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EXECUTIVE SUMMARY

The current judicial system of the Islamic Republic of Iran (IRI) was shaped after the fundamental changes brought about by the 1979 Revolution. Successive revolutionary governments undertook the process of implementing Islamic law through the country's political, judicial and bureaucratic institutions, eliminating the Western influence introduced throughout the secular reign of Reza Shah.

Following these changes, Iran's judicial system has become a *sui generis* system that combines the French overall structure of the judiciary with *Shari'a* law. Chapter XI of the Constitution of the IRI is dedicated to the judiciary and sets out its general framework and structure. Public Courts of the IRI are functionally classified according to their area of jurisdiction and the seriousness of the crime at stake. Alongside Public Courts, numerous specialized courts also assert jurisdiction over discrete subject matters.

Partly as a result of its structural and statutory sophistication, at first glance the IRI's judiciary seems to adhere to long-established principles governing the rule of law and fair trial rights through the Constitution and various national laws. In addition, the IRI is a party to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), which contain extensive provisions regarding fair trial and due process rights. Notwithstanding, violations of due process and fair trial rights by the judiciary are entrenched and systematic. Decades of history attest that the IRI uses its judiciary as a tool to achieve political ends, rather than to safeguard the rights and freedoms of its citizens.

This report examines the structure and function of the courts presently in place in the IRI, as well as the role and function of the head of the judiciary, subsidiary judges, and the Ministry of Justice. Finally, it will show how the IRI continuously violates its international obligations by denying the most basic due process and fair trial rights to its citizens, and that many of these violations are a natural consequence of the structure and laws pertaining to the country's judiciary..

1. INTRODUCTION

The current legal framework of the judiciary in Iran is the result of the multiple reforms that have taken place since the early twentieth century.

The reign of the secularizing monarch Reza Shah saw the successful implementation of wide-ranging reforms to Iran's judicial system. In 1927, the country's Minister of Justice, Ali Akbar Davar, dissolved the existing judicial system with the approval of Parliament and instituted major judicial reforms with the help of European experts.¹ A new court system was established and new civil, commercial and criminal codes were drafted. Although religious judges were still allowed to rule in certain areas such as family or inheritance law, the court system was –for the most part–

¹ MAJID MOHAMMADI, *JUDICIAL REFORM AND REORGANIZATION IN THE 20TH CENTURY IRAN STATE-BUILDING, MODERNIZATION AND ISLAMICIZATION*, 94-98 (Routledge Taylor & Francis Group, 2008).

successfully freed of any religious influence.²

After the 1979 Islamic Revolution, Iran became the first theocracy in the world and consecrated the *Velayat-e Faqih* or Guardianship of the Jurist. Under the *Velayat-e Faqih*, a supreme jurist, or religious authority, conducts the affairs of the State in accordance with God's laws during the absence of the 12th Shi'a Imam. The individual who fulfills this role is titled the Supreme Leader, and is vested with absolute authority.³

The Revolution introduced radical changes throughout the entire country, and especially to its judicial system, which rapidly transitioned from its existing secular and semi-independent structure (closely and consciously resembling the French legal system) to one based on Shi'a principles of governance. The new Constitution of the IRI adopted by referendum on 2 and 3 December 1979, replaced the Constitution of 1905. The preamble of the Constitution,⁴ together with articles 4, 61 and 171, affirmed the predominance of the rule of the Islamic Shari'a and strengthened clerical authority in every aspect of the nation's life. In keeping with the Constitution, applicable laws were modified to comply with Shari'a principles of governance.

In July 1982, the Supreme Leader, Ayatollah Khomeini, issued an order to void laws contrary to Islam or Shari'a and all courts were instructed to use authentic Islamic texts and *fatwas*.⁵ Criminal laws were changed to introduce Islamic crimes and punishments such as crucifixion, amputation of limbs, waging war against God or apostasy. The progressive family law adopted in 1967 was abolished, and the age of criminal responsibility was brought to nine lunar years for women and 15 lunar years for men. Finally, the legal requirements for judgeship were modified and women were barred from becoming judges.⁶

A second wave of reforms took place following Ayatollah Khomeini's death in 1989. The Constitution was amended, introducing further crucial amendments that had the effect of weakening oversight of the Judiciary. The Supreme Judicial Council⁷ was dissolved and replaced by a single individual (hereinafter "the head of the Judiciary") appointed by the Supreme Leader. The head of the Judiciary assumed significant judicial, organizational and administrative

² MAJID MOHAMMADI, JUDICIAL REFORM AND REORGANIZATION IN THE 20TH CENTURY IRAN STATE-BUILDING, MODERNIZATION AND ISLAMICIZATION, 99-101 (Routledge Taylor & Francis Group, 2008).

³ Karim Lahidji, *The History of the Judiciary in Iran* in THE FUTURE OF IRAN: JUDICIAL REFORM – THE LEGATUM INSTITUTE 5 (2012) available at <http://www.li.com/docs/default-source/future-of-iran/2012-future-of-iran-by-karim-lahidji-the-history-of-the-judiciary-in-iran.pdf?sfvrsn=2>

⁴ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1979], arts. 4, 61 and 171.

⁵ MAJID MOHAMMADI, JUDICIAL REFORM AND REORGANIZATION IN THE 20TH CENTURY IRAN STATE-BUILDING, MODERNIZATION AND ISLAMICIZATION, 130 (Routledge Taylor & Francis Group, 2008).

⁶ Karim Lahidji, *The History of the Judiciary in Iran* in THE FUTURE OF IRAN: JUDICIAL REFORM – THE LEGATUM INSTITUTE, 6-8 (2012) available at <http://www.li.com/docs/default-source/future-of-iran/2012-future-of-iran-by-karim-lahidji-the-history-of-the-judiciary-in-iran.pdf?sfvrsn=2>

⁷ *Id.* The Supreme Judicial Council included the head of the Supreme Court, the Attorney General and three jurists nominated by judges across the country.

responsibilities regarding the Judiciary.⁸

The dissolution of the Supreme Judicial Council and its replacement with a single non-elected individual allowed for the implementation of far-reaching reforms of the country's judicial system. In 1994, the first head of the Judiciary, Ayatollah Mohammad Yazdi, dissolved the general structure of Iran's modern court system established in the 1930s and replaced it with a new system modeled after traditional Shari'a courts. The 1994 Law of Public Courts established a single-judge system in which the adjudicator was commonly a cleric.

Islamic legal tradition holds Shari'a jurists in high regard, in that they are said to be familiar and knowledgeable with every aspect of human life.⁹ Shari'a jurists exercised general jurisdiction, reviewed and settled all claims and litigation except those that remained with the jurisdiction of revolutionary courts. Appeals of first instance judgments became a privilege under the discretion of the issuing court. Finally, the 1994 law abolished prosecutors' offices across the country allowing judges to act first as both procurators¹⁰ and prosecutors representing the interests of the State, before adjudicating the dispute in clear violation of the principle of impartiality of judges.¹¹ Soon after his appointment as head of the Judiciary by Supreme Leader Khamenei in 2009, however, Mahmoud Hashemi Shahroudi said that his predecessor, Ayatollah Yazdi, had left him a ruined Judiciary.¹² Shahroudi reversed the reform of the General Courts' Law and established a multi-level system comprised of general and specialized courts.

Since the revolution, the Iranian Judiciary has managed to institute a unique system borrowing from the French civil law system and Shar'ia law and jurisprudence. Today, it is comprised of courts asserting jurisdiction over various subject matters such as Public Courts, Revolutionary Courts or the Special Clerical Court. The system is further shaped by hundreds of different laws, regulations, and circulars, some of which are still in a trial period. The Iranian Judiciary suffers from enormous backlogs, due in part to the great number of cases that are deferred to the courts¹³ but also to the majority of ill-prepared and politically-motivated judges that rule the country.

⁸ MAJID MOHAMMADI, JUDICIAL REFORM AND REORGANIZATION IN THE 20TH CENTURY IRAN STATE-BUILDING, MODERNIZATION AND ISLAMICIZATION, 171 and 173 (Routledge Taylor & Francis Group, 2008).

⁹ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1979], sub-section 6 to art. 3.

¹⁰ In this report the term procurator refers to legal officers in the Iranian judiciary who are responsible for investigating crimes.

¹¹ MAJID MOHAMMADI, JUDICIAL REFORM AND REORGANIZATION IN THE 20TH CENTURY IRAN STATE-BUILDING, MODERNIZATION AND ISLAMICIZATION, 171-178 (Routledge Taylor & Francis Group, 2008) *see also* Karim Lahidji, *The History of the Judiciary in Iran in THE FUTURE OF IRAN: JUDICIAL REFORM – THE LEGATUM INSTITUTE*, 8 (2012) available at <http://www.li.com/docs/default-source/future-of-iran/2012-future-of-iran-by-karim-lahidji-the-history-of-the-judiciary-in-iran.pdf?sfvrsn=2>

¹² *Iran's Crumbling Judiciary*, PBS (Aug. 15, 2009) available at <http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2009/08/irans-crumbling-Judiciary.html>

¹³ Najafabad News, *Vorud-ih Salanih 15 miliun parvandih bih dastgah ghazayi* (Fifteen Million Cases Before the Judiciary Every Year), available at <http://najafabadnews.ir/?p=21969> (in Persian).

Although the Constitution of the IRI formally expresses the wish to eliminate “all forms of dictatorship, autocracy and monopoly [of power]”,¹⁴ the judiciary’s institutional structure, national legislation and *de facto* practice do not allow the protection of fair trial rights essential to the implementation of the rule of law. The Iranian Judiciary concentrates all the powers of the Judiciary in the hands of a single individual – the head of the Judiciary – appointed by the Supreme Leader, who is himself unelected and unaccountable to any institution in practice. Thus, the unelected element of the IRI effectively controls the Judiciary, which has been used as a tool to achieve the domestic political objectives of the leadership to the detriment of its original purpose: to guard the interests of its citizens against the abuses of the political branches and administrative authorities.

Furthermore, there is no oversight of the constitutionality of laws that are promulgated and thus no control over the legislative power. The Guardian Council, vested with the power to control the conformity of the laws with the constitution, does not interfere with judicial affairs because the Judiciary, like the Guardian Council is directly under the control of the Supreme Leader. Finally, the judges of the IRI, when appointed, do not enjoy security of tenure and their employment and promotion is at the discretion of the head of the Judiciary. In such conditions, they lack independence and are unable to fulfill their crucial role of upholding human rights, and instead the lower courts typically follow directives issued by the head of the Judiciary.

Iran is a party to several international human rights instruments containing fair trial and due process guarantees, but the Judiciary has violated the most basic due process rights of citizens in both civil and criminal proceedings in contravention of its international obligations as a matter of course since the Islamic Revolution.

The present report analyzes the current structure and functions of the Judiciary. The first section outlines the structure of Public Courts and specialized courts as well as the Public Prosecutor’s Office and the applicable appeal procedures. In the second section, the report examines the powers and duties of the actors of the judiciary – the head of the Judiciary, judges and the Ministry of Justice. Finally, the report analyzes the due process guarantees of Iranian law and examines the practices of the IRI’s judiciary from the standpoint of International Human Rights law.

2. STRUCTURE OF THE JUDICIARY

The Iranian judiciary is based on a multilayered court system in which courts have functional areas of specialization. Further, the severity of the crime sometimes determines the jurisdiction of the courts.

While Public Courts have general jurisdiction over all disputes, specialized courts such as Revolutionary Courts, Military Courts, the Special Clerical Court, the High Tribunal for Judicial Discipline and the Court of Administrative Justice have functional areas of specialization limiting their jurisdiction to particular offenses or disputes.

¹⁴ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1979], arts. 4, 61 and 171.

2.1. PUBLIC COURTS

Public Courts in the IRI are divided into civil and criminal courts. Criminal courts are further divided between Criminal Courts I and Criminal Courts II, which are distinguished by the severity of the punishments available. Finally, some branches of the Public Courts have specific areas of subject matter or *ratione personae* jurisdiction such as family law or crimes committed by young offenders.

2.1.1. Civil Courts

Under Article 10 of the Law of Public and Revolutionary Courts in Civil Matters (hereinafter Code of Civil Procedure), Public Courts have general jurisdiction over any and all disputes that have not been assigned by law to another court.¹⁵ Consequently, they adjudicate civil, commercial and family matters.

2.1.1.1. Jurisdiction and Composition

As a general rule, the court of the domicile or residence of the defendant has jurisdiction to adjudicate a civil dispute.¹⁶ Provided that the defendant has no domicile or residence in Iran, and that the dispute involves real property, the court where the property is located asserts jurisdiction over the claim.¹⁷ When a claim pertains to personal property or chattel, the court where the property is located will adjudicate the dispute regardless of whether the defendant has his domicile or residence in that jurisdiction.¹⁸

Hearings in Public Courts are convened with the presence of a chief judge or alternate judge, who conducts the proceedings and issues the judgment in accordance with the Code of Civil Procedure.

Jurisdictional disputes between courts within the same district are adjudicated by Appeals Courts. Jurisdictional disputes between courts of different districts are settled by the Supreme Court.¹⁹ Jurisdictional conflicts between Public Courts, Revolutionary Courts and Military Courts are likewise resolved by the Supreme Court, which issues binding decisions as to jurisdiction.²⁰

Specific branches of the Public Courts are dedicated to particular subjects such as commercial matters, international cases, intellectual property or family matters.

2.1.1.2. Family Courts

Prior to the revolution, Iran's former government adopted the Family Bill of 1967 in an endeavor

¹⁵ Law on Public and Revolutionary Courts in Civil Matters of January 10, 2001, (hereinafter the Code of Civil Procedure), art. 10 available in Persian at <http://rc.majlis.ir/fa/law/show/93305>

¹⁶ Code of Civil Procedure, art. 11.

¹⁷ *Id.*

¹⁸ Code of Civil Procedure, arts. 11 and 12.

¹⁹ Code of Civil Procedure, art. 27.

²⁰ Code of Civil Procedure, art. 28.

to bring family disputes under State control and diminish the influence of the religious clerics in Shari'a courts. Family Courts were, however, shuttered after the revolution and family matters were adjudicated in General Courts.

The Family Protection Law currently in force in the IRI was adopted in 2007 and amended in August 2013.²¹ According to this law, specific sections of Public Courts are now dedicated to family matters.

Family Courts are composed of one presiding judge or substitute and one female advisor.²² The presiding judge must be married and have at least four years of legal experience.²³ The advisor to the Court must provide her advice in writing prior to the issuance of the judgment and the presiding judge is duty-bound to mention it in his judgment.²⁴

Family Courts assert jurisdiction over all matters relating to family law such as marriage or divorce, including temporary marriages, dowry or *mahr*,²⁵ as well as custody of the children, alimony and parenting.²⁶

Ratione loci, preference is given to the courts of the residence of the wife, who will have the option to bring an action in either the court of the residence of the defendant or the court of her own residence.²⁷ If both husband and wife file a claim in Family Courts, the court initially seized will adjudicate the dispute unless both actions are filed on the same day, in which case the court of the residence of the wife will assert jurisdiction.²⁸

The Family Protection Law further establishes family counseling centers alongside every family court to “strengthen family values and prevent family disputes – divorce in particular – and strive towards peace and reconciliation.”²⁹ These centers are composed of experts in the fields of psychology, social sciences, law and Shari'a. The law further requires that half of the experts in every center be women.³⁰ The court can use the capacity of the counseling center in an effort to mediate the dispute.³¹ If the center is successful in finding an agreement between the spouses, it will issue an order of reconciliation.³² Otherwise, it will refer the matter back to Family Courts after having issued a written opinion.³³

²¹ Family Protection Law of July 23, 2007 amended in 2013, (Family Protection Law) available in Persian at <http://www.rooznamehrasmi.ir/laws/ShowLaw.aspx?Code=847>

²² Family Protection Law, art. 2.

²³ Family Protection Law, art. 3.

²⁴ Family Protection Law, art. 2.

²⁵ *Mahr* is a dowry in the form of real or personal property that a man gifts to his wife at the time of the conclusion of the wedding.

²⁶ Family Protection Law, art. 4.

²⁷ Family Protection Law, art. 12.

²⁸ Family Protection Law, art. 13.

²⁹ Family Protection Law, art. 16.

