

# Insight Iran

Alternative Report Submitted to the UN Committee on the Rights of the Child for Consideration of the Third Periodic Report of the Islamic Republic of Iran

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**71st Pre Sessional Working Group, June 2015**



**INSIGHTIRAN**

February 2015

## 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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## INSIGHTIRAN

### **Alternative Report Submitted to the UN Committee on the Rights of the Child For Consideration of the Third Periodic Report of the Islamic Republic of Iran 71st Pre Sessional Working Group, June 2015**

#### **Introduction**

1. Insight Iran would like to thank the United Nations Committee on the Rights of the Child (the “Committee”) for this opportunity to provide information on the compliance of the Islamic republic of Iran (IRI) with the Convention on the Rights of the Child (CRC). Our submission is complementary to the alternative reports written by our colleague NGOs and not an attempt to cover all of the instances in which the IRI’s criminal justice system raises concerns under the CRC.
2. The IRI continues to breach its obligations under the CRC and has failed to change its laws and practices in accordance with the CRC principles such as non-discrimination (art. 2), best interest of the child (art. 3), and right to life, survival and development (art. 6). These rights are at higher risk under certain circumstances, including when a child becomes subject to criminal law, whether as an offender or victim. In the both scenarios, there must be special judicial procedures and legal safeguards for children, distinguished from the criminal system designed for adults, which complies with international standards and the obligations of the IRI under the CRC and other international human rights instruments. It is evident that the whole criminal justice system in Iran, despite some developments, is far from international standards and when it comes to children it fails to comply with the IRI’s international obligations.
3. Moreover, the IRI’s reservation to the CRC narrows the scope of the Convention impermissibly and makes Islamic Shari’a law supreme. By seeking to limit its obligations only as far as they are consistent with Shari’a law, the IRI has demonstrated an unwillingness to ensure respect for rights and protection for children.
4. The purpose of this submission is to examine the situations in which a child becomes involved in the criminal justice system in Iran. In sum, it examines the IRI’s criminal justice system when dealing with crimes committed by, and against, children. The analysis has been arranged in the same order as of the clusters of the CRC. In addition, references have been made to the relevant articles of the Convention in the beginning of each section. Moreover, at the end of each section, a number of recommendations have been made that the Committee

might find helpful when preparing its recommendations to the IRI. All of the recommendations have also been put together and can be found in the first Annex.

5. It must be explained that the current submission is based on the latest developments in the criminal laws of the IRI. The IRI adopted the new Islamic Penal Code (IPC) in 2013, which repealed Books one to four of the Old Penal Code and contains some changes in respect of children, while keeping most of the problematic and discriminatory old rules. For the ease of reference, an accurate translation of the relevant articles of the IPC has been added to the submission, which can be found in the second Annex. It is also worth mentioning that the new Criminal procedure Code 2013 is adopted; however, its coming into force has been suspended at the time this submission was prepared.
6. We hope the Committee will find the following information helpful to its work.

### **1. Age of Majority and Criminal Responsibility (arts. 1, 2, and 40(3))**

7. According to international rules, including the CRC and the Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice), every human being under the age of eighteen years old is considered to be a child and the age of 18 is the standard age of entering into majority and full criminal responsibility. It is also established that the states have limited discretion to set a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. (Article 40 of the CRC)
8. The problem that arises in the IRI, and perhaps with some other Islamic states, is the contradiction between, on the one hand, the internationally accepted notion of “child” and age of criminal responsibility and, on the other hand, the age of maturity under Islamic Shari’a. In Islamic sources, reaching the age of maturity is deemed to be the point of leaving childhood and becoming an adult which results in full criminal responsibility. Additionally, in none of the Islamic schools is the age of maturity under Islamic Shari’a in complete conformity with the age of 18 as enshrined in international instruments and the age varies for boys and girls.
9. What is striking in the old and new Penal Code is that it includes an article that exempts immature children from criminal responsibility: according to article 146 of the new IPC “Immature children have no criminal responsibility”. Also, article 148 of the same law provides only correctional and security measures for immature offenders. Similarly, according to article 49 of the old IPC, “children” were exempted from criminal responsibility and, therefore, Correction and Rehabilitation Centers were in charge of correcting measures.
10. However, ignoring the internationally accepted definition of the child, the same laws define a child as an individual who has not reached the age of maturity under Islamic Shari’a. The only difference between the old and new Code is that, the old Code was silent on how old is “the age of maturity under Islamic Shari’a”, and, in practice, it arguably referred back to the Civil Code (article 1210) which sets 9 lunar years (8 years and 9 months) for girls and 15 lunar years (14 years and 7 months) for boys as the age of maturity.<sup>1</sup> The new Penal Code has addressed this flaw and given this matter a separate article. Article 147 of the new IPC fixes the age of 9 lunar years for girls and 15 lunar years for boys as the age of maturity.

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<sup>1</sup> Proving maturity even before the aforementioned ages is possible under Islamic Shari’a on the basis of other physical signs. For example it is possible that a boy under the age of 15 is deemed as having attained maturity under Islamic Shari’a, if he is capable of producing sperm.

