

The Islamic Republic's Justice System: A Deadly Trap for Iran's Most Vulnerable

Presentation of Roya Boroumand – September 12 2019, Geneva

The justice system in the Islamic Republic of Iran can be best described as a death trap, in particular for the most vulnerable populations: those who have the least means to defend themselves, the poor, members of Iran's minorities, drug users, and children. The pillars of the judicial process that leads hundreds of individuals - guilty and innocent alike - to death row every year are the highly punitive and discriminatory laws, the arbitrary and opaque judicial process, the persecution of those who defend the rule of law, and a culture of impunity which is reinforced by the absence of safeguards against abuses and accountability for perpetrators. Though progress has been made since the early years of the Islamic Republic when defendants had no lawyer and no right to appeal and flogging with cables and other forms of torture were standard interrogation procedure, neither reforms in the laws and judicial practices nor international response to Iran's violation of its human rights commitments have been significant or consistent enough to result in safeguards for the rights of individuals facing the death penalty, access and increased transparency, or Iran's removal from the list of the world's top executioners.

Iran continues to foresee in law the death penalty for a considerable number of acts which do not meet the threshold of the "most serious crimes" such as drug offences, as well as for acts that should not be considered crimes at all.¹ Iran dismisses the information published in human rights reports on its judicial process and the death penalty as biased or baseless. However, its strategy of secrecy and withholding data from the public, the international community, and even from Iranian lawmakers, has not changed in four decades. The state does not allow independent observers access to detainees or trials and persecutes lawyers who report on due process violations. Regardless of these constraints, continued mass arrests and consistent testimonies from detainees and death row prisoners across the country indicate that individuals are routinely tortured to confess; that they are tried and sentenced in the absence of due process of law; and their number remains too high to ignore.

Legal Reforms: Progress on Drug Policy and Juvenile Offenders Falls Short

At its 2014 Universal Periodic Review, Iran received 41 recommendations about its use of the death penalty, almost all of which, including a recommendation to "amend the penal code to exclude drug trafficking-related offences from those punishable by death," were rejected. Iran accepted one recommendation involving guaranteeing due process safeguards in capital cases and partially accepted two recommendations regarding the application of the death penalty for individuals under the age of 18.

¹ Abdorrahman Boroumand Center has identified more than 200 acts for which the death penalty is prescribed under Iranian criminal law, including extramarital consensual sexual relations, sexual conduct between consenting adults of the same sex, insulting the prophet of Islam, and a fourth conviction of theft. Broadly defined and vaguely worded offences of *moharebeh* (waging war on God) and *efsad fel-arz* (corruption on earth) which carry the death penalty are also routinely resorted to by the authorities. Despite the absolute prohibition on the use of the death penalty for individuals under the age of 18 at the time of the crime under international law, Iranian laws continue to allow the imposition and implementation of death sentences for child offenders.

A November 2017 Amendment (Article 45) to the Law for Combating Drugs restricted the use of the death penalty chiefly by increasing the volume threshold attracting a capital sentence for drug crimes. We have seen in the last two years a welcome reduction in the number of executions and of individuals on death row.

Further, the 2013 reform of the penal code and code of criminal procedure provided for the better protection of individuals' fair trial rights. For example, it reduced the number of crimes for which individuals under the age of 18 can be sentenced to death and opened the door to the presence of lawyers during the investigative phase of the judicial process, except in security and organized crime-related cases. In addition, the revised law has given judges the authority to spare any child offender the death penalty. Under Article 91 of the Code, judges are granted discretionary power to impose an alternative punishment in cases of *qesas* and *hodud* offenses where the juvenile offender did not understand the nature of the crime or its consequences, or when their "mental development and maturity" at the time of the crime is in doubt. Article 315 of the 2015 Code of Criminal Procedure established juvenile branches in provincial criminal courts (known as Criminal Court One). These branches have jurisdiction over capital offenses committed by minors, including murder, "enmity against God," and "corruption on earth." Note 2 to Article 315 requires that an advisor, "whose opinion is advisory," with expertise in fields such as psychology, criminology and social work be present.²

In January 2015, a Judiciary ruling required courts to review any petition from a child offender who was sentenced to death before the reformed law came into effect. The requirement of the offender's petition, however, is particularly problematic for death row juvenile offenders who are either unaware of their right to request a review or lack the means to retain a lawyer to do so on their behalf.

