

# IRAN HUMAN RIGHTS REVIEW: DUE PROCESS

Edited by Tahirih Danesh and Mahmood Amiry-Moghaddam  
Foreword by Geoffrey Robertson QC



## **Iran Human Rights Review: Due Process**

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The Foreign Policy Centre  
Suite 11, Second floor 23-28 Penn Street  
London N1 5DL  
UK

[www.fpc.org.uk](http://www.fpc.org.uk)  
[events@fpc.org.uk](mailto:events@fpc.org.uk)  
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## Foreword to the Iran Human Rights Review: Due Process

Geoffrey Robertson QC

Iran is back on the international black spot radar. President Trump is issuing threatening tweets ("*Iran is playing with fire*") which hard-liners in Tehran – most notably it's Supreme Leader – are responding to an aggressive anti-Americanism not heard for several years, whilst the nuclear deal was being stitched up. That deal was ignoble because it ignored any consideration of human rights – Iran was relieved of sanctions as a reward for postponing its nuclear ambitions without being asked to improve with its human rights record. This new edition of the Iran Human Rights Review shows just how bad that record is.

It has, of course, been worse, and the present problems stem from the failure to acknowledge and punish past atrocities. Due process and judicial independence were swept away by the 1979 revolution, after which special revolutionary corps with religious lickspittles as judges were installed to punish all those considered to be '*mohareb*' – enemies of God - and death sentences became the order of the day. In 1988 came the worst crime against humanity committed against prisoners of war since the Nazis – the execution without trial of many thousands of Mujahedeen and atheists.

Thereafter, at the order of the present Supreme Leader, there were over 160 assassinations of the Regime's enemies in Europe, and more recently, again on his orders, were the killings by revolutionary guards and by *Basij* militiamen during the 2009 election demonstrations. None of these killers have been punished. These are some of the international crimes committed by the Regime which has learnt how to control a judicial system in which judges have no independence from the theocratic state: the capital crime of 'enmity to God' covers all forms of political and social dissent because the state is God under the *Velayat-e-faqih* (Rule of the Islamic jurist) doctrine introduced by the revolution. Like a medieval despot, the Supreme Leader is the supreme judge.

It is a pleasure to welcome Dr Ahmed Shaheed to these pages. As the most recent UN Special Rapporteur on Human Rights in Iran, he brings a particular authority and objectivity to his analysis of the disrespect for due process in Iran's revolutionary courts and the increasing incidents of arbitrary arrest and of denial of counsel to defendants. Other articles give further detailed accounts of the harassment and imprisonment of lawyers and of the breaches of Article 14 of the Constitution, which is supposed to guarantee due process and impartial trials. Abuse of human rights is, of course, built into the law itself: men have more rights than women, whose testimony is valued at half that of a male; Muslims have more rights than non-Muslims; and Shia Muslims have more rights than Sunni Muslims. Judges (who cannot be female) are directly appointed by, and answerable to, the Supreme Leader and are patsies of the intelligence services. Torture is widespread, and lawyers who dare to act for dissidents are targeted for reprisals and often sentenced to terms of imprisonment.

The vague dragnet charge of 'spreading corruption on earth' has been extended to hang drug dealers despite a lack of theological precedent (other than the Prophet's suggestion in the sixth century about the treatment of thieves). Iran now delivers comparatively more death sentences than China. 2,500 prisoners have been executed in the last five years, 70% of them convicted for drug offences. The review shows just how many of these public executions are likely to have resulted from miscarriages of justice perpetrated by judges who come from seminaries rather than law schools, and who impose death sentences on individuals who are likely to be innocent or whose appeals are pending. Her examples of arbitrary executions are recent and terrifying.

There can be no doubt that Islamic laws, as introduced and applied in Iran after 1979 are incompatible with minimal human rights standards. For a recent example, take the case of Nazanin Ratcliffe, an Iranian charity worker married to a Briton, who returned to Tehran to show their baby

to her grandparents. She was arrested and, at a secret court before a savage judge, was jailed for five years as a spy without the slightest evidence other than that she had once worked for the BBC. The baby's British passport was confiscated and the father was not allowed into the country to see wife or child. What is notable about this case is not so much its brutality, as the fact that the UK Government has done nothing about it. The British Consul has not been allowed to visit her (contrary to the Vienna Convention) and Foreign Secretary Boris Johnson, normally so loquacious, has been cowed and unconcerned.

This Review contains evidence that proves the case of human rights abuse against Iran, but who will care? The Obama administration and the European negotiators on the Iran nuclear deal certainly did not: perhaps some payback for these atrocities will occur to the dyspeptic mind of President Trump, but who knows what will happen then.

## **Introduction: Due Process and Rule of Law**

Tahirih Danesh and Mahmood Amiry-Moghaddam

Due process and the rule of law are among the preconditions for protection and promotion of human rights. In a society where rule of law plays a pivotal role in its judiciary, the government facilitates all individuals, regardless of gender, ethnicity or belief, to enjoy equal rights. Equality before the law, an independent and impartial judiciary, including judges, prosecutors and lawyers who are able to defend citizens and their rights without fear of persecution or harassment, are essential elements of due process and the rule of law.

In Iran, however, due process is violated in at least the following ways:

1. Articles of Iranian law
2. The arbitrary approach of the judiciary to the implementation of laws, often violating even the most basic elements of the Islamic Republic Constitution
3. Lack of independent judges and impartial prosecutors
4. The lack of transparent and/or open court sessions
5. Lack of equal legal rights for all citizens

Accordingly, many citizens are sentenced based on forced confessions and lack of access to independent lawyers. In fact, many lawyers in Iran continue to face harassment, prosecution, fines and even prison sentences for defending their clients. Examples include Abdolfattah Soltani<sup>1</sup> and Nasrin Sotoudeh.<sup>2</sup> Subsequently, it may be ascertained that lack of due process is one of the most important obstacles for any improvement in the situation of the human rights in Iran, rendering this matter a top priority in any attempt to reform the country's approach to human rights.

A complete analysis of the rule of law and due process in Iran is beyond the scope of the present issue. However, through contributions by different experts we have tried to shed light on the background to and different aspects of the violations of due process and rule of law in the Islamic Republic of Iran (IRI).

In this introductory review we will briefly mention a few of the important aspects of the violation of due process in law and practice in Iran. We will also examine what parts of Iran's international obligations and the present Iranian constitution guarantee due process and rule of law, and which parts of the constitution violate it. We will further look at how due process is violated in practice. Finally we will provide some recommendations for the Iranian authorities and Iran's international partners on how to proceed in order to promote due process and the rule of law in the country.

### **Does the Iranian constitution protect due process?**

Following the Constitutional Revolution of 1906-11, Iran became the first country in the region to adopt a modern-style constitution. During the decades immediately before the Islamic revolution of 1979, the Iranian Constitution accommodated several articles that protect due process and the rule of law. These articles also exist in the Constitution adopted after the establishment of the Islamic Republic. Some of the articles that directly or indirectly promote due process of law include: 24, 27, 34 to 38, 156, 159, 165 and 166 of the Islamic Republic Constitution. For instance Article 35 grants the right to a lawyer, Article 156 underlines the independence of the judiciary stating: "Judiciary

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<sup>1</sup> Associated Press in Berlin, Iranian human rights lawyer jailed for 13 years, The Guardian, June 2012, <http://www.theguardian.com/world/2012/jun/13/iranian-human-rights-lawyer-jailed>

<sup>2</sup> Human Rights Watch, Iran: Lawyers' defence work repaid with loss of freedom, October 2010, <http://www.hrw.org/news/2010/10/01/iran-lawyers-defence-work-repaid-loss-freedom>

shall be an independent power that protects individual and social rights”, and Article 38 bans all forms of torture and forced confessions.<sup>3</sup>

In addition to joining the Universal Declaration of Human Rights in its law, Iran has ratified several international conventions promoting the rule of law such as the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> These instruments underline equal legal rights for all individuals regardless of sex, ethnicity, opinion or belief and ban many forms of discrimination. In addition, the ICCPR includes several relevant articles such as Article 14 which underlines the right to a fair trial and due process of law. Article 14 specifically mentions the importance of an impartial judicial system, access to a lawyer and a fair trial, and not compelling individuals to testify against themselves or to confess guilt.

### **Violation of due process according to the law**

Despite the articles of the Islamic Republic Constitution and Iran’s international obligations mentioned above, several additions to the Constitution after the Islamic Revolution of 1979 violate due process. These articles are in complete contradiction to the previously mentioned articles of the Constitution and Iran’s international obligations. These articles, discussed below, undermine the independence and impartiality of the judicial system, the equality of all citizens before the law, as well as the right to a free and fair trial.

### **Citizens are not equal before the law**

An important precondition for due process and the rule of law in any country is that of equal legal rights for all citizens. This is not the case in Iran where discriminatory laws and practices are among the most significant obstacles to due process and rule of law in the country. Iran’s Constitution, Civil Code and Penal Code have several discriminatory articles where people are discriminated based on gender and religion. Men have more rights than women, Muslims have more rights than non-Muslims and Shia Muslims have more rights than Sunnis. To mention some examples: a woman’s testimony is valued as half that of a man’s testimony in Court. A woman cannot become a judge or have an important position in the Judiciary. According to Article 12 of the Constitution these positions are only for men who belong to the Twelver J’afari school of *Shi’ite* Islam. A Muslim who murders a non-Muslim has a lighter punishment than vice versa. A full list of discriminatory laws in Iran can be found elsewhere.<sup>5</sup> In this way, half of the population who are women, in addition to all members of religious minorities (including Muslims who do not follow the Twelver Ja’fari Shi’ite Islam), have fewer legal rights than men. In addition, the age of criminal responsibility is 9 lunar years for girls (8 years 9 months) and 15 lunar years (14 years 7 months) for boys. This is both discrimination based on gender and a clear violation of the Convention on the Rights of the Child (CRC) which Iran has ratified.

### **Lack of impartiality and independence of the Judiciary**

According to Article 157 of the Islamic Republic Constitution, the Head of the Judiciary who is the highest authority within the judicial system, is directly appointed and supervised by the Supreme

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<sup>3</sup> Comparative Constitutions Project, Iran (Islamic Republic of)’s Constitution of 1979 with Amendments through 1989 (English Translation), April 2016, [http://www.constituteproject.org/constitution/Iran\\_1989.pdf?lang=en](http://www.constituteproject.org/constitution/Iran_1989.pdf?lang=en)

<sup>4</sup> UN Human Rights-Office of the High Commissioner, International Covenant on Civil and Political Rights, December 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>5</sup> Please see: FIDH, Discrimination against religious minorities in Iran, August 2003, <http://www.fidh.org/IMG/pdf/ir0108a.pdf> and Women’s Forum Against Fundamentalism in Iran, Official Laws Against Women in Iran, 2005, <http://www.wfafi.org/laws.pdf>

Leader, who under the Constitution is the Head of State and has the country's highest political power. The Head of the Judiciary must be a *Mojtahed* (a man with the highest level of expertise in Shi'ite Islamic jurisprudence). This in itself undermines the impartiality and independence of the judiciary. The Head of the Judiciary also appoints the Prosecutor General and the Head of the Supreme Court, both of whom must also be *Mojtahed*.

## Judges

Judges are appointed by the Head of the Judiciary based on their beliefs, political position and allegiance to the establishment. The Head of the judiciary has also the power to dismiss judges based on his judgement. This gives little room for judges to act independently as their employment is in the hands of the Head of the Judiciary whose position is directly controlled by the Supreme Leader.

In addition, according to the Islamic Penal Code, when confessions or testimony by eyewitnesses are missing in a case, the judge can make a decision based on his exclusive opinion, without any reference to laws and codes.<sup>6</sup> This phenomenon is known as 'knowledge of the judge', or *elm-e qazi*.<sup>7</sup> The law requires that rulings based on a judge's 'knowledge' derive from evidence, including circumstantial evidence, and not merely personal belief that the defendant is guilty of the crime.<sup>8</sup> However, there have been cases where 'knowledge of the judge' has been applied rather arbitrarily. These patterns throughout the judiciary lead to a culture of impunity that results in serious violations of human rights. For instance, in December 2007, Makwan Moloudzadeh was executed for sodomy charges based on the 'knowledge of the judge'.<sup>9</sup>

## Special Courts

After the 1979 revolution, several 'Special Courts' were established in Iran. The legality of these courts continues to be disputed and many experts believe that they are not constitutional. The Revolutionary Courts were established in 1979 by the first Supreme leader Ayatollah Khomeini. They were temporary courts designed to deal with the officials of the former regime. However, more than 37 years later they continue to operate. All cases regarded as security-related, such as cases involving political and civil activists, and others allegedly involved in corruption and drugs-related charges are processed by the Revolutionary Courts. These courts are responsible for the vast majority of the death sentences issued and carried out over the last 37 years in Iran. The Revolutionary Courts are less transparent than the Public Courts (both criminal and civil) and Revolutionary Court judges are known for the abuse of their legal powers more than other judges.<sup>10</sup> Revolutionary Court judges often deny access to legal representation during the investigation phase and prevent lawyers from accessing client files on the basis of confidentiality or that the lawyers have insufficient 'qualifications' to review certain files.

The Special Clerical Court was also established in an ad hoc manner lacking any basis in the Constitution. This court is not a subset of the judicial system and deals with crimes committed

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<sup>6</sup> Human Rights Watch, 2012, Codifying repression: An assessment of Iran's new penal code, [http://www.hrw.org/sites/default/files/reports/iran0812webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/iran0812webwcover_0.pdf)

<sup>7</sup> International Journal of Social Sciences and Education, Volume 5, Issue 2, 2015: Changes in Personal Knowledge of the Judge with Emphasis on Islamic Punishment Law, Akram Asghari and Syed Ali Asghar Mosavi Rokni

<sup>8</sup> Article 210, New Islamic Penal Code

<sup>9</sup> Iran Human Rights, 6 December 2007: Makwan Moloudzadeh was executed for an alleged crime committed when he was 13 years old, December 2007, <http://iranhr.net/en/articles/57/>

<sup>10</sup> Saeed Kamali Dehghan, Six Judges accused of leading role in Iranian crackdown on free speech, The Guardian, July 2014, <http://www.theguardian.com/world/2014/jul/31/six-judges-iran-crackdown-journalists-activists>



primarily by the clergy. As it functions independently under the direct supervision of the Supreme Leader, it does not follow the official Procedural Code.

In addition, other 'special courts' operate within the judicial system of Iran, without having a legal basis. Special courts are branches of the public courts but are designed to deal with certain groups such as the special courts for media or for government employees. The very existence of these courts lacks legal justification and is a violation of the equality of all citizens before the law.

### **Lawyers and Bar Associations**

For many years, the Islamic Republic authorities have subjected Iranian human rights lawyers, their families and colleagues to persecution, intimidation, harassment, property confiscation and imprisonment. Lawyers representing human rights defenders are specifically targeted. Several lawyers have been sentenced to imprisonment, they often receive absurd fines of millions of rials that serve as a deterrent to accessing justice, and have been banned from practicing their profession or travelling abroad. Many have faced charges such as acting against national security. Lawyers who choose to defend prisoners facing security or political charges face significant risks and challenges, which in turn may influence how they defend their clients. Article 128 of the Criminal Code of Procedure for Public and Revolutionary Courts<sup>11</sup> provides the right to legal representation during the investigation phase, with one exception which gives the judges power to exclude lawyers for the purposes of confidentiality, the prevention of corruption and for national security crimes. More often than not, in cases processed by the Revolutionary Courts the judges abuse this exception. Almost all those sentenced for security-related charges (such as membership of banned opposition groups) and many of those arrested for drug-related offences are denied access to lawyers during the investigation phase. Furthermore, the Iranian Bar Association, an entity established as an independent body since 1954, was shut down after the Islamic Revolution. Once the Bar Association reopened, it had lost its independence and ability to defend a lawyer's union rights. Lawyers who want to run in the Bar Association's Board of Directors election, must be approved by a Disciplinary Court of Advocates, under the supervision of the Judiciary. This means that lawyers who have been critical of the authorities can be banned from potential membership of the Board of Directors. This is a clear violation of Articles 19 and 22 of the ICCPR ratified by Iran. These trends point to the fact that in Iran lawyers do not enjoy the right to freely exercise their profession, and lack freedom of expression and freedom of association.

### **Violations of the process in practice**

In addition to the legal issues mentioned above, due process of law is violated arbitrarily and despite the law. There are many reports indicating the law enforcement authorities, including the judiciary and judges fail to follow the Islamic Republic's legal code. The use of torture, forced confessions, sham trials, trumped up charges and lack of access to legal representation even after the investigation phase occur in many cases handled by the Revolutionary Courts system. Furthermore, the lack of transparency and culture of impunity rampant throughout the Islamic Republic judiciary prevents access to official information, reports and figures regarding those held illegally or executed, particularly in marginal communities. Another cause of such violations is that the Islamic Republic legal system allows for a considerable range of heterogeneous charges to result in the death penalty, including sexual preferences, adultery, insulting the prophet, economic corruption and vague charges such as 'corruption on earth'. Article 286 of the Islamic Penal Code defines this as 'a person who commits a crime on an extensive level against the physical integrity of others, against the

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<sup>11</sup> European Country of Origin Network, Iran-National Laws, <http://www.ecoi.net/iran/nationallaw>

domestic or external security, spreads lies, disrupts the national economic system, undertakes arson and destruction, disseminates poisonous, microbiological and dangerous substances, establishes corruption and prostitution centres or assists in establishing them.’ Article 286 does not offer concrete definitions for either the term ‘crime’ or the scope of ‘extensive’ and this therefore gives the judges more power to interpret the law at their own will.

### **Torture and forced confessions**

The Islamic Republic Constitution bans the use of torture in order to extract confessions. Article 38 of the Constitution states: ‘All forms of torture for the purpose of extracting confessions or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this article is liable to punishment in accordance with the law’.<sup>12</sup>

However, testimonies from numerous witnesses, including televised confessions, show that torture and the acquisition of forced confessions are system-wide techniques employed throughout the Islamic Republic judiciary. In the years immediately following the 1979 Revolution it was believed that torture, including the sexual torture of minors,<sup>13</sup> to extract forced confessions were mainly used against people affiliated with the banned opposition groups. In recent years reports by international and Iranian human rights groups<sup>14</sup> show that torture and forced confession during the investigation phase is the rule and not the exception. Furthermore, this practice is not limited to cases involving political and security related charges. Almost all prisoners who are arrested for drug offences have been kept in solitary confinement and subjected to physical torture in the investigation phase following their detention, while being denied access to a lawyer. In many cases confessions given during detention have been the only evidence available for the judge to base his verdict upon. Torture is also used in other criminal cases involving rape or murder where there is not enough evidence against the suspect. In 2014 a man who had confessed to the crime but was absolved of all charges 48 hours before his execution was to be carried out, was asked as to why he had confessed to a murder he had not committed? He answered: “They beat me up so much that I thought if I falsely do not confess, I would die during the interrogation”. Needless to say, he did not have access to a lawyer after his arrest.

