Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**654**
Land:	Iran
Kilde:	Amnesty International
Titel:	Flawed Reforms. Iran's New Code of Criminal Procedure
Udgivet:	10. februar 2016
Optaget på baggrundsmaterialet:	28. februar 2017

FLAWED REFORMS

IRAN'S NEW CODE OF CRIMINAL PROCEDURE

AMNESTY INTERNATIONAL

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We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

First published in 2016
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: MDE 13/2708/2016
Original language: English
Printed by Amnesty International,
International Secretariat, UK

amnesty.org

Cover photo: *A cartoon illustrating how Iran's criminal justice system maintains a facade of equality and justice. The baton represents the force of the state, in the form of the unchecked powers granted to security, intelligence, and prosecutorial authorities, tipping the scales in favour of the state and rendering the accused defenceless. "Iranian Justice" by © Kianoush Ramezani, www.kianoush.fr*

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IRAN'S NEW CODE OF CRIMINAL PROCEDURE

CONTENTS

GLOSSARY

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCP	(Iran's new) Code of Criminal Procedure, which was passed in April 2014 and entered into force in June 2015
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
HRC	(UN) Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPPED	International Convention for Protection of all Persons from Enforced Disappearances
SCC	Special Court for the Clergy
UDHR	Universal Declaration of Human Rights
UPR	Universal Periodic Review
DIYEH	Blood money
FATWA	A religious ruling or decree issued by an Islamic jurist
HADD (PLURAL: HODUD)	A crime for which a fixed punishment is derived from the Qur'an or the Hadith
EFSAD-E FEL-ARZ	Offence of "corruption on earth"
MOHAREBEH	Offence of "enmity against God"
QESAS	Punishment of retribution in kind
SABBO AL-NABI	Offence of insulting the Prophet of Islam

SHARI'A	Islamic law
TA'ZIR	Discretionary punishment for crimes for which fixed penalties are not provided in Islamic law

1. EXECUTIVE SUMMARY

> "The issue is that there are individuals among lawyers who could be troublemakers."
>
> Zabihollah Khodaian, the Legal Deputy of Iran's Judiciary, June 2015

These words were spoken by Zabihollah Khodaian, the Legal Deputy of Iran's Judiciary, in June 2015 in the wake of criticism directed at the authorities for imposing restrictions on the right to access a lawyer. While shocking, they are hardly surprising as they exemplify the long-standing lack of regard for due process in Iran's criminal justice system.

Iran's 1979 revolution triggered a swift and fundamental transformation of the country's justice system. Its aftermath witnessed vast numbers of people being arbitrarily detained, tortured and summarily executed with almost no regard for due process guarantees such as the right to have access to a lawyer from the time of arrest. Since then, relative order has gradually been restored to the justice system. Many laws hastily adopted after the revolution have been amended and improved. Iran has added the Convention on the Rights of the Child (CRC) to the list of international treaties to which it is state party, a list which also includes those ratified before 1979, such as the International Covenant on Civil and Political Rights (ICCPR). However, flaws in Iranian legislation and the failure to incorporate key human rights guarantees into national law persist, making the country's legal framework largely inconsistent with international human rights law and standards. In fact, the unfair, summary and predominantly secret processes, and the special and revolutionary courts and tribunals established in the aftermath of the revolution, continue to characterize Iran's criminal justice system, undermining the right of all to a fair trial

In June 2015, a much anticipated new Code of Criminal Procedure (CCP) entered into force in Iran. The new CCP, which had been in the making for almost a decade, was passed by Parliament and signed into law by the President in April 2014. This new Code replaced a deeply flawed Code of Criminal Procedure, adopted in 1999, whose validity was supposed to last only for a trial period of three years but was repeatedly extended. The new Code introduces several long overdue reforms to Iran's criminal justice system, including the restriction of the use of provisional pre-trial detention to situations where there is a risk of flight or a threat to public safety, stricter regulations governing the questioning of accused persons, and enhancement of the right to access a lawyer during the pre-trial period. However, it has failed to tackle many of the major shortcomings in Iran's criminal justice system.

The new Code's shortcomings have been aggravated by a number of retrogressive changes that came in the form of a bill, introduced in August 2014, to amend the Code after it had been adopted in April earlier that year. The bill was approved in June 2015 by the Guardian Council only days before the Code's entry into force. These amendments have effectively rolled back the half-hearted reforms in the new CCP that, up to the introduction of the amendments, were repeatedly used by the authorities to showcase their criminal justice reform project both domestically and internationally.

1.1 LEGAL FRAMEWORK

The Constitution of the Islamic Republic of Iran, adopted in October 1979, covers the key principles of fair trial. For instance, it protects the right to liberty by stating, "No one shall be arrested except by the order and in accordance with the procedures laid down by law." Presumption of innocence, equality before the courts, prohibition of torture and other ill-treatment, the right to an open hearing, and access to legal counsel are all constitutionally guaranteed. However, various laws, including the 2013 Islamic Penal Code, the Press Law, the new CCP and the Anti-Narcotics Law, undermine these and other fair trial guarantees by including restrictive and vaguely worded provisions. Combined with major flaws in the structure and administration of the criminal justice system, the result is a continued proliferation of harsh and unjust sentences following grossly unfair trials.

1.2 RIGHT TO LIBERTY

Right to liberty and protection against arbitrary arrest and detention. Iran's Constitution and the new CCP provide for the right to liberty. However, restrictive, overly broad and vaguely worded provisions in the Constitution, the 2013 Islamic Penal Code and other laws give rise to arbitrary and unlawful arrests and detention. For instance, the Constitution effectively undermines safeguards through vague qualifications such as "in accordance with Islamic criteria".

Some laws in Iran impose undue restrictions on the exercise of human rights. Some even criminalize acts and conducts that should not be considered crimes at all, and impose harsh penalties for "crimes" such as "adultery", "insulting Islamic sanctities" and "insulting the Prophet of Islam". Such provisions are often used to arbitrarily deprive people of their liberty.

Some offences are not clearly defined, such as "enmity against God" and "corruption on earth", and some laws include vague or overly broad provisions for certain offences, particularly those relating to national security such as "spreading propaganda against the system". Indeed, the 2013 Islamic Penal Code expands the scope of the capital offence of "corruption on earth" and continues to grant judges wide interpretive powers, in breach of the principle of legality and legal certainty. These provisions allow for arrests and detentions deemed arbitrary under international law.

Although the Constitution and other laws recognize the principle of legality, the recognition is only partial. People can be arrested, detained and punished for behaviour that is not codified as a criminal offence in Iranian law such as apostasy. Indeed, the Constitution allows judges to base their judgements, in the absence of codified laws, on authoritative Islamic sources, religious decrees by Islamist jurists and, in some cases, their personal knowledge of Islamic law. Arrest, detention and imprisonment that has no basis in law is by definition arbitrary.

Right to be detained only by individuals and agencies that are legally authorized to do so. The new CCP contains long-overdue reforms in this regard by requiring individuals with arrest, detention and investigation powers to undergo training and carry special identification cards, and by restricting the law enforcement agencies that can exercise judicial powers. However, these welcome changes may be rendered meaningless by provisions in the Code that continue to grant an array of intelligence and security forces wide-ranging powers of arrest and detention without effective oversight. For instance, the new CCP explicitly includes Ministry of Intelligence officials as "judicial officers" who can make arrests, ending years of debate on whether they were legally allowed to act in this capacity, but fails to restrict the scope of crimes these officials can deal with as "judicial officers". Such flaws erode the rule of law and allow state agents to arbitrarily deprive people of their liberty with almost total impunity.

1.3 RIGHTS RELATED TO ARREST AND DETENTION

Right to be informed of the reasons for arrest at the time of arrest. This safeguard has long been abused in Iran. The new CCP is an improvement on the old Code as it regulates the issuance of warrants and summons more clearly. It also introduces disciplinary measures for anyone who summons or arrests an

individual without sufficient reason. However, its provisions still fall short of international standards. For instance, under the CCP a warrant must give the reasons for arrest but there is no requirement for including an explanation of the legal provision under which an individual is being arrested. People can therefore be arrested on the basis of overly broad reasons, such as "national security". Indeed, those accused of such offences can still be arrested without receiving a summons in advance.

Detailed information about the nature and cause of the alleged offences is crucial for a suspect to challenge or seek dismissal of the charges at an early stage. However, the new CCP does not appear to differentiate between information that must be given promptly after arrest and information that must be provided once formal charges have been laid. It also fails to set out a clear time frame for bringing formal charges.

Right of detainees to be informed of their rights, including the rights to notify a third person, access a lawyer, challenge the lawfulness of detention, remain silent, not incriminate themselves and have recourse to complain about torture or other ill-treatment during arrest or detention. The new CCP has improved on the old Code, as it obliges the authorities to notify detainees of their rights under the CCP. However, failure by the authorities to notify the accused of their right to a lawyer or denial of this right will not impact the validity of the investigations or the admissibility of information gathered as evidence in court. Such breaches are only subject to disciplinary penalties. Moreover, the CCP fails to explicitly list all the rights of which an accused person must be notified.

The new CCP also improves a detainee's right to inform a third person that they have been detained, allowing them to communicate with relatives by phone or other means. However, it allows "judicial officers", after referral to judicial officials, to restrict this right when they deem it necessary. It does not set out clearly the grounds for such exceptions, as required by international law. Indeed, judicial officials can prohibit visits or correspondence with an accused if they determine that they are not in the interest of a "good trial proceeding". The regulations do not set any limitation for restricting individuals' right to communicate and receive visits from relatives.

Right to remain silent. Another improvement introduced by the new CCP is the inclusion of a provision that explicitly spells out this right.

Right to be brought before a judge promptly after arrest or detention. The main purpose of this right is to address the lawfulness of the detention. Despite recognition of the new CCP of the right to challenge the lawfulness of detention, the Code does not provide for the accused person to be brought before an objective, independent and impartial judicial authority, namely a judge. Instead, the nominated official is the investigator, who is located within the Office of the Prosecutor and therefore lacks the necessary objectivity and impartiality. This effectively means that the same entity that issues the detention order approves it, responds to a detainee's request to have it revoked, and determines the necessity for continued detention. The accused person can appeal against the decision of the investigator. The appeal request is heard by the court that has jurisdiction to try the offences in question. The CCP does not make it clear whether the appeal will be heard by judges who will subsequently preside over the trial. This could adversely affect the impartiality of the court as required under international law and standards. It also remains silent on key issues, such as whether the appeal will be heard at an oral hearing, and whether the accused has the right to counsel and to present evidence. In short, the provisions in Iranian law concerning the right to be brought before a judge promptly after arrest fall far below those required by international standards.

Right to release pending trial. International standards make clear that in general people charged with a criminal offence should not be detained pending trial, and that pre-trial detention should be an exceptional measure of last resort. In a welcome improvement, the new CCP appears to have abolished mandatory pre-trial detention. Instead, it has made it dependant on two conditions: where there is sufficient reason and evidence to charge someone with specific crimes listed in the Code, including crimes punishable by death and national security offences; and where the person's liberty would result in the destruction of evidence, or risk public disorder or their own life or the lives of others, or be likely to lead to the suspect absconding.

While the old Code allowed a provisional pre-trial detention order to be extended indefinitely, the new CCP sets limits. However, the limits of one or two years permitted under the new Code in some cases are disproportionately long and may still violate the right to presumption of innocence and the right to trial within a reasonable time.

Right to reparation for unlawful arrest or detention. The new CCP falls far short of providing an enforceable right to reparation, including compensation, for those unlawfully arrested or detained. Although it has introduced a provision that allows individuals to receive financial compensation, victims can only request this if the charges against them are dropped or they are acquitted at trial. This is in contrast with international law and standards, under which the right to reparation must apply to people whose detention or arrest has violated national laws or procedures, or international law and standards, or both, irrespective of whether the individual was subsequently convicted or acquitted.

The Code not only fails to limit the right to reparation to financial compensation, thus excluding other forms of reparation such as restitution and guarantees of non-repetition, but also includes vaguely worded clauses which preclude the possibility of compensation including when individuals "are arrested due to their refusal to provide evidence, documents, and reasons showing their innocence".

Right to access legal counsel and choose one's own lawyer. Iran's Constitution guarantees the right of people arrested or detained to access legal counsel. In practice, however, the authorities have long denied individuals this right during the investigative stage, often referring to provisions of the 1999 Code of Criminal Procedure. The new CCP as adopted in April 2014 enhanced the right to access a lawyer by removing some of the previous restrictions applying to the investigative stage. However, it did not fully guarantee the right from the time of arrest as it permitted the judicial authorities to delay individuals' access to a lawyer in the case of some offences. These included, but were not limited to, drug-related offences and crimes against national security. The amendments approved by the Guardian Council in June 2015 failed to bring provisions of the new Code into line with international law and standards with regards to the right to access a lawyer from the time of arrest. Instead, they replaced the relevant provision of the new Code, which allowed access to legal assistance to be delayed for up to a week, with a provision that denies individuals facing national security-related charges the right to access an independent lawyer of their own choice for the investigation phase, which may last for months. According to the final text of the Code, such individuals may only select their lawyers from a roster of lawyers approved by the Head of the Judiciary. The same restriction was introduced for individuals accused of involvement in organized crimes that are subject to such punishments as the death penalty, life imprisonment and amputation.

The new CCP does include provisions guaranteeing the right to free legal assistance for those without adequate financial resources. However, it differentiates between the applicability of this right during the pre-trial period and during trial; during the investigative stage, accused individuals who cannot afford a lawyer only appear to qualify for a state-appointed lawyer if they face charges that could carry the death penalty or life imprisonment.

Right to adequate time and facilities to prepare a defence. International standards require that anyone charged with a criminal offence has the right to adequate time and facilities to prepare a defence and defend themselves. This includes providing detainees with adequate time and facilities to meet their lawyer in private. The new CCP, however, fails to expressly guarantee this right and further appears to limit such meetings to one hour on some occasions, regardless of the complexities of the case. It further fails to ensure the confidentiality of such meetings. These and other related failings also undermine the crucial principle of "equality of arms", which insists that the defence and prosecution are treated in a manner that guarantees equal opportunity for both sides to prepare and present their case.

Regulations governing interrogations. The new CCP sets out stricter regulations for conducting and recording interrogations. As with the old Code, it bans asking leading questions, deception and forcing or coercing the accused person during interrogation, and removes the previous bar on defence lawyers interjecting or objecting during interrogations. However, the new CCP fails to address a wide range of important issues, including interrogation of people who are intoxicated, identification of interrogators and time limits for interrogation sessions.

Rights of foreign nationals. The new CCP fails, in contravention of international law, to guarantee the right to consular notification for foreign nationals in custody to communicate with and receive visits from representatives of their government.

1.4 RIGHT NOT TO BE TORTURED OR OTHERWISE ILL-TREATED

Iran's Constitution prohibits torture and other ill-treatment, but fails to ensure its absolute prohibition because it uses restrictive language that only prohibits the use of torture for extracting confessions or information. A similarly restrictive definition appears in other laws and legislation, which fail to recognize as torture severe pain or suffering that is inflicted as punishment or to intimidate, or for reasons based on discrimination. Iranian law continues to provide for various cruel punishments that are prohibited by international law, including flogging, amputation, blinding, crucifixion and stoning, all of which constitute forms of torture and other cruel, inhuman or degrading treatment or punishment.

Iranian law does not define torture nor does it provide for a separate crime of torture, thus obstructing adequate investigation and prosecution of the crime. Crucially, the laws also fail to establish adequate provisions for the investigation and punishment of those responsible for torture and other ill-treatment. This is, in general terms, due to the absence of a specific crime of torture, the failure to clearly criminalize torture and the failure to guarantee the right to remedy and reparation for victims of torture and other ill-treatment.

The use of unofficial detention centres and secret detention facilitates the existence of torture. Iran's relevant law, the Prison Regulations, fails both to bring all prisons and detention centres under effective control and to expressly prohibit the use of unofficial or secret detention centres.

Another effective safeguard against torture is the maintenance of up-to-date official records of all detainees. The new CCP, in a welcome development, requires such an official record from the moment of arrest. However, the provisions fail to require the recording of key information, including the authority that ordered the detention, the facility where the detainee is being held, the exact time they were admitted, the authority responsible for the facility, and the detainee's state of health.

The new CCP also improves the right of those arrested to be examined by a doctor immediately after arrest, a key safeguard against torture and other ill-treatment. Unfortunately, it does not allow the detainee to choose an independent doctor, as international standards require, but provides for a doctor appointed by the Prosecutor.

1.5 RIGHTS DURING TRIAL

Right to equality before the law and courts. Iran's Constitution enshrines this principle, but includes significant qualifications that allow discrimination on various grounds. For example, the Civil Code denies women equal rights with men, including with respect to marriage, divorce, child custody and inheritance. The Islamic Penal Code assigns women a subordinate status to men. For example, it values a woman's testimony at half that of a man's in some proceedings. It also sets the age of criminal responsibility significantly lower for girls than for boys. Non-Muslims too are treated unequally. For instance, in some cases they are subject to heavier punishments than Muslims for the same offence.

Independence of the judiciary. International standards enshrine the right to trial by a competent, independent and impartial tribunal. This right is reflected in Iran's Constitution and the new CCP. However, the method of appointing the highest judicial authorities in Iran casts doubt over their independence as it effectively allows the executive branch to interfere in judicial affairs. Of particular concern is the scope of powers granted to the Head of the Judiciary, who is appointed by the head of state.

Moreover, the vetting process for recruiting judges runs contrary to international standards regarding qualification and selection as it allows the judiciary to exclude anyone who does not adhere to state-sanctioned political and religious ideologies. Judges are also at risk of arbitrary dismissal based on vaguely worded offences that effectively enable the Supreme Disciplinary Court for Judges to arbitrarily dismiss them for conduct they find undesirable.

A further flaw is Iran's failure to ensure that qualified women and members of ethnic and religious minorities are appointed as judges in order to combat discrimination and grant equality in the justice system. Iranian

laws also allow for discrimination on the grounds of religion, political opinion and birth as they bar non-Muslims, those born outside wedlock, and those critical of the political system from becoming judges.

Right to be tried by an impartial court. Iran's laws on paper guarantee the impartiality of courts and other bodies exercising judicial functions. For instance, they provide for recusal of judicial authorities if their impartiality is doubted. However, the new CCP, similarly to the old Code, suffers from major flaws that undermine this principle of impartiality, including provisions that place the investigation of some offences under the remits of the trial court and the judges who will subsequently preside over the trial.

Right to a public hearing. This right is recognized in Iranian law, including the Constitution and the CCP. However, vague and broadly defined circumstances in which the right to a public hearing can be restricted effectively allow judges to hold trials behind closed doors at will. The circumstances include some recognized as valid by international standards, such as the need to protect public order, but others are much broader, such as that an open hearing would "disturb religious or ethnic sentiments".

Presumption of innocence. This right is recognized under Iranian law, including by the Constitution and the new CCP. However, legal shortcomings in the CCP and the Islamic Penal Code undermine this right in practice. A key problem is the criminal justice system's heavy reliance on confessions as evidence. Moreover, the law fails to place the burden of proof that statements have been given voluntarily on the prosecution. Indeed, both the Islamic Penal Code and the CCP fail to clarify who bears the burden of proof and the standards of proof. Disproportionately long periods of pre-trail detention, as permitted under the new CCP, also undermine the principle of presumption of innocence.

Exclusion of evidence obtained unlawfully. Iran's Constitution declares confessions extracted under duress as void and inadmissible, in line with international standards. Other Iranian laws, including the Islamic Penal Code, have similar provisions. However, the law provides no details on what constitutes an involuntary statement or what procedures judges and prosecutors should follow to establish whether a statement is indeed lawful and admissible.

Right to appeal. Iranian law provides for this right for those convicted of criminal offences, but only for offences of a certain severity. The CCP provides for the right to appeal to a higher tribunal, but the appeal proceedings, particularly before the Supreme Court, raise concerns. For instance, those convicted of crimes punishable by irreversible punishments, including the death penalty and amputation, have access to just one level of appeal conducted in writing. Even if the Supreme Court overturns the sentence, the case is then sent back to a court of first instance that could insist on reissuing the same verdict. Despite the failure of the new CCP to address these and other shortcomings of the right to appeal, it did significantly improve the appeal process for those sentenced to death for drug-related offences as it repeals Article 32 of the Anti-Narcotics Law, which had effectively taken away the right to appeal for such individuals.

Right to be present during trial and appeal. The new CCP provides for the right of the accused person to be present during trial and specifies measures to ensure that sufficient attempts are made to notify the accused person in sufficient time of the date of the hearing. However, it does not appear to provide for the same right during appeal as that the decision is left to the discretion of the court.

Right to equality of arms. Iranian law does not contain any provisions relating to this right. It fails to require the disclosure of inculpatory or exculpatory material by the prosecution to the accused and their lawyer. Indeed, the CCP gives the investigator broad authority to withhold information from the accused and their lawyer if he determines that disclosure would contradict "uncovering the truth" or would be against national security.

1.6 CONCLUSION AND RECOMMENDATIONS

Amnesty International welcomes the numerous improvements made under Iran's new CCP. However, the organization regrets that the Code constitutes a lost opportunity as it fails to address long-standing shortcomings in Iran's criminal justice system. Amnesty International has highlighted these shortcomings in the documentation and analysis it has conducted over the last three decades. The judiciary lacks independence, the security and independence of lawyers are undermined and, in many cases, including

those relating to national security or involving political prisoners, detainees are not afforded access to legal counsel until investigations are deemed complete. Individuals are generally allowed to meet their lawyers for the first time shortly before their trial or sometimes even at it. This effectively denies them the right to adequate time and facilities to prepare their defence. Prolonged periods of incommunicado detention, sometimes in informal detention centres run by intelligence and security forces, to which the judiciary has no access, are prevalent. Denial of access to legal counsel from the time of arrest and the use of incommunicado detention facilitate torture or other ill-treatment, which are primarily aimed at obtaining "confessions". Iranian courts routinely allow such "confessions" as admissible evidence. Trials, in particular in cases of political prisoners or those accused of national security-related offences, are often extremely brief, lasting only a few hours.

Amnesty International is further disappointed by the authorities' decision to abort some of the much-anticipated changes in the new Code before they could even take effect.

The weaknesses in Iran's justice system can be resolved if the authorities have the political will to do so. Iran has ratified several international human rights treaties that guarantees, among other rights, the right to a fair trial. As a state party to these treaties, the Iranian authorities have pledged to uphold the fair trial rights guaranteed to all accused persons. This commitment is of little value if key human rights protections and safeguards contained in the instruments are not fully incorporated into domestic law and then fully implemented. Other treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance, need to be ratified.

Amnesty International is calling on the Iranian authorities to repeal or amend some provisions of the new CCP, as well as of the Constitution, the Islamic Penal Code and the Press Code to bring them into line with international law and standards. These include provisions that unduly restrict human rights, such as freedom of expression, association and peaceful assembly; criminalize behaviour or actions that should not be criminal offences; and allow for detention on the basis of vague, overly broad or uncodified laws.

The Iranian authorities also need to amend laws and practice so that the multitude of rights required to ensure fair trials – from the moment of arrest, through the period of interrogation and trial, to the final stage of appeal – are respected. They should take urgent action to banish the blight of torture and other ill-treatment in Iran and abolish cruel, inhuman and degrading punishments. Such action requires the adoption of new legal provisions to establish adequate oversight over law enforcement and judicial officials and to ensure that allegations of human rights violations are properly investigated, those found responsible adequately sanctioned and that victims have the right to remedy and reparation.

2. METHODOLOGY

This report seeks to provide an analysis of how well relevant Iranian laws, in particular the new CCP that came into force in June 2015, meet international law and standards on fair trials. In doing so, the report primarily draws on public sources, including the text of Iranian laws and international human rights treaties and standards; information published by the Iranian government, including in submissions to the UN, and statements made by Iranian officials; reports and findings published by UN bodies, as well as other independent non-governmental human rights organizations; and Iranian and international media reports.

Amnesty International has conducted its analysis of the new Code with the benefit of having continuously examined Iran's criminal justice system over the last three decades. This examination has highlighted the major failings of the system and Amnesty International's analysis of the new CCP has sought to conclude whether the changes it has introduced will address these failings.

The report begins with a brief summary of Iran's legal framework. It then looks at four areas of the right to a fair trial: the right to liberty; rights related to arrest and detention; the right not to be tortured or otherwise ill-treated; and rights during trial. It ends with a list of detailed recommendations to the Iranian authorities.

As the new Code entered into force shortly before the drafting of this report, Amnesty International has not yet been able to assess the implementation of the new law in practice. As such, this report does not include any cases. Where relevant, the report provides references to Amnesty International outputs that describe cases and practices under the old Code.

Amnesty International hopes that this report can contribute to the ongoing process of legal reform in Iran, so that people who come into contact with the justice system can be confident that they will be treated with dignity and fairness, and that justice will prevail.

3. BACKGROUND

3.1 THE CRIMINAL JUSTICE SYSTEM IN IRAN

Iran's 1979 revolution shook the country's criminal justice system to its core. The ensuing decade saw thousands of individuals executed and imprisoned with almost no regard for due process. The authorities, led by Ayatollah Khomeini and filled with a sense of revolutionary justice, scrapped any aspects of fair trial rights recognized under the previous judicial system that resembled or were seen to have been influenced by "Western" thinking, values and secularism. The offensive targeted fundamental guarantees of fair trial such as public trials and the right to defence lawyers, which were described by Ayatollah Khomeini as a reflection of "the Western sickness among us" and "a Western absurdity".[1]

The revolutionary wave that swept over the country's judicial system meant that codified laws were disregarded by Shari'a (Islamic law) judges directly appointed by Ayatollah Khomeini in order to summarily try and execute those considered "anti-revolutionary", including individuals with real or perceived affiliation with the overthrown government of the Shah, members of ethnic groups seeking a degree of autonomy, and sex workers. In doing so, the newly appointed judges had the blessing of Ayatollah Khomeini, who on numerous occasions instructed them to "dispose of" legislation contrary to Shari'a and instead implement Islamic law.[2]

More than three decades on, the chaos that saw the collapse of the country's justice system has subsided. However, the unfair, summary and predominantly secret processes, and the special and revolutionary courts and tribunals established in the aftermath of the revolution, continue to characterize Iran's criminal justice system, undermining the right of all to a fair trial. Many laws hastily adopted after the revolution to replace those deemed inconsistent with Islamic law have been amended and are indeed improvements on their earlier versions. Nonetheless, the country's legal framework remains largely inadequate, inefficient and inconsistent with international law and standards. Over the past three decades, Amnesty International has persistently documented the major shortcomings of Iran's criminal justice system arising from inadequate laws and the failure to implement these laws in practice. The key shortcomings are as follows:

- The judiciary lacks independence;
- Equality before the law is not guaranteed as women,[3] members of minority communities[4] and non-Muslims in particular are subjected to institutionalized discrimination;
- The right to presumption of innocence is undermined by heavy reliance on confessions as evidence and excessive use of long periods of pre-trial detention;

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[1] Ervand Abrahamian, *Tortured Confessions – Prisons and Public Recantations in Modern Iran*, University of California Press, 1999, p. 125.

[2] See website of Ayatollah Khomeini, "The accused's rights and the limits of judicial powers", available at bit.ly/23JxK5H (accessed on 17 July 2015).

[3] See for example, Amnesty International, *You shall procreate: Attacks on women's sexual and reproductive rights in Iran* (Index: MDE 13/1111/2015), available at www.amnesty.org/en/documents/MDE13/1111/2015/en/

[4] See, for example, Amnesty International, *Iran: Human rights abuses against the Kurdish minority* (Index: MDE 13/088/2008), available at www.amnesty.org/en/documents/MDE13/088/2008/en/; Amnesty International, *Iran: Human rights abuses against the Baluchi minority* (Index: MDE 13/104/2007), available at www.amnesty.org/en/documents/MDE13/104/2007/en/; Amnesty International, *Iran: Defending minority rights: The Ahwazi Arabs* (Index: MDE 13/056/2006), available at bit.ly/1KsnF6D

- Individuals can be arrested, detained and imprisoned on the basis of vague, broadly defined and uncodified laws;
- In many cases, including those relating to national security or involving political prisoners, detainees are denied access to legal counsel until investigations are deemed complete;
- Those accused of criminal charges are often only allowed to meet their lawyers for the first time shortly before trial or sometimes even at trial, effectively denying them the right to adequate time and facilities to prepare their defence;[5]
- Prolonged incommunicado detention is prevalent, sometimes in informal and secret detention centres run by intelligence and security forces which lack judicial oversight;
- Torture and other ill-treatment, used primarily to obtain "confessions", are facilitated by denial of prompt access to legal counsel and the use of incommunicado detention, and encouraged by courts that routinely allow such "confessions" as admissible evidence;
- Corporal punishments provided for under Iranian law include amputation, crucifixion and flogging, which are cruel, inhuman and degrading punishments;[6]
- Trials, in particular of political prisoners and those accused of national security-related offences, are often summary and extremely brief, sometimes even lasting only a few hours;
- People are sentenced to death and executed after grossly unfair trials and for a wide range of crimes including those that do not amount to the "serious crimes" under international law.[7]

The Constitution of the Islamic Republic of Iran, adopted in October 1979, contains provisions pertaining to key principles of fair trial. For instance, the Constitution protects the right to liberty and stipulates: "No one shall be arrested except by the order and in accordance with the procedures laid down by law."[8] Presumption of innocence, equality before the courts, prohibition of torture and other ill-treatment, the right to an open hearing, and access to legal counsel are constitutionally guaranteed. Yet, restrictive and vaguely worded provisions in various laws, including the Islamic Penal Code, the Code of Criminal Procedure and the Press Code, as well as major flaws in the structure and administration of the criminal justice system, including a lack of accountability, independence and transparency, result in the continued proliferation of unjust sentences following grossly unfair trials.

Iran has ratified a number of international treaties guaranteeing fair trial rights, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). According to Article 9 of Iran's Civil Code, "the provisions of treaties agreed between the government of Iran and other governments in compliance with the Constitution have the force of law." Despite this, key human rights guarantees contained in the international human rights instruments to which Iran is a party have not been incorporated into domestic law. In 2011, the UN Human Rights Committee (HRC), which oversees implementation of the ICCPR, stated that "the status of international human rights treaties in domestic law is not specified in the legal system, which hinders the full implementation of the rights contained in the Covenant."[9]

Despite the international fair trial guarantees to which Iran has agreed to adhere, trials before Iranian courts do not generally meet the international standards for fair trial, most notably those laid down in Articles 6 (in capital cases) and 14 of the ICCPR.

