



A Legal Analysis on Violation of Rights in the Post-Election Events

Shadi Sadr

June 2010

Iran Human Rights Documentation Center

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Preface

Nearly one year has passed since the widespread public protests to the announced results of Iran's 2009 presidential election. In the past year, a harsh crackdown in various forms across various sectors of society has rendered the human rights situation in Iran more precarious than ever before. During this time, many human rights lawyers and activists have voiced their criticisms of Iran's human rights record under the country's current, existing laws. The following article examines the question of which laws may be cited in terms of the rights of the protesters and to what extent violations of these laws occurred in the post-election events. To this end, I've based my analysis on basic rights set forth in the Constitution of Iran and officially-recognized common laws. After reviewing the limits and provisions in the law concerning the aforesaid rights, I've attempted to highlight some of the most prominent and specific cases in which widespread violations of these basic rights occurred.

I. Right of peaceful assembly

Article 27 of the Constitution states that “[p]ublic assemblies and marches may be freely held, provided arms are not carried and that they are not detrimental to the principles of Islam.”¹ This Article stipulates two conditions for the right to assembly: participants must be unarmed; and assemblies must not infringe upon the “principles of Islam.” The latter provision, in particular, is subject to broad interpretation due to a lack of legal consensus that any text provides an authoritative definition of the term “principles of Islam.” The law for “Political Parties, Societies, Political and Craft Associations, and Islamic or Recognized Minority Religious Associations” in Article 6² adds other provisions to these two conditions to limit the freedom of association. According to clause 2 of Article 6 of this law, the legal framework for groups to freely assemble is thus defined:

A march may be freely held, provided that it is not detrimental to the principles of Islam as determined by the Article 10 Commission and participants are unarmed . . . and prior notice is given to the Interior Ministry. Assemblies in public squares and parks are also free with permission from the Interior Ministry.³

Therefore, in the first place, only political parties, societies, and non-governmental organizations officially registered with the Ministry of the Interior possess the right to request a permit [for holding assemblies], while ordinary citizens not affiliated with a registered organization do not possess the right to freely hold assemblies. Secondly, the Article 10 Commission, which is composed of representatives from various governmental institutions, must determine whether or not the assemblies and demonstrations infringe on the principles of Islam; if they do not, the Commission will issue the permit to hold the assembly. In summary, the right to freedom of assembly in the Islamic Republic of Iran is limited and contingent on the following provisions:

1. Unarmed assembly
2. Lack of infringement on the principles of Islam
3. Submission of request by a registered organization
4. Issuance of permit by the Article 10 Commission

A review of the circumstances of the post-election public assemblies, and the legal provisions in this regard,

1. *Qanun-i Assasi Jumhuri 'i Isla'mai Iran [The Constitution of the Islamic Republic of Iran] 1358 [1980] art. 27*, available at <http://www.iranonline.com/iran/iran-info/Government/constitution-3.html> [hereinafter *Iranian Const.*].

2. *Political Parties, Societies, Political and Craft Association, and Islamic or Recognized Minority Religious Association Law of 29 August, 1981 (Iran)*, available at <http://www.khorasan.ir/tabid/1176/Default.aspx>.

3. *Id.*

indicate that it is clear that none of these assemblies were lawful in the eyes of the existing law. Article 4 of “the Law for the Use of Firearms by Officers of the Armed Forces in States of Emergency” states the following:

Police Forces have the right to use firearms on the order of the commander of operations, for the purpose of restoring order and controlling illegal demonstrations, and quelling insurrection and riots, in situations that are not containable without the use of firearms, provided that:

1. Other means were tried first in accordance with the law and were not effective; and
2. Prior to the use of firearms, the lawbreakers and insurgents have been duly warned about the use of firearms against them.⁴

According to section 5 of the same law, police forces may intervene to restore order and security in illegal demonstrations only if the demonstrators are armed.

To date, no reliable evidence or witnesses have indicated that the post-election protests were anything other than peaceful. Yet the Revolutionary Guard (IRGC) announced in an official statement that it would take action to crack down on the street protests. IRGC commanders also stated repeatedly in several interviews that IRGC and paramilitary *Basij* forces were used to put down the demonstrations. These statements were made even though the IRGC and *Basij* did not have the right to intervene in the post-election demonstrations due to the fact that the marches were peaceful and participants were unarmed.