³⁰ Family Protection Law, art. 17.

³¹ Family Protection Law, art. 16.

³² Family Protection Law, art. 19.

³³ Family Protection Law, art. 19.

2.1.2. Criminal Courts

Public criminal courts are divided between Criminal Courts I and Criminal Courts II. Criminal Courts I have jurisdiction over more important felony charges as well as all crimes committed by high-level government officials and civil servants. Criminal Courts II, on the other hand, try cases involving lighter punitive sentences.

Specific branches of Criminal Courts I are dedicated to crimes committed by young offenders.

2.1.2.1. Criminal Courts I and Criminal Courts II

In accordance with Article 301 of the Code of Criminal Procedure (hereinafter CCP), Criminal Courts II have general jurisdiction over all criminal offenses that are not within the specific jurisdiction of another court.³⁴

Pursuant to Article 302 of the CCP, Criminal Courts I adjudicate felony charges that entail severe punishment. This article provides that:

The following cases are adjudicated at a Criminal Court I:

- Crimes punishable by death;
- Crimes punishable by life imprisonment;
- Crimes punishable by amputation or intentional crimes against bodily integrity with compensatory payments equaling or exceeding one-half of the compensatory payment for a wrongful death;
- Crimes punishable by category III or higher *ta'zir* punishments;³⁵
- Political and press crimes.³⁶

Articles 307 and 308 of the CCP grant *ratione personae* jurisdiction to Criminal Courts I over Government officials and high-ranking civil servants charged with crimes committed in the discharge of their duties.³⁷ Hence, for example, the Criminal Court I of Tehran has jurisdiction over highest-ranking government officials and civil servants.³⁸ Lower-ranking individuals will be judged in the Criminal Court I of the province where the crime was committed.³⁹

The courts of the place where the crime was committed have *ratione loci* jurisdiction to

³⁴ Code of Criminal Procedure of June 22, 2015, (hereinafter Code of Criminal Procedure), art. 301 available in Persian at <http://www.ghanoon.ir/جدید-کیفری-دادرسی-آیین/>.

³⁵ For a definition of *ta'zir* crimes see the Islamic Criminal Code (Book one and two), (hereinafter the Islamic Criminal Code) arts. 18-19 available in English at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

³⁶ Code of Criminal Procedure, arts. 302 and 305.

³⁷ Code of Criminal Procedure, arts. 307-309.

³⁸ Code of Criminal Procedure, art. 307.

³⁹ Code of Criminal Procedure, art. 308.

adjudicate the dispute.⁴⁰ If the defendant has committed multiple crimes in various locations, the defendant will be prosecuted and tried in the court where the most serious crime took place.⁴¹

If the accused is charged with multiple crimes within the jurisdiction of both Criminal Courts I and Criminal Courts II, Criminal Court I will assert jurisdiction over all the crimes committed by the accused in accordance with article 314 of the CCP. Finally, when the defendant is convicted of multiple crimes that are within the jurisdiction of Public Courts, Military Courts and Revolutionary Courts, he or she will first attend trial in the court that has jurisdiction over the most serious crime.⁴²

Jurisdictional disputes will be resolved in accordance with the relevant provisions of the Code of Civil Procedure.⁴³

2.1.2.2. Composition of the Criminal Courts and Geographical Distribution

There is at least one Criminal Court II-level court in each judicial provincial district.⁴⁴ There is also at least one Criminal Court I-level court in the capital of each of Iran's 31 provinces.⁴⁵ Article 296 of the Code of Criminal Procedure further allows the head of the Judiciary to create additional branches at the Criminal Court I level in county courthouses.⁴⁶

Criminal Courts II are composed of one chief judge or a substitute judge⁴⁷ whereas Criminal Courts I are comprised of one chief judge and two associate judges.⁴⁸ Criminal Courts I reach quorum with the presence of two judges.⁴⁹

2.1.3. Juvenile Courts

2.1.3.1. Jurisdiction

Juvenile Courts have exclusive jurisdiction over crimes committed by children⁵⁰ or adolescents that are under 18 years of age at the time of the crime or prior to the start of the investigations.⁵¹

⁴⁰ Code of Criminal Procedure, note 1 to art. 310.

⁴¹ Code of Criminal Procedure, note 2 to art. 310.

⁴² Code of Criminal Procedure, art. 314.

⁴³ Code of Criminal Procedure, art. 317.

⁴⁴ Code of Criminal Procedure, art. 295.

⁴⁵ Code of Criminal Procedure, art. 296.

⁴⁶ Code of Criminal Procedure, note 1 to art. 296.

⁴⁷ Code of Criminal Procedure, art. 295.

⁴⁸ Code of Criminal Procedure, art. 296.

⁴⁹ Code of Criminal Procedure, art. 296.

⁵⁰ Code of Criminal Procedure, note 1 to art. 304. An infant is defined as a child that has not reached the age of puberty. Article 1210 of the Civil Code provides that the age of maturity is 9 lunar years for girls and 15 lunar years for boys. As stated by articles 147-148 of the Islamic Criminal Code, children below the age of maturity are not criminally responsible and can only be sentenced to correctional and security measures. However, a young adult between the age of 9 years old (or 15 years old in the case of boys) and the age of 18 years old will be deemed criminally responsible.

If the child turns eighteen prior to the start of investigations or trial, the dispute will be adjudicated by common criminal courts rather than Juvenile Courts.⁵² That said, the young adult will benefit from all the protections and safeguards applicable in Juvenile Courts.⁵³

Young offenders, accomplices or accessories to a crime committed by adults, will be judged in Juvenile Courts.⁵⁴ Similarly, as long as one of the accused is a child, all the defendants will be judged in Juvenile Courts. Only the child or young offender will, however, be afforded the specific protections and safeguards available in Juvenile Courts while the other defendants will be judged as adults.⁵⁵

More serious offenses committed by children will be adjudicated in Criminal Courts I in accordance with Article 315 of the CCP. In each district court, a specific branch of Criminal Courts I – the special division for crimes of adolescents – is dedicated to more serious crimes committed by children and of young offenders. However, the defendant is afforded all the protections and safeguards available in Juvenile Courts.⁵⁶

2.1.3.2. Composition and geographical distribution

Under Article 298 of the CCP, “[e]ach provincial judicial district court holds at least one branch dedicated to the juvenile court.”⁵⁷ Until Juvenile Courts are established, disputes that are within the jurisdiction of such courts will be adjudicated in Criminal Courts II.⁵⁸

Juvenile Courts are administered by one judge and one counselor experienced in psychology, criminology, social work or education.⁵⁹ Judges in Juvenile Courts are required to be married (preferably with children), have a minimum of five years of legal experience and have undergone specific training.⁶⁰

2.1.3.3. Specific procedures applicable to safeguard the interest of the child

Certain limited procedures are put in place by the Code of Criminal Procedure to protect the interests of children in Juvenile Courts. For example, Article 413 of the CCP requires that the parent of the child, or his or her guardian, as well as advisors and social workers such as those working in juvenile correctional centers be present during trial to safeguard the interests of the

⁵¹ Code of Criminal Procedure, art. 304.

⁵² Code of Criminal Procedure, note 3 to art. 304.

⁵³ Code of Criminal Procedure, note 3 to art. 304.

⁵⁴ Code of Criminal Procedure, art. 312.

⁵⁵ Code of Criminal Procedure, note to art. 312.

⁵⁶ Code of Criminal Procedure, art. 315.

⁵⁷ Code of Criminal Procedure, art. 298.

⁵⁸ *Id.*

⁵⁹ Code of Criminal Procedure, arts. 298 and 410.

⁶⁰ Code of Criminal Procedure, art. 409. This article, however, does not specify the type of training that the judges have to undergo.

child. In addition, Juvenile Courts may conduct preliminary investigations in lieu of the procurator if the interest of the child so requires.⁶¹

That said, the treatment of children and young offenders in the IRI still falls short of the requirements set forth in the UN Convention on the Rights of the Child, to which Iran is a party. For example, the State is only required to provide legal aid to the child – should he or she not be able to afford it – in more serious offenses adjudicated in the special division for crimes of adolescents of Criminal Courts I.⁶² In cases of lesser offenses, even when a defendant may be sentenced to up to six months of imprisonment, the child or his or her representatives are allowed to conduct his defense dispensing with an attorney.⁶³ Under Article 37(d) of the Convention on the Rights of the Child, however, “every child deprived of his or her liberty” must be provided legal assistance.⁶⁴

2.2. SPECIALIZED COURTS

Revolutionary Courts and the Special Courts for the Clergy, which are specialized courts, exist in contravention of Articles 61 and 171 of the Iranian Constitution.. Indeed, according to those provisions, Military Courts are the only specialized courts provided for by the Constitution. Nonetheless, the Revolutionary Courts that were established by the Revolutionary Council in 1979 — still exist. They were initially meant to be temporary, as the Revolutionary Council itself was.⁶⁵

The Special Clerical Court, another specialized court, was created in the immediate aftermath of the Revolution to safeguard the interests of the clerical community, and has been used to police dissenting voices within the clergy in the years since.⁶⁶ It initially began its functions without any procedural rules and regulations until 1990, when the Supreme Leader approved the Rules and Regulations drafted by the Prosecutor of the Special Clerical Court himself.⁶⁷

The High Tribunal for Judicial Discipline, created decades ago under the Pahlavi regime, addresses disciplinary issues pertaining to judges. The Court of Administrative Justice,

⁶¹ Code of Criminal Procedure, art. 414.

⁶² Code of Criminal Procedure, art. 415.

⁶³ *Id.*

⁶⁴ Convention on the Rights of the Child, Nov. 20. 1989, 1577 U.N.T.S. 3

⁶⁵ Bylaws Regulating Revolutionary Courts of June 17, 1979 available in Persian at <http://rc.majlis.ir/fa/law/show/99447>. Article 3 of the Bylaws provided that these courts were to “be disbanded on the recommendation of the Government and approvals of the rules of the Islamic Revolution after permission is granted by the Imam (Ayatollah Ruhollah Khomeini). In such a case, the Judiciary will continue the unfinished work of the revolutionary courts.”

⁶⁶ See, Majid Mohammadi, *Special Court for the Clergy: raison d'être, development, structure and function*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Aug. 2010), available at http://www.iranhrdc.org/files/pdf_en/LegalCom/Special_Court_for_the_Clergy_854451794.pdf

⁶⁷ Ordinance for the Special Prosecutor's Offices and Courts of the Clergy of August 5, 1990, (hereinafter the Ordinance) available in English at <https://www.princeton.edu/irandataportal/laws/scc/>

established in 1982, hears complaints and grievances against administrative regulations and orders issued by governmental bodies.

2.2.1. Revolutionary Courts

The Islamic Revolutionary Courts were created in the early days of the Iranian Revolution to try officials and sympathizers of the Pahlavi monarchy. These courts were formally established by a decree of the Revolutionary Council dated 17 June 1979, which gave them jurisdiction over a wide range of offenses including *moharebeh* or waging war against God, *efsad-e fil-arz* or spreading corruption on earth, and terrorism or armed rebellion against the State.⁶⁸ The

2.2.1.1. Subject-matter jurisdiction:

Article 303 of Code of Criminal Procedure outlines the subject-matter jurisdiction of Revolutionary Courts in criminal matters. It provides that Revolutionary Courts have jurisdiction to try offenses regarding:

- a. Crimes against national and foreign security of the IRI; enmity with god (*Moharebeh*), corruption on earth (*Efsad-e-fel-arz*) – armed rebellion, conspiracy against the regime, armed action, terrorism and sabotage, profiteering and forestalling the market of public commodities;
- b. Slander against the founder of the Islamic Republic of Iran and the Supreme Leader;
- c. Narcotics crimes and smuggling of arms;
- d. Engaging in espionage with foreign entities;
- e. All other crimes that are within the jurisdiction of this tribunal pursuant to some particular legislation.⁶⁹

In accordance with specific regulation, Revolutionary Courts further adjudicate:

- Financial crimes that harm the stability and economy of the country such as forging currency, trafficking goods or counterfeiting; economical crimes that disrupt the production system of the country by the unauthorized sale of goods or arms;
- Smuggling of cultural heritage or national wealth abroad;⁷⁰
- Illegal counterfeiting of audiovisual work;⁷¹
- Crimes pertaining to the public and private health institutions of the country;⁷² and
- Disputes relating to Article 49 of the Constitution, which provides for the seizure and expropriation of illegally acquired assets.⁷³

⁶⁸ Bylaws Regulating Revolutionary Courts of June 17, 1979 *available in Persian at* <http://rc.majlis.ir/fa/law/show/99447>

⁶⁹ Code of Criminal Procedure, art. 303.

⁷⁰ Law on Economical Crimes Against the Country of December 10, 1990, section 6 of art. 2 *available in Persian at* <http://rc.majlis.ir/fa/law/show/91851>

⁷¹ Law on Illegal Audiovisual Activities of January 6, 2006, art. 11 *available in Persian at* <http://rc.majlis.ir/fa/law/show/130025>

⁷² Law Regulating Crimes Against Health Institutions of March 14, 1989, art. 11 *available in Persian at* <http://www.tazirat.gov.ir/mazandaran/tab-7150/index.aspx>

Crimes adjudicated in Revolutionary Courts are broad and vaguely worded, allowing these Courts to assert jurisdiction over almost any offense in practice. By way of example, the crime of *Efsad-e fel-arz* or corruption on earth is defined in Article 286 of the Islamic Penal Code as:

[a]ny person who extensively commits felony against the bodily entity of people, offenses against internal or international security of the state, spreading lies, disruption of the economic system of the state, arson and destruction of properties, distribution of poisonous and bacterial and dangerous materials, and establishment of, or aiding and abetting in, places of corruption and prostitution, [on a scale] that causes severe disruption in the public order of the state and insecurity [...].⁷⁴

First, though this definition encompasses serious national security crimes and other organized criminal activity, it fails to specify the cases in which the listed offenses disrupt the public order of the State and trigger application of the Article.⁷⁵ Second, it criminalizes the publication of lies as “corruption on earth”, allowing Revolutionary Courts and the procurators who gather evidence for relevant cases to charge, arrest and prosecute most, if not all, acts of opposition.⁷⁶

The broad wording of the provision leads to frequent overlaps between the jurisdiction of Revolutionary Courts and the jurisdiction of Public Courts that adjudicate political crimes. Indeed, any political crimes can be categorized as a crime against internal and external security or corruption on earth, therefore falling under the jurisdiction of Revolutionary Courts.

The Supreme Court has the authority to resolve jurisdictional disputes between Public and Revolutionary courts.⁷⁷ In practice, the history of such disputes suggests that Revolutionary

⁷³ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 49 and the Law on the Implementation of Article 49 of the Constitution of the IRI of September 16, 1984, available in Persian at

<http://www.vekalatonline.ir/laws/6390/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D9%86%D8%AD%D9%88%D9%87-%D8%A7%D8%AC%D8%B1%D8%A7%DB%8C-%D8%A7%D8%B5%D9%84-49--%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D8%B3%D8%A7%D8%B3%DB%8C-%D8%AC%D9%85%D9%87%D9%88%D8%B1%DB%8C-%D8%A7%D8%B3%D9%84%D8%A7%D9%85%DB%8C-%D8%A7%DB%8C%D8%B1%D8%A7%D9%86/>

⁷⁴ Islamic Criminal Code, art. 286 available at <http://www.iranhrdc.org/english/english/human-rights-documents/iranian-codes/100000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html?print>

⁷⁵ Human Rights Watch, CODIFYING REPRESSION, AN ASSESSMENT OF IRAN’S NEW PENAL CODE 40 (Aug. 2012) available at <https://www.hrw.org/report/2012/08/28/codifying-repression/assessment-irans-new-penal-code>

⁷⁶ Iran Human Rights Documentation Center, SUBMISSION TO THE UN UNIVERSAL PERIODIC REVIEW, 20TH UPR WORKING GROUP SESSION 7 (Oct.–Nov. 2014) available at <http://www.iranhrdc.org/english/human-rights-documents/united-nations-reports/un-reports/100000454-ihrdc-s-submission-to-the-un-universal-periodic-review.htm>

⁷⁷ Code of Civil Procedure, art. 28.

