

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/40/67 para 75 (b)

Full recommendation:

Pending implementation of the aforementioned recommendations, and without prejudice to the binding obligation enshrined in the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights to not sentence children to death and to not execute child offenders, the Special Rapporteur recommends that the judiciary: (b) Ensure that any article 91 assessment is conducted on the prima facie basis that there is uncertainty about the mental development of the child, and as such a death sentence cannot be imposed. Ensure that the burden of proof is always on the prosecution to establish complete certainty about the full mental development of the child, in line with article 91. Furthermore, ensure that the child is afforded the benefit of the doubt if the assessment is not undertaken immediately after the crime.

Assessment using Impact Iran human rights indicators¹

A. Ensure that any Article 91 assessment is conducted *prima facie* basis that there is uncertainty about the mental development of the child, and as such death penalty sentence cannot be imposed

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”.² 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 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”.³ 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”.⁴ The Legal

¹ CCPR.6.5.S.1; CRC.6.1.S.2; CRC.37.4.S.1; CCPR.6.5.P.1; CRC.37.4.P.1; CCPR.6.5.O.1; CCPR.6.5.O.2; CRC.37.4.O.2

² 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/>

³ See OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

⁴ 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>

Medicine Organization has reportedly repeatedly ignored past medical records of mental disorders to issue their opinion on a child's maturity.^{5 6 7}

Over the years, several executions of child offenders have been commuted in Iran, however, these reports are rare.⁸ 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”.⁹ Iranian authorities executed 6 juvenile offenders in 2018, 4 in 2019 and 4 in 2020.¹⁰ One of the juvenile offenders executed in 2020 was Majid Esmailzadeh, a victim of sexual exploitation who was tortured to make self-incriminating confessions. One of the juvenile offenders executed in 2020 was Majid Esmailzadeh, a victim of sexual exploitation who was tortured into making self-incriminating confessions.¹¹ The continuing high levels of death sentences issued to persons under 18 suggests the government of Iran has not taken the *prima facie* position that the minds of juvenile offenders are of uncertain development.

B. Ensure that the burden of proof is always on the prosecution to establish complete certainty about the full mental development of the child, in line with Article 91.

The Iranian legal framework does not adequately provide detailed provisions on standard of proof and on whom the burden of proof rests.

Article 37 of the Constitution protects the presumption of innocence.^{12 13} However, Article 164 of the Islamic Penal Code defines confessions as self-incriminating statements made by the accused and Article 171 gives primary weight to confessions.¹⁴ Article 360 of the Code of Criminal Procedure stipulates that convictions can be issued on the basis of voluntary given confessions alone. The heavy reliance of the criminal justice system on confessions as evidence

⁵ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/04/iran-execution-of-young-man-vengeful-and-cruel/>

⁶ OHCHR News, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24581&LangID=E>

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 For more, please see: Abdorrahman Boroumand Center for Human Rights in Iran - <https://www.iranrights.org/projects/omidmap>

⁹ 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

¹⁰ <https://iranhr.net/en/articles/4727/>.

¹¹ <https://iranhr.net/en/articles/4233>

¹² Article 37, Constitution of the Islamic Republic of Iran

<http://www.iranchamber.com/government/laws/constitution_ch03.php>

¹³ Article 4, Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

¹⁴ 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/>

requires that children regularly testify against themselves or confess guilt, which may incentivize not scrutinizing their mental development too closely.¹⁵

Additionally, and as aforementioned, death sentences can be issued against child offenders without complete certainty about the full mental development of the child. The burden of proof is inconsistently on the prosecution to establish complete certainty about the full mental development of the child.

C. Ensure that the child is afforded the benefit of the doubt if the assessment is not undertaken immediately after the crime

The Islamic Republic of Iran has repeatedly executed child offenders even when assessments were undertaken long after the alleged crime, indicating that children are not afforded the benefit of the doubt.¹⁶

Recommendation Status:

This recommendation has **NOT** been implemented.

¹⁵ Iran Wire, <https://iranwire.com/fa/features/2304>

¹⁶ 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>