



# Legal Research Series

*Legal Status of the Child: Iran's International Human Rights Obligations*

Lili Birnbaum, Hasret Cetinkaya, Elizabeth Harper

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## **Executive Summary**

This legal research analysis belongs to a series of studies on human rights in Iran authored by the Human Rights in Iran Unit. The Human Rights in Iran Unit in the School of Law at the University of Essex focuses on the Islamic Republic of Iran's compliance with international human rights law. Each study tackles a distinct topic to measure international obligations against domestic law and practice and to identify underlying or systemic problems. The Unit seeks to provide an accessible account of the breadth and complexity of violations in Iran from the standpoint of international law, which may serve scholars, practitioners and anyone concerned with human rights in Iran.

This study considers the legal status of the child in the Islamic Republic of Iran with respect to the State's obligations under international human rights law. The relevant treaties to which Iran is a State party are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).

The analysis demonstrates that the Islamic Republic of Iran violates its obligations under international human rights law to adopt a child-rights approach in several ways:

- **Minimum Age of Criminal Responsibility:** The Iranian Penal Code sets the "age of maturity" as the basis of the minimum age of criminal responsibility, which results in a protection gap for girls between the ages of 9 and 18 and boys between 15 and 18. The minimum age for girls does not conform to international legal standards, both on the basis of the age itself and in terms of the disparity between minimum ages for boys and girls, which violates the principle of non-discrimination guaranteed by article 2(1) of the ICCPR and CRC, and 2(2) of the ICESCR;
- **Juvenile Executions:** Due to the unreasonably low minimum age of criminal responsibility within Iran, children may be subjected to the death penalty. The application of the death penalty to persons under the age of 18 is strictly prohibited by international law. Iran's definition of the child on the basis of the minimum age of criminal responsibility is thus in direct contravention of an absolute prohibition enshrined within international human rights law;
- **Minor Marriage:** The age of minor marriage has recently been amended to 13 years of age for girls and 15 years of age for boys. Notwithstanding the inherent discriminatory elements of this disparity, the low age for girls to be married may lead to further complications with regard to the child's right to freedom in matters of reproductive health, engaging the right to health under article 12 ICESCR and

article 24 CRC, as well as the child's right to information under article 19(2) of the ICCPR and article 17 of the CRC.

- **Legal Subjecthood:** the protective framework placing duties upon the guardians of the child is not complemented by a clear recognition of the child's subjecthood, whereby a child is not his or her parents' possession or a possession of the State but is, rather, an independent rights-bearer with legal recognition.

These wide scale violations are embedded within the domestic legal framework of the Islamic Republic of Iran, thereby signaling a need to consider reform of these laws in order to guarantee the rights of the child are adequately respected, protected and fulfilled, in accordance with Iran's obligations under international human rights law.

## Table of Contents

<b><u>1. INTRODUCTION.....</u></b>	<b><u>5</u></b>
<b><u>2. THE CONVENTION ON THE RIGHTS OF THE CHILD.....</u></b>	<b><u>6</u></b>
2.1 LEGAL FRAMEWORK.....	9
2.2 IRAN'S RESERVATION TO THE CONVENTION.....	10
<b><u>3. LEGAL STATUS OF CHILDREN UNDER IRANIAN LAW.....</u></b>	<b><u>16</u></b>
3.1 THE IRANIAN CONTEXT: CONFORMITY WITH ISLAMIC CRITERIA.....	16
3.2 CHILD AS RIGHTS-BEARER OR POSSESSION.....	18
<b><u>4. AGE OF THE CHILD.....</u></b>	<b><u>21</u></b>
4.1 AGE OF MAJORITY.....	23
4.2 AGE OF CRIMINAL RESPONSIBILITY.....	24
4.3 AGE OF MARRIAGE.....	28
<b><u>5. CONCLUSION.....</u></b>	<b><u>34</u></b>

## 1. Introduction

This study examines the Islamic Republic of Iran's (Iran or IRI) compliance with international human rights standards with regard to children in Iran.<sup>1</sup> Accordingly, the study primarily analyses relevant domestic and international law. This requires an analysis of the content and interpretation of the relevant provisions enshrined in the human rights treaties to which Iran is a party. Reference is made to documentation of violations in practice where relevant to the legal analysis.

Out of nine core international human rights treaties,<sup>2</sup> Iran is a party to and legally bound by five of them<sup>3</sup>, namely:

- the International Convention on the Elimination of All Forms of Racial Discrimination;<sup>4</sup>
- the International Covenant on Civil and Political Rights (ICCPR);<sup>5</sup>
- the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>6</sup>
- the Convention on the Rights of the Child (CRC);<sup>7</sup> and
- the Convention on the Rights of Persons with Disabilities.<sup>8</sup>

For the purposes of this study, the CRC is of most relevance as it explicitly addresses the rights of the child, and is the most comprehensive international human rights treaty

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<sup>1</sup> All research is supervised by Scott Sheeran and Catherine Bevilacqua, Co-Directors of Research in the Human Rights in Iran Unit, School of Law, University of Essex.

<sup>2</sup> The list of all core universal human rights treaties is available at the OHCHR website: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>>

<sup>3</sup> Iran has ratified all five. See the UN Treaty Collection (UNTC): <<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>> and OHCHR (Ratification Status of Iran): <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=81&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=81&Lang=EN)>

<sup>4</sup> UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

<sup>5</sup> International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

<sup>6</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

<sup>7</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. Iran is also a party to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, UN Doc A/RES/54/263

<sup>8</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities, 13 December 2006, UN Doc A/RES/61/106, Annex I

relating to children.<sup>9</sup> Article 1 of the CRC defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. In Iran the number of children under 18 is an estimated 21.77 million out of a population of approximately 75 to 80 million.<sup>10</sup>

## 2. The Convention on the Rights of the Child

This section explores the obligations of Iran under the CRC and other international human rights treaties, as well as the relevant constraints imposed within domestic law on child rights. The significance of Iran’s reservation to the CRC is also analyzed.<sup>11</sup>

Four overarching principles are considered to constitute a child rights approach and underpin the expansive range of rights included in the CRC.<sup>12</sup> These include the principles of non-discrimination (article 2),<sup>13</sup> best interest of the child (article 3),<sup>14</sup> right to life, survival and development (article 6),<sup>15</sup> and right to be heard (article 12).<sup>16</sup> The

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<sup>9</sup> See also the ICCPR, which provides for “measures of protection” to children on the basis of non-discrimination (article 24(1)).

<sup>10</sup> UNICEF, “Iran, Islamic Republic of: Statistics” (last updated 2012), available at: <[http://www.unicef.org/infobycountry/iran\\_statistics.html](http://www.unicef.org/infobycountry/iran_statistics.html)> [estimates total population at 76.4 million]. See also CIA World Factbook, which estimates the total population at 80.8 million (“Iran: People and Society, Population” (July 2014 estimate), available at: <<https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html>>).

<sup>11</sup> When ratifying a treaty, States are allowed to submit reservations to the treaty, so long as these reservations are in accordance with the “object and purpose” of the treaty. See especially article 19 of the Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, and in general, articles 20-23.

<sup>12</sup> Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* (CRC GC 5), UN Doc CRC/GC/2003/527 (2003), para 12. States have largely accepted these principles, as evidenced by, e.g., the UN General Assembly (UNGA) *Resolution on the Rights of the Child*, which was consensually agreed to by all member States. UN Doc A/RES/68/147 (2013), para. I(1)

<sup>13</sup> Non-discrimination is enshrined in article 2 of the CRC. According to article 2 (2) of the Convention, children should be protected from discrimination based on the “status, activities, expressed opinions or beliefs of the child’s parents, legal guardians or family members”.

<sup>14</sup> Article 3(1) of the CRC set outs the principle of best interest of the child, which shall be a primary consideration in all actions taken by public or private authorities.

<sup>15</sup> This right is contained in article 6 and incorporates several other Convention rights: health (article 24), protection (article 25), adequate standard of living (article 27), education (article 28 and 29), and freedom from exploitation (articles 32, 34, 36) cf. CRC, *General Comment No. 7 (2005): Implementing Child Rights in Early Childhood* (CRC GC 7), UN Doc CRC/C/GC/7/Rev.1 (2005), para. 10. As UNICEF puts it, “The concept of ‘development’ is not just about the preparation of the child for adulthood. It is about providing optimal conditions for childhood, for the child’s life now”. cf. UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*. (3<sup>rd</sup> edn, 2007), p. 93.

four core principles of a child rights approach, which are broadly accepted by state practice,<sup>17</sup> apply across the Convention's provisions and also constitute substantive rights in themselves.<sup>18</sup>

Article 3(1) provides an example of how these principles apply throughout the Convention. This principle has three functions as (1) a substantive right; (2) a fundamental legal principle that should be primarily considered within legal interpretations; and (3) a rule of procedure, used when determining the potential impact of a measure upon a child.<sup>19</sup> Each function of this principle requires the State to consider the best interests of the child as a primary consideration in all actions taken by public or private authorities.

The principle of non-discrimination, enshrined in article 2 of the CRC, is also a fundamental principle of international human rights law as a whole and is considered an integral aspect of all provisions within the core international human rights instruments, including the CRC.<sup>20</sup> Therefore, all provisions of the CRC, as well as the ICCPR and the ICESCR, must adhere to the principle of non-discrimination.<sup>21</sup>

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<sup>16</sup> This right entails the right of the child to speak, participate and have his or her views taken into account. This approach is the key to the child's legal subjecthood and recognizes children as right holders. *Cf.* CRC article 12. This right is connected to the freedom of expression (article 13) and a child's evolving capacities (Article 5 and 14). The right to be heard means that a child's opinion should be given due weight, according to his or her age and maturity, in decision-making. *Cf.* CRC GC 7, para. 14

<sup>17</sup> See, e.g., UN General Assembly, *Resolution on the Rights of the Child*, UN Doc A/RES/60/231 (2006), para I(1).

<sup>18</sup> Committee on the Rights of the Child (CRC), *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* (CRC, GC5), UN Doc CRC/GC/2003/527 (2003), para 12.

<sup>19</sup> CRC, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* [CRC GC 14], UN Doc CRC/C/GC/14 (2013), para. 6.

<sup>20</sup> The Committee on the Rights of the Child has stated: "The non-discrimination principle in the Convention requires that all the rights guaranteed by the Convention should be recognized for all children within the jurisdiction of the State." (CRC, GC 5, para. 30) The Committee on Economic, Social and Cultural Rights (CESCR) has further expressed that this principle is a fundamental component of international human rights law (CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights* (CESCR, GC 20), UN Doc E/C.12/GC/20 (2009), para. 2-3). For further discussion on the principle of non-discrimination, see below Section 4.

