

## Concluding Observations Human Rights Committee CCPR/C/IRN/CO/3 para 21

### Full recommendation:

*The State party should ensure that all legal proceedings are conducted in full accordance with article 14 of the Covenant, including guaranteeing (a) the right to legal assistance of one's own choosing, including for pretrial detainees; (b) the right to be informed promptly of the nature and cause of the criminal charges; (c) the intervention and presence of lawyers in all cases, including during the investigation stage; (d) the presumption of innocence; (e) the right to a public hearing; and (f) the right to appeal a ruling. The State party should remove the mahdoor-ol-dam (deserving of death) definition, applied to victims, so as to ensure that perpetrators are prosecuted and brought to justice for their crimes. The Committee reminds the State party of its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.*

### Assessment using Impact Iran human rights indicators<sup>1</sup>

#### A. Ensuring that all legal proceedings are conducted in full accordance with article 14 of the Covenant

##### 1. The right to legal assistance of one's own choosing, including for pretrial detainees;

The guarantee of to the right to legal defense is enshrined in Article 35 of the Constitution which ensures the right to choose a lawyer.<sup>2</sup> Article 190 of the revised Code of Criminal Procedure (CCP) protects the right of a suspect to “be accompanied by a lawyer during the preliminary investigations”. Article 48 of the CCP permits the accused to “demand the presence of a lawyer from the start of detention.”<sup>3 4</sup> However, a Note to Article 48 of the 2015 CCP,<sup>5</sup> specifies that individuals facing charges for certain offences, including those relating to national security and organized crime, must select their legal counsel from among a limited list of lawyers approved

<sup>1</sup> CCPR.14.1.S.3; CCPR.14.2.S.1; CCPR.14.3.S.3; CCPR.14.3.S.4; CCPR.14.1.P.5; CCPR.14.2.P.1; CCPR.14.3.P.2; . CCPR.14.3.P.3; CCPR.9.2.O.2; CCPR.14.1.O.10; CCPR.14.2.O.2.CCPR.14.3.O.3; CCPR.14.3.O.5

<sup>2</sup> Constitution of the Islamic Republic of Iran < [http://www.iranchamber.com/government/laws/constitution\\_ch03.php](http://www.iranchamber.com/government/laws/constitution_ch03.php)>

<sup>3</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_ICJ\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>4</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

<sup>5</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_ICJ\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

and announced by the Head of the Judiciary at the phase of preliminary investigations.<sup>6</sup> In 2018, the Judiciary published the list of approved lawyers (including only 20 names for Tehran). However, many of the lawyers named are reportedly close to the security bodies or had been solicited for payments of money to appear on the list, threatening due process and questioning the independence and neutrality of the Judiciary.<sup>7</sup> As a consequence, the right to legal assistance of one's choosing in such cases is particularly limited.

Defendants in national security cases are often denied access to a lawyer in the investigative stage of the judicial process. In the hundreds of cases of individuals arrested for political reasons or suspected for ordinary crimes that the Abdorrahman Boroumand Center has investigated, all detainees were interrogated without the presence of an attorney.<sup>8</sup> Reports have shown a pattern of reported cases where prisoners remain incarcerated without proper access to legal representation at all stages of their trial process.<sup>9 10</sup>

## 2. The right to be informed promptly of the nature and cause of the criminal charges

Article 32 of the Constitution stipulates that the subject of the charge must be immediately notified to the accused in writing.<sup>11</sup> The revised Code of Criminal Procedure (CCP)<sup>12</sup> introduces disciplinary measures for anyone who summons or arrests an individual without sufficient reason.<sup>13</sup> Article 181 of the revised CCP provides that accused individuals are to be arrested pursuant to a warrant which specifies a reason for the arrest and details pertaining to this reason, signed by an investigating judge.<sup>14</sup> However, there is no requirements for including an explanation of the legal provision under which an individual is being arrested, enabling arrests on the basis of vaguely defined terms such as “national security”.<sup>15</sup>

<sup>6</sup> The former CCP had conditioned the presence of a lawyer at the investigative stage on the permission of the judge in cases with a “confidential” aspect, cases where the presence of a party other than defendant would “corrupt” proceedings as determined by the judge, and in national security cases; See the March 17, 2017 report of the UN Special Rapporteur, Asma Jahangir, on fair trial in Iran (<https://undocs.org/en/A/HRC/34/65>)