Despite these apparent victories for juvenile justice, boys older than 15 and girls older than nine who are convicted of *qesas* or *hodud* offenses (including murder and rape) can still be executed. Further, child offenders' petitions for retrial have been arbitrarily granted or denied or simply shelved since the implementation of the new penal code. In the case of Abolfazl Chazani, Supreme Court Branch 33 denied his request for retrial in October 2015 — executing him regardless on June 27, 2018 — despite his claims of falling below the age of "maturity" at the time of the crime.³ The same is true of Abolfazl Naderi who was executed on September 2, 2018 in Arak Prison. Saleh Shari'ati's request has gone unanswered for months. In all these cases, defendants had reported having been interrogated with threats, beating and torture (hanging from the arms for long periods of time and flogging on the sole of their feet) at police stations.

In the amended drug law, the death penalty remains mandatory when the new volume thresholds are met, and even when they are not met, if the accused is a ringleader or financier, in cases where a principal or accomplice has drawn a weapon or carried a weapon with intent to oppose law enforcement, or interestingly, where individuals who are under the age of 18 or mentally ill are exploited in the commission of the crime. The law fails to define criteria such as "ringleader" nor does it provide for how "intent to oppose law enforcement" is to be established, potentially leaving capital sentencing open to wide interpretation on the part of judges. Further, commuted sentences for death row prisoners include absurd exorbitant fines of tens of thousands of dollars and long prison sentences that add to the burden of already impoverished families.

² (Article 410) Trials before Court for Children and Adolescents must convene with the presence of a judge and an advisor whose opinion is advisory (Article 298). In cases where the defendant is a girl, at least one of the advisors must be a woman (Article 410, Note 2).

³ <https://www.iranrights.org/memorial/story/-8261/abolfazl-chazani-sharahi>

More generally, the scope of these reforms was too limited. The law remains deeply flawed, vague, and open to broad interpretation. In practice its provisions are not always implemented and in some cases routinely flouted in particular when it comes to the right to defense. Lawyers continue to be denied access to their clients during interrogations. Detainees, including alleged child offenders, continue to be interrogated without an attorney present, coerced into confessions, and convicted to death based on those confessions. Moreover, the death sentence remains mandatory for certain non-violent drug crimes.

Shortcomings in Safeguarding the Right to Defense

Lawyers express that criminal cases are “mentally stressful and physically demanding” because authorities conducting pre-trial investigations have a negative perception of defense lawyers and, despite the recent amendments to criminal procedure, continue to disregard the defendant’s right to legal representation.⁴

There is no public defender office in Iran’s justice system, and legal provisions that previously made attorneys available to the poor have been all but eradicated. One law, approved January 19, 1977,⁵ created a fund designed to foster public defenders; Article 10 of the law requires the government to dedicate funds for pro-bono defense in its annual budget and transfer those funds to the Bar Association to pay attorneys. After the 1979 revolution, this article was ignored. Though a public endowment for pro-bono attorneys was established in the mid-2000s, that funding has yet to be granted, said Bar Association head Isa Amini.⁶ In an interview published on February 18, 2019, former Bar Association head Dr. Ali Najafi Tavana noted that lawyers have not only faced obstacles to carrying out their work, but have never been supported by public funds. In the past 12 years, the Judiciary has failed to pay even the modest standard fee of 200,000 tomans per case. This amount, which many attorneys find insulting, does not even cover transportation costs for the 10 to 20 trips on average that lawyers must make to court per case.⁷

Lack of funding, compounded by authorities’ lack of respect for the right to defense, puts death penalty defendants in a precarious position. Attorney at law Abdolsamad Khorramshahi explained how these contraventions to the requirement for the presence of an attorney during the investigation create a vicious cycle of negligence in court:

