

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/40/67 para 75(d)

Full recommendation:

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: (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.

Assessment using Impact Iran human rights indicators¹

A. the Special Rapporteur recommends that the judiciary ensures 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

Article 35 of the Constitution of Iran grants everyone the right to select a lawyer and states that if a person is unable to do so, arrangements must be made to provide them with legal counsel.² Child defendants are considered under the same criminal legal framework as adults in the Islamic Republic of Iran. State-funded legal aid is available to persons who provide evidence that they do not have the financial means to secure legal representation; however, there is no priority given to or special regime for applications submitted on behalf of children.³ Iranian law recognizes the right to a lawyer for all criminal defendants including child and juvenile defendants,⁴ although there are exceptions and restrictions applied to that right.

With regards to the provision of qualified and independent legal aid at the early stages of the legal proceedings, the new Code of Criminal Procedure (CCP) allows defendants, including child defendants, upon their request, to access a lawyer within the initial investigation phase. The procurator (often called an investigative judge) who oversees the investigation phase is also required to inform the defendant of the right to legal counsel.⁵ In cases where the defendant's guardians cannot afford a lawyer, a public defender will be appointed by the court. Additionally, Article 48 of the CCP permits all criminal defendants, including child and juvenile defendants, to

¹ CCPR.6.5.S.1; CRC.6.1.S.2; CRC.37.4.S.1; CCPR.6.5.P.1; CRC.37.4.P.1; CCPR.37.4.P.2; CCPR.6.5.O.1; CCPR.6.5.O.2; CCPR.37.2.O.2; CRC.37.4.O.2 CCPR.37.4.S.1

² Constitution of Iran, Article 35, <https://irandatportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>, (English translation)

³ Family protection law, Article 5.

⁴ Code of Criminal Procedure, Article 5, <https://bit.ly/2T0Sgja>

⁵ Code of Criminal Procedure, Article 190, <https://bit.ly/2T0Sgja>

“demand the presence of a lawyer from the start of detention.”⁶⁷ However, a Note to Article 48 of the 2015 CCP,⁸ specifies that individuals facing charges for certain offences, including those relating to national security and organized crime, must select their legal counsel from among a limited list of lawyers approved and announced by the Head of the Judiciary at the phase of preliminary investigations.⁹ Such appointment does not guarantee the independence of legal aid for criminal defendants, including child and juvenile defendants. Further, in May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the CCP which would allow the prosecution to delay access to a lawyer for 20 days, with possibility of extension to the whole duration of investigation in cases related to national security, terrorism of financial corruption.^{10 11} Such amendment would severely restrict access to legal counsel during the pre-trial phase, including for child and juvenile defendants.

Although the CCP guarantees the right to free legal assistance for those without adequate financial resources, the applicability of this right is differentiated between the pre-trial and trial phases.¹² For instance, the CCP does not ensure access to free legal assistance during the investigation phase in cases where the accused face charges other than those punishable by severe punishments, such as the death penalty or life imprisonment. As a consequence, safeguards provided in the Iranian legal framework fall short of protecting the accused person’s right to access legal counsel in the pre-trial phase, including for children and juveniles.

With regards to the provision of legal aid to defendants, including child defendants, during the trial phase, the presence of a defence lawyer during a trial is required only for cases in front of the high criminal court. Under Article 415 of the new Criminal Procedure, which specifically deals with juvenile and child defendants, the presence of an attorney is not required in trials for less serious *ta’zir* crimes (i.e. those with discretionary punishments), meaning a public defender would not be provided in such cases. Article 415 also states that in these cases, a parent or the child can conduct the defence.¹³ According to the Iran Human Rights Documentation Center,

⁶ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

⁷ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

⁸ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

⁹ The former CCP had conditioned the presence of a lawyer at the investigative stage on the permission of the judge in cases with a “confidential” aspect, cases where the presence of a party other than defendant would “corrupt” proceedings as determined by the judge, and in national security cases; See the March 17, 2017 report of the UN Special Rapporteur, Asma Jahangir, on fair trial in Iran (<https://undocs.org/en/A/HRC/34/65>)

¹⁰ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

¹¹ Amnesty International, www.amnesty.org/en/documents/mde13/0379/2019/en/ ;

<https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>

¹² Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹³ Code of Criminal Procedure, Article 415, <https://bit.ly/2T0Sgja>

child defendants are frequently charged with these less serious categories of offenses, especially girls accused of prostitution, a crime punishable by flogging. Even in cases where a child defendant is eligible for state funded legal aid, there is no system in place to prioritize attorneys for children.¹⁴

In practice, authorities in Iran frequently restrict or limit access to a lawyer even in situations where it is legally permitted or required. Defendants in national security cases are often denied access to a lawyer in the investigative stage of the judicial process. In the hundreds of cases of individuals arrested for political reasons or suspected for ordinary crimes that the Abdorrahman Boroumand Center has investigated, all detainees were interrogated without the presence of an attorney.¹⁵ Reported cases show a pattern of incarcerated prisoners being subjected to limited or restricted access to legal representation through all stages of the trial process.^{16 17} Such pattern includes cases where children were denied access to legal counsel, notably during the investigation phase, and in some of these cases were sentenced to the death penalty.^{18 19 20}