The police, moreover, only have the right to use arms when other methods of crowd control and restoration of order have failed. The police are legally obligated to give prior warning to protestors, and weapons may be used only if demonstrations continue after this warning is issued. To date, none of the documentation of repeated shootings at protesters has shown that police and military personnel gave warnings to protesters before using their firearms. During several protests (on June 15, 2009, June 20, 2009, Ashura, etc.), gunshots were fired to put a stop to demonstrations, resulting in the killing and wounding of a considerable number of protestors.

Article 57 of the Islamic Penal Code states that

[i]f an officer commits a crime on the order of an official’s unlawful command, both the person who ordered the act and the person who carried out the act will be punished in accordance with the law. If an officer executes an order while mistakenly believing he is acting lawfully, he will only pay the blood-price compensation or a fine.⁵

Article 570 of the same law states that

[a]ny government official, officer, or any person connected to the government and its institutions who unlawfully deprives citizens of their personal rights, or deprives them of their constitutional rights, in addition to discharge from service and prohibition from government employment for three to five years, will be sentenced to a prison term of six months to three years.⁶

Therefore, police and military commanders and officers who used firearms in the crackdown on public demonstrations on various dates, given that a number of people were killed or wounded as a result of this

4. The Use of Firearms by Officers of the Armed Forces in State of Emergency Law (Iran), available at http://daneshpajuh.ir/Ghavanin/Ghavanin_6_3.html. (last visited on June 15)

5. Majmua-hi Qava’nini Jaza’l [Code of Criminal Laws], art. 57 (Iran).

6. Majmua-hi Qava’nini Jaza’l [Code of Criminal Laws] 1381 [2003], art. 570 (Iran).

unlawful use of firearms, must be criminally prosecuted. But as we will see in the “Violation of the Right to Justice” section of this article, these laws were almost wholly ignored.

The armed crackdown on the post-election protests, however, was just one instance of violation of the right to peaceful assembly. Thousands of protesters were arrested in the streets and prosecuted on charges of attending illegal demonstrations. In some cases in which the court’s ruling has been declared and finalized, demonstrators have been charged with “acts against national security.” One such case is that of Atefeh Nabavi, a female university student who attended the June 15 march in Tehran (the largest post-election public assembly, estimated by government officials at more than two million people). She was found guilty on charges of “disrupting public order” and “assembling and conspiring against the establishment by participation in illegal demonstrations” and sentenced to four years in prison.

Book Five, Chapter One of the Criminal Code defines Crimes Against National Security to include the following:

- forming or directing an association with the aim of disrupting homeland security, or membership in such associations (Sections 498 and 499);
- propaganda activity against the Islamic Republic establishment (Section 500);
- espionage (Sections 501, 502, 503, 505, 506 and 510);
- provocation of armed forces to disobey orders (Section 504);
- collaboration with hostile foreign states (Section 508);
- bomb threats (Section 511); and
- provocation of the public to civil war (Section 512).

It is plainly evident that attending a demonstration to protest election results cannot constitute grounds for any national security crimes. Nevertheless, several protesters at such demonstrations were arrested, tried, and punished on charges of acts against national security.

Following the protests on Ashura [Dec. 27, 2009], citing a *fatwa* issued by Ayatollah Makarem-Shirazi, a hardliner *marja* in Qom, that designated the Ashura protesters as *mohareb* or “enemies of God” (an offense punishable by execution), the Revolutionary Courts meted out the death penalty to several allegedly *moharab* protesters arrested that day. Mohammad-Amin Valian, a 20-year-old student who had thrown stones at *Basij* forces during the Ashura protests, was convicted of *mohareb* by the Revolutionary Court and sentenced to death. This is while according to section 183 of the Islamic Penal Code, a *mohareb* is defined as “one who takes up arms for creating fear and terror among the public and taking away freedom and security from individuals.” Valian was not permitted to choose an attorney, and the court did not accept the defense made by the lawyer appointed to him (who argued that “according to religious edicts, stones are not considered weapons”), and sentenced Valian to death—a sentence that was upheld on appeal.