<sup>21</sup> Article 2(1) of the CRC and the ICCPR, and article 2(2) of ICESCR. See also Human Rights Committee, *General Comment No. 18: Non-discrimination* (HRC GC 18), UN Doc HRC/GEN/1/Rev.1 at 26 (1994), para. 1; Human Rights Committee, *General Comment No. 28: Equality of rights between men and women (article 3)* [HRC GC 28], UN Doc CCPR/C/21/Rev.1/Add.10 (2000), para. 2-3. States parties are required to implement these provisions in good faith. (CESCR GC 20, para 14: "Under international law, a failure to act in good faith to comply with the obligation in article 2, paragraph 2, to guarantee that the rights

Article 2 of the CRC contains four major components: 1) the nature of the obligation, i.e. positive and negative obligations;<sup>22</sup> 2) universality, whereby all children within the jurisdiction are included; 3) grounds and scope upon which discrimination is prohibited; and 4) protection and dissociation from family members' activities.<sup>23</sup> Children in Iran are thus afforded multiple and comprehensive protections against non-discrimination in international law by virtue of the CRC, the ICCPR (articles 2, 24 and 26) and the ICESCR (articles 2, 3, 10 and 13).<sup>24</sup>

The comprehensive nature of the obligations within the Convention means that the Convention creates distinct obligations and also reinforces interrelated and preexisting human rights obligations. These obligations exist concurrently with the other human rights obligations of the State, which means that children in Iran are protected not only by the CRC but also equally by the ICCPR, ICESCR, CERD, and CRPD, to which Iran is a

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enunciated in the Covenant will be exercised without discrimination amounts to a violation. Covenant rights can be violated through the direct action or omission by States parties, including through their institutions or agencies at the national and local levels.”)

<sup>22</sup> Negative obligations are the obligations imposed upon States parties that require the State to refrain from certain activities, such as the obligation to refrain from using torture. Positive obligations refer to those obligations that require action by the State, e.g. the provision of (and access to) public, competent tribunals. *Cf.* Sital Kalantry, et. al., “Enhancing enforcement of economic, social and cultural rights using indicators: A focus on the right to education in the ICESCR” (2010) 32 *HumRtsQ* 253, 255-256. See also Committee on the Rights of the Child, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/527 (2003), para. 12, which sets out positive obligations of the State party with regard to non-discrimination.

<sup>23</sup> P. Alston, "A Guide to Some Legal Aspects Connected to the Ratification and Implementation of the Convention on the Rights of the Child" (1994) *Commonwealth Law Bulletin* 1110, 1113.

<sup>24</sup> Human Rights Committee, *General Comment No. 17: Article 24* (HRC, GC 17), UN Doc HRI/GEN/1/Rev.1 at 23 (1994), para 5. This includes both direct and indirect discrimination, for example discrimination of the child through lesser custodial rights afforded to the mother, Article 21(5) provides for “the awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian”. In practice, this means that, where the father dies, a “worthy” mother will only be allowed custody if a legal guardian has not been designated. According to Civil Code Article 1233, however, “a woman cannot accept guardianship without, the consent of her husband” (Civil Code article 1233). In other words, the mother’s custodianship of her own child is reliant upon her husband’s permission. In addition, the natural guardian is considered the father and paternal grandfather (Civil Code articles 1180 and 1181); in the case of the father’s death, the child’s paternal grandfather will therefore be considered the natural guardian.<sup>24</sup> Where the paternal grandfather is no longer living, the father may also appoint another guardian aside from the mother (Civil Code article 1188).



State party.<sup>25</sup>

## 2.1 Legal framework

Where the obligations of a State party to a treaty are unclear or require expansion, it is useful to consider the basic legal rules applicable to treaties as well as the interpretations of relevant treaties according to UN treaty bodies tasked with such duties. This study draws upon these sources in its analysis of Iran's obligations under international human rights law.

### *Vienna Convention on the Law of Treaties*

International treaties are to be interpreted in accordance with the basic interpretation rules of international law found in the Vienna Convention on the Law of Treaties (VCLT).<sup>26</sup> The VCLT stipulates that an international treaty shall be interpreted in good faith, based on the ordinary meaning of the terms of the treaty, within context, and on the object and purpose of the treaty.<sup>27</sup> Interpretation should also consider the subsequent practice as agreed by the States parties to the treaty, as well as the *travaux préparatoires* and circumstances of the conclusion of the treaty.<sup>28</sup> Although Iran is not a party to the VCLT, the interpretation rules of the VCLT are generally recognized as a codification of customary international law.<sup>29</sup> Iran is therefore bound by these rules not through treaty obligations, but through custom. Accordingly, Iran's reservation of the CRC is subject to the interpretation rules contained in the VCLT.

### *Treaty-monitoring bodies*

The rights within the CRC are interpreted by the Committee on the Rights of the Child, which monitors State parties' adherence to and implementation of Convention rights.<sup>30</sup> Treaty-monitoring bodies, which are made up of groups of independent experts, are

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<sup>25</sup> ICCPR, ratified 24/06/75, ICESCR ratified 24/06/75, CERD, ratified 29/08/68, CRPD, ratified 23/10/09

<sup>26</sup> Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331

<sup>27</sup> Article 31 of the VCLT. See also Report of the International Law Commission, May – August 2012, UN Doc A/62/10, p. 80

<sup>28</sup> *Ibid.* See also Article 32 of the VCLT. The term *travaux préparatoires* refers to the official discussions held during the course of negotiating the terms of the treaty.

<sup>29</sup> See e.g. *Case Concerning the Territorial Dispute (Libya v. Chad)*, International Court of Justice (ICJ), 1994, para. 41; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) [1971]* ICJ Advisory Opinion, para. 94; *Fisheries Jurisdiction Case (Federal Republic of Germany v Iceland)*, [1973] ICJ Jurisdiction of the Court, paras. 24 and 36.

<sup>30</sup> Established by Article 43 of CRC

deemed as most suitable to interpret their respective treaties.<sup>31</sup> The United Nations treaty bodies, such as the Human Rights Committee or the Committee on the Rights of the Child, often use General Comments as means to clarify or expand upon specific provisions within their respective treaties. Treaty bodies' General Comments and decisions on communications are generally viewed as authoritative,<sup>32</sup> and it is accepted that these treaty bodies provide useful tools for interpretation.<sup>33</sup> The expertise provided by these bodies will be used throughout this analysis to assist with clarification of States' legal obligations and to provide further understanding of how human rights treaties can be implemented within national law.

## 2.2 Iran's reservation to the Convention

The CRC is “the most widely ratified treaty in history, the first virtually universal human rights convention, and the most far-reaching and comprehensive of human rights treaties”.<sup>34</sup> All but three states (the USA, Somalia and South Sudan) have ratified the Convention, bringing it to the very edge of universality.<sup>35</sup> The sheer number and scope of reservations lodged by state parties, however, calls into question the value of such near-universality.

An international human rights treaty becomes legally binding when a State agrees to be bound by its provisions either through ratification of or accession to the treaty.<sup>36</sup> Iran has

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<sup>31</sup> Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2<sup>nd</sup> edn, N.P. Engel, 2005), Introduction, XXII, para. 6 and p. 746-748, paras. 61-64. The UN treaty bodies (and the treaties) relevant to the current analysis include the: Committee on the Rights of the Child (CRC); Human Rights Committee (ICCPR); Committee on Economic, Social and Cultural Rights (ICESCR); the Committee on the Elimination of All Forms of Racial Discrimination (ICERD); and the Committee on the Elimination of Discrimination against Women (CEDAW).

<sup>32</sup> Debate exists however as to whether the conclusions of the treaty bodies indicate “subsequent practice” themselves, or if the State responses to these decisions should be relied upon instead. For further discussion on the authoritative nature of treaty bodies, see UNGA, Report of the International Law Commission, Sixty-Fifth session, UN Doc A/68/10, p. 23, para. 10 (Chapter IV, Section C(2), Conclusion 2, Commentary); Keller & Ulfstein (eds.) *UN Human Rights Treaty Bodies: Law and Legitimacy* (CUP, 2012), p. 409-410.

<sup>33</sup> Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2<sup>nd</sup> edn, N.P. Engel, 2005), Introduction, XXII, para. 6

<sup>34</sup> Philip Alston and John Tobin, *Laying the Foundations for Children's Rights: An Independent Study of some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child*, (UNICEF Innocenti Research Centre, 2005), p. ix

<sup>35</sup> UNTC, Chapter IV, 11. Convention on the Rights of the Child, New York, 20 November 1989. Available at: [http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-11&chapter=4&lang=en](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en)

<sup>36</sup> According to VCLT article 11, a State may express its consent to be legally bound by the provisions of a treaty through, *inter alia*, ratification or accession. These terms have the same effect, but are subject to different procedures. States will ratify a treaty after signing the treaty

committed itself to implementing the CRC's provisions within its domestic law by way of ratifying the treaty; the CRC's provisions may thus be understood as part of domestic law, as States must integrate the obligations imposed by these treaties within their national legal framework.<sup>37</sup> The Iranian Civil code implements these obligations by stating that, "Treaty provisions which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and other governments, shall have the force of law."<sup>38</sup> It follows that Iran recognizes that it is bound by the CRC as part of its domestic law, which also implies that the courts should encourage implementation of international human rights law within domestic decisions.<sup>39</sup>

The Islamic Republic of Iran ratified the Convention on the Rights of the Child, which it 13 July 1994 with the following reservation:

The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the internal legislation in effect.<sup>40</sup>

Prior to ratification, Iran signed the CRC in 1991.<sup>41</sup> At that time, Iran submitted a similar reservation, except that it read "contrary to the Islamic Shariah", rather than the 1994

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(signatures show an endorsement of the treaty but do not create legally binding obligations). When States accede to a treaty, they agree to be bound by the treaty without any preliminary measures, thereby simplifying the process. For further information, see UNICEF, "Convention on the Rights of the Child: Signature, Ratification and Accession" (last updated 19 May 2014), available at: <[http://www.unicef.org/crc/index\\_30207.html](http://www.unicef.org/crc/index_30207.html)>.

<sup>37</sup> ICCPR article 2(2)

<sup>38</sup> Civil Code of the Islamic Republic of Iran, 1928, Art. 9, available at: <http://www.unhcr.org/refworld/docid/49997adb27.html> The relevant Constitutional provisions include Article 77 and Article 125. Article 77 holds that all "[i]nternational treaties, protocols, contracts and agreements must be approved by the Islamic Consultative Assembly." Article 125 further explains that "The President or his legal representative has the authority to sign treaties, protocols, contracts, and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organizations, after obtaining the approval of the Islamic Consultative Assembly."

<sup>39</sup> While the ICCPR does not prescribe a specific method of implementation on a national level, the Human Rights Committee "takes the view... that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order" (Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant* (HRC GC 31), UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para. 13).

<sup>40</sup> Declarations and reservations to the Convention on the Rights of the Child, Office of the High Commissioner on Human Rights (OHCHR), "Iran (Islamic Republic of)," upon Iran's ratification 13 July 1994. Available at: <<http://treaties.un.org/doc/publication/unts/volume%201788/volume-1788-a-27531-english.pdf>>. Please note that the text of the reservation recorded on the UNTC website mistakenly replaces the word 'internal' with 'international,' which alters the reservation's meaning. The original version is used here.

