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Iran: Draconian amendment further erodes fair trial rights

The Iranian authorities have put another nail in the coffin of justice by making a retrogressive amendment in Iran's new Code of Criminal Procedures which limits the right to access an independent lawyer of one's choice during primary investigations in certain criminal cases, including those related to national security. The authorities must immediately amend the law to ensure that any person charged with a criminal offence has access to a lawyer of their own choosing from the time of arrest.

The draconian development came in the form of a last-minute amendment to a new Code of Criminal Procedures, which was passed in April 2014 and was entered into force on 22 June 2015. According to the amendment, approved by the Guardian Council on 17 June 2015¹, individuals facing national security-related charges may only select their legal counsel for the investigation phase, which may last for months, from a roster of lawyers approved by the Head of the Judiciary. The same restriction is imposed on individuals accused of involvement in organized crimes which are subject to such punishments as the death penalty, life imprisonment, and amputation.

This retrogressive move does away with basic due process guarantees and confirms yet again the authorities' utter disregard for their international human rights obligations, including fair trial standards. Denial of the right to access a lawyer of own choice is particularly disturbing in cases where individuals risk facing the irreversible punishment of the death penalty. Under international law including the International Covenant on Civil and Political Rights (ICCPR) to which Iran is a party, proceedings in capital cases must scrupulously observe all relevant international standards protecting the right to a fair trial. This includes the right to counsel of choice at all stages of criminal proceedings including during pre-trial detention, questioning and primary investigation.

Denial of the right to access a lawyer during primary investigations constitutes one of the longstanding abuses in Iran's criminal justice system, which has facilitated torture and other ill-treatment. This was allowed under a deficient Code of Criminal Procedures, which conditioned access to counsel during the course of primary investigations on a court's approval in cases concerning national security offences, as well as where the presence of individuals other than the accused was deemed to cause "corruption".²

In April 2014 a new Code of Criminal Procedures, which was in the making for almost a decade, passed into law introducing a number of overdue reforms. Most notably, the Code included provisions that granted individuals facing criminal charges the right to request the presence of a lawyer at the onset of detention and throughout the course of primary investigations. Despite this welcome improvement, the Code still allowed judicial officials to deny the right to legal counsel for up to a week in cases of certain offences, including for organized crimes, crimes against national or external security, theft, drug-related offences or crimes punishable by the death penalty or life imprisonment.

Up to the introduction of this new amendment, which was first introduced in August 2014, this half-hearted improvement was repeatedly used by the authorities to showcase their criminal justice reform project both domestically and internationally.

Amnesty International is now appalled by the authorities' decision to abort this much-anticipated change before it could even take effect and thus further eroding fair trial rights and the independence of the legal profession with it. The organization calls on the authorities to urgently withdraw the latest restrictions imposed on the right to access legal counsel and take immediate steps to review the Code

of Criminal Procedure in order to bring it into conformity with international fair trial standards.

Background

In April 2014 a new Code of Criminal Procedures passed into law. The new Code was much celebrated for some improvements, including restricting the use of temporary detention to situations where there is a flight risk or a threat to public safety, stricter regulations governing questioning and interrogation of the accused, and notification of detainees' right at the onset of arrest and detention. The Code protected the right of detainees to access counsel of their own choice, even though there were unacceptable limitations to the exercise of this right.

Despite these overdue reforms, the new Code has failed to tackle major shortcomings suffered by Iran's criminal justice system for decades, such as in relation to the independence of the judiciary, lack of legal safeguards against torture and other ill-treatment, and the right to reparation and remedy for victims of human rights violations.

Under International law, everyone deprived of their liberty or facing a possible criminal charge has the right to the assistance of a lawyer of their choice to protect their rights and to help in their defence. While the right to the assistance of a lawyer during the pre-trial stage is not expressly set out in the ICCPR, the Human Rights Committee (HRC), the body of independent experts that monitors implementation of the ICCPR, has clarified that it is required for the meaningful exercise of the right to a fair trial.³

The HRC has also stated, "The right to communicate with counsel requires that the accused is granted prompt access to counsel." Delaying of access to legal assistance may only be permitted under exceptional circumstances that must be prescribed by law. However, even in such cases, access should not be delayed for more than 48 hours from the time of arrest or detention.⁴ The UN Special Rapporteur on torture has also recommended that "Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention."⁵

The UN Basic Principles on the Role of Lawyers state that the adequate protection of the human rights and fundamental freedoms to which all persons are entitled requires that all persons have effective access to legal services provided by an independent legal profession.

Public Document

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¹ Iran's Guardian Council vets legislation for conformity to the Constitution and to Islamic Law, and must approve all bills before they become law.

² The Note to Article 128 of the old Code of Criminal Procedure stated, "in case where the issue is confidential or the presence of other parties apart from the accused causes corruption as well as cases of crimes against national security, the presence of a lawyer during primary investigations depends on the authorization of the court".

³ HRC Concluding Observations: Georgia, UN Doc. CCPR/C/79/Add.75 (1997) para. 27, Netherlands, UN Doc. CCPR/C/NLD/CO/4 (2009) para.11.

⁴ Principle 7 of the Basic Principles on the Role of Lawyers.

⁵ UN Doc. A/56/156 (2010) Para.39(f).