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[5] See, for example, Amnesty International, "Iran: Activists jailed after unfair trial for protest" (Index: MDE 13/2627/2015), 8 October 2015, available at www.amnesty.org/en/documents/mde13/2627/2015/en/

[6] See, for example, Amnesty International, "Iran: Man forcibly blinded in one eye in 'unspeakably cruel' retribution punishment", 5 March 2015, available at www.amnesty.org/en/latest/news/2015/03/iran-eye-for-an-eye-acid-retribution/; Amnesty International, "Iran amputates fingers of two men in shocking act of cruelty" (Index: MDE 13/1998/2015), 30 June 2015, available at www.amnesty.org/en/documents/mde13/1998/2015/en/

[7] Amnesty International, *Addicted to death: Executions for drug offences in Iran* (Index: MDE 13/090/2011), 15 December 2011, available at www.amnesty.org/en/documents/mde13/090/2011/en/; Amnesty International, "Iran: Death sentence for 'insulting the Prophet'" (Index: MDE 13/064/2014), 26 November 2014, available at www.amnesty.org/en/documents/mde13/064/2014/en/; Amnesty International, "Iran: Mohammad Ali Taheri sentenced to death" (Index: MDE 13/2245/2015), 9 August 2015, available at www.amnesty.org/en/documents/mde13/2245/2015/en/

[8] The Constitution of the Islamic Republic of Iran, Article 32, available at www.servat.unibe.ch/icl/ir00000_.html

[9] Human Rights Committee (HRC), *Concluding observations on the Islamic Republic of Iran, Consideration of reports submitted by States parties under article 40 of the Covenant*, CCPR/C/IRN/CO/3, para. 6, available at bit.ly/1L0vjzY (HRC, CCPR/C/IRN/CO/3).

Moreover, Iran has not yet ratified a number of key human rights treaties that guarantee core human rights principles, such as equality and non-discrimination, and set out fair trial standards, such as the right to liberty, prohibition of torture and other ill-treatment, and the right to access legal counsel. These treaties include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[10]

DEVELOPMENT OF IRAN'S CRIMINAL PROCEDURE LAWS

Iran's first code of criminal procedure, entitled the Temporary Law of the Principles of Criminal Proceedings[11], was enacted in September 1911 and was influenced by the French Code of Criminal Procedure. Following the 1979 revolution, Iran's laws were overhauled in order to comply with Shari'a. The Temporary Law of the Principles of Criminal Proceedings, however, remained operational after the revolution (until 1999) albeit with some amendments introduced in September 1979. So too did the institution with prosecutorial powers, which had been introduced to Iran's criminal justice system in 1928, though in practice the roles of prosecutor and judge were often conflated, particularly in cases of political prisoners.

Despite the survival of some procedural laws on paper, the justice system was overshadowed by the chaos and wave of repression following the revolution and an array of inefficient laws hastily passed after it. The problems were compounded by an order issued by Ayatollah Khomeini in 1982 which declared void all laws and regulations incompatible with Islamic law. Subsequently, the Judicial Council[12] communicated a decree to all courts instructing them to avoid implementing laws contrary to Islamic principles and, pending the passage of new laws, to refer to reliable Islamic sources and authentic fatwas.[13]

In July 1994, as part of the ongoing transformation of Iran's justice system, including the structure of courts, the Law on Formation of General and Revolutionary Courts was enacted.[14] The law granted the Head of the Judiciary the authority to abolish the Office of the Prosecutor, which had come under criticism for being un-Islamic after the Revolution.[15] In less than a year, the institution of the Office of the Prosecutor was disestablished by order of the Head of the Judiciary. The role of conducting investigations, including questioning the accused person and witnesses, was placed within the jurisdiction of the court and the judges who presided over trials.

In 1999, a new code of criminal procedure, which aimed to suit the post-revolution changes,[16] replaced the 1911 Temporary Law of the Principles of Criminal Proceedings. The Code of Criminal Procedure for General and Revolutionary Courts was passed into law for a trial period of three years.[17] The Code had significant flaws and fell far short of international fair trial standards. For example, it did not guarantee the right to access a lawyer from the time of arrest as a Note to its Article 128 permitted the restriction of the right to access legal counsel during pre-trial detention. The Code of 1999 also failed to limit the

[10] During its first Universal Periodic Review (UPR) in 2010, Iran initially accepted to take away recommendations to ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). However, in June 2010, while rejecting the recommendations, the Iranian delegation announced that "Iran had no objection to join the CAT with only one caveat, which was the fact that CAT considers torture a legal punishment established by Iran's legislation. However, the Government is studying the issue." Following its second UPR in 2014, Iran rejected all recommendations calling on the country to ratify CAT, CEDAW and ICPPED.

[11] The Temporary Law of the Principles of Criminal Proceedings, September 1911, available at bit.ly/1X0ROf2 (accessed on 1 February 2016).

[12] The Judicial Council, as the highest authority of the country's judiciary, was established in 1982 pursuant to Article 156 of the Constitution, which guarantees the independence of the judiciary. The Council consisted of the Head of the Supreme Court, the Prosecutor General and three elected judges. The Council was replaced by the Head of the Judiciary as the highest authority in 1989.

[13] A fatwa is a religious ruling or decree issued by an Islamic jurist. See Adine Abghari, *Introduction to the Iranian legal System and the Protection of Human Rights in Iran*, The British Institute of International and Comparative Law, 2008, p. 52.

[14] The Law on Formation of General and Revolutionary Courts, 13 July 1994, available at rc.majlis.ir/fa/law/show/90416 (accessed on 1 February 2016).

[15] Opponents of the Office of the Prosecutor argued that the institution had no basis in Islamic law, which requires confessions and testimonies to be heard directly by a trial judge. They further argued that proceedings before the Office of the Prosecutor delays the process of resolving cases. See Adine Abghari, *Introduction to the Iranian legal System and the Protection of Human Rights in Iran*, p. 58.

[16] The 1994 Code of Criminal Procedure for General and Revolutionary Courts was intended to accompany the Law on Formation of General and Revolutionary Courts.

[17] The Code of Criminal Procedure for General and Revolutionary Courts, 19 September 1999, available at rc.majlis.ir/fa/law/show/93219 (accessed on 1 February 2016).

length of provisional pre-trial detention, meaning that individuals could be detained for months, even years, without access to a lawyer. In October 2002, as the complications and problems arising from the abolition of the Office of the Prosecutor emerged, including delays in the prosecution of cases and the lack of impartiality of the courts, amendments were introduced to the 1994 Law on Formation of General and Revolutionary Courts.[18] The amendments, in a welcome move, reinstated the Office of the Prosecutor but failed to bring Iranian laws into line with international human rights standards on fair trial.

In 2000, a year after the introduction of the Code of Criminal Procedure for General and Revolutionary Courts, the then Head of the Judiciary, Ayatollah Hashemi Shahroudi, initiated a process for drafting a new code of criminal procedure. This new law was to address the "ambiguities and mistakes of existing laws" and ensure consistency with "scientific developments".[19] The draft bill, which was prepared by the judiciary, was delayed in the review process between parliament and the judiciary. Following the end of Ayatollah Shahroudi's tenure and the appointment of the new Head of the Judiciary, Ayatollah Sadeq Larijani, the draft bill was subjected to further delays. Meanwhile, and as the proposed Code remained pending, the trial period of the 1999 Code of Criminal Procedure for General and Revolutionary Courts was repeatedly extended. In March 2010, Iran's Supreme Leader, using his authority as the head of state, renewed the 1999 Code of Criminal Procedure until further notice. The Code remained operational until the entry into force of the new CCP on 22 June 2015.

3.2 THE NEW CODE OF CRIMINAL PROCEDURE

In April 2014, the new Code of Criminal Procedure (CCP), which had been in the making for almost a decade, was passed by parliament and signed into law by the President with a three-year trial period. The date of entry into force of the Code was supposed to be six months after its publication in the Official Gazette on 23 April 2014.[20]

The new CCP was much celebrated for containing a number of long overdue reforms. Indeed, it is an improvement on the old Code. Among other things, it restricts the use of provisional pre-trial detention to situations where there is a risk of flight or a threat to public safety, sets out stricter regulations governing the questioning of accused, and obligates the authorities to notify detainees of their rights following arrest and detention.

Despite these overdue reforms, the new Code constitutes a lost opportunity as it fails to tackle major shortcomings in Iran's criminal justice system, including the lack of independence of the judiciary, of legal safeguards against torture and other ill-treatment, and of respect for the right to adequate reparation and remedy for victims of human rights violations. The failure has been compounded by an apparent lack of political will by the authorities to embrace and uphold the improvements achieved under the new Code. This was first demonstrated in August 2014, when a member of parliament's Legal and Judicial Commission announced that the entry into force of the Code would be delayed for almost a year. The postponement was apparently at the request of the Head of the Judiciary, who predicted numerous difficulties in implementing the new law, including insufficient resources to provide the number of qualified judges needed, and devise and put into place the new institutional and administrative processes.[21] The Code finally came into force on 22 June 2015,[22] but with some late and unwelcome amendments.

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[18] Amendments to the Law on Formation of General and Revolutionary Courts, 3 November 2002, available at rc.majlis.ir/fa/law/show/93837 (accessed on 1 February 2016).

[19] Islamic Parliament Research Centre, *The Report of the Research Centre of the draft Code of Criminal Procedure*, 2 December 2009, available at rc.majlis.ir/fa/legal_draft/show/720670 (accessed on 17 July 2015).

[20] New Code of Criminal Procedure, Article 569. Under Article 2 of Iran's Civil Code, the entry into force of enacted legislation is 15 days after its publication in the Official Gazette, unless the legislation itself sets a different date of entry into force.

[21] ISNA, *Implementation of the Code of Criminal Procedure postponed with the request of the Head of the Judiciary*, available at bit.ly/1meq1dD (accessed on 12 June 2015).

[22] The manner in which the entry into force of the new CCP was postponed did not fully conform with Iranian laws, which stipulate strict legal procedures to postpone the entry into force of adopted legislation: either parliament must enact legislation to specify the new date or the Supreme Leader must exercise his authority in the form of a state order (*hokm-e hokoumati*). A request by the Head of the Judiciary followed by approval by the Parliamentary Commission does not constitute a legal basis for postponing the entry into force of an adopted law. In the case of the CCP, the new date for its entry into force was eventually set out under another piece of legislation, the Code of Criminal Procedure for Armed Forces and for Electronic Procedure, but this was only signed into law on 8 November 2014, about two weeks after the original date the new CCP was supposed to enter into force.

In August 2014, parliamentarians put forward an Amendment Bill[23] which sought to amend a few of the new Code's provisions, including ones strengthening respect for the rights of the accused, most notably the right to access a lawyer during the investigation phase.[24] Initially, the Amendment Bill attempted to fully reverse the new Code's provisions with regards to access to a lawyer by allowing the Office of the Prosecutor to deny individuals accused of certain crimes such as those relating to national security access to legal representation during the entire investigation phase if they deemed it necessary. The draft amendment was submitted to the Guardian Council – the body that vets legislation for ensuring conformity to the Constitution and Islamic law, and approves all bills before they become law – on 2 June 2015. On 10 June 2015, the Guardian Council returned the Amendment Bill to parliament with a series of objections and recommendations. It also declared unconstitutional the provision that called for further restrictions on access to legal counsel.[25]

In an attempt to obtain the Guardian Council's seal of approval, the parliament made a number of last-minute changes to the Amendment Bill. This time the parliament succeeded and on 17 June 2015, only five days before the Code's entry into force the Guardian Council approved the amendments. Under these amendments, individuals facing national security-related charges can, in principle, have access to legal representation during the investigation phase but may only select their legal counsel during this period, which may last for months, from a roster of lawyers approved by the Head of the Judiciary. The same restriction is imposed on individuals accused of involvement in organized crimes that are subject to punishments that include the death penalty, life imprisonment and amputation. By denying individuals the right to access an independent lawyer of their choice, this retrogressive move did away with basic due process guarantees. Denial of the right to access a lawyer of one's own choice is particularly disturbing in cases where individuals face the irreversible punishment of execution. Under international law, including the ICCPR, to which Iran is a party, proceedings in capital cases must scrupulously observe all relevant international standards protecting the right to a fair trial. This includes the right to counsel of choice at all stages of criminal proceedings, including during pre-trial detention, questioning and investigation.[26]

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[23] The Bill to Postpone the Entry Into Force of the Code of Criminal Procedure and Amend a Number of its Provisions, 20 August 2014, available at rc.majlis.ir/fa/legal_draft/show/900324 (accessed on 1 February 2016).

[24] The Speaker of Parliament, Ali Larijani, submitted on 6 June 2015 the Amendment Bill to the Code of Criminal Procedure (CCP) to the Guardian Council for approval. The Bill proposed that in cases involving certain crimes, including offences against national or external security, the Office of the Prosecutor would be allowed to deny an individual access to legal counsel for the entire period of the investigation. Under the new Code, the period within which such individuals can be denied access to a lawyer is one week following arrest. See bit.ly/1mgjEXk

[25] The website of the Guardian Council, "The opinions of the Guardian Council on the Amendment Bill on the Code of Criminal Procedure", 10 June 2015, available at bit.ly/23Jz48H (accessed on 17 June 2015).

[26] Amnesty International, "Iran: Draconian amendment further erodes fair trial rights" (Index: MDE 13/1943/2015), 24 June 2015, available at www.amnesty.org/en/documents/mde13/1943/2015/en/

4. RIGHT TO LIBERTY

International human rights standards state that everyone has the right to liberty and security of person, and provide protective measures against unlawful and arbitrary detention.[27] Under Article 9 of the ICCPR, individuals may be deprived of their liberty only in legally prescribed circumstances and in accordance with procedures established by law. Arrests and detentions carried out according to domestic laws may nonetheless be considered arbitrary if the laws authorizing them and setting out their procedures do not conform to international standards.[28]

The Constitution of the Islamic Republic of Iran, in Article 32, guarantees the right of every individual to liberty providing that "[n]o one shall be arrested except by the order and in accordance with the procedure laid down by law." This is reiterated in Article 4 of the new CCP, which stipulates:

> *Innocence is to be presumed. All actions restricting an individual's liberty or depriving them of it, as well as entering the private sphere of individuals, are prohibited except on legal grounds, with due respect to regulations and under the supervision of judicial officials. In any case, such actions must not be carried out in a manner which is harmful to individuals' dignity and reputation.*

Yet, restrictive, overly broad and vaguely worded provisions are contained in the very same Constitution as well as in the Islamic Penal Code, the Press Code, the CCP and other laws.

4.1 RIGHT NOT TO BE ARRESTED UNDER LAWS INCOMPATIBLE WITH HUMAN RIGHTS

Under international law, deprivation of liberty is arbitrary when it is carried out on the basis of domestic laws that are incompatible with human rights, such as the rights to freedom of expression, association, peaceful assembly, belief and religion. The UN Working Group on Arbitrary Detention considers deprivation of liberty to be arbitrary in the following situations: when arrest and detention occurs without a clear legal basis; when deprivation of liberty results from the exercise of human rights and freedoms guaranteed in the Universal Declaration of Human Rights (UDHR) and other international instruments, such as the right to freedom of expression, association, peaceful assembly and religion; when detention is on discriminatory grounds; or in cases of sufficiently serious violations of the right to fair trial.

The HRC has further clarified in General Comment 35: "An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

[27] Universal Declaration of Human Rights (UDHR), Article 3; International Covenant on Civil and Political Rights (ICCPR), Article 9(1); Arab Charter on Human Rights, Article 14(1) and Convention on the Rights of the Child (CRC), Article 37(b).

[28] ICCPR, Article 9.

For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances."[29] The Committee states:

> *[A]rrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17). Arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary.*[30]

Additionally, the Committee lists "detaining family members of an alleged criminal who are not themselves accused of any wrongdoing, the holding of hostages and arrests for the purpose of extorting bribes or other similar criminal purposes" and "imprisonment after a manifestly unfair trial" as examples of arbitrary detention.[31]

While Iran's Constitution, as the law with which all other legislations must comply, contains safeguards protecting some human rights, it subjects them to vague qualifications. For example, freedom of association is protected under Article 26 of the Constitution only if it does not violate the "criteria of Islam". Article 27 protects freedom of assembly so long as this is not "detrimental to the fundamental principles of Islam".[32]

Other Iranian laws impose similar undue restrictions on the exercise of human rights and some even criminalize acts and conduct that should not be considered crimes at all. For instance, the 2013 Islamic Penal Code contains provisions that criminalize insulting religion and religious figures, in breach of the rights to freedom of expression and freedom of thought, conscience and religion. Article 262 states: "[A]nyone who curses the Prophet of Islam or other Prophets or accuses them of adultery is *saabbo al-nabi* [someone who insults or curses the Prophet] and will be sentenced to death".[33] In Book Five of the Islamic Penal Code on Discretionary and Deterrent Punishments, which was not part of the amendments that passed into law in 2013,[34] Article 513 provides for imprisonment of one to five years for insulting Islamic sanctities or any of the prophets or imams in a manner that does not amount to *sabbo al-nabi*. The Islamic Penal Code does not provide any clarity as to what "Islamic sanctities" are nor what constitutes an "insult", leaving it entirely open to interpretation by trial judges.

The Islamic Penal Code also criminalizes insulting the authorities, including Ayatollah Khomeini, Ayatollah Khamenei[35] and the President.[36] In practice, these provisions are frequently used to prosecute individuals for the peaceful exercise of their right to freedom of expression.[37] International standards allow for public officials to be exposed to a greater degree of scrutiny and public criticism. In this regard, the HRC has stated that the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.[38]

The 1986 Press Code and its subsequent amendments also restrict the right to freedom of expression and prescribe punishments and disciplinary measures for conduct that is protected under the peaceful exercise

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[29] HRC, General Comment 35, *Article 9 (Liberty and security of person),* CCPR/C/GC/35, para. 12, available at www.refworld.org/docid/553e0f984.html (HRC, General Comment 35*).*

[30] HRC, General Comment 35, para. 17.

[31] HRC, General Comment 35, paras 16-17.

[32] The authorities frequently use this limitation to refuse permits for peaceful public gatherings. See Amnesty International, *Iran: 'We are ordered to crush you': Expanding repression of dissent in Iran* (Index: MDE 13/002/2012), available at www.amnesty.org/en/documents/MDE13/002/2012/en/

[33] According to Article 263, "an accused [person] who claims that their statements were made under duress, as a result of negligence, or in a state of intoxication", among other things, would not be sentenced to death. A punishment of flogging is prescribed in such cases.

[34] Book Five of the 2013 Islamic Penal Code, which discusses discretionary and deterrent punishments, entered into force in May 1996. Unlike the rest of the Code, this section was permanently adopted and was not subject to a trial period. As a result, it was not part of the amendments that passed in May 2013. See Book Five of the Penal Code on Discretionary and Deterrent Punishments, 22 May 1996, available at bit.ly/1nRuftq (accessed on 2 February 2016).

[35] Article 514 of the Islamic Penal Code states: "Anyone who, in any manner, insults Imam Khomeini, the founder of the Islamic Republic or the Supreme Leader shall be sentenced to imprisonment between six months and two years."

[36] Article 609 of the Islamic Penal Code states: "Anyone who insults any of the heads of the three branches [executive, legislative, and judiciary] or deputy presidents, ministers, parliamentarians, members of the Council of Experts, the Guardian Council, the Judges or the staff of the Supreme Audit Court [*divan-e mohasebat*], civil servants of the ministries, governmental institutes or companies and municipalities while they are on duty or because of their position shall be sentenced to imprisonment between three and six months or a flogging sentence of up to 74 lashes or a financial fine of 1 million rials [around US$34]."

[37] See, for example, Amnesty International, "Iran: harsh prison sentences for two female activists highlight rampant injustice", 2 June 2015, available at www.amnesty.org/en/latest/news/2015/06/iran-harsh-prison-sentences-for-two-female-activists-highlight-rampant-injustice/

[38] HRC, General Comment 34, *Article 19 (Right to Freedom of Expression)*, CCPR/C/GC/34, para. 38, available at www.refworld.org/docid/4ed34b562.html (HRC, General Comment 34).

of this right.[39] Article 3 of the Press Code establishes the right of the media to publish "opinions, constructive criticism, and suggestions and explanations of people and officials" provided that they are "in line with the principles of Islam and the best interest of the society". The Note to the Article defines constructive criticism as one that is based on logic and reason, and avoids insults, humiliation and destruction.

Article 6 of the Press Code includes examples of material that "contravenes Islamic principles and regulations" and subjects them to the punishments provided under Article 698 of Book Five of the Penal Code, namely imprisonment of two months to two years or up to 74 lashes. The examples include "publication of material which are atheistic or contrary to Islamic principles" (Article 6.1); "material harmful to the foundations of the Islamic Republic" (Article 6.1); "insulting Islam and its sanctities" (Article 6.7); "insulting individuals who are religiously respected including through photos or cartoons" (Article 6.8); and "publishing material against the provisions of the Constitution" (Article 6.12).

Under international law, the right to freedom of expression protects the right to express ideas that may shock, offend or disturb. This includes the right to criticize political leaders as well as religious systems. The HRC has criticized laws prohibiting blasphemy or lack of respect for religious systems, stating:

> *[I]t would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.*[40]

Iranian laws that impose compulsory wearing of the hijab (veil) on women and girls over the age of nine are also in breach of international standards on freedom of belief and religion, freedom of expression and the principle of equality and non-discrimination. The Islamic Penal Code penalizes women who fail to cover their head and comply with a strict Islamic dress code in public with imprisonment or a fine.[41]

Interference with individuals' right to privacy constitutes another example of where Iranian laws are incompatible with international human rights and therefore give rise to arbitrary deprivation of liberty. Article 17 of the ICCPR stipulates that "no one shall be subjected to arbitrarily or unlawful interference with his privacy" and that everyone has "the right to the protection of the law against such interference". This right to privacy covers protection of consensual sexual conduct between adults, including those of the same sex.

The 2013 Islamic Penal Code, however, contains numerous provisions that criminalize certain consensual[42] sexual conducts between adults of the same and opposite sexes, making them punishable by sanctions ranging from 31 lashes to the death penalty.[43] For instance, under Article 225 of the Islamic Penal Code the punishment of adultery for a woman and a man who meet the condition of *ehsan*[44] is stoning. However, in cases where the implementation of a stoning sentence is not possible, a woman or a man who has been convicted of adultery may be executed by hanging upon the approval of the Head of the Judiciary. The punishment of fornication between a man and a woman who do not meet the condition of *ehsan* is 100 lashes.[45]

The Code also criminalizes *lavat* ("male-male anal penetration") with penalties ranging from flogging to the death penalty. The Code differentiates between the "active" and the "passive" partners of same-sex sexual conduct. According to Article 234 and its Note, the "active" partner shall be sentenced to death only if he

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[39] The Press Code, 13 March 1986, available at rc.majlis.ir/fa/law/show/91180 (accessed on 1 February 2016).

[40] HRC, General Comment 34, available at www.refworld.org/docid/4ed34b562.html

[41] Book Five of the Penal Code on Discretionary and Deterrent Punishments, Article 638. The Law on "Discretionary" (*ta'zirat*) and Deterrent Punishments, 22 May 1996, available at bit.ly/1nRuftq (accessed on 2 February 2016).

[42] The Islamic Penal Code does not include a separate provision on the crime of "rape" but considers "forced adultery" or "forced fornication" as rape, which is punishable by death. This means that marital rape is not criminalized under Iranian laws. The Islamic Penal Code also punishes with death incest and consensual sexual intercourse between a married man and a married women, a men and his stepmother, and a non-Muslim man and a Muslim woman (Article 224).

[43] The majority of these provisions are contained in Book Two of the Islamic Penal Code under the *hodud* punishments.

[44] Individuals who commit adultery are sentenced to stoning if they meet the condition of *ehsan*. Article 226 of the 2013 Islamic Penal Code stipulates the following with regards to *ehsan:* "The condition of *ehsan* is met for a man and a woman as follows: 1. A man meets the condition of *ehsan* if he has a permanent mature wife; has had vaginal intercourse with his wife after she has reached puberty and while she has been sane; and can have vaginal intercourse with her whenever he desires to; 2. A woman meets the condition of *ehsan* if she has a permanent mature husband; has had vaginal intercourse with her husband after he has reached puberty and while he has been sane; and is able to have vaginal intercourse with her husband." Article 227 states that "married couples do not meet the conditions of *ehsan* in such times: travelling, imprisonment, menstruation, lochia [bleeding/discharge after birth], diseases preventing intercourse or illnesses that would endanger the other party such as AIDS and syphilis."

[45] The 2013 Islamic Penal Code, Article 230.

meets the conditions of *ehsan,* if the intercourse is by force, or if he is not a Muslim and the "passive" partner is a Muslim. The "passive" partner, however, shall be sentenced to death regardless of whether he meets the conditions of *ehsan* unless the intercourse has been forced on him.[46] If no penetration occurs between the partners, they may still be convicted of the lesser crime of *tafkhiz*. Article 235 of the Islamic Penal Code defines *tafkhiz* as the "placing of a man's sexual organ between another man's thighs or buttocks." The punishment for *tafkhiz* is 100 lashes but conviction for a fourth time is punishable by the death penalty.[47]

Sexual acts between two women are criminalized under the crime of *mosahegheh*, which is when a woman "places her sexual organ on another woman's sexual organ".[48] The crime of *mosahegheh* is punishable by 100 lashes. Upon the fourth conviction, those found guilty of *mosahegheh* will be sentenced to death.[49] Article 237 prescribes the punishment of between 31 to 74 lashes for sexual conduct between same-sex consenting adults that falls short of intercourse such as kissing or lustful touching.

Book Five of the Islamic Penal Code also contains punishments for certain sexual acts between consenting adults of opposite sex. For example, Article 637 of Book Five states:

> *When [a] woman and a man who are not married engage in illicit relations or acts contrary to decency other than adultery, including kissing and sleeping under one cover, they will be sentenced to a flogging sentence of up to 99 lashes. If the act is committed by force, only the party who has resorted to force will be subject to punishment.*

International human rights bodies have repeatedly called on all states to repeal laws criminalizing consensual sexual acts between adults. The HRC has stated that "adult consensual sexual activity in private is covered by the concept of 'privacy'," [50] which is protected under Article 17 of the ICCPR. Furthermore, the Committee, in its 2011 Concluding observations on the third periodic report of the Islamic Republic of Iran, called on the Iranian authorities to "ensure that anyone held solely on account of freely and mutually agreed sexual activities or sexual orientation should be released immediately and unconditionally."[51] The UN Committee on Economic, Social and Cultural Rights, a body responsible for overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Iran is a state party, in its 2013 Concluding observations on the second periodic report of the Islamic Republic of Iran expressed concern that consensual same-sex sexual activity is criminalized in Iran and that those convicted may even receive the death penalty.[52]

Arrests and detentions stemming from laws that criminalize sexual acts between consenting adults are therefore arbitrary and unlawful under international law.

4.2 RIGHT NOT TO BE DETAINED ON THE BASIS OF VAGUE OR OVER-BROAD LAWS

Some Iranian laws lack precision in the definition of various offences, in particular offences against national security, contrary to the principle of legality enshrined in Articles 9 and 15 of the ICCPR. International human rights bodies have remarked that arrest and detention based on laws that are vague or over-broad may be arbitrary under international law and standards.[53] The HRC has stated: "Any substantive grounds for

[46] The 2013 Islamic Penal Code, Article 234.

[47] Article 136 of the 2013 Islamic Penal Code states: "In cases where an individual commits the same *hadd* crime three times and is subject to *hadd* punishment each time, their punishment on the fourth occasion is the death penalty."

[48] The 2013 Islamic Penal Code, Article 238.

[49] The 2013 Islamic Penal Code, Article 136.

[50] HRC, *Toonen v. Australia*, Communication no. 488/1992, CCPR/C/50/D/488/1992, available at www1.umn.edu/humanrts/undocs/html/vws488.htm

[51] HRC, CCPR/C/IRN/CO/3, para. 10, available at bit.ly/1L0vjzY

[52] Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of the Islamic Republic of Iran*, E/C.12/IRN/CO/2, (2013), para. 7, available at www.refworld.org/docid/52d547e54.html

[53] HRC, *Floresmilo Bolaños v. Ecuador*, Communication no. 238/1987, Supp. No. 40 (A/44/40); HRC, *Domukovsky et. al. v. Georgia*, Communications nos. 623, 624, 626, 627/1995, CCPR/C/62/D/623/1995, CCPR/C/62/D/624/1995, CCPR/C/62/D/626/1995 and CCPR/C/62/D/627/1995; HRC, *Concluding observations on Ethiopia*, CCPR/C/ETH/CO/1, para. 15, available at www.refworld.org/docid/4fb2488d2.html; HRC, *Concluding observations on Hungary*,

arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application."[54]

According to Article 498 of Book Five of the Islamic Penal Code, whoever forms or administers a group or association larger than two persons either inside or outside the country that seeks to "disturb the security of the country" shall be sentenced to between two and 10 years' imprisonment. Membership of such groups or associations is punishable by three months' to five years' imprisonment. Judges are given wide interpretative powers under these provisions as the terms "disturb" and "security of the country" are not defined under the Islamic Penal Code.

Another example of a crime whose definition is entirely left to the discretion of judges is "spreading propaganda against the system". Article 500 of Book Five states: "... anyone who undertakes any form of propaganda against the state... will be sentenced to between three months and one year in prison". In practice, this provision is generally used to restrict peaceful exercise of the rights to freedom of expression, association and assembly.

Alarmingly, lack of precision of definitions of crimes in Iran's laws extends to offences that could carry the death penalty, including the crimes of *moharebeh* ("enmity against God") and *efsad-e fel-arz* ("corruption on earth").

The old Islamic Penal Code did not distinguish between the crimes of "enmity against God" and "corruption on earth". Its Article 183 stated, "Any person resorting to arms to cause terror, fear or to breach public security and freedom will be considered as a *mohareb* [enemy of God] and a *mofsed fel-arz* [corrupter on earth]". The 2013 Islamic Penal Code, however, differentiates between the two and defines them in separate provisions.

Article 279 defines *moharebeh* as:

> *[T]aking up arms with the intention of [taking] people's lives, property, or honour in order to cause fear among them in a manner that causes insecurity in the atmosphere. Whenever a person takes up arms against one or a few specific individuals because of personal disputes and his acts are not directed at the public and whenever a person takes up arms but due to his inability does not cause insecurity, they shall not be considered as* mohareb.

The Code leaves it to the discretion of the judge to choose between the death penalty, crucifixion, amputation of the right arm and the left leg, or banishment as punishment for those found guilty.[55]

Under the old Islamic Penal Code, any member or supporter of an organization that sought to overthrow the Islamic Republic by procuring arms was considered a *mohareb*, even if they did not individually take part in the military activities of the organization and simply on the basis of membership in the organization. "Effective efforts and activities" of such an individual towards furthering the goals of the organization would have resulted in them being considered a *mohareb* as long as they had knowledge of the organization's positions.[56] For years, the authorities resorted to this provision in order to sentence to death members, supporters and sympathizers of armed opposition groups who had not taken up arms against the state.[57] This was in flagrant violation of their obligations under international law which restrict the application of the death penalty to the "most serious crimes", interpreted by international bodies as being limited to "intentional killing". Furthermore, penalizing individuals' merely for membership of an organization may not be legitimate as it does not in itself prove the intent of the individual to commit an offence.

The 2013 Islamic Penal Code has restricted the scope of the crime of "enmity against God" as it does not contain the above provision. However, it fails to clarify how an act must be carried out in order to "cause insecurity in the atmosphere" as stipulated under Article 279. The criteria for "causing insecurity" therefore remain at the discretion of judges. Moreover, the Islamic Penal Code, in contravention of international law,

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CCPR/C/HUN/CO/5, para. 9, available at bit.ly/1nPM4Jt; Committee Against Torture, *Concluding observations on Cuba*, CAT/C/CUB/CO/2, para. 12, available at bit.ly/1PUPqRx

[54] HRC, General Comment 34, para. 22, available at www.refworld.org/docid/4ed34b562.html

[55] The 2013 Islamic Penal Code, Articles 282 and 283.