<sup>41</sup> Signature does not mean that treaty provisions become binding upon a State. However, by signing the treaty, the State is "obligated to refrain from acts which would defeat the object and

formulation, which focuses on provisions that are “incompatible with Islamic Laws and the internal legislation in effect.”<sup>42</sup> The change in the wording of Iran’s reservation upon signature and ratification seems to reflect the understanding that Islamic laws in Iran are subject to a specific interpretation.

Iran’s blanket reservation to the Convention on the Rights of the Child implies that all rights derived from the Convention are subject to Islamic law as enforced in Iran. If valid, Iran’s reservation would allow the State to apply the entirety of the CRC in a flexible manner and subject to internal legislation. Precisely those two aspects however – the comprehensive or ‘blanket’ coverage of the reservation, and the primacy accorded to internal laws – fall short of accepted standards for treaty reservations.

The reservation by Iran may be invalid according to international legal standards on two grounds: first, on account of the generalized nature of the reservation, and second, through the invocation of domestic law to preclude the full application of the treaty’s provisions.

#### *Blanket reservation*

The blanket reservation submitted by Iran does not clearly indicate the exact obligations that Iran has undertaken and, as such, does not conform to a basic requirement for treaty reservations.<sup>43</sup> The Human Rights Committee elaborates on these basic requirements within its General Comment 24, stating that reservations must be “specific and transparent.”<sup>44</sup> This requirement ensures that individuals can receive the full effects of the

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purpose of a treaty” (VCLT, article 18(a)). See also Bayefsky, “How to complain about human rights treaty violations: The basic international rules”, Section C, available at: <[http://www.bayefsky.com/complain/4\\_rules.php](http://www.bayefsky.com/complain/4_rules.php)>

<sup>42</sup> Declarations and reservations to the Convention on the Rights of the Child, OHCHR, “Iran (Islamic Republic of)”, upon Iran’s signature. Available at: <[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)>

<sup>43</sup> Articles 19-23 of the VCLT.

<sup>44</sup> Human Rights Committee, *General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant* (HRC GC 24), UN Doc CCPR/C/21/Rev.1/Add.6 (1994), para. 6, 8 and 19. See also *Restrictions to the Death Penalty*, *ibid*, para 65: “The purpose of the Convention imposes real limits on the effect that reservations attached to it can have.” and *The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights* (Arts. 74 and 75), Advisory Opinion OC-2/82, September 24, 1982, Inter-Am. Ct. H.R. (Ser. A) No. 2 (1982), para 29: “Modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves

treaty obligations, as intended by its purpose. Reservations to human rights treaties should thus “refer to a particular provision of the Covenant and indicate in precise terms its scope in relation thereto”.<sup>45</sup> The Human Rights Committee holds that:

[R]eservations should not systematically reduce the obligations undertaken only to the presently existing in less demanding standards of domestic law. Nor should interpretative declarations or reservations seek to remove an autonomous meaning to Covenant obligations, by pronouncing them to be identical, *or to be accepted only insofar as they are identical, with existing provisions of domestic law* [emphasis added].<sup>46</sup>

Iran’s reservation instead subjects all provisions of the CRC to the qualification of the vaguely defined notion of “Islamic laws” and its “internal legislation” which includes a very broadly defined range of laws, and may change over time. The reservation by Iran thus gives primacy to an entire body of religious and internal law in a blanket declaration. It speaks to no specific article, right or other principle, and could effectually apply to every single provision of the CRC. As a result, Iran’s actual obligations under all 54 articles of the Convention are opaque.

According to article 51(2) of the CRC, a reservation incompatible with the object and purpose of the present Convention shall not be permitted.<sup>47</sup> This provision reflects one of the core principles of the VCLT that deals with reservations to treaties: when States ratify a treaty, they are allowed to formulate a reservation to express their differences with specific provisions.<sup>48</sup> These reservations, however, must not be incompatible with the object and purpose of the treaty.<sup>49</sup> If the object and purpose of the Convention is to ensure greater rights and protection to children, then Iran’s blanket reservation would appear invalid on the basis of its generality: the reservation effectively allows Iran to suspend children’s rights and the provision of services to them, which defeats the object

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to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction.”

<sup>45</sup> HRC GC 24, para. 19.

<sup>46</sup> HRC GC 24, para. 19.

<sup>47</sup> CRC art. 51(2). This concept is elaborated by VCLT article 19(c) and related jurisprudence from regional human rights courts, such as the European and Inter-American Courts of Human Rights. See, for example: *Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, I.C.J. Reports 1951, p. 15; Human Rights Committee, *General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant* (HRC GC 24), UN Doc CCPR/C/21/Rev.1/Add.6 (1994); *Restrictions to the Death Penalty* (Arts. 4(2) and 4(4) of the American Convention on Human Rights), Advisory Opinion OC-3/83, September 8, 1983, Inter-Am. Ct. H.R. (Ser. A) No. 3 (1983).

<sup>48</sup> Articles 19-23 of the VCLT

<sup>49</sup> VCLT, article 19(3). See also *Advisory Opinion Concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, I.C.J. Reports 1951, p. 12-13

and purpose of the CRC.<sup>50</sup>

In its 2000 and 2005 Concluding Observations on Iran's first and second periodic reports under the CRC, respectively, the Committee on the Rights of the Child encouraged Iran to withdraw or narrow its reservation, criticizing the "broad and imprecise nature of the State party's general reservation [which] potentially negates many of the Convention's provisions and raises concern as to its compatibility with the object and purpose of the Convention".<sup>51</sup> This concern was echoed by the UN General Assembly, which in Resolution A/68/184 (2014) called upon Iran to effectively implement its human rights obligations, to withdraw overly general or imprecise reservations to human rights treaties or any reservations that could be considered incompatible with the object and purpose of the treaty, and to consider acting upon the concluding observations of relevant treaty bodies.<sup>52</sup> Additionally, several states have officially objected to Iran's reservation to the CRC under this principle.<sup>53</sup> By objecting to the reservation, these States are providing supporting evidence that this reservation is contrary to the object and purpose of the treaty.<sup>54</sup>

### *Internal Law as Justification*

The second problematic aspect of the reservation relates to VCLT article 27, which states

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<sup>50</sup> As William Schabas stated, "Iran's reservation [to the CRC] is so far reaching as to constitute a total absence of ratification. It is hardly necessary to even consider whether the reservation is compatible with the object and purpose of the Convention." Schabas, 'Reservations to the Convention on the Rights of the Child' (1996) 18(2) *HumRtsQ* 472, 478. See also HRC GC 24, para. 19; Safir Syed, 'The Impact of Islamic Law on the Implementation of the Convention on the Rights of the Child: The Plight of Non-Marital Children under Shari'a' (1998) 6(4) *International Journal of Children's Rights*, 385.

<sup>51</sup> Committee on the Rights of the Child, *Concluding Observations on the initial periodic report of Iran* (CRC CO 2000), UN Doc CRC/C/15/Add.123 (2000), para. 7; Committee on the Rights of the Child, *Concluding Observations on the second periodic report of Iran* (CRC CO 2005), UN Doc CRC/C/15/Add.254 (2005), para. 6-7.

<sup>52</sup> UNGA, *Resolution Concerning the Human Rights Situation in Iran*, UN Doc A/RES/68/184 (4 February 2014), para. 9. See also previous UNGA Resolution of 2012, UN Doc A/RES/66/175, para 10.

<sup>53</sup> The United Nations Treaty Collection lists all States parties to the CRC and the declarations or reservations made upon ratification of the treaty. The following States have formally objected to Iran's reservation to the CRC: Sweden, Finland, Germany, Ireland, the Netherlands, Norway, Portugal, Denmark, Austria, and Italy. See UNTC, "Convention on the Rights of the Child", available at: <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)>

<sup>54</sup> While the force of an objection to a reservation is dependent upon the intention of the objecting State (*Mer d'Iroise case*, Reports of International Arbitral Awards (RIAA), vol. XVIII, pp. 32-33, para. 39), it is clear that objections to a reservation do not indicate acceptance of reservations (Report of the ILC Special Rapporteur, Alain Pellet, UN Doc A/CN.4/535/Add. 1 (2003), para. 69)

that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”<sup>55</sup> This is not only a basic tenet of public international law but has also been affirmed by the Committee on the Rights of the Child in its General Comment on implementation of the Convention within domestic law:

The Committee is deeply concerned that some States have made reservations which plainly breach article 51(2) by suggesting, for example, that respect for the Convention is limited by the State’s existing Constitution or legislation, including in some cases religious law.<sup>56</sup>

The reservation attempts to give primacy to Iranian internal law by its reference to “internal legislation in effect”, which is intrinsically linked to Islamic criteria under Iran’s Constitution.<sup>57</sup> This reliance upon a vaguely defined “catch-all” within Iranian domestic law thus invalidates Iran’s reservation to the CRC on both counts – generality that defeats the object and purpose of the Convention and invocation of internal law.

According to the VCLT, a State may formulate a reservation *unless* “the reservation is incompatible with the object and purpose of the treaty” (VCLT, article 19(c)). A reservation contrary to the object and purpose of the treaty will therefore be considered invalid. This reasoning is reflected in CRC article 51(2). Where a reservation is deemed incompatible, the treaty provisions continue to apply to the State party, unless the State officially withdraws from the treaty. In other words, whilst the treaty remains in force, the reservation cannot be considered as applicable:<sup>58</sup> in short, as Iran’s reservation is incompatible with the object and purpose of the treaty, all provisions of the Convention apply fully to Iran.<sup>59</sup>

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<sup>55</sup> VCLT, Article 27.

<sup>56</sup> This statement further clarifies that international treaty provisions take precedence over any such internal law in the case of conflict between the two. UN Committee on the Rights of the Child, *General Comment No. 5: General Measures of implementation of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/5 (2003), para 20. See also Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), para. 4.

<sup>57</sup> The concept of “Islamic criteria” will be considered in further detail in 2.2 below.

<sup>58</sup> While there are divergent views on the legal effect of submitting a reservation that is incompatible with the object and purpose of the treaty, this analysis takes the view described herein. For further information, see Ryan Goodman, “Human rights treaties, invalid reservations, and state consent” (2002) 96 *AJIL* 531. For rules relating to withdrawal from a treaty, see VCLT articles 42-45. In the event of withdrawal, customary international law will still apply, as withdrawal from a treaty does not “in any way impair the duty of any State to fulfill any obligation embodied in the treaty to which it would be subject under international law independently of the treaty” (VCLT, article 43).

<sup>59</sup> This is also the position taken by Amnesty International. See “Last Executioner of Children” (2011), p. 3, available at: <https://www.amnesty.org/en/library/asset/MDE13/059/2007/en/b758ea94-d38d-11dd-a329->

### 3. Legal status of children under Iranian law

Most laws relating to children are scattered across the Civil Code, Penal Code, Criminal Procedure Code, Labour Code and several selected family and juvenile laws, such as the Law on Protection of Children and Adolescents.<sup>60</sup> These laws, as well as key provisions of the Iranian Constitution, place rights – of children, women and men – within an Islamic framework.

