

ACCESS TO JUSTICE FOR CHILDREN: ISLAMIC REPUBLIC OF IRAN

This report was produced by Hossein Raeesi, Legal Advisor to the Iran Human Rights Documentation Center, in February 2015 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.

I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant international instruments in the national legal system?

Iran has signed and ratified the CRC, with reservations.¹ On 20 February 1994, the *Majlis* (Parliament) passed legislation as follows: “The [UN] Convention on the Rights of the Child which consists of an introduction and 54 items (attached) has been ratified [by the Parliament] and the Islamic Republic is allowed to join the Convention provided that if at any time or for any reason its content should contradict civic laws or Islamic standards, the Islamic Republic of Iran is not obligated to adhere to it”.²

According to the Iranian Civil Code, treaty provisions which have been concluded in accordance with the Constitution between Iran and other governments have the force of law.³ Therefore, the provisions of the CRC are binding as law. However, the conditions set forth by Iran on the ratification of the CRC make enforcement of the CRC’s provisions legally difficult.

As at the date of this report, Iran has signed but not ratified the CRC Optional Protocol on children in armed conflict,⁴ and has acceded to the CRC Optional Protocol on the sale of children,⁵ both without conditions.

B. Does the CRC take precedence over national law?

No. Although legally speaking they are to be considered at the same level, in practice, according to Article 4 of the Iranian Constitution, all laws based on Shi’a Islamic criteria take precedence.

C. Has the CRC been incorporated into national law?

Treaties that have been concluded between Iran and other governments have the force of law,⁶ and therefore are automatically incorporated into domestic law. However, Iran maintains a reservation to the CRC that it will not apply any CRC provisions that are

¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

² The law allowing ratification of the CRC and text of the CRC document, available at: <http://rc.majlis.ir/fa/law/show/92374>.

³ Civil Code of the Islamic Republic of Iran, 1928, Article 9, available at: <http://rc.majlis.ir/fa/law/show/97937>.

⁴

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en.

⁵

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en.

⁶ Civil Code of the Islamic Republic of Iran, 1928, Article 9.

incompatible with Islamic laws (see part I.A above).⁷

Iran has adopted some legislation to implement the CRC. For example, in some special child- and youth-based trial cases, the Criminal Procedure Code and other relevant legal articles refer to the special treatment of children and youth at hearings, based on the CRC. According to Articles 219 to 231 of the Criminal Procedure Code of both General Criminal and Revolutionary Courts in Iran, ratified in 1999/2000, and Articles 407 to 418 of the recent Criminal Procedure Code ratified in 2013/2014, CRC provisions have, generally speaking, been incorporated, but not into laws of significance. For example, the possibility of retaliatory punishment of children under the age of 18 have not been outlawed. Moreover, we do not see a complete incorporation of the provisions on education, health, or political, economic, social and cultural rights of children in Iran.

D. Can the CRC be directly enforced in the courts?

Yes, legally the provisions of the CRC are enforceable. But in practice they are, so far, not judicially considered as law. There is not enough legal support for the provisions in the system and some of the provisions are basically nullified due to their contradiction of domestic laws.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

There are no examples. Practically, courts do not use them.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

In Iran's legal system, redressing any abuse, crime, or maltreatment experienced by children is possible, but follows a general framework which makes no specific provision for children. Most laws pertaining to children are based on religious jurisprudence. Children's rights will only be upheld if they are not in conflict with Islamic law. In the case of their child having been the victim of a crime, the parents can apply to a prosecutor's office for criminal proceedings to be initiated. If the case is not of a criminal nature, a civil or quasi-judicial case can be brought by the individual child (depending on his/her age and maturity), his/her legal guardian, or lawyer to defend the child's rights.

B. If so, are children of any age permitted to bring these cases by themselves in their own name/on their own behalf, or must the cases be brought by or with the assistance of a representative?

Children under the age of 15 are generally required to present their cases through a legal representative. To obtain documentation pertaining to the child's level of maturity and, in turn, the possibility of presenting his/her case to the court requires meeting certain conditions. In certain cases where a child under the age of 15 has to represent him/herself in a family court, there exists a system whereby proof of maturity can be

⁷ https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en#EndDec.

obtained, on condition that it is accepted by the court.

