

**Human Rights Council****Fortieth session**

25 February–22 March 2019

Agenda item 4

Human rights situations that require the Council's attention**Situation of human rights in the Islamic Republic of Iran****Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran****Summary*

The present report, submitted pursuant to Human Rights Council resolution 37/30, comprises two parts.

In the first part, the Special Rapporteur describes how the protests in the Islamic Republic of Iran reflect long-standing grievances related to human rights. An amendment to the drug trafficking law has led to a decline in executions. Nevertheless, increasing economic challenges have intensified grievances, which may be exacerbated following the reimposition of unilateral sanctions. Discontent has been expressed through disparate protests by different groups across the country. The Government has introduced some measures aimed at addressing economic challenges, but the arrests of lawyers, human rights defenders and labour activists signal an increasingly severe State response.

In the second part, the Special Rapporteur describes how the execution of child offenders in the Islamic Republic of Iran has continued over decades in violation of the country's international human rights obligations. Girls can be sentenced to death as young as 9 and boys as young as 15. Despite amendments to the Penal Code and practical efforts aimed at reducing the executions, at least 33 child offenders have been executed since 2013. The Special Rapporteur makes a number of targeted recommendations to the Parliament and the judiciary with a view to ending such executions.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 37/30, is divided into two parts. The first part describes a number of pressing human rights concerns in the Islamic Republic of Iran. The second part examines the execution of individuals who were children (persons below 18 years of age¹) at the time of the alleged commission of the relevant offence (hereinafter referred to as “child offenders”²) in the country.

2. Since his appointment, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran has met with numerous victims of alleged violations, relatives of victims, human rights defenders, lawyers, and representatives of civil society organizations, including in Germany and the United Kingdom of Great Britain and Northern Ireland. The Special Rapporteur travelled to Geneva and to New York to present his most recent report³ to the General Assembly. During these missions, he met with representatives of the Permanent Mission of the Islamic Republic of Iran to the United Nations and other interlocutors. The Special Rapporteur has reviewed written submissions and information submitted, and government statements and reports, legislation, media reports, and reports of international human rights mechanisms. The Government has provided comments on the Special Rapporteur’s reports. The Special Rapporteur thanks all interlocutors and officials for the cooperation extended and information submitted.

3. In 2018, special procedures of the Human Rights Council issued 14 communications, 3 of which were replied to by the Government. In order to further engagement, the Special Rapporteur reiterates his request to visit the Islamic Republic of Iran.

II. Human rights situation

4. The current human rights situation has been characterized by the Government’s response to increasing economic challenges, sanctions, and long-standing human rights concerns. Widespread protests in December 2017 and January 2018 morphed into disparate protests driven by falling living standards, high inflation, perceived misallocation of public funds, delays in the payment of salaries, and challenges in accessing water, among other issues. The reimposition of sanctions heightened tensions.

5. The Special Rapporteur is disturbed by indications of an increasingly severe response to the protests, amidst patterns of violations of the right to life, the right to liberty and the right to a fair trial. An increasing number of human rights defenders, lawyers, journalists and labour activists are being arrested or harassed. The Head of the Judiciary publicly described the protests as “sedition” aimed at “dragging people to the streets to target the very foundation of the Islamic Republic”.⁴

A. Right to life

6. The Special Rapporteur remains concerned at the extensive use of the death penalty, despite positive developments. From January to October 2018, 207 persons were reportedly executed, in comparison to 437 for the same period in 2017.⁵ The decline largely resulted from an amendment to the drug trafficking law in November 2017, which reduced executions related to drug offences. As a result, punishments for certain drug offences were retroactively amended from the death penalty or life imprisonment to a maximum prison term of 30 years. The quantity of drugs required for a death sentence to be imposed was also increased.

¹ The Committee on the Rights of the Child has consistently recommended that States make necessary legal amendments to establish the definition of the child as persons below the age of 18 years. See CRC/C/IRN/CO/3-4, para. 28.

² This terminology is in line with Committee on the Rights of the Child general comment No. 10 (2007) on children’s rights in juvenile justice.

³ See A/73/398.

⁴ See www.mizanonline.com/fa/news/472402.

⁵ See <https://iranhr.net/en/articles/3514/>.

Following the adoption of the amendment, the judiciary was instructed to review the cases of those already sentenced to death for drug-related offences. The lack of transparency on death penalty cases has made it difficult to assess the review process, but in October 2018, the Deputy Chairman of the Islamic Consultative Assembly Judiciary Commission reportedly stated that the death sentences of 15,000 individuals had been commuted.⁶ Concerns remain, however, about the availability of legal assistance to those eligible for review, the lack of opportunity to appeal the outcome of the review, and the retention of the mandatory death penalty for some drug offences.

7. Other concerns persist. According to article 6 of the International Covenant on Civil and Political Rights, which the Islamic Republic of Iran has ratified, States parties that have not yet abolished the death penalty should only impose it for the “most serious crimes”, a term confined to crimes involving intentional killing.⁷ However, the Islamic Republic of Iran continues to apply the death penalty for numerous acts that do not entail intentional killing. Concerns were raised following the establishment of special courts in August 2018 to try “economic crimes” which carry the death penalty.

8. A further long-standing concern relates to the execution of individuals convicted of murder in the context of *qisas* (retribution in kind). In such cases, the application of absolute, equivalent retaliation in the form of the death penalty is available to the next of kin of the victim. Such executions accounted for nearly three quarters of reported executions in 2018.⁸ As an alternative, the next of kin of the victim can pardon the defendant with or without accepting *diya* (compensation known as “blood money”). *Qisas* is an offence which entails a mandatory punishment. No consideration can be given to mitigating factors such as the offender’s age or character or the circumstances of the crime.

9. In 2006, the then Special Rapporteur on extrajudicial, summary or arbitrary executions observed, *inter alia*, that while *diya* saved lives to the extent that it avoided executions, it could violate the guarantees of non-discrimination, because the request to pay *diya* discriminated against those who were not in a position to buy their freedom.⁹ The Penal Code also stipulates that *diya* for murdering a woman is half that of a man. Furthermore, while Iranian law has been amended to provide the equal application of *qisas* punishments and *diya* for the murder of Muslims and constitutionally recognized religious minorities, this does not apply to non-recognized groups. Additionally, when a pardon in exchange for *diya* has not been granted, it leads to violations of the right to seek pardon or commutation from the State.¹⁰

10. Reports indicate that ethnic and religious minority groups constitute a disproportionately large percentage of persons executed or imprisoned.¹¹ Many are also on death row. Concerns have been raised, for example, about the situation of Hedayat Abdollahpour, a Kurdish Iranian, whose death sentence was upheld by the Supreme Court upon its second review in October 2018 amidst reports that he had been subjected to torture in detention and had been denied access to a lawyer of his choice.

11. The right to life has been violated by non-State actors. On 22 September 2018, an attack on a military parade in Ahvaz led to the death of at least 24 persons and injury to numerous others.¹² Another attack in December 2018 in the city of Chabahar reportedly led to the death of two people and numerous injuries.¹³ The Special Rapporteur expresses his deepest condolences to the victims and their families, and to the Government and people of the Islamic Republic of Iran. The Special Rapporteur unreservedly condemns the attacks, and recalls the State’s obligation to hold the perpetrators accountable, in compliance with international human rights law, including the right to a fair trial. Following the Ahvaz attack,

⁶ See <http://kerman.farsnews.com/news/13970725000810>.

⁷ See Human Rights Committee, general comment No. 36 (2018) on the right to life.

⁸ See <https://iranhr.net/en/articles/3514/>.

⁹ A/61/311, para. 60.

¹⁰ International Covenant on Civil and Political Rights, art. 6 (4).

