

SAFETY AND INDEPENDENCE OF LAWYERS & ACCESS TO LEGAL REPRESENTATION IN IRAN

by

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ADVOCACY RIGHTS

- 1.1 As a member of the United Nations (24 October 1945), the Islamic Republic of Iran (Iran) has obligations to ensure the equal enjoyment by all people within its territory of the personal and advocacy rights protected by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).¹
- 1.2 Discharge of these obligations entails ensuring for all the right to legal representation guaranteed by the ICCPR as part of rights to due process and equality. Article 14(3) (d) of the ICCPR lists, among the minimum procedural guarantees for persons charged with a criminal offence, the right, "to...defend himself in person or through legal assistance of his own choosing... and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it." The United Nations Human Rights Committee (HR Committee) has determined that this right to be represented extends to civil proceedings.²
- 1.3 It is widely accepted that in order to ensure the right to legal representation, states must adopt and maintain effective measures to ensure the safety and independence of lawyers and the freedom to engage in advocacy without reprisals. The United Nations Basic Principles on the Role of Lawyers (Basic Principles)³ describe specific state duties widely accepted as necessary to ensuring the right to representation through ensuring the independence and safety of lawyers and protecting lawyers from interference by state and other actors. Compliance with the Basic Principles is a fundamental precondition to fulfilment of the requirement of every state to ensure effective access both to enforcement of rights and the legal representation required for effective enforcement and remediation.
- 1.4 The Basic Principles recommend, amongst others, that:
 - (a) Lawyers must be able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. Lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics (Article 16);
 - (b) States shall adequately safeguard the security of lawyers who are threatened as a result of discharging their functions (Article 17);
 - (c) States shall ensure that all persons are entitled to assistance from a lawyer of their choice to protect and establish rights and to defend them in all stages of criminal proceedings (Art. 1);

¹ The ICCPR was signed by Iran on 4 April 1968 and ratified on 24 June 1975

² 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, para. 10.
available at: <http://www.refworld.org/docid/478b2b2f2.html> (accessed 13 March 2014)

³ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

- (d) States shall ensure that all people within its territory have equal access to legal assistance without discrimination based, *inter alia*, on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin (Article 2); and
- (e) States shall ensure that lawyers are free to form and join self-governing professional associations and further that the executive body of such an association is elected by its members and operates free from external interference (Article 24);

1.5 Iran has failed to fulfil these obligations and has not cooperated with the investigation and reporting that could lead to improved compliance with its obligation to ensure rights and access to remedies through safeguarding the safety and independence of lawyers. Requests by the Special Rapporteur on the Independence of Judges and Lawyers to visit Iran in 2006, 2008 and 2011 have been refused.⁴

1.6 In violation of the obligation to protect the personal advocacy rights of individuals and the rights of lawyers to engage in advocacy (as contained in the ICCPR and UDHR), Iran has, *inter alia*:

- (a) subjected lawyers to politically motivated prosecutions and to arbitrary detention for exercising protected freedoms of expression and association and for carrying out their legitimate work as lawyers;
- (b) carried out reprisals against members of the Defenders of Human Rights Center (DHRC) for their peaceful human rights advocacy;
- (c) denied medical attention and access to legal representation to imprisoned lawyers; and
- (d) carried out reprisals against lawyers representing members of minority groups in cases involving the determination of rights.

2. ARBITRARY DETENTION OF LAWYERS

2.1 Some of the lawyers wrongfully prosecuted and arbitrarily detained in reprisal for their human rights advocacy are listed below. Some of these lawyers have themselves been denied access to legal representation.

<i>Name</i>	<i>Date of arrest</i>	<i>Allegation</i>	<i>Sentence and remarks</i>
Abdolfattah Soltani (winner of several human rights awards)	Arrested in 2009 and 2011	Various charges including co-founding the Centre for Human Rights Defenders and endangering national security.	18 years of imprisonment in Evin prison. Following appeal he was sentenced to 13 years imprisonment.
Afshin Karampour	Arrested in September 2011, sentenced July 2013	Spreading propaganda against the system. Remark: administrator of Majzoonban – e-Noor Dervish website.	7.5 years imprisonment <i>Evin</i> prison. Remark: has been denied transfer to medical centers.
Amir Eslami	Arrested in	Spreading propaganda	7.5 years imprisonment in

⁴ 2006: Compilation prepared by the Office of the High Commissioner for Human Rights, C/HRC/WG.6/7/IRN/2, p.4; Office of the High Commissioner of Human Rights, *Country and other visits by Special Procedures Mandate Holders since 1998*.

