

Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/37/68 para 93

Full recommendation:

The Special Rapporteur also reiterates her call upon the Government to ensure that the judiciary is free from interference of any kind and to uphold the integrity of judges, prosecutors and lawyers, through transparent and merit-based appointments, and through protecting them and their families and professional associates against all forms of reprisals as a result of discharging their functions. The judiciary should also be held accountable for ensuring that proceedings are conducted fairly and that the rights of the parties are respected, through a mechanism that is consistent with the Basic Principles on the Independence of the Judiciary.

Assessment using Impact Iran human rights indicators¹

- A. The Special Rapporteur also reiterates her call upon the Government to ensure that the judiciary is free from interference of any kind and uphold the integrity of judges, prosecutors and lawyers, through transparent and merit-based appointments, and through protecting them and their families and professional associates against all forms of reprisals as a result of discharging their functions.**

According to the Constitution of the Islamic Republic of Iran, the head of the judicial system in Iran (the Chief Justice) is directly appointed by the Supreme Leader² and can be dismissed by him at any point in time.³ No other organ or institution is involved in the dismissal process.⁴ The Chief Justice is in charge of selecting high-ranking judicial officials, including the Head of the Supreme Court and the country's Prosecutor General.⁵ As a result, the Judiciary is not independent from the government in the Islamic Republic of Iran.

The Law for the Selection of Judges of 1982 with its subsequent amendments, as well as the Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges of 2013, are the main norms regulating the selection of judges. Mandatory criteria for selecting judges in Iran include the following: the appointed judge has to

¹ CCPR.14.1.S.2; CCPR.14.1.P.3.; CCPR.14.1.O.5.; CCPR.14.1.O.6.; CCPR14.1.O.8.

² Article 157 Constitution of the Islamic Republic of Iran <
http://www.iranchamber.com/government/laws/constitution_ch11.php>

³ Article 110 Constitution of the Islamic Republic of Iran <
http://www.iranchamber.com/government/laws/constitution_ch08.php>

⁴ 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

⁵ See Articles 158 to 162 of the Constitution of the Islamic Republic of Iran
http://www.iranchamber.com/government/laws/constitution_ch11.php

be a Muslim man, who is “bound to faith” and is “loyal to the principle of the primary of the Supreme Leader”.⁶ Field investigations and ideological and political interviews are also part of the selection process.^{7 8} These discriminatory and vague criteria enable judges to be appointed based on their political loyalty, thus undermining the independence and impartiality of the Judiciary. There are reports of Iranian authorities having initiated formal investigations into individuals with judicial functions following accusations of corruption, bribery and abuse of power.

The selection process of judges in Iran impacts the judicial process and undermines the due process of law. In 2014, a Judiciary’s circular listed the most common complaints against judges and the numerous violations of the principle of due process.⁹ These included unlawful arrests, failure to renew temporary detention orders within the prescribed time, failure to render decisions within the prescribed time, ruling prior to the conclusion of the investigation and trial, issuing decisions in courts of original jurisdiction without convening a trial session, issuance of “unfounded and undocumented” rulings, issuing rulings outside the scope of the complaint, and unpleasant, inappropriate, and insulting conduct.¹⁰ There is little transparency regarding these complaints or their outcomes and not all of them were considered. During the Iranian year 1395 (March 20, 2016 –March 19, 2017), Iran’s General Inspection office received 30,315 complaints and subsequently sent 3,464 emails to those who had filed complaints. There were 1,502 written follow-ups of local and provincial investigations.¹¹ Due process violations are particularly grave in Iran in light of the strikingly high numbers of executions conducted by the State. At least 5,079 executions have reportedly been carried out in Iran since the beginning of 2012 through to May 27, 2020.¹²

The 1955 Law for the Independence of Lawyers established the independence of the Bar Association and granted lawyers with immunity from prosecution for their work.¹³ However, following its disestablishment after the Iranian Revolution and its subsequent reinstatement, the Bar Association has been put under increased Judiciary’s governance.¹⁴ Additionally, the Iranian Government has repeatedly attempted to amend bylaws of the Bar Association and reduce the

⁶ Article 13 Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges (2013).

⁷ Article 14 Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges (2013)

⁸ <http://rc.majlis.ir/fa/law/show/90547> ; <http://rc.majlis.ir/fa/law/show/91044>

⁹ Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Document Center, Impact Iran and Human Rights Activists in Iran, 2020,

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

¹⁰ Abdorrahman Boroumand Center, <https://www.iranrights.org/library/document/2994>

¹¹ Ministry of Justice 2017 report on the accomplishments of the Judiciary in the year 1395. <https://www.justice.ir/FileSystem/View/File.aspx?FileId=5282d9cd-913e-4c78-b3d8-b39475070de2>

¹² Abdorrahman Boroumand Center, <https://www.iranrights.org/memorial>

¹³ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/97>

¹⁴ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/iranian-bar-associations-struggle-for-independence/>

independence of lawyers.^{15 16 17} Most recently, a draft bill presented in May 2020 would replace the Bar Association with the “Supreme Council of the Coordination of Lawyers’ Affairs,” which would be composed of Government appointed judiciaries.¹⁸ The Judiciary is in charge of investigating the qualification of lawyers and confirming the issuance of licenses to newly qualified lawyers.¹⁹ In November 2020, the Judiciary issued a directive allowing it to investigate complaints against lawyers instead of the Bar Association’s own disciplinary tribunal.²⁰

