Legal Research Series

Rule of Law in Iran: Independence of the Judiciary, Bar Association, Lawyers and Iran’s Compliance with International Human Rights Obligations

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EXECUTIVE SUMMARY

This legal research analysis belongs to a series of studies on human rights in Iran authored by the Human Rights in Iran Unit. The Human Rights in Iran Unit in the School of Law at the University of Essex focuses on the Islamic Republic of Iran (Iran)’s compliance with international human rights law. Each study tackles a distinct topic to measure international obligations against domestic law and practice and to identify underlying or systemic problems. The Unit seeks to provide an accessible account of the breadth and complexity of violations in Iran from the standpoint of international law, which may serve scholars, practitioners and anyone concerned with human rights in Iran.

This study considers the Islamic Republic of Iran’s compliance with its obligations under international human rights law with respect to the independence and impartiality of the judicial system and the legal profession. The relevant treaty to which Iran is a State party is the International Covenant on Civil and Political Rights (ICCPR), which includes the right to a fair trial and due process of law under Article 14, the right to freedom of expression under Article 19 and freedom of association under Article 22. The UN Basic Principles on the Independence of the Judiciary are also examined. The study also analyses Iran’s treatment of lawyers and the Bar Association in relation to applicable international law and assesses the impact of any violations on lawyers, both as individual rights-bearers and collectively as promoters and protectors of human rights.

The analysis demonstrates that Iran does not comply with certain long-established rule of law principles such as separation of powers, equal protection and due process of the law, right to a fair trial, right to an independent judiciary, as well as individual freedoms such as the rights to freedom of expression and association.

With regard to the judicial system, this study finds that Iran violates a number of key legal requirements of Article 14 of the ICCPR:

- **Independence and impartiality of the judiciary** - The Iranian Constitution provides that the judiciary shall be an independent institution that protects individual and social rights, upholding the separation of powers principle *de jure*. However, the Head of the Judiciary is appointed and supervised by the Supreme Leader who, under the Constitution, is the Head of State. This is a clear interference by the executive in judicial affairs.

- **Revolutionary Courts** - Following the 1979 Revolution and the establishment of the Islamic Republic of Iran (‘IRI’), Clerical and Revolutionary courts were introduced. Neither court’s establishment nor mandate is based in the Constitution but these courts have been institutionalised over the years. Revolutionary courts can hand down the death penalty and have jurisdiction over national security crimes or serious security-related crimes, including conspiracy, terrorism and espionage. Denial of access to a lawyer, arbitrary detention, convictions and sentencing are commonplace.
and a formal judgment is often not issued. It is clear that the Revolutionary courts routinely violate the right to a fair trial and the guarantees of due process contained in Article 14 of the ICCPR.

- **Independence and impartiality of individual judges** - 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. If appointed, judges do not enjoy security of tenure because their employment is at the discretion of the Head of the Judiciary. This provides little incentive for judges to act contrary to the wishes of the Head of the Judiciary and diminishes the independence and impartiality of judges.

With regard to lawyers and the Iranian Bar Association, the analysis finds that Iran violates Articles 19 and 22 of the ICCPR:

- **Lawyers as individual rights-bearers** - Iran has continuously and systematically targeted human rights defenders, including lawyers, and their families. Such individuals face intimidation, arbitrary detention and restrictions of their right to freedom of expression and association. Human rights lawyers face international travel bans, lengthy detention without charge, convictions for propaganda offences and bans on practising law. Furthermore, lawyers defending lawyers are subject to intimidation and prosecution by the State. Defence lawyers have also been arrested simply for defending ‘ordinary’ criminal defendants or expressing critical views of the judicial process. The IRI fails to comply with Articles 19 and 22 of the ICCPR and uses national security as an unjustified pretext to suppress lawyers.

- **Lawyers as collective rights-bearers** - The IRI has taken steps to weaken the legal profession and Iranian Bar Association with respect to international standards since the 1979 Revolution. Since 1997, elections of the Board of Directors has been subject to candidates being confirmed by the Supreme Disciplinary Court for Judges. Candidates must satisfy, among other requirements, commitment to the IRI regime and a lack of membership or cooperation with politically or religiously opposed groups. This disqualifies a significant number of lawyers, particularly human rights defenders, prior to election and thus ensures that elected candidates are individuals are politically aligned with the Government.

- Furthermore, Article 187 legal advisors operate alongside lawyers and the Bar Association but fall under the direct supervision of the judiciary. Article 187 advisors require an annual permit from the judiciary, making it unlikely that the advisors will act in contravention to the judiciary’s wishes for fear of revocation or non-renewal of their licenses. 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. The above is in clear contravention of Article 22 of the ICCPR.
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1. INTRODUCTION

Without an independent judicial system and independent lawyers, the rule of law and protection of all human rights is undermined. An independent judiciary and independent lawyers are crucial components of effective rule of law in any State. This legal research study examines the structure of Iran’s judicial system, with particular emphasis on the operations of its Revolutionary Courts and their prosecutors, in light of Iran’s obligations under applicable international human rights law. The study will also analyse Iran’s treatment of lawyers and the Bar Association in relation to applicable international law and assess the impact any violations have on lawyers, both as individual rights-bearers and collectively as guarantors of the rule of law and human rights defenders.

At the heart of the requirement for an independent and impartial tribunal is the desire to guard against the influence of the political branches, or administrative authorities subject to direction from the political branches, which would result in decisions or treatment driven by interests other than the rule of law and human rights. Key legal principles, such as fair trial, independent and impartial adjudication of disputes, and the right to defend oneself in criminal proceedings, constitute the enabling framework for the protection and promotion of human rights. Without these necessary safeguards, individuals lack effective recourse for lapses in the rule of law and human rights violations and are exposed to further human rights violations by the State.

Rule of law principles are entrenched in international law. Fundamental notions of justice and the rule of law are not novel, nor are they unique to any one legal tradition: ‘For instance, in the Western common law tradition, the right to trial by a court and the rights of the accused in criminal proceedings are derived from the general principle of due process of law, which itself can be traced back to the Magna Carta of 1215.’ Similarly, some commentators believe that in Islamic jurisprudence, the notions of freedom, justice and equality “are inherent in the Islamic belief” and Islam contains universally accepted standards of due process of law. Thus, “[t]he principle of the legitimacy or supremacy of law is a general principle which is so deeply rooted in modern man’s conscience that no civilised society can function effectively without it.” Yet, States with various forms of government in all regions of the world struggle to uphold the principle of judicial

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1 Iran has 22 local bar associations comprised under the umbrella of the national Union of Bar Associations. See, e.g., M Nayyeri, ‘Iranian Bar Associations: Struggle for Independence,’ (Iran Human Rights Documentation Center, 2012), p. 2; International Bar Association Human Rights Institute (IBAHRI), Report, ‘Balancing Independence and Access to Justice: a Background Report on the Justice System in Iran’ (Oct. 2007), p.7. For the purposes of this study, the Union of Bar Associations is referred to simply as the ‘Bar Association’ or ‘Iranian Bar Association.’
3 M Nowak (n 2), p. 305.
independence. Iran is no exception, but the problems are acute and not well understood.

Iran is a party to several international human rights law instruments that contain due process of law guarantees, access to a tribunal, freedom of expression and freedom of association: the International Covenant on Civil and Political Rights (‘ICCPR’), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. For the purposes of this study, the analysis is confined to application of the ICCPR because of its wider applicability and comprehensive provisions regarding the justice system and the freedoms relevant to the situation in Iran.

At first glance, Iran appears to employ long-established rule of law principles including the separation of powers, equal protection and due process of the law, right to a fair trial, and right to an independent judiciary, as well as individual freedoms such as the rights to freedom of expression and association. Many of these principles are enshrined in the Iranian Constitution. However, the 1979 ‘Islamic Revolution’ and the establishment of the Islamic Republic of Iran marked a shift away from both an independent and impartial judiciary and respect of the right to fair trial for the criminally accused under the jurisdiction of Iran’s Revolutionary Courts. The continued use of the Revolutionary Courts – special courts initially created to handle anti-Revolutionary crimes, which still hears, among others, crimes against national security – has been accompanied by an increasing number of lawyers themselves being arrested or convicted for representing criminal defendants in these Courts or for promoting human rights in Iran. Thus Iran’s institutional structure, subsequent legislation and practice appear to be inconsistent with Iran’s international legal obligations.

This study outlines the twentieth century development of Iran’s judicial system and the Bar Association. It also sets out the key international legal principles and applies them to the situation in Iran. Specifically, article 14 (independent and impartial judiciary and fair trial rights), article 19 (right to freedom of opinion and expression) and article 22 (freedom of association) of the ICCPR are examined. Relevant provisions of UN instruments specific to the judiciary, prosecutors and lawyers are also considered.

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8 International Convention on the Elimination of All Forms of Racial Discrimination (1965) 660 UNTS 195 (ratified by Iran on 29 August 1968, see UNTC website), Articles 5 and 6.
9 Convention on the Rights of the Child (1989) 1577 UNTS 3 (ratified by Iran on 13 July 1994, see UNTC website), Articles 9, 12, 13, 15, 16, 37 and 40.
11 See, inter alia, Arts. 24, 27, 34-37, 156, 159 and 166 of the Iranian Constitution.
2. OVERVIEW AND BACKGROUND

2.1 Necessity of an Independent and Impartial Judiciary and Legal Profession

2.1.1 Judiciary

The basic function of the judiciary is to adjudicate disputes between two or more parties without bias. Therefore, the judiciary as an institution and its individual judges must be insulated from the influence of the executive and legislative branches or any other inappropriate sources in order to prevent abuses of power by any branch “to the detriment of a free society.” Indeed, the principle of an independent judiciary originates from the theory of separation of powers that forms the basis of the modern constitutional State. In the context of individuals versus the State, the function of the judiciary as a neutral arbiter of disputes becomes even more meaningful due to the outright imbalance of power in favour of the State. The judiciary must act to “hold the scales of justice evenly between the humble citizen and the mighty government” as well as between citizens. For this reason, the independence of judges and lawyers is considered to be the “bedrock of the rule of law” and nowhere is this more relevant than when an individual’s human rights are at stake.

