

Concluding Observation Committee on the Rights of the Child CRC/C/IRN/CO/3-4 para 36(b)

Full recommendation:

Take legislative measures to abolish the death sentence for persons who committed a hudud or qisas crime while under the age of 18 years, that is currently established in the Islamic Penal Code without leaving any discretion to the courts.

Assessment using Impact Iran human rights indicators¹

The execution of child offenders – children defined as human beings below the age of 18 years old² – is prohibited under international law, namely Article 37 of the Convention on the Rights of the Child (“CRC”), Article 6(5) of the International Covenant on Civil and Political Rights (“ICCPR”) and customary international law.³ Accordingly, the death penalty should not be imposed for crimes committed by a person under 18 years old, regardless of their age at the time of trial, sentencing or the execution of the capital punishment.⁴ Iran has ratified both the CRC and ICCPR, thus it is explicitly obligated to prohibit such executions.

Yet, the laws in Iran, particularly the Islamic Penal Code of 2013 (“Islamic Penal Code”), still impose death penalties for child offenders. Article 146 of the Islamic Penal Code establishes that persons not considered mature are not responsible for any crimes. However, Article 147 stipulates that the age of maturity (and therefore, criminal responsibility) for girls is 9 years old and for boys 15 years old. Therefore, child offenders of these ages and above may be punished under that law,⁵ including for all crimes that include the death penalty in Iran, such as *qisas* (retribution in kind) for the crime of murder,⁶ and *hudud* (punishments fixed by God).⁷ In Iran, *qisas* and *hudud* are offences that carry mandatory punishments such as death, with no consideration as to mitigating factors such as the offender’s age.

Iran has undertaken several legislative reforms attempting to restrict death sentences for child offenders. On 12 May 2020, Iran introduced the Law on Protection of Children and Adolescents,⁸ which seeks to provide alternative punishments to capital punishment for persons

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 CRC Article 1.

³ See Commission on Human Rights resolution 2003/67.

⁴ CRC General Comment No. 10 “Children’s rights in juvenile justice” (2007), para 75, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f10&Lang=en

⁵ Article 147 of the Islamic Penal Code.

⁶ For instance, if a person cuts off someone else’s finger, the victim may inflict the same punishment onto the perpetrator.

⁷ Article 279 of the Islamic Penal Code states: “Moharebeh is defined as drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity.”

⁸ See <https://shenasname.ir/laws/6788>

under the age of 18. This law excludes *qisas* while emphasizing that the Islamic Penal Code, and thus the death penalty, is still valid in such cases.⁹

In 2013, Iran amended the Islamic Penal Code to give judges the discretion to exempt children from the death penalty, under Article 91 of Islamic Penal Code, if the judge has assessed that the child did not realise the nature of the crime or if there is uncertainty about his or her mental development (in other words, the child defendant is not “completely mature”) at the time of committing the crime. If the defendant is deemed not mature at the time of committing the crime, the court may impose alternative punishments, such as imprisonment. The Government of Iran stated its policy goal to utilize mediation when possible so as to avoid executions.¹⁰ Furthermore, the Islamic Penal Code’s guiding notes highlight the importance of restorative justice and juvenile rehabilitation, and provides the opportunity for judges to exercise discretion by seeking a medical expert’s opinion from the "Forensic Medicine Organization" to determine the defendant’s maturity at the time of the crime.

Despite legal developments, Iranian law still permits the death penalty for child offenders, including in cases of murder (in accordance with *qisas*) or *hudud*.¹¹ Since 1990, Iran reportedly has executed more child offenders than any other State worldwide,¹² including at least 33 child offenders since 2013 with at least 21 of those children sentenced to death on the basis of *qisas*.¹³ The 6 child offenders, aged between 14 and 17 at the time of the crime, reportedly executed in 2018, were convicted for the crime of murder under *qisas*.¹⁴ At least 4 juvenile offenders were executed in both 2019 and 2020 respectively. Of those, 2 were executed on rape charges and 6 were executed on murder charges.^{15 16} The Government of Iran has commented that extensive efforts were made to satisfy the victim’s next of kin through mediation in order to convert *qisas* to *diyya*. It further noted that its “principled policy ... is to encourage compromise even with ... cash assistance to realize the payment of the *diyyeh*” and “this is the prevailing trend and main course of dealing with this group of offenders”. The Government also referred to the establishment of a reconciliation commission and a task force consisting of officials, psychologists, social workers, corrections officials, lawyers, and members of civil society that support mediation with the victim’s next of kin. Additionally, conflict resolution council branches and the Women and Children and Protection Office of the Judiciary allegedly intervene

⁹ Article 25 of the Law of “Protection of Children and Adolescents”.