#### 3.1 The Iranian Context: Conformity with Islamic criteria

According to Article 4 of the Iranian Constitution, “All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria”.<sup>61</sup> Article 4 further stipulates that this provision “applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations,” and that the *fuqaha*, or Islamist jurists of the Guardian Council, shall judge compliance with this principle.<sup>62</sup> The principle of conformity with “Islamic criteria” is explicitly invoked in other specific provisions of the Iranian Constitution as well. In Article 20, for instance, the Constitution states that “All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.”

A core principle of international law requires States to give primacy to its international obligations above its domestic laws, as examined above in reference to the VCLT.<sup>63</sup> As discussed, internal law cannot be invoked as a justification for non-compliance with

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[2f46302a8cc6/mde130592007en.pdf](https://www.refworld.org/docid/49997adb27.html): “Amnesty International considers that if the reservation is invoked to allow for the execution of child offenders, it would defeat the very object and purpose of the CRC. Iran’s reservation should therefore be removed or, in any event, never invoked as legal authority to allow for the execution of child offenders.”

<sup>60</sup> 1928 Civil Code of the Islamic Republic of Iran (unofficial English translation), available at: <http://www.refworld.org/docid/49997adb27.html>; 1991 Penal Code of the Islamic Republic of Iran (English translation, last amended in 2012), available at: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/3200-islamic-penal-code-of-the-islamic-republic-of-iran-book-one-and-book-two.html#.U4t66JRdU6E>; 1999 Criminal Code of Procedure for Public and Revolutionary Courts (English translation), available at: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html#.U4t7M5RdU6E>; 1990 Labour Code (English translation), available at: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/21843/64830/E90IRN01.htm>; 2002 Law on Protection of Children and Adolescents (English translation, endorsed 2003), available at: [http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/iranislamicrepof/iran\\_child\\_prot\\_law\\_eng.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/iranislamicrepof/iran_child_prot_law_eng.htm)

<sup>61</sup> Constitution, Islamic Republic of Iran, Article 4

<sup>62</sup> Constitution of Iran, article 4

<sup>63</sup> States cannot invoke internal law as justification for violation of its treaty obligations (VCLT article 27).



international law; this is a well-accepted general principle of customary international law<sup>64</sup> and, as such, is binding upon all States. This Constitutional provision is thus problematic due to the primacy it implicitly seeks to accord to specific elements of domestic law over international legal obligations.<sup>65</sup>

In addition, as a State party to several core international human rights treaties, Iran is bound to uphold the principle of non-discrimination within its domestic legal framework. Inclusion of a Constitutional provision that allows for qualification of the principle of non-discrimination cannot conform to Iran's international legal obligations. Although the Islamic Republic of Iran has pointed to the express enumeration of human rights within its Constitution and domestic laws,<sup>66</sup> it is clear that the 'Islamic criteria' requirement seeks to preserve an avenue to constrain these rights.

The specific qualification of "Islamic criteria" within Iran sets the tone that children can be discriminated against both in law and in practice, depending on the State authorities interpretation of "Islamic criteria".

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<sup>64</sup> This principle can be found in VCLT article 27. The VCLT is, in itself, considered to constitute customary international law.

<sup>65</sup> In 2000, the Committee on the Rights of the Child stated that the "narrow interpretations of Islamic texts by [Iranian] State authorities are impeding the enjoyment of many human rights protected under the Convention" (CRC CO 2000, para 6).

<sup>66</sup> See, eg, UN Human Rights Council 'National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1,' submitted by IRI (18 Nov. 2009) U.N. Doc. A/HRC/WG.6/7/IRN/1 (UPR Report), paras. 21-40, 61, 86; Human Rights Committee, 'Consideration of reports submitted by States parties under article 40 of the Covenant, Islamic Republic of Iran, Addendum: Replies from the Government of the Islamic Republic of Iran to the list of issues (CCPR/C/IRN/Q/3) to be taken up in connection with the consideration of its third periodic report (CCPR/C/IRN/3)', (12 September 2011), U.N. Doc. CCPR/C/IRN/Q/3/Add.1, §§68, 71-73, 86-90, 103, 116.

The Constitutional qualification of “Islamic criteria”, similar to Iran’s reservation to the CRC, thus invokes a specific interpretation of Sharia, as interpreted by Iran’s *Majlis* (Parliament), the Supreme Leader and the Guardian Council.<sup>67</sup>

### 3.2 Child as Rights-bearer or Possession

Within the ICCPR, article 16 requires States parties to ensure that each individual is afforded recognition before the law. The Convention on the Rights of the Child explicitly applies this notion to the child by recognizing the child’s subjecthood, whereby a child is not his or her parents’ possession or a possession of the State but is, rather, an independent rights-bearer with legal recognition.<sup>68</sup> International law thus accords to all children the agency and rights of subjecthood, taking into consideration the child’s evolving capacities.<sup>69</sup> It requires a paradigm shift to regard children as rights holders and not as objects.<sup>70</sup>

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<sup>67</sup> Nadjma Yassari, “Iranian Family Law in Theory and Practice” (2004) 9 *Yearbook of Islamic and Middle Eastern Law* 43, 50: “To make sure that future laws would be compatible with Islamic principles, Principle 4 of the new [post-Revolution] Constitution ordered a specific body – the Council of Guardians – to supervise all parliamentary Bills... According to Principle 71 of the Iranian Constitution, the Parliament, *magles-e-surai-e eslami*, is the legislative organ. Its competences are, however, limited by Principle 91 of the Constitution that submits the activities of the Parliament to the control of the Council of Guardians (*sura-je negahban*). The task of the Council of Guardians is to make sure that no law proposed by the Parliament is in conflict with Islamic Principles or the Constitution. The Council is constituted of 12 members, six of whom are clerics appointed by the revolutionary leader, and six law experts, appointed by Parliament upon the recommendation of the Ministry of Justice. In case of incompatibility with Islamic law, the draft is returned to Parliament for reconsideration. If the Members of Parliament insist on the enactment of a law and if the Council of Guardians still refuses, a third organ – the Expediency Council, *marma etaxis-e maslahat enezam*, is brought in to arbitrate between the Council and the Parliament and decide the matter (Principle 112 of the Constitution). The members of the Expediency Council are appointed by the revolutionary leader.”

<sup>68</sup> UN Committee on the Rights of the Child, *General Comment 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)* [CRC GC 8], UN Doc CRC/C/GC/8 (2006), para 47. This extends even to the very youngest children *cf.* CRC GC 7, para 5: “The Convention requires that children, including the very youngest children, be respected as persons in their own right.” See also, generally, ICCPR article 16, which holds that “Everyone shall have the right to recognition everywhere as a person before the law.”

<sup>69</sup> CRC Article 5; CRC GC 7, para 17: “Evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children’s autonomy and self-expression and which have traditionally been justified by pointing to children’s relative immaturity and their need for socialization.”

<sup>70</sup> A child-rights approach represents a historical change in how childhood is conceived: “respecting, protecting and fulfilling the rights in the Convention... requires a paradigm shift away from child protection approaches in which children are perceived and treated as “objects” in need of assistance rather than as rights holders entitled to non-negotiable rights to protection,” UN Committee on the Rights of the Child, *General Comment No. 13 (2011): The right of the*

According to then-Iranian Minister for Foreign Affairs Dr. Kamal Kharazi, speaking before the UN General Assembly's 2005 Special Session on Children, the protection of the child in Iran is ensured by Islam, the Constitution and international law:

Our overall policy towards children and youth is based on the exalted Islamic precepts and values as well as the letter and spirit of the Constitution, and the commitments derived from the international instruments in particular the World Summit's outcome and the Convention on the Rights of the Child.<sup>71</sup>

This statement reflects the obligation imposed upon Iran as a State party to the ICCPR, ICESCR and CRC to implement the provisions of these treaties within domestic law. In practice, however, inconsistencies between Iranian and international law exist.

### *Constitution*

While there are a number of domestic provisions relating to the family, few fully address the range of rights enumerated in the CRC.<sup>72</sup> Article 10 of the Iranian Constitution, for example, reads, "As the family is the fundamental unit of Islamic society, all laws, regulations, and relevant planning must be directed towards facilitating the formation of family, safeguarding its sanctity and the stability of family relations *on the basis of Islamic laws and morality.*"<sup>73</sup> The status of the child is addressed through the prism of the protection of the family or of the mother.<sup>74</sup> While the "interests of the child" are mentioned within the Constitution, the Civil Code shows that discrimination against the

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*child to freedom from all forms of violence* (CRC GC 13), UN Doc CRC/C/GC/13 (2011), para 59. This principle has been further supported by the Inter-American Court of Human Rights in "Juridical status and human rights of the child", Advisory Opinion OC-17/02, August 28, 2002, Inter-Am. Ct. H.R. (Ser. A) No. 17 (2002), Para 137(1): "Children are subjects entitled to rights, not only objects of protection."

<sup>71</sup> Statement by H.E. Dr. Kamal Kharrazi, Minister for Foreign Affairs, before The Twenty-Seventh Special Session of the UNGA on Children New York (10 May 2002), 5<sup>th</sup> Meeting, UN Doc A/S-27/PV.5, p 30.

<sup>72</sup> The Iranian Constitution, for example, requires the government to take certain measures to ensure women's rights, in conformity with Islamic criteria, such as "establishing competent courts to protect and preserve the family" (article 21(3)). The CRC, on the other hand, explicitly establishes the primary need to consider the best interests of the child in all actions concerning children, including in courts of law (article 3), in addition to distinct rights afforded to the child when deprived of his or her liberty (article 37). The clear legal obligations imposed upon the State by the CRC should result in direct implementation of these additional rights.

<sup>73</sup> Constitution, Islamic Republic of Iran, Article 10 (emphasis added).

<sup>74</sup> Relatedly, the Constitution is not only "protective" of children but also of women, who are less endowed with rights than "protected" for the sake of their "precious duty" as mothers (Islamic Republic of Iran, Constitution, preamble section "Women in the Constitution". See also, for example, Article 10 and 21 of the Constitution). For further discussion on women's rights, please refer to Human Rights in Iran Unit, *Legal Status of Women: Iran's International Human Rights Obligations* (June 2014), available at: <<http://www.essex.ac.uk/hri/documents.aspx>>

mother and a lack of consideration for the best interest for the child results in a situation wherein the child's rights are effectively violated. Nevertheless, a constitution is not intended to address all possible issues, such as all rights necessary to comprehensively protect children and to allow for their development. They may indicate a general approach in their overall focus and framing. However, the Constitutional provisions related to the child must be read in conjunction with child-specific domestic laws, such as the Civil Code, with due attention to the implementation of these laws on the ground.