### **Sham trials**

Articles 36 and 37 of the Iranian Constitution say that the ‘passing and execution of a sentence must be only by a competent court and in accordance with law’, and ‘Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court’.<sup>15</sup>

However one does not need to refer back to the 1980s to see courts issuing death sentences after trials which lasted only 5 to 15 minutes.<sup>16</sup> In July 2016, 25 Sunni Kurds were executed, sentenced by the Revolutionary Court of Tehran for alleged cooperation with terrorist groups. According to several independent witness testimonies, and the lawyer of some of the prisoners, their trial did not last beyond 15 minutes. The notorious Judge Abolghasem Salavati of the Tehran Revolutionary Court

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<sup>12</sup> Iran Online, Iran Constitution Section 3 Rights of the People, <http://www.iranonline.com/iran/iran-info/government/constitution-3.html>

<sup>13</sup> For more details see: <http://www.irantribunal.com/index.php/en/sessions/court/402-judgment>

<sup>14</sup> Iran Human Rights, 2052 Executions For Drug Offences in the Last Five years in Iran, March 2015, <http://iranhr.net/en/articles/1185/>

<sup>15</sup> Iran Constitution [http://www.servat.unibe.ch/icl/ir00000\\_.html](http://www.servat.unibe.ch/icl/ir00000_.html)

<sup>16</sup> Iran Human Rights, Iranian Official Confirms Execution of 20 Sunni Prisoners, August 2016, <http://iranhr.net/en/articles/2602/>

sentenced them to death. Several members of the banned opposition groups, who have been executed during the last 5 years, had been sentenced by the Revolutionary Court in a similar manner.

Sham trials also include other charges, such as drug-related offences which are processed by the Revolutionary Courts. It seems that the Revolutionary Court judges more often abuse their powers and the trials by these Courts more often are sham.

### **People are not equal**

Although the Iranian Constitution says all citizens are equal before the law, in reality some citizens are 'more equal than others'. There are numerous examples of this in the history of the Islamic Republic. To illustrate this we mention two examples. In January 2013 two young men were hanged publicly who were charged with threatening a man with a knife and mugging him on the street few weeks earlier. The incident was caught on a monitoring camera and distributed on social media. The two young men were arrested and sentenced to death charged with 'moharebeh' (waging war against God) because Judge Salavati was of the opinion that what they did, especially because they were armed with a knife, had terrorised the public.<sup>17</sup> In 2015, Mahmood Karimi, a famous religious singer close to the Supreme Leader was involved in a car accident. He started arguing with the couple driving the other car and fired several shots at their car with his revolver. The incident received much media attention and the couple filed a complaint against him. However, the Iranian Judiciary dropped all charges against Mr Karimi and he didn't face any sanctions.<sup>18</sup> The public hanging of two young men for using a knife and dropped charges for a man close to the Supreme Leader using gunfire illustrates that the Judiciary doesn't treat people equally. The abovementioned case is not unique.

Due process is violated in Iran both by law, and despite the law. The lack of an independent judiciary whose politically appointed judges are allowed to abuse their power, limitations on the independence of lawyers, discriminatory laws against segments of the population and an arbitrary approach to implementation which has become the modus operandi throughout the Islamic Republic's law enforcement system, are all factors which must be changed in order to establish the rule of law and due process in Iran. Some of these changes seem more difficult than others. For instance, creating an independent judiciary is not possible without placing limitations on the legal powers of the Supreme Leader. This must of course be the ultimate goal of any reform. However any reference to the Supreme Leader's position is considered by the authorities as crossing a red line and will be associated with considerable risk to their safety and freedom. But campaigning for the removal of some of the discriminatory laws in the constitution, shutting down the Revolutionary Courts, giving more freedom and power to the Bar Association, pushing for more freedom of expression and assembly and ending arbitrary patterns and practices are among the issues that the Iranian civil society inside Iran and countries with bilateral dialogues with Iran can push for. Real improvements in the human rights situation are not possible without strengthening the rule of law. For instance, Iranian legislators have sent a new law amendment calling for the abolition of the death penalty for several drug offences. However, as long as the drug offenders have no access to legal representation after their arrest, are subjected to torture to extract false confessions and tried by the Revolutionary Court in sham trials, a change in the law will not necessarily lead to a reduction in the number of drug-related executions.

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<sup>17</sup> Iran Human Rights, Today: New Demonstration of Horror in Tehran; Two Men Hanged Publicly 35 Days After Being Arrested, One Man Hanged in Isfahan, January 2013, <http://iranhr.net/en/articles/922/>

<sup>18</sup> Iran Pulse, Charges dropped against Iranian religious singer who shot at couple, Al Monitor, January 2014, <http://www.al-monitor.com/pulse/originals/2014/01/singer-shooting-charges-dropped.html>

In light of the above, we propose the following policy recommendations:

- For the Islamic Republic authorities to:
  - review all legislation with a view to strengthening access to the due process of law and eradicating the culture of impunity, in particular by safeguarding an independent Bar Association and making provisions for legal aid
  - guarantee the rights and protection of lawyers undertaking their professional duties
  - end the practice of torture and other cruel and inhuman or degrading treatment or punishment such as forced and false confessions and solitary confinement
  - ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
  - suspend the practice of the death penalty, in particular for offences committed below the age of 18 and for drug crimes, in light of the serious impediments to due process of law and fair trials, and reserve this sentence to the most serious crimes in line with Iran's international commitments
  - Stop the practice of public executions which is not only a degrading and inhumane punishment for the convict, but also brutalises the society as a whole
  - guarantee the right of those facing execution to seek pardon, or a commuted sentence through access to independent legal representation
  - observe and implement Article 57 of the Islamic Republic Constitution regarding an independent judiciary
  - accept the visit requests and cooperate with the United Nations Special Rapporteur on the Situation of Human Rights in Iran in 2017
- For the international community, in particular EU and UK policymakers, to:
  - draw attention to the lack of due process of law and the arbitrary nature of the rule of law in the Islamic Republic judiciary
  - following EU Guidelines on the Death Penalty, draw the attention of the Islamic Republic authorities to the high rate of executions in Iran within the framework of bilateral relations<sup>19</sup>
  - provide information, assistance and training for Islamic Republic judges
  - increase multilateral support for initiatives by Iranian civil society that support improved awareness of legal rights, access to due process of law, and the abolition of the death penalty
  - provide information and exchanges on the importance of the parallel processes of education and legislation among Islamic Republic authorities and Iranian civil and human rights activists
  - condition Islamic Republic's participation in global processes on social cohesion and inclusion of all its ethnic, religious and other minorities.

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<sup>19</sup> EUR-Lex, EU guidelines on death penalty, April 2013, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A130202\\_1](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A130202_1)

## **Due process violations form the core of Iran's human rights crisis**

Ahmed Shaheed

Respect for due process rights is, in many ways, a litmus test for a country's commitment to the full realization of human rights. Due process rights are foundational and fundamental in nature and comprise the cornerstone of a society based on the rule of law, fair trial guarantees and the proper administration of justice. They allow for the right to remedy and safeguard against impunity by ensuring that no one is either above or below the law. In order to meet their obligation to guarantee due process rights, states must satisfy two types of requirements: an institutional component of setting up competent, independent and impartial tribunals; and procedural elements related to ensuring lawful arrests, detentions and fair trial rights. In my view, systematic due process rights violations and Iran's failure to address these concerns are at the heart of the human rights crisis that has plagued the country for many years now.

Indeed, the urgent need for fundamental reform of Iran's justice system, and the impact these reforms can have in dramatically improving the human rights situation are critical to understanding the degree and depth of the human rights situation in the country. The administration of justice, and especially criminal justice in Iran, suffer as a result of national laws that clearly violate Iran's international legal obligations, and the persistent failure to faithfully and properly implement, without impunity, laws that otherwise satisfy Iran's international legal obligations. Additionally, the independence, impartiality and competence of Iran's courts, and of the judges who preside over them, is seriously compromised by a judicial system that is closely tied to the office of the most powerful individual in the country: the Supreme Leader.

Before delving into the particulars of Iran's judiciary, however, it is helpful to remember that the primary factor leading to the re-establishment of a United Nations (UN) human rights monitor on Iran in 2011, after a nine-year hiatus, was the serious concern expressed by the international community over the egregious human rights violations committed by Iranian authorities to suppress widespread dissent in the aftermath of the presidential election in 2009. This crackdown was marked by the killing of several dozen demonstrators by security forces, mass arrests of peaceful protesters disputing the results of the election, and show trials of hundreds of dissidents, including political opposition members. I was appointed as UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran in June 2011.

In addition to my mandate, various human rights mechanisms at the UN have assessed Iran's systematic failure to abide by its due process obligations under international law. In 2010, the UN Human Rights Council reviewed the human rights situation in Iran during its first cycle of the Universal Periodic Review process (UPR). Iran received 212 recommendations from other member states, the second highest number for the 2010 cycle of the UPR. Fifteen of these recommendations related to the administration of justice, including a recommendation by the Netherlands to Iran to '[t]ake measures to ensure an effective and impartial judicial system, in conformity with ICCPR is guaranteed'. Iran only accepted eight of these recommendations, including the above.<sup>20</sup>

The following year, in October 2011, the UN Human Rights Committee (HR Committee) had the opportunity to evaluate Iran's compliance with the International Covenant on Civil and Political Rights (ICCPR). In paragraph 22 of its Concluding Observations, the HR Committee recommended that Iran should:

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<sup>20</sup> UPR-Info, Database of Recommendations, <http://www.upr-info.org/database/>

*[E]nsure that all legal proceedings are conducted in full accordance with article 14 of the Covenant, including guaranteeing (a) the right to legal assistance of one's own choosing, including for pretrial detainees; (b) the right to be informed promptly of the nature and cause of the criminal charges; (c) the intervention and presence of lawyers in all cases, including during the investigation stage; (d) the presumption of innocence; (e) the right to a public hearing; and (f) the right to appeal a ruling.<sup>21</sup>*

In paragraph 23 of the same observations the HR Committee said that Iran 'should take immediate steps to ensure and protect the full independence and impartiality of the judiciary, and guarantee that it is free to operate without pressure and interference from the executive power and clergy'. The HR Committee also highlighted other elements that constitute due process such as, inter alia, the right to equality before the law, the principle of legality, and the protection against torture and arbitrary deprivation of liberty.

In the ensuing period, the Iranian government attempted to address at least some of these concerns by amending both their penal and criminal procedure codes. The due process rights deficit plaguing the administration of justice in Iran is, however, deeply entrenched in both law and practice. More specifically, the structures, practices and culture that undergird the country's judicial institutions are intimately linked to the concept of *velayat-e faqih*, or the 'guardianship of the jurist', which requires a qualified jurist, known as the Supreme Leader, to lead the country and ensure that its laws are consistent with the state's official religion (Twelver Shi'ism). Pursuant to Iran's constitution, the Supreme Leader is the most powerful individual in the country. He directly controls the country's military, state-owned television and radio, and high-level appointees in the judiciary. He appoints the head of the judiciary who is vested with the powers to appoint, promote, transfer or dismiss judges. Judges are also subjected to intensive investigation and questioning by various bodies, including security services, regarding their beliefs and political leanings.

There are also serious problems with Iran's court system. Iran's revolutionary courts, initially established to prosecute former regime officials after the 1979 Islamic Revolution, are today mandated to try a range of offences including those related 'national security crimes' which are often nothing more than the peaceful exercise of fundamental rights. Human rights organisations have repeatedly noted that judges presiding over revolutionary courts are often unduly influenced by, or work closely with, security and intelligence units to prosecute political dissidents—an observation which was echoed by the HR Committee.<sup>22</sup> Revolutionary courts also have jurisdiction to try drug-related offences which comprise the vast majority of death penalty cases (and executions) in the country and are often rife with fair trial abuses.

In addition to the lack of independence and impartiality, defendants prosecuted in revolutionary courts, and some ordinary criminal courts, are also denied basic due process rights provided to other defendants in less contentious cases. While the recent amendments to the Criminal Procedure Code<sup>23</sup> fill a number of the old code's due process protection gaps, individuals charged with national security, capital, political or press crimes (and those accused of offences that incur life sentences) cannot select a lawyer of their own choosing and do not receive unfettered access to evidence gathered in support of the allegations against them. I have also noted efforts by the government,

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<sup>21</sup> UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.IRN.CO.3.doc>

<sup>22</sup> UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.IRN.CO.3.doc>

<sup>23</sup> Iran Human Rights Documentation Centre, Amendments to the Islamic Republic of Iran's Code of Criminal Procedure -- Part 1, June 2015, <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000602-amendments-to-the-islamic-republic-of-iran's-new-code-of-criminal-procedure.html>

and the judiciary more specifically, to exercise institutional control over the Iranian Bar Association, whose independence and autonomy has increasingly come under threat.

Compounding serious flaws in the laws protecting due process rights is the authorities' failure to faithfully observe and properly implement laws that are in compliance with due process and fair trial standards. In my March 2016 report to the UN Human Rights Council<sup>24</sup>, I expressed concern that I continued to receive reports of individuals arrested without being shown a warrant, or are kept in unknown locations without their families and lawyers having any information regarding the circumstances of their arrest or their whereabouts. I also noted that despite protections afforded in Iran's constitution and recently amended laws, I received reports suggesting that it is not uncommon for defendants to go to trial without representation, take part in trials that last only several minutes, or be 'routinely subjected to blindfolding, harassment, ill-treatment, torture and coerced confessions during pre-trial detention and interrogations'.

While such abuses are often discussed within the context of national security-related cases, human rights groups have documented many cases where defendants charged with ordinary crimes such as murder, rape or drug trafficking have also been deprived of their fundamental due process rights. Equally troubling were the reports that few, if any of these cases have been investigated by the authorities, let alone the perpetrators brought to trial.

The institutional and procedural deficits that are, in many ways, built into Iran's system of criminal justice facilitate the abuse of other fundamental rights such as those that violate the guarantee of the freedoms of expression, association and peaceful assembly and freedom of thought, conscience and religion; and a host of other civil, political, economic, social and cultural rights. Indeed, many of the topics that I raised with the Iranian government during my mandate—discrimination suffered by women, members of the LGBT community, and religious and ethnic minorities; the imposition of the death penalty for non-homicide offences; and restrictions on the peaceful exercise of civil liberties—are directly or indirectly affected by the violation of due process and fair trial rights.

It follows, therefore, that the human rights situation in Iran cannot be adequately addressed without structural, substantive and serious reform of the country's system of administering justice, especially in criminal matters. Without such reform, including structural changes to a judiciary and court system that often sacrifice independence, impartiality and competence in return for political expediency and stability, we simply cannot conclude that Iran's government is committed to the full realization of the rights of its citizens.

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<sup>24</sup> UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, (published) May 2016, <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/105/97/PDF/G1610597.pdf?OpenElement>

## Qesas – Whose Justice? For Behnoud and Ehsan

Roya Kashefi-Ladjevardi

*“...No one can imagine what I feel ...*

*What it means to have chains around my hands and feet with the hangman’s noose in sight...*

*How can you know what it feels like to witness your friend’s painful horrifying death knowing it could have been you? The struggle for life ... the last gasp for air ... body kicking and writhing hanging from the noose...*

*I’ve seen it ... experienced it. I’ve lived it...*

*First time there were five of us. I was given time to beg for forgiveness, and while my execution was postponed I watched the other four die in front of me. Next time we were eleven and I witnessed the death of eight friends... another time seven of us were taken - five came back...”<sup>25</sup>*

Nine times. Behnoud Shojaie<sup>26</sup> said his goodbyes to the world on nine separate occasions over the last three years – ever since he turned 18. Finally In the early hours of 11 October 2009, 21 year old Behnoud is taken, on his own, to be executed. On his knees, Behnoud begs for mercy, everyone present, including judicial officers, begged for his life, hundreds of people gathered outside Evin’s closed doors pray for mercy. However with a blue plastic rope round his neck, his victim’s mother kicks the stool from under him...

Is this justice? If so, whose justice is it?

According to Article 4<sup>27</sup> of the Iranian Constitution<sup>28</sup> all laws must conform to the Islamic criteria. Qesas – the law of retribution which affords individuals the right to avenge the life of one’s loved one, is one such enforceable law based on Book III of the still experimental Islamic Penal Code as amended in 2013. Although the death penalty applies for several other offences, in the case of murder, it is the right of the inheritors of the deceased to pardon, or ask for qesas - punishment by death. According to the Islamic justice system, qesas is not the same as the death penalty since it is up to the individual - not the justice system - to demand death. Qesas figures are not calculated into the increasing number of executions annually.

In the 37 years since the Revolution, human rights defenders in and outside of Iran have questioned the compatibility of Iranian Islamic laws (their interpretation and application) with universal

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<sup>25</sup> Words spoken by Behnoud Shojaie in an interview with journalist Saba Vasefi after the eighth time he had returned from the execution chamber

<sup>26</sup> Behnoud Shojaie was convicted and executed on 11 October 2009 for the murder of Ehsan Nasrollahi. Shojaie maintained that he had acted in self-defence and had no intention of killing Ehsan whom he hardly knew. While fighting his case his lawyers repeatedly questioned the flawed process of the case.

<sup>27</sup> Article 4: All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the fuqaha' of the Guardian Council are judges in this matter.

<sup>28</sup> The Constitution of the Islamic Republic of Iran - Adopted on: 24 Oct 1979, Effective since: 3 Dec 1979, Amended on: 28 July 1989



standards as enshrined in the International Bill of Human Rights<sup>29</sup> and consequent treaties and conventions.

In 1990, The Organisation of the Islamic Conference (OIC) issued the Cairo Declaration of Human Rights in Islam.<sup>30</sup> The Declaration - which affirms Islamic Shari'a as its sole inspiration - is widely acknowledged to be a response to the United Nations (UN) Universal Declaration of Human Rights. The Islamic Republic relies on the Cairo Declaration to respond to widespread international recrimination and condemnation regarding its systematic violation of rights.

