

## Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/31/69 para 65

### Full recommendation:

*The Special Rapporteur is encouraged by the willingness of the Islamic Republic of Iran to explore steps to reduce the number of executions in the country. He reiterates his call on the Government to declare a moratorium on the use of the death penalty and encourages it to continue its examination of laws and policies that effectively undermine or violate the right to life. These include laws that provide for the death penalty for acts not considered to be criminal offences or crimes that do not warrant use of the death penalty under international law, such as drug-related crimes. He also appeals to the Government to abandon piecemeal reforms and to immediately and unconditionally prohibit the execution of offenders who are juveniles, defined as individuals under 18 years of age, at the time they committed the capital offence.*

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

#### **A. The Special Rapporteur reiterates his call on the Government to declare a moratorium on the use of the death penalty for acts not considered to be criminal offences or crimes that do not warrant use of the death penalty under international law, such as drug-related crimes**

In its latest General Comment on Article 6, the Human Rights Committee explicitly stipulated that the term “the most serious crimes” must “be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death [...], although serious in nature, can never serve as the basis, within the framework of Article 6, for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, [...], cannot justify the imposition of the death penalty.”<sup>2</sup>

The death penalty continues to be applied in the Islamic Republic of Iran to a wide range of offences that do not meet the threshold of “most serious crimes,” in other words, crimes that do not involve intentional killing, in contravention with Article 6 of the International Covenant on Civil and Political Rights.<sup>3</sup> For example, the death penalty may be applied in some cases of

<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> 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>3</sup> Ibid.

adultery,<sup>4</sup> for certain cases of consensual same-sex intercourse between men<sup>5</sup> or for vaguely defined offences such as *moharebeh* (“enmity against God”)<sup>6</sup> and *efsad-e fel-arz* (“corruption on earth”).<sup>7</sup> The Human Rights Committee explicitly stipulated that the imposition of the death penalty cannot “be based on vaguely defined criminal provisions, whose application to the convicted individual would depend on subjective or discretionary considerations the application of which is not reasonably foreseeable.”<sup>8</sup> The lack of precision and clarity around what can constitute a crime of *moharebeh*, for instance, grant judges with wide and discretionary interpretative powers.

In November 2017, an amendment made to the law on drug trafficking entered into force, replacing the mandatory death penalty with a prison term of up to 30 years for non-violent drug-related offences and increased the quantity of drugs required for a death sentence to be imposed. However, mandatory death sentences for numerous drug-related offences were retained and the amendment transformed a number of crimes into capital crimes for first-time offenders in specific circumstances.<sup>9</sup> In 2019, reportedly 30 individuals were executed on drug-related charges.<sup>10</sup> The Human Rights Committee has consistently underscored that drug-related offences do not meet the threshold of “most serious crimes” and that the death penalty should not be applied to them.<sup>11</sup>

Despite the existence of several means and mechanisms that accept complaints regarding the violation of rights in Iran, such as the Judge’s Disciplinary Court, the Article 90 Parliamentary Commission and, in general, any appeals courts including the Supreme Court, there is little evidence to suggest that these complaints are properly investigated and adjudicated.

Between January 2015 and December 2018, the Islamic Republic of Iran reportedly executed at least 2,303 people.<sup>12</sup> Reports received by OHCHR indicated a decrease in the number of executions between 2017 and 2018 (437 in 2017 compared to 207 in 2018 for the same period).<sup>13</sup> The Islamic republic carried out at least 273 executions in 2018, 280 in 2019, and 267 in 2020.

<sup>4</sup> Islamic Penal Code (2013), Articles 136 and 225, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>5</sup> Islamic Penal Code (2013), Article 235, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>6</sup> Islamic Penal Code (2013), Article 279, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>7</sup> Islamic Penal Code (2013), Article 286, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>8</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>9</sup> Drug trafficking law, arts. 8 and 45

<sup>10</sup> ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

<sup>11</sup> CCPR/C/PAK/CO/1, para. 17; CCPR/C/THA/CO/2, para. 17; CCPR/C/KWT/CO/3, para. 22; A/71/372, para. 48; and Human Rights Committee, general comment No. 36.

<sup>12</sup> Amnesty International, <https://www.amnesty.org/download/Documents/MDE1305732019ENGLISH.PDF>

<sup>13</sup> Report of the UN Secretary General on the situation of human rights in the Islamic Republic of Iran, February 2019, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F40%2F24&Language=E&DeviceType=Desktop>

<sup>14</sup>In 2019, Iran was the country with the second-highest number of reported executions, behind China.<sup>15 16 17</sup>

OHCHR continues to receive reports indicating that death sentences are passed following proceedings that do not respect due process and fair trial standards.<sup>18 19</sup> Similarly, the NGOs Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, and Iran Human Rights documented numerous violations of fair trial in the Islamic Republic of Iran as provided under Article 14 of the ICCPR. These include violations of the right to legal counsel and to choose a lawyer as well as the right to appeal, arbitrary arrests, the use of forced confessions as evidence, lack of independence of the judiciary.<sup>20</sup>

The Government of the Islamic Republic of Iran has not declared a moratorium on the use of the death penalty for acts not considered to be criminal offences or crimes that do not warrant use of the death penalty under international law, such as drug-related crimes.

