

Submission from Civil Liberties Australia to the  
**Australia-Iran Human Rights Dialogue**

1 August 2018

**Overview**

Civil Liberties Australia (CLA) was founded on the idea of standing up for every individual's right and ensuring the protection and just implementation of individual and group civil liberties. Based on that foundation, CLA believes that, in the upcoming Australia-Iran Human Rights Dialogue in Tehran, Australia should be respectful but both firm and principled – based on our national values – in drawing attention to and actively calling for the cessation of Iran's failure to abide by international and domestic legal human rights standards which the nation has signed up to.

CLA believes that we should offer a 'fair-go' whereby Australia does not merely reprimand, but – during discourse – offers justification, explanation and steps by which Iran can enhance some of the many human rights initiatives it has taken in recent times. With President Hassan Rouhani currently in his second four-year term in office since May 2017, and with positive reform under way, CLA believes that DFAT should prioritise engaging in positive dialogue with firm pressure in relation to the following focus issues.

Focus Issue #1: **Death Penalty**

There is immense room for improvement. Dialogue needs to point out that Iran's destructive culture of capital punishment is out of kilter with international trends, particularly with China where the reported number of executions has been cut by two-thirds over the past decade. Iranian law considers acts such as:

- insulting the Prophet,
- apostasy,
- same-sex relations,
- adultery,
- throwing acid, and
- some non-violent drug-related offences

as capital crimes. The widespread disparity between the religious and societal impact of such offences suggests that a re-forming of crimes designated as "capital" could be a first step in lessening the number of executions. By any measure, the above "crimes" exist at ends or nodes of the spectrum of possible offending.

Australia should note that the judiciary has continued to execute people at a high rate, particularly for drug offences, in cases where alternate sentencing is possible. CLA notes that major reduction in executions in China is reported to have followed simple directions from the chief executives of the legal system to judges to explore options for less absolute sentencing.

Human rights groups have reported that Iran executed at least 476 people to 27 November 2017, including five who were sentenced to death for crimes allegedly committed as children. Australia should advocate that crimes committed by children receive lesser punishment than those committed by adults. Article 37(a) of the UN Convention on the Rights of the Child, which Iran has signed and ratified, is relevant to considerations in this area. This children's issue points to the opportunity for systemic change across Iran's penal code, an improvement which could be enhanced by ongoing dialogue with support expressed for areas where Iran has initiated reform. Australia could encourage reform's continuation and expansion.

*Note: Iran's Parliament officially amended national drug laws on 13 August 2017 to remove the death sentence for several drug-related crimes and replace it with life imprisonment and/or fines. The Guardian Council, a body of 12 Islamic jurists, approved the amendment in October and the law went into effect on 14 November. On 21 November, the Prosecutor of Iran, Abbas Jafari Dolatabadi, stated that 3300 individuals convicted of drug offences had filed appeals under the new law. Currently, only those distributing more than 50kg of narcotics including opium, 2kg of heroin or 3kg of crystal meth will be sentenced to death. There is no capital punishment for marijuana possession. – New York Times, 10 January 2018*

<https://www.nytimes.com/2018/01/10/world/middleeast/iran-drugs-death-penalty.html>

## Focus Issue #2: **Corruption, Due Process and Prisoner Treatment**

Iranian courts – particularly the revolutionary courts – are accused of failing to provide fair trials and of using confessions obtained under torture as evidence. Both practices are against international covenants to which Iran is signatory.

Authorities can restrict detainees' access to legal counsel, particularly during the investigation period. Several people charged with national security crimes have suffered from a lack of adequate access to medical care in detention, reports say. Further, *sharia* (or Islamic) law, is now more strictly imposed by judges than it was under reformist President Mohammed Khatami. Moreover, much of the alleged prisoner abuse highlighted in 2016 by a UN Special Representative on the situation of Human Rights in Iran occurs in unofficial detention centres run by Iran's intelligence services and the military.

