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Iran: Nearly four decades after revolution, legal framework remains deeply flawed

Nearly four decades after Iran's 1979 Revolution shook its criminal justice system to the core, the country's legal framework remains largely inadequate, inefficient and inconsistent with international fair trial standards, leaving individuals who come into contact with it with little or no protection, said Amnesty International in a new report published today.

[*Flawed reforms: Iran's new Code of Criminal Procedure*](#) provides a comprehensive analysis of Iran's new Code of Criminal Procedure, which came into force in June 2015. The report welcomes the introduction of several long overdue reforms, which the authorities have repeatedly hailed as major advances towards respect for fair trial standards and the rights of the accused. However, as the report exposes, the Code constitutes a lost opportunity as it fails, by and large, to do more than scratch the surface of the flaws that run deep in Iran's criminal justice system. The report calls on the authorities to take immediate steps to review and amend the Code in order to bring it into conformity with international fair trials standards.

On 11 February, as the authorities celebrate the anniversary of the revolution that resulted in the change of government in Iran 37 years ago, dozens of journalists, writers, human rights defenders, artists and others who have dissented from state-sanctioned ideologies languish in jail solely for the peaceful exercise of their rights. Thousands of individuals also remain on death row, often after unfair trials and for crimes which should never attract the death penalty under international law, such as drug-related offences. All have been betrayed by a state that has failed to uphold the promises of justice and freedom offered by the 1979 Revolution.

The immediate aftermath of the revolution witnessed a massive scale of human rights violations, with thousands of individuals imprisoned with almost no regard for due process, tortured and extrajudicially executed. These atrocities were facilitated by a legal vacuum as the authorities scrapped any guarantees of fair trial rights recognized under the previous judicial system that they deemed undesirable. The scope and scale of the violations of the early years of the Islamic Republic have narrowed with time. However, the country's criminal justice system has remained characterized by unscrupulous practices that have eroded the right of all to a fair trial. The country's criminal procedures, including those in the recently adopted Code of Criminal Procedure, continue to place enormous powers in the hand of prosecutorial, security and intelligence authorities. The exercise of these powers, in a context where an overwhelming number of laws are aimed at suppressing dissent, has created a breeding ground for abuses, rendering the accused practically defenceless and robbed of their right to be presumed innocent.

The new Code of Criminal Procedure

The new Code of Criminal Procedure, which had been in the making for almost a decade, came into force in June 2015. It is an improvement on the old code, which had been in force since 1999, and contains provisions that, if implemented properly, could provide individuals with some increased fair trial safeguards. For example, the new Code requires the judicial authorities to notify the accused of their rights, provide them with a written copy about their rights, and enclose a receipt of the communication in the case file. However, the Code does very little to guarantee the rights of individuals standing trial on criminal charges and confronted by the powerful machinery of the state. Instead, many of the Code's provisions grant the intelligence and security bodies, as well as the Office of the Prosecutor, powers that are open to abuse.

Intelligence and security bodies with judicial powers

The new Code of Criminal Procedure contains some overdue reforms with regards to the agencies and individuals who are legally permitted to exercise judicial powers. For example, it requires officials that have the power to arrest, detain and investigate to undergo training and carry special identification cards. These improvements are, however, undermined by other provisions in the Code that grant broad arrest and investigation powers to an array of intelligence and security forces. In fact, the new Code 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. It also recognizes the Intelligence Organization of the Revolutionary Guards as judicial officers. The Code further fails to clarify, in clear and precise terms, the scope of these powers and the circumstances under which they can be used. This failure, compounded by the absence of an effective oversight mechanism and a context where these bodies have long enjoyed almost virtual impunity, gravely jeopardizes the rule of law and the independence of the judicial system.

Unchecked powers of the prosecutor

The powers granted to the Office of the Prosecutor by the new Code of Criminal Procedure extend over a wide range of issues which, under international law, should fall outside prosecutorial discretion due to this body’s lack of objectivity and impartiality. These largely unchecked powers permeate the entire criminal proceedings, starting from the moment an individual comes into contact with the criminal justice system at the time of arrest.

