

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Ref.: AL IRN 30/2022
(Please use this reference in your reply)

18 January 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 44/8, 51/8, 43/4, 50/17 and 49/24.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **interferences with the legal profession, affecting those protestors who have been detained, accused and tried, in the current context of ongoing mass protests and unrest sparked by the death of Jina Mahsa Amini in September 2022. We also bring to your attention reports of the arrest and judicial harassment of seven lawyers working on human rights cases, Mostafa Nili, Arash Keykhosravi, Astareh Ansari, Bahareh Sahraian-Jahromi, Nazanin Salary, Mahmoud Taravat- Roui, and Babak Paknia, which suggest a possible pattern of interference with the legal profession, contrary to human rights laws and standards.** These lawyers are:

Mostafa Nili, a human rights defender and lawyer, who has represented many prisoners, including student union activists. He has been detained several times.

Arash Keykhosravi, a human rights defender, and lawyer, who has represented many human rights defenders including the environmental rights defenders.

Astareh Ansari, a human rights lawyer.

Bahareh Sahraian-Jahromi, a human rights lawyer.

Nazanin Salary, a human rights lawyer, and Chair of the Human Rights Committee of the Fars Bar Association. She has defended many human rights cases and represents women victims of violence and discrimination.

Mahmoud Taravat- Roui, a human rights lawyer who has defended many human rights defenders and activists.

Babak Paknia, a human rights lawyer who has defended several civil and political rights activists. He has represented numerous people who have been arrested during protests in past years.

We take the opportunity to recall that Special Procedures mandate-holders have already expressed initial concerns on such allegations in a communication sent to your Excellency's Government on 20 October 2022 (UA IRN 23/2022). We regret that no reply has been received, and we are dismayed that the situation continues to deteriorate, in particular as it relates to the work of lawyers attempting to represent those detained. Special Procedures mandate-holders have also expressed concerns about the cases of Mr. Nili and Mr. Keykhosravi in a communication sent to your Excellency's Government on 5 October 2021 (JAL IRN 27/2021).

According to the information received:

Since the death of Jina Mahsa Amini in September 2022, and the start of a nation-wide protest movement, more than 430 human rights defenders and at least 14,000 individuals have been arrested, including at least 46 lawyers. Individuals detained have reportedly been prevented from communicating with counsel of their choice; and lawyers wishing to represent them have allegedly faced difficulties in exercising their professional activities.

Case of Mostafa Nili

Reports indicate that Mr. Mostafa Nili was arrested on 7 November 2022 for taking on the legal defence of protestors. Mr. Nili has been detained several times over the past years. In 2010, he was convicted to three years in prison on the charge of "assembly and collusion against national security" and an additional six months in prison on the charge of "propaganda against the state", for taking part in the peaceful protests against the results of the 2009 presidential election and publishing critical content against violent crackdown on the peaceful protests at that time. He served a sentence from 18 July 2011 to 18 November 2014. In 2021, Mr. Nili also spent four months and four days in detention for his efforts with other lawyers and activists to file a complaint against the authorities for their mismanagement of the COVID-19 pandemic. Subsequently, he was convicted to four years in prison, two years ban from traveling and media activities. This last sentence was later suspended, however, since his arrest on 7 November 2022, it has been reinstated.

Case of Arash Keykhosravi

Mr. Arash Keykhosravi was arrested in Karaj on 19 November 2022 and is still being detained. Mr. Keykhosravi has been detained in the past for his activities as a human rights defender and a lawyer. In August 2018, Mr. Keykhosravi was arrested in front of Iran's Parliament building in Tehran at a rally against the signing of an accord between Caspian Sea nations. He was sentenced to a six-year- prison term, which was subsequently overturned by Branch 34 of the Court of Appeals in January 2020. He is also one of the nine Iranian lawyers and human rights defenders who were arrested on 14 August 2021, during a meeting held to decide on filing a lawsuit against [REDACTED] and the government for banning foreign vaccines. In August 2021, he was convicted to two years in prison and a one/year ban from practicing law. He was released on bail on 25 December 2021, after spending four months in prison.

Cases of Astarah Ansari, Bahareh Sahraian- Jahromi, Nazanin Salary and Mahmoud Taravat- Roui

All four lawyers were reportedly arrested on 1 November 2022 while peacefully gathering in front of the Shiraz bar association to show their support for protestors who took to the streets after the death of Jina Mahsa Amini. They were released on bail on 19 November 2022. In May 2022, the Shiraz Public and Revolutionary Court's prosecutor had issued a warrant for the arrest of Mahmoud Taravat-Roui and Nazanin Salary, who were prosecuted on charges of conspiracy against national security, propaganda activities against the Islamic Republic of Iran and cooperation with hostile states, for their work on human rights cases and their participation in a professional seminar abroad.

