

Concluding observations Human Rights Committee CCPR/C/79/Add.25 para 20

Full recommendation:

The Committee recommends that Iranian legislation and practice be brought into line with the provisions of articles 9 and 14 of the Covenant, which provide that all persons should have the right to a fair trial, including the assistance of counsel, the right to be brought promptly before a judge and the right to be tried in public. Urgent consideration should also be given to the abolition of the Revolutionary courts.

Assessment using Impact Iran human rights indicators¹

A. Right to a fair trial: the right to access legal counsel

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.² 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 Code of Criminal Procedure (CCP), revised in 2015, permits the accused to “demand the presence of a lawyer from the start of detention.”^{3 4}

Article 48 of the Code of Criminal Procedure (CCP), revised in 2015, permits the accused to “demand the presence of a lawyer from the start of detention.”^{5 6} 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.⁷ 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

¹ CCPR.9.3.S.3; CCPR.9.3.S.1; CCPR.14.1.S.3, CCPR.14.3.S.4
CCPR.9.3.P.1; CCPR.9.2.P.1; CCPR.14.3.P.2, CCPR.14.1.P.5
CCPR.9.1.O.1; CCPR.14.3.O.3, CCPR.14.1.O.10

² Constitution of the Islamic Republic of Iran < http://www.iranchamber.com/government/laws/constitution_ch03.php>

³ 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_IJS_IRN_42313_E.pdf

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

⁵ 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_IJS_IRN_42313_E.pdf

⁶ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

⁷ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

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.^{8 9} 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' legal files.^{10 11 12} Yet, the Human Rights Committee has explicitly stipulated that the accused should be granted prompt access to legal counsel,¹³ including during the pre-trial phase.¹⁴ 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.^{15 16} Such amendment would further restrict access to legal counsel during the investigation phase.

With regard to the right to access legal counsel of one's choosing, a Note to Article 48 of the 2015 CCP,¹⁷ 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 and announced by the Head of the Judiciary at the phase of preliminary investigations.¹⁸ 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,

⁸ 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

⁹ HRW <<https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>>

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

¹¹ HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

¹² HRANA <<https://www.en-hrana.org/court-prevents-lawyer-accessing-files-five-sunni-prisoners>>

¹³ CCPR General Comment No.32 <<https://undocs.org/CCPR/C/GC/32>>

¹⁴ 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

¹⁵ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

¹⁶ 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/>

¹⁷ 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

¹⁸ 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>)

threatening due process and questioning the independence and neutrality of the Judiciary.¹⁹ 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.²⁰ 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.^{21 22}

B. Right to a fair trial: the right to be brought promptly before a judge

The Iranian legal framework does not require the accused to be brought promptly before an objective, independent and impartial judicial authority. Under Article 185 of the revised Code of Criminal Procedure (2015), the first judicial authority engaging with a detainee is the “investigator”, an official located within the Office of the Prosecutor who has to responsibility to issue judicial orders, including the bail order and temporary detention order.²³ Article 240 of the Code stipulates that the investigator is obliged to immediately submit in writing the detention order to the Prosecutor who shall approve/disprove the order within 25 hours. Only in the event of a disagreement between the two parties or when the suspect appeals against the detention order that a court will review the legality of a detention order or the necessity of its continuation. Article 214 obliges the investigator to release the accused if the reasons for detention no longer exist, with the approval of the Prosecutor.

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”. The purpose of this hearing is primarily to address the lawfulness of detention. The Human Rights Committee has repeatedly ruled against the qualification of investigators, prosecutors and investigating judges as judicial officers for determining the legality of the detention as it considers that they lack the institutional objectivity and impartiality necessary to act for this purpose.²⁴ The Human Rights Committee

¹⁹ “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>)

²⁰ 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

²¹ HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

²² HRANA <<https://www.en-hrana.org/arash-sadegh-golrokh-iraeis-lawyers-access-cases>>

²³ Article 217 of the Code of Criminal Procedure (2015)

²⁴ HRC, Kulomin v Hungary, Communication no. 521/1992, CCPR/C/50/D/521/1992, para. 11.3; Reshetnikov v Russian Federation, Communication no. 1278/2004, CCPR/C/95/D/1278/2004, para. 8.2; Zheludkova v Ukraine, Communication no. 726/1996, CCPR/C/75/D/726/1996, para. 8.3; HRC, Concluding observations on Tajikistan, CCPR/CO/84/TJK (2005), para. 12;

has explicitly stipulated: “[A] public prosecutor cannot be considered as an officer exercising judicial power under paragraph 3 [of Article 9 of the ICCPR].”²⁵

Under the Iranian Code of Criminal procedure, it is the same entity which, in the first instance, issues detention orders, approves them and respond to their appeals, namely the Office of the Prosecutor. Consequently, the Iranian legal framework is inconsistent with international standards. Failure to bring promptly a detainee before an impartial and independent judicial prevents accused individuals from challenging the lawfulness of their detention.

