



# **INTERNATIONAL RIGHTS AND MECHANISMS**



**INTRODUCTION FOR  
IRANIAN LAWYERS**

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## Introduction

Human rights as we know them are a reflection of certain fundamental universal notions, which provide a set of global benchmarks for how humanity should conduct itself. The principle of the universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions.

Lawyers are responsible for safeguarding these fundamental rights around the world. The *Rule of Law, meanwhile*, should form the basis for any open society. But promoting and encouraging respect for human rights requires knowledge and skills. We believe it is essential for all lawyers to try and acquire these skills and integrate human rights norms into their daily practice, both inside and out of court.

Hence the reason for this toolkit, which aims to help Iranian lawyers strengthen their ability to advocate for human rights. As well as containing a rough outline of the basics of human rights law and the vital role of lawyers, we hope this kit will help improve understanding of the concept of a *fair trial* under international law, through selected case studies that demonstrate the application of international norms in other jurisdictions.

The toolkit also provides basic knowledge on fair trial standards, with information and links leading to further sources that should open a window on the international law arena. We hope lawyers will keep this toolkit in mind in all their cases and strive to apply Iranian law in a manner consistent with the norms of international human rights law. Lawyers are uniquely positioned to raise awareness of human rights standards. In doing so, they can help enhance both the Rule of Law and the quality of their society.

This toolkit has been developed by several organizations based on the experiences and evaluations of trainings for lawyers in Iran, including by [Lawyers for Lawyers](#) and [Free Tribune of Lawyers](#). We welcome your feedback at [humanrightstoolkit@gmail.com](mailto:humanrightstoolkit@gmail.com) in order to continuously improve and update the toolkit.

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# CHAPTER ONE

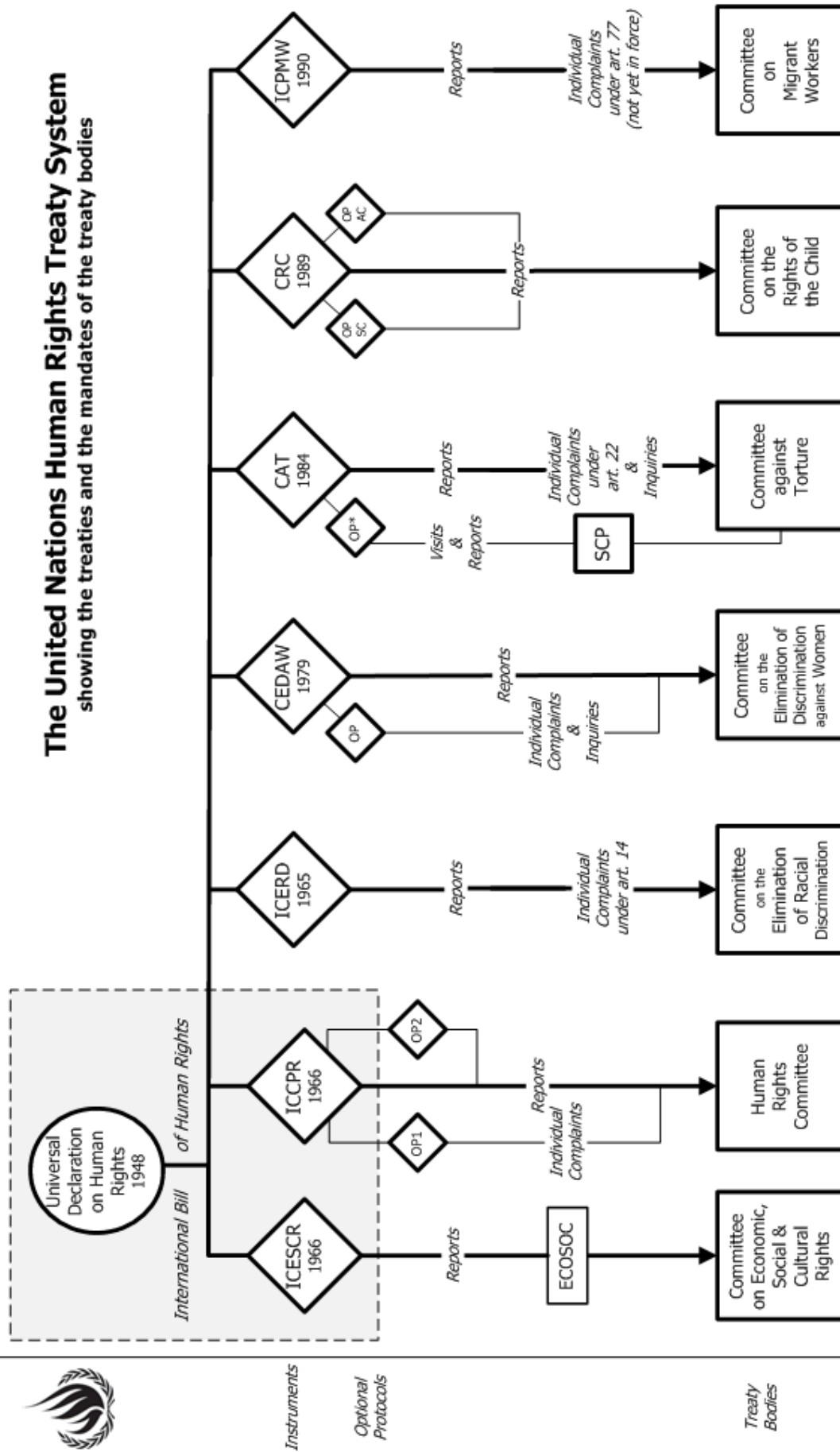
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**Introduction to the Sources of  
International Human Rights Law**