Case of Babak Paknia

Mr. Paknia was arrested on 25 September 2022 outside his home allegedly in relation to his advocacy for the rights of his clients by posting legal information on his social media, following the unrest and protest movement. One hour after his arrest, his home and office were reportedly searched and some items including his mobile phone and computer were confiscated. He was detained on the basis of a temporary detention warrant. He objected to this warrant, but the Islamic Revolutionary Court did not accept his objection. He was released on bail on 2 November 2022.

The multiple arrests and detention of the above-mentioned lawyers suggests a continuous pattern in which numerous lawyers have been subjected to prolonged pre-trial detention, unfair trials based on vaguely worded and/or overly broad laws, lengthy prison sentences, and ill-treatment, merely for carrying out their duties as members of the legal profession or legitimate human rights advocacy. The arrest and detention of at least 46 lawyers since the start of the protests in September 2022 is particularly worrying in the context of the many official calls on the Judiciary to issue death sentences for the people arrested during protests and the four executions which took place a few weeks only after trials that fail to respect the rights of the accused to fair trial and due process. According to the information we have received, persons detained for their protest activities have not been able to access lawyers to mount a legal defense. Nor have lawyers who sought to represent protestors

been able to provide legal advice to their clients. Furthermore, when representing their clients, lawyers continue to be threatened, intimidated, and ultimately imprisoned as evidenced by the above cases.

Rules and regulations that interfere with the legal profession

Concerns about rules and regulations currently in force in Iran that systematically interfere with the independence of the legal profession have been raised in previous communications by Special Procedures mandate-holders on 1 October 2021 (IRN 26/2021) and on 30 July 2015 (IRN 10/2015)

We would like to reiterate our concerns raised previously regarding the By-Law entitled “Regulations for the Enforcement of the Law on the Independence of the Bar Association” of June 2021 and article 48 of the Code of Criminal Procedure; as well as highlight other rules and regulations that interfere with the legal profession as well.

1. *The Islamic Republic of Iran’s Code of Criminal Procedure*

Article 191

Article 191 of the Code of Criminal Procedure states: “If the investigator determines that review of and access to all or part of the papers, records and evidence on the case undermines the uncovering of the truth, or if the case concerns crimes against internal or external security of the country, he can issue a non-disclosure order with reasons. This order shall be communicated to the accused or their lawyer in person and is subject to appeal in a competent court within three days. The court is obliged to consider the appeal and make a decision on an expedited basis”.

On the basis of article 191, an investigator can, therefore at their own discretion, prohibit lawyers from accessing the contents of their client's file for broadly framed “security” reasons.

Article 351 and Note

Article 351 of the Code of Criminal Procedure states: “the private claimant or plaintiff and the accused and their lawyers can obtain the necessary information by going to the court and investigating the case, and can make copies of the required papers, at their own expense, by informing the judge”. The Note interpreting Article 351 states that “it is forbidden to distribute copies of the classified documents and documents containing materials related to the investigation of crimes on unchaste behaviour and crimes against internal or external security”. Information received indicates that on the basis of this article, the right to obtain copies of all documents relevant to the case concerning “unchaste behaviour” or “security” is systematically denied to the defendant and their lawyer.

The Code of Criminal Procedure also limits the number of lawyers that parties may consult in criminal court.

- **Note to Article 346** limits parties to two lawyers except in a limited set of cases
- **Article 385** specifies that in such cases, parties are limited to three lawyers
- **And Note of Article 297** states: “The rules of procedure of the Criminal Court One, as described in this law, are applicable in the Islamic Revolutionary Court in cases that deal with plurality of judges.”

2. *Article Concerning Selection of Lawyers approved by the Expediency Discernment Council*

The Expediency Discernment Council approved a single article regarding “Selection of a lawyer by the parties to a suit” on 3 October 1991.

- a) The **Article** states that the parties have the right to appoint lawyers of their choice and the court should accept those lawyers. The parties should pay for the lawyers they appoint.

However, **Note 1** interpreting the article states that the parties to a suit in Special Clerical Court must choose a lawyer from those whom the court deems to be “competent clerics”. This Article thus infringes on the rights of both defendants and lawyers before Special Clerical Courts.

3. *Article 216 of the Executive By-law of the Prisons Organization and the Preventive and Corrective Measures of the Country approved in 2021*

Article 216 of the By-Laws of the Prisons Organization stipulates: “The lawyer's meeting with the imprisoned client shall take place by presenting an official power of attorney to the head of the institution or the person in charge of the meeting and, if possible, in a special room separate from the public meeting area. If a prisoner is not allowed a visit, the meeting will be subject to the opinion and order of the relevant judicial authority. In addition, the power of attorney contract is arranged at the request of the prisoner by the order of the head of the institution. The organization, in cooperation with the Statistics and Information Technology Centre of the Judiciary, is required to make it possible for an advocacy contract to be prepared and signed electronically, for the prisoners, through the Electronic Judicial Services system.”

Note 1 of Article 216 of the Executive By-law of the Preventive and Corrective Measures of the Country, approved in 2021, subjects the meeting of the lawyer with his or her client to the approval of the power of attorney contract by the judicial authority.

