

ISLAMIC REPUBLIC OF IRAN

Human Rights Committee Consideration of the periodic report of the Islamic Republic of Iran

Submission on the List of Issues prior to reporting by the Lawyers for Lawyers Foundation

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I Introduction

Submitting Party

1. Lawyers for Lawyers ('**L4L**') is an independent, nongovernmental organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, L4L has a special consultative status with the ECOSOC since 2013.¹
2. L4L promotes and protects the independence of the legal profession through the support and empowerment of lawyers around the world who face reprisals, improper interferences, and undue restrictions, as a result of discharging their professional functions.² In doing so, we advocate for adherence to core values underpinning the legal profession, in conformity with internationally recognized human rights laws, norms and standards, including but not limited to the International Covenant on Civil and Political Rights ('**ICCPR**')³ and the UN Basic Principles on the Role of Lawyers ('**Basic Principles**').⁴

Concerning

1. At its 130th session, the Human Rights Committee ('**the Committee**') will adopt a List of Issues prior to reporting on the Islamic Republic of Iran ('**State party**'). L4L welcomes the opportunity to contribute to the List of Issues regarding the State party in preparation for the fourth periodic review by the Committee. Our submission will focus on the situation of lawyers in the State party, specifically regarding the obstacles to the independent exercise of the legal profession and violations committed against legal professionals.

Methodology

2. L4L has closely been following the situation of lawyers in the State party. The information for this submission has been collected through ongoing desk-research, interviews and engagement with, and reports from Iranian lawyers and other local and international stakeholders.

II Substantive Part – Implementation of the ICCPR and related issues

Issues of concern

3. In this submission, L4L sets out its concerns with regard to the State party's failure to comply with article 14 in connection to articles 9 and 19 (2) of the ICCPR. Based on first provision, the State party is required to uphold the right to equality before courts and tribunals as well as the right to a fair trial. The right to fair trial encompasses the obligation to guarantee effective access to legal services provided by an independent legal profession in accordance with the Basic Principles.⁵

¹ For more information visit our website: <https://lawyersforlawyers.org/en/about-us/>

² For more information visit our website: <https://lawyersforlawyers.org/over-ons/wat-doen-wij/>

³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR').

⁴ Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 ('Basic Principles').

⁵ Interference in the work of lawyers may lead to violations of the right to a fair trial under article 14 of the ICCPR, as has been recognized by the Committee. Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee stated that "*lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.*" See also Declaration on

4. Adherence to the UN Basic Principles on the Role of Lawyers is considered a fundamental pre-condition for the adequate protection of the human rights and fundamental freedoms to which all persons are entitled.⁶ In its task of promoting and ensuring the proper role of lawyers, the State party should respect and take into account the Basic Principles within the framework of its national legislation and practice.⁷
5. It is the State party's duty under the ICCPR to also respect and guarantee that all persons within its jurisdiction have effective and equal access to lawyers of their own choosing. Additionally, lawyers should be able to perform their professional functions without intimidation, hindrance, harassment or improper interference from any quarter, nor should they be threatened with sanctions for any action taken in accordance with recognized professional duties, standards and ethics.⁸
6. The State party must also ensure that lawyers are adequately protected when their security is threatened in the cause of their legitimate professional duties. Furthermore, lawyers should not be equated with their clients or their clients' causes.⁹ In addition, the State party must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.¹⁰ The Basic Principles affirm that lawyers, like other citizens, are entitled to freedom of expression and assembly.¹¹
7. During the examination of the previous (third) periodic report of the State party at its 103th session (17 and 18 October 2011), the Committee expressed concerns about *"continuing reports of harassment or intimidation, prohibition and forceful breaking up of demonstrations, and arrests and arbitrary detentions of human rights defenders. Furthermore, the Committee noted "with concern that human rights defenders and defence lawyers often serve prison sentences based on vaguely formulated crimes such as mohareb or the spreading of propaganda against the establishment".*¹² Also, the Committee expressed concerns *"about the frequent violations of fair trial guarantees provided for under the Covenant, especially in the Revolutionary Courts and the Evin Prison Court".*¹³
8. The Committee called on the State Party to *"ensure that the right to freedom of assembly and association is guaranteed to all individuals without discrimination, and release immediately and unconditionally anyone held solely for the peaceful exercise of this right, including (...) lawyers (...). The State party should also ensure*

the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular article 12.

⁶ Basic Principles, preamble, paragraph 9.

