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Responses to Information Requests

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13 March 2020

IRN200131.E

Iran: Court summonses and arrest warrants, including issuance procedures; description of the documents, including security features; whether copies can be obtained from outside the country or by a third party; prevalence of fraudulent court documents (2017-March 2020)
Research Directorate, Immigration and Refugee Board of Canada

1. Legal Framework

According to a 2016 report by Amnesty International on the June 2015 Code of Criminal Procedure of the Islamic Republic of Iran [1], the 2015 Code of Criminal Procedure "articulates the provisions regulating the issuance of warrants and summons" (Amnesty International 11 Feb. 2016, 30). The Code states that the Office of the Prosecutor is the authority that issues summons and arrest warrants, and that it is "the body responsible for uncovering crimes, prosecuting the accused, conducting investigations, and preserving the rights of the public" (Amnesty International 11 Feb. 2016, 31). The Code also "requires individuals with arrest, detention and investigation powers to undergo training and carry special identification cards, and declares void any investigations conducted by individuals who do not possess this card" (Amnesty International 11 Feb. 2016, 27). According to the same source, the Code "does not,

however, clarify whether those carrying out arrests and interrogations are required to present their identification cards to those arrested and detained" (Amnesty International 11 Feb. 2016, 27). The same source states that the Code

defines *zabetan-e ghazai* ("judicial officers") as officials who are permitted to take lawful action in order to uncover crimes, preserve and gather evidence, identify the accused person, and conduct investigations. These actions must be carried out under the supervision and instructions of the Prosecutor [Code, Art. 28]. The *zabetan-e ghazai* ("judicial officers") are divided into two categories: *zabete ghazai 'aam* ("general judicial officers") and *zabet-e ghazai khas* ("special judicial officers"). "General judicial officers" are those who can intervene in relation to all crimes with the exception of crimes that are legally remitted to other agencies. They include "commanders, officers, and rank-and-file police officers who have received the required training" [Code, Art. 29].

...

"Special judicial officers" are those who are also permitted to perform the duties outlined in Article 28 of the CCP, provided that they are "within their designated responsibilities on the grounds of specific laws." Examples of these officers, as mentioned in Article 29 of the CCP, include "prison chiefs, their deputies, and prison guards in relation to prisoners' affairs; officials of the Ministry of Intelligence and the Basij forces; as well as armed forces where delegated by law to carry out part or all of judicial officers' responsibilities". The amendments to the CCP, approved in June 2015, added the Intelligence Organization of the Revolutionary Guards to the list of "special judicial officers". (Amnesty International 11 Feb. 2016, 27-28, italics in original)

Amnesty International asserts that

[d]espite the new CCP's clarification of the list of agencies with arrest, detention and investigation powers, it continues to grant broad judicial powers to a wide array of security forces and agencies and fails to clarify the scope of these powers and the circumstances under which they can be used. Instead of outlining the circumstances under which they may act as "judicial officers", the Code refers to "their governing regulations", which are often broad and vague. (Amnesty International 11 Feb. 2016, 28)

2. Court Summonses

According to the Amnesty International report, under the 2015 Code, summons must be signed by a *magham-e ghazai* ("judicial authority") and should include the reasons for the summons as well as the date and location of reporting and consequences of failing to report. If the accused person is illiterate, the delivery officers must orally inform them

of the content of the summons [Code, Art. 170 and 173]. The Code provides for an exception to the requirement of the inclusion of the reasons for summoning in cases where "the social status of the accused or public morality or safety" requires it. In such cases, the individual who has received the summons can inquire about the reasons of the summons from the relevant judicial bodies [Code, note to Art. 170]. The [Code] does not provide greater clarity on when the judicial authorities can choose not to include the reasons for a summons and leaves it to their discretion. Nor does the Code explicitly specify which judicial authorities are legally entrusted with making such a determination.

Individuals who fail to report after receiving a summons without "justified" reasons will be issued with an arrest warrant [Code, Art. 179]. However, it is not always necessary to issue a summons before arresting someone. The [Code] allows the investigator to order the arrest of the accused without a prior summons in four circumstances [Code, Art. 180]. These include cases where individuals are accused of crimes which are punishable by death, amputation or life imprisonment or where individuals are accused of organized crimes and crimes against national or "external" security. (Amnesty International 11 Feb. 2016, 31-32, italics in original)

The same source also adds that article 342 of the Code

obligates the court to summon the accused, the plaintiff, their lawyers, the Prosecutor and other relevant parties after scheduling a hearing. The period between the summons and the court hearing may not be less than a week [Code, Art. 343]. A hearing may be rescheduled if the accused has a legitimate excuse. In cases where the accused person's place of residence is unknown and delivery of the summons is not possible, the hearing time and the content of the summons must be published in one of the national or local newspapers with a large circulation. The hearing date cannot be scheduled earlier than a month after the publication of the summons. (Amnesty International 11 Feb. 2016, 76)

A joint report by the Danish Immigration Service (DIS) and the Danish Refugee Council (DRC), based on 2017 interviews in Tehran and London, indicates that

[d]elivery of summons will be made by a process server. A process server is a mail man from the judiciary who delivers court papers, a source explained. If the person who has been summoned is not present at his/her address, and the person lives with his/her parents or relatives, the summons will be delivered to the parents or relatives by the process server who will check the name of the person concerned and the family relationship between the two. If the process server does not find anyone at the address, the summons will be put on the door after being signed by the process server. If the address of the person concerned is not known, the summons will be published in a national newspaper and then considered served.