¹¹ See <https://ipa.united4iran.org/en/prisoner/>.

¹² See Security Council press statement available at www.un.org/press/en/2018/sc13523.doc.htm.

¹³ See www.irna.ir/en/News/83125141.

the Special Rapporteur received reports indicating that at least 300 members of Ahwazi Arab minority groups had been detained incommunicado.¹⁴ The authorities later confirmed that 22 people had been arrested,¹⁵ and then later denied that they had been executed.¹⁶ In its comments, the Government stated that investigations were continuing. The Special Rapporteur reiterates the right to a fair trial of those detained, and the need for information on their whereabouts.

B. Right to a fair trial and liberty

12. The extensive use of the death penalty is alarming given the numerous reported cases of violations of the right to a fair trial. Many cases highlight violations of the right to defend oneself through legal assistance of one's own choosing and the right to not to be compelled to testify against oneself or to confess guilt, which are guaranteed under article 14 of the International Covenant on Civil and Political Rights which the Islamic Republic of Iran has ratified.

13. According to article 35 of the Constitution and article 48 of the Code of Criminal Procedure, individuals are guaranteed the right to be represented by their chosen lawyer. However, in articles 48 and 302 of the Code of Criminal Procedure it is stated that if individuals are accused of offences punishable by death, life imprisonment or amputation, or of "political or press crimes", their choice of legal representation during the investigation stage is restricted to lawyers on a list approved by the Head of the Judiciary. The Special Rapporteur is particularly disturbed by these restrictions, given the reports received and information obtained during interviews indicating a pattern of torture and other ill-treatment conducted to compel confessions during the investigation stage. The Special Rapporteur notes that according to the Penal Code, confessions extracted under duress or torture are prohibited and inadmissible before the courts,¹⁷ and perpetrators are subject to punishment. However, in article 171 of the Penal Code it is also stated that "if an accused person confesses to the commission of an offence, his or her confession shall be admissible and there is no need for further evidence". Furthermore, it is stated in article 360 of the Code of Criminal Procedure that convictions can be issued on the basis of voluntarily given confessions alone. As such, the Special Rapporteur is concerned that there is a strong institutional expectation to extract confessions, which does not facilitate an environment conducive to fair trials. In its comments, the Government described the conditions that must be met before – under the Penal Code – a confession can be introduced, which include that the accused must be "recognized to be reasonable, mature, and impartial and free during confession".

14. Discrimination in the administration of justice has been illustrated by the disproportionate number of arrests and convictions of members of minority groups. The Special Rapporteur received numerous reports in this respect, consistent with information obtained during interviews conducted with members of the Baha'i, Azerbaijani Turkish, Kurdish and Baloch communities among others. The Special Rapporteur also reviewed a list of 83 imprisoned members of the Baha'i community. In February 2018, special procedure mandate holders noted that they were aware of several reported cases in which members of the Christian minority had received heavy sentences after being charged with threatening national security, either for converting people or for attending house churches.¹⁸

15. The Special Rapporteur reviewed reports of violations of the right to a fair trial and liberty of dual and foreign nationals detained in the Islamic Republic of Iran. On the basis of ongoing reports, information reviewed and interviews conducted, the Special Rapporteur considers that there is a pattern involving the arbitrary deprivation of liberty of dual nationals and foreign nationals in the Islamic Republic of Iran, as identified by the Working Group on

¹⁴ See www.amnesty.org/en/latest/news/2018/11/iran-fears-mounting-for-detained-ahwazi-arabs-amid-reports-of-secret-executions/.

¹⁵ See <https://bit.ly/2EZ3MWK>.

¹⁶ See www.irna.ir/fa/News/83096589.

¹⁷ See arts. 168–169.

¹⁸ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22629&LangID=E.

Arbitrary Detention.¹⁹ The Special Rapporteur concurs with the Working Group's assessment that many of the cases follow a familiar pattern, which includes, inter alia, arrest and detention outside of legal procedures, lengthy pretrial detention, denial of access to legal counsel, prosecution under vaguely worded criminal offences with inadequate evidence to support the allegations, torture and ill-treatment, and denial of medical care.²⁰ The patterns identified point to an urgent need for the Government to address the situation of all dual and foreign nationals detained in the Islamic Republic of Iran, including Ahmadreza Djalali, Kamran Ghaderi, Robert Levinson, Saeed Malekpour, Siamak and Baquer Namazi, Xiyue Wang, Nazanin Zaghari-Ratcliffe and Nizar Zakka. The Working Group has issued opinions calling for the release of a number of the aforementioned individuals,²¹ including Ahmadreza Djalali who has been sentenced to death. The Special Rapporteur is further alarmed by reports indicating that a number of them need urgent and appropriate medical care, and calls upon the Government to address such concerns. In its comments, the Government denied that Mr. Levinson was detained and stated it had "initiated investigations, on the basis of its legal obligations toward the missing allegation, and the case is still open and under further investigation". The Government further described national security-related charges against the other aforementioned individuals.

C. Right to freedom of peaceful assembly and association

16. Reports received indicate a curtailment on the enjoyment of the right to freedom of association and assembly over the year, which has affected various groups, including workers, teachers, students, minority groups, and women.

17. Workers at the Haft Tapeh sugar mill protested about unpaid wages in July 2017, August 2018 and November 2018. In November 2018, the authorities reportedly detained approximately 18 workers and labour activists.²² Twelve persons were reportedly released, while protests calling for the release of the remaining detainees continue at the time of writing.

18. In March 2018, 10 workers at the Iran National Steel Industrial Group in Ahvaz were detained for several days owing to their alleged involvement in a strike over wages and work conditions.²³ In June, "dozens" more were reportedly arrested after protesting about unpaid wages.²⁴ A strike resumed in November in the absence of a response to their demands.

19. Truck drivers have conducted strikes across many provinces since May 2018 in protest against low wages in light of increasing inflation. Over 150 drivers were later reportedly detained after they resumed their strike in September,²⁵ including in Qazvin Province.

20. Teachers protested against low wages and underfunding in October and November 2018. Some were detained or summoned to courts.²⁶ In May 2018, Mohammad Habibi, a member of the Iranian Teachers' Trade Association of Tehran, was arrested. He was convicted on national security-related charges in August²⁷ amidst concerns that he had been denied medical care despite sustaining injuries caused by ill-treatment during his arrest.²⁸ In its comments, the Government stated that Mr. Habibi had received 27 visits for medical reasons and had been sent to medical centres three times.

21. Protests related to access to water have been reported, with demonstrations in Khuzestan Province, Bavi, Khorramshahr, Abadan, Kut-e-Abdollah and Ahvaz. Fifteen

¹⁹ See the Working Group's opinions No. 49/2017, para. 44; and No. 52/2018, para. 82.

²⁰ See the Working Group's opinion No. 52/2018, para. 86.

²¹ See the Working Group's opinions Nos. 52/2018, 92/2017, 49/2017, 50/2016 and 28/2016.

²² See www.tuc.org.uk/tuc-writes-iranian-ambassador-regarding-arrests-haft-tapeh-sugar-workers.

²³ See www.industrialunion.org/iran-10-detained-after-protests-over-unpaid-wages-of-4000-steel-workers.

²⁴ See www.hra-news.org/2018/hranews/a-15727/.

²⁵ See www.itfglobal.org/en/news-events/press-releases/2018/october/itf-statement-on-iran-truckers-strike.

²⁶ See www.hrw.org/news/2018/11/22/iran-mounting-crackdown-teachers-labor-activists.

²⁷ Ibid.

