

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/72/322 para 107

Full recommendation

The Special Rapporteur remains deeply concerned about the alarming level of executions, including of juveniles, in the country. She reiterates her call on the Government to immediately and unconditionally abolish the sentencing of children to death and to engage in a comprehensive process of commutation of all death sentences issued against children, in line with juvenile justice standards. The Special Rapporteur also reiterates her calls to establish a moratorium on the use of the death penalty, to replace the death penalty for drug-related offences with penalties that comply with relevant international standards, and to end the practice of public executions.

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur reiterates her call on the Government to immediately and unconditionally abolish the sentencing of children to death

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 in Islamic law giving the judge discretion as to the sentence imposed) is 18 years for all children. 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 girls and boys.

The law on the “Protection of Children and Adolescents”,⁴ 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.⁵

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

¹CCPR.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 The law adopted on May 12, 2020 : < <https://shenasname.ir/laws/6788> >

⁵ Article 25 of the law of “Protection of Children and Adolescents”.

pardon or commutation from the State.⁶ There are several 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 victim's next of kin, conflict resolution council branches and the Women and Children and Protection Office of the Judiciary.⁷ 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”.⁸ 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”.⁹ 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”.¹⁰

The prohibition of imposing the death penalty on children is widely considered to be *jus cogens* under international law and represents a *prima facie* 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 reasonable doubt, that the accused was older than 18 years old at the time of the offence.¹¹ Executions of child offenders continue to be conducted in the Islamic Republic of Iran. Reportedly, four convicted child offenders were executed in 2019 in the Islamic Republic of Iran.¹²

⁶ 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>

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 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/>

⁹ See OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

¹⁰ 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>

¹¹ 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>

¹² ECPM, Iran Human Rights: <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

Iranian authorities executed at least 6 juvenile offenders in 2018, 4 in 2019 and 4 in 2020.¹³ The Government of the Islamic Republic of Iran has not unconditionally abolished the sentencing of children to death.

B. The Special Rapporteur reiterates her call in the Government to engage in a comprehensive process of commutation of all death sentences issued against children, in line with juvenile justice standards

A number of executions of child offenders have been commuted in Iran over the years,¹⁴ however these reports remain rare.¹⁵

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”.¹⁶

The Government of the Islamic Republic of Iran has not engaged in a comprehensive process to commute all death sentences issued to persons currently on death row in respect of crimes committed when the person was under the age of 18 years, in line with juvenile justice standards.

C. The Special Rapporteur also reiterates her call to establish a moratorium on the use of the death penalty

The Islamic Republic of Iran has not established a moratorium on the death penalty.

D. The Special Rapporteur also reiterates her call to replace the death penalty for drug-related offences with penalties that comply with relevant international standards

The Government of the Islamic Republic of Iran generally considers drug-trafficking a serious offence requiring the death penalty under certain circumstances and claims its anti-narcotic regulations and heavy sentences act as effective deterrents.¹⁷ However, the Government reviewed and amended its anti-narcotic law in 2017, reducing the number of crimes that can be

¹³ <https://iranhr.net/en/articles/4727>

¹⁴ ISNA News -The death sentence of 6 juvenile offenders was commuted on February 8, 2017 (in Persian):<
<https://www.isna.ir/news/95112014376/> >

¹⁵ For more, please see: Abdorrahman Boroumand Center for Human Rights in Iran - <
<https://www.iranrights.org/projects/omidmap> >

¹⁶ 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

¹⁷ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, September 2016,
<https://undocs.org/Home/Mobile?FinalSymbol=A%2F71%2F418&Language=E&DeviceType=Desktop>.

sentenced with the death penalty. Between 2010 and 2017, 3,224 individuals were reportedly executed for drug-related crimes.¹⁸ According to Iranian officials, from 2014 to 2017, 70% and 80% of executions per year were related to drug offences.¹⁹ The high rate of executions can be explained by the previous anti-narcotic law, which prescribed the death penalty for a wide range of crimes. For example, under Article 4 of the previous version of the law, a person carrying 5 kg or more of narcotics could be sentenced to death.

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 increasing the quantity of drugs required for a death sentence to be imposed. As a result of the amendment, the number of death penalties issued for drug-related crimes has significantly decreased since 2017.²⁰ However, mandatory death sentences for numerous drug-related offences remain and the law has transformed a number of crimes into capital crimes for first-time offenders in specific circumstances.²¹ At least 30 people were executed on drug-related charges in 2019 and 25 in 2020. On May 3, Iran Human Rights reported that during the first four months of 2021, 22 out of 82 executions were carried out as a result of drug-related charges - a 300% increase compared to the first trimesters of the two previous years.²²

Despite the existence of several means and mechanisms accepting 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. Iran does not have any administrative processes or independent human rights monitoring mechanisms in place to ensure that the application of the death penalty complies with international human rights standards.

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.²³

The Islamic Republic of Iran has amended its Anti-narcotic Law but has not replaced all death penalties for drug-related offences with penalties that comply with relevant international standards.

¹⁸ ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

¹⁹ < <https://www.mashregnews.ir/news/305059/> >

²⁰ ECPM, Iran Human Rights, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

²¹ Drug trafficking law, articles 8 and 45.

²² <https://iranhr.net/en/articles/4721>

²³ 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.

E. The Special Rapporteur also reiterates her call to end the practice of public executions

Article 499 of the revised Code of Criminal Procedure (2015) prohibits the issuance of punishments, including execution, flogging and stoning, in public, but allows the judge or the prosecutor to order otherwise if deemed preventive.²⁴ The preventive effect of public executions is considered and accepted as common knowledge among judges who support such practice.²⁵

In 2008, then-Head of the Judiciary, Ayatollah Shahroudi, issued a directive entitled the Public Prohibition of Execution,²⁶ effectively banning public executions. However, directives and circulars are not considered as law. Public executions are still practiced in the Islamic Republic of Iran and every year a number of public executions are recorded. In 2019, 13 individuals were reportedly executed in public spaces in Iran.²⁷

According to the latest regulations issued by the current Head of the Judiciary in 2019, the presence of persons under 18 years of age at public executions is prohibited, unless the judge decides otherwise.²⁸

The Human Rights Committee has opined that public executions are contrary to Article 7 of the International Covenant on Civil and Political Rights²⁹ and therefore inevitably render the execution arbitrary in nature, thus a violation of Article 6.³⁰

The Islamic Republic of Iran has not prohibited the sentencing of children to death and has not engaged in a comprehensive process to commute all death sentences issued to persons currently on death row in respect of crimes committed by child offenders. The Islamic Republic of Iran has not established a moratorium on the death penalty and has not ended the practice of public executions. Although the Government amended its Anti-narcotic Law, the legislation does not fully comply with human rights international standards.

Recommendation Status:

This recommendation has **NOT** been implemented.

²⁴ The Code of Criminal Procedure (adopted in 2013): < <https://shenasname.ir/laws/2327-keifari> >

²⁵ < <https://p.dw.com/p/12Y5C> >

²⁶ Hamshahri Newspaper: < <https://www.hamshahrionline.ir/news/43036/> >

²⁷ ECPM & Iran Human Rights, Annual Report on the Death Penalty in Iran, 2019, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

²⁸ Note 2 of Article 43 of the regulation on the Execution of Hudud and Qisas Sentences (Adopted on June 17, 2019): < <http://rrk.ir/Laws/ShowLaw.aspx?Code=18022> >

²⁹ Human Rights Committee, CCPR/CO/72/PRK, para. 13, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/CO/72/PRK&Lang=En

³⁰ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 40, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