11. Despite the mandatory nature of the Penal Code, there have been many legal and religious disagreements about the age of maturity and criminal responsibility. Some Islamic jurists held different views on the age of maturity—for example some proposed the age of 13 lunar years for maturity of girls. Ayatollah Yousef Sane'i, for example, set the age of maturity for girls at 13 years old and not 9 years old. But the Penal Code has followed the fatwa by the majority of conservative clerics who deem 9 years to be the age of maturity for girls. The majority of lawyers have also believed that recognition of criminal responsibility for a girl of 8 years and 9 months old and a boy of 14 years and 7 months old is wrong, out-dated, and conflicts with the modern needs of society. In addition, the Committee had urged the IRI to set the age of majority at 18 and increase its minimum age requirements in accordance with international standards.<sup>2</sup>
12. It was, therefore, expected that the new IPC would address such criticisms and take a step forward. However, while the new IPC stipulates the age of maturity, it makes no change as of its formulation and its recognition as the minimum age of criminal responsibility. In their third Periodic Report to the CRC, the IRI authorities have alleged that “[t]he absolute criminal age has [been] increased to 18 years”<sup>3</sup> and that the new IPC no longer follows “the religious majority criterion”<sup>4</sup>. These assertions are completely untrue. The age of maturity under Islamic Shari’a is still the definitive criterion for criminal responsibility under the penal regime of the IRI; and fatwas (i.e. religious opinions) and recommendations which offered older ages are completely dismissed. So in fact, the hope that the minimum age of criminal responsibility would be changed (i.e. increased) in the new IPC is lost. 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 clearly is a low and discriminatory standard.

- a. Low Standard

13. The law age of criminal responsibility in Iran has been subject to legal and practical criticisms: while the minimum age for many legal affairs such as the application for a driver’s license, obtaining a passport, and/or signing a deed, etc. is 18 years old, and people under the age of 18 years old are not considered as meeting the physical, mental and rational requirements for these acts, those same people, if they commit a crime, will be treated as an adult with full criminal responsibility. This is more considerable for girls as they are deemed of full criminal responsibility as soon as they become 8 years and nine months.
14. While the determination of a child’s minimum age of criminal responsibility falls within the provenance of State Parties, it should not be “unreasonably low”.<sup>5</sup> Referring to the facts of emotional, mental and intellectual maturity, the Beijing Rules stresses that the beginning of the age of criminal responsibility should not be fixed “at too low an age level.”<sup>6</sup> More specifically, a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable.”<sup>7</sup> Therefore, the age of criminal responsibility in the Iranian criminal system, particularly for girls (8 years and 9 months) is “too low” and well below the international standard.

<sup>2</sup> Committee on the Rights of the Child, Concluding Observations on the second periodic report of Iran, UN Doc CRC/C/15/Add.254 (2005), para 23.

<sup>3</sup> The Islamic Republic of Iran, The Third Periodic Report on the Convention on the Rights of the Child, March 2013, p. 11.

<sup>4</sup> Ibid.

<sup>5</sup> CCPR General Comment 17, Article 24 (Rights of the child) 1989, para 4.

<sup>6</sup> UNGA, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), UN Doc A/RES/40/33, Rule and Commentary 4.1.

<sup>7</sup> General Comment 10, Children’s rights in juvenile justice, para. 32.

b. Discrimination against Girls

15. The Committee on the Rights of the Child emphasizes that the minimum ages set by States should be the same for both boys and girls in accordance with the principle of non-discrimination.<sup>8</sup> The IRI's definition of a child and, subsequently, the minimum age is based on sex discrimination and is contrary to international standards. The Committee in its 2005 Concluding Observations on Iran urged the IRI to make the age of majority and minimum age requirements "gender neutral".<sup>9</sup> This was totally ignored by the IRI when they changed the law. In the changes made to the Penal Code in 2013 the old discriminatory formula was reaffirmed.

**Recommendations:**

16. (1) Amend the Penal Code and increase the minimum age of criminal responsibility to 18 years.
17. (2) Set a gender-neutral minimum age requirement for boys and girls and eliminate discrimination on the basis of sex in determining the minimum age of criminal responsibility.

**2. *Diya* (Blood Money) and Discrimination against Girls (art. 2)**

18. Amongst the different laws of Islamic countries, the Iranian Penal Code is the only one that still specifies that a woman's *diya* (blood money) is not equal to the blood money of a man. In fact, the blood money for a Muslim man is the standard against which the values of all other categories of persons are measured, both for life and for injuries. According to traditional Shari'a, the standard blood money for life is 100 camels or 200 cows or 1,000 sheep, which was given a monetary value of 1,500,000,000 IRI Rials [currently around \$50,000 US Dollars] for the Iranian year 1393 (2014-15).
19. It must be explained at this point that the age of the victim does not make any difference with regard to the blood money. So, the same rules apply to individuals, including children, who suffer from bodily injuries regardless of their age. Unlike age, however, sex is a legal ground for inequality. Article 550 of the new Penal Code (similar to Article 300 of the old Code) provides that: "[t]he *diya* (blood money) for murdering a woman is half that of a man". Interestingly, although the new Penal Code insists on this unequal treatment, it has prescribed a new solution to alleviate the inequality of *diya* between men and women. The note to Article 545 provides that:

*"In all cases of homicide where the victim is not a man, the difference between the diya and the diya of a man shall be paid from the Fund for Compensation of Bodily Harms."*

20. The Fund for Compensation of Bodily Harms was established to exclusively compensate bodily harms caused in hit and run car accidents or when the when the vehicle was not insured and the driver was not capable to pay the compensation. In fact, the IRI, while still

<sup>8</sup> General Comment 4, Adolescent health and development in the context of the Convention on the Rights of the Child, para. 9

<sup>9</sup> CRC ,Concluding Observations on Iran 2005 (n 3), para 23.

insisting on this inequality, has found an unusual solution to the problem. However, this should not be viewed as a significant step towards equality for women: in the case of bodily injury that does not cause death, the *diya* for men and women is still only equal until it reaches to one-third of the full *diya*. That is, the one-third mark acts as a kind of trigger: once the *diya* of the injuries of a woman is higher than one-third of the full *diya*, it will be decreased to half that of a man's *diya* for the same injuries. Article 560 of the new IPC states:

*“The diya of [harm to] limbs and bodily abilities, up to one third of the full diya, is the same for man and woman; however if it reaches, or exceeds, one third of the full diya, the diya of woman shall be decreased to half.”*

