Südwind is an Austrian non-governmental organization, founded in 1979, and has been in consultative status with the Economic and Social Council since 2009. Since 2010 Südwind has participated in the Human Rights Council, delivering statements and organising parallel events amongst others on human rights in Iran.

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Iran is an ‘Islamic republic’ since 1979 and its official religion is Islam of Twelver Shi'a School. According to the Article 4 of its Constitution:

“All civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the fuqaha' of the Guardian Council are judges in this matter.”

It is therefore legitimate to expect Iran to establish an Islamic penal code, a penal code (at least partially) based on Shari'a laws. But the first Islamic penal code was not born until 12 years after the revolution in 1979. The former code which was adopted in 1991, was renewed for four courses of five trial years each and was considered a temporary code. Therefore the need for a permanent and debated penal code existed since the end of Iran-Iraq war and afterwards. The New (current) Islamic penal code arrived after two decades of lack of a permanent code in January 2012. However, this need still persists since the new penal code is also applicable for a trial period of 5 years.

**Iran's penal code Structure**

The very first point about the Iranian Penal Code is that what is called the New Islamic Penal code corresponds to the three out of five books of this code which were reviewed and amended by the Islamic Parliament and afterwards vetted by the Islamic Guardian Council1 in 2012. This code eliminated the chapter on deterrent punishments and thus currently consists of five books: 1- Preliminary, 2- Hudud, 3- Qisas, 4- Diyat, and 5- Ta’zirat.

Hudud, or Hadd (singular) is the punishment which its type, amount and quality is prescribed by Shari'a. These are already fixed in Islamic sources and are the most severe punishments in the penal code. They range from capital punishment and stoning to amputation of limbs and flogging. Hudud offences are considered as entire and predominant violations of claims of God, are therefore eternally immutable and cannot be waived by people. Crimes punishable by Hadd are as follows:

- Zina (illicit or unlawful² sexual intercourse)

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1. The Guardian Council of the constitution is a powerful unelected body of twelve members comprised of six clerics appointed by the supreme leader and six jurists appointed by the head of judiciary. Its primary role is to ensure the accordance of rules and regulations in the Islamic Republic of Iran with Shari'a laws.

2. Unlawful sexual relation indicates a relation out of marriage
- Livat (Sodomy and homosexual acts between men)
- Mosahaqa (Homosexual acts between women)
- Qavvadi (Pimping)
- Qazf (Defamation, unfounded accusation of unlawful sexual intercourse)
- Sabb-al-nabi (Insulting the prophet)
- Shorb-e-khamr (Alcohol consumption)
- Serqat (Theft)
- Moharaba (Enmity against God/waging war against God)
- Baqy (Rebellion)
- Efsad-fel-arz (Corruption on earth)

Qisas or the law of retaliation, is the punishment to which the criminal shall be sentenced and is equal to his/her crime. This is based upon the maxim of “an eye for an eye, a tooth for a tooth and a life for a life” and is applicable in cases of homicide and bodily harm under one condition: retaliation must be demanded by the victim in cases of bodily harm or the victim’s next of kin in cases of homicide. However if a victim or the next of kin decides to exercise their right to forgive the offender, they can still ask for blood money (Diya). In this case, the judge could still decide to sentence the offender.

According to article 612 of book 5 of the Islamic penal Code, “Anyone who commits a murder and where there is no complainant, or there is a complainant but he has forgiven and withdrawn his application for Qisas, or if Qisas is not executed for any reason, if his act disrupts the public order and safety of the society or it is thought that it emboldens the offender or others [to commit murder again], the court shall sentence the offender to three to ten years’ imprisonment.”

The Islamic law of homicide and bodily harm is basically governed by three principles which makes the above-mentioned details more comprehensible:

(a) The principle of private prosecution;
(b) The principle that redress consists in retaliation or financial compensation;
(c) The principle of equivalence, which means that retaliation is only allowed if the monetary value of the victim is the same as or higher than that of the perpetrator.

Diya or blood money is the monetary compensation prescribed by Shari’a for the crime. In cases in which an unintentional accident has occurred and as its consequence, a person is injured or dead, a liability for blood money is created. Blood money is also applicable if someone has intentionally caused somebody else’s injury or death but a sentence
of retaliation is not possible to be pronounced, such as when the offender is forgiven by the victim or the next of kin.

Finally, Ta’zir is the chastisement or punishment which its type and amount is not determined by Shari’a but left to discretion of the judge, such as imprisonment, fine and lashes; but the number of lashes must be less than the number stipulated for Hadd punishment. In principle all forbidden or sinful acts, even if they do not constitute Hadd offences, homicide or bodily harm, are punishable under the Shari’a. An important function of Ta’zir is to provide grounds for the punishment of those who have committed Hadd crimes or crimes against persons but cannot be sentenced to the appropriate punishment for procedural reasons (e.g., because of uncertainty, or pardon by the victim’s next of kin, or lack of legally required evidence) or for the punishment of those who have committed acts that resemble these crimes but do not fall under their legal definitions. Instances of such acts are misappropriation not amounting to theft and defamation on other grounds than forbidden sexual intercourse.

In fact, what was amended recently by the parliament, included the first four books of the past penal code and mainly the preliminary chapter which underwent various changes. It also expanded greatly, as the 62 Articles in the past code are now 216 Articles. It is therefore essential to identify how the New Code generally differs from its predecessor before analysing it in depth.