Quite apart from the adverse psychological impact of individuals having the power to forgive or punish by death, the wider impact of qesas on society must not be ignored. Qesas executions have taken place in public while some members of the public have cheered on the family and others cried out for mercy. Witnessing and participating in such scenes as well as the death by hanging seriously harms the very fabric of society.

There are also additional discriminatory laws governing qesas which undermines due process. For example, if a man kills a woman, her family has the right to demand retribution<sup>31</sup> but because the value of the life of the woman is half of that of the man's, her family must pay the remainder of the blood money to the murderer before 'justice' is carried out.<sup>32</sup> If a Moslem man kills a non-Moslem man,<sup>33</sup> there is no qesas<sup>34</sup> but if a non-Moslem kills a Moslem qesas laws apply. If a father kills his child, there is no qesas.<sup>35</sup>

If a murder is committed and the perpetrator can prove that, the victim deserved to die there is no right to retribution. According to Islamic teachings, any person can unilaterally decide that another human being has forfeited the right to life (*mahduroldam*) and kill them in the name of performing one's religious duty to rid society of vice.<sup>36</sup> This is in direct violation of Article 11 of the Universal Declaration of Human Rights and Article 37<sup>37</sup> of the Islamic Constitution itself concerning the concept of innocent until proven guilty - a dead person cannot defend him/herself. This clause is used in defence of those who have for example killed religious converts (apostates) or individuals claiming to be enemies of the State and/or Islam.

The Constitution allows for judges to use their personal interpretations in their work,<sup>38</sup> making the application of justice arbitrary at best.

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<sup>29</sup> The *International Bill of Human Rights* consists of the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *International Covenant on Civil and Political Rights* and its two Optional Protocols. <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

<sup>30</sup> Cairo Declaration on Human Rights in Islam <http://hrlibrary.umn.edu/instree/cairodeclaration.html>

<sup>31</sup> The Holy Qora: Verse 178 Surah Al-Baqara: 'O you who believe! Al-Qisas (the Law of Equality in punishment) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood money, then adhering to it with fairness and payment of the blood money, to the heir should be made in fairness. This is an alleviation and a mercy from your Lord. So after this whoever transgresses the limits (i.e. kills the killer after taking the blood money), he shall have a painful torment.'

<sup>32</sup> Islamic Penal Code Book III 382

<sup>33</sup> The Holy Qoran: Verse 93 Surah Al-Nisa: 'And whoever kills a believer intentionally, his recompense is Hell to abide therein, and the Wrath and the Curse of Allah are upon him, and a great punishment is prepared for him.'

<sup>34</sup> Islamic Penal Code Book III 310

<sup>35</sup> Islamic Penal Code Book III 301

<sup>36</sup> Islamic Penal Code Book III 302 (a)

<sup>37</sup> Article 37: 'Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court.'

<sup>38</sup> Article 167: 'The judge is bound to endeavour to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgement on the basis of authoritative Islamic sources and authentic fatawa. He, on

In the last few years, arguably perhaps since the death of Behnoud, a growing movement has seen the involvement of popular public figures advocating the culture of forgiveness and raising funds to compensate the victim's family. They make personal visits to victims' families, plays have been performed and special screenings have taken place with proceedings donated to save the lives of those sentenced to qesas. Unfortunately, in some instances unscrupulous individuals have taken advantage of the good will of the public for personal gain. On the other hand, asking for large sums of money as the price of mercy has resulted in a desperate tragic barter for life. The question remains, is this justice? If so, whose justice?

The proponents of qesas argue that it is a preventative punishment; that if the public understood the consequence of taking a life, murder rates would fall.<sup>39</sup> However this is not proven. They argue that although the right to retribution is given in Islam, the words of God encourage mercy and values it above all else. The problem with this argument is that the present qesas legal system expects justice, decisions around life and death to fall on the shoulders of the grieving families of the victims.

Some religious scholars argue that the application of Islamic justice is a question of interpretation.<sup>40</sup> In the same manner as defenders of qesas, using the very same verse they too argue that in so far as the Quran gives the right to retribution it favours forgiveness and mercy more. They argue in favour of revision of the laws, as stipulated in Article 9 of the Civil Code of Iran. 's that states that national laws must be brought in line with its international obligations.

Behnoud and hundreds of other Behnouds caught up in the legal system at present were minors at the time of committing their crimes, but have been tried as adults. According to the Convention on the Rights of the Child to which the Islamic Republic is signatory they should not have been tried as adults where the punishment is the death penalty.<sup>41</sup> However, the existing legislation recognises a young boy of 14 years 7 months (15 lunar years) and a girl of 8 years 9 months (9 lunar years) to be criminally responsible. Although efforts were made in the 2015 amendments to the Criminal Procedural Code,<sup>42</sup> much of the contradictions and confusions remain allowing the judges to rule as they see fit in each case, resulting in serious failures of justice.

It is not fair or just to allow a grieving family to make life and death decisions about the perpetrator of the crime they are effected by. It is not fair or just to expect a person to beg for his/her life with a noose round his/her neck – it is inhumane. It is not fair or just to set a price and barter for life. It is not fair or just to have discriminatory laws that adversely affect the fundamental right to life. Without a doubt, a modern progressive society such as the one aspired to by the overwhelmingly young population of Iran should be progressive and forward thinking in its laws. The existing legal system – I hesitate to call it a justice system - not only fails due process but it undermines what it means to be a free and equal human being with all the inherent rights and dignity that goes with it.

The unanswered question remains 'whose justice?'

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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 judgement.'

<sup>39</sup> The Holy Qoran: Verse 179 Surah Al-Baqarah, O men of understanding! There is security of life for you in the law of retaliation, so that you may learn self-restraint.

<sup>40</sup> ACI 3rd conference in the Death Penalty and the Right to Life series, last panel day two UCLA, May 2014, [http://youtu.be/xx45V\\_zD2GQ?list=PL7Vnh45Dgvh1dRdX\\_rSgq2NX\\_1hsEE3f6](http://youtu.be/xx45V_zD2GQ?list=PL7Vnh45Dgvh1dRdX_rSgq2NX_1hsEE3f6)

<sup>41</sup> Article 37 (a) Convention on the Rights of the Child

<sup>42</sup> The amended Criminal Procedural Code came into effect on June 2015.

## Death penalty: Murder in the name of law

Sedigheh Vasmaghi

Illicit drugs and drug trafficking has been a major social issue in Iran for some time. Therefore, legislation to combat illicit drugs began in the 1960s, and the first use of capital punishment in this regard dates back to 1968. The fight against drugs took a new form after the Islamic Revolution of 1979. The Islamic Republic's laws, which are based on the Islamic sharia and the views of Islamic jurists (foqaha), looked for solutions based on sharia rules to eradicate the drug problem, without any regard for the pre-existing legislation. Therefore, Ayatollah Khomeini's fatwa became the basis for issuing sentences, particularly death sentences, to drug offenders. The aforementioned fatwa states that: "Corruption is any act that afflicts a large number of people, either intentionally or without the knowledge of a such outcome."<sup>43</sup>

While the execution orders by the Islamic Revolutionary Courts continued, the Supreme Judicial Council also passed its circular number-43383 on 7 December 1982, which recognized the death sentence for drug-related offences based on the aforementioned fatwa. This circular states that: '...issuing [the] death penalty for drug-related offences is appropriate and in accordance with the Islamic principles, if the offender's action has been to such an extent that it can be regarded as spreading corruption on earth'.<sup>44</sup> Thus, 'spreading corruption on earth' became the charge and the sharia-accepted justification for executing drug offenders. In the years that followed, the aforementioned fatwa was referred to by the judges as a basis for issuing death sentences to drug traffickers, until a regulation was passed by the Expediency Council<sup>45</sup> in 1988 based on the same fatwa; which has been, with only slight modifications, used as a reference for issuing death sentences until today. Over the past 38 years, thousands of drug offenders have been executed and thousands more are on death row. Drug-related cases are dealt with in the Islamic Revolutionary Courts; although these courts are not authorized to do so. As per Articles 159 and 61 of the Constitution, all criminal investigations must be carried out in public courts. Because of the history behind the formation and initial objective, the Revolutionary Courts do not follow the usual formalities carried out in the public courts. In addition, the legal documents used for issuing death sentences have some serious and fundamental problems, some of which will be discussed in brief:

1. The first problem is that the Islamic Republic still lacks a legally-approved anti-narcotics law. The Revolutionary Courts still refer to the regulation passed by the Expediency Council for issuing death sentences, whereas the official legislator in Iran is the Islamic Parliament (Majlis). Only in such cases where differences of opinion arise between the Parliament and the Guardian Council and the Parliament's decision does not meet the Guardian Council's requirements, the matter is forwarded to the Expediency Council for approval and only in such conditions does the Expediency Council's decision find a legal basis.<sup>46</sup> The anti-drug regulation has not gone through such procedure and was passed directly by the Expediency Council, contrary to the Constitution. The introductory section of the Council's regulation states that the Supreme Leader of the Islamic Republic regards the issue of illicit drugs as a scourge [for society] and has therefore put the Council in charge of addressing the issue, with reference to paragraph 8 of article 110 of the Constitution. According to this paragraph, the Council shall offer advisory opinions to the Leader on matters that cannot be resolved through normal channels. This is while; firstly, in this case, the Council has entered directly into legislation rather than offering its advisory opinion. Secondly, paragraph 8 of Article 110

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<sup>43</sup> Refer to <http://www.vekalatonline.ir>

<sup>44</sup> Ibid.

<sup>45</sup> The body that mediates disputes between the parliament (Majlis) and the Guardian Council (the powerful body of 12 high level clerics that advise on legislation, election eligibility and other issues).

<sup>46</sup> Article 112 of the Constitution of the Islamic Republic of Iran.

of the Constitution states that the Council shall offer advisory opinions to the Leader on matters that cannot be resolved through normal channels. These include such matters that arise unexpectedly and in such circumstances where there is not enough time for the Parliament to resolve it through normal procedures. Ongoing and prevalent social problems such as the issue of illicit drugs should not be resolved through unusual and unlawful channels, but need to go through the normal process of legislation by parliamentary experts. Thirdly, the advisory opinions by the Council include temporary solutions to resolve unexpected and transient matters. Providing a permanent and sustainable solution to resolve ongoing problems is the responsibility of the legislative body.

2. The laws related to drugs and the execution of drug traffickers were enacted without going through the necessary social and legal debates, without professional studies on the social consequences of their implementation, without the presence of people's representatives and by an institution that lacks legislative power. That is why these laws have not only failed to solve the drug problem in the country, they have added to the existing problems. The increasing difficulties for the families of the executed persons, pressures by international and human rights groups on the country and the distortion of Iran's global image are some of the consequences of implementing the aforementioned laws and executing the drug offenders in large numbers. The death sentences continue to be issued, while many Iranian officials have repeatedly acknowledged the fact that the executions have failed to deter the drug-related offences and have even added to the existing problems.<sup>47</sup> When a penalty, especially the death penalty, has not only been ineffective in deterring a particular crime, but even resulted in further negative consequences, it would be logical and moral to stop its implementation immediately.
3. Another problem is the use of the term sharia (Islamic law) for offences related with drug trafficking. When a crime comes under the banner of sharia, in a religious system, executing the sentence itself becomes the objective, irrespective of its consequences. The same is true for all other sharia-defined laws. The term 'spreading corruption on earth' has been used in describing drug-related offences, whereas using the term in relation with drug trafficking has no reference in religious texts and narratives, and consequently in fiqh. Use of the term was solely based on a personal decision by Ayatollah Khomeini, without any valid explanation according to sharia. The aforementioned fatwa was issued based on Verse 33 of Surah Al-Ma'idah, also known as the verse of Moharebeh (waging war against God). This verse addresses a group of thieves whom the Prophet had trusted and sheltered and permitted them, who were sick and weak, to drink from the milk of the camels that had been collected as charity. After they recovered, the men stole the camels, killed some men and fled.<sup>48</sup> The aforementioned verse refers to these men as 'those who have waged war against God and His Messenger and spread corruption on earth'. This verse sanctioned punishment by death for those men; but the Prophet Mohammad did not sentence the men to death.<sup>49</sup> Implementing the punishment which was not even applied to a group of thieves 14 centuries ago in the Hejaz region to deal with drug traffickers today indeed has no reasonable justification. Subjecting drug traffickers to the death penalty is also not justifiable by the usual fiqh arguments - because drug trafficking has no certain punishment in the

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<sup>47</sup> For example, refer to the remarks made by the spokesperson of the Parliament's judicial committee and the statements of the former head of Tehran's Criminal Court as well as comments made by Director-General for Legal and Parliamentary Affairs of the Drug Control Headquarter in Iran newspaper, dated December 9<sup>th</sup> 2015.

<sup>48</sup> Al-Hural-Aamili, Wasa'il al-Shi'a volume 28, narration no. 34836, Aal al-Bayt Le Ihya al-Turath institute, Amman; And Muhammad Ibn 'Omar Waqidi, Al-Maghazi volume 2, page 431, university publication, second edition, 1990.

<sup>49</sup> Al-Hural-Aamili, Wasa'il al-Shi'a volume 28, narration no. 34836.

sharia laws and therefore does not fall under the category of hudud<sup>50</sup> - but rather in the traditional jurisprudence, it falls under the category of tazirat<sup>51</sup> and tazir cannot be harsher than hadd. This is while, in the case of drug trafficking, the highest of the hudud punishments has been applied to a crime of the tazir nature, which is contrary to Islamic jurisprudence.

4. Another important point is that any punishment should be proportionate to the gravity of the crime committed. The death sentence is traditionally and legally not proportionate to the offence of drug trafficking, and all international regulations and global conventions, to which Iran has pledged obedience, regard this as an inappropriate punishment. Moreover, the death sentence is not just limited to drug traffickers, but any person found carrying more than 30 grams (even if only 31 grams) of heroin, cocaine and morphine.<sup>52</sup> Issuing the death penalty for such cases is inappropriate and cruel.

Sharia is used as a means to justify the death sentences, whereas the Quran, Islam's most sacred text, has not encouraged the death penalty even in case of homicide, which is regarded as the greatest sin, and invited people to forgive rather than seek retaliation.<sup>53</sup> It can be understood from explicit verses of the Quran that it did not automatically support the notion of 'a life for a life' even at the time. Therefore, it is reasonable to argue that it would not approve of taking lives for other crimes either. In the old days, human life was often regarded with a low value and therefore in practice the death penalty was recognized as a common punishment. In today's world, a progressive idea has emerged that tries to remove the death penalty from the list of punishments. Removing the death penalty from drug-related offences - a criminal sanction which has no historical reference or validity in sharia and is in fact against sharia - would be a huge step toward understanding that killing offenders instead of punishing them and ignoring the circumstances that have led to the offence is an unreasonable, harmful and inhumane act. It could be said that recognizing the death sentence is equivalent to legalizing murder.

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<sup>50</sup> Hadd (plural: Hudud) in the Islamic jurisprudence refers to the punishments for offenses for which particular punishments have been specified in the Quran or the Hadiths, such as a hundred lashes for adultery or hand amputation for stealing.

<sup>51</sup> Tazir (plural: Tazirat) refers to punishments for offenses for which no punishment has been specified in the Quran or the Hadiths, such as imprisonment of drug traffickers.

<sup>52</sup> Paragraph 6 of article 8 of the Anti-Narcotic Law and its amendments, approved on October 25, 1988 by the Expediency Council.

<sup>53</sup> Refer to the Quran: Ma'idah/45 and 32, Baqarah/178, Shora/ 40 and Nahl/126

## Status of due process protections under Iranian law: Three examples

Shahin Milani

Several articles of the 1979 Iranian Constitution provide strong protections of due process rights. Protections enshrined in these provisions, however, are routinely violated in Iran's judicial system. This article will explore Iran's due process laws and procedures in three areas: i) being informed of the charges against the defendant, ii) the right to have access to counsel, and iii) legal clarity of what constitutes a punishable offence.

### The right of the defendant to be informed of the charges against him or her

Article 32 of the Iranian Constitution declares: *No one can be arrested except in accordance with the rule and the procedures that are set by the law. In the case of arrest, the charge and the reason for the arrest must be immediately conveyed and communicated to the defendant in writing. The preliminary file must be submitted to qualified judicial authorities within twenty-four hours and the preliminaries for the trial must be set as quickly as possible. Anyone who deviates from this principle will be penalized in accordance with law.*<sup>54</sup> In many cases individuals arrested for their political activities or religious beliefs are not informed of the exact charges against them for long periods subsequent to their arrests. Jason Rezaian, Washington Post's Iran correspondent in Tehran was arrested in July 2014, however the charges he was facing were announced to him or his legal team in April 2015.<sup>55</sup> Often, exact charges are announced after lengthy interrogations during which the defendant is tortured or put under tremendous pressure. This approach is in direct violation of Iran's obligations under Article 9.2 of the International Covenant on Civil and Political Rights, which provides: *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*<sup>56</sup>

### The right to be provided with effective assistance of counsel

Article 35 of the Iranian Constitution states: *Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel.* With respect to this right, a recent change in Iran's Code of Criminal Procedure has seriously undermined the rights of the accused. A note to Article 48 (on the right to request an attorney) of this code states: *In cases of crimes against internal or external security, and in cases involving organized crime, where Article 302 of this code is applicable, during the investigation phase, the parties to the dispute are to select their attorneys from a list approved by the head of the judiciary. The names of the approved attorneys will be announced by the head of the judiciary.*<sup>57</sup> The full implications of this provision, which was added at the last minute to the final version of the bill, are yet to be determined. It is clear, however, that under this rule defendants cannot access an attorney of their own choosing during the critical investigation phase, in which they could be subjected to torture or otherwise pressured to make false confessions. A letter signed by more than two hundred attorneys working in Iran voiced their concerns regarding Article 48 of

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<sup>54</sup> The Constitution of the Islamic Republic of Iran 1979, <http://www.wipo.int/edocs/lexdocs/laws/en/ir/ir001en.pdf>

<sup>55</sup> Gregg Zoroya, Timeline: From Jason Rezaian's Arrest to Release in Iran, USA Today, January 2016, <http://www.usatoday.com/story/news/world/2016/01/16/timeline-jason-rezaian-arrest-release-iran/78893830/>.

