

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/40/67 para 74(b)

Full recommendation:

The Special Rapporteur recommends that the judiciary: (b) Pending legislative review, urgently issue a circular which requires all judges not to sentence children to death on the basis of qisas or hudud crimes, and which requires presiding judges to order retrials for all child offenders on death row without recourse to the death penalty.

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 under Islamic law)⁴ 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 *Shari'a* law) 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. Crimes such as adultery, homosexuality, fornication, drinking alcohol, obscenity against the Prophet, theft, moharebeh (fighting against the God), and corruption on earth, are among the crimes that included under Hudud crimes, and Murder, mutilation are among crimes that punishable by Qisas.

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”.⁵ 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”.⁶ 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

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

⁵ 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/>

⁶ See OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

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”.⁷

Over the years, several executions of child offenders have been commuted in Iran, however, these reports are rare.⁸

At least four juvenile offenders were executed in both 2019 and 2020 respectively.^{9 10} In his 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”.¹¹

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.¹²

As of March 2021, no circular which requires all judges not to sentence children to death on the basis of *qisas* or *hudud* crimes, and which requires presiding judges to order retrials for all children offenders on death row without recourse to the death penalty, has been issued.

Recommendation Status:

This recommendation has **NOT** been implemented.

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

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

¹¹ 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

¹² 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>