



Response to the OHCHR Call for Inputs about the Death Penalty

Submitted by **The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty
Abdorrahan Boroumand Center for Human Rights in Iran
Japan Innocence & Death Penalty Information Center
and
Capital Punishment Justice Project
in preparation for

The 2022 supplement to the Secretary-General's quinquennial report on capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty (WCADP), an alliance of more than 150 NGOs, bar associations, local authorities, and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Abdorrahan Boroumand Center for Human Rights in Iran (ABC) is a non-governmental non-profit organization dedicated to the promotion of human rights and democracy in Iran. The Center is an independent organization with no political affiliation. Taking as a starting point the fundamental equality of all human beings, the Center seeks to ensure that human rights in Iran are promoted and protected without discrimination, whether it be on the basis of one's gender, race, religion, ethnicity, or national origin. Guided by the belief that unremedied human rights violations are a major obstacle to the establishment of a stable democracy, the Center is committed to the right of all victims of human rights abuses to justice and public recognition.

The Japan Innocence and Death Penalty Information Center's purpose is: (1) to aid those who have been wrongfully arrested and convicted; (2) to effect positive changes to the Japanese criminal justice system; and (3) to educate the public about the reality of capital punishment and seek its eradication.

Capital Punishment Justice Project (CPJP) stands for a world without the death penalty. CPJP works with our partner organisations, human rights defenders, volunteers, our Board, the Australian public and key stakeholders to develop legal and policy solutions that will help save lives. CPJP is engaged in: providing substantial assistance to persons facing the death penalty in the form of legal expertise, advocacy, assistance and support; carrying out policy work, promoting international law, education and awareness raising work to further abolition of the death penalty and the effective implementation of the Australian Government's Strategy for Abolition of the Death Penalty; hosting and supporting in Australia and the Asia Pacific region training and other initiatives aimed at challenging the death penalty in ways consistent with international law and deepening relationships with anti-death penalty organisations, lawyers and advocates, so as to support their work; and partnering with Monash University to create Eleos Justice, the region's leading academic hub for evidence-based research, policy and clinical casework devoted to restricting and abolishing the death penalty in ways consistent with international law.

This report is also endorsed by FIACAT (The International Federation of Action by Christians for the Abolition of Torture), Center for Prisoners' Rights Japan, and Legal Awareness Watch Pakistan.

EXECUTIVE SUMMARY

1. The authors submit this report in response to an OHCHR request to assist the Secretary-General in his report to the Human Rights Council pursuant to Paragraph 5 of Resolution 22/11¹ and Resolution 18/117.²

I. Several States continue to sentence people to death for crimes committed as juveniles.

A. Iran

2. Since July 1, 2020, the Islamic Republic of Iran has executed at least five alleged juvenile offenders, all for homicide, according to the Abdorrahman Boroumand Center for Human Rights in Iran (hereinafter ABC).
3. The Islamic Penal Code authorizes the death penalty for males older than 15 years and females older than 8 years convicted of murder.³ Justifications offered by Iranian officials regarding such executions are considered by many legal experts inside Iran as gravely at odds with Iran's own history and traditions, existing domestic and international law, and scientific assessments.⁴ Iran schedules executions of juvenile offenders on short notice, reducing people's ability to intervene or protest.⁵
4. A revision to the country's Islamic Penal Code (Article 91) which took effect in June 2013 grants judges discretion—but does not obligate them—to impose alternative punishments if the juvenile offender did not understand the nature of the crime or its consequences, or when their “mental development and maturity” at the time of the crime is in doubt. To this end, judges may solicit a non-binding opinion from a forensic medical expert.
5. Emblematic of the failures of Article 91 reform is the case of Arman Abdolali, executed on November 24, 2021 for a homicide which occurred when he was 17. According to documents obtained by ABC, at his original trial, a juvenile court consultant certified his sufficient mental maturity (so as to disqualify him from an associated defense) without meeting Abdolali or conducting an investigation. The court consultant expressed regret for this fact in a letter to judicial authorities: this disclosure made no difference in the case, however. At a retrial in 2020, the judge solicited an expert opinion to evaluate Abdolali's mental maturity at the time of the crime. This expert conducted investigations, including with Abdolali's former teachers, schoolmates, and coaches, and found that Abdolali had not been mentally mature at the time of the incident. The judge nonetheless rejected the recommendation he himself had sought, declaring that such an evaluation could not be conducted meaningfully seven years after the fact, and Abdolali was again sentenced to death.⁶

¹ UN Human Rights Council Resolution 21/11, ¶ 5, U.N. Doc. A/HRC/Res/21/11 (Apr. 10, 2013).

