

Impartiality and Fairness in Iran: Judiciary, Lawyers, Bar Association and International Treaty Obligations

Iran is in violation of several of its obligations under international human rights law with respect to the independence and impartiality of the judicial system and the legal profession. The relevant international human rights treaty that Iran is a party to is the International Covenant on Civil and Political Rights (ICCPR).

JUDICIAL INDEPENDENCE in Iran is undermined by the control of the Supreme Leader

- The Iranian Constitution provides that the judiciary shall be an independent institution (Art. 156), suggesting compliance with the long-established separation of powers principle.
- However, under the Iranian Constitution, the Supreme Leader is the highest State authority, who is institutionally placed above all governing branches (Arts. 57, 110). This is known as the principle of *Velayat-e Faqih* (guardianship of the Islamic jurist). The Supreme Leader's wide-reaching powers under the Constitution include the ability to appoint and supervise the Head of the Judiciary (Art. 110(6)(2)).
- This power of appointment is in violation of ICCPR Art. 14, which provides that courts must be independent and impartial, as the Supreme Leader's involvement undermines the separation of powers principle.

INDIVIDUAL JUDGES' independence and impartiality is compromised by the *Gozinesh* Process

- The selection of judges is based on the *gozinesh* process, which involves extensive investigations into candidates' beliefs and prior political leanings rather than their professional competence and legal qualifications.
- Iranian judges must demonstrate, amongst other things, a commitment to Islamic principles and the Islamic Republic of Iran's regime and a lack of membership to politically opposed groups (1982 Law on the Qualifications for the Appointment of Judges Art. 1; 1995 *Gozinesh* (Selection) Law Art. 2(5)).
- The *gozinesh* process contravenes the prohibition on discrimination under ICCPR Art. 2(1), and violates the principles of independence and impartiality enshrined in ICCPR Art. 14. If appointed, judges do not enjoy security of tenure because their employment is at the discretion of the Head of the Judiciary, again violating the principles of independence and impartiality.

REVOLUTIONARY COURTS routinely deny fair trial guarantees

- Revolutionary courts have jurisdiction over, amongst other things, national security crimes. Denial of access to a lawyer, arbitrary detention, convictions and sentencing are commonplace. Rights to visitation and medical treatment are arbitrarily denied and a copy of a formal judgment is often not issued to the defendant.
- The Iranian Revolutionary courts systemically violate ICCPR Art. 14, which stipulates a set of minimum fair trial guarantees for a criminally accused. Additionally, ICCPR Art. 14 procedural guarantees are connected to substantive rights under the treaty. For example, as the Revolutionary courts can issue a death sentence, the right to life under ICCPR Art. 6(1) is compromised when an unfair trial results in a lawful death sentence pursuant to ICCPR Arts. 6(2)-(5).

COLLECTIVE RIGHTS-BEARERS: Iranian Bar Association

- Candidates for the Board of Directors of the Iranian Bar Association must satisfy, amongst other things, commitment to the Islamic Republic of Iran regime and a lack of membership or cooperation with politically or religiously opposed groups. As seen with judges, this ensures that elected candidates are politically aligned with the Government.
- The judiciary's 2012 Bill of Formal Attorneyship threatens to completely eradicate the Bar Association's independence by placing it under the direct control of the Head of the Judiciary, who is in turn accountable to the Supreme Leader. This is in clear contravention of ICCPR Art. 22 on freedom of association.
- A body of lawyers, known as Article 187 legal advisors, operate alongside Attorneys and the Bar Association but are directly supervised by the judiciary. Article 187 advisors require an annual permit from the judiciary, making it unlikely that the advisors will act against the judiciary's wishes for fear of revocation or non-renewal of their licenses.

LAWYERS AS INDIVIDUAL RIGHTS-BEARERS: Systematic Persecution

- Iran has continuously and systematically targeted lawyers, and their families, through, *inter alia*, intimidation and arbitrary detention, using national security as an unjustified pretext for suppression.
- Human rights lawyers face international travel bans, lengthy detention without charge, convictions for propaganda offences and bans on practising law, constituting a violation of ICCPR Art. 19 on freedom of expression and Art. 22.