Without impartial and independent adjudication, “there is no substantive protection of human rights . . . and no good government or civil order. The rule of law requires judicial independence as a precondition.” Both an independent and impartial judiciary and an independent legal profession “are prerequisites for the protection of human rights and the application of the rule of law and for ensuring fair trials and that that there is no discrimination in the administration of justice.” Judges, prosecutors and lawyers are the three fundamental pillars necessary for maintaining rule of law, ensuring protection of human rights, and preventing impunity for human rights violations. Judges play a critical role in upholding human rights because they hold “the ultimate decision over life,

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15 Cooray, ibid, p. 349.


17 S Shetreet (n 12) pp.475-76.

18 Declaration on Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, Human Rights Council Resolution 23/6 (7 June 2013), preamble.

19 OHCHR and IBA (n 13) pp. 150, 158.
freedoms, rights, duties and property of citizens.”

They must be able to render justice impartially and independently according to applicable national and international law. Prosecutors must also be independent and impartial and “willing resolutely to investigate and prosecute suspected crimes committed against human beings even if these crimes have been committed by persons acting in an official capacity.”

2.1.2 Legal profession

Like the judiciary, lawyers serve a key function in protecting human rights and upholding the rule of law and the right to a fair trial. Judges, prosecutors and lawyers alike are entitled to exercise the rights to freedom of expression and freedom of association like any other citizen. Unlike with other citizens, though, these rights “acquire specific importance in the case of persons involved in the administration of justice.”

Furthermore, lawyers and bar associations represent the frontline of defending human rights and have played a “seminal role in mobilising public opinion to defend the rule of law and judicial independence”. In so doing, lawyers “must be granted all the due process guarantees afforded by domestic and international law” and must be allowed to perform their professional duties in an atmosphere free from governmental pressure, harassment, physical attacks, corruption and other kinds of intimidation. An independent legal profession bolsters the ability to create and sustain an independent judiciary by protecting lawyers’ professional interests and by “protecting and strengthening the integrity and independence of the legal profession.”

The collective function of bar associations is important in this sense because it “transcends the individual rights” of the lawyers to serve as a check against governmental abuse of power and fulfils the role of ‘social watchdogs.’

On their own, lawyers may not be able to

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21 OHCHR and IBA (n 13) p. 115.
24 ICJ, ibid, pp. 37, 67.
27 Ibid, pp. 150-151.
28 Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc A/64/181 (2009), para. 19; S Shetreet (n 6) p. 22.
effectively safeguard and advocate for human rights and fundamental freedoms in society at large. This realisation is particularly evident with regard to mass, flagrant or systemic violations, and likely explains the UN General Assembly’s frequent reference to the rights of human rights defenders “individually and in association with others” throughout the UN Declaration on Human Rights Defenders.\(^\text{30}\)

If any one of these “fundamental pillars” fails or is prevented from upholding their duties within the system, there will be serious risks of creating a culture of impunity, increasing human rights violations, violence and overall deterioration in the administration of justice.\(^\text{31}\) As the Office of the High Commissioner for Human Rights (OHCHR) and the International Bar Association have stated:

> It is therefore indispensable that States assume their international legal duties derived from the various sources of international law, whereby they must permit judges, prosecutors and lawyers to carry out their professional responsibilities independently and impartially without undue interference from the Executive, Legislature or private groups or individuals.\(^\text{32}\)

In addition, “human rights and fundamental freedoms are all the better safeguarded to the extent that the judiciary and the legal professions are protected from interference and pressure.”\(^\text{33}\) As is evident, a fair and independent judiciary and legal profession are critical for the rule of law and protection of human rights.

### 2.2 Brief History of Judicial System and Lawyers in Iran: 1900s to Present

The current legal framework of the judiciary must be understood in the context of twentieth century developments. The struggle for an independent and impartial judicial system in Iran has been ongoing since Iran’s constitutional revolution in the early twentieth century.\(^\text{34}\) Although the strength and independence of the judiciary and legal system varied over the ensuing decades, the systems are considered to have been relatively independent (or more probably ‘semi-independent’) for much of the period between the Constitutional Revolution and the 1979 Revolution.\(^\text{35}\) This period saw the establishment of secular courts at the county, regional, and provincial levels and a

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\(^\text{31}\) OHCHR and IBA (n13) p. 116.

\(^\text{32}\) OHCHR and IBA (n 13) p. 158.


\(^\text{35}\) Lahidji, *ibid*, p. 12.
Supreme Court at the national level. Shari’a, tribal and guild courts were abolished and modern legal training was required of all lawyers and judges. Judicial precedents became more centralised and uniform, a judicial hierarchy was developed and observed and procedural rules and principles – including the principle of judicial independence – were implemented. Independent public prosecutor offices were created, the right to criminal defence was recognised and various rules and procedural codes were put in place to safeguard public order.

This general trend was also reflected in development of the legal profession. In 1911, the First Charter of Attorneyship was adopted, requiring lawyers to first take qualifying examinations in order to practice law. Lawyers established the Iranian Bar Association in 1930, although it had limited independence. The Association gained full autonomy in 1953 pursuant to the Law of Independence. The government and Justice Ministry no longer had oversight of the Association and members elected their governing board of directors. The 1953 Law of Independence also placed the responsibility of granting and revoking law licenses with the Association. Lawyers’ Disciplinary Courts and Prosecutors’ offices were in charge of resolving professional misconduct of lawyers, which insulated lawyers from interference by judicial authorities. This period oversaw the structural changes to move the Iranian judiciary and legal system into the modern era. Overall, the judiciary and legal profession still had to operate in the context of a ruling Pahlavi monarchy associated with significant human rights violations, especially against dissidents and political opponents.

The 1979 Revolution ushered in drastic changes to the country and especially to the justice system. The Islamic Republic Party (‘IRP’), formed shortly after the prior Pahlavi monarchy was overthrown, established the Islamic Republic of Iran and with it, “waves of Islamisation and revolutionising institutions hit all parts of society including the judicial and legal system[s]. The idea of the rule of Islamic Shari’a and reestablishment of Shari’a courts was raised by revolutionary forces and hardliner clerics,” led by the Head of the Judiciary installed at the time, Ayatollah Mohammad Beheshti. The new Islamic Republic was headed by the Revolution leader, Ayatollah

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36 Ibid p.3; Abrahamian (n 34) p. 26.
39 Nayyeri (n 1) p. 3; Ibid, pp. 1-2.
40 Nayyeri (n 1) p. 3.
41 Ibid.
42 Ibid, p.4.
43 Ibid.
44 Ibid.
47 Nayyeri (n 1) p. 5. The swift and widespread Islamisation of the country particularly impacted elections, higher education, women and religious minorities. See S Irfani (n 46) pp. 198-203, 204-209, and 211-12, respectively.
Ruhollah Khomeini, who instituted subsequently became a relatively unique but central element of the new Islamic Republic, *Velayat-e Faqih* or the rule of an Islamic jurist.  

2.3 Overview of Iran’s Judiciary and Legal System

2.3.1 Iran’s Power Structure: Guardian Council and Supreme Leader

The judicial system must be understood in relation to Iran’s political and constitutional power structure. Under Iran’s Constitution, the ‘Guardian Council’ has broad supervision over the *Majlis* (the Parliament) and monitors all legislation to ensure its compliance with the Constitution and Shari’a law. The Council is comprised of twelve jurists, six of whom are appointed by the Supreme Leader of the Islamic Republic of Iran, and six of whom are appointed by the *Majlis* from a list of non-clerical jurists put forth by the Head of Judiciary. The Head of the Judiciary is appointed and dismissed by the Supreme Leader.

The Supreme Leader is, formally speaking, selected and monitored by the Assembly of Experts, which is comprised of 86 popularly elected clerics. The Guardian Council vets candidates for election to the Assembly of Experts, the Presidency and other government posts, such as Members of Parliament. The Supreme Leader has immense powers under the Constitution, including: formulation and supervision over the execution of Iran’s policies; supreme commander of the armed forces; appointment and dismissal of Guardian Council members, the heads of the judiciary, the commanders of the regular armed forces, the Revolutionary Guards (parallel armed forces established after the 1979 Revolution), the *Basij* (paramilitary forces under the control and supervision of the Revolutionary Guards) and the Islamic Republic of Iran Broadcasting group; and making all key decisions on security, defence and foreign policy. This broad extent of Constitutional powers is matched by the significant influence and rule of the Supreme Leader in practice.