21. Therefore, 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. So, any assertion by the IRI authorities on the equality of blood money for both sexes under the new Islamic Penal Code must be dismissed.
22. This was made crystal clear once more when, on 5 December 2012, an elementary school in the village of Shin-Abad near Piranshahr caught in fire due to a faulty heater and 28 of the student girls were severely burnt, while two of them lost their lives.<sup>10</sup> According to the law, the blood money for those who had injuries that required more than one third of the full blood money were offered half of the amount payable if they were boys. This included those who had died, where their parents were offered half of the full blood money. 18 of the students and their families agreed the deal and received the halved compensation. The rest, however, resisted and it was only after an intensive campaign of their lawyer and the families that the State-run insurance company agreed to pay the difference.<sup>11</sup>
23. However, this must not be confused and seen as equal blood money for girls, as it was an exceptional case, which was concluded by the discretion of the government outside of the court. Was it not because of a specific order issued by the Cabinet of Ministers, which in itself was motivated by the scale of the tragedy and the public outrage, the insurance company would have never paid the difference as it had no such obligation under the Penal Code. Therefore, it must be firmly stressed that the Penal Code discriminates against girls and the blood money for life and bodily injuries for girls are half that of boys. The same blood money rules discriminate against non-Muslim children who belong to religious minorities that are not recognised in the IRI Constitution, such as Baha'is. This requires an independent study.

### **Recommendations:**

24. (1) Eliminate discrimination on the basis of sex and religion in determining compensation for homicide and bodily injury committed against children.
25. (2) Amend articles 550 and 560 of the new Penal Code and guarantee equal compensation for boys and girls in all cases of death and bodily injury.

<sup>10</sup> See: ISNA News Agency, <[http://isna.ir/fa/news/92063119495/ه-ای-ی-ن-اگفت-ه](http://isna.ir/fa/news/92063119495/ه-ای-ی-ن-اگفت-ه-از-ه-ادش-ن-ح-ادش-ه-از-ه-ای-ی-ن-اگفت-ه)>.

<sup>11</sup> Khabar Online, 6 December 2014, <<http://www.khabaronline.ir/detail/388651/society/education>>.

### 3. Impunity for Fathers (art. 6)

26. According to Shi'a jurisprudence as reflected in the IPC, a father, and any male paternal ascendant (e.g. father's father), cannot be put to death for killing his child (or grandchild). This rule does not apply to the mother and the ascendant (e.g. mother's mother). Article 220 of the old IPC stipulated that "[a] father or grandfather that murders his child shall not be sentenced to *qisas* [retribution], but only to *ta'zir* punishment and *diya* [blood money] for murder to the heir of the victim." It was seen by some commentators as an impunity for fathers and paternal grandfathers to kill their children and grandchildren without facing any serious sanction.
27. The new IPC has kept the same rule but put it differently. 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 ..."*
28. Cases in which fathers kill their own children are usually cases of honour killing or marital disputes between parents. For example, in May 2014, a father killed his 17 year old daughter in Kangavar. He told the police that he had been fed up with his daughter's behaviour for some time. According to him, his daughter had been out of town with some friends including some boys when in return they were arrested by the police and handed over to their families.<sup>12</sup> In another case, it was reported a father had murdered his 3 and 6 year old children following a dispute with his wife.<sup>13</sup>
29. In such cases, the *qisas* punishment (the death penalty) cannot be delivered against the father and he may only be sentenced to between three to ten years of imprisonment for disturbing the public order, at the discretion of the judge. It must be explained that the critics of this provision do not seek the death penalty for the father, but they stress that the only alternative punishment available, which is based on disturbing the public order and left at the discretion of the judge, is insufficient and sends a wrong signal to fathers that they may get away with killing their children.

#### **Recommendation:**

30. Amend articles 301 and 612 of the IPC and increase the sentence for murdering children by their fathers.

### 4. Corporal Punishment at Home or School (art. 28(2))

31. Corporal punishment and other cruel or degrading forms of punishment can take place in many settings, including at home in the hands of parents or at school by teachers. Under the IRI's Penal Code, physical punishment and corporal chastisement is not ruled out as a method of correcting children. In fact, parents, and guardians, of children are deemed responsible for correcting children and "if necessary" they are allowed to use corporal punishment. This must however be applied "moderately" and "expediently". Article 49 of the old Penal Code provided that "[i]f, in order to correct child offenders, corporal chastisement is deemed

<sup>12</sup> Daily Etemad, 29 May 2014, available at <<http://www.magiran.com/npview.asp?ID=2959517>>.

<sup>13</sup> Source: Fars News Agency, 2 January 2015, <<http://www.farsnews.com/newstext.php?nn=13931012000750>>.

necessary, it must be moderate and expedient”. Moreover, in order to remove any doubt about the lawfulness of such acts and to give assurance to parents, article 59 of the same law provided that “[t]he following acts shall not be considered an offence: 1- The acts committed by parents and legal guardians of minors and insane people in order to chastise or protect them provided that chastisement and protection are exercised within the customary limit. ...”.

