

## Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/40/67 para 70(f)

### Full recommendation:

*Ensure that all persons accused of any crime are assured access to a lawyer of their choosing during all stages of the judicial process, including during the initial investigation and interrogation stage, and are provided with legal aid as needed.*

### Assessment using Impact Iran human rights indicators<sup>1</sup>

The guarantee of to the right to legal defense is enshrined in Article 35 of the Constitution of the Islamic Republic of Iran, which also ensures the right to choose a lawyer and 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.”<sup>2</sup> Additionally, 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.” Similarly, Article 48 of the CCP permits the accused to “demand the presence of a lawyer from the start of detention.”<sup>3 4</sup>

However, the right to access a lawyer of one’s choosing is limited by a note to Article 48 of the 2015 CCP,<sup>5</sup> which 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.<sup>6</sup> 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 the independence and neutrality of the Judiciary.<sup>7</sup>

<sup>1</sup> CCPR.14.3.S.4; CCPR.14.3.S.4; CCPR.14.3.P.2; ; CCPR.14.3.P.2; CCPR.14.3.O.3; CCPR.14.3.O.3

<sup>2</sup> Constitution of the Islamic Republic of Iran < [http://www.iranchamber.com/government/laws/constitution\\_ch03.php](http://www.iranchamber.com/government/laws/constitution_ch03.php)>

<sup>3</sup> 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](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

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

<sup>5</sup> 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](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>6</sup> 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>)

<sup>7</sup> “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>)

Additionally, 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.<sup>8</sup> 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. Yet, the Human Rights Committee has explicitly stipulated that the accused should be granted prompt access to legal counsel,<sup>9</sup> including during the pre-trial phase.<sup>10</sup> 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 investigation, in cases related to national security, terrorism or financial corruption.<sup>11</sup> <sup>12</sup> Such amendment would further restrict access to legal counsel during the investigation phase.

Despite the existence of several mechanisms that ostensibly accept complaints regarding violations of citizens' rights, such as the Article 90 Commission of the parliament (established based on Article 90 of the Constitution, offering a mechanism to citizens to file complaint against any of the three branches of power) and the Oversight Bodies for the exercise of Citizenship Rights in the country's provincial courts, there is no evidence to suggest that complaints to these bodies are independently reviewed and investigated.<sup>13</sup>

In its 2019 Report to the Universal Periodic Review, the Islamic Republic of Iran stated that it adopted measures including “providing access to a lawyer and benefiting from legal advice” and added that “In the agreement with the center of lawyers and legal advisers of the Judiciary and a number of bar associations, free judicial assistance is provided to prisoners” and that “Social and judicial assistance units also provide legal counsel to prisoners.”<sup>14</sup>

<sup>8</sup> Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

<sup>9</sup> UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, available at: <https://www.refworld.org/docid/478b2b2f2.html> <<https://undocs.org/CCPR/C/GC/32>>

<sup>10</sup> Human Rights Committee, *Concluding observations on Georgia*, CCPR/C/79/Add.75, para. 27, available at [bit.ly/20caB7i](http://bit.ly/20caB7i); HRC, *Concluding observations on the Netherlands*, CCPR/C/NLD/CO/4, para. 11, available at [www.refworld.org/docid/4aa7aa642.html](http://www.refworld.org/docid/4aa7aa642.html)

<sup>11</sup> Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

<sup>12</sup> Amnesty International, [www.amnesty.org/en/documents/mde13/0379/2019/en/](http://www.amnesty.org/en/documents/mde13/0379/2019/en/); <https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>

<sup>13</sup> Joint submission to the Human Rights Committee, Abdorrahman Center, Iran Human Rights Documentation Center (IHRDC), Impact Iran and Human Rights Activists in Iran, 2020, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCS%2fIRN%2f42313&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCS%2fIRN%2f42313&Lang=en)

<sup>14</sup> National Report, UPR 2019, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

However, in practice, 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.<sup>15</sup> 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.<sup>16 17 18 19</sup> In many reported cases, especially national security cases, defendants have reported seeing their lawyer for the first time on their day of trial.<sup>20 21</sup>

The Islamic Republic of Iran has not ensured that all persons accused of any crime are assured access to a lawyer of their choosing during all stages of the judicial process, including during the initial investigation and interrogation stage, and are provided with legal aid as needed.

Recommendation Status:

This recommendation has **NOT** been implemented.

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<sup>15</sup> 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](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>16</sup> HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

<sup>17</sup> HRANA <<https://www.en-hrana.org/arash-sadegh-golrokh-iraeis-lawyers-access-cases>>

<sup>18</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, [https://www.ohchr.org/Documents/Countries/IR/Report\\_of\\_the\\_Special\\_Rapporteur\\_on\\_the\\_situation\\_of\\_human\\_rights\\_in\\_the\\_Islamic\\_Republic\\_of\\_IranA4361.pdf](https://www.ohchr.org/Documents/Countries/IR/Report_of_the_Special_Rapporteur_on_the_situation_of_human_rights_in_the_Islamic_Republic_of_IranA4361.pdf)

<sup>19</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, July 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/27/PDF/N2019027.pdf?OpenElement>

<sup>20</sup> 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](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>21</sup> HRW <<https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>>