<sup>56</sup> International Covenant on Civil and Political Rights, Art. 9.2, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>57</sup> Amendments to the Islamic Republic of Iran's Code of Criminal Procedure –Part 1, via the Iran Human Rights Documentation Centre, <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000602-amendments-to-the-islamic-republic-of-iran%E2%80%99s-new-code-of-criminal-procedure.html>.

the Code of Criminal Procedure.<sup>58</sup> In June 2015 and in response to objections to this provision, Ayatollah Sadegh Larijani, the head of the Iranian judiciary, cited security concerns as the rationale for allowing only a select group of pre-approved attorneys to represent defendants in sensitive cases during the investigation phase. Larijani stated, “Since the Islamic Republic’s most sensitive secrets are at issue in national security cases, the judiciary is entitled to select an attorney who it can trust and be assured that information is not leaked.”<sup>59</sup> Remarkably, Larijani carved out an exception for the principle of presumption of innocence regarding attorneys and said, “We are not leveling baseless accusations against attorneys. But when it comes to the Islamic Republic’s secrets the governing principle is not the presumption of innocence; rather it is caution.”<sup>60</sup> Larijani repeated his disdain for presumption of innocence in another context in August 2015. Addressing possible disqualification of candidates by the Guardian Council, Larijani stated, “Some said that presumption of innocence should be the default position, but this is a simple-minded assertion.”<sup>61</sup>

### The principle of legality

The principle of legality, which means that there can be no legal punishment without a clearly defined laws criminalizing specific conducts, is a fundamental tenet of international human rights law. Article 15.1 of the International Covenant on Civil and Political Rights states that ‘No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.’<sup>62</sup> The protection against ill-defined criminal statutes is a critical due process right, and its violation can lead to serious human rights abuses. Two examples of such abuses will be briefly discussed below.

### Apostasy

Apostasy, generally defined as converting from Islam to another religion, can carry the death penalty in Iran. However, there is no specific provision in the Islamic Penal Code that codifies this crime. There are various interpretations of the concept of apostasy in Islamic jurisprudence, which means that the elements of this crime are not exactly clear. Apostasy is, nevertheless, occasionally prosecuted by invoking Article 220 of the Islamic Penal Code, which in turn cites Article 167 of the Iranian Constitution. Article 167 of the Iranian Constitution declares: *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 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.*<sup>63</sup> This, in effect, means that a judge can rely on his own understanding of Islamic law to define and punish crimes not properly defined under the law, including apostasy. Since apostasy can be a capital offence, the fact that it is not defined in Iran’s main criminal statute constitutes a major abuse of due process rights. The charge of disseminating propaganda against the Islamic Republic is often used to target political dissidents, journalists, and activists. The charge is overly broad and can encompass a wide array of activities. Article 500 of the Fifth Book of the Islamic Penal Code of the Islamic Republic of Iran

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<sup>58</sup> Guzinishi vukalā dar qānūni āyīni dādrisī kiyfarī mukhālifi uşūli qānūni asāsī ast, Iranian Students News Agency June 2015, <http://www.isna.ir/news/94041508547/>.

<sup>59</sup> Āmulī Lārījāni: Miġūyand agar mā mujavviz dādīm dīgar kasī ḥaq nadārad laghv kunad, īn ḥarfi ghalatī ast, Entekhab (June 28, 2015), <http://www.entekhab.ir/fa/news/212246>

<sup>60</sup> Ibid.

<sup>61</sup> Āmulī Lārījāni: “Aşl bar birā’at ast” ḥarfi ‘avāmānih ast, Asr Iran, August 2015, <http://www.asriran.com/fa/news/413531>.

<sup>62</sup> International Covenant on Civil and Political Rights, Art. 15.1, December 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>63</sup> The Constitution of the Islamic Republic of Iran 1979, [http://www.iranchamber.com/government/laws/constitution\\_ch11.php](http://www.iranchamber.com/government/laws/constitution_ch11.php).

defines this crime: *Anyone who engages in any type of propaganda against the Islamic Republic of Iran or in support of opposition groups and associations, shall be sentenced to three months to one year of imprisonment.*<sup>64</sup> In other jurisdictions the issue of the scope of such legislation is more clearly defined, as for example The European Court of Human Rights has explained that an offence should be clearly defined. The Court states, 'This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable'.<sup>65</sup> The wording of Article 500, and its application, tell a very different story. Numerous individuals have been arrested and imprisoned under this provision for exercising their right to object to various government policies. The fact that Iranian citizens are routinely prosecuted under vague criminal provisions is another aspect of the violation of their due process rights.

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<sup>64</sup> Islamic Penal Code of the Islamic Republic of Iran – Book Five, via the Iran Human Rights Documentation Center, July 2013, <http://www.iranhrc.org/english/human-rights-documents/iranian-codes/1000000351-islamic-penal-code-of-the-islamic-republic-of-iran-book-five.html>.

<sup>65</sup> Kokkinakis v. Greece, 17 Eur. Ct. H. R. 397 (1994), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57827>. In Kokkinakis v. Greece, the issue was whether a conviction based on a statute prohibiting proselytizing could stand under the European Convention on Human Rights.



## Pondering the roots of recurrent miscarriages of justice in the Islamic Republic of Iran

Ladan Boroumand

Iran has the highest per capita execution rate in the world. Numbers however are an approximation, for independent human rights organisations are not allowed to investigate and report freely in Iran. Nevertheless, Iranian and international human rights groups manage to reach out to victims and witnesses, and record meticulously the statistics published by judicial authorities and law enforcement agencies. One such organisation is the Abdorrahman Boroumand Foundation (ABF), which has created an online memorial dedicated to the victims of the Islamic Republic of Iran.<sup>66</sup> Listed here are the ABF's annual execution numbers since 2011/695, 2012/ 579, 2013/913, 2014/964, 2015/1052, 2016 /567 and as of January 30th 2017 ABF has collected reports of 79 executions. These numbers are unsettling per se, but for those of us more knowledgeable about the scope of human rights abuses and the systemic violation of due process that undermines the administration of justice in Iran, the execution statistics become dreadful indicators of recurrent miscarriages of justice resulting in the murder of innocent people. And for those of us who work on the victims' cases and for whom every single number that adds up to make the annual statistics, has a face, a smile, a story, and a family, statistics become transfigured into a crowd of familiar faces whose helpless gaze and silent screams are a constant and enduring indictment of our conscience. The aim of this piece is to connect the three levels of reality regarding the prescription of the death penalty in Iran: the number of executions, the systemic violation of due process and defence rights, and the stories of those who fall victims to such a corrupt justice system.

Before the 1979 Islamic Revolution, Iran's judicial system was comparable to that of other modern and developing nation states. 'Judicial organization was separated from religion. Judicial precedents throughout Iran were centralized and uniform, and the issuance of unlawful judgement was prevented. Recognized principles of procedure, such as the rule of independence of judges, rule of *res judicata*,<sup>67</sup> basing of judgments on the enacted laws were implemented. Independent public prosecutor's offices were established for the purpose of defending public rights; an independent Bar Association was established and right of defense for accused persons was created. Modern educated judges presided over court proceedings'.<sup>68</sup> The independence of the judiciary may not always have been respected in practice, but it was constitutionally and legally established.

This modern judiciary became the main target of Iran's new rulers in the wake of the 1979 Islamic revolution. Soon a five-member Committee was established to purge the judicial system of *undesirable elements*, pursuant to the Legal Bill for the Modification of the Judiciary and the Law for Hiring Judges of 8 March 1979.<sup>69</sup> The power of the committee was absolute and its decisions, resulting in a widespread purge of the judiciary, final.

The Law for the Conditions of Selection of Judges of 4 May 1981 established the conditions of eligibility for judges.<sup>70</sup> The latter were to be hired among *men* who were *legitimate children* and *had a 'practical commitment to Islam'* and *allegiance to the Islamic Republic*. The law also allowed hiring practically anyone as a judge who could 'obtain the Judicial High Council's permission'. Moreover, Note 2 of the Amendments of 4 October 1982 to this law allowed widespread employment of

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<sup>66</sup> Human Rights and Democracy for Iran, Omid Memorial, <http://www.iranrights.org/memorial>

<sup>67</sup> Whereby a matter that has been adjudicated by a competent court and therefore may not be pursued further by the same parties.

<sup>68</sup> Morteza Nasiri, A Review of Iran's Judicial System, in *Iran Nameh*, January 1997, English translation by Legatum Institute. <http://www.iranrights.org/library/document/2016/a-review-of-irans-judicial-system>

<sup>69</sup> Islamic Parliament Research Center Of The Islamic Republic Of Iran, Law for Hiring Judges, March 1979, <http://rc.majlis.ir/fa/law/show/98067>

<sup>70</sup> Islamic Parliament Research Center Of The Islamic Republic Of Iran, Law for the Conditions of Selection of Judges, May 1981, <http://rc.majlis.ir/fa/law/show/90547>

seminary students 'who had general knowledge equivalent to a high school diploma' as judges or working at prosecutor's offices as well as Revolutionary Courts. By 1989, the judiciary counted about 2,000 new judges trained in theological seminaries (graduates and students) and political appointees, many having replaced judges trained in law schools.

The risk of judicial incompetence is not the only problem defenders are facing, the constitution of the Islamic Republic denies the judiciary's independence and submits this branch to arbitrarily serve at the pleasure of the Supreme Leader who represents God on earth and enjoys an absolute and unaccountable power. The Supreme Leader appoints the Head of the Judiciary, who is the highest judicial authority of the land. The Head of the Judiciary has the power to appoint, promote and dismiss judges in accordance with loosely defined legal guidelines: 'Employment of just and worthy judges, their dismissal, appointment, transfer, assignment to particular duties, promotions, and carrying out similar administrative duties, in accordance with the law.' (Art. 158. 3). Article 164 empowers him to remove a judge from a case, without his consent, 'if the interest of society necessitates it.' In fact, if the head of the judiciary does not approve of the judgement of a case, he may at his own discretion, remove the judge from the case. To make matters worse, the law empowers him to invalidate a court verdict that has been approved by the Supreme Court, if he considers it to be in contradiction with Shari'a law, and such contradiction is only a matter of opinion and interpretation. In addition to these structural shortcomings regarding the independence of judges, it is important to add the systematic violation of the right of the accused to the presumption of innocence,<sup>71</sup> to a proper investigation, and the severe restrictions on the work of defence lawyers,<sup>72</sup> many of whom are silenced and given long prison sentences for defending the rights of their clients and publicising the violation of due process.<sup>73</sup> Confessions obtained under torture and other methods of duress are accepted by judges as part of a proper mode of investigation.

The question now is how these appalling legal deficiencies translate into reality and shape the fate of individuals caught in the grip of the judicial system. ABF's Omid Memorial is populated with more than 18,700 victims, all of whom were deprived of due process guarantees of fair trial established by international human rights laws.

Arash Rahmanipur was 20 years old. He was a supporter of a group called the Royal Association of Iran; he was arrested on April 15th, 2009.<sup>74</sup> His pregnant sister was arrested with him. Mr. Rahmanipur had told his attorney that -- in two of the interrogations in which his sister had also been present -- they [interrogators] had told him that if he wanted his sister to be released, he had to make the confessions that they asked of him. Arash was charged with, 'war against God', through membership of the 'terrorist mini-group, the *Royal Association of Iran*, and effective collaboration with this group, as well as association and collusion for committing crimes against security'. He was also charged with fomenting unrest during the post 2009 elections protests in Iran. Arash was tried on August 8 2009. His lawyer, Ms. Nasrin Sotoudeh, was not allowed to attend his trial. The authorities appointed another lawyer for him, who rejected his client's charges 'due to a lack of corpus delicti'<sup>75</sup> for charges based on Articles 186 and 610 of the Islamic Penal Law, because he has not been armed and he has not actually attempted any crime'. Mrs Sotoudeh made clear that Arash had been arrested before the elections and could not have fomented post-election unrest while in

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<sup>71</sup> Javad Kargozari, "Proving Innocence in Iran: An Near Impossible Task and A Wrong Approach", December 2013, ABF English translation. <http://www.iranrights.org/library/document/2881>

<sup>72</sup> International Bar Association's report, *Balancing Independence and Access to Justice: the Justice System in Iran*, October 2007 via <http://www.iranrights.org/library/document/2991>

<sup>73</sup> Human Rights Watch, *Iran: Lawyers' defence work repaid with loss of freedom*, October

2010, <http://www.iranrights.org/library/document/1476/iran-lawyers-defence-work-repaid-with-loss-of-freedom>

<sup>74</sup> Human Rights and Democracy for Iran, Arash Rahmanipur, <http://www.iranrights.org/memorial/story/-7226/arash-rahmanipur>

<sup>75</sup> Concrete evidence of a crime.

prison. She also pointed to numerous other violations of due process. Arash was denied the right to call witnesses and cross examine 'the evidence' presented against him which included 'reports by officials; the defendant's own confessions; and other documents present in his file'. In a letter he wrote in prison he claimed his innocence and considered his only crime to be 'his disbelief in official beliefs'. Commenting on his death sentence, Arash wrote: 'It pains me to see that, in this land, love is a crime for which the innocent is hanged' (November 1 2009). Arrested when he was just 19 years old, Arash was hanged on January 28 2010, at the age of 20.

Hashem Sha'baninejad (Amuri) wrote poetry in both Farsi and Arabic and taught Arabic language and literature at high schools in Ramshir, Khuzestan Province, while simultaneously studying for a Master's degree in political science.<sup>76</sup> He was the founder of the *Al-Hiwar Scientific and Cultural Organization* ('Hiwar' meaning 'Dialogue' in Arabic). In 2005, the Arab population of Khuzestan province demonstrated against the government's alleged intention to reduce Khuzestan's Arab population to one third of the total population of the province through the promotion of the migration of non-natives to the province. These peaceful demonstrations were met with police violence and resulted in the death of a number of protestors. In the wake of these demonstrations Al-Hiwar was banned. But Hashem and his friends continued their cultural activities and were accused by security people of promoting 'ethnic thinking'. Hashem was arrested on February 13 2011, along with other members of the *Al-Hiwar Organization*. He spent 7 months in solitary confinement at the detention center of the Ministry of Information, undergoing severe physical and mental torture. He was transferred to Karun Prison only after he had been forced to confess on television. At his trial, Hashem talked about the torture he had undergone, including having boiling water poured on his body, and stated that he had attempted to commit suicide twice, because of the pressure. His attorney had limited access to the content of the case and could not meet him without the presence of prison authorities. The Court did not accept Sha'baninejad's retraction, nor did the Supreme Court for 'the defendants and their counsel have not submitted any evidence to prove the said claim [of torture] ...'. As if interrogators were documenting the torture in order to help their victims substantiate their claim! After learning of his death sentence, Hashem wrote: 'I must stress the fact that under no circumstances did I ever engage in armed action. I do not believe in violence'. Sha'baninejad and his friends were secretly executed in January 2013, while their request for a new trial was being examined by the Supreme Court. Their families were not told of the precise date of execution; their bodies were not returned to their families who were not told of their place of burial. They were just warned against holding mourning rituals in mosques or other places.

Married and father of a two year old son, Mohsen Amir Aslani held a bachelor's degree in psychology and owned a psychology institute named Soroush Parsian, where he provided consultation and conducted classes in 'Inner Path' (spirituality), dream analysis, and the Qur'an. A devout Muslim, Amir Aslani promoted a tolerant and modern vision of Islam. His teachings were the cause of his popularity. The number of his students had gradually increased. In the [Islamic] months of Ramadan and Muharram 2005, around 400 people had attended his lectures to listen to his interpretation of Islam, a fact that brought the attention of the authorities. Intelligence sources told him to stop his activities prior to his arrest. A couple of 'new followers' had warned his students and their parents that his lectures were dangerous and that they should stop attending his classes. On May 2 2006, he was arrested at his home along with his wife and a number of his students. His secretary was strongly advised by interrogators to confess to an illicit sexual relationship with him. He was first charged with 'heresy to Islam, its principle and secondary tenets, and to the Shi'a religion; disparaging the Prophet Jonah; committing a Haram ('sinful') act (playing banal music in his classroom on the day of Ashura and public mourning); engaging in the practice of medicine without

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<sup>76</sup> Human Rights and Democracy for Iran, Hashem Sha'baninejad <http://www.iranrights.org/memorial/story/71725/hashem-shabaninejad-amuri>

the necessary legal permit; illegally acquiring property through conducting psychotherapy classes; and committing an unchaste act with his secretary'. During his interrogations he had no access to his family or a lawyer. The intelligence authorities were seeking the death penalty for Mr. Amir Aslani. In the first instance, the court sentenced him to a total of four and a half years imprisonment, 120 lashes and a monetary penalty. Mohsen appealed his sentence and the appellate court upheld the conviction but reduced the sentence to two and a half years jail and 50 lashes (March 2007). Prison authorities refused to release Mr. Amir Aslani on bail. Instead they opened a new case against him on trumped up charges of rape. This time they required death penalty before the Revolutionary Court. The Revolutionary Court convicted Mr. Amir Aslani of 'Corruption on earth', and 'rape' and sentenced him to death, without giving him a chance to defend himself, call for witnesses, and cross examine the deficient 'proof' provided by the deputy prosecutor who did not attend the trial sessions. Twice during the procedure, the Supreme Court overruled the Revolutionary Court's verdict. It ruled that there were considerable substantive and procedural defects in the proceedings from the very beginning; it further ruled the decision defective for numerous reasons, overruling the same and sending it back to the Province Criminal Court for a re-trial. At this point, contemptuous of the Supreme Court's ruling, the Head of the Judiciary used his arbitrary prerogative and confirmed the death sentence. Mr. Amir Aslani was hanged on September 24th, 2014. He was 35.

These are just a few examples that illustrate how the arbitrary power of the judicial branch, and the systemic violation of due process that characterise it have transformed this branch into an instrument that spreads terror and suppresses political and religious dissidents. But miscarriages of justice are not limited to political and ideological cases, ordinary citizens fall victims to a system that covers and protects members of the ruling oligarchy when they commit crimes or allows incompetent investigators or whimsical judges to toy with citizens' honour, property and lives.

