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IRAN: REGRESSIVE AMENDMENT WOULD DEAL CRUSHING BLOW TO RIGHT TO ASSISTANCE OF A LAWYER DURING INVESTIGATION PHASE

Iranian lawmakers must urgently revise a proposed amendment to Iran's Code of Criminal Procedure that would allow prosecution and judicial authorities to deny detainees facing "national security" and certain other criminal charges the right to access a lawyer while they are under investigation, Amnesty International said today.

The draft amendment was finalized by Iran's legal and judicial parliamentary commission on 6 May and is expected to be scheduled for a vote in Iran's parliament in the coming weeks.

The proposed amendment comes amid ongoing calls on Iranian lawmakers by lawyers and others to reform a deeply flawed provision in the Note to Article 48 of the Code of Criminal Procedure, which came into force in 2015. The provision requires individuals facing charges related to "national security" and certain organized crimes to select their legal counsel for the investigation phase from a list of lawyers approved by the head of the judiciary. According to Amnesty International's research, since 2015, the authorities have failed to respect even this flawed provision and have routinely denied detainees any access to a lawyer during the investigation phase.

The draft amendment would be a retrogressive step, entrenching in law the routine practice of denying access to a lawyer during the investigation phase. It would reintroduce the kind of restrictions found under the previous Code of Criminal Procedure of 1999, under which prosecution and judicial authorities could effectively bar detainees' access to a lawyer for the entire investigation phase in a wide range of criminal cases, including those concerning "national security".

In Iran, those charged with "national security" offences include human rights defenders, journalists and political dissidents targeted solely for the peaceful exercise of their human rights.

Iranian lawmakers should focus their attention on introducing legal reforms that would strengthen – rather than undermine – the right to a fair trial. In particular, they should legislate to ensure that all detainees are granted the right to promptly access a lawyer of their choosing from the time of arrest and during investigation and that investigations are rendered void and inadmissible, as provided by international law, if the accused is denied the right to access legal counsel during interrogations or is not informed of this right.

Amnesty International recalls that Iran is obliged under international human rights law, including the International Covenant on Civil and Political Rights, which it has ratified without making any reservation, to ensure, in law and practice, that detainees have prompt access to legal counsel of their choosing from the time of arrest and during interrogations. This is not only essential for the meaningful enjoyment of the right to effective defence during trial, but is also one of the strongest safeguards against torture and other ill-treatment in detention before and during questioning, when individuals are particularly vulnerable.

PROPOSED AMENDMENT TO CODE OF CRIMINAL PROCEDURE

On 6 May 2019, the spokesperson of Iran's legal and judicial parliamentary commission, Hassan Norouzi, announced that the commission had prepared a draft amendment to the 2015 Code of Criminal Procedure. The text of the draft amendment has not yet been published on the website of Iran's parliament where proposed bills are generally listed. However, according to the statement of Hassan Norouzi, the proposed amendment would permit prosecution authorities to deny detainees facing charges related to "national security", "terrorism" and "financial corruption" access to a lawyer for 20 days and to extend that period by issuing an order referred to as an "order prohibiting the presence of a lawyer".

The amendment fails to clarify which prosecution officials may impose the initial 20-day ban, simply stating that individuals accused of certain offences "can be barred from access to a lawyer during detention and primary investigation for a maximum of 20 days." Neither does the amendment specify whether the officials who are granted the authority to extend this period are the same as those who imposed the initial restriction. The amendment merely states that the order

shall be issued by a “judicial authority”. Under Iranian law, the term “judicial authority” encompasses authorities from the prosecution office such as investigators, assistant prosecutors and prosecutors. The draft proposal states that the “judicial authority” may issue the order “if deemed necessary” but specifies neither the criteria nor the process for making this decision.

The same restriction can be imposed on individuals accused of involvement in serious organized crimes which are subject to such punishments, as the death penalty, life imprisonment and amputation.

The proposed amendment does not set a limit on the duration of the ban, effectively allowing the suspension of access to a lawyer to be extended over the entire investigation phase, which may last for months. It states that the accused may appeal against the order to a court of law, but does not specify the type of court which may receive such appeals. Nor does it clarify how the accused can meaningfully exercise this right in detention without access to legal assistance.