32. It does not seem that the new IPC has made any significant change to this rule although it adds “religious” limits to acceptable chastisement. Article 158, stipulates that 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.”
33. The problem is that “moderate” and “customary” limits are too vague. They may vary from case to case and do not comply with international standards. Religious limits are not more helpful either. Therefore, for instance, slapping a child in the face may be considered as customarily acceptable if a child is rude to his or parents, and as long as it does not make the child’s face red or blue or does not cause bleeding it is within religious limits. Hitting the child in less sensitive areas or acts such as shaking or throwing the child or other painful and degrading punishments that do not cause redness of skin or any bruise or injury, are even more likely to comply with religious limits. Therefore, it would be true to say that the law does not comply with international standards set by the CRC:
34. First, the law, while imposing all sorts of inhuman and degrading punishments such as flogging and amputation of limbs as a punishment for certain crimes, permits some forms of corporal punishment against children in the hands of their parents and legal guardians. In fact, not only does the law permit some forms of corporal punishment, does it describe it as “necessary” in some occasions.
35. Second, it fails to protect children against those forms of corporal and degrading punishments that do not cause a qualified injury under Shari’a law. By adding “religious limits” to the new Penal Code—which was implied in the old IPC anyway—the law does not move forward towards more protection for children, but falls deeper into Shari’a law that does not conform with the current needs of the society and children.
36. Third, the current limits on physical punishment of children by parents and legal guardians are effectively whatever they can get away with. This is because the law fails to provide any clear criteria for unlawful acts and leaves it to parents, and guardians, to use their own discretion. The law should have taken this area out of the hands of custom, religion, and individual discretions and ban all forms of physical violence against children.
37. School is another setting where children are subject to power and control by adults and are at risk of being exposed to violence by teachers and school authorities that may misuse their power over children. However, it must be noted that, under the IRI’s law, as far as corporal punishment is concerned, teachers do not enjoy the same favourable provisions provided for parents and legal guardians. Therefore, basically they have no right to impose any corporal punishment against children. They must follow the disciplinary rules of the school and any sanction against children must be in accordance with the rules and regulation. Otherwise, the teacher or school authorities will face disciplinary and/or criminal consequences. Having said that, this does not reflect the current practice and culture in schools in Iran. Although it must be admitted that the application of corporal punishment has been decreased over the last

several decades, it still exists while every now and then some extreme cases take the attention of the public and media.

38. For example in 2012 a series of separate incidents in the schools of a small town near Kerman were reported by newspapers where students were violently beaten and injured by their teachers.<sup>14</sup> Such incidents, however, are not limited to small towns and villages and similar incidents happen in big cities like Tehran<sup>15</sup>. The frequency and high number of these incidents across the country show the widespread and intense nature of the problem. It is also worth mentioning that not only some parents may turn a blind eye on some minor incidents, even in more serious cases they may not pursue legal proceedings against teachers and school authorities either, as they may fear that it will have negative consequences for their children. In fact, in some cases, the victims and their parents have been forced by school authorities to give their forgiveness and drop the criminal cases, and they often do so.<sup>16</sup> In sum, although disciplinary regulations and criminal rules are in place in order to punish the perpetrators, it is clearly not sufficient and more drastic measures are needed to overcome the problem.

#### **Recommendations:**

39. (1) Strictly ban, and clearly define, all forms of violence against children.
40. (2) Take effective measures to end the culture of violence against students in schools and guarantee that teachers and school authorities do not apply any form of unlawful punishment, including corporal punishment, against children.

### **5. Cruel, Inhuman and Degrading Punishments (art. 37(a))**

41. According to international rules, including the CRC and the Beijing Rules children shall not be subject to any criminal punishment. In fact, the criminal regime for children has been separated from that for adults and has a correcting and protecting character. Under the new IPC, there have been some desirable changes in respect to *ta'zir*<sup>17</sup> punishments and as far as *ta'zir* crimes are concerned, such perspective towards child offenders is observable in the law. As a result, if an individual under 18 years old, whether boy or girl and whether he or she has reached the age of maturity or not, commits *ta'zir* crimes, he or she shall be sentenced merely to correctional measures ranging from handing over to parents to detention in the Correction

<sup>14</sup> Source: Daily Etemad, 25 October 2012, No 2528, p. 13.

<sup>15</sup> For example in December 2014, a 15 year old boy was hit violently, including in his genitals, by his teacher which resulted in his hospitalization. Source: ILNA News Agency, News No. 229070, 1<sup>st</sup> December 2014.

<sup>16</sup> In December 2014, a sixth grade student was hit by his teacher in the head that fractured his nose. He went under surgery and requires a further surgery when he reaches 16. His father claimed that he was threatened by the Principal of the school that should he pursue his criminal complaint his son would be dismissed from the school. Source: Khordad News Agency, News No. 111087, 27 December 2014, available at <<http://khordadnews.ir/news/111087>>.

<sup>17</sup> Crimes punishable by *ta'zir* are usually less serious crimes for which punishments are not fixed and instead are left to the discretion of a *Shari'a* judge. In principle, all forbidden or sinful acts that do not constitute *hadd* or *qisas* offences are punishable under this category. The Islamic judges may, at their discretion, impose punishments on those who have committed such acts. However, most of the *ta'zir* crimes are now dealt with in the Penal Code and the judge can only apply the punishments prescribed in the Code. (Nayyeri, Mohammad, New Islamic Penal Code of the Islamic Republic of Iran: An Overview, Human Rights in Iran Unit, University of Essex, 31 March 2012, 9. available at: <[http://www.essex.ac.uk/hri/documents/HRIU\\_Research\\_Paper-IRI\\_Criminal\\_Code-Overview.pdf](http://www.essex.ac.uk/hri/documents/HRIU_Research_Paper-IRI_Criminal_Code-Overview.pdf)>.

and Rehabilitation Center. So, there is no longer any possibility for application of adult *ta'zir* punishments on children and juveniles. In comparison with the old Code, in which reaching the age of maturity resulted in full criminal responsibility, these changes may be regarded as positive, especially for girls.

42. However, it must be noted there are other categories of crimes under Islamic Shari'a, and subsequently, under the penal regime of the IRI, that disregard the abovementioned protective and correctional view. These include *hudud*<sup>18</sup> and *qisas*<sup>19</sup> which are based purely on Islamic rules and deemed by the majority of Islamic jurists as unchangeable. However, this categorization is only complete when combined with two other crucial factors the age and sex of the child offender. In fact, in the new Code children are categorized under four age groups, each subject to different rules for boys and girls:

1. Children under 9 years old
2. Children between 9 and 12 years old
3. Children and juveniles between 12 and 15 years old
4. Juveniles<sup>20</sup> between 15 and 18 years old.