Summons can as well be served at the working place of the person concerned. In this case it will be delivered to the Human Resources Department.

... An anonymous analyst noted that summons might be sent to the person concerned, and a text message may be sent to his/her inbox. However, this happens basically only with lawyers who have an electronic account with a registered password and user name. Summons are too long to be sent by a short text message.

An anonymous legal source stated that in some cases, such as sensitive political and national security cases, the accused can be put under arrest without summoning. The source added that the Revolutionary Court does not necessarily follow and comply with the legal summoning procedures. (DRC and DIS of Denmark Feb. 2018, 5-6)

In correspondence with the Research Directorate, a representative of the Human Rights Activists News Agency (HRANA), a "press association established in 2009 by Iranian human rights advocates" (HRANA n.d.), stated that "[t]here is no standard for all the issued summons," noting that "electronic summons are sent out in some areas through text messages, while in smaller cities they are still writing the summons by hand, [and] typed out summons in templates are also fairly common" (HRANA 3 Feb. 2020). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Samples of summonses, as provided by the HRANA representative, are attached to this Response (Attachments 1, 2, and 3).

3. Arrest Warrants

According to the Amnesty International report, the 2015 Code requires that arrests are carried out on the basis of arrest warrants that are signed by the investigator [Code, Art. 181]. While the Code states that the arrest warrant must include the reasons for arrest, it does not explicitly mention the requirement for the inclusion of the legal provisions under which the arrest is made. The investigator could also provide "judicial officers" with an arrest warrant for a specified period of time in cases where the accused is on the run. The "judicial officers" could then arrest the accused on finding them [Code, Art. 184]. However, if the accused person's hiding place is their house or workplace or that of others, "judicial officers" may not enter such places unless they obtain a separate order from a judicial authority authorizing entry [Code, note 3 to Art. 184].

Despite the general requirement for the issuance of an arrest warrant by the investigator prior to making arrests, "judicial officers" can arrest individuals without such warrants in cases of "evident crimes" [Code, Art. 44 and 46]. Where arrests are made in such cases and the "judicial officers" determine that detention of the accused is necessary for completion of the investigation, they must promptly inform the accused in writing of the charges and the reasons

for them. They must then communicate this to the Prosecutor seeking their legal authorization. In all cases, the accused person cannot be kept in the custody of "judicial officers" for more than 24 hours. (Amnesty International 11 Feb. 2016, 32-33)

The same source also notes that, under article 45 of the Code, a crime is "evident" when

- a. it is committed within the sight of judicial officers; when the officers arrive [on] the crime scene immediately after the commission of the crime; and when they observe the evidence of the crime immediately after it has taken place;
- b. the victim, or two or more people who have witnessed the crime, identifies a specific individual as the offender while the crime is being committed or immediately after it;
- c. immediately after the commission of the crime, evident signs or evidence of the crime or the tools and instruments of the crime are found in the possession of the accused, or their belonging to the accused is established;
- d. the accused intends to abscond, is escaping, or is arrested immediately after the crime;
- e. the crime has been or is being committed in a home or in a residential place and the residents request the presence of the officers at the time the crime is being committed or immediately after it;
- f. the accused reports the crime and surrenders immediately after the crime;
- g. the accused is a vagrant and has a negative reputation in the area in question. (Amnesty International 11 Feb. 2016, 32)

The source further explains that the Code

requires an arrest warrant to include the reasons for arrest but does not require the inclusion of a clear explanation of the legal basis of the arrest as well as the factual specifics to substantiate the reasons. This could result in individuals being detained with arrest warrants which include overly broad reasons such as "national security". The Code also allows the arrest of people accused of national security charges without prior summons ... (Amnesty International 11 Feb. 2016, 30)

According to the HRANA representative, "usually the arrest warrants are not handed to the person; at best, they show it to the arrestee before arrest. In some rare cases ... arrest warrants are made public" (HRANA 3 Feb. 2020). The same source also noted that in "many cases summons[es] are used for arresting individuals, [as] once summoned to court some defendants will be arrested [at] their arrival to the court, in some other cases the person is summoned to start serving their sentence and will be arrested at their arrival" (HRANA 3 Feb. 2020).

