

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

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: 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;

Assessment using Impact Iran human rights indicators¹

- A. The Special Rapporteur recommends that the judiciary: 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.**

The revised Code of Criminal Procedure (CCP), which came into force in 2015, establishes the juvenile court. Article 304 of the new CCP states that “All offences committed by children² and individuals who are under 18 solar years are investigated by the Court for Children and Adolescents.” However, the jurisdiction of such courts does not apply to crimes committed by people under 18 years old which ordinarily, when committed by adults, fall under the jurisdiction of Provincial Criminal Courts.³ These crimes include offences punishable by the death penalty.⁴ In such cases, jurisdiction rests under the special juvenile branches of the relevant Provincial Criminal Court, where proceedings shall be governed by the same juvenile justice regulations as applied to the Court for Children and Adolescents.⁵ According to the Code of Criminal Procedure, the Court for Children and Adolescents does not have jurisdiction of cases where the accused person has reached 18 years old before the start of the proceedings, in which case

¹CCPR.37.4.S.2

CCPR.37.4.P.2

CCPR.37.4. O.2

² Under Note 1 to Article 304 of the new Code of Criminal Procedure, a child is an individual who has not reached the age of puberty as defined in Iran under *Shari'a* as nine lunar years for girls and 15 lunar years for boys.

³ Code of Criminal Procedure, Article 315.

⁴ Crimes which fall under the jurisdiction of the Provincial Criminal Courts include crimes punishable by life imprisonment or amputation; crimes involving forms of physical assault which are punishable by payment of half or more of a full *diya* (blood money); and certain *ta'zir* crimes; political and press crimes which fall under the jurisdiction of Criminal Courts One (Article 302); national security-related offences; *moharebeh* (enmity against God); *efsad-e fel-arz* (corruption on earth); insulting the founder of the Islamic Republic of Iran and the Supreme Leader; and drug-related offences which fall under the jurisdiction of Revolutionary Courts.

⁵ Code of Criminal Procedure, Article 315.

jurisdiction falls under the relevant adult criminal court. The accused person shall enjoy all the privileges applicable to individuals who are tried by the Court for Children and Adolescents.^{6 7}

The Committee on the rights of the Child explicitly stipulated that the “child justice system should apply to all children above the age of criminal responsibility but below the age of 18 years at the time of the commission of the offence.” The Committee further recommended member States “ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence.”⁸

With regards to proceedings, the Special Office of the Prosecutor for Children is assigned to conduct investigations of offences committed by children aged between 15 and 18 years old. However, in cases of *zena* (“adultery” or “fornication”), *lavat* (“male-male anal penetration”), other “offences against decency”, as well as some *ta'zir* offences (those carrying discretionary punishments) and in cases of crimes committed by children under the age of 15, investigations are directly conducted by the court and the judges who preside over the trial.

Iranian law does not prescribe any limit on pretrial detention of defendants under 18. Nor does Iranian law present any procedural safeguards to protect the privacy of child defendants. In addition, there are no separate procedures for initiating investigations, issuing warrants against children, or separating children vulnerable to domestic violence from their parents.

The Iranian judicial system has established several procedural mechanisms to administer juvenile justice. However, the Islamic Republic still lacks a distinctive and comprehensive juvenile justice system that prioritizes the best interest of the child. While there are positive aspects to the new juvenile courts and juvenile branch of the criminal courts, these developments fail to bring Iran’s juvenile justice system in line with the Convention. Neither court system is constructed around the best interest of the child, nor are there any legal provisions requiring judges to take the best interest of the child into account during criminal proceedings.⁹

⁶ Code of Criminal Procedure, Note 2 to Article 304

⁷ See more : Iran Human Rights Documentation Center, https://iranhrdc.org/the-iranian-judiciary-a-complex-and-dysfunctional-system/#_Toc462333474

⁸ General comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, <https://undocs.org/CRC/C/GC/24>

⁹ 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

B. The Special Rapporteur recommends that the judiciary: 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

The Court for Children and Adolescents can convene with one presiding judge and one advisor.¹⁰ The judges serving in the Court are directly appointed by the Head of the Judiciary. They must have at least five years of judicial experience. Other criteria such as their marital status, age, and whether they are parents themselves will be assessed in determining their eligibility for the position.¹¹ The Court will be assigned a number of male and female advisors, who are appointed for a period of two years.¹² If the accused is a girl, at least one of the advisors must be a woman.¹³ There is no specification as to what kind of training judges elected to the Court should receive.

In its 2019 National Report to the Universal Periodic Review, the Government of the Islamic Republic of Iran stated that “human rights training for judges, judicial officers and administrative staff on the rights of the child, the rights of persons with disabilities, the prohibition of torture and ill-treatment and the confronting against domestic violence,” have been conducted, as well as “training courses on citizenship rights for judges, staff and judicial officers” and “sequential specialized sessions on the rights of the child by the National Body on the Convention on the Rights of the Child”.¹⁴ The Government of the Islamic Republic of Iran has not indicated the existence of expert trainings on child sociology, child psychology and behavioural sciences for judges and prosecutors working in the child justice system.

Although the selection process for judges in the child justice system of the Islamic Republic of Iran suggests that judges and prosecutors have a minimum level of professional qualification, there is no readily available information that might suggest that they receive expert training on child sociology, child psychology and behavioural sciences.

Recommendation Status:

This recommendation has been **PARTIALLY** implemented.

¹⁰ Code of Criminal Procedure, 2015, Article 298.

¹¹ Code of Criminal Procedure, Article 409

¹² Code of Criminal Procedure, Article 410

¹³ Code of Criminal Procedure, Article 410

¹⁴ National Report, UPR 2019, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>