### *Child Protection Law*

The Child Protection Law sets out prohibitions of crimes against the child, such as child abuse, exploitation and sale of the child.<sup>75</sup> In its article 1, the Child Protection Law establishes that “all individuals below the age of 18 shall enjoy the provisions of this law”, but it does not provide that the child has rights in his or her own individual legal capacity.<sup>76</sup> The CRC, on the other hand, requires that States parties allow the child the right to be heard, with respect of their evolving capacities, in proceedings regarding such crimes and to establish procedures for complaints and redress.<sup>77</sup> This right is integral to the recognition of the child as a rights bearer, as it is “connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with his or her own views on the rights enshrined” within the CRC.<sup>78</sup> In Iran's Child Protection Law, article 3 instead establishes a set range of possible criminal sentences, without taking into consideration the severity of the crime or how this crime has impacted upon the child's development.<sup>79</sup> While this law is somewhat in conformity with the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography<sup>80</sup> in terms of its criminalization of these acts, it does not include the child-

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<sup>75</sup> Islamic Republic of Iran, Child Protection Law, ratified by Parliament 15/12/2002, endorsed by Council of Guardians 14/01/2003. Full English text available at: [http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/iranislamicrepof/iran\\_child\\_prot\\_law\\_eng.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/iranislamicrepof/iran_child_prot_law_eng.htm).

<sup>76</sup> The Convention on the Rights of the Child is, overall, a “confirmation of the equal status of children as subjects of rights” (CRC GC 5, para. 66). See also CRC Committee, *General Comment No. 12: The right of the child to be heard* (CRC GC 12), UN Doc CRC/C/GC/12 (2009), paras. 1, 18, 68

<sup>77</sup> CRC articles 5 and 12(2); CRC GC 12, para. 32, 44, 46-48, 84

<sup>78</sup> CRC GC 12, para. 68.

<sup>79</sup> The Committee insists that “States parties must be aware of the potential negative consequences of an inconsiderate practice of [the right to be heard], particularly in cases involving very young children, or in instances where the child has been a victim of a criminal offence, sexual abuse, violence or other forms of mistreatment. States parties must undertake all necessary measures to ensure that the right to be heard is exercised ensuring full protection of the child.” (CRC GC 12, para. 21)

<sup>80</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 (25 May 2000). Iran became a State party in September 2007 (UNTC, [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-11-c&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en)).

rights approach required by both the Convention and its Optional Protocol (CRC-OPSC article 8(3)). The law focuses on punishing the perpetrator, rather than ensuring that the child has the ability to fully express his or her rights as enshrined in the CRC. It is therefore inadequate in relation to international legal standards.

The inconsistencies that exist between Iran's international legal obligations and the implementation of these duties within domestic law are most notable in the absence of recognition of the child as a subject and individual rights-bearer. Instead, the focus within Iranian laws is the protection of the family, particularly of the father,<sup>81</sup> or the penalization of persons who commit crimes against the child. The protection of the rights of the child is not adequately incorporated. This lack of a rights-focused approach negatively affects children in practice, particularly with regard to the minimum ages of majority, criminal responsibility, puberty and marriage.

#### **4. Age of the Child**

Minor status entails a host of specific rights, measures of protection and legal remedies.<sup>82</sup> Yet, an agreed global definition of the child remains elusive and inhibits international protection efforts: States may undertake certain obligations regarding children but, without determining who is a child, these obligations lose the power of precise application.

Article 1 of the Convention on the Rights of the Child, while setting eighteen as the model definition of a child, ultimately leaves the term open to varying cultural and religious interpretations.<sup>83</sup> This margin of discretion is limited, however, by the principles of a child-rights approach, which must continue to be upheld.<sup>84</sup> Accordingly, the

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<sup>81</sup> The Committee on the Rights of the Child has reiterated that, in Iran, "the rights of the child are seen through a paternalistic lens; the child is not seen as an active subject of human rights" (CRC CO 2000, para 2).

<sup>82</sup> Geraldine Van Bueren, *The International Law on the Rights of the Child*. (Martinus Nijhoff, 1998), p. 32, 53; HRC, *General Comment 17: Rights of the Child (Article 24)* [HRC GC 17], UN Doc HRI/GEN/1/Rev.1 at 23 (1994), para 4.

<sup>83</sup> CRC Article 1: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

<sup>84</sup> CRC, *General Comment No. 7 (2005): Implementing Child Rights in Early Childhood*, UN Doc CRC/C/GC/7/Rev.1 (2005), para. 8: "States parties are encouraged to draw on beliefs and knowledge about early childhood in ways that are appropriate to local circumstances and changing practices, and respect traditional values, provided these are not discriminatory, (article 2 of the Convention) nor prejudicial to children's health and well-being (art. 24.3), nor against their best interests (art. 3)." See also General Comment 14, which states, "Any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence 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>85</sup> Further, the Human Rights Committee maintains that while the determination of a child's age of majority falls within the provenance of State Parties, the ages of majority, criminal responsibility and employment should "not be set unreasonably low".<sup>86</sup>

There is an increasing trend within international law to define a child as all those under eighteen.<sup>87</sup> The CRC sets out a concrete minimum age in specific areas: capital punishment or life imprisonment without parole is not allowed for individuals under 18 (article 37(a)) and direct participation in hostilities is prohibited for persons under age 15 (article 38).<sup>88</sup> In other areas, such as the age of criminal responsibility (article 40) or age of employability (article 32), the Convention again gives the state limited discretion.<sup>89</sup>

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determination of their best interests" (CRC, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)* [CRC GC 14], UN Doc CRC/C/GC/14 (2013), para. 53.

<sup>85</sup> Committee on the Rights of the Child, *General Comment 4: Adolescent health and development in the context of the Convention on the Rights of the Child* (CRC GC 4), UN Doc CRC/GC/2003/4 (2003), para. 9

<sup>86</sup> This publication will focus primarily upon the ages of majority and of criminal responsibility. For further information on labour rights within Iran, please refer to Human Rights in Iran Unit, *Analysis of Labour Rights and Employment: Iran's International Human Rights Obligations* (June 2014), available at: <<http://www.essex.ac.uk/hri/documents.aspx>>. See also, HRC GC 17, para 4; UNGA, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") : resolution / adopted by the General Assembly* (1985), UN Doc A/RES/40/33, Rule 4.1 & Commentary. 4.1: "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity." Commentary: "The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless."

<sup>87</sup> In an example of this emerging consensus as shown by state practice, the resolution adopted following the UN General Assembly's Special Session on Children (A/S/27-24 (2002)) defines children as "every human being below the age of 18 years, including adolescents". (UNGA Special Session on Children. "A World Fit For Children", UN Doc A/RES/S-27/2 (2002) [adopted without a vote], para 4.) Although this resolution was adopted without a vote, in its statement at the 6<sup>th</sup> Meeting of the Special Session (A/S-27/PV.6, p 85) Iran emphasized that, "We will interpret those parts of the outcome document which relate to the Convention on the Rights of the Child in line with our position, as defined and enunciated by my Government upon its ratification of the Convention on the Rights of the Child." (See above for further elaboration on Iran's reservation to the CRC.)

Regional human rights bodies and soft law sources have reaffirmed the standard established by the CRC's Article 1 of a child as a person under the age of 18 *cf.* African Charter on the Rights

## 4.1 Age of Majority

The age of majority under Iranian law varies greatly from the international standard set by the Convention on the Rights of the Child. According to Civil Code Article 1210, the age of majority is 9 for girls and 15 for boys.<sup>90</sup> These religious-related provisions rely on a lunar calendar<sup>91</sup> in which 9 lunar years constitute 8 years and 9 months, while 15 years amount to 14 years and 7 months.<sup>92</sup>

This leaves a large protection gap in which Iranian girls between 9-18 and boys between 15-18 years lack the basic protections of the Convention, as the Committee on the Rights of the Child has noted with concern in its 2005 Concluding Observations on Iran.<sup>93</sup> The Committee went on to urge the government to set the age of majority at 18 and to

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and Welfare of the Child *cf.* Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990); Juridical status and human rights of the child, Advisory Opinion OC-17/02, August 28, 2002, Inter-Am. Ct. H.R. (Ser. A) No. 17 (2002), para 42: “Finally, taking into account international norms and the criterion upheld by the Court in other cases, “child” refers to any person who has not yet turned 18 years of age.” See also UNGA, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, UN Doc A/RES/45/113 (1990), Article II (11)a: “A juvenile is every person under the age of 18.”

<sup>88</sup> The Optional Protocol to the CRC on the involvement of children in armed conflict sets the minimum age for direct participation in hostilities at 18 years (article 1). Iran has signed but not ratified this Protocol (UNTC, available at:

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en)).

<sup>89</sup> CRC, Articles 40 and 32.

<sup>90</sup> Islamic Republic of Iran, Civil Code, Article 1210, Note 1 and 2.

<sup>91</sup> As a lunar calendar, the Islamic calendar (or Hijri calendar) relies upon the motion of the moon. It is based on the Qur’an (Sura IX, 36-37). Containing 12 synodic months (approximately 354.36 days), the Islamic calendar is consistently shorter than the Christian calendar, which consists of approximately 365 days per year. The Islamic calendar thus shifts with respect to the Christian calendar, which is a purely lunar calendar. It contains 12 months that are based on the motion of the moon, and because 12 synodic months is only 12 x 29.53=354.36 days, the Islamic calendar is consistently shorter than a tropical year, and therefore it shifts with respect to the Christian calendar. The proper observance of the Islamic calendar is considered a sacred duty for Muslims. See Calendars through the Ages, “The Islamic Calendar”, available at: <http://www.webexhibits.org/calendars/calendar-islamic.html>

<sup>92</sup> Mohammad Nayyeri, “Criminal Responsibility of Children in the Islamic Republic of Iran’s New Penal Code”, Iran Human Rights Documentation Centre (2012), Available at: <http://www.iranhrdc.org/english/publications/legal-commentary/100000054-criminal-responsibility-of-children-in-the-islamic-republic-of-irans-new-penal-code.html#.UJ1E2W9mIxx>

<sup>93</sup> CRC CO 2005, para. 22: “The Committee reiterates its deep concern that the age of majority is set at pre-defined ages of puberty for boys at 15 and for girls at 9, because it implies that boys from 15 to 18 years and girls from 9 to 18 years are not covered by the provisions and principles of the Convention.”

increase its minimum age requirements to be enforceable, gender neutral and in the best interests of the child, in accordance with international standards.<sup>94</sup>

Though states are accorded some flexibility by the Committee on the Rights of the Child, their definitions must be reasonable; Iran's definition of a child raises concerns on reasonableness as well as discrimination based upon gender.

The Law on Protection of Children and Adolescents provides one rare instance in which the age of 18 is used in Iranian law.<sup>95</sup> Article 1 of this act defines the scope of the application to "all individuals below the age of 18"; a child is not explicitly defined as "18 and below", although they are included within this ambit.<sup>96</sup>

## 4.2 Age of Criminal Responsibility

In terms of criminal responsibility, the Penal Code bases its definition of the child on the age of maturity.<sup>97</sup> The Penal Code sets the age of a "mature" child as 9 lunar years for a girl and 15 lunar years for a boy,<sup>98</sup> which mirrors the age of majority as set by the Civil Code.<sup>99</sup> Under this definition, "non-mature" children are exempt from criminal responsibility.<sup>100</sup> This formulation, however, allows girls between 9 and 18 years of age and boys between 15 and 18 years of age to be held criminally responsible.<sup>101</sup> The definition of the child under the Penal Code and the disparity between the minimum age of criminal responsibility within Iranian law (9 for girls and 15 for boys) and the

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<sup>94</sup> CRC CO 2005, para 23.