<sup>7</sup> “Iranian Lawyers Criticize Proposal to Deprive Defendants of Right to Choose Counsel,” Human Rights Activists in Iran, June 6, 2018 (<https://www.iranrights.org/library/document/3443>)

<sup>8</sup> Abdorrahman Boroumand Center, joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_ICJ\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>9</sup> HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

<sup>10</sup> HRANA <<https://www.en-hrana.org/arash-sadegh-golrokh-iraeis-lawyers-access-cases>>

<sup>11</sup> Constitution of the Islamic Republic of Iran < [http://www.iranchamber.com/government/laws/constitution\\_ch03.php](http://www.iranchamber.com/government/laws/constitution_ch03.php)>

<sup>12</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

<sup>13</sup> Amnesty International < <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>>

<sup>14</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_ICJ\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>15</sup> Amnesty International < <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>>

The 2015 CCP does not set out a clear timeframe within which the suspect must be informed of the formal charges held against them.<sup>16</sup> Such shortcomings enabled the temporary detention of a number of individuals for an inappropriate amount of time before they could be finally notified of their charges and their judicial process finally begins.<sup>17</sup> Reports of long detentions by the Iranian authorities before the issuance of charges against the detainees and mass arrests without warrants are common place. Such occurrences are often linked with police crackdowns on protesters or certain events.<sup>18 19 20</sup>

Not being promptly informed of the nature and cause of criminal charges not only is a violation of the right to a fair trial but also prevent accused individuals from challenging and seeking dismissal of the charges at an early stage and to challenge the lawfulness of detention.

### 3. The intervention and presence of lawyers in all cases, including during the investigation stage

Article 35 of Iran's Constitution stipulates that when a party to a lawsuit is unable to secure legal counseling "the means of a lawyer being appointed to act for them must be made available to them".<sup>21</sup> Article 190 of the revised Code of Criminal Procedure (CCP) protects the right of a suspect to "be accompanied by a lawyer during the preliminary investigations". Article 48 of the CCP permits the accused to "demand the presence of a lawyer from the start of detention."<sup>22 23</sup> Although the CCP guarantees the right to free legal assistance for those without adequate financial resources, the applicability of this right is differentiated between the pre-trial and trial phases.<sup>24</sup> For instance, the CCP does not ensure access to free legal assistance during the investigation phase in cases where the accused faces charges other than those punishable by severe punishments such as the death penalty or life imprisonment. As a consequence, safeguards provided in the Iranian legal framework fall short to protect the accused person's right to access legal counsel in the pre-trial phase. In many reported cases, especially national security cases, defendants have reported seeing their lawyer for the first time on their day of trial.<sup>25 26</sup> Prisoners reportedly remained incarcerated without proper access to legal representation at all stages of their trial process and lawyers were reportedly denied timely access to their clients'

<sup>16</sup> Amnesty International <<https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>>

<sup>17</sup> UNPO <<https://unpo.org/article/21430>>

<sup>18</sup> HRANA <<https://www.en-hrana.org/motaleb-ahmadian-awaiting-trial-since-5-years-ago>>

<sup>19</sup> HRANA <<https://www.en-hrana.org/ali-zahed-still-awaiting-court-session>>

<sup>20</sup> HRANA <<https://www.en-hrana.org/saeed-shirzad-still-waiting-appeal-courts-decision>>

<sup>21</sup> Constitution of the Islamic Republic of Iran <[http://www.iranchamber.com/government/laws/constitution\\_ch03.php](http://www.iranchamber.com/government/laws/constitution_ch03.php)>

<sup>22</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

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<sup>23</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

<sup>24</sup> Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

<sup>25</sup> Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_ICJ\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>26</sup> HRW <<https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>>

legal files.<sup>27 28 29</sup> Yet, the Human Rights Committee has explicitly stipulated that the accused should be granted prompt access to legal counsel,<sup>30</sup> including during the pre-trial phase.<sup>31</sup> In May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the Code of Criminal Procedure which would allow the prosecution to delay access to a lawyer for 20 days, with a possibility of extension to the whole duration of investigation, in cases related to national security, terrorism or financial corruption.<sup>32 33</sup> Such amendment would further restrict access to legal counsel during the investigation phase.