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# The United Nations Human Rights Treaty System

showing the treaties and the mandates of the treaty bodies



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## Chapter 1. Introduction to the Sources of International Human Rights Law

The foundation of modern Human Rights Law (i.e., human rights law as codified since World War II) has been built on three international instruments drafted by the United Nations (UN) usually referred to as the *International Bill of Human Rights*. They comprise the:

1948: Universal Declaration of Human Rights<sup>1</sup>

1966: International Covenant on Economic, Social and Cultural Rights<sup>2</sup>

1966: International Covenant on Civil and Political Rights<sup>3</sup>

The UN Commission on Human Rights drafted the Universal Declaration of Human Rights (UDHR) in 1948. Members of the commission included Australia, Belgium, the Belarusian Soviet Socialist Republic, Chile, the Republic of China, Egypt, France, India, Iran, Lebanon, Panama, the Philippines, the United Kingdom, the United States of America, the Union of Soviet Socialist Republics, Uruguay, and Yugoslavia.



The Chair of the UDHR's Drafting Committee was Eleanor Roosevelt.

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<sup>1</sup> [http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>2</sup> <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

<sup>3</sup> <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.



The UN General Assembly adopted the Universal Declaration of Human Rights on December 10, 1948. Forty-eight states voted in favor – there were no votes against, eight abstentions, and two states were absent. Iran voted in favor, while Saudi Arabia abstained (did not vote ‘against’) because of article 16, which stipulated equal marriage rights, and article 18, which stipulated the right of freedom to change one’s religion.

## Fair Trial-Related Rights and Principles

This is what the UDHR says with regard to a *fair trial*:

**Article 7:** All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8:** Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9:** No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10:** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11:**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

## The Legal Status of the UDHR

The UDHR is a *Declaration*, adopted by the General Assembly of the United Nations; as such, it is not a Treaty. From that perspective, it is not binding and therefore, Mr. Khorassani’s objections to it are irrelevant. However, the bulk of the UDHR is assumed to be International Customary Law and from that fact flows the binding force of its provisions. Much of the UDHR is also repeated, elaborated and codified in a number of international treaties. As we will see, Iran is a Party to several of these treaties.

## International Covenant on Civil and Political Rights 1966 (ICCPR)

The UN *International Covenant on Civil and Political Rights* (ICCPR) is the most relevant treaty for our purposes.<sup>4</sup> Article 14 provides the most important rules relating to a *fair trial* and therefore, implicitly, the role of lawyers:

### 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 (*ordre 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 defense 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;

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<sup>4</sup> <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

- 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.

### The Legal Status of the ICCPR

The treaty was signed by Iran in 1968 and ratified in 1975. No reservations were made on either of those occasions, which means the provisions of the treaty are binding for Iran and need to be adhered to in Iran's daily practice, including its legal practice.

