



*Mission Permanente  
de la République Islamique d'Iran  
auprès des Nations Unies  
et des autres Organisations Internationales à Genève*

*In the Name of God, the Compassionate, the Merciful*

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The Permanent Mission of the Islamic Republic of Iran to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the communication No. AL IRN 30/2022 dated 18 January 2023 concerning **Mostafa NILI, Arash KEYKHOSRAVI, Astareh ANSARI, Bahareh SAHARIAN-JAHROMI, Nazanin SALARY, Mohammad TARAVAT-ROUI, Babak PAKNIA**, has the honor to transmit, herewith, the comment of the High Council for Human Rights of the Islamic Republic of Iran in that regard.

The Permanent Mission of the Islamic Republic of Iran avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 22 June 2023



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**The Comments on the Allegations Raised in the 18 January 2023  
Correspondence of the Special Procedures Mandate-Holders Regarding  
Lawyers**

With regards to the alleged cases raised in the 18 January 2023 Correspondence of the Special Procedures Mandate-Holders appertaining to the lawyers, the following points are presented for consideration thereof, so that they can rectify the existing approach.

1. Currently, tens of thousands of lawyers (approximately 38,000 lawyers have a permit issued by the Center of the Judiciary Lawyers, and 58,000 others have a license granted by the Central Bar Association) are freely working in the Country. The prosecution of a handful of lawyers, not for the purpose of practicing Law but for committing criminal acts that have nothing to do with their job and legal profession, cannot be defined under the title of harassment of lawyers. For example, Arash Keykhosravi, Mostafa Nili, and Babak Paknia have been prosecuted and convicted for committing crimes such as inciting the families of those who lost their lives to the COVID-19 pandemic in order to spark riots with the coordination of anti-Establishment elements inside and outside the Country. Therefore, charges brought thereagainst have nothing to do with the attorneyship profession thereof. While honoring the inherent philosophy of attorneyship and respecting the independence of lawyers, the Islamic Republic of Iran declares that during the recent riots, none of the family members of the lawyers have been arrested, reprimanded, or prosecuted for simply being legal attorneys or cooperating and providing services in the cases of people accused of rioting. In addition, the general policy of the

Islamic Republic of Iran is to exercise tolerance with lawyers. Contrary to the statistics announced in the Correspondence in question, most of the arrested individuals have been released either following the issuance of judicial security orders or the recent amnesty granted by the Supreme Leader. For example, according to the inquiries, Mahmoud Taravat-Roui, Bahareh Sahraian, Nazanin Salari, and Astareh (Maryam) Ansari, who had been arrested in Fars province, were released a few days after the arrest. A writ of non-prosecution was also issued for them following the amnesty granted by the Supreme Leader.

2. With regards to what the Special Procedures Mandate Holders have expressed concern about and described as restrictive provisions in the laws of the Islamic Republic of Iran, be advised that owing to the extensive formal and substantive changes in the 2013 Code of Criminal Procedure (hereinafter referred to as the CCP) and the 2015 amendment, the tendency is to apply the principle of narrow interpretation of laws in favor of the accused, pay particular attention to the principles and norms of civil and human rights, and realize a fair trial system for the accused, victims, witnesses, informants, lawyers and the like in the criminal proceedings. The Law has postulated the necessity of having a lawyer and the right thereof to defend the accused as the client, and guaranteeing that the defendant knows the legal rights thereof judicial authorities and judicial officers in all criminal matters. Therefore, in order to enlighten the special procedures mandate holders of the UN Human Rights Council, the points enumerated as hereinunder are presented concerning the allegations raised in the Correspondence under the title of “rules and regulations that interfere with the legal profession”:

#### 1. Article 48 of CCP

Influenced by the universal model of a fair trial, the CCP has moved away from the interrogative procedure system in the preliminary investigation stage by using comparative