<i>Name</i>	<i>Date of arrest</i>	<i>Allegation</i>	<i>Sentence and remarks</i>
	October 2011, sentenced July 2013	against the system. Remark: administrator of Majzoonban – e-Noor Dervish website.	Evin prison. Remark: hunger strike in June 2012.
Mustafa Daneshju	Arrested in May 2011, sentenced July 2013	Spreading propaganda against the system. Remark: administrator of Majzoonban – e-Noor Dervish website.	7.5 years imprisonment in Sari prison, moved to Evin prison in August 2012.
Omid Behrouzi	Arrested in October 2011, sentenced July 2013	Spreading propaganda against the system. Remark: administrator of Majzoonban – e-Noor Dervish website.	7.5 years imprisonment in Evin prison
Farshid Yadollahi	Arrested in January 2011, sentenced July 2013	Spreading propaganda against the system. Remark: administrator of Majzoonban – e-Noor Dervish website.	7.5 years imprisonment in Evin prison. Remark: hunger strike in June 2012. Transferred to Rajaishahr prison.
Hassan Sarchahi	Arrested in December 2010	It is unclear to us what the allegations are on which bases Sarchahi has been sentenced.	2 years imprisonment in Evin prison. *It is unclear whether Sarchahi has been released.
Javid Houtan Kian	Arrested in October 2010	Initially questioned in connection with ‘ties with foreign anti- revolutionary groups’ and ‘the possession of false identity cards. Later he was sentenced for having interviewed foreign media about his client’s situation (an Azeri woman who was punished for adultery and murder in 2010 and continues to be imprisoned and facing a sentence of death by stoning).	6 years imprisonment in Tabriz prison. Released in August 2013.
Kambiz Norouzi	June 2009	Conspiracy against national security; spreading anti- government propaganda and disrupting public	1.5 years imprisonment * It is unclear whether Norouzi has been released.

<i>Name</i>	<i>Date of arrest</i>	<i>Allegation</i>	<i>Sentence and remarks</i>
		order.	
Mohammed Seyfzadeh	October 2010	Collusion and assembly with intent to disrupt internal security.	2 years Rajaishahr prison. * Seyfzadeh has not been released.
Mohammed Ali Dadkhah (co-founder of DHRC)	July 2011	Membership in an organization seeking to overthrow the government; spreading propaganda against the system by having interviews with foreign media.	9 years imprisonment in Evin prison.
Nasrin Sotoudeh (winner of Sacharov award from the European Parliament; legal counsel to Nobel laureate Shirin Ebadi)	Arrested in September 2010	Undermining national security, propaganda against the regime and not wearing a hejab (Islamic dress or headscarf).	11 year imprisonment in Evin prison, after appeal sentenced for 6 years imprisonment Remark: hunger strike in October 2012. *Released 18 September 2013.

2.2 There is a lack of access to adequate healthcare in Iranian prisons, and reports indicate that several lawyers in detention have been denied adequate medical treatment. For example, reports indicate that Mustafa Daneshju was found unconscious in a prison shower; Mohammad Seifzadeh urgently requires treatment for serious heart disease; and, Abdolfattah Soltani and Amir Eslami face health problems.

2.3 Although the ICCPR does not expressly provide for a right to health care, the HR Committee has determined⁵ that adequate and timely medical care must be provided to all detainees as part of state duties to ensure the enjoyment by all persons of rights to life (Article 6), freedom from torture and other cruel, inhuman or degrading treatment or punishment (Article 7) and the right of prisoners to humane treatment (Article 10). As stated by the HR Committee, “the State party [to the ICCPR] by arresting and detaining individuals takes the responsibility to care for their life.”⁶

2.4 In August 2013 authorities released Javid Houtan Kian, a prominent lawyer arrested in October 2010. Mrs. Nasrin Sotoudeh, human rights lawyer and member of the DHRC, was released on 18 September 2013. Despite these releases, many lawyers are still arbitrarily detained or face prosecution and imprisonment as a result of their human rights advocacy.

⁵ Human Rights Committee ‘Concluding Observations: Georgia’ (2002) UN Doc A/57/40 vol. I 53 para 78(7); Pinto v. Trinidad and Tobago (Communication No. 232/1987) Report of the Human Rights Committee vol. 2 UN Doc A/45/40 p. 69 para 12.7; Kelly v. Jamaica (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; Human Rights Committee ‘Concluding Observations: Portugal’ (2003) UN Doc A/58/40 vol. I 56 para 83(11); Human Rights Committee ‘Concluding Observations: Cambodia’ (1999) UN Doc A/54/40 vol. I 57 para 306; Human Rights Committee ‘Concluding Observations: Congo’ (2000) UN Doc A/55/40 vol. I 43 para 282; Human Rights Committee ‘Concluding Observations: Mongolia’ (2000) UN D Lantsova v. Russian Federation (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2. oc A/55/40 vol. I 49 para 332; Human Rights Committee ‘Concluding Observations: Syrian Arab Republic’ (2001) UN Doc A/56/40 vol. I 70 para 81(13).

