assessments done by the Legal Medicine Organization are performed long after the alleged offence was committed.<sup>8</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>9</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>10</sup>

In January 2020, the UN Secretary General reiterated that “United Nations human rights mechanisms have highlighted significant deficiencies with article 91 of the Penal Code and its application.” He also expressed concerns about “the discretion left to judges in applying article 91, including whether to request a forensic specialist assessment of the maturity of the accused and when to do so, sometimes requesting it years after the alleged offence, and to use any other method deemed appropriate to assess the mental development of the accused.” The UN Secretary General also highlighted the absence of definition on what “constitutes the non-realization of the nature of the crime, nor does it define or provide the criteria for assessing “mental development”, which increases the risk of arbitrary decision-making”.<sup>11</sup>

The Legal Medicine Organization continues to assess child offenders as ‘mentally developed’ at the time of the alleged offence,<sup>12</sup> in some cases for crimes that are sentenced with the death penalty. In 2019, 4 individuals who reportedly committed crimes when they were under 18 years

<sup>7</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/021/61/PDF/G1902161.pdf?OpenElement>

<sup>8</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/021/61/PDF/G1902161.pdf?OpenElement>

<sup>9</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>10</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/021/61/PDF/G1902161.pdf?OpenElement>

<sup>11</sup> Report of the UN Secretary General on the situation of human rights in the Islamic Republic of Iran, January 2020, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F20&Language=E&DeviceType=Desktop>

<sup>12</sup> Amnesty International, <https://www.amnesty.org/en/latest/news/2020/04/iran-execution-of-young-man-vengeful-and-cruel/>

old were executed.<sup>13</sup> At least 4 were executed in 2020, and at least one of them had been under psychiatric care, suffering from several mental illness.<sup>14</sup>

The Legal Medicine Organization has not systematically delivered a finding of uncertainty when absolute certainty cannot be scientifically established, including when the assessment is not conducted immediately after the alleged offence.

There is no readily official and available information that might suggest the existence of an established and published methodology to conduct medical assessments on the mental development of a child in the Islamic Republic of Iran. Additionally, there is no readily available information as to whether assessments from experts from the Legal Medicine Organization rely exclusively on a scientific, evidence-based assessment as to whether there is total certainty about the mental development of a child offender at the time of the offence. There is no readily available information that indicates that experts from all relevant fields, including the relevant child development, psychology, psychiatry, and social service fields, are solicited to conduct such assessments.

**Recommendation Status:**

This recommendation has **NOT** been implemented.

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

<sup>14</sup> <https://iranhr.net/en/articles/4727>