



## INSIGHTIRAN

### **Follow-up Report Submitted to the UN Committee on the Rights of the Child in Relation to the Written Replies of the Islamic Republic of Iran**

**71st Session of the Committee on the Rights of the Child  
Geneva, January 2016**

1. Insight Iran would like to thank the United Nations Committee on the Rights of the Child (the “Committee”) for this opportunity to provide further information on the replies of the Islamic republic of Iran (IRI) to the List of Issues distributed by the Committee in June 2015. Our current submission is not an attempt to cover all of the IRI’s replies and only addresses a limited number of replies relevant to the areas covered in our main submission. We hope the Committee will find the following information helpful to its work.

#### **Question 1**

##### **The General Reservation to the CRC:**

2. In relation to the general reservation to the CRC, the IRI has replied “no cases of incompatibility of the text of the Convention with Islamic standards and domestic law of the country have been reported to the executive bodies and organizations.” This, if true, only implies that no such system of ‘reporting’ is in place. This clearly has no implication for the ‘existence’ of such conflicts, which was the subject matter of the question. Cases of incompatibilities, whether ‘reported’ or not, do ‘exist’ in the IRI’s laws, and more often rise within legislation or judicial settings. As it was stressed in our main submission, the IRI’s reservation to the CRC makes Islamic Shari’a law supreme and the CRC inferior. It is clear that the IRI still refuse to specify which parts the Convention they deem to be incompatible with Islamic Laws.

#### **Question 3**

##### **The Definition of Child and Minimum Age for Criminal Liability**

3. In their replies (paragraphs 11-16), the IRI has listed a number of laws where child is defined as a person under 18 years old. However, this is not true where such definition matters most, e.g. in criminal justice system. Article 146 of the new Islamic Penal Code 2013 (IPC) instead of referring to children, refers to ‘immature individuals’ and article 147 continues to set the age of 9 for girls and 15 for boys (based on the lunar calendar) as the age of criminal liability. The new IPC makes no change as of its formulation and its recognition as the minimum age of criminal responsibility. The age of maturity under Islamic Shari’a is still the definitive criterion for criminal responsibility under the penal regime of the IRI. This formulation

allows girls as young as 8 years and 9 months of age and boys of 14 years and 7 months to be held criminally responsible. This is clearly a low and discriminatory standard.

4. In their replies, the IRI have relied heavily on the changes made to the IPC in relation to *ta'zir* crimes (paras 16 and 29). As it was stressed in our submission, there have been some desirable changes in respect to *ta'zir* punishments. However, this does not change the fact that in the case of the commission of the crimes punishable by *hudud* and *qisas*, children may still be sentenced to inhuman and degrading punishments including the death penalty and flogging.

## Question 6

### The Death Penalty

5. The IRI have described *qisas* (retribution) as 'a personal right' reserved for the family of the murdered. There is, therefore, no disagreement on the side of the IRI that, if a child (a girl over 8 years and 9 months old or a boy over 14 years and 7 months old at the time of the commission of the crime) is convicted of murder, they will be sentenced to *qisas* i.e. the death penalty. Their life, in fact, will be in the hands of the family of the victim.
6. The same is true in relation to *hudud* crimes. That is, if a child over the age of majority is convicted of any of *hudud* crimes he or she will be sentenced to the same penalties as adult offenders.
7. As it was explained in our main submission, in a seemingly progressive move, article 91 of the new Code, may, in special conditions, exempt such children and juveniles from *hudud* and *qisas* punishments and provide correctional measures instead. The IRI have attempted (in paras 29-31) to sell this provision as the ultimate solution to this manifest incompatibility with the CRC.
8. However, this is subject to the discretion of the judge and does not completely solve the problem. Moreover, it is extremely unlikely that the court decides that, for example, a 15-year-old does not understand the prohibition of murder or sexual relations out of marriage. This has been put to test in numerous cases, where, with the exception of some extreme cases, the reliance on article 91 has proved fruitless. In such cases when a boy or girl under the age of 18 is convicted of murder, if according to the opinion of the judge, he or she understands the nature of the crime, and, forensic experts confirms his or her mental development, he or she may be sentenced to *qisas* (the death penalty).
9. Unlike what the IRI have claimed, the court's investigation of the mental development of juvenile offenders is usually done through basic questioning, the purpose of which is clearly to establish the ability to distinguish between good and evil. This is a much lower standard that totally ignores the international standard of complete abolition of the death penalty, without ifs and buts, for all people under 18 years old.
10. So, contrary to what the IRI assert, the death penalty (*qisas*) for people under 18 years old is still a strong prospect for such offenders. Similarly, in the case of *hudud* crimes such as rape, certain cases of illicit sexual relationship (*zina*) and sodomy (*livat*), it is still possible for child and juvenile offenders to be sentenced to the death penalty. The new IPC does not ban juvenile execution in absolute terms and leaves the door open for such possibility.

