

Concluding Observations Committee on the Rights of the Child CRC/C/IRN/CO/3-4 para 34

Full recommendation:

In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party revise its Civil Law accordingly and strengthen its efforts to ensure that this right is appropriately integrated and consistently interpreted and is applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to, and have an impact on, children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving this due weight as a primary consideration.

Assessment using Impact Iran human rights indicators¹

- A. Revise its Civil Law accordingly and strengthen its efforts to ensure the right of the child to have his or her best interests taken as a primary consideration is appropriately integrated and consistently interpreted and is applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to, and have an impact on, children**

Access to justice is guaranteed in Iran under Article 34 of the Constitution, which states that: “It is the indisputable right of every citizen to seek justice by recourse to competent courts. All citizens have the right to access such courts, and no one can be barred from courts to which he has a legal right of recourse.”² According to the Iranian Civil Code, all persons are entitled to civil rights but nobody can utilise and employ these rights unless they possess the legal capacity to do so.³ Only children over the age of 15, who are legally deemed mature, may bring a case to the courts unassisted, however,⁴ all other children need to bring cases through their legal guardian.⁵ The father’s consent is needed to initiate legal proceedings, except where the father is the person against whom a complaint is made or he is unavailable to provide his consent.⁶

¹ CRC.12.2.S.1; CCPR.37.4.S.2

CRC.12.2.P.1; CCPR.37.4.P.2

CRC.12.2.O.1; CCPR.37.4.O.2

² Constitution of the Islamic Republic of Iran, English translation, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

³ Civil Code art. 958.

⁴ Civil Code, art. 1210

⁵ Civil Code, art. 1210

⁶ For example see article 1172 of the Civil law.

Another major obstacle to justice for children in Iran is access to legal aid. The Constitution of Iran (Article 35) 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.⁷ 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.⁸

The new Code of Criminal Procedure (CCP) of 2015, established a new type of court - juvenile court.⁹ Article 304 of the new CCP states that “All offences committed by children¹⁰ and individuals who are under 18 solar years are investigated by the Court for Children and Adolescents.” The juvenile courts are administered by a judge and two judicial advisors with experience in psychology, criminology, social work or education.¹¹ According to the Code of Criminal Procedure, juvenile court judges should be married (preferably with children), have a minimum of 5 years of judicial experience as judges, and have received training (although the type of training is not specified).¹²

General criminal courts still preserve jurisdiction over “serious crimes”, however.¹³ These crimes include offences punishable by at least 10 years imprisonment or the death penalty.¹⁴ In such cases, jurisdiction rests under the special juvenile branches of the relevant Provincial Criminal Court, where proceedings are governed by the same juvenile justice regulations that are applied to the Court for Children and Adolescents.¹⁵ According to the Code of Criminal Procedure, the Court for Children and Adolescents does not have jurisdiction in cases where the accused person has reached 18 years of age before the start of the proceedings, in which case 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.^{16 17}

⁷ Constitution of the Islamic Republic of Iran, art. 35, English translation, available at: <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>.

⁸ Family sponsorship law, Article 5

⁹ Code of Criminal Procedure, art. 294, available at: <http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>.

¹⁰ 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.

¹¹ Code of Criminal Procedure. art. 298, available at: <http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>

¹² Code of Criminal Procedure. 409, available at: <http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>.

¹³ Code of Criminal Procedure, Article 315.

¹⁴ 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.

¹⁵ Code of Criminal Procedure, Article 315.

¹⁶ Code of Criminal Procedure, Note 2 to Article 304

¹⁷ See more : Iran Human Rights Documentation Center, https://iranhrdc.org/the-iranian-judiciary-a-complex-and-dysfunctional-system/#_Toc462333474

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 to “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.”¹⁸

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 is geared toward 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.¹⁹ 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. Iranian law does not prescribe any limit on pretrial detention of defendants under the age of 18. Nor does Iranian law present any procedural safeguards to protect the privacy of child defendants.²⁰

B. Develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving this due weight as a primary consideration

As of February 2020, Iran has not established an independent and impartial National Human Rights Institution which would advise and guide authority figures in the implementation of human rights and treaty bodies such as the Committee on the Rights of the Child. The High Council of Human rights is often mentioned by Iran as being the country’s NHRI, yet this body is a part of the Judiciary of Iran which contradicts standards introduced by the Paris Principles. Similarly, there is no mechanism that deals specifically with children’s rights that also accepts and addresses complaints by children. The National Body for the Convention of the Rights of the Child was established in Iran in 2010, yet this body is also a part of the Ministry of Justice.²¹

In its National Report to the Universal Periodic Review in 2019, the Islamic Republic of Iran reported that it carried out “human rights trainings for judges, judicial officers and administrative staff on the rights of the child, the rights of persons with disabilities, the prohibition of torture and

¹⁸ 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>

¹⁹ Impact Iran submission to the Committee on the Rights of the Child, review of the 3rd and 4th periodic reports of the Islamic Republic of Iran: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=IRN&Lang=EN

²⁰ See more: Impact Iran submission to the Committee on the Rights of the Child, review of the 3rd and 4th periodic reports of the Islamic Republic of Iran:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=IRN&Lang=EN

²¹ For more please see: Impact Iran submission to the Committee on the Rights of the Child, review of the 3rd and 4th periodic reports of the Islamic Republic of Iran:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=IRN&Lang=EN

ill-treatment and the confronting against domestic violence”.²² There is however no readily available information indicating that these trainings include guidance for determining the best interests of the child in every area and for giving these interests primary consideration.

Recommendation Status:

This recommendation has **NOT** been implemented.

²² National Report to the Universal Periodic Review, Islamic Republic of Iran, 2019, <https://undocs.org/A/HRC/WG.6/34/IRN/1>