<sup>95</sup> Islamic Republic of Iran, 2003 Child & Juvenile Protection Act (2003), article 1, full English translation available at: [http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/iranislamicrepof/iran\\_child\\_prot\\_law\\_eng.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/iranislamicrepof/iran_child_prot_law_eng.htm)

<sup>96</sup> Islamic Republic of Iran, 2003 Child & Juvenile Protection Act, Article 1.

<sup>97</sup> Islamic Republic of Iran, New Penal Code, article 147.

<sup>98</sup> Islamic Republic of Iran, New Penal Code, article 147.

<sup>99</sup> Islamic Republic of Iran, Civil Code, Article 1210, Note 1 and 2.

<sup>100</sup> Islamic Republic of Iran, New Penal Code, article 146. The Old Penal Code defined the child as "a person who has not reached the age of puberty as stipulated in Islamic Shari'a." (Article 49, Note 1). The Criminal Procedure Code defines the child as "a person who has not reached religious maturity", reflecting an on-going debate between Islamic clerics regarding the age of maturity according to Islamic Shari'a. For further details, see Mohammad Nayyeri, *Criminal Responsibility of Children in the Islamic Republic of Iran's New Penal Code* (Iran Human Rights Documentation Centre, February 2012), available at: <http://www.iranhrdc.org/english/publications/legal-commentary/1000000054-criminal-responsibility-of-children-in-the-islamic-republic-of-irans-new-penal-code.html#.U6a8XII1dU6E>

<sup>101</sup> Islamic Republic of Iran, Penal Code, Article 49, Note 1



recommended minimum age within international law (18 years of age)<sup>102</sup> results in “arbitrary and disparate application of laws and discriminat[ion] between girls and boys with respect to legal capacity (including minimum age for marriage), civil liability and age of criminal responsibility”.<sup>103</sup>

The new Penal Code, which is in force, creates a 5-tier age bracket (under 9, 9-12, 12-14, 14-15, 15-18), each distinguished by gender, to correspond to the 4 categories of crimes under Shariah: minor *ta'azir* (crimes inducing discretionary punishments not prescribed by Islam), major *ta'azir*, *qisa* (retribution), and *huddud* (violations of divine will inducing punishments prescribed by Shari'a).<sup>104</sup> These categories yield a total of 40 possible punishment permutations determined by age, gender and category of crimes.<sup>105</sup>

Nevertheless, the Government of Iran has stated that “children ha[ve] no criminal responsibility in the judicial system of Iran”.<sup>106</sup> In practice, however, the age of maturity as defined by the Penal Code implies that a 9-year-old girl could be punished for a crime as an adult.<sup>107</sup> It should be noted, however, that the categorization of the new Penal Code does provide stronger safeguards in certain cases for alleged child offenders. Article 90 states that:

In respect of the 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

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<sup>102</sup> While CRC article 1 recommends that a child should be defined as a person under 18 years of age, the Committee on the Rights of the Child has noted that “a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable.” (CRC GC10, para. 32; see also UNGA, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") : resolution / adopted by the General Assembly (1985)*, UN Doc A/RES/40/33, Rule 4)

<sup>103</sup> CRC CO 2000, para 19. This comment refers to the age of puberty as set within the Civil Code article 1212, Note 1, which is used as the basis for minimum age of marriage, as well as the minimum age of criminal responsibility as previously defined in the old Penal Code. As shown within the present analysis, this statement continues to apply to the newly defined age of criminal responsibility under the revised Iranian Penal Code, article 147.

<sup>104</sup> The ways in which these punishments are applied to children require deep legal analysis that is outside the scope of this study. For further information, see Mohammad Nayyeri, *Criminal Responsibility of Children in the Islamic Republic of Iran's New Penal Code*, Iran Human Rights Documentation Centre (2012), Available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/100000054-criminal-responsibility-of-children-in-the-islamic-republic-of-irans-new-penal-code.html#.UJ1E2W9mIrk>>

<sup>105</sup> Refer to the Human Rights in Iran Unit's Legal Research Series: *The Death Penalty for Drug Crimes in Iran: Analysis of Iran's International Human Rights Obligations* (2014), available at <<http://www.essex.ac.uk/hri/documents.aspx>> for an analysis of juvenile justice and the death penalty in Iran.

<sup>106</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran*, UN Doc A/HRC/14/12 (2010), para 66.

<sup>107</sup> Islamic Republic of Iran, Penal Code, Article 49, Note 1

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.

Certain *hudud* crimes are punishable by the death penalty, such as specific types of *zina* (sexual intercourse between a man and a woman who are not married)<sup>108</sup> and swearing at the Great Prophet of Islam.<sup>109</sup> In practice, if a girl between the ages of 9 and 18 were to be found guilty of either of these crimes, she could be sentenced to the death penalty.<sup>110</sup>

International law unequivocally prohibits the application of the death penalty to persons under the age of 18.<sup>111</sup> While the Iranian government acknowledges the problematic nature of its minimum age of criminal responsibility, it dismisses the necessity of precise determinations by emphasizing mercy as an alternative to the harsh crimes included in the Penal code.<sup>112</sup> This approach does not comply with Iran's international legal

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<sup>108</sup> See articles 244(a)-(d) of the Iranian Penal Code. Article 244(a), for example, prohibits *zina* with blood relatives who are prohibited to marry. See also Article 233-234 of the Iranian Penal Code, which criminalizes sodomy, punishable by death.

<sup>109</sup> Article 262 of the Iranian Penal Code.

<sup>110</sup> The Penal Code applies to all "mature" persons. As the age of maturity is defined as 9 lunar years for girls and 15 lunar years for boys, a girl above this age would be considered "mature" for the purposes of the Penal Code. This is subject to the categorization of crimes, as explained above. For further information see Mohammad Nayyeri, *Criminal Responsibility of Children in the Islamic Republic of Iran's New Penal Code*, Iran Human Rights Documentation Centre (2012), Available at: <http://www.iranhrdc.org/english/publications/legal-commentary/1000000054-criminal-responsibility-of-children-in-the-islamic-republic-of-irans-new-penal-code.html#.UJ1E2W9mIrk>

<sup>111</sup> CRC, article 37(a); ICCPR, article 6(5). The Human Rights Committee has recognized this prohibition as non-derogable customary international law (HRC GC 24, para. 8). See also the following examples of international bodies condemning Iran for its application of the death penalty to juveniles within domestic law: OHCHR Press Release, "Iran: UN expert condemns public execution of juvenile and reiterate call for immediate halt on the death penalty", available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11415&LangID=E>; UN General Assembly, *Resolution on the situation of human rights in the Islamic Republic of Iran*, UN Doc A/RES/68/184 (2013), para. 5(c); Human Rights Committee, *Concluding Observations on the third periodic report of the Islamic Republic of Iran* (HRC CO 2011), UN Doc CCPR/C/IRN/CO/3 (2011), para. 13; CRC CO 2005, para. 30.

<sup>112</sup> UN Committee on the Rights of the Child, *Second periodic reports of the Islamic Republic of Iran*, UN Doc CRC/C/104/Add.3 (2003), paras. 203-205: "The legal age for criminal responsibility is one of the problems that needs to be resolved by Iranian religious jurists and lay lawyers... It is well known that the lofty Islamic Shariah, the unique Heavenly Book which has recommended pardon and forgiveness even in the heaviest and harshest of crimes, such as those calling for retribution, and the great and kind Prophet of the religion has recommended the giving of love to children and showing kindness to them. They cannot but look at children and their rights with kindness and generosity. In the area of punishment, the fact should be taken into account that, first of all, an undiscerning minor is not liable to prosecution and punishment.

obligations, as the prohibition of juvenile execution is absolute.<sup>113</sup> In relation to lesser punishments, this reliance on discretionary mercy is also inadequate: Although the CRC does not set a minimum age of criminal responsibility, the Committee on the Rights of the Child recognizes that if a child comes into conflict with the law who has reached the age of criminal responsibility under domestic law, but has not yet reached 18 years of age, all related procedures must be in “full compliance with the principles and provisions of CRC”.<sup>114</sup> Article 37(c) of the CRC obliges States parties to ensure that every child deprived of liberty must be treated “in a manner which takes into account the needs of persons of his or her age”, while Article 40(1) requires States parties to “take into account the child’s age” when a child becomes involved in the criminal justice system. These rights, coupled with the core principle of upholding the child’s best interests (article 3(1)), requires States parties dealing with children allegedly involved in criminal activity to take into consideration mitigating factors, including the age and maturity of the child, and to comply with the procedural guarantees as set forth by Article 40(2) of the CRC.<sup>115</sup> Instead, in Iranian law, the punishment of the child is left to the discretion of the judge; thereby, the child in practice may still be subject to harsh crimes inconsistent with international law.

Iranian Civil Code Article 958 further contributes to the contravention of international legal obligations. This article states: “Nobody can utilize and employ [civil] rights unless he possesses legal capacity for so doing”. It is unclear how this provision is interpreted in practice, and whether children are considered to possess legal capacity.

States parties are required to implement the CRC’s provisions in domestic law, which includes an obligation to formulate a clear definition of the minimum age of criminal responsibility within domestic legislation.<sup>116</sup> The lack of a specific definition of “legal capacity” within Iranian law and a reliance on discretionary sympathy from a judge thus

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Secondly, the punishment meted out to a discerning minor is also a discretionary punishment, the variety of which in Islamic law is great and includes discretionary punishments of a light and exemplary type.”

<sup>113</sup> CRC, article 37(a); ICCPR, article 6(5)

<sup>114</sup> Committee on the Rights of the Child, *General Comment No. 10 : Children’s rights in juvenile justice* (CRC GC 10), UN Doc CRC/C/GC/10 (2007), para. 31

<sup>115</sup> The requirement to take into consideration mitigating factors, including the child’s age, is also inherent within the overarching principles of the CRC, particularly the principle of non-discrimination (article 2), the best interests of the child (article 3(1)) and the right of the child to be heard (article 12). See also CRC GC10, which analyses each overarching principle with respect to children in conflict with the law, emphasizing the importance of taking mitigating factors into consideration. See also CRC GC12, para. 15, which requires States parties to take into consideration a child’s maturity as part of the right of the child to be heard.

<sup>116</sup> *Ibid.*

does not comply with the international legal obligations set forth by the Convention on the Rights of the Child.

Although the CRC does not define “legal capacity” or set a minimum age of criminal liability within article 40 (3), the Committee has concluded that a minimum age below 12 is internationally unacceptable.<sup>117</sup> Iran’s approach of defining the minimum age of criminal responsibility on a predetermined age of maturity contradicts this standard.

### 4.3 Age of marriage

Although the CRC does not require States to adopt a specific minimum age of marriage, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women strongly recommend that States parties “review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years of age, for both girls and boys”.<sup>118</sup> This recommendation is closely linked with the core principles of the Convention; most notably, the best interests of the child, the child’s right to development, and the principle of non-discrimination are likely to be negatively affected by early marriage prior to the child’s realization of their full capacities and maturity.