Courts are allowed to assert jurisdiction over offenses that are not, in the opinion of the authorities, punished severely enough by ordinary courts.⁷⁸

2.2.1.2. **Composition of the Courts and Geographical Distribution**

According to Article 297 of the CCP, when adjudicating cases carrying severe punishments, Revolutionary Courts are composed of one chief judge and two associate judges. The court has quorum with two judges.⁷⁹ The chief judge, an alternate or an associate judge, will hear all other cases.⁸⁰

The same Article specifies that Revolutionary Courts are situated in the capital of each province and, at the discretion of the head of the Judiciary, in provincial judicial districts.⁸¹

2.2.2. **Military Courts**

Article 172 of the Constitution mandates the establishment of Military Courts in the following terms:

For the purpose of investigating the crimes related to the special police or military duties of the members of the Army, Police and the Islamic Revolutionary Guard Corps, military courts shall be established in accordance with the law. However, their ordinary crimes or those committed in their capacity as law enforcement officers shall be investigated by the public courts. Military Prosecutor's Office and military courts are a part of the Judiciary and shall be subject to the provisions related to the Judiciary.⁸²

Section 8 of the Code of Criminal Procedure – articles 571 to 648 – and the Law on Crimes and Punishments of the Armed Forces of December 2003⁸³ outline the composition, jurisdiction and procedural rules applicable before these courts.

Military Courts and the military office of the prosecutor are under the purview of the judicial organization of the armed forces, which is the organization responsible for trying military personnel.⁸⁴

⁷⁸ Lawyers Committee for Human Rights, THE JUSTICE SYSTEM OF THE ISLAMIC REPUBLIC OF IRAN (May 1, 1993) available at <http://iranrights.org/library/document/93/the-justice-system-of-the-islamic-republic-of-iran>

⁷⁹ Code of Criminal Procedure, art. 297. In the text of the Code, this article requires a quorum of two judges to adjudicate crimes mentioned in Article 302 (a-d) of this Code. However, it is likely that this is a drafting error and that the article in fact refers to article 303, which deals with cases within the purview of the Revolutionary Courts.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 172.

⁸³ Law on Crimes and Punishments of the Armed Forces of December 1, 2003, (Law of the Armed Forces) available in Persian at <http://rc.majlis.ir/fa/law/show/94088>

2.2.2.1. Jurisdiction

Article 582 of the CCP provides for four different Military Courts within the IRI's judicial system, which are:

- (a) military courts II; (b) military courts I; (c) military appeal chambers; (d) wartime military court II; (e) wartime military court I; and (e) wartime military appeal chambers.⁸⁵

Military Courts have jurisdiction over crimes committed by the members of the armed forces⁸⁶ including the army, the police, the Islamic Revolutionary Guards Corps,⁸⁷ members of the Ministry of intelligence and the *Basij*⁸⁸ in the discharge of their military duties.⁸⁹ Common crimes committed by military personnel – unrelated to rank and professional duties – will conversely be adjudicated in Public Courts.⁹⁰ Military Courts will assert jurisdiction as long as the crime or felony was committed while the suspect was a member of the armed forced, irrespective of whether he retired from service at the time of preliminary investigations and trial.⁹¹

Military Courts I have specific jurisdiction over crimes committed by high-ranking military officials as well as crimes committed by military abroad, while Military Courts II adjudicate other crimes committed by lower ranking personnel.⁹²

Wartime Military Courts have jurisdiction over crimes committed by members of the armed forces while at war.⁹³ In accordance with Article 591 of the Code of Criminal Procedure, wartime tribunals are to adjudicate crimes:

- (i) which are within the jurisdiction of military tribunals;
- (ii) committed against the internal or external security of the country; and

⁸⁴ Code of Criminal Procedure, art. 571.

⁸⁵ Code of Criminal Procedure, art. 582.

⁸⁶ Code of Criminal Procedure, art. 597.

⁸⁷ The Army of the Guardians of the Islamic Revolution (*Sepah-e Pasdaran-e Enqelab-e Eslami*) is more commonly known as Iran's Revolutionary Guards Corps (IRGC). The IRGC has great political influence in the country. It has traditionally played a key role in silencing opposition to the IRI's revolution. The IRGS only reports to the Ayatollah Khamenei, which makes them effectively the executive arm of the Supreme Leader.

⁸⁸ The *Basij* (*Sāzmān-e Basij-e Mostaz' Afīn*) was initially created by Ayatollah Khomeini to fight the Iran-Iraq War. Currently members of the Basij are an auxiliary force engaged in national security. They receive their orders from the Revolutionary Guards Corp. and owe allegiance and loyalty to the Supreme Leader.

⁸⁹ Law on the Armed Forces, art. 1 and Code of Criminal Procedure, art. 597.

⁹⁰ QANUNI ASSASSI JOMHURI ISLAMIRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 172 and Code of Criminal Procedure, note 3 to art. 597; *see also* the Law on the Armed Forces, art. 1.

⁹¹ Code of Criminal Procedure, notes 2 and 3 to art. 597.

⁹² Code of Criminal Procedure, arts. 584-585 and 598.

⁹³ Code of Criminal Procedure, art. 590.

(iii) committed while at war during the execution of military duties regardless of whether they are within the jurisdiction of those tribunals will be adjudicated by wartime tribunals.⁹⁴

2.2.2.2. Composition and Geographical Distribution of Military Tribunals

Article 578 of the CCP provides that the organization of the armed forces, comprised of a military court together with a military prosecutor will be present in the capital of each province.⁹⁵ If needed, further branches are created at the discretion of the head of the organization of the armed forces.⁹⁶

Military Courts judges must have at least fifteen years of legal experience.⁹⁷ The number of judges, their duties and their obligations are identical to those of Criminal Courts I and Criminal Courts II.⁹⁸

2.2.3. The Special Clerical Court

The Special Clerical Court (hereinafter “SCC”) was created by an Order of Ayatollah Khomeini in May 1979,⁹⁹ in an effort to safeguard the political interests of the Revolution and particularly the interests of the country’s religious establishment. A decree issued by Khomeini on June 12, 1987, further specified and expanded the jurisdictions of this Court.¹⁰⁰ In 1990, his successor Ayatollah Khamenei commissioned a 47-Article Ordinance (hereinafter the “Ordinance”) outlining the organization of the Courts, the mandate of the prosecution, the laws applicable and the mechanism of appointment of judges and prosecutor.¹⁰¹ This Ordinance was amended in 2005.¹⁰²

⁹⁴ Code of Criminal Procedure, art. 591.

⁹⁵ Code of Criminal Procedure, art. 578.

⁹⁶ *Id.*

⁹⁷ Code of Criminal Procedure, art. 572.

⁹⁸ Code of Criminal Procedure, art. 583.

⁹⁹ The Special Court for the Clergy was formed on May 24, 1979 by the order of Ayatollah Khomeini. According to Khomeini, “Although in Islam the punishment for criminals does not differ between classes and everyone is equal before the law, and criminals who committed crimes while wearing clerical attire must be punished; nonetheless, I am told that a number of opponents of Islam and the clergy are attempting to degrade the clergy in the name of purging and thereby opening the way for tyrants.” See Majid Mohammadi, *Special Court for the Clergy: Raison d’être, Development, Structure and Function*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Aug. 2010), available at http://www.iranhrdc.org/files/pdf_en/LegalCom/Special_Court_for_the_Clergy_854451794.pdf

¹⁰⁰ Mirjam Künkler, *The Special Court of the Clergy (dādgāh-- ye vizheh-- ye ruhāniyat) and the Repression of Dissident Clergy in Iran* in CONSTITUTIONALISM, THE RULE OF LAW AND THE POLITICS OF ADMINISTRATION IN EGYPT AND IRAN 16 (SUNY Press, 2012).

¹⁰¹ Ordinance for the Special Prosecutor’s Offices and Courts of the Clergy of August 5, 1990 (“the Ordinance”) available in English at <https://www.princeton.edu/irandataportal/laws/scc/>

¹⁰² Amendments to the Bylaws for the Special Clerical Prosecutor’s Offices and Courts of November 27, 2005 (Amended Ordinance) available at <https://www.princeton.edu/irandataportal/laws/scc-amendments/>

2.2.3.1. Jurisdiction of the Special Clerical Court

As stated in Article 1 of the Ordinance, the objective of the Ordinance is to curb the influence of delinquent and deviant individuals in theological seminaries, to preserve the reputation of the clergy and to punish clerical offenders.¹⁰³

Article 13 of the Ordinance outlines the jurisdiction of the SCC as follows:

- Crimes¹⁰⁴ committed by clerics;¹⁰⁵
- All crimes against the dignity of the clergy;
- Disputes that affect the security of the public and in which at least one of the litigants is a member of the clergy;
- Any matter assigned to the courts by the Supreme Leader.¹⁰⁶

Although Article 14 of the Ordinance states that claims against a cleric, unrelated to his religious functions, are within the competence of Public Courts, it immediately goes on to carve exceptions to the jurisdiction of said Courts. First, a note to Article 13 specifies that the SCC of Tehran has exclusive jurisdiction to prosecute high-level government officials and civil servants who are members of the clergy.¹⁰⁷ Articles 14 and 15 of the Ordinance further restrict the ability of Public Courts to prosecute clergymen by allowing the Prosecutor General of the SCC to demand the transfer of the case to the SCC and by requesting that he approve any investigation and prosecution initiated by criminal courts beforehand.¹⁰⁸

Based on these provisions, all crimes committed by clergymen are within the jurisdiction of the SCC. Unlike other specialized courts in the IRI such as Military or Revolutionary Courts, which have dedicated areas of jurisdiction, the SCC courts are “exclusive” courts, created solely for the purpose of prosecuting clerics and containing opposition to the IRI from within the country’s sprawling clerical community.¹⁰⁹

¹⁰³ See, the Ordinance, art. 1.

¹⁰⁴ Crimes are defined pursuant to Article 18 of the Ordinance as any action that, under the laws or ruling of the Shari’a, deserves punishment or corrective and reformatory steps. In essence, any action that damage the clergy is considered to be a crime under the law.

¹⁰⁵ Art. 16 of the Ordinance defines “clerics” as “any person that wears clerical attire or who works in education at a theological seminary or, if he has another occupation, customarily is considered a clergyman.”

¹⁰⁶ The Ordinance, art. 13.

¹⁰⁷ The Amended Ordinance, note 3 to art. 13.

¹⁰⁸ The Ordinance, arts. 14 and 15.

¹⁰⁹ See Majid Mohammadi, *Special Court for the Clergy: raison d’être, development, structure and function*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Aug. 2010), available at http://www.iranhrdc.org/files/pdf_en/LegalCom/Special_Court_for_the_Clergy_854451794.pdf

The jurisdiction of the SCC is not limited to clerics, and extends its reach to lay people. Under Article 31 of the Ordinance, the SCC is competent to try accomplices and accessories of clerics irrespective of whether these individuals are members of the clergy.¹¹⁰

Finally, Article 13 of the Ordinance allows the Supreme Leader to defer any case he deems fit to the jurisdiction of the SCC thereby awarding him an extremely powerful tool to curb and silence dissent amongst opposing clerics.¹¹¹

2.2.3.2. The SCC: A Court Independent from the Judicial Branch

SCC rulings are not subject to review by the Judiciary, which has no authority to monitor and oversee these Courts. Instead, they are under the exclusive control of the Supreme Leader of the IRI, who has used them as a political tool to monitor and silence any external opposition or dissent within the religious establishment.¹¹²

The SCC has always remained separate and independent from the rest of the Judiciary and from the IRI's apparatus of government more generally. To wit, neither Khomeini's decree nor the Ordinance or its amendments have been approved by the Iranian parliament as required by Article 71 of the Constitution.¹¹³ The initial decree of June 1987 and the subsequent Ordinance were both only approved by the Supreme Leader. Interestingly, the Ordinance was published in the Official Gazette, in an effort to create the illusion that it had been legally adopted.¹¹⁴

The SCC is granted a separate budget, which is not subject to approval by the Iranian parliament in accordance with constitutional requirements, but rather by the Expediency Council, an institution appointed by and only accountable to the Supreme Leader.¹¹⁵ It is also endowed with its own security network and prison system.¹¹⁶ Finally, because these Courts operate outside of the judicial framework, SCC judges do not fall under the authority of the High Tribunal for Judicial Discipline. Conversely, SCC judges are not protected by the State Employment Bill, which applies to all members of the Judiciary.¹¹⁷

¹¹⁰ The Ordinance, art. 31.

¹¹¹ The Ordinance, art. 13.

¹¹² See, for example witness statement of Hasan Yousefi Eshkevari, available at <http://www.iranhrdc.org/english/publications/witness-testimony/1000000543-witness-statement-of-hasan-yousefi-eshkevari.html>.

¹¹³ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 71.

¹¹⁴ Mirjam Künkler, *The Special Court of the Clergy (dādgāh-- -ye vizheh-- -ye ruhāniyat) and the Repression of Dissident Clergy in Iran*, in CONSTITUTIONALISM, THE RULE OF LAW AND THE POLITICS OF ADMINISTRATION IN EGYPT AND IRAN 57, 65 (SUNY Press, 2012).

¹¹⁵ The Ordinance, art. 45

¹¹⁶ The Ordinance, art. 25.

¹¹⁷ Mirjam Künkler, *The Special Court of the Clergy (dādgāh-- -ye vizheh-- -ye ruhāniyat) and the Repression of Dissident Clergy in Iran*, in CONSTITUTIONALISM, THE RULE OF LAW AND THE POLITICS OF ADMINISTRATION IN EGYPT AND IRAN 57, 68 (SUNY Press, 2012).

As already stated above, the SCC is only answerable to the Supreme Leader, who appoints its members and can decide to defer any case to these courts. Under Articles 3 and 10¹¹⁸ of the Ordinance, the Supreme Leader directly appoints the Special Prosecutor of the Clergy as well as the Chief Justice of the first district of the SCC. All other judges of the SCC are also appointed with the approval of the head of the Judiciary, who is himself appointed by the Supreme Leader.¹¹⁹ As mentioned above, the Supreme Leader can defer any case he deems appropriate to the SCC. Public Courts are prohibited from exercising jurisdiction over clerical cases unless they have obtained the approval of the Public Prosecutor of the SCC, who, again, is also appointed by the Supreme Leader. These provisions grant *carte blanche* to the Supreme Leader to prosecute his political opponents through the SCC.¹²⁰

2.2.3.3. Geographical Distribution

According to Article 9 of the 2005 amendments to the Ordinance, Prosecutors' offices and SCC courts are set up in (1) Tehran (provinces of Tehran and Semnan); (2) Qom (Markazi province and the provinces of Qom and Kashan); (3) Mashhad (provinces of Khorasan Razavi, Khorasan Shomali, Khorasan Jonubi, Sistan and Baluchestan); (4) Esfahan (provinces of Esfahan, Yazd and Chaharmahal va Bakhtiari); (5) Shiraz (provinces of Fars, Bushehr and Khokiluyeh va Boyer Ahmad); (6) Tabriz (provinces of Azerbaijan, Ardebil and Zanjan), (7) Sari (provinces of Golestan and Mazandaran); (8) Ahvaz (provinces of Khuzestan and Luristan), (9) Kerman (provinces of Kerman and Hormozgan); (10) Hamedan (provinces of Kermanshah, Kurdistan, Hamedan, and Ilam) and (11) Rasht (provinces of Gilan and Qazvin).¹²¹

2.2.4. High Tribunal for Judicial Discipline

The law creates two different sets of tribunals, one for the disciplinary offenses committed by judges in the exercise of their duties, and another specifically dedicated to the competence of judges.¹²²

2.2.4.1. The High Tribunal for Judicial Discipline and Courts of Appeal

The main branch of the High Tribunal for Judicial Discipline is located in Tehran. High tribunals for judicial discipline have three members – one chief judge and two substitutes – and decisions

¹¹⁸ The Ordinance, arts. 3 and 10.

¹¹⁹ The Ordinance, art. 46.

¹²⁰ Majid Mohammadi, *Special Court for the Clergy: raison d'être, development, structure and function*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Aug. 2010), available at http://www.iranhrdc.org/files/pdf_en/LegalCom/Special_Court_for_the_Clergy_854451794.pdf

¹²¹ The Amended Ordinance, art. 9.