II. Prohibition against arbitrary arrest

Despite the lack of reliable data on the number of persons arrested, according to Iranian authorities, some 4,000 individuals were arrested in the first month alone following the [June 12, 2009] elections.⁷ Some human rights organizations estimate the number of post-election detainees from June 2009-March 2010 to be up to 18,000 people.⁸

7. See, *Detention of 4,000 People After the Election*, Mardomak, Aug. 11, 2009, http://www.mardomak.org/news/judiciary_annnc_4000_detainees/. (last visited on June 15)

8. See, *Asamiye-Bazdashthihah*, Human Rights Activists in Iran, 2009, <https://docs.google.com/viewer?url=http://96.0.240.163/>

These detainees were arrested during street protests or by security agents showing up at their homes and offices. In both cases, based on documents and existing evidence, there was widespread violation of the rights of the detainees.

A. Arrest without court order:

Article 32 of the Constitution states that

[n]o 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.⁹

The law of the Judicial Procedure for General and Revolutionary Courts in Criminal Affairs (Criminal Affairs law), the Reform law for trials at General and Revolutionary, and the law of Respect for Legitimate Freedoms and Protection of Civil Liberties (Civil Liberties law) determine the way in which Article 32 must be implemented. Based on these laws, no person may be arrested without a warrant (issued by the prosecutor or on his authority) except in cases of witnessed crimes. In cases of witnessed crimes, law enforcement (police officers and security agents) must obtain a judicial official's ruling for release or continued detainment of the detainee within 24 hours of the arrest.

The arrest warrant must also be documented and supported with reasons. The accused has the right to protest the arrest warrant at specific intervals. Even absent such protest, in crimes relating to national security, subsequent to a two-month temporary arrest, the judicial official [overseeing the case] must renew the arrest warrant, unless there is clear reason for continued detention.

In practice, in the course of the post-election events, nearly all of these laws were violated on a large scale. In the first few days following the elections, a large number of well-known political activists and journalists were arrested at their homes or workplaces. The attorneys of some of these individuals later stated that their clients' files contained a general arrest warrant signed by the Tehran Prosecutor (Saeed Mortazavi) that was issued four days before June 12 [Election Day] –that is, prior to the start of the street protests. These attorneys added that these general warrants did not cite any evidence or reasons whatsoever for the arrests.¹⁰ Based on these general warrants, security agents made sweeping arrests and searched detainees' homes and offices.

Chapter 3 of the Law of Criminal Procedure has comprehensive regulations for searches and investigation of private properties. Many of these regulations were violated in the course of the post-election arrests. For example, Article 100 of this law states that

[s]earches and investigation of homes must be carried out during daytime hours, and during the night only by urgent reasons as stipulated by a Judge on the arrest warrant.

wp-content/uploads/2010/03/asamiye-bazdashtiha88.pdf&pli=1. (last visited on June 15)

9. Iranian Const., *supra* note 1, art. 32, available at http://www.iranchamber.com/government/laws/constitution_ch03.php. (last visited on June 15)

10. See, Saleh Nikbakht, *Mortazavi Should Respond to the Arrest Warrant Issued 4 Days Prior to the Election*, Kalame, Jan. 13, 2010, <http://www.kalame.org/1388/10/23/klm-8188>. (last visited on June 15)

Yet the homes of many detainees were searched after midnight by security agents who failed to present warrants stipulating the reason for nighttime searches.¹¹

Based on the testimonies of some detainees arrested in street protests, they were forced to sign and stamp their fingerprint on pre-written forms, without having an individual file with exclusive documents assembled for them. One detainee testified that

[t]he page listing the crimes was the same for everyone. Acts against national security, disobeying police orders, propaganda against the Islamic Republic regime, serving BBC and VOA foreign media ... All we had to do was stamp our fingerprint [onto the form]. They had arrested one [person] at the supermarket, another one in street clashes, and another on Hemmat Expressway before the Tehran Pars exit. We all had the same crime and had to stamp the form. We were supervised by a ranked officer. We kept telling him that we didn't accept the charges, but he kept ordering us to stamp the forms. I tried not to stamp the form, and I was beaten. They hit me with punches and kicks and a hose. Heidarifar even came down from his bench to personally land a few slaps and kicks on me. I finally stamped it. We all did.¹²

According to section 109 of the Criminal Affairs law, a Judge must inform defendants of the charges against them and make clear to them the reason for arrest, after which an investigation may be opened.

