



UPR SUBMISSION
To the Human Rights Council
34th Session of the Working Group on the Universal Periodic Review
re
Islamic Republic of Iran
Presented by
LAWYERS FOR LAWYERS
28 March 2019

**LACK OF INDEPENDENCE OF LAWYERS AND OF THE ORGANISATION OF
THE LAWYERS' PROFESSION**

**RIGHT OF LEGAL ASSISTANCE THROUGH A LAWYER OF HIS/HER OWN
CHOOSING**

DETENTION OF LAWYERS

I. Introduction

1. With respect to the position of lawyers in Iran not much has changed since the UPR-review of 2014. No progress has been made towards ensuring the independence of the legal profession, i.e. the independence of lawyers. Arguably the situation has even deteriorated since 2014.
2. This submission needs to be considered against a background of decades of repression of lawyers who came to be a focus for the Iranian authorities due to the manner in which they discharge of their professional responsibilities, including the active promotion of human rights. It is daily practice in Iran that a lawyer who chooses to represent a person who happens to be considered, by the Iranian authorities, an “enemy of the State” becomes a suspect himself/herself. The same is true for lawyers who publicly speak up on issues related to the Rule of Law and/or related to Human Rights issues.
3. Since 1979 at least 200 lawyers have been prosecuted, detained and sometimes jailed for “crimes”, which alleged crimes turned out to be nothing else than these lawyers doing their job on issues and on behalf of clients that apparently are – on purely political grounds – perceived and defined by the authorities as threats to the national



security. In this submission several examples of this approach by the authorities are discussed and tested against the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a party¹, and against the United Nations *Basic Principles on the Role of Lawyers* (Basic Principles)²

4. The *Basic Principles* are not a Treaty but are widely considered to have codified the generally accepted principles with respect to duties and rights of lawyers, which are directly derived from the fair trial rights that go back to the Universal Declaration of Human Rights and which are set out in Article 14 of the ICCPR. On 23 August 2007 the United Nations Human Rights Committee (HR Committee) has published its *General Comment* on this Article 14 which document interprets the scope and meaning of this provision, based on the Committee's own case law and also through references to case law of various Human Rights Courts.³
5. This Submission focuses on the three topics listed above.
6. Lawyers for Lawyers (L4L) is an independent, non-political foundation, established in 1986 to promote a free and independent exercise of the legal profession around the world, enabling lawyers to effectively fulfil their role in upholding the rule of law and the protection of human rights.

L4L has special consultative status with ECOSOC since 2013.

info@lawyersforlawyers.nl - www.lawyersforlawyers.org

II. Lack of independence of lawyers and of the organization of the lawyers' profession

7. Until 2001 lawyers in Iran had been organized exclusively in the Iranian Bar Association. This association was founded in 1953 and was a follow-up to various predecessors. Until the Islamic Revolution of 1979 this association could be considered to be independent. From 1979 the government developed various means to enlarge its influence on the Bar Association, for example by adopting legislation that provided the authorities with the power to appoint the leadership of the Bar Association. The real changes were introduced in 2001, when the government used article 187 of the *Law of Third Economic, Social and Cultural Development Plan to*

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

² Adopted unanimously by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

³ 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 27 March 2019)



set up a new body of lawyers known as “Legal Advisors of the Judiciary”. This body was to function parallel to the Bar Association. Members were appointed by the Head of the Judiciary, while the qualifications of the lawyers involved were of a much lesser degree than the Bar Exam of the Bar Association required of new members of the Bar. The organization of these lawyers was later named “Centre for Legal Advisors, Attorneys, and Experts of the Judiciary” and although its name was changed thereafter also today this is the name under which it operates.

8. The government has undertaken efforts to merge these two organisations of lawyers and bring the organization created through this merger under direct responsibility of the Head of the Judiciary (who is appointed by the *Supreme Leader* of Iran) but this process has not been completed and meets much protest from the Iranian Bar Association.
9. At this point the Centre for Legal Advisors, Attorneys, and Experts of the Judiciary is an organization of lawyers that lacks any independence from the Judiciary; lawyers working under the auspices of the Centre are totally dependent on the approval of the leadership of the Centre which can make or break any lawyer on the basis of political correctness or other grounds unrelated to their functioning as an independent lawyer.