¹²² Law on the Supervision of the Conduct of Judges, arts. 3 and 44.

are taken at a majority.¹²³ Judges must have at least 25 years of legal experience and they should not be convicted of any grade three or higher offence within the past ten years.¹²⁴

The High Tribunal for Judicial Discipline has jurisdiction over all disciplinary offences committed by judges in the employ of the Judiciary.¹²⁵ It therefore adjudicates violations ranging from misdemeanors due to disorder and inefficiency in the proceedings to bribery or inappropriate conduct violating civil or religious customs alike.¹²⁶ Sentences in turn range from simple warnings to permanent dismissal from judgeship or public service.¹²⁷

Disciplinary action against the judge can be initiated by the following individuals: (1) private complainants, (2) the head of the Judiciary, (3) the head of the Supreme Court or the Prosecutor-General; (4) the branch of the Supreme Court that is reviewing the file; (5) the High Tribunal itself or (6) the Prosecutor of the High Tribunal.¹²⁸

It follows from this provision that judges may be recommended for dismissal by the head of the Judiciary on the grounds of inappropriate behavior (that is, behavior deemed to be contrary to civic or religious customs), although there is no clear definition of what constitutes conduct contrary to civil and religious custom.¹²⁹

Decisions of the High Tribunal for Judicial Discipline sentencing a judge to a punishment ranging from grade 1 to grade 5 can be appealed within a month by the defendant or by the Prosecutor of the High Tribunal. Judgments carrying a conviction of grade five or higher are only subject to revision by the High Tribunal that has handed down the conviction.¹³⁰

2.2.4.2. The High Tribunal for Competence of Judges and the Courts of Appeal

Matters relating to the competence of judges and their personal qualifications to rule are within the jurisdiction of the High Tribunal for Competence of Judges and the Court of Appeal for Competence of Judges.¹³¹

Preliminary investigations are conducted by an investigatory committee composed of the Judiciary's vice chair for judicial affairs, the Deputy Minister of Justice for legal and parliamentary affairs, the deputy chief for judicial affairs of the Supreme Court for Judicial affairs, and the Prosecutor of the High Tribunal for Judicial Discipline.¹³² The committee will

¹²³ Law on the Supervision of the Conduct of Judges, art. 35.

¹²⁴ Law on the Supervision of the Conduct of Judges, art. 5.

¹²⁵ Law on the Supervision of the Conduct of Judges, art. 6.

¹²⁶ Law on the Supervision of the Conduct of Judges, arts. 14-17.

¹²⁷ Law on the Supervision of the Conduct of Judges, art. 13.

¹²⁸ Law on the Supervision of the Conduct of Judges, art. 22.

¹²⁹ Law on the Supervision of the Conduct of Judges, art. 17 and Bylaws Regulating the Behavior of Judges of May 23, 2013, art. 12, available in Persian at <http://rooznamehrasmi.ir/Laws/ShowLaw.aspx?Code=933>

¹³⁰ Law on the Supervision of the Conduct of Judges, arts. 36-37.

¹³¹ Law on the Supervision of the Conduct of Judges, arts. 44 and 48.

¹³² Law on the Supervision of the Conduct of Judges, art. 45.

forward the file to the High Tribunal for the Competence of Judges if it concludes that there are sufficient grounds to prosecute. The High Tribunal is composed of three members who have at least 20 years of experience and no criminal conviction of grade three or higher within the last 10 years.¹³³ The tribunal issues its verdict at a majority vote.¹³⁴

The decisions of the High Tribunal for Competence of Judges can be appealed within one month before the Court of Appeal for Competence of Judges.¹³⁵

2.2.5. The Court of Administrative Justice

The Court of Administrative Justice was created in keeping with Article 173 of the Constitution, which states:

For the purpose of dealing with complaints, grievances and objections of people against government employees, institutions or administrative regulations and redressing their rights, a court known as the Court of Administrative Justice shall be established under the supervision of the head of the Judiciary. The scope of authorities and the mode of operation of such court shall be laid down by law.¹³⁶

The Court of Administrative Justice is based in Tehran and comprises three organs: (1) the first-level branches, (2) the Appellate Branches, and (3) the General Board of the Court of Administrative Justice.¹³⁷

2.2.5.1. First-level Rulings, Appeals and Requests for Revision

2.2.5.1.1. First-level Branches

In accordance with Article 10 of the Law of the Court of Administrative Justice, first level branches have jurisdiction to hear the following claims:

1. Citizens' complaints, grievances and objections regarding:
 - a. Decisions made and measures taken by government officials, State-run offices and institutions or municipalities such as ministers, city halls, the social security organization and other public institutions of the IRI which are in violation of laws and regulations;
 - b. Decisions of those individuals in relation to their duties;

¹³³ Law on the Supervision of the Conduct of Judges, art. 49. The judges are selected within professional grade 11 or 12 which are the highest grades in the Judiciary, and comprise the most important representatives of the Judiciary such as the deputy to the Ministry of Justice and the deputy Attorney General.

¹³⁴ Law on the Supervision of the Conduct of Judges, art. 50.

¹³⁵ Law on the Supervision of the Conduct of Judges, art. 48.

¹³⁶ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 173 and Law of the Court of Administrative Justice of June 15, 2013, art. 1, available in Persian <http://www.divan-edalat.ir/show.php?page=translate>

¹³⁷ Law of the Court of Administrative Justice, art. 2.

2. Complaints against final administrative decisions of inspection boards or specialized commissions which are in violation of laws and regulations;
3. Complaints made by State agents against the institutions they work for (employment law disputes).¹³⁸

The Court of Administrative Justice hears citizens' complaints and protests against State agents and agencies so as to ensure the correct implementation of the laws by State organs.¹³⁹ It therefore guarantees the nation's rights in the face of state-run organizations.

First-level branches are composed of a single judge and a substitute judge.¹⁴⁰ If the regulation or decision is found to violate the law, it will be quashed by the first-level branch and the plaintiff will be reinstated in his or her rights.¹⁴¹ Decisions of administrative first-level branches constitute binding precedents for administrative public institutions and agents.¹⁴²

2.2.5.1.2. Appeals and requests for revision

The Appeal Branches of the Court of Administrative Justice are composed of one presiding judge and two deputy judges.¹⁴³ Either party or its representative can appeal the ruling of a first level branch before the Appeal Branches of the Court of Administrative Justice. The statute of limitations to lodge an appeal is 20 days or two months from the date of the issuance of the first instance decision, depending on whether the appellant resides within the country or abroad.¹⁴⁴ Should an appeal be successful, the Appeal Branch will reverse the lower court's decision, issue a new ruling, and remand the case to the issuing institution or individual for enforcement.¹⁴⁵

Requests for revision of final judgments are governed by Articles 98 *et seq.* of the Law of the Court of Administrative Justice. The parties can petition for revision if: (1) the judgment is outside the scope of the request presented by the parties or exceeded the scope of that request (*ultra* or *infra petita*), (2) the same branch or another branch has issued a conflicting ruling based on similar facts; (3) inconsistencies appear in the sentencing section of the judgment; (4) the court relied on erroneous/falsified evidence to reach its verdict; or (5) new evidence, previously unavailable, has come to light.¹⁴⁶

In addition to the parties and their representatives, the head of the Court of Administrative Justice or the head of the Judiciary can request revision of a final ruling should they consider that it violates the law or Shari'a.¹⁴⁷

¹³⁸ Law of the Court of Administrative Justice, art. 10.

¹³⁹ Law of the Court of Administrative Justice, art. 1.

¹⁴⁰ Law of the Court of Administrative Justice, art. 3.

¹⁴¹ Law of the Court of Administrative Justice, art. 11.

¹⁴² Law of the Court of Administrative Justice, art. 11.

¹⁴³ Law of the Court of Administrative Justice, art. 3.

¹⁴⁴ Law of the Court of Administrative Justice, art. 65.

¹⁴⁵ Law of the Court of Administrative Justice, arts. 71-72.

¹⁴⁶ Law of the Court of Administrative Justice, art. 98.

¹⁴⁷ Law of the Court of Administrative Justice, art. 79.

The petition for revision is filed with the court that issued the final judgment.¹⁴⁸ That court will then proceed to a *de novo* review and issue a new ruling should it conclude that the original ruling was contrary to the law.¹⁴⁹

2.2.5.1.3. The General Board of the Court of Administrative Justice

The General Board of the Court of Administrative Justice has a double mandate. It hears appeals against bylaws or administrative regulations which allegedly violate the law, thereby ensuring the proper interpretation and implementation of the laws in the country's administrative system. It further ensures the consistency of administrative laws and regulations through its review of conflicting or similar decisions of administrative courts.

As stated by Article 12 of the Court of Administrative Justice, the General Board:

- a. Investigates complaints and protests of individuals and corporations against regulations and other governmental and municipal ordinances, which are alleged to be against the laws or Shari'a or have been taken *ultra* or *infra-petita*.
- b. Sets consistent precedents in cases where conflicting decision have been handed down by various branches of the administrative courts; and
- c. Sets consistent precedents in cases where similar decisions have been handed down by various branches of the administrative courts.¹⁵⁰

Appeal petitions before the General Board of the Court of Administrative Justice are initially examined by a special commission of the General Board comprised of 15 judges who will determine whether the General Board has jurisdiction to hear the case.¹⁵¹ When the commission unanimously rules in favor of the jurisdiction of the General Board or when less than $\frac{3}{4}$ of its members vote otherwise, it will proceed to the General Board of the High Tribunal for Judicial Discipline.¹⁵²

Whenever the state regulation being challenged is found to violate Shari'a law the court is duty-bound to refer the issue to the Guardian Council for advice.¹⁵³

In addition to its appellate duties, the Court of Administrative Justice also ensures the consistency of administrative laws and regulations. In order to do so, the General Board will be sized every time various branches of administrative courts issue conflicting decisions.¹⁵⁴ Identical decisions from different branches are similarly subject to the General Board's review so that a final

¹⁴⁸ Law of the Court of Administrative Justice, arts. 102 and 104.

¹⁴⁹ *Id.*

¹⁵⁰ Law of the Court of Administrative Justice, art. 12.

¹⁵¹ Law of the Court of Administrative Justice, art. 84.

¹⁵² Law of the Court of Administrative Justice, art. 84.

¹⁵³ Law of the Court of Administrative Justice, note 2 to art. 84 and art. 87.

¹⁵⁴ Law of the Court of Administrative Justice, art. 89.

decision can be issued in relation to the regulation at stake.¹⁵⁵ The rulings of the General Board are binding on administrative courts and institutions alike.¹⁵⁶

2.3. THE PUBLIC PROSECUTOR

The Iranian criminal system is an inquisitorial system in which the court takes part in the investigations and uncovering of the crimes as opposed to an adversarial system where the judge is an impartial referee between the parties.

The General Courts' Law of 1994 dissolved the public prosecutor's office. Thereafter, the functions of procurators and prosecutors were absorbed by general courts, which investigated the crime before adjudicating it. This system not only led to arbitrary justice in some cases but also increased the number of appeals to 70 percent of trial court rulings between 1994 and 2004.¹⁵⁷ As a result, Mahmoud Hashemi Shahroudi, who succeeded Ayatollah Yazdi as the head of the Judiciary, reintroduced the Office of the Public Prosecutor into the judicial system in 2004.

2.3.1. Structure and Composition of the Prosecutor's Office

An Attorney General presides over the Prosecutor's office in the IRI and is nominated by the head of the Judiciary from amongst the nation's prominent jurists.¹⁵⁸ He ensures the proper enforcement of the law and consistent criminal pursuits by the Prosecutor's office and can, as a result, request criminal investigations whenever necessary.¹⁵⁹ The members of the Prosecutor's office are transferred, promoted, or demoted based on recommendations of the Attorney General to the head of the Judiciary.¹⁶⁰ The Prosecutor General is further vested with the prerogative to request revisions of judgments¹⁶¹ in accordance with Article 477 of the Code of Criminal Procedure.¹⁶²

There is a Prosecutor's office alongside the criminal courts of each district.¹⁶³ The Prosecutor's office is composed of deputy prosecutors, assistants, procurators and administrative staff.¹⁶⁴

¹⁵⁵ Law of the Court of Administrative Justice, art. 90.

¹⁵⁶ Law of the Court of Administrative Justice, arts. 90, 92 and 93.

¹⁵⁷ MAJID MOHAMMADI, JUDICIAL REFORM AND REORGANIZATION IN THE 20TH CENTURY IRAN STATE-BUILDING, MODERNIZATION AND ISLAMICIZATION 175 (Routledge Taylor & Francis Group, 2008).

¹⁵⁸ Code of Criminal Procedure, art. 288.

¹⁵⁹ *Id.*

¹⁶⁰ Code of Criminal Procedure, art. 289.

¹⁶¹ See below the section on revisions.

¹⁶² Code of Criminal Procedure, art. 493.

¹⁶³ Code of Criminal Procedure, art. 22.

¹⁶⁴ Code of Criminal Procedure, art. 23.

2.3.2. Jurisdiction of the Prosecutor's Office

The Office of the Prosecutor is assigned the task of protecting the interests of society as a whole and maintaining peace and public order.¹⁶⁵ In service of these goals, public prosecutors investigate crimes, decide whether or not to prosecute the accused, represent the interests of society during trial, and enforce judgments.¹⁶⁶

2.3.2.1. Preliminary investigations

In the IRI, criminal offense can give rise to two types of judicial actions: public prosecution and civil claims. A criminal court is not only competent to impose criminal penalties but can also award the victim of a criminal offense with damages, as a civil court would do.

A criminal investigation can be initiated in the following manners:

- By a complaint from the victim;
- When officers of the court have uncovered evidence in relation to a crime;
- When the crime happened before the eyes of the Prosecutor or procurator;
- When the accused confessed and there is no reason to doubt his confession;
- The prosecutor acquired knowledge of the crime in some other way.¹⁶⁷

The Prosecutor is the only person allowed to initiate investigations following the discovery of evidence pointing to a crime.¹⁶⁸ Officers of the Ministry of Justice such as police officers, the intelligence division of the Revolutionary Guard Corps, or the *Basij*¹⁶⁹ register the victim's complaint¹⁷⁰ and conduct preliminary investigations. These officers are under the supervision of the Prosecutor¹⁷¹ and are required to obey his directives and orders.¹⁷² They do not have the power to take coercive measures without the prior knowledge and approval of the competent judicial authority. In cases of offenses where the defendant has been caught in the act, these officers have slightly more independence inasmuch as they can take any measures they deem necessary to collect evidence and arrest the accused before notifying the Prosecutor.¹⁷³ The officers' role in criminal investigations comes to an end as soon as the Prosecutor or procurator takes over the case.¹⁷⁴

Once a criminal case is opened, the Prosecutor will delegate the investigation of the crime and apprehension of the suspect to the procurator (*bazpors*), who has sole power to conduct the

¹⁶⁵ Code of Criminal Procedure, art. 22.

¹⁶⁶ Code of Criminal Procedure, arts. 28, 328, 396 and 584 *et seq.*

¹⁶⁷ Code of Criminal Procedure, art. 64.

¹⁶⁸ Code of Criminal Procedure, art. 89.

¹⁶⁹ Code of Criminal Procedure, art. 29.

¹⁷⁰ Code of Criminal Procedure, arts. 37-38.

¹⁷¹ Code of Criminal Procedure, art. 32.

¹⁷² Code of Criminal Procedure, arts. 34-35.

¹⁷³ Code of Criminal Procedure, arts. 44-46.

¹⁷⁴ Code of Criminal Procedure, art. 54.

investigations and gather evidence for trial.¹⁷⁵ The procurator conducts all necessary preliminary investigations, summons the accused and/or orders preliminary detention.¹⁷⁶ In accordance with Article 93 of the CCP, the procurator,

[S]hall perform the investigations with complete neutrality and within the confines of the law. He shall not be partial towards or against the accused and collect all the evidence available.

Even though the procurator is independent from the Prosecutor, the latter retains important prerogatives with respect to preliminary investigations. First, the procurator is part of the Office of the Prosecutor¹⁷⁷ and as such, is under his direct supervision in professional terms.¹⁷⁸ The law further specifies that the Prosecutor can supervise the investigations and/or take part in them, but that he cannot decide to interrupt them once they have been handed over to the procurator.¹⁷⁹ Also, should the Prosecutor believe that further investigations are needed he can direct the procurator to conduct those investigations after having specifically identified the areas lacking in proof.¹⁸⁰ Finally, in accordance with Article 92 of the CCP, the Prosecutor can decide to conduct the preliminary investigations himself in cases of grave offenses provided that there is a shortage of procurators in that district.