In 2000, the Judiciary established the General Office for the Supervision of Lawyers, Experts, Family Counsellors and Official Translators in accordance with Article 187 of the Law of the Third Economic, Social and Cultural Development Plan.²¹ In October 2020, Mohammad Mosaddegh, the Iranian Judiciary’s Deputy Chief for Legal and Parliamentary Affairs, announced the creation of a judicial body to supervise lawyers, the General Office for the Supervision of Lawyers, Experts, Family Counsellors and Official Translators, under the responsibility of his Office.^{22 23}

In 2014, President Rouhani reportedly stated that “a lawyer should be immune from any prosecution for carrying out its professional duty, and the investigative authority for the lawyers’ professional issues is the Bar Association.”²⁴ Yet, human rights lawyers have increasingly been targeted and have been repressed, arrested, detained, and imprisoned solely for exercising their rights to freedom of expression, association and assembly and for carrying out their professional work to defend their clients. Lawyers defending human rights defenders, political prisoners and prisoners of conscience have been reportedly harassed, arrested, detained and prosecuted in the Islamic Republic of Iran, notably on security of defamation charges.^{25 26 27 28 29 30 31}

¹⁵ Report of the Special Rapporteur on the situation of human rights in Iran, May 2015, <https://undocs.org/A/HRC/28/70>

¹⁶ Human Rights Watch, <https://www.hrw.org/news/2009/07/16/iran-halt-moves-curtail-lawyers>

¹⁷ Lawyers for Lawyers, <https://lawyersforlawyers.org/en/iran-lawyers-call-upon-iranian-authorities-to-revoke-controversial-bill/>

¹⁸ Radio Farda, <https://en.radiofarda.com/a/more-than-12-000-lawyers-in-iran-reject-move-to-dismantle-bar-association/30590110.html>

¹⁹ The Supreme Disciplinary Court for Judges has the authority to vet lawyers. <https://rc.majlis.ir/fa/law/show/92825>

²⁰ Vokalapress, <https://vokalapress.ir/?p=7708>

²¹ Parliament of the Islamic Republic of Iran, <https://rc.majlis.ir/fa/law/show/93301>

²² Tabnak News, <https://bit.ly/2MNjDOj>

²³ Center for Human Rights in Iran, <https://iranhumanrights.org/2020/12/new-directive-allows-iranian-judiciary-to-control-lawyers-through-disciplinary-body/>

²⁴ Lawyers for lawyers, <https://lawyersforlawyers.org/wp-content/uploads/Oral-statement-Iran-L4L-LRWC-19-3-2015.pdf>;

Meeting the members of the board of Directors of Bar Associations, February 2014) See:

http://www.rouhani.ir/event.php?event_id=310

²⁵ OHCHR News, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24333&LangID=E>

²⁶ Center for Human Rights in Iran, <https://iranhumanrights.org/2020/06/list-of-attorneys-imprisoned-in-iran-for-defending-human-rights/>

²⁷ Human Rights Watch, <https://www.hrw.org/news/2018/12/13/iran-escalating-crackdown-lawyers>

²⁸ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/97>

²⁹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, May 2015, <https://undocs.org/A/HRC/28/70>

³⁰ See a number of reports published by HRANA: <<https://www.en-hrana.org/annual-report-of-prosecuted-lawyers-in-iran>>; <<https://www.en-hrana.org/iranian-authorities-detain-lawyers-and-civil-rights-activists>>

³¹ CSHR <<http://en.cshr.org.uk/2018/09/04/free-tribune-lawyers-condemns-detention-human-rights-lawyers/>>

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.³²

In light of the above, the Government has not ensured that the Judiciary is free from interference of any kind and has not upheld the integrity of judges, prosecutors and lawyers, through transparent and merit-based appointments, and through protecting them and their families and professional associates against all forms of reprisals as a result of discharging their functions.

B. The judiciary should also be held accountable for ensuring that proceedings are conducted fairly and that the rights of the parties are respected, through a mechanism that is consistent with the Basic Principles on the Independence of the Judiciary.

Based on the Law on Supervision of Judges' Conduct, adopted in September 2011, the Supreme Court of Judges has been established to hear complaints against judges and prosecutors.³³ According to the law, a range of punishments, from dismissal from government positions to imprisonment and deprivation of rights, are provided for convicted judges and prosecutors.³⁴ The possibility of appealing in this court is available for defendants.³⁵ However, as no information or report has been published on the cases that have been processed in this court, the effectiveness of this mechanism to ensure a fair trial and accountability for judges cannot be assessed.

In its national report to the Universal Periodic Review, the Islamic Republic of Iran stated that it held “Human rights training for judges, judicial officers and administrative staff on the rights of the child, the rights of persons with disabilities, the prohibition of torture and ill-treatment and the confronting against domestic violence” and “training courses on citizenship rights for judges, staff and judicial officers”.³⁶

³² 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%2fICS%2fIRN%2f42313&Lang=en

³³ Law on Supervision of Judges' Conduct, <https://rc.majlis.ir/fa/law/show/799728>

³⁴ Law on Supervision of Judges' Conduct, Article 13 to 21.

³⁵ Law on Supervision of Judges' Conduct Article 37.

³⁶ National Report, UPR 2019, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

The numerous reports of violations of fair trial and due process in legal proceedings suggest that the Supreme Court of Judges is inefficient in holding judges accountable. Similarly, reports suggest that trainings are insufficient and/or inefficient.³⁷

Recommendation Status:

This recommendation has **NOT** been implemented.

³⁷ See more : Abdorrahman Boroumand Center (ABC) Iran Human Rights Documentation Center (IHRDC) Impact Iran Human Rights Activists in Iran,
https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf