

**Special Rapporteur on the situation of human rights in the Islamic Republic of Iran
A/HRC/25/61 para 96(b)**

Full recommendation:

To strengthen fair trial safeguards by ensuring access to legal counsel during all phases of pretrial detention and the investigative stage of cases, including during interrogation and arraignment, and allow for legal counsel to advise the accused during these proceedings.

Assessment drafted using Impact Iran indicators¹

Article 35 of the Iranian Constitution stipulates that when a party to a lawsuit is unable to secure legal counseling “the means of a lawyer being appointed to act for them must be made available to them.” 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.” yet its note prohibits defendants in political cases from having access to legal counsel during pre-trial stages of their prosecution, which is usually when most violations are committed by officials.² Although the CCP guarantees the right to free legal assistance for those without adequate financial resources, the applicability of this right is differentiated between the pre-trial and trial phases. For instance, the CCP does not ensure access to free legal assistance during the investigation phase in cases where the accused faces charges other than those punishable by severe punishments such as the death penalty or life imprisonment. As a consequence, safeguards provided in the Iranian legal framework fall short to protect the accused person’s right to access legal counsel in the pre-trial phase.

Prisoners reportedly remained incarcerated without proper access to legal representation at all stages of their trial process and lawyers were reportedly denied timely access to their clients’ legal files.³ Yet, the Human Rights Committee has explicitly stipulated that the accused should be granted prompt access to legal counsel, including during the pre-trial phase.⁴

In May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the Code of Criminal Procedure which would allow the prosecution to delay access to a lawyer for 20 days, with a possibility of extension to the whole duration of

¹ Indicators used: CCPR.14.3.S.4; CCPR.9.2.P.1; CCPR.14.3.O.3.

² Iran Human Rights Documentation Center <https://iranhrdc.org/amendments-to-the-islamic-republic-of-irans-code-of-criminal-procedure-part-1/>

³ “If You Are Arrested for Murder and You Don’t Have Money,” Iran Students News Agency. 1 February 2018, <https://www.isna.ir/news/96111106756> and <https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>

⁴ ICCPR Article 14: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

investigation, in cases related to national security, terrorism or financial corruption.⁵ Such amendment would further restrict access to legal counsel during the investigation phase.

Recommendation Status:

This recommendation has **NOT** been implemented.⁶

⁵ <https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>

⁶ *For more, please see:* 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

Field Code Changed