Once the investigations are closed, the procurator issues a decision in writing advising the Prosecutor of the need to issue an indictment against the accused.¹⁸¹ If the Prosecutor and the procurator agree on the course of proceedings, the Prosecutor will then either issue an indictment or forego the right to prosecute the accused.¹⁸² In case of a disagreement between the procurator and the Prosecutor, the matter will be referred to the criminal court that has jurisdiction over the case, which will make a final decision.¹⁸³ The decision to discontinue prosecution of a suspect, as well as decisions relating to the temporary detention or bail of the accused, can be appealed in the court that has jurisdiction over the case.¹⁸⁴

2.3.2.2. Trial

By law, the Prosecutor represents the interests of society in criminal trials. While his presence is mandatory in Criminal Courts I, he can also attend hearings in Criminal Courts II.¹⁸⁵ He

¹⁷⁵ Code of Criminal Procedure, art. 92.

¹⁷⁶ Code of Criminal Procedure, arts. 89 *et seq.*

¹⁷⁷ Code of Criminal Procedure, art. 22.

¹⁷⁸ Code of Criminal Procedure, art. 73.

¹⁷⁹ Code of Criminal Procedure, art. 74.

¹⁸⁰ Code of Criminal Procedure, art. 266.

¹⁸¹ Code of Criminal Procedure, art. 265

¹⁸² Code of Criminal Procedure, arts. 267-268.

¹⁸³ Code of Criminal Procedure, art. 269.

¹⁸⁴ Code of Criminal Procedure, arts. 270 and 271.

¹⁸⁵ Code of Criminal Procedure, art. 300.

participates in the hearing by reading the indictment¹⁸⁶ and requesting the punishment on behalf of the State, questioning the accused and witnesses.¹⁸⁷

2.3.2.3. Enforcement of Judgments

The enforcement of criminal judgments, discussed in greater detail in Section 3.2.3 below, is also the duty of the Office of the Prosecutor that conducted the preliminary investigations and participated in trial.

The presiding judge¹⁸⁸ of the Office of the Prosecutor enforces criminal sentences through the Office of Implementation of Criminal Sentences,¹⁸⁹ chaired and supervised by the Prosecutor.¹⁹⁰ One of the units of the Office of Implementation of Criminal Sentences may be stationed in prisons or other punitive institutions.¹⁹¹

2.4. APPEALS

The current judicial system of the IRI has a two-pronged appeal system in which Appeal Courts will initially review first instance judgments. Appeal Courts judgments are in turn sent to the Supreme Court.

2.4.1. Regular Appeals

2.4.1.1. Jurisdiction

According to Article 331 of the Code of Civil Procedure, “financial disputes of more than three million rials as well as all disputes that are not financial” can be appealed. All other judgments of first instance courts are final.¹⁹²

All criminal judgments can be appealed except in cases involving sentences of class eight *ta'zir* punishments,¹⁹³ and sentences in which compensatory payment equals or is less than 1/10 of the compensation for loss of life.¹⁹⁴

¹⁸⁶ Code of Civil Procedure, art. 396.

¹⁸⁷ Code of Civil Procedure, art. 328.

¹⁸⁸ Code of Criminal Procedure, note 3 to art. 584. When the presiding judge is absent, he is replaced by the alternate judge.

¹⁸⁹ See section 3.2.3.

¹⁹⁰ Code of Criminal Procedure, art. 584.

¹⁹¹ Code of Criminal Procedure, art. 584.

¹⁹² Code of Civil Procedure, art. 330.

¹⁹³ There are eight classes of *ta'zir* punishment in the Islamic Penal Code. *Ta'zir* punishments are punishments that are not explicitly fixed under Shari'a law, but are handed out at the discretion of a judge. Class eight punishments are the most lenient, while class one punishments are the harshest. Article 428 states when a class four punishment or higher (one through three) has been handed out, the Supreme Court is to directly hear the appeal. Class four punishments include imprisonment between five to ten years, fines

It should be noted that criminal cases that carry a heavier punishment are appealed directly to the Supreme Court.¹⁹⁵

2.4.1.2. Common Procedures

Appeals are heard in the Courts of Appeal located in the capital of each province.¹⁹⁶

Procedures to file an appeal are similar in criminal and civil cases. The parties or their lawyers or representatives¹⁹⁷ have either twenty days or two months from the day the first instance judgment is handed down to file an appeal depending on whether they reside in Iran or abroad.¹⁹⁸ In addition to the parties, the Prosecutor can appeal the judgment in criminal cases.¹⁹⁹

The appeal can be lodged at the administrative offices of the first instance or Appeal Court or, in case of criminal proceedings, at the detention center where the accused is detained.²⁰⁰

When filing an appeal, the parties can rely on the following grounds:

- The documentation or testimonies relied upon in the first instance judgments were incorrect or falsified;
- The ruling is against the law or Shari'a;
- The ruling of the court ignores the arguments set forth in the parties pleadings;
- The tribunal or judge lacked jurisdiction.²⁰¹

If the appeal is successful, the Court of Appeal will quash the judgment and issue a new ruling. Otherwise, the ruling is confirmed and the case is remanded to the original court for enforcement.²⁰²

2.4.2. The Supreme Court

The Supreme Court is the highest judicial authority in the country. Like the Court of Administrative Justice, the Supreme Court has a double mandate: it hears appeals against judgments of Public Courts and specialized courts, and ensures consistency of civil and criminal judgments. Furthermore, in accordance with Article 110 of the Constitution, the Supreme Court investigates the President of the Republic for misconduct before he can be impeached by the vote of 2/3 of the parliament and removed by the Supreme Leader.

ranging from 18 to 36 million toumans (approximately \$5,559 to \$11,118 per the 2015 exchange rate), and being permanently banned from employment in the public sector.

¹⁹⁴ Code of Criminal Procedure, art. 427.

¹⁹⁵ Prior to the amendments to articles 426-428 of the CPP, in practice it was not possible to appeal drug trafficking convictions.

¹⁹⁶ Code of Criminal Procedure, art. 426 and Code of Civil Procedure, art. 334.

¹⁹⁷ Code of Criminal Procedure, art. 433 and Code of Civil Procedure, art. 335.

¹⁹⁸ Code of Criminal Procedure, art. 431 and Code of Civil Procedure, art. 336.

¹⁹⁹ Code of Criminal Procedure, art. 433.

²⁰⁰ Code of Criminal Procedure, art. 439 and Code of Civil Procedure, art. 339.

²⁰¹ Code of Criminal Procedure, art. 434 and Code of Civil Procedure, art. 348.

²⁰² Code of Criminal Procedure, art. 455 and Code of Civil Procedure, art. 358.

2.4.2.1. Appeals before the Supreme Courts and Revisions

The Supreme Court has appellate jurisdiction over judgments of civil and criminal courts, Revolutionary Courts and Military Courts that carry high criminal sentences or orders for monetary compensation at higher levels.

In criminal cases, the Supreme Court has jurisdiction to hear appeals against judgments of first instance courts sentencing the accused to death, amputation, life imprisonment, class three punishments or higher, and intentional crimes against another's body resulting in compensatory payments equaling or exceeding one half of the compensation for loss of life, as well as political and press offenses.²⁰³

In civil cases, the Supreme Court hears appeals against final judgments that have not been appealed before appellate courts in cases when the amount of damages exceeds 20 million rials and cases of marriage, divorce, filiation or denial of sexual relations between husband and wife.²⁰⁴ It also acts as a second-degree appeal for all appeal judgments pertaining to marriage or divorce.²⁰⁵

The statute of limitations to file an appeal before the Supreme Court is the same as that applicable to appeals before appeal courts.²⁰⁶ In both civil and criminal cases, the grounds of appeal are errors of fact, violations of the law or the Shari'a invalidating the judgment, or violations of procedural rules leading to a miscarriage of justice.²⁰⁷

Contrary to appeal courts, the Supreme Court does not have the power to issue a new judgment and can only remand the case to the lower court if it concludes that the appeal should be upheld.²⁰⁸

When the Supreme Court rejects an appeal and concludes that the lower court's judgment is legally sound, it will remand the case to the issuing court for enforcement.²⁰⁹ If, on the other hand, it determines that the verdict should be quashed due to an error in the investigation process, it will remand the case to the issuing court for further investigations.²¹⁰ When the lower court's judgment is quashed due to lack of jurisdiction of the court, the Supreme Court will remand the case to the court that should exercise jurisdiction.²¹¹ Finally, if the lower court's ruling is quashed based on any other defects, the case will be remanded to a parallel court for it to issue a new ruling.²¹² The decision of the Supreme Court is not binding upon the reviewing court, which can decide to confirm the ruling of the original court. That judgment can be appealed again before

²⁰³ Code of Criminal Procedure, art. 428.

²⁰⁴ Code of Civil Procedure, art. 367.

²⁰⁵ Code of Civil Procedure, art. 368.

²⁰⁶ Code of Civil Procedure, art. 397. *See also* note 200, *supra*.

²⁰⁷ Code of Criminal Procedure, art. 464 and Code of Civil Procedure, art. 348.

²⁰⁸ Code of Criminal Procedure, art. 469 and Code of Civil Procedure, arts. 401 and 405.

²⁰⁹ Code of Criminal Procedure, art. 469 and Code of Civil Procedure, arts. 370 and 396.

²¹⁰ Code of Criminal Procedure, art. 469 and Code of Civil Procedure, arts. 401 and 405.

²¹¹ Code of Criminal Procedure, art. 469 and Code of Civil Procedure, arts. 401 and 405.

²¹² Code of Criminal Procedure, art. 469 and Code of Civil Procedure, arts. 401 and 405.

the Supreme Court. Should the Supreme Court agree with the lower court, the judgment will be affirmed. Otherwise should the Supreme Court disagree with that ruling, the case will be sent to the General Board of the Supreme Court. The General Board will then issue a binding decision either maintaining the ruling of the appeals court or remanding the case to another appellate branch.²¹³ The decision of the General Board is binding upon the lower court²¹⁴ and the ruling of the lower court is final.²¹⁵

Revisions

The Supreme Court also hears petitions for revision separate from the appeals process in relation to judgments of Public, Revolutionary and Military courts.

In criminal cases, final criminal judgments are subject to revision regardless of whether they have been enforced when: (1) the accused was convicted of murder and the victim is still alive; (2) several suspects have been convicted of a crime that cannot be committed by more than one individual; (3) two individuals have been convicted for the same crime by different jurisdictions; (4) the evidence or the testimony relied upon was forged; or (5) new evidence is discovered that invalidates the judgment, and (6) the punishment is disproportionate to the crime.²¹⁶

In civil cases, petitions for revisions can be filed when: (1) the judge ruled *infra* or *ultra vires*; (2) the amount of damages exceeds the amount that was requested by the claimant; (3) another ruling has been issued in the same dispute; (4) the documents or the evidence relied upon was forged or (5) new evidence, unavailable at the time, came to light.²¹⁷

The parties or their representatives as well as the Attorney General or the Prosecutor of the district court can file a petition for revision with the court that has rendered the judgment.²¹⁸ In civil cases, only the parties to the trial or the head of the Judiciary can participate in a request for revision.²¹⁹

Once the request for revision is filed, the Supreme Court will either uphold it or quash the judgment and remand the case to a parallel court so that it can undergo the revision process.²²⁰ The new judgment is subject to appeal²²¹ but is not subject to revision based on the same grounds.²²²

2.4.2.2. Other Supervisory Duties

Consistency of Rulings of the Public and Revolutionary courts

²¹³ Code of Criminal Procedure, art. 470 and Code of Civil Procedure, art. 408.

²¹⁴ Code of Criminal Procedure, art. 470 and Code of Civil Procedure, art. 408.

²¹⁵ Code of Criminal Procedure, art. 470 and Code of Civil Procedure, art. 408.

²¹⁶ Code of Criminal Procedure, art. 474.

²¹⁷ Code of Civil Procedure, art. 426.

²¹⁸ Code of Criminal Procedure, art. 475.

²¹⁹ Code of Civil Procedure, arts. 441 and 477.

²²⁰ Code of Criminal Procedure, arts. 476 and 480; Code of Civil Procedure, art. 438.

²²¹ Code of Criminal Procedure, art. 480; Code of Civil Procedure, art. 438.

²²² Code of Criminal Procedure, art. 482; Code of Civil Procedure, art. 430.

In addition to its appellate duties, the Supreme Court also ensures the consistency of judgments rendered by Public and Revolutionary Courts as mandated by Article 161 of the Constitution, which reads:

With a view of exercising supervision on the proper implementation of law by the courts of law, creating uniform and binding judicial precedents, carrying out the responsibilities assigned to it by law, a Supreme Court shall be established on the basis of rules and criteria established by the head of the Judiciary.²²³

In conformity with this constitutional provision, Article 471 of the Code of Criminal Procedure states that the Attorney General or the Chief justice of the Supreme Court has to seize the General Board of the Supreme Court every time they are aware of conflicting judgments issued by various branches of the Judiciary on similar issues due to a different understanding of the law.²²⁴

The General Board of the Supreme Court is composed of the Chief Justice of the Supreme Court or his deputy as the head, the Attorney General or his representative, and at least three fourths of the directors, advisors and deputies of all branches.²²⁵ Judgments issued by the General Board are binding on other branches of the Supreme Court and all other public and revolutionary courts.²²⁶

Article 110 of the Constitution of the IRI

Finally, the Supreme Leader can remove the President of the Republic, with due regard to the interests of the country, if the Supreme Court finds him guilty of violating his constitutional obligations or pursuant to a vote of the parliament testifying to his incompetence pursuant to Article 89 of the Constitution.²²⁷ Abolhasan Bani-Sadr is the only Iranian president who was removed from office in this manner after the parliament voted to impeach him on June 21, 1981.²²⁸

3. THE HEAD OF THE JUDICIARY, JUDGES, AND THE MINISTRY OF JUSTICE

Prior to the amendments to the Constitution, the highest judicial authority in the country was the Supreme Judicial Council, composed of the head of the Supreme Court, the Attorney General, and three Islamic jurists elected by judges across the country.²²⁹ The 1989 amendments to Article 156 of the Constitution removed the collective leadership and partly elected nature of the

²²³ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 161.

²²⁴ Code of Criminal Procedure, art. 471.

²²⁵ Code of Criminal Procedure, art. 471.

²²⁶ Code of Criminal Procedure, art. 471.

²²⁷ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 110 section 10.

²²⁸ U.S. Library of Congress, *The Bani Sadr Presidency*, available at <http://countrystudies.us/iran/25.htm>

²²⁹ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1979], art. 157.

Supreme Judicial Council and replaced it with a single, non-elected individual appointed by the Supreme Leader.²³⁰

3.1. THE HEAD OF THE JUDICIARY

Ayathollah Sadegh Ardeshir Larijani-Amoli was appointed head of the Judiciary by the Supreme Leader on August 15, 2009, and was confirmed for another five-year term in August 2014.²³¹

Prior to his appointment as the head of the Judiciary, Larijani served as one of the members of the Guardian Council for a period of eight years. He is portrayed as a relatively junior and un-experienced cleric. As one expert stated, “People understood his appointment at the head of the Judiciary as someone who will do whatever he will be told, so in that sense he does not really have much credibility.”²³²

His family, however, has strong ties to the clerical establishment in the Islamic Republic of Iran and particularly to the Supreme Leader, who was instrumental in the rise of the Larijani “dynasty” in Iran.²³³ Sadegh Larijani’s brother Ali is the speaker of the Iranian parliament. His other brother, Mohamad Javad Larijani, was the deputy to international affairs of Sharoudi, the former head of the Judiciary, and during his brother Sadegh’s tenure as head of the judiciary, he has also served as the chairman of Iran’s national human rights council, which is tasked with overseeing the judiciary with regard to human rights matters. Another brother, Mohamad Bagher Larijani, is the head of the Tehran University of Medical Sciences. Finally, Fazel Larijani served for many years as Iran’s cultural attaché in Canada.