Iran’s legal and judicial parliamentary commission has presented the draft amendment to the 2015 Code of Criminal Procedure as the outcome of an initiative that the commission launched in June 2018 to reform a highly controversial provision in the Note to Article 48 of the 2015 Code of Criminal Procedure. The provision requires individuals facing charges related to “national security” and certain organized crimes to select their legal counsel for the investigation phase from a list of lawyers approved by the head of the judiciary.

Amnesty International is concerned that the lawmakers have turned the initiative on its head by proposing, instead of the annulment of the existing provision, a new flawed provision which, if adopted and implemented, would effectively remove detainees’ right to a lawyer in a wide range of criminal investigations, including those concerning “national security”.

In Iran, those charged with “national security” offences include human rights defenders, journalists and political dissidents targeted by intelligence and security bodies solely for the peaceful exercise of their human rights. The proposed amendment would further solidify patterns of human rights violations against these individuals, which typically include prolonged solitary confinement without access to one’s lawyer and family, and the use of torture and other ill-treatment to extract forced “confessions” which are then used by Revolutionary Courts as “evidence” to issue convictions and harsh sentences.

The proposed amendment is also particularly disturbing as it applies to cases where individuals are at risk of being convicted of charges that attract severe or irreversible punishments, such as the death penalty, amputation and life imprisonment.

EVOLUTION OF LEGISLATIVE ASSAULTS ON RIGHT TO ASSISTANCE OF A LAWYER IN IRAN

Denial of access to a lawyer during investigations has been a long-standing form of abuse in Iran’s criminal justice system and has facilitated the use of torture and other ill-treatment on a widespread basis, including to extract forced “confessions”.

Article 35 of Iran’s Constitution guarantees the right of individuals to legal counsel. The Article stipulates: “Both parties to a lawsuit have the right in all courts of law to choose a lawyer and, if they are unable to do so, arrangements must be made to provide them with legal counsel.”

However, the Iranian authorities have failed, for decades, to adopt adequate laws, policies and regulations to ensure that this right is respected in practice, particularly during the investigation phase.

Before June 2015, when a new Code of Criminal Procedure came into force, the Note to Article 128 of the 1999 Code of Criminal Procedure effectively allowed the prosecution authorities to bar access to legal counsel during the entire investigation phase in a wide range of cases including those concerning “confidential issues” or “national security” offences, unless a court ruled otherwise.

After years of criticism and condemnation by lawyers, human rights groups and the UN, in April 2014, a new Code of Criminal Procedure, which was in the making for almost a decade, passed into law, introducing several overdue reforms, including a provision that granted individuals the right to request the presence of a lawyer from the start of detention and throughout the course of investigations.

However, the Code still allowed, in a Note to its Article 48, judicial officials to deny detainees the right to legal counsel for up to a week in certain criminal cases, including those concerning organized crimes, ‘national security’ or drug-related offences and crimes punishable by the death penalty or life imprisonment.

In June 2015, just days before the new Code of Criminal Procedure entered into force, the Note to Article 48 was amended, replacing the provision denying access to a lawyer for a week in certain cases with a provision requiring

individuals accused of certain charges to select their legal counsel for the investigation phase from a list of lawyers approved by the head of the judiciary.

In addition, the amendments removed a welcome provision under the new Code which would have rendered investigations void if the right of the accused to access legal counsel was denied or if the person was not informed of this right. In the amended text, failure by the authorities to notify the accused of their right to a lawyer or denial of this right no longer impacts the validity of the investigations. Such breaches are only subject to disciplinary penalties. As a result, courts can continue to rely on evidence gathered during investigations conducted without the presence of a lawyer.

Between 2015 and 2018, the prosecution authorities routinely invoked the Note to Article 48 of the Code of Criminal Procedure to prevent those detained for politically motivated reasons from accessing lawyers of their own choosing, not only at the investigation stage but also during trial, even though such a restriction was outside the scope of the Note. Lawyers were regularly told that they were not on the list approved by the head of the judiciary, even though no official list had been made public. In January 2018, 155 lawyers from around the country submitted an open letter addressed to the head of the judiciary, complaining about these abusive practices.