“Unfortunately, in many cases where pro-bono lawyers are assigned, lawyers are inexperienced, and since they are not remunerated very much, show little interest in the defense of such clients. Their appearance in court is thus mostly symbolic and out of obligation. And we see murder cases where the lawyer has not even read the file once, which naturally has its consequences. Let’s say that a defendant has confessed to a murder under pressure from police or the court, or any other reason, and that the lawyer, having not read the file, is not fully familiar with the case and cannot present a good defense. As a result, an innocent person is hanged. In many pro-bono cases, pro-bono lawyers feel obligated because the court has assigned the case to them.... They have no way of refusing, barring exceptional circumstances. There needs to be

⁴ *The Life of the Law in the Islamic Republic of Iran*

Reza Banakar & Keyvan Ziaee: <https://www.tandfonline.com/doi/full/10.1080/00210862.2018.1467266>

⁵ http://hamivakil.ir/DYN/12/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%B5%D9%86%D8%AF%D9%88%D9%82

⁶ Interview with Islamic Republic News Agency, 5 October 2018. <http://www.irna.ir/fa/News/83122225>

⁷ Iran Online, 18 February 2019. <http://www.ion.ir/news/449419/%D9%88%DA%A9%DB%8C%D9%84-%D9%87%D8%B2%DB%8C%D9%86%D9%87-%D9%88%DA%A9%D8%A7%D9%84%D8%AA>

institutional change, and pro-bono lawyers must be paid a fee to be motivated to know the case and defend their clients with more rigor.”⁸

Khorramshahi voiced the opinion that death penalty cases should be assigned to lawyers with at least 10 years of experience and that they should be properly remunerated; unfortunately, seasoned and novice lawyers alike tend to avoid taking on criminal cases because of the obstacles and costs they face in the police station, prosecutor’s office (dādsarā), and courts.

Article 48 of the 2015 Code of Criminal Procedure provides for the right of any accused person to “demand the presence of a lawyer from the start of detention.”⁹

The law requires that detainees be charged within 24 hours of their arrest, and that an attorney be present when the detainee is informed of their charges; nonetheless, authorities flout this law with impunity. As one former judiciary official noted in a 2018 interview:

“The Code of Criminal Procedure specifies that for crimes that carry the death penalty and life imprisonment, the investigation should take place with the presence of the defendant’s attorney. In other words, as soon as a person is detained, a lawyer must be present and no detainee should be charged without the presence of an attorney, but the law has not included implementation modalities. Lawyers are in their offices and communication between courts and the Bar Association is difficult. To assign a pro-bono lawyer, there needs to be some correspondence with the Bar Association, which is time-consuming... judicial procedure privileges the rights of society and the crime victim over the rights of the accused.”¹⁰

Too many police officers, investigators, and judges operate under the understanding that confessions should be obtained before evidence is collected and without the presence of an attorney. Interviewed by an Iranian news agency, police officers have acknowledged that there are no lawyers to be seen when a detainee is brought in for investigation. Lawyers can be present in the investigation bureau with prior authorization, but they cannot “disturb” the course of the investigation. According to one police officer, who preferred to remain anonymous:

“The lawyer can teach the accused not to say anything, or to talk in a way that creates hang-ups in the course of the investigation. The police cannot permit the investigation to be hindered [for a defense lawyer’s sake].”¹¹

Our documentation indicate that these interrogations can last a few days or a few months during which detainees are denied access to legal counsel.

⁸ Ibid.

⁹ However, under the Note to the Article, individuals accused of certain offences, including those relating to national security as well as those accused of “organized crimes” whose offence is punishable by penalties such as death and life imprisonment, are denied the right to access an independent lawyer of their own choosing during the investigation phase, which may last for months. When allowed to select counsel, these individuals’ lawyers must be approved by the Head of the Judiciary. Moreover, as a result of a late retrogressive amendment to the original revised draft of the code, which had 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, was removed

¹⁰“If You Are Arrested for Murder and You Don’t Have Money,” Iran Students News Agency. 1 February 2018, <https://www.isna.ir/news/96111106756>

¹¹ Ibid.

For children and adults facing undue risk of execution, Iran lacks an independent human rights body with the authority to investigate complaints and hold officials accountable. As a result, courts continue to be permitted to rely on confessions extracted without the presence of a lawyer during the investigation phase and in some cases coerced confessions are aired on national television before or after the execution of prisoners.