

THE IRAN NOTES

The Iran Notes is a series of short thematic briefing notes produced by FIDH and LDDHI to analyze the key aspects and root causes of Iran's ongoing human rights crisis. For feedback: asia@fidh.org.

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IRAN'S JUDICIARY: A TOOL OF REPRESSION AND FEAR

The Iranian judiciary has a long history of using its security-oriented and suppressive role to silence the political opposition, criticism of its human rights record, and other peaceful forms of dissent.

The judiciary is controlled and administered by clerics, who have no proper legal and judicial qualifications and training, and its jurisprudence is based on a specific reading of the Shiite Islamic principles. The judges are a mix of clerics and non-clerics in the General Courts of Justice. The cleric judges are appointed on the basis of their theological studies, while the non-clerics hold university degrees in judicial fields. The Iranian Constitution, which came into effect after the 1979 Islamic revolution and was last amended in 1989, describes the judiciary as "an independent power that shall support individual and social rights and be responsible for ensuring justice"(Article 156). However, the independence of the judiciary is negated by other constitutional provisions: Article 57, which empowers the Supreme Leader to supervise and exert control over the executive, legislative, and judicial branches; and Article 157, which gives him the power to appoint the Head of the Judiciary for five years.

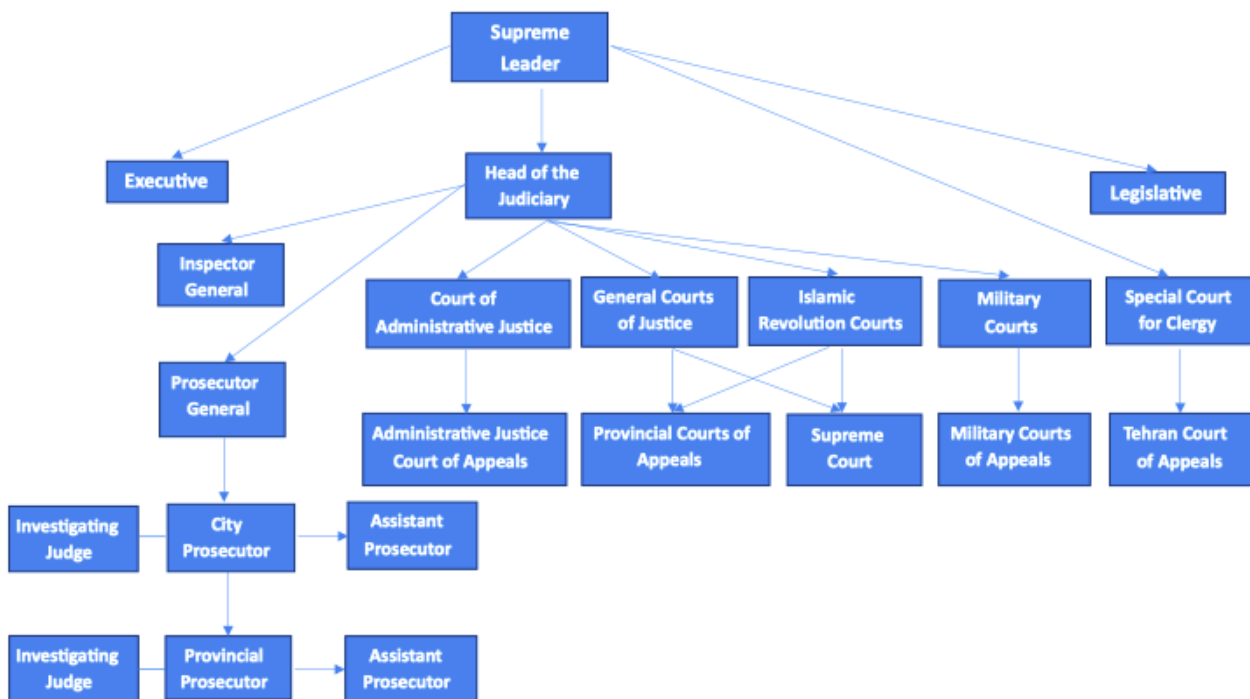
Cleric at the helm: The head of the judiciary

The Head of the Judiciary is the most senior judicial official and bears ultimate responsibility for the administration and supervision of the justice system, including the appointment and dismissal of judges. The Head of the Judiciary also selects the candidate pool for the President's appointment of the Minister of Justice, who is not allowed to interfere with judicial issues and is responsible for the executive's relations with the judiciary and legislative branches. The Head of the Judiciary also appoints the President of the Supreme Court and the Prosecutor General, who must be Islamic jurists. The current Head of the Judiciary, appointed by Supreme Leader Ayatollah Khamenei on 1 July 2021, is Hojattolislam Gholamhossein Ej'ei, who has occupied many high-ranking positions within the judiciary over the past four decades.