The 1982 statement of Mr. Khorassani is inconsequential since it does not refer to this treaty. Reservations can also only be made in writing and need to be submitted before signing and ratifying the treaty.

### Vienna Convention on the Law of Treaties 1969<sup>5</sup>

The rules on making reservations are outlined in the relevant provisions of the Vienna Convention of 1969. It is generally accepted that most of the provisions of this convention are a codification of Customary International Law, including the provisions regarding reservations.

#### Article 19:

##### Formulation of reservations

A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

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<sup>5</sup> <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

- a. The reservation is prohibited by the treaty;
- b. The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- c. In cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

### Article 23

#### Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

(...)

## UN Human Rights Websites

The United Nations has created and maintains an extensive series of websites that contain comprehensive information on various human rights treaties and mechanisms.<sup>6</sup>

A guide to the relevance and importance of each human rights treaty can be found at <http://indicators.ohchr.org>. This takes you to a world map that is clickable per country. A dropdown menu then outlines the latest information regarding the signing and ratifying of a particular treaty, including extensive information where reservations have been made. This is what the map looks like in the next page.

For example: if you click on Iran and then click on the *Convention on the Rights of the Child of 1990*, you will learn that Iran signed this treaty in 1991 and did not sign the Optional Protocols. In addition, it shows that, upon signing and ratification of the treaty in 1994, the following reservations were made by Iran:

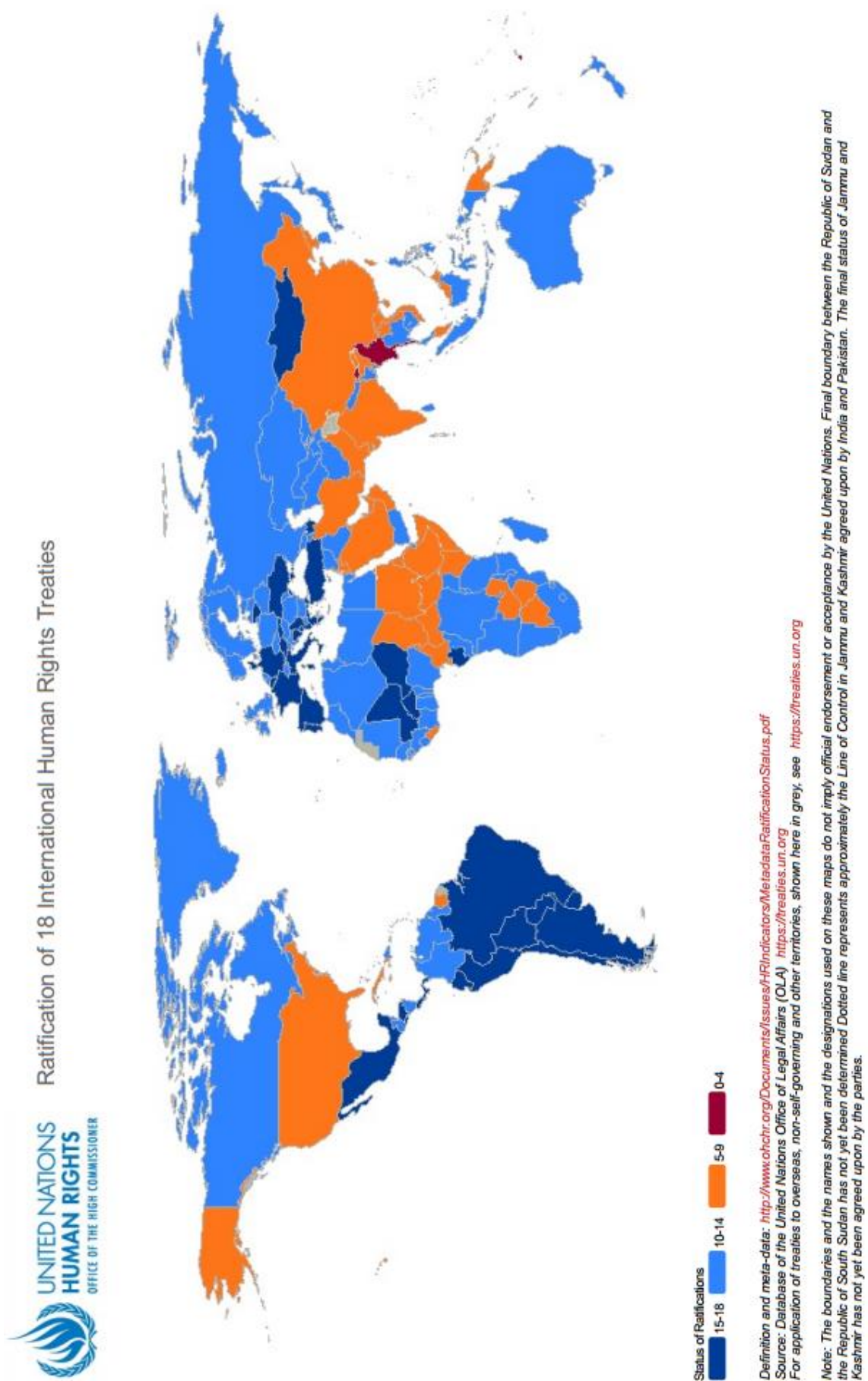
*"The Islamic Republic of Iran is making reservation to the articles and provisions which may be contrary to the Islamic Shariah, and preserves the right to make such particular declaration, upon its ratification".*