[56] The 1996 Islamic Penal Code, Article 187.

[57] For example, see Amnesty International, "Iran: Gholamreza Khosravi Savadjani executed" (Index: MDE 13/030/2014), 3 June 2014, available at www.amnesty.org/en/documents/mde13/030/2014/en/

provides for the death penalty in circumstances where an individual's actions have not resulted in intentional loss of life.

With regards to the crime of *efsad-e fel-arz* ("corruption on earth"), Article 286 of the 2013 Islamic Penal Code stipulates:

> *[W]hoever, in a widespread manner, commits: crimes against individuals' physical integrity, crimes against national security, causes disruption in the economic structure of the country, commits arson and destruction, distributes poisonous or dangerous substances, or runs corruption and prostitution centres, in a manner that causes severe disruption in the public order of the country or causes extensive damage to the physical integrity of individuals or private and public property, or spreads corruption or prostitution in large scale is "corrupt" on earth and shall be sentenced to death.*

The new definition of *efsad-e fel-arz* expands its scope beyond that stipulated in the previous Code; namely, procuring arms to cause terror or fear, or to breach public security and freedom. Under the 2013 Islamic Penal Code, offences ranging from arson and rape to crimes such as distributing toxic substances could result in an individual being convicted of *efsad-e fel-arz* if it is determined that the offences have been committed in a "widespread manner".

While the definition of "corruption on earth" contains a number of grave offences that are internationally recognizable, these offences are not defined in clear, narrow terms. They therefore fail to meet requirements for clarity and precision needed in criminal law. Moreover, the use of vaguely worded and overly broad phrases such as "in a manner that… spreads corruption" continues to grant judges wide interpretative powers, in breach of the principle of legality and legal certainty.

4.3 RIGHT NOT TO BE DETAINED ON THE BASIS OF NON-CODIFIED LAWS

The principle of legality is recognized under Iranian laws, including the Constitution, which in Article 36 states that the "issuance of sentences and their implementation shall only be through a competent court and in accordance with law". This is reiterated in Article 2 of the 2013 Islamic Penal Code, which defines a crime as "any act or omission for which there are prescribed punishments in the law", and Article 12, which allows issuances and implementation of punishments only in accordance with law and in compliance with conditions and requirements specified in law.

Despite these provisions, recognition of the principle of legality in the Iranian legal system is only partial. This enables the authorities to arrest, detain and impose punishments for behaviour and conduct that are not codified as criminal offences in national law. The same Constitution that guarantees the principle of legality allows judges to base their judgements, in the absence of codified laws, on authoritative Islamic sources and authentic fatwas.[58] Additionally, both the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights and the Islamic Penal Code give judges discretion to use their knowledge of Islamic law to rule in cases where no codified law exists.[59]

The principle of legality, as established in international law, requires that the imposition of criminal liability be limited to clear and precise provisions so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation. The laws setting forth criminal acts must be accessible to the persons concerned and be formulated with sufficient precision to enable defendants to have been able to foresee, with legal advice if necessary, to a reasonable degree, the consequences that a given action might entail.

A key area where these concerns manifest themselves most prominently is in relation to the crime of *ertedad* ("apostasy").[60] Article 26 of the Press Code states: "[W]hoever, through the press, insults the religion of

[58] Constitution of the Islamic Republic of Iran, Article 167, available at www.servat.unibe.ch/icl/ir00000_.html

[59] The Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights, 5 May 2004, available at rc.majlis.ir/fa/law/show/94150 (accessed on 2 February 2016).

[60] Earlier drafts of the 2013 Islamic Penal Code, drafted by Iran's judiciary, included the crime of "apostasy" but it was not included in the final draft passed into law.

Islam, shall be sentenced and punished as an apostate, should his/her acts amount to apostasy." Apostasy is not defined as an offence in Iran's Penal Code but it is a *hadd* offence in Shari'a, punishable by death. Article 220 of the 2013 Islamic Penal Code stipulates: "[W]ith regards to the *hadd* crimes that are not specified in this Code,[61] Article [167] of the Constitution will be applicable". This means that judges must resort to Shari'a when faced with individuals accused of "apostasy" and can convict and sentence them to death on this basis.

The discretion granted to judges to refer to uncodified laws is further expanded under the Procedure Code for the Special Court for the Clergy.[62] This states in a Note to Article 42: "On exceptional subjects, and subjects for which Shari'a and Iranian law have not specified punishments, the judge can issue a sentence based on his own viewpoint, within reason."

Provisions authorizing judges to go beyond codified laws constitute a brazen violation of the principle of legality and render arrest, detention and imprisonment in these circumstances arbitrary as they have no basis in law.

4.4 RIGHT TO BE DETAINED ONLY BY LEGALLY AUTHORIZED AGENCIES

Under international human rights law and standards, arrest and detention may only be carried out by individuals and agencies that are legally authorized to do so. The laws granting people the authority to exercise the power to make arrests, keep individuals in custody and investigate cases must clarify the extent of such powers and the circumstances under which they can be exercised.

The new CCP contains a number of overdue reforms and clarifications with regards to the agencies and individuals who are legally permitted to exercise judicial powers. It requires individuals with arrest, detention and investigation powers to undergo training and carry special identification cards, and declares void any investigations conducted by individuals who do not possess this card.[63] These are welcome improvements on the previous Code, which did not require officers to undergo any training or carry a special card to perform their duties, and gave judges wide discretion to assess the credibility of investigations conducted by such officials.[64]

The CCP does not, however, clarify whether those carrying out arrests and interrogations are required to present their identification cards to those arrested and detained. Amnesty International is further concerned that the improvements may be rendered meaningless by other provisions in the Code that grant an array of intelligence and security forces, including the Basij militia, Ministry of Intelligence personnel and Revolutionary Guards, wide ranging powers to arrest and detain civilians, with no effective oversight of their actions. This facilitates the already widespread practice of arbitrary arrest and detention of individuals by security and intelligence officials.

The new CCP defines *zabetan-e ghazai* ("judicial officers") as officials who are permitted to take lawful action in order to uncover crimes, preserve and gather evidence, identify the accused person, and conduct investigations. These actions must be carried out under the supervision and instructions of the Prosecutor.[65] The *zabetan-e ghazai* ("judicial officers") are divided into two categories: *zabete ghazai 'aam* ("general judicial officers") and *zabet-e ghazai khas* ("special judicial officers"). "General judicial officers" are those who can intervene in relation to all crimes with the exception of crimes that are legally remitted to other

[61] The *hadd* crimes currently contained in the Islamic Penal Code include *zena* ("adultery" or "fornication"), *lavat* ("male-male anal penetration"), *tafkhiz* ("non-penetrative sex between two men"), *mosahegheh* (lesbianism), *ghavvadi* ("connecting two or more individuals for sex"),[61] *ghazf* ("accusing an individual of adultery"), *sabbo al-nabi* ("insulting the Prophet of Islam"), "consumption of alcohol", "theft", *moharebeh* ("enmity against God"), *baghi* ("armed rebellion against the state"), and *efsad-e fel-arz* ("corruption on earth").

[62] The Procedure Code for the Special Court for the Clergy, 5 August 1990, available at www.vekalatonline.ir/laws/11456/ (accessed on 2 February 2016).

[63] The 2014 Code of Criminal Procedure (new CCP), Article 30.

[64] The 1999 Code of Criminal Procedure, Note to Article 15.

[65] Article 28 of the new CCP states: "Judicial officers are officials who, under the supervision and training of the Prosecutor and under the law, act in order to uncover crimes, preserve and gather proof and evidence of the crime, identify and locate the accused, prevent the accused from escaping and hiding, conduct early investigations, deliver summons and implement judicial orders."

agencies. They include "commanders, officers, and rank-and-file police officers who have received the required training."[66]

The new CCP attempts to restrict the law enforcement agencies who can exercise judicial powers. For example, with regards to "general judicial officers" the new Code requires those in the police forces to have reached a certain level of seniority in order to act in the capacity of a "judicial officer". Under the old Code, the police forces as a whole were authorized to act as "judicial officers". Conscripted soldiers are no longer considered "judicial officers".

"Special judicial officers" are those who are also permitted to perform the duties outlined in Article 28 of the CCP, provided that they are "within their designated responsibilities on the grounds of specific laws." Examples of these officers, as mentioned in Article 29 of the CCP, include "prison chiefs, their deputies, and prison guards in relation to prisoners' affairs; officials of the Ministry of Intelligence and the Basij forces; as well as armed forces where delegated by law to carry out part or all of judicial officers' responsibilities". The amendments to the CCP, approved in June 2015, added the Intelligence Organization of the Revolutionary Guards to the list of "special judicial officers".

Despite the new CCP's clarification of the list of agencies with arrest, detention and investigation powers, it continues to grant broad judicial powers to a wide array of security forces and agencies and fails to clarify the scope of these powers and the circumstances under which they can be used. Instead of outlining the circumstances under which they may act as "judicial officers", the Code refers to "their governing regulations", which are often broad and vague.

For example, the Statute of the Revolutionary Guards Corps Forces states, in Article 2, that the force is mandated, among other things, to combat "agents or movements which intend to destroy or overthrow the Islamic Republic system or act against Iran's Islamic Revolution".[67] The Revolutionary Guards also "co-operate with the police forces, in necessary situations, in order to maintain order, security and rule of law in the country".[68] The Statute stipulates that the forces shall act as "judicial officers" in undertaking this mandate. By using vaguely formulated and broad phrases such as "acting against Iran's Islamic Revolution" the Statute gives these forces the power to make arrests and conduct investigations in relation to a wide range of activities that are deemed to pose a risk to the state. Alarmingly, many of these acts do not amount to internationally recognizable offences but are criminalized under the Islamic Penal Code, such as insulting the authorities. These offences are regularly resorted to in order to crush peaceful protests and silence dissent, in violation of international law.

The new CCP explicitly includes Ministry of Intelligence officials as "judicial officers", ending years of debate on whether intelligence officials are permitted to act in such a capacity. However, it fails to restrict the scope of crimes these officials can deal with in this capacity. The Law on Formation of the Ministry of Intelligence, similar to the Statue of the Revolutionary Guards Corps Forces, refers to the responsibilities of this body in very broad terms and fails to provide precise boundaries for the extent of the judicial powers which could be delegated to the Ministry's employees.[69] For example, Article 1 of the Law refers to "discovering and developing security intelligence" and "preventing the conspiracies of domestic and international enemies against the Islamic Revolution" among the reasons for the establishment of the Ministry of Intelligence. Phrases such as "soft security threats", as stipulated under the 2010 Law for the Fifth Five-Year Development Plan,[70] effectively grant intelligence officials a blanket authorization to act as "judicial officers" in a wide range of offences hence providing a fertile ground for abuse and impunity.

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[66] New CCP, Article 29.

[67] The Statute of the Revolutionary Guards Corps Forces, 6 September 1982, available at rc.majlis.ir/fa/law/show/90595 (accessed on 8 July 2015).

[68] The Statute of the Revolutionary Guards Corps Forces, Article 5.

[69] The Law on Formation of the Ministry of Intelligence, 18 August 1983, available at bit.ly/1S1fIHY (accessed on 3 February 2016).

[70] The 2010 Law for the Fifth Five-Year Development Plan, in its Article 205, lists a number of actions that the Ministry of Intelligence should take in order to "defend the government and national interests". One of the responsibilities stipulated under in its Article 205(B) is "preventing and confronting corruption in economic security, organized crimes against security, terrorist acts, and soft security threats" for which they are authorized to act as "judicial officers". See the Law for the Fifth Five-Year Development Plan, 24 December 2010, available at bit.ly/1KqVzbI (accessed on 3 February 2016).

The UN Special Rapporteur on human rights and counter-terrorism has asserted: "If intelligence services are given powers of arrest and detention, national law outlines the purposes of such powers and circumstances under which they may be used". He has further clarified:

> *It is widely accepted as good practice for intelligence services to be prohibited explicitly from exercising powers of arrest and detention if their legal mandate does not require them to exercise law enforcement functions in relation to national security offences, such as terrorism… However, if national law provides intelligence services with powers of arrest and detention, it is good practice for this to be explicitly within the context of a mandate that gives them the responsibility for performing law enforcement functions pertaining to specified threats to national security, such as terrorism. If national or regional law enforcement bodies have a mandate to enforce criminal law in relation to national security offences, there is no legitimate reason for a separate intelligence service to be given powers of arrest and detention for the same activities. There is a risk of the development of a parallel enforcement system, whereby intelligence services exercise powers of arrest and detention in order to circumvent legal safeguards and oversight that apply to the law enforcement agencies.*[71]

The management and supervision of "judicial officers" (both general and special) lie with the Prosecutor, who is also responsible for holding regular training courses for "judicial officers". The Prosecutor must inspect the relevant departments every two months to ensure that "judicial officers" are performing their duties appropriately.[72] The new CCP remains silent on the type of action the Prosecutor is required to take in cases where "judicial officers" are in breach of regulations or in cases of misconduct. Recognition of security and intelligence officials as "judicial officers" with arrest, detention and investigation powers in the absence of adequate laws that clearly define the chain of command and establish effective oversight risks eroding the rule of law and independence of the prosecutorial authorities – and, consequently, the judicial system. This risk is aggravated when Iran's security and intelligence bodies have evaded the rule of law and any oversight for decades, and acted with almost total impunity.

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[71] Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Report to the Human Rights Council*, A/HRC/14/46, p. 41, available at www.un.org/ga/search/view_doc.asp?symbol=A/HRC/14/46

[72] New CCP, Note 1 to Article 30 and Articles 32.

5. RIGHTS RELATED TO ARREST AND DETENTION

5.1 RIGHT TO BE INFORMED OF THE REASONS FOR ARREST

Under international law, anyone who is arrested must be informed of the reasons why they are being deprived of their liberty.[73] A key purpose of this requirement is to enable an individual to challenge their detention if they believe it is unlawful or unfounded. Therefore, reasons given for the arrest or detention must be specific and must include a clear explanation of the legal provisions under which the individual is being detained as well as the factual basis for the arrest or detention.

Individuals must be notified of the reasons for arrest at the time of arrest. If the reasons are provided orally, the information should be given in writing subsequently. In certain circumstances, an unavoidable delay of several hours may be tolerated provided that the person arrested is sufficiently aware of the reasons for arrest and no questioning takes place. The HRC has emphasized: "[T]he reasons must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim."[74]

The new CCP is an improvement on the old Code as it articulates the provisions regulating the issuance of warrants and summons in a more systematic and clear manner. Article 168 prohibits the investigator from summoning or arresting "an individual as an accused [person] unless there exists sufficient reasons for the accusations". Breaches of this provision are subject to disciplinary penalties.[75] However, the provisions outlining arrest and detention procedures suffer from shortcomings and do not comply fully with international standards. For instance, the CCP requires an arrest warrant to include the reasons for arrest but does not require the inclusion of a clear explanation of the legal basis of the arrest as well as the factual specifics to substantiate the reasons. This could result in individuals being detained with arrest warrants which include overly broad reasons such as "national security". The Code also allows the arrest of people accused of national security charges without prior summons, which include offences that, as described above, unduly restrict the rights to freedom of expression, association and peaceful assembly.

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[73] Article 9(2) of the ICCPR states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

[74] HRC, General Comment 35, para. 25, available at www.refworld.org/docid/553e0f984.html

[75] New CCP, Note to Article 168.

Moreover, under the new CCP, like the old Code, the issuance of summons and arrest warrants falls within the authority of the Office of the Prosecutor rather than a court.

OFFICE OF THE PROSECUTOR

Under the CCP, the Office of the Prosecutor is the body responsible for uncovering crimes, prosecuting the accused, conducting investigations, and preserving the rights of the public. The Office is chaired by the Prosecutor, who is the prosecutorial authority and, under Article 484 of the CCP, also responsible for implementing sentences. Other officials of the Office include deputy prosecutors, assistant prosecutors, investigators and administrative personnel.[76]

The investigator is the judicial authority responsible for conducting the investigations, including interrogation of the accused and the witnesses, and is delegated with the powers to issue arrest warrants, summons, and decide on measures to address any risk of flight.[77] The investigator, however, may not commence an investigation unless instructed by the Prosecutor.[78] While investigators hold a lower position in the hierarchy of the Office, they maintain a level of autonomy in carrying out their professional duties. In practice, this means that the investigator must seek the approval of the Prosecutor for some of their decisions, including those taken to address the risk of flight such as detention orders. However, disagreement between the Prosecutor and the investigator in such cases does not automatically negate the investigator's decisions – a competent court has the power to rule on such disputes. The Prosecutor is responsible for supervising the investigator and providing the required training.

Under the CCP, the Prosecutor has several distinct offices, including the following:

The General and Revolutionary Office of the Prosecutor: under Article 22 of the new CCP, this Office is formed in the judicial district (*hoze ghazai*) of every county in parallel with the district's courts.

The Special Office of the Prosecutor for Children: under Article 290 of the new CCP, a branch of the General and Revolutionary Office of the Prosecutor shall be assigned to conduct the investigations of offences committed by children aged between 15 and 18. The Special Office, however, is not permitted to conduct the investigations in cases of *zena* ("adultery" or "fornication"), *lavat* ("male-male anal penetration"), other "offences against decency", as well as some *ta'zir* offences (those carrying discretionary punishments) which are considered to be of minor character, regardless of the age of the child. In violation of guarantees of the impartiality of courts, the investigation in such cases and in cases of crimes committed by children under the age of 15 must be directly conducted by the court and the judges who preside over the trial. The Special Office is chaired by one of the Prosecutor's deputies and must have one or more investigators.

The Supreme Court's Office of the Prosecutor operates in parallel with the Supreme Court and is chaired by the Prosecutor General. In cases where the Supreme Court is the competent body to hear claims against state officials, its Office of the Prosecutor is responsible for conducting the investigations.

SUMMONS

Under the CCP, summons must be signed by a *magham-e ghazai* ("judicial authority") and should include the reasons for the summons as well as the date and location of reporting and consequences of failing to report. If the accused person is illiterate, the delivery officers must orally inform them of the content of the summons.[79] The Code provides for an exception to the requirement of the inclusion of the reasons for

[76] New CCP, Article 23.

[77] New CCP, Article 92. A preliminary investigation, under Article 90, is defined as the "compilation of lawful actions taken by the Prosecutor or another judicial authority, in order to preserve the traces, signs [of commission of the crime], collection of evidence, identification and discovery of the accused and preventing them from absconding or hiding".

[78] New CCP, Article 89.

[79] New CCP, Articles 170 and 173.

summoning in cases where "the social status of the accused or public morality or safety" requires it. In such cases, the individual who has received the summons can inquire about the reasons of the summons from the relevant judicial bodies.[80] The CCP does not provide greater clarity on when the judicial authorities can choose not to include the reasons for a summons and leaves it to their discretion. Nor does the Code explicitly specify which judicial authorities are legally entrusted with making such a determination.

Individuals who fail to report after receiving a summons without "justified" reasons will be issued with an arrest warrant.[81] However, it is not always necessary to issue a summons before arresting someone. The CCP allows the investigator to order the arrest of the accused without a prior summons in four circumstances.[82] These include cases where individuals are accused of crimes which are punishable by death, amputation or life imprisonment or where individuals are accused of organized crimes and crimes against national or "external" security.

The crimes against national and "external" security are contained in Chapter One of Book Five of the Islamic Penal Code. While the Chapter includes a number of internationally recognizable criminal offences such as espionage, it maintains provisions that unduly restrict the rights to freedom of expression, association and peaceful assembly. For example, Article 500 states: "Whoever, by any means, spreads propaganda against the state or in support of opposition groups or organizations shall be sentenced to between three months and one year in prison." The authorities often resort to this provision in order to target those who peacefully exercise their rights to freedom of expression, association and assembly. Article 180 therefore allows such individuals to be arrested without receiving a prior summons.

ARREST WARRANTS

The CCP requires that arrests are carried out on the basis of arrest warrants that are signed by the investigator.[83] While the Code states that the arrest warrant must include the reasons for arrest, it does not explicitly mention the requirement for the inclusion of the legal provisions under which the arrest is made. The investigator could also provide "judicial officers" with an arrest warrant for a specified period of time in cases where the accused is on the run. The "judicial officers" could then arrest the accused on finding them.[84] However, if the accused person's hiding place is their house or workplace or that of others, "judicial officers" may not enter such places unless they obtain a separate order from a judicial authority authorizing entry.[85]

Despite the general requirement for the issuance of an arrest warrant by the investigator prior to making arrests, "judicial officers" can arrest individuals without such warrants in cases of "evident crimes".[86] Where arrests are made in such cases and the "judicial officers" determine that detention of the accused is necessary for completion of the investigation, they must promptly inform the accused in writing of the charges and the reasons for them. They must then communicate this to the Prosecutor seeking their legal

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[80] New CCP, Note to Article 170.

[81] New CCP, Article 179.

[82] Article 180 of the new CCP lists the circumstances as follows: a) cases where individuals are accused of crimes which are punishable by death, amputation or life imprisonment; b) cases where the accused person's place of living or work is unknown and attempts to ascertain the address have not yielded any outcomes; c) cases of fifth degree or higher *ta'zir* crimes[82] where it is feared that the accused may abscond, hide, or collude with others; and d) cases where individuals are accused of organized crimes and crimes against national or "external" security.

[83] New CCP, Article 181.

[84] New CCP, Article 184.

[85] Note 3 to Article 184 of the new CCP.

[86] New CCP, Articles 44 and 46. Under Article 45, a crime is "evident" when:
a) it is committed within the sight of judicial officers; when the officers arrive in the crime scene immediately after the commission of the crime; and when they observe the evidence of the crime immediately after it has taken place;
b) the victim, or two or more people who have witnessed the crime, identifies a specific individual as the offender while the crime is being committed or immediately after it;
c) immediately after the commission of the crime, evident signs or evidence of the crime or the tools and instruments of the crime are found in the possession of the accused, or their belonging to the accused is established;
d) the accused intends to abscond, is escaping, or is arrested immediately after the crime;
e) the crime has been or is being committed in a home or in a residential place and the residents request the presence of the officers at the time the crime is being committed or immediately after it;
f) the accused reports the crime and surrenders immediately after the crime;
g) the accused is a vagrant and has a negative reputation in the area in question.

authorization. In all cases, the accused person cannot be kept in the custody of "judicial officers" for more than 24 hours.

5.2 RIGHT TO BE INFORMED OF RIGHTS

Any individual deprived of their liberty must be informed of their rights and provided with an explanation of how they may avail themselves of them. This includes the right to notify a third person of the arrest, access legal counsel, receive medical assistance, challenge the lawfulness of detention, enjoy a privilege against self-incrimination, remain silent, and complain and have recourse for complaints about ill-treatment or conditions of detention. The right to notification about rights should be guaranteed by law.

In an improvement to the old Code, the new CCP has provisions obligating the authorities to notify individuals of their rights. Article 6 guarantees the rights of the accused, the victim, witnesses and any other relevant individuals involved in a case to be informed of their rights during the proceedings. Article 52 requires "judicial officers" to notify a detainee of their rights as guaranteed under the Code, provide the accused person with a written copy of the notification, and enclose a receipt of the communication in the case file. With the exception of the right to access a lawyer, the Code fails to explicitly list all the rights of which an individual must be notified. Article 190, which acknowledges the right of the suspect to "be accompanied by a lawyer during the preliminary investigations",[87] obliges the investigator to notify the suspect of this right before the start of the investigation. If the suspect has been summoned, this right should be contained in the summons communicated to the suspect.

In the original version of the new CCP, adopted in April 2014, there was a progressive provision which rendered investigations void if the accused person's right to access legal counsel was denied or if the person was not informed of this right. This provision could have served as a strong safeguard against torture and other ill-treatment, coerced "confessions", enforced disappearances and other human rights violations. Regrettably, however, the amendments to the new Code, passed in June 2015, rolled this back. Under the amendments, failure by the authorities to notify the accused of their right to a lawyer or denial of this right will no longer impact the validity of the investigations. Such breaches are only subject to disciplinary penalties. As a result, courts can continue to rely on evidence gathered during investigations conducted without the presence of a lawyer.

5.3 RIGHT TO REMAIN SILENT

The right to presumption of innocence requires that those facing criminal charges have the right to remain silent during investigation and at trial. Under international standards, anyone suspected of a crime should be informed of their right to remain silent during questioning by police or judicial authorities. The right to remain silent serves as an important safeguard of the right not to be compelled to incriminate oneself. The HRC has stated that "anyone arrested on a criminal charge should be informed of the right to remain silent during police questioning".[88] The Committee has also called for the right to remain silent to be enshrined in law and applied in practice.[89]

One of the improvements of the new CCP, hailed by activists and Iranian lawyers, is its inclusion of a provision that explicitly provides for the right to remain silent. Article 197 states: "The accused can remain silent. In such cases, the accused person's refusal to reply or sign their statements will be noted in the minutes." The 1999 Code of Criminal Procedure, in Article 129, instead of guaranteeing the right to remain silent, only implicitly allowed the accused to avoid answering questions by stating that "the accused person's

[87] The term "preliminary investigation" under the CCP refers to the entire course of investigation carried out prior to the trial and not only the police questioning. The preliminary investigation, under Article 90, is defined as the "compilation of lawful actions taken by the Prosecutor or another judicial authority, in order to preserve the traces, signs [of commission of the crime], collection of evidence, identification and discovery of the accused and prevent them from absconding or hiding."

[88] HRC, *Concluding observations on France*, CCPR/C/FRA/CO/4, para. 14, available at www.refworld.org/docid/48c50ebe2.html

[89] HRC, *Concluding observations on Algeria*, CCPR/C/DZA/CO/3, para. 18, available at bit.ly/1oa6lt7

refusal to respond will be noted in the minutes". While the new Code acknowledges the right of the accused person to remain silent, it remains unclear whether an adverse inference could be drawn from their silence.

5.4 RIGHT TO BE INFORMED PROMPTLY OF CHARGES

International human rights law states that detainees must be promptly given detailed information about the nature and cause of charges.[90] This enables suspects to challenge and seek dismissal of the charges at an early stage and is thus critical for the effective exercise of the right to challenge the lawfulness of detention.

Under international standards, the information about charges that is to be given promptly after arrest does not have to be as specific as the information that must be given once formal charges have been brought. The new CCP does not appear to differentiate between the information that must be given at various stages. It also fails to set in clear and precise terms the timeframe within which the suspect must be informed of the charges against them. However, reading a number of provisions of the new CCP together yields the conclusion that the investigator should bring charges within 24 hours. Given the significance of the right to be informed promptly of any charges, it is of paramount importance that laws set out in precise terms the duty of judicial authorities to inform the suspect of the charges without undue delay and within a specific time frame.

Under Article 5 of the new CCP, the accused must be informed of the charges and the reasons for them "as soon as possible". However, Article 195 simply requires the investigator to clearly inform the suspect of the charges and the reasons "before the start of investigation".[91] According to Article 189, the investigator should start the investigation immediately after the suspect is arrested. If not feasible, the investigation must commence no later than 24 hours after the arrest. Detaining the accused beyond 24 hours without starting the investigation or "determining his status" amounts to illegal detention.[92]

Articles 46 discusses the issue of informing the suspect of the charges in cases where the arrest has been made by the "judicial officers" in relation to "evident crimes".[93] In such cases, the "judicial officers" who carry out the arrest must take the accused to the investigator or a substitute judicial authority no later than 24 hours following the arrest.[94] If detention of the accused is deemed necessary for completion of the investigation of "evident crimes", the "judicial officers" must promptly inform the accused of the charges and the reasons for them in writing. They shall then communicate this to the Prosecutor to seek his decision. "Judicial officers" are prohibited from detaining the accused person for more than 24 hours.

5.5 RIGHT TO BE BROUGHT PROMPTLY BEFORE A JUDGE

A crucial safeguard against abuse is the requirement that individuals are brought before a judge promptly after their arrest or detention. This applies in all cases without any exceptions and is regardless of whether the person challenges their detention or not. Article 9(3) of the ICCPR states: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." The purpose of this hearing is primarily to address the lawfulness of detention and assess whether sufficient legal reason for arrest and detention exists or whether the release of an individual should be ordered.

Despite improvements under the new CCP with regards to the issuance of detention orders, the Code fails to bring Iranian law into full compliance with international fair trial standards aimed at safeguarding the

[90] Article 14(3)(a) of the ICCPR says: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum grantees, in full equality: (a) To be informed promptly and in details in a language which he understands of the nature and cause of the charge against him."

[91] Article 195 states: "The investigator, before the start of the investigation and taking into account the rights of the accused, shall caution them about their statements. Following that, he shall clearly inform the accused of the charges against him and the reasons for the charges."

[92] New CCP, Note to Article 189.

[93] For a definition of "evident crimes" see Chapter 5.1, "Arrest warrants".

[94] New CCP, Article 185.

wellbeing of detainees. This is partly due to its failure to require that the accused is brought before an objective, independent and impartial judicial authority promptly after the initial arrest or detention, namely a judge. Instead, the official who is delegated with such judicial powers is the "investigator" who lacks the necessary institutional objectivity and impartiality.

Under Article 185 of the new CCP:

> *Judicial officers must immediately bring the arrested individual before the investigator. If the investigator or a substitute judicial official is not accessible [immediately], they should bring the accused before them at the earliest business hour. In cases where the accused is not brought before the investigator immediately, the reasons for the delay and the period of detention shall be recorded in the case file. The detention of the accused [under the custody of judicial officers] before they are brought before the investigator or a substitute judicial authority should not exceed 24 hours.*

Therefore, under the new CCP, a detainee's first contact with a judicial authority is with the investigator, who is based in the Office of the Prosecutor. The Code entrusts the investigator with issuing judicial orders, including the bail order and temporary detention order.[95] With regards to the detention order, Article 239 of the CCP states:

> *The temporary detention order must be well-founded and justified and must include, in its text, the legal reasoning as well as the accused's right to appeal the order. Following the issuance of the detention order, the accused is remanded in custody. If the accused is detained to prevent collusion with others, this shall be mentioned in the transfer papers.*

Article 240 of the new CCP obliges the investigator to immediately submit in writing the detention order to the Prosecutor, who shall in turn express their opinion to the investigator in writing within 24 hours. It is only in the event of a disagreement between the investigator and the Prosecutor or in cases where the suspect appeals against the detention order that a court will review the legality of a detention order or the necessity of its continuation. The accused will remain in detention until the court issues its ruling, which should be within 10 days.

A dispute between the investigator and the Prosecutor is heard by the court with jurisdiction over the offences with which the accused is charged.[96] The CCP is, however, silent on key aspects of the court's proceedings in such matters, including the right of the accused to a hearing; the right to counsel in this hearing; and the right to present evidence and access essential information necessary to challenge the detention.