In the years following Sadegh Larijani’s appointment as head of the Judiciary, human rights non-governmental organizations and activists have criticized the sharp rise in executions in Iran. In May 2012, the EU sanctioned the head of the Judiciary for its many human rights abuses, including the signing off on harsh and inhuman sentences, the rise of arbitrary arrests and executions and more generally for the overall systematic violations of due process by the Judiciary.²³⁴

²³⁰ MAJID MOHAMMADI, JUDICIAL REFORM AND REORGANIZATION IN THE 20TH CENTURY IRAN STATE-BUILDING, MODERNIZATION AND ISLAMICIZATION, 149, 173-174 (Routledge Taylor & Francis Group, 2008).

²³¹ *Iran: the Head of the Judiciary reappointed despite controversies*, PAYVAND IRAN NEWS (Aug. 15, 2014) available at <http://www.payvand.com/news/14/aug/1078.html>

²³² Noor Samaha, *The Brothers Larijani: A Sphere of Power*, ALJAZEERA (June 9, 2013) available at <http://www.aljazeera.com/indepth/spotlight/2013/06/2013628374847373.html>

²³³ Noor Samaha, *The Brothers Larijani: A Sphere of Power*, ALJAZEERA (June 9, 2013) available at <http://www.aljazeera.com/indepth/spotlight/2013/06/2013628374847373.html> and see also Muhammad Sahimi, *Nepotism and the Larijani Dynasty*, PBS (Aug. 20, 2009) available at <http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2009/08/nepotism-the-larijani-dynasty.html>

²³⁴ Council Regulation No. 264/2012 of March 23, 2012 amending Regulation No. 359/2011 Concerning Restrictive Measures Directed Against Certain Persons, Entities, and Bodies in View of the Situation in Iran, 24 Mar. 2012, O.J. (L 87/85) available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:087:0026:0036:EN:PDF>

3.1.1. Appointment Mechanism and Functions of the Head of the Judiciary

The head of the Judiciary is the highest judicial authority of the country. He is appointed by the Supreme Leader for a period of five years amongst the *mojtaheds*²³⁵ who possess legal knowledge.²³⁶ As the highest Judiciary authority in the country, the nominee shall be a devout cleric but does not necessarily need to have legal credentials.

In accordance with Article 158 of the Constitution²³⁷ and the Law on the Duties and Powers of the Head of the Judiciary,²³⁸ the head of the Judiciary:

- Creates the necessary organizational structure for the administration of justice in accordance with Article 156 of the Constitution.
- Draws up bills related to the Judiciary, compatible with the principles of the Islamic Republic of Iran.
- Appoints and dismisses judges, determines judicial grades, issues promotions in accordance with the law; in doing so, he can transfer volunteer judges to Tehran or provincial cities as need be without having to comply with the formal requirements relating to the mutation of judges.
- Proposes the annual budget of the Judiciary to the cabinet.

Article 162 of the Constitution further provides that the head of the Judiciary lays down the rules and criteria for the establishment of the Supreme Court,²³⁹ the Court of Administrative Justice,²⁴⁰ and the State Chief Inspectorate.²⁴¹ He also nominates the Chief Justice of the Supreme Court and the Attorney General, both of whom must be *mojtaheds*.²⁴²

Finally, a recent amendment to Article 293 of the Code of Criminal Procedure transferred the powers of the Supreme Court to the head of the Judiciary with respect to matters involving public rights, complaints against the government, charities and public endowments that allegedly violate

²³⁵ Mojtahehs possess the highest level of expertise in Shi'a Islamic jurisprudence. See SHI'I ISLAM AND IDENTITY, RELIGION, POLITICS AND CHANGE IN THE GLOBAL MUSLIM COMMUNITY 114 (Lloyd Ridgeon Ed. 2012).

²³⁶ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 157.

²³⁷ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 158.

²³⁸ The law on Duties and Obligations of the Head of the Judiciary of November 4, 1999, available in Persian at <http://rc.majlis.ir/fa/law/show/93287>

²³⁹ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 162.

²⁴⁰ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 173.

²⁴¹ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 174.

²⁴² QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 172.

the law or the Shari'a by the Attorney General. In such cases, the matter is to be referred to the head of Judiciary for adjudication rather than the Supreme Court.²⁴³

3.2. JUDGES

3.2.1. Qualifications

According to Article 163 of the Constitution, “the conditions and qualifications to be fulfilled by judges serving in the IRI should be established by law, in accordance with the criteria of *Fiqh*.”^{244,245}

In keeping with this article, the Iranian parliament passed the Judge's Appointment Conditions Act.²⁴⁶ The Law on Guidelines for the Recruitment, Selection and Apprenticeship of Applicants for Judgeship and Employment of Judges was also promulgated by the Judiciary.²⁴⁷

According to these laws, only male applicants fulfilling the following qualifications can serve as a judge:

- Be just and have commitment to Islamic principles as well as to the Islamic Republic's System;
- Be of legitimate birth;
- Possess Iranian citizenship and have completed the mandatory military service or be exempt thereof;
- Be sound of mind and free of any drug addiction;
- Having reached *Ejtehaad* with the approval of the Judicial High Council or holding a degree in law, theology or from the college of Judicial and Administrative Studies operating under the guise of the justice department or from the college or High Judicial studies or Qom. In case there are not enough qualified individuals, religious seminary students will also be able to serve as judges.²⁴⁸

In light of the legislation above, the IRI's judges are therefore divided in two main groups of religiously educated and legally trained judges.

Following the Islamic Revolution, women were initially barred from occupying any type of judicial appointment, which had become the exclusive right of men in Iran. The law was, however, amended in 1995 to allow women to occupy certain specific posts within the Judiciary.

²⁴³ Code of Criminal Procedure, art. 293.

²⁴⁴ *Fiqh* is religious jurisprudence.

²⁴⁵ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 169.

²⁴⁶ Law on the Qualifications of Judges, single article of May 2, 1982, available at <http://rc.majlis.ir/fa/law/show/90547>

²⁴⁷ Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges of May 11, 2013, (“the Guidelines for the Recruitment and Selection of judges”) available in Persian at <http://rooznamehrasmi.ir/Laws/ShowLaw.aspx?Code=927>

²⁴⁸ Law on the Qualifications of Judges, single article of May 2, 1982, available at <http://rc.majlis.ir/fa/law/show/90547>

Under that law, women can act as advisors to family courts or as assistant/deputy prosecutors.²⁴⁹ Women can also hold administrative positions within the courts. As evidenced by a table submitted by the IRI in response to a query of the Commission of Human Rights, there are no women in decision-making positions amongst the 614 women that worked in the Judiciary in 2010.²⁵⁰

Before a male candidate can be appointed to a judgeship, his qualifications must be vetted through the *gozinesh* process. This process involves exhaustive investigations into the applicant's personal history, religious beliefs and political affiliations in accordance with the guidelines on the recruitment and selection of judges. According to Article 13 of the guidelines, only Muslim men between the ages of 22 and 36 who have demonstrated allegiance to the IRI and have no contrary political affiliations can pass the *gozinesh* process.²⁵¹ The *gozinesh* process drastically impairs the ability of qualified individuals to apply for State positions and also damages the independence and impartiality of judges, who will conform to these requirements in order to be eligible for judgeship.

3.2.2. Tenure

Article 164 of the Constitution provides that:

[a] judge may not be removed provisionally or permanently from his position without having been tried and his guilt or violation, which is the basis of his dismissal, having been proved; neither may he be transferred to another place nor his position be changed without his consent unless it is in the interest of the society by the Head of the Judiciary after consulting with the President of the Supreme Court and the Attorney General.²⁵²

Even though the Constitution, on its face, recognizes the independence of the Judiciary, Iranian legislation grants the power to nominate, promote or remove judges to the head of the Judiciary. Judges have therefore no security in tenure as their appointment is made at the discretion of the head of the Judiciary, who is himself appointed by the Supreme Leader. As a result, judges are typically subservient to the regime that controls their professional lives.

²⁴⁹ Law on the Employment of Judges, Note 5 amended in 1995 *available at* <http://rc.majlis.ir/fa/law/show/91044>

²⁵⁰ Iran Human Rights Documentation Center, GENDER INEQUALITY AND DISCRIMINATION IN IRAN: THE CASE OF IRANIAN WOMEN 57 (2013), *available in English at* <http://www.iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html>

²⁵¹ The Guidelines for the Recruitment and Selection of judges, arts. 13-14.

²⁵² QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 168.

3.2.3. Enforcement judges

3.2.3.1. Enforcement of Civil Sentences

The enforcement of judgments is regulated by the Law on Enforcement of Civil Judgments of October 23, 1977 and the Law for the Enforcement of Monetary Judgments of July 7, 2015.

Only final sentences can be enforced. The enforcement of civil sentences is within the jurisdiction of the enforcement section of the court that has issued the ruling,²⁵³ which is comprised of a director and of sufficient enforcement officers.²⁵⁴ That section carries out the enforcement of the judgment and deals with all the issues related to the said enforcement.²⁵⁵

Once the prevailing party requests the enforcement of the judgment, the court will issue an enforcement order and notify the debtor of the enforcement of the judgment.²⁵⁶ Notification of the judgment is done in conformity with the provisions of the Code of Civil Procedure regarding notification.²⁵⁷ Once an enforcement order has been issued, the debtor has to provide the court with an inventory of all of his real and personal property so that payment of his debt can be made on the basis of that property.²⁵⁸ Should the debtor be unable to honor the judgment or deceive the court regarding his assets, he will be sentenced to one of the following punishments for a period ranging from six months to two years:

- Prohibition to leave the country;
- Prohibition to take part in commercial activities;
- Prohibition to sit on corporation boards or act as a director;
- Prohibition to apply for a loan or have a checkbook.²⁵⁹

In addition, the prevailing party can request imprisonment of the debtor until he complies with the enforcement order.²⁶⁰

3.2.3.2. Enforcement of Criminal Sentences

The presiding judge²⁶¹ of the Office of the Prosecutor enforces criminal sentences through the Office of Implementation of Criminal Sentences, chaired and supervised by the Prosecutor.²⁶²

²⁵³ Law on Enforcement of Civil Judgment of October 23, 1977, arts. 5 and 19 (Law on Enforcement of Civil Judgments) available at <http://rc.majlis.ir/fa/law/show/97591>

²⁵⁴ Law on Enforcement of Civil Judgments, arts. 12-13.

²⁵⁵ Law on Enforcement of Civil Judgments, arts. 25-28.

²⁵⁶ Law on Enforcement of Civil Judgments, arts. 4-5.

²⁵⁷ Law on Enforcement of Civil Judgments, arts. 8-9.

²⁵⁸ Law on the Enforcement of Monetary Judgments of July 7, 2015, arts. 8 and 19 (Law on Enforcement of Monetary Judgments) available at <http://www.rrk.ir/Laws/ShowLaw.aspx?Code=5133>

²⁵⁹ Law on the Enforcement of Monetary Judgments, art. 16.

²⁶⁰ Law on Enforcement of Civil Judgments, arts. 34-35; Law on the Enforcement of Monetary Judgments, arts. 3-4 and 16, 18.

²⁶¹ Code of Criminal Procedure, note 3 to art. 584. In his absence, the duties of the presiding judge are undertaken by the alternate judge.

²⁶² Code of Criminal Procedure, art. 584.

One of the units of the Office of Implementation of Criminal Sentences may be stationed in prisons or in other punitive institutions.²⁶³ The Office of Implementation of Criminal Sentences comprises two units: one unit is dedicated to the criminal record of detainees and another one manages pardon or parole requests from detainees.²⁶⁴ In addition to enforcement judges, the Office of Implementation of Criminal Sentences can employ professionals in the field of sociology, education, psychology, criminality or law.²⁶⁵

Prison judges of the Office of Implementation of Criminal Sentences are stationed in prison and exclusively manage issues regarding prisoners. Like other criminal enforcement judges, prison judges are under the direct supervision of the Prosecutor.²⁶⁶

They are in charge of enforcement orders pertaining to prisoners, rule on requests for forgiveness and parole from prisoners and approve their leave.²⁶⁷ Finally, they are in charge of the well-being of detainees who are old, physically or mentally ill and in need of treatment.²⁶⁸

3.3. MINISTRY OF JUSTICE

According to Article 160 of the Constitution,²⁶⁹ the Minister of Justice is responsible for coordinating the relations of the Judiciary with the other branches of Government in administrative matters. In doing so, he receives bills from the Judiciary and ensures that they are ready for submission to the parliament. He further defends such bills before the parliament. The Minister of Justice also prepares the section of the annual budget bill that pertains to the Judiciary under the supervision of the head of the Judiciary and defends the Judiciary's budget both before the cabinet and on the floor of the parliament.

The Minister of Justice is nominated by the President based upon the suggestions of the head of the Judiciary.²⁷⁰ The parliament and the president, who are elected, have little say in selection and nomination of the Minister of Justice. The current Minister of Justice of the IRI, Mostafa Pourmohammadi, was a member of a three-person committee that sentenced thousands of

²⁶³ Code of Criminal Procedure, art. 584.

²⁶⁴ Code of Criminal Procedure, art. 488.

²⁶⁵ Code of Criminal Procedure, arts. 489-490.

²⁶⁶ See "Prison judges, in charge of matters relating to prisoners", available at <http://ghanoondaily.ir/1392/07/14/Files/PDF/13920714-262-13-5.pdf>

²⁶⁷ *Qazi-ih nazir-ih zindan, mas 'ul nizarat bar salamati zindaniyan* ("Prison judges, in charge of matters relating to prisoner health") in Ghanoon Daily, available at <http://ghanoondaily.ir/1392/07/14/Files/PDF/13920714-262-13-5.pdf>, (in Persian).

²⁶⁸ Code of Criminal Procedure, art. 489 and *Qazi-ih nazir-ih zindan, mas 'ul nizarat bar salamati zindaniyan* ("Prison judges, in charge of matters relating to prisoner health") in Ghanoon Daily, available at <http://ghanoondaily.ir/1392/07/14/Files/PDF/13920714-262-13-5.pdf>, (in Persian).

²⁶⁹ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 160.

²⁷⁰ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 160.

political prisoners to death in 1988.²⁷¹

4. VIOLATIONS OF IRANIAN LAW AND INTERNATIONAL LAW

Fair trial rights are procedural guarantees that constitute the enabling framework of the promotion and protection of more substantive human rights. In fact, as stated by Human Rights Committee,²⁷² Article 14 of the International Covenant on Civil and Political Rights (ICCPR) has direct relevance to the right to life, the prohibition against torture and the rights to liberty and security of the person.²⁷³

In this section, the laws and practices of the IRI's judiciary regarding to fair trial guarantees such as the right to an independent and impartial tribunal, to a reasoned judgment, to counsel of one's choice or the prohibition against torture and self-incrimination are examined through the prism of International Human Rights law.

4.1. THE RIGHT TO BE TRIED BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL

The critical importance of an independent and impartial tribunal is reiterated in all human rights instruments including the ICCPR, which was signed in 1968 and ratified without reservations by Iran on June 24, 1975. However, constitutional and statutory provisions defining the role and structure of the judiciary in the IRI preclude judicial independence by design as all the powers of the Judiciary are concentrated in the hands of a single individual, the head of the Judiciary.

4.1.1. International Law

The right to be tried by an independent and impartial tribunal is guaranteed by article 14(1) of the ICCPR, which provides that:

[I]n the determination of any criminal charges against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a *competent, independent and impartial tribunal* established by the law.²⁷⁴ (emphasis added)

The notions of independence and impartiality of the Judiciary are often closely linked. Independence refers to independence from other branches of the government and State

²⁷¹ See The Iran Human Rights Documentation Center, *Who is Mostafa Pourmohammadi: a Profile of the Iranian President Hassan Rouhani's Pick for Ministry of Justice* (Aug. 15, 2015) available at <http://www.iranhrdc.org/english/news/inside-iran/100000361-who-is-mostafa-pourmohammadi-a-profile-of-iranian-president-hassan-rouhanis-pick-for-minister-of-justice.html>

²⁷² The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties.

²⁷³ Human Rights Committee, Gen. Comm. No. 32 to article 14 (2007), U.N. Doc. CCPR/C/GC/32, ¶¶ 59-61.

