

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/40/67 para 73(a)

Full recommendation:

The Special Rapporteur recommends that Parliament: urgently amend legislation to prohibit the execution of persons who committed a hudud or qisas crime while below the age of 18 years and as such are children. Urgently amend the legislation to commute all existing sentences for child offenders on death row.

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur recommends that Parliament of the Islamic Republic of Iran urgently amend legislation to prohibit the execution of persons who committed a hudud or qisas crime while below the age of 18 years and as such are children

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 giving the judge discretion as to the sentence imposed)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 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.

The law on the “Protection of Children and Adolescents”,⁵ adopted in June 2020, provides alternative punishments for persons under the age of 18 except for crimes under *qisas* and *hudud*, where the Islamic Penal Code sentences prevails.⁶

In *qisas* cases, the pardon or commutation of the sentence is based solely on the request of the victim or the victim’s guardian, which deprives the child defendant of his or her right to seek pardon or commutation from the State.⁷ There are several institutions which can intervene to

¹ CCPR.6.5.S.1

CCPR.6.5.P.1

CCPR.6.5.O.1

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 by *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 The Law on the Protection of Children and Adolescents adopted on May 12, 2020 : <https://bit.ly/3euW9ZF>

⁶ Article 25 of the law of “Protection of Children and Adolescents”.

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>

mediate cases of children sentenced with *qisas*, notably in order to commute *qisas* 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.⁸ There is no readily available information that would indicate the number of cases received, reviewed and adjudicated by these institutions.

Additionally, Article 91 of the 2013 Islamic Penal Code 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”.⁹ 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”. 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”.¹⁰ 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”.¹¹

The prohibition of imposing 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 proved, beyond reasonable doubt, that the accused was older than 18 years old at the time of the offence.¹² Executions of child offenders continue to be conducted in the Islamic Republic of Iran. Iranian authorities executed at least 6 juvenile offenders in 2018, 4 in 2019 and 4 in 2020.¹³ ¹⁴ There is no readily available information that might indicate the existence of steps taken by the Government to repeal laws imposing the death penalty against child offenders.

The Parliament of the Islamic Republic of Iran has not amended legislation to prohibit the execution of persons who committed a *hudud* or *qisas* crime while below the age of 18 years.

⁸ 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>

⁹ 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/>

¹⁰ See OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

¹¹ 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>

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>

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

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

B. The Special Rapporteur recommends the Parliament to urgently amend the legislation to commute all existing sentences for child offenders on death row

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”.¹⁵

The Parliament of the Islamic Republic of Iran has not amended the legislation to commute all existing sentences for child offenders on death row.

Recommendation Status:

This recommendation has **NOT** been implemented.

¹⁵ 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