Women: Judges in name only

Despite their title, female judges assume only advisory or administrative positions, or other judicial positions, such as assistant prosecutors. After the 1979 revolution, all female judges posted to courts throughout the country were dismissed, and there were no female judges thereafter. However, the need to have women in the judiciary to handle cases involving women led the government to recruit women as judges. Although the Constitution does not specifically bar women from judgeship, the 1982 Law for Selection of Judges stipulates that judges are selected among "men," a discriminatory requirement that effectively bars women from being appointed as judges having the same powers as their male counterparts. An amendment to this law in 1985 provided for the recruitment of women with judicial education as advisors in civil courts. As a result of another amendment in 1995, they could work as advisors in the Court of Administrative Justice and as investigating judges. In 2011, the Family Protection Law gave them the title of judge in family courts, where they can write rulings, but cannot independently issue them, because they would be invalid without a male judge's signature and endorsement. In December 2017, it was reported that there were 920 female judges in the country, accounting for 8.5% of all judges. In May 2023, a regime-affiliated academic revealed that there were 1,121 female judges in the country (1).

Chart of Iran's judiciary



Constitutional and unconstitutional courts

In addition to the General Courts of Justice, which are formally similar to courts in secular systems, the only other tribunals envisioned in the Constitution are: 1) military courts (Article 172 of the Constitution), which handle crimes committed in connection with military or security duties by members of the Army, the Gendarmerie, the police, and the Islamic Revolution Guards Corps (IRGC); and 2) the Court of Administrative Justice (Article 173), which handles the complaints, grievances, and objections of the people with respect to government officials, organs, and statutes. The Court of Administrative Justice is headquartered in Tehran and has offices in all provincial capitals to facilitate people's access to the court. Judges of all three above-referenced courts are appointed by the Head of the Judiciary.

Two other types of tribunals have been set up without any constitutional basis, to investigate certain categories of crimes: the Special Court for Clergy (SCC) and the Islamic Revolution Courts (IRCs). The SCC was established at the behest of Ayatollah Khomeini in June 1979 initially to handle cases involving clerics who had cooperated with the former regime. The court adjudicates exclusively cases involving alleged criminal offenses committed by clerics or other people related to the clergy. The court has branches in 10 cities throughout the country - Tehran, Qom, Mashhad, Isfahan, Shiraz, Ahvaz, Tabriz, Hamedan, Kerman, and Rasht. The Supreme Leader appoints the SCC prosecutor and president, and the latter appoints other SCC judges based on the Supreme Leader's opinion.

IRCs lack independence, competence, impartiality, and transparency

The IRCs have played a significant role in suppressing all forms of protest for several decades. They started operating on 15 February 1979, immediately after the Islamic revolution, but were officially established only on 24 February 1979, at the order of Ayatollah Khomeini. After a few years, the IRCs were included in the structure of the judiciary through Article 297 of the Criminal Procedure Code. Article 303 of the Criminal Procedure Code gives IRCs jurisdiction over certain categories of offenses under which political opponents have been charged. These offenses include: 1) procuring weapons and explosives to overthrow the Islamic Republic of Iran (IRI) (Article 187 of the Islamic Penal Code); 2) moharebeh (Article 279) (2); 3) corruption on earth (Article 286) (3) ; insurrection (Article 287) (4) ; 4) spying on behalf of foreigners (Article 502); 5) insulting the founder of the IRI and the Supreme Leader (Article 514); and 6) gathering and collusion against the IRI (Article 610).

Although formally in the fold of the judiciary, the IRCs have frequently operated outside the scope of the law, overseeing summary trials and failing to comply with due process, by such acts as by not allowing defendants to have lawyers or interfering with the work of lawyers by withholding information and documents. IRCs are notorious for delivering harsh verdicts and have been responsible for imposing death sentences on at least 25,000 people, including several thousand political activists during more than four decades. IRC judges are mostly clerics who do not have any judicial qualifications and training and are appointed by the Head of the Judiciary to their positions based on their non-academic theological background. Some IRC judges are laypersons who received a degree in law.

Cases handled by IRCs are adjudicated by a single judge, who is not impartial and, in most cases, acts as both judge and prosecutor. If the case attracts international attention or if certain parts of the hearing are televised for specific domestic purposes, a prosecutor would also be present, in order to give the appearance of a proper court and more backing to the judge. In that case, the defendants would effectively face two prosecutors. The overwhelming majority of the trials held before the IRCs are not open to the public. Information on the trials is usually scant and disclosed at the entire discretion of the IRCs.

Formally, the Office of the IRC assigns the cases to specific branches of the IRC. While many branches of the IRC handle mostly drug-related cases, cases involving the above-referenced offenses are generally referred to a few hand-picked branches, the judges of which invariably carry out the wishes of the security and intelligence agencies. Observation of IRCs over the past three decades shows that many of the cases in which the defendants faced death sentences or lengthy (i.e. mostly from five years upwards) prison terms, were referred to IRC Branches 15, 26, 28, and 29 in Tehran (5). In other cities, IRC Branch 1 of the city has often taken up such cases.