and

"The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect."

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<sup>6</sup> Please see Chapter 6 for links to all available sources.



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# CHAPTER TWO

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UN Mechanisms

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## Chapter 2. UN Mechanisms

### Introduction

In this chapter, we explore specialized UN human rights mechanisms. Before going into this, it needs to be stressed that the UN General Assembly deals with human rights issues as one among a number of the numerous topics on its Agenda, and can also choose to delve into the specifics of human rights in a particular region or country. Iran has been at the center of a number of UN General Assembly debates regarding its human rights record.

Thus, this chapter begins with a report by the UN Secretary General to the General Assembly and then moves on to the Human Rights Council and its specific procedures. The Human Rights Committee, the Treaty body under the ICCPR, is then dealt with in more detail.

### UN General Assembly

#### The UN Secretary General's Report on Iran - 31 August 2015; UN Doc. No. A/70/352)<sup>7</sup>

The United Nations General Assembly is one of a number of UN bodies concerned with the human rights situation in Iran. The fact that the General Assembly expresses its concern is relevant for lawyers striving to apply human rights standards on behalf of their clients, since it highlights global concern about the lack of progress in this area, rather than the beliefs or aims of individual lawyers. The General Assembly has taken the initiative to have reports on these matters on the table and also adopted a resolution calling on the Iranian authorities to work for change. The most recent report of the Secretary General to the General Assembly, dated 31 August 2015, includes issues related to:

- **Death penalty – juveniles**
- **Freedom of expression – journalists**
- **Human rights defenders**
- **Women - child marriage**
- **Labor rights**
- **Fair trial – lawyers**
- **Religious and ethnic minorities.**

#### The Iran Resolution in the UN General Assembly (2 November 2015; UN Doc. No. A/C.3/70/L.45)<sup>8</sup>

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<sup>7</sup> [www.un.org/ga/search/view\\_doc.asp?symbol=A/70/352](http://www.un.org/ga/search/view_doc.asp?symbol=A/70/352).

<sup>8</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/70/L.45](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.45).

The “Iran Resolution,” which comments on the current situation and progress of the application of human rights in Iran, deals with the issues raised in the Secretary General’s Report. Fair trial rights were mentioned in this resolution as one of the areas in need of substantive improvements:

“Urges the Government of the Islamic Republic of Iran to uphold, in law and in practice, procedural guarantees to ensure fair trial standards of law, including timely access to legal representation of one’s choice, the right not to be subjected to torture, cruel and inhuman or degrading treatment or punishment and consideration of bail and other reasonable terms for release from custody pending trial, and urges the Government to cease enforced disappearances and the widespread and systematic use of arbitrary detention;”<sup>9</sup>

## The UN Human Rights Council

This is how the Human Rights Council describes itself on its website:

*“The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. It meets at the UN Office at Geneva.*

The Council is made up of 47 United Nations Member States, which are elected by the UN General Assembly. The Human Rights Council replaced the former United Nations Commission on Human Rights.

The Council was created by the United Nations General Assembly on 15 March 2006 by resolution 60/251. Its first session took place from 19 to 30 June 2006. One year later, the Council adopted its “Institution-building package” to guide its work and set up its procedures and mechanisms.