Under international law, including Article 9(3) of the International Covenant on Civil and Political Rights, to which Iran is a state party, once an individual is arrested or detained, they must promptly be brought before an objective, impartial and independent judge or judicial authority to assess the lawfulness of their detention and issue appropriate orders, such as pre-trial detention or bail. The new Code of Criminal Procedure, in a welcome step, has abolished mandatory pre-trial detention and has now made it dependent on the presence of sufficient evidence to charge a suspect with certain offences such as capital crimes and those relating to national security and on the possibility of flight, destruction of evidence, or disturbance to public order. These advances, however, risk being rendered meaningless by other provisions of the Code which place the liberty of the accused in the hands of the Office of the Prosecutor. This body lacks the required objectivity, impartiality and independence to decide on the necessity of pre-trial detention by virtue of the role it plays in the investigation and prosecution of the accused. While the Code gives the accused the right to appeal against a decision of the Office of the Prosecutor to subject them to pre-trial detention, it is silent on crucial matters such as whether the court should review the request in an oral hearing, and the right of the accused to be present, to be represented by counsel and to submit evidence in this kind of hearing.

The scope of powers granted to the Office of the Prosecutor also defies the minimum guarantees for a fair trial when it comes to making decisions about disclosure of information to the defence. A key component of the right to prepare an adequate defence, as guaranteed under international law, is granting the accused and their lawyer timely access to relevant information such as the list of witnesses and the documents on which the prosecution intends to rely, as well as information that might result in the exoneration of the accused. Determination of whether there are exceptional circumstances permitting the prosecution to withhold evidence from the defence must be made by an independent and impartial court.

Iran’s Code of Criminal Procedure, however, allows the Office of the Prosecutor, rather than an impartial court, to impose restrictions on disclosure of information to the accused or their lawyer in cases involving national security and offences against “decency”, as well as where disclosure is deemed to “undermine the uncovering of the truth”. The Code does not provide objective criteria for making such an assessment, granting the investigator a blanket authorization to issue a non-disclosure order. The burden of challenging the necessity of non-disclosure rests with the accused and their lawyer.

By giving such disproportionate powers to the prosecutorial authorities without establishing effective oversight mechanisms, the Code puts its entire force behind the state, effectively further tipping the scales in its favour.

Accused rendered defenceless

In return for the vast powers that the Office of the Prosecutor has at its disposition, the new Code has only recognized the rights of the accused in a half-hearted fashion. This deficiency has been exacerbated by a series of amendments which were passed only days prior to the Code's entry into force and rolled back some of its most progressive provisions even before they could take effect.

One of the most important fair trial guarantees, which serves as an important safeguard against torture and other ill-treatment and coerced confessions, is the right to access to a lawyer from the time of arrest. The new Code includes a provision that both entitles the accused to request a lawyer from the time of arrest and requires the authorities to inform the accused of this right. However, failure to uphold these rights does not affect the validity of the investigations, allowing courts to rely on evidence gathered during investigations conducted without the presence of a lawyer. Regressive amendments made to the Code in June 2015 removed the provision that rendered investigations void in the case of such breaches.

Moreover, under the June 2015 amendments, individuals facing national security-related charges are not permitted to access an independent lawyer of their choice for the entire investigation phase, which may last for months. They 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.

While the Office of the Prosecutor can, by virtue of the powers it holds, place individuals in a coercive environment, the Code leaves the accused with no effective recourse where allegations of coercion arise. This means, in practice, that Iranian courts can continue to rely on evidence gathered in violation of international law and standards including the absolute prohibition of torture and other ill-treatment. The new Code explicitly spells out the right of the accused to remain silent and outlaws the use of torture and other ill-treatment to obtain confessions. It further requires courts to exclude torture-tainted evidence and rely on statements only if they have been given voluntarily. However, it fails to outline detailed procedural provisions pertaining to the implementation of these principles, including what constitutes an involuntary statement and who bears the burden of proving that a statement has been made voluntarily. Equally problematic is the Code's silence on procedures that must be followed by judges and prosecutors to investigate allegations of torture and other ill-treatment, such as an automatic and immediate medical examination. These flawed norms fail to ensure the implementation, in practice, of the rule that statements and other forms of evidence elicited as a result of torture, other ill-treatment or coercion must be excluded from all proceedings.

Background

In April 2014, a new Code of Criminal Procedure 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. In August 2014, about two months before the planned entry into force of the Code, the authorities announced that the entry into force of the Code would be delayed for almost a year for various reasons, including insufficient resources allocated to provide the number of qualified judges needed. In the same month, parliamentarians put forward an Amendment Bill which sought to reverse a number of the new Code's half-hearted reforms. On 17 June 2015, only five days before the Code's entry into force the Guardian Council – the body that vets legislation to ensure its conformity with the Constitution and Islamic law, and approves all bills before they become law – approved the amendments.

Public Document

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