²⁷⁴ International Covenant on Civil and Political Rights ("ICCPR"), art. 14(1), Mar. 23, 1976, 999 U.N.T.S. 171 available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

institutions while impartiality focuses on the judge's state of mind in relation to a particular case and requires that he or she be free from bias, prejudice or political pressures from external sources.

The Human Rights Committee has unambiguously held that “the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception. It is applicable in all circumstances, in all courts, whether ordinary or special.”²⁷⁵

Principle four of the Basic Principles on the Independence of the Judiciary further specifies that independence in decision-making entails that “there shall be no inappropriate or unwarranted interference in the judicial process, nor shall the decisions by the courts be subject to revision.”²⁷⁶

4.1.2. Iranian Law

4.1.2.1. The Independence and Impartiality of the Judiciary

The Iranian Constitution pledges adherence to the principle of separation of powers and explicitly states in Article 156 that the Judiciary is an independent authority.²⁷⁷ However, this independence is purely formal as it fails to translate either in national laws or in practice.

Iran's judiciary has no elected officials, and is not subject to oversight by any elected official. The head of the Judiciary, appointed by and accountable only to the Supreme Leader, takes all major judicial and administrative decisions pertaining to the Judiciary. As discussed above, he nominates, promotes and dismisses judges. The *gozinesh* process,²⁷⁸ together with the fragility of a judge's tenure which is at the discretion of the head of the Judiciary, weaken judges' independence, making it almost impossible for them to rule impartially – based on their knowledge and understanding of the law – and ignore the policies and directives of the unelected executive branch of the IRI.²⁷⁹ As admitted by the first deputy to the former head of the Judiciary himself, “judges must obey the Supreme Leader and have no independence in judgment.”²⁸⁰ The

²⁷⁵ U.N. Human Rts. Comm., *M. Gonzalez del Río v. Peru*, Comm. No. 263/1987, ¶5.2, UN doc. GAOR, A/48/40 (vol. II), (1992).

²⁷⁶ United Nations Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan (26 Aug. - 6 Sept. 1985), G.A. Res. 40/32 and G.A. Res. 40/116, Principle 4, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

²⁷⁷ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 156 states that “[t]he Judiciary shall be an independent power that protects individual and social rights, shall be responsible for implementing justice and shall carry out the following functions [...]”

²⁷⁸ Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, Human Rts. Council, ¶ 62, U.N. Doc. A/HCR/25/61 (Mar. 13, 2014).

²⁷⁹ Mehrangiz Kar, *Who are the judges in the Islamic Republic of Iran* in THE FUTURE OF IRAN: JUDICIAL REFORM – THE LEGATUM INSTITUTE 4-5 (2012) available at <http://www.li.com/docs/default-source/future-of-iran/2012-future-of-iran-by-mehrangiz-kar-who-are-the-judges-in-the-islamic-republic-of-iran.pdf?sfvrsn=2>

²⁸⁰ Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, Human Rts. Council, ¶ 62, U.N. Doc. A/HCR/25/61 (Mar. 13, 2014).

case of Akbar Ganji attests to the difficulties encountered by judges who attempt to remain impartial and independent. Akbar Ganji is a leading Iranian journalist who withstood trial and was convicted to ten years' imprisonment on espionage charges for attending a conference in Berlin. Judge Ali Bakhshi, who denounced the fabricated nature of the charges against the accused, reduced his sentence to six months on appeal. However, the Supreme Court immediately overturned Ali Bakhshi's more lenient verdict, and Bakhshi himself was instead forced into retirement.²⁸¹

The lack of judicial independence endemic to Iran's system is also evidenced by the fact that some verdicts are leaked before the court has even had a chance to hold trial. In the case of Siamak Pourzand, the Appeal Court's verdict was announced in the newspaper *Resalat* ten days before the court convened to consider Mr. Pourzand's case. This verdict was later confirmed when the Court of Appeal issued its ruling.²⁸²

Finally, Article 477 of the Code of Criminal Procedure allows the head of the Judiciary to request the revision of a final judgment when he believes that the judgment violates the law or Shari'a.²⁸³ In practice, this provision is rarely put into motion to ensure that judgments comply with the law and is instead commonly used to achieve the political goals of the authorities. For example, the death sentence of Mohsen Amir Aslani was carried out following the head of the Judiciary's overruling of the Supreme Court, notwithstanding the fact that it had been quashed three times by the Supreme Court. Once the head of the Judiciary overruled the Supreme Court on the basis of Article 477 of the Code of Criminal Procedure, the case was remanded to Branch 13 of Revolutionary Court of Tehran, which confirmed the death sentence. The accused was consequently executed at dawn on September 24, 2014.²⁸⁴

International observers have repeatedly raised concerns regarding the independence of the IRI's judicial system.²⁸⁵ As one expert explains,

Since the judicial system is functioning under the direct leadership of the Supreme Leader and since the Supreme Leader's main task is to safeguard the regime, as a result, the judiciary system of the

²⁸¹ *Iran's Crumbling Judiciary*, PBS (Aug. 15, 2009) available at

<http://www.pbs.org/wgbh/pages/frontline/tehranbureau/2009/08/irans-crumbling-Judiciary.html>

²⁸² Iran Human Rights Documentation Center, *MOCKERY OF JUSTICE: THE FRAMING OF SIAMAK POURZAND 27* (Aug. 2008), available at <http://www.iranhrdc.org/english/publications/reports/3153-mockery-of-justice-the-framing-of-siamak-pourzand.html>

²⁸³ See Section 2.4.2 above.

²⁸⁴ Iran Human Rights Documentation Center, *Chronicle of an Execution: the Case of Mohsen Amir Aslani* (2014) available at <http://www.iranhrdc.org/english/publications/legal-commentary/1000000565-chronicle-of-an-execution-the-case-of-mohsen-amir-aslani.html>

²⁸⁵ Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, Human Rts. Council, ¶¶ 60-65, U.N. Doc. A/HCR/25/61 (Mar. 13, 2014), available at <http://rc.majlis.ir/fa/law/show/94150>

Islamic Republic of Iran cannot be considered as a body that maintains the law but one that maintains the Regime.²⁸⁶

4.2. THE RIGHT TO A REASONED JUDGMENT

4.2.1. International Law

The principle of *Nullum crimen, nulla poena sine lege* is a fundamental principle of human rights law that ensures fairness and transparency of proceedings by guaranteeing that no crime or punishment exists without a legal basis. It is guaranteed in Article 11 of the Universal Declaration of Human Rights (UDHR), which states:

No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time it was committed.²⁸⁷

The same fundamental principle is laid down in all major human rights treaties. Article 15(1) of the ICCPR,²⁸⁸ for example, prohibits the application *ex post facto* laws that did not constitute an offense at the time of the crime.

The European Court of Human Rights (ECHR)²⁸⁹ has also held that Article 7(1) of the European Convention of Human Rights prohibits the retroactive application of the criminal law and “embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) [...]”²⁹⁰

These provisions safeguard the legal security of defendant by ensuring the legal predictability or foreseeability of judgments.

4.2.2. Iranian Law

Article 167 of the Constitution provides that:

The judge is bound to endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he has to

²⁸⁶ Mehrangiz Kar, *Who are the judges in the Islamic Republic of Iran in THE FUTURE OF IRAN: JUDICIAL REFORM – THE LEGATUM INSTITUTE 6 (2012) available at <http://www.li.com/docs/default-source/future-of-iran/2012-future-of-iran-by-mehrangiz-kar-who-are-the-judges-in-the-islamic-republic-of-iran.pdf?sfvrsn=2>*

²⁸⁷ Universal Declaration of Human Rights, art. 5, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); ICCPR art. 11.

²⁸⁸ Article 15(1) of the ICCPR states that “[n]o one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed”.

²⁸⁹ Although Iran is not a party to the ECHR, the treaty is one of the major regional human rights instruments and the ruling of the European Court of Human Rights regarding fair trial and due process are of crucial importance.

²⁹⁰ *Kokkinakis v. Greece*, App. No. 14307/88, May 23, 1993, Series A 260-A available at [http://hudoc.echr.coe.int/eng#{\"docname\":\[\"Kokkinakis\"\],\"documentcollectionid2\":\[\"GRANDCHAMBER\", \"CHAMBER\", \"DECISIONS\"\],\"itemid\":\[\"001-57827\"\]}](http://hudoc.echr.coe.int/eng#{\)

deliver his judgment on the basis of authoritative Islamic sources and authentic fatwa. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgment..²⁹¹

Article 3 of the Code of Civil Procedure reiterates the same principle by prohibiting judges from refraining to issue rulings when the law is silent or incomplete.

Those provisions of Iranian law, allowing a judge to base his ruling on Islamic sources or authoritative fatwas, clearly violate the above-mentioned international provisions. In fact, the reliance by judges on various fatwas and religious teaching defeats any possibility of predictability of judgments, since the sheer volume of existing edicts to which a judge may refer makes virtually any ruling on any dispute possible.²⁹²

4.3. THE RIGHT TO COUNSEL

Although the right to counsel is guaranteed in both the Constitution and national laws of the IRI, the numerous restrictions imposed on the exercise of that right preclude the effective assistance of counsel as guaranteed by international and regional human rights treaties.

4.3.1. International law

The right to effective legal assistance is guaranteed by articles 14(3)(b) and 14(3)(d) of the ICCPR.²⁹³ They read as follows:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without

²⁹¹ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 167.

²⁹² Mehrangiz Kar, *Who are the judges in the Islamic Republic of Iran in THE FUTURE OF IRAN: JUDICIAL REFORM – THE LEGATUM INSTITUTE 7* (2012) available at <http://www.li.com/docs/default-source/future-of-iran/2012-future-of-iran-by-mehrangiz-kar-who-are-the-judges-in-the-islamic-republic-of-iran.pdf?sfvrsn=2>

²⁹³ Article 14(3)(b) and 14(3)(d) of the ICCPR.

payment by him in any such case if he does not have sufficient means to pay for it;

Although the meaning of “adequate time” is dependent upon the circumstances of each case, the facilities mentioned in this Article should include evidence and other supporting documents which the accused requires to prepare his case as well as the opportunity to meaningfully engage with counsel.²⁹⁴

Those provisions guarantee the right to counsel of choice at every stage of criminal proceedings including during pre-trial detention, questioning and primary investigations.²⁹⁵ Delaying access to a lawyer may only be permitted under exceptional circumstances and cannot be refused for more than 48 hours from the time of arrest or detention.²⁹⁶

Article 6(3)(c) of the European Convention on Human Rights similarly guarantees the right of anyone charged with a criminal offense to defend himself in person or through legal assistance of his own choice.²⁹⁷

4.3.2. Iranian law

Article 35 of the IRI’s Constitution recognizes the right to an attorney in all courts of law and requires that the Courts provide the necessary means to guarantee this right.²⁹⁸

The fundamental right to an attorney in criminal proceedings is also guaranteed in articles 5, 48, 190, 347 and 348 of the Code of Criminal Procedure, which mandate the presence of a lawyer in cases carrying harsh punishments.²⁹⁹ Should the accused not be able to afford a lawyer, he will have a court- appointed one.³⁰⁰

Article 48 of the CCP was recently amended to allow for the presence of a lawyer during the preliminary investigations’ stage of the proceedings. However, access to a lawyer can still be

²⁹⁴ *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, Note by the Secretariat, 186 ¶ 9, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (May 27, 2008) available at <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>

²⁹⁵ *Concluding Observations of the Human Rights Committee: Netherlands*, ¶ 11, U.N. Doc. CCPR/C/NLD/CO/4 (Aug. 25, 2009) available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5; see also *Concluding Observations of the Human Rights Committee: Georgia*, ¶ 27, U.N. Doc. CPPR/C/79/add.75 (May 5, 1997) available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5

²⁹⁶ United Nations Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (27 Aug. to 7 Sept. 1990), Principle 7, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

²⁹⁷ Article 6(3)(c) of the ECHR states that everyone charged with a criminal offense has the right “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require”

²⁹⁸ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 35.

²⁹⁹ Code of Criminal Procedure, arts. 5, 48, 190, 347-348.

³⁰⁰ Code of Criminal Procedure, art. 348.

delayed for up to one week in cases where the accused is charged with a national security crime or other serious offense. More importantly, for more important crimes punishable by Article 302 of the CCP, national security cases as well as political or press crimes, the law mandates that the lawyer present during investigations and questioning will be selected through a pool of lawyers approved by the head of the Judiciary.³⁰¹ This restriction on the lawyer of one's choice is not only a violation of the accused's due process rights but it also impairs the independence of lawyers by giving an unfair advantage to those selected by the head of the Judiciary.

Finally, subsection 3 of the single Article of the Citizenship Rights Law of 2004 requires courts and prosecutions' offices to safeguard the right of the accused to a defense and to appoint an attorney for the accused should he not be able to afford one.³⁰²

The IRI routinely violates not only international law but also its own Constitution and national laws by severely restricting the rights of suspects and accused to effective legal representation in Revolutionary Courts. Since the 1979 revolution, the Judiciary has perceived lawyers as an unwanted disturbance in political and security cases and made every effort to diminish their role and independence. As stated by Hojat-ol-Islam Sadeqh Khalkhali, head of the Extraordinary Revolutionary Tribunals:

“There is no room in revolutionary courts for defense lawyers because they keep quoting laws to play for time and this tries the patience of the people.”³⁰³

As the UN Special Rapporteur on Human Rights in Iran recently reported, the IRI still denies the right to counsel in judicial proceedings. According to his most recent report:

All persons interviewed for the purposes of the present report stated that they had no access to a lawyer during the initial investigation stage of their case, which is precisely the period when most violations of fair trial standards occur. Some 45 of interviewees who were prosecuted reported that they did not have a lawyer during their trial. In three cases, the judges reportedly refused to allow the defendant to retain a lawyer of their choice.³⁰⁴

One lawyer interviewed by the Iran Human Rights Documentation Center stated that access to a lawyer during the investigation stage of the trial is “almost impossible” and “practically non-existent”.³⁰⁵

³⁰¹ Code of Criminal Procedure, art. 48.

³⁰² Citizenship Rights Law of May 4, 2004, art. 3 available at <http://rc.majlis.ir/fa/law/show/94150>.

³⁰³ *Iran Must Close Down the 36-Year-Old Islamic Revolutionary Courts*, HUMAN RIGHTS & DEMOCRACY IN IRAN available at <http://blog.iranrights.org/iran-must-close-down-the-36-year-old-islamic-revolutionary-courts/>

³⁰⁴ Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, *Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran*, Human Rts. Council, ¶ 73, U.N. Doc. A/HCR/25/61 (Mar. 13, 2014), available at <http://rc.majlis.ir/fa/law/show/94150>

³⁰⁵ Witness testimony of H (pseudonym), para. 41, (on file with IHRDC).

Similarly, Siamak Pourzand was repeatedly denied access to the lawyer of his choice and pressured to admit that he was satisfied with his court-appointed lawyer.³⁰⁶

The most egregious violations to the right to counsel occur in specialized courts. As Mahnaz Parakand - an attorney - explained to the Iran Human Rights Documentation Center:

Prior to the 2009 presidential elections lawyers faced certain restrictions in entering the Revolutionary Courts, but [the restrictions] were not so blatant and severe [as they are now]. In fact, lawyers could attend court, but faced more challenges in accessing judges and/or accessing the file— which is a tale of its own! However, [after the 2009 presidential elections] the authorities began imposing more limitations on lawyers entering Revolutionary Courts. The process was such that the accused person or other individuals required in court entered a waiting area where they would have to get a letter. Lawyers had to get approval from the branch to be let in. On many occasions the judge was not available, or, even if he was, other administrators such as Mr. Fallah or Mojtaba in Branch 28 of the Revolutionary Court would have the power to allow or forbid the lawyers to get in.³⁰⁷

In the rare instances where the right to counsel of choice is respect, the ability of said counsel to effectively defend his client is seriously hindered by the numerous obstacles that lawyers have to face in order to conduct the defense of their clients. According to several lawyers interviewed by the Iran Human Rights Documentation Center, counsel are often given a few days to go through large case files, they are prohibited from making copies of the files and have to resort to handwritten notes.³⁰⁸ What is more, entire files are rarely made available to counsel who often have only limited access to the evidence regarding their clients.³⁰⁹

³⁰⁶ Iran Human Rights Documentation Center, *MOCKERY OF JUSTICE: THE CASE OF SIAMAK POURZAND 12* (Aug. 2008) available at <http://www.iranhrdc.org/english/publications/reports/3153-mockery-of-justice-the-framing-of-siamak-pourzand.html>

³⁰⁷ *Witness Statement of Mahnaz Parakand*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER ¶46 (Jun. 8, 2012), available at <http://www.iranhrdc.org/english/publications/witness-testimony/100000216-witness-statement-of-mahnaz-parakand.html>

³⁰⁸ *Witness Statement of Mehrangiz Kar*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Sept. 11, 2015), on file with IHRDC; *Witness Statement of Mahmood Alizadeh Tabatabai*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Oct. 13, 2015) on file with IHRDC.