²⁸ See www.amnestyusa.org/wp-content/uploads/2018/10/uaa17418.pdf.

farmer representatives were arrested when 200 farmers protested against water diversions to the Governorate of Kohgiluyeh va Boyer Ahmad Province.²⁹

22. Consistent with the pattern of discrimination observed, minority groups have been affected. In July 2018, 80 persons from the Azerbaijani Turkish community were reportedly arrested before and during a cultural celebration at Babak Fort in East Azerbaijan Province.³⁰ Most were released amidst reports that those detained had been subjected to ill-treatment. In August, 40 persons from the community were temporarily detained during a gathering in Meshgin Shahr in Ardabil Province amidst reports of excessive force by security forces. Concerns have also been raised about the fate and whereabouts of eight Gonabadi dervishes who allegedly held a sit-in protest in August 2018 at the Great Tehran Penitentiary.³¹ In its comments, the Government stated that the aforementioned persons were imprisoned with access to telephone calls.

23. The Special Rapporteur is further troubled by the arrests of women protesting against compulsory veiling (the hijab). While most were released on bail, some were sentenced to up to two years in prison on the charge of “encouraging moral corruption”.³² Women who do not wear the hijab can be sentenced to up to two months in prison or fined, in violation of their right to take part in cultural life without discrimination.³³

D. Right to freedom of expression and opinion

24. The Special Rapporteur observes increasing limitations placed upon the rights to freedom of opinion and expression. In April 2018, popular social media website Telegram was banned for allegedly “disrupting national unity” and “allowing foreign countries to spy” on the Islamic Republic of Iran.³⁴ In November, the Government proposed a bill which introduced new offences associated with the use of banned online applications.³⁵ In its comments, the Government stated that active social networks such as Telegram “are obliged to register only with the Ministry of Culture and Islamic Guidance”.

25. The Special Rapporteur is further disturbed by the trend of human rights defenders, including women human rights defenders, being arrested and imprisoned in connection with their activities, and the increasing numbers of arrests of lawyers and labour activists.

26. In June 2018, prominent human rights lawyer Nasrin Sotoudeh was arrested. Hoda Amid, a lawyer who had represented women in vulnerable situations, was arrested in September and subsequently released on bail pending trial.³⁶ Lawyer Zeinab Taheri was arrested and later released on bail pending charges.³⁷ In one welcome development, human rights lawyer Abdolfattah Soltani was released on conditional parole in November.³⁸

27. In November 2018, special procedure mandate holders raised concerns about the arrest of Nasrin Sotoudeh, her husband Reza Khandan, and Farhad Meysami, following their advocacy in support of women’s rights.³⁹ Women’s rights defenders Najmeh Vahedi and Rezvaneh Mohammadi were arrested and then reportedly released on bail in November pending trial.⁴⁰

²⁹ See www.ilna.ir/fa/tiny/news-628251.

³⁰ See www.amnesty.org/download/Documents/MDE1388892018ENGLISH.PDF.

³¹ See <https://iranhumanrights.org/2018/10/great-tehran-penitentiary-imposes-information-blackout-on-eight-sufi-detainees-held-in-solitary-confinement/>.

³² See <https://bit.ly/2EV0xzs>.

³³ A/72/155, para. 76.

³⁴ See <https://rsf.org/en/news/iranian-court-imposes-total-ban-telegram>.

³⁵ See www.isna.ir/news/97082813960/.

³⁶ See www.en-hrana.org/womens-rights-activist-hoda-amid-released-on-bail.

³⁷ See www.fidh.org/en/issues/human-rights-defenders/release-on-bail-of-zeinab-taheri.

³⁸ See www.irna.ir/fa/News/83108418.

³⁹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23947&LangID=E.

⁴⁰ See www.iranhumanrights.org/2018/09/three-detained-womens-rights-activists-should-be-immediately-released/.

28. Other individuals remain imprisoned for exercising their right to freedom of opinion and expression. Alternative health practitioner Mohammad Ali Taheri was imprisoned following a conviction for “spreading corruption on earth”. The Special Rapporteur reiterates the call of the United Nations High Commissioner for Human Rights for his release.⁴¹

29. The Special Rapporteur is alarmed by the health situation of numerous imprisoned human rights defenders. Farhad Meysami began a hunger strike in August 2018 in protest at his lack of access to a lawyer of his choice and the charges against him. Arash Sadeghi is in need of specialist medical care and remains imprisoned despite calls for his release from the Working Group on Arbitrary Detention in April.⁴² Soheil Arabi is in urgent need of medical attention. He was due for release in 2018, but was instead charged with additional offences and was sentenced to 10 years and 8 months of additional imprisonment. In November, concerns were raised about the worrying health situation of Narges Mohammadi, who is in need of appropriate medical care. She remains imprisoned despite the call of the Working Group on Arbitrary Detention in 2017 to release her.⁴³ The health situation of prisoners was highlighted in December 2018, following the death of Vahid Sayyadi-Nasiri, a prisoner who had begun a hunger strike in November. The Special Rapporteur urges the Government to conduct a prompt, independent, impartial and effective investigation into the circumstances of the death of Mr. Sayyadi-Nasiri, and to ensure that all those detained in need of medical attention are afforded it urgently. In its comments, the Government stated that Mr. Sadeghi was under the continuous supervision of a specialist and had access to medical clinics outside of the prison.

30. The Special Rapporteur received reports of arrests and intimidation of journalists and media workers within the country. Journalists outside of the country have also been targeted, such as the staff of the British Broadcasting Corporation (BBC) Persian Service. A collective criminal investigation and a purportedly temporary asset-freezing injunction initiated in 2017 against over 150 staff still remains in place. In some cases, staff members’ families based in the Islamic Republic of Iran have been interrogated and harassed. Staff have also been threatened and defamatory news stories have been circulated on social media about them. The Special Rapporteur reiterates his predecessor’s concerns at such actions and calls upon the Government to cease all legal actions⁴⁴ and harassment against journalists, including the BBC Persian Service staff. In its comments, the Government stated that a number of BBC staff had been acquitted with respect to the asset-freezing injunction while other cases remained open.

E. Impact of sanctions

31. The violations of civil and political rights described must be examined in the context of renewed economic challenges for the Islamic Republic of Iran. These challenges intensified with the reimposition of sanctions in 2018 following the decision by the United States of America to cease its participation in the Joint Comprehensive Plan of Action (the nuclear deal).⁴⁵

32. In October 2018, the International Court of Justice indicated provisional measures pending further proceedings and its final decision on proceedings brought by the Islamic Republic of Iran against the United States on the alleged violation of the Treaty of Amity, Economic Relations and Consular Rights between the two States.⁴⁶ It considered that assurances by the United States regarding humanitarian exemptions were “not adequate to address fully the humanitarian and safety concerns raised” by the Islamic Republic of Iran, and therefore it is of the view that there remains a risk that measures adopted by the United

⁴¹ See www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16292&LangID=E.

⁴² See the Working Group’s opinion No. 19/2018.

⁴³ See the Working Group’s opinion No. 48/2017.

⁴⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22314&LangID=E.

⁴⁵ See www.whitehouse.gov/presidential-actions/ceasing-u-s-participation-jcpoa-taking-additional-action-counter-irans-malign-influence-deny-iran-paths-nuclear-weapon/.

⁴⁶ International Court of Justice press release dated 3 October 2018, available at <https://www.icj-cij.org/files/case-related/175/175-20181003-PRE-01-00-EN.pdf>.