Under Article 1235 of the Civil Code, the child's guardian represents the child in all legal affairs. Articles 1180 and 1181 of the Civil Code give the right of guardianship over a child to the father or the paternal grandfather. Mothers are entitled to guardianship after the father and after the paternal grandfather. In her absence, it is up to the child's relatives to uphold his/her rights. In case none of the above guardians exist, it is the public prosecutor of the city who, through the guardianship division of the city's office of the judicature, takes on the responsibility of defending and demanding enforcement of the rights of the child. Moreover, for those children in immediate need of guardianship, the court can appoint a temporary guardian to follow up the case in court.

C. In the case of infants and young children, how would cases typically be brought?

In such cases, children must be represented by their legal guardian (see part II.B above).

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Children have the right to appoint their own lawyers in all criminal cases. But should they not be able to do so, they will be given a court-appointed attorney. According to Article 220 of the Law of Penal Judgment of the Public Court of Iran, which was passed in September 1999, and Article 415 of the new Law of Penal Judgment passed in 2013/2014, the right of a child to his/her own attorney is guaranteed. Moreover, according to the above articles a child cannot be summoned or arrested for questioning about an alleged crime unless and until the parents have been notified. If the child's parents are not available, the attorney will be notified.

In non-criminal cases, if a person cannot afford a lawyer and can prove this fact they can access legal aid. Any person who is unable to afford court costs can request the court to waive costs. If the court is satisfied with witness testimonies (about the claimant's financial situation), or if a claimant is covered under assistance from an organisation such as the Imam Khomeini Relief Foundation⁸ or the State Welfare Organization of Iran, then the court will relieve the claimant from paying court costs and/or will appoint the claimant a pro bono lawyer.

The Iranian Bar Association has court-appointed lawyers to deal with children's cases. In general, however, neither the lawyers nor the judges have the necessary sensitivity to consider the child's interests in these cases.

E. Are there any conditions or limits on children or chosen legal representatives bringing cases (e.g. would a child's parents or guardian have to agree to a case being brought)?

In criminal cases where the child is the victim of a crime it is possible to present the case without the permission of the child's legal guardian (father or paternal grandfather). In civil cases, the permission of the child's legal guardian is required except: (1) in the absence of a natural guardian (father or paternal grandfather); or (2) in a case where the natural guardian has violated the right of the child, and the court has

⁸ http://www.emdad.ir/index_en.asp.

been convinced of this violation, which results in the annulment of the natural guardianship. In such cases the public prosecutor, with the help of the guardianship division of the office of the judicator, and through family courts will appoint another guardian for the child. This appointed guardian can legally present the child's case to court.

Generally speaking, however, in Iran's legal system parents have an enormous amount of leverage regarding their children and changing this situation proves to be very difficult within the legal system. In practice, it is rare that a mother, who has been granted guardianship of the child through the court, can defend her child against any violations. In cases where the mother has not been granted guardianship of her child, and where the father is either the perpetrator or does not show interest in the defence of his child's rights, it becomes almost impossible in practice to challenge such violations in court. In the case of a child's murder by his/her father, the matter can be brought to court, but the possibility of punishing or sentencing the father (or paternal grandfather) in such cases is non-existent as, according to Article 305 of the Islamic Penal Code, the father and paternal grandfather are exempt from punishment. In Iran a father can very seriously put a stop to any such court proceedings.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Legal challenges in criminal and civil cases must involve a case of a victim, and follow their respective laws. In Iran, it is not mandatory to have a lawyer in any civil cases as well as in some criminal cases.

Criminal violations are brought forward to the office of the public prosecutor in the city in which the crime takes place. The prosecutor is the one who defends the child victim against the defendant. But non-supervised or ill-supervised children may not get a chance to present their cases to the court and not much can usually be done on their behalf.

In civil and family cases, the petition forms can be filled out and presented to the court by the child, his/her legal representative or guardian with acceptable reasons, as per court requirements. The case is then followed up by the child's legal representative and/or their guardian if the child is under 15, or by the child him/herself if he/she is over 15 or if the court accepts the child's maturity level as being over 15, in order to demand restitution for the violation.