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studies and adopting new approaches. Note to Article 48 of the 2013 CCP – by accepting the right to enjoy the presence of a lawyer in the preliminary stage of investigations for specific crimes against domestic and external security as well as organized crimes – is an essential step in line with the principle of the presence of a lawyer in all crimes. The Note in question has been accepted by the legislative system of the Islamic Republic of Iran, leading to a situation in which no person can be prohibited from the right to have a lawyer in the preliminary stage of investigations. Compared to the previous laws (Article 128 of the 1998 CCP) as well as the previous laws that limited the presence of a lawyer to typical crimes, the aforementioned Note has made a significant innovation in such a way that it includes internal and external security crimes and organized crimes. Moreover, the Note has a critical stipulation, which allows the intervention of lawyers who do not qualify under Article 48 is possible in crimes against internal or external security and organized crimes, whose punishment is less than the cases provided for in Article 302 of the CCP. This excludes many cases from the scope of the ruling contained in the abovesaid Note. Therefore, the Note is only related to the preliminary stage of investigations in specific crimes and is not included in the trial stage. The request of the First Deputy Chief of the Judiciary from the Central Bar Association and the Center of the Judiciary Lawyers regarding the increase of attorneys subject to the Note to Article 48 of the 2013 CCP led to the introduction of trusted counselors by the two said centers. Therefore, the allegations suggesting the “the right to obtain copies of all documents ..... is systematically denied to the defendant and their lawyer” are unsubstantiated.

## 2. Article 191 of CCP

Granting the accused the right to access the criminal case through a lawyer is one of the most critical manifestations of fair proceedings in the legal system of the Islamic Republic of Iran. Such a right, which leads to the settlement of preliminary investigations, provides

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the possibility of preparing a suitable defense for the defendant and the lawyer. In the scope of Iran's criminal policy, first of all, Article 67 of the CCP enacted during the former Shah regime, despite considering the right to attend the preliminary investigation stage and obtain a copy of the case documents for the victim, had deprived the accused of such an important privilege. After the victory of the Islamic Revolution, the 2013 CCP allowed for the first time the study of the case before each investigation by the accused and the lawyer to respect the equality of the litigants. Therefore, the accused can study or access the judicial case if it does not conflict with the need to discover the truth or provided that the crime attributed thereto has not been perpetrated against the internal or external security of the State. Despite this, it is possible to prevent the study of the case by the defendant's lawyer when the examining magistrate – citing the reason – issues an order not to have access to the documents of the case, and if the competent court upholds the order after hearing the objection raised by the accused or the attorney. Undoubtedly, the provisions are intended to realize the goal pursued by the CCP: to create a balance between the need to discover the truth (criminal expediency) and the right to have a lawyer (social expediency).

### 3. Article 351 of CCP

As per Article 351, the defendant's lawyers can obtain the necessary information by going to the court, studying the case, and making photocopies of the relevant pages of the case file. However, according to the Note to the said Article, it is forbidden to take photocopies of classified documents containing information related to the investigation of crimes against public chastity and offenses perpetrated against internal or external security. Moreover, on the strength of Article 191 of the aforesaid Code, only if the examining magistrate deems the disclosure of this information to be contrary to the discovery of the truth or in security-related cases can he restrict access to specific evidence and documents.



- 4) Appointing a pro bono defense attorney to assist the victim (in addition to the accused) at the sentencing stage is considered one of the innovations of the new Law, which is foreseen in line with the right of the parties to enjoy access to a lawyer, proving the victim-oriented approach implemented by the judicial system.
- 5) In addition to the right to review the case, the accused and the lawyer can obtain a picture of the documents therein, as it provides the possibility of an effective defense for the attorney.
- 6) The possibility of having the court proceeding on the go with the lawyer's presence and without the defendant in some crimes, provided that the court does not consider the presence of the accused necessary, is another innovation of the new Law.

#### 4. Note to Article 346 of CCP

As it is understood from the aforesaid Article, it touches upon the principle of the right to have a lawyer in court, and the legislator has accepted the plurality of attorneys for the accused. The Article only specifies the limitation of the presence of people in order to bring order and with a view to taking care of the defendant's interests. There is no prohibition whatsoever for seeking counsel. This is despite the fact that such restrictions are common in other judicial systems worldwide, and the defendants cannot bring as many lawyers or consultants as they want to the court.

The right to have a lawyer is so crucial that it is mentioned in the writ of summons sent to the accused. In the event of arresting the defendant or presence thereof without a writ of summons, the right to have a lawyer shall immediately be explained thereto according to the Law. The presence of lawyers in proceedings and preliminary investigations in the Islamic Penal Code is of such importance that depriving anyone of such a right is punishable.