#### 4. The presumption of innocence

Article 37 of the Constitution protects the presumption of innocence.<sup>34</sup> The article is reiterated in Article 4 of the revised Code of Criminal Procedure (CCP).<sup>35 36</sup> Despite these legal provisions, the 2013 Islamic Penal Code defines confessions as self-incriminating statements made by the accused and accord them the primary weight.<sup>37</sup> The heavy reliance of the criminal justice system on confessions as evidence fails to protect adequately those charged with criminal offences from being compelled to testify against themselves or confess guilt, therefore fails to protect adequately the presumption of innocence. Furthermore, Iranian law does not provide detailed provisions on standard of proof and on whom the burden of proof rests, although the presumption of innocence requires the burden of proof to be on the prosecution. Unjustifiable long periods of pre-trial detention, as permitted under the revised CCP, also undermine the principle of presumption of innocence.

Due to these shortcomings, the legal guarantees for the presumption of innocence fall short in practice, in particular in cases related to national security charges. Regularly, authorities first arrest and detain the individuals and then attempt to gather a confession or any type of information that might prove the person's guilt. Individuals are therefore arrested and assumed guilty before the charges held against them have been proved beyond reasonable doubt. The

<sup>27</sup> HRANA <<https://www.en-hrana.org/arash-sadegh-golrokh-iraies-lawyers-access-cases>>

<sup>28</sup> HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

<sup>29</sup> HRANA <<https://www.en-hrana.org/court-prevents-lawyer-accessing-files-five-sunni-prisoners>>

<sup>30</sup> CCPR General Comment No.32 <<https://undocs.org/CCPR/C/GC/32>>

<sup>31</sup> HRC, Concluding observations on Georgia, CCPR/C/79/Add.75, para. 27, available at [bit.ly/20caB7i](http://bit.ly/20caB7i); HRC, Concluding observations on the Netherlands, CCPR/C/NLD/CO/4, para. 11, available at [www.refworld.org/docid/4aa7aa642.html](http://www.refworld.org/docid/4aa7aa642.html)

<sup>32</sup> Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

<sup>33</sup> [www.amnesty.org/en/documents/mde13/0379/2019/en/](https://www.amnesty.org/en/documents/mde13/0379/2019/en/) ; <https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>

<sup>34</sup> Constitution of the Islamic Republic of Iran <[http://www.iranchamber.com/government/laws/constitution\\_ch03.php](http://www.iranchamber.com/government/laws/constitution_ch03.php)>

<sup>35</sup> Code of Criminal Procedure (2015) as referenced by Amnesty International  
<https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

<sup>36</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

<sup>37</sup> Article 171 of the Islamic Penal Code of the Islamic Republic of Iran (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>, and Articles 119, 360 and 389 of the new Code of Criminal Procedure (2015) as referenced by Amnesty International  
<<https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>>

presumption of innocence has been reportedly violated in cases of security charges against civil, political and ethnic rights activists.<sup>38 39 40 41</sup>

## 5. The right to a public hearing

The right to open hearings is protected under Article 165 of the Constitution of the Islamic Republic of Iran.<sup>42</sup> However this guarantee is limited if, notably, “the court determines that an open trial would be detrimental to public morality or discipline”. The revised Criminal Code of Procedure also guarantees the right to public hearings with limitations including or crimes against morality and decency or when a public hearing would disturb “public safety” or “religious or ethnic sentiment”.<sup>43</sup> However, such vague and broadly defined circumstances leave the judges with great discretion as to decide whether to hold trials in camera.

It is not possible to accurately ascertain the number of hearings open to the general public, as this information has not been made public by Iranian authorities. However, cases related to civil and political issues have reportedly been held behind closed doors, with no open access to the case details and to the hearings by outside personnel.<sup>44</sup>

## 6. The right to appeal a ruling

Iranian law provides for the right to appeal a ruling for those convicted of criminal offences, but only for offences of a certain severity. The 2015 Code of Criminal Procedure (CCP) provides that judgements can be appealed within 20 days by parties within a country, and within two months by those outside the country.<sup>45</sup> Per Article 433, court verdicts can be appealed by defendants and plaintiffs, their lawyers, or legal representatives; and by the Prosecutor’s Office in cases of acquittal or where matters of legality or proportionality of sentencing are at stake.<sup>46</sup> However, certain judicial decisions are automatically considered final and unable to be appealed, such as eighth degree *ta’zir* verdicts<sup>47</sup> and payments of *diya* (blood money) amounting to less than a tenth of full *diya* (Article 427 of the CCP).<sup>48</sup>

<sup>38</sup> HRANA, <https://www.amnesty.org/en/latest/news/2018/06/iran-sufi-bus-driver-executed/>

<sup>39</sup> HRANA, <https://www.en-hrana.org/statements/amnesty-iran-tv-confessions-breach-suspects-rights>