Many of the post-election detainees spent months in temporary detention without benefitting from legal regulations that safeguard their rights. Kobra Zaqehdoust, who was arrested at Behesht Zahra cemetery while attending the 40th day memorial service for those killed in post-election violence, has been in temporary arrest for nine months now, without judicial officials determining the case against her. According to Zaqehdoust's attorney, her arrest warrant was re-extended after nine months without explanation to her family and lawyer about the reason for this extension.¹³

I II. Prohibition against torture

Article 38 of the Constitution provides an absolute prohibition against torture:

Any kind of torture used to extract an admission of guilt or to obtain information is forbidden. 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.¹⁴

Common laws also foresee relatively comprehensive regulations prohibiting torture and providing punitive measures against the perpetrators of torture. The law of civil rights, in addition to torture, forbids harassment of defendants, including blindfolding, binding, covering the face of or sitting behind [during an interrogation] the defendant. Yet almost all of those arrested by agents of Iran's Intelligence Ministry – especially prisoners interrogated in the notorious Section 209 of Evin prison – report being forced to wear blindfolds, facing the wall during interrogation, and being bullied by derogatory language and threats from interrogators. In short, based on various accounts that corroborate one another, it appears that all three kinds

11. *See, Nightly Arrests of Mehdi Mirdamadi & Hossein Nouraninejad in Tehran*, Radio Farda, Sep. 17, 2009, http://www.radiofarda.com/content/F8_mirdamadi_nouraninejad_arrest/1824818.html.

12. Interview by The Abdorrahman Bourmand Foundation with Sa'id, Former Kahrizak Detainee, in a location outside of Iran (Dec. 12, 2010), available at <http://www.iranrights.org/farsi/document-1217.php>.

13. *See, Extending the Detentions of Unnamed Prisoners after 9 Months*, Rahana, Apr. 21, 2010, <http://www.rharian.info/archives/10402>.

14. Iranian Const., *supra* note 1, art. 38, available at http://www.iranchamber.com/government/laws/constitution_ch03.php.

of torture –physical, psychological, and sexual – were practiced on post-election detainees.

A. Physical torture

Post-election detainees have reported physical torture including: slapping, beating, kicking, the use of tear, pepper and mustard gases, beating with batons, deprivation of food, water, toilets, and sleep, confinement in poor physical conditions (hot, unventilated air), overcrowding, and lack of medical and sanitary attention for injured and sick prisoners. The Majlis' special investigative committee confirmed such cases of abuse in its report on *Kahrizak* detention center. The committee also verified that three detainees arrested during the July 10, 2009 protests died as a result of severe physical torture, lack of medical attention, and poor conditions of confinement at *Kahrizak*.¹⁵

B. Psychological torture

Post-election detainees have reported psychological torture including: prolonged solitary confinement, profanity, threats of execution, threats of rape, threats of harm of family members, arrest of the prisoner's children, and purposeful delay of legal proceedings. Hengameh Shahidi, a journalist and director of women's affairs for [presidential candidate] Mehdi Karroubi's campaign, was arrested in the early post-election days and is currently serving a six-year prison term at Evin. According to a report by her lawyer, Mohammad Mostafaei, Shahidi declared at one of the cross-examination sessions at her Revolutionary Court trial:

On my first night in prison, they beat and verbally assaulted me, to the extent that I was begging for mercy. My daily medication includes 12 anti-anxiety pills, 8 pills for heart disease, and 5 pills for various conditions. From my first night in prison, until the time I was released from solitary confinement, I constantly received threats of execution. Their repeated profanity unnerved me so much that I had nightmares of execution for two months. I was also under pressure to make confessions that were not true.¹⁶

Prolonged solitary confinement is a form of psychological abuse that has been frequently reported by prisoners' lawyers and family members. For example, Badr-al-Sadat Mofidi, spokesperson for the Iranian Journalists Association, who is currently still in jail, was kept in a solitary cell for over three months,¹⁷ though cases of longer periods in solitary have also been reported.¹⁸ This takes place despite the fact that the Law of Respect for Legitimate Freedoms and Protection of Civil Liberties prohibits keeping suspects in solitary confinement altogether.

C. Sexual abuse

Sexual abuse has been widely reported by post-election detainees, both male and female. Mehdi Karroubi, one of the two reformist presidential candidates in the 2009 election, in a letter to Ayatollah Hashemi Rafsanjani, the head of the Expediency Council, wrote of his certainty that rape and sexual abuse were occurring in Iranian prisons.¹⁹ Karroubi subsequently presented his documentation of several cases of

15. See, Majlis, Majlis Special Committee Complete Report about Kahrizak, Mardom Salari, Jan. 11, 2010, <http://www.mardomsalari.com/Template1/News.aspx?NID=69403> [hereinafter Majlis Rep.].