**1991 penal code vs. new penal code**

Although the new code was widely publicized to be the effort that the Islamic Republic of Iran (thereafter IRI) has made to align itself with its international obligations, numerous are experts who believe that the main shortcomings of the previous penal code persist in its successor. This being mainly due to the special interpretation that the IRI has of the Shari’a laws, it claims unable to halt the instructions of Islam in order to follow the western standards of Human Rights. This is despite the fact that some jurists believe that it is possible to apply Shari’a laws whilst respecting Human Rights norms. Some also believe that the IRI has not in any way considered its international

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3. For example, see: [http://fararu.com/fa/news/173144/%D9%BE%D8%A7%D8%B3%D8%AE-%D8%A2%D9%85%DB%8C-%D9%84%DB%8A%7%DB%8C-%D9%8B%DB%8C-%D8%A9%85%DB%86%DA%A9%92%DA%AF%DB%A7%96-%D9%85%DB%81%DA%A7%DB%8C-%D9%82%DB%85%DA%A7%8D](http://fararu.com/fa/news/173144/%D9%BE%D8%A7%D8%B3%D8%AE-%D8%A2%D9%85%DB%8C-%D9%84%DB%8A%7%DB%8C-%D9%8B%DB%8C-%D8%A9%85%DB%86%DA%A9%92%DA%AF%DB%A7%96-%D9%85%DB%81%DA%A7%DB%8C-%D9%82%DB%85%DA%A7%8D)

4. For example, see: [http://isfahanbar.org/vdca1q082bqi.la2.html](http://isfahanbar.org/vdca1q082bqi.la2.html)
obligations while amending its Penal Code

The new penal code underwent massive amendments. However, only a few of those amendments were fundamental and significant. Those include:

1- Recognition of responsibility and punishment for legal persons.

2- Enhancing the number of Hadd offences by adding ‘Swearing at the Prophet (Sabb-al-nabi)’, ‘Rebellion (Baqy) and Corruption on Earth (Efsad-fel-arz)’ to the code.

3- Encroaching upon the principle of legality of crimes, punishments and procedures by letting judges adjudicate based on provisions of Shari’a law, which are not directly mentioned in the code but are a source to the Islamic legal system.

4- No definition for Political offences.

5- Ta’zir punishments are divided into eight degrees, first degree being the most severe including imprisonment for over twenty-five years, fine of more than one billion Rials, confiscation of whole assets and dissolution of the legal person. The eighth degree however is the least severe which includes imprisonment up to three months, fine up to ten million Rials, and flogging up to ten lashes.

6- Death penalty for minors could be replaced by other punishments if they do not realize the nature of the crime committed or its prohibition, or if there is uncertainty about their full mental development.

7- Harsher approach to national security crimes.

By looking at the above-mentioned, one can almost comprehend the points and issues in which the IRI is in contrast with the international community. In other words, these reveal to a great extent the inconsistencies of the Iranian penal system with what is called international Human Rights standards. Those area include:

- Type and intensity of punishments such as flogging, dismemberment, stoning etc.
- Children rights (mainly execution of minors)
- Women’s rights (wide range of discriminations against women)

5. Idem
6. Articles 69 and 220 of the new Islamic penal code
- Minority rights (discrimination against minorities)
- Public and fundamental freedoms

This article is going to analyse each of these areas in depth and will finally provide some recommendations to the IRI on how to align itself with international standards.

I) Type and intensity of punishments

One of the areas in which Iran’s penal code is in deep and constant conflict with international human rights law is where type and intensity of punishments are concerned. In practice, in most cases the principle of ‘proportional justice’ is basically ignored as the punishments are extremely harsh and as they challenge the objectives of punishment such as rehabilitation and deterrence. This fact has been reflected several times by A. Shaheed, the Special Rapporteur on the situation of Human Rights in Iran.

1) Death penalty

The extremely high rate of death penalty in Iran is probably one of the most echoed concerns of the international community and the United Nations in general. It has time and again been requested from Iran to introduce a moratorium on capital punishment\(^7\). However the number of executions continue to rise despite the arrival of president Rouhani’s government of ‘foresight and hope’.

Iran is a state party to the International covenant on Civil and Political Rights (ICCPR) and is therefore bound to respect its obligations under it. According to the article 6 of the Covenant, ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life... In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary

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\(^7\) See for example report ‘A/HRC/19/6’, para. 10

contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide." It is further stipulated by the UN Human Rights Committee that ‘the right to life...is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation... States are obliged to restrict the application of the death penalty to the “most serious crimes”’.

In Iran, there is clearly no situation of public emergency, nor crimes for which death penalty is prescribed are ‘the most serious’ ones. According to numerous NGOs who closely track the number of death penalties in Iran, drug related crimes, possession and trafficking in particular, are the charges most commonly used against those executed in Iran. This is justified by Iranian authorities by the fact that Iran is surrounded by drug manufacturing countries and a retributive approach is the best possible method to tackle this plague. This is why a new and more severe law prohibiting the use of drugs was passed in December 2010 and entered into force on 4 January 2011. Article 18 of this law prescribes death penalty for drug trafficking and large-scale trade and states that death penalty is mandatory in cases of detention or trafficking of various drugs for amounts greater than those prescribed by law. Persons convicted of these offenses are not allowed to exercise their right to appeal to a higher court, as required by international law. Under Article 32 of the Law on the fight against drugs, “the conviction and sentence imposed on persons sentenced to death for offenses on drugs are simply confirmed either by President of the Supreme Court or by the Attorney General of the Islamic Republic.” This is an obvious breach of article 14 of the ICCPR based on which everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal.

Death penalty however, does not limit solely to drug-related crimes. The amendments to the Penal code retain the death penalty for conduct that should either not constitute crimes at all, or for which the death penalty is strictly prohibited under international law, given that they are not considered among “the most serious” crimes. The majority of the offences punished by death penalty are among Hadd offences and are violations of claims of God. Zina (illicit sexual intercourse) and homosexual activities are among them.

Zina or adultery in general is defined as consensual or forced penetrative sex between a man and a woman who are not married to each other. Although there exists very strict standards of evidence for proving Zina, such as testimonies of four witnesses or four times confession by the

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9 General comment of the Human Rights Committee under article 6 of ICCPR
offender, but this crime and its punishment are left untouched in the amendments of the new code. According to the article 224 of the new code, death penalty is imposed in the following cases:

(a) Zina with blood relatives who are prohibited to marry
(b) Zina with a step-mother; in which case, the man who committed Zina shall be sentenced to the death penalty
(c) Zina of a non-Muslim man with a Muslim woman; in which case, the man who committed Zina shall be sentenced to the death penalty
(d) Zina committed by coercion or force [i.e. rape]; in which case, the man who committed Zina by coercion or force shall be sentenced to the death penalty.