States may entail irreparable consequences.⁴⁷ The Court’s provisional measures mandate the United States to ensure that sanctions allow for humanitarian exemptions, including medicines and medical devices; foodstuffs and agricultural commodities; and spare parts, equipment and services necessary for the safety of civil aviation.⁴⁸ The United States announced it was terminating the Treaty.⁴⁹

33. In October 2018, the United States Secretary of State said “existing exceptions, authorizations, and licensing policies for humanitarian-related transactions and safety of flight will remain in effect”.⁵⁰ The United States Department of the Treasury has issued guidance in this respect, including for third-country financial institutions.⁵¹ In the guidance, it is noted that United States sanctions law “contains explicit exceptions that allow foreign financial institutions to conduct or facilitate transactions for the sale of agricultural commodities, food, medicine, or medical devices” to the Islamic Republic of Iran “without penalty, as long as the transaction does not involve a designated entity or otherwise proscribed conduct”.⁵² Given that most Iranian banks are on the Department of the Treasury’s Specially Designated Nationals List, financial transactions – even for non-sanctionable trade – might prove difficult in practice. Furthermore, given the ambiguity around the application of secondary sanctions and the complexity of applying them as part of the exemptions, foreign companies and banks are likely to remain cautious in fear of repercussions by the United States.⁵³ According to reports,⁵⁴ companies exporting medical supplies to the Islamic Republic of Iran face challenges in accessing non-sanctioned banking services as well as shortages of foreign currency in the Islamic Republic of Iran, which limit the possibility of payments to foreign companies.

34. Following declarations⁵⁵ that the Society for Worldwide Interbank Financial Telecommunication (SWIFT) could be subject to sanctions, SWIFT indicated its decision to suspend some Iranian banks. Non-sanctioned Iranian financial institutions were allowed to remain on SWIFT to conduct limited transactions involving food and medicine.⁵⁶

35. The Special Rapporteur is concerned that by preventing financial transfers to the Islamic Republic of Iran, the aforementioned secondary sanctions, which target third parties, are likely to hinder the production, availability and distribution of essential medical and pharmaceutical equipment and supplies, which could potentially increase mortality rates. Similar concerns were expressed in the context of previous sanctions.⁵⁷ In September, the Syndicate of Pharmaceutical Industries noted that the Islamic Republic of Iran imported more than half of the raw material required for the production of medicines.⁵⁸ According to members of the Parliament’s Health Commission, the Islamic Republic of Iran was short of 80 pharmaceutical items⁵⁹ and hospitals were experiencing shortages of medicines, medical equipment and consumer goods.⁶⁰ The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights stated: “The current system

⁴⁷ International Court of Justice, Request for the indication of provisional measures, Order, paras. 91–92, dated 3 October 2018, available at <https://www.icj-cij.org/files/case-related/175/175-20181003-ORD-01-00-EN.pdf>.

⁴⁸ Ibid.

⁴⁹ See www.state.gov/secretary/remarks/2018/10/286417.htm.

⁵⁰ Ibid.

⁵¹ “Clarifying guidance on humanitarian assistance and related exports to the Iranian people”, 6 February 2013, available at www.treasury.gov/resource-center/sanctions/Programs/Documents/hum_exp_iran.pdf.

⁵² Ibid., p. 4.

⁵³ See www.economist.com/business/2018/11/08/european-companies-will-struggle-to-defy-america-on-iran.

⁵⁴ See www.ecfr.eu/article/commentary_iran_the_case_for_protecting_humanitarian_trade.

⁵⁵ See www.state.gov/secretary/remarks/2018/11/287090.htm.

⁵⁶ See www.bloomberg.com/opinion/articles/2018-11-02/trump-s-iran-bank-cutoff-from-swift-will-make-u-s-sanctions-hurt.

⁵⁷ See A/67/327.

⁵⁸ See <http://fna.ir/a0ws79>.

⁵⁹ See www.isna.ir/news/97061105121/.

⁶⁰ See www.ilna.ir/fa/tiny/news-673055.

creates doubt and ambiguity which makes it all but impossible” for the Islamic Republic of Iran to import “these urgently needed humanitarian goods. This ambiguity causes a ‘chilling effect’ which is likely to lead to silent deaths in hospitals as medicines run out, while the international media fail to notice.”⁶¹

III. Execution of child offenders

A. Introduction

36. The execution of child offenders is prohibited by international law, regardless of the age of the accused when the execution takes place. This prohibition is enshrined within the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and customary international law. In 2003, the Commission on Human Rights affirmed that international law established that the execution of child offenders was in contravention of customary international law.⁶²

37. Numerous human rights mechanisms have called upon the Islamic Republic of Iran to stop sentencing children to death, including the Committee on the Rights of the Child,⁶³ the Human Rights Committee,⁶⁴ the General Assembly,⁶⁵ the United Nations High Commissioner for Human Rights⁶⁶ and special procedure mandate holders.⁶⁷ Successive Secretaries-General of the United Nations have raised this issue, in 10 previous reports on the Islamic Republic of Iran, as well as in public statements.⁶⁸ During universal periodic reviews, numerous States have recommended that the Islamic Republic of Iran end the executions. In 2010, the recommendation to “consider the abolition of juvenile execution” was supported by the Government,⁶⁹ and in 2014 the recommendation to “ban executions of juvenile offenders, while at the same time providing for alternative punishments in line with the new Iranian Penal Code” was partially supported.⁷⁰ The Islamic Republic of Iran explicitly accepted the obligation to prohibit such executions through its ratification of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

38. The Special Rapporteur deeply regrets, however, that the Islamic Republic of Iran continues to sentence children to death “far more often than any other State”.⁷¹ Girls as young as 9 and boys as young as 15 can be sentenced to death. Information received indicates that at least 61 child offenders have been executed since 2008.⁷² At least six child offenders were executed in 2018. All were aged between 14 and 17 at the time of the alleged commission of the crime, and all were executed on the basis of *qisas* for the crime of murder. According to previous reports, 5 child offenders were executed in 2017,⁷³ 5 in 2016,⁷⁴ 4 in 2015⁷⁵ and 13 in 2014.⁷⁶ Credible information received indicates that there are at least 85 child offenders

⁶¹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23469&LangID=E.

⁶² See Commission on Human Rights resolution 2003/67.

⁶³ CRC/C/IRN/CO/3-4, para. 36.

⁶⁴ CCPR/C/IRN/CO/3, para. 13.

⁶⁵ See General Assembly resolution 73/181.

⁶⁶ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23689&LangID=E.

⁶⁷ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23216&LangID=E.

⁶⁸ United Nations, “Secretary-General, concerned at worrying trend of executions in Iran, reaffirms United Nations opposition to death penalty”, 19 October 2015, available at <https://www.un.org/press/en/2015/sgsm17247.doc.htm>.

⁶⁹ A/HRC/14/12, para. 90 (40).

⁷⁰ A/HRC/28/12, para. 138.156; and A/HRC/28/12/Add.1, para. 7 (b).

⁷¹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22664&LangID=E.

⁷² Six executions were documented in 2018. Fifty-five executions were reported from 2008 to 2017. See Iran Human Rights and Ensemble contre la peine de mort, annual report 2017, p. 27, available at <https://iranhr.net/en/articles/3258/>.

⁷³ See A/HRC/37/68, para. 19.

⁷⁴ See A/HRC/34/40, para. 18.

⁷⁵ See A/71/418, para. 21.

⁷⁶ See A/HRC/28/70, para. 15.

currently on death row in the Islamic Republic of Iran and that 21 children have been sentenced to death since 2013.

39. In 2013, the Government amended the Penal Code to give judges the discretion to exempt children from the death penalty if the judge assesses that the child did not realize the nature of the crime or if there is uncertainty about his or her mental development. It stated that its policy was to seek to avoid executions through mediation when possible. In comments provided, it also highlighted the importance of restorative justice and juvenile rehabilitation. The Special Rapporteur encourages the Government to continue to review existing policies with a view to prohibiting the execution of child offenders, in line with its international treaty commitments. The present report seeks to support such efforts.