48 Amnesty International (AI), ‘Iran: Election Contested, Repression Compounded’ (2009), p. 4; Islamic Republic of Iran (IRI) Constitution, Preamble, p. 3; see also, Kar (n 37) p.2.
50 IRI Constitution, art. 107; see also Report of the Special Rapporteur on the right to freedom of opinion and expression (n 49), §16.
51 Special Rapporteur, *ibid*, para. 19; AI, (n 48), p.5; IRI Constitution, art. 91.
52 AI, *ibid*, p.5; Special Rapporteur, *ibid*, para. 16, citing IRI Constitution, arts. 107, 111.
53 The President is the head of government and is to be popularly elected every four years. IRI’s Constitution makes clear that the President is subordinate to the Supreme Leader and has no input in matters directly concerned with the Supreme Leader’s Office. Special Rapporteur, *ibid.*, para. 17, citing IRI Constitution, art. 113.
54 Special Rapporteur, *ibid*, para. 16; AI (n 48), p.5.
55 IRI Constitution, art. 110; AI (n 48), p.5.
2.3.2 Head of the Judiciary: Eligibility and Role

The Constitution provides in article 156 that the judiciary shall be “an independent power that protects individual and social rights” and is responsible for implementing justice and performing typical judicial and administrative functions.\(^{56}\) The judiciary is overseen by the Head of Judiciary, who is appointed by the Supreme Leader and is required to be a Mojtahed (highest level of expertise in Shi’ite Islamic jurisprudence) and to possess knowledge of judicial matters.\(^{57}\) The Head of Judiciary is deemed to be “the highest authority of the judiciary”\(^{58}\) and has the power to appoint and dismiss judges, define their jobs, make promotions and transfers of judges and make other administrative decisions.\(^{59}\) The Head of Judiciary also appoints the Prosecutor General and President of the Supreme Court, both of whom also must be Mojtaheds.\(^{60}\)

2.3.3 Judges: Eligibility

Under Iranian legislation, eligibility for a judgeship appointment requires individuals to “have faith and [be] just and possess a practical commitment to the Islamic principles and loyalty to Iran’s Islamic Republic system.”\(^{61}\) Qualified clergymen who have been approved by the Judicial High Council are eligible to be judges. Alternatively, if not enough qualified clergymen are available, individuals with a bachelor degree in law or theology may become judges after completing the requisite judicial training and upon obtaining permission from a government-trusted clergyman. These judges are deemed “permitted judges.”\(^{62}\) Under the 1982 Law on the Qualifications for the Appointment of Judges, Shi’a Muslim women may be appointed as advisory judges but cannot preside over a court.\(^{63}\) Additionally, potential state or otherwise authoritative employees (presumably including judges, prosecutors and some lawyers) must also satisfy the criteria set forth under the 1995 Selection Law based on Religious and Ethical Standards.\(^{64}\) This selection process, known as the gozinesh process, involves the investigation by the Supreme Selection Council and the Intelligence Ministry into an applicant’s beliefs, previous political opinions and affiliations, and repentance of any former political opinions and affiliations.\(^{65}\)

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\(^{56}\) IRI Constitution, art. 156; Special Rapporteur (n 49) para. 21.

\(^{57}\) IRI Constitution, art. 157; Special Rapporteur, *ibid*, para. 21.

\(^{58}\) IRI Constitution, art. 157.

\(^{59}\) *Ibid*, art. 158.


\(^{64}\) *Ibid*, p. 4.

\(^{65}\) *Ibid*. 

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2.3.4 Iran’s Courts: Revolutionary, Military and Public

Iran’s legal system is comprised of multiple, distinct courts based on subject matter: the Revolutionary Courts for, among others, national security crimes, military courts for handling crimes related to special military or police duties, clerical courts for resolving issues related to the clerics and regular Public courts for ordinary criminal and civil matters. In cases where a person is accused of several crimes involving multiple jurisdictions, the person is to first be tried by the court with jurisdiction over the most serious crime. The Revolutionary Courts have explicit priority over the military and Public courts in cases where the allegations warrant the same degree of punishment. Both the Revolutionary Courts and the Public criminal courts can sentence defendants to execution for certain offences but only a single judge presides in the Revolutionary Court branches, whereas a Public court judge is surrounded by a panel of four advisors when dealing with capital offences.

2.3.5 Revolutionary Courts

The Iranian Constitution does not provide for the establishment or the mandate of the Revolutionary Courts and clerical courts. The Revolutionary Courts were created pursuant to Ayatollah Khomeini’s edict within just a few days of the Revolution with a Shari’a judge appointed as the Courts’ head. Although initially intended as a temporary emergency measure to try high-level officials of the former regime, the Revolutionary Courts became institutionalised through the 1979 Administrative Regulations Governing the Revolutionary Courts and the 1992 Law on Public and Revolutionary Courts. Notwithstanding their origins and original purpose, the Revolutionary Courts are still in existence and operating today. They have jurisdiction over national security crimes or “serious security-related crimes, such as offences against the internal and external security of the State, conspiracy, carrying arms, sabotage, use of terrorism, espionage and smuggling, or offences linked to illegitimate appropriation of wealth,” as well as offences under Iran’s anti-narcotics law.

66 IRI Constitution, art. 172.
67 IRI Constitution, art. 156.
68 IRI Criminal Code of Procedure for Public and Revolutionary Courts, art. 55.
69 Ibid.
70 AI, ‘Iran: Submission to the Human Rights Committee’ (prepared for the 103rd Session of the Human Rights Committee 17 October – 4 November 2011), p. 41
71 IRI Criminal Code of Procedure for Public and Revolutionary Courts, art. 55.
72 Abrahamian (n 34) p.124; Lahidji (n 34) p.4; Special Rapporteur (n 49) para. 27.
74 Report of the Special Rapporteur on the right to freedom of opinion and expression (n 49), para. §27.
75 AI (n 60) p. 41.
3. JUDICIARY

3.1 Applicable Law and Principles

Given the connection between a fair and independent justice system and the protection of human rights, it is unsurprising to find the former enshrined in multiple international and regional human rights treaties. Article 14, which concerns the right to a fair trial, contains procedural guarantees that often play a crucial role in the more substantive guarantees of other ICCPR rights. Specifically, article 14 rights have a direct connection with the right to life under article 6, the prohibition against torture and inhuman, cruel or degrading treatment or punishment under article 7 and the right to liberty and security of person under article 9. These substantive rights may be violated when an unfair trial results in a death sentence, where statements obtained through the use of torture or other illegal ill-treatment are allowed into evidence, or where persons are detained without trial for unreasonable lengths of time. Accordingly, adherence to article 14 guarantees has a critical connection to upholding these three rights and others under the ICCPR. Article 14 subsections (1) to (3) are of particular relevance to this analysis.

3.1.1. Article 14(1) – General Articulation of the Right to a Fair Trial

The key requirements of Article 14(1) are: equality before the courts; public hearings and judgments; and a competent, independent and impartial tribunal established by law.

The right to a fair trial or hearing is an overall right encompassing all of the guarantees enumerated in article 14. Determining whether an accused received a fair trial requires an evaluation of the proceedings as a whole. This necessarily means the proceedings must be absent of “any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive,” The right to a fair trial on a criminal charge arises from the date on which the State’s activities – whether it is an official notification of the charge or arrest – substantially affect the accused. The right continues until the

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76 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984), arts. 12-15; Convention on the Rights of the Child (1989), particularly arts. 37 and 40.
78 HRC, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial (2007) UN Doc. CCPR/C/GC/32, para. 58.
79 Ibid, paras. 59-61.
80 Ibid.
82 HRC GC 32 (n78) para. 25.
83 Nowak (n 2) p. 318-19.
criminal proceedings are concluded. The right also includes a temporal requirement, in that criminal proceedings should not be subjected to undue delays.

Equality

Equality pertains to a prohibition of discrimination, unless it is established by law and founded on reasonable and objective grounds, without entailing “actual disadvantage or other unfairness to the defendant.” The notion of equality also requires an “equality of arms,” which means that the same procedural rights should be afforded to both the prosecutor and the defendant. This includes the right to adequate access to counsel, to be present at hearings, adequate inspection of the records and evidence, and presentation and cross-examination of witnesses.

Public Hearings and Judgments

The UN Human Rights Committee (‘HRC’), the treaty body for the ICCPR, has made it clear that trials in all criminal matters “must in principle be conducted orally and publicly.” The requirement of public hearings and judgments is an essential element of the right to a fair trial as it implicates the transparency of the legal process including the judiciary. “Public” includes the media and any members of the general public who wish to attend. Public trials and hearings are important safeguards for the criminal defendant and society as a whole. Although all or part of the public may be excluded from hearings in exceptional circumstances, the requirement that the resultant judgment be made public (including the essential findings, evidence and legal reasoning) is nearly absolute.

84 Ibid, p. 319.
86 HRC GC 32, ibid, para. 9; ICJ (n 23) p. 8.
89 HRC GC 32, ibid, para. 28.
90 Ibid; Nowak (n 2) p.323.
91 HRC GC 32, ibid, para. 29.
92 Ibid, para. 28. In the context of limitations based on national security, see Sultanova et. al. v Uzbekistan, where the Human Rights Committee held that, although the accused was charged with acts threatening public security and public order, holding the trial in camera was not justified, particularly because the judge did not provide any justifications to the dismissal of several requests for a public hearing. Communication No. 915/2000, UN Doc CCPR/C/86/D/915/2000 (2006), para. 7.5.
93 Ibid, para. 29; Nowak (n 2) p.323. The only allowable restrictions on publication of the judgment are ‘where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.’ See also ICCPR, art. 14(1).
Competent, Independent and Impartial Tribunal Established by Law

The UN Human Rights Committee has made it clear in interpreting article 14 that the requirement of a competent, independent and impartial tribunal is an absolute right that is not subject to any exception. The terms “competent” and “established by law” refer to the tribunal’s jurisdictional power and ensure that such power is determined generally and independently in a given case, rather than arbitrarily.

The requirement that a judiciary be independent means the actual separation and protection from political interference from the other governing branches. Independence also entails issues of the appointment and removal of judges; the requisite qualifications they must possess; and guarantees surrounding their security of tenure. States have positive obligations to take specific measures guaranteeing the independence of the judiciary, “protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them.” A situation where the functions of the judiciary and the executive are not clearly distinguishable, or where the executive controls or directs the judiciary, is “incompatible with the notion of an independent tribunal.”

Impartiality of the judiciary has a subjective and objective limb. The subjective aspect pertains to individual judges and the requirement that judges must not allow personal bias, prejudice or preconceptions about a particular case to influence their judgment. Judges also must not have a personal stake in the matter before them (i.e. conflict of interest) or allow outside pressure, such as from the media, other government branches, or even other judges, to influence their decisions. The objective aspect refers to the court or tribunal as a whole as viewed by the public. While actual impartiality is imperative, the tribunal must also appear to a reasonable observer to be impartial in order to ensure public confidence and trust in the judiciary. For example, in Castedo v.