There is no doubt that the ‘consensual’ adult relation is a private matter, based upon the right to physical autonomy, privacy and liberty, that States should avoid to infringe on. And the fact that adult sexual relations are either between ‘a male and a female’, or between two males, or two females should not affect the nature and enjoyment of these rights. Nonetheless, in IRI’s penal code, same sex activities are also harshly suppressed.

Livat, homosexual acts between men, is defined in the penal code as ‘penetration of a man’s sex organ (penis), up to the point of circumcision, into another male person’s anus’. The Hadd punishment for Livat is death penalty for the active party if he has committed Livat by using force, coercion, or in cases where he is married. The Hadd punishment for the passive party, in any case (whether or not he is married) is death penalty. Mosahaqa or lesbianism however is not treated with death penalty

Other non-serious conducts punished by death penalty are insulting the prophet and alcohol consumption at the third time. According to article 263 of the new code “anyone who swears at or commits Qazf against the Great Prophet of Islam (peace be upon him) or any of the Great Prophets, shall be considered as Sabb-al-nabi [a person who swears at the Prophet], and shall be sentenced to the death penalty. Commission of Qazf against, or swearing at, the [twelve] Shi’ite Imams (peace be upon them) or the Holy Fatima (peace be upon her) shall be regarded as Sabb-al-nabi.”. The latter article was added in the new amendments and did not exist in the previous code. It infringes on the right to freedom of expression, by providing a vague and non-precise definition of an act which may not be a crime at all.

11. Article 233 of the new penal code.
12. The punishment for Mosahaqa is explained in the chapter related to flogging.
13. Article 19 of the ICCPR.
Alcohol consumption follows the same pattern. It is considered a crime against God and is punished by death penalty in case of recidivism of third time.

According to article 135 of the new code, “where anyone commits the same offense punishable by Hadd three times, and each time the Hadd punishment is executed upon him/her, the Hadd punishment on the fourth occasion shall be the death penalty.” It is therefore clear that in Hadd offences of alcohol consumption, Mosahaqa, Zina, Qazf and theft, the forth recidivism falls under the category of capital punishment and no derogation to this principle is allowed.

Finally, what is probably more problematic than death penalty for alcohol consumption are the two crimes against God which rely on a political grounds of public and Islamic regime’s security. Those two include Moharaba (enmity against God) and Baqiy (rebellion), under which Iranian authorities have prosecuted political dissidents and those exercising their civil and political rights such as freedom of expression, assembly and association.

The new code expands the range of these politically established crimes in a very vague and broad manner. Their definition usually covers innumerable types of political exercise of rights, and judges are given the material to easily suppress any act that goes against the will of the authorities on the pretext of protecting God’s claims. A very recent case among others proves this claim; the case of Gholamreza Khosravi.

Gholamreza was arrested in 2008 in Rafsanjan, Kerman Province, in connection with his alleged support of the pro-PMOI (People’s Mojahedin Organization of Iran) TV station Sima-ye Azadi (Voice of Freedom). In 2008 he was sentenced to six years’ imprisonment, three years of which were suspended. Following an appeal by the Ministry of Intelligence, the three-year suspended sentence was implemented, bringing his total sentence to six years. Following further legal proceedings, including two retrials, he was sentenced to death after he was convicted of the new charge of “enmity against God” (Moharaba), for his alleged ties to the PMOI. The Supreme Court confirmed this sentence on 21st April 2012 and his execution was carried out on 1st June 2014.

Moharaba, ‘enmity against God’ or otherwise translated as ‘waging war against God’ is defined in article 277 of the new penal code as follows:

“Drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity. When a person draws a weapon on one or several specific persons because of personal enmities and his act is not against the public, and also a person who draws a weapon on people, but, due to inability does not cause insecurity, shall not be considered as a Mohareb [i.e. a person who commits Moharaba].”

As defined by this article, a person who is merely a supporter or a member of an organisation which may be willing to engage in armed struggle with regime, falls clearly out of the scope of this crime. Yet in Gholamreza’s case mentioned above, no distinction is done between the two notions of taking up arms and supposed supporting of such an organisation. This was not the only time this article was used to quell political opponents. In January 2011, Evin prison authorities hanged Jafar Kazemi and Mohammad Ali Haj-Aghai for the crime of Moharaba because of their alleged ties to the banned Mojahedin-e Khalq organization (MEK). Prosecutors had accused the two of sending images of the protests to foreign contacts following the disputed June 2009 presidential election, and shouting anti-government slogans. Prosecutors also used a visit by Kazemi to see his son at an MEK camp in Iraq as proof of his membership in the organization, and alleged that Haj-Aghai had visited the same camp several times¹⁵.

It is important to note that one of the only times that the most violent punishment, that is crucifixion, is possible to be used against the dissidents, is in the crime of Moharaba. According to the new code, the Hadd punishment for Moharaba is one of the following four punishments:

(a) The death penalty (hanging)

(b) Crucifixion

(c) Amputation of right hand and left foot

(d) Banishment¹⁶

Baqy (armed rebellion) on the other hand was newly added to the new code. It was used to be under the same definition as Moharaba in the previous code but it was divided and was given a separate definition. Article 286 and 287 are the two articles that are supposedly added to prevent further incidents with the same nature of post 2009 election events. They are both categorised under the chapter of “Baqy and corruption on earth”. Article 286 provides that:

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¹⁵ Article 282 of the new penal code
“Any person, who extensively commits felony against the bodily entity of people, offenses against internal or international security of the state, spreading lies, disruption of the economic system of the state, arson and destruction of properties, distribution of poisonous and bacterial and dangerous materials, and establishment of, or aiding and abetting in, places of corruption and prostitution, [on a scale] that causes severe disruption in the public order of the state and insecurity, or causes harsh damage to the bodily entity of people or public or private properties, or causes distribution of corruption and prostitution on a large scale, shall be considered as mofsed-fel-arz [corrupt on earth] and shall be sentenced to death”.

