

Concluding Observations Committee on the Rights of the Child CRC/C/IRN/CO/3-4 para 42

Full recommendation:

In light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party adopt and implement legislation recognising the right of the child to be heard in all relevant legal proceedings by establishing systems and/or procedures for social workers and courts to comply with the principle. It also recommends that the State party conduct programmes and awareness-raising activities to promote the meaningful and effective participation of all children within the family, the community and schools, including within student council bodies, with particular attention to girls and to children in vulnerable situations.

Assessment using Impact Iran indicators¹

A. Adopt and implement legislation recognising the right of the child to be heard in all relevant legal proceedings by establishing systems and/or procedures for social workers and courts to comply with the principle

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

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

¹ Indicators used: CRC.12.2.S.1; CRC.12.2.P.1; CRC.12.2.O.1

² 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

³ Civil Code art. 958.

⁴ Civil Code, art. 1210

⁵ Ibid.

⁶ For example see art. 1172 of the Civil law. The Guardianship of the child is fully explained in this article: Guardianship in Iranian Law, Hakime Mohammadi, Published August 23, 2014, available at <http://mehrkhane.com/fa/news/12585/>

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 criminal procedure code of 2015, established a new type of court - juvenile court.⁹ The juvenile courts are administered by a judge and two judicial advisors with experience in psychology, criminology, social work or education.¹⁰ According to the Criminal Procedure law, 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).¹¹

Under the new criminal procedures, one of the branches of the criminal court system is to be devoted to children and adolescents.¹² Similarly during the initial investigation phase, one of the branches of the office of the prosecutor is appointed to conduct investigations in those cases.¹³ The creation of a special office of prosecutors for juveniles that is in charge of investigating crimes committed by juveniles between the ages of 15 to 18 is a positive improvement, though one legal expert predicts that those offices will only be established in Tehran.¹⁴

The “Law on the Protection of Children and Adolescents”,¹⁵ which had been in consideration within the government’s legislative bodies for over 9 years, was finally passed on June 11, 2020. This law brought a few improvements to the status of children within the context of the judicial system in Iran. Namely it established, through Article 2 of the law, that people under 18 are considered minors before the law.¹⁶ Despite this apparent improvement, Article 25 of the new law makes an exception for crimes that carry *hudud* and *qisas* punishments, which allow for the imposition of the death penalty for juvenile offenders. Additionally, Articles 146 and 147 of the Islamic Penal Code, which set the age of criminal responsibility at the age of a puberty, have yet to be repealed. This means that for cases related to *hudud*, *qisas* and *diyat* the age of criminal responsibility remains at 9 years for girls and 15 years for boys.

The general criminal court still preserves jurisdiction over “serious crimes” – which are offenses punishable by at least 10 years’ imprisonment – and sexual crimes, such as sodomy between two

⁷ Constitution of Iran, art. 35, available at: <http://www.moi.ir/Portal/File/ShowFile.aspx?ID=ab40c7a6-af7d-4634-af93-40f2f3a04acf> (in Farsi) and at: <http://www.servat.unibe.ch/icl/ir00000.html> (English translation).

⁸ Family sponsorship law, Article 5

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

¹⁰ Ibid. art. 298, available at: <http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>

¹¹ Ibid. art. 409, available at: <http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>

¹² Ibid. art. 402, available at: <http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>

¹³ Ibid. 287, available at: <http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>

¹⁴ Iran Human Rights Documentation Center consultation with Iranian lawyer Hossein Raeesi, February 2015.

¹⁵ <http://dotic.ir/news/7053/>

¹⁶ Ibid.

males, adultery, or rape, all of which can carry capital sentences.¹⁷ Under the new Penal Code, a specific sub-branch of the general criminal court, and not the special juvenile court, is designated to have jurisdiction over serious crimes or sexual crimes charged to juveniles.¹⁸

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 18. Nor does Iranian law present any procedural safeguards to protect the privacy of child defendants.²⁰

B. Conduct programmes and awareness-raising activities to promote the meaningful and effective participation of all children within the family, the community and the school, including within student council bodies, with particular attention to girls and to children in vulnerable situations

There are no reports of awareness raising campaigns being conducted to promote children's participation in family relations, in the community and in school.

Recommendation Status:

This recommendation has been **NOT** been implemented.²¹

¹⁷ Code of Criminal Procedure (2014), arts. 306 and 285, available at:

<http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>

¹⁸ Ibid. art.315, available at: <http://www.rooznamehrasmi.ir/Files/Laws/Ghanoon%2093.02.03.pdf>

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 Ibid.

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