

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

### Full recommendation:

*The Special Rapporteur recommends that the judiciary: (a) Urgently halt the planned execution of all child offenders, and commute the death sentences imposed on the basis of qisas and hudud crimes for all child offenders.*

### Assessment using Impact Iran human rights indicators<sup>1</sup>

The Islamic Penal Code (2013)<sup>2</sup> establishes the age of criminal responsibility to be of 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 specific penalties are not provided under Islamic law)<sup>4</sup> 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 *Shari'a* law) or *qisas* (punishment or retribution in kind), which allow for the death penalty, is maintained at the age of “maturity”, which 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.

The law on the “Protection of Children and Adolescents”,<sup>5</sup> adopted in June 2020, provides a range of alternative punishments for persons under the age of 18, however for crimes under *qisas* and *hudud* sentences that are already established under the Islamic Penal Code, including the death penalty, prevail.<sup>6</sup>

In cases regarding *qisas*, the right to pardon or commutation of the sentence exclusively belongs to the victim or the victim’s guardian. The State does not have right to overrule their decision or pardon the convicted person. This can deprive the child defendant of his or her right to seek pardon or commutation of the sentence.<sup>7</sup> 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*

<sup>1</sup> CCPR.6.2.S.1; CCPR.6.5.S.1; CCPR.6.2.P.1; CCPR.6.5.P.1; CCPR.6.2.O.3; CCPR.6.5.O.1; CCPR.6.5.O.2

<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, *taz'ir* 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> The law adopted on May 12, 2020 : <https://shenasname.ir/laws/6788>

<sup>6</sup> Article 25 of the law of “Protection of Children and Adolescents”.

<sup>7</sup> 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>

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.<sup>8</sup> There is no readily available information that would indicate the number of cases received, reviewed and adjudicated by these institutions and they are simply mediators with no formalised powers.

The prohibition on the imposition of the death penalty on children is widely considered to be *jus cogens* (a fundamental principle of international law that binds all states) 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.<sup>9</sup> Executions of child offenders continue to be conducted in the Islamic Republic of Iran.

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”.<sup>10</sup> The Article further adds that “the court may ask for the opinion of forensic medicine or resort to any other method that it sees as 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”.<sup>11</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>12</sup>

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

<sup>8</sup> Ibid.

<sup>9</sup> 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>

<sup>10</sup> 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/>

<sup>11</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>12</sup> 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>

<sup>13</sup> For more, please see: Abdorrahman Boroumand Center for Human Rights in Iran - <https://www.iranrights.org/projects/omidmap>

individuals who have been sentenced to death for crimes committed when they were under 18 years of age”.<sup>14</sup>

Iranian authorities executed at least 6 juvenile offenders in 2018, 4 in 2019 and 4 in 2020.<sup>15</sup>

The Islamic Republic of Iran has not urgently halted the planned execution of all child offenders, and has not commuted the death sentences imposed on the basis of *qisas* and *hudud* crimes for all child offenders.

Recommendation Status:

This recommendation has **NOT** been implemented.

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<sup>14</sup> 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](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)

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