Under Article 214 of the Code, the investigator must, with the approval of the Prosecutor, release the accused if the reasons for detention no longer exist. The accused can also, once a month, request the revocation of the detention order or its replacement with a lighter measure to address the risk of flight. The request must be submitted to the investigator, who must give their reasoned reply to the accused's request immediately and within five days. If the request is rejected, the accused can appeal against the decision within 10 days.

Entrusting officials in the Office of the Prosecutor with the issuance and approval of detention orders, albeit temporary ones, poses serious risks to the rights of detainees. Article 9(3) of the ICCPR stipulates that the detainee must be promptly brought before "a judge or other officer authorized by law to exercise judicial power". However, if the detainee is brought before a judicial officer other than a judge, the officer must be objective, impartial and independent of the parties. This judicial official must have the authority to review the lawfulness of the arrest or detention and must be empowered to order a detainee's release if the arrest or detention is unlawful.[97] International human rights bodies have repeatedly ruled against the qualification of investigators, prosecutors and investigating judges as judicial officers for determining the legality of the detention as they are considered to lack the necessary institutional objectivity and impartiality to act for this

[95] New CCP, Article 217.

[96] New CCP, Article 271.

[97] Commission on Human Rights, *Situation of Detainees at Guantánamo Bay*, E/CN.4/2006/120, 27 February 2006, para. 28, available at www.refworld.org/docid/45377b0b0.html

purpose.[98] The HRC has expressly stated: "[A] public prosecutor cannot be considered as an officer exercising judicial power under paragraph 3 [of Article 9 of the ICCPR]."[99]

Moreover, under international law, the burden of proving the lawfulness of the initial arrest or detention and the necessity for continued detention and its proportionality lies with the state. In the context of Iran's criminal justice system, this would be the Office of the Prosecutor,[100] which must establish that the release of the accused poses a substantial risk that cannot be alleviated by other means.

The detention review arrangement provided by the new CCP effectively means that the same entity which, in the first instance, issues a detention order, approves it and responds to the requests of detainees for revocation of detention orders must establish as well the necessity for continued detention. While the investigator maintains a level of autonomy from the Prosecutor in their decision-making, both positions are located within the Office of the Prosecutor. The Office of the Prosecutor is also the body that intervenes in the subsequent proceedings of a criminal case as the prosecuting authority. There is therefore a conflict of interest, which ought to disqualify officials of the Office of the Prosecutor from acting as judicial officers assessing the necessity and lawfulness of detention.

5.6 RIGHT TO RELEASE PENDING TRIAL

According to international human rights law and standards, individuals charged with criminal offences should not be held in custody pending trial as a general rule, and pre-trial detention should be regarded as an exceptional measure. Article 9(3) of the ICCPR states: "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement." Presumption of release pending trial is in accordance with the right to liberty and the presumption of innocence. International human rights bodies have found laws making pre-trial detention obligatory for specific offences to be in violation of Article 9(3) of the ICCPR.[101]

The burden of establishing that it is necessary and proportionate to deprive an individual of their liberty, including pending trial, rests with the state. It must establish that release would create a substantial risk of flight, harm to others or interference with the evidence or investigation that cannot be allayed by other means.

Article 217 of the new CCP includes a variety of measures to address the risk of flight that investigators could issue to guarantee access to the accused, preventing them from absconding or hiding, and ensuring preservation of the rights of the victim. The investigator shall issue a judicial order with regards to flight risk measures "if there exists sufficient reason" and "after informing the accused of the charges and conducting the required investigations". These measures range from "recognizance with an oath by the accused person to present himself before the judicial authorities when needed" to a "detention order".[102]

The new CCP is an improvement on the old Code with regards to the conditions under which a detention order can be issued and, in a welcome move, appears to have made the use of pre-trial detention for certain offences discretionary rather than mandatory, and dependent on the fulfilment of two preconditions. First, temporary detention is not allowed except in cases where sufficient reason and evidence exist to charge the accused with one of the specific crimes listed in Article 237 of the CCP. These include, but are not limited

[98] HRC, *Kulomin v Hungary*, Communication no. 521/1992, CCPR/C/50/D/521/1992, para. 11.3, available at www1.umn.edu/humanrts/undocs/html/521-1992.html; *Reshetnikov v Russian Federation*, Communication no. 1278/2004, CCPR/C/95/D/1278/2004, para. 8.2, available at bit.ly/1PWUBXp; *Zheludkova v Ukraine*, Communication no. 726/1996, CCPR/C/75/D/726/1996, para. 8.3, available at bit.ly/1T0sA1k; HRC, *Concluding observations on Tajikistan,*. CCPR/CO/84/TJK (2005), para. 12, available at www.refworld.org/docid/43f2ff740.html; UN Working Group on Arbitrary Detention, Report to the Commission on Human Rights, Mission to China, E/CN.4/2005/6/Add.4 (2004), para. 32(c), available at bit.ly/1nMf0kR

[99] HRC, General Comment 35, para. 32, available at www.refworld.org/docid/553e0f984.html

[100] Although, in Iran's criminal justice system, investigators and prosecutors are also referred to as judges, they are in fact investigating judges.

[101] HRC, *Concluding observations on Mauritius*, CCPR/CO/83/MUS, para. 15, available at bit.ly/1QIB0Hk

[102] New CCP, Article 217.

to, crimes punishable by death and amputation, and crimes against national and external security of the country, which are punishable by *ta'zir* penalties of degree five and higher.[103]

Secondly, temporary detention orders may not be issued unless one of the following conditions is met:

> *a) [T]he accused person's liberty would result in the destruction of evidence or collusion with co-accused individuals, witnesses or others who have information about the case or it would cause witnesses to refrain from testifying; b) the accused is feared to abscond or hide and there exists no other means to allay the risk; c) the accused person's liberty would pose a threat to public order, or to the lives of the plaintiff, witnesses, their families or to his or her own life.*

Under Article 35 of the old Code, temporary detention was "obligatory" in the following circumstances:

> *[W]here there were sufficient reasons for charging the suspect with intentional murder, kidnapping, acid-throwing,* moharebeh, efsad-e fel-arz *or crimes which are punishable by death or life imprisonment; where the accused was suspected of crimes such as robbery, scams, embezzlement, bribery, corrupt behaviour in office, forgery and using a forged document, and had been previously convicted of any of these crimes once or more; where the liberty of the accused was deemed to cause corruption; and where it was required by special regulations.*

The old Code not only made pre-trial detention obligatory under some circumstances, but also used vague phrases such as "causing corruption" which lent themselves to broad interpretation and granted judicial authorities almost unlimited powers to detain individuals pending trial.

Under the new CCP, temporary detention orders may also be issued after the start of trial if the court determines on its own initiative or on the Prosecutor's suggestion that it is necessary to address a flight risk. The detention order issued by the court is subject to appeal in the Provincial Court of Appeal.[104]

EXTENSION OF DETENTION

Under the 1999 Code of Criminal Procedure, a temporary detention order could in practice be extended for an unlimited period. Under Article 33, the accused had the right to appeal against his or her detention order to a provincial appeal court within 10 days. While Article 33 provided that the "detainee's situation must be clarified" in the course of one month, it also allowed the judge to renew the temporary detention order at the end of that period. The Code did not provide any definition of "clarifying a detainee's situation" and set no limits on how many times this order could be renewed, resulting in some detainees being held for months and sometimes even years in pre-trial detention.

Under Article 242 of the new Code, in cases of "crimes punishable by the death penalty", "crimes punishable by life imprisonment", "crimes punishable by amputation and intentional physical assault punishable by payment of one third of a full *diyeh* [blood money]", and "*ta'zir* crimes of degree four and higher", if the accused is held in detention for two months and the investigations have not resulted in an indictment, the investigator must revoke the detention order or replace it with a lighter measure. In cases of other crimes, the envisioned period is one month. If there exist sufficient grounds for extending the order, the investigator can do so and communicate the rationale to the accused. The accused then has 10 days to appeal against the extension of the order to a competent court. Retention of a flight risk order must be approved by the Prosecutor. In the event that the Prosecutor opposes retaining an order, a competent court must dissolve the dispute.

The procedures stipulated under this provision are to be applied every month or two months depending on the nature of the charges. Under this provision, however, "the detention period of the accused must not exceed the minimum penalty applicable to the crime. In any case, the detention period must not exceed two years in cases of crimes punishable by death and one year in cases of other offences."

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[103] *Ta'zir* crimes of degree five and higher, as prescribed under Article 19 of the 2013 Islamic Penal Code, are subject to punishments that include, but are not limited to, imprisonment of more than two years, cash fines of more than 80 million rials (around US$2650), and deprivation of social rights for more than five years.

[104] New CCP, Article 246.

While the introduction of measures to limit extension of temporary detention is indeed a positive step, the legally permissible length of one or two years is still disproportionately long. This may violate the right to presumption of innocence as well as the right to trial within reasonable time or release, as guaranteed under Article 9(3) of the ICCPR. The HRC has emphasized that, in cases involving serious charges where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible.[105] The HRC has also raised concern about laws that set the maximum time of pre-trial detention in relation to the possible penalty for the alleged offence.[106] These laws focus on the potential penalty rather than the need to protect legitimate interests, to limit the length of pre-trial detention and to bring the detainee before the courts promptly.

In a welcome improvement, the new CCP has increased the number of alternatives to provisional pre-trial detention. This is in line with international standards, which hold that detention pending trial should be exceptional and that alternative, less restrictive measures should be considered in order to mitigate the accused person's flight risk. These include light flight risk measures such as recognizance with an oath by the accused person to present himself before the judicial authorities when needed, prohibition on leaving the place of residence monitored through electronic devices, and bail or sureties.[107] Article 250 of the Code requires that flight risk measure orders are issued taking into account, among other things, the type and severity of the offence in question, the risk of the accused absconding, the accused's gender, age, character, and physical and psychological condition, and the accused's previous criminal record. These improvements, however, are undermined as a result of the wide powers granted by the Code to the Office of the Prosecutor. Under Article 217 of the new CCP, it is the investigator who is responsible for making a determination with regards to the type of flight risk measure rather than an independent court.

5.7 RIGHT TO CHALLENGE THE LAWFULNESS OF DETENTION

International law requires that everyone deprived of their liberty has the right to embark on proceedings to challenge the lawfulness of their detention before a court. Article 9(4) of the ICCPR states: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." This right is also guaranteed under Article 37(d) of the CRC.

This right is guaranteed to all individuals deprived of their liberty regardless of the reasons for their detention and the form of deprivation of liberty. International standards require states to put in place simple and expeditious procedures that enable individuals to challenge the lawfulness of their detention. The HRC has called on states to ensure that the applications for review of lawfulness of detention are processed as promptly as possible to ensure their effectiveness.[108] Moreover, the court or tribunal reviewing the lawfulness of detention and its continuity must be impartial and independent.

The new CCP recognizes the individual's right to challenge the lawfulness of their detention and requires the inclusion of this right in the text of the detention order.[109] Under Article 270, the accused can appeal the decisions of the investigator with regards to issuance of a detention order, its extension or if the investigator decides to maintain the detention order or aggravate other flight risk measures such as bail.[110] The appeal request will be heard by the court that has jurisdiction to try the alleged offence in question.[111] The Code leaves it unclear whether the court reviewing the accused's appeal is composed of judges different from those who would preside over the trial, which may pose a risk to the impartiality of the court. It is also silent

[105] HRC, *Sextus v Trinidad and Tobago*, Communication no. 818/1998, CCPR/C/ 72/D/818/1998, para. 7.2, available at www1.umn.edu/humanrts/undocs/818-1998.html

[106] HRC, *Concluding observations on Argentina*, CCPR/C0/70/ARG, para. 10, available at www.refworld.org/docid/3b39f0977.html

[107] New CCP, Article 217.

[108] HRC, *Concluding observations on Panama*, CCPR/C/PAN/CO/3, para. 13, available at bit.ly/1PUWxtb

[109] New CCP, Article 239.

[110] The appeal deadline is 10 days from the time of notification for those residing in Iran at the time of the investigator's decision and one month for those residing outside the country.

[111] New CCP, Article 271.

on other matters of paramount importance. These include: whether the court reviews the request in a hearing; the right of the accused to be present in this hearing; the right to counsel; and the right to present evidence and access essential information necessary to challenge the detention.

The revised CCP also recognizes the right to continuing review of detention. This recognition is a welcome step as a detention that was lawful at its inception may become unlawful if it is no longer necessary to alleviate the risk arising from the liberty of the accused. Under Article 241, the accused can challenge once a month their continued detention or request the replacement of the detention order with a lighter flight risk measure. The Code, however, does not provide for the hearing of this request directly in a court. Instead, it is the investigator who is delegated with the decision-making power over such requests. It is only in the event of rejection by the investigator that the accused can submit an appeal to a court.

While the Code provides for continuous review of detention, such review processes remain vague. Article 241 requires detainees to submit their request for review of continuing detention first to the investigator. This does not meet the requirement of independence and impartiality required by international standards, as the investigator is located within the Office of the Prosecutor. Under this provision, it is only in the event of the investigator's rejection of the request that the accused has the right to appeal the decision in a competent court. Article 241 therefore appears to be in conflict with Article 270, which allows a detainee to appeal an investigator's decision to extend the detention order directly in the competent court. Moreover, the Code does not specify the time limit within which the court is expected to make a decision with regards to such appeal requests; Article 271 only states that the court shall review such appeal requests in a special session.

5.8 RIGHT TO REPARATION FOR UNLAWFUL ARREST OR DETENTION

Every person who has been unlawfully arrested or detained shall have an enforceable right to reparation that includes compensation and other forms of reparation, including restitution,[112] rehabilitation,[113] satisfaction[114] and guarantees of non-repetition.[115] The right to reparation must apply to people whose detention or arrest has violated national laws or procedures, or international law and standards, or both. The issue in such cases is whether or not the detention itself was lawful, irrespective of whether the individual was subsequently convicted or acquitted.

The new CCP falls far short of these requirements. Under the Code, individuals who have been deprived of their liberty can request financial compensation only if the charges against them are dropped or if they are acquitted at trial.[116] The legal ground on which an individual could claim compensation, therefore, is not the unlawfulness of arrest or detention, but the outcome of the investigation or the trial. This already limited right to compensation is further undermined by vaguely worded exclusion clauses in Article 256, which preclude the possibility of compensation for four categories of individuals.

These are:

> *a) Individuals who are arrested due to their refusal to provide evidence, documents, and reasons showing their innocence;*

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[112] The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law defines restitution as restoring "the victim to the original situation before the gross violations of international human rights law... Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property."

[113] Under the Basic Principles and Guidelines on the Right to a Remedy and Reparation Rehabilitation, rehabilitation includes "medical and psychological care as well as legal and social services".

[114] Satisfaction includes taking measures among which are "commemorations and tributes to the victims" and "public apology, including acknowledgement of the facts and acceptance of responsibility".

[115] Under the Basic Principles and Guidelines on the Right to a Remedy and Reparation, guarantees of non-repetition, which will contribute to prevention, include, but are not limited to: "strengthening the independence of the judiciary" and "reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."

[116] New CCP, Article 255.

b) [Individuals] who have made themselves the subject of suspicion and arrest by helping the offender to abscond;

c) [Individuals] who for any illegitimate reasons have facilitated the conditions of their own arrest;

d) [Individuals] who have simultaneously been detained for other lawful reasons.

These vaguely worded exclusion clauses, some of which appear to violate the right to presumption of innocence and the right to remain silent, limit the possibility of individuals accessing a remedy for violation of their rights. Broadly worded conditions such as "[individuals] who for any illegitimate reasons have caused their own arrest" in practice lend themselves to wide interpretation and allow the authorities to reject nearly any compensation claim.

The old Code did not include the possibility of providing compensation to those who had been deprived of their liberty. However, under Article 575 of the Islamic Penal Code, judicial authorities who, in violation of laws and regulations, order an individual's arrest or detention will be barred from judicial positions for life and will be deprived of holding governmental positions for five years.

Amnesty International welcomes the new Code's inclusion of provisions that enable individuals to receive financial compensation in cases where they are acquitted or the charges against them are dropped. However, the organization regrets that these provisions are only limited to financial compensation and make no mention of other forms of reparation such as restitution, and guarantees of non-repetition. This marks a failure to bring Iran's laws into compliance with international standards with regards to the right to reparation for unlawful arrest and detention.

5.9 RIGHT TO ACCESS A LAWYER AT THE TIME OF ARREST

Under international law, individuals arrested or detained, regardless of whether or not it is on the basis of a criminal charge, and individuals facing a criminal charge, whether or not detained, have the right to the assistance of legal counsel of their own choosing.

While the right to the assistance of a lawyer pre-trial is not expressly set out in the ICCPR, the HRC has clarified that the treaty's provisions on the right to counsel apply to the pre-trial phase.[117] Article 14(3) of the ICCPR states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality… (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing." The HRC has stated, in its General Comment 32, that, "The right to communicate with counsel requires that the accused is granted prompt access to counsel."

Article 35 of Iran's Constitution guarantees the right of individuals to legal counsel. The Article stipulates: "Both parties to a lawsuit have the right in all courts of law to choose a lawyer, and if they are unable to do so, arrangements must be made to provide them with legal counsel." Despite the general recognition of the right to legal counsel in the Constitution, the Iranian authorities have for decades denied individuals this right during the investigation phase. In doing so, they have regularly resorted to a provision in the 1999 Code of Criminal Procedure that permitted the accused to be accompanied by a lawyer during the investigations,[118] but set out limitations on the involvement of the lawyer during this phase which effectively impeded individuals' enjoyment of a meaningful right to legal assistance. Under the Note to Article 128 of the old Code, individuals' access to legal representation during the investigation phase was conditioned on a court's approval in cases concerning "confidential issues" or national security offences, as well as where the presence of individuals other than the accused was deemed to "cause corruption". Such vague phrases effectively gave judges almost unlimited interpretive powers to bar access to legal counsel for the entire investigation phase. Moreover, Article 128 of the Code forbade lawyers from intervening until "the end of

[117] HRC, *Concluding observations on Georgia*, CCPR/C/79/Add.75, para. 27, available at bit.ly/20caB7i; HRC, *Concluding observations on the Netherlands*, CCPR/C/NLD/CO/4, para. 11, available at www.refworld.org/docid/4aa7aa642.html

[118] The 1999 Code of Criminal Procedure, Article 128.

investigations", which meant, even in cases where individuals could, in principle, have had access to legal representation during the investigation phase, lawyers could not speak during the interrogation sessions. The old Code did not clarify whether "the end of investigations" referred to the end of one session or the end of the course of investigation. Nor did it specify what would constitute "intervening in the investigations".[119]

The UN Working Group on Arbitrary Detention, in its 2003 report after its visit to Iran, raised concerns about the "extremely restrictive interpretation of Article 128 of the Code of Criminal Procedure"[120] which granted courts the discretion to exclude legal counsel from proceedings.

In 2004, parliament passed the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights. Article 1(3) requires courts and prosecutors' offices to respect the right of detainees and defendants to a legal defence and to provide them with the opportunity to be represented by a lawyer and to use the services of experts. The Law's general recognition of the right to access a lawyer without restrictions raised hopes that the limitations on access to a lawyer provided under the Note to Article 128 of the CCP would be lifted. However, four months after the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights was passed, the Law on the Fourth Economic, Social, and Cultural Development Plan reinstated the restrictions imposed on access to a lawyer laid out in Article 128 of the 1999 Code of Criminal Procedure. Although Article 130(7) of the Law on the Fourth Economic, Social, and Cultural Development Plan acknowledged the right of individuals to access legal counsel throughout the investigation phase, trial and implementation of judicial sentences, it excluded "cases where the issue is confidential or where the judge determines that the presence of parties other than the accused causes corruption."

The new CCP, before it was subjected to the June 2015 amendments, enhanced the rights of individuals to legal counsel and removed some of the previous restrictions on lawyer's engagement during the investigation phase. Article 48 of the new CCP stated, "The accused can demand the presence of a lawyer from the start of detention. The lawyer can meet the detainee paying due attention to the confidentiality of the investigations and negotiations. At the end of the meeting, which should be no longer than one hour, the lawyer can give their written observations for documentation in the case file."

The original version also included a provision which rendered investigations void if the accused person's right to access legal counsel was denied or if the person was not informed of this right.

Despite the improvements, the new Code did not fully guarantee the right to access a lawyer from the time of arrest. The Note to Article 48 permitted the judicial authorities to delay individuals' access to a lawyer by up to a week in the case of some offences. These included, but were not limited to, drug-related offences and crimes against national security.

Under international law, delaying access to legal assistance may only be permitted under exceptional circumstances which must be prescribed by law and limited to occasions when it is considered to be indispensable to maintain security and good order. However, even in such limited cases, access should not be delayed by more than 48 hours from the time of arrest or detention.[121] The UN Special Rapporteur the question of torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture) has recommended that "[l]egal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention."[122]

In June 2015, only days prior to the entry into force of the new CCP, the Guardian Council approved a series of amendments that aggravated the Code's shortcomings. The June 2015 amendments revoked the Note to Article 48 of the new CCP, which allowed access to legal assistance to be delayed by up to a week. However, instead of bringing the provision into line with international law and standards, it replaced it by a provision that denies individuals facing certain offences, including those relating to national security, the right to access an independent lawyer of their own choosing and only allows them to select their legal counsel for the investigation phase, which may last for months, from a roster of lawyers approved by the Head of the

[119] The 1999 Code of Criminal Procedure, Article 128.

[120] Working Group on Arbitrary Detention, *Report to the UN Economic and Social Council*, E/CN.4/2004/3/Add.2, para. 51, available at bit.ly/1K0X6oZ

[121] UN Basic Principles on the Role of Lawyers, 7 September 1990, Principle 7, available at www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx (UN, Basic Principles on the Role of Lawyers).

[122] Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture), *Report to the General Assembly*, A/56/156, para. 39(f), available at www.un.org/documents/ga/docs/56/a56156.pdf

Judiciary. The same restriction was introduced for individuals accused of involvement in organized crimes that are subject to such punishments as the death penalty, life imprisonment and amputation.[123]

The amendments fail to define in precise, narrow terms the circumstances under which access to an independent lawyer of one's choice could be denied. For example, it is not clear what constitutes "organized crimes subject to punishments stipulated under Article 302" as there is no clear and narrow definition of "organized crimes" under Iranian law. Moreover, it appears that determination of such circumstances is left entirely to the discretion of officials in the Office of the Prosecutor without any oversight by an impartial and independent body. It also remains unclear whether their decision would be open to challenge before a court.

In addition, the amendments removed the provision under the new Code which rendered investigations void if the accused person's right to access legal counsel was denied or if the person was not informed of this right. This provision could have served as a strong safeguard against torture and other ill-treatment, coerced "confessions", enforced disappearances and other human rights violations. Under the amendments, failure by the authorities to notify the accused of their right to a lawyer or denial of this right will no longer impact the validity of the investigations. Such breaches are only subject to disciplinary penalties. As a result, courts can continue to rely on evidence gathered during investigations conducted without the presence of a lawyer.

The June 2015 amendments, however, left intact the provisions of the new CCP which lift some of the restrictions imposed on lawyers' engagement during the investigation phase. For example, under the Note to Article 195: "The accused person's lawyer can object to the investigator if he asks leading questions or in cases of other violations of the law." The old Code, while it in principle permitted the presence of lawyers during interrogations, barred them from interjecting and objecting.

In addition to the deficiencies described above, it also remains unclear whether the new CCP negates the restrictions imposed by the Executive Regulations for the Organization of State Prisons and Security and Corrective Measures (the Prison Regulations)[124] on detainees' access to a lawyer prior to trial. Article 180 of the Regulations guarantees the right of "all convicted or accused individuals to have contact with their relatives and acquaintances in accordance with the Executive Regulations." Any such contacts, made through visits and correspondence, are supervised by prison officials. However, the Note to the Article allows a judge to prohibit visits to or correspondence with an accused person if that is not in the interest of a "good proceeding". In such cases, any visit or correspondence with the accused person during the prohibition period is only allowed with the written permission of competent judicial authorities. The provisions stipulate that after the start of the trial proceedings, a detainee's lawyer can meet them and no official can prevent such a meeting. The provision, which uses the terms "accused" and "convict" interchangeably, provides for the denial of individuals' right to access legal counsel throughout the pre-trial period if it is "against good proceedings", a vaguely worded phrase that is not clarified.

5.10 RIGHT TO CHOOSE A LAWYER

Under international law and standards, individuals have the right to the assistance of a counsel they have chosen from the moment of arrest and both during the pre-trial and trial phase. The UN Basic Principles on the Role of Lawyers state that the adequate protection of the human rights and fundamental freedoms to which all persons are entitled requires that everyone has effective access to legal services provided by an independent legal profession.[125]

Iran's Constitution, in Article 35, guarantees the right of individuals to choose who will represent them. The Article states: "Both parties to a lawsuit have the right in all courts of law to choose a lawyer, and if they are unable to do so, arrangements must be made to provide them with legal counsel." Up until the passage of the June 2015 amendments, the new CCP did not contain any provisions explicitly acknowledging or denying the right of individuals to appoint a lawyer of their choosing. However, the provisions discussing

[123] Amnesty International, "Iran: Draconian amendment further erodes fair trial rights" (Index: MDE 13/1943/2015), 24 June 2015, available at www.amnesty.org/en/documents/mde13/1943/2015/en/ (Amnesty International, "Iran: Draconian amendment further erodes fair trial rights").

[124] The website of the Prisons Organization uses the title "State Prisons and Security and Corrective Measures Organization". See: prisons.ir (accessed on 4 December 2015). For the text of the Regulations see the Executive Regulations for the Organization of State Prisons and Security and Corrective Measures, available at bit.ly/1QFVIHV (accessed on 3 February 2016).

[125] UN Basic Principles on the Role of Lawyers, available at www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx

access to legal counsel indicated an acknowledgment of this right. Regrettably, the retrogressive amendments made to the new CCP in June 2015 limited the right to access an independent lawyer of one's choice during the investigation phase in certain criminal cases, including those related to national security.[126]

Denial of the right to access a lawyer of choice is particularly disturbing in cases where individuals face the irreversible punishment of the death penalty. Under international law, including the ICCPR, proceedings in capital cases must scrupulously observe all relevant international standards protecting the right to a fair trial. This includes the right to counsel of choice at all stages of criminal proceedings, including during pre-trial detention, questioning and investigations.

5.11 RIGHT TO FREE LEGAL ASSISTANCE

Article 14(d) of the ICCPR guarantees the right of individuals facing criminal charges who do not have their own lawyer to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment if they do not have sufficient means. The HRC has, in its General Comment 32, stated: "[T]he gravity of the offence is important in deciding whether counsel should be assigned 'in the interest of justice' as is the existence of some objective chance of success at the appeals stage."[127]

The new CCP contains welcome provisions guaranteeing the right to free legal assistance for those without adequate financial resources. However, it fails to comply fully with international fair trial standards as it differentiates between the applicability of this right during the pre-trial period and during trial. Under the Note to Article 190 of the CCP, individuals facing criminal charges appear to only qualify for a state-appointed lawyer during the investigation phase if they are accused of charges that could carry the death penalty or life imprisonment, rather than because they lack sufficient means to pay a lawyer.

The CCP is silent on the issue of access to free legal assistance during the investigation phase in cases where the accused faces charges other than those punishable by the death penalty or life imprisonment. This raises the concern that free access to legal counsel during the pre-trial phase may only be provided in cases of offences subject to severe punishments. In this regard, the Committee against Torture has expressed concerns over legislation that limits free legal assistance to individuals accused of offences whose punishment exceeds five years' imprisonment.[128] Moreover, in determining whether an accused person is entitled to free legal assistance, the CCP fails to take into consideration other issues relevant to the interests of justice, such as the complexity of the issues or the procedures, and the accused person's particular vulnerabilities.

The requirements to qualify for free legal assistance appear to change at trial stage. Article 347 of the new CCP gives the accused person the right to request the court to assign them a lawyer by the end of the first court hearing. If the accused person's lack of adequate financial resources is established by the court, it will appoint them a lawyer. The Code also allows the court to assign the accused person a lawyer on its own initiative if it determines that the presence of a lawyer is necessary for a victim who cannot afford the legal fees.[129]

Unlike the Note to Article 190, which restricts eligibility for state-appointed lawyers during the investigation phase to cases of offences attracting the death penalty and life imprisonment, Article 347 of the CCP does not specify the seriousness of the charges laid against the accused nor does it mention the severity of the potential penalties as a requirement to qualify for free legal assistance. However, according to Article 348, a court hearing without the presence of a lawyer cannot be held if the accused is charged with crimes cited in

[126] Amnesty International, "Iran: Draconian amendment further erodes fair trial rights".

[127] HRC, General Comment 32, *Article 14 (Right to equality before courts and tribunals and to fair trial),* CCPR/C/GC/32, available at www.refworld.org/docid/478b2b2f2.html (HRC, General Comment 32).

[128] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *Concluding observations on Turkey,* CAT/C/TUR/CO/3, para. 11(b), available at bit.ly/1SvJ80W

[129] New CCP, Note to Article 347.

Article 302(a)(b)(c)(d).[130] In such cases, if the accused fails to appoint a lawyer or the lawyer fails to attend the hearing without good reason, appointment of a lawyer by the court is obligatory.

5.12 RIGHT TO TIME AND FACILITIES TO COMMUNICATE WITH LAWYER IN CONFIDENCE

Every individual charged with a criminal offence has the right to adequate time and facilities to prepare a defence and to defend themselves. This means that the accused must be given the opportunity to communicate in confidence with their lawyer. This right applies to all phases of a criminal proceeding and is of particular importance during pre-trial detention.

The authorities must therefore provide a detained accused with adequate time and facilities to meet and communicate with their counsel privately without restrictions, influence, pressure or undue interference. This includes face-to-face meetings, and communications on the telephone and in writing. The authorities must respect the confidentiality of these communications. According to Principle 22 of the Basic Principles on the Role of Lawyers: "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."

The new CCP, in Article 48, states: "The accused can demand the presence of a lawyer from the start of detention." However, it imposes a cap of one hour for such meetings without taking into account the circumstances of each case, and fails to refer to confidentiality of communications and meetings between detainees and their lawyers. This failure is exacerbated by other laws, in particular the Prison Regulations, which subject such meetings and correspondence to undue scrutiny.

Under the Prison Regulations, lawyers who have an official retainer can obtain written permission from the relevant judge to meet their clients in prison. They can then submit the retainer to the head of the prison and meet their client "if possible, in a special room separate from the general meeting rooms."[131] The Regulations allow the Bar Association, upon obtaining the approval of the Organization of State Prisons and Security and Corrective Measures (Prisons Organization), to build a room in every prison dedicated to meetings of lawyers and their clients. The Bar Association is expected to use its own funds to provide these facilities.

While the Prison Regulations allow for a meeting between lawyers and their clients in a room separate from the general meeting area, they:

- Fail to guarantee the privacy of such meetings because the phrase "if possible" subjects this to the availability of adequate facilities;
- Negate the responsibility of the state to provide adequate facilities in prisons and detention centres for a private meeting between lawyers and their clients, and instead place the burden on the Bar Association;
- Lack a specific reference to the prohibition of the presence of authorities during such meetings; and
- Fail to clarify whether the provision covers "detainees" as well as "prisoners" as they use the terms "accused" and "convicts" interchangeably.