² UN Human Rights Council Resolution 18/117, U.N. Doc. A/HRC/Res/18/117 (Oct. 17, 2011).

³ Amnesty International, *Iran: Teenager's execution exposes complicity of courts, parliament and doctors in assault on children's rights*, June 29, 2018, available at <https://www.amnesty.org/en/documents/MDE13/8696/2018/en/>.

⁴ See ABC's Report: “Children, Yet Convicted as Adults,” Page 20-30, <https://www.iranrights.org/library/document/3629>

⁵ *Ibid.*

⁶ ABC correspondence with source with knowledge of the case of Arman Abdolali, May 2021.

See also joint statement of UN human rights experts, November 25, 2021,

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27861&LangID=E>.

B. Saudi Arabia

6. The August 2018 Law on Juveniles sets the maximum prison sentence for people under the age of 18 at ten years; however, the law does not eliminate the possibility of death sentences for juveniles charged with crimes punishable by retaliation under Shari'a law (such as murder and infliction of bodily injury).⁷

C. Egypt

7. Egyptian law prohibits the death penalty for any person under the age of 18.⁸ Nonetheless, a loophole in Egyptian law states that when a child is accused of a crime with an adult co-defendant, courts that are not juvenile courts have jurisdiction over the matter, leading juveniles to be tried as adults alongside their co-defendants and sentenced to death.⁹

II. States prohibit imposing the death penalty on pregnant women

8. The authors have been unable to identify any countries that have executed pregnant women since 2020. Domestic law generally prohibits such executions.¹⁰
9. Article 10 of sentence implementation guidelines issued by Iran's Judiciary Chief in June 2019 require that Criminal Verdict Implementation judges issue an order delaying implementation of the capital sentence in the case of pregnant women, so long as they are pregnant. The order should be pursuant to a confirmed opinion from a forensic medical expert. After birth, implementation can be delayed by up to six months, whether or not the child is alive. Implementation of a nursing woman's death sentence can be postponed until the child reaches the age of two.¹¹ Similar provisions are foreseen in Iran's Code of Criminal Procedure (Article 501).¹²

⁷ Amnesty International, *Death Sentences and Executions 2018*, April 2019, available at <https://www.amnesty.org/en/documents/act50/9870/2019/en/>.

⁸ FIDH, *The Death Penalty in Egypt* (April 2005), art. 12, available at <https://www.fidh.org/IMG/pdf/eg415a.pdf> (citing Article 112 of the Law No. 12 of 1996 promulgating the Children's Code); Reprieve, *Stolen Youth: Juveniles, mass trials and the death penalty in Egypt* (Mar. 2018), at 15, available at <https://reprieve.org.uk/wp-content/uploads/2018/03/Stolen-Youth-Juveniles-mass-trials-and-the-death-penalty-in-Egypt-.pdf> (citing Article 11 of Egypt's Child Law). See also Mohamed, Gaber, "Reforming the Death Penalty in Egypt: An Islamic Law Perspective" (Dec. 2017), 28 (Master of Laws Thesis, Indiana University Maurer School of Law), available at <https://www.repository.law.indiana.edu/etd/52/>.

⁹ The National Council for Childhood and Motherhood, *Promulgating the Child Law*, Article 122, Law No. 12 of 1996 amended by Law No. 126 of 2008, available at https://www.unodc.org/res/cld/document/egy/2002/egypt_child_act_english_html/Egypt_Child_Act_English.pdf.

¹⁰ Cornell Center on the Death Penalty Worldwide and World Coalition Against the Death Penalty, "Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty", p.7, September 2018, available at <https://www.deathpenaltyworldwide.org/publication/judged-more-than-her-crime>.

