

Concluding Observations Human Rights Committee CCPR/C/IRN/CO/3 para 22

Full recommendation:

The State party should take immediate steps to ensure and protect the full independence and impartiality of the judiciary, and guarantee that it is free to operate without pressure and interference from the executive power and clergy. The State party should also ensure that judges, in interpreting legislation and in relying on religious principles, do not reach verdicts that are in contravention of the rights and principles as laid down in the Covenant.

Assessment using Impact Iran human rights indicators¹

A. The State party should take immediate steps to ensure and protect the full independence and impartiality of the judiciary, and guarantee that it is free to operate without pressure and interference from the executive power and clergy.

According to the Constitution of the Islamic Republic of Iran, the head of the judicial system in Iran (the Chief Justice) is directly appointed by the Supreme Leader² and can be dismissed at any time by him.³ No other organ or institution is involved in the process.⁴ The Chief Justice is in charge of selecting high-ranking judicial officials including the Head of the Supreme Court and the country's Prosecutor General.⁵

The Law for the Selection of Judges of 1982 with subsequent amendments, as well as the Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges of 2013, are the main norms regulating the selection of judges. Mandatory criteria for selecting judges in Iran include the following: the appointed judge has to be a Muslim man, "being bound to faith" and "being loyal to the principle of the primary of the Supreme Leader".⁶ Field investigations and conducting ideological and political interviews are

¹ CCPR.2.2.S.1; CCPR.14.1.S.2;
CCPR.2.2.P.2; CCPR.14.1.P.3; CCPR.14.1.P.4;
CCPR.2.2.O.1; CCPR.14.1.O.8;

² Article 157 Constitution of the Islamic Republic of Iran <
http://www.iranchamber.com/government/laws/constitution_ch11.php>

³ Article 110 Constitution of the Islamic Republic of Iran <
http://www.iranchamber.com/government/laws/constitution_ch08.php>

⁴ 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

⁵ See Articles 158 to 162 of the Constitution of the Islamic Republic of Iran
http://www.iranchamber.com/government/laws/constitution_ch11.php

⁶ Article 13 Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges (2013).

part of the selection process.^{7 8} These discriminatory and vague criteria enable the appointment of judges based on their political loyalty and undermine the independence and impartiality of the judiciary. There are reports of formal investigations undertaken by Iranian authorities into individuals with judicial functions following accusations of corruption, bribery and abuse of power, yet there is a dearth of information regarding whether the motivations behind these investigations were political in nature or a result of an impartial criminal process.^{9 10}

The selection process of judges in Iran impacts the judicial process and undermines due process of law. In 2014, a Judiciary's circular listed the most common complaints against judges and numerous due process violations.¹¹ These included unlawful arrest, failure to renew temporary detention orders within the prescribed time, failure to render decisions within the prescribed time, ruling prior to the conclusion of investigation and trial, issuing decisions in courts of original jurisdiction without convening a trial session, issuance of "unfounded and undocumented" rulings, issuing rulings outside the scope of the complaint, and unpleasant, inappropriate, and insulting conduct.¹² There is little transparency regarding these complaints and their outcome and not all are considered. During the Iranian year 1395 (March 20, 2016 –March 19, 2017), Iran's General Inspection office received 30,315 complaints. The office sent 3,464 emails to those who had filed complaints. Written follow-ups of local and provincial investigations amounted to 1,502.¹³ Due process violations are particularly grave in Iran in light of the strikingly high numbers of executions conducted by the State. At least 5,079 executions have been reportedly conducted in Iran since the beginning of 2012 through May 27, 2020.¹⁴

B. The State party should also ensure that judges, in interpreting legislation and in relying on religious principles, do not reach verdicts that are in contravention of the rights and principles as laid down in the Covenant.

Under Article 220 of the Islamic Penal Code and Article 167 of the Iranian Constitution, a judge may refer to Islamic law to rule on crimes not explicitly defined in the law. These articles require judges to rely on non-codified law – namely authoritative Islamic sources and *fatwas* (a ruling on a point of Islamic law given by a recognized authority) – to convict and sentence individuals to

⁷ Article 14 Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges (2013)

⁸ <http://rc.majlis.ir/fa/law/show/90547> ; <http://rc.majlis.ir/fa/law/show/91044>

⁹ Iran International <https://iranintl.com/en/iran/president-rouhani%E2%80%99s-brother-sentenced-five-years-prison>

¹⁰ OCCRP <https://www.occrp.org/en/27-ccwatch/cc-watch-briefs/10035-iran-new-conservative-chief-justice-fires-60-corrupt-judges>

¹¹ Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Document Center, Impact Iran and Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

¹² Abdorrahman Boroumand Center, <https://www.iranrights.org/library/document/2994>

¹³ Ministry of Justice 2017 report on the accomplishments of the Judiciary in the year

1395. <https://www.justice.ir/FileSystem/View/File.aspx?FileId=5282d9cd-913e-4c78-b3d8-b39475070de2>

¹⁴ Abdorrahman Boroumand Center, <https://www.iranrights.org/memorial>

crimes and punishments not codified by the existing law. The lack of clear and precise substantive grounds for arrest or detention allows for an overly broad, arbitrary interpretation or application of the law.¹⁵

Provisions codified under the Islamic Penal Code criminalize a range of activity when they ‘disturb’ the “security of the country”¹⁶ or “spread propaganda against the Islamic Republic of Iran”.¹⁷ These terms are not defined under the Islamic Penal Code, giving the judges wide interpretative powers under these provisions. Furthermore, crimes of *moharebeh* (enmity against God)¹⁸ and *efsad-e fel-arz* (corruption on earth),¹⁹ offences that could carry the death penalty, are not precisely defined in the Penal Code, leaving room for interpretation to the judges. It is left to the discretion of the judge to punish a crime of *moharebeh* with either the death penalty, crucifixion, amputation of the right arm and the left leg, or banishment.²⁰

In its National Report to the Universal Periodic review in 2019, the Islamic Republic of Iran reported that it carried human rights training for judges, judicial officers and administrative staff “on the rights of the child, the rights of persons with disabilities, the prohibition of torture and ill-treatment and he confronting against domestic violence” as well as training courses on citizenship rights.²¹ However, there is no readily available information indicating the content of such trainings and how they may ensure that all verdicts reached are in compliance of all the rights and principles laid down in the International Covenant on Civil and Political Rights.

The absence or lack of clarity and precision of offences provided under Iranian law grant judge with wide interpretative powers which undermine the legality of their decision and legal certainty. Judges have reportedly been using these shortcomings to interpret laws subjectively²² and in contravention with the rights laid down in the International Covenant on Civil and Political Rights.²³

Recommendation Status:

This recommendation has **NOT** been implemented.

¹⁵ HRC, General Comment 34, para. 22, available at www.refworld.org/docid/4ed34b562.html

¹⁶ Article 498 Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁷ Article 500 Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁸ Article 279 of the Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

¹⁹ Article 286 Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

²⁰ The Islamic Penal Code (2013), Articles 282 and 283, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

²¹ National Report, Islamic Republic of Iran, UPR 2019, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

²² HRANA <<https://www.en-hrana.org/lawyer-sues-clients-trial-judge-citing-abuse-of-criminal-procedure-code>>

²³ See more: Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Document Center, Impact Iran and Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICSR_IRN_42313_E.pdf