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[130] The crimes outlined under sections (a), (b), (c) and (d) of Article 302 are "crimes punishable by the death penalty", "crimes punishable by life imprisonment", "crimes punishable by amputation and intentional physical assault punishable by payment of half of a full *diyeh*", and "*ta'zir* crimes of degree three and above".

[131] Executive Regulations for the Organization of State Prisons and Security and Corrective Measures, Article 187.

Infringements on the right to communicate with counsel in confidence are also found in the new CCP. Article 154 states:

> *Whenever the accused give their lawyer or another individual, writings, documents, tools, or evidence effective in the uncovering of the crime, the investigator can investigate them in the presence of the lawyer or the person in question. If the aforementioned individuals refuse to submit the documents, they will be sentenced to the punishment prescribed for those helping an accused escaping prosecution. If the individuals [holding the documents] have justifiable reason [for withholding], they shall submit their reasons to the investigating judicial official. Writings and documents irrelevant to the crime shall not be read or investigated.*

The provision, which places the accused person's lawyer on a par with any third party, is in marked contrast with the confidential nature of lawyer-client relations. The UN Special Rapporteur on the independence of judges and lawyers has stated, "lawyers' files and documents should be protected from seizure or inspection by law and in practice and their electronic communications should not be intercepted."[132]

Correspondence by an accused person or a convicted individual is also subject to the inspection of officials. Under Article 198 of the Prison Regulations, a prisoner or detainee "who is not barred from receiving visits" can write two letters a week to their spouse, children, parents, lawyer, relatives, friends and judicial officials. However, all such correspondence, whether sent or received by an accused person or a convicted individual, will be read and inspected by "experienced and trusted officials of the Prisons Organization."[133] This provision constitutes a flagrant violation of the right to confidential communication with counsel.

5.13 RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENCE

The principle of "equality of arms" (see Chapter 7.6) requires that both the defence and the prosecution are treated in a manner that guarantees equal opportunity for both parties to prepare and present their case. The right to adequate time and facilities to prepare a defence applies to all phases of the proceedings. Article 14(3) of the ICCPR states: "In the determination of any criminal charges against him, everyone shall be entitled to the following minimum guarantees of equality… (b) To have adequate time and facilities for preparation of his defence..."

Determination of how much time is adequate to prepare a defence depends on a variety of factors, including the stage of the proceeding, complexity of the case, access of the suspect or their lawyer to information and evidence, and time limits prescribed by national law. A key issue is granting the accused and their lawyer timely access to relevant information. This information includes the list of witnesses, the documents on which the prosecution intends to rely as well as information that might result in the exoneration of the accused, and information refuting the credibility of the prosecution's evidence.

The Basic Principles on the Role of Lawyers, in Principle 21, states: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time." The HRC has emphasized:

> *'[A]dequate facilities' for the preparation of one's defence, within the meaning of Article 14(3)(b) of the ICCPR, includes access to all evidentiary materials that the prosecution plans to offer in court against the accused person, or which are exculpatory. The scope of protection of this provision must be such as to ensure that individuals cannot be condemned on the basis of evidence to which they, or those representing them, do not have full access.*[134]

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[132] Special Rapporteur on the independence of judges and lawyers, *Report to the General Assembly*, A/64/181, para. 110 (b), available at www.refworld.org/pdfid/4a9e2c1c0.pdf

[133] Executive Regulations for the Organization of State Prisons and Security and Corrective Measures, Article 200.

[134] HRC, *Onoufriou v Cyprus*, Communication no. 1636/2007, CCPR/C/100/D/1636/2007, para. 6.11, available at bit.ly/1VRcIMC

While the right to disclosure of relevant information is not absolute, restrictions on disclosure must only be allowed in exceptional circumstances and must not lead to an unfair trial. In such cases, determination of whether the prosecution is permitted to withhold disclosure of evidence from the defence must be made by an independent and impartial court. In those exceptional cases where restriction on disclosure is permitted, such restriction must be strictly necessary and proportionate to the aim of protecting the rights of another individual or to safeguard an important public interest such as national security.

The new CCP lacks specific reference to the right of individuals accused of criminal offences to have adequate time and facilities to prepare a defence. However, the Code contains provisions, most notably those concerning the disclosure of information on the case to the lawyer, that run counter to individuals' right to adequate time and facilities to prepare a defence. It allows the investigator to impose restrictions on disclosure of information to the accused or their lawyer in cases involving national security and offences against decency,[135] as well as where disclosure "undermines the uncovering of the truth."[136] The Code does not make any reference to the exceptional nature of non-disclosure in such cases, nor does it provide an objective criteria for when access to case material constitutes a threat to "uncovering of the truth". It thus grants the investigator a blanket authorization to issue a non-disclosure order in a wide range of circumstances.

Delegation of decision-making powers regarding the necessity of non-disclosure to the investigator rather than an independent and impartial court constitutes a flagrant breach of international law. Officials in the Office of the Prosecutor, given their role in the proceedings, lack independence and impartiality and must not be given such decision-making powers. While under the Code, the non-disclosure order issued by the investigator can be the subject of appeal to a court by the accused or their lawyer within three days, the burden of challenging the non-disclosure order rests on the defence. Further, the Code fails to clarify key issues such as the criteria based on which the court must determine the appeal, whether the appeal will be heard at an oral hearing, and whether the accused has right to have counsel and present evidence during the hearing. The CCP does not spell out a process for continuous review of the appropriateness of non-disclosure throughout the proceedings. Nor does it lay out any measures to counterbalance the difficulties caused to the defence due to the restrictions on access to information effectively stacking the cards in prosecution's favour.

The wide interpretative power granted to the investigator is of even graver concern in a context where the independence of the judiciary is compromised and national security related offences are vaguely and broadly defined and are regularly resorted to in order to crush peaceful dissent. Moreover, "crimes against decency" include a wide range of activities that are protected under the right to privacy but are criminalized under Iranian law. They include consensual sexual relations between unmarried adults as well as same-sex sexual conduct between consenting adults.

5.14 REGULATIONS GOVERNING INTERROGATIONS

International human rights standards require that regulations and rules governing the conduct of interrogations be formally prescribed and made publicly available. Such regulations must be the subject of regular review and should address, among other things: informing the accused person of the identity of all individuals present during questioning; the permissible duration of interrogations as well as an interrogation session; required rest periods between sessions and breaks during a session; places where questioning may take place; and questioning people under the influence of drugs or alcohol.[137] Under the new CCP, interrogation of the accused person, which constitutes part of the investigations, is primarily within the remit of the investigator. However, it appears that "judicial officers" may also interrogate the accused if she or he is

[135] New CCP, Note to Article 191.

[136] Article 191 of the new CCP states: "If the investigator determines that review of and access to all or part of the papers, records and evidence on the case undermines the uncovering of the truth, or if the case concerns crimes against internal or external security of the country, he can issue a non-disclosure order with reasons. This order shall be communicated to the accused or their lawyer in person and is subject to appeal in a competent court within three days. The court is obliged to consider the appeal and make a decision on an expedited basis."

[137] HRC, *Concluding observations on Japan*, CCPR/C/JPN/CO/5, para. 19, available at bit.ly/1PaG2vA; ; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, 2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, CPT/Inf (92) 3, April 1992, para. 39, available at www.cpt.coe.int/en/annual/rep-02.htm

in their custody following arrest in cases of "evident crimes" or when they are delegated with investigating powers by the investigator.[138]

The new CCP, in contrast to the old Code, sets out stricter regulations for conducting and recording interrogations. The old Code banned asking leading questions, deception and forcing or coercing the accused during interrogation. However, it lacked provisions requiring the judicial authorities to, among other things, adequately record the interrogations. It further barred lawyers from interjecting or objecting during interrogation sessions in cases that their presence was permitted. Under the new CCP, the accused person's lawyer is allowed to object to the investigator if there are leading questions or any other violations of the law.[139]

The new Code obligates "judicial officers" to record the statements made by the accused person, the reasons for detention, the date and time of the start of the detention, the length of the interrogation, the rest period between interrogation sessions, and the date and time when the accused person is brought before a judge. The records must be signed by the accused.[140] "Judicial officers" must insert page numbers on all interrogation papers as well as on all other documents in the case file.[141] The Code also prohibits the use of "force, coercion, insulting language, leading questions and questions irrelevant to the charges" during interrogations. Answers by the accused person to such questions as well as coerced statements are not valid.[142]

Furthermore, the Code's provisions on the conduct of the investigation prohibit all judicial authorities including the "judicial officers" from writing between the lines, removing words, or striking through the text in interrogation and investigation papers. Any corrections, including side notes, must be noted and signed by both the investigator and the accused person… The accused person's responses to the questions asked during interrogations must be noted down without alterations or distortions.[143] If the accused is literate, they can write down the answer themselves unless they decide not to avail themselves of this right. Moreover, the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights bars the infliction of harm on an accused person (see Chapter 4). Failure to comply with these regulations will render such additions void but the procedure for establishing such failure is not laid out in the law.

The stricter regulations in relation to questioning of the accused specified under the new CCP would, if implemented properly, provide for better protection of the rights of the accused. They could serve as an important tool to protect detainees against torture and other ill-treatment during interrogation and could facilitate accountability for those who violate such laws. Despite these improvements, the new Code fails to address a wide range of issues of importance, including interrogation of individuals who are under the influence of alcohol or other substances and the time limit for the length of interrogation sessions. Alarmingly, the Code does not set any requirement that interrogators must be identifiable, an important safeguard that facilitates accountability.

5.15 RIGHT TO ACCESS THE OUTSIDE WORLD

One of the fundamental safeguards against human rights violations in custody, including torture and other ill-treatment and enforced disappearance, is the right of detainees to communicate with the outside world and to receive visits. The HRC has emphasized that states must ensure that the right of individuals in custody and pre-trial detention to access family members, a lawyer and doctors is enshrined in law.[144]

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[138] New CCP, Article 98.

[139] New CCP, Article 195.

[140] New CCP, Article 53.

[141] New CCP, Article 59.

[142] New CCP, Article 60.

[143] New CCP, Article 115.

[144] HRC, *Concluding observations on the Central African Republic*, CCPR/C/CAF/CO/2, para. 14, available at bit.ly/1QK8vcd; HRC, *Concluding observations on Sweden*, CCPR/C/SWE/CO/6, para. 13, available at bit.ly/1nRk20j

Any individual who is arrested, detained or imprisoned has the right to inform a third person that they have been taken into custody and where they are being held. This right should be guaranteed from the outset of custody.

The new CCP is an improvement on the old Code as it offers more clarity about the duty of law enforcement and judicial officials to respect the right of individuals to inform a third person of their arrest. The old Code was silent on the issue. The Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights required officials to send the case file of detainees to the competent judicial authorities and inform their families, but it did not specify a time limit for informing the family members.

Article 50 of the new CCP, in a welcome measure, entitles individuals in custody to inform their relatives of their arrest via telephone or any other possible means. It also obliges the "judicial officers" to adequately assist detainees to exercise this right. The Article, however, only partially complies with international standards as it permits the "judicial officers" to impose restrictions on the right of individuals to inform a third party of the arrest when it is deemed "necessary". In such cases, they must refer the matter to judicial officials.

Under international standards, notification of the arrest can be delayed only in exceptional cases, when it is absolutely necessary to ensure the effectiveness of the investigation. Any exceptions must be clearly set out in law. Moreover, restrictions imposed on the right to inform a third party of the arrest must be strictly limited in time. Article 50 of the new CCP not only fails to mention expressly that restrictions on this right are only permitted in exceptional circumstances, but also fails to clarify when the restrictions are allowed. Individuals, therefore, could be denied this right based on the determination of "judicial officers" and "on the grounds of necessity". While the Article states that such a determination is subject to the approval of a judicial official, it does not specify the competent official responsible for approval of the decision. Nor does it set any time limit for restrictions on the right of a detainee to inform third parties of the arrest.

Detainees also have the right to access their families. The authorities have a duty to provide detainees with reasonable facilities to communicate with and receive visits from family and friends.[145] This right applies to all detainees and may only be restricted or supervised if it is necessary "in the interest of administration of justice and of the security and good order of the institution".[146]

Article 49 of the new CCP entitles the parents, spouse, children and siblings of arrested individuals to inquire about them from the local Office of the Prosecutor, the Provincial Prosecutor, and the Head of the Justice Department in each province. The provision does not mention whether such information can be shared with other parties with a legitimate interest, such as the detainees' lawyers, and national and international human rights bodies and mechanisms. Under the Code, responding to the queries of the individuals mentioned in the provision, "to the extent that it does not infringe on the social and familial status of the detainees", is obligatory. The Code does not, however, provide any clarification as to what constitutes an infringement of one's social or familial status. Nor does it include any provisions on the right of detainees to communicate with and receive visits from their family members. The issue is instead dealt with under the Prison Regulations. Under Article 180 of the Regulations, all prisoners and detainees are permitted to have contact with their relatives and acquaintances. Such contact, which is through visits and correspondence, can take place under the supervision of the prison officials and in full compliance with the Prison Regulations.

Once again, the general recognition of this right is only partial and is subject to restrictions on the grounds of vaguely worded conditions. Under the Note to Article 180, judicial officials can prohibit visits or correspondence with an accused if they determine that they are not in the interest of a "good trial proceeding". In such cases, any visit or correspondence with the accused during the prohibition period is only allowed with the written permission of competent judicial authorities. The decision of a judge to deprive a detainee of the right to have access to the outside world does not appear to be subject to review by another official or body. Moreover, the regulations do not provide any clarification as to when meeting or corresponding with the accused person would contravene "good proceedings". Nor do they set any limitation restricting individuals' right to communicate and receive visits from relatives. This means that judges can in

[145] UN General Assembly, Resolution 43/173 of 9 December 1988, A/RES/43/173, Principle 19, available at www.un.org/documents/ga/res/43/a43r173.htm

[146] UN Standard Minimum Rules for the Treatment of Prisoners, Rule 92, available at www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

practice deprive detainees of their right to have access to the outside world on the basis of vaguely worded conditions for an unlimited period of time.

5.16 RIGHTS OF FOREIGN NATIONALS

Under international standards, foreign nationals held in police custody or pre-trial detention should be given facilities to communicate with and receive visits from the representatives of their government. Article 36(c) of the Vienna Convention on Consular Relations, to which Iran is a state party, states:

> *Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement.*

Access of foreign nationals held on criminal charges to their consular representatives are addressed both by the June 2015 amendments to the new CCP and the Prison Regulations. However, both laws fail to comply with international standards as they treat such access as a privilege subject to the approval of the prosecutorial authorities rather than a right guaranteed by law.

The new CCP, as adopted in April 2014, did not include any provisions with regards to the rights of foreign nationals held in pre-trial detention or imprisoned. However, the amendments passed in June 2015 added a Note to Article 236 which states:

> *In cases where foreign nationals are under investigation, on their request, the investigator shall immediately submit their details and the charges against them to the Prosecutor General for the required actions and notification of relevant bodies. If the investigation results in the conviction of the accused person, the Implementation Judge shall submit a summary of the verdict to the Prosecutor General in line with this provision. The Prosecutor shall also be informed if there is a request for a meeting from the relevant consulate. [The matter] will be decided in accordance with the Prosecutor's decision and in line with regulations.*

Despite the attempt to include a provision addressing the situation of foreign nationals, the amendments fail to comply with international standards as they subject the right of foreign nationals to access their consular representatives during the pre-trial period to the approval of the Prosecutor General.

Iran's Prison Regulations also restrict the right of foreign nationals to access consular assistance by conditioning it on the permission of judicial authorities. Article 193 of the Prison Regulations states: "Meetings of political or consular representatives [of governments] with their respective citizens who have been convicted [*mahkoum*] is [dependent] upon referral by the Ministry of Foreign Affairs and the permission of the Prosecutor, or trial judges, or judges supervising prisons." The Article fails to clarify the criteria on which such a request is assessed. This effectively allows the authorities to deny foreign nationals the right to meet their consular representatives.

Moreover, the use of the term *mahkoum,* which refers to an individual convicted of a crime, instead of *mottaham*, an accused person, suggests that the Regulations do not protect the right to access consular assistance during the pre-trial period.

The provisions of the Prison Regulations governing access to consular assistance also raise concern about the confidentiality of the communications between detained foreign nationals and their government representatives. One of the purposes of meetings and communications between detained foreign nationals and the representatives of their government is assistance with the accused person's defence and monitoring the conditions under which they are held. Therefore, it is paramount that such meetings can take place in private.

However, Article 194 of the Regulations requires the presence of prison officials familiar with the language in question in cases of meetings between foreign nationals and prisoners or detainees. The Article prohibits whispering and requires discussions to be conducted in a loud voice. It further obligates the prison officials responsible for overseeing the meeting to terminate the meeting immediately and report the issue to the

head of the prison if the topic of the parties' discussions is "against the internal regulations" of the prison or institution, a vague and overly broad phrase.[147]

According to Article 194 of the Prison Regulations, all meetings of detainees and prisoners with foreign nationals, including their consular representatives, shall be monitored by a prison official. The same applies to any correspondence between foreign nationals and their consular representatives. Under Article 205, foreign nationals are permitted to write to their consular representative through the Ministry of Foreign Affairs. These letters are subject to the general monitoring procedures set out by the regulations governing the correspondence of detainees and prisoners. As shown above, all correspondence, whether sent or received by detainees and prisoners, must be thoroughly read and inspected by a prison official.[148] Letters written in a foreign language shall be translated and inspected in prison. In cases where translation facilities do not exist in a prison, the letters must be sent to the Prisons Organization for the required inspection. The letters will be sent to the destination "if there does not exist any obstacle".[149] Similarly, telephone conversations of foreign nationals are only permitted in the presence of an interpreter trusted by the Prisons Organization.[150]

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[147] Executive Regulations for the Organization of State Prisons and Security and Corrective Measures (Prison Regulations), Article 194, available at prisons.ir

[148] Prison Regulations, Article 200.

[149] Prison Regulations, Article 204.

[150] Prison Regulations, Note to Article 206.

6. RIGHT NOT TO BE TORTURED OR OTHERWISE ILL-TREATED

International law requires states to ensure that all people deprived of their liberty are treated with respect for the inherent dignity of the human person. They must respect the human rights of detainees and prisoners, and guarantee that they are protected from torture and other ill-treatment.

Prohibition of torture and other ill-treatment is a norm of customary international law. It is an absolute prohibition that applies to all people, in all circumstances, at all times. The prohibition is also formulated in absolute terms in Article 7 of the ICCPR, to which Iran is a state party. While under the ICCPR states are permitted to derogate from some of their obligations "[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed", freedom from torture and other ill-treatment is a right from which no derogation is permitted.

The Convention against Torture and other Cruel, Inhuman, or Degrading Punishment or Treatment (CAT) defines torture as:

> *[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

Cruel, inhuman or degrading treatment is "any harsh or neglectful treatment that could damage a detainee's physical or mental health." Such treatment may be linked, for instance, to poor prison conditions. "Punishment intended to cause physical or mental pain or suffering, or to humiliate or degrade" constitutes cruel, inhuman or degrading punishment.[151]

While Iran has not ratified CAT, it is nonetheless bound by customary international law, as well as other human rights treaties such as the ICCPR that recognize the absolute prohibition on torture and other ill-treatment.

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[151] Amnesty International and the Council for the Development of Social Science Research in Africa, *Monitoring and investigating torture, cruel, inhuman, or degrading treatment, and prison conditions*, 2000, p. 11, available at www.amnesty.nl/sites/default/files/public/booklet_eng_torture_0.pdf

Article 38 of Iran's Constitution prohibits torture, but only if it is "for the purpose of extracting confession or acquiring information". Additionally, Article 39 bans all affronts to the dignity of detained or imprisoned persons.

This prohibition was reinforced by the 2004 Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights, Article 1(9) of which outlaws "torture of the accused in order to extract confessions or forcing them to other affairs". Article 1(6) and 1(7) provide examples of conduct from which law enforcement officers must refrain. The Law forbids officers from harming an accused person, for example by blindfolding them or tying their limbs while they are being detained, interrogated or investigated. Officers should also avoid covering the face of the accused or sitting behind their back during interrogation. The Law requires that interrogations are carried out in accordance with "scientific and legal principles, previous training and under required supervision".[152] Article 60 of the new CCP also prohibits the use of "force, coercion, insulting language, leading questions and questions irrelevant to the charges" during interrogations. Answers by the accused to such questions as well as coerced statements are not valid.

While Iranian legislation outlaws torture and bans certain types of abusive conduct during interrogations, it does not provide any definition of torture. Further, it limits the prohibition to when torture is aimed at "extracting confession or acquiring information" thereby failing to acknowledge where pain or suffering is inflicted on an individual as a form of punishment or intimidation or for any reason based on discrimination. Examples of punishments which violate the legal prohibition on torture and other ill-treatment but are allowed under Iran's criminal law include flogging, amputation, blinding, crucifixion and stoning. Moreover, there is no reference to infliction of mental pain and suffering nor to cases where torture is inflicted on an individual in order to coerce, punish, or intimidate a third person.

Iranian laws also fail to include and adequately define a separate crime of sexual assault and to recognize it as a form of torture or other ill-treatment when committed by state officials. Allegations of rape by state officials must be raised under the ordinary criminal charge of *zena-ye be onf* ("fornication by force") which is only concerned with forced penetrative sex. The law further fails to include provisions to criminalize a wide range of coercive non-penetrative sexual conduct such as sexual insults, forced nakedness, groping, kissing, and touching. An inadequate definition of rape, the absence of provisions that define consent or lack thereof compounded by rules of evidence which make it difficult for women, in particular those held in detention, to raise their complaint effectively, leave individuals vulnerable to rape and other forms of sexual violence which, when committed by state officials, constitute torture or other ill-treatment.

International law requires states to adopt laws and take measures that give effect to rights guaranteed under international standards, including freedom from torture and other ill-treatment. States must also take effective measures to prevent, investigate and punish torture and other ill-treatment, including by ensuring that all places of detention are officially recognized, respecting the right to access an independent doctor at the start of detention, and keeping an official and central registration of detainees.

Statements elicited as a result of torture or other ill-treatment, or other forms of coercion, must be excluded as evidence in criminal proceedings, except in those brought against suspected perpetrators of such abuse. The requirement to exclude such evidence is inherent to the prohibition against torture and other ill-treatment as well as the right of accused people not to be compelled to testify against themselves or confess guilt and enjoy the right to remain silent.

6.1 PLACES OF DETENTION

One of the fundamental guarantees for protection of detainees and prisoners against torture and other ill-treatment and enforced disappearance is the requirement that people deprived of their liberty are held in a place of detention that is officially recognized. They must not be held in secret detention. This applies to both officially recognized detention places and elsewhere, such as private residences. The authorities must ensure that family members of detainees are informed of their arrest, their place of detention and any subsequent transfers.

[152] The Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights, Article 1(10).

Iran's Prison Regulations provide for the management and supervision of all prisons and detention centres but fail to bring such facilities under its effective control. The Regulations do not expressly prohibit the use of unofficial or secret detention centres. Nor do they set out, in clear and strict terms, the supervisory role of the Prisons Organization and the consequences of non-adherence by security and intelligence bodies. These shortcomings are further aggravated by a string of by-laws that allow intelligence and security bodies to run special detention facilities for people accused of national security offences.

This situation has facilitated the detention of many individuals, particularly those accused of national security-related offences, in secret facilities run outside the framework of the law by intelligence bodies such as the Ministry of Intelligence.

MANAGEMENT OF DETENTION CENTRES

Under the Law Replacing the Supervisory Council on Prisons and Security and Corrective Measures with the Organization of State Prisons and Security and Corrective Measures, passed in 1986, "management" of the affairs of all prisons, detention centres and their affiliated bodies falls within the remit of the Prisons Organization.[153] This is reiterated in Article 18 of the Prison Regulations passed in 2001. Neither of these laws, however, expressly prohibits secret detention centres or facilities that are run outside the supervision of the Prisons Organization. In fact, despite the 1986 law, which claimed that the Prisons Organization shall have supervisory powers over all prisons and detention centres, secret detention centres run by security and intelligence bodies have remained prevalent.

In 1999, Ayatollah Hashemi Shahroudi, the then Head of the Judiciary, issued a decree in which he prohibited detention facilities controlled by bodies other than the Prisons Organization. The decree, however, provided for the allocation of detention facilities to hold individuals accused of "security crimes" such as espionage. These facilities were instructed to operate under the "management" of the Prisons Organization and with the "co-ordination" of intelligence bodies such as the intelligence department of the police forces.[154] In November 2006, in an attempt to place a tighter grip on these facilities, which had continued to operate outside the law, Ayatollah Shahroudi passed the Executive By-law for Management of Security Detention Centres.[155] This revoked all previous "agreements between the [Prisons] Organization and security bodies"[156] but allowed for the detention of individuals accused of national security offences in special detention facilities established in the central prisons of each province.[157] It stated that, if it was not possible to establish such facilities in provincial prisons due to lack of space or "appropriate conditions", security bodies, with the approval of the Prisons Organization, could allocate a suitable space for this purpose in their own facilities.[158] The security bodies named under the By-law include the Ministry of Intelligence, and the intelligence departments of the Revolutionary Guards, the police forces and the armed forces.[159]

While the By-law states that these detention facilities operate under the supervision of the Prisons Organization[160] and require regular inspection by judicial authorities, including judges and prosecutors,[161] it effectively allows intelligence and security bodies to oversee their running. Under Article 4, officials of

[153] Prison Regulations, Article 18. In 1986, the Prisons Organization replaced the Supervisory Council on Prisons and Security and Corrective Measures. See the Law Replacing the Supervisory Council on Prisons and Security and Corrective Measures with the State Prisons Organization and Security and Corrective Measures, 26 January 1986, available on the website of the Islamic Parliament Research Centre at rc.majlis.ir/fa/law/show/91160 (accessed on 14 July 2015). Article 9 of the Law required the passage of an executive by-law which was passed in July 2001, 15 years after the adoption of the Law of Alteration in 1986. The 2001 Prison Regulations were subjected to amendments in 2002 and 2010.

[154] See Prohibition of Forming Special Detention Centres and Allocation of One Detention Centre for Security Crimes in Provinces, 3 December 1999, available on the website of the Islamic Parliament Research Centre at rc.majlis.ir/fa/law/show/131562 (accessed on 14 July 2015). Ayatollah Shahroudi's decree allowed for armed forces to continue maintaining their disciplinary detention facilities. It also instructed the judicial and security authorities "to establish a detention centre in the capital of each province in order to hold those accused of espionage, acting against national security, armed robbery, kidnapping, assassination, supporting and organizational affliction to anti-revolutionary groups".

[155] Executive By-law for Management of Security Detention Centres, 21 November 2006, available at bit.ly/1S0h31N (accessed on 3 February 2016).

[156] Executive By-law for Management of Security Detention Centres, Article 8.

[157] Executive By-law for Management of Security Detention Centres, Article 3.

[158] Executive By-law for Management of Security Detention Centres, Note to Article 3.

[159] Executive By-law for Management of Security Detention Centres, Article 1(b).

[160] Executive By-law for Management of Security Detention Centres, Article 1(a).

[161] Executive By-law for Management of Security Detention Centres, Article 2.

such detention facilities must be appointed from among the employees of the Prisons Organization after they are screened by security and intelligence bodies. Lower-grade personnel are also subject to the screening but the security and intelligence bodies, such as the Ministry of Intelligence, may also appoint their staff to such positions.[162] Additionally, the By-law refers to "security offences" without any clarification as to what charges fall within this category.

In February 2013, the Executive By-law for Formation and Management of Police Detention Facilities and their Supervision attempted to regulate the detention facilities run by the police.[163] Under Article 2, police detention centres will be established in provinces upon the request of the province's police chief, on confirmation of the need for such facilities by the local prosecutor, and after the approval of the Head of Provincial Prisons. Police detention centres may only be used to hold individuals who are kept in police custody for investigation by order of the judicial authorities.[164] The duration of the custody in such cases must be specified by the judicial authorities[165] and the accused may not be interrogated in police detention facilities.[166] Under Article 4, management of these facilities is the responsibility of the Prisons Organization.

6.2 REGISTRATION OF DETAINEES

International law requires the authorities to ensure that up-to-date official records of all detainees are collated and held centrally as well as in each detention centre. The HRC, in its General Comment 20, states:

> *To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.*

The new CCP, in a welcome improvement, requires the authorities to maintain an official record of detainees immediately after the arrest. The old Code did not contain any provisions obliging the authorities to systematically record detainees' details. Such an obligation, if upheld in practice, could provide for better protection of detainees against torture and other ill-treatment and enforced disappearance.

According to Article 49 of the new CCP, the details of an arrested individual, including details of their birth certificate such as their name, the names of their parents, their date of birth, their place of birth, details of their occupation and their address, as well as the reasons for their arrest, must be sent to the Office of the Prosecutor within one hour of the arrest. The Prosecutor of every county is obligated to record these details electronically and in a special record book. The complete list of detainees must be sent to the Head of the Province's Justice Department at the end of each day. Furthermore, under the Executive By-law for Formation and Management of Police Detention Facilities and their Supervision, the officials of these detention facilities must record the names of all detainees admitted as well as any actions taken in relation to them, such as transfer to hospital or general detention centres, and submit them to the data and computing unit of the province's Prisons Organization on a daily basis.[167]

Despite the improvements made under Article 49, the provision fails to include the requirement to record key information, such as the authority that ordered the deprivation of liberty, and the exact time that they were admitted, the authority responsible for the detention facility, and the detainee's state of health. This information is not required by Article 48 of the Prison Regulations either, which asks prisons and places of detention to admit individuals provided that the transfer officer submits an official paper, signed and stamped by the judicial official who has issued the verdict or the order.

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[162] Executive By-law for Management of Security Detention Centres, Note to Article 4.

[163] Executive By-law for Formation and Management of Police Detention Facilities and their Supervision, 26 February 2013, available at bit.ly/1Ph3ZPV (accessed on 3 February 2016).

[164] Executive By-law for Formation and Management of Police Detention Facilities and their Supervision, Article 6.

[165] Executive By-law for Formation and Management of Police Detention Facilities and their Supervision, Article 7.

[166] Executive By-law for Formation and Management of Police Detention Facilities and their Supervision, Article 9.

[167] Executive By-law for Formation and Management of Police Detention Facilities and their Supervision, Article 10.

Moreover, it remains unclear whether the requirements set by the new CCP with regards to registration of detainees' records and the obligation of officials to respond to inquiries by their families will be equally binding on the officials of the detention centres established under the Executive By-law for Management of Security Detention Centres. Article 6 of the By-law requires the officials of security detention centres to "confidentially" and directly submit the names of their detainees to the Head of the Prisons Organization every month. The Head of the Prisons Organization must handle such data, taking into consideration their "classified" status.

6.3 ACCESS TO A DOCTOR

Under international standards, including Rule 24 of the Standard Minimum Rules for the Treatment of Prisoners and Principle 24 of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, all persons deprived of their liberty must be given or offered a medical examination as promptly as possible after admission to a place of detention. International human rights bodies and mechanisms have emphasized the role of medical examination by an independent doctor at the start of detention as a protective measure against torture and other ill-treatment. The HRC has emphasized the need "to have suspects examined by an independent doctor as soon as they are arrested, after each period of questioning and before they are brought before the examining magistrate or released."[168] People deprived of their liberty should be informed of their right to see a doctor. Moreover, individuals have a right to be examined by a doctor of their own choice.