There are reports of individuals being kept in pre-trial detention for a disproportionate amount of time before being notified of their charges and before being brought before a judge.^{26 27 28 29 30}

C. Right to a fair trial: right to be tried in public

The right to open hearings is protected under Article 165 of the Constitution of the Islamic Republic of Iran.³¹ 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”.³² 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.³³

D. The State party should consider the abolition of the Revolutionary courts

²⁵ <https://www.refworld.org/docid/553e0f984.html>

²⁶ UNPO <<https://unpo.org/article/21430>>

²⁷ Human Rights Watch, <https://www.hrw.org/news/2015/03/13/iran-submission-committee-rights-child>

²⁸ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, July 2020, <https://undocs.org/A/75/213>

²⁹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, September 2019, <https://undocs.org/en/A/HRC/37/24>

³⁰ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/en/A/HRC/40/67>

³¹ Constitution of the Islamic Republic of Iran < http://www.iranchamber.com/government/laws/constitution_ch11.php>

³² Article 352, Code of Criminal Procedure (2015) as referenced by Amnesty International < <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>>

³³ HRANA <<https://www.en-hrana.org/ahmad-montazeris-court-session-held-behind-closed-doors>>

Ad-hoc revolutionary tribunals and special religious courts, established in the aftermath of the revolution, are still in place today in the Islamic Republic of Iran.³⁴ The Law on Formation of General and Revolutionary Courts was adopted in 1994,³⁵ subsequently amended in 2002.³⁶ The Code of Criminal Procedure for General and Revolutionary Courts was enacted in 1999.³⁷ Despite its trial period stipulated for three years, it remained in place until the entry into force of the new Code of Criminal Procedure (CCP) in 2015.³⁸ Revolutionary courts are among Iran's criminal courts listed under Article 294 of the new CCP (2015) and, according to Article 297, are to be established in the capital of each of the state's provinces.³⁹ Revolutionary courts have jurisdiction over crimes against national and external security, *moharebeh* ("enmity against God"), *efsad-e fel-arz* ("corruption on earth"), *baghi* ("armed rebellion against the state"),⁴⁰ "gathering and colluding against the Islamic Republic", armed activities, arson and "destruction and plunder of resources with the purpose of opposing the system", "insulting the founder of the Islamic Republic and the Supreme Leader", all smuggling of restricted items and drug-related offences and other offences whose investigation fall under the revolutionary court's jurisdiction.⁴¹

In 2018, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran stated that the pattern of reported violations related to due process and fair trial in the country often occurred within the context of revolutionary courts,⁴² which reportedly issue the most death sentences.⁴³ Similarly, NGO reports seem to suggest that trials before revolutionary courts disproportionately target civil rights activists and members of religious minorities such as the

³⁴ NGO 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

³⁵ The Law on Formation of General and Revolutionary Courts, 13 July 1994, available at rc.majlis.ir/fa/law/show/90416

³⁶ Amendments to the Law on Formation of General and Revolutionary Courts, 3 November 2002, available at rc.majlis.ir/fa/law/show/93837

³⁷ The Code of Criminal Procedure for General and Revolutionary Courts, 19 September 1999, available at rc.majlis.ir/fa/law/show/93219

³⁸ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

³⁹ Iran Human Rights Documentation Center, <https://iranhrdc.org/amendments-to-the-islamic-republic-of-irans-code-of-criminal-procedure-part-1/>

⁴⁰ Defined under Articles 279 to 285 and Articles 286 to 288 of the Islamic Penal Code (2013), Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁴¹ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁴² <https://undocs.org/en/A/HRC/37/68>

⁴³ See <https://iranhr.net/en/articles/2839/>

Baha'is,⁴⁴ and often do not respect the human rights safeguards provided under the right to a fair trial.^{45 46 47 48}

Recommendation Status:

This recommendation has **NOT** been implemented.

⁴⁴ EN-HRANA, <https://www.en-hrana.org/?s=revolutionary+court>

⁴⁵ Omid memorial case of Ahmad Nasiri, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-8023/ahmad-nasiri>)

⁴⁶ Letter of Zahedan Prison inmates, May 13, 2019, Abdorrahman Boroumand Center (<https://www.iranrights.org/library/document/3577>)

⁴⁷ EN-HRANA, <https://www.en-hrana.org/case-ahmadinejads-former-vp-sent-revolutionary-court?hilite=%27revolutionary%27%2C%27court%27>

⁴⁸ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/61>