In administrative law, public actions can be challenged through the Administrative Justice Court. The constitutionality of a law cannot be challenged unless the issue arises in a case.

B. What powers would courts have to review these violations, and what remedies could they offer?

Civil courts may order restitution for violations in individual cases. The Administrative Justice Court may revoke an order.

Courts are obliged to adhere to Iranian laws and do not have any power to overturn legislation. For example, if a set of divorced parents has a dispute over their child's expenses, and if the child lives with his/her mother, the court has no choice but to force the father to pay for the child's expenses, even if the mother is financially more able to do so. This is because, according to law, in all circumstances it is the duty of the father or paternal grandfather to cover the child's expenses.

- C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Generally, in Iranian courts an individual victim has to be named for the case to be brought forward and followed up. In case a collective order is passed that affects a number of people, it is possible for anyone to challenge the order and ask the Administrative Justice Court to revoke the order. This can be done with no mention of a particular victim.

- D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Collective complaints are possible, only if every member of the group and the exact nature of the group's claim or each member's claim is identified. In case a claim is contingent upon the rights of others, it is possible to present the claim jointly to one court.

- E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

The recent Law of Penal Judgment allows children's rights organisations to act as plaintiff on behalf of children under their protection, provided they obtain authorisation to do so from the Ministry of Justice. This authorises these organisations to follow the child's file and claim through the court system.

Under Article 66 of the new criminal procedure law, which will enter into force on 21 June 2015, some non-governmental organisations that are authorised by the Iranian judiciary can intervene in cases on behalf of children. It remains to be seen whether this new provision will be implemented.

IV. Practical considerations Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

- A. Venue: In what courts could a case be filed (e.g. civil, criminal, administrative, etc.)? What would the initial filing process entail?

See part III.A above.

Criminal cases must be filed and followed up in the place/city in which the crime occurred. A civil claim must be filed in the city/town of the plaintiff's residence, with some exceptions.

- B. Legal aid / Court costs: Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e. would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

Legal aid is offered to those who have sufficient proof of their inability to afford a lawyer, regardless of the importance of the case or its likelihood of success. Children are not prioritised. If a person is not eligible for free or subsidised legal aid and still chooses to be represented by a lawyer, the person or their family must pay for the lawyer.

- C. Pro bono / Financing: If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

It is possible to use pro bono lawyers or obtain assistance from an organisation such as the Imam Khomeini Relief Foundation,⁹ but no priority exists for children. Any individual, including a child, who meets the financial criteria can benefit from the services of a pro bono lawyer (*Moaazedati*) or in penal cases can be given a court-appointed lawyer. However, it is not culturally common to be represented by a lawyer.

- D. Timing: How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

There are statutes of limitations for criminal cases; the limitation period will depend on the crime. For example, embezzlement cases cannot be re-opened in criminal courts after a 10-year lapse, whereas for rape or any "crime against Allah" (*Hodud*), there is no limitation period and therefore a case can be brought to court at any time. Civil or family cases can be presented to court at any time, therefore an adult can make a claim regarding his/her rights that have been violated during childhood. Moreover, there is no limitation period for bringing cases where financial rights and/or compensation for monetary damages are concerned.

- E. Evidence: What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

According to Iranian law the hierarchy of evidence as proof of a violation in criminal and civil cases is as follows: confession to a crime; testimony of two male witnesses; official documentation; ordinary documentation; oath; and judge's knowledge/information (criminal cases only). Other important sources of evidence are trusted police reports, expert testimonies, coroner's reports, etc.

⁹ http://www.emdad.ir/index_en.asp.

Collecting evidence for children's criminal files is no different to that of adults. It is, however, possible to ask for and get permission for the purpose of collecting evidence, if needed. Recently some limitations have been placed on the police in cases of children's files. Any investigation and inquiry regarding children's files is left to the courts.¹⁰ With the passing of the recent Law of Penal Judgment, all children under 15 must have a private file (*shakhsiat*).¹¹

Articles 285-287 and 296-315 of the new criminal procedure law allows for more child-friendly procedures, like giving testimonies in separate rooms. Children under 15 are not asked to take an oath, whereas children over 15 are considered adults due to Shari'a law.

- F. Resolution: How long might it take to get a decision from the court as to whether there has been a violation?

