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RIGHTS OF DETAINEES AND ACCUSED IN THE LEGAL SYSTEM OF ISLAMIC REPUBLIC OF IRAN

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice.

"Democracy is just a word. You have to give it meaning."

-- Ramsey Clark

Background: The Constitution of the Islamic Republic of Iran was adopted by referendum on October 24, 1979 and was amended on July 28, 1989. The Constitution establishes the framework in which the rights of the Iranian people can and should be protected. Article 3 of the Constitution requires the government to “direct all its sources”¹ to “ensure political and social freedoms within the framework of the law”² and “to secure the diverse rights of all citizens, both women and men, and to provide legal protection for all, as well as the equality of all before the law.”³

There are several legal principles and provisions in Iranian’s legal regime, including sources under international and national law, that protect detainees and accused persons.

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¹ Article 3, the Constitution of Islamic Republic of Iran (the “Constitution”).

² Article 3.7, *id.*

³ Article 3:14, *id.*

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On June 24, 1975, Iran ratified the *International Covenant on Civil and Political Rights* (“ICCPR”) containing principles that protect detainees and accused persons.⁴ As a member of the United Nations, Iran is also bound by the *Universal Declaration of Human Rights* which in turn articulates the rights owed to all detainees. These treaties are binding on Iran and incorporated by ratification into its domestic law. Article 9 of the Iranian Civil Code, international conventions that have been ratified pursuant are equal to any law passed by the parliament.

The *Islamic Penal Code of Iran* (“*Islamic Penal Code*”) and *Code of Procedure for Public Courts and Revolutionary Tribunals in Criminal Matters* (“*Code of Criminal Procedure*”) also include provisions that guarantee implementation of those rights by law enforcement officers.⁵

Enforcement of these legal safeguards provided for detainees and accused persons, however, has faced many impediments due to the prevalence of corruption in Iran. While these protections may not be implemented to the full extent of the law, knowledge of these principles is nevertheless an important precursor to judicial and political recognition. This document provides a brief look at the rights owed to persons subject to detention and arrest under Iranian law. This paper is not intended to be an exhaustive or comprehensive understanding of all legal rights detainees enjoy under Iranian law. As such, a lawyer familiar with Iranian law should be immediately consulted if you know anyone who is or may be subject to detention in Iran.

⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (1967).

⁵ Article 15 of the *Code of Criminal Procedure* defines the law enforcement officers; The *Islamic Penal Code* is applicable to anybody detained within the borders of Iran. See Article 3 of the *Islamic Penal Code*. Article 4 of the *Islamic Penal Code*, also, extends its jurisdiction to Iranians who commit a crime abroad.

I. The Presumption of Innocence

Article 37 of the Constitution expressly states that “[i]nnocence is to be presumed, and no one is considered guilty of a charge unless his or her guilt has been established by a competent court.” This principle is recognized in almost all civilized countries as one of the most important principles in the criminal law and shifts the burden of proof to the prosecutor. While in U.S. courts, the government is required to prove guilt “beyond a reasonable doubt”, the standard of the burden of proof, however, is not articulated under law and has been subject to varying interpretations.

II. The Principle of Legality of Crimes and Non-Retroactivity of Punitive Provisions

The principle of “legality” is articulated in Article 36 of Iran’s Constitution. It states that “[a] sentence to punishment and its execution must only be by the decision of a competent court, and by virtue of the law.” This right is consistent with Article 9(4) of the ICCPR which states that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.:

Moreover, Iranian law protects persons from being punished for an act which was not unlawful at the time in which it was committed. The principle of non-retroactivity that completes the principle of legality is spelled out in the Constitution. Article 169 of the Constitution states that “no act or omission may be regarded as a crime with retrospective effect on the basis of a law framed subsequently.”

This important principle, however, in some instances has been violated in the *Islamic Penal Code*. For example Article 638 of the *Islamic Penal Code* does not make a distinction between *haram* (an act forbidden under Islamic jurisprudence) that is not defined in the law and

“illegal acts.”⁶ In other words, an individual may be subject to criminal punishment for a crime that is not penalized under Iranian law, but which for the judge determines is *haram*. The principle of legality guarantees that every person would be able to recognize a punishable action.