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94 HRC GC 32, ibid, para. 19; Gonzalez del Rio (n 85) para. 5.2 (right of an accused to be tried by an independent and impartial tribunal “is an absolute right that may suffer no exception”).
95 Nowak (n 2) p.319.
97 HRC GC 32 (n 78) para. 19; see, also, Nowak, ibid, p.307.
98 HRC GC 23, ibid, para. 19.
99 Ibid, para. 21.
100 Ibid. These two aspects are also described as the personal (judges) and the substantive (whole judiciary), as well as institutional (whole judiciary) and behavioral (judges) impartiality. See, respectively, Shetreet (n6) p. 44 and C Guarnieri and D Piana, ‘Judicial Independence and the Rule of Law: Exploring the European Experience,’ p. 115, in S Shetreet and C Forsyth (eds.), The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges (Martinus Nijhoff, 2012).
101 HRC GC 32 (n 78) para. 21; Nowak (n 2) p.321. In addition, participation in a trial of judges “who, under domestic statutes, should have been disqualified cannot normally be considered to be fair and impartial within the meaning of Article 14.” Karttunen v Finland, Human Rights Committee Communication No. 387/1989, UN Doc CCPR/C/46/D/387/1989 at 108(1992), para. 7.2.
102 HRC GC 32, ibid, para. 21; Shetreet (n 6) p.33; Cooray (n 14) p.350.
the UN Human Rights Committee considered the complaint of an individual who was not selected for a university post based on a points-based selection process. Although the Committee could not conclude that the judge had acted partially, the Committee found a violation of article 14(1) on the basis that, because the reporting judge was an employee of the university, the applicant could “reasonably have harboured doubts as to the impartiality of the court”. This case emphasises the need to ensure courts meet both the subjective and objective elements of impartiality.

These requirements under article 14(1) apply to all courts and tribunals, regardless of whether they are ordinary or specialized, civilian or military. The UN Human Rights Committee notes with caution that, while military or special courts are not prohibited from trying civilians, such courts “may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.” Accordingly, use of military or special courts to try civilians should only occur in exceptional cases where the State can show not only that these trials are necessary and justified by objective and serious reasons, but also that the ordinary civilian courts are unable to handle the trials with regard to the specific class of individuals and offences at issue. Even if the State can meet these criteria, it is still obligated to ensure that the extraordinary courts fully comply with the requirements of article 14. The special character of the court does not warrant suspension, limitation or modification of the article 14 rights.

The UN Human Rights Committee further identified that such special courts established for certain categories of cases, such as terrorist activities, tend to operate with serious irregularities that may violate the right to a fair trial and the right to an independent and impartial tribunal. Examples include the use of “faceless” or anonymous judges, exclusion of the public from the proceedings, exclusion of the accused or the accused’s representative from the proceedings, restricting an accused’s right to choose one’s own

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104 Ibid, para. 2.1-2.3.
105 Ibid, paras. 9.5-9.8.
106 HRC GC 32, ibid, para. 22. See also the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, UN Doc A/68/285 (2013), para. 93, where the Special Rapporteur reiterates, “The independence of military tribunals must be legally guaranteed at the highest possible level”.
107 HRC GC 32, ibid.
109 Ibid.
111 See, for example, Gonzalez del Rio (n 85) para. 5.2. The Inter-American Court of Human Rights has unequivocally stated that the use of faceless judges is a “blatant violation of the right to a public hearing”. See, for example, Castillo Petruzzi et al v. Peru, Inter-American Court of Human Rights (1999) Ser. C No. 52, paras. 172-173 and 221.
lawyer, severe restrictions or outright denial of the right to communicate with one’s lawyer, threats to lawyers, inadequate time to prepare a defence and severe restrictions or outright denial of the right to present witnesses or to cross-examine certain prosecution witnesses. The Committee has repeatedly expressed concern over the use of special courts and, on several occasions and in numerous cases, has recommended their abolition.

The Committee notes that a State’s obligations under article 14 also apply to religious courts and to customary courts established by custom. Judgments issued by such courts cannot be recognised as binding by the State unless the court has first met the basic guarantees under article 14. The proceedings before such courts also must be limited to minor civil and criminal matters and the option to challenge the decisions by either party must be a possibility, pursuant to an article 14-compliant process.

The critical importance of an independent and impartial judiciary has been emphasised in numerous international soft law instruments. The UN General Assembly Basic Principles on the Independence of the Judiciary (‘Judiciary Principles’) are declaratory of generally accepted views and have been influential in assessing the independence of the judiciary. These principles act as guidelines for securing and promoting the independence of the judiciary as promulgated by, among others, the UN Charter, the UDHR, and the ICCPR. UN Member States are instructed to bring these principles “to the attention of judges, lawyers, members of the executive and the legislature and the public in general.”

The Judiciary Principles require UN Member States to enshrine the guarantees in their constitutions or national law, and for all governmental and other institutions to respect and observe the independence of the judiciary. The judiciary itself is tasked with deciding matters impartially, “on the basis of facts and in accordance with the law,

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113 Ibid, citing Gutierrez Vivanco at §7.1.
114 Ibid, citing Polay Campos at §8.8 and Carranza Alegre at §7.5.
117 Ibid, citing Gutierrez Vivanco at §7.1.
120 HRC GC 32 (n 78) para. 24.
121 Ibid.
122 Basic Principles on the Independence of the Judiciary (n 20).
123 OHCHR and IBA (n 13) p. 119.
125 Ibid.
without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”

More broadly, the Judiciary Principles prohibit any inappropriate or unwarranted interference with the judicial process.

The Judiciary Principles also stress the right of an accused to be tried by ordinary courts or tribunals that use established legal procedures and prohibit the creation of special courts that do not follow such duly established procedures. Again, military, anti-terrorism and other special criminal courts are viewed with much scepticism and are usually subjected to a strict standard given the risk these extraordinary courts present to fair trial and other rights.

Regarding the selection and security of judges, the Judiciary Principles require that judges’ term of office, independence, remuneration, conditions of service, among others, be adequately secured by law and that judges have a guaranteed tenure until a mandatory retirement age or other expiration term is reached. Selection and promotion of judges is to be based solely on objective factors, such as ability, integrity and experience. Standards of judicial conduct governing disciplinary, suspension or removal proceedings should be in place and an independent review process should be available for any such actions. Moreover, assignment of cases to judges should be decided internally as an administrative function and not by outside influences.

Numerous reports and recommendations of the Special Rapporteur on the independence and impartiality of the judiciary and the independence of lawyers have been issued. These provide further useful guidance on the law and principles relating to the judiciary. Several NGOs expanded upon the Judiciary Principles by drafting more comprehensive standards.

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129 Ibid, Principle 5.
130 Nowak, M., (n 20) p. 311.
3.1.2. Article 14(2) – Presumption of Innocence

The presumption of innocence until proven guilty, in accordance with the law guaranteed under article 14(2), continues until conviction. An accused may not be convicted if reasonable doubt of guilt exists and judges must conduct criminal trials without previously forming an opinion on an accused’s guilt or innocence.\(^{137}\) Indeed, article 14(2) requires all public authorities to refrain from prejudging the guilt or innocence of an accused.\(^{138}\) Additionally, the length of any pre-trial detention or the denial of bail is prohibited from consideration in determining one’s guilt.\(^{139}\)

3.1.3 Article 14(3) – Minimum Rights of the Criminal Accused

Article 14(3) provides for the minimum rights that must be afforded to persons charged with a criminal offence.

Regarding the prompt notification of the nature and cause of the charge as required by article 14(3)(a), the notification must include an exact legal description of the offence and the underlying facts giving rise to the charge. The provision of sufficient information enables the accused and their lawyers to prepare a defence.\(^{140}\) To satisfy the requirement of promptness, notification of the nature and cause of the charge should be issued to the accused when the charge is formally lodged or directly thereafter.\(^{141}\) Notification may be stated orally to the accused but must subsequently be issued in writing.\(^{142}\)

The right to adequate time and facilities for preparation of a defence provided under article 14(3)(b) applies to both the accused and their lawyers at all stages of the trial.\(^{143}\) This right is a critical element of the right to a fair trial and to the equality of arms.\(^{144}\) Although the amount of time necessary to constitute ‘adequate time’ varies depending on the circumstances, it is clear that a few days is inadequate and is likely to result in a violation of article 14.\(^{145}\) The reference to adequate facilities includes access to documents, records, evidence and all materials the prosecution intends to use against the

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137 HRC GC 32 (n 78) para. 30; Nowak (n 2) p.330.
138 HRC GC 32, ibid, para. 30.
139 Ibid.
140 Nowak (n 2) p. 331.
141 Ibid, p.332; HRC GC32 (n 78) para. 31.
142 Ibid, HRC GC 32.
144 HRC GC 32 (n 78) para. 32.
145 Nowak (n 2) p.332, citing Little v. Jamaica (n 143) paras. 8.3, 8.4.
accused (see also ICCPR article 14(3)(e)).\textsuperscript{146} It also includes access to any exculpatory material, which encompasses not only material that establishes innocence but also any material of assistance to the defence.\textsuperscript{147}

The right to communicate with counsel of an accused’s own choice under article 14(3)(b) entails prompt access to a lawyer. Lawyers should be allowed to meet with their clients privately and under conditions fully respectful of the confidentiality of the communications. Lawyers also need to be able to fulfil their duties to their clients “without restrictions, influence, pressure or undue interference from any quarter.”\textsuperscript{148}

The general right to defence under article 14(3)(d) involves three distinct rights: the right of accused persons to be present at their trial; the right of accused persons to defend themselves in person or through legal counsel of their own choosing; and the right of accused persons to have legal counsel appointed, when the interests of justice require, without charge, if they cannot afford to pay for counsel themselves.\textsuperscript{149} In addition, article 14(3)(f) entails the provision of a translator, if required, without charge. Defendants must be informed of each of these rights and must be given sufficient time to exercise them.\textsuperscript{150}

For instance, accused persons cannot defend themselves if they are not timely informed beforehand of the date and place of the trial.\textsuperscript{151} The appointment of counsel “where the interests of justice so require” is determined by the seriousness of the offence.\textsuperscript{152} In capital punishment cases, it is “axiomatic” that the defendant is entitled to the effective assistance of counsel at all stages of the proceedings, including appeals.\textsuperscript{153} The State has the responsibility to ensure the fulfilment of this obligation.