When dealing with children's criminal cases, Iran's Law of Penal Judgment does not make any reference to whether these cases should be expedited or not. But due to the fact that children's criminal files are directly dealt with in the court,¹² preliminary investigation of these cases is naturally cut short and their files are dealt with at greater speed. In criminal cases, after the trial has concluded, the judge must announce the final verdict within a week.

- G. Appeal: What are the possibilities for appealing a decision to a higher court?

An appeal process is possible in all cases. The only exceptions are penal cases with jail sentences of less than 3 months and civil cases with fines of less than 3,000,000 Rials. All other cases can be appealed in the Court of Appeals. For sentences of death or life imprisonment the appeal application must be presented to the Supreme Court. This process is not free of charge. To waive court costs one must follow the process described in part II.D above. The Juvenile Courts follow the same procedure for children.

- H. Impact: What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Iran's legal system is based on the civil law system in which a decision of the court is pertinent only to the particular case in question and has no long-term legal impact.

Political backlash from a positive decision is possible. In particular, in cases where a decision is contrary to Islamic law, the backlash comes from hard line clergy, backed by the regime. The fear of political repercussions is a big reason behind the decrease in positive court decisions and maintaining the status quo.

- I. Follow up: What other concerns or challenges might be anticipated in enforcing a positive decision?

¹⁰ Law of Penal Judgment, passed in March 2014, Article 286.

¹¹ Law of Penal Judgment, passed in March 2014, Article 66.

¹² Law of Penal Judgment, passed in March 2014, Article 285.

Enforcing a positive decision can involve writing expert legal articles, media involvement, and legal advocacy. Concerns and challenges of doing so are being charged with blasphemy and crime and propaganda against the state. Essentially, enforcing a positive decision can mean challenging the existing law, which often means challenging “God’s laws”.

It is possible that the group of fundamentalists in the *Majlis* would push to limit the power of judges in Iran. The *Majlis* can pass laws that could limit the recurrence of a decision contrary to their liking or to Shari’a law. As long as the rights of children are directly tied in with Islamic laws, any positive step in a contrary direction would have repercussions.

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Legal framework for protecting children’s rights

Since the 1979 Islamic Revolution Shari’a law has been the sole source of legislation in Iran. The Iranian Constitution is bound by its allegiance to Shari’a law, which ultimately is the source of any human rights recognition, formation and legislation. The rights of children have seriously suffered under these conditions. Currently there is no specific system or structure for the rights of the child in Iran and what had been established prior to the 1979 Revolution, such as the juvenile courts, is no longer in effect. In the arena of the rights of the child, there exists a set of sparse laws that do not stand alone as children’s rights laws.

The most significant steps taken towards the promotion and protection of children’s rights in Iran have been signing the CRC, the Child and Youth Protection Bill, and the Child Protection Act for Unsupervised or Ill-supervised Minors. The Child and Youth Protection Bill signed into law on 16 December 2002, which is a brief eight-item bill, is among the very few laws that have been legislated exclusively for the protection of children from abuse. This law, nevertheless, does not cover all dimensions of protection and makes reference to only a few child abuse issues. Furthermore, the above legislation covers only a fraction of the rights of the child in Iran and cannot protect children in all circumstances. An example is the legislation that allows a man to marry his step-daughter.

Courts in Iran do not have much authority when it comes to the rights of the child. The reason for this is that there is no reference to the CRC or any other international human rights documents in the country’s judicial system. And although there is no legal prohibition for the courts to uphold the rights of the child, it is easier for the court system to sidestep the issue altogether. This practice frees the courts of Iran from having to fight, hinder or put a stop to the country’s anti-child rights laws. Moreover, these child-unfriendly laws can only be changed by the *Majlis*.

Age of majority and criminal responsibility

The Iran Constitution’s dedication to upholding Islamic laws has placed the age of majority in Iran at the lowest in the world. Moreover, there exists a clear discrepancy

between the rights of girls and boys in the country.¹³ According to the Civil Code, the age of majority is nine years for girls and 15 years for boys.¹⁴ For the purposes of criminal responsibility, the Penal Code bases its definition of the child on the age of majority under the Civil Code.¹⁵ Therefore, nine-year-old girls and 15-year-old boys are criminally responsible and subject to the laws of *Hudud* (crimes punishable with fixed and severe punishments) and *Qisas* (retribution punishment). Furthermore, underage marriage, which is directly influenced by Shari'a law, is one of the most significant factors that paves the way for the violation of the rights of the child.