The Special Rapporteur on torture has stated: "At the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention."[169] The Rapporteur has further emphasized the importance of the independence of the medical personnel who carry out such examinations as well as their qualifications in order to identify signs of both physical and psychological torture.[170]

The new CCP is an improvement on the old Code, which did not provide for the right of those arrested to be examined by a doctor after arrest. Article 51 of the new CCP states: "Upon the request of the person in custody or the request of one of their close relatives, a doctor appointed by the Prosecutor shall examine the detainee. The doctor's notes will be recorded in the case file." However, the CCP does not fully ensure the right of people deprived of their liberty to be examined by a doctor as promptly as possible, since it conditions the medical examination on the request of the detainee or their relatives. It further fails to grant people deprived of their liberty the right to an independent doctor of their own choosing; the medical personnel carrying out the examination are appointed by the Prosecutor, which can undermine the effectiveness of this important safeguard.

6.4 PUNISHMENTS UNDER IRANIAN LAW AMOUNTING TO TORTURE OR OTHER ILL-TREATMENT

The prohibition of torture and other ill-treatment under international law and standards excludes pain and suffering arising from lawful sanctions that are prescribed in national laws as long as they are in compliance with international standards. While a penalty may be allowed under national law, it might nonetheless violate international standards.

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[168] HRC, *Report to the General Assembly*, A/52/40, para. 109, available at bit.ly/1UQTeHN

[169] Special Rapporteur on torture, *Report to the General Assembly*, A/56//156, para. 39.(f), available at www.un.org/documents/ga/docs/56/a56156.pdf

[170] Special Rapporteur on torture, *Report to the UN Economic and Social Council, Visit by the Special Rapporteur to Turkey*, E/CN.4/1999/61/Add.1, para. 111(d), available at bit.ly/1TImPVf

The Special Rapporteur on torture has refuted "the notion that the administration of such punishments as stoning to death, flogging and amputation – acts which would be unquestionably unlawful in, say, the context of custodial interrogation – can be deemed lawful simply because the punishment has been authorized in a procedurally legitimate manner, i.e. through the sanction of legislation, administrative rules or judicial order".[171]

Corporal punishments are among the punishments that are prohibited under international law as they violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The HRC has stated that punishments such as flogging, amputation and stoning are not compatible with the ICCPR and has called on states to abolish these punishments in order to bring their laws into compliance with the Covenant.[172]

The 2013 Islamic Penal Code retains cruel punishments that constitute torture, including flogging, amputation, blinding, stoning, and crucifixion. The Code, in defiance of international law, has also retained the cruel, inhuman and degrading punishment of execution by stoning for extramarital consensual sex by married adults.

QESAS

The law of *qesas* (retribution in kind) for causing injury intentionally allows the imposition of a range of cruel punishments under *qesas-e ozv* (retaliation for injured limb or body part). Articles 386 to 416 of the Islamic Penal Code contain regulations providing for *qesas-e ozv.* Under Article 386, causing intentional injury to another person's body parts carries the penalty of *qesas-e ozv* upon the request of the victim or their guardian. The offence is defined as causing any damage less than murder, such as severing a body part or impairing the function of an organ.[173] Penalties provided for include amputation of limbs, cutting of body parts such as lips, tongue, ears, eyelids and nose, removal of teeth and blinding.

AMPUTATION

In addition to *qesas* regulations, a number of other provisions of the Islamic Penal Code provide for the punishment of amputation. The crime of theft, when meeting certain conditions,[174] carries the punishment of amputation. Under Article 278 of the Islamic Penal Code, the punishment for first-time theft is "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." Theft for the second time is punishable by "amputation of the left foot in such a manner that half of the sole and part of the place of anointing [during religious ablution] remain." Third- and fourth-time offenders are punished with life imprisonment and the death penalty, respectively.

Article 282 of the Islamic Penal Code grants judges the discretion to impose four possible penalties against an individual convicted of *moharebeh*. Among the punishments is cross amputation, where a hand and opposite foot are cut off.

FLOGGING

The Islamic Penal Code maintains a wide range of offences punishable by flogging. Many of these offences criminalize acts that should not be considered crimes at all. Offences punishable by flogging include, but are

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[171] Special Rapporteur on torture, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, E/CN.4/1997/7, para 8, available at bit.ly/1mss2mN

[172] HRC, *Concluding observations on Sudan*, CCPR/C/79/Add.85, para. 9, available at bit.ly/1R98a4O

[173] The 2013 Islamic Penal Code, Article 387.

[174] The 2013 Islamic Penal Code, Article 268. The conditions stipulated under this provision include but are not limited to the following: "The stolen property has a legitimate value", "the stolen property was placed in *herz* [a secure place]", "the thief breached the *herz* [the secure place]", and "the theft was not committed in a time of famine". See Iran Human Rights Documentation Centre, English Translation of Books I & II of the New Islamic Penal Code, available at bit.ly/20LbR3g

not limited to, some sexual offences;[175] the commission of religiously unlawful acts in public;[176] the consumption of alcohol;[177] falsely accusing someone of having extramarital sexual relations;[178] insulting others,[179] including senior officials such as the President;[180] making, publishing, exhibiting, exporting, importing or possessing with the intention to trade material such as paintings and films that are against "decency" or "public morality";[181] defamation;[182] spreading lies with intent to cause "unease in the public mind";[183] some drug-related offences; and disturbing public order.

CRUCIFIXION

Crucifixion is provided for under Article 282 of the Islamic Penal Code as a possible punishment for *moharebeh*. Under the Regulatory Code on Implementation of Executions, Stoning, Crucifixion, and Amputations,[184] individuals sentenced to crucifixion shall be tied to a cross facing Mecca with their hands tied horizontally and their feet vertically. They shall then be left on the cross for three days until they are brought down from the cross.[185] If the individual is still alive, they will be spared.[186] If the person dies before the end of three days, the authorities must bring the deceased down for burial.[187]

STONING

The Islamic Penal Code retains the cruel punishment of stoning. According to Article 225: "The punishment for adultery for a woman and a man who meet the condition of *ehsan*[188] is stoning… Otherwise, both shall receive 100 lashes." The Article adds: "If implementation of the stoning sentence is not possible and if the crime has been proved through witness testimony, with the proposal of the court of final verdict and approval of the Head of the Judiciary, a woman or man who has committed adultery while meeting the condition of *ehsan* shall be executed [by hanging]."

Earlier drafts of the 2013 Islamic Penal Code had omitted an explicit reference to the punishment of stoning, possibly as a result of international condemnation of stoning as well as the campaigning of Iranian women's rights activists. Despite the omission, a judge could still impose the penalty of stoning based on Article 220 of the Islamic Penal Code and Article 167 of the Constitution, which give judges the discretion to "pass their judgements based on authoritative Islamic sources and authentic fatwas" in the absence of codified laws. Parliament reinserted an explicit reference to stoning after objections by the Guardian Council.

DEATH PENALTY

Under Iran's laws, including the 2013 Islamic Penal Code, a wide range of offences carry the death penalty, which in some circumstances could amount to torture or other ill-treatment. These offences include crimes such as drug-related offences that do not meet the threshold of "the most serious crimes" under

[175] The 2013 Islamic Penal Code, Articles 222, 225, 229, 230, 232, 234, 236, 237, 239, 243 and 637.

[176] Book Five of the Islamic Penal Code on Discretionary and Deterrent Punishments, Article 638.

[177] The 2013 Islamic Penal Code, Article 265.

[178] The 2013 Islamic Penal Code, Article 250.

[179] Book Five of the Islamic Penal Code on Discretionary and Deterrent Punishments, Article 608.

[180] Book Five of the Islamic Penal Code on Discretionary and Deterrent Punishments, Article 609.

[181] Book Five of the Islamic Penal Code on Discretionary and Deterrent Punishments, Article 640.

[182] Book Five of the Islamic Penal Code on Discretionary and Deterrent Punishments, Article 697.

[183] Book Five of the Islamic Penal Code on Discretionary and Deterrent Punishments, Article 698.

[184] The Regulatory Code on Implementation of Executions, Stoning, Crucifixion, and Amputations, 19 September 1999, available at www.jcl.ir/1390/08/24/post-5/ (accessed on 3 February 2016).

[185] Regulatory Code on Implementation of Executions, Stoning, Crucifixion, and Amputations, Article 25.

[186] Regulatory Code on Implementation of Executions, Stoning, Crucifixion, and Amputations, Article 26.

[187] Regulatory Code on Implementation of Executions, Stoning, Crucifixion, and Amputations, Note to Article 26.

[188] See footnote 38 for definition of *ehsan*.

international law, which international human rights bodies have interpreted as being limited to crimes involving intentional killing.[189] Some capital offences such as "insulting the Prophet of Islam" and "adultery" should not be considered crimes at all.

Some offences such as certain drug-related offences carry a mandatory death penalty. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved[190] and that "[t]he mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment".[191] According to the HRC and regional human rights bodies, the use of the death penalty after an unfair trial, including one that has accepted as evidence "confessions" extracted through torture, also violates the prohibition of inhuman or degrading treatment or punishment.

International human rights bodies have called on states to refrain from carrying executions in public, as public executions are incompatible with human dignity and constitute a violation of the prohibition against cruel, inhuman or degrading treatment or punishment.[192] Executions in public are provided for under Iranian law including the country's Anti-Narcotics Law, which provides for an execution in public when the offence of drug trafficking has been committed by armed offenders.[193]

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; the guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The death penalty violates the right to life, as proclaimed in the Universal Declaration of Human Rights. It is the ultimate cruel, inhuman and degrading punishment.

6.5 DISCIPLINARY MEASURES

Any disciplinary punishment imposed on a detainee or a prisoner must be strictly in accordance with regulations and procedures established by law. In addition to setting out the types and duration of permissible punishments, the laws must also establish what constitutes a disciplinary offence and identify the competent officials authorized to impose the penalties. [194]

Iran's Prison Regulations require that any disciplinary measures permitted under the Regulations be imposed only after the relevant authorities have followed procedures that have established a prisoner's guilt. Article 169 of the Prison Regulations specifically prohibits "[spoken curses], swearing, using indecent language, corporal punishment of the accused or convicts, and imposing violent, excruciating or humiliating punishments, in all penal institutes and prisons". Under Article 174 of the Regulations, alleged offences by prisoners must be investigated by a disciplinary council composed of judicial and prison officials. The Regulations, however, do not set out the disciplinary offences which are subject to punishments. Article 172 obligates all detainees and prisoners to treat each other cordially, obey the orders of prison officials, and comply with the internal regulations of the prison. All breaches are subject to disciplinary measures. The Note to Article 173 expressly prohibits assault, self-harm, attempting to commit suicide or making threats about committing suicide.

If a disciplinary council finds the accused prisoner guilty but only by majority vote, it may only impose one of the punishments listed under Article 175, such as "deprivation of visits on up to three occasions, deprivation of prison leave for up to three months, exclusion of being considered for release on probation for up to 20 days, and detention in solitary confinement for a maximum of 20 days." The Note to Article 175 stipulates

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[189] Special Rapporteur on extrajudicial, summary or arbitrary executions (Special Rapporteur on extrajudicial executions), *Report to the General Assembly*, A/67/275, para. 67, available at bit.ly/1QKeCNA

[190] Special Rapporteur on extrajudicial executions, *Report to the Commission on Human Rights*, E/CN.4/1999/39, para. 63, available at bit.ly/1X7Rifj

[191] Special Rapporteur on extrajudicial executions, *Report to the Commission on Human Rights*, E/CN.4/2005/7, para. 80, available at bit.ly/1Sx6I3p

[192] Special Rapporteur on extrajudicial executions, Report to the Commission on Human Rights. E/CN.4/2006/53/Add.3, para. 43, available at bit.ly/1R9blcJ; HRC, *Concluding observations on Nigeria*, CCPR/C/79/Add.65, para. 16, available at bit.ly/1L2ld0z; HRC, *Concluding observations on the Democratic People's Republic of Korea*, CCPR/CO/72/PRK, para. 13, available at bit.ly/1PnqS4c

[193] The 2010 Anti-Narcotics Law, Article 11.

[194] Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, Principle 30; Standard Minimum Rules for the Treatment of Prisoners, Rule 29.

that the disciplinary council can only impose up to one-third of the prescribed penalties. Imposition of more than one-third of the penalties requires the confirmation of the prison's supervisory judge.

The new CCP, in Article 524, lists the disciplinary punishments that may be imposed on detainees and prisoners after decision by the disciplinary council and approval of the Implementation Judge. The prescribed penalties include "transfer from centres for vocational training and employment to semi-closed or closed prisons, deprivation of visits on up to three occasions, deprivation of prison leave for up to three months, and exclusion of being considered for release on probation for up to 20 days."

The new CCP no longer lists solitary confinement as a form of disciplinary measure, which remains one of the disciplinary penalties prescribed under the Prison Regulations. It remains unclear whether the list provided under the CCP is an exhaustive list which aims to rule out the use of solitary confinement. Under Article 528 of the CCP, the Ministry of Justice is to draft an executive by-law and submit it to parliament within six months of the entry into force of the new CCP. The by-law ought to include regulations regarding categorizing detainees and prisoners, their employment and training, and procedures regarding visits. This may address the discrepancies that exist between the new CCP and the Prison Regulations including with regards to the use of solitary confinement as a form of disciplinary punishment.

Iranian laws only provide for solitary confinement in the context of disciplinary measures in the Prison Regulations. Despite the lack of legal basis for holding detainees in solitary confinement in circumstances other than those predicted under the Prison Regulations, detainees, in particular those accused of national security-related offences, are routinely held in solitary conferment during the investigation phase, which may last for months. This is mainly due the failure of laws to regulate the use of solitary confinement and prohibit its prolonged use as a form of torture or other ill-treatment.

Solitary confinement may amount to torture or other ill-treatment, depending on its length and conditions, or the resulting reduced sensory stimulation. International standards increasingly favour the restriction or elimination of the use of solitary confinement. Under Article 7 of the UN Basic Principles for the Treatment of Prisoners, "Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged." The HRC has stated: "[P]rolonged solitary confinement... may amount to acts prohibited by article 7 [of the ICCPR]".[195] The Committee has also found violations of the prohibition of torture and other ill-treatment and of the obligation to respect human dignity in cases where prisoners had been held in solitary confinement.[196]

6.6 INVESTIGATION OF ALLEGED ABUSES AND THE RIGHT TO REMEDY AND REPARATION

International law requires states to conduct prompt, impartial, independent and thorough investigations into all allegations of torture and other ill-treatment, bring those responsible to justice, and ensure that victims have access to an effective remedy and receive reparation, including rehabilitation

Iran, as a state party to the ICCPR, has undertaken to ensure that any individual whose rights recognized under the Covenant are violated has access to an effective remedy, notwithstanding the official status of the offender. The authorities must therefore ensure that victims' allegations are investigated by a competent body and any remedies granted are enforced.[197] Despite these undertakings, Iran's inadequate legal framework not only fails to provide safeguards against torture and other ill-treatment, but also allows those responsible for such violations to escape justice. This is partly due to laws that prohibit torture in general terms but do not recognize a specific crime of torture. Prosecution of allegations of torture requires national laws to contain a specific crime of torture with prescribed penalties corresponding to the grave nature of the

[195] HRC, General Comment 20, *Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, para. 6, available at www.refworld.org/docid/453883fb0.html

[196] HRC, *Rosa Espinoza de Polay v. Peru*, Communication no. 577/1994; CCPR/C/61/D/577/1994, 6 November 1997, para. 8.6, available at bit.ly/1PWRNDf

[197] ICCPR, Article 2.

crime.[198] Provisions of the Islamic Penal Code which could be used for prosecution of torture are not consistent with international standards as they are restrictive in their definition and scope of application.

Article 570 of the Islamic Penal Code states:

> *[A]ll officials and authorities affiliated with state institutions and bodies who unlawfully deny individuals their personal freedoms, or deprive them of the rights enshrined in the Constitution of the Islamic Republic of Iran, shall be sentenced to between two months' and three years' imprisonment in addition to dismissal from service and prohibition of state employment for one to five years.*

Article 578 asserts:

> *Any civil servant or judicial or non-judicial agent who corporally mistreats and abuses an accused person in order to force him to confess shall be sentenced, in addition to* qesas *and* [diyeh], *to six months' to three years' imprisonment; if it is done under someone's order, only the person who has issued the order shall be sentenced to the aforementioned imprisonment; if the accused person dies as a result of the abuses, the principal to the murder shall be sentenced to the punishment provided for a murderer, and the person who has issued the order shall be sentenced to the punishment provided for a person who has ordered a murder.*[199]

While Article 578 could be relied on to bring perpetrators of torture to justice, it fails to adequately guarantee the right to a remedy and reparation. The Article does not criminalize torture. Nor does it use the term "torture". Instead, it limits the punishable violation to physical assault of the accused, hence excluding other forms of torture and other ill-treatment including those that involve the infliction of mental pain and suffering. It further restricts the application of the Article by subjecting physical assault of the accused to penalties when it is "in order to force him to confess". This excludes torture and other ill-treatment inflicted on an individual for other purposes, such as punishment and intimidation. Additionally, the form of financial compensation provided for under this Article includes *diyeh,* which must be paid by the perpetrator. It remains unclear whether a person who has been subjected to torture or other ill-treatment would be entitled to compensation in cases where those responsible have not been identified and brought to justice.

Subsequent to the adoption of the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights in 2003, the judiciary established a national body responsible for investigating violations of "citizens' rights". The Supervision and Inspection Board, formed under Article 1(15) of the Law, shall endeavour to correct policies or conduct that are not in compliance with laws; confront those in breach through competent bodies; and report the outcomes of their work to the Head of the Judiciary. Under the Executive By-law of Article 1(15) of the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights, the Supervision and Inspection Board's responsibilities include "submitting the complaints it receives to the relevant bodies and pursuing the investigation until it yields an outcome"; "deploying inspection groups to the bodies"; and "preparing reports on the implementation of laws in the country every three months and making them available to the public every three months."[200]

Since its establishment, the Board has set up a database which allows individuals whose rights have been violated as well as those who have witnessed violations to submit their complaints. Iran, in its National Report for the second cycle of its Universal Periodic Review, asserted: "The conduct of state officials and agents suspected of mistreatment and torture, are investigated and the result of such investigations are scrutinized by competent boards."[201] Despite such claims by the authorities, it remains unclear whether and to what extent the Supervision and Inspection Board has adequately addressed allegations of human rights violations, including torture and other ill-treatment. Amnesty International is not aware of the public disclosure of the biannual reports on implementation of laws and

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[198] Amnesty International, *Combating torture: A manual for action* (Index: ACT 40/001/2003), p. 171, available at www.amnesty.org/en/documents/act40/001/2003/en/

[199] Iran Human Rights Documentation Centre, Islamic Penal Code of the Islamic Republic of Iran - Book Five, available at bit.ly/1nRuftq (accessed on 15 June 2015).

[200] See Executive By-law of Article 1(15) of the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights, available at bit.ly/1nRuftq (accessed on 3 February 2016).

[201] Working Group on the Universal Periodic Review, *Report to the General Assembly*, A/HRC/WG.6/20/IRN/1, para. 43, available at bit.ly/1VUa0G9

the Board does not appear to have published the names, identities and photos of those found guilty of violating individuals' rights as required under the Note to Article 3 of the Executive By-law of Article 1(15) of the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights.

7. RIGHTS DURING TRIAL

IRAN'S CRIMINAL COURTS

Iran's criminal courts are listed under Article 294 of the new CCP. They include Criminal Court One, Criminal Court Two, the Revolutionary Court, the Court for Children and Adolescents, and the Military Courts. Under the CCP, as adopted in April 2014, trials before Criminal Court One, which has jurisdiction over serious crimes such as capital offences, and the Revolutionary Court, when hearing serious cases, had to convene with three judges. However, under the amendments passed in June 2015, these courts may now proceed to trial with only two judges. This retrogressive change creates uncertainty as to how a majority vote, which is required for issuance of sentences in such cases, could be obtained. Under Article 395 of the new CCP, in Criminal Court One and in all other courts where there is more than one judge on the bench, cases are decided by majority vote of the judges.

Criminal Court One, which replaces the Provincial Criminal Court,[202] is located in the capital of each province and in the counties if deemed necessary by the Head of the Judiciary.[203] The court is composed of a presiding judge and two associate judges,[204] but can convene with two judges.[205] Criminal Court One has jurisdiction to hear the following cases: 1) crimes punishable by death; 2) crimes punishable by life imprisonment; 3) crimes punishable by amputation and cases of physical assault punishable by payment of half or more of a full *diyeh*; 4) *ta'zir* crimes of degree three and higher; 5) political and press crimes. The Court must try cases involving political and press crimes in open hearings and with the presence of a jury.[206] The parties to cases brought before Criminal Court One are permitted up to three lawyers.[207] Trial sessions before Criminal Court One must be audio recorded or, with the permission of the judge, video recorded. Publication of these recordings is, however, prohibited although they may be "used" with the permission of the court.[208] The verdicts issued by Criminal Court One can be appealed in the Supreme Court.[209]

Criminal Court Two, which replaces the General Criminal Courts,[210] is formed in the Judicial District of each province and consists of one presiding judge.[211] Criminal Court Two has jurisdiction to hear all cases falling outside the jurisdiction of other courts.[212]

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[202] New CCP, Note 3 to Article 296.

[203] New CCP, Note 1 to Article 296.

[204] New CCP, Article 295.

[205] The Official Gazette, "The Amendments to the CCP", 22 June 2015, Article 19, available at www.rrk.ir/Laws/ShowLaw.aspx?Code=5116 (accessed on 16 July 2015).

[206] New CCP, Article 305.

[207] New CCP, Article 385.

[208] New CCP, Article 400.

[209] New CCP, Article 444.

[210] New CCP, Note 3 to Article 296.

[211] New CCP, Article 295.

[212] New CCP, Article 301.

The Revolutionary Court has jurisdiction over the following offences: 1) crimes against national and external security, *moharebeh* ("enmity against God"), *efsad-e fel-arz* ("corruption on earth"), *baghi* ("armed rebellion against the state"), "gathering and colluding against the Islamic Republic", armed activities, arson and "destruction and plunder of resources with the purpose of opposing the system"; 2) "insulting the founder of the Islamic Republic and the Supreme Leader"; 3) all drug-related offences as well as trafficking of arms and ammunition and other restricted items; 4) all other offences whose investigation falls under the Revolutionary Court by dint of special laws.

Where offences under the jurisdiction of the Revolutionary Courts are punishable by the death penalty, life imprisonment, amputation, payment of half or more of a full *diyeh*, and punishments prescribed for *ta'zir* crimes of degree three and higher, the hearings will convene with the presence of a presiding judge and one associate judge. In all other cases, the hearing will convene with a single judge who will issue the verdict and sentence.

The Court for Children and Adolescents. Article 304 of the new CCP states, in an overarching manner: "All offences committed by children[213] and individuals who are under 18 solar years are investigated by the Court for Children and Adolescents." However, Article 315 of the new CCP excludes from the jurisdiction of such courts all offences committed by people under 18 years of age which ordinarily fall, when committed by adults, under the jurisdiction of Provincial Criminal Courts or Revolutionary Courts. These include crimes punishable by life imprisonment or amputation; crimes involving forms of physical assault which are punishable by payment of half or more of a full "blood money" (*diyeh*); and certain *ta'zir* crimes; political and press crimes which fall under the jurisdiction of Criminal Courts One (Article 302); national security-related offences; "enmity against God" (*moharebeh*); "corruption on earth" (*efsad-e fel-arz*); insulting the founder of the Islamic Republic of Iran and the Supreme Leader; and drug-related offences which fall under the jurisdiction of Revolutionary Courts. In these cases, the jurisdiction rests according to Article 315 of the CCP with special juvenile branches that have to be established in the Criminal Courts One of all provinces. The proceedings in these special juvenile branches are, however, supposed to be covered by the same juvenile justice regulations governing the Court for Children and Adolescents.[214]

According to the CCP, the Court for Children and Adolescents shall maintain jurisdiction over juvenile cases even where the accused person reaches the age of 18 during the proceedings. However, if before the start of the proceedings the accused person reaches the age of 18, the Court for Children and Adolescents will no longer be the competent court and the case will be investigated in the relevant adult criminal court which has jurisdiction over the offence. Note 2 to Article 304 states that the accused person will continue to enjoy all the privileges applicable to individuals who are tried by the Court for Children and Adolescents.

The Court for Children and Adolescents can convene with one presiding judge and one advisor, who merely has an advisory role and may not sit on the bench.[215] The judges serving in the Court are directly appointed by the Head of the Judiciary. They must have at least five years of judicial experience. Other criteria such as their marital status, age, and whether they are parents themselves will be assessed in determining their eligibility for the position.[216] The Court will be assigned a number of male and female advisors,[217] who are appointed for a period of two years.[218] If the accused is a girl, at least one of the advisors must be a woman.[219]

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[213] Under Note 1 to Article 304 of the new CCP, a child is an individual who has not reached the age of puberty as defined in Iran under Shari'a as nine lunar years for girls and 15 lunar years for boys.

[214] New CCP, Article 315.

[215] New CCP, Article 298.

[216] New CCP, Article 409.

[217] New CCP, Article 410.

[218] New CCP, Note 1 to Article 410.

[219] New CCP, Note 2 to Article 410.

Sentences issued against juvenile offenders are subject to appeal regardless of the severity of the prescribed punishment.[220] The verdicts of the Court for Children and Adolescents may be appealed to a branch of the Provincial Court of Appeal, which is designated by the Head of the Judiciary to handle such appeals. The verdicts of the special juvenile branches of Criminal Courts One are appealed to the Supreme Court.

Military Courts have jurisdiction over offences committed by police and military personnel when they relate to their professional and legal duties and responsibilities. Military Courts include Military Court One, Military Court Two, the Military Court of Appeal, Wartime Military Court One, Wartime Military Court Two, and Wartime Military Court of Appeal. A separate Code of Criminal Procedure for the armed forces was passed in November 2014.

7.1 EQUALITY BEFORE THE LAW AND COURTS

International law and standards prohibit discrimination in law and practice, and require states to ensure that all individuals are entitled to equality before the law and to equal protection of the law. Article 26 of the ICCPR states:

> *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.*

Iran's Constitution enshrines the principle of equality but subjects it to significant qualifications that permit discrimination on various grounds and uses a language that indicates there are "desirable" forms of discrimination. Article 20 states: "All members of the nation, both men and women, are entitled to equal protection of the law and shall enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria." Article 3 provides: "[T]he government of the Islamic Republic of Iran has the duty of directing all its resources to the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and intellectual spheres" and to "securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law". The authorities' interpretation of broad and vaguely worded qualifications such as "in conformity with Islamic criteria" has resulted in an array of provisions that discriminate or have a discriminatory impact on various grounds, including religion, ethnicity, political opinion, gender, sexual identity and sexual orientation.

Iran's legal system entrenches discrimination based on gender by giving women a subordinate status relative to men, denying them equality before the law.

Under the Civil Code, women are denied equal rights with men, including with respect to marriage, divorce, child custody and inheritance. For instance, men can divorce their wives without reason, although certain conditions apply, such as paying alimony (Article 1133). A woman who seeks divorce must prove that she is living in conditions of severe hardship that make the continuation of marital life intolerable. Examples of such hardship include addiction of the husband to drugs or alcohol or being subjected to domestic violence (Article 1130). Men have the exclusive right to have at least two permanent spouses in polygamous marriages[221] and as many spouses as they wish in situations of *sigheh* ("temporary marriage") (Articles 1075-1077).[222]

Women are also assigned a subordinate status as compared to men under the 2013 Islamic Penal Code. Article 147 sets the age of criminal responsibility lower for girls than for boys, the former at nine lunar years

[220] New CCP, Article 445.

[221] Parliament's Research Centre (*Markaz-e Pajoohesh-haye Majles*), "Family Protection Law", 4 February 1975, Articles 16-17, available at rc.majlis.ir/fa/law/show/97187 (accessed on 20 November 2015). See also the website of Parliament's Research Centre, "The Civil Code", Article 942, 31 October 1935, available at rc.majlis.ir/fa/law/show/92778 (accessed on 2 December 2015) (Parliament's Research Centre, "The Civil Code").

[222] Parliament's Research Centre, "The Civil Code".

(8.7 solar years), the latter at 15 lunar years (14.6 solar years). The Code accords a woman's testimony half the value of that of a man in some legal proceedings[223] and sets the amount of *diyeh* to be paid as reparation for criminally causing the death of a woman at half that payable for causing the death of a man.[224]

The Islamic Penal Code fails to criminalize marital rape as men are entitled to unhampered sexual access to their wives. Under the Code, all sexual relations falling outside heterosexual married life are criminalized. This includes all sexual activity between consenting adults of the same sex.

Non-Muslims are also treated unequally in some instances and are subject to heavier punishments than Muslims for the same offences. For example, if an unmarried non-Muslim man is convicted of having sexual relations with an unmarried Muslim woman, the man would be sentenced to death, whereas an unmarried Muslim man would face a sentence of flogging.[225] The same is applicable to a non-Muslim man who takes the "active" role in anal sex with a Muslim man; he would face the death penalty whereas a Muslim man would face a sentence of flogging.[226] If a Muslim is murdered, the murderer is sentenced to *qesas*. If a non-Muslim murders another non-Muslim, the murderer again will be sentenced to *qesas*, but if a Muslim murders a non-Muslim, there is no penalty of *qesas* stipulated.[227] In such cases, the murderer could be prosecuted under Article 612 of the Islamic Penal Code, which prescribes imprisonment of three to 10 years, but only if "his action disturbs public order, protection or security of society, or incites him or others".

Shi'a clerics are not treated in the same way as other citizens before the law. All court cases involving clerics, regardless of the offence, are tried by the Special Court for the Clergy (SCC). This special court, which was established by a directive of Ayatollah Khomeini, the first Leader of the Islamic Republic, and which has no basis in the Constitution, operates according to its own regulations outside the framework of the judiciary, under the direct control of the Supreme Leader. Defendants can only be represented by other clerics who have been approved to stand before the SCC and are permitted to defend those who appear before it.

7.2 INDEPENDENCE OF THE JUDICIARY

International fair trial standards require the independence of courts and judges. The right to trial by a competent, independent and impartial tribunal is provided for under Article 10 of the UDHR, Article 14(1) of the ICCPR, and Article 40(2)(b)(iii) of the CRC.