Nevertheless, the exact scope of *haram* acts is not defined in the law and a judge should refer Islamic jurisprudence to find whether an act is *haram* and therefore punishable or not. This might result in jeopardizing detainees’ rights and it is against the principle of legality.

III. The Pre-Trial Rights of Detainees and Accused Persons

The Right of Habeas Corpus: Under Iranian law no person can be arrested without a reason. Article 32 of the Constitution provides that:

“No person may be arrested except according to and in the manner laid down in the law. If someone is detained, the subject matter of the charge, with reasons (for bringing it), must immediately be communicated and explained in writing to the accused. Within at most 24 hours the file on the case and preliminary documentation must be referred to the competent legal authority. Legal procedures must be initiated as early as possible. Anyone infringing this principle will be punished in accordance with the law.”

This right is also guaranteed Article 9(2) of the ICCPR which states that “[a]nyone who is arrested shall be informed, at the time of arrest, of the

⁶ Article 638 of *Islamic Penal Code* states “anyone who explicitly violates any religious taboo in public other than being punished for the act, he or she should also be imprisoned from ten days to two months, or should be flogged (74 lashes) . . . ”

reasons for his arrest and shall be promptly informed of any charges against him.”

However, while Iranian law recognizes the right of *habeas corpus*, the right to petition for a writ of *habeas corpus*, however, is not established. Therefore, detainees whose right to be informed of the charges against them have been violated may not have the power to require a court or the government to articulate those charges expeditiously.

The Right to an Attorney: Under Iranian law every person has a right to select an attorney of their choice in all court proceedings. Article 35 of the Constitution states that “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.” Nonetheless, the right to select an attorney in all court, which is conferred to the accused in “all court[s]”, has been limited by Article 128 of the *Code of Criminal Procedure*.

While Article 128 recognizes that an accused may have their attorney present throughout an interrogation, that right has been limited due to a interpretative note accompanying the provision.⁷ The interpretative note states that in “confidential matters or when the judge decides that the presence of another person (including the attorney) might cause ‘corruption’ or interrupt the procedure or in crimes against the national security, the presence of the attorney is dependent on permission of the court.” This broad commentary gives both the government and prosecutors incredibly broad powers to circumvent the lawful right of any detainees to have their attorney present and to prevent unlawful coercion. As a result, it is widely viewed that Iranian courts complying with Article 128’s interpretative note violate the rights of detainees and accused persons.

⁷ See Article 128, *Code of Criminal Procedure*.

The *Law of Protection of Citizens' Rights and Respect to Legitimate Freedoms* (the "*Law of Protection of Citizens*") was also passed by former President Mohammad Khatami and the Sixth Parliament of Iran, on May 2, 2004 and accepted by the Council of Guardians (*Shora-ye Negaban-e Qanun-e Assassi*) the day after. Article 3 of the law obliges the courts to observe the right of the accused to defend himself or herself and provide him or her with the opportunity to obtain an attorney and expert. Although Article 3 of the *Law of Protection of Citizens* has removed the limitations expressed in Article 128 of the *Code of Criminal Procedure*, the courts have not implemented this legal provision.

The Prohibition Against Torture and Other Forms of Force: Under Iranian law, law enforcement officers are prohibited from using "any kind of torture to extract a confession of guilt or to obtain information."⁸ Article 38 of the Constitution emphasizes "compelling people to give evidence, or confess or take an oath is not allowed. Such evidence or confession or oath is null and void. Any person infringing this principle is to be punished in accordance with the law."⁹

The *Law of Protection of Citizens* provides specific provisions to forbid torture and use of force against detainees and accused persons. The *Law of Protection of Citizens* articulates that while the prisoner is detained, interrogated or investigated, law enforcement officers must not harm the detainees or the accused person in any manner,¹⁰ take them to unknown locations,¹¹ cover their head,¹² or use of any force or torture to extract an admission of guilt or to obtain information.¹³

Not only does the Constitution forbid the use of any torture or force, but it also condemns aspersion of the dignity of and respect of detainees and accused persons. Article 39 of the Constitution expresses that "aspersion of the dignity of and respect due to any person who has been arrested or put in detention, or imprisoned or exiled by command of the law is forbidden in any form, and is liable to punishment."¹⁴