<sup>40</sup> HRANA, <https://www.en-hrana.org/2-civil-activists-cases-sent-back-primarily-court>

<sup>41</sup> HRANA, <https://www.en-hrana.org/statements/human-rights-watch-halt-execution-child-offender>

<sup>42</sup> Constitution of the Islamic Republic of Iran < [http://www.iranchamber.com/government/laws/constitution\\_ch11.php](http://www.iranchamber.com/government/laws/constitution_ch11.php) >

<sup>43</sup> Article 352, Code of Criminal Procedure (2015) as referenced by Amnesty International <

<https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF> >

<sup>44</sup> HRANA <<https://www.en-hrana.org/ahmad-montazeris-court-session-held-behind-closed-doors>>

<sup>45</sup> Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_IJS\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IJS_IRN_42313_E.pdf)

<sup>46</sup> Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

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<sup>47</sup> I.e. incarceration up to three months, fines of up to 10 million rials and floggings up to ten lashes.

<sup>48</sup> Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

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In August 2018, Iranian authorities issued a directive concerning special tribunals for cases of economic corruption, which shortened the timeframes for appealing non-capital verdicts issued by such tribunals, and made all non-capital verdicts unappealable.<sup>49 50</sup> This legal change undermines defendants' right to appeal a ruling by doing away with certain procedures, including in-person trial sessions for appeals proceedings as under Article 450 of the CCP. Appeals can now be undertaken without a hearing, in the absence of the convict and of his or her lawyer. In 2019, reported cases have shown that individuals have been adjudicated without trial sessions on the basis of this governmental directive for which the court of first instance's verdict has been upheld.<sup>51 52 53</sup> Reports also indicated that defendants are routinely denied effective appeals proceedings in other cases as well.<sup>54 55 56 57</sup>

## 7. The State party should remove the *mahdoor-ol-dam* (deserving of death) definition, applied to victims, so as to ensure that perpetrators are prosecuted and brought to justice for their crimes

In the old version of the Islamic Penal Code (1991), Article 295 specified *mahdoor-ol-dam* to define someone that is “deserving of death”. The revised Islamic Penal Code of 2013 includes *mahdoor-ol-dam* as well under Article 302, which provides for the crimes exempt from *qesas* (retribution in kind).<sup>58</sup> There are no readily available official report that might indicate that the definition of *mahdoor-ol-dam* is still being actively used in criminal proceedings, however, information gathered show that *mahdoor-ol-dam* can still be invoked. For example, in 2016, the Supreme Court discussed a case where the defendant claimed that he committed murder because they believed the victim was *mahdoor-ol-dam*. The Supreme Court upheld the claim.<sup>59</sup>

Recommendation Status:

This recommendation has **NOT** been implemented.

<sup>49</sup> See ABC's “The Iran Judiciary's Illegal Directive on Financial Corruption: A Legal Analysis from ABC” (<https://www.iranrights.org/library/document/3448>). Vahid Mazlumin and Mohammad Esmail Qasemi, both put to death in November 2018, were sentenced by such special tribunals. <https://www.iranrights.org/memorial/story/-8336/vahid-mazlumin> ; <https://www.iranrights.org/memorial/story/-8335/mohammad-esmail-qasemi>

<sup>50</sup> Youth Journalism Club, July 21, 2019 <<https://www.yjc.ir/fa/news/7009151>>

<sup>51</sup> Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_IJS\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IJS_IRN_42313_E.pdf)

<sup>52</sup> Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_IJS\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IJS_IRN_42313_E.pdf)

<sup>53</sup> See Abdorrahman Boroumand Center, “Judiciary's New Approach to Appeals Trials is Against the Law,” August 22, 2019 (<https://www.iranrights.org/library/document/3619>)

<sup>54</sup> Abdorrahman Boroumand Center, joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_IJS\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IJS_IRN_42313_E.pdf)

<sup>55</sup> Abdorrahman Boroumand Center <<https://www.iranrights.org/memorial/story/71725/hashem-shabaninejad-amuri>>

<sup>56</sup> Abdorrahman Boroumand Center <<https://www.iranrights.org/memorial/story/74843/reza-hosseini>>

<sup>57</sup> Abdorrahman Boroumand Center <<https://www.iranrights.org/memorial/story/-7770/mohsen-nasiri>>

<sup>58</sup> Islamic Penal Code of the Islamic Republic of Iran (2013), original version, <https://rc.majlis.ir/fa/law/show/845048>

<sup>59</sup> <https://www.isna.ir/news/95092213162/>