43. Therefore, in order to arrive at a full understanding of the complex structure of the new Penal Code regarding children, the different categories of crimes (i.e. *hudud*, *qisas* and *ta'zirat*) must be considered together with the different ages of criminal responsibility for boys and girls. This results in the following eight scenarios:<sup>21</sup>

44. **1- Children under 9 years old commit *Ta'zir* crimes:** In such cases there is no criminal responsibility, nor is there any correctional and security measures provided by law. In this regard, there is no difference between girl and boy.

45. **2- Children under 9 years old commit crimes punishable by *Hudud* and *Qisas*:** In such cases, the gender of the child becomes of importance. If the child offender is a boy, considering that he has not reached the age of maturity, according to article 88 of the new IPC, he shall be subject to minor correctional and security measures such as handing over to his parents with promise of correction, sending the child to a social worker or psychologist, banning him from visiting specific persons or places, etc. If the child offender is a girl under 8 years and 9 months, she shall be treated the same. However, if she is a girl who has reached the age of maturity but she is under 9 years old (e.g. she is 8 years and 10 months), she may be subject to *hudud* and *qisas* punishments (which will be referenced in more details in situation No. 8 down below).

46. **3- Children between 9 to 12 years old commit *Ta'zir* crimes:** The court shall sentence this group of children to minor correctional measures such as handing over to

<sup>18</sup> Crimes punishable by *hudud* (i.e. the limits, or the limits prescribed by God; singular: *hadd*) are those with fixed and severe punishments in Islamic sources, such as illicit (out of marriage) sex (*zina*), sodomy and homosexual acts between men (*livat*), homosexual acts between women (*mosahaqa*), procuring (*qavvadi*), etc. (Ibid at 5)

<sup>19</sup> Crimes punishable by *qisas* (retribution) are a category of crimes under Islamic criminal law, in which, intentional homicide and bodily harm are punishable by the same harm (i.e. the death penalty for murder and inflicting the same injury for bodily harm). (Ibid, at 6)

<sup>20</sup> As explained previously, under the IRI's law the term "child" only applies to individual who have not reached the age of maturity. The term law uses for higher ages up to the age of 18 years old is "juvenile". The same term has been used throughout this report when references are made to this category under Iranian laws.

<sup>21</sup> See Nayyeri, Mohammad, Criminal Responsibility of Children in the Islamic Republic of Iran's New Penal Code, 22 February 2012, available at: <<http://www.iranhrc.org/english/publications/legal-commentary/100000054-criminal-responsibility-of-children-in-the-islamic-republic-of-irans-new-penal-code.html>>.

their parents with promise of correction, sending the child to a social worker or psychologist, banning them from visiting specific persons or places, etc. For this category of crimes, there is no difference between girls and boys.

47. **4- Children between 9 to 12 years old commit crimes punishable by *Hudud* and *Qisas*:** In such cases, again, the gender of the child makes a huge difference. If the child offender is a boy, considering he has not reached the age of maturity, according to article 88, he shall be subject to minor correctional measures (see No. 2). However, if she is a girl, considering that girls in this age-range have reached the age of maturity, she may be subject to *hudud* and *qisas* punishments (which will be referenced in more details in situation No. 8 down below).
48. **5- Children and juveniles between 12 to 15 years old commit *Ta'zir* crimes:** In the case of minor *ta'zir* crimes, the court's decisions are similar to children of 9 to 12 years old (see No. 3). But, in the case of severe *ta'zir* crimes, the court may sentence the child to be held in a Correction and Rehabilitation Center from three months to one year. For this category of crimes, there is no difference between girls and boys.
49. **6- Children and juveniles between 12 to 15 years old commit crimes punishable by *Hudud* and *Qisas*:** As stated above, when *hudud* and *qisas* punishments are concerned, the gender and the age of maturity remain important and make considerable differences. Thus, if the child offender is a boy who has not reached the age of maturity (14 years and 7 months), like severe *ta'zir* crimes (No. 5), he may be convicted to up to one year in Correction and Rehabilitation Center. However, if the child is a boy who has reached the age of maturity (e.g. 14 years and 9 months old), or if the child is a girl in this range of age (e.g. 13 years old), they may be subject to *hudud* and *qisas* punishments that are described in more detail below (see No. 8)
50. **7- Juveniles between 15 to 18 years old commit *Ta'zir* crimes:** In such cases, depending on the importance of the crime, the sentences may vary. But in any event the sentence does not go further than five years in a Correction and Rehabilitation Centre (for severe *ta'zir* crimes). For minor *ta'zir* crimes, the sentence will not exceed more than 2 years in a Correction and Rehabilitation Center, public service and financial fines. In this respect, there is no difference between girl and boy.
51. **8- Juveniles between 15 to 18 years old commit crimes punishable by *Hudud* and *Qisas*:** Considering article 91 and other articles of the new IPC, there is no doubt that in such cases, *hudud* and *qisas* punishments can be awarded. In other words, a juvenile between 15 to 18 years old, whether a boy or girl, has reached the age of maturity and bears criminal responsibility. Consequently, in the case of committing crimes punishable by *hudud* and *qisas*, he or she may be sentenced to such punishments. As mentioned above, on the issues of *hudud* and *qisas*, the Code still relies on the age of maturity under Islamic Shari'a. Therefore, if a boy—after reaching the age of 15 lunar years (14 years and 7 months)—and a girl—after reaching the age of 9 years (8 years and 9 months)—commit crimes punishable by *hudud* and *qisas*, they may not be sentenced to correctional measures, but instead may be subject to *hudud* and *qisas* rules and will be treated as adults.
52. In summation, this analysis demonstrates that there have been some desirable changes in respect to *ta'zir* punishments. However, in the case of the commission of crimes punishable by *hudud* and *qisas*, children may still be sentenced to such punishments which include the death penalty (e.g. for murder and rape and in some cases of sodomy and homosexual acts

between men (*livat*), flogging (e.g. for drinking alcohol or homosexual acts between women (*mosahaqa*)), stoning (for some cases of *zina*, i.e. illicit (out of marriage) sex), and amputation of limbs (e.g. for theft).