Take the case of Reyhaneh Jabbari for example, the 19-year-old interior decorator, who had been hired by a supposed intelligence officer, Dr. Morteza Sarbandi, to 'redecorate his medical office'. In reality Sarbandi took Reyhaneh to an empty apartment with the intent of sexually assaulting her. According to Reyhaneh, Sarbandi and Sheikhi, purportedly another intelligence officer, picked her up on July 7 2007 at 6pm. Sheikhi got out of the car before they reached their destination and on their way Sarbandi went to a pharmacy and bought condoms and a drug called Diphenoxylate, which was discovered in one of the juice glasses at the crime scene. Diphenoxylate is a combination of morphine and sedative and, depending on the dosage taken, side effects include dizziness, loss of consciousness, and drowsiness. He locked the door and offered a glass of orange juice to Reyhaneh and asked her to take her scarf off and grabbed her by force. She begged Sarbandi to let her go, but he didn't, she grabbed a knife she had spotted there and stabbed him on his right shoulder, and rushed to the door to try to unlock it. That was when Sheikhi unlocked the door and came in. At this moment Sarbandi was still alive. Reyhaneh ran away, and on her way out called the ambulance and went back home. Sarbandi was found in the stairs and died of haemorrhage. Reyhaneh was arrested, one day later, on July 8. She was in solitary confinement for about two months, during which she was denied the right to see a lawyer and family visit. During that time, she was subjected to various kinds of physical and psychological torture:

"The chubby man pulled my head back, and the beardless man slapped my ears a few times: left, right, left, right... I felt something in my back. I felt the swelling of my skin, and then ... rip.... my skin ruptured. I had a vision of my little sisters being made helpless like me. ... They bound your hands and feet. Then they hung you from a rod, like a piece of clothing, and kicked you in your stomach with their knees ...."<sup>77</sup> Most of Reyhaneh's interrogations were conducted by two agents from the Ministry of Intelligence and not the agents of the prosecutor's office. They wanted her to make a

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<sup>77</sup> Diaries of Reyhaneh Jabbari, Parts 1,2,3,4, and 7, <http://www.tribunezamaneh.com/archives/47844>

false confession, that she had bought the knife with which she killed Sarbandi and they succeeded in coercing this confession from her. Reyhaneh was charged with first degree murder.

The first and the second sessions of Reyhaneh's trial were presided over by a Judge who, considering the young age of the defendant and the status of the victim, had declared that the court should carry out a more detailed investigation into the case. This first ruling was not to the liking of intelligence authorities, thus the first Judge was removed from the case and another, more compliant, was appointed to preside the court. Reyhaneh was ultimately found guilty of first degree murder after a flawed investigation and unfair trial. No mention was made in the case file of what the victim's intent was in slipping the drug into the juice he offered to Reyhaneh. According to her lawyer: 'Preparing the groundwork, such as a vacant property, condom, a sheet on the sofa, demanding the removal of headscarf, embracing Reyhaneh, and saying that you have no way of escape, all indicate that failure to resort to self-defence would have actualised the rape. The court dismissed the legitimate defence argument in the case of Ms. Jabbari, despite the fact that it met all the necessary provisions.' Mr. Sheikhi, the second man, was never summoned to court nor was he interrogated as a witness. The investigation did not establish when and where the knife was bought by Reyhaneh and could never establish any motive for the crime. The judge also ignored the fact that Reyhaneh had called the ambulance and did not even destroy the crime's evidence which she would have if she had premeditated the crime. Reyhaneh was executed on October 25 2014, she was 26.

To the story of Hashem, Mohsen, Arash, Reyhaneh, we can add many more, each containing, in one form or another, an outrageous miscarriage of justice which are denounced not only by victims' relatives, lawyers, and human rights organisations, but by the very judicial authorities themselves. They better than anyone else know that 'something is rotten' in the judicial branch of the Islamic republic of Iran. In an internal report, *The Main Prevalent and Widespread Violations [Existing] across the Country's Judicial Districts*,<sup>78</sup> translated and published by ABF, the Judges' Disciplinary Prosecutor, Ahmad Shaf'i, denounces the recurrent violation of due process and miscarriage of justice by the judges. Ahmad Shaf'i highlights 70 recurrent transgressions committed by judges, based on an internal investigation by Iran's judicial disciplinary authorities. This report is accessible in English on the ABF website, but to end this article it is worth conveying some of these transgressions:

- Issuing arrest warrants without observing proper legal process
- Issuing surety and bail orders without specifying the amount
- Detention orders issued to hold the defendant in illegal detention centers, after issuance of an order [denying bail], resulting in detention
- Unlawful arrest
- Releasing the defendant without rendering an opinion in preliminary investigations
- Use of unnecessary, disorganised, and uncustomary language in rulings and orders
- Not rendering an opinion regarding certain defendants or the charges brought against them in criminal cases
- [Requiring and] obtaining [the defendant's] final defence, prior to completion of investigations
- Issuance of a new bail order without rendering a decision regarding the prior bail order
- Issuance of an order or ruling prior to the termination of investigations or adjudication
- Performing tasks not within the scope of the substitution [of venue] [document]
- Issuance of a guilty verdict without first obtaining the defendant's final defence
- Issuance of a ruling citing unrelated articles [of law]

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<sup>78</sup> Sahmad Shaf'i. assistant prosecutor of Judges Disciplinary Court, *Internal Report on the Violations of Procedure and Due Process by Iranian judges*, ABF English translation and publication, <http://www.iranrights.org/library/document/2994>

- Issuance of a ruling outside the scope of the indictment
- Increasing the sentence upon appeal, without legal justification
- Unpleasant conduct, at times inappropriate and insulting behaviour
- Inappropriate relations with the parties to the case and the attorney
- Lack of attention to evidence
- [Issuance of a] court decision prior to writing the ruling
- Lower authority's non obedience of a higher authority
- Disregard for *res judicata*
- Disregard for the content of official records
- Not addressing preliminary objections in the first trial session
- Issuing a court date prior to the completion of a complaint

The above-mentioned are the judges who send hundreds and hundreds of people to the gallows every year. People like Alireza Madadpur, who was in the wrong place at the wrong time. Alireza's family was poor, he was his family's breadwinner. Alireza had studied to be an accountant but his financial circumstances forced him to abandon university a few months before earning his bachelor's degree. Lack of hope for the future drew him to drugs and addiction. In the fall of 2011, Alireza - always in search of additional income - accepted his colleague's offer to take over the care and cleaning of a house. He was dropped at the house early on the morning of November 12, when the house inhabitants were still asleep. He sat there waiting for them to wake up, but the police raided the house and arrested him and two other men he had never met before. 990 grams of crystal meth were discovered along with ingredients to produce the drug. Like many others, Alireza was held incommunicado for weeks and interrogated. By the time his interrogation was over, he had lost so much weight that, according to an eye witness, he looked like 'a skeleton'. Like many others in his case, he could not afford a lawyer. Less than two weeks before trial, the state assigned him a lawyer who never took the time to meet with him. Judge Reza Farajollahi at Branch 4 of the Revolutionary Court of Karaj tried the four men indicted in the case, including Alireza, on July 17 2012. Like he had done in many others cases, and after just twenty minutes of review, Farajollahi decided that they all should be fined, lashed and hanged for possession of drugs and precursor chemicals. The judge was deaf to the persistent denials of Alireza and the testimonies of the two men arrested with him who insisted that Alireza had come to the house for cleaning work, that they didn't know him, and that he had not participated in the drug production. He also ignored the fact that Alireza had no criminal record, had never been arrested before, and that there was no evidence of any connection with the men who were arrested in the house. On August 24 2016, Alireza was executed along with 11 other death row prisoners. He was 34 years old.

Alireza's sister's screaming and tearful voice echoes indefinitely: *Where is human rights?*

We owe her a proper response, not only for her sake, but ultimately for our sake in democratic societies.

## Extrajudicial killings supported by law and Islamic jurisprudence

Kamyar Behrang

Perhaps when Mirza Mohammad Reza Kermani shot the Qajar king, Naser al-Din Shah, on 30 April 1896, Iran's contemporary history entered a different era. Mirza Reza Kermani was first attracted to the teachings of the 19<sup>th</sup> Century anti-Western political activist, Seyyed Jamaledin Asadabadi and after a period of delivering sermons against the Qajar dynasty took up arms? and assassinated the shah who had, a few years earlier, arrested and humiliated Seyyed Jamaledin Asadabadi. So on that day Mirza Reza sought revenge for his sufferings as well as those of his master.<sup>79</sup>

It was after this incident that assassination entered Iran's modern political practice. However assassination in the political-ideological system goes much further back. In Islam the first signs of assassination are seen after the death of the Prophet and over his succession (although some cases took place during the lifetime of the Prophet<sup>80</sup>). It is important to note that there are three different phrases in Arabic literature that refer to assassination; and the meaning and connotations of which have evolved through the years. *Fataka* means elimination and murder of an individual due to neglect. *Arhab* refer to intimidation, however over time it has evolved into the concept of causing fright in order to overcome or prevent an act. *Ightiyal* refer to the covert murder of an individual or a group of people. It is important to note these differences, as assassinations over the years can be categorised according to these definitions.

According to verse 33 of the Chapter of Food in the Quran "*The recompense of those who wage war against Allah and His Messenger and strive to make mischief on the earth is to be murdered or hanged, or their hands and their feet to be cut off on opposite sides or to be exiled from where they are. This is their disgrace in this world. And for them there is in the Hereafter a great torment.*"<sup>81</sup> This same verse was used over the years to pave the way for religious powers to issue sentences of 'waging war' or 'corruption on earth', and without a court hearing conduct "state-sponsored murder" (execution) through extrajudicial killings. This concept is also applicable whereby through *arhab* impact on the ruling government or the murder of the opponents as a means of strengthening the foundation of the state is pursued.

In reality, issuing death sentences without conducting a court session is possible based on the 'permission' of the Imam or his special representation or the leader and Islamic ruler. Here, the Islamic jurist or ruler who believes he is carrying out 'God's order' elevates 'murder' to a 'holy' act above and beyond murder and assassination.

### Assassinations during the Pahlavi Era

During the early part of the Pahlavi era, after its founding in 1925, the definition of assassinations acquired new meaning - when government opponents are murdered at the hands of forces suspected to be organised by the government or by forces with close government ties.

Mirzadeh Eshqi, poet and journalist, and one of the strong opponents of then Prime Minister (later Shah) Reza Khan. His critiques were met with bullets shot at him on 5 July 1924. However, it was never determined as to whose orders and agents carried out his murder.

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<sup>79</sup> Maryam Shabani, Tarikh Irani ,The Revenge Bullet in the Heart of the Qajar Shah, May 2011 <http://www.tarikhirani.ir/fa/files/16/bodyView/159/>

<sup>80</sup> Encyclopaedia of Intelligence and Security in Islamic Works and Texts, Imam Hossein University publications, available on-line at: <http://icnc.ir/index.aspx?pid=289&metadataId=545f3a99-bcdf-4331-abf6-21172d98657c>

<sup>81</sup> Quran, 5:33, <http://quran.com/5>

Abdol-Hossein Taymourtash, Sheykh Khazal, Firouz Mirza Nosratoddoleh (the son of Abdol-Hossein Farmanfarma), Hassan Modarres, Abdol-Hossein Diba, Mohammad Farkhi Yazdi and Taqi Arani (who contracted typhus while in custody), are all among those who met their death during the reign of the first Pahlavi king. They were all subjected to the wrath of the establishment and so no steps were taken to find their assassins.

However, during the reign of the second Pahlavi king, political assassinations assumed a different form. The administration under Mohammad Reza Shah Pahlavi approached his critics in a different manner. This era resulted in a new form of political assassinations in Iranian society. Ahmad Kasravi was the first victim of this new form of assassination. His criticisms of Shia history did not appeal to the right wing clerics and so on 11 March 1940 the Muslim group, 'Fadaiyan-e Islam' put an end to his life.

With regards to the assassination of author and journalist, Mohammad Massoud in 1948 there are a range of theories and assumptions. Some see his death as another case of assassinated critics and dissents, while others view it as a case of change involving the inner circle.<sup>82</sup>

Following the case of Kasravi, the Fadaiyan-e Islam were responsible for the assassination of two of Iran's Prime Ministers, Abdol-Hossein Hajir in 1949 and Haj Ali Razmara in 1951. During that period 'revolutionary executions' at the hands of this group were plotted and years later, despite the fact that this group was dismantled, laid the foundation for the assassination in 1965 of Hassan-Ali Mansour, another Iranian Prime Minister at the hands of the members of the related group the 'Islamic Coalition'. Although the administration was not behind these acts, they can be considered as influential in the assassinations that took place following the 1979 Islamic revolution.

### **Post-revolutionary assassinations**

Although the judicial system after the revolution did not provide for due process of the law - resulting in the execution of thousands of people, it also led to assassinations beyond Iran's borders. Perhaps the assassination of Shapour Bakhtiar, the last Prime Minister during the Pahlavi era, and the Mykonos group<sup>83</sup> attack are among the most important. The similarities between their cases and the assassinations carried out the generation before by members of the Fadaiyan-e Islam lie in the lack of formal a death sentence or sentence in absentia by the Iranian legal system but which were instead carried out as extra judicial 'revolutionary assassinations'. Since these acts are deemed as 'religious duty', the assassins are venerated by the Islamic Republic administration.<sup>84</sup>

It was during this same era that other terrorist groups opposed to the new regime murdered Islamic Republic officials. However, since the revolution and formation of groups such as the Marxist-Islamic group 'Forqan' and the 'People's Mojahedin-e Khalq (MEK)' claim to be Islamic and accordingly pursued their opposition to the revolutionary and religious authorities in the new administration.

It could be argued that death sentences issued by authorities based on the Islamic charge of 'combatting against God' have often resulted in the demise of the authorities that issue such

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<sup>82</sup> Babak Amir Khosravi, Did the Tudeh Party of Iran play a role in the assassination of Mohammad Massoud Naqshi' by B Rah Avarad Monthly, <http://www.rahavard.com/Articles/98-Amirkhosravi.pdf>

<sup>83</sup> To learn more, please see report on the assassination of the Kurdish dissidents at: Iran Human Rights Documentation Centre, Murder at Mykonos: Anatomy of a Political Assassination, 2007, <http://www.iranhrc.org/english/publications/reports/3150-murder-at-mykonos-anatomy-of-a-political-assassination.html>

<sup>84</sup> Official reception for the "champion" in Tehran, and conflict over Bakhtiar's assassin in Paris, Radio Farda, April 2010, [http://www.radiofarda.com/a/f2\\_Iran\\_received\\_Vakili\\_Rad\\_Bakhtiar\\_assassin\\_France\\_opposition\\_transparency/2046511.html](http://www.radiofarda.com/a/f2_Iran_received_Vakili_Rad_Bakhtiar_assassin_France_opposition_transparency/2046511.html)



sentences. Instances include cases as far back as that of the first Shia Imam and as recent as Forqan in relation to the Islamic Republic.<sup>85</sup>

In reality the two sides of the coin are based on the construction of 'the other', a justification of the interpretation used to issue the sentence. Since the basis of the sentence is not 'the law of the land' but religious interpretation and beliefs, the issuing judge does not view himself as a representative of the administration but that of God. Therefore, as seen over the recent years, anyone can place one's self in such position of judgment and call for death in the name of God and Islam.

### **Assassinations abroad and of dissidents in Iran**

As the revolutionary government consolidated its hold on power over time the assassinations carried out abroad came to a halt, leading to new forms of handling the opposition abroad. Assassinations that later became known as 'chain murders, were among these. It is difficult to determine the exact date these murders began to take place but perhaps the 1988 murder of Dr Kazem Sami, the Minister of Health under the leadership of Prime Minister Bazargan was the starting point of the 'chain murder' of dissidents and critics of the Islamic Republic.

It is important to note since the beginning of the IRI the murders were blamed on forces outside the circle forming the state. During his address Akbar Hashemi Rafsanjani, the Chair of the Parliament at the time, stated: 'We strongly ask the intelligence and security forces to investigate this suspicious death, as it appears to stem from evil causes'.<sup>86</sup>

In later years, cultural figures and thinkers became targets, including the case of Ali Akbar Saeidi Sirjani. He was known for his prose and poetry, however, his famous letter to Seyyed Ali Khamenei, the Supreme Leader of the Islamic Republic, began a new chapter in his public popularity.<sup>87</sup> In his second letter to the Supreme Leader he writes: 'Mr Khamenei, I was saddened to hear your chiding communication read by Mr Saberi.<sup>88</sup> Not because I am the subject of the anger of that esteemed authority and his imminent punishment at the hands of the people of Hezbollah, as death in the path of defence of truth is martyrdom and we pray for martyrdom.'

Sirjani was arrested some time later and died in custody within months with no rights to communication or visitation. However, years later, his forced confessions were broadcast as part of the television programme called 'Identity'.

Similar assassinations involving Mohammad Jafar Pooyandeh, Mohammad Mokhtari, Parvaneh Eskandari, Darioush Forouhar and a number of other cultural and political figures continued. Eventually, in a statement issued by the Ministry of Intelligence on 6 January 1999, during the presidency of Seyyed Mohammad Khatami, these acts were blamed on a number of 'unknown, deceitful and independent'<sup>89</sup> colleagues in the Ministry.

In addition to their numbers, an important factor regarding the 'chain murders' revolved around their religious nature. In reality, none of the victims were tried in a court of any kind. Based on some

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<sup>85</sup> 'Origins of Forqan Group' by Sadigheh Bali Lashek, Tarikh Irani, available online at: <http://tarikhirani.ir/fa/news/17/bodyView/715/>

<sup>86</sup> Sogeh Barasqian, Unlocking Hashemi's Memoirs, , May 2011, <http://tarikhirani.ir/fa/files/3/bodyView/186/>

<sup>87</sup> Saeed Sirjani's letters to Khamenei,: <http://rowshanai.org/articles/nameh.html>

<sup>88</sup> It is believed that the Supreme Leader had contacted Sirjani, using satirist Kiumars Saberi as an intermediary, calling on Sirjani to stop all writing.

<sup>89</sup> Hamshahri Newspaper No. 1736, Wednesday 16 Diy 1377/6 January 1996

of the documents<sup>90</sup> and admissions of the main culprit in this case - Saeed Emami - all the deaths were carried out following the judgement of apostasy issued by certain Shia clerics. Emami emphasises: 'Although Fallahian<sup>91</sup> was an Islamic jurist, often in sensitive cases he would not personally issue the death sentence against apostates. Instead, he would obtain them from Ayatollahs Khoshvaght, Mesbah, Khazali, Jannati and at times from Hojjatol Islam Mohseni Ejei and hand them to us'.<sup>92</sup>

What happened during this era was an amalgamation of politics, religion and state-sponsored terrorism, where in previous years these would have acted separately and in contradiction of the other. In effect, the Islamic Republic carried out these murders as either execution without due process of law, or an assassination based on religious edict alone.