B. Legal framework

1. International legal framework

40. In 1975, the Islamic Republic of Iran ratified the International Covenant on Civil and Political Rights without reservation. In article 6 (5) of the Covenant, it is stated that the “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age ...”. In 1994, the Islamic Republic of Iran ratified the Convention on the Rights of the Child, which stipulates in its article 37 (a) that “neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”. In both cases, the explicit and decisive criterion is the age at the time of the alleged commission of the offence. The Human Rights Committee has stated that if there is no reliable and conclusive proof that the person was not below the age of 18 at the time that the crime was committed, he or she will have the right to the benefit of the doubt and the death penalty cannot be imposed.⁷⁷

41. Upon ratification of the Convention on the Rights of the Child, the Islamic Republic of Iran made a reservation stating that it “reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect”. Article 19 of the Vienna Convention on the Law of Treaties, of 1969, provides that reservations should not be incompatible with the object and purpose of the treaty. In 2016, the Committee on the Rights of the Child recommended that the Islamic Republic of Iran withdraw it accordingly,⁷⁸ in the light of article 51 (2) of the Convention in which it is specified that “a reservation incompatible with the object and purpose of the present Convention shall not be permitted”. In response, the Government noted that the provisions of the Convention are “legally binding in the country”.⁷⁹

42. The prohibition of imposing the death penalty on children is widely considered to form part of the *jus cogens* category of norms of international law. No derogation or deviation from such peremptory norms is permissible. This *jus cogens* character is reflected by almost complete unanimity in calls to end the practice, which continues in only a few States. In its comments, the Government disagreed that the prohibition formed part of *jus cogens*.

2. National legal framework

(a) Age of criminal responsibility

43. Substantial inconsistencies exist within Iranian legislation and the Iranian justice system which mean that girls aged 9 and boys aged 15 can be sentenced to death for certain crimes, whereas children aged up to 18 are sentenced to correctional measures for other crimes.

⁷⁷ See the Committee’s general comment No. 36 (2018) on the right to life.

⁷⁸ CRC/IRN/CO/3-4, paras. 9–10.

⁷⁹ Supplementary response of the National Body on the Convention on the Rights of the Child, para. 1, available from https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fCOB%2fIRN%2f23480&Lang=en.

44. According to the Civil Code, the age of “maturity” for girls is 9 lunar years, and for boys 15 lunar years.⁸⁰ Maturity in this context is assessed according to the child’s physical development according to some traditional rulings in Islamic jurisprudence. Articles 146 and 147 of the 2013 revised Penal Code also specify the age of criminal responsibility at 9 lunar years for girls and 15 lunar years for boys.

45. Criminal responsibility for crimes punishable by *hudud* (punishments fixed by God) or *qisas* is maintained at the same age of maturity, that is, 9 lunar years for girls and 15 lunar years for boys. These crimes carry mandatory punishments such as death, flogging and amputation, giving no discretion to the court as to what sentence is appropriate based on individual circumstances, age, and mitigating factors. All child offenders executed in 2018 were executed on the basis of *qisas*.

46. In contrast, the age of responsibility for the frequently less serious *ta’zir* crimes (crimes for which the judge has discretion as to the sentence imposed) is 18 years for all children. In such circumstances, convicted children are sentenced to correctional measures.

47. The Special Rapporteur notes further inconsistencies within the legal framework. In the 2017 amendment to the drug trafficking law, the death penalty was retained for any individual who “has exploited children or juveniles under the age of 18 ... for the commission of the crime”.⁸¹ Article 35 continues to sanction “anyone who forces children and juveniles under the age of 18 ... to use drugs”. These provisions indicate a clear acknowledgment that individuals below the age of 18 years have less “maturity” or “mental development” than those above the age of 18 years.

48. Other legislative provisions reflect a similar understanding. Article 1 of the Protection of Children and Adolescents Act, of 2002, defines a child as every human being below the age of 18 years old. Furthermore, only an individual over 18 years old can obtain a passport,⁸² vote,⁸³ or obtain a driving licence.

49. In the light of the inconsistencies described, the Special Rapporteur reiterates the recommendations of the Committee on the Rights of the Child to the Islamic Republic of Iran to revise its legislation to increase the age of maturity to 18 years.⁸⁴ In its comments, the Government noted that “the minimum age for criminal liability has been determined through taking into account of the mental and psychological development of children and juveniles, and considering of geographical, cultural, social, religious and racial conditions. When an age is recognized as the minimum age for criminal liability, it indicates that the juvenile, at this age, has reached the level of emotional, mental and psychological maturity that may recognize his/her liability against his/her behaviours. Therefore, the recognition of the minimum age is associated with consideration of the mental maturity of juveniles.”

(b) Legislative developments

50. In 2013, the Penal Code was amended. Article 91 of the amended Code exempts children aged below 18 years and above the age of maturity from the death penalty if it is assessed that they “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”. Article 91 also stipulates 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”.⁸⁵ Following the amendment, child offenders on death row began to apply to the Supreme Court for retrials. Some applications were successful but others were refused. This led to the issuance of a “unifying judicial precedent” by the Supreme Court in 2014 which confirmed that applications for retrials were admissible. In submissions to the Committee on the Rights of the Child, the Islamic Republic of Iran noted that “the retrial of all adolescents who were

⁸⁰ Article 1210, note 1.

⁸¹ Art. 45.

⁸² Passport and Immigration Law, sect. 1, art. 18.

⁸³ Election Law, art. 36.

⁸⁴ CRC/C/15/Add.254, para. 23; and CRC/C/IRN/CO/3-4, paras. 27–28.

⁸⁵ See <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>.

under 18 at the time of committing the crime is accepted and their previous verdicts have been annulled by the Supreme Court”.⁸⁶ However, as will be elaborated on, child offenders face numerous hurdles in relying upon the provisions of article 91 and the executions continue.

C. Efforts and position of the State

51. A number of measures have been put in place relating to child offenders. Most recently, a bill on the protection of children and adolescents was approved by Parliament. It is pending approval by the Guardian Council. The Code of Criminal Procedure provides for the establishment of children’s and adolescents’ courts, comprised of a specialist judge and a qualified adviser with knowledge of child development.⁸⁷ However, if children above the age of maturity (9 lunar years for girls and 15 lunar years for boys) are accused of *qisas* or *hudud* crimes or certain *ta’zir* crimes, they instead face the First Criminal Court’s special adolescents’ division.⁸⁸ Credible information received indicates that in practice this means that the child is tried in the same physical courtroom in which adults are tried.

52. All child offenders executed in 2018 were executed pursuant to a conviction for murder on the basis of *qisas*. In comments received, the Government stated that extensive efforts were made to satisfy the next of kin of the victim through mediation in order to convert *qisas* to *diya*. It further noted that its “principled policy ... is to encourage compromise even with ... cash assistance to realize the payment of the *diyeh*” 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 which supports mediation with the next of kin of the victim. In addition, conflict resolution council branches and the Women and Children and Protection Office of the judiciary intervene in cases. Non-governmental organizations (NGOs) also support mediation and fundraising for payments of *diya*. Notwithstanding such efforts, the 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.

53. In comments received, the Government justified the continuing executions, on the basis that “the duty of the State in this case is merely to examine and deliberate the murder, and execution of the sentence is only possible on the basis of the request of the owners of the blood”. In 2009, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted that no other State in which Islamic law was applicable saw the need to make such an argument to justify the executions of child offenders.⁸⁹ He further noted that article 37 (a) of the Convention on the Rights of the Child and article 6 (5) of the International Covenant on Civil and Political Rights bound the Government to extend the abolition of execution of child offenders to *qisas* crimes.⁹⁰ Furthermore, as noted, this practice deprives the child of his or her right to seek pardon or commutation from the State as enshrined in article 6 (4) of the International Covenant on Civil and Political Rights.