⁷ Basic Principles, preamble, paragraph 11.

⁸ Idem, Principles 1, 2 and 16.

⁹ Idem, Principles 17 and 18.

¹⁰ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that lawyers should also be able to *"meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."* See also Principle 22 of the Basic Principles.

¹¹ Principle 23 of the Basic Principles.

¹² Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, CCPR/C/IRN/CO/3, paragraph 26.

¹³ Idem, par. 21.

the prompt, effective and impartial investigation of threats, harassment, and assault on members of these groups, and, when appropriate, prosecute the perpetrators of such acts".¹⁴ Furthermore, the Committee called on the State Party to "ensure that all legal proceedings are conducted in full accordance with article 14 of the Covenant, including guaranteeing (a) the right to legal assistance of one's own choosing, including for pretrial detainees; (...) (c) the intervention and presence of lawyers in all cases, including during the investigation stage".¹⁵

9. According to our information, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR.

10. This submission highlights the following issues that give rise to L4L's concerns:

- A. Criminal prosecution of lawyers
- B. Freedom of expression of lawyers
- C. Access of lawyer to their clients and free choice of legal representation

11. As a result, the professional rights and privileges of lawyers in the State party are violated systematically. This impairs their ability to provide effective legal representation and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to effective remedy and fair trial. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all persons.

14. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach upon other rights that lawyers, like other citizens, are entitled to, including the rights to security of person (article 9), and freedom of expression (article 19).

15. Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted due to their work, L4L would recommend that the Committee specifically addresses the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.

A – Criminal prosecution of lawyers

16. Lawyers in the State party, especially those working on sensitive cases, have reported that they have been consistently subjected to judicial and administrative harassment in connection to their legitimate professional activities. Over the last few years, the number of independent human rights lawyers have been arrested, charged with national-security related crimes, or banned from practicing law has continued to increase.

17. The Basic Principles provide that, governments "*shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance,*

¹⁴ Idem, par 26.

¹⁵ Idem, par. 21.

harassment or improper interference".¹⁶ Moreover, according to Principle 16 (c) "governments shall ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics".

18. According to the information L4L received, lawyers in the State party who are working on sensitive cases in the defence of human rights are sometimes sentenced to lengthy jail terms in connection to their professional activities.
19. The ongoing and systematic criminal prosecution of lawyers in the State party is illustrated by the following cases:

Mohammad Ali Dadkhah

Mohammad Ali Dadkhah is a renowned lawyer who has represented many supporters of the opposition and activists who were arrested in the aftermath of the presidential elections in 2009. Mr. Dadkhah is co-founder of the now outlawed Iran's Centre for Human Rights Defenders ('CHRD').

In July 2011, Mr. Dadkhah was sentenced to a nine-year prison and barred from working as a lawyer for ten years. Mr. Dadkhah was charged with "membership of an association [the CHRD] seeking the soft overthrow of the government" and "spreading propaganda against the system through interviews with foreign media". After being sentenced Dadkhah was immediately denied the capacity to assist his client, who was facing a charge that could possibly carry the death sentence. On 28 April 2012, Mr. Dadkhah was also found guilty in appeal, in retaliation for his human rights activities. Mr. Dadkhah has been out on parole since 2013 and is still banned from practicing law.¹⁷

Abdolfattah Soltani

Abdolfattah Soltani is a prominent human rights lawyer, and co-founder of the now outlawed CHRD. Mr. Soltani's work has included defending political prisoners, human rights defenders and trade unionists.

On 10 September 2011, Mr. Soltani was arrested when he was in a Revolutionary Court dealing with the case of a client. Consequently, he was detained in Evin prison. On 4 March 2012, the Islamic Revolution Court sentenced Mr. Soltani to 13 years in prison. He was convicted on charges of "propaganda against the system", "participation in founding the Human Rights Defenders Centre", "assembly and collusion against national security" as well as "earning illegitimate assets" through receiving the Nuremberg City's Human Rights prize in 2009. In June 2012, his sentence was subsequently changed first to 13 years in prison, then to 10 years followed by first a 10 and then a 2-year ban on practicing law. On 21 November

¹⁶ Principle 16(a) of the Basic Principles.