The Parliament Article 90 Commission is in charge of investigating complaints from citizens made against the operations of the Parliament itself, the executive and the judiciary.²¹ There is no publicly available information on data relating to the number of complaints received and investigated vis-à-vis cases of violations of the rights to fair trial and due process of children in the Islamic Republic of Iran. Additionally, there is little information as to whether children have unhindered access to such complaint mechanism. Under Iranian law, only children over the age of 15, who are legally deemed mature, may bring a case to Iranian courts unassisted.²² However, children under the age of 15 must bring cases through their legal guardians, typically a father who must consent prior to the initiation of legal proceedings, except in cases where the father is the person against whom a complaint is made, or he is unavailable to provide his consent.^{23 24} There is no National Human Rights Institution in the Islamic Republic of Iran that is competent to receive and address complaints of children who have been detained or arrested and

¹⁴ See more: Joint alternative report by civil society organizations on the implementation of the Convention on the Rights of the Child by the Islamic Republic of Iran, 2015,

https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IRN/INT_CRC_NGO_IRN_19809_E.pdf

¹⁵ Abdorrahman Boroumand Center, joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

¹⁶ HRANA <https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>

¹⁷ HRANA <https://www.en-hrana.org/arash-sadegh-golrokh-iraicis-lawyers-access-cases>

¹⁸ See: <https://www.en-hrana.org/juvenile-offender-death-row-ardabil-prison>; <https://www.en-hrana.org/open-letter-kurdish-citizen-fears-for-imprisoned-brothers-life> ; <https://www.en-hrana.org/mohammad-saber-malek-reisi-teenager-became-adult-prison>

¹⁹ OHCHR News, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23689&LangID=E>

²⁰ Amnesty International, <https://www.amnesty.org/en/latest/news/2019/04/iran-two-17-year-old-boys-flogged-and-secretly-executed-in-abhorrent-violation-of-international-law/>

²¹ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

²² Civil Code, art. 1210

²³ Civil Code, art. 1210

²⁴ For example see art. 1172 of the Civil law.

interviewed without the presence of a lawyer, or who have not been granted legal assistance immediately.

In light of the above, the Iranian judiciary has not ensured that children who have been detained or arrested are interviewed only in the presence of their chosen lawyer and/or are immediately granted legal aid if needed.²⁵

B. the Special Rapporteur recommends that the judiciary ensures that children who have been detained or arrested are granted access to a family member of their choice at all times regardless of the offence they are accused of

A number of restrictive provisions under Iranian law prevent relatives of detainees from being informed of the detainees' arrests when deemed "necessary",²⁶ further, relatives cannot inquire about the detainees' whereabouts if it "infringe[s] on the social and familial status of the detainees",²⁷ conditions that are not further defined and seemingly therefore arbitrary. The right of detainees to communicate with and receive visits of family members is restricted under Article 180 of the Prisons Regulations when judicial officials determine that correspondence is not in the interest of a "good trial proceeding", without clarifying what could contravene "good proceedings" and without setting limitation as to the period of restriction.²⁸ Competent judicial authorities can allow correspondence and/or visit during the prohibition period, however such decision does not appear to be subject to review by another official or body. Ultimately this means that judges can, in practice, deprive detainees of their right to have contact with the outside world for an unlimited period of time. Such provisions facilitate the perpetration of enforced disappearances by Iranian authorities. Child offenders in the Islamic Republic of Iran have not been guaranteed access to a family member of their choice at all times regardless of the offence they are accused of.²⁹

Recommendation Status:

This recommendation has **NOT** been implemented.

²⁵ Amnesty International, <https://www.amnesty.org/en/latest/news/2019/04/iran-two-17-year-old-boys-flogged-and-secretly-executed-in-abhorrent-violation-of-international-law/>

²⁶ Article 50 of the revised Code of Criminal Procedure (2015) entitles individuals in custody to inform their relatives of their arrest but permits "judicial officers" to impose restrictions on such right when deemed "necessary", without clarifying when and for how long such restrictions are allowed or specifying a competent official responsible for the approval of such decision. Relatives then must refer to judicial officials.

²⁷ Article 49 of the revised Code of Criminal Procedure (2015) entitles relatives of detainees to inquire about them to the local Office of the Prosecutor, the Provincial Prosecutor, and the Head of the Justice Department in each province but only "to the extent that it does not infringe on the social and familial status of the detainees" without specifying what constitute such infringement.

²⁸ Executive Regulations of the Prisons Organization, 11 December 2005, www.prisons.ir/page-main/fa/0/form/pld77

²⁹ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/12/iran-stop-execution-of-young-man-arrested-at-16-and-forced-to-confess/>