¹¹ "Code of Method for Implementing Sentences of Hodud, Deprivation of Life, Amputation, Qesas of Life and Bodily Organ and Injury, Blood Money, Flogging, Internal Exile, Deportation, Forced Residency, and Prohibition of Residency in Specified Areas", issued June 17, 2019. Text of the guidelines in Persian at Ekhtebar.com: <https://www.ekhtebar.com/%D8%A2%DB%8C%DB%8C%D9%86%E2%80%8C%D9%86%D8%A7%D9%85%D9%87%D9%86%D8%AD%D9%88%D9%87-%D8%A7%D8%AC%D8%B1%D8%A7%DB%8C-%D8%A7%D8%AD%DA%A9%D8%A7%D9%85-%D8%AD%D8%AF%D9%88%D8%AF%D8%8C-%D8%B3%D9%84%D8%A8-%D8%AD/>

¹² Iran's Code of Criminal Procedure, <https://www.iranrights.org/library/document/2683>

10. The Tanzanian Penal Code has a mandatory death penalty for several offenses.¹³ But a pregnant person convicted of an offense punishable with death is sentenced to life imprisonment.¹⁴ Breastfeeding mothers are not exempt from being sentenced to death.¹⁵

III. States continue to impose the death penalty on people with psychosocial and intellectual disabilities.

A. Singapore

11. In February 2022, the government announced that Roslan bin Bakar and Pausi bin Jefridin, both men with low IQs suggestive of some form of intellectual disability, were to be hanged on February 16. During criminal motions, Pausi’s attorney submitted a report stating that his client has an IQ level of 67 and that his restricted education retarded his development of mind. Roslan’s attorney, in turn, presented a report informing the court of his client’s “limited capacity for judgment, decision-making, consequential thinking, impulse control, and executive function.”¹⁶
12. Article 33B(3)(b) of Singapore’s 1973 Misuse of Drugs Act grants the Court the discretion not to impose a death sentence upon an individual if “he or she was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or her acts and omissions in relation to the offence under section 5(1) or 7.”¹⁷ However, while the domestic legal framework addresses the issue of “abnormality of mind” in determining culpability—albeit with significant limitations due to practical challenges to obtaining independent psychiatric or medical assessments—it is silent with respect to whether an individual meets the threshold recognized in other jurisdictions for “competency” to be executed. There is no requirement for a psychiatric or medical assessment to be conducted in advance of a scheduled execution.
13. Courts dismissed the various appeals and motions, but the legal proceedings gave rise to a temporary pause to the planned executions, with Pausi having up to a month to appeal the High Court’s ruling, while a new application joint with 9 other capital defendants was filed on behalf of Roslan and Rosman bin Abdullah on unrelated grounds.
14. The President issued a temporary respite on the executions of both Roslan and Pausi.¹⁸
15. Rosman’s execution was also unable to go ahead on 23 February as a result of his involvement in the application mentioned above. Rosman also had an IQ sufficiently low to evidence

¹³ Penal Code of Tanzania, arts. 39 (treason), 40 (instigating invasion), 196-97 (murder) (1945). Available online at <https://www.refworld.org/docid/3ae6b5de0.html>; Penal Act of Zanzibar, art. 180, Act No. 6 of 2018, Mar. 16, 2018.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Kalidas, A G. 2022. “Halt the Executions of Pausi Jefridin and Roslan Bakar in Singapore”. *Malaysian Bar, Badan Peguam Malaysia*, February 14, 2022, <https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-halt-the-executions-of-pausi-jefridin-and-roslan-bakar-in-singapore#:~:text=Pausi%20is%20a%20Malaysian%20from,reported%20to%20be%20a%20Singaporean.&text=Th%20eir%20executions%20are%20scheduled%20for.executions%20on%209%20February%202022>.

¹⁷ Singapore. 1973. Misuse of Drugs Act 1973. July 7, 1973. Accessed March 17, 2022. <https://sso.agc.gov.sg/Act/MDA1973>.

¹⁸ Constitution of Singapore, Art. 22P(1); Criminal Procedure Code (Singapore), Section 313(h).

intellectual disability, and had previously been assessed with “ADHD symptomatology, low IQ, and stunted emotional development.”