*See UNHR: Office of the High Commissioner, article: Iran - Denial of adequate medical treatment to political prisoners unacceptable.*

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19886&LangID=E>

Australia is in a strong position to encourage Iran to sign up to and ratify both the Convention Against Torture and the Optional Protocol to it (OPCAT). CLA believes we could offer to have an ongoing officials-level dialogue with Iran about Australia's recent experience with ratifying OPCAT and the process our nation is going through to fully implement it.

## Focus Issue #3: **Freedom**

Authorities continue to restrict freedoms of expression, association and assembly and prosecute journalists, online media activists, and trade unionists on charges of "acting against national security," "propaganda against the state," and "assembly and collusion to disrupt national security," merely for exercising their legitimate right of free speech.

CLA also notes that scores of human rights defenders and political activists are reported to remain behind bars for their peaceful activism. [Hadi Ghaemi](#), executive director of [International Campaign for Human Rights in Iran](#), writes that after the 2009 protests, the "judiciary has emerged as a [key instrument to intimidate protestors](#) and remove many leading activists and opinion makers, steps that were both critical to the regime's survival." The judiciary, he notes, also implements the Islamic penal code, including stoning, amputations and flogging, all considered torture under international law. It is entirely open to Iran to enforce tough laws by alternate means, or to ameliorate the harshest laws as the nation has shown it can do in the past year (see above).

*Note: On 19 December 2016 President Rouhani announced the Charter on Citizens' Rights, which largely reiterated rights and protections that already exist in the national constitution and in domestic law. In the absence of a mechanism for enforcement, however, it is unclear whether the Charter will add real protections. For recent examples see: [Human Rights Watch – Iran World Chapter 2018](#)*

#### Focus Issue #4: **Women's Rights**

Iranian women face daily discrimination in personal status matters related to clothing, marriage, divorce, inheritance, and child custody. For example:

- women are required to wear the hijab;
- women are subjected to early and forced marriages;
- virgin women need their male guardian's approval for marriage regardless of the female's age;
- Iranian women cannot pass on their nationality to their foreign-born spouses or their children;
- a married woman may not obtain a passport or travel outside the country without the written permission of her husband;
- under the civil code, a husband is accorded the right to choose the place of living; and
- a husband can prevent his wife from working in certain occupations if he deems them against 'family values'.

Moreover, laws and policies that discriminate against women interfere with Iranian women's right to work. Women confront an array of restrictions, such as on their ability to travel, job prohibitions, and an absence of basic legal protections. Women are marginalised in the economy, and make up only 16% of the workforce; the rate of unemployment for women is 20% (twice that of men). DFAT can highlight in consultations the fact of President Rouhani's criticism of women's marginalisation in the economy during his re-election campaign. Australia can call for positive action, providing examples of how the economy and society can benefit, perhaps by highlighting the achievements of Iranian-born women in Australia.

*Note: Despite a moratorium in 2002, human rights watchdogs have observed that death by public stoning of women has resurfaced (Iran's penal code allows it in cases of adultery), particularly in provinces where there is less media attention.*

*For recent examples see:*

Human Rights Watch: World Report: Events of 2017: Women's Rights in Iran

<https://www.hrw.org/world-report/2018/country-chapters/iran>

VOA News – Women's Rights in Iran (4 January 2018) <https://www.voanews.com/a/womens-rights-in-iran/4193418.html>

## Focus Issue #5: Treatment of Minorities, Migrants, Persons with Disability

The Iranian Constitution and law denies freedom of religion to Bahais\* (people of the Baha'i faith) and discriminates heavily against them. The government also discriminates against other religious minorities, including Sunni Muslims, and restricts cultural as well as political activities among the country's Azeri, Kurdish, Arab, and Baluch ethnic minorities. There have been widespread reports of Iran's non-Muslim religious minorities being unjustly harassed or imprisoned by government authorities. Charges of economic neglect and discrimination by various minorities have in some cases led to clashes between police and ethnic or religious minority demonstrators.