53. So, the statement made by IRI in their report to the Committee that the new Penal Code has ensured gender equality and “here is no difference between boy and girl in specifying any punishment”<sup>22</sup>, would be untrue in respect to *hudud* and *qisas*. The new IPC, like the old one, continues to discriminate between boys and girls under those categories of crimes.
54. Furthermore, it must be stressed that the application of *hudud* and *qisas* punishments on people under 18 years old has not been abolished. It is true that new provisions are made in the new IPC which may in certain cases restrict the application of *hudud* and *qisas* punishments (this will be discussed in more detail in the following section) however, it is evident that the IRI has failed to put an absolute ban on such horrible punishments for children in their new IPC.

#### **Recommendation:**

55. Abolish all forms of cruel, inhuman, and corporal punishments, including amputation of limbs and flogging, unconditionally for all children under 18 for all categories of crimes including *hudud* crimes.

### **6. Death Penalty (arts. 6 and 37(a))**

56. International law unequivocally prohibits the application of the death penalty to persons under 18 years old. In particular, the CRC has sets out a concrete minimum age in respect of capital punishment for all individuals under the age of 18 (article 37(a)). It is therefore a violation of international law to impose capital punishment for offences committed by children.
57. For this, the IRI has been criticized by international community and in return it has tried to justify and deny the cases. To alleviate some of the criticism, the IRI has taken different measures—for example, it has often postponed the execution of the death penalty for juvenile convicts until they reach the age of 18. By doing so, Iranian authorities occasionally feel confident to claim that the IRI does not execute juveniles. This is indeed a deliberate abuse of the international standards that take into account the age of offender at the “time of commission”, not the “time of execution”.
58. However, in some cases such considerations have been ignored completely and there is no room for any justification left. For instance, when a juvenile under the age of 18 is sentenced to the death penalty and executed before reaching the age of 18, there is no room left for denial and justification. For example, following a proceeding that lasted only 2 months from the beginning (commission of crime) to the end (execution), Alireza Mullah Soltani, born in December 1993, was publically hanged on September 21, 2011, in retribution (*qisas*) for the murder of Ruhollah Dadashi.<sup>23</sup> He was 17 years and 6 months old at the time he committed the murder, and 17 months and 8 months old when he was executed.

<sup>22</sup> The IRI, The Third Periodic Report on the Convention on the Rights of the Child, March 2013, p. 82.

<sup>23</sup> Source: ISNA News, 19 September 2011, <<http://www.isna.ir/fa/news/9006-19233/سوي-از-حکمت-تايي-ديدا/9006-19233>>.  
<عادل-کشور-عالي-ديوان>

59. As explained in the previous section, the new Penal Code, like the old one, continues to impose *hudud* and *qisas* punishments on people under 18 years old, which include capital punishment. However, 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:

*Article 91 – “In respect of crimes punishable by hudud and qisas, if the offenders, who are under 18 years old but have reached the age of maturity, do not understand the nature of the committed crime or its prohibition, or if there is a doubt about their mental development and perfection, then, according to their age, they shall be awarded one of the punishments provided in this chapter.*

*Note – In recognizing the mental development and perfection, the court may ask for the opinion of Forensic Medicine [Department] or employ other means which it deems appropriate.”*

60. It appears that the possibility of averting *hudud* and *qisas* in a situation in which a lack of mental development is proved is a positive change. 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 16-year-old does not understand the prohibition of murder or sexual relations out of marriage. Therefore, when a 16 year old boy or girl commits a 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, subject to other conditions, he or she may be sentenced to *qisas* (the death penalty).
61. This was put to test when Maryam, a young woman who had allegedly murdered her husband in April 2009 when she was 17 years old, was sentenced to the death penalty. Following the adoption of the new IPC, she, through her lawyer, applied for a re-trial on the basis of the new favourable provision of the new IPC (art. 91). Her application was eventually accepted and the case was sent to a different branch for a re-trial. However, considering article 91 and stressing on her mental development and realisation of the prohibition of murder, Branch 4 of the Provincial Court in the Province of Fars sentenced her to the death penalty once again.<sup>24</sup>
62. So, contrary to what the IRI authorities assert<sup>25</sup>, the death penalty (*qisas*) for people under 18 years old has not been abolished and 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.
63. It must be emphasised that what international standards including the CRC require is the complete abolition of the death penalty, without ifs and buts, for all people under 18 years old, which is not the change taken place here. The current IRI’s approach as reflected in the new IPC, even if it is ever considered to be progressive in comparison to the old Code, does not ban juvenile execution in absolute terms and leaves the door open for such possibility. This does not comply with Iran’s international obligations.

<sup>24</sup> Source: <<https://hra-news.org/fa/execution/> و س ع ر و س - ب ا ر - ن و ج و ا ن - ع ر و س >.

<sup>25</sup> The Islamic Republic of Iran, The Third Periodic Report on the Convention on the Rights of the Child, March 2013, p. 11.

### **Recommendations:**

64. (1) Abolish the death penalty and inhuman punishments unconditionally for all individuals under 18, for all categories of crimes including *hudud* and *qisas*.
65. (2) Guarantee that no one will ever be sentenced to the death penalty for crimes they may have committed when they were under 18 at the time of the commission of the crime.