16. The Attorney General subsequently sought punitive costs orders for \$35,000 and \$2,000 against capital defence lawyers for their work in these cases. Courts punish capital defence lawyers for their work, making it virtually impossible to find anyone to represent people on death row. Filing fees to challenge the imposition of the death penalty also act as a barrier to legal representation.
17. Nagaenthran K. Dharmalingam (known as Nagaen) is likely to be executed this year. Nagaen is a 33-year-old man with intellectual disabilities where fresh evidence indicates that he has developed mental illness. Nonetheless, the court determined that his condition is not severe enough to satisfy Article 33B(3)(b).¹⁹ Again, the court did not consider legal arguments of competency for execution.
18. Nagaen’s execution had been scheduled for November 10, 2021, but because he tested positive for COVID-19, and because several arguments had been raised before the court that required determination, the court postponed final decision. A new hearing was scheduled for March 1, 2022.²⁰ To this date, his execution is suspended until further notice, until the five appellate judges confer to render their decision.²¹

B. Iran

19. A source with knowledge of the women’s ward at Lakan Prison in Rasht Province told ABC that a number of women who had received capital sentences for homicide or adultery (later commuted to lengthy prison terms) all displayed signs of psychological disturbance, including self-harm and sadistic behavior. The source reports that psychosocial disability considerations “were not important” in the legal process at the time the verdicts were issued. The source says that the staff psychologist provided no services beyond Narcotics Anonymous meetings.²²

C. Japan

20. In March 2022, the family of Chizuo Matsumoto filed a lawsuit challenging the legality of his July 2018 execution.²³ At the start of his district court trial, Matsumoto shouted some “inaneities,” but thereafter he remained silent through the remainder of the trial and higher court proceedings, refusing even to communicate with his attorneys.²⁴ His family argues that he was “psychologically incompetent” and therefore his execution violated a provision in the Code of

¹⁹ Gopalan, Preetha. 2022. “Save Nagaenthran Dharmalingam the intellectually disabled man on death row: everything you need to know”. Reprieve, February 25, 2022, <https://reprieve.org/uk/2022/02/25/nagaenthran-dharmalingam-singapore-execution/>.

²⁰ *Ibid.*

²¹ Tang, Louisa. 2022. “Court of Appeal reserves judgement over drug trafficker on death row, rebukes defence for last-minute applications”. *Today Online*, March 1, 2022, <https://www.todayonline.com/singapore/court-appeal-reserves-judgement-over-drug-trafficker-death-row-rebukes-defence-last-minute-applications-1831576>.

²² Abdorrahman Boroumand Center interview with source with knowledge of Lakan Prison, March 6, 2022

²³ Japan Innocence and Death Penalty Research Center, *Execution was Illegal! Family of former death row inmate files suit*, Mar. 8, 2022, on file with The Advocates for Human Rights.

²⁴ Japan Innocence and Death Penalty Research Center, *Execution was Illegal! Family of former death row inmate files suit*, Mar. 8, 2022, on file with The Advocates for Human Rights.

Criminal Procedure prohibiting execution of people with psychological disabilities.²⁵ The family contends that the Justice Minister “ignored the legal responsibility of reviewing the extensive psychiatric reports, and ordered the execution haphazardly.”²⁶

IV. States fail to uphold obligations under the Convention on the Rights of the Child

21. As detailed in the coauthors’ 2020 response to the Call for Inputs, when a child abruptly loses a parent as a result of the death penalty, the child is subjected to severe emotional trauma.²⁷

²⁵ Japan Innocence and Death Penalty Research Center, *Execution was Illegal! Family of former death row inmate files suit*, Mar. 8, 2022, on file with The Advocates for Human Rights.

²⁶ Japan Innocence and Death Penalty Research Center, *Execution was Illegal! Family of former death row inmate files suit*, Mar. 8, 2022, on file with The Advocates for Human Rights.

²⁷ The Advocates for Human Rights and the World Coalition Against the Death Penalty, *Response to OHCHR Call for Inputs about the Death Penalty*, 31 March 2020, ¶¶ 16-22, available at <https://www.theadvocatesforhumanrights.org/Publications/Index?id=539>; Quaker United Nations Office (QUNO), *Children of Parents Sentenced to Death*, by Helen F. Kearney (New York, US: Quaker United Nations Office, Feb. 2012), 12.