And article 287, which is even more broad and vague than former provisions, adds:

“Any group that wages armed rebellion against the state of the Islamic Republic of Iran, shall be regarded as moharebs, and if they use [their] weapon, its members shall be sentenced to the death penalty.”

A simple analysis of the cases of Moharaba and corruption on earth indicates that these punishments are most commonly used on ethnic and religious minorities and discriminated groups such as Kurds, Ahwazi Arabs and Baloutches.\(^7\) In most of these case, Iran’s obligations under ICCPR such as right to a fair trial\(^8\), right to protection against torture, cruel, inhuman and degrading treatment\(^9\), right to life\(^10\), and right to liberty and security\(^2\), are transgressed.

The above-mentioned are classified under Hadd offences punishable by death penalty. But there exist a few Ta’zir offences which are penalized by death penalty as well. Those are mentioned in various laws or in the fifth book of the penal code and include: Spying in case the offender is a member of the armed forces, and gross economical offences which threaten the economy such as money laundering and extensive banknotes forging etc.

2) Stoning

Another extremely controversial area of the new penal code, is the punishment of ‘stoning to death’. This sentence existed in the previous code and was retained in the new code despite numerous claims by the officials during the preparation phase of the penal code.

\(^8\) Article 14
\(^9\) Articles 7 and 10
\(^10\) Article 6
\(^2\) Article 9
that ‘stoning is completely wiped off the penal image of the IR’22. Article 225 of the new code stipulates that:

“The Hadd punishment for Zina of a man and a woman who meet the conditions of Ihsan shall be stoning to death. Where the execution of stoning is not possible, upon proposal of the court of final judgment and approval of the Head of Judiciary, if the offense is proved by testimony of witnesses, the man and a woman who have committed Zina and meet the conditions of Ihsan shall be sentenced to the death penalty [hanging]; otherwise, each one of them shall be given one hundred lashes.”

What is meant by Ihsan, is defined by the 226 article of the new code:

“(a) Ihsan of a man is defined as a status that a man is married to a permanent and pubescent wife and has had vaginal intercourse with her whilst he has been sane and pubescent and can have vaginal intercourse with her whenever he so wishes.

(b) Ihsan of a woman is defined as a status that a woman who is married to her permanent and pubescent husband and the husband has had vaginal intercourse with her whilst she was sane and pubescent and she is able to have vaginal intercourse with her husband.”

It is interesting to note that the Iranian legislator has carefully followed the exact content of Shia Shari’a laws and has detailed the provisions on the crime of Zina, reflecting the faith in immutable rules and principals of Shari’a. The old code even specified the manner of execution and the size of stones to be used. According to articles 102 and 104 of the old code, men will be buried up to their waists and women up to their breasts for the purpose of execution by stoning and that the stones used should not be large enough to kill the person by one or two strikes; nor should they be so small that they could not be considered as stones.

This form of execution is therefore deliberately designed to prolong the suffering of the offender and violates the jus Cogens norm of Human Rights law which is prohibition of torture. Iran is bound by the ICCPR whose article 7 unconditionally prohibits torture, cruel, inhuman and degrading treatment.

22 See for example: http://fararu.com/farnews/125597%DA%96%DA%88%DA%96%DA%98%DA%88%DA%99%DA%88%DA%98%DA%86-%DA%97%DA%98%DA%96%DA%89%DA%98%DA%87%DA%88%DA%96%DA%87%DA%96%DA%88%DA%98%DA%86-%DA%97%DA%88%DA%86%DA%98%DA%98%DA%98%DA%88%DA%98%DA%86-%DA%97%DA%98%DA%96%DA%89%DA%98%DA%87%DA%88%DA%96%DA%87%DA%96%DA%88%DA%98%DA%86-%DA%97%DA%88%DA%86%DA%98%DA%98%DA%98%DA%88%DA%98%DA%86-%DA%97%DA%98%DA%96%DA%89%DA%98%DA%87%DA%88%DA%96%DA%87%DA%96%DA%88%DA%98%DA%86-%DA%97%DA%88%DA%86%DA%98%DA%98%DA%98%DA%88%DA%98%DA%86-%DA%97%DA%98%DA%96%DA%89%DA%98%DA%87%DA%88%DA%96%DA%87%DA%96%DA%88%DA%98%DA%86-%DA%97%DA%88%DA%86%DA%98%DA%98%DA%98%DA%88%DA%98%DA%86-%DA%97%DA%98%DA%96%DA%89%DA%98%DA%87%DA%88%DA%96%DA%87%DA%96%DA%88%DA%98%DA%86-%DA%97%DA%88%DA%86%DA%98%DA%98%DA%98%DA%88%DA%98%DA%86
According to some NGOs since the Islamic Revolution of 1979, IRI has executed at least 77 people by stoning, and the figure is believed to be higher. The idea of decriminalization of the Zina and abolishing the sentence of stoning therefore seems a far-fetched dream. And even if the sentence of stoning was eliminated from the Iranian penal code, it would not mean that stoning could not take place. As explained above, one of the fundamental amendments to the new code is that the principle of legality of crimes, punishments and procedures has been encroached upon by letting judges adjudicate based on provisions of Shari’a law, which are not directly mentioned in the code but are a source to the Islamic legal system. Meaning that if the provision relating to stoning was removed from the penal code, it would still be possible to punish Zina and adultery by stoning. This is based on the article 220 of the new code stating that:

"Regarding the Hadd punishments that are not mentioned in this law article 167 of the Islamic Republic of Iran’s Constitution shall be applicable."

And article 167 obliges the judges to adjudicate, and not to allow any wrongful act violating claims of God be waived in any way, resulting the act to be left unpunished:

“The judge is bound to endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic fatwa. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgment.”

This is an affirmation of article 4 of the constitution and upon the fact that Iran is an Islamic Republic and all laws and regulations in IRI must be attentively measured with the principles of Islamic jurisprudence.

3) Flogging

One of the other punishments in the Islamic penal code amounting to torture and established for “non-serious crimes” is flogging.