D. Vulnerability and treatment of children in the criminal justice system

54. Child offenders continue to be executed in the Islamic Republic of Iran amidst violations concerning the right to a fair trial, torture and other ill-treatment, and a lack of consideration given to each child’s individual circumstances.

⁸⁶ See CRC/C/IRN/3-4/Add.1.

⁸⁷ Code of Criminal Procedure, arts. 289 and 408.

⁸⁸ *Ibid.*, art. 315.

⁸⁹ A/HRC/11/2, paras. 35–36.

⁹⁰ *Ibid.*

1. Patterns of convictions based upon confessions

55. The sentencing of children to death is particularly alarming, given their specific vulnerability as children amidst documented patterns of violations related to the lack of access to a lawyer and the reliance on confessions obtained through coercion or torture in judicial proceedings.⁹¹ The Convention on the Rights of the Child and the International Covenant on Civil and Political Rights require that a child cannot be compelled to confess guilt or acknowledge guilt.⁹² The Committee on the Rights of the Child further states that children may be led to a confession that is not true because of their age, their development, the length of the interrogation, their lack of understanding, the fear of unknown consequences, or the suggested possibility of imprisonment, as well as the promise of possible release or lighter sanctions.⁹³ The inherent vulnerability of children is further increased because if they are charged with crimes involving the death penalty they cannot choose their own lawyer during the initial investigation phase. They are instead limited to a lawyer approved by the Head of the Judiciary. Information received indicates that numerous children have been convicted on the basis of confessions compelled during this phase. In 2018 for example, Zeinab Sekaanvand was reportedly coerced into confessing that she had killed her husband when she was 17 years old.⁹⁴ She recanted her confession but was nevertheless executed. Alireza Tajiki was executed in 2017, after confessing to murder at the age of 15 after reportedly being tortured. He also later recanted his confession but no investigation was undertaken into his claims.⁹⁵

2. Practices amounting to torture and other ill-treatment

56. The treatment of children on death row is of deep concern. Government representatives have claimed that the Islamic Republic of Iran does not execute children.⁹⁶ In practice, this means that the State imprisons the convicted child on death row for years until they reach the age of 18 and executes them thereafter. Reports received also indicate that the executions of numerous child offenders were repeatedly postponed, often at the last minute.⁹⁷ In this respect, in June 2018 the United Nations High Commissioner for Human Rights raised the case of Abolfazi Chezani Sharahi, a child offender whose execution was postponed four times before his eventual execution.⁹⁸ Similarly, the executions of Alireza Tajiki and Omid Rostami were postponed four times. They were executed in 2017 and 2018 respectively after spending numerous years on death row. The Special Rapporteur is concerned that the combination of circumstances, with respect to repeated postponements, the practice of waiting until the child reaches the age of 18, and the inherent vulnerability of the child given his or her age, inevitably leads to severe mental trauma and physical deterioration.⁹⁹ The Special Rapporteur accordingly contends that the policy and practice of sentencing children to death in the Islamic Republic of Iran amounts to a pattern of torture and other cruel, inhuman, or degrading treatment contrary to the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a party. The Special Rapporteur emphasizes that the way to address this is to immediately prohibit the sentencing of children to death and to commute the death sentences of all child offenders on death row.

3. Circumstances of children sentenced to death

57. Reports received indicate that many children sentenced to death on the basis of *qisas*, along with their families, have lower levels of economic and social standing, education, and

⁹¹ See para. 13 above.

⁹² Convention on the Rights of the Child, art. 40; and International Covenant on Civil and Political Rights, art. 14.

⁹³ See the Committee's general comment No. 10 (2007) on children's rights in juvenile justice, para. 57.

⁹⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23689&LangID=E.

⁹⁵ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21958&LangID=E.

⁹⁶ See the statement made by the Head of the Judiciary in 2014, available at <https://bit.ly/2LE4dGY>.

⁹⁷ A/67/279, para. 48.

⁹⁸ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23279&LangID=E.

⁹⁹ See A/67/279, pp. 9–14 on the “death row phenomenon”.

support networks.¹⁰⁰ Girl child offenders have in some cases faced extreme situations, including forced marriage and domestic violence. However, there is no legislative scope that allows the court to take into account mitigating factors related to the background and circumstances in which the child is living or the conditions in which the offence has been allegedly committed. Two individuals who had married as children were executed in 2018. Mahboubeh Mofidi, who was married at the age of 13, allegedly murdered her husband when she was aged 17.¹⁰¹ Zeinab Sekaanvand, who was married at the age of 15, allegedly murdered her husband when she was aged 17.¹⁰² Ms. Sekaanvand was executed despite no investigation being undertaken into allegations of domestic violence during her marriage. The Special Rapporteur reiterates the recommendation of the Committee on the Rights of the Child that the minimum age of marriage of 13 years for girls and 15 years for boys should be increased to 18 years.¹⁰³

58. The Special Rapporteur notes that the background of the accused child and the circumstances in which the offence was allegedly committed are critical, not only because they should be taken into account by the court, but also because they can hinder attempts to avoid execution by paying for *diya*. Children who have grown up in poverty, for example, are unlikely to be able to afford the *diya* requested (which has no upper limit for *qisas* crimes). The child's life therefore depends upon his or her family being able to attract the attention of NGOs that can help to raise enough money. Such organizations are not present in every province, and poorer families in more remote provinces with less influence, education and awareness face serious challenges. The Special Rapporteur contends that these factors explain why most executed child offenders originate from poorer backgrounds and economically less advantaged provinces.

59. In its comments, the Government stated that according to article 286 of the Code of Criminal Procedure, the preparation of a "personality file" which considered the conditions at the time of offence was mandatory at the time of issuing the verdict. It also stated that the file was prepared separately from the criminal file and included a social worker's report on the defendant's physical, family and social status, as well as medical and psychiatric reports. It further noted that for the purposes of paying *diya*, the "destitution" of the accused was taken into consideration, and that NGOs and social institutions contributed financially.

E. Implementation of article 91 of the Penal Code

1. Overview

60. As noted, the enactment of article 91 of the Penal Code in 2013 allowed judges to exempt children from the death penalty if the judge assessed that the child did 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". In its submission to the Committee on the Rights of the Child in 2015, the Islamic Republic of Iran stated that the previous verdicts of all child offenders would be annulled, pending retrials.¹⁰⁴ In its comments on the present report, the Government stated that "the provisions of the Islamic Penal Code have been effective in reducing the execution of adults under the age of 18 years". Recent reports indicate that the sentences of at least six child offenders were commuted in 2017 following retrials.¹⁰⁵ Executions have however continued. Since article 91 entered into force in 2013, the Special Rapporteur estimates that at least 33 child offenders have been executed,¹⁰⁶ and according to credible information received at least 21 children were sentenced to death on the basis of *qisas*. In 2016, the Committee on the Rights of the Child deplored the fact that

¹⁰⁰ See, for example, Amnesty International, *Growing Up on Death Row* (2016), p. 53, available at www.amnestyusa.org/wp-content/uploads/2017/04/growing_up_on_death_row_-_the_death_penalty_and_juvenile_offenders_in_iran_final.pdf.

¹⁰¹ See www.hrw.org/news/2018/02/07/iran-three-child-offenders-executed.

¹⁰² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23689&LangID=E.

¹⁰³ CRC/C/IRN/CO/3-4, paras. 27–28.

¹⁰⁴ CRC/C/IRN/Q/3-4/Add.1, para. 33.

¹⁰⁵ A/72/322, para. 68.

¹⁰⁶ See para. 38 above.

the executions had continued despite the amendment¹⁰⁷ and in 2017 some special procedure mandate holders described ongoing executions as “conclusive proof of the failure of the 2013 amendments to stop the execution of individuals sentenced to death as children”.¹⁰⁸ In the present section, the Special Rapporteur seeks to explain why article 91 has not been effective in stopping the executions.

