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The report been provided by the Committee of the rights of the child, (Isfahan's Lawyers' association of Isfahan Department of justice's) to the Human Right's Council, .

In the field of:

The problems of carrying out "Convention of the rights of the child 1998" in Iran

Abstract:

1. This report is been provided by the secretary of Human Rights' Commission" and the responsible of "The rights of the child committee" at the Isfahan Lawyers' association. At the end of the report you may find the annexes which have been numbered.

2. The Parliament of Islamic republic of Iran, in Mars 1993, has approved "the convention of the right of the child" but with some conditions. Since 12 August 1994, the regulations of this convention are to be respected by Iran.

According to the ninth article of Iranian civil code, the contents of this convention are considered as the civil law and according to the forth article of this convention, Iran is obliged to put into practice the necessary legal and administrative actions or steps towards achieving the known rights in this convention.

3. In spite of what has been indicated in the article No. 3, there are many serious obscurities and problems in performing this convention in Iran. These problems and obscurities are issued as the result of the manner of joining the Islamic republic of Iran, on the conditions which by themselves they are generally ambiguous.

There is an anxiety that lack of performing the regulations of this convention, with reference to general reservation not only is not suitable with the real aims and goals of the convention's regulations and its dominant spirit, but also is to be considered inconsistent with its regulations.

4. After joining Iran to this convention, there have been some positive approaches regarding enactment of some regulations on giving protection to the rights of children. Anyhow, it should not ignore the aim and the object of the convention's regulations, by way of performing its previous domestic regulations while from the viewpoint of human rights and international principals it has been joined to the convention.

5. The recommendation and practicable technique is that:

Firstly, Iranian government should clearly assign and suggest the proofs and certain cases of convention regulations which are not accepted by the Islamic tradition (Shariee) by way of preparing and providing a bill to the Islamic parliament of Iran. Secondly, the Human Rights Council should provide a summary of experiences and

approaches of other Islamic countries in interaction with the convention, especially in relation with the implementation of the reservation to the Iranian representatives

6. There is a concern that in spite of Iran approving the principles of the convention, continuation of current status or in the other words having ambiguity on some of the articles of the convention by the Iranian government provide a situation that may cause to Iran's accusation of not respecting the whole convention or even invalidation of Iran's joining to the convention.

It should be considered which of the articles are leading to the lack of legal recognition of principal of Iran's incorporation.

Introduction of the organization:

7. Isfahan's lawyers' association is an organization corporative non- governmental and non- politic, which has been working since 1996. Its main activities are on the base of organizing the profession of attorney ship, performing the laws, justices, achieving to the equitable judgment, training the lawyers and trying to improve the laws by way of cooperating with the authorities and legislators, along with the other lawyers' associations in Iran, by way of providing suggestions and techniques, especially to the parliament of Iran. In Iran establishment of the lawyers' association doesn't need the permission of the council of states (the cabinet), as in the law been approved by the Iranian parliament, it is permitted that in each division of provincial courts, in which the number of its lawyers reaches at the limit of 60 lawyers, in that division, they can establish an independent lawyers' association. The lawyers' association does not profit by the governmental budget, but they pay their expenses through the payments of the lawyers which are the official members or trainers. At the moment, Isfahan Lawyers' association has 1268 lawyers and 435 trainers as the members. There are different divisions in this organization and one of the most important ones is its human rights commission which has formed a commission of the rights of children.

Methodology

8. In order to provide this report, different methods have been considered such as, the method of legal and social study, the method of qualitative research and the use of research finding, including bibliotheca resources , investigating international and civic laws and referring to the media archive.

In this regard the base of the work has been the regulations of the convention of the child and the other international regulation in regard to the children and also civic laws and regulations.

The other method been considered is comparison and juxtaposition of the international regulations with civic laws.