### **7. Children and Juvenile Courts (art. 40)**

66. According to the Criminal Procedure Code (art. 219), in every judicial district, as far as practicality and availability allows, one or more branches of public courts are assigned to try crimes committed by children. It has been clarified by the same law that the term “child” refers to a person who has not reached religious maturity. However, the same provision has been extended to all individuals younger than 18 years old. Therefore, effectively, such branches deal with crimes committed by individuals under 18 years old.
67. While the abovementioned provisions are about the trial stage, it is worth noting that there are other provisions in respect of the pre-trial investigations when the alleged offender is under 18 years old. As an extra safeguard, the same law provides that the initial investigation shall be conducted directly by the judge (and not by the Prosecution’s office as in other cases). In order to carry out the investigation, the court can summon the child through his or her parents or legal guardians. In more serious the court may order the arrest of the child.
68. It is worth noting that the draft Bill of Establishment of Children and Juvenile’s Court (2005), and its successor the draft Bill of Prosecution of crimes Committed by Children and Juvenile (2012), had provided relatively advanced provisions for such courts. For instance it was proposed that special courts and Prosecution’s Offices for children should be established, the Court should consist of one judge and two advisors, and the judge, for example, should meet certain requirements such as minimum 5 years of experience and attending specialized training. However, the draft Bills, were not adopted.
69. This must, however, be mentioned that the jurisdiction of these children’s courts, even under the abovementioned draft Bill, is not absolute. This lies in the fact that what is called “Children’s Court” is in fact a branch of General Court and the fact that they are specialized in such cases does not change their legal jurisdiction. Article 231 of the Criminal Procedure Code stresses that assigning some branches of the General Courts to children’s crimes does not prevent the referral of other cases to such branches, which is a reminder that they are still General Courts. Although this may seem insignificant, the difference that it makes for child offenders is huge.
70. In fact this becomes of considerable importance when there is a conflict of jurisdiction between General Courts and other categories of courts. In particular, when a crime falls into the jurisdiction of Revolutionary Courts, which include all drug related offences, the so-called Children’s Courts lose their authority and the alleged child offender shall be tried in the Revolutionary Courts which are primarily designed for adults and lack any specialty or safeguards for children. More importantly, Revolutionary Courts are notorious for their disregard for fair trial standards and rule of law.

71. Another limitation to the jurisdiction of Children's Court is the Provincial Criminal Court, which deals with offences punishable, inter alia, by the death penalty. According to the decision number 678 dated 25 May 2006 of the Supreme Court "if a mature individual under the age of 18 years old commits an offence that falls within the jurisdiction of the Provincial Criminal Court, his or her offence(s) shall be tried in the Provincial Criminal Court". In other words, in such cases, for example where a 13-year-old girl is charged with murder, which is punishable by the death penalty (*qisas*, i.e. retribution), the Children's Court has no authority and she must be tried in the Provincial Criminal Court with no special consideration or specialty regarding children. The investigation also will be carried out by the same Prosecution's Office and police forces that investigate offences committed by of adults.
72. It seems that the new Criminal Procedure Code (2014) has, to a degree, addressed the abovementioned problems and recognised exclusive jurisdiction for Children's Courts over all cases against individuals under the age of 18. However, as it was explained earlier, the coming into force of the new Criminal Procedure Code has been suspended. Therefore, it is not clear that, after it comes into force, how long it takes for such provisions to materialize, as they require some significant changes in the structure of the criminal justice system.

**Recommendations:**

73. (1) Guarantee in law and practice that child offenders fully enjoy fair trial standards including the safeguards mentioned in article 40 CRC.
74. (2) Make sure that all criminal charges against children are dealt with in competent and well-trained courts and prosecution's offices that take into account special needs and rights of children.

## ANNEX ONE

### Recommendations

1. Ensure the full implementation of, and withdraw the reservation to, the CRC.
2. Amend the Penal Code and increase the minimum age of criminal responsibility to 18 years.
3. Set a gender-neutral minimum age requirement for boys and girls and eliminate discrimination on the basis of sex in determining the minimum age of criminal responsibility.
4. Eliminate discrimination on the basis of sex and religion in determining compensation for homicide and bodily injury committed against children.
5. Amend articles 550 and 560 of the new Penal Code and guarantee equal compensation for boys and girls in all cases of death and bodily injury.
6. Amend article 301 of the new Penal Code and increase the sentence for murdering children by their fathers.
7. Abolish the death penalty and inhuman punishments unconditionally for all individuals under 18, for all categories of crimes including *hudud* and *qisas*.
8. Guarantee that no one will ever be sentenced to the death penalty for crimes they may have committed when they were under 18 at the time of the commission of the crime.
9. Abolish all forms of cruel, inhuman, and corporal punishments, including amputation of limbs and flogging, unconditionally for all children under 18 for all categories of crimes including *hudud* crimes.
10. Strictly ban, and clearly define, all forms of violence against children.
11. Take effective measures to end the culture of violence against students in schools and guarantee that teachers and school authorities do not apply any form of unlawful punishment, including corporal punishment, against children.
12. Guarantee in law and practice that child offenders fully enjoy fair trial standards including the safeguards mentioned in article 40 CRC.
13. Make sure that all criminal charges against children are dealt with in competent and well-trained courts and prosecution's offices that take into account special needs and rights of children.

## ANNEX TWO

### Translation of the Relevant Articles of the New Islamic Penal Code 2013<sup>26</sup>

**Article 88-** The court shall make one of the following decisions, whichever is more appropriate, about the children and young people who have committed *ta'zir* offenses whose age at the time of commission is between nine to fifteen years according to the solar calendar:

- (a) Handing over to parents or natural or legal guardians while taking promises to correct and educate the child or youth and taking care of their good behaviour

Note- When the court finds it in the best interest [of the child], it can take promises from the persons mentioned in this paragraph to take measures such as the following and report the result to the court in a specified time:

- 1- Referral of the child or youth to a social worker or psychologist or other specialists and cooperation with them
- 2- Sending the child or youth to an educational and cultural institute in order to study or learn a skill
- 3- Required measures in order to treat or rehabilitate the addiction of the child or youth under the supervision of a doctor
- 4- Banning the child or youth from the harmful association with and contacting [specific] people at the discretion of the court
- 5- Banning the child or youth from going to specific places

- (b) Handing over to other natural or legal persons that the court finds to be in the best interest of the child or youth by ordering the measures mentioned in paragraph (a) where, considering article 1173 of the Civil Code, the parents or natural or legal guardians of the child or youth or not competent or available

Note- Handing the child to competent people is subject to their acceptance.

