

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/37/68 para 84

Full recommendation:

The Government of the Islamic Republic of Iran should also ensure that all those sentenced to death can exercise their right to equal access to justice through adequate legal representation, which is an essential component of due process at any stage in criminal proceedings, including the appeal and review process. Adequate and qualified legal representation at the review stage through effective legal aid programmes should be ensured.

Assessment using Impact Iran human rights indicators¹

Article 35 of the Constitution of the Islamic Republic of Iran guarantees the right to legal defence, which also ensures the right to choose a lawyer. In the event that a party to a lawsuit is unable to secure legal counselling, according to Article 35 of the Iranian Constitution a lawyer will be provided.² 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 beginning of his/her detention.”^{3 4}

However, the right to access a lawyer of one’s choose is limited by a note to Article 48 of the 2015 CCP⁵ for individuals facing charges for certain offences, such as those related to national security and organised crime. In such cases, the individual must select their legal counsel during the preliminary investigative phase, from a limited list of lawyers approved and announced by the Head of the Judiciary.⁶ In 2018, the Judiciary published the list of approved lawyers which only had 20 names listed for all of Tehran. However, many of these lawyers reportedly have close ties with the security forces or paid to appear on the list after speaking with government

¹ 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

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>)

officials, thus suggesting that due process in Iran is threatened and the independence and neutrality of the Judiciary is questionable.⁷

Although the CCP guarantees the right to free legal assistance for those without adequate financial resources, the applicability of this right is different in the pre-trial and trial phases.⁸ The CCP ensures 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. However, 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 extending such delay to the whole duration of the investigation, in cases related to national security, terrorism or financial corruption.⁹ ¹⁰ Such amendment would further restrict access to legal counsel during the phase of investigation.

Despite the existence of several mechanisms that ostensibly accept complaints regarding violations of citizens' rights, such as the Parliament's Article 90 Commission (established under 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.¹¹

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 centre 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.”¹²

However, individuals accused of committing crimes against national security, including those that might be sentenced to the death penalty, are often denied access to a lawyer during the investigative stage of the judicial process. Of the hundreds of cases that the Abdorrahman Boroumand Centre has investigated of individuals arrested for political reasons, or suspected of committing ordinary crimes, none of the individuals were interrogated with the presence of an

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

⁹ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

¹⁰ Amnesty International, 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/>

¹¹ 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

¹² National Report, UPR 2019, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

attorney.¹³ Similarly, none of the death row prisoners Iran Human Rights has inquired about have had access to a lawyer in the initial phase after their arrest.¹⁴ Reports have shown a pattern of reported cases where prisoners remain incarcerated without proper access to legal representation during all stages of their trial procedure.^{15 16 17 18} In many reported cases, especially those involving charges of crimes against national security, defendants have reported seeing their lawyer for the first time on the day of their trial.^{19 20}

In light of the above, the Islamic Republic of Iran has not ensured that all those sentenced to death can exercise their right to equal access to justice through adequate legal representation. Additionally, the existing legal aid programmes have not been effective in ensuring adequate and qualified legal representation for all.

Recommendation Status:

This recommendation has **NOT** been implemented.

¹³ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

¹⁴ <https://iranhr.net/en/articles/4732/>

¹⁵ HRANA <https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>

¹⁶ HRANA <https://www.en-hrana.org/arash-sadegh-golrokh-iraeis-lawyers-access-cases>

¹⁷ 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

¹⁸ 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>

¹⁹ 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

²⁰ Human Rights Watch <https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>