Flogging is mainly prescribed for Hadd offences whose number of lashes is already defined by the Islamic jurisprudence to 74 lashes and beyond. Because less than this number, flogging is no longer Hadd-related, but becomes a punishment whose amount could be defined by the judge due to the nature of crime which is Ta’zir and not Hadd.

Offences for which flogging is prescribed are, once again, not serious in nature. Most offences punished by Hadd flogging do not constitute detrimental and dangerous behaviours for society, whose consequences are irreparable. They are mostly (consensual or discretionary) adult behaviours which should not constitute crimes at all. They include:

a) Zina or unlawful sexual intercourse, in the following cases:

- Zina with blood relatives who are prohibited to marry and a Zina that the offender meets the conditions of Ihsan, if the woman who has committed Zina is pubescent and the man who has committed Zina is non-pubescent, the woman shall be sentenced to one hundred lashes

- If a man who is married to his permanent wife commits Zina prior to any sexual intercourse [with his wife], he shall be sentenced to the Hadd punishment of one hundred lashes and shaving his head, and banishment for one year

- In cases where the offender does not meet the conditions of Ihsan [mentioned in article 227], the Hadd punishment for Zina shall be one hundred lashes

- Sexual intercourse of a husband with his deceased wife, which is not Zina; but, shall be punishable by thirty one to seventy four lashes of Ta’zir punishment of the sixth grade

- Where a man or woman confesses to Zina less than four times, s/he shall be sentenced to thirty-one to seventy-four lashes of Ta’zir punishment of the sixth grade

b) Livat or sodomy is punished by flogging if the active party has willingly committed Livat without using force or coercion, and where he is not married. In this case he shall be sentenced to one hundred lashes

c) Homosexual acts of males or of females in cases such as kissing or touching as a result of lust, is punishable by thirty-one to seventy-four lashes of Ta’zir punishment of the sixth grade.

d) Mosahaqa, or lesbianism whose Hadd punishment is one hundred lashes.
e) Qavvadi or pimping receives Hadd punishment of seventy-five lashes for men;
and if committed for the second time, in addition to the Hadd punishment of seventy-five lashes, the
offender shall be sentenced to banishment from his area for a period of up to one year at the
discretion of the judge, and it is only seventy-five lashes for women.

f) Qazf or defamation as a Hadd crime is punished by eighty
lashes

h) Consumption of intoxicants which leads to the Hadd punishment of seventy lashes. Flogging like
death penalty is most often exercised in public, following the policy of public deterrence. The effects
of this policy has long been debated and blamed by experts because of its devastating impact on
public's mental health particularly on children. It is believed to propagate violence in the society with
very little or no positive outcome for decreasing offence rate. This policy is argued to be a violation
of right to health, which is enshrined in the article 12 of the Covenant on Economic Social and
Cultural rights to which Iran is a State Party.

4) Dismemberment

Dismemberment is one of the other torturous practices prescribed by the Islamic penal code. It is
done by the amputation of limb or foot, and constitutes a punitive reaction to two Hadd crimes. Those
include the offences of theft and Moharaba (enmity against God).

a) Theft: In the new penal code as in the previous code, two kinds of theft have been distinguished
from each other. The first is what is mentioned in article 267 of the new code, and is considered a
Hadd offence. It is particularly difficult to prove since 14 conditions have to be gathered in order for
theft to fall under Hadd category. It is stipulated in article 268 of the new code that:

"Theft shall be punishable by Hadd punishment provided that all the following conditions are met:
(a) The stolen property has a legitimate value.
(b) The stolen property was placed in herz [a secure place]
(c) The thief breached the herz [the secure place].
(d) The thief takes out the property from the herz [the secure place].
(e) The theft and breaching the herz [the secure place] are committed secretly.
(f) The thief was not the father or paternal grandfather of the owner.
(g) The stolen property, at the time it was taken out from the herz [the secure place] has a value equal to four and a half nokhod [a traditional unit of weight] of coined gold [equal to 0.87 g]
(h) The stolen property is not the property of the government or a public property or a public endowment or an endowment for public good.
(i) The theft was not committed in a time of famine
(j) The owner of the property makes a complaint against the thief before judicial bodies
(k) The owner of the property has not forgiven the thief prior to the proof of the theft
(l) The stolen property is not returned to the owner prior to the proof of the theft
(m) The stolen property is not entered into the thief’s ownership prior to the proof of offense
(n) The stolen property has not been gained through theft or usurpation”. Since all the conditions are not always met, theft as a Hadd offence is very rare to occur. This kind of theft is punishable by extremely harsh penalties, which aggravate on the basis of recidivism of the offender:
“(a) on the first occasion, amputation of the full length of four fingers of the right hand of the thief in such a manner that the thumb and palm of the hand remain.
(b) On the second occasion, amputation of the left foot from the end of the knob [on the foot] in such a manner that half of the sole and part of the place of anointing [during ablution] remain.
(c) On the third occasion, life imprisonment.
(d) On the fourth occasion, the death penalty even though the theft is committed in prison24.”

24 Article 278 of the new penal code
This is a clear breach of the principle of prohibition of torture as this kind of punishment is particularly painful and its consequences remain for a long time endangering the dignity of the offender for the rest of his life. In a famous case, Reza Safari, a 42 year old man, who was convicted of theft was punished by amputation. In his public letter from prison he stated that: “without giving any painkillers or numbing agents, they cut off my fingers with an electric wire-cutter. I could see bloodstains on the wire cutter: it had evidently been used for this purpose many times before...I now had a “sign” on me: my fingers were cut off. Not only would people refuse to give me a job, they would point me out everywhere “...[as a thief]. So I had no job and no income.

The second kind of theft however belongs to the category of Ta’zir, because the necessary conditions of the Hadd offence are not met. This is not punished by dismemberment but with long imprisonment and up to 74 lashes.

b) As mentioned above, Moharaba or enmity against God is punishable by one of the following punishments: death penalty, crucifixion, amputation of right hand and left foot, banishment. Although two punishments of crucifixion and amputation of right hand and left foot are very rarely or not at all exercised, but the mere fact that such penalties exist in the penal code, dehumanizes and discredits the penal policies of the IRI. These punishments violate international obligations of the IRI and must therefore be halted immediately.


