

Concluding observations Committee on the Rights of the Child CRC/C/IRN/CO/3-4 para 92(d)

Full recommendation:

Promote alternative measures to detention, such as diversion, probation, mediation, counselling or community service, wherever possible, and ensure that detention is used as a last resort and for the shortest possible period of time and that it is reviewed on a regular basis with a view to withdrawing it.

Assessment using Impact Iran human rights indicators¹

A. The State party should promote alternative measures to detention, such as diversion, probation, mediation, counselling or community service, wherever possible

Article 6 of the Law on the Protection of Children and Adolescents (adopted in April 2020) identifies and details the responsibilities of the institutions responsible for the prevention of crimes as well as for the sentences held against juvenile offenders.² These institutions include the State Welfare Organization, the police, the Ministry of Education, the Ministry of Interior, the Ministry of Labour, and the Ministry of Health. Article 4 of the law mandates the Judiciary to establish an "Office for the Protection of Children and Adolescents" to oversee the implementation of the law.³ There is no readily available information that might suggest that these institutions have been promoting alternative measures to detention.

In its 2019 National Report to the Universal Periodic Review, the Government of the Islamic Republic of Iran gave examples of protections given to children under its revised criminal laws. Regarding alternative measures to detention, the State noted that it applied “a variety of correctional and educational alternatives to incarceration”. These included returning children to their families or “holding” children in “rehabilitation centers for upbringing for a maximum of 5 years”.⁴ The Government also mentions that, in most provinces’ capitals, “Rehabilitation and Training Centers” have been established for convicted juvenile offenders.⁵ The nature of these rehabilitation centres remains rather unclear, but reports indicate that most of them are⁶ Additionally, there is no readily available information as to the circumstances into which children are being ‘held’ in these rehabilitation centres.

¹ CCPR.37.1.S.2; CCPR.37.2.S.1; CCPR.37.2.S.2; CCPR.37.2.P.1; CCPR.37.1.O.1; CCPR.37.2.O.1

² < <https://shenasname.ir/laws/6788> >

³ < <https://shenasname.ir/laws/6788> >

⁴ National Report, UPR 2019, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

⁵ For a history of “Rehabilitation and Training Centers” in Iran, please see: <http://www.madadkar.org/prevention-of-social-damage/history-correcting-and-training-centers.html>

⁶ Iran Human Rights Documentation Center consultation with Iranian lawyer Hossein Raeesi, February 2015

There is no readily available information that might indicate the number of cases where alternative measures to detention have been applied in the Islamic Republic of Iran.

B. The State party should ensure that detention is used as a last resort and for the shortest possible period of time and that it is reviewed on a regular basis with a view to withdrawing it

The Islamic Penal Code (2013)⁷ establishes the age of criminal responsibility at 9 lunar years for girls and 15 lunar years for boys.⁸ However, the age of responsibility for *ta'zir* crimes (crimes for which fixed penalties are not provided in Islamic law and allow judicial discretion as to the sentence imposed) is 18 years for all children. For these crimes, convicted children are sentenced to correctional measures, such as a stay in a rehabilitation centre. In contrast, criminal responsibility for crimes punishable by *hudud* (punishments fixed by God) or *qisas* (punishments or retributions in kind) is maintained at the age of “maturity” that is 9 lunar years for girls and 15 lunar years for boys.

Additionally, the law on the “Protection of Children and Adolescents”,⁹ adopted in June 2020, provides alternative punishments for persons under the age of 18 except for crimes under *qisas* and *hudud*, where the Islamic Penal Code sentences prevails.¹⁰ Under *qisas* and *hudud*, juvenile defendants are subjected to the same legal framework as adult offenders. Although the Penal Code allows judges from any court system some discretion in sentencing for *ta'zir* crimes, the law prescribes no formal form of mitigation for this type of crime based on the age of the offender.

Article 91 of the 2013 Islamic Penal Code allows judges to pronounce alternative sentences in cases of *hudud* or *qisas* crimes where the juveniles “do not realize the nature of the crime committed or its prohibition, or if there is uncertainty about their full mental development, according to their age”.¹¹ The Article further adds that “the court may ask the opinion of forensic medicine or resort to any other method that it sees appropriate in order to establish the full mental development”.¹² In 2019, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran found that the aforementioned assessment of the mental development of

⁷ Article 146 and 147, 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/>

⁸ Civil Code, Article 1210, note 1

⁹ The law adopted on May 12, 2020 : < <https://shenasname.ir/laws/6788> >

¹⁰ Article 25 of the law of “Protection of Children and Adolescents”.

¹¹ 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/>

¹² 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/>.

the accused at the time of the offence was “arbitrary and inconsistent, and at the sole discretion of the judge, who can choose whether to seek medical advice or not”.¹³

In its 2019 National Report to the Universal Periodic Review, the Government of the Islamic Republic of Iran gave examples of protections for children under its revised criminal laws. These include “considering special provisions for differentiating treatment” and “establishing of system of gradual criminal liability”, “using opportunity-creating criminal responses and arranging new legal institutions such as suspension of prosecution, postponement of sentence and suspension of punishment at different stages of the trial”. Such instances may suggest that alternative punishments to imprisonment for children may be considered in certain situations. However, Iranian law does not specifically ensure that detention is used as a last resort and for the shortest possible period of time. In cases of crimes of *hudud* and *qisas*, juvenile defendants are subjected to the same legal framework as adult offenders and therefore may be sentenced for crimes with mandatory punishments, which include imprisonment. The Islamic Penal Code, as revised in 2013, has removed some life imprisonment provisions for children, but the punishment has been retained for crimes such as *moharabeh* and theft as a third offense.¹⁴ There is no readily available information that might indicate the number of children held in detention in the Islamic Republic of Iran. However, NGO reports have shown a pattern of cases of arrests and detention of children that suggest that detention is not considered as a last resort in the Islamic Republic of Iran. Amnesty International reported the arrest and detention of children during and in the aftermath of the November 2019 protests, some of them as young as 10 years old.¹⁵

The Government of the Islamic Republic of Iran stated that the child justice system allows “the possibility of repeated reconsideration of verdicts and court decisions after the issuance of a ruling.” However, the Government does not mention if such review is made on a regular basis and whether it is done with a view to withdrawing the sentence of detention. There is no readily available information that might indicate the number of cases where the sentence of detention was withdrawn after reconsideration.

Recommendation Status:

This recommendation has been **PARTIALLY** implemented.

¹³ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/021/61/PDF/G1902161.pdf?OpenElement>

¹⁴ Islamic Penal Code, 2013, Articles 278 and 375.

¹⁵ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>