



**INSIGHTIRAN**

**Executive Summary**

**Alternative Report Submitted to the UN Committee on the Rights of the Child**

**Third Periodic Report of the Islamic Republic of Iran**

**71<sup>st</sup> Pre-Sessional Working Group**

**Geneva - June 2015**

The Islamic republic of Iran (IRI) is a signatory to the CRC and obliged to comply with its principles including in certain circumstances when a child is subject to criminal law. The purpose of this submission is to examine the situations in which a child becomes involved in the criminal justice system in Iran. This submission is based on the latest developments in the criminal laws of the IRI, including the new Islamic Penal Code (IPC) adopted in 2013.

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

While the old and new IPC include an article that exempts immature children from criminal responsibility, the same laws define a child as an individual who has not reached the age of puberty under Islamic Shari'a. The old IPC, however, was silent on how old "the age of puberty" was, and, in practice, it was referred back to the Civil Code and Islamic Shari'a. Article 147 of the new IPC has addressed this flaw and expressly fixes the age of 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 puberty.

So, while some Islamic jurists suggest a higher age of puberty for girls, the new IPC ignored those opinions and criticisms, including from the Committee<sup>1</sup>, and made no change as of its formulation. The IRI's assertions that "[t]he absolute criminal age has [been] increased to 18 years"<sup>2</sup> and that the new IPC no longer follows "the religious majority criterion"<sup>3</sup> are completely untrue. The age of puberty under Islamic Shari'a is still the definitive criterion for criminal responsibility and varies for boys and girls. It 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 very "low" and "discriminatory" standard, particularly against girls.

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<sup>1</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>2</sup> The Islamic Republic of Iran, The Third Periodic Report on the Convention on the Rights of the Child, March 2013, p. 11.

<sup>3</sup> Ibid.

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

The Iranian Penal Code specifies that a woman's *diya* (blood money) is not equal to the blood money of a man; and, the same rules apply to children. Article 550 of the new IPC provides that: "[t]he *diya* (blood money) for murdering a woman is half that of a man". Although the new IPC insists on this unequal treatment, it has found an unusual solution to the problem in some cases of murder where the difference between the *diya* of a woman and a man shall be paid from a special Fund (art. 545).

However, this should not be viewed as an ultimate solution: in the case of (a) unintentional homicide, or (b) bodily injury that does not cause death, the *diya* for men and women is unequal (art 560). So, if someone causes a 10 year old boy to go blind in both eyes, he would be given full *diya* equal to an adult man, while a 10 year old girl, if incurring the same injury, would only be given half of the full *diya*, and this is not payable from the aforementioned Fund. Therefore, it is clear that the new IPC continues to discriminate against girls. 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.

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

According to the IRI Penal Code, a father, and any male paternal ascendant (e.g. father's father), cannot be put to death for killing his child or grandchild (art. 301). This rule does not apply to the mother and the ascendant (e.g. mother's mother). Cases in which fathers kill their own children are usually cases of honour killing or marital disputes between parents.<sup>4</sup> In such cases, the father may only be sentenced to between three to ten years of imprisonment for disturbing the public order, at the discretion of the judge. This is a very lenient punishment and sends a wrong signal to fathers that they may get away with killing their children.

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

Under the IRI's Penal Code, physical punishment and corporal chastisement is not ruled out as a method of correcting children. In fact, "if necessary" parents, and guardians, of children are allowed to use corporal punishment. Article 158(d) of the new IPC stipulates that the acts committed by parents and legal guardians of minors in order to discipline them shall be exempted from punishment, provided that such actions are exercised "within the customary and religious limits for chastisement and protection." These limits are too vague and 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 violence against children.

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<sup>4</sup> 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. Daily Etemad, 29 May 2014, available at <<http://www.magiran.com/npview.asp?ID=2959517>>. In another case, it was reported a father had murdered his 3 and 6 year old children following a dispute with his wife. Source: Fars News Agency, 2 Jan 2015, <<http://www.farsnews.com/newstext.php?nn=13931012000750>>.

In addition, there have been numerous cases where children have been subject to violent punishments by teachers and school authorities.<sup>5</sup> The frequency and high number of these incidents across the country show the widespread and intense nature of the problem, which needs to be addressed by the IRI authorities both in law and practice.

## 5. Inhuman Punishments and the Death Penalty (arts. 6 and 37(a))

Under the new IPC of the IRI, there have been some desirable changes in respect to *ta'zir*<sup>6</sup> punishments and as far as *ta'zir* crimes are concerned, the criminal regime for children has been separated from that for adults and has a correcting and protecting character. However, it must be noted there are other categories of crimes under the penal regime of the IRI, i.e. *hudud*<sup>7</sup> and *qisas*<sup>8</sup> that disregard the abovementioned protective and correctional view. A more closer scrutiny reveals that in the case of crimes punishable by *hudud* and *qisas*, children may still be sentenced to serious punishments including the death penalty (e.g. for murder and rape), flogging (e.g. for drinking alcohol or homosexual acts), stoning (for some cases of *zina*, i.e. illicit (out of marriage) sex), and amputation of limbs (e.g. for theft). It is in fact evident that the IRI has failed to put an absolute ban on such inhuman and degrading punishments for children in the new IPC.

Nevertheless, in a seemingly progressive change, article 91 of the new Code, may exempt such children and juveniles from *hudud* and *qisas* punishments, in special conditions, i.e. where it is established that they “... do not understand the nature of the committed crime or its prohibition, or if there is a doubt about their mental development and perfection ...”. 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 e.g. a 16-year-old girl does not understand the prohibition of murder or sexual relations out of marriage. The new provision of the IPC, even if it is ever considered to be progressive in comparison to the old Code, does not ban juvenile execution and other inhuman punishments in absolute terms and leaves the door open for such possibility. This does not comply with Iran’s international obligations.

## 6. Children and Juvenile Courts (art. 40)

According to the Criminal Procedure Code (art. 219), in every judicial district one or more branches of public courts are assigned to try crimes committed by individuals under 18. The

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<sup>5</sup> 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. Source: Daily Etemad, 25 October 2012, No 2528, p. 13. In a different incident in Tehran, 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, 1 Dec 2014, <<http://www.ilna.ir/news/news.cfm?id=229070>>.

<sup>6</sup> Crimes punishable by *ta'zir* are 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* offences, homicide or bodily harm, 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 dealt with in the Penal Code and the judge applies the punishments stipulated in the Code.

<sup>7</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.

<sup>8</sup> Crimes punishable by *qisas* (retribution) are a category of crimes under Islamic criminal law, in which, 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).

jurisdiction of these children's courts, however, is not absolute. As a result, when a crime falls into the jurisdiction of Revolutionary Courts, which deals with crimes such as drug related offences, or Provincial Criminal Court, which deals with crimes such as murder and rape, the alleged child offender shall, respectively, be tried in the Revolutionary Courts or Provincial Criminal Court. These courts lack any specialty or safeguards for children, and frequently impose inhuman punishment and the death penalty, while they are notorious for their disregard for fair trial standards.

While the new Criminal Procedure Code (2014) has addressed some of the abovementioned problems, it is not clear when it will come into force; and, more importantly, how long it will take for the changes in the judicial structure to materialize.

### 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. 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.
11. Guarantee in law and practice that child offenders fully enjoy fair trial standards including the safeguards mentioned in article 40 CRC.
12. 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 of children.