2. Inconsistent and arbitrary assessments

61. In 2016, the Committee on the Rights of the Child expressed “serious concern” that decisions to exempt children from death sentences on the basis of article 91 assessments “are under the full discretion of judges”, and strongly urged the Islamic Republic of Iran to remove such discretion from the courts.¹⁰⁹ The discretion given is particularly problematic because the criteria used for assessing “mental development” is undefined and subjective. In some cases, judges reportedly asked simple questions focused on whether the child knew that it was wrong to kill. In other cases, judges considered the child to be “mentally developed” as long as there was no evidence of mental health issues. Judges have also used measures such as assessing whether the defendant has grown body hair to confirm mental development.¹¹⁰

62. In its comments, the Government stated that “the lack of understanding on the side of the defendant, of the nature of the committed crime or existence of doubt in his/her maturity and wisdom are stipulations and the terminology referred to in article 91 shall be carefully observed at the time of the judicial proceedings ...”. The Government further noted that “the legislator, in article 91, approached the acceptance of criminal liability maturity and in a way, it has admitted that adolescent people under the age of 18 could have not reached mentally maturity and do not understand the nature of their act; there is doubt on their growth and perfection of mind; and thus, they may not be subject to *hadd* or *qisas*. Therefore, the reference of the law [to] those terms is important, because it helps the judge to reason on this basis and, instead of imposing severe penalties, such as *hadd* or *qisas*, determine, as per case and their age, the prescribed punishments.”

3. Inconsistent use and provision of expert advice

63. Article 91 of the Penal Code provides that “the court may ask for the opinion of forensic medicine or resort to any other method it sees appropriate in order to establish the full mental development”. The Committee on the Rights of the Child expressed serious concern that judges “are allowed but are not mandated to seek forensic expert opinion”.¹¹¹ In some cases where expert opinion has not been requested, the child has been assessed by the judge as being mentally developed. For example, Omid Rostami, who was convicted of killing someone when he was 16 years of age, was executed in 2018 despite the failure of the District Court and the Supreme Court to request an expert opinion to assess his mental development.

64. When expert advice has been requested, an opinion has been sought from doctors working for the Iranian Legal Medicine Organization, a State institution. On numerous occasions, the Iranian Legal Medicine Organization has undertaken the assessment long after the crime was allegedly committed. Fatemeh Salbehi was convicted of killing her husband in 2008, when she was aged 17. She was sentenced to death and then afforded a retrial pursuant to article 91 in 2013. During the retrial, the Iranian Legal Medicine Organization concluded that she was mentally developed at the time of the crime, which had taken place five years earlier. She was executed. Similarly, child offender Abolfazl Sharahi was assessed as being mature one year after the alleged commission of the offence, and was subsequently executed. The Special Rapporteur suggests that it is impossible for a credible assessment to be made in such circumstances. The Special Rapporteur observes that there is a need to highlight the

¹⁰⁷ CRC/C/IRN/CO/3-4, para. 35.

¹⁰⁸ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E.

¹⁰⁹ CRC/C/IRN/CO/3-4, paras. 35–36.

¹¹⁰ Joint alternative report by civil society organizations, “Rights of the child in Iran”, March 2015, available at https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19809_E.pdf.

¹¹¹ CRC/C/IRN/CO/3-4, paras. 35–36.

extensive evidenced-based research supporting the view that individuals under the age of 18 have a lower level of mental development than adults. Further evidence is available to support this view in Iranian legislation itself, as already noted.¹¹² The Special Rapporteur also observes that article 91 allows for a child offender to be exempted from the death penalty if there is “uncertainty about their full mental development”. This indicates that if there is any doubt whatsoever then the child cannot be sentenced to death.

4. Inconsistent follow-up

65. In some cases, even when the judge has assessed that there is uncertainty as to the mental development of the child, the assessment has been overturned upon appeal and the child has been subsequently sentenced to death. For example, Mohammad Kalhori was initially assessed as not mentally developed at the time of the crime and was sentenced to imprisonment. However the Supreme Court later overturned his sentence and he was sentenced to death during a retrial.¹¹³

5. Inconsistent implementation of retrials

66. Information received by the Special Rapporteur indicates that article 91 has not been effective in sparing children already on death row from execution. One reason for this is that article 91 does not provide for an automatic review of cases. Child offenders on death row or their families must instead submit an application for retrial. As noted, many have lower levels of economic and social standing, education, and support networks, and lower levels of familiarity with their legal rights. In such circumstances, they may not be aware of the possibility of applying for a retrial or may not have the means to do so. In other cases, applications for retrials have been rejected. This trend was highlighted by the predecessor to the current Special Rapporteur, who described how the requests of Zeinab Sekaanvand and three other child offenders had been rejected by the Supreme Court without explanation.¹¹⁴

67. Even when requests for retrial have been accepted, some child offenders have been resentenced to death. The Committee on the Rights of the Child and the predecessor to the current Special Rapporteur expressed concerns in this respect in 2016¹¹⁵ and 2017¹¹⁶ respectively.

6. Assessment of the implementation of article 91

68. The Special Rapporteur has described some fundamental and serious limitations related to the implementation of article 91, while acknowledging that in some cases child offenders have been exempted from the death penalty. The assessment of mental development at the time of the crime is arbitrary and inconsistent, and at the sole discretion of the judge, who can choose whether to seek medical advice or not. The credibility of such assessments is further undermined by the use of inconsistent criteria, particularly when they were conducted years after the crime in question. In some cases the findings of the assessment have been overturned upon appeal in any event. Some requests under article 91 for retrials for child offenders on death row have been rejected. In other cases where retrials have been granted, the child offender has been found to be mentally developed and the death sentence has been upheld.

IV. Conclusions and recommendations

A. Human rights situation

69. The Special Rapporteur observes that the protests in the Islamic Republic of Iran which began in December 2017 reflect long-standing grievances related to human rights,

¹¹² See paras. 46–49 above.

¹¹³ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23216&LangID=E.

¹¹⁴ A/72/322, para. 67.

¹¹⁵ CRC/C/IRN/CO/3-4, paras. 35–36.

¹¹⁶ A/72/322, para. 68.

in particular the enjoyment of economic, cultural and social rights. Positive developments have been noted, such as the amendment to the drug trafficking law which led to a substantial decline in executions. Nevertheless, increasing economic challenges have intensified the grievances. These grievances may be further exacerbated due to the recent reimposition of unilateral sanctions. Discontent has been expressed through disparate protests by different groups across the country. The Government has introduced some measures aimed at mitigating the economic impact but has also increased the limits placed upon the rights to freedom of opinion, expression, assembly, and association. In parallel, ominous developments signal an increasingly severe State response, illustrated by the arrests of lawyers, human rights defenders and labour activists. Their imprisonment undermines the protection of all rights, including the right to a fair trial. This is worrying, given the pattern observed of ill-treatment to coerce confessions during the initial investigation stage and the denial of access to a chosen lawyer during this stage for serious offences. In the meantime, the death penalty continues to be used extensively, including for crimes that do not entail intentional killing.