⁶ Lantsova v. Russian Federation (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

3. REPRISALS AGAINST MEMBERS OF DHRC

- 3.1 In 2001 the DHRC was established by five prominent lawyers: Ms. Shirin Ebadi, Ali Dadkhah, Mohammad Seifzadeh, Mohammad Sharif and Abdolfattah Soltani. The objectives of the DHRC include (i) defending those accused of political crimes and prisoners of conscience on a *pro bono* basis, (ii) publishing reports on human rights in Iran, (iii) facilitating a dialogue amongst intellectuals and activists, and (iv) providing human rights education.⁷
- 3.2 Various founding members of the DHRC have been harassed by state agents, and some members were sentenced for founding the DHRC.
- (a) Abdolfattah Soltani has been subjected to abduction and prosecution for representing clients in politically sensitive cases. Soltani represented the journalist Akbar Ganji and the family of the Canadian photographer Zahra Kazemi who died in prison during or after interrogation. On 4 March 2012, Soltani was sentenced by the Iranian High Court to 13 years imprisonment for: (i) founding DHRC, (ii) spreading propaganda against the regime, (iii) undermining national security and (iv) ‘illegally’ accepting award moneys from the Nuremberg International Human Rights Awards in 2009.⁸
 - (b) Mohammad Seyfzadeh was charged and convicted of taking part in the formation of DHRC. He was banned from practicing law and sentenced to 9 years imprisonment in October 2010.⁹
 - (c) Mohammad Ali Dadkhah was sentenced on 4 July 2011 to nine years imprisonment and banned from practicing law for attempting to overthrow the government, when he defended a Christian pastor on death row in Iran for apostasy. His sentence was affirmed by the court of appeals on 28 April 2012.¹⁰

4. MINORITY GROUPS: DENIAL OF LEGAL REPRESENTATION

- 4.1 The UN General Assembly has expressed concern about human rights abuses against members of minority groups.¹¹ In October 2013, the Special Rapporteur on the human rights situation in Iran reported that religious minorities have been increasingly subject to various forms of legislated discrimination, including in employment and education, and often face arbitrary detention, torture and ill-treatment.¹² In this context, the ability of counsel to defend their clients without hindrance or harassment is critical.
- 4.2 Other human rights organisations have recently reported the cases cited below where: (i) legal representation was denied to members of minority groups, and (ii) lawyers were arrested and prosecuted apparently for representing members of a minority group.¹³ These reports deserve further investigation by the Special Rapporteur.

⁷ Defenders of Human Rights Center, website

⁸ Human Rights Watch, “Iran: Quash Convictions and Free Rights Advocates: Long Sentences in Newest Convictions of Human Rights Activists”, 8 March 2012

⁹ International Campaign for Human Rights in Iran, Abrupt Reversal of Ceased Prosecution Keeps Seifzadeh in Prison, 10 April 2013

¹⁰ Saeed Kamali Dehghan, Iranian lawyer Mohammad Ali Dadkhah sentenced to nine years in jail: Dadkhah has defended several people on death row in Iran, including Pastor Yusuf Naderkhani who is jailed for apostasy, The Guardian, 3 May 2012.

¹¹ Situation of human rights in the Islamic Republic of Iran, 1 November 2013, A/C.3/68/L.57, paras. 5(h) to (k).

¹² Special Rapporteur on the human rights situation in the Islamic Republic of Iran, Report, 4 October 2013, A/68/503, p.11.

¹³ Special Rapporteur on the human rights situation in the Islamic Republic of Iran, Report (A/HRC/22/56), February 2013; Secretary General report on the human rights situation in Iran (A/68/377), September 2013; Amnesty International, Report on Iran 2013, May 2013 ; Human Rights Watch, World Report 2014, Iran, January 2014.