The independence of the legal profession in Iran is not guaranteed with respect to the Iranian Bar Association and is absent with respect to the *Centre for Legal Advisors, Attorneys, and Experts of the Judiciary*. The right to a fair trial for citizens presupposes the availability of lawyers who are able to function truly independently. The lack of independence discussed in the previous paragraphs, therefore, forms a clear violation of Article 14, para 3 of the ICCPR and also of Basic Principles 24 and 25.

III. Right of legal assistance through a lawyer of his /her own choosing

10. Article 48 of Iran’s Criminal Procedure Regulations provides for the right of citizens to consult with a lawyer. However, a “Note” appended to this article provides that in cases of crimes against the internal or external security of the State suspects have to choose a lawyer from a list approved by the Head of the Judiciary. The list contains lawyers that are selected by the Head of the Judiciary which lawyers clearly cannot be considered to be independent; also, clearly, this provision effectively does away with the right to be represented by a lawyer of his/her choice.
11. Article 48 is at all times applied in Iran in criminal cases against lawyers who have to face trial for, allegedly, being a threat to the security of the State; these are usually



lawyers who defend clients that are one way or another trying to defend human rights or voicing opposition against the policies of the government.

The application of the Note to Article 48 of Iran’s Criminal Procedure Regulations is a clear violation of article 14, para 3 (b) of the ICCPR and also of Basic Principle 1.

IV. DETENTION OF LAWYERS

12. On 22 June 2017, the Human Rights Council (HRC) passed a resolution condemning in general “the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions”. The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable”.⁴ The acts that are condemned in this Resolution are precisely the sort of acts that occur on a large scale in Iran as well. In the introduction we referred to the number of 200 lawyers persecuted since 1979 in the next paragraphs the current situation is presented.
13. Currently, six lawyers are detained in Iran, for clearly political reasons:
 - 1) Nasrin Sotoudeh, convicted to 38 years prison and 148 lashes for "gathering and colluding against national security", "propaganda against the state", "effective membership in the illegal and anti-Semitic group of the Defenders of Human Rights and the National Assembly of Peace", "encouraging people to commit corruption and protest" , "Appearing without a religious hijab at the polling station", "Disrupting public order", "Publishing falsehoods to disturb public opinion". She is a well-known and widely respected Human Rights Lawyer, who had been sentenced before to six years in prison and, at the time, was released early due to worldwide protests. She received numerous Awards for her courageous human rights work.
 - 2) Amir Salar Davoodi, currently in temporary arrest, not allowed to see a lawyer; no charges have been filed against him yet.

⁴ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20.



- 3) Farhad Mohammadi, he is the lawyer of environmentalist Kurd Sanandaj; also, he is accused of communicating with the Kurdish opposition parties of the Iranian regime and, therefore, for acting against national security.
 - 4) Zainab Tahery, she was the lawyer of several of the Gonabadi Daravish, an oppressed religious minority in Iran. She was arrested and later released but was re-arrested in February 2019; charges against her are still unknown.
 - 5) Masoud Shams Nejad, he was arrested on January 18, 2018, and sentenced to six years in prison in February 2019 for alleged violation of national security and for association with Kurdish opposition parties.
 - 6) Mohammad Najafi, he was arrested on September 29, 2018 in Shaazand, Arak, and has been sentenced to more than 13 years in prison for allegedly being a threat to national security, insulting the leader and for giving an interview to the Voice of America.
14. Also currently, 12 Lawyers are “wanted” and are actively persecuted by the authorities. All are accused of acts similar to the ones for which the lawyers discussed in the previous paragraph are in prison. L4L knows the identity of all 12 of them , but does not want to enlarge the threats that they suffer.

In all of these cases the freedom of expression of each of the lawyers involved is violated by the authorities and not protected. Also, this policy of the authorities is a clear violation of Basic Principle 16 that holds that governments should guarantee that lawyers can discharge of their duties without intimidation, hindrance, harassment or improper interference. Also, this conduct violates Basic Principle 17 that lawyers while discharging their duties should be protected by the authorities. In several of these cases Basic Principle 18 is violated by the authorities as well, since they are identifying these lawyers with the alleged crimes committed by their clients.