70. The Special Rapporteur recommends that the Government and Parliament:

(a) Pending abolishment, remove from the scope of the death penalty any offence other than the “most serious crimes”, which are confined to intentional killing, and ensure that all those sentenced to death for other offences have their sentences commuted. Amend legislation to ensure that any person sentenced to death, including on the basis of *qisas*, can seek pardon or commutation from the State;

(b) Ensure that prisoners are protected from all forms of torture and other ill-treatment. Ensure that confessions obtained through such treatment are never admitted as evidence against the accused;

(c) Amend the Penal Code and the Code of Criminal Procedure to ensure that confessions alone are not sufficient for admission of guilt;

(d) Ensure that medical care is urgently provided to those individuals in detention who need it, including those identified in the present report, in light of the imminent threat to life or serious deterioration of their health. Ensure that all individuals in custody receive adequate, prompt and regular health care, including specialist care as needed, on the basis of their informed consent;

(e) Ensure that deaths in custody, and allegations of violations of due process and of ill-treatment are promptly, independently, impartially and effectively investigated by an independent competent authority with a view to bringing those suspected of criminal responsibility to justice in compliance with their right to a fair trial;

(f) Ensure that all persons accused of any crime are assured access to a lawyer of their choosing during all stages of the judicial process, including during the initial investigation and interrogation stage, and are provided with legal aid as needed;

(g) Ensure that all prisoners with health conditions for whom staying in prison would mean an exacerbation of their condition are not detained in prison, and issue alternative sentences if there is no prospect of recovery through the full implementation of article 502 of the Code of Criminal Procedure;

(h) Protect the rights of all persons belonging to religious and ethnic minorities and address all forms of discrimination against them, and release all those imprisoned for having exercised their right to freedom of religion or belief;

(i) Ensure that all those arrested for the peaceful exercise of their rights to freedom of opinion, expression, assembly and association are released. Promptly report to the families the whereabouts and situation of individuals taken into custody;

(j) Ensure that human rights defenders, including women human rights defenders, and lawyers and journalists are not threatened with or subjected to intimidation, harassment, arbitrary arrest, deprivation of liberty or other arbitrary sanction, and release all those detained in connection with their work;

(k) Implement the recommendations reflected in the opinions of the Working Group on Arbitrary Detention, and address patterns of violations highlighted by the Working Group with respect to dual and foreign nationals;

(l) Take all measures necessary to mitigate some of the effects of economic sanctions, and to meet its obligations under the International Covenant on Economic, Social and Cultural Rights, including on the protection of vulnerable groups. Establish a transparent financial mechanism to ensure that trade in medicines and other essential humanitarian items continues.

71. The Special Rapporteur recommends that sanctions-imposing countries take all steps to ensure that sanctions in the Islamic Republic of Iran do not undermine human rights, including by ensuring that humanitarian and procedural safeguards and exemptions prevent a harmful impact on the enjoyment of human rights.

B. Execution of child offenders

72. The Special Rapporteur notes that the execution of child offenders has continued over decades in violation of the international human rights obligations of the Islamic Republic of Iran. Girls as young as 9 and boys as young as 15 can be sentenced to death. The Government's support for mediation efforts to obtain forgiveness for *qisas* crimes, and the enactment of article 91 of the Penal Code, have meant some children have avoided the death penalty. Despite this, at least 21 children have been sentenced to death and 33 child offenders have been executed since the enactment of article 91. These numbers confirm that the content of article 91 is not sufficient and its implementation has not been effective. In numerous cases, the assessment of mental development provided for by article 91 has been conducted years after the crime in question was allegedly committed. Information reviewed indicates that many children sentenced to death have lower levels of economic and social standing, education, and support networks, and in some cases have faced extreme situations including forced marriage and alleged domestic violence. However, the legislation does not allow the court to take into account mitigating factors when considering the death sentence. Furthermore, if *diya* is agreed, children whose families are not as wealthy are less able to "buy" their freedom and depend upon others to find the money to save their lives. Hence the executions continue unabated.

73. The Special Rapporteur recommends that Parliament:

(a) 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;

(b) Withdraw the general reservation to the Convention on the Rights of the Child given that such a general reservation is not compatible with the object and purpose of the Convention;

(c) Amend the Penal Code to increase the age of criminal responsibility for *qisas* and *hudud* crimes to 18 years for all children, and ensure that all children are treated equally and without discrimination within the criminal justice system.

74. The Special Rapporteur recommends that the judiciary:

(a) Urgently halt the planned execution of all child offenders, and commute the death sentences imposed on the basis of *qisas* and *hudud* crimes for all child offenders;

(b) Pending legislative review, urgently issue a circular which requires all judges not to sentence children to death on the basis of *qisas* or *hudud* crimes, and which requires presiding judges to order retrials for all child offenders on death row without recourse to the death penalty.

75. Pending implementation of the aforementioned recommendations, and without prejudice to the binding obligation enshrined in the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights to not sentence children to death and to not execute child offenders, the Special Rapporteur recommends that the judiciary:

(a) Require courts to comprehensively assess mental development in all cases in line with article 91 of the Penal Code, and to always seek expert advice from the relevant child development, psychology, psychiatry, and social service fields as well as from the Iranian Legal Medicine Organization, with a view to ensuring that the child is exempted from the death penalty;

(b) Ensure that any article 91 assessment is conducted on the prima facie basis that there is uncertainty about the mental development of the child, and as such a death sentence cannot be imposed. Ensure that the burden of proof is always on the prosecution to establish complete certainty about the full mental development of the child, in line with article 91. Furthermore, ensure that the child is afforded the benefit of the doubt if the assessment is not undertaken immediately after the crime;

(c) Undertake a prompt, effective and transparent review of all child offenders on death row and ensure that they are afforded legal representation and financial and other needed support to exercise their right to a retrial as provided for by article 91 of the Penal Code;

(d) Ensure that children who have been detained or arrested are interviewed only in the presence of their chosen lawyer, are immediately granted legal aid if needed, and are granted access to a family member of their choice at all times regardless of the offence they are accused of;

(e) When assessing the quality and veracity of testimony or confession offered by the child, ensure that the judge considers all circumstances of interrogation, especially the age of the child as well as the length of detention and interrogation and the presence of legal or other representatives and parents during questioning;

(f) Require that all those who deal with children in the criminal justice system, especially judges, prosecutors, medical examiners, police interrogators and other law enforcement professionals, undergo specialist, ongoing and systematic training on the rights of the child. Such training should inform participants about how to take into account the child's physical, psychological, mental and social development in a manner consistent with the obligations of the Islamic Republic of Iran under international human rights law;

(g) Establish specialist and separate child courts to consider cases involving children, for all crimes including *qisas* and *hudud* crimes, in the first instance and on appeal, in all provinces. Ensure that the judges who preside over such courts, and the prosecutors who are able to bring cases before such courts, have a minimum level of professional qualifications and expert training in child sociology, child psychology and behavioural sciences;

(h) Ensure that the court takes into account the circumstances in which the child is living and the conditions in which any offence has allegedly been committed, including through the preparation, introduction and full consideration of pre-sentence reports. Ensure that the court is informed about all relevant facts about the child, such as social and family background, wealth, education and circumstances of marriage. Ensure that adequate social services capacity has been established to be able to provide such reports and is mandated to provide such advice;

(i) Ensure that detention pending trial is only used as a measure of last resort and for the shortest possible period of time for children accused of any crime, including *qisas* and *hudud* crimes;

(j) Provide the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur with a list of all child offenders on death row.

76. Pending abolition of the death penalty for child offenders, the Special Rapporteur recommends that the Iranian Legal Medicine Organization, and other expert bodies called upon to conduct article 91 assessments:

(a) Conduct assessments that provide a scientific, evidence-based assessment as to whether there is total certainty about the mental development of the child offender at the time of the offence in line with article 91 of the Penal Code. Ensure that such an assessment reflects the findings of assessments by experts from all relevant fields, including the relevant child development, psychology, psychiatry, and social service fields;

(b) Afford the child offender the benefit of the doubt and deliver a finding of uncertainty when absolute certainty cannot be scientifically established, including if the assessment is not conducted immediately after the alleged offence. Establish and publish a methodology to conduct the assessment.