History

9. In some of the international documents regarding to the rights of children, specially, Universal Declaration of Child Right dating 20 November 1959, there is a specific international attention to this point that the child must be benefited by a series of rights and liberties, until as a result of its respecting, the child and its society both can benefit of the advantages of this rights and liberties. Since the representative of Iranian government had attended in the meeting of UN general assembly dated 20 November 1959 and also has announced his positive vote, therefore we can say that historically Iran has shown its interest and its positive approach in regard to the respecting the World's Standards of the right of the child. As it has been mentioned in the beginning of the declaration, all the governments officially have recognized the basis and should respect the rights been notified in that, by way of enacting some laws and regulations. Iranian government also has approved and performed some laws and regulations according to the basis of this declaration. Along with the political transformations and as a result, Islamic Revolution in Iran in 1979, this process didn't continue as before. While Islamic Republic of Iran has joined the Convention on the Rights of the Child in 1994 with five years delay. The method of joining to this convention, by means of performing general reservation indicates Iran's hesitation in performing the contents of conventions' regulations, because of its contradictions with the civic laws and Islamic Shariee. Considering the fact that in the contemporary Iran, basically in view of the constitutional laws, the regulations are enacted and performed on the basis of Islamic rules and principals, it is clear that many of the regulations of this convention do not agree with the religious perception and interpretation, therefore they cannot be approved and performed. Besides, Islamic parliament of Iran, before approving this convention, extensive reservation_ , have been worried about that and has put forward some questions to the Guardian Council of the constitutional law, about accordance or non-concordance of the convention with the religious regulations. Guardian Council in its theory numbering576 dated 1998, clearly has declared the cases which do not agree with the religious basic. It is interesting to know that yet in the viewpoint of the Guardian Council, article 37- A of the convention, concerning the prohibition of the execution of the children under 18 years old is left in suspense.

Existing conditions and laws' approach

10. Although Iran's ratification of the basis of the Convention is a positive approach, but with the reservation that Iran made while signing the Convention makes it impossible to fully and accurately assess Iran's observation or failure to observe the regulations of the Convention. It is natural that by obliging to domestic regulations or Islamic laws can be the excuses for not applying the regulations of the Convention based on general reservation or reservation. Therefore the difficulty of the situation will become further clear when in the Islamic laws there are various views and interpretation on a specific matter, such as the age of criminal responsibility in the religious laws views that is based on religious adolescence (puberty), and puberty age differs in boys and girls, and they differ according the Shia and Sunni interpretations. In this case from the theoretic perspective for determining who is deemed a child, the implementation of the Convention in Iran wholly depends on the gender and religious denomination on one

hand and the views of the custodians of religious laws on the other. Clause 1 of article 1210 of the Iranian Civil Code states that boys maturity age is 15 lunar years and girls 9 lunar years. This law is based on the famous opinions of Shia clerics regarding religious puberty and observant to religious duties that has been stated in the Civil Code. Nevertheless, firstly: non-Shia Iranians in their personal matters can apply their own religious laws and in local courts in Sunni populated areas, their denomination's laws apply to them. Secondly: Some Shia clergy in Iran have determined 13 full lunar years as the age of puberty (maturehood) of girls, but due the aforementioned clause in the aforementioned article, the courts cannot accept the views of this group of clergies. Thirdly, passport regulations, banking laws, general duties regulations, laws on official notary or registry offices, traffic and licensing, all deem individuals below the age of 18 as children and these individuals cannot leave the country without permission, or open their own bank accounts, do national service, drive or sign official documents. Fourthly and most importantly in clause 1 of article 49 of the Islamic Penal Code of the Iranian criminal laws originates from the Civil Code with regards to age of adolescence according to Sharia law, and deems individuals above the age of child as adults.

11. Comparison of Iran with other countries with regards to reservations makes it clear that most countries that have ratified the Convention with reservation or interpretative declaration, by making exact reference to a particular article from the 54 articles, they specify the reason for the reservation.

As well as Iran, Djibouti, Pakistan, Qatar, Saudi Arabia, Syria, and Tanzania have made reservations or interpretative declaration without making any reference to a particular article. In 1997 Pakistan revoked its general reservation. As well as applying general reservations, Singapore and Brunei have made specific reservations on some articles and not accepted them.

12. Although according to Article 19 of the Vienna Convention on the Law of Treaties that was adopted in 1969 and entered into force in 1980: "A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless: (a) the reservation is prohibited by the treaty; (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or (c) in cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty." There are a number of observations here however, first of all that international human rights treaties are compiled following common international norms and member states do not have specific interests at heart. The aim in the ratification of an international human rights treaty is not to set a balance between rights and concessions, but the purpose is to make a commitment that leans on common norms of mankind, and from this aspect it differs with other international treaties. The result is that the system and how reservations are applied in international human rights treaties will differ with other international treaties. In these types of normalizing treaties, the emphasis is on the individual interests of the members and the preservation of a complete treaty balance is in vain, Because in the existence logic of a human rights convention is solid on common human norms. Paragraph 2 of Article 51 of the Convention on the Rights of the Child and also the International Court of Justice in consultative vote on the Genocide Convention is solid on this basis.