Several Human Rights instruments have insisted on the principle of non-discrimination. The universal declaration of Human Rights stipulated that “Everyone is entitled to all the rights and freedoms…without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...”. The International Covenant on Civil and Political Rights further adds that: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
It is however hardly debatable that under classical Islamic law, the principle of legal equality of persons is not recognised. The new Iranian Islamic penal code follows the classical doctrine and violates the principle of legal equality by provisions that discriminate on the basis of gender and religion.

**Discrimination upon gender/religion**

In classical Shari’a criminal law men and women are treated differently with regard to evidence and blood money. The testimony of a man has twice the strength of that of a woman. Instead of the testimonies of two male witnesses required for conclusive evidence, the testimonies of one man and two women or the testimonies of four women may be used in court. Article 199 of the new penal code reflects this discrimination regarding the evidence:

“The standard [of proof] for testimony in all offenses shall be two male witnesses; unless in Zina, Livat, and Mosahaqa which shall be proved by four male witnesses. In order to prove a Zina punishable by the Hadd punishment of flogging, shaving [of head] and/or banishment, testimony of two just men and four just women shall be sufficient. If the punishment provided is other than the above, testimony of at least three men and two women shall be required. In such cases, if two just men and four just women testify for the offense, only the Hadd punishment of flogging shall be given. Bodily offenses punishable by Diya shall also be proved by one male witness and two female witnesses.”

The rule further establishes that “when a Muslim woman is murdered, the right to Qisas (retaliation) is created; however, if the murderer is a Muslim man, prior to Qisas, the heir(s) of the victim [va-li-e-dam] should pay the murderer half of the Diya (blood money) of a man….”

According to Islamic Shari’a, retaliation for homicide or bodily harm is only allowed if the victim’s blood money (Diya) is the same as or higher than the offender’s. If the value of the blood money of the offender is higher than that of the victim, for retaliation the victim or his/her next of kin would have to pay the difference to the perpetrator. Thus, if a woman is killed by a man, the murderer may be sentenced to death if the woman’s next of kin demand it, but they must pay one half of the blood money of a man to the offender, since according to article 382 of the penal code, the blood money of a woman is half that of a man.

25. Article 382 of the new penal code.
Furthermore, in case of blood money, a key principle applies in all cases; the blood money for Muslim man is the standard against which the value of all other categories of persons are measured, both for life and for injuries. Therefore, if a man causes a woman to go blind (injury to both eyes), the payable blood money to the woman for her both eyes is only half of the full blood money of a man. The rule applies in cases of other injuries as the article 560 of the penal code stipulates that:

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

According to the previous key principle, as the IRI has recognised only three religious minorities which are Jews, Christians and Zoroastrians, if a Muslim man kills a Christian man, retaliation will not be possible, but since 2003, his blood money is equal to that of Muslims. However, if a person from a non-recognised religious minority kills a Muslim, no retaliation is possible, neither can the victim’s heirs claim blood money. Because Qisas shall be delivered only if the victim is equal in religion with the perpetrator. This is the case of Baha’i’s who are one of the most discriminated minorities in Iran.

This is while the term religion in the legal context does not limit to one particular belief and that freedom of religion is an unconditionally protected right. This un-conditionality is stressed in the Human Rights Committee’s General comment N. 22 as follows:

“Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms “belief” and “religion” are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community...”

Iran therefore violates the most basic yet prominent principle of the international Human Rights law, which is the principle of equality and non-discrimination among human beings.

27. Article 299 of the new penal code.
Discrimination on minors

One of the most significant principles of the criminal law, is the principle of juvenile justice. Meaning that children must receive different treatment from adults when encountering the penal system. In other words, juvenile justice is the area of criminal law applicable to persons not old enough to be held responsible for their criminal acts. The main goal of the juvenile justice system is rehabilitation rather than punishment. This discrimination in favour of minors is therefore justified under international law and is an exception of the principle of equality and non-discrimination.

In the IRI however, there are several legal discriminations against minors. Not only against minor offenders but also against minor victims. According to Shia jurisprudence sometimes the relation between the victim and the perpetrator prevents Qisas (retaliation) to occur. For instance, the penal code dictates that “Qisas shall be delivered only if the perpetrator is not the father, or any ascendants, of the victim.” The father is therefore exempt from retaliation in case he kills his child. This is justified in traditional Islam arguing that the father shall be able to use any means he considers appropriate to punish and instruct his child.

But minors are mostly discriminated against when they commit an act that is considered a crime for an adult. This is well illustrated in two areas: the age of criminal responsibility and juvenile execution in Iran.

As these two issues are concerned, Iran has long time been criticised about its position on them. Although the internationally accepted minimum age for responsibility is 18 years old for both boys and girls, Iran has a different standard following Shari’a law. As article 147 indicates, the age of maturity for girls and boys are, respectively, a full nine and fifteen lunar years. Following the Shari’a law, the age of maturity in the penal code is equivalent of age of criminal responsibility; meaning that a 10 year old girl or a 15 year old boy who commits murder, is considered mature enough and capable of fully comprehending the hideousness and unlawfulness of her/his action. This is in clear contrast with the realities of the modern world in which minimum age of 18 is required for less important acts such as voting, applying for a driver’s license or a passport.

The small advancement made in the new penal code is that non-mature children have no criminal responsibility28 and that in cases of offenses punishable by Hadd or Qisas, if mature people under eighteen years do not realize the nature of the crime committed or its prohibition, or if there is

28 Article 146 of the new penal code
uncertainty about their full mental development, according to their age, they may be sentenced to other punishments prescribed in chapter 10 of the first book which are correctional measures. In case of Ta’zir offences however, a minor, no matter mature or not, is sentenced to correctional measure only.