Until 2002, article 1041 of Iran’s Civil Code authorized marriage at the age of majority (15 lunar years for boys and 9 for girls) and also allowed for earlier marriages at the discretion of the child’s guardian (father or paternal grandfather).<sup>119</sup> However, the Expediency Council amended the law in 2002 so that 13 lunar years became the minor age of marriage for girls, while boys remained at 15.<sup>120</sup> This revision does not bar a male

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<sup>117</sup>CRC GC 10, para 31-32. Rule 4 of the Beijing Rules echoes a similar sentiment *cf.* UNGA, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)* : resolution / adopted by the General Assembly (1985), UN Doc A/RES/40/33, Rule 4

<sup>118</sup> CRC GC 4, para. 20; Committee on the Elimination of Discrimination against Women, *General Recommendation 21: Equality in marriage and family relations*, UN Doc HRI/GEN/1/Rev.6 at 250 (2003), para. 36.

<sup>119</sup> Iranian Civil Code, pre-2002 Article 1041: “Marriage before the age, of majority is prohibited. Note Marriage before puberty by the permission of the Guardian and on condition of taking into consideration the ward’s interest is proper.”

<sup>120</sup> Mohammad Nayyeri, “Gender inequality and discrimination: The case of Iranian women” (March 2013), p. 20-21, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U6PwTY1dU6E>>. In 2012, the Legal Affairs Committee of the Majles threatened to return the age of marriage to its earlier minimums. Mohammad Ali Isfenani, the Chairman of the Legal Affairs Committee, was quoted as saying, “As some people may not comply with our current Islamic legal system, we must regard 9 as being the appropriate age for a girl to have reached puberty and qualified to get married. To do otherwise would be to contradict and challenge Islamic Sharia law” *cf.* Tsai, Vivian. “Child Bride Practice Rising In Iran, Parliament Seeks To Lower Girl’s Legal Marriage Age To 9.” (*International Business Times*, 30 August

guardian from petitioning a court in order to marry a child below this minimum age.<sup>121</sup> In other words, there is no absolute minimum age for marriage within Iran.<sup>122</sup>

Reports indicate that minor marriages continue to be arranged widely throughout Iran.<sup>123</sup>

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2012), available at: <<http://www.ibtimes.com/child-bride-practice-rising-iran-parliament-seeks-lower-girls-legal-marriage-age-9-760263>>

<sup>121</sup> Prior to the amendment, Iranian Civil Code Article 1041, Note, stated: “Marriage before puberty by the permission of the Guardian and on condition of taking into consideration the ward’s interest is proper.” According to Iranian legal expert Mohammad Nayyeri, the newly revised Article 1041 now states: ““Marriage of girls before reaching the age of 13 full solar years and boys before reaching the age of 15 full solar years is subject to the permission of the Guardian and on condition of taking the child’s best interest into consideration and approval of the relevant court.” (Mohammad Nayyeri, “Gender inequality and discrimination: The case of Iranian women” (March 2013), p. 21, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/100000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U6PwTY1dU6E>>.) While this provision takes into consideration the best interests of the child, the subjection of this minimum age to the permission of the Guardian still leaves an ambiguous loophole through which, under certain conditions, children could marry prior to this age of marriage.

<sup>122</sup> Mohammad Nayyeri, “Gender inequality and discrimination: The case of Iranian women” (March 2013), p. 22, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/100000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U6PwTY1dU6E>>

<sup>123</sup> The Iranian NGO Society For Protecting The Rights of The Child, released statistics that in 2009, 43,459 girls under age 15 were married in 2009, as were 716 girls younger than 10 in 2010. As cited in Robert Tait, “Alarm as hundreds of children under age of 10 married in Iran” (*The Telegraph*, 26 August 2012), Available at: <<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/9500484/Alarm-as-hundreds-of-children-under-age-of-10-married-in-Iran.html>>. Statistics from UNICEF collected between 2000-2010 indicate that 17% of female adolescents between the ages of 15-19 are married. This relative high percentage may be indicative of the extent of child marriage in Iran, although it includes women that are 18-19 years of age (UNICEF, “Iran, Islamic Republic of: Statistics” (last updated 27 December 2013), Available at: <[http://www.unicef.org/infobycountry/iran\\_statistics.html#sthash.1gcK5mqG.dpuf](http://www.unicef.org/infobycountry/iran_statistics.html#sthash.1gcK5mqG.dpuf)>. This grouping of age is indicative of the need to disaggregate data to account for, in the present example, the number of girls married at age 15 versus age 19.) It is likely that these numbers are higher given underreporting rates of child marriage that verge on sixty percent, according to the United Nations Population Fund (UNFPA) [see UNFPA, et. al., “Child Marriage in Southern Asia: Policy Options for Action” (2012), Available at: <<http://unfpa.org/webdav/site/asiapacific/shared/Publications/2012/Child%20Marriage%20in%20Southern%20Asia.pdf>>].

The Iranian government has acknowledged the existence of this problem.<sup>124</sup> Statistics from UNICEF collected between 2000-2010 indicate that 17% of female adolescents between the ages of 15-19 are married.<sup>125</sup> This relative high percentage may be indicative of the extent of child marriage in Iran, although it includes 18-19 years.<sup>126</sup> It is likely that these numbers are higher given that, within cities, only 55 per cent of child marriages are registered,<sup>127</sup> while the rate of registration is even lower in rural areas,<sup>128</sup> which implies that large numbers of child marriages are not reported to authorities.<sup>129</sup> The Iranian government itself has acknowledged the existence of this problem.<sup>130</sup>

The CRC does not specify a minimum age for marriage, but child marriage may be identified as a violation of the right to health under the CRC (article 24), particularly in

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<sup>124</sup> The Iranian government conceded in its State report to the Committee on the Rights of the Child that “[e]arly and forced marriages should also be stopped.” See CRC, *Second periodic report of the Islamic Republic of Iran*, UN Doc CRC/C/104/Add.3 (2003), para. 49; The Society For Protecting The Rights of The Child, released statistics that in 2009, 43,459 girls under age 15 were married in 2009, as were 716 girls younger than 10 in 2010. As cited in Robert Tait, “Alarm as hundreds of children under age of 10 married in Iran” (*The Telegraph*, 26 August 2012), Available at: <<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/9500484/Alarm-as-hundreds-of-children-under-age-of-10-married-in-Iran.html>>

<sup>125</sup> UNICEF, “Iran, Islamic Republic of: Statistics” (last updated 27 December 2013), Available at: <[http://www.unicef.org/infobycountry/iran\\_statistics.html#sthash.1gcK5mqG.dpuf](http://www.unicef.org/infobycountry/iran_statistics.html#sthash.1gcK5mqG.dpuf)>. In addition, the Society for Protecting the Rights of the Child, an Iranian NGO, released statistics stating that in 2009, 43,459 girls under age 15 were married in 2009, as were 716 girls younger than 10 in 2010. (As cited in Robert Tait, “Alarm as hundreds of children under age of 10 married in Iran” (*The Telegraph*, 26 August 2012), Available at: <<http://www.telegraph.co.uk/news/worldnews/middleeast/iran/9500484/Alarm-as-hundreds-of-children-under-age-of-10-married-in-Iran.html>>)

<sup>126</sup> UNICEF, “Iran, Islamic Republic of: Statistics” (last updated 27 December 2013), Available at: <[http://www.unicef.org/infobycountry/iran\\_statistics.html#sthash.1gcK5mqG.dpuf](http://www.unicef.org/infobycountry/iran_statistics.html#sthash.1gcK5mqG.dpuf)>. This grouping of age is indicative of the need to disaggregate data to account for, in the present example, the number of girls married at age 15 versus age 19.

<sup>127</sup> UNFPA, et. al., “Child Marriage in Southern Asia: Policy Options for Action” (2012), p. 13, Available at: <<http://unfpa.org/webdav/site/asiapacific/shared/Publications/2012/Child%20Marriage%20in%20Southern%20Asia.pdf>>

<sup>128</sup> UNFPA, et. al. states that the average rate for registration of child marriages outside cities is approximately 45 percent. (UNFPA, et. al., “Child Marriage in Southern Asia: Policy Options for Action” (2012), p. 13, Available at: <<http://unfpa.org/webdav/site/asiapacific/shared/Publications/2012/Child%20Marriage%20in%20Southern%20Asia.pdf>>)

<sup>129</sup> The Human Rights Committee requires registration of marriages in accordance with article 23(2) of the ICCPR, including those conducted in accordance with religious rites (HRC, *General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses* (Art. 23) [CRC GC 19], UN Doc HRI/GEN/1/Rev.6 at 149 (2003), para. 4).

<sup>130</sup> The Iranian government conceded in its State report to the Committee on the Rights of the Child that “[e]arly and forced marriages should also be stopped.” See CRC, *Second periodic report of the Islamic Republic of Iran*, UN Doc CRC/C/104/Add.3 (2003), para. 49.

light of the State's obligation to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children".<sup>131</sup> In accordance with this provision, the Committee on the Rights of the Child has "strongly recommended" that States parties increase the minimum age of marriage to 18, both in law and in practice.<sup>132</sup> The Committee on Economic, Social and Cultural Rights has also explicitly cited early marriage as a "harmful traditional practice" that affects children's health.<sup>133</sup> This is due to the negative impact that an early marriage may have on the child's reproductive health,<sup>134</sup> due to the vulnerabilities faced by young girls, including a decreased ability to access education and economic opportunities,<sup>135</sup> as well as a general lack of information provided to children on reproductive health and measures of protection.<sup>136</sup> As Iran has an obligation to protect all children from harmful traditional

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<sup>131</sup> CRC, Article 24(3)

<sup>132</sup> CRC, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, UN Doc CRC/GC/2003/4 (2003), para. 20.