On the other hand, four decades after the 1979 revolution, the Islamic Revolutionary Courts bear no signs of departure from a political system that stems from revolutionary and illegal processes, and through both obvious and covert manners advances its agenda of extrajudicial killings.

If we look at the definition of execution or extrajudicial killings, as acts 'carried out by or on behalf of government officials in an illegal or independent manner without court order' then we reach a conclusion that resonates with the Islamic Republic's record over the recent years. This includes execution orders issued in unfair trials based on charges of 'apostasy' or assassinations carried out on the grounds of a religious judgement.

Ka'ab bin Ashraf was a Jewish poet who wrote critically of the Prophet Mohammad during his early years in Medina, and called on the masses to rise against Islam. In a gathering among his supporters, Mohammad said: 'O Providence, in return for the verses he has written and the troubles he has caused, deal with him as you deem appropriate' and he re-emphasises 'who will rid me of the evil of Ka'ab bin Ashraf who has caused me grief'<sup>93</sup> and so a few days later Mohammad bin Maslama murdered Ka'ab bin Ashraf. In this manner, those who consider themselves as 'representatives of the Hidden Imam' and Islamic rulers see it as their right to issue such calls for murder.

Long after the inception of Islam, based on Khomeini's religious judgment, 'if a Muslim murders a non-believer who does not follow one of the holy books, the Muslim will face no retribution nor is he obliged to pay blood money, either in a Muslim country or in lands of the infidel'.<sup>94</sup> Therefore, following the Islamic revolution and the new constitution, according to Article 310 the murder of all those who are considered infidels bear no retribution but may incur a fine and blood money.<sup>95</sup>

In addition, some Shia clerics' interpretation of verse 89 of the Nisa Surih<sup>96</sup> of the Quran accommodates murder in cases where the victim is deemed as an apostate. However, as previously mentioned, this is not done through legal channels. Nasser Makarem Shirazi's interpretation clarifies:

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<sup>90</sup> Patrick Cockburn, Death riddle over Iran's spymaster, June 1999, <http://www.independent.co.uk/news/world/death-riddle-over-irans-spymaster-1101895.html>

<sup>91</sup> Fallahian served as Minister of Intelligence during the presidency of Akbar Rafsanjani between 1989 and 1997.

<sup>92</sup> A page from a shocking interrogation, Saeed Emami, May 2012, <http://www.rahesabz.net/story/52633/>

<sup>93</sup> The assassination of Kaab bin Ashraf, by Hadi Akbari, Bagherol Oloum Institute Publications available online at: <http://pajooh-e.ir/>

<sup>94</sup> Tahrir'ul Vasileh, by Ayatollah Rouhollah Khomeini, Vol. 2, Chapter on Retribution, A discussion on important considerations for retribution, issue 1, <http://ghbook.ir/index.php?name=>

<sup>95</sup> Article 310, exemptions 1 and 2 in the Islamic Republic Penal Code, approved in April 2013, <http://www.ekhtebare.com/>

<sup>96</sup> Quran, 4:89, <http://quran.com/4/89>

*...this holy verse following its previous verse refers to those apostates whom some naïve Muslims supported and interceded for, whereas the Quran separates them from Islam ... do not befriend them unless they reconsider their position and stop destruction and discord, and that will manifest itself in their decision to part with the heart of corruption and accept the heart of Islam. However, if they decide not to depart, then know that they have not parted ways with corruption and discord and their adherence to Islam is a means of espionage, and so wherever you may find them, capture them and where necessary, kill them'.<sup>97</sup>*

Based on such interpretation, following the murder of Farhang Amiri, an Iranian Baha'i resident of Yazd 'the murderers admitted that solely based on religious beliefs they committed such a violent act, as Mr Amiri was a Baha'i and Baha'is are deemed as unbelievers. They referred to a verse of the Quran, without the ability to identify which verse, committed this act based on their aim to kill a Baha'i, no matter who it may be.'<sup>98</sup>

Under such circumstances, the body of Islamic jurisprudence laws and the Islamic Republic Penal Code (approved by the Islamic Republic of Iran) accommodates those who, even without an official sentence issued by a judge, and solely based on personal judgement commit murder against those whom they believe to be an unbeliever, by allocating a fine.<sup>99</sup> Such laws not only lay the ground for extrajudicial killings but also provides legal protection for the murderer.

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<sup>97</sup> Exemplary Interpretation (Tafsir-e Nemouneh), by Makarem Shirazi, Dar'ul Kotub Al-Eslamiyeh Publications, Vol. 4, Tehran, P. 77

<sup>98</sup> Full Details of the Grounds for the Religiously-motivated Murder of Farhang Amiri, Baha'I News, October 2016, <http://www.bahainews.today/index.php/news-1/featured/item/906-farhang-amiri-bahai-yazd>

<sup>99</sup> For further details refer to Dr Kiumars Kalantary, First Degree Murder of a Non-Muslim in Iranian and Islamic Penal Laws, Journal of Rights, Vol. 13, No. 32

## Administration of justice in Iran: Due process absent a rights-based constitutional framework

Azin Tadjini

Under the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran on 24 June 1975, due process is guaranteed under article 14.<sup>100</sup> Article 14 aims to ensure the proper administration of justice and to this end guarantees a series of specific rights, including the right to equality before courts and tribunals, regardless of nationality and without any form of discrimination; the right to a fair and public hearing by a competent, independent and impartial tribunal established by law; the right to be informed promptly and in detail about the nature and causes of the criminal charges; adequate time and facilities to prepare one's defence, to communicate with a counsel of one's own choosing, to be tried without delay, to examine witnesses; to be present during their trial, and the right not to be compelled for example through physical or psychological pressure to testify against oneself. Article 14 moreover contains particular guarantees for compensation for the suffering of wrongful conviction, the right to appeal a conviction to a higher tribunal, the right not to be tried twice for the same crime, as well as guarantees for the protection of juvenile persons. These elements are all the more important in legal systems that practice the death penalty.

It is commonplace to claim that the Iranian legal system covers the key principles of due process, but that these principles do not go far enough and that their implementation is flawed. And indeed, we do find due process provisions in the constitution, such as presumption of innocence, equal access to court, the right to an open hearing and access to legal counsel.<sup>101</sup> But is the mere inclusion of certain familiar key principles and the vocabulary of due process in the constitution sufficient to claim that the legal system covers the key principles of due process? Is the main challenge the lack of sufficient due process provisions and their flawed implementation or is the main challenge something else?

The way in which a state regulates and puts into practice the administration of justice reflects the nature of the political regime. Although most societies have similar types of criminal justice agencies (such as courts, judges, police, prosecutors, prisons, etc), the systems of criminal justice differ significantly in their organisation and mission goals. On one side of the spectrum we find systems that are control oriented, where state control has supremacy over the claims of the accused. On the other side of the spectrum, we find systems that are due process oriented, where the political system stresses human rights and is devised to protect the rights of the accused. The international human rights system articulates the standards of this latter, due process oriented system.<sup>102</sup>

In other words, due process rests on the premise that the legal system is one which recognises individual liberty as the basis for the organisation of the political system and as a limitation for the exercise of political power. Due process therefore involves not only the guarantee of a series of specific rights but also a requirement for a minimum standard of institutional design. It covers both substantive and procedural aspects. Substantive due process asks whether the government's deprivation of life, liberty or property is justified by a sufficient purpose. Procedural due process asks whether the government has followed proper procedure when it takes away life, liberty or property. Therefore, speaking of due process presumes the existence of a particular constitutional design that facilitates or at least does not establish explicit barriers for the achievement of due process guarantees. Among the main features of such a design we find separation of powers, in particular guarantees for the independence of the judiciary; transparency; requirements on the competency of

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<sup>100</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), article 14.

<sup>101</sup> The Constitution of the Islamic Republic of Iran (1979), for example articles 34, 35, 37, and 165.

<sup>102</sup> See for example, the ICCPR, article 14 and the UN Human Rights Committee General Comment 32 (CCPR/C/GC/32).

judges; and accountability. Absent such a minimum design, reforms of criminal procedure provisions and improvement of individual provisions on due process will have limited effect.

The examination of due process in any given country, therefore, requires a prior examination of the political and legal framework to see whether it at all makes sense to speak of due process when analysing the administration of justice in the country or whether the administration of justice is based on a framework different than one of due process.

In Iran, the Constitution of 1979 establishes the foundation for today's political and legal system. This system, known as *velayat-e faqih*, is conceptually diametrically opposed to the concept of due process for two main reasons.

Firstly, under the system of *velayat-e faqih*, the supreme leader directly controls the legislative, executive and judicial branches of the government.<sup>103</sup> The separation of powers and the independence of the judiciary, both of which are a prerequisite for due process, thereby lack the fundamental constitutional basis in Iran. As a result, the administration of justice may, and in practice does, suffer from undue executive interference, arbitrariness and a lack of transparency. Because of the absence of an independent judiciary, the administration of justice also lacks efficient mechanisms to prevent impunity. The independence of the judiciary also presumes that the judiciary is competent. The vetting process for recruiting judges under the Constitution of 1979, allows the judiciary to exclude anyone who does not adhere to state-sanctioned political and religious ideologies. Judges also risk arbitrary dismissal based on vaguely worded offences that enable the Supreme Disciplinary Court for Judges to arbitrarily dismiss judges for conduct found undesirable. In addition, the system of appointing judges does not ensure that qualified women and members of ethnic and religious minorities are appointed as judges.

Secondly, under the system of *velayat-e faqih*, individual rights are subordinated to the state ideology and the state interest.<sup>104</sup> Individual rights are therefore conceptualised in a way that sees rights not as a premise and limitation for the exercise of political power, but instead as something subject to state control. Conceptually, this way of regulating rights is diametrically opposed to the rights-based framework that the concept of due process rests on.

Moreover, under the Constitution of 1979, individual rights suffer from a dual problem. Firstly, they are not held by all individual on a non-discriminatory basis.<sup>105</sup> The constitution instead establishes a formal hierarchy of persons which is incompatible with the principle of equality which is fundamental to due process. Secondly, the content of rights is narrower than what follows from Iran's obligations under international human rights law. As a result, a wide range of expression and actions that are legitimate under international human rights law are instead criminalised under the Iranian legal framework and subject to the administration of criminal justice.

In order for the administration of criminal justice to meet Iran's obligations under international human rights law, it is therefore not sufficient to include independent due process provisions in the Constitution and in the Criminal Procedure Code. The main challenge to the implementation of due process lies in the constitutional framework which establishes institutional barriers for enabling a

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<sup>103</sup> The Constitution of the Islamic Republic of Iran (1979), most notably articles 57, 60 and 110.

<sup>104</sup> The Constitution of the Islamic Republic of Iran (1979), articles 2, 3 and 4.

<sup>105</sup> This is mainly due to three aspects of the Constitution: 1) the weak non-discrimination and equality provisions of the Constitution (articles 2, 3, 19 and 20); 2) the specific discrimination provision based on religious affiliation in articles 12, 13 and 14; and 3) the limitation of individual rights to Islamic criteria (for example article 4, in addition to the specific conditioning of the majority of the rights provisions.)

meaningful system of due process. If the aim is to bring the administration of justice into line with international human rights standards, change must therefore take place at this level.

## **Execution: Efforts to stop executions including juvenile executions in Iran**

Araz Fanni

Putting citizens to death and ordering executions by authorities and those in positions of power is a typical and punitive phenomenon that, until relatively recently, both with and without the approval of judicial authorities, was included in the laws of all countries.

Even now, state-sponsored forms of violence and the assassination of political groups impact upon the lives of many. The earliest references to the just treatment of people's rights in the history of civilisations include Confucianism, Buddhism and Mithraism (during the reign of Cyrus the Great); during the early days of Christianity through the state (for example, Emperor Constantine, who began to formalise Christianity as the state religion of the Roman Empire, and banned crucifixion); as well as the early days of Islam and the initial Caliphate. Important political discourse surrounding the notion of 'treat others as you wish to be treated' were to some extent reflected in these instances. However, this imperative yielded greater ethical dimensions than those of legal or penal.

In contemporary times, it was during the enlightenment era when, for the first time, a thinker called Cesare Beccaria, in his book entitled 'On Crime and Punishment' referred to the inhumane nature of execution and raised a call for the eradication of execution in specific cases. Written in 1764, Beccaria's book was one of the bestselling books of its time. According to Beccaria, execution does not lead to a decrease in the number of criminals/crimes. Therefore, one of the most important reasons used by legal authorities and states for the use of execution was seriously questioned.

Following this book and the increase in the level of knowledge and public awareness, many citizens, intellectuals, civil rights activists and scholars began their efforts to fight against execution. Among them was the Heidelberg University scholar, Carl Mittermaier whose second book called 'death penalty' was published in 1830. They were among well-known figures in Germany and Scandinavia who raised their voices against execution and began to popularise their point of view among the masses.

In 1867 Portugal became the first country to eradicate the execution of criminals during peace time. In 1870 Holland, in 1889 Italy, in 1902 Norway, in 1921 Sweden and in 1930 Denmark were among European countries that also stopped the use of execution in times of peace. Unfortunately this human rights-led and humane approach was later set aside by fascists in Italy and Spain, Nazis in Germany and Stalin's dictatorship in the Soviet Union. The murder of dissidents, Jews and Roma were conducted by those regimes but countries that regard themselves as liberal and supportive of human rights also conducted courts such as Nuremburg and ordered the execution of Nazi and fascist criminals.<sup>106</sup>

### **Human rights conventions and execution**

Following the 1948 ratification of the Universal Declaration of Human Rights in Paris, a new process for the stay or abolition of execution got underway. This process was similar to that prior to WWII. Many countries abolished execution either during peacetime or entirely. Following many years of negotiation<sup>107</sup>, in 1965 the UK signed a bill to abolish the death penalty.

It is important to note that, among European politicians, in spite of their dynamic relationship with the social sciences, where the notion of abolishing the death penalty had been prevalent for many

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<sup>106</sup> De mänskliga Rättigheternas Väg – genom historia och litteratur, Ove Bring, 2011, s: 602-613

<sup>107</sup> The Abolition of Death Penalty Act (ADPT), 1965

years, the fear of public opinion, which viewed execution as a means of violence prevention, stopped them from openly expressing their views or approving laws against the death penalty. To this day, public opinion is an important factor in accepting or rejecting execution as a form of punishment. Therefore, the most effective way of abolishing the death penalty must be through a two-track approach. The first step is to raise public awareness and share information about the lack of impact execution has in decreasing rates of crime and violence. The second must be working with policymakers.

It is interesting to note that the European Convention on Human Rights that was approved in 1950 did not identify execution as a form of punishment. This was added following a substantial delay in 1983 in an amendment to protocol 6 of the Convention that abolished the death penalty in peacetime.<sup>108</sup> Much later, in 2002, in another amendment known as protocol 13, execution at all times, including during war, was abolished among the member states of the Council of Europe, a mere 15 years ago.<sup>109</sup>

What is important to note here is that changes in culture in our society and acceptance of societal norms and new policies require fundamental change in a society. Gradual changes in public opinion can result from a change of policy. Policymakers introduce new laws. Then economic and social conditions transform and finally the masses, meaning society as a whole, begin to accept these changes. Research in legal advances, the evolution of norms and constructs by political sociology and social sciences in general point to the fact that the political schools of the modern era, in particular humanists, social democrats, liberals, feminists and activists, in harmony with other groups and modern parties, are among the most important social forces demanding the abolition of the death penalty.

It is important to emphasise that the struggle for access to human rights for all is not a struggle for equal rights for all during the contemporary era, but a long term process that stems from the earliest days of groups and communities. However, it is only during the modern era that, following the formation of judicial and legal institutions, and those responsible to act as a check on institutions of power, that the influence of individuals and authoritarian processes have been diminished, and gradually, in democratic countries, human rights have been recognised as a political norm.

In other words, that democracy and human rights each necessitate the other is not natural or God-given. It is possible, even in democratic societies to regress to dictatorship and authoritarianism. In 21st century Europe, the possibility of extreme nationalists and those in favour of radicalisation such as the Front National in France, UKIP in the UK, the Sweden Democrats, the Danish People's Party in Denmark and Geert Wilders' Party in the Netherlands reversing progress on human rights and reinstating the death penalty is real. The election of new US President Donald Trump could also potentially reverse recent steps taken to reduce the use of the death penalty in America. However, the point is that human rights-friendly and democratic states must be re-enforced and protected by civil society organisations.

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<sup>108</sup> Council of Europe, Protocol No. 6 to The Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, as amended by protocol No.11, April 1983, [http://www.echr.coe.int/Documents/Library\\_Collection\\_P6\\_ETS114E\\_ENG.pdf](http://www.echr.coe.int/Documents/Library_Collection_P6_ETS114E_ENG.pdf)

<sup>109</sup> Council of Europe, Protocol No.13 to The Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, May 2002, [http://www.echr.coe.int/Documents/Library\\_Collection\\_P13\\_ETS187E\\_ENG.pdf](http://www.echr.coe.int/Documents/Library_Collection_P13_ETS187E_ENG.pdf)



## How to measure the rate of universal rights

Issuing and carrying out executions is an important indicator for the lack or presence of democracy, human rights laws, due process and functioning of judicial systems around the world. As of 2016, in 104 countries the death penalty is entirely abolished and in 36 countries it is temporarily banned. Therefore, in more than 75% of the member states of the United Nations, execution is no longer applicable or currently not being carried out. The number of those put to death in 2016 is estimated at more than 2,000. This rate does not include those executed in China due to a lack of reliable data. In addition, around 20,300 individuals await their execution.<sup>110</sup>

As mentioned above, execution or death sentences against citizens by the authorities in charge based on current bodies of law was a regular occurrence until the end of WWII. Tradition, social norms and practices, religion and ideology played an important role in the maintenance of capital punishment.

For instance, in Muslim majority countries, according to the laws of Islam, citizens can refer to the laws of qesas<sup>111</sup> and demand execution in cases involving murder. In such cases, other legal sanctions must be replaced by execution. In other words, two forms of punishment take place: legal/judicial and religious.