In correspondence with the Research Directorate, a professor in social anthropology at a Canadian university said that "IRGC [Islamic Revolutionary Guard Corps] and the revolutionary court feel they do not need to follow the legal procedures" and added that they

may issue a document "to call people to court" and "sometimes ... arrest them right away" (Professor 13 Mar. 2020). The Professor provided a sample of such document, which is attached to this Response (Attachment 4). The Professor however stated that "in most cases, they just arrest people without giving them any formal document" (Professor 13 Mar. 2020).

A sample of a "moving" [without a fixed address (HRANA 3 Feb. 2020)] arrest warrant, as provided by the HRANA representative, is attached to this Response (Attachment 5).

4. Obtaining Copies

In correspondence with the Research Directorate, the Middle East Consultancy Services (MECS), a London-based research organization providing strategic advice and information on the Middle East and North Africa region (MECS n.d.), explained that

[g]enerally, copies of court summons and arrest warrants can be obtained from outside Iran and by a third party. However, this is dependant upon the type of crime and which court deals with such matters.

In order to obtain such documents, one would need a valid letter of authority signed by the client and an official solicitor who is a member of the Iranian Association Bar. If you are outside of the country, it is possible to give authority to a solicitor based in Iran. Iranian courts only allow official solicitors to act on behalf of a defendant.

According to the law, solicitors can obtain the summons or arrest warrant. However, in practice, only general courts (which deal with civil matters and general crimes) allow lawyers to obtain such documents on behalf of their clients. Revolutionary [C]ourts (which deal with political matters), on the other hand, are very strict with handing over summons due to the fact that they can be used against the Iranian government in an international setting. (MECS 14 Feb. 2020)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5. Fraudulent Documents

Information on the prevalence of fraudulent summonses and arrest warrants was scarce among the sources consulted by the Research Directorate within the time constraints of this Response.

The Danish and DRC report states that while "[b]ribery in the justice system occurs,"

[a]n anonymous analyst explained that it is difficult to obtain a legal document by bribe as courts are under surveillance, and there are cameras in the court room; the courts have their own security system called Hirasat, which reports to the Hefazat Ettelaat or counter-intelligence of the judiciary. In contrast, a Western embassy said that obtaining a legal document with false information is probably possible. (DRC and DIS of Denmark Feb. 2018, 7, italics in original)

MECS indicated, without providing further details, that it is "relatively easy to forge a court document" (MECS 14 Feb. 2020).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.


Note

[1] Sources indicate that the Code of Criminal Procedure of the Islamic Republic of Iran came into force on 22 June 2015 (Austrian Red Cross Jan. 2019; Amnesty International 11 Feb. 2016, 19), but that an English translation of the current version of the Code of Criminal Procedure could not be found (Austrian Red Cross Jan. 2019).

References

Amnesty International. 11 February 2016. *Flawed Reforms: Iran's New Code of Criminal Procedure*. (MDE 13/2708/2016) [Accessed 13 Feb. 2020]

Austrian Red Cross. January 2019. Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD). "Iran, Islamic Republic - Law Guide." [Accessed 13 Feb. 2020]

Danish Refugee Council (DRC) and Danish Immigration Services (DIS) of Denmark. February 2018.  *Iran: Judicial Issues*. [Accessed 27 Jan. 2020]

Human Rights Activists News Agency (HRANA). 3 February 2020. Correspondence from a representative to the Research Directorate.

Human Rights Activists News Agency (HRANA). N.d. "About Us." [Accessed 14 Jan. 2020]

Middle East Consultancy Services (MECS). 14 February 2020. Correspondence with the Research Directorate.

Middle East Consultancy Services (MECS). N.d. "About Us." [Accessed 14 Jan. 2020]

Professor. 13 March 2020. Correspondence with the Research Directorate.

Additional Sources Consulted

Oral sources: Academics (4) researching the Iranian judiciary; Center for Human Rights in Iran; Foundation for Democracy in Iran; Iran Human Rights Documentation Center; lawyers (3) who have practised in Iran.

Internet sites, including: Freedom House; UK – Home Office; UN – Refworld.

Attachments

1. Iran. N.d. Sample of a summons letter. Sent to the Research Directorate by a representative of the Human Rights Activists News Agency (HRANA), 3 February 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
2. Iran. N.d. Sample of a summons letter. Sent to the Research Directorate by a representative of the Human Rights Activists News Agency (HRANA), 3 February 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
3. Iran. N.d. Sample of a summons letter. Sent to the Research Directorate by a representative of the Human Rights Activists News Agency (HRANA), 3 February 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
4. Iran. N.d. Sample of a document delivered prior to an arrest. Sent to the Research Directorate by a professor at a Canadian university, 8 February 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
5. Iran. N.d. Sample of an arrest warrant (not static). Sent to the Research Directorate by a representative of the Human Rights Activists News Agency (HRANA), 3 February 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.

Date modified:

2018-06-25