Islamic sources, fatwas, and “judge’s knowledge”

Judges are required to adjudicate each case on the basis of the codified law. However, in cases of absence of codified law, judges must deliver their judgment on the basis of “authoritative Islamic sources and authentic fatwa” (Article 167 of the Constitution). In some cases, judges cited Ayatollah Khomeini’s treatise Tahrir ul-Vassileh to issue sentences. Pursuant to Article 211 of the Islamic Penal Code, judges have broad discretion to sentence defendants based on an arbitrary provision known as “judge’s knowledge,” which means the judge knows that the offender has committed the offense. Judges frequently invoke this provision, including to impose death sentences.

Fair trial rights denied

The enjoyment of various constitutional rights closely connected with the right to a fair trial is conditional upon “compliance with Islamic tenets” (Article 20 of the Constitution). Such rights include: the right to equal protection by the law (Article 20); the right to recourse to courts (Article 34); the right to counsel (Article 35); the right to be sentenced in accordance with the law (Article 36); the right to the presumption of innocence (Article 37); and the prohibition of torture (Article 38). Article 38 prohibits torture only “for obtaining confession and/or information.” However, courts generally dismiss allegations of torture and admit as evidence confessions obtained under torture.

The judiciary routinely disregards international standards of fair trial and due process for defendants facing criminal charges. An investigating judge, in close liaison with the Office of the Prosecutor, rather than a court, issues summons and arrest warrants. Human rights defenders, civil society activists, and political dissidents have been frequently arrested without an arrest warrant or by means of pre-signed arrest warrants and remained in detention for months.

In addition, Articles 190 and 191 of the Criminal Procedure Code authorize the investigating judges not to disclose important information to defendants and their lawyers, thus preventing them from preparing an adequate defense. Prosecutors in General Courts of Justice may decide to refer investigations of cases to pre-trial investigating judges, or to assistant prosecutors. Investigating judges decide whether cases are referred to the court for trial or dropped.

In the IRCs, cases are usually prepared by security and intelligence agencies, such as interrogators from the Ministry of Intelligence or the Intelligence Unit of the Islamic Revolution Guards Corps. In the IRCs, defendants often have no access to lawyers during pre-trial investigations and lawyers of their choosing. In IRCs’ trials against human rights defenders, civil society activists, and political dissidents, charges are rarely dropped. Independent lawyers who take up cases of human rights defenders, civil society activists, and political dissidents before IRCs are routinely targeted, detained, charged, tried, and sentenced to lengthy prison terms, severely restricting the ability of defendants to appoint lawyers of their own choosing.

Bogus appeals

Courts of appeals regularly fail to handle cases impartially. Appeals against sentences of death, amputation, life in prison, prison terms exceeding 10 years, fines exceeding 360 million rials (about US\$8,500) (6), expropriation of entire assets of persons, rulings in political and press-related offences fall under the jurisdiction of the Supreme Court (Article 428 of the Criminal Procedure Code), which has 52 branches across the country, including 45 in Tehran. Supreme Court judges are appointed by the Head of the Judiciary.

Appeals against all other rulings issued by the General Courts of Justice and the IRCs fall under the jurisdiction of Provincial Courts of Appeals, which are established in all provincial capitals. Military courts and the Court of Administrative Justice have their own courts of appeals.

Like cases adjudicated in General Courts of Justice, appeals filed in cases heard before IRCs are heard before Provincial Courts of Appeals. In many cases, rulings of the IRCs have been referred to Branches 36 and 54, or other “friendly” branches of the Tehran Province’s Court of Appeals, if the authorities were intent on upholding convictions of defendants. Branches of the Supreme Court examining appeal cases are rarely reported in the media. Supreme Court Branches 9 and 39 have been known to examine death-penalty cases (7).

References

- 1 Iranian Students News Agency, Deputy director of human resources of the judiciary: 908 people will join the judiciary by year’s end, 15 December 2017; <https://www.isna.ir/news/96092413086/>; Iranian Students News Agency, 1,121 female judges and 8 mayors in the country, 30 May 2023; <https://www.isna.ir/news/1402030906194/>
- 2 Article 279 of the Islamic Penal Code defines moharebeh as “Taking up arms against life, assets or honor of the people or with the intent to intimidate them in a way that causes insecurity [...]”
- 3 According to Article 286 of the Islamic Penal Code corruption on earth applies to “anyone who commits a crime on an extensive level against the physical integrity of others, the 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 centers or assists in them [...]”
- 4 According to Article 278 of the Islamic Penal Code, “insurgents are members of any group that stages armed uprising against the Islamic Republic of Iran.”
- 5 Many of the judges of the IRC in Tehran and other cities have been subjected to restrictive measures by the European Union, the United States, and the United Kingdom under their respective human rights sanctions’ regimes.
- 6 Using the lowest publicly known official exchange rate (US\$1 - 42,000 rials). The current black market rate is approximately US\$1 = 450,000 rials.
- 7 Judge Ghassem Mazinani at Branch 9 upheld the death sentences of three protesters who were executed on 19 May 2023.