

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/29/37/Add.5 para 40

Full recommendation:

The Special Rapporteur thanks the Government for its response, in which it is indicated that the case was under reconsideration and the final verdict had to be issued. Therefore, he would like to urge the Government of the Islamic Republic of Iran not to execute Ms. Razieh Ebrahimi.

Assessment using Impact Iran human rights indicators¹

According to the Government of the Islamic Republic of Iran, Ms. Razieh Ebrahimi was tried for the murder of her husband when she was 17 years old and sentenced to *qisas* (retribution in kind), in this case the death penalty. The sentence as upheld by the Appeal Court. The Supreme Court ordered a retrial of the case, which was under reconsideration in 2015.² There is no readily available information as to the current status of Ms. Razieh Ebrahimi's case, specifically whether the death sentence has been confirmed.

The Islamic Penal Code (2013)³ establishes the age of criminal responsibility at 9 lunar years for girls and 15 lunar years for boys.⁴ 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 and alternative punishments. In contrast, criminal responsibility for crimes punishable by *hudud* (punishments fixed by God) or *qisas*, 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.

In cases of *qisas* (retribution-in-kind) for murder, Articles 381 of the Islamic Penal Code (2013) prescribe the death penalty punishment, if the victim's family chose to do it.⁵ According to Article 347 of the same law, the holder of "the right to retaliation" may, at any stage of the prosecution, trial or execution of the sentence, forgive "the right", free of charge or in exchange to compromise. The responsibility for choosing the punishment is placed on the victim's family or next of kin by the state. They can choose retaliation by the death penalty, accept monetary compensation called *diya* (blood money) or to forgive the defendant. Where the next of kin choose retribution, the

¹ CCPR.6.5.S.1

CCPR.6.5.P.1

² Islamic Republic of Iran's reply to Communication IRN 11/2014,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32729>

³ 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/>

⁴ Article 1210, note 1 Civil Code of the Islamic Republic of Iran

⁵ Islamic Penal Code: <https://shenasname.ir/subjects/salamat/1571-mojazat92>

victim's next of kin or their representative must be present at the execution.⁶ According to Iran Human Rights, the next of kin are also encouraged to carry out the executions themselves⁷ and have received several reports of family members conducting executions, with the last case taking place in March 2021 where a daughter carried out her mother's execution.⁸

The victim's next of kin is also allowed to pardon or commute the death sentence of the accused by accepting *diyah* (compensation known as “blood money”). There are several institutions that can intervene to mediate cases of individuals sentenced with *qisas*, notably in order to commute *qisas* into *diyah* 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.⁹

The Government of the Islamic of Iran noted that the State was not intervening in the pardon or commutation of sentences in cases of *qisas*, which “is only possible on the basis of the request of the owners of the blood”.¹⁰ Ultimately, if the victim's next of kin does not grant pardon in exchange for *diyah*, the sentence must be executed, with no option for the accused to seek pardon or commutation from the State. In cases where the *diyah* pardon is available, there is no separate and public system for seeking pardon or commutation.

In cases involving child offenders, Article 91 of the Islamic Penal Code, revised in 2013, 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”.¹¹ 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”.¹² Provisions under Article 91 apply to Ms. Razieh Ebrahimi and should therefore be considered in the retrial of her case.

In 2017, a number of special procedure mandate holders described ongoing executions in the Islamic Republic of Iran as “conclusive proof of the failure of the 2013 amendments [including Article 91] to stop the execution of individuals sentenced to death as children”.¹³ In 2019, the

⁶ Article 43(ch) of Regulation 9000/27863/100, 17 June 2019 (“The Regulation on the Enforcement of hodud, death penalty, amputation, qisas of life, body parts and injury, diyat, flogging, exile, loss of country, compulsory residence and prohibition of residence in certain places or areas.”) <https://rc.majlis.ir/fa/law/show/115267>

⁷ <https://iranhr.net/en/articles/4726>

⁸ <https://iranhr.net/en/articles/4668/>

⁹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/en/A/HRC/40/67>

¹⁰ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/en/A/HRC/40/67>

¹¹ 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/>

¹² 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/>

¹³ OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

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”.¹⁴

The sentence and potential application of the death penalty against Ms. Razieh Ebrahimi 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 further 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.¹⁵ Additionally, the prohibition of imposing the death penalty on children is widely considered to be *jus cogens* under international law.¹⁶

Recommendation Status:

This recommendation has **NOT** been implemented.

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

¹⁵ 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>

¹⁶ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/en/A/HRC/40/67>