16. <http://chrr.us/spip.php?article9223>

17. See, Mofidi: *Rude Interrogations, Solitary Confinement, Psychological and Physical Pressure and being Kept in the Dark About Detention*, Pars, Mar. 19, 2010, <http://parsdailynews.com/62634.htm>.

18. See, E.g., *Majid Tavakoli Still in Solitary Confinement*, HRANA, Apr. 12, 2010, http://hra-news2.info/index.php?option=com_content&view=article&id=495:tavakoli&catid=7:776&Itemid=7.

19. See, Letter from Mehdi Karroubi, Presidential Candidate, The Islamic Republic of Iran, to Akbar Hashemi Rafsanjani, Chairman of the Assembly of Experts, The Islamic Republic of Iran (Jul. 29, 2010), available at <http://tabnak.ir/fa/pages/?cid=58952>.

detainees who had been raped to the Majlis [parliament] and the Judiciary. Authorities, however, have continually denied the occurrence of prison rape. Some post-election detainees who succeed in leaving Iran after their release have testified about the details of their rapes, notably Ebrahim Sharifi²⁰ and Maryam Sabri.²¹

In addition to rape, other types of sexual abuse have been reported by detainees, including threat of rape, sexual taunts, and pressuring of prisoners (especially women) to confess to extramarital affairs with politicians. Hengameh Shahidi's attorney Mohammad Mostafaei writes in a report that his client's file contained questions about her personal life and private matters, some of which he found embarrassing to repeat.²²

Article 1.11 of the Law to Respect the Legitimate Freedom and to Protect Citizens' Rights states that

[i]nterrogation questions must be useful, clear and relevant to the charges against the accused, and must avoid prying into personal life, private matters, prior charges and other subjects irrelevant to the case.²³

The Comment to Article 43 of the law of Criminal Procedure also states

[i]nvestigating offenses of sexual impropriety is forbidden, except when the crime is publically witnessed, or if the complaint is brought by a private citizen, in the later case, the investigation will be performed by the court judge, ,²⁴

Although section 90 of the Islamic Penal Code provides punitive measures for the practice of torture of a five-year prison term in addition to the payment of retaliation or blood-price compensation, no report published to date indicates that Iranian judicial officials have opened legal proceedings against the perpetrators of torture on post-election detainees.

I V. Right to free trial

Regulations concerning defendants' rights during the interrogation period and regulations on receiving fair trials are recognized to some degree by Iranian law. Article 35 of the Constitution states that

[b]oth 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.²⁵

This right, however, as well as the defense attorney's role and level of access during the preliminary investigation (i.e., the period in which the file is at court before an indictment is issued) is largely limited for political trials by the Criminal Affairs law.

Section 128 of the Criminal Affairs law officially recognizes the defendant's right to have an attorney present during the preliminary investigation, but it does not accord the defendant's attorney the rights of intervention and defense. The defendant's attorney may only "without interfering in the preliminary

20. Video File: Raped in Iran, available at http://www.youtube.com/watch?v=KS7JE6_h6YE.

21. Video File: Maryam Sabri Girl Raped in Prison, available at <http://www.izlese.org/uo-uoeu-ouoo-uoe-o1.html>.

22. <http://chr.us/spip.php?article9223>

23. Law to Respect the Legitimate Freedom and to Protect Citizens' Rights Art. 1.1 (Iran), available at <http://dadkhahi.blog-sky.com/?PostId=218>.

24. Criminal Procedure Law Art. 43 (Iran) available at http://hoghhoogh.online.fr/article.php3?id_article=67.

25. Iranian Const., *supra* note 1, art. 35, available at http://www.iranchamber.com/government/laws/constitution_ch06.php.

investigation, once it is over, present to the judge any arguments or materials that he [the attorney] deems necessary for his client's defense and discovery of the truth." In cases involving charges of acts against national security, the interrogator is permitted to bar the attorney from being present. Thus, the only time when the right to have an attorney present is recognized and guaranteed for political defendants are during trial.

In practice, however, in the case of the post-election detainees, court officials did not allow any of the defense attorneys to be present at the preliminary investigation. In addition to this arbitrary use of the authority accorded to them by section 128, court officials barred the attorneys chosen by defendants from being present at the defendants' trials. The defendants were represented by lawyers appointed by security officials, and often these lawyers presented very weak defenses. This took place even though under section 168 of the Criminal Procedure, the court appoints a lawyer for a defendant only if the defendant is unable to financially afford a lawyer of his choice, and the charges against him/her carry heavy sentences.