Finally, the prohibition against self-incrimination under article 14(3)(g) means that accused persons cannot be forced to testify against themselves at trial or to confess to guilt. In this connection, authorities may not use any direct or indirect physical or undue psychological pressure in contravention of the prohibition against torture under article 7 of the ICCPR in an attempt to extract a confession. Domestic law must ensure that any confessions obtained under such circumstances are excluded as evidence against the accused, although such material can be used by the accused to prove the use of torture.\textsuperscript{154}

3.2 Application to the Situation in Iran

3.2.1. Independence and Impartiality of the Judiciary

Legislation pertaining to Iran’s judiciary indicates adherence to the separation of powers

\begin{itemize}
\item\textsuperscript{146} \textit{Ibid}; HRC GC 32 (n 78) para. 33.
\item\textsuperscript{147} HRC GC 32, \textit{ibid}, para. 33.
\item\textsuperscript{148} \textit{Ibid}, para. 34.
\item\textsuperscript{149} \textit{Ibid}, paras. 36-38; see also Nowak (n 2) pp. 337-40.
\item\textsuperscript{150} HRC GC 32, \textit{ibid}.
\item\textsuperscript{151} HRC GC 32, \textit{ibid}, para. 36.
\item\textsuperscript{152} HRC GC 32, \textit{ibid}, para. 38.
\item\textsuperscript{153} \textit{Ibid}.
\item\textsuperscript{154} HRC GC 32, \textit{ibid}, para. 41; see also Nowak (n 2) pp. 344-45.
\end{itemize}
principle. Article 156 of the Constitution explicitly states that the judiciary is an independent power. However, both Iranian legislation and the _de facto_ situation suggest otherwise. As one commentator has stated:

Since the judicial system is functioning under the direct leadership of the Supreme Leader [whose] main task is to safeguard the regime, as a result, the judicial system in the Islamic Republic of Iran cannot be considered as a body which maintains the law, but one that maintains the regime. Hence, there are no clear boundaries between the judiciary, Revolutionary Guards, the Basij, police and the intelligence services. And therefore, hidden and open interference and interventions is seen.155

The Head of Judiciary himself is directly appointed by, and answerable to, the Supreme Leader. The Special Rapporteur on the independence of judges and lawyers and the Special Representative on the situation of human rights in the Islamic Republic of Iran have noted the Supreme Leader’s influence over the judiciary with concern.156 This followed the reported statement of Hadi Marvi (First Deputy to the Judiciary Chief Mahmoud Hashemi Shahroudi) that “judges must obey the Supreme Leader and have no independence in judgment.”157 The influence of both the Supreme Leader and Head of Judiciary in the aftermath of the 2009 presidential election indicates judges’ inability or unwillingness to defy the Head of Judiciary. It is reported that the judiciary acquiesced to the intervention of military and security forces to quell the public protests through the use of killing, mass arrests, arbitrary detention and torture.158 Reports further indicate that the Iranian authorities used arbitrary detention and torture in an effort to repress dissent surrounding the 2009 presidential election.159 The torture methods were reported to be “highly systematic” and used to extract information about persons or groups considered to be “anti-regime”, as well as to obtain confessions that were later used against them in legal proceedings, in contravention of the prohibition against torture and use of confessions under article 14.160 Extensive use of arbitrary and incommunicado detention was also reported, with all persons allegedly being subjected to such tactics for political purposes.161 In the majority of the cases, there were no formal charges made, no judicial process and no access to a lawyer.162 Two of the accused were provided access to a lawyer but, allegedly, only after a forced confession had been obtained through the use of torture.163 Further, a former commander of the Revolutionary Guard was appointed as a “consultant” to the judiciary, demonstrating the influence of the Supreme Leader on the judiciary.164

157 Ibid.
158 AI (n 60) pp. 17-21.
160 Ibid., pp. 8, 21.
161 Ibid., pp. 8, 17, 21.
162 Ibid., pp. 22-23.
163 Ibid., pp. 22-23.
164 Kar (n 37) p. 5.
The reported systematic use of arbitrary detention, torture and deprivation of due process, as well as the use of “show trials,”\(^{165}\) is not confined to the time period surrounding the 2009 presidential elections. To the contrary, the reporting indicates that this appears to be the *modus operandi* of the security forces and the Revolutionary Courts since the 1979 Revolution. Such treatment was considered persistent throughout the 1980s and 1990s, documented in multiple reports of the Special Representative on the human rights situation in the Islamic Republic of Iran during that period.\(^{166}\) It is documented that immediately following the Revolution and the reestablishment of clerical judges, clerics held trials – often in the prisons – and ordered the summary executions of hundreds of the former regime’s officials and military.\(^{167}\)

The Iranian Courts have been known to deprive defendants of access to lawyers in the pre-trial phase and sometimes during trial.\(^{168}\) This denial of the right to a defence lawyer contravenes article 35 of the Iranian Constitution, which guarantees the right to a lawyer, and article 128 of the Criminal Code of Procedure, which provides the right to a lawyer during the investigation phase. However, article 128 is subject to an exception that allows judges to exclude lawyers where they deem it necessary for purposes of confidentiality, prevention of corruption and for national security crimes.\(^{169}\) This exception is frequently abused by investigating judges to prevent the presence of lawyers during the interrogation of a defendant, where the use of torture is often relied upon to exact confessions.\(^{170}\) Revolutionary Court judges are said to often prevent lawyers from accessing client files on the basis that the lawyer is not properly ‘qualified’ to review certain files; the licensing Bar Association is the competent body to make such assessments, not Revolutionary Court judges.\(^{171}\)

Public “recantations,” typically in the form of videotaped “confessions” that are then publicly broadcasted, are common tools used to intimidate prison detainees and members of the public who oppose the regime.\(^{172}\) Recantations of lesser-known individuals may be shown on closed-circuit television within the prisons rather than broadcast to the public at

\(^{165}\) See, eg, IBAHRI, ‘IBAHRI concerned at lack of legality of mass trials in Iran’ (18 August 2009) (expressing concern about mass trial of over 100 individuals critical of the 2009 presidential elections, as well as some of the lawyers defending them).


\(^{168}\) AI (n70) p.40; Ibid, p. 69.

\(^{169}\) Kar (n 37) p. 7, discussing the Note to article 128 of the Criminal Code of Procedure.

\(^{170}\) Ibid, pp. 7-8; see, also, IHRDC, ‘Witness Statement of Mahnaz Parakand’ (8 September 2012), paras. 26-28.

\(^{171}\) IHRDC, *ibid*, para. 22.

\(^{172}\) Abrahamian (n 34) p.5; Afshari (n 167) pp. 75-76.
large like those of well-known individuals. One commentator has stated that the purpose is “that of grand theatre staged by the authorities as positive propaganda for themselves and as negative propaganda against their real and imagined enemies.” The authenticity or accuracy of these recantations is dubious and may be attributable to the use of torture. The use of such public recantations serves no legal purpose.

The Islamic Republic of Iran sometimes responds to reports of the above by pointing to the rights explicitly enumerated in the Iranian Constitution and laws, including certain fair trial rights, equality before the law, the prohibitions against torture and use of evidence obtained by torture, as proof that it has not violated these rights. Undoubtedly, express enumeration of human rights in the Constitution and laws are incredibly important as a prerequisite to adequate protection of human rights. However, it does not automatically lead to actual implementation, respect and compliance with human rights in Iran. The problem is multifaceted: the Constitution’s general principles on human rights conflict internally with the general principle of Velayat-e Faqih and role of Shari’ā; the rights are undermined by legislation passed on specific judicial issues; and the de facto implementation of the law is inconsistent with the rights in question.

3.2.2 Revolutionary Courts

The institutional structure of Iran also appears to be inconsistent with article 14 of the ICCPR. The Revolutionary Courts and Guard were originally established to deal with members and supporters of the former regime and to repress those individuals and groups who were instrumental in the Revolution but did not support the IRP.

In 1981, it was reported that an Islamic cleric of the Revolutionary Courts ordered the execution of fifteen girls demonstrating in support of then-President Abolhassan Banisadr after his removal from office for criticising the Supreme Leader and the IRP. The girls were said to have been executed without any access to a lawyer or appearance at trial. It is reputed that over 4,000 people, mostly supporters of the Mujahideen-e Khalq, have been executed by the Revolutionary Guard on the orders of Islamic judges. By 1982, the estimates of the number of people executed since the 1979 Revolution continued to rise, with indications that victims were being executed under the pretext of being

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175 Irfani (n 46) pp. 183-186.
177 *Ibid*.
178 *Ibid*. 
‘terrorists’ or threatening to the regime – a tactic that is still reportedly used today. The term ‘terrorist’ came to connote ‘a general term for political dissidents – teachers, lawyers, students and journalists who subscribe to a particular ideology or outlook.’

In 1984, the UN Commission on Human Rights appointed a Special Representative to Iran to investigate human rights concerns. The representative’s mandate was to examine the treatment of minorities and discrimination against members of the Baha’i religion. The Representative noted the revolutionary authorities’ systematic nature of persecution against Baha’i through the use of arrest and execution of prominent figures, confiscation of assets and intimidation. Of most importance to this study, the report also discussed the use of summary arrest and lengthy arbitrary detentions without formal charge, as well as the many execution orders issued by the Revolutionary Courts. It was expected that if formal charges were brought, they were on vague and false grounds, such as being “agents of Zionism, collaborators with the Pahlavi regime, opponents of Islam, enemies of the Government and people of Iran and moral degenerates.”

The Special Rapporteur’s subsequent mandate was expanded to cover the general human rights situation in Iran, and the UN special procedures focused on human rights in Iran included both country-specific and thematic mandates. Similar accounts of systematic abuses of human rights, torture, mass executions, lack of fair trial and due process echo the first report throughout the numerous Special Representative and Special Rapporteur reports since 1979, including those of the current Special Rapporteur.

This evidence suggests that these article 14 violations are not specific to any particular period for the Islamic Republic of Iran – any one particular Supreme Leader, Head of Judiciary or judge. Rather, they appear to be systemic. The apparent failure to operate a system respectful of separation of powers principles, including an independent and impartial judiciary, has perpetuated a justice system influenced by political power and interests, especially the views of the Supreme Leader and those directly appointed and

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179 Ibid.
180 Ibid, p. 224.
181 UN Commission on Human Rights Res. 1984/54 (14 March 1984)
influenced by him, such as the Head of Judiciary. Consequently, violations of the various fair trial rights under articles 14(1)-(3) of the ICCPR and the Judiciary Principles are prevalent, perpetrated by Revolutionary Courts, displaying many of the characteristics warned against by the UN Human Rights Committee.\(^\text{188}\)

### 3.2.3 Independence and Impartiality of Individual Judges

The weight of evidence suggests that individual judges in Iran are often not objectively independent or impartial. Their selection is based on the gozinesh process, which involves extensive investigations focused on candidates’ beliefs and prior political leanings rather than solely professional competence and legal qualifications. If appointed, judges do not enjoy security of tenure because their employment is at the discretion of the Head of Judiciary who, under article 158 of Iran’s Constitution, has broad powers of appointment, transfer, assignment and promotion of judges. While article 164 of the Constitution prescribes the grounds under which judges may be removed or transferred and the procedure for doing so, all of these decisions are subject to the Head of Judiciary’s input. Therefore, there are few incentives for judges to act inconsistently with the views of the Head of Judiciary. This diminishes the independence and impartiality of judges, in contravention of article 14(1) of the ICCPR and the Judiciary Principles.\(^\text{189}\)

Furthermore, from 1994, judges in the Revolutionary and Public Courts fulfilled the role of both prosecutor and judge.\(^\text{190}\) This undermined the opportunity of a criminal defendant receiving a fair trial as the judge determining guilt and sentencing was also the one who prosecuted the case.\(^\text{191}\) This arrangement violated the impartiality requirement under article 14(1) of the ICCPR, Judiciary Principles by adopting the Guidelines on the Role of Prosecutors (Prosecutors Guidelines).\(^\text{192}\) Although separation of the adjudicatory and prosecutorial functions was restored in the late 1990s, there is no indication that persons convicted and sentenced under the former framework have been released, compensated, had their convictions expunged or received any other form of judicial remedy.

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\(^\text{188}\) Although outside the scope of this research study, it is worth nothing that, like the Revolutionary Courts, clerical courts exist outside Iran’s official judicial system, issue death sentences and appear to be used “as a means of resolving factional struggles within the clerical leadership rather than as courts of law.” AI (n 60) p.29.

\(^\text{189}\) Kar (n 37) pp. 4-5.


\(^\text{191}\) Ibid, p. 68.

\(^\text{192}\) ‘Guidelines on the Role of Prosecutors,’ (n 23).
4. LAWYERS AND BAR ASSOCIATIONS

4.1 Applicable Law and Principles

4.1.1 Freedom of expression

The UN Human Rights Committee has stated that freedom of opinion and expression under article 19 of the ICCPR is the “foundation stone” for a free and democratic society.193 It is unsurprising that this right is at the core of the ICCPR and serves as a touchstone for all other ICCPR rights.194 Article 19 encompasses both a private freedom (freedom of opinion)195 and a public freedom (freedom of expression).196 The private freedom to hold and form an opinion is absolute and cannot be limited or restricted in any way; any attempts to do so will violate the ICCPR.197 The outward manifestation, or public freedom of expression, is the right to express one’s opinion and to actively seek, receive and impart information.198 The scope of the right to freedom of expression in relation to form and content is broad, including verbal and written expression, assemblies and demonstrations, works of art, audio and visual media, etc.199 It covers, among other things, discussion of private and public affairs and political, human rights and religious discourse.200

Unlike for the right to form a personal opinion, the State may limit the right to freedom of expression, but only in the precise manner and for the specific purposes set forth under article 19(3).

Regarding the manner of limitation, it must be established by law, accessible to the public and be sufficiently precise for individuals to regulate their conduct.201 Because any restriction on the freedom of expression is a serious curtailment of human rights, any restriction that is not established through formal legislation or an equivalent method will violate article 19.202 Incompatible methods of limitation include administrative provisions, vague statutory authorisations and traditional, religious, or other customary law.203 Such a legal limitation may not give unfettered discretion to those charged with

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194 Ibid, para. 2; Nowak (n 2) p. 438 (citations omitted).
195 ICCPR, art. 19(1).
196 ICCPR, art. 19(2); Nowak (n 2) p.440.
197 Nowak (n 2) p.440; HRC GC 34 (n 197) para. 9.
198 Nowak, ibid; HRC GC 34, ibid, para. 11.
199 Nowak, ibid, p. 445; HRC GC 34, ibid, para. 12.
200 HRC GC 34, ibid, para. 11.
201 Nowak (n 2) p. 460; HRC GC 34, ibid, paras. 22, 25.
202 HRC GC 34, ibid, para. 24; Nowak, ibid.
203 Ibid.
enforcing it. Limitations are then subject to a strict test of necessity and proportionality.

Regarding the purpose and effect, States may limit the right to freedom of expression only on the basis of protecting the rights and reputations of others and for the protection of national security, public order or public health or morals. The national security and public order limitations are often used by States as ‘justifications’ to target journalists or persons engaged in gathering and disseminating information on human rights situations, including judges and lawyers. States also may try to extend the notions of national security or public order so far as to curtail mere expressions of opinion or to justify “the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights” or for the arbitrary arrest and detention, torture or threats of any person.

Thus, the limitations provision under article 19(3) must be strictly construed and any restrictions based on national security may only be imposed in “serious cases of political or military threat to the entire nation.” Consequently, repressive measures that are aimed at critics of a regime will violate article 19, despite a State’s attempts to justify such repression by labelling the expression as ‘subversive’. Likewise, blasphemy laws and other prohibitions imposed for lack of respect for a religion or belief system contravene the right to freedom of expression. Individuals must be able to criticise all public figures, including heads of state, government figures and religious leaders.

4.1.2 Freedom of Association

Article 22 of the ICCPR provides for “the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests,” as well as for limitations on this right in certain circumstances. The right to freedom of association is both a civil and a political right. It safeguards an individual’s right to found or join an association and establishes the collective right of an association to perform activities on behalf of its members. States have a negative obligation to refrain from interference with associations and a positive obligation to provide the legal framework for incorporation of associations as juridical persons. States may require associations to register or to be licensed but cannot otherwise restrict the right to freedom of association except as prescribed by law and only as deemed necessary in a democratic

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204 HRC GC 34, *ibid*, para. 25.
205 Nowak (n 2) p. 460; HRC GC 34, *ibid*, para. 24.
206 ICCPR, art. 19(3).
207 HRC GC 34 (n 197) para. 23; see, also, Nowak (n 2) pp. 463-66.
210 Nowak, *ibid*, p. 450 (citing multiple Human Rights Committee cases).
211 HRC GC 34 (n 197) para. 48.
212 HRC GC 34, *ibid*, paras. 38, 48.
213 ICCPR, art. 22.
214 Nowak (n 2) p. 496.
society in the interests of national security, public order, the protection of public health and morals, or the protection of the rights and freedoms of others.\footnote{ICPR, art. 22(2); Nowak, \textit{ibid}, p. 506.} Associations can only be dissolved by the State where they present a political or military threat to the entire nation or engage in war propaganda against the State.\footnote{Nowak, \textit{ibid}.}

The African Commission on Human and Peoples’ Rights (‘ACHPR’) has explicitly considered lawyers’ right to freedom of association, which is worth setting out in this context.\footnote{African Commission on Human and Peoples’ Rights (ACHPR), \textit{Civil Liberties Organisation v. Nigeria (in respect of the Nigerian Bar Association)}, Comm. No. 101/93 (1995).} The Nigerian government retroactively issued a Legal Practitioners’ Decree establishing a new governing body (‘Body of Benchers’) over the Nigerian Bar Association. Under the Decree, the Body of Benchers would be comprised of 128 members, of whom 31 would be Bar Association nominees. The remaining 97 members would be the Government’s nominees.\footnote{\textit{Ibid}, para. 1.} The Body of Benchers was given broad discretionary powers, including authority over financial and disciplinary matters.\footnote{\textit{Ibid}, para. 2.} The Decree prohibited and criminalised attempts of bringing actions against the Body of Benchers to challenge its management of the Bar Association or the exercise of its power.\footnote{\textit{Ibid}, para. 3.} The African Court determined that the Decree was an impermissible interference with the free association of the Nigerian Bar Association because the new Body of Benchers was dominated by government representatives and had wide discretionary powers. Thus, the Decree contravened the Charter’s preamble, in conjunction with the Judiciary Principles, and stood in violation of the right to freedom of association under article 10 of the African Charter.\footnote{\textit{Ibid}, para. 17. The ACHPR also found that the Decree violated Articles 6 (right to liberty) and 7 (fair trial rights) of the African Charter because it was retroactive and prohibited legal recourse (paras. 12-14).} The African Court emphasized that government authorities should refrain from limiting the exercise of the freedom of association and “should not override constitutional provisions or undermine fundamental rights guaranteed by the Constitution and international human rights standards.”\footnote{\textit{Ibid}, para. 16.}