Ahwazi Arab people

- (a) In 2009 five men (Ghazi Abbasi, Abdul-Reza Amir-Khanafereh, Abdul-Amir Mojaddami, and Jasim Moghaddam Payam) were arrested and denied access to a lawyer. In 2012 they were convicted by Branch 1 of the Revolutionary Court of Ahwaz on the basis of “enmity against God, corruption on earth” and other vague and overly broad charges. Their death sentences were affirmed by Branch 32 of Iran's Supreme Court in February 2013, and they were secretly executed in late 2013.¹⁴ Mohammad Ali Amouri and four other men were arrested in 2011, and reportedly tortured in custody. All five were denied access to a lawyer and sentenced to death by a Revolutionary Court in July 2013. The death sentences were upheld by the Supreme Court in January 2013.¹⁵

Kurdish people

- (b) Jamshid Dehghani, Jahangir Dehghani, Hamed Ahmadi and Kamal Molayee were arrested in 2009. They were denied representation by a lawyer and in November 2010 all were convicted by Branch 28 of the Revolutionary Court of Tehran of vaguely worded offences and sentenced to death. The Supreme Court affirmed the sentences in September 2013.¹⁶ In the fall of 2013, Iranian authorities executed Habibollah Golparipour, Reza Esmaili and Sherko Moarefi, who had been convicted of national security charges in summary proceedings by the Revolutionary Court.¹⁷

Azerbaijani people

- (c) Houtan Kian's legal counsel, Naghi Mahmoudi, fled Iran in 2011 because his own safety was threatened after he represented Azerbaijani cultural rights activists.¹⁸ In 2008, human rights lawyer Hemid Valai and two ethnic Azerbaijani activists were arrested and reportedly tortured while in custody.¹⁹ On 13 July 2013, five Azerbaijani human rights defenders (Mahmud Fezli, Dr. Latif Hasani, Dr. Ayat Mehrali Baglou, Behboud Gholizadeh and Shahram Radmehr) began a hunger strike to protest their nine-year sentences. All were denied timely access to lawyers, their lawyers did not have access to their case files during the investigation, and the appeal court refused to hear the lawyers' arguments regarding trial irregularities.²⁰

Sufi (Dervish) people

- (d) In September 2011 four lawyers (Farshid Yadollahi, Amir Eslami, Afshin Karampour and Omid Behrouzi) were arrested along with over 60 Sufis. Yadollahi and Eslami were

¹⁴ Amnesty International, Urgent Action 280/13 (MDE 13/040/2013), 4 October 2013; Amnesty International, Public Statement 16 January 2014 (MDE 13/005/2014); Human Rights Watch, “Iran: Halt execution of Arab minority men”, News, 26 July 2013.

¹⁵ Amnesty International, Report 2013 Iran, May 2013.

¹⁶ Amnesty International, *Iran: Death sentences upheld, executions imminent: Jamshid Dehghani, Jahangir Dehghani, Hamed Ahmadi and Kamal Molayee* (MDE 13/037/2013), 19 September 2013; Amnesty International, *Iran: Further Information: Iranian hunger strikers' health failing*, 7 January 2014.

¹⁷ Amnesty International Public Statement, 25 November 2013, MDE 13/048/2013; Human Rights Watch, “Joint Letter to the UN General Assembly Regarding Resolution A/C.3/68/L.57”, News, 15 November 2013.

¹⁸ Amnesty International, *Iran, “We Are Ordered to Crush You”: Expanding Repression of Dissent in Iran*, 28 February 2012.

¹⁹ Front Line Defenders, *Iran: Arbitrary Detention and Ill-Treatment of human rights defenders Hemid Valai, Sejjad Radmehr and Vedud Esedi*, 8 September 2008; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Addendum, 27 May 2009, A/HRC/11/4/Add.1, paras. 1319-1320 and 1323-1324;

²⁰ Front Line Defenders, *Iran: Detained ethnic Azerbaijani human rights defenders on hunger strike*, September 8, 2013; Amnesty International Canada, *Iran: Repression of dissent intensifies in run-up to presidential election*, 12 June 2013, p.4.

imprisoned for representing Sufi clients and for lodging complaints of unlawful actions by security forces. They have been granted access to a lawyer. Three of the lawyers continue to be held in Evin Prison on charges of ‘insulting the Supreme Leader’, ‘spreading lies’, and ‘holding membership in a deviant group’.²¹ Mustafa Daneshju was arrested in his Tehran law office on 18 May 2011 for ‘spreading lies’ in relation to his representation of two Sufi clients. Mustafa Daneshju remains in custody²². The Special Rapporteur reported seven people were given sentences of 7.5 to 10.5 years in prison for crimes associated with their roles as lawyers and administrators of ‘Majzooban Noor’, a community news website covering human rights abuses against members of the Dervish community. These individuals refused to submit an appeal as a form of protest against unfair trial standards, including inadequate access to counsel.²³