*\* The Baha'i faith is a monotheistic religion founded in Persia during the nineteenth century.*

CLA believes DFAT should argue that, in line with the active modernisation of Iran, it is time the Constitution and/or restrictive religious laws were updated to recognise that there are now numerous religions or belief systems in the world that have proven capable of existing side by side. The religious view is that peaceful coexistence on earth earns merit in the after life, and that a nation should be encouraging minorities to get along with the majority and to contribute equally to work for nation building.

For example, Australia should support the claims of Sunni leaders for removal of restrictions on the appointment and employment of Sunnis in Sunni-majority areas, and for removing restrictions on Friday prayer assemblies in Iran.

*Note: In 2015, Iran reportedly allowed all Afghan children, including undocumented ones, to enrol in schools after Ayatollah Khamenei (Supreme Leader of Iran since 1989) issued a ruling emphasising that "no Afghan child, even the undocumented ones, should be left out of school." Australia can express support and encouragement to Iran's Minister of Education, after he announced that about 370,000 Afghans and other foreign students have enrolled in schools in Iran.*

Under Iranian law, same-sex conduct is punishable by public flogging and, in the case of two males, can be punished by the death penalty. Although Iran permits and subsidises sex reassignment surgery for transgender people, no law prohibits discrimination against them. Australia should encourage Iran to pass a new anti-discrimination law which ensures that different elements of Iran's governing documents do not work against each other.

Moreover, DFAT should actively address concerns expressed by the Committee on the Rights of Persons with Disabilities over violation of disability rights by the Iranian government in many areas, including preventing and punishing violence and abuse, access to justice, and denial of legal capacity. The committee has recommended a new Bill on Protecting Rights of Persons with Disabilities which is currently under consideration; this should be included and encouraged in dialogue as a positive step, as part of a new anti-discrimination law.

Regarding both focus issues #4 and #5, CLA suggests that Australia and DFAT assists Iran by providing expert advice on the formulation of policies directed at improving rights for women and targeted groups. Australia has a long and generally successful history with such legislation, and it would be appropriate for us to offer Iran access to Australian experts by secondment.

## Focus Issue #6: **Warfare**

Iran continues to provide the Syrian government with military assistance and plays an influential role alongside Russia and Turkey in the Syria negotiations that are under way. Human Rights Watch and other organisations have documented deliberate and indiscriminate attacks on civilians, as well as torture by the Syrian government. Although a broader factor in Iran's human rights matters, Iranian warfare should be considered as an overshadowing factor, and should be included in DFAT dialogue. Australia should encourage Iran to distance itself from human rights abuses, such as the bombing of women and children, to signify that the new, modern Iran is based on much stronger human rights and civil liberties principles.

## **Conclusion**

Iran has ratified the [International Covenant on Civil and Political Rights](#) and the [International Covenant on Economic, Social, and Cultural Rights](#) without reservations, committing itself to the protection and promotion of civil, political, economic, and social rights including freedom of expression, assembly, association, and religion. The [Iranian Constitution](#) also guarantees these freedoms: however there appears to be much ambiguity and inherent structural obstacles which don't allow the theoretical foundation of the nation to match the reality.

CLA believes the above key issues, as well as strong reminders of Iran's legal obligation as a party to international agreements, should be the focus of conversation, as well as appropriate discussion about the continuation of the Australian-Iran relationship. The dialogues present an opportunity for Australia to develop cooperative bilateral action plans to achieve progress on rights and liberties in Iran, and to discuss and decide mechanisms for helping Iran to fast-track some initiatives.

CLA notes that it is also open, should cooperation not be forthcoming, for policy options encouraged by the Council on Foreign Relations 2011 to be considered. These include targeted sanctions, especially in the private sector and in government companies that enable repression, such as those that censor mobile, satellite, and Internet communications.

DFAT should also encourage efforts to train and provide tools to civil society activists to highlight and discourage Internet surveillance and censorship efforts. In this regard, DFAT should work closely with the international diplomatic community and with global and local NGOs.

CLA urges DFAT to be proactive, respectful and firm in dialogue for change surrounding structural complications, cultural divide and human rights abuses in Iran.

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