**B. The Special Rapporteur appeals to the Government to abandon piecemeal reforms and to immediately and unconditionally prohibit the execution of offenders who are juveniles, defined as individuals under 18 years of age, at the time they committed the capital offence**

The Islamic Penal Code (2013)<sup>21</sup> establishes the age of criminal responsibility at 9 lunar years for girls and 15 lunar years for boys.<sup>22</sup> However, the age of responsibility for *ta'zir* crimes (crimes for which fixed penalties are not provided in Islamic law giving the judge discretion as to the sentence imposed) is 18 years for all children. In these cases, 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 and 15 lunar years for girls and boys respectively.

<sup>14</sup> [https://iranhr.net/media/files/Rapport\\_iran\\_2021-gb-290321-BD.pdf](https://iranhr.net/media/files/Rapport_iran_2021-gb-290321-BD.pdf)

<sup>15</sup> <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/>

<sup>16</sup> See more: Abdorrahman Boroumand Center <https://www.iranrights.org/projects/omidmap>

<sup>17</sup> See more: Human Rights Activists in Iran <https://www.en-hrana.org/wp-content/uploads/2019/10/Annual-Report-of-Executions-2019.pdf>

<sup>18</sup> See the report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran available from [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ListReports.aspx); and [A/73/299](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/A/73/299)

<sup>19</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 28 January 2020, A/HRC/43/61, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F61&Language=E&DeviceType=Desktop>

<sup>20</sup> Abdorrahman Boroumand Center (ABC), Iran Human Rights Documentation Center (IHRDC), Impact Iran, Human Rights Activists in Iran, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCS%2fIRN%2f42313&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCS%2fIRN%2f42313&Lang=en)

<sup>21</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>22</sup> Article 1210, note 1

The law on the “Protection of Children and Adolescents”,<sup>23</sup> 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.<sup>24</sup>

In *qisas* cases, the execution of the sentence is solely based on the request of the victim or the victim’s guardian, which deprives the child of his or her right to seek pardon or commutation from the State.<sup>25</sup> There are a number of institutions which can intervene to 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 next of kin victim, conflict resolution council branches and the Women and Children and Protection Office of the judiciary.<sup>26</sup> 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 juvenile “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>27</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.” 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>28</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>29</sup>

The prohibition of imposing the death penalty on children is widely considered to be *jus cogens* under international law and represent 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

<sup>23</sup> The law adopted on May 12, 2020 : <https://shenasname.ir/laws/6788>

<sup>24</sup> Article 25 of the law of “Protection of Children and Adolescents”.

<sup>25</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>26</sup> Ibid.

<sup>27</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>28</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>29</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>

offence.<sup>30</sup> Executions of child offenders continue to be carried in the Islamic Republic of Iran. 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. Since 1990, Iran has executed more juvenile offenders than any other country in the world.<sup>31</sup> According to data collected by Iran Human Rights (IHR) and international human rights organisations, the Islamic Republic is responsible for more than 70% of all executions of juvenile offenders in the last 30 years. IHR's statistics also show that at least 63 juvenile offenders have been executed in Iran over the past 10 years, with at least four executed in 2019 and four in 2020.<sup>32 33</sup> Although there are reports of juvenile offenders having their sentences commuted,<sup>34</sup> such instances remain rare compared to the number of juvenile offenders' executions carried in Iran.<sup>35</sup>

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.”<sup>36</sup>

Recommendation Status:

This recommendation has **NOT** been implemented.

<sup>30</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>31</sup> Amnesty International, “Executions of Juveniles Since 1990 as of November 2019” accessed April 25, 2020, <https://www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf>

<sup>32</sup> ECPM, Iran Human Rights: [https://iranhr.net/media/files/Rapport\\_iran-GB.pdf](https://iranhr.net/media/files/Rapport_iran-GB.pdf) and [https://iranhr.net/media/files/Rapport\\_iran\\_2019-GB-BD.pdf](https://iranhr.net/media/files/Rapport_iran_2019-GB-BD.pdf)

<sup>33</sup> <https://iranhr.net/en/articles/4648/>

<sup>34</sup> ISNA News -The death sentence of 6 juvenile offenders was commuted on February 8, 2017 (in Persian): <https://www.isna.ir/news/95112014376/>

<sup>35</sup> For more, please see: Abdorrahman Boroumand Center for Human Rights in Iran - <https://www.iranrights.org/projects/omidmap>

<sup>36</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)