13. The second point to make is the defining of a reservation, be it general or extensive, whether minor or comment on specific article must not be in contradiction with the main objectives and intentions of the convention. In the internal laws of Islamic countries, including Iran the reservation is contrary to the substance of the signing of treaty and causes the annulment of the treaty. Obscure reservations or general reservations or contradictory to the main objective of the convention must not cause the annulment of the signing of the convention, within the international human rights treaty mechanism. These type of reservations or declarations which take place while a country joins a convention, must not be done with the non-membership and acceptance of the member country. The conclusion is that despite its general reservation, Iran is a member of the Rights of the Child Convention.

14. According to article 4 of the Iranian Constitution, all the legal approaches of the country are religious or Sharia approaches, and the determination whether a legislation is in conformity with Sharia laws or not is the responsibility of the religious scholars in the Guardian Council. Of course laws that had existed through the approval of the Shah's parliament prior to the approval of the Constitution and the formation of the Islamic Republic of Iran, for as long as did not get deemed as void by the Guardian Council, are still in effect. Also article 9 of the Iranian Civil Code states that all the conventions that Iran has signed with other countries are still in effect and also the international conventions that Iran joined before and after the Islamic Revolution are on principle done with a customary approach and on the basis of today's mankind's logic and wisdom and without the interference of the Sharia element. This might raise the problem that that how can customary laws coexist and conform with Sharia laws in such way so that the legal system becomes applicable and practical. Naturally this difficult task is the responsibility of the legislative power and the Guardian Council.

Going concerns

15. The concern that there is the extent and the generality of Iran's reservations on the Convention would case the lack of full ratification by Iran. Two of Iran's reservation, one the non-conformity with Iranian laws, and the international procedure in the laws of treaties is based on being in conformity with domestic laws on the treaty regulations, and not stress on internal regulations. Naturally the aim of joining a treaty is to set up new legal principles in the domestic system. Otherwise joining an international treaty is meaningless. Iran's second reservation when signing the convention is based on points that are in conflict with Islamic Sharia law, and the way in which this reservation has been made it means that it stands the same in the future. This means if in the future other points of the convention are deemed as in conflict with Sharia law, then these cases shall not be applicable by Iran. This reservation is because of the diverse and wide-ranging definitions that exist in Sharia, something very confusing. Another concern is that Iran's general reservation will cause slowness in the preparation of suitable legislations process, that conform to the contents of the convention in the least form process. Furthermore with relying to the general reservation, the Islamic Parliament may deem it unnecessary to amend domestic laws and legislate laws in proportion with the convention. The outcome of this situation will be Iran's failure to comply with the convention's contents.

Of course there are cases in the convention such as paragraph 1 of article 37 are part of the international order norms and even if a country does not join the convention, this article cannot be ignored. In its consultative opinion the Guardian Council has not deemed it as contrary to Sharia law. Meanwhile the concern exists that treaties that Iran has joined in view of article 9 of its Civil Code can either overall or in the Rights of the Child Convention specifically be faced with Iran's general or extensive reservation.

Recommendations

16. The UPR on Iran is a good opportunity for the Council and Iran to put into debate the human rights outcomes and consequences and restrictions that Iran is faced with in implementing the Convention. These restrictions are clearly due to the way in which Iran has joined the Convention in the form of having reservations, the observation of which becomes dependent on the reservations. The Iranian legislative bodying should review the way in which it has reasoned the way in which Iran has joined the Convention, and must announce the specific instances where the Convention contradicts Islamic Sharia Law.

18. We recommend the Council to make use of and benefit the experiences of other countries, the experiences of Islamic countries in particular in the way the Convention is utilized within their domestic laws, and make this information available to Iran.

18. It is necessary to make sure that steps are made for coordination between Iranian laws and justice mechanisms with the Convention for the purpose full protection of the rights of children. This coordination should be done particularly with those types of articles that are like article 37a of the Convention.