So the challenge is no more in Ta’zir offences but rather in Hadd and Qisas offences for which corporal punishment and death penalty are applied. Numerous have been cases of minors who have been punished by death penalty, mostly behind closed doors. But most often the practice has been to detain the child until the age of maturity or afterwards and then execute the punishment. This method has been used to decrease the international pressure on Iran on the subject of juvenile execution. Thus Iran may no more execute child offenders but it sure executes the adults who were children and not mature at the age of commission of the crime. Behnoud Shojaei is one of the recent examples of this practice. He was believed to have committed a murder at the age of 17, and the family of the victim decided not to forgive him. Following the law of retaliation, Behnoud was executed on 11 October 2009 at the age of 21. Delara Darabi, was another minor who was executed on 1st May 2009. She was convicted of murder of his father’s cousin at the age of 17 and was executed at the age of 21 while neither her lawyer nor her family were informed that the execution were about to be carried out.

Furthermore in an ongoing case, Razieh Ebrahimi, a 21 year old girl who is convicted of murder of his husband at the age of 17. She is currently on death row and risks being executed at any moment. Razieh was a victim of child marriage as she was forced to marry an older man at the age of 14 and gave birth to a child at the age of 15. She was physically and mentally abused for several years and shot her husband in sleep in 2009.

Juvenile execution is a complete breach of Iran’s international obligations. It is bound by the Convention on the Rights of the Child and must ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. It is also reiterated in the International Covenant on Civil and Political Rights that sentence of death shall not be imposed for crimes committed by persons below eighteen years of age.

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29. Article 91 of the new penal code
31. See: http://www.reuters.com/article/2009/05/05/iran-executions-reuters-idUSLDOE4D0EH20090505
32. See: http://www.huffingtonpost.com/2014/02/03/09/20/raziieh-ebrahimi-iran-child-execution_n_5514835.html
age and shall not be carried out on pregnant women. It is therefore strictly forbidden to carry out death penalty for minors at the age of execution or minors at the age of commission of the crime, no matter under Hadd charges or Qisas charges. It is the State’s responsibility to ensure that no child is executed on the basis of retaliation laws, and that the State must protect minor offenders from violation of their rights by itself or by other citizens who may have been affected by the minor’s wrongdoing.

III) Restriction of public and fundamental freedoms

Different theories on criminal punishment were born in the course of history depending on society’s perspective. They all justify the objectives of the punishment differently answering to the question of why each society should punish offenders. The responses of these theories differ, but could be summarized into the following purposes for punishment: deterrence, retribution, just deserts, rehabilitation, incapacitation, and more recently, restorative justice. In other words, society and States as representatives might punish individuals because:

- They deserve to be punished
- Punishment will stop them from committing further crimes
- Punishment tells the victim that society disapproves of the harm that he or she has suffered
- Punishment discourages others from doing the same thing
- Punishment protects society from dangerous or dishonest people
- Punishment allows an offender to make amends for the harm he or she has caused
- Punishment ensures that people understand that laws are there to be obeyed.

When applying the above criteria to the Iranian penal code, the result is surprisingly staggering. In theory the policy is aimed at maximum deterrence. The evidence is the high number of overly broad and vaguely defined provisions of the new penal code or various judicial decrees that criminalize civil acts and non-offensive behaviours. In practice on the other hand, harsh criminal response to non-criminal behaviours is an increasingly common practice of the Iranian authorities; behaviours which are mostly rooted in civil and political liberties that do not match the criteria of a “crime”. This concern has several times been pointed out by the Special Rapporteur on the Human Rights situation in Iran in his reports. In a recent report in October 2013, he warned against the “use of overly

33. Article 37 of the Convention on the Rights of the Child
34. See report number: A/68/503
broad and vaguely worded national security laws under which authorities can prosecute, convict and sentence political dissidents for protected activities”. He also alarmed the international community that “the new code appears to expand the categories and definitions of national security crimes to include “armed rebellion”, “sowing corruption” and “damaging the economy of the country”.

Numerous are cases of lawyers, journalists, activists and students who have been convicted to acts which do not constitute crimes. In a recent case on 8 July 2014, Marzieh Rasouli, who is a female Iranian journalist, was convicted to two years imprisonment and 50 lashes, for publishing anti-state propaganda and taking part in protests in 2009.35

Mahnaz Mohammadi, is another female journalist and filmmaker who was tried and convicted of spreading anti-State propaganda on 7 June 2014. In November 2012 she was also convicted for “gathering and collusion against the national security”, and “spreading propaganda against the State”, through cooperation with foreign media including the BBC, and supporting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Her sentence was upheld by the Appeals Court of Tehran in early 2014. She is currently serving her 5 year term imprisonment. Abdolfattah Soltani, is a prominent human rights defender who was sentenced to 13 years in prison in June 2012. He was among the co-founders of the Centre for Human Rights Defenders Iran. He was judged on various charges, including co-founding the centre, spreading anti-government propaganda and endangering national security.36

Omid Kokabi, is a 30 year old PhD student in optical physics who did his studies in the Institute of Photonic Sciences in Catalonia, Spain. In 2010, he transferred to Texas University to continue his studies in this field but during a visit to Iran in February 2011, he was arrested at the airport on charges of “communicating with a hostile government” and “illegal earnings.” He was sentenced to 10 years in prison in 2012.

Hamid Babaei, is another student who was arrested on vague charges after return to Iran for holiday in July 2013. He is now serving a six-year sentence for acting against national security by communicating with hostile governments. According to an NGO, his charge appears to relate to his refusal to monitor and spy on Iranian students studying in Belgium, where he had been pursuing graduate studies, as requested by the Ministry of Intelligence. The scholarship and funds he received from Bel-

37. See: http://www.iranhumanrights.org/2013/02/omid_kokabi-2/
graduate studies, as requested by the Ministry of Intelligence. The scholarship and funds he received from Belgium's University of Liege as a graduate student were used as "evidence" of his alleged work for "hostile governments." It appears that Iranian authorities have adopted a policy of maximum "criminalization" rather than de-criminalization; a policy of terror whose aim is restricting civil and political liberties or infringing the right to privacy of citizens. For instance, on 13 July 2014, two men received 80 lashes in public for eating in public during the month of Ramadan. Or 8 young men were sentenced to a total of 127 years in prison for their activities on Facebook, on charges of collusion and gathering against the national security, propaganda against the regime, publication of lies, insulting the supreme leader.
In Iran, different decrees have established different type of police unites such as “morality police for Hijab” or “Ramadan police”. They tend to closely monitor citizens’ actions/appearance and guide/order them to correct themselves. In many cases, it goes beyond a simple advice and involves aggression, arrest and fines. Below are photos of these two unites and we believe that pictures are self-explanatory.