In June 2018, the head of the judiciary finally issued a list with only 20 lawyers approved for Tehran province. The judiciary said that similar lists had been prepared for other provinces. There are reports in the media and social media referring to the number and identifies of some of the lawyers included in the lists issued for some provinces, but, as far as Amnesty International is aware, the lists have not been made publicly available by the judiciary .

These developments triggered an outcry from the community of lawyers. Many voiced their concerns in media interviews, wrote critical articles or took to social media in protest, questioning the arbitrary basis on which the judiciary had only approved 20 male lawyers out of thousands of male and female lawyers in Tehran province, noting the inclusion of several former prosecution and judicial officials in the list who had been accused of perpetrating human rights violations, and describing the Note to Article 48 as an attack on the integrity and independence of the legal profession.

In response, the judiciary announced that the list was not final and that more names would be added to it at a later date.

On 12 June 2018, the spokesperson of the legal and judicial parliamentary commission, Hassan Norouzi, announced that over 50 members of parliament had proposed a bill to reform the Note to Article 48 of the 2015 Code of Criminal Procedure, such that it would “remove the restrictions imposed on the choice of lawyer in political cases”.

However, according to the records available on the website of Iran’s parliament , on 23 June 2018, 35 parliamentarians proposed a bill which ran entirely counter to the stated plan to reform the Note to Article 48 . This bill proposed that the existing provision restricting the right of certain detainees to access a lawyer of their choice during the investigation phase should be changed to a provision that conditions their access to a lawyer during the investigation phase on the permission of a “judicial authority”. The bill provided no further information on the competent authority that would be responsible for this decision or the criteria they should apply in order to make it.

This bill appears to have formed the basis of the draft amendment to the Note to Article 48 that Hassan Norouzi announced on 6 May 2019 had been prepared by the legal and judicial parliamentary commission.

If this proposed amendment is adopted by the parliament, legal provisions concerning access to a lawyer would return almost full circle to the situation under the 1999 Code of Criminal Procedure.

INTERNATIONAL LAW AND STANDARDS

Under international law, everyone deprived of their liberty or facing a possible criminal charge has the right to the assistance of a lawyer of their choice to protect their rights and to help in their defence.

According to the UN Human Rights Committee, the body of independent experts that monitors the implementation of the International Covenant on Civil and Political Rights, which Iran has ratified without making any reservation, the right to communicate with counsel is essential for the meaningful exercise of the right to a fair trial and this requires that the accused is granted prompt access to counsel of their choice from the time of arrest and during all stages of criminal proceedings, including during pre-trial detention, questioning and investigations.ⁱ

The Human Rights Committee has previously called on Iran to “take all necessary measures to ensure that pre-trial detention is not excessively long in law and in practice, particularly through independent judicial supervision and prompt access to lawyers, in full compliance with article 9 of the Covenant”.ⁱⁱ

With regard to trials in which capital punishment is a potential outcome, the International Covenant on Civil and Political Rights states that proceedings in death penalty cases must scrupulously observe all relevant international standards protecting the right to a fair trial.

Access to legal counsel during interrogations is also one of the strongest safeguards against torture and other ill-treatment in detention. Accordingly, the UN Special Rapporteur on torture has recommended that “Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention.”ⁱⁱⁱ

ⁱ UN Human Rights Committee, Concluding Observations: Georgia, 5 May 1997, UN Doc. CCPR/C/79/Add.75, para. 27; Concluding Observations: Netherlands, 25 August 2009, UN Doc. CCPR/C/NLD/CO/4, para. 11.

ⁱⁱ UN Human Rights Committee, Concluding observations: Islamic Republic of Iran, 29 November 2011, UN Doc. CCPR/C/IRN/CO/3, para. 18.

ⁱⁱⁱ UN Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, *Question of torture and other cruel, inhuman or degrading treatment or punishment*, 3 July 2001, UN Doc. A/56/156, para. 39(f).