V. RECOMMENDATIONS

15. During the interactive dialogue in the UPR cycle of 2014 several recommendations with respect to the proper functioning of the judicial system and a fair trial, including on the independence of the Bar Association, were partially supported by Iran, including recommendations 138.204, 138.205, 138.209, 138.210, 138.211 and 138.212.⁵ Furthermore, recommendation 138.226 about guaranteeing the right to

⁵ Report of the Working Group on the Universal Periodic Review of the Islamic Republic of Iran, Addendum 1: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/28/16/Add.1, 2 March 2015.



legitimate freedom of expression, association and assembly, and the release of political prisoners, including lawyers, detained solely for exercising these rights was partially accepted. None of the Recommendations led to any actual changes in Iran. The Iranian Government had in its response to the Recommendations signalled that “full implementation of some of these recommendations is contrary to our constitution, basic laws and Islamic values”. Apart from the lack of specificity in this response, this position must seem to be not acceptable to the Council of Human Rights, since all of these Recommendations are founded in various Human Rights Treaties, among them the ICCPR, to which Iran is a party. From a legal point of view it is not possible for any member state to just set aside certain Treaty-provisions for any reasons, including for reasons based on religious considerations. So the first Recommendation L4L presents here is:

Rec. A. Iran should immediately start implementing Recommendations 138.204, 138.205, 138.209, 138.210, 138.211 and 138.212 and 138.226



16. The *Note* to Article 48 of Iran’s Criminal Procedure Regulations undermines the useful meaning of article 48 which implements the right to legal counsel. As set out above this Note stipulates that in cases related to alleged crimes against the country’s domestic and foreign security, suspects are not free to be represented by lawyers of

⁵ Report of the Working Group on the Universal Periodic Review of the Islamic Republic of Iran, Addendum 1: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/28/16/Add.1, 2 March 2015.

138.204 Increase the legal measures aimed at guaranteeing due process and the impartiality in the administration of justice, including the independence of judges and the Bar Association, paying special attention to the recommendations concerning the death penalty formulated by the Human Rights Committee, especially in relation to juvenile offenders (Chile);

138.205 Ensure the independence of the judicial system and ensure the rules of fair trial and the rights of the defence (France);

138.209 Provide by law unobstructed access to legal counsel throughout all phases of criminal investigation, trial and appeal; ensure the accused is informed of this right immediately upon arrest; and give defendants and their lawyers unrestricted access to the full case file and all evidence against the accused (Denmark);

138.210 Guarantee due process of law in all judicial proceedings (Germany);

138.211 Ensure, in law and in practice, that all citizens are given fair trials based on the rule of law, as accepted in the 2010 UPR examination (Norway);

138.212 Ensure all the procedural guarantees and the right to a fair trial for all persons indicted of committing a crime, including the right to defence and access to a lawyer (Romania);

138.226 Guarantee the right to legitimate freedom of expression, association and assembly, and release political prisoners, including activists, lawyers and journalists, detained solely for exercising these rights (Australia);



their choice while at the same time this Note provides for a delay of one week before the suspect is allowed to communicate with a lawyer.

Rec. B. Delete the *Note* to Article 48 of Iran’s Criminal Procedure Regulations

.....

17. The situation in which two very different organisations (the Iranian Bar Association and the *Centre for Legal Advisors, Attorneys, and Experts of the Judiciary*) have responsibilities re the organisation of the lawyers’ profession is untenable, especially since the *Centre* is not independent from the executive branch and therefore – due to its very structure – not in a position to guarantee the independence of the lawyers that it organizes. So the primary organisation should be the Iranian Bar Association, which, then, should be freed from the decisive influence of the Executive on the appointment of officers of the Bar association.

Rec. C. Restore the role of the Iranian Bar Association as the principal body organising and representing the free and independent Bar. While doing so remove the legal obstacles preventing the current Bar Association from being totally independent from the Executive.

.....

18. The lawyers who are currently detained or persecuted as discussed above are without any exception to be considered as political prisoners/suspects for they are detained or prosecuted for the sort of work they chose to do as a lawyer, not for the commission of actual common crimes. This is a principled, serious breach of the Rule of Law that ought to prevail in any democratic civilised society, it violates the fair trial principles laid down in art 14 para. 3 of the ICCPR as developed by, among others, the United Nations Human Rights Committee, while it also violates the very goals of the United Nations Basic Principles on the Role of Lawyers that stipulate that governments are to safeguard lawyers in the discharging of their responsibilities and are to refrain from intimidation, hindrance, harassment or improper interferences of lawyers discharging of their functions.

Rec. D. Immediately release the lawyers discussed in this submission who are currently detained and stop further prosecution of those lawyers who are accused of crimes against the security of the State, also discussed in this submission.

.....

28 March 2019