Activities such as news publishing on Facebook or eating during Ramadan because one does not fast are not activities matching the criteria of a crime. But the Iranian legislator has ensured to establish broadly defined provisions in the penal code in order to supress the political or ideological dissidents in times of need. Charges such as “disturbing the public order, collusion and gathering against the national security, propaganda against the regime, publication of lies, insulting the supreme leader etc.” are among the ambiguous accusations mentioned in the fifth book of the penal code and are used for the above mentioned purpose. They are among the dozen of articles in the first chapter of the fifth book of the penal code, which concerns national security crimes.

For example article 498 of this code states that:

“Anyone, with any ideology, who establishes or directs a group, society, or branch, inside or outside the country, with any name or title, that constitutes more than two individuals and aims to perturb the security of the country, if not considered as Mohareb, shall be sentenced to two to ten years imprisonment.”

Or article 500 that announces that:

“Anyone who engages in any type of propaganda against the Islamic Republic of Iran or in support of opposition groups and associations, shall be sentenced to three months to one year of imprisonment.”

Crimes with unspecified contents, which are left to the appreciation of the judge do not limit to national security charges. Crimes against public prudence and morality also belong to this category of offences which illegitimately limit public freedoms. When a man and a woman who are not married to each other, commit indecent acts other than Zina, such as kissing or sleeping next to one another, they are sentenced to up to ninety-nine lashes; and if the act is committed by force only the one who has used force shall be punished as Ta’zir⁴¹.

⁴¹ Article 627 of the penal code
Other instances for crimes against public prudence are articles 638 and 640 as follows:

Article 638: “Anyone in public places and roads who openly commits a harām (sinful) act, in addition to the punishment provided for the act, shall be sentenced to two months’ imprisonment or up to 74 lashes; and if they commit an act that is not punishable but violates public prudence, they shall only be sentenced to ten days to two months’ imprisonment or up to 74 lashes. Note-
Women, who appear in public places and roads without wearing an Islamic hijab, shall be sentenced to ten days to two months’ imprisonment or a fine of fifty thousand to five hundred Rials.”
And article 640: “The following individuals shall be sentenced to three months to one year of imprisonment and a fine of one million and five hundred Rials to six million Rials and up to 74 lashes or to one or two of the above punishments.

1- Anyone who, for distribution and business purposes, displays and shows to the public, or produces or keeps any writing or design, gravure, painting, picture, newspapers, advertisements, signs, film, cinema movie, or basically anything, that violates public prudence and morality.

2- Anyone who, whether personally or through someone else, for the abovementioned purposes, imports or exports the aforementioned objects, or by any means deals or acts as a broker to the [abovementioned] business or any other businesses, or benefits from renting the said objects.

3- Anyone who, by any means, advertises to encourage dealing and promoting the abovementioned objects, or introduces people who commit the abovementioned illegal acts, or the place the said objects can be obtained.”

Besides the existing framework of the current penal code, Iran often takes separate legislative measures which restrict citizens in various ways in their choices. In a very recent act in April 2014, the Iranian parliament considered voting a bill based on which vasectomy and offering contraception would be sentenced up to 5 years of imprisonment. Such a policy emerged following the order of the supreme leader on increasing the population of the country by half.2

Such charges are clear breach of public and individual freedoms enshrined in the human rights instruments such as right to security and protection, right to privacy, and freedom of choice and autonomy. They are results of a theory according to which citizens are impotent creatures who need guidance and instructions. Otherwise they will constantly commit wrongdoings and sinful acts.

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42. See: http://www.theguardian.com/world/2014/apr/15/iran-ban-vasectomies-birthrate
IV) recommendations

Sudwind recommends to the government of Iran to:

- Declare a moratorium on all executions; ban public executions, including stoning; and limit capital punishment to offences considered to be most serious crimes under international law
- Prohibit the execution of juveniles, as prescribed by international law, and that authorities consider commuting all capital sentences for juveniles currently facing a death sentence
- Proscribe the use of all forms of corporal punishment, including flogging and amputation; investigate all allegations of custodial deaths and allegations of torture in custody in a transparent manner consistent with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and accede to the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, along with the Optional Protocol thereto
- Address impunity, to facilitate accountability, to provide redress for human rights violations and strengthen the rule of law, all of which are required to effectively promote respect for human rights in the country
- Strengthen effective safeguards against human rights abuses, to establish an effective national human rights mechanism that is compliant with the Paris Principles, in order to ensure that violations of human rights are investigated and sufficient remedies are provided
- Prevent discrimination against women and girls, as well as religious and ethnic minorities, in all spheres of public life and services, and to protect their freedoms to freely associate and express themselves
- Ensure that the minimum age for marriage complies with international standards and that measures to prevent the forced, early and temporary marriage of girls are established
- Narrow the scope of limits on freedoms guaranteed by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Committee on the Elimination of Racial Discrimination without discrimination of any kind, including the freedom of expression, access to information, association, assembly and religion; ensure the independence of the judiciary and Bar Association and also ensure that due process rights are fully observed at all stages of law enforcement
- Explicitly define actions that constitute crimes against national security, and encourages the Government to ensure that peaceful activities that are considered to be protected by freedom of expression, association and assembly are not criminalized
- Release all political prisoners and prisoners of conscience, including the Green Movement leaders, human rights defenders, religious leaders and dissidents, journalists and bloggers and labour rights and student activists
- Engage with the United Nations in capacity-building to address core human rights challenges, including issues relating to gender inequality, and accede to the Convention on the Elimination of All Forms of Discrimination against Women and the protocols thereto
- Provide access to the country mandate holder and to thematic rapporteurs