- (c) Advising [the child or youth] by the judge  
(d) Cautioning and warning or taking a written promise not to commit an offense again  
(e) Detention in the Correction and Rehabilitation Centre from three months to one year in the case of *ta'zir* offenses of the first to fifth degree

Note 1- Decisions mentioned in paragraphs (d) and (e) shall only be applicable on a child or youth between twelve and fifteen years. In the case of commission of *ta'zir* crimes of the first to fifth degree, application of provisions of paragraph (e) shall be mandatory.

Note 2- If a child who has not become mature commits any of offenses punishable by *hadd* or *qisas*, if s/he is from twelve to fifteen years of age, s/he shall be sentenced to one of the measures provided in paragraphs (d) or (e); otherwise, one of the measures provided in paragraphs (a) to (c) of this article shall be applicable.

Note 3- In respect of the measures mentioned in paragraphs (a) and (b) of this article, the Children and Youth Court, taking into account the investigations made and also the reports of social workers about the condition of the child or youth and his/her behaviour, can review its decision as many times as the best interest of the child or youth requires.

**Article 89-** The following punishments shall be given to young people who commit *ta'zir* crimes and they are between fifteen to eighteen years of age at the time of commission of the crime:

<sup>26</sup> For a comprehensive English translation of Articles 1- 288 of the new IPC see: Nayyeri, Mohammad, English Translation of Books I & II of the New Islamic Penal Code, available at: <<http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>>.

- (a) Detention in Correction and Rehabilitation Centre from two to five years in the case of offenses punishable in law by a *ta'zir* punishment of the first to third degree.
- (b) Detention in Correction and Rehabilitation Centre from one to three years in the case of offenses punishable in law by a *ta'zir* punishment of the fourth degree.
- (c) Detention in Correction and Rehabilitation Centre from three months to one year or a fine of ten million (10,000,000) Rials to forty million (40,000,000) Rials or providing one hundred and eighty to seven hundred and twenty hours of unpaid public services in the case of offenses punishable in law by a *ta'zir* punishment of the fifth degree.
- (d) A fine of one million (1,000,000) Rials to ten million (10,000,000) Rials or providing sixty to one hundred and eighty hours of unpaid public services in the case of offenses punishable in law by a *ta'zir* punishment of the sixth degree.
- (e) A fine of up to one million (1,000,000) Rials in the case of offenses punishable in law by a *ta'zir* punishment of the seventh and eighth degree.

Note 1- Hours of providing public services shall not exceed four hours a day.

Note 2- Considering the accused person's condition and the crime committed, the court, at its discretion, instead of sentencing him/her to detention or a fine prescribed in paragraphs (a) to (c) of this article, can order the offender to stay at home in specific hours determined by the court or detention in the Correction and Rehabilitation Centre in the weekend for three months to five years.

\* \* \*

**Article 91** – “In respect of crimes punishable by *hudud* and *qisas*, if the offenders, who are under 18 years old but have reached the age of maturity, do not understand the nature of the committed crime or its prohibition, or if there is a doubt about their mental development and perfection, then, according to their age, they shall be awarded one of the punishments provided in this chapter.

Note – In recognizing the mental development and perfection, the court may ask for the opinion of Forensic Medicine [Department] or employ other means which it deems appropriate.”

\* \* \*

**Article 146-** Non-mature children have no criminal responsibility.

**Article 147-** The age of maturity for girls and boys are, respectively, a full nine and fifteen lunar years.

**Article 148-** In the cases of non-mature children, safeguarding and correctional measures shall be applied in accordance with the provisions of this law.

\* \* \*

**Article 158-** In addition to the cases mentioned in previous articles, committing conduct which is considered by law as an offense, shall not be punished in the following cases:

- (a) If the commission of the conduct is mandated or permitted by law.
- (b) If the commission of the conduct is necessary for enforcement of a more important law.
- (c) If the conduct is committed upon the lawful order of a competent authority and the aforementioned order is not against Shari'a.
- (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.
- (e) Athletic exercises and the accidents arising from them, provided that the causes of the accidents are not the violation of relevant rules of that sport, and such regulations do not violate the rules of Islamic Shari'a.
- (f) Every legitimate surgical or medical operation which is done by the consent of the patient or

his/her parents or natural or legal guardians, or legal representatives, with due consideration given to technical and medical and governmental regulations. In emergency cases obtaining consent is not required.

\* \* \*

**Article 301**-“Qisas shall be delivered only if the perpetrator is not the father, or a paternal grandfather, of the victim, is of sound mind, and of the same religion as of the victim”.

\* \* \*

**Article 545**-“In all cases of homicide where the victim is not a man, the difference between the *diya* and the *diya* of a man shall be paid from the Fund for Compensation of Bodily Harms.”

\* \* \*

**Article 550**- “The *diya* for murdering a woman is half that of a man”.

\* \* \*

**Article 560**-“The *diya* of [harm to] limbs and bodily abilities, up to one third of the full *diya*, is the same for man and woman; however if it reaches, or exceeds, one third of the full *diya*, the *diya* of woman shall be decreased to half.”

\* \* \*

**Article 612** (Book Five)- Anyone who commits a murder and where there is no complainant, or there is a complainant but he has forgiven and withdrawn his application for *qisas*, or if *qisas* is not executed for any reason, if his act disrupts the public order and safety of the society or it is thought that it emboldens the offender or others [to commit murder again], the court shall sentence the offender to three to ten years’ imprisonment.

Note- In this case, an accessory to the crime shall be sentenced to one to five years’ imprisonment.