

Concluding Observations Human Rights Committee CCPR/C/IRN/CO/3 para 16

Full recommendation

The State party should amend the Penal Code to abolish the imposition of corporal punishment by judicial and administrative authorities. The State party should also explicitly prohibit all forms of corporal punishment in child-rearing and education, including by repealing the legal defences for its use in article 1179 of the Civil Code, articles 49 and 59 of the Penal Code and article 7 of the Law on the Protection of Children.

Assessment using Impact Iran human rights indicators¹

A. The Islamic Republic of Iran should amend the Penal Code to abolish the imposition of corporal punishment by judicial and administrative authorities

Article 38 of the Constitution of the Islamic Republic of Iran prohibits torture and other ill-treatment, but only when it is “used to extract an admission of guilt or to obtain information”.² Similarly, Article 578 of the Islamic Penal Code asserts “any civil servant or judicial or non-judicial agent who corporally mistreats and abuses an accused person in order to force him to confess shall be sentenced [...]”.³ Torture and other ill-treatment inflicted on an individual for other purposes is not, therefore, explicitly prohibited. Furthermore, the Iranian legislation does not provide a definition of torture.

The Penal Code of the Islamic Republic of Iran impose corporal punishment for a significant number of crimes. Articles 386 to 416 contain regulations allowing the imposition of a range of punishment under *qesas-e ozv* (retaliation for injured limb or body part).⁴ Such punishments include amputation of limbs, cutting of body parts and blinding. Under Article 278 of the Penal Code, the crime of theft, when meeting certain conditions,⁵ is sentenced with “amputation of the full length of four fingers of the right hand of the thief [...]”.⁶ At least 149 crimes continue to be punishable by flogging in Iran such as: consumption of alcohol, drug

CCPR.7.1.S.1; CCPR.7.1.P.1; CCPR.7.1.O1; CCPR.7.1.O1; CCPR.7.1.O.3

² Constitution of the Islamic Republic of Iran English translation

http://www.iranchamber.com/government/laws/constitution_ch03.php

³ Islamic Penal Code of the Islamic Republic of Iran (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁴ Islamic Penal Code of the Islamic Republic of Iran (2013) as referenced in “Flawed Reforms: Iran’s next Code of Criminal Procedure”, Amnesty International, 2016, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁵ The conditions stipulated under this provision include but are not limited to the following: “The stolen property has a legitimate value”, “the stolen property was placed in herz [a secure place]”, “the thief breached the herz [the secure place]”, and “the theft was not committed in a time of famine” Article 268, Islamic Penal Code of the Islamic Republic of Iran (2013), Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁶ Article 278 Islamic Penal Code of the Islamic Republic of Iran (2013) Islamic Penal Code of the Islamic Republic of Iran, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

use and petty drug dealing, theft, adultery, “flouting” of public morals, illegitimate relationships, and mixing of the sexes in public.⁷

Although in 2002 then-Head of the Judiciary Ayatollah Shahroudi issued a ban on stoning,⁸ it remains as a punishment for act of adultery by a woman and a man who meet the condition of *ehsan*⁹ under the Islamic Penal Code (2013).¹⁰ In 2007, the Iranian judiciary confirmed that a man who had been convicted of adultery 10 years earlier was stoned to death in Qazvin province.¹¹ The practice reportedly further continued despite the issuance of the ban.^{12 13} In 2013 the spokesman for the Iranian Parliament’s Justice Commission confirmed that while the Penal Code no longer prescribes stoning, it remains a valid punishment under *Shari’a* law, which is enforceable under the Penal Code.¹⁴

Iranian authorities have regularly resorted to corporal punishments, in particular flogging. Over 100 flogging sentences and 19 sentences of amputation were issued over the course of 2017.¹⁵ In 2020 the Abdorrahman Boroumand Center documented 160 flogging sentences.^{16 17 18}

Iranian authorities do not systematically or thoroughly release information on corporal punishment sentences or their implementation. Reports of flogging cases rarely appear in the Iranian media, usually from small towns and villages.²⁰

The Human Rights Committee has explicitly stated that flogging, amputation and stoning are not compatible with the International Covenant on Civil and Political Rights (ICCPR).²¹ The text of article 7 of the ICCPR allows for no limitation. Violation of *jus cogens* norms, such as

⁷ For a list of acts punishable by flogging in Iranian law, see: Abdorrahman Boroumand Center <https://www.iranrights.org/library/document/3643>

⁸ European Parliament Report, 2003, <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2003-0334+0+DOC+XML+V0//EN>

⁹ The condition of *ehsan* is described under Article 226 of the 2013 Islamic Penal Code, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

¹⁰ Article 225, Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

¹¹ Radio Farda report: < https://www.radiofarda.com/a/fl_stoning_Iran/401521.html >

¹² Iran Human Rights, <https://iranhr.net/en/articles/603/>

¹³ Radio Farda report: < https://www.radiofarda.com/a/f7_Stoninig_3_men_in_Iran/479480.html >

¹⁴ Mohamadali Esfanani, in an interview with Fars News Agency that Radio Zamaneh reported it: <<https://www.radiozamaneh.com/53576> >

¹⁵ Report of the Special Rapporteur on the human rights situation in the Islamic Republic of Iran, 12 March 2018, <https://undocs.org/A/HRC/37/68>

¹⁶ Abdorrahman Boroumand Center, <https://www.iranrights.org/library/document/3126> ; See also Abdorrahman Boroumand Center, <https://www.iranrights.org/library/document/3270>

¹⁷ See Amnesty International urgent action: <https://www.iranrights.org/library/document/3587>

¹⁸ See Arya News Service, translated by the Abdorrahman Boroumand Center, <https://www.iranrights.org/library/document/3190>