¹⁷ Lawyers for Lawyers, 7 May 2012: <https://lawyersforlawyers.org/en/iran-jail-sentence-ali-dadkhah-was-upheld-on-appeal/>, Further information is (publicly) available on: <https://www.fidh.org/en/region/asia/iran/IRAN-Human-rights-lawyer-Mohammad>, and: <https://news.un.org/en/story/2012/10/422552-un-human-rights-office-speaks-out-against-increasing-clamp-down-critical-voices>

2018, Mr. Soltani was released conditionally by Court order and is still banned from practicing law.¹⁸

Nasrin Sotoudeh

Nasrin Sotoudeh is a prominent Iranian human rights lawyer. Mrs. Sotoudeh is known for her peaceful human rights work in the defence of women and children who are victims of domestic violence, but also of Iranian human rights defenders and journalists. Amongst other cases, Mrs. Sotoudeh acted as the lawyer for women's rights defenders who protested against the compulsory veiling in Iran and were subsequently prosecuted.

On 13 June 2018, Mrs. Sotoudeh was arrested at her home in Tehran and taken to Evin prison, where she is still being held. After her arrest, she learned that she was sentenced in absentia to five years in prison on 4 September 2016.

On 11 March 2019, Mrs. Sotoudeh learned that she was found guilty of, amongst others, "inciting corruption and prostitution", "openly committing a sinful act by appearing in public without a hijab" and "disrupting public order" and sentenced to 33 years in prison and 148 lashes. She was tried in absentia because she refused to appear in court since she was unable to choose her own lawyer. As a result of the previous sentence of five years in prison, she is now due to serve 38 years in prison, 12 years of which she must serve before becoming eligible for parole.¹⁹

On 27 July 2020, Sotoudeh's husband made public that Iran's judiciary has blocked the bank account of imprisoned human rights lawyer Nasrin Sotoudeh.²⁰

B – Freedom of expression of lawyers

20. Lawyers, like any other individual, have the right to freedom of expression. In particular, they have the right to take part in public discussion of matters concerning the law, the administration of justice, and the promotion and protection of human rights.²¹ The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed in light of the rights of the lawyers, but also in protection of the rights of their clients. The lawyer should be enabled by the State party to effectively protect the rights and interests of their client.

21. L4L was, however, informed that lawyers are being sentenced to prison and banned from practising law for exercising their right to freedom of expression. Lawyers have been the subject of criminal prosecution in connection to their reporting on human rights violations, and giving interviews to media. This has, for example, been the case for Mr. Dadkhah (see above). Reports that we have received from other

¹⁸ Lawyers for Lawyers, 25 November 2018: <https://lawyersforlawyers.org/en/conditional-release-of-lawyer-abdolfattah-soltani/>. Further information is (publicly) available on: <https://www.fidh.org/en/issues/human-rights-defenders/iran-conditional-release-of-abdolfattah-soltani>

¹⁹ Lawyers for Lawyers, <https://lawyersforlawyers.org/en/lawyers/nasrin-sotoudeh/>

²⁰ Center for Human Rights in Iran, 28 July 2020: <https://www.iranhumanrights.org/2020/07/judiciary-blocks-nasrin-sotoudehs-bank-account-cutting-off-funds-for-family/>

²¹ Principle 23 of the Basic Principles.

lawyers, indicate that more lawyers in the State party have been subjected to harassment, improper interference, arbitrary arrest, prosecutions, and convictions because they have exercised their right to freedom of expression.

C – Access of lawyers to their clients and free choice of legal representation

a. Access of lawyers to their clients

22. The Basic Principles provide that governments “*shall ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention*”.²² In addition, the Basic Principles provide that “*all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality*”. Such access may serve as a preventive measure against ill-treatment, coerced self-incriminations and confessions or other violations of the rights of the suspect.²³

23. L4L was informed by lawyers from the State party that they often experience difficulties with access to clients in detention, especially when working on sensitive cases. According to our information, lawyers are regularly prevented from meeting with clients. They also have no access to appropriate information, files and documents within sufficient time to provide effective legal assistance to their clients.

b. Free choice of legal representation

24. Article 1 of Basic Principle state that “*all persons are entitled to call upon the assistance of a lawyer of their choice*”. Article 35 of constitution of Iran states: “*Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel.*”²⁴ In 2015, certain articles in the Code of Criminal Procedure were amended.²⁵ Pursuant to Article 48 of Iran’s Criminal Procedures Regulations, people have the right to ask for and have a meeting with a lawyer as soon as they are detained. However, the implemented “Note to Article 48” requires individuals facing charges related to “national security” and certain organized crimes to select their legal counsel for the investigation phase from a list of lawyers approved by the head of the judiciary.²⁶ The Note to Article 48 also enables judicial authorities to delay an

²² Principle 7 of the Basic Principles.

