

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

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: (c) Undertake a prompt, effective and transparent review of all child offenders on death row and ensure that they are afforded legal representation and financial and other needed support to exercise their right to a retrial as provided for by article 91 of the Penal Code.

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur recommends that the judiciary undertakes a prompt, effective and transparent review of all child offenders on death row

In the January 2020 report, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran wrote that “he continues to monitor the situation of child offenders on death row, and has received information that there are at present at least 100 individuals who have been sentenced to death for crimes committed when they were under 18 years of age”.² Iranian authorities executed 6 juvenile offenders in 2018, 4 in 2019 and 4 in 2020.^{3 4} There is no readily available information that might indicate that the judiciary has undertaken a prompt, effective and transparent review of all child offenders on death row.

Amendments made to the Islamic Penal Code in 2013 allow judges to pronounce alternative sentences in circumstances where the juveniles “do not realise the nature of the crime committed or its prohibition, or if there is uncertainty about their full mental development, according to their age”.⁵ The Article further adds that “the court may ask for the opinion of forensic medicine or resort to any other method that it sees appropriate in order to establish the full mental development [of the accused]”. A number of child offenders on death row requested retrials on the basis of the 2013 amendments, prompting the judiciary to undertake reviews of these cases.

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.2CRC.37.4.O.2

² Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, https://www.ohchr.org/Documents/Countries/IR/Report_of_the_Special_Rapporteur_on_the_situation_of_human_rights_in_the_Islamic_Republic_of_IranA4361.pdf

³ <https://iranhr.net/en/articles/4727>

⁴Iran Human Rights: https://iranhr.net/media/files/Rapport_iran-GB.pdf and https://iranhr.net/media/files/Rapport_iran_2019-GB-BD.pdf

⁵ Article 91, 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/>

However, in 2017, a number of UN special procedure mandate holders considered the ongoing executions of child offenders in the Islamic Republic of Iran as “conclusive proof of the failure of the 2013 amendments to stop the execution of individuals sentenced to death as children”.⁶ 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 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”.⁷ This suggests that reviews of child offenders on death row undertaken following the 2013 amendments of the Islamic Republic are not effective and transparent.

The prohibition on the imposition of the death penalty on children is widely considered to be *jus cogens* under international law and represents a violation of Articles 6(5) of the International Covenant on Civil and Political Rights and 37(a) of the Convention on the Rights of the Child. The Human Rights Committee has explicitly stipulated that the death penalty cannot be imposed if it cannot be proven, beyond a reasonable doubt, that the accused was 18 or older at the time of the offence.⁸

B. The Special Rapporteur recommends that the judiciary ensures that child offenders are afforded legal representation and financial and other needed support to exercise their right to a retrial as provided for by Article 91 of the Penal Code

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.⁹ 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.¹⁰ Iranian law recognizes the right to a lawyer for all criminal defendants including child and juvenile defendants,¹¹ although there are exceptions and restrictions applied to that right, detailed below.

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

⁶ See OHCHR News, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21547&LangID=E

⁷ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F40%2F67&Language=E&DeviceType=Desktop>

⁸ UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html>

⁹ Constitution of Iran, Article 35, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>, (English translation)

¹⁰ Family protection law, Article 5.

¹¹ Code of Criminal Procedure, Article 5, <https://bit.ly/2T0Sgja>

procurator (often called an investigative judge) who oversees the investigation phase is also required to inform the defendant of the right to legal counsel.¹² 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 “demand the presence of a lawyer from the start of detention.”^{13 14} However, a Note to Article 48 of the 2015 CCP,¹⁵ 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.¹⁶ 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.^{17 18} 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.¹⁹ 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's right to access legal counsel in the pre-trial phase, including for 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

¹² Code of Criminal Procedure, Article 190, <https://bit.ly/2T0Sgja>

¹³ 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

¹⁴ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

¹⁵ 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

¹⁶ 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>)

¹⁷ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

¹⁸ 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/>

¹⁹ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

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.²⁰ According to the Iran Human Rights Documentation Center, 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.²¹

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.²² 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.^{23 24} 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 death.^{25 26 27}

The Article 90 Commission of the Parliament is in charge of investigating complaints from citizens made against the operations of the Parliament itself, the executive and the judiciary.²⁸ 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.²⁹ However, children under the age of 15 must bring cases through their legal guardians, typically a

²⁰ Code of Criminal Procedure, Article 415, <https://bit.ly/2T0Sgja>

²¹ 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

²² 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

²³ HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

²⁴ HRANA <<https://www.en-hrana.org/arash-sadegh-golrokh-iraeis-lawyers-access-cases>>

²⁵ 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>>

²⁶ OHCHR News, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23689&LangID=E>

²⁷ Amnesty International, <https://www.amnesty.org/en/latest/news/2019/04/iran-two-17-year-old-boys-flogged-and-secretly-executed-in-aborrent-violation-of-international-law/>

²⁸ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

²⁹ Civil Code, art. 1210

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.^{30 31}

In June 2020, the Iranian Guardian Council passed legislation that, among provisions aimed at protecting children, requires social workers from the State Welfare Organization (SWO) to promptly investigate children in situations of “extreme danger” from abuse, exploitation, or situations resulting in children not being enrolled or present in school.^{32 33} The Government of the Islamic Republic of Iran also established “Special Investigation Branches and Criminal Courts in the Judiciary for the examination of child abuses crimes” and launched an SMS hotline (30003636) for child abuse reports.³⁴ There is no readily available information as to the number of complaints/reports received by these mechanisms or if complaints/reports are promptly investigated and adequately adjudicated.

There is no National Human Rights Institution in the Islamic Republic of Iran that is competent to receive and address complaints of violations of children’s rights.

Child offenders have not been guaranteed legal representation and financial and other needed support in the Islamic Republic of Iran, including to exercise their right to a retrial as provided for by article 91 of the Penal Code.

Recommendation Status:

This recommendation has **NOT** been implemented.

³⁰ Civil Code, art. 1210

³¹ For example see art. 1172 of the Civil law.

³² Human Rights Watch, <https://www.hrw.org/news/2020/06/23/iran-child-protection-law-positive-insufficient>

³³ Parliament of the Islamic Republic of Iran, https://rc.majlis.ir/fa/legal_draft/state/1055680

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