The Committee on the Rights of the Child has expressed its deep concern that the age of majority set by Iran implies that boys from 15 to 18 years and girls from 9 to 18 years are not covered by the provisions and principles of the CRC, and has urged Iran to review its legislation so that the age of majority is set at 18 years of age.¹⁶

Juvenile justice

There is no independent criminal procedure law or code specifically for children in Iran. Grounds used by judges and the police to prove criminal wrongdoing are the same for adult and child offenders alike.

The Law of Penal Judgment (*Aeen Dadrasy Keifari*) in Iran has made the establishment of the Young Offenders Court possible.¹⁷ According to Articles 219 to 231 of the Public and Revolutionary Courts' penal judgment law, every District Court, and if required, one or more branches of public courts are assigned to process all children's crimes. A more recent (but similar) law, which is expected to be implemented shortly, indicates that preliminary investigation in the case of children's criminal files must be implemented only by prosecutors/assistant prosecutors or the examining magistrates.¹⁸ Articles 408 to 417 refer to procedural steps of the Young Offenders Courts with respect to interviewing, interrogating and questioning of child witnesses.

However, despite the fact that juvenile courts have been in existence for some time in Iran, children accused of serious charges are still tried in adult courts and handed heavy sentences. To this day it is possible for any child charged with murder or rape to receive a death sentence. In the last few years we have been witness to numerous counts of death sentences for children in Iran. The Committee on the Rights of the Child has urged Iran to take the necessary steps to suspend death sentences and abolish the death penalty for persons who committed crimes as children.¹⁹

¹³ Constitution of the Islamic Republic of Iran, Article 4.

¹⁴ According to Article 1210 of the Civil Code of Iran, legislated in 1934/1935, the legal age of adulthood is 18 years. But immediately after the Islamic Revolution, the first parliament (*Majlis*) was obliged to change those articles that the Guardian Council (*Shoraye Negahban*) did not deem as corresponding to Islamic laws. One such article was Article 1210 of the Civil Code.

¹⁵ New Penal Code, Article 147.

¹⁶ UN Committee on the Rights of the Child, Concluding observations on the second periodic report of the Islamic Republic of Iran, CRC/C/15/Add.254, 31 March 2005, paras 22-23. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.254&Lang=en.

¹⁷ Regulatory Code on the Prisons and Security and Disciplinary Measures Organization, passed on 11 December 2005, Article 17.

¹⁸ Criminal Procedure Law, Articles 285-287.

¹⁹ *Ibid.*, paras 30, 73.

Best interests of the child principle

Article 45 of the Family Protection Law states that, when making a decision, the court is obliged, at all times, to take into consideration the best interests of the child. This provision must be cited in court for the benefit of children. However, since all laws governing Iranian family courts are based on Islamic laws, one cannot expect these courts to observe and be bound by any international standards. Therefore, in spite of the abovementioned provision, courts do not in practice take into consideration the best interests of the child at all times.

Challenges for civil society

In spite of the initiatives taken on child protection laws as well as the establishment of children's rights organisations in Iran, such as the National Body on CRC by the Ministry of Justice, protection of the rights of children is mostly upheld by individuals and grassroots organisations. Grassroots child protection organisations, independent children's rights activists, and lawyers working with child protection issues in Iran face difficulties standing up to national security structures and laws. Whenever the interpretation of a child protection case requires any deviation from Islamic law, the judicial and security systems in Iran are quick to oppose the children's rights defenders, accusing them of offending the laws of Islam and/or disregarding Shari'a law. For example, in cases where children are facing the death penalty, it is common for judges to dismiss references to Article 37 of the CRC on the basis that the laws of the country are clear with regard to this issue.

Other issues

Other important factors that will help uphold the rights of the child are immediate inquiry and investigation of individual cases of violations, the assistance of a pro bono lawyer, and inadmissibility of all evidence collected without the presence of the child's lawyer.

This report is provided for educational and informational purposes only and should not be construed as legal advice.