Moreover, this obligation is enshrined under the ICCPR. Article 7 of the ICCPR states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

IV. The Rights of Detainees and Accused Persons During Trial and Conviction

The Constitution requires that that all trials be held openly and that members of the public be able to attend without any restriction.¹⁵ Nevertheless, if the court determines that an open trial would be detrimental to public morality or discipline, or if in case of private disputes, both parties may request not to hold an open hearing.¹⁶

The court is also obliged to deliver a well-reasoned verdict with reference to the articles and principles of the law.¹⁷ The judges are required to judge each case on the basis of the codified law.¹⁸ Where there is no direct statutory authority, Iranian law requires that the judge deliver his judgment on the basis of authoritative Islamic sources and authentic fatwa.¹⁹ Nonetheless, as noted before, punishment of an act that is not unlawful under the law would undermine the principle of legality of crimes,

⁸ Article 38, *Constitution*.

⁹ Article 38, *id.*

¹⁰ Article 6, *Law of Protection of Citizens*.

¹¹ Article 7, *id.*

¹² *Id.*

¹³ Article 9, *id.*

¹⁴ Article 39, *Constitution*.

¹⁵ Article 165, *id.*

¹⁶ Article 165, *id.*

¹⁷ Article 166, *id.*

¹⁸ Article 167, *id.*

¹⁹ *Id.*

regardless of whether it is premised on authoritative Islamic norms.

V. Legal Sanctions

The *Islamic Penal Code* expressly states that “any state official or authority who illegally denies or deprives people of the rights enshrined in the Constitution shall be subject to confinement terms ranging from 6 months up to 3 years in addition to discharge from government service from 3 to 5 years.”²⁰ The Constitution also holds the judge responsible for moral and material loss. Article 171 of the Constitution states:

“Whenever an individual suffers moral or material loss as the result of a default or error of the judge with respect to the subject matter of a case or the verdict delivered, or the application of a rule in a particular case, the defaulting judge must stand surety for the reparation of that loss in accordance with the Islamic criteria, if it be a case of default. Otherwise, losses will be compensated for by the State. In all such cases, the repute and good standing of the accused will be restored.”

If a person is arrested unlawfully and files a complaint in regard to his illegal arrest to law enforcement officers, the officers are obliged to hear the complaint.²¹ Otherwise if law enforcement officers do not hear the complaint and they cannot prove that its legal procedure has been observed, the law requires them to be discharged from government service from 3 to 5 years.²²

The *Islamic Penal Code* also denotes that if the authorities of detention centers refuse to deliver the complaints of detainees to legal authorities, they

²⁰ Article 570, *Islamic Penal Code*.

²¹ Article 572, *id.*

²² *Id.*

shall be imprisoned for a period ranging from 2 months up to 2 years.²³

Additionally, if any of the juridical or non-juridical authorities and employees cause physical harm and torment upon an accused in order to force him to confess, they shall, in addition to being subject to *Qesas* (retribution) or payment of blood money²⁴ as the case may be, be sentenced to a term of six months to three years in prison.²⁵ If somebody orders the unlawful treatment in this respect, only the person who has issued the order shall be sentenced to such imprisonment.²⁶ Where the accused dies as a result of physical harm and torment, the perpetrator shall be subject to the penalty for homicide.²⁷ The person ordering the physical harm and torment shall be punished for ordering an act of homicide.²⁸

Conclusion: Legal safeguards provided in the legal system of Iran, to a great extent, have the *potential* to protect detainees and accused persons. It is very important to emphasize that a fair, non-biased, competent judicial system is the cornerstone to the rule of law in any country. As illustrated in this note, the legal framework protecting the rights of detainees and accused in Iran is more and less comprehensive. However, corrupted law enforcement and judicial officers have essentially made all the legal safeguards ineffectual.

²³ Article 574, *Islamic Penal Code*.

²⁴ As Article 294 of *Islamic Penal Code* defines, blood money as a compensation that a murderer or one who has caused grievous bodily harm should pay to the victim or his/her heirs.

²⁵ Article 578, *id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*



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