

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/28/70 para 94

Full recommendation:

The Special Rapporteur looks forward to observing the impact that amendments to the Code of Criminal Procedure will have on improving access to legal counsel, and encourages the Government to guarantee this right for all accused, regardless of the allegations against them. He notes that the Government should further ensure that national laws support the independence of lawyers, in accordance with international norms and standards, and implores the Islamic Republic of Iran to release all lawyers that appear to have been imprisoned for protected activities in defence of their clients, such as raising awareness about fair trial concerns.

Assessment using Impact Iran indicators¹

A. Encourages the Government to guarantee this right for all accused

The guarantee of to the right to legal defense is enshrined in Article 35 of the Constitution which ensures the right to choose a lawyer.² Article 190 of the revised Code of Criminal Procedure (CCP) protects the right of a suspect to “be accompanied by a lawyer during the preliminary investigations.” Article 48 of the CCP permits the accused to “demand the presence of a lawyer from the start of detention.”³ ⁴ However, a Note to Article 48 of the 2015 CCP,⁵ specifies that individuals facing charges for certain offences, including those relating to national security and organized crime, must select their legal counsel from among a limited list of lawyers approved and announced by the Head of the Judiciary at the phase of preliminary investigations.⁶ In 2018, the Judiciary published the list of approved lawyers (including only 20 names for Tehran). However, many of the lawyers named are reportedly close to the security bodies or had been solicited for payments of money to appear on the list, threatening due process and questioning

¹ CCPR.14.3.S.4; CCPR.14.3.P.2; CCPR.14.3.O.3; CCPR.14.1.S.2; CCPR.14.1.P.2

² Constitution of the Islamic Republic of Iran http://www.iranchamber.com/government/laws/constitution_ch03.php

³ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

⁴ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

⁵ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

⁶ The former CCP had conditioned the presence of a lawyer at the investigative stage on the permission of the judge in cases with a “confidential” aspect, cases where the presence of a party other than defendant would “corrupt” proceedings as determined by the judge, and in national security cases; See the March 17, 2017 report of the UN Special Rapporteur, Asma Jahangir, on fair trial in Iran (<https://undocs.org/en/A/HRC/34/65>)

the independence and neutrality of the Judiciary.⁷ As a consequence, the right to legal assistance of one's choosing in such cases is particularly limited.

Defendants in national security cases are often denied access to a lawyer in the investigative stage of the judicial process. In the hundreds of cases of individuals arrested for political reasons or suspected for ordinary crimes that the Abdorrahman Boroumand Center has investigated, all detainees were interrogated without the presence of an attorney.⁸ Reports have shown a pattern of reported cases where prisoners remain incarcerated without proper access to legal representation at all stages of their trial process.^{9 10}

B. Ensure that national laws support the independence of lawyers and release all lawyers that appear to have been imprisoned for protected activities in defence of their clients

In law, the Iranian Bar Association is independent since 1997, when a board of directors was appointed through The Law on Conditions for Obtaining the Attorney's License, yet in practice, the Judiciary is in charge of vetting the candidates for appointment to this organ and lawyers have no immunity.¹¹ According to reports that have been published in recent years, a number of lawyers and judges are scrutinized by security intelligence institutions.¹² According to reports that have been recorded and published in recent years, a number of lawyers, mainly those that acted in defense of human rights activists like Hoda Amid, Payam Derafshan and Farokh Forouzan have been persecuted and arrested by Iranian intelligence institutions.¹³ Cases where lawyers have acted in defense of human rights activists and members of minorities are the most common instances where the Iranian authorities have actively engaged in repressing them through detention and incarceration.¹⁴

Recommendation Status:

This recommendation has **NOT** been implemented.¹⁵

⁷ "Iranian Lawyers Criticize Proposal to Deprive Defendants of Right to Choose Counsel," Human Rights Activists in Iran, June 6, 2018 (<https://www.iranrights.org/library/document/3443>)

⁸ Abdorrahman Boroumand Center, joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

⁹ HRANA <https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>

¹⁰ HRANA <https://www.en-hrana.org/arash-sadegh-golrokh-iraicis-lawyers-access-cases>

¹¹ <https://iranhrdc.org/iranian-bar-associations-struggle-for-independence/#4>

¹² HRANA <https://www.en-hrana.org/annual-report-of-prosecuted-lawyers-in-iran>

¹³ CSHR <http://en.cshr.org.uk/2018/09/04/free-tribune-lawyers-condemns-detention-human-rights-lawyers/>

¹⁴ Radio Farda <https://en.radiofarda.com/a/iranian-lawyer-arrested-for-claiming-executed-sufi-man-s-innocence/29308266.html> and Amnesty <https://www.amnesty.org/en/latest/news/2018/09/iran-arrests-of-lawyers-and-womens-rights-activists-signal-intensifying-crackdown-on-civil-society/>

¹⁵ For more please see: <https://www.iranhumanrights.org/2015/02/womenreport-womens-education/> and <https://www.hrw.org/report/2017/05/25/its-mens-club/discrimination-against-women-irans-job-market>