\section*{4.1.3 UN Guidelines on the Role of Prosecutors and Basic Principles on the Role of Lawyers}

The UN Congress on the Prevention of Crime and Treatment of Offenders bolstered the General Assembly’s Judiciary Principles by adopting the Guidelines on the Role of Prosecutors\footnote{Guidelines on the Role of Prosecutors (n 23).} (‘Prosecutors Guidelines’) and the Basic Principles on the Role of Lawyers\footnote{Basic Principles on the Role of Lawyers (n 23).} (‘Lawyers Principles’) in 1990, which reflect and expand on many of the fair trial, freedom of expression and freedom of association rights contained in the ICCPR.
The Prosecutors Guidelines address a range of issues, including qualifications, selection and training, freedom of expression and association, roles in criminal proceedings and discretionary functions and relations with other government agencies or institutions.227 They state that qualified prosecutors should be selected on the basis of stated criteria, without partiality or prejudice.228 States must ensure that prosecutors are aware of the “constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognised by national and international law.”229 Prosecutors are to be “strictly separated from judicial functions” in criminal proceedings.230 Like judges, prosecutors must act impartially, objectively and in accordance with the law.231 They should also “respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.”232

Prosecutors are also tasked with giving “due attention” to prosecution of crimes committed by public officials, especially abuse of power and “grave violations of human rights and other crimes recognised by international law.”233 They must not use evidence they know or can reasonably believe was obtained by unlawful methods constituting a “grave violation of the suspect’s human rights” such as torture and cruel, inhuman or degrading treatment or punishment, or other human rights abuses, and must take all necessary steps to bring to justice those utilising such methods.234

The Lawyers Principles deem lawyers as the “essential agents of the administration of justice”235 tasked with “protecting the rights of their clients … promoting the cause of justice” and upholding “human rights and fundamental freedoms recognised by national and international law.”236 States must ensure that lawyers are able to perform these functions “without intimidation, hindrance, harassment or improper interference” and can travel and consult with their clients freely.237 Lawyers must be given access to appropriate information, files and documents at the earliest possible time to enable them to effectively represent their clients and may not be prevented from appearing before the courts or administrative authorities to represent their clients, unless the lawyer has been disqualified in accordance with national law and in conformity with the Principles on Lawyers.238 Notably, lawyers are not to be “identified with their clients or their clients’ causes as a result of discharging their functions.”239 As such, States must ensure that

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227 OHCHR and IBA (n 13) p. 147.
229 Ibid, Guideline 2(b).
233 Ibid, Guideline 15.
234 Ibid, Guideline 16.
235 Basic Principles on the Role of Lawyers (n 23) Principle 12.
237 Ibid, Principle 16.
239 Ibid, Principle 18; Report of the Special Rapporteur on the independence of judges and lawyers, (n 133)
lawyers are not prosecuted or threatened with prosecution or any other sanctions for fulfilling their recognised professional and ethical duties.240

4.2 Application to the Situation in Iran

4.2.1 Lawyers As Individual Rights-Bearers

Iran’s apparent failure to ensure an independent and impartial judiciary and to safeguard the fair trial rights of criminal defendants has an adverse impact on the ability of lawyers to effectively defend those accused of crimes. Nevertheless, in addition to being prevented from fulfilling professional duties, it is clear that lawyers, and their families, are often targeted for trying to uphold human rights in Iran.

A wide range of UN bodies241 and other organisations242 have documented the “continuing and systematic targeting of human rights defenders, including, inter alia,
lawyers … who endure intimidation, interrogation, arrest and arbitrary detention as a result of their activities…”, as well as the “[o]ngoing, systemic and serious restrictions of freedom of peaceful assembly and association and freedom of opinion and expression, including those imposed on lawyers…” It is reported that human rights organisations and civil society groups working within Iran are typically accused of some type of illegal activity, “such as publishing statements, writing letters to international organisations, and holding news conference” or “distributing propaganda against the state” as a basis to shut down the organisation. Those lawyers who continue to engage in advocating for human rights, either by direct work with or representation of these organisations, may be subjected to international travel bans, multiple arrests and interrogations, lengthy detentions without charge, high bails, use of secret evidence, conviction for offences such as ‘propaganda against the system’ unannounced changes to sentences, and bans on practicing law. Lawyers’ family members may also be targeted for harassment, mistreatment or even arrest as a way to pressure lawyers. Furthermore, the lawyers who defend the arrested lawyers may then in turn be prosecuted, as was the case with prominent lawyer and human rights activist, Ms Nasrin Sotoudeh.

Ms Sotoudeh is known for representing juvenile defendants sentenced to execution. She also represented lawyer and co-founder of Defenders of Human Rights Centre Shirin Ebadi. Ms Sotoudeh was detained in September 2010 and subjected to several months in solitary confinement in Evin Prison. Her husband and her defence lawyer were also summoned for questioning. Ms Sotoudeh was convicted and initially sentenced to eleven years imprisonment for charges of “propaganda against the State,” “collusion and

gathering with the aim of acting against national security” and links to the Defenders of Human Rights Centre, which she denied. She was also banned from practicing law and from leaving the country for twenty years. Following an appeal, her sentence was reduced to six years of imprisonment and a ten-year ban on practicing law and leaving the country.

Ms Sotoudeh’s case does not appear to be an isolated incident. In the two-year period following the 2009 presidential election, it is reported that nearly fifty lawyers were subjected to persecution by Iranian authorities as a result of exercising their professional duties. Although the authorities tend to target those lawyers who defend human rights defenders, activists and prisoners of conscience, this is not exclusive. Defence lawyers may also be arrested simply for defending ‘ordinary’ criminal defendants or expressing critical views of the judicial process. In 2010, for instance, Javid Houtan Kiyan, the lawyer of an Iranian woman sentenced to death by stoning for adultery was himself arrested for alleged “links to ‘anti-revolutionary groups abroad’” and being in possession of forged identity cards. He was allegedly subjected to cigarette burns, repeated beatings, being soaked with water and then left in the cold. Reports suggest that he was sentenced to a year of imprisonment and a five-year ban on practicing law during a trial in which he had no access to a lawyer. In another example, three lawyers were reportedly arrested and sentenced to several months’ imprisonment for “propagating lies and creating public anxiety” after representing members of a religious minority group who were charged, and acquitted, with “acting against national security.”

4.2.2 Lawyers As Collective Category of Human Rights Defenders

In the aftermath of the Revolution, the Bar Association and lawyers were viewed as “a form of opposition to [the Islamic Republic of Iran’s] fundamentalist ideas”, so the Bar Association was closed down and a number of its Board members were arrested and imprisoned. In a 1982 letter appealing to the international community, the exiled Iranian Lawyers Committee described this event, during which regime forces stormed the

252 Ibid; FIDH (n 252) p. 38.
253 Ibid.
254 Ibid.
255 FIDH (n 252) p. 38.
256 Ibid., p. 37.
257 AI Statement, ‘Iran: Rights organisations condemn continued persecution campaign against lawyers in Iran’ (23 May 2011).
258 AI Report, ‘Fears grow for Iran stoning case lawyer and son’ (n 250).
259 AI Appeal (n 258)
260 Ibid.
Bar Association’s premises and confiscated its records, library and funds.\textsuperscript{263} The Lawyers Committee’s letter also explained that the right of lawyers to defend those facing Revolutionary Courts had been overruled, in contravention of the new Constitution, and that at least seven lawyers had been executed over the previous six months.\textsuperscript{264} The Lawyers Committee further detailed the alleged human rights abuses conducted by the new regime, including: denial of the right to defence; suppression of the legal profession’s independence; acts of genocide against religious minorities and Iranian nationalities like the Kurds; massacres of professional groups defending human rights and “all those who resist the sectarian domination of a ruling sect”; arbitrary execution of over 8,000 innocent persons prior to February 1982, including teenagers and pregnant women; and, detention and inhumane treatment of thousands of innocent persons.\textsuperscript{265} The Islamic Republic of Iran also removed the law licenses of those deemed to be promoting subversive ideas against the ideals of the Revolution.\textsuperscript{266}

\textit{Bar Association’s Board of Directors}

The Bar Association later reopened as a result of international pressure. However, in 1984 the Judiciary was given the power to appoint the Bar’s Supervisor, putting a halt instead to the election of a Chairperson by the Bar’s members.\textsuperscript{267} The Bar Association’s ability to elect its Board members was set to be reinstated by the 1991 Law of Appointment of Attorney by Parties to a Lawsuit. However, the day before the election was to occur, the 1991 Law of Correction of the Bar Associations was adopted,\textsuperscript{268} which placed an indefinite hold on the elections and created a commission to remove lawyers who the commission determined to be connected with the former Pahlavi regime or with groups declared illegal.\textsuperscript{269}

Following the election in 1997 of President Mohammad Khatami, the Bar Association was permitted to resume elections for its Board of Directors for the first time in nearly two decades, but was subject to the 1997 Law on Conditions for Obtaining the Attorney’s License.\textsuperscript{270} The Law on Conditions requires that election candidates be confirmed by the Supreme Disciplinary Court for Judges following inquiries with the Ministry of Intelligence, the Revolutionary Courts, the police and other relevant judicial and law enforcement bodies as to whether a given candidate meets several enumerated criteria.\textsuperscript{271} Among the requisite factors are the belief and commitment “to the rules and foundations of the holy Islam”, the Iranian regime and the primacy of religious jurists and the