While **Article 216 of the By-Laws** of the Prisons Organization appears to ensure the rights of prisoners to retain and meet with a lawyer of their choosing, the Notes interpreting the regulation make clear that attorneys need the approval of a judicial authority in order to meet with a client who is in custody on any charge.

While we do not want to prejudge the accuracy of these allegations, we express serious concerns over the apparent interference with the work of lawyers, as well as over the restrictions brought about by the rules and regulations as described supra which appear to contravene international standards relating to the free and independent exercise of the legal profession and the right to fair trial in Iran, especially at a time where the Judiciary and in particular the Islamic Revolutionary Court are issuing death sentences against persons seemingly for their peaceful participation in ongoing protests.

In particular, we are very concerned about reported breaches of the right to legal counsel of one's choosing of those arrested and their right to confer with a lawyer – both of which are key elements of due process. We also express grave concerns over the reported acts of intimidation and harassment, including arbitrary arrest and disbarment that several lawyers providing legal support or attempting to provide legal support to those detained further to the mass protests, have been facing.

The legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system. The free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference.

States must put in place all appropriate measures to ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. International and regional standards also expressly prohibit the identification of lawyers with their clients or their clients' causes in the discharge of their professional duties.

As stressed by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in a report to the Human Rights Council, access to justice is an integral element of the protection of the rights to freedom of peaceful assembly and of association. When access to justice is not guaranteed, people cannot fully exercise their rights to freedom of peaceful assembly and of association. States must therefore eliminate de facto and de jure barriers that impede access to justice, and strengthen the independence of investigative, administrative and judicial bodies, as well as establish legal safeguards against undue internal or external interference.

We are extremely concerned that the ability of lawyers in the Islamic Republic of Iran to practice independently and free of intimidation, harassment, or criminalization may be gravely impacted by the recent publication by the Judiciary of its own version of the By-Law entitled "Regulations for the Enforcement of the Law on the Independence of the Bar Association". Without the protection provided by an independent bar association, lawyers are extremely vulnerable to various attacks and to restrictions on their independence, especially from State authorities. In places where bar associations are controlled by the State, lawyers often become the target of attacks from the very entities that should be protecting them. Such attacks most often take the form of groundless or arbitrary suspension to practice or disbarment, and are frequently accompanied by further restrictions, including arbitrary detention and prosecution. Silencing and/or controlling bar associations not only poses great risks to

the legal community, but also has an adverse impact on the rule of law and the ability of ordinary people to defend their human rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

We are issuing this appeal in order to safeguard the rights of the abovementioned individuals from irreparable harm and without prejudicing any eventual legal determination.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legislative and other measures adopted by the Islamic Republic of Iran to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16 (a) of the Basic Principles on the Role of Lawyers) and to prevent their prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions (Principle 18).
3. Please provide information on the legal and factual grounds invoked for the arrest and detention of Mostafa Nili, Arash Keykhosravi, Astarah Ansari, Bahareh Sahraian-Jahromi, Nazanin Salary, Mahmoud Taravat-Roui, and Babak Paknia and explain how these are compatible with international law.
4. Please provide an update on the cases of Mostafa Nili, Arash Keykhosravi, Astarah Ansari, Bahareh Sahraian-Jahromi, Nazanin Salary, Mahmoud Taravat-Roui, and Babak Paknia
5. Please provide information on the measures taken to ensure that those detained further to the mass protests have full access to the guarantees of due process and justice, including their ability to meet and communicate with counsel of their choice.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the

accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Javaid Rehman
Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975.

We would like to refer to article 9 ICCPR enshrining the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. In its General Comment No. 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22) and freedom of religion (art. 18). It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary. Furthermore, article 14 upholds the right to a fair trial and equality of all persons before the courts and tribunals.

Further, we wish to recall article 14 (1) of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 of the ICCPR provides a set procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. Counsel should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency's Government to Principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("the Body of Principles"), and Principles 7 and 8 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990), which further protect the right of detained individuals to access and communicate with counsel promptly after arrest.

In addition, Principle 16 of the Basic Principles on the Role of Lawyers requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with

prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

Article 19 of the ICCPR, provides that "everyone shall have the right to hold opinions without interference" as well as that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." In this connection, we also want to draw your attention to General Comment No. 34 (2011), in which the Human Rights Committee expressed concern about lawyers being the target of threats, intimidation and attacks because of their professional activities, and that an attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, can never be compatible with Article 19 of the ICCPR.

Principle 23 of the Basic Principles on the role of Lawyers provides that lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall 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 and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

On the matter of bar associations, in his report on the subject, the former Special Rapporteur on Independence of Judges and Lawyers noted that "Bar associations should be independent and self-governing professional associations of lawyers, set up to promote and protect the independence and the integrity of lawyers and to safeguard their professional interests. Their status and important functions should be recognized and supported by States, which should refrain from interfering in their work and functioning" (A/71/348, paragraph 112).