### Iran and juvenile executions

According to Iran's laws the age of criminal responsibility is 15 years for boys and 9 years for girls. If a crime takes place prior to the age of 18 the case is placed in a queue and usually executions are carried out after the accused reaches the age of 18. International human rights conventions condemn the execution of those who have committed crimes whilst below the age of 18. This means that issuing death sentences for those below the age of 18 can be argued to be illegal. Usually those below the age of 18 when committing a crime are sentenced to serve periods involving rehabilitation and education.

According to reports issued by the Human Rights Commission of the United Nations, Amnesty International and Human Rights Watch, along with Saudi Arabia, Pakistan, Sudan and Somalia, Iran continues to subject juvenile offenders to execution. This practice is in contradiction with the framework of the International Convention for Civil and Political Rights as well as the Convention on the Rights of the Child.

The most recent reliable news about rates of juvenile executions in Iran was published towards the end of January 2017 on the website of the UN Human Rights Commissioner and states that during 2016 at least 5 of those sentenced to death in Iran at the time of committing the 'crime' were not of legal age.<sup>112</sup>

There are no official statistics to determine the national or ethnic identity of those juveniles who are facing execution or have been executed, however, it is possible to argue that, due to the centralist policies of the Islamic Republic, marginal communities and regions, in particular Kurdistan,

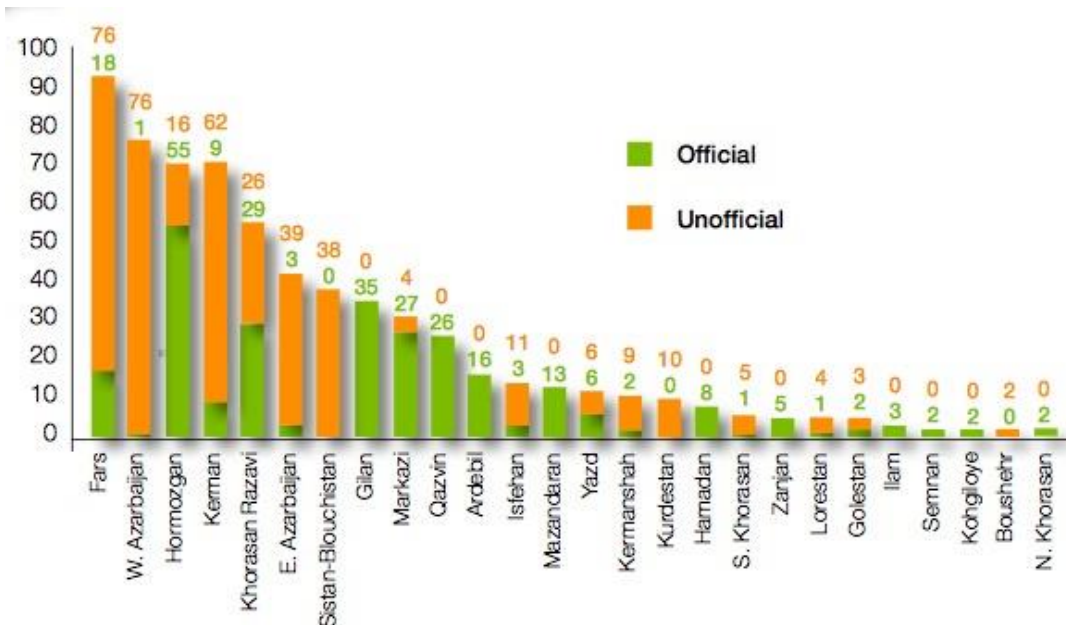
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<sup>110</sup> Amnesty International Sweden, Facts on the Death Penalty, December 2016, (in Swedish) <http://www.amnesty.se/vad-gor-vi/dodsstraffet/fakta-om-dodsstraffet/>

<sup>111</sup> The victim's family's legal right to retaliation, to demand the execution of the perpetrator in cases of murder

<sup>112</sup> UN Human Rights- Office of the High commissioner, UN experts urge Iran to halt juvenile's execution, January 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21093&LangID=E>

Khuzistan, Adharbaijan, Turkiminstan, and Baluchistan, may be disproportionately affected. Most of Baluchistan, much of Khuzistan, and Kurdistan face poverty and unrest is rampant in these parts of the country. It appears that the number of juveniles executed in Balushistan, Khuzistan and Kurdistan may be relatively higher than in other regions.



The diagram above shows the geographical distribution of the official (green) and unofficial/unannounced (yellow) executions in other parts of Iran than the in the Tehran/Karaj area. Prisons in the provinces of Fars (south), West Azarbaijan (northwest), Hormozgan (south) and Kerman (southeast) had the highest number of executions. Hormozgan province had the highest number of officially announced executions.

Islamic Republic officials share others' views. In his response to a question regarding juvenile executions, Alireza Jamshidi, the spokesperson of the judiciary, stated: "As you know we do not have execution for those below the age of 18. What appears in our laws for those between the ages of 15 and 18 is qesas. We have prepared a bill in this regard that in case of approval will be implemented." He added: "Our perspective regarding those whose age at the time of committing a crime may have been below 18 involves peace and reconciliation. Fortunately, in some cases, the case has reached an amicable end. With regards to the case you are questioning, he was above the age of 18."<sup>113</sup>

### Penal codes and Islamic punishments

Penal codes in Iran are in accordance with Islamic punitive laws. In other words, fatwas and legal processes that stem from 1,400 years ago. Since 2007 the process of approving a revised penal code has been ongoing and in 2013, after addressing concerns expressed by the Guardian Council, the revised code was approved by the Islamic Republic Parliament and has begun implementation. The greatest and most comprehensive challenge to the new penal code, much like the original penal code, is that of hadd<sup>114</sup>, qesas, death penalty and the age of criminal responsibility, set at 9 for girls and 15 for boys, stemming from Islamic law.

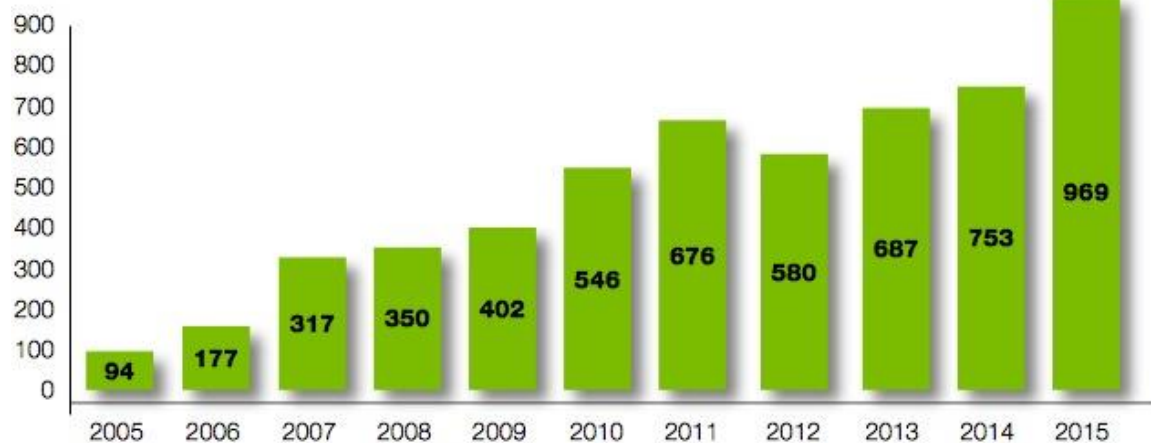
<sup>113</sup> Gooya News, Wednesday, June 2008, <http://news.gooya.com/politics/archives/2008/06/073008.php>

<sup>114</sup> Oxford Islamic Studies, A punishment fixed in the Quran and hadith for crimes considered to be against the rights of God. The six crimes for which punishments are fixed are theft (amputation of the hand), illicit sexual relations (death by stoning or one hundred lashes), making unproven accusations of illicit sex (eighty lashes), drinking intoxicants (eighty

Based on Article 78 of the new code, children and teens below the age of 12 who commit a crime are introduced to social workers, psychologists or educational and cultural institutions in order to receive training. However, youth between the ages of 15 and 18 who commit a crime face hadd or qisas which may result in execution after they reach the age of 18.

Despite the fact that in the revised Islamic penal code the legal and public nature of penal laws are emphasised<sup>115</sup>, lawmakers have determined punishments based on sharia laws, and since there are varying interpretations of Sharia among clerics, then the principle of equality before the law is violated.

Ayatollah Sanei has determined the age of maturity and legal responsibility at 13 years. In other fatwas physical characteristics have been noted in place of age. Ayatollah Fazel Meybodi states: “Maturity is an evolutionary and natural phenomenon and lawmakers cannot reject or validate it and say: a 9 year old girl is automatically mature.”<sup>116</sup> In summary, it can be stated that Islamic Republic penal codes are based on feudalist standards where clerics and judges make legal and penal pronouncements according to their own inclinations. Instances of miscarriages of justice, random sentences and inhumane punishments over the past four decades are rampant.<sup>117</sup> Subsequently, the number of executions over the past decade has grown at least ten-fold. Therefore, the struggle for the abolition of the death penalty and juvenile executions in Iran must continue more than ever before.<sup>118</sup>



Since the first annual report by IHR in 2008 the number of executions increased by about 300%. With 969 executions 2015 was the year with the highest number of executions since 1990. (Numbers prior to 2008 are reported by Amnesty International).

lashes), apostasy (death or banishment), and highway robbery (death). <http://www.oxfordislamicstudies.com/article/opr/t125/e757>

<sup>115</sup> Please see full English text of the revised code at: <http://www.iranhrc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

<sup>116</sup> Meybodi, F. 1995. “Puberty from Theological and Professional Perspectives”, Farzaneh Journal, Volume II, No.

<sup>117</sup> Please see the full text at: <http://www.iranhrc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

<sup>118</sup> Both charts are from the Iran Human Rights 2015 annual report available on-line at: [http://iranhr.net/media/files/Rapport\\_iran\\_2014-GB-120314-BD.pdf](http://iranhr.net/media/files/Rapport_iran_2014-GB-120314-BD.pdf)

## Fair trials for the accused in drug-related offences

Behrouz Javid-Tehrani

In recent years, Iran has been ranked as having the second highest number of death sentences in the world per year after China.<sup>119</sup> While the Chinese refuse to release official execution data, by comparing the populations of the two countries, it could be said that Iran has the highest rate of executions per capita. The majority of those executed in recent years in Iran were convicted of drug-related offences. Reports by Iran Human Rights (IHR) indicate that more than 2,500 prisoners charged with drug-related offences were executed in the past five years alone, which constitute about 70% of the total number of executions during this period.<sup>120</sup> Over the past two years, negotiations have begun at the highest levels of the judiciary, legislative and executive bodies about the abolition of the death penalty for drug-related offences and reforming the anti-narcotic laws, creating some hope for reducing the penalties received by the convicts. A bill has also been submitted to the Parliament in this regard, but there seems to be a long way to go before any legislation is implemented to rectify the situation. Reports prepared in recent years by IHR and other human rights organisations indicate that unfair trials are the biggest hurdle in the way of justice for this group of prisoners in Iran. In many cases, those accused of drug-related offences had no access to a lawyer throughout their detention and trial periods, or only met their court-appointed lawyer during the trial sessions. Moreover, some of the defendants who were able to appoint a lawyer, told IHR that their lawyers were not allowed to defend them during the trial. Overall, lawyers often cannot make any significant impact in such cases. Therefore, a significant reduction in the number of drug-related executions is unimaginable without fundamental reforms to the trial process for these prisoners.

### Executions for drug-related charges in Iran

#### Anti-Narcotics Law

According to current Iranian laws, the manufacturing, distributing, selling or trafficking of more than 5 kilograms of cannabis, marijuana, opium poppy, tar opium or burned opium in or out of the country is punishable by the death penalty. Also, anyone charged with smuggling more than 30 grams of heroin, morphine, cocaine, meth, chemical derivatives of morphine and cocaine or other chemical extracts of cannabis and cannabis oil shall be sentenced to death by execution. Prior to 2011, possessing, purchasing and selling some other drugs such as chemical extracts of cannabis and industrial drugs were not subject to the death penalty, but since 2011 these were also included in the law after an amendment was passed by the Expediency Council.<sup>121</sup> This amendment declared that anyone who possesses, purchases or sells more than 30 grams of cannabis or industrial drugs shall receive a similar punishment as for all varieties of heroin. This decision led to many new death sentences and a sudden rise in the number of annual executions.<sup>122</sup>

#### Legal proceedings

Until November 2015, persons convicted of drug-related offences, even those facing the death penalty, did not have a right to appeal similar to other judicial cases, and their verdicts became

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<sup>119</sup> Amnesty International, Death penalty 2015: Facts and figures, April 2015, <http://www.amnesty.org/en/latest/news/2016/04/death-penalty-2015-facts-and-figures/>

<sup>120</sup> Iran Human Rights Review, More Than 2500 People Executed for Drug Offences in Iran, <http://iranhr.net/en/statement/46/>

<sup>121</sup> An official's comment on the death penalty for drug traffickers; reported by Iranian Students' News Agency (ISNA), <http://goo.gl/vUFSyi>

<sup>122</sup> Iran's anti-narcotics law and its 2010 amendment, <http://irlaw.ir/wp-content/uploads/2015/07/mobareze-ba-mavad-mokhader.pdf>

executable immediately after approval by the Attorney General or the Head of the Judiciary. In November 2015, a unanimous order was passed on ‘the right to appeal to the Supreme Court against death penalties for defendants in drug-related offences,’ after which only the drug offenders who had received a death penalty obtained the right to request a retrial similar to other defendants in Iran’s judicial system.<sup>123</sup> As many of these prisoners have apparently been sentenced to death through unfair trials, there is hope that a retrial for those facing a death penalty could change the fate of many of these prisoners. However, IHR has reported a number of cases in recent months<sup>124</sup> where the death sentences of those convicted prior to November 2015 were executed without a retrial.

### **Short trials and ineffective lawyers**

Drug-related cases are dealt with in the Islamic Revolutionary Courts. The revolutionary courts were created on February 24, 1979, shortly after the overthrow of Iran’s monarchy and through the direct order of Ayatollah Ruhollah Khomeini with the aim of trying the previous government’s officials. These courts maintain lower transparency and human right standards than other public courts in Iran. Records of these court proceedings<sup>125</sup> show that, even in cases with more than one defendant, the defendants are convicted through very short trials, often concluded in only one session. In such cases, most of the defendants are presented by a court-appointed lawyer due to lack of financial resources. A number of these prisoners told IHR<sup>126</sup> that they had not even met their public defender before the trial. In such cases where appointed lawyers have been present, the judges have not allowed the lawyers to defend their clients effectively and have only allowed a written defence to be submitted. Mehrangiz Kar, a prominent Iranian lawyer, journalist and human rights activist currently living in the United States, said in an interview with the ‘No to Execution’ TV programme that in one instance an official from a security agency had asked her for a few packs of signed, blank power of attorney papers to be used for some defendants. This person did not provide any explanation regarding the charges of these individuals and only told her that she would never be able to meet her clients.<sup>127</sup>

### **Torture and coerced confessions**

Another important issue is the systematic violation of the rights of the individuals arrested for drug-related offences as well as their right to a fair trial. Many of the prisoners facing the death penalty have told IHR<sup>128</sup> that while they were detained at the ‘Headquarters for Combating Drugs’ (Soroosh 111-formerly known as Kahrizak), they were tortured in various ways and beaten with wooden sticks, hoses and cables, hung by their hands from the ceiling for hours while being beaten, or spent weeks in solitary confinement with handcuffs and shackles. All of these practices violate the basic rights of the detainees in order to put pressure on them and force them to confess; because the Islamic justice system, adopted by Iran’s legal system, relies mainly on confession by the accused and without a guilty plea, it is very difficult to convict the accused on the basis of available evidence.

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<sup>123</sup> Official gazette, unanimous vote no. 743 of the Supreme Court’s General Board on the subject of appeal of the death sentence to the Supreme Court by the accused for committing drug-related crimes, <http://rooznamehrasmi.ir/laws/ShowLaw.aspx?Code=8008>

<sup>124</sup> Available in the organization’s archive.

<sup>125</sup> Available in the archive of Iran Human Rights.

<sup>126</sup> Available in the organization’s archive.

<sup>127</sup> Episode 28 of ‘No to Execution’, an interview with Mehrangiz Kar, <http://www.youtube.com/watch?v=2VRXWe-M5f4>

<sup>128</sup> Available in the organization’s archive.