<sup>133</sup> Committee on the Rights of the Child, *General Comment No. 14: The right to the highest attainable standard of health* (CESCR GC 14), UN Doc E/C.12/2000/4 (2000), para. 22; see also World Health Assembly resolution WHA47.10 (1994) "Maternal and child health and family planning: traditional practices harmful to the health of women and children"

<sup>134</sup> The leading cause of death in low and middle income countries for girls aged 15-19 is complications from pregnancy and childbirth (World Health Organization, Regional Office for Europe, "Child marriage – a threat to health" (2012), available at: <<http://www.euro.who.int/en/health-topics/Life-stages/child-and-adolescent-health/news/news/2012/12/child-marriage-a-threat-to-health>>). See also World Health Organization, *WHO Guidelines on Preventing Early Pregnancy and Poor Reproductive Outcomes Among Adolescents in Developing Countries* (2011), p. IX, available at: <[http://whqlibdoc.who.int/publications/2011/9789241502214\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789241502214_eng.pdf)> ; CRC, GC 4, para. 20; World Health Organization, Regional Office for Europe, "Child marriage – a threat to health" (2012), available at: <<http://www.euro.who.int/en/health-topics/Life-stages/child-and-adolescent-health/news/news/2012/12/child-marriage-a-threat-to-health>>

<sup>135</sup> UNAIDS, *Global report: UNAIDS reports on the global AIDS epidemic 2013* (2013), p. 78, available at: <[http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2013/gr2013/un\\_aids\\_global\\_report\\_2013\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2013/gr2013/un_aids_global_report_2013_en.pdf)>

<sup>136</sup> According to a joint report published by UNAIDS, UNFPA and UNIFEM, "early marriage is directly linked to an increased risk of HIV infection." This is also linked to the right to education, as "[g]irls with less than seven years of schooling are more likely to be married by age 18". See UNAIDS, UNFPA and UNIFEM, "Women and HIV/AIDS: Confronting the crisis" (2004), p. 40-41, available at: <[http://www.unfpa.org/hiv/women/docs/women\\_aids.pdf](http://www.unfpa.org/hiv/women/docs/women_aids.pdf)>. Young girls are also more likely to be affected by HIV at an early age, which has resulted in "a global HIV prevalence among girls and young women that is double or greater than among males of the same age" (UNAIDS, *Global report: UNAIDS reports on the global AIDS epidemic 2013* (2013), p. 78, available at: <[http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2013/gr2013/un\\_aids\\_global\\_report\\_2013\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/epidemiology/2013/gr2013/un_aids_global_report_2013_en.pdf)>). The Committee on the Rights of the Child has reaffirmed the importance of providing children with the information necessary to make informed decisions on their reproductive health (CRC GC 4, para. 10).

practices under the CRC,<sup>137</sup> and an obligation to uphold the child's right to health under the ICESCR, it is clear that the legal ability to wed girls from 13 years of age contravenes the international legal standards set forth within the CRC and the ICESCR.<sup>138</sup>

Early marriage is likely to incur consequences for the child's right to development, particularly in terms of educational growth; where a child is not allowed to pursue his or her educational capacities, the right to education, enshrined within article 28-29 of the CRC and examined in further detail below, will be violated. This right also includes the right of the child to development (article 29(1)); allowing a child to adopt responsibilities of an adult prior to the child reaching full maturity may significantly hinder educational development, especially where the child becomes pregnant. These violations are further exacerbated by the lack of free and full consent, examined below.

The Convention on the Rights of the Child requires States parties to provide clear definitions of the child within domestic law, particularly with regard to the minimum age of criminal responsibility (article 40(3)).<sup>139</sup> In Iran, both the age of criminal responsibility and the age of marriage are set unreasonably low, which in effect does not afford children their individual rights. The definition of the child within Iranian domestic law is therefore not in conformity with its legal obligations under international human rights law, in particular the CRC.

#### **4.3.1 Free and full consent**

Articles 10(1) of the ICESCR and article 23(3) of the ICCPR, both of which specifically require "free and full consent of the intending spouses", impose binding obligations upon Iran.<sup>140</sup> These articles also imply a duty to set a minimum age for sexual consent, which

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<sup>137</sup> In its General Comment 4 on adolescent health, the Committee on the Rights of the Child, "strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys". The Committee also underlines that, "States parties must notably fulfill the following obligations: (g) To protect adolescents from all harmful traditional practices, such as early marriages, honour killings and female genital mutilation" *cf.* CRC GC 4, paras. 20 and 39. These views are further reinforced by UNGA, Resolution on the Girl Child, UN Doc A/62/140 (2008), preamble & para. 13.

<sup>138</sup> It should also be noted that the right to information, as enshrined in article 19(2) of the ICCPR, may be violated within situations of early marriage where the child is not fully informed of protective sexual health practices and risks of unprotected sexual relations, such as HIV/AIDS and complications that may arise from pregnancy.

<sup>139</sup> See also CRC GC 10, paras. 30-35.

<sup>140</sup> ICESCR, Article 10(1); ICCPR, Article 23(3): "No marriage shall be entered into without the free and full consent of the intending spouses." This provision mirrors Article 16(2) of the UDHR: "Marriage shall be entered into only with the free and full consent of the intending spouses." See also HRC GC 19, para. 4.



is closely linked to the minimum age of marriage, as examined above.<sup>141</sup> As the Human Rights Committee has recognized, States that allow “either by statutory or customary law a guardian, who is generally male, [to consent] to the marriage instead of the woman herself, thereby prevents [*sic*] women from exercising a free choice”.<sup>142</sup> Due to a child’s cognitive abilities, evolving capacities and dependencies, it is doubtful that children in Iran, whether age 9, 13 or even 15, are able to give such consent freely.<sup>143</sup>

Once married, Civil Code article 1105 designates the husband as the head of the family.<sup>144</sup> By sanctioning the “exclusive” superiority of the husband over the wife within domestic law, this legal provision provides a basis for additional situations wherein the free and full consent of the woman is not adequately protected. For example, the notion of *tamkin* relates to the wife’s duty of sexual submission and obedience.<sup>145</sup> According to Civil Code article 1108<sup>146</sup> any resistance by the wife to such sexual advances constitute grounds for refusal to pay “maintenance” of food, clothes and housing. In a situation of early marriage, wherein the child is already in a vulnerable state due to her evolving capacities, the restrictions imposed by the State upon a woman’s right to reproductive freedom, implicit within the right to health,<sup>147</sup> puts child brides at significant risk of marital rape.<sup>148</sup> Such restrictions also result in a direct violation of the State party’s

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<sup>141</sup> CRC GC 4, para. 9.

<sup>142</sup> HRC GC 28, para. 23.

<sup>143</sup> For a general overview of a rights-based approach to establishing a minimum age for marital consent, see Angela Melchiorre, “Marrying protection and autonomy” in CRIN, “Measuring maturity: Understanding children’s ‘evolving capacities’” (2009) 23 *CRIN Review*, 28-29, Available at: <[http://www.crin.org/docs/CRIN\\_review\\_23\\_final.pdf](http://www.crin.org/docs/CRIN_review_23_final.pdf)>

<sup>144</sup> IRI Civil Code, Article 1105: “In relations between husband and wife; the position of the head of the family is the exclusive right of the husband.”

<sup>145</sup> For further discussion, see Mohammad Nayyeri, “Gender inequality and discrimination: The case of Iranian women” (March 2013), p. 28 *et seq.*, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U6PwTY1dU6E>>

<sup>146</sup> IRI Civil Code, Article 1108: “If the wife refuses to fulfil duties of a wife without legitimate excuse, she will not be entitled to the cost of maintenance.”

<sup>147</sup> In accordance with article 24(3) of the CRC, States parties are required to provide the child with the full information necessary to make conclusive and well-informed decisions on reproductive and sexual health, which includes the ability to make an independent choice in decisions on the timing, spacing and number of children conceived (CRC GC15, para. 69). See also United Nations, *Beijing Declaration and Platform for Action, adopted at the Fourth World Conference for Women*, UN Doc A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), Annex I: Platform For Action, para. 94, which states that “Reproductive health... implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce *and the freedom to decide if, when and how often to do so*” (emphasis added).

<sup>148</sup> These issues could be exacerbated within a temporary marriage. Article 21 of the 2007 Family Protection Act allows Iranian men to take multiple wives, as long as the duration of the temporary marriages is “definitely determined”. As temporary marriages are only available for women who are not virgins, i.e. women who have been married previously, this issue is not likely to impact

obligation to take effective measures towards abolishing traditional harmful practices prejudicial to the health of children<sup>149</sup> and, in effect, the right to health itself.<sup>150</sup> In addition, if a woman is subjected to sexual violence due to her refusal of sexual advances, her right to inherent dignity as well as the prohibition of torture or other cruel, inhuman or degrading treatment or punishment will likely be violated.<sup>151</sup>

By legally allowing and even encouraging<sup>152</sup> child marriage from the ages of 13 for girls and 15 for boys, Iran is violating several of its obligations under the CRC, ICCPR, and ICESCR, including in particular the right to free and full consent and the right to health.

## 5. Conclusion

As a State party to the Convention on the Rights of the Child, Iran is obliged to adopt a child rights approach within its domestic law. The analysis herein has shown that the Iranian domestic legal framework does not adequately incorporate this approach. As such, Iranian laws and provisions relevant to the child are in contravention of its commitments under international human rights law.

Perhaps most notably, the unreasonably low minimum age of criminal responsibility as well as the minimum age of marriage, particularly for girls, gives rise to considerable and

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upon girls (Mohammad Nayyeri, “Gender inequality and discrimination: The case of Iranian women” (March 2013), p. 20-21, available at: <<http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#.U6PwTY1dU6E>>). For these reasons, the implications of temporary marriages is considered instead within Human Rights in Iran Unit, *Legal Status of Women: Iran’s International Human Rights Obligations* (June 2014), available at: <<http://www.essex.ac.uk/hri/documents.aspx>>.

<sup>149</sup> CRC article 24(3); Committee on the Rights of the Child, *General Comment No. 15: The right of the child to the highest attainable standard of health*, UN Doc CRC/C/GC/15 (2013), para. 69.

<sup>150</sup> The right to health includes the right to control one’s own body, which encompasses the right to sexual and reproductive freedom. This freedom indicates an ability to choose family planning methods based upon personal preference. (CRC GC 14, para. 8 and fn. 12)

<sup>151</sup> Articles 37(a) and 37(c) of CRC; Articles 5 and 7 of ICCPR. While there is still some debate as to whether domestic violence can be considered torture or cruel and inhuman treatment, several international and regional bodies have classified domestic violence as such. For further information, see Human Rights in Iran Unit, *Legal Status of Women: Iran’s International Human Rights Obligations* (June 2014), available at: <<http://www.essex.ac.uk/hri/documents.aspx>>. See also Committee against Torture, *General Comment 2: Implementation of article 2 by States Parties*, UN Doc CAT/C/GC/2/CRP.1/Rev.4 (2007), para. 18; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment, Manfred Nowak, UN Doc A/HRC/7/3 (2008), para. 44; *Opuz v Turkey*, Application No. 33401/02 (ECtHR, 09 June 2009), para. 173-176.

<sup>152</sup> Associated Press, “Iran: Mahmoud Ahmadinejad urges girls to marry at 16.” (21 November 2010, *The Guardian*), Available at: <<http://www.guardian.co.uk/world/2010/nov/21/iran-ahmadinejad-girls-marry-16>>

structural violations of the rights of the child. In certain situations, Iran's definition of the child on the basis of maturity can lead to the execution of a minor, which directly contradicts the absolute prohibition of capital punishment applied to persons under 18 years of age. Child brides, who may be as young as 13 years of age – and, under specific conditions, could be younger – are placed at a heightened risk of marital rape, implying serious violations of, *inter alia*, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment under the ICCPR and the right to health under the ICESCR.

The domestic laws that allow for such severe consequences directly contradict Iran's duty to implement its human rights obligations in an effective manner. The wide scale of violations that occur against children within Iran thus imply the need for significant reform within Iran's domestic legal framework to ensure that a child rights approach is adopted that will guarantee the rights of the child are comprehensively protected both in law and in practice.

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