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\footnotetext{263}{Irfani (n 46) Appendix 2, ‘Appeal by Iranian Lawyers Committee, Subject: Suppression of the Iranian Bar Association,’ p.261. This event is also mentioned in Nayyeri (n 1) p.6.}
\footnotetext{264}{Irfani, \textit{Ibid}, p. 261.}
\footnotetext{265}{\textit{Ibid}, p. 262.}
\footnotetext{266}{Nayyeri (n 1) pp. 5-6.}
\footnotetext{267}{\textit{Ibid}.}
\footnotetext{268}{\textit{Ibid}, p. 9.}
\footnotetext{269}{\textit{Ibid}.}
\footnotetext{270}{\textit{Ibid}, p. 10.}
\footnotetext{271}{\textit{Ibid}, p. 11.}
\end{footnotes}
Constitution. Candidates must also not be members of, or cooperate with, “apostate groups” or “misleading and anti-Islam sects and groups whose charters are based on denial of divine religions,” and must lack membership and support for “illegal and anti-Islamic Republic of Iran cliques”; candidates must also have no relationship with the former Pahlavi regime. As a result of the application of these broad and undefined criteria, numerous lawyers – particularly prominent human rights defenders – have been disqualified prior to every election for the Bar Association’s Board of Directors. Following the 2009 presidential election protests, the Head of the Judiciary attempted to unilaterally adopt the “Revision to the Regulations of the Law of Independence of the Bar Associations,” which would have further undermined the Bar Association’s independence.

Article 187 Advisors

The Government’s interference with the Bar Association extends past the elections of the Board of Directors. In 2001, a new body of lawyers termed “Legal Advisors of the Judiciary” was created pursuant to Article 187 of the 2000 Law of Third Economic, Social and Cultural Development Plan. The Article 187 legal advisors and their “Legal Advisors’ Centre” operate in parallel to lawyers and the Iranian Bar Association but they are under the direct supervision of the Judiciary. The required qualifications for such legal advisors, which are significantly less stringent than those of lawyers, bypass the normal requirements to be a licensed lawyer. The Legal Advisors’ Centre has its own examination, training and permit processes. However, legal advisors must renew their permits annually with the Judiciary’s approval, making it less likely that legal advisors will act in contravention to the Judiciary’s views for fear of revocation or non-renewal of their licenses.

Bill of Formal Attorneyship

In 2011, the Legal Advisors’ Centre began attempts to integrate itself and its legal advisors into the Bar Association. This followed the Bar Association’s objection to the

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273 Ibid.
274 Ibid, p. 11.
275 Ibid, p. 15; see also Sevom, (n 252) p. 31; HRW, ‘Iran: Halt Moves to Curtail Lawyers’ (n 250).
276 Nayyeri, ibid, p. 12.
278 Article 187 legal advisors must sit for one exam and complete a 6-month traineeship, whereas Iranian Bar Association lawyers must sit for an entrance exam, complete an 18-month traineeship, and then sit for a final plenary exam. Nayyeri, ibid, p. 13.
279 Ibid.
280 Ibid. Indeed, this has already been the case, for example, two Article 187 legal advisors had their licenses revoked by the Legal Advisors’ Centre after it was revealed by the Ministry of Intelligence and Political and Security Affairs that they had represented members of a religious minority group; FIDH, ‘The Hidden Side of Iran: Discrimination against ethnic and religious minorities’, (October 2010) p. 24.
continuing existence of Article 187 legal advisors on the grounds that the law creating the advisors had expired in 2005. Article 187 legal advisors began representing themselves as lawyers and the Legal Advisors’ Centre was renamed in 2009 to the “National Association of Legal Advisors and Attorneys” to resemble the name of the Bar Association. The Bar Association continued its resistance and objection to the Article 187 scheme, eventually supporting a Bill of Attorneyship, proposed by 153 Members of Parliament, that could resolve the conflict between the two organisations and bring the legal advisors under the supervision of the Bar Association. The Judiciary replaced the Parliament’s Bill with its own Bill of Formal Attorneyship in 2012, which is currently still pending between the Commission of Government Bills and the Judiciary as of March 2014.

The Bill of Formal Attorneyship is the most far-reaching of the laws targeting the Bar Association thus far as it threatens to completely eradicate the Bar Association’s independence. Provisions of concern include the following:

- The long-standing and historic title of the “Bar Association” will be replaced with the “Organisation of Attorneys”, reflecting the determination of the authorities to downgrade the position of the Bar from an independent body to a subordinate governmental organisation;

- Articles 25 - 30 prescribe a dependent body called the “Supervision Commission”, whose members would be appointed by the Head of the Judiciary. The Commission is empowered to supervise key affairs of the Bar Association and lawyers, including the competence of the lawyers and the election of the Board of Directors and confirmation of the elections, suspension and revocation of the licenses of all lawyers, including the directors of the Bar;

- Under article 122, ownership of the Bar Association’s properties and assets will be conveyed to the abovementioned Supervision Commission;

- Under article 123, the decisions made by the Commission cannot be challenged in

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281 Nayyeri, ibid, p. 14.
282 Ibid. The Bar Association strongly objected to this renaming and filed a complaint in the Court of Administrative Justice. Although the Court did not nullify the name change, the Centre’s new name has been abandoned in practice.
283 Ibid, pp. 14, 16.
286 IHRDC (n 292) pp. 2-3.
judicial and administrative bodies in many cases, such as revocation of the licenses of lawyers and, in those cases, shall be deemed final;

• The President of the Bar Association currently issues lawyer’s licenses; under the new Bill, lawyers’ licenses shall be issued with the signature of the Chairperson of the Organisation, which must be approved by the judicial authority, the Chief Director of the Justice Administration of the Province (article 42), for the issue to be valid. Similarly, the procedure of taking the professional oath cannot be carried out without the presence of the Chief Director of the Justice Administration. There is no consequence or complaint procedure for his refusal to attend;

• According to article 48 of the new Bill, “competent bodies” are empowered to suspend or bar lawyers from practicing law. Currently, according to the Law of Independence of Bar Associations, this is the exclusive role of the Disciplinary Court for Attorneys. If this article is adopted, Public and Revolutionary Courts, for example, will be able to directly suspend and disbar lawyers.

The new Bill of Formal Attorneyship was drafted without prior consultation or agreement of the Bar Association, whose opinions have not been taken into account. It closely resembles the 2009 Revised Regulations of the Law of Independence of the Bar Associations, which were later suspended following persistent objections by the Bar Association. If passed, the Formal Bill of Attorneyship will place all aspects of the Bar Association under the direct control of the Head of Judiciary, who in turn is accountable to the Supreme Leader.

The experiences of lawyers and the Bar Association since the Revolution demonstrate Iran’s lack of compliance with articles 19 and 22 of the ICCPR. Iranian authorities’ vague assertions that lawyers are ‘threatening national security’ or promoting ‘subversive’ or ‘anti-revolutionary ideas’ fail to meet the criteria of foreseeability and sufficient precision necessary for acceptable restrictions on the right to freedom of expression. Engaging in professional duties and promoting human rights does not constitute “serious cases of political or military threat to the nation” as indicated by the UN Human Rights Committee. To the contrary, the patterns displayed – arresting and interrogating lawyers and their family members, and convicting and imposing arbitrary sentences, including bans on practicing law – suggest that Iran uses national security as a pretext to suppress lawyers.

This is supported by Iran’s interference with the Bar Association. The pending Bill of Formal Attorneyship presents a challenge to the independence of the Iranian Bar Association in contravention of article 22 of the ICCPR, the UN Basic Principles on the Role of Lawyers and Iran’s own Constitution.

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287 Ibid, pp. 2-3; see, also, Nayyeri (n 1) pp. 17-22.
288 Nayyeri, ibid, p. 17.
5. CONCLUSION

An independent and impartial judiciary and legal profession are fundamental to the rule of law and the protection of human rights. This legal research study sets out Iran’s obligations under articles 14, 19 and 22 of the ICCPR and other applicable instruments, such as the UN Guiding Principles on the Independence of the Judiciary and Role of Prosecutors and Basic Principles on the Role of Lawyers, which provide for the right to a fair trial by a competent, independent and impartial tribunal established by law and the rights to freedom of expression and association.

Prior to the 1979 Revolution, Iran had a semi-independent judicial system and a fully independent Bar Association. The fundamental structures and processes were in place, though these were challenged by the Pahlavi monarchy and its violations of the rule of law and human rights. Following the Revolution and a new Constitution for the Islamic Republic, the Supreme Leader and his direct appointee, the Head of Judiciary, heavily influenced the legal system. Islamic judges were reintroduced, Revolutionary Courts were established and legislation targeting the independence of the legal profession was enacted. Despite its international obligations, Iran has continued the use of the Revolutionary Courts for alleged crimes against national security. Violations of the right to a fair trial have occurred under the Revolutionary Courts at all stages of proceedings against those brought within its jurisdiction, including lawyers. The guarantees for rights that do exist in the Constitution are undermined by specific legislation on the judiciary and legal profession. Furthermore, both Iran’s institutional structure and the situation in practice fail to comply with its international legal obligations.

Iranian lawyers and human rights defenders have been subjected to harassment, persecution and, in a number of instances, to prosecution and conviction for conduct that reflects the peaceful exercise of their rights to freedom of expression and of association. The Islamic Republic of Iran has also taken steps that resemble attempts to undermine the independence of the Bar Association, from outright abolition of the Association to the drafting of the Bill of Formal Attorneyship and establishment of the Article 187 advisors. This restricts the Bar Association’s collective function to protect its members and the rule of law and to promote human rights and the rule of law.
Annex – Article 14 of the ICCPR

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.