Despite the fact that he had been arrested two months before the elections on different charges, Arash Rahmanipour was found guilty of organizing post-election protests at one of the 2009 mass show trials and sentenced to death. He was executed a short time later. Rahmanipour's attorney, Nasrin Sotudeh, said in an interview that she had been denied access to her client, and spoke about the method by which his confession was extracted:

Mr. Rahmanipour told me that officers pressured him into confessing to acts he had not committed by promising that his execution sentence would be reduced to a ten-year jail sentence if he did so. Throughout all the interrogations and the trial, I was barred from being present at court. In one of the sessions at which I insisted on attending to defend my client, I was threatened with arrest and finally, the related official confiscated my Bar Association certificate and documented its confiscation in the items listed in the manifest.²⁶

Arash Rahmanipour was defended by a court-appointed lawyer.

In early 2010, Tehran's Revolutionary Court set up a branch in Evin prison for processing the files of post-election detainees. Since it was located inside a prison, defense attorneys were not permitted to enter this branch, or to follow up on their clients' files and cases. Despite the detainees' repeated protesting of this situation, the Evin branch is still active.²⁷

Another frequently-reported instance of rights violations is that detainees were interrogated by security agents without judicial officials being present. By law, a defendant can only be examined by judicial officials. In practice, however, in the cases of post-election detainees, defendants were examined and interrogated in prison by agents of security and police institutions. These institutions conducted the cases with a total lack of judicial supervision. In multiple instances, security officials went as far as advising judges on what type of ruling to issue.

The attorney of one political defendant said in an interview that his client's file showed that the charges, the questions, and even the defendant's penalty had been determined in advance by security officials. The entire processing of the case had effectively taken place outside the authority of the Judiciary.²⁸

26. Persian to English, Arash Rahmanipour's lawyer Speaks on the Executions, January 28, 2010, available at, <http://persian-2english.com/?p=5352>

27. Interview by Deutsche Welle Radio with Nassrin Soutoudeh, Iranian Defense Attorney, available at <http://noorebeido-kht121.persianblog.ir/post/367>.

28. See, *Justice Hangs in the Balance of the Decision of the Ministry of Intelligence*, Melliun, Apr. 10, 2010, <http://www.melliun.org/hambast/ha10/04/12hoghugh.htm>.

Article 165 of the Constitution recognizes the right to open public trial and includes two provisions that allow the judge to declare a closed trial in the event that he believes an open trial would be detrimental to public integrity or public order. Section 188 of the Criminal Procedure adds the provision that the judge may call for a closed trial if he determines the case is offensive to religious sentiments. Thus, based on these legal clauses, the majority of defendants arrested in the post-election aftermath were tried behind closed doors. At the series of trials that later became known as the “show trials,” only reporters from state-affiliated media were allowed to be present in the courtroom, and the defendants’ lawyers and families were barred from attending.

It is important to note that, with regard to national security crimes (the definition of which by nature includes political crimes), the provisions of Article 165 of the Constitution and section 188 of the Criminal Procedure law contradict the Constitution’s Article 168, which states that

[p]olitical and press offenses will be tried openly and in the presence of a jury, in courts of justice. The manner of the selection of the jury, its powers, and the definition of political offenses, will be determined by law in accordance with the Islamic criteria.²⁹

Yet, this law has never been observed for political crimes.

V. Right to justice

In face of the widespread violation of the rights of post-election detainees, a broad consensus has emerged among the victims of human rights violations and their families to bring the offenders to justice. The most prominent group that initiated and pursued this course was the families of those killed on the streets or in prisons. Many of these families, after learning of the murder or rape of their loved ones, sought legal redress through judicial channels and demanded that the perpetrators of these crimes be identified and prosecuted. These families also requested that the clothes and personal belongings of their loved ones be returned, since in most cases, the victims’ bodies were released unclothed.