## 5. Article 297 of CCP

The basic principle with regard to the appointment of a lawyer in the CCP is to provide a defense attorney for the arrested accused at the first opportunity. The defendant can refrain from providing any defense without the presence of the lawyer, as stipulated by Article 48 of the CCP. The Note to Article 297 of the said Code shall not be considered a limitation. That is because regulating the judicial system is, per se, to support the litigants in fulfilling their demands. Furthermore, what is stated in the mentioned Note is not a limitation but an expansion of the number of private defenders for litigants. Because in other criminal lawsuits, it is only possible to choose two lawyers for each side. This is while in the aforementioned crimes, the legislator has considered the possibility of appointing three defense attorneys.

Such support by the criminal laws of the Islamic Republic of Iran can be observed in the criminal policy of the Country, which considers the principle of the presumption of innocence in such a way that the plaintiff must make great efforts to prove the claim thereof.

## 6. Single Article of Plan to Appoint Lawyer, Enacted in 1991 Expediency Discernment Council

From the legislator's point of view, the appointment of a cleric lawyer is protective for the accused whose case is being heard in the special clerical court. That is because such a lawyer must be cognizant of and have sufficient and complete knowledge about the client's lifestyle, interactions, thoughts, ideas as well as educational and religious background in order to be able to act efficiently and fairly and thoroughly defend the client's rights. Moreover, such regulation goes back to the previous decades and has nothing to do with the recent riots in the Islamic Republic of Iran.

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#### **7. Article 216 of Executive Bylaw of State Prisons Organization, Enacted in 2021**

It is accepted by the judicial system of many countries that laws, regulations, and procedures deal with security issues in a different way from other crimes. Matters of such nature are among the red lines of every State. The Islamic Republic of Iran is no exception. The defendant is provided with such protection in order to fend off fraud, possible abuse of the defendant's status, and extrajudicial exploitation of the situation. By doing so, the only people who can be in contact therewith are those who try to protect the defendant's rights, not those who pave the way for violating the rights thereof by exploitation through media or other means. The legislator has taken into consideration the need to review the attorney contract and confirm it to prevent the presence of incompetent people in order to maintain the safety of the citizens, ensure the general order of the society and fulfill the maximum rights of the accused.

#### **8. Executive Bylaw of Independence of Central Bar Association, Enacted in 2021**

Creating order and providing a mechanism for active civil institutions is a common and accepted thing in all legal systems worldwide. The Judicial and assisting institutions are not left alone under the pretext of independence in no place in the world or legal system. What is reprehensible is creating restrictions and dealing with active people in such institutions simply for performing their duties. But suppose a person, regardless of participation and membership in such institutions, commits an act contrary to the Law. In that case, the perpetrator shall definitely be dealt with legally to maintain public order in the society, respect the Law, and ensure the institution's dignity. Such a response is necessary and requested by the legal community.

What is perceived from the so-called concern expressed by the special procedures mandate holders is that the persons working in the legal profession have been targeted for performing their inherent duties. The Islamic Republic of Iran strongly rejects such an

allegation. The legislator's provision is to act in order to maintain order and respect the Law if a person commits an act against the Law or abuses the advocate's license.

### **Measures Taken to Ensure Fair Trial by Defense Attorneys During Recent Riots**

The Central Bar Association and the Center of the Judiciary Lawyers – in line with their inherent duties in order to help preserve justice, fulfill the rights of the oppressed and facilitate the access of all the people who need assistance, and those who had to go to the courts and needed the advice of qualified lawyers so that their rights are not lost in the proceedings due to lack of familiarity with their rights – did not hesitate to lend a helping hand as soon as the riots were started in some cities. In this regard, the officials of the Judiciary, including His Excellency the Chief of the Judiciary, have repeatedly emphasized the importance of ensuring a fair trial and the availability of a lawyer for the arrested. That is indicative of the attention paid to the rights of the accused by the Judiciary, Central Bar Association and the Center of the Judiciary Lawyers. In addition, the Supreme Leader, as the highest political and judicial authority of the Islamic Republic of Iran, has on several occasions stressed upon observing the principles governing fair proceedings and not violating the rights of those arrested. A case in point is the amnesty granted to many of those arrested during the recent riots. In order to play a supporting role and as per the orders of the Supreme Leader and the Chief of the Judiciary, the Central Bar Association and the Center of the Judiciary Lawyers were actively involved in related issues after the recent riots. First of all, by dispatching a legal team to the house of [REDACTED] the two aforesaid entities announced their readiness to represent her family. Wherever the involvement of the two said centers could help people in need – both the accused and the criminal – fulfill their rights, they did not hesitate to provide support. As per the statistics, over 1,112 private, court-appointed and pro bono defense attorneys have represented the defendants arrested during the recent riots.