## Statistics

The total number of executions in Iran in 2015 was 969 cases, as recorded by the research and statistics division of IHR, of which drug-related offences accounted for 638 (66 percent).<sup>129</sup> Out of these numbers, 596 cases (61 percent) were not announced through official channels.<sup>130</sup> Also 57 cases of public executions were recorded in the same year, of which 5 percent were in relation to drug-related offences.<sup>131</sup> Obviously, these are only the statistics recorded by the human rights organisations collected despite the opaqueness in Iran's political and media environment, the constant suppression of human rights activists, undeclared or secretly carried out executions and the severe restrictions imposed on communication with prisoners. It is likely that the actual number of executions, particularly in the prisons of the Eastern provinces of Iran, are more than what human rights organisations have been able to record. Considering that in January 2011, one of the detainees who had been arrested on political charges was executed for 'selling and possessing drugs',<sup>132</sup> it could be assumed that more prisoners who were convicted with other charges were executed under this title. But since the identity of more than 70 percent of those executed have not been declared, this is impossible to prove. It is worth noting that, as part of a visit to Sistan and Baluchestan Province in February 2016, Shahindokht Molaverdi, the Vice-President for Women and Family Affairs, had said: "We have a village in Sistan and Baluchestan Province where every single man has been executed. The children of these families are potential drug traffickers as they would want to seek revenge and provide money for their families. There is no support for these people." These comments by Ms. Molaverdi were suppressed after she was summoned to the court following a complaint by Sistan and Baluchestan Province's Justice Department and there was no further mention of the issue or the village's name by official media or authorities.<sup>133</sup>

## The European Union, the United Nations and Iran in the fight against drugs

The United Nations Office on Drugs and Crime (UNODC) established with the aim of equipping governments to handle drug, crime, terrorism, and corruption-related issues, has provided significant financial and technological aid for Iran's counter-narcotics efforts.<sup>134</sup> However, most of this aid is used directly for the arrest and subsequent execution of small-scale drug traffickers. The London based NGO Reprieve wrote in its 2014 report: 'The UN's records show it has given more than \$15 million to 'supply control' operations by Iran's Anti-Narcotics Police, funding specialist training, intelligence, trucks, body scanners, night vision goggles, drug detection dogs, bases, and border patrol offices. UNODC projects in Iran have come with performance indicators including 'an increase in drug seizures and an improved capability of intercepting smugglers', and an 'increase of drug-related sentences'.<sup>135</sup> International human rights organisations have repeatedly asked UNODC to withdraw its support to Iran and to condition it on Iran's abolition of the death penalty for drug traffickers. Faced with these concerns, a number of European countries including the UK, Ireland and Denmark have chosen to withdraw their support for UN-Iranian counter-narcotics

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<sup>129</sup> Annual Report on the Death Penalty in Iran 2015 (page 11), <http://iranhr.net/media/files/report..2015.pdf>

<sup>130</sup> Annual Report on the Death Penalty in Iran 2015 (page 25), <http://iranhr.net/media/files/report..2015.pdf>

<sup>131</sup> Annual Report on the Death Penalty in Iran 2015, <http://iranhr.net/media/files/report..2015.pdf>

<sup>132</sup> Radio Farda, Dutch-Iranian woman accused of "drug trafficking" was executed. [http://www.radiofarda.com/a/f11\\_iran\\_postelection\\_execution\\_iranian\\_dutch\\_woman/2291069.html](http://www.radiofarda.com/a/f11_iran_postelection_execution_iranian_dutch_woman/2291069.html)

<sup>133</sup> Mehr News, Support program for the families of executed persons in the sixth development plan/ 20-page Gender Equity Index, <http://goo.gl/KRfJ3F>

<sup>134</sup> United Nations Office on Drugs and Crime (UNODC), ADAM (Automated Donor Assistance Mechanism), <http://www.unodc.org/unodc/en/global-it-products/adam.html>

<sup>135</sup> Reprieve, UN must freeze counter-narcotics aid to Iran in wake of new executions, say rights groups, December 2016, <http://www.reprieve.org.uk/press/un-must-freeze-counter-narcotics-aid-to-iran-in-wake-of-new-executions-say-rights-groups/>

operations.<sup>136</sup> Despite the European Union's reliance on Iran's strict anti-narcotic measures to prevent the flow of illicit drugs to Europe, the European Union has combined its support for Iran's counter-narcotic trafficking programmes with humanitarian efforts in recent years by increasing pressure on Iranian authorities to stop the execution of drug traffickers. The effects of these pressures became apparent after the government of President Hassan Rouhani took office, which was impatiently awaiting a rapprochement with the West, particularly with the European Union. The current ongoing negotiations in Iran's judiciary and executive bodies to remove the death penalty for drug traffickers could be regarded as an outcome of these efforts.

### Preventing drug trafficking

The Iranian authorities have repeatedly admitted that executions have not deterred drug trafficking.<sup>137</sup> Since Iran falls on the drug smuggling route from Afghanistan to Europe and considering the severe poverty and unemployment in the border regions of both Iran and Afghanistan, there is a need to combat poverty and unemployment as an effective measure to combat drug trafficking. It is also important to focus on rehabilitation programmes for drug addicts in Iran who are often abused because of their addiction and employed for drug trafficking. This would also help reduce demands and vulnerabilities and could be an effective measure in combating drug trafficking. Legalisation of soft drugs and alcoholic drinks could also help prevent organised crime and reduce the demand for heavier substances, but such a goal is unimaginable for Iran in the short term.

Over the past two years and as a result of the pressures exerted by international organisations, Iran's judicial authorities have begun addressing the need to change the laws in order to lower the number of executions. Accordingly, the Iranian Judiciary presented a bill entitled 'removing the death penalty for drug-related offences' to the Parliament. The bill, which was later renamed 'reducing the death penalty for drug-related offences', is currently under review by the Parliament's judiciary committee. In his recent statements, chairman of the Parliament's Judiciary Committee, Allahyar Malekshahi announced that in the bill, the death penalty will remain in place for four categories of drug-related offences; including: 'organized and gang crimes', 'armed drug trafficking', 'people who were forgiven once but repeated the offence', and 'bulk distribution and purchase of narcotics'.<sup>138</sup> On November 23 2016, the Parliament acknowledged the immediacy of the proposed bill, raising hopes for its approval.<sup>139</sup> However, human rights groups believe that despite its positive aspects, the bill will not reduce the number of executions in Iran significantly. They are critical of some clauses in the bill, which allow the execution of four categories of drug offenders: where a partner in crime or at least one of the participants in the crime has carried firearms or used any form of weapon, where the accused person has been the head of an organised crime band as referred to in Article 18 of this law or Article 130 of the Islamic Penal Code, where the accused person has previously been sentenced to death or 10 years or more of imprisonment or has spent at least 5 years in prison for drug-related offences, and where the accused has manufactured or imported the

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<sup>136</sup> Human Rights Watch, UN: Freeze Funding of Iran Counter-Narcotics Efforts, December 2014, <http://www.hrw.org/fa/news/2014/12/17/265682>

<sup>137</sup> Tasnim News, Deputy Judiciary: executions have not deterred drug trafficking, <http://www.tasnimnews.com/fa/news/1395/07/18/1207852/%D8%A2%DB%8C%D8%A7-%D9%82%D9%88%D9%87-%D9%82%D8%B6%D8%A7%D8%A6%DB%8C%D9%87-%D8%B7%D9%86%D8%A7%D8%A8-%D8%AF%D8%A7%D8%B1-%D8%B1%D8%A7-%D8%A7%D8%B2-%DA%AF%D8%B1%D8%AF%D9%86-%D9%82%D8%A7%DA%86%D8%A7%D9%82%DA%86%DB%8C%D8%A7%D9%86-%D8%A8%D8%B1-%D9%85%DB%8C-%D8%AF%D8%A7%D8%B1%D8%AF>

<sup>138</sup> Mehr News Agency: death penalty for four categories of drug offenders/constraints in executing the sentences, <http://goo.gl/ISoZVX>

<sup>139</sup> Alternative sentence to replace death penalty for drug offenders, <http://goo.gl/MEHnLp>

items enlisted in Article 8 of the law beyond a certain amount.<sup>140</sup> This is while the amount of narcotics whose manufacturing or import would result in a death sentence has not yet been specified. However, there is still a long way to go before the bill's approval. It needs to be approved by the Guardian Council before it can be passed, who might suggest more changes to the bill. Considering all of these legal barriers, as long as the detained persons do not have immediate access to a lawyer and are systematically tortured while in detention, reforms and changes to anti-narcotic laws are not enough in order to reduce the number of executions. For better implementation of justice and to lower the number of executions, the Iranian Judiciary should consider the issue of fair trials and fundamentally review the justice system. The judicial enforcement authorities and the police must be held seriously accountable for the torture and physical and psychological pressures applied to obtain coerced confessions. Prisoners should have access to a lawyer immediately after their detention and the lawyers' role in the courts should become more significant. Meanwhile, the European Union, which has previously exerted some pressures on the Iranian authorities, should continue pushing for changes in the law as well as fundamental reforms to the judicial process, ensuring fair trials for the accused in drug-related offences.

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<sup>140</sup> The Iranian Parliament's plan is positive and historic, but it will not lead to significant reduction in number of executions, <http://goo.gl/XT7k5y>



## Risking Life to Earn Bread

Rebin Rahmani

It was dark and a group of kulbars (border couriers) were quietly walking on a dirt road by the border checkpoint. Suddenly the border guards at the checkpoint, who were equipped with floodlights, became aware of the presence of the kulbars.

The border guards began shooting. A kulbar was wounded and some horses were killed in the shooting. Mohammad, the last man walking in the group, was hiding in a corner. For a moment, he saw the floodlight illuminating his horse, and heard the guard loading his gun. Suddenly, Mohammad jumped in front of his horse and shielded it, while he continued walking slowly. Other men, who had abandoned their horses and were fleeing, shouted: what are you doing Mohammad? Run! They will kill you too! But Mohammad replied: this horse and its load are all I have. I will either die or pass this route. Mohammad was lucky that night. Both he and his horse reached their destination safely that night.

This is only one of the tens of such tragic recollections that eye-witnesses and kulbars shared with me last year, during the making of a documentary about the situation of Kurdish kulbars. The issue of killing of Kurdish kulbars and border tradesmen has come to the attention of the media and international human rights organizations in recent years. But it should be noted that it is not a recent issue. Even before the rise of the Islamic Republic, the illegal transit of goods and the problems associated with it had been a part of the day-to-day lives of Kurdistan's marginalized border area residents.

The government's security concerns in this area, the lack of sufficient investment and the resulting poverty and unemployment, particularly in recent years, have made the kulbars and their killings one of the main concerns for social and political activists. While the government could resolve many of the problems facing these areas through proper policymaking and investment, instead it has resorted to the most violent and brutal means, which has resulted in the killing of kulbars –victims of the government's security concerns— rather than proposing remedial solutions.

In July this year, Seyyed Ahsan Alavi, the Sanandaj representative in the Parliament, announced in a meeting with media reporters: "Currently Kordestan province ranks 29th province in the country in terms of per capita income. Unfortunately the province's ranking in other sectors and indexes is no better. For example, Kordestan province ranks 24th in terms of value added and 26th in terms of value added in the mines and industry sector." Expressing his concerns regarding the worrying rate of unemployment in the province, he added: "The unemployment rate in Kordestan province is very worrying. Contrary to the unrealistic statistics announced by the authorities, unemployment in the province has reached more than 45 percent."

Moreover, based on the Household Income and Expenditure Survey conducted by Iran Statistics Center for the year 2015-16, which was published in September this year, the lowest household income was recorded in Ilam province with the average annual household income of 19,798,000 tomans (around \$4,900), followed by Kordestan province with 20,145,000 tomans (around \$5,000).<sup>141</sup>

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<sup>141</sup> Statistical Centre of Iran, Household Income and Expenditure Survey 2015-16, <http://www.amar.org.ir/%D8%A2%D9%85%D8%A7%D8%B1%D9%87%D8%A7%DB%8C-%D9%85%D9%88%D8%B6%D9%88%D8%B9%DB%8C/%D9%87%D8%B2%DB%8C%D9%86%D9%87-%D9%88-%D8%AF%D8%B1%D8%A2%D9%85%D8%AF-%D8%AE%D8%A7%D9%86%D9%88%D8%A7%D8%B1>

The official statistics announced by the government themselves indicate the dire condition of unemployment and poverty in these regions. Therefore, people enter jobs such as becoming border couriers or tradesmen, not so much out of choice but of desperation.

The killing of kulbars is justified with the excuse of preventing smuggling and its subsequent economic loss to the country. This is while the highest volume of smuggled transit goods currently enter the country through the government mafia via the southern Iranian ports. According to officials from the Task Force to Combat the Smuggling of Commodities and Currency, “the estimates show that between 50 to 60 percent of the smuggled goods are imported through customs.” Similarly, the head of Kurdistan’s police had earlier announced that “only 3 percent of the smuggled goods enter the country via the Iran-Iraq border.” But these statements have not prevented the government forces from violently targeting the kulbars. In recent years, the killing of kulbars has become one of the most tragic stories from the region.

In continuation of such policies, a project was launched in 2006 with the aim of closing the borders to combat smuggling, which resulted in a worrying rise in the killing of kulbars and tradesmen. The increase in the number of victims and a number of protests by people in various cities urged the government to consider creating official channels for couriers to import goods. Finally, in the last few years, ten border routes – Sileh, Shushemi, Sumar, Tileku, Maleh-Khvor, Dror, Hangeh-Zhale, Saif, Haji Omran, and Qasemerash – were introduced by the Ministry of Interior as official borders for kulbars. Residents of the border regions and particularly the kulbars were issued trade cards, which allow them to import a limited quantity of commodities through Kordestan’s borders to sell in the border markets. Based on this law, each kulbar who is issued a trade card is allowed to legally import up to 1,500,000-toman (around \$375) worth of commodities every six months. This means that each kulbar can earn an income of only 250,000 tomans per month (around \$60). This is far below the poverty line as defined by the government.

The Kurdish term ‘kulbar’ consists of: ‘kul’ meaning back and ‘bar’ meaning carrying. The term is used to describe people in the border regions who carry, in return for a small amount of money, imported goods including cigarettes, tea, home appliances, fabrics, mobile phones and occasionally alcoholic drinks on their backs or with the help of riding animals such as horses and mules, through impassable routes to border villages and cities. Most of these goods are purchased by businessmen in Tehran or countries such as the United Arab Emirates or China, while the kulbars only earn a meagre transportation fee.

The ‘tradesmen’ are people who collect the goods imported by kulbars from the border cities and villages and ship them with various vehicles to the central cities of Iran. The kulbars’ and tradesmen’s ages range from 13 to 70 years old and among them one can find both the illiterate and college graduates, who have become kulbars or tradesmen due to lack of job opportunities.

Over the past few years, with the development of the civil society in Kordestan, the killings of kulbars and tradesmen have been reported by human rights organizations and the media on a daily basis. Based on the data collected by these organizations, some 184 Kurdish kulbars and tradesmen have been killed in the past three years alone, and another 173 wounded. Also 22 Kurdish kulbars have lost their lives as a result of falling from the mountain, getting caught in avalanches, hypothermia or drowning in the border rivers.<sup>142</sup>

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<sup>142</sup> Kurdistan Human Rights Network, 2015 Annual report on violation of human rights of Kolber workers in Iran, <http://kurdistanhumanrights.net/en/?p=747>. See also the Iran Human Rights Report, Dangerous Borders, Callous Murders, [http://persian.iranhumanrights.org/1391/06/dangerous\\_murders/](http://persian.iranhumanrights.org/1391/06/dangerous_murders/)

While their killing has no legal justification even according to the Islamic Republic's laws, members of this vulnerable group of Kurdish society continue to be killed every day. According to the criteria and procedures specified in Article 3 of 'The Law on the Use of Weapons by Armed Forces', the officers must first give an oral warning to the trespasser, then, if necessary, shoot into the air, and then target the lower body if they must fire. They are only allowed to shoot the upper body parts if these measures have been ineffective or if they believe the trespasser is armed and dangerous and there is an imminent risk of attack by him. Since the kulbars are harmless tradesmen and not aggressive attackers, the use of weapons against them is a breach of law.

Kurdish human right activists argue that the killings are systematic and reject claims by government officials that the killings are arbitrary actions by the border guards. Their arguments are based on the facts that firstly, the killings are continuing on a daily basis and secondly, when the wounded victims and relatives of the killed kulbars approach the relevant authorities such as the military courts demanding justice, they are faced with verdicts that demonstrate unconditional support for the military officers.

According to the existing laws, none of these complaints have so far led to legal prosecution of the officers accused of arbitrarily killing the kulbars. The only result in some cases has been the payment of blood money to the injured persons or the victims' families from the police budget or the treasury, in accordance with Article 13 of 'The Law on the Use of Weapons'. Even in some cases, the police have refused the payment of the money and tried to obtain the victim's family's consent by threatening them or applying pressures.

Unfortunately, so far the victims' and their families' call for justice against the unlawful and inhumane actions of the military forces has not only failed to cause any punishment for these officers or prevent the killings, but in some rare instances the cases have been closed, partly through the payment of blood money but mostly by obtaining forced consent from the families. As a result, the military officers continue targeting and shooting the kulbars without any fear of punishment.

Another important issue to consider is the critical situation of the victims' families, who live in miserable conditions due to loss of the family's breadwinner. In most cases, the military officers refuse to return the victim's corpse without obtaining a written consent from the family, as a result of which, except in one case in recent years, the victim's family has not received any blood money. In these families, after the death of the breadwinner, the responsibility of earning a livelihood is transferred to the younger family members. In such circumstances, the children are forced to leave schools to work as kulbars. Unfortunately, in such families, children become the main victims of the policies of the Islamic Republic in Kurdistan.

## Resources

*The Resources section provides access to further information on the themes addressed in editions of the Iran Human Rights Review. The links below are to resources provided by third parties. The Foreign Policy Centre and the editors of the Iran Human Rights Review do not have any responsibility for their content and the information provided does not necessarily represent the views of the Foreign Policy Centre.*

Observing the Accused Person Interrogation Rights in Pretrial Period in Iran's Law and the International Charter of Human Rights by Feizollah Salehi Taebloo and Manuchehr Tavassoli Naini in the Journal of Politics and Law.

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Impartiality and Fairness in Iran: Judiciary, Lawyers, Bar Association and International Treaty Obligations by the Human Rights in Iran Unit, University of Essex.

<http://www.essex.ac.uk/hri/documents/brief-impartiality-and-fairness-in-iran.pdf>

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Annual reports on the death penalty 2008-2015 produced by the organisation Iran Human Rights, including many capital cases where due process is violated. <http://iranhr.net/en/reports/#/>

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<http://www.theguardian.com/artanddesign/gallery/2016/jan/08/inside-iran-jail-where-children-face-execution-in-pictures>

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General Principles of Law and International Due Process: Principles and Norms Applicable in Transnational Disputes, Charles Kotuby Jr. and Luke A. Sobota, Oxford University Press 2017. <http://global.oup.com/academic/product/general-principles-of-law-and-international-due-process-9780190642709?cc=us&lang=en&>

Access to Justice in Iran: Women, perceptions, and reality, Sahar Maranlou, Cambridge University Press, 2015.

[http://books.google.co.uk/books/about/Access\\_to\\_Justice\\_in\\_Iran.html?id=sqYaBQAAQBAJ&redir\\_esc=y](http://books.google.co.uk/books/about/Access_to_Justice_in_Iran.html?id=sqYaBQAAQBAJ&redir_esc=y)

Video clip of a short presentation by Nasrin Sotouderh about due process and juvenile cases from the Centre for Supporters of Human Rights. <http://cshr.org.uk/ارسدیدگی-ی-در-دادرسسی-آپ-ین>

Article published in Iran's Ettela'at Newspaper about rights of the accused in the revised Penal Code in Iran by Qader Sattarpour. <http://www.ettelaat.com/etiran/?p=122500>

The Reinforcement of Rights of Accused in the Primary Investigation Stage of Criminal Procedure Law, Muhamad Mehdi Saghian, Spring 2014, Criminal Law Research Journal, Allameh Tabataba'i University. [http://iclr.atu.ac.ir/article\\_663.html](http://iclr.atu.ac.ir/article_663.html)

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