The independence of the courts is essential to a fair trial and a prerequisite of the rule of law. Individuals involved as decision-makers in a case must be free to decide matters before them independently and impartially, on the basis of the facts and in accordance with the law, without any interference, pressures or improper influence from any branch of government or elsewhere. Principle 4 of the Basic Principles on the Independence of the Judiciary states: "There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision."[228]

Iran's Constitution provides for the independence of the judiciary by stating, in Article 156: "The judiciary is an independent power, the protector of the rights of the individual and society, responsible for the implementation of justice…" This is reiterated in Article 3 of the new CCP, which asserts: "Judicial tribunals must, impartially and independently, investigate the charges against an individual in the shortest period possible…" Despite these legal and constitutional guarantees, the method of appointment of the highest authorities of Iran's judiciary cast doubts over its independence as it effectively allows interference of the executive in judicial affairs. Under Article 157 of the Constitution, the Supreme Leader, who is the highest political authority of the country and the head of state, directly appoints the Head of the Judiciary for a period of five years. The Head of the Judiciary in turn directly, but with input from the Supreme Court's judges, appoints the Head of the Supreme Court and the Prosecutor General.[229] This selection procedure,

[223] The 2013 Islamic Penal Code, Article 199.

[224] The 2013 Islamic Penal Code, Article 550.

[225] The 2013 Islamic Penal Code, Article 224(p).

[226] The 2013 Islamic Penal Code, Note 1 to Article 234.

[227] The 2013 Islamic Penal Code, Article 310 of the 2013.

[228] UN Basic Principles on the Independence of the Judiciary, 1985, available at www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx

[229] Constitution of the Islamic Republic of Iran, Article 162, available at www.servat.unibe.ch/icl/ir00000_.html

which is based on the unilateral decision of the head of state on the basis of highly subjective criteria,[230] is particularly concerning given the scope of the powers granted to the Head of the Judiciary under Iranian law. The Special Rapporteur on the independence of judges and lawyers has expressed concern over the level of the Supreme Leader's influence on Iran's judiciary.[231]

Under Article 163 of Iran's Constitution: "The conditions and qualifications to be fulfilled by a judge will be determined by law, in accordance with religious criteria."[232] These conditions, which are set out in more detail in Article 13 of the Executive By-law on Absorption, Selection and Traineeship of Judgeship Applicants and Recruitment of Judges, include: Iranian nationality; faith and practical commitment to Islam; practical commitment to the Constitution and the principle of *velayat-e faghih* ("rule of a Muslim jurist"); and lack of any affiliation with illegal groups, parties and organizations.[233] They must also be between 22 and 36 years of age at the time of applying, have been born in wedlock, and have done their military service. Under Article 3, the applicants must have a bachelor degree in law or in other subjects such as judicial sciences, Islamic jurisprudence and law, and theology. Clerics who have graduated from seminaries at level two are also eligible to apply to be a judge.

Applications for judgeships are first assessed by the Department of Selection of Judges, which must express its opinion on applicants to a selection board within four months. As part of its assessment, the Department conducts an investigation into the applicants' political and religious beliefs. This is done through queries sent to various bodies including the Intelligence Department of the Judiciary and the Ministry of Intelligence as well as interviews and "local investigation".[234] The outcome of the Department's investigation will then be submitted for a final decision to a selection board composed of three judges or other officials from the judiciary directly appointed by the Head of the Judiciary for a period of three years. The Board, in determining the eligibility of the applicants, must take into consideration the report of the Department on the "general competency" of the applicants.[235]

The vetting process for recruitment of judges under Iranian law runs contrary to international standards on qualifications and selection of judges as it effectively allows the judiciary to exclude any individual who fails to adhere to state-sanctioned political and religious ideologies. Alarmingly, similarly draconian criteria may be resorted to in order to subject judges to disciplinary penalties that include a permanent ban on holding governmental positions, a permanent ban on judicial positions, and suspension from work for between one month and one year, thus undermining their independence.[236]

The Supervisory Law on Judges' Conduct (Supervisory Law), passed in 2011, sets out the procedure through which disciplinary offences of judges must be dealt with.[237] Under the Law, the Supreme Disciplinary Court for Judges is the competent tribunal with jurisdiction over disciplinary offences committed by judges. These offences are named under Articles 14 to 18 of the Law and attract penalties of various degrees depending on their severity. While the prohibited conduct under the Supervisory Law includes actual breaches of the code of conduct for judges, it contains vaguely worded offences that effectively enable the Court to arbitrarily dismiss judges for conduct they find undesirable. For example, under Article 17(6) of the Supervisory Law, "conduct contrary to judicial status" is subject to penalties which include permanent ban on holding governmental and judicial positions. The Note to the Article defines "conduct contrary to judicial status" as any conduct which is criminalized as an intentional crime under Iranian law or "conduct that is contrary to apparent custom of judges and is reproached by judges".

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[230] Under Article 157 of the Constitution, the Head of the Judiciary must be a Muslim jurist familiar with judicial affairs and must possess qualities such as fairness and prudence.

[231] Special Rapporteur on the independence of judges and lawyers, *Report to the Commission on Human Rights*, E/CN.4/2001/65, para. 116, available at bit.ly/1PaSewp

[232] Constitution of the Islamic Republic of Iran, available at www.servat.unibe.ch/icl/ir00000_.html

[233] Executive By-law on Absorption, Selection and Traineeship of Judgeship Applicants and Recruitment of Judges, 18 May 2013, available at rooznamehrasmi.ir/Laws/ShowLaw.aspx?Code=927 (accessed on 3 February 2016).

[234] Executive By-law on Absorption, Selection and Traineeship of Judgeship Applicants and Recruitment of Judges, Articles 14, 15 and 16.

[235] Executive By-law on Absorption, Selection and Traineeship of Judgeship Applicants and Recruitment of Judges, Article 21.

[236] Supervisory Law on Judges' Conduct, Article 13, available on the website of the Islamic Parliament Research Centre, at rc.majlis.ir/fa/law/show/799728 (accessed on 05 February 2016).

[237] The Supervisory Law on Judges' Conduct, 29 October 2011, available at bit.ly/1UKupx0 (accessed on 3 February 2016).

The Supervisory Law provides for another tribunal – the Supreme Court for Investigating Judges' Competency (the Competency Court) – that must investigate the "legal and religious competency" of judges when they have been doubted by officials, including the Head of the Judiciary, the Head of the Supreme Court, and the Prosecutor General.[238] The Law does not provide any clarification about criteria based on which these officials could cast doubt over a judge's competency, thus putting judges at risk of arbitrary dismissal. The failures of the Supervisory Law are compounded by Article 164 of the Constitution, which allows the Head of the Judiciary, after consultation with the Head of the Supreme Court and the Prosecutor General, to remove or move judges when "the interest of society" requires it.

Under Principle 18 of the Basic Principles on the Independence of the Judiciary, "[j]udges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties." Principle 19 requires that "all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."

Iranian law fails to uphold another key requirement for the independence of the judiciary. Under international law, judges must be competent and should be selected on the basis of their legal training, experience and integrity. States must also take steps to ensure the appointment of qualified women and members of minority communities in order to combat discrimination. Principle 10 of the Basic Principles on the Independence of the Judiciary states:

> *In selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate of judicial office must be a national of the country concerned, shall not be considered discriminatory.*

In breach of international law, Iranian legislation allows for discrimination on the grounds of religion, political opinion and birth as it bars non-Muslims, those born outside wedlock and those critical of the system from filling judgeship positions. While the Executive By-law on Absorption, Selection and Traineeship of Judgeship Applicants and Recruitment of Judges does not expressly exclude women from becoming judges, Iranian women are barred from acting as trial judges. The 1982 Law on Conditions of Selection of Judges, which remains in force, states that "judges shall be selected from qualified men".[239] A 1985 amendment to the Law allowed qualified women to act as advisors in some courts but did not lift the ban.[240] Currently, a number of women have been appointed to roles under the title of "judge", in particular in family courts. However, they do not have the right to rule on the merits of a case or issue verdicts, and may only advise male judges.

7.3 IMPARTIALITY OF COURTS

Everyone charged with a criminal offence has the right to an impartial tribunal. The impartiality of judicial bodies requires that all decision-makers in a criminal case be unbiased and perceived as unbiased. Judges and jurors must be driven by the interests of justice. They must not have pre-formed opinions about the cases in question, and must not pursue the interest of one of the parties. Individuals charged with criminal offences must be able to challenge the impartiality of the court.

Iran's laws guarantee the impartiality of courts and other bodies exercising judicial functions. They provide for recusal of judicial authorities if their impartiality is doubted, and disciplinary punishments for those found to have breached the principle of impartiality. Despite these guarantees, the new CCP, similarly to the old Code, suffers from major flaws that undermine the principle of impartiality of courts. The resulting lack of impartiality is due to provisions of the Code which, in some circumstances, place investigating duties on judges who preside over the trial.

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[238] Supervisory Law on Judges' Conduct, Article 44.

[239] The Law on Conditions of Selection of Judges, 4 May 1982, available at bit.ly/1JYm0pt (accessed on 3 February 2016).

[240] The Law to Add Five Notes to the Law on Conditions of Selection of Judges, 14 February 1985, available at rc.majlis.ir/fa/law/show/91044 (accessed on 3 February 2016).

Under Article 3 of the new CCP, "[j]udicial tribunals must, impartially and independently, investigate the charges against an individual in the shortest period possible…" Article 372 prohibits judges from expressing any opinion that could imply the accused person's guilt or innocence before the end of the proceedings and verdict. The Supervisory Law on Judges' Conduct subjects breaches of impartiality, such as expressing opinions about the merits of the case before the trial has concluded, to disciplinary penalties. Under the CCP, investigators are obligated to conduct investigations with impartiality and not to discriminate between uncovering issues that are for or against the interests of the accused.

The new CCP specifies circumstances in which judges must recuse themselves. The parties to a case are also permitted to challenge a judge's impartiality on grounds that include: family connections by blood or marriage to the parties to the case; an employment relationship between the judge and one of the parties; and if the judge has previously expressed their opinion about the merits of the case in any capacity or has acted as a witness for one of the parties.[241]

The Code gives the parties the right to request the recusal of a judge prior to the verdict. The judge may accept the request and recuse himself[242] or reject it. In such cases, the rejection may be appealed within 10 days. The parties to a case can also, under Article 424, request the recusal of the Prosecutor or the investigator on the same grounds that could provide for a judge's recusal.

Iran's judicial system, however, continues to suffer from the legacy of when the Office of the Prosecutor was abolished for being un-Islamic. The law retains the position whereby the investigation of some offences, in particular "crimes against decency", falls within the remit of the trial court. This is despite the existence of a body that is specifically in charge of conducting investigations and prosecuting. Under Articles 102 and 306 of the CCP, the trial judge should directly investigate the offences of *zena* ("adultery" or "extramarital fornication"), *lavat* ("male-male anal penetration"), and other offences against "decency". In addition, courts are entrusted to directly investigate some crimes considered to be minor[243] as well as offences committed by children under the age of 15.[244]

The new CCP also appears to entrust judges with investigative powers in some circumstances. According to the Note to Article 92, for some offences where the investigator is not available and a substitute investigator is not accessible, a court judge will be delegated with the responsibilities that normally fall within the authority of an investigator. The judge should continue to act in this capacity as long as the circumstances remain unchanged. The law does not clarify whether a judge who has acted as an investigator and been involved in the investigation phase is permitted to be a decision-maker at trial.

Provisions of the new CCP allowing the direct investigation of some offences by judges presiding over the trial are in flagrant violation of the right to an impartial tribunal as they allow the judicial officials who have conducted the investigations, including interrogating the accused, and therefore have a pre-trial opinion about the case to act as trial judges.

7.4 CLOSED HEARINGS

Under international law, everyone is entitled to a public hearing. This right, which may only be restricted in prescribed and narrowly defined circumstances, means that not only the parties in a case, but also the general public, are entitled to attend the hearings. Among the circumstances under which the public's access to part or all hearings may be restricted are: morals[245]; public order (which primarily relates to the order within the courtroom)[246]; national security in a democratic society[247], when the interests of the private

[241] New CCP, Article 421.

[242] New CCP, Article 422.

[243] Under Article 340, these include *ta'zir* crimes of degrees seven and eight.

[244] New CCP, Note 1 to Article 285.

[245] HRC, *Z.P. v Canada*, Communication no. 341/1988, CCPR/C/41/D/341/1988, para. 4.6, available at www1.umn.edu/humanrts/undocs/session41/341-1988.html

[246] ICCPR, Article 14(1); HRC, *Gridin v Russian Federation*, Communication no. 770/1997, CCPR/C/69/D/770/1997, para. 8.2, available at bit.ly/23Nc201

[247] ICCPR, Article 14(1).

lives of the parties require it[248]; and when the courts determine, in special circumstances, that publicity could prejudice the interest of justice[249].

The right to an open hearing is recognized under Iranian laws, including the Constitution and the CCP. Despite this, the vague and broadly defined circumstances under which the right to an open hearing may be restricted effectively allow judges to hold trials in camera at will. Article 165 of Iran's Constitution states: "Trials are to be held openly and members of the public may attend without any restriction unless the court determines that an open trial would be detrimental to public morality or order, or if in cases of private disputes, the parties to the dispute request that the trial be held in a closed session."[250]

This is reiterated in Article 352 of the new CCP, which states that court hearings are public[251] except in cases of "forgivable crimes" between two parties and one side requests a closed hearing. "Forgivable crimes" are those which do not have a public angle, which are prosecutable upon private complaint, and whose prosecution ceases if the plaintiff drops the charges. In addition to these circumstances, the court may issue an order for a closed hearing after the Prosecutor's opinion has been presented, in family disputes and in cases of crimes against decency or morality and where an open hearing would disturb public safety or undefined "religious or ethnic sentiments".

The circumstances in which a court can rule against a public hearing in Iran's legal system include some that are internationally recognized, including public order and safety and morality. However, the permissible circumstances for a closed trial under the CCP exceed those recognized by international law and standards and grant judges wide interpretive powers.

7.5 PRESUMPTION OF INNOCENCE

The right to presumption of innocence is a fundamental principle of the right to a fair trial, as recognized in Article 14.2 of the ICCPR and Article 40(2)(b)(i) of the CRC. Everyone charged with a criminal offence must be presumed innocent, and treated as innocent, unless and until they are convicted in proceedings which comply with international standards for fair trial. This right applies to all stages of the proceeding; before formal charges are filed and until the conviction is upheld following an appeal.

A fundamental aspect of the principle of presumption of innocence is the prohibition on compelling those charged with criminal offences to testify against themselves or to confess guilt. The prohibition includes any form of coercion, whether direct or indirect, physical or psychological, and the exclusion of any evidence elicited as a result of torture and other ill-treatment. Presumption of innocence requires that decision-makers in a case refrain from prejudging any case and that the authorities, including prosecutors, police and government officials, do not make statements indicating an opinion about the guilt of an accused person before the conclusion of criminal proceedings, or following an acquittal. It also places an obligation on the authorities to discourage the media from prejudging a trial or influencing its outcome. This supervision must be carried out in a manner consistent with the right to freedom of expression and the public's right to information about court proceedings.[252]

Presumption of innocence is recognized under Iranian law, including in the Constitution, which in Article 37 states: "Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court." The principle is reiterated in Article 4 of the new CCP. Despite this, legal shortcomings, including in the 2013 Islamic Penal Code and the new CCP, undermine the protection of this right in practice.

An underlying root cause of inefficient protection of presumption of innocence is the heavy reliance of Iran's criminal justice system on confessions as evidence, in particular for establishing guilt for offences that fall under *hodud* crimes. The 2013 Islamic Penal Code defines confessions as self-incriminating statements

[248] ICCPR, Article 14(1).

[249] ICCPR, Article 14(1).

[250] Constitution of the Islamic Republic of Iran. English translation available at www.servat.unibe.ch/icl/ir00000_.html

[251] The Note to the Article defines a public hearing as one where there is no hindrance for the attendance of the general public.

[252] HRC, General Comment 32, para. 30, available at www.refworld.org/docid/478b2b2f2.html

made by the accused.[253] Under Article 171, confessions are accorded the primary weight. The provisions state that "whenever the accused confesses, the confession is valid against them and other evidence will not be followed".

Iran's law recognizes that in some circumstances confessions may not be relied upon. Article 171 of the Penal Code states: "[I]f the investigation of the judge reveals that other signs and evidence are in conflict with the accused person's confessions, the court shall conduct the necessary investigations and other evidence must be mentioned in the verdict". Similarly, under the new CCP, if confessions are the basis of a verdict, the trial judge must hear them first-hand in court.[254] If the court believes that confessions have been voluntary and there are no doubts about their accuracy, it can proceed to issue a verdict on their basis.[255] Under Article 389(e) of the new CCP, "the court will start investigating the accused" if there is doubt about "the accuracy of the confessions".

Despite this recognition, Iranian law lacks detailed provisions on issues that are detrimental in criminal proceedings, including on standard of proof and on whom the burden of proof rests. Presumption of innocence requires the burden of proof to be on the prosecution to show, beyond reasonable doubt, that statements of the accused have been given voluntarily. Both the Islamic Penal Code and the new CCP fail to clarify the standards of proof and who bears the burden of proof. They merely oblige the judge to re-investigate the accused if there are any doubts about the accuracy of their statements.

The value attached to confessions for establishing guilt in Iranian law, which places confessions on top of the hierarchy of evidence, compounded by the absence of laws clarifying the burden of proof, in practice leads to many situations where defendants are tortured, otherwise ill-treated or coerced into signing "confessions" of guilt.

Protection of the presumption of innocence also requires that any decision to detain a person pending trial and the length of such detention is consistent with this principle. Laws that provide for obligatory pre-trial detention as well as those which set the maximum time of pre-trial detention in relation to the possible penalty for the alleged offence may violate the right to presumption of innocence and the right to trial within a reasonable time or release, as guaranteed under Article 9(3) of the ICCPR. The new CCP, contrary to the old Code, sets a limit for extension of temporary detention, but continues to provide for disproportionately long periods of detention that can last up to two years for some offences (see Chapter 5.6 "Right to release pending trial").

Alarmingly, the new CCP also contains a provision that blatantly undermines the presumption of innocence. Article 13 includes circumstances under which the investigation into a criminal case would cease. These include: the death of the accused, a statute of limitations, repentance of the accused as provided for by law, amnesties, and pardoning by the plaintiff. The Note to the Article addresses the issue of the accused person's insanity after charges are filed. The Note states:

> *Whenever the offender loses their sanity before the final conviction, the investigations and trial shall stop until their recovery unless in* hagho-alnas *crimes [forgivable crimes][256] the evidentiary situation is such that the accused would not have been able to clear himself of the charges even if he was sane. In such cases, the legal guardian of the accused shall be notified within five days in order to appoint a lawyer. If they do not appoint a lawyer, regardless of the charges and the applicable punishment, the accused shall be assigned a lawyer and the investigation and trial shall continue.*

To indicate that in some circumstances the weight of evidence against the accused person is such that, regardless of their sanity, they would not be able to prove themselves innocent flouts the guarantees of presumption of innocence as enshrined in the Constitution and the CCP.

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[253] The 2013 Islamic Penal Code, Article 164. Rules of evidence in Iran's criminal justice system are contained in Section Five of the 2013 Islamic Penal Code and not the CCP.

[254] New CCP, Note 2 to Article 119.

[255] New CCP, Article 360.

[256] "Forgivable crimes" are those, which do not have a public angle, are prosecutable upon private complaint, and their prosecution ceases if the plaintiff drops the charges.

7.6 EQUALITY OF ARMS

A fundamental requirement of a fair hearing is the principle of "equality of arms" between the parties in a case. The principle is paramount in criminal proceedings where the prosecutors, representing the State, have sufficient resources. The principle therefore requires, among other things, that the accused person has adequate time and facilities to prepare a defence (see Chapter 5.13).

Iranian law does not contain any provisions pertaining to the principle of equality of arms and does not require the disclosure of inculpatory and exculpatory material by the prosecution to the accused and their lawyer. Article 93 of the CCP obligates the investigator to conduct the investigations with impartiality and not to discriminate between uncovering issues that are in favour of the accused and those that are against them. However, it does not grant the accused and their lawyer the right to access the inculpatory and exculpatory material in the possession of the prosecution.

Furthermore, the CCP, in Article 191, gives the investigator broad authority to withhold information from the accused and their lawyers if they determine that disclosure "is in contradiction with uncovering of the truth, or in cases of crimes against national or external security of the country". Similarly, the investigator is permitted to restrict access of the plaintiff to the case material. Under Article 100 of the new CCP, the plaintiff is permitted to access and read the case materials "which are not in contradiction with uncovering the truth". The investigator, however, may bar the plaintiff from accessing part or all of the material on the same grounds that they may bar the accused and their lawyer – when they determine that disclosure "is in contradiction with uncovering of the truth."[257] The Code imposes a blanket prohibition on the disclosure of classified documents and material containing information yielded from the investigation of crimes against decency and crimes against national and external security to the plaintiff.[258]

The new CCP also fails to fully guarantee other key requirements of the principle of "equality of arms", including the right to legal counsel (see Chapter 5.9 to 5.13) and the right to be present during the trial and appeal (see Chapter 7.9).

7.7 USE OF EVIDENCE OBTAINED UNLAWFULLY

International standards require that statements elicited as a result of torture or other ill-treatment or other forms of coercion are excluded as evidence in criminal proceedings, except in circumstances where they are brought against suspected perpetrators of such abuse. Exclusion of such evidence serves as an important safeguard against torture and other ill-treatment as it annihilates one of its key purposes – extraction of confessions that would be relied on during criminal proceedings. If effectively excluded, the motivation for obtaining them and therefore the use of torture and other ill-treatment diminishes as an important incentive is left out.[259] This rule not only applies to self-incriminating statements made by the accused but also to any statements made by any other individual that are established to have been obtained under torture or other ill-treatment.

The HRC has stated in General Comment 20: "It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment." The Committee Against Torture has emphasized the need "in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence", raising concern about laws that merely mention exclusion of torture-tainted evidence as "general principles". The Committee has clarified: "[T]he absence of detailed procedural norms pertaining to the exclusion of tainted evidence can diminish the practical applicability of these general principles…"[260]

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[257] New CCP, Note 1 to Article 100.

[258] New CCP, Note 2 to Article 100.

[259] Amnesty International, *Combating torture: A manual for action* (Index: ACT 40/001/2003), p. 109, available at www.amnesty.org/en/documents/act40/001/2003/en/

[260] Committee Against Torture, *Report to the General Assembly*, A/54/44, para. 45, referring to Yugoslavia, available at bit.ly/1K2WYp2

Article 16 of the UN Guidelines on the Role of Prosecutors states:

> *When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.*

Iran's Constitution in Article 38 declares confessions extracted under duress as void and inadmissible. This is reiterated in Article 1(9) of the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights, which prohibits reliance on confessions extracted through torture, and Article 168 of the 2013 Islamic Penal Code, which deems a confession "admissible only if at the time of confession the confessor is sane, pubescent, intended [to make the confession] and free."[261]

Despite these provisions, the prohibition on admitting torture-tainted evidence is only formulated as a general principle. Iranian laws do not contain detailed provisions on the inadmissibility of unlawfully obtained confessions or other evidence. For example, Article 169 of the Islamic Penal Code states: "A confession which is taken under coercion, force, torture, or mental or physical abuses or ill-treatment, shall not be given any validity and weight". Article 360 of the new CCP allows the court to issue a verdict on the basis of confessions if there exists no doubt about their accuracy or that they have been voluntarily given by the accused person. These provisions, however, are silent on what constitutes an involuntary confession or statement and who bears the burden of proving that a statement has been voluntary. They further fail to specify procedures that must be followed by judges and prosecutors to establish whether a statement is lawful and admissible, including automatic and immediate medical examination where the accused alleges that a statement has been extracted under torture or other ill-treatment.

Instead, the law appears to leave determination of whether a statement is admissible to the subjective assessment of the trial judge. Article 169 of the Islamic Penal Code, which renders void confessions obtained under coercion, force and torture, obligates "the court to investigate the accused again". Similarly, the new CCP in Article 389(e) states "the court will start investigating the accused" if there is doubt about "the accuracy of the confessions". Neither of the provisions includes any clarification as to what such investigation entails.

7.8 RIGHT TO APPEAL

APPEAL COURTS

Provincial Court of Appeal. Based in the capital of each province, this court is composed of a presiding judge and two associate judges and has jurisdiction to consider all appeal requests apart from those falling under the jurisdiction of the Supreme Court.[262] Under the amendments to the CCP passed in June 2015, however, the court's sessions may convene with the presence of two judges only.

The Supreme Court's branches are composed of a presiding judge and two associate judges. Under the amendments to the CCP passed in June 2015, however, the court's sessions may convene with the presence of two judges only. As the highest judicial body of the country, the Supreme Court is responsible for overseeing the implementation of the law and ensuring uniformity of judicial precedent.[263] The Head of the Supreme Court is appointed by the Head of the Judiciary for a period of five years.[264] Under Article 110(10) of the Constitution, the Supreme Court has jurisdiction over cases where the President is in breach of his legal responsibilities.

[261] Iran Human Rights Documentation Centre, "English Translation of Books I & II of the New Islamic Penal Code", 8 April 2014, available at bit.ly/20LbR3g

[262] New CCP, Article 426.

[263] Constitution of the Islamic Republic of Iran, Article 161, available at www.servat.unibe.ch/icl/ir00000_.html

[264] Constitution of the Islamic Republic of Iran, Article 162.

Contrary to many other legal systems, the Supreme Court in Iran does not consist of a single panel of judges whose decisions constitute precedents that are binding on courts across the country. Iran's Supreme Court is composed of various branches, some of which are in Qom, central Iran, and some in Mashhad, Khorasan province. Similar to courts of first instance, different branches of the Supreme Court may issue contradictory opinions on identical issues. In such cases, the General Board of the Supreme Court may convene a session to review the conflicting decisions and issue a *ray-e vahdat-e raviye* ("verdict of unified precedent") which is binding on all courts. The General Board consists of the Head of the Supreme Court or his deputy, the Prosecutor General or his representative, and at least a third of the head of its branches, associate judges and deputies.

Everyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court. The right to appeal guarantees that a conviction arising from errors of law and fact, or breaches of the accused person's rights, is not final.

Iran's laws provide for the right to appeal only for those convicted of criminal offences that reach a certain level of severity. Under Article 427 of the new CCP, the verdicts of criminal courts may be appealed in the Provincial Court of Appeal or the Supreme Court. The Article, however, provides that the verdicts of criminal courts are final and not subject to appeal if they concern offences that are considered to be of minor character. These offences include *ta'zir* crimes of degree eight, and financial compensation for inflicting bodily injuries which do not amount to more than one-tenth of a full *diyeh*.[265] *Ta'zir* crimes of degree eight are those punishable by imprisonment of up to three months, fines of up to 10 million rials (about US$345), and a flogging sentence of up to 10 lashes. The law therefore may be in breach of the ICCPR as the right to have a conviction and sentence reviewed by a higher tribunal, which is guaranteed under the Covenant, is not confined to serious offences. The HRC has raised concerns about the exclusion of individuals convicted of minor criminal offences from accessing mechanisms of appeal.[266]

With the exception of offences deemed to be minor, conviction of all other crimes can be appealed in either the Provincial Court of Appeal or the Supreme Court, depending on the seriousness of the crime. Under Article 426 of the new CCP, the competent tribunal for the review of criminal convictions, apart from those that should be appealed in the Supreme Court, is the Provincial Court of Appeal. Grounds for appeal under Article 434 include: claims of invalidity of the evidence on which the lower court has relied; claims that the conviction is in violation of laws; claims of lack of jurisdiction of the court which issued the sentence; allegations of impartiality of the lower court's judge; and claims of dismissal of the evidence presented by the accused. Individuals residing in Iran have 20 days to lodge an appeal after the verdict has been communicated to them. This period is extended to two months for those residing outside the country.

The Provincial Court of Appeal has jurisdiction to review and address questions of law and fact. It may: uphold the sentence; overturn the sentence and acquit the accused for any legal reason;[267] or overturn the sentence and issue a new verdict if it determines that the conviction has violated the law.[268] It may not, however, increase discretionary punishments or disciplinary and corrective measures unless the sentence stipulated under the initial verdict is below the minimum punishment prescribed under the law.[269]

Under the CCP, conviction of crimes punishable by more severe punishments is subject to appeal in the Supreme Court. These include: crimes punishable by death, amputation or life imprisonment; *ta'zir* crimes of degree three and higher; intentional physical assault punishable by more than half of a full *diyeh*; and political and press offences.[270] A conviction may be appealed in the Supreme Court on the grounds of violations of law in relation to the accused person's charges and the prescribed punishments; allegations of

[265] The full *diyeh* was set at the equivalent of US$56,958 in the year 1394 in the Iranian calendar (2015). Accordingly, offences punishable by financial compensation under US$5695.80 may not be appealed.

[266] HRC, *Terrón v Spain*, Communication no. 1073/2002, CCPR/C/82/D/1073/2002, para. 7.2, available at www1.umn.edu/humanrts/undocs/html/1073-2002.html

[267] In such cases, if imprisoned, the accused shall be immediately released by order of the court.

[268] New CCP, Article 455.

[269] New CCP, Article 458.

[270] New CCP, Article 428.

breach of procedural regulations with a degree of importance that would render the verdict void; and incompatibility of the evidence with the material on which the court relied.

The Supreme Court will uphold the sentence if the conviction has been in accordance with the law and has taken into consideration the reasons and evidence presented to the lower court. However, in cases where it is found that the lower court's verdict is in breach of the law, proceedings have violated procedural regulations, or the court has dismissed the evidence and information presented by the parties, the Supreme Court shall overturn the sentence. If overturning the sentence was the result of a general amnesty or because the conduct for which the accused was convicted is not considered an offence, the Supreme Court will not remand the case to a lower court for retrial. However, if the conviction has relied on incomplete investigation, the Supreme Court, upon overturning the sentence, will remand the case to the lower court that issued the sentence for retrial. In cases where the court of first instance lacked jurisdiction to rule on the case, the Supreme Court will remand the case to a competent court. In all other cases where the Supreme Court overturns a sentence, the case will be remanded to a court of first instance but not the court that issued the sentence.[271]

The Supreme Court therefore may only uphold or overturn a sentence but cannot increase or decrease a sentence. Moreover, with the exception of cases where the Supreme Court overturns the sentence but does not remand the case to a lower court (cases of general amnesties or where the conduct in question has not been criminalized), it is a court of first instance that will determine the merits of the case. In fact, in some circumstances the court of first instance may insist on the initial verdict. In such cases, if the verdict is appealed, the Supreme Court may uphold the very sentence that it had once overturned, provided that it finds the reasoning of the lower court convincing. However, if the Supreme Court overturns the sentence, the case must then be heard by the General Board of the Supreme Court, which may uphold or overturn the sentence. Court sessions relating to *r'ay-e esrari* ("insistence verdicts") must be attended by the General Prosecutor or their representative and the Board should hear their statement before making a decision.[272]

If the sentence is overturned by the Board, it will be remanded to a different court of first instance. The lower court must then issue a verdict "in accordance with the reasoning of the General Board".[273] However, the wording of the provision leaves it unclear whether the lower court is legally bound by the decision of the Board. The provision asserts that in such cases the verdict of the court of first instance is deemed final and cannot be appealed.