¹⁹ Abdorrahman Boroumand Center, <https://www.iranrights.org/projects/flogging>

²⁰ Joint submission to the Human Rights Committee, Abdorrahman Center, Iran Human Rights Documentation Center (IHRDC), Impact Iran and Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fHCS%2fIRN%2f42313&Lang=en

²¹ UN Human Rights Committee (HRC), CCPR/C/79/Add.85, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/79/Add.85&Lang=en

the prohibition of torture or other ill-treatment, cannot be justified on the basis of inconsistent domestic laws.²²

While it is technically possible to file complaints about violations if individuals are subjected to torture, inhumane treatment or detention, there is, as of now, no evidence that judicial actions are taken in response to complaints. The judicial disciplinary courts, the Armed Forces Judicial Court, the Article 90 Commission of the Parliament and Oversight Bodies for the exercise of the Citizenship Rights in the country's provincial courts are among the institutions tasked with receiving and reviewing complaints. There is as of yet no readily available information as to how many complaints have been made and whether investigations are promptly and impartially undertaken, or whether remedies are made available to victims. Furthermore, the degrading nature of flogging deters many victims from reporting on their cases.²³

B. The Islamic Republic of Iran should also explicitly prohibit all forms of corporal punishment in child-rearing and education, including by repealing the legal defences for its use in article 1179 of the Civil Code, articles 49 and 59 of the Penal Code and article 7 of the Law on the Protection of Children.

Concerning the use of corporal punishment in child-rearing and education, Article 1179 of the Civil Code allows for the 'reasonable punishment of children'.²⁴ The previous version of the Islamic Penal Code (as amended up to 2012) provided for the right of parents or guardians to impose corporal punishment on their children under Article 49 and 59. Such provisions appears now under Article 158 of the 2013 Islamic Penal Code provides for the chastisement of children by parents or guardians within customary and religious limits.²⁵ Article 7 of the previous Law on Protection of Children (2002), prohibited "all kinds of abuse leading to physical, mental or moral damage to the child endangering their physical or mental health" (Article 2) but excluded from this protection actions taken under Article 59 of the Penal Code and Article 1179 of the Civil Code (Article 7).²⁶ On June 7, 2020, the Guardian Council approved a bill amending the Law on Protection of Children which, while including new penalties for certain acts that harm children and adolescents' physical and mental health, does not explicitly prohibit corporal punishment on children.²⁷ Due to this, Iranian law remains in

²² Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 27 September 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/300/93/PDF/N1830093.pdf?OpenElement>

²³ Joint submission to the Human Rights Committee, Abdorrahman Center, Iran Human Rights Documentation Center (IHRDC), Impact Iran and Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICS%2fIRN%2f42313&Lang=en

²⁴ Article 1179 of the Civil Code of the Islamic Republic of Iran as referenced by the Committee on the Rights of the Child (CRC), CRC/C/IRN/CO/3-4, 14 March 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRN%2fCO%2f3-4&Lang=en. The full translation of the Civil Code of the Islamic Republic of Iran is available at Iran Human Rights Documentation Center, <https://iranhrdc.org/the-civil-code-of-the-islamic-republic-of-iran/>

²⁵ Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

²⁶ Law on Protection of Children and Adolescents (2002) as referenced in "Country Report of Iran", Global Initiative to End All Corporal Punishment of Children, https://endcorporalpunishment.org/reports-on-every-state-and-territory/iran/#_ftn1

²⁷ Human Rights Watch, <https://www.hrw.org/news/2020/06/23/iran-child-protection-law-positive-insufficient>

violation of international law as the Human Rights Committee has stated that the prohibition under Article 7 of the ICCPR extends to “corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure”.²⁸

Furthermore, while the 2013 Islamic Penal Code abolishes corporal punishment and flogging of children under the age of 18 years for the crimes under *ta'zir* (discretionary punishment for crimes of which fixed penalties are not provided in Islamic Law)²⁹, it retains the punishment for crimes under *hudud* (fixed punishments prescribed by Islamic Law) and *qesas* (punishment of retribution in kind) for children who have reached the legal age of criminal responsibility (9 lunar years for girls and 15 lunar years for boys).³⁰ In 2016, the Committee on the Rights of the Child raised serious concerns about such crimes carrying sentences “involving torture or cruel or degrading treatment or punishment which have been and continue to be applied to children.”³¹ For example, a 14 year-old boy was sentenced to six months in prison and 30 lashes for stealing pigeons from his neighbor’s roof in February 2013 by a court in Birjan, Khorasan Province. The judge sentenced the boy despite the fact that the pigeons were returned and the plaintiff withdrew his complaint.³² The same year another individual aged 17 years old received 80 lashes on the charge of “drinking alcohol”.³³

Recommendation Status:

This recommendation has **NOT** been implemented.

²⁸ UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, available at:

<https://www.refworld.org/docid/453883fb0.html>

²⁹ Ta'zir crimes are acts that are in violation of *Shari'a* laws and/or the Islamic Government’s regulations. While the punishments for crimes under *hudud* or *qisas* are provided under *Shari'a* law, *taz'ir* crimes do not have codified and fixed penalties under *Shari'a* law, which are determined at the discretion of the Islamic Government .

³⁰ Committee on the Rights of the Child (CRC), CRC/C/IRN/CO/3-4, 14 March 2016,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRN%2fCO%2f3-4&Lang=en

³¹ Committee on the Rights of the Child (CRC), CRC/C/IRN/CO/3-4, 14 March 2016,

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRN%2fCO%2f3-4&Lang=en

³² Abdorrahman Boroumand Center <https://www.iranrights.org/library/document/273>

³³ Abdorrahman Boroumand Center <https://iranrights.org/projects/flogging>