5. INDEPENDENCE OF THE IRANIAN BAR ASSOCIATION

- 5.1 In 2012 the Iranian Judiciary drafted a bill on the reorganisation of the Iranian Bar Association: the draft Bill on Formal Attorneyship (the Bill). The Bill introduces supervision of lawyers by the state and thereby severely threatens the independence of the legal profession. The Bill is currently waiting to be submitted to Parliament. The Bill has been met with serious concerns from both Iranian lawyers and international organisations.²⁴ President Rouhani has recently promised that the Bill will be re-evaluated to ensure that proper attention will be paid to the independence of the Bar Association. However, the Bill has not been amended thus far.
- 5.2 The Bill introduces two mechanisms that contravene the requirement, set out in the Basic Principles. Firstly, it introduces a ‘Supervisory Committee’ authorised to: (i) control the admission and examination of trainee attorneys; (ii) grant and revoke licenses of attorneys; and, (iii) will be granted the ownership of the Bar Association’s assets.²⁵ This Supervisory Committee would consist of seven members elected by the Head of the Judiciary. This violates the principle that lawyers must be free to form self-governing organisations, with an executive bodies that are elected by its members and operate free from external interference.²⁶
- 5.3 Secondly, the Bill would empower ‘competent bodies’—a term not defined by the Bill—to suspend lawyers from practising law.²⁷ The Basic Principles require all disciplinary proceedings against lawyers to be determined by an impartial disciplinary committee established by the legal profession, or by an independent authority or court, and must be subject to judicial review.²⁸ Further, the Bill stipulates that a member of the Judiciary shall chair each branch of the Disciplinary Court for Attorneys and the Disciplinary Court of Appeal for Attorneys.²⁹ The Head of the Judiciary would be empowered to approve the appointment of the Disciplinary Prosecutor for Attorneys.³⁰ These

²¹ Amnesty International Public Statement, 18 November 2011, MDE 13/098/2011; International Federation for Human Rights, *Iran: Double punishment for jailed human rights defenders*, 21 October 2011; Lantos-Swett, K. “*Iran vs. Its People: Abuses Against Religious Minorities*”, Georgetown Journal of International Affairs, 20 June 2013.

²² Amnesty International, Iran: “We Are Ordered to Crush You”: Expanding Repression of Dissent in Iran, 28 February 2012; Lantos-Swett, K. “*Iran vs. Its People: Abuses Against Religious Minorities*”, Georgetown Journal of International Affairs, 20 June 2013.

²³ Special Rapporteur on the human rights situation in the Islamic Republic of Iran Report, 4 October 2013, A/68/503, para. 9.

²⁴ For example, the Special Rapporteur on the situation of human rights in Iran stated in his report to the UN Human Rights Council dated February 2013 that he “continues to share the International Bar Association’s concerns regarding the erosion of the independence of the legal profession and Bar Association in the Islamic Republic of Iran.”

²⁵ Article 122 of the Bill

²⁶ Article 24 Basic Principles

²⁷ Article 48 of the Bill

²⁸ Article 28 Basic Principles

²⁹ Articles 90 and 93 of the Bill

³⁰ Article 91 of the Bill

measures, together with the powers attributed to the Supervisory Committee, would place the Bar Association under effective control by the state.

6. RECOMMENDATIONS

- 6.1 It is recommended that, to comply with obligations under the ICCPR and UDHR, Iran:
- (1) Bring legislation and policy into conformity with international obligations under the UDHR and ICCPR to protect rights to equality and freedom of expression and association, prisoners' rights to humane treatment and rights of all to receive and provide legal representation;
 - (2) Allow the Special Rapporteur on the Independence of Judges and Lawyers to visit Iran and conduct investigations related access to and freedom to deliver legal representation;
 - (3) Ensure the immediate release from prison of Abdolfattah Soltani, Afshin Karampour, Amir Eslami, Mustafa Daneshju, Omid Behrouzi, Farshid Yadollahi, Kambiz Norouzi, Mohammed Seyfzadeh and Mohammed Ali Dadkhah;
 - (4) Ensure the immediate release of all other lawyers currently imprisoned for discharging their professional duties, for defending the rights of persons belonging to a minority group or for belonging to a minority group;
 - (5) Enable the DHRC to continue with their activities and to safeguard the personal and professional security freedom of all DHRC members;
 - (6) Respect its obligation to provide adequate medically treatment for detained lawyers and other prisoners;
 - (7) Amend the Draft Bill on Formal Attorneyship (articles 25 through 30, article 48, articles 90 through 93 and articles 120 through 122) in consultation with the Bar Association of Iran to: a) ensure that the independence of the bar is adequately protected; b) comply with the Basic Principles; and, c) comply with the duty under the ICCPR to ensure access by all to independent lawyers in cases involving the determination of rights.