### Question 7

#### Honour Killing

11. The Committee had questioned the IRI with regard to honour killing and articles 301 and 612 of the 2013 of the IPC. The IRI's response to this question is unhelpful and better described as an 'escape from responding'.
12. As it was explained in detail in our submission, according to Shi'a jurisprudence as reflected in the IPC, a father, and any male paternal ascendant (e.g. father's father), if murder his child shall not be sentenced to *qisas* [retribution], but only to *ta'zir* punishment and *diya* [blood money]. According to article 301 of the new IPC: "*Qisas* shall be delivered only if the perpetrator is not the father, or a paternal grandfather, of the victim ...".
13. In such cases, which are usually cases of honour killing, the father may only be sentenced to between three to ten years of imprisonment for disturbing the public order (article 612 of the IPC). What is significant here is that the punishment of the father under article 612 is not mandatory, but left at the discretion of the judge. This means that the judge is under no obligation to punish the murderer. If the judge considers appropriate, he may sentence the father a very light sentence or even release him without any punishment.
14. Such provisions are rightly seen by some commentators as impunity for fathers and paternal grandfathers to kill their children and grandchildren without facing any serious sanction. Article 302, combined with 612, send a wrong signal to fathers that they may get away with killing their children.

### Question 8

#### Discrimination Between Boys and Girls

15. In paragraphs 41-44 of the IRI's replies, they have listed a number of provisions, which, in their view, ban all forms of sex discrimination. This is far from reality. As it has been explained in more detail that the IRI's laws discriminate between boys and girls in many areas including compensation for bodily injuries (art 560 IPC). So, for example, if someone causes a 6 year old boy to go blind in both eyes, he would be given full *diya* equal to an adult man, while a 6 year old girl, if incurring the same injury, would only be given half of the full *diya*, and this is not payable from the Fund for Compensation of Bodily Harms.
16. Moreover as mentioned above, the IRI's definition of a child and, subsequently, the minimum age is based on sex discrimination. The Committee in its 2005 Concluding Observations had urged the IRI to make the age of majority and minimum age requirements "gender neutral". The Committee's recommendation has been totally ignored by the IRI when they adopted the new Penal Code in 2013.

### Question 12

#### Corporal Punishment Under the IPC

17. The IRI, in paragraphs 80-82 of their replies, have clearly diverted the Committee's question to *ta'zir* crime. This is while the Committee's question was on the type of punishment regardless of the type of the crime. The question was whether children were punishable by corporal punishments such as flogging or amputation of limbs. The IRI has escaped answering this question by only commenting on *ta'zir* crimes. Their honest answer should have included statements on *hudud* and *qisas* crimes as well. In fact corporal punishments are mainly given for *hudud* and *qisas* crimes. The answer to the Committee's question is simply

“YES”. Subject to the same rules of criminal liability as explained earlier, under the IPC children can be sentenced to corporal punishments such as flogging (e.g. for drinking alcohol, or some forms of homosexual acts), stoning (for some cases of *zina*, i.e. out of marriage sex), and amputation of limbs (e.g. for theft).

### Question 13

#### Chastisement of Children

18. As it was explained in full detail in our submission, according to article 158(d) of the IPC committing a conduct which is considered by law as an offense, shall not be punished in the following cases: “... (d) The acts committed by parents and legal guardians of minors and insane people in order to chastise or protect them provided that such actions are exercised within the customary and religious limits for chastisement and protection.” The problem is that “customary” and “religious” limits are too vague. They may vary from case to case and do not comply with international standards.
19. The IR’s response (Para 84) simply confirms this issue. They admit that “specifying whether parents’ behavior is typical depends on the custom of various regions of the country with different ethnic and religious groups. In this regard, custom is inherently something dynamic and variable.” This is exactly what the IPC should have avoided and what the Committee has rightly raised concern about. The law fails to provide any clear criteria for unlawful acts and leaves it to parents and custom.

#### About Us

Insight Iran is an independent, non-governmental, non-profit organization dedicated to the promotion of human rights in Iran. We are committed to provide direct insight into, and accurate understanding of, the situation of human rights in Iran, while our ultimate goal is for changes to be made to laws, policies and practice in Iran in compliance with the standards guaranteed under international human rights instruments. To that end we conduct in-depth research, publish reports, engage in international advocacy, and make submissions to, *inter alia*, the UN bodies and Special Procedures.

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