Article 34 of the Constitution states that asking for justice is the unquestionable right of every individual as follows:

To ask for justice is the unquestionable right of every individual. Everyone may refer to the competent courts in search of justice. All members of the nation are entitled to have recourse to such within their reach. No one may be prevented from recourse to any court to which the law entitles him to refer.³⁰

As previously mentioned, there are various legal articles penalizing government officials who unlawfully cause bodily injury. One of the most important articles on this subject is section 57 of the Islamic Penal Code, which provides as follows:

When a crime is carried out on the order of a government official, both the person who ordered the crime and the person who executed it will be punished in accordance with the law. An official, who executes an order believing mistakenly that he is acting lawfully, will only be charged with the blood-price or a financial fine.³¹

In practice, however, legal proceedings were opened solely for the crimes committed at *Kahrizak* detention

29. Iranian Const., *supra* note 1, art. 168, available at http://www.iranchamber.com/government/laws/constitution_ch06.php.

30. Iranian Const., *supra* note 1, art. 34, available at http://www.iranchamber.com/government/laws/constitution_ch03.php.

31. Criminal Procedure Law Art. 57 (Iran).

center which resulted in the murders of at least three persons. Seven police officers were indicted. At the time of this report, the martial court's ruling on this case has still not been officially announced.³² Ladan Mostafaei, the wife of Ali Hassanpour who was shot dead in the June 15 demonstrations, explained in an interview:

We pressed charges and requested that my husband's killers be indentified and prosecuted. The file is still at the Tehran Criminal Court. We continually follow up on it, but don't get a response. We won't stop, though. We want to know: for what crime was Ali killed? Why should they be able to get away with firing a bullet at him on the street without being held to account? Who shot him, and who ordered the shooting? Let them tell us what crime my husband and others [who were killed] committed, to deserve being shot dead on the spot? They offered us to accept the blood-price compensation. They said "You have two children, take this compensation." But neither my children and I nor my husband's mother and family, are willing to accept the blood-price compensation and let the matter rest. We will stand by our claim until the very last. We will appeal to the United Nations to assist us – and other families whose innocent loved ones were killed– for opening legal proceedings and indentifying our loved ones' murderers."³³

Other cases of murder, rape, and torture filed by the victims' families are in a similar state. These cases are neglected and the perpetrators of these crimes have not been identified. Some of the families who filed complaints were threatened and intimidated to withdraw their claims. After Ebrahim Sharifi, a post-election detainee who claims he was raped in *Kahrizak* detention center was identified by Mehdi Karroubi to judicial officials, reports that he received threats that his family would be killed in a set-up accident. In face of these threats, Sharifi fled the country.³⁴

Thus, although the right to justice is recognized by Iranian law, governmental agents and officials responsible for the widespread violation of the rights of Iranian citizens in the course of post-election events have effectively been granted immunity by the judiciary system. The most evident instance of such immunity is former Tehran Prosecutor Saeed Mortazavi. Even after the Majlis investigatory committee publicly identified him as the prime offender responsible for the atrocities the occurred at *Kahrizak* detention center, Mortazavi was not prosecuted.³⁵

32. See, Judicial Organization of the Armed Forces, Statement of the Judicial Organization of the Armed Forces about *Kahrizak*, Tabnak, Dec. 19, 2009, <http://tabnak.ir/fa/pages/?cid=77905>.

33. http://enghelabe-eslami.com/akhbare-roz_1/KH-13-20100425.htm

34. See, Majlis Rep. *supra* note 16, available at <http://www.mardomsalari.com/Template1/News.aspx?NID=69403>.

35. *Id.*



Shadi Sadr is a prominent Iranian lawyer, journalist and women's rights activist. She graduated in 1999 from the University of Tehran with a master's degree in law and political science.

Sadr has defended numerous activists and journalists including several women sentenced to execution, whose convictions were subsequently overturned. She was also the director of Raahi, a legal advice center for women in Iran, until it was shut down by the Islamic Republic in 2007.

Sadr has written extensively about Iranian women and their legal rights. She worked as a journalist for several reformist newspapers in Iran and founded Zanaan-e Iran (Women of Iran), the first website dedicated to the work of Iranian women's rights activists. By its second year, Zanaan-e Iran was receiving 70,000 visitors a month.

In July 2009, Sadr was arrested by plainclothes police officers while on her way to Friday prayers in Tehran. After an international outcry, she was released 11 days later and fled to Germany where she remains an outspoken activist for women's legal rights in Iran. On May 16, 2010, Sadr was condemned in absentia to six years imprisonment including five years for acting against national security, and one year imprisonment plus 74 lashes for disturbing the public order and rebelling against government officials.

Sadr is the recipient of numerous awards including the Ida B. Wells Award for Bravery in Journalism and the Human Rights Defenders Tulip Award.