³⁰⁹ *Witness Statement of Ahmad Hamid*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER ¶¶ 37-38 (Apr. 2, 2015), available at <http://www.iranhrdc.org/english/publications/witness-testimony/100000591-witness-statement-of-ahmad-hamid.html>. The witness recounts that he was given two days to read 3,000 pages of case file. He further adds that some portions of the case file were made unavailable to the lawyers because they contained information that the Government did not want them to access; see also *Witness Statement of Mehrangiz Kar*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Sept. 11, 2015), on file with IHRDC; *Witness Statement of Farideh Rayrat*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Aug. 11, 2015), on file with IHRDC.

4.4. RIGHT TO BE INFORMED OF CHARGES

The suspect's right to prompt notification of the charges against him is a fundamental right in criminal proceedings, guaranteed by all major international conventions. Although the Iranian Constitution and domestic laws also formally recognized the right of the suspect to be informed of the charges against him, the IRI has, in practice, repeatedly violated that internationally guaranteed right by detaining suspect for long periods of time without informing them of the charges against them.

4.4.1. International Law

Article 14(3)(a) of the ICCPR guarantees everyone's right to be "informed promptly and in a language which he understands of the nature and cause of the charges against him."³¹⁰ The Human Rights Committee has further explained that: "there shall be no delay in informing the suspect of the charges against him. Such information shall be provided as the prosecution decides to take steps against a person suspected of a crime."³¹¹

The same right is guaranteed in similar wording at Article 6(3)(a) of the ECHR.³¹²

4.4.2. Iranian Law

Article 32 of the Constitution states that no one should be arrested without a warrant; upon arrest, and that the suspect shall be immediately notified of the charges against him.³¹³

Similarly, Article 190 of the CCP guarantees the accused, and his lawyer, the right to be informed of the charges against him and the right to have access to the evidence underpinning the charges.³¹⁴ Unfortunately, following the recent amendments to the Code of Criminal Procedure, violation of this article does not result in the exclusion of the evidence gathered but simply carries a disciplinary punishment.³¹⁵

Most individuals interviewed by the Iran Human Rights Documentation Center testify that they were held in detention for long periods of time without having any knowledge of the charges against them. Isa Savari for example, recounted that:

³¹⁰ ICCPR, art. 14(3)(a).

³¹¹ *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, Note by the Secretariat, 186 ¶ 8, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (May 27, 2008) available at <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>

³¹² See, ECHR, art. 6(3)(a).

³¹³ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 32.

³¹⁴ Code of Criminal Procedure, note 1 to art. 190.

³¹⁵ Code of Criminal Procedure, note 1 to art. 190; see also The Iran Human Rights Documentation Center, *Amendments to the Islamic Republic or Iran's Code of Criminal Procedure – Part 2* available at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000625-amendments-to-the-islamic-republic-of-iran%E2%80%99s-code-of-criminal-procedure-%E2%80%93-part-2.html>

They started to torture us once we arrived there. *We did not know what our charges were.* They did not give us any opportunity to ask why we were being tortured. One night I asked them what we had done. They did not answer. They only added that we were anti-revolutionary and Wahhabi.³¹⁶ (Emphasis added)

Similarly, Hassan Yousefi Eshkevari testified that he was not given a bill of indictment that would allow him to conduct his defence at the time of his trial.³¹⁷

4.5. RIGHT OF FREEDOM FROM TORTURE AND FORCED CONFESSIONS

Notwithstanding the clear prohibition of torture in both international law and domestic regulations of the IRI, forced confessions from detainees under threats, intimidation and psychological and physical torture are commonplace in the course of preliminary interrogation and detention of criminal suspects.

4.5.1. International Law

Torture is defined by the Convention Against Torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.³¹⁸

Article 5 of the UDHR and Article 7 of the ICCPR both prohibit the use of torture or cruel, inhuman or degrading treatments or punishments.

Article 10.1 of the ICCPR further mandates that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

³¹⁶ *Witness Statement of Isa Savari*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Dec. 1, 2012), ¶ 20 <http://www.iranhrdc.org/english/publications/witness-testimony/100000580-witness-statement-of-isa-savari.html>

³¹⁷ *Witness Statement of Hassan Yousefi Eshkevari*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER ¶ 54 (Apr. 25, 2014), available at <http://www.iranhrdc.org/english/publications/witness-testimony/100000543-witness-statement-of-hasan-yousefi-eshkevari.html>

³¹⁸ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, article 1(1), Dec. 10, 1984, 1465 U.N.T.S. 85.

When inflicted by a State, torture is often used to extract information, intimidate and coerce an individual. The prohibition against torture is therefore closely linked to the right against self-incrimination guaranteed in Article 14(3)(g) of the ICCPR.³¹⁹

4.5.2. Iranian Law

The Constitution of the IRI recognizes the presumption of innocence in Article 37³²⁰ and further prohibits the use of confessions extracted through force, intimidation or torture in Article 38.³²¹

The Code of Criminal Procedure also guarantees freedom from forced confessions. Articles 60, 195 and 196 of the CCP ban interrogations conducted by manipulation, duress or compulsion and exclude evidence and confessions obtained under duress.³²²

Finally, the same prohibition is reiterated in subsection 9 of the Citizenship Rights Law.³²³

Despite these provisions, Iran's courts have a long and well-documented history of extracting forced confessions from political prisoners, often under the threat of torture.

As stated by the UN Special Rapporteur for the human rights situation in the IRI:

In 90 per cent of cases, former detainees claimed that their interrogators had subjected them to psychological abuse, including prolonged solitary confinement, mock executions, threats to life, sexual harassment, threats to family members, harsh verbal abuse and threats of rape and other torture. Some 76 per cent also alleged that their interrogators physically abused them in the form of severe beatings to the head and body, often with a baton-like object. Some reported having been subjected to suspension and pressure positions, sexual molestation, electric shocks or burning. Some also reported having been transferred to general prison wards and shared cells after the investigation period, after which interrogations largely concluded. Some interviewees stated they were released shortly thereafter on bail.³²⁴

Isa Savari, a political activist, recounted how he had been tortured every time he was arrested. He stated:

³¹⁹ ICCPR, art. 14 (3)(g) guarantees the right of every individual “not to be compelled to testify against himself or to confess guilt.”

³²⁰ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 37.

³²¹ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 38.

³²² Code of Criminal Procedure, arts. 60, 195 and 196.

³²³ Citizenship Rights Law of May 4, 2004, Subsection 9 to art. 1, available at <http://rc.majlis.ir/fa/law/show/94150>

³²⁴ See Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, Human Rts. Council, ¶ 56, U.N. Doc. A/HRC/25/61 (Mar. 13, 2014), available at <http://shaheedoniran.org/wp-content/uploads/2014/03/A-HRC-25-61-updated.pdf>.

When I was arrested in 2011 for the second time, they tied my neck with a rope and told me they wanted to hang me. They pushed the chair from under my feet for one or two seconds. The rope was made of cotton. [...] Then, they put me in a place called “the break room” for twenty-four hours. They tie your hands and feet for twenty-four hours and open water valves. It was April 2011. It was hot. I had to drink water like a dog, since my hands and feet were tied. I was in my underwear. After twenty-four hours, I could not speak. They took revenge on me.³²⁵

Behrouz Javid Tehrani also told IHRDC that:

They beat me a number of times there. One thing that really bothered me, which is among the worst tortures that I can think of, was that they cuffed my hands and my feet, and then locked my hands and feet together, and then covered my mouth. I clenched my jaw before they covered my mouth. They wanted to cover my mouth with a piece of cloth. One of the ward 209 guards punched me in the chest, but I did not unclench my jaw. He climbed on my chest and started jumping up and down. Three of my ribs broke at that point. I opened my mouth, and he covered it. They tied my handcuffs to the shackles on my feet, and I had to lie on my broken chest until the morning. Being handcuffed and shackled was among the worst forms of torture I experienced because it wears you down and you cannot move at all.³²⁶

Ali Mahin Torabi, a young Kurdish Iranian arrested while he was a juvenile, explained how he was tortured so that he would confess to the crimes he was arrested for. He recalled that:

He then asked me a number of questions about the incident and my role in it. Whatever I said, he reacted by saying, “Stop this bullshit, you know very well this is all a bunch of nonsense.” He slapped and beat me so much that I said, “You tell me what you want me to write and I’ll write it!” [...] During the 28 days, every time I was taken for interrogation Lt. Sharifi tore up my true answers, claiming they were lies. He said, “Write what I tell you!” During the interrogations, they would seat me on an old metal chair under which was a picnic-type gas stove. Every five minutes they would turn up the flame, to the point that as a result of burning heat, my cotton pants would stick to my body. I told him to just stop the flame and I would tell him anything he wanted to hear. He also had

³²⁵ *Witness Statement of Isa Savari*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER ¶¶ 31 and 53 (Dec. 1, 2012) <http://www.iranhrdc.org/english/publications/witness-testimony/1000000580-witness-statement-of-isa-savari.html>

³²⁶ *Witness statement of Behrouz Javid Tehrani*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER ¶ 7 (Oct. 11, 2012), <http://www.iranhrdc.org/english/publications/witness-testimony/1000000222-witness-testimony-behrouz-javid-tehrani.html>

a hose filled with metal bits that he from time to time targeted under my feet, causing blisters.³²⁷

Saman Naseem, a Kurdish Iranian who was 17 years old at the time of his arrest, also testified that:

That was the start of 97 days of torture and suffering. During those first days, the level of torture was so high that I was left unable to walk. My entire body was black and blue. They hung me from my hands and feet for hours. I was blindfolded the whole time. I could not see the interrogators and torturers. They used all kinds of inhumane and illegal methods to try and extract confessions from me. They repeatedly told me that they had arrested members of my family including my father, my mother, and my brother. They told me that they would bury me with a digger. They told me that they would kill me right there and would cover my grave with cement. I was not allowed any contact with my family during this time. In an utterly inhumane act, they filmed my interrogations, when I was hanging between life and death, under pressure and the risk of torture. I can say now that those interviews are absolute lies and I deny their content. Later, a news report was released on state TV that implied I had been freed and had gone home. I was actually being sentenced to death, based on a ‘confession’ that had been pre-written.³²⁸

Prisoners often recanted forced confessions at trial or upon release.³²⁹

4.6. THE RIGHT TO A PUBLIC TRIAL

4.6.1. International law

The right to a public trial is guaranteed by Article 11 (1) of the UDHR which states that:

Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in *a public trial* at which he has had all the guarantees necessary for his defence.
[Emphasis added]

The ICCPR also guarantees the right to a public hearing in both civil and criminal cases in its Article 14(1). According to this Article, everyone is entitled to a fair and public hearing though

³²⁷ *Statement of Ali Mahin Torabi*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER ¶¶ 6 and 8 (Aug. 12, 2011), <http://www.iranhrdc.org/english/publications/witness-testimony/3505-witness-statement-of-ali-mahin-torabi.html>

³²⁸ Louisa Anderson, *Awaiting my execution: a letter from Iran*, AMNESTY INTERNATIONAL (Feb. 14 2015), available at <https://www.amnesty.org/en/latest/campaigns/2015/02/awaiting-my-execution-a-letter-from-iran/>

³²⁹ *Witness Statement of Ahmad Hamid*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER ¶¶ 12 and 41 (Apr. 2, 2015), available at <http://www.iranhrdc.org/english/publications/witness-testimony/1000000591-witness-statement-of-ahmad-hamid.html>

“the press and public may be excluded from all or parts of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

The Human Rights Committee emphasized that apart from the exceptional circumstances provided for in Article 14(1) “a hearing must be open to the public in general, including members of the press, and must not, for example, be limited only to a certain category of persons.”³³⁰

4.6.2. Iranian law

The right to a public trial for political offenses and press offenses is entrenched in the IRI’s constitution at Article 168, which states that:

Investigations of political crimes and press offenses shall be opened and shall be carried out by a court of law in the presence of a jury. The manner of appointment, qualifications and authorities of the jury, and the definition of a political crime shall be laid down by law on the basis of Islamic precepts.”³³¹

In contravention with this provision as well as its own constitution, the hearings of the SCC and Revolutionary Courts are held in camera and the press has never been allowed in political cases before the revolutionary courts.

In that respect, Hassan Yousefi Eshkevari recounts:

Another illegal development in my case was their refusal to hold a public trial. Despite the promise they had originally made, they broke their pledge and violated the law.”³³²

5. CONCLUSION

The Islamic Republic of Iran often responds to concerns about human rights violations by its Judiciary by pointing to the rights enumerated in both the Constitution and the laws of the IRI as evidence that the system complies with universally accepted standards of human rights. Undoubtedly, the enumeration of the citizens’ rights in statutes and regulations is an essential

³³⁰ *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, Note by the Secretariat, 185 ¶ 6, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (May 27, 2008) available at <http://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>

³³¹ QANUNI ASSASSI JOMHURI ISLAMI IRAN [THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN] 1368 [1989], art. 168.

³³² *Witness Statement of Hassan Yousefi Eshkevari*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER ¶51 (Apr. 25, 2014), available at <http://www.iranhrdc.org/english/publications/witness-testimony/1000000543-witness-statement-of-hasan-yousefi-eshkevari.html>

prerequisite to the realization and protection of those rights. However, the mere recognition of those rights in the text of the law does not automatically lead to the implementation and effective enforcement of those rights.

The rights enumerated in the Iranian Constitution often conflict with Shari'a law, which in essence defeats the implementation of those rights, as Article 4 of the Iranian Constitution declares that all laws must conform to Islamic criteria. Furthermore, the system suffers from the lack of an independent and impartial judiciary comprised of officials free from pressures of the intelligence apparatus. Likewise, as demonstrated throughout this report, judges are reportedly ill-prepared and politically-motivated in a considerable number of cases.

Violations of the fair trial and due process rights to which Iran has pledged adherence are systematic and widespread. Since the Revolution, the Iranian Judiciary has been at the core of the systematic crackdown on those who have expressed views critical of the Government, and others who have otherwise fallen afoul of the powers at be.

As is regularly highlighted by international observers and human rights defenders, it is of critical importance that the Iranian authorities effectively implement the separation of powers enshrined in Article 156 of the Constitution in practice, and that all organs of the State recognize the independence of the courts. Thus far, judicial reform in the IRI has studiously avoided addressing these pressing concerns.

METHODOLOGY

IHRDC gathered and analyzed information for this report from the following sources:

- *Government documents.* These include recorded public statements by State officials and published legal instruments.
- *Testimony of victims and witnesses.* These include witness statements taken by IHRDC attorneys from activists, lawyers, human rights defenders and journalists who were former political prisoners. This also includes firsthand testimony in letters from prisoners obtained exclusively by IHRDC.
- *Documents issued by non-governmental organizations.* These include interviews, reports and press releases written by the United Nations, Amnesty International, Human Rights Watch, International Campaign for Human Rights in Iran, Human Rights Activists News Agency (HRANA), and other NGOs were among sources that have been used in drafting this report.
- *Academic articles and books.* These include the works of historians and political scientists who have written about the judicial system in Iran.
- *Media reporting.* Various Iranian media sources, as well as non-Iranian media sources, have been used to provide details and context for this report.

The IHRDC has meticulously cross-checked all the sources of information used to compile this report to ensure their credibility and accuracy.

All names of places, people, organizations, etc. originally written in Farsi have been transliterated using the system of the International Journal of Middle Eastern Studies (IJMES), available at <http://ijmes.ws.gc.cuny.edu/authorresources/ijmes-translation-and-transliteration-guide/>