²³ Human Rights Committee, General Comment No. 20 on article, 7 A/44/40, par. 11.

²⁴ Iran’s constitution: <https://fis-iran.org/en/resources/legaldoc/constitutionislamic>

²⁵ In addition to article 48 of Iran’s Criminal Code more concerning amendments were made. One such amendment concerns the significant changes relating to cases than can be appealed to the Supreme Court of the IRI. The amendments to Article 428 of the Code of Criminal Procedure increase the threshold for triggering Supreme Court review. Other amendments include: the expansion of circumstances in which a person is considered fit to stand trial (Article 13); a rule preventing non-governmental organizations from attending court sessions involving crimes against decency even if they initiated the case (Article 66); a rule which allows the procurator to delegate some of his or her investigative responsibilities (Article 98), which makes the process of surveilling bank accounts easier for judiciary officials (Article 151); and a rule allowing Criminal, Revolutionary and provincial Appellate courts to have a quorum with the presence of two judges (Articles 296, Article 297, and Article 426), where all judges had to be present in the past.

²⁶ Amnesty International, 16 May 2019:

<https://www.amnesty.org/download/Documents/MDF1303792019ENGLISH.PDF>

individual's access to counsel in cases involving alleged "national security" crimes.²⁷ Those charged with "national security" offences include human rights defenders, lawyers, journalists and political dissidents targeted in connection to their peaceful exercise of their human rights.²⁸

25. At the end of 2017, more than 150 lawyers²⁹ called on Judiciary Chief to stop restricting the detainees' access to legal counsel. The United Nations Special Rapporteur on the situation of human rights in the Islamic Republic of Iran expressed concerns that "*not only that article 48 undermines the independence of the legal profession, but also that it is a serious impediment to due process and the right to a fair trial.*"³⁰ In March³¹ and in September³² 2019, the European Parliament adopted resolutions on the human rights situation in Iran, calling for an amendment to article 48 of the country's Criminal Procedure Law to ensure that all defendants have the right to be represented by a lawyer of their choice and to a fair trial.

III Conclusions and recommended questions

According to our information, the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under article 14 of the ICCPR. As a result, the lawyers' professional rights and privileges are violated. These violations impair the ability of lawyers to provide effective legal representation and makes them increasingly wary of working on sensitive cases. It also severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, such as the right to effective remedy and fair trial. The work of lawyers is indispensable for the public confidence in the administration of justice and to ensure effective justice for all persons in the State party.

In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach on other rights that lawyers, like any other citizens, are entitled to, including the rights to security of person (article 9), and freedom of expression (article 19). Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as a lawyer, **L4L recommends the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.**

²⁷ Center for Human Rights in Iran, 23 June 2020: <https://www.iranhumanrights.org/2020/06/list-of-attorneys-imprisoned-in-iran-for-defending-human-rights/>.

²⁸ Amnesty International, 16 May 2019: <https://www.amnesty.org/download/Documents/MDE1303792019ENGLISH.PDF>

²⁹ The signatories include prominent Iranian human rights lawyers Nasrin Sotoudeh, Abdolfattah Soltani and Mohammad Seifzadeh, see also: <https://www.iranhumanrights.org/2018/01/155-lawyers-call-on-irans-judiciary-to-stop-restricting-detainees-access-to-counsel/>

³⁰ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 28 January 2020, A/HRC/43/61, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/021/53/PDF/G2002153.pdf?OpenElement>

³¹ European Parliament resolution of 14 March 2019 on Iran, notably the case of human rights defenders (2019/2611(RSP)), available on: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0204_EN.html

³² European Parliament resolution of 19 September 2019 on Iran, notably the situation of women's rights defenders and imprisoned EU dual nationals (2019/2823(RSP)), available on: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0019_EN.html

Recommended Questions to State Party:

Please provide information on what measures the State party has taken to ensure that lawyers are able to carry out their professional functions safely and independently without fear of criminal prosecution.

Please respond to the reports of harassment, the improper interference, the arbitrary arrest, the prosecutions, and the convictions in relation to lawyers who have exercised their right to freedom of expression.

Please respond to the reports of difficulties of lawyers to access clients in detention centres.

Please provide information on what measures the State party has taken to ensure that all persons are entitled to call upon the assistance of a lawyer of their choice.