While the CCP provides for the right to appeal before a higher tribunal, the appeal proceedings, in particular before the Supreme Court, are of concern on various grounds. Firstly, those convicted of crimes punishable by serious and irreversible punishments such as the death penalty and amputation have access to just one level of appeal conducted in writing. This is because there is no intermediary tribunal between the court of first instance and the Supreme Court, and the appeal request on such cases must be lodged directly with the Supreme Court. A panel of one judge and two associate judges may then uphold the sentence in the absence of the parties to the case. Even more concerning are the last-minute amendments to the CCP, passed in June 2015, which reduced to two the number of judges whose presence is required for the court to convene.[274]

Secondly, even in cases where the Supreme Court overturns a sentence, the case will be remanded to a court of first instance, which could insist on issuing the original verdict. Moreover, the CCP appears to allow for the presence of the Prosecutor during proceedings in some circumstance where the accused is not permitted to participate, for example during the sessions of the General Board for determination of an "insistence verdict". This is in breach of the principle of equality, in particular equality of arms (see Chapter 7.9, "Right to be present during hearing and appeal").

Although the CCP has failed to address the shortcomings of Iran's criminal justice system with regards to a meaningful right to appeal, it includes a significant achievement with regards to the right to appeal for those sentenced to death for drug-related offences. The new Code, in Article 570, revokes Article 32 of the Anti-

[271] New CCP, Article 469.

[272] New CCP, Article 472.

[273] New CCP, Article 470(c).

[274] The Official Gazette, "The Amendments to the CCP", 22 June 2015, available at www.rrk.ir/Laws/ShowLaw.aspx?Code=5116 (accessed on 18 July 2015).

Narcotics Law, which, in flagrant violation of international law, left individuals sentenced to death for drug-related offences with no avenue to mount an appeal. Under Article 32 of the Anti-Narcotics Law, all death sentences passed were subject to confirmation either by the Head of the Supreme Court or the Prosecutor General, who were entitled to revise or quash the sentence if they found it contravened Islamic law or that the judge was not competent.[275]

APPLICATION FOR RETRIAL

Once convictions have been upheld and finalized, they may be implemented. However, the CCP allows the convicted individual, their lawyer or legal representative, the Prosecutor General and the Prosecutor overseeing implementation of sentences[276] to submit an *e'adeh dadresi* ("application for retrial") in limited circumstances. These circumstances, under Article 474 of the new CCP, are: 1) when a person has been convicted of murder and it comes to light that the deceased is in fact alive; 2) where multiple individuals are convicted of a crime but the nature of the commission of the offence is such that only one offender could have been involved; 3) where two individuals are separately convicted by different courts of the same offence and where the conflicting sentences indicate the innocence of one of the individuals; 4) where an individual has been issued with different sentences for the same offence; 5) where it is proved, in a court, that the basis of the sentence was forged documents or purged testimony; 6) where emergence of fresh evidence after the finalization of the sentence proves the innocence of the convicted individual; and 7) where the conduct for which someone has been sentenced is not a criminal offence or the punishment imposed exceeds the legal maximum.[277]

The grounds for application for retrial under the new CCP are more restrictive than those provided for under the old Code as the new Code no longer lists disproportionate punishment as a result of a judge's mistake and passage of more favourable laws as grounds for a request for retrial. This creates concern that convicted individuals may now be denied access to an appropriate way to benefit from more favourable laws.

In addition to the normal avenues to file a request for retrial as listed under Article 474, there exists an exceptional route whereby the Head of the Judiciary can directly intervene in finalized cases and instruct the Supreme Court to overturn them and issue a new verdict. Under Article 477 of the new CCP, the Head of the Judiciary is authorized to exercise this power if they determine that the verdicts in question are "evidently in contravention with Shari'a". In such cases, the Head of the Judiciary refers the case to branches of the Supreme Court which are specially allocated by them to handle such cases. These special branches "shall overturn the sentence, try the case both on merit and procedural grounds, and issue a verdict". The Article thus does not permit the Head of the Judiciary to unilaterally overturn a sentence they find to be in contravention of Shari'a, but appears to obligate the special branches to which the case is referred to comply with the order of the Head of the Judiciary and overturn the sentence. The Head of the Judiciary is thus effectively authorized to indirectly overturn judgements they deems evidently in conflict with Shari'a.[278]

In the context of Iran's judicial system, the broad authority granted to the Head of the Judiciary provides a window of opportunity to reverse unjust decisions and miscarriages of justice. However, it also lends itself to abuse. This is particularly alarming as, firstly, the Head of the Judiciary is directly appointed by the head of state and, secondly, the broad phrase of "evidently in contravention of Shari'a" allows the Head of the Judiciary to resort to uncodified laws to order that a judgement be overturned.

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[275] Article 32 states: "Death sentences issued by virtue of this act shall be final and enforceable after the endorsement of the Chairman of the Supreme Court or the Prosecutor General."

[276] New CCP, Article 475.

[277] New CCP, Article 474.

[278] Article 477 also constitutes an exception as it authorizes the special branches of the Supreme Court to rule on both the merits and the procedural grounds of a case.

7.9 RIGHT TO BE PRESENT DURING HEARING AND APPEAL

Everyone who has been charged with a criminal offence has the right to be tried in their presence and to an oral hearing. The right to be present at trial has been guaranteed by Article 14(3)(d) of the ICCPR. The HRC has further clarified: "[A]ll criminal proceedings must provide the accused person with the right to an oral hearing, at which he or she may appear in person or to be represented by counsel and may bring evidence and examine witnesses."[279]

The new CCP provides for the right of the accused to be present during trial and takes measures to ensure that sufficient attempts are made to notify the accused in sufficient time of the date of the hearing. Moreover, it preserves the right of the accused to a retrial in cases where they have been convicted in their absence. Regrettably, the Code does not provide for the same right during the appeal. The right to be present during a hearing before the Provincial Court of Appeal is not expressly provided for in law; it appears to have been left to the court's discretion. Furthermore, the proceedings before the Supreme Court are held in the absence of the accused person and their lawyers unless the court deems their presence necessary.

Article 342 of the CCP, which is under the section on Proceedings in Criminal Courts, obligates the court to summon the accused, the plaintiff, their lawyers, the Prosecutor and other relevant parties after scheduling a hearing. The period between the summons and the court hearing may not be less than a week.[280] A hearing may be rescheduled if the accused has a legitimate excuse. In cases where the accused person's place of residence is unknown and delivery of the summons is not possible, the hearing time and the content of the summons must be published in one of the national or local newspapers with a large circulation. The hearing date cannot be scheduled earlier than a month after the publication of the summons.

If the Court decides to proceed with a trial in the individual's absence, it should first issue a "trial in absentia order". The order should include the charges, the date of the proceedings and the consequence of failure to attend. It must be published twice, with a 10-day interval, in a newspaper with a large circulation. The hearing date cannot be scheduled earlier than a month after the publication of the summons.[281]

According to Article 406 of the CCP, an individual who has been convicted in their absence has a right to request *vakhahi* ("appeal before the same court") within 20 days of receiving the verdict. The law also requires the verdict to have been delivered through *eblagh-e vaghe'i* ("actual notification"); when legal documents and papers such as summons and court verdicts are delivered to the accused in person and a receipt of the delivery is obtained.[282] Although the law does not use the term retrial, *vakhahi* effectively provides for a retrial as the court, under Article 407, is obligated to schedule a hearing, invite the parties to attend the hearing, and hear the evidence and defence provided by them.[283] A verdict issued following a *vakhahi* hearing can be appealed.

The new CCP, however, does not expressly provide for the right of the accused to be present during the appeal proceedings when the appeal request is at the level of the Provincial Court of Appeals. It appears that the accused person's right to be present is at the discretion of the court. Under Article 450(c) of the Code, the Court of Appeal issues the order for the presence of all whose presence is necessary. The parties can attend in person or through their legal counsel, but the absence of the accused or their lawyers will not stop the proceedings. Article 451 stipulates: "In cases where the proceedings in the Provincial Court of Appeal

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[279] HRC, *Guerra de la Espriella v Colombia*, Communication no. 1623/2007, CCPR/C/98/D/1623/2007, para. 9.3, available at bit.ly/1nRyo0E; HRC, General Comment 32, paras 23, 28, available at www.refworld.org/docid/478b2b2f2.html; HRC, *Domukovsky, Tsiklauri, Gelbakhiani and Dokvadze v Georgia*, CCPR/C/62/D/623/1995, CCPR/C/62/D/624/1995, CCPR/C/62/D/626/1995, CCPR/C/62/D/627/1995, para. 18.9.

[280] New CCP, Article 343.

[281] New CCP, Note to Article 394.

[282] Article 406 states: "In all offences, with the exception of the *hodud* crimes whenever the accused or their lawyer do not attend any of the court hearings or do not submit a defence statement, the court shall issue a verdict in absentia after the proceedings. If the court has found the accused guilty, the verdict is subject to *vakhahi* within 20 days after the actual notification of the verdict. After the expiry of the *vakhahi* period, the sentence could be subject to *tajdid-e nazar* [appeal in the Court of Appeal] or *farjam khahi* [appeal in the Supreme Court]. The appeal period for those who reside outside the country is two months."

[283] Note 2 to the Article states that a sentence that has been issued in absentia will be enforceable after the *vakhahi* and appeal periods have elapsed. If the verdict has not been delivered to the accused through "actual notification", the convicted individual is permitted to request *vakhahi* within 20 days after they have learned of the verdict. In such cases, the implementation of the sentence will be halted.

require scheduling of a time and the presence of the parties, the proceedings shall take place with the presence of the prosecutor of the province's capital or one of his deputies or assistants…"

Furthermore, proceedings before the Supreme Court are generally held in the absence of the accused and their lawyers unless the court deems their presence necessary.[284] It remains unclear, however, whether the Prosecutor has a right to be present. The Code does not explicitly provide for the presence of the Prosecutor but the language it uses implies that the Prosecutor may be permitted to attend a session despite the absence of the convicted individual, in contravention also to the principle of equality of arms. Article 469 allows the parties to the case or their lawyers, "if they are present", to present their arguments with the permission of the judge. The Article, however, stipulates that the Prosecutor General, or his representative, must express their written and reasoned opinion in the court. The court, taking into account the content of the case file and the statements made in the court, issues its decision. The views and statement of the Prosecutor or his legal representative must be recorded in the verdict.

Under international standards, the right to be present during appeal depends on the nature of the proceedings in question. For example, it depends on whether the appeal court has jurisdiction to decide questions of law and fact or merely questions of law. Moreover, the principle of fairness, including equality of arms, require that at least the counsel for the accused is permitted to participate if the prosecutor is present in the proceedings and is granted an opportunity to put forward their arguments.

While the proceedings before Iran's Supreme Court are considered to be *shekli* ("procedural") as the court can only uphold or overturn a sentence and may not decrease or increase a sentence, the court does take into consideration questions of fact. For example, the court investigates compliance of the verdicts with law as well as the evidence of the case.[285] Furthermore, the presence of the accused or their lawyer during the Supreme Court proceedings appears to be of greater importance when taking into account the appeal system in Iran. The Supreme Court is the competent body with jurisdiction over the most serious offences that carry severe punishments, including the death penalty. Under the CCP, those convicted of such offences must directly appeal to the Supreme Court, which in turn will either uphold the sentence or remand the case to a court of first instance upon overturning the sentence. This means that such cases only undergo one level of appeal that may only assess questions of law.

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[284] New CCP, Article 468.

[285] New CCP, Article 469(a).

8. CONCLUSION AND RECOMMENDATIONS

Iran has come a long way since the years immediately following the 1979 revolution when, as a result of the almost total absence of the rule of law, thousands of individuals were arbitrarily detained and imprisoned with almost no regard for due process guarantees, tortured and summarily executed. Since then, relative order has gradually been restored to the justice system. However, it is still marked by inefficient laws, flawed reforms, and a judiciary that is subject to influence and interference from different quarters.

The new CCP is an improvement on the old Code. If effectively implemented, it could open a new and improved chapter for Iran's criminal justice system. However, the new Code has major shortcomings, which hinder Iran's compliance with international human rights law. The retrogressive amendments made to the Code in June 2015 just days before its entry into force aggravated its shortcomings and confirmed again the authorities' disregard for their international human rights obligations, including adherence to fair trial standards.

Iran has ratified various international human rights treaties, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Rights of the Child. By doing so, the Iranian authorities have pledged to uphold fair trial rights. This commitment will be meaningless if key human rights guarantees contained in the international human rights instruments to which Iran is a party are not fully incorporated into domestic law.

To this end, Amnesty International provides the following recommendations to the Iranian government:

RATIFICATION OF INTERNATIONAL TREATIES

- Ratify promptly and without reservation the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention for the Protection of All Persons from Enforced Disappearances; and the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;
- Ratify both Optional Protocols to the International Covenant on Civil and Political Rights;
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and opt in to the inquiry and inter-state mechanisms;
- Withdraw the reservation to the Convention on the Rights of the Child considering that it is of a general nature and incompatible with the object and purpose of the Convention, and ratify the (Third) Optional Protocol to the Convention on the Rights of the Child (on a communications procedure).

RIGHT TO LIBERTY

- Uphold the principle of legality and ensure that individuals are detained only on the basis of clearly defined, internationally recognizable offences in laws that are themselves consistent with international human rights law and standards;
- Repeal Article 167 of the Constitution, Article 220 of the 2013 Islamic Penal Code and Article 1(2) of the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights, which allow judges to issue sentences based on uncodified Islamic sources in the absence of codified laws;
- Ensure that no one may be detained or imprisoned solely for the peaceful exercise of the human rights guaranteed under the ICCPR, including the rights to freedom of expression, association, peaceful assembly, belief, religion and privacy, and release immediately and unconditionally anyone so detained;
- Repeal or amend, with a view to bringing into conformity with international law, vaguely worded provisions of the Islamic Penal Code that unduly restrict the rights to freedom of expression, association and peaceful assembly, including Articles 262, 498, 499, 500, 508, 513, 514, 609, 610, 638, 639, 640, 698 and 700;
- Ensure that restrictions on freedom of expression are narrowly and clearly defined, and do not exceed those which are permissible under international law;
- Repeal laws that criminalize consensual sexual activity between same- and opposite-sex adults;
- Repeal Article 638 of Book Five of the Islamic Penal Code, which, in breach of international standards on freedom of belief and religion, freedom of expression and the principle of equality and non-discrimination, subjects women who fail to comply with the strict Islamic dress code to punishments of imprisonment and a fine;
- Ensure that all offences are defined narrowly and clearly in law, so as to remove current areas of ambiguity arising from the lack of or vague definition of crimes, and do so with particular urgency where the penalties prescribed are severe;
- Ensure that agencies authorized to deprive people of their liberty are clearly set out in law, and introduce legislation that clarifies the extent of powers delegated to these agencies and the circumstances under which these powers can be used.

RIGHTS RELATED TO ARREST AND DETENTION

RIGHT TO BE INFORMED PROMPTLY OF ANY CHARGES

- Ensure that individuals deprived of their liberty are promptly informed of the charges against them;
- Review and amend, with a view to bringing into conformity with international law, provisions of the new Code of Criminal Procedure (CCP) to ensure that the timeline within which charges must be brought against an individual is clearly set in law;

NOTIFICATION OF DETAINEES' RIGHTS

- Ensure that individuals deprived of their liberty are promptly informed of their rights, including the rights to notify a third person, access legal counsel, challenge the lawfulness of detention, and remain silent;
- Amend the Note to Article 190, which subjects failure to notify an accused of their right to a lawyer only to disciplinary penalties, to ensure that statements obtained in violation of the right to notification of rights are not admissible at trial;

RIGHT TO BE BROUGHT PROMPTLY BEFORE A JUDGE

- Ensure that anyone arrested or detained on a criminal charge is brought promptly and physically before a judge; and in cases where the detainee is brought before an official other than a judge, guarantee the

official's impartiality, objectivity and independence from the parties to the case, including the Office of the Prosecutor;

RIGHT TO CHALLENGE THE LAWFULNESS OF DETENTION

- Ensure in law and practice that all persons deprived of their liberty have the right to challenge the lawfulness of their detention and its continuity before a regular, independent and impartial court that is authorized to order their release if the detention is found to be unlawful;
- Ensure that all detainees are promptly informed of their right to challenge the lawfulness of detention and that the procedures and mechanisms whereby applications for review of lawfulness of detention are lodged are clearly set out in law;
- Review and amend Articles 239, 240, 241 and 217 of the CCP to ensure that procedures available to individuals to challenge the lawfulness of detention are clearly set out in the law and that they include the right to a public hearing; the right to counsel in this hearing; and the right to present evidence and access information necessary to challenge the detention;
- Review and amend, with a view to bringing into conformity with international law, Article 242 of the CCP to ensure that the legally permissible detention period is not disproportionately long and that it adheres to the principle of presumption of innocence and the right to trial within reasonable time or release;

RIGHT TO REPARATION FOR UNLAWFUL ARREST OR DETENTION

- Ensure that all individuals who have been unlawfully arrested or detained, regardless of whether they have been subsequently convicted or acquitted, have a right to reparation, including compensation, restitution, rehabilitation, satisfaction, and guarantees of non-repetition;

REGULATIONS GOVERNING INTERROGATIONS

- Provide adequate and comprehensive training for all officials who conduct interrogations and ensure that they are provided with sufficient resources and technical equipment necessary to investigate crimes effectively and lawfully;
- Review and amend provisions regulating the conduct of interrogations to ensure that such records include the identity of the officials who conduct the interrogations as well as the identity of others present;
- Ensure all police interrogations are video-recorded;

RIGHT TO ACCESS A LAWYER AT THE TIME OF ARREST

- Ensure that all persons charged with a criminal offence have access to a lawyer of their choice immediately following the arrest;
- Repeal the Note to Article 48, which denies individuals facing certain offences access to an independent lawyer of their choice and allows them only to appoint lawyers approved by the Head of the Judiciary;
- Repeal the Note to Article 190, which subjects failure to notify an accused of their right to a lawyer or the denial of this right only to disciplinary penalties and ensure that statements obtained in violation of the right to notification of rights and violation of individuals' right to access a lawyer are not admissible at trial;
- Ensure that delaying access to a lawyer is limited to exceptional circumstances prescribed by law and that under no circumstances is access delayed by more than 24 hours;

RIGHT TO FREE LEGAL ASSISTANCE

- Ensure that, where the interests of justice require it, indigent individuals facing criminal offences, whether detained or at liberty, have access to free legal representation during all stages of the proceedings;
- Amend laws, including Note 2 to Article 190 of the CCP, to ensure that the right to free legal assistance during the course of investigations is not restricted to cases where the accused person is charged with offences punishable by the death penalty or life imprisonment;

RIGHT TO TIME AND FACILITIES TO COMMUNICATE WITH THE LAWYER IN CONFIDENCE

- Ensure that anyone who faces a criminal charge is provided with adequate time and facilities to meet and communicate with their lawyers in confidence;
- Uphold, in law and practice, the confidentiality of the communications and consultations between lawyers and their clients within their professional relationship, including by adopting laws to prohibit the presence of authorities during meetings between lawyers and their clients;
- Ensure that places of detention, including police stations, have adequate facilities where those arrested and detained can meet and communicate with their lawyers privately;
- Repeal or amend, with a view to bringing into conformity with international law, Article 154 of the CCP, which allows the judicial authorities to inspect documents and material that an accused person has left in the possession of their lawyer;
- Repeal or amend, with a view to bringing into conformity with international law, Article 200 of the Prison Regulations, which allow prison officials to inspect all correspondence sent or received by a detainee or prisoner, including correspondence with their counsel;

RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENCE

- Ensure that the accused and their defence lawyer are granted adequate time and facilities to prepare a defence in line with the principle of equality of arms;

DISCLOSURE OF INFORMATION ON THE CASE TO THE LAWYER

- Enact legislation obligating the competent authorities to grant the accused and their defence lawyers access to appropriate information, including inculpatory and exculpatory evidence;
- Review and amend Article 191 of the CCP to ensure that any restrictions on disclosure of information to the accused or their lawyer is permitted only in exceptional circumstances, and is strictly necessary and proportionate and that determination of the necessity of non-disclosure is made by an independent and impartial court;
- Adopt a legal process for independent, impartial and continuous review of the appropriateness of non-disclosure throughout the proceedings;

RIGHT TO HAVE ACCESS TO THE OUTSIDE WORLD

- Ensure that any exceptions to the right to notify a third person of the arrest are clearly set out in law; are strictly limited in time; and are absolutely necessary for the investigation;
- Ensure that detainees have – by law and in practice – immediate and regular access to the outside world, in particular to their lawyers and families, as well as to adequate medical care when required;
- Review and amend, with a view to bringing into conformity with international law, provisions that allow the authorities to restrict detainees' and prisoners' access to the outside world based on vague conditions, including Article 50 of the CCP and the Note to Article 180 of the Prison Regulations;

RIGHTS OF FOREIGN NATIONALS

- Ensure that all foreign nationals held in Iran have prompt access to consular assistance and that where necessary interpretation facilities are provided for them;
- Ensure that all foreign nationals held in Iran are informed promptly of their right to communicate in confidence with their country's diplomatic representatives or with the representative of relevant international organizations;
- Ensure that foreign nationals in custody in Iran who consent to this are given the facilities to communicate with and receive visits from representatives of their governments.

RIGHT NOT TO BE TORTURED OR OTHERWISE ILL-TREATED

PLACES OF DETENTION

- Impose, in law and practice, an absolute prohibition on secret detention and ensure that all persons deprived of their liberty are held in officially recognized places of detention and are registered in a centralized register of detainees accessible to their lawyers and families at all times upon request and without delay;
- Publish an up-to-date list of all officially recognized places of detention in a form that is readily accessible to lawyers as well as members of the public;
- Guarantee the adequate maintenance of the central register of all detainees, as per Article 49 of the CCP, to ensure that detainees can be promptly traced by their families;
- Bring appropriate sanctions against officers responsible for the unlawful detention of detainees, including failure to keep proper records;
- Allow regular, unannounced, independent and unrestricted inspections by national and international independent expert bodies to all places where people are or may be deprived of their liberty;

PROTECTION AGAINST TORTURE AND OTHER ILL-TREATMENT

- Define torture as a crime under Iranian law, ensuring that the prohibition of torture is not restricted to when it is "for the purpose of extracting confession or acquiring information" as it currently is under the Constitution, and encompasses pain or suffering that is inflicted on an individual as a form of punishment or intimidation or for any reason based on discrimination;
- Adopt legislation that adequately defines and criminalizes all forms of sexual violence, including rape, and recognizes them as torture or other ill-treatment when committed by state officials;
- Guarantee that the legal definition of torture is consistent with the definition in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that Iranian law is fully consistent with the Convention;
- Ensure that statements elicited as a result of torture, ill-treatment or other forms of coercion are excluded as evidence in criminal proceedings, except those brought against suspected perpetrators of such abuse;
- Establish procedures for the automatic investigation of all allegations of torture and other ill-treatment brought to the authorities' attention regardless of whether the victim has lodged an official complaint;

ACCESS TO A DOCTOR

- Explicitly require that all detainees are promptly offered medical examinations by an independent doctor upon being taken into custody, at entry, exit, during transfers, and periodically during detention, and that the records of such examinations are made accessible to detainees and representatives of their choice;

PUNISHMENTS AMOUNTING TO TORTURE AND OTHER ILL-TREATMENT

- Repeal all legislation, in particular provisions of the Islamic Penal Code, which allow for the application of corporal punishments, such as flogging and amputation, and other cruel punishments such as stoning, crucifixion and blinding which violate the absolution prohibition of torture and other ill-treatment;

DISCIPLINARY MEASURES

- Ensure that any disciplinary punishment imposed on detainees or prisoners is in accordance with regulations and procedures established by law and that such laws strictly adhere to international human rights standards;
- Outlaw prolonged solitary confinement, which violates the absolute prohibition of torture and other ill-treatment under international law;

- Ensure that solitary confinement is allowed only as an exceptional measure, for as short a time as possible, under judicial supervision, with adequate review mechanisms, including the possibility of judicial review;

INVESTIGATION OF ALLEGED ABUSES AND RIGHT TO REMEDY AND REPARATION

- Ensure that all allegations of torture or other ill-treatment are investigated promptly, thoroughly and impartially and, where sufficient admissible evidence is found, that those suspected of such actions are tried in proceedings that adhere to international fair trial standards – without recourse to the death penalty;
- Provide full, prompt reparation for survivors of torture and other ill-treatment and their relatives, including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation, as well as measures of satisfaction and guarantees of non-repetition, in accordance with international law and standards;
- Publicly publish, in a format accessible to the general public, the number of allegations of human rights violations received by the Supervision and Inspection Board established under the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights;
- Ensure the regular publication of the biannual reports of the Supervision and Inspection Board as well as the names, identities and photos of those found guilty of violating individuals' rights, as stipulated under the Note to Article 3 of the Executive Regulation of the Supervision and Inspection Board.

RIGHTS DURING TRIAL

EQUALITY BEFORE THE COURTS

- Review, amend or abolish all laws that discriminate on the basis of race, colour, religion, ethnicity, birth, sex, sexual orientation, gender identity, political or other opinion, national or social origin, property, or other status;
- Repeal or amend, with a view to bringing into conformity with international law, the provisions of Iranian laws that discriminate directly against women or have a discriminatory impact on women, including, in the Islamic Penal Code, Article 147 (minimum age of criminal responsibility), Article 199 (value of testimony), Articles 221-244 (criminalizing consensual sexual relations outside marriage and between individuals of the same sex), Articles 382, 388, 550 and 560 (*diyeh*), and the Note to Article 638 (compulsory wearing of the hijab), as well as articles in the Civil Code concerning marriage, divorce, custody and guardianship of children, and inheritance, as well as the rights to work and to leave the country without the permission of their husband for married women;
- Repeal or amend all discriminatory laws and practices that exclude women and members of minority groups from holding certain positions, such as the post of judge, and take the necessary steps to increase the number and proportion of qualified women and members of minority communities in judicial positions at all levels;
- Review, with a view to abolition, the use of all special courts in Iran, including the Special Court for the Clergy, unless they are reformed to bring law and practice into line with international standards for fair trial;

INDEPENDENCE OF COURTS

- Ensure the independence of the judiciary and ensure that effective safeguards are in place to prevent interference, pressure or improper influence from any branch of government, including intelligence bodies and security forces;
- Review and amend provisions of the Supervisory Law on Judges' Conduct which allow for the imposition of disciplinary penalties, including dismissal from service, on judges based on vaguely worded and legally undefined "offences" such as "conduct contrary to judicial status";

- Ensure that all charges against judges are processed under appropriate procedures which guarantee them the right to a fair hearing, and that all decisions in disciplinary, suspension or removal proceedings are subject to an independent review by a higher tribunal;
- Repeal or amend Article 164 of the Constitution, which allows the Head of the Judiciary to unilaterally dismiss judges or move them without their consent;
- Repeal all discriminatory provisions which bar individuals from holding judgeship positions on the grounds of their gender, religion, political opinion, birth or any other status; and ensure that individuals are selected for judicial office based on their ability, appropriate training and qualifications in law;

IMPARTIALITY OF COURTS

- Review Articles 102, 285 and 306 of the new CCP to ensure sufficient separation of prosecutorial functions from the trial courts and guarantee that trial judges do not participate in other parts of the proceedings in another capacity;

RIGHT TO AN OPEN HEARING

- Guarantee the right of all persons charged with a criminal offence to an open hearing and ensure that any exceptions to this right are prescribed in law and narrowly defined;
- Review and amend, with a view to bringing into conformity with international law, Article 352 of the new CCP, which allows judges to exclude the public on the grounds of vaguely worded and broadly defined conditions such as disturbing "religious or ethnic sentiments";
- Publish, in a format available to the general public, the evidence and legal reasoning in cases where the public is excluded from the trial;

PRESUMPTION OF INNOCENCE

- Enact legislation to ensure that, in line with the principle of presumption of innocence, the burden of proof is on the prosecution to show, beyond reasonable doubt, that statements of the accused have been given voluntarily;
- Review and amend, with a view to bringing it into conformity with the right to presumption of innocence, the Note to Article 13 of the new CCP;
- Review and amend, with a view to bringing into conformity with international law, provisions of the CCP to ensure that the legally permissible detention period is not disproportionately long and that it adheres to the principle of presumption of innocence and the right to trial within reasonable time or release;

EQUALITY OF ARMS

- Uphold the principle of "equality of arms" in law and practice, including by adopting legislation which grants the accused and their lawyer the right to receive the information on which the prosecution intends to rely;

EXCLUSION OF EVIDENCE OBTAINED IN VIOLATION OF INTERNATIONAL LAW

- Ensure that statements or confessions made by a person deprived of their liberty other than those made in the presence of a judge and with the assistance of a lawyer have no probative value in proceedings;
- Ensure that statements elicited as a result of torture, other ill-treatment or other forms of coercion are excluded as evidence in criminal proceedings, except in circumstances where they are brought against suspected perpetrators of such abuse;
- Ensure that where, in the course of judicial proceedings, it is alleged that a statement was made under torture or other ill-treatment or when a judge otherwise has reason to suspect that evidence was obtained through torture or other ill-treatment, proceedings are postponed and a separate hearing is held before such evidence is admitted and an independent investigation is initiated into such allegations;

RIGHT TO APPEAL

- Ensure that everyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a competent higher court or tribunal;
- Review and amend, with a view to bringing into conformity with international standards, Article 427 of the new CCP, which excludes individuals convicted of criminal offences deemed to be minor from accessing mechanisms of appeal;
- Ensure that individuals who have been sentenced to death under the Anti-Narcotics Law and are currently on death row are granted a meaningful right to appeal including the possibility of submitting an *e'adeh dadresi* ("application for retrial") based on the passage of a more favourable law;
- Ensure that Article 474 of the CCP is interpreted in a manner that guarantees the right to file an *e'adeh dadresi* ("application for retrial") after conviction and finalization of the sentence when a change of law imposes a lighter penalty for that crime;
- Put in place procedures allowing for criminal proceedings to be reopened in cases where an international human rights court or body or a national court has concluded that the rights of the accused have been violated;

RIGHT TO BE PRESENT DURING TRIAL AND APPEAL

- Ensure that all individuals charged with criminal offences have the right to be tried in their presence and that all criminal proceedings provide the accused with the right to an oral hearing where they can be present and be represented by counsel and may bring evidence and examine witnesses;
- Review and amend Articles 450, 451, 454 and 468 of the CCP to guarantee the right of the accused to be present at appeal where the court considers issues of both law and fact.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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FLAWED REFORMS

IRAN'S NEW CODE OF CRIMINAL PROCEDURE

Nearly four decades after the revolution that shook Iran's criminal justice system to its core, the country's legal framework remains largely inadequate, inefficient and inconsistent with international fair trial standards.

In June 2015, a much anticipated new Code of Criminal Procedure, which had been in the making for almost a decade, came into force. The new Code is an improvement on the old one and introduces several long overdue reforms that, if implemented properly, could provide accused persons with increased fair trial safeguards. For example, it requires the authorities to notify the accused of their rights orally and in writing.

However, it has failed to tackle many of the major shortcomings in Iran's criminal justice system. They include the lack of adequate legal safeguards to guarantee the range of rights required to ensure fair trials, such as equality before the law and courts, protection against torture and other ill-treatment, access to a lawyer from the time of arrest, and an enforceable right to remedy and reparation.

Amnesty International calls on the authorities to take immediate steps to review and amend the Code in order to bring it into conformity with international fair trial standards.

Index: MDE 13/2708/2016
Date: February 2016

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