¹⁰ <https://undocs.org/en/A/HRC/40/67 para 39>

¹¹ Iran Human Rights and ECPM, “Annual Report on the Death Penalty in Iran 2019”, <https://www.iranhr.net/en/reports/22/>

¹² Amnesty International, “Executions of Juveniles Since 1990 as of November 2019”, accessed April 25, 2020, <https://www.amnesty.org/download/Documents/ACT5002332019ENGLISH.pdf>

¹³ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, A/HRC/40/67 (30 January 2019) para 60, <https://undocs.org/en/A/HRC/40/67>

¹⁴ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, A/HRC/40/67 (30 January 2019) paras 38 and 52, <https://undocs.org/en/A/HRC/40/67>

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

¹⁶ https://iranhr.net/media/files/Rapport_iran-GB.pdf

in these cases. Non-governmental organisations reportedly also support mediation and fundraising for payments of *diya*. Notwithstanding such alleged efforts, the UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Javaid Rehman (“Special Rapporteur”), has received reports that relevant actors are “reluctant to intervene in cases of *hudud* crimes such as adultery, same-sex relationships, or murder crimes also involving rape”.¹⁷

Under the Islamic Penal Code, the Iranian courts continue to exercise considerable discretion in deciding to impose the death penalty for children who committed a *hudud* or *qisas* crime. In recent years, numerous reports indicate that Iranian courts have selectively applied Article 91 of Islamic Penal Code and its guiding notes in sentencing child offenders to the death penalty.¹⁸ In 2016, the Committee on the Rights of the Child expressed “serious concern” that decisions to exempt children from death sentences under Article 91 of Islamic Penal Code are under full judicial discretion.¹⁹ The Special Rapporteur described this judicial discretion as “problematic” because the criteria for assessing children’s mental development is undefined and subjective.²⁰

Despite forensic reports confirming that the defendant was not “fully mature” at the time of the crime, some judges, reportedly, use their discretion to decide that the defendant was mature and the language of Article 91 of Islamic Penal Code did not apply to the individual, as they had previously been charged for criminal activities (e.g. robbery). Some judges allegedly have concluded that the child offender was “mature” based on simple factors such as: if the child understood if it was wrong to kill another human being, if the defendant had grown body hair (used as assessment for mental development), or contributed a lack of mental health concerns with criminal responsibility as those with diminished criminal responsibility typically have mental health issues or are “afflicted with insanity”.²¹

Iran justifies the execution of child offenders on the policy that no children under the age of 18 years old are executed. That is, under Islamic Penal Code, if a child commits a crime punishable by death, the death sentence can be imposed on that individual after a court hearing, but the execution of the death penalty will be suspended until the offender reaches the age of 18 years old.

¹⁷ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, A/HRC/40/67 (30 January 2019) para 52, <https://undocs.org/en/A/HRC/40/67>

¹⁸ Amnesty International, <https://www.amnestyusa.org/press-releases/irans-hypocrisy-exposed-as-scores-of-juvenile-offenders-condemned-to-gallows/>

¹⁹ CRC/C/IRN/CO/3-4, paras 35–36

²⁰ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, A/HRC/40/67 (30 January 2019) para 61, <https://undocs.org/en/A/HRC/40/67>

²¹ Amnesty International, <https://www.amnestyusa.org/press-releases/irans-hypocrisy-exposed-as-scores-of-juvenile-offenders-condemned-to-gallows/>; Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, A/HRC/40/67 (30 January 2019) para 61, <https://undocs.org/en/A/HRC/40/67>

Overall, despite some legislative developments in Iran that purport to reduce capital punishment for child offenders, in practice they have had little effect, especially for children who have committed a *hudud* or *qisas* crime. In cases of child offenders, Iranian courts exercise broad discretion in imposing the death penalty under the Islamic Penal Code.

Recommendation Status:

This recommendation has **NOT** been implemented.