Among them were the Universal Periodic Review mechanism, which serves to assess the human rights situations in all United Nations Member States; the Advisory Committee which serves as the Council’s “think tank” providing it with expertise and advice on thematic human rights issues; and the Complaint Procedure that allows individuals and organizations to bring human rights violations to the attention of the Council.

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<sup>9</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/345/14/PDF/N1534514.pdf?OpenElement>.



The Human Rights Council also works with the UN Special Procedures established by the former Commission on Human Rights and now assumed by the Council. These are made up of special rapporteurs, special representatives, and independent experts and working groups that monitor, examine, advice and publicly report on thematic issues or human rights situations in specific countries.”<sup>10</sup>

For our purposes, the *Universal Periodic Review (UPR)* and the *UN Special Procedures* are the most relevant mechanisms.

### Universal Periodic Review (UPR)

The Universal Periodic Review process results in the reviewing, every four years, of the human rights record of all UN Member States. This is based on input from the State under review, in combination with input and recommendations from other States, UN bodies, national human rights institutes and – not unimportantly - civil society. As the UN website says:

*“The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed.*

The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. It is a cooperative process that, by October 2011, has reviewed the human rights records of all 193 UN Member States. Currently, no other universal mechanism of this kind exists. The UPR is one of the key elements of the Council, which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.”<sup>11</sup>

*Lawyers for Lawyers*<sup>12</sup> has consultative status at the UN Department of Economic and Social Affairs (ECOSOC-status) and is therefore able to participate in the UPR-process. It frequently

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<sup>10</sup> <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx#ftn1>.

<sup>11</sup> <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

<sup>12</sup> [www.lawyersforlawyers.org](http://www.lawyersforlawyers.org).

uses the opportunity to provide information and recommendations regarding the independence of lawyers within the State under review.

In the 2014 report, Iran received 291 recommendations with regard to an array of human rights issues – see the *Report of the Working Group on the Universal Periodic Review*.<sup>13</sup> Of the 291 recommendations, Iran (partially) accepted 189, and rejected the remainder – see the Report of the Working Group on the Universal Periodic Review (Iran) (2 March 2015; UN Doc. A/HRC/28/12/Add.1).<sup>14</sup>

Among the 291 recommendations, several relate to the role of lawyers and fair trial<sup>15</sup>:

**“207.** Allow all prisoners access to legal counsel during all phases of pre-trial detention and the investigative stages of cases, and allow for legal counsel to advise the accused during these proceedings (UK)

**208.** Ensure immediate access to a freely chosen counsel within the first hour of the procedure, including during the first interrogations and until the end of the judicial process, as well as access to all the official documents of the procedure (Belgium)

**209.** Provide by law unobstructed access to legal counsel throughout all phases of criminal investigation, trial and appeal; ensure the accused is informed of this right immediately upon arrest; and give defendants and their lawyers unrestricted access to the full case file and all evidence against the accused (Denmark)

**210.** Guarantee due process of law in all judicial proceedings (Germany)

**211.** Ensure, in law and in practice, that all citizens are given fair trials based on the rule of law, as accepted in the 2010 UPR examination (Norway)

**212.** Ensure all the procedural guarantees and the right to a fair trial for all persons indicted of committing a crime, including the right to defense and access to a lawyer (Romania)

**213.** Take measures to ensure due process and fair trial, particularly in any process that would lead to the application of the death penalty (Mexico)”

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<sup>13</sup> Report of the Working Group on the Universal Periodic Review (Iran) (22 December 2014; UN Doc. A/HRC/28/12\*), available at: <http://www.refworld.org/docid/54f855c94.html>.

<sup>14</sup> See Report of the Working Group on the Universal Periodic Review (Iran) (2 March 2015; UN Doc. A/HRC/28/12/Add.1), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/040/69/PDF/G1504069.pdf?OpenElement>, p. 2-4.

<sup>15</sup> <http://www.refworld.org/docid/54f855c94.html>.

The UPR-mechanism is certainly worthwhile, since all States have so far agreed to participate in the process. However, it is too early to judge the effectiveness of the system, which will take at least two reviewing cycles to ascertain properly.

### Special Procedures

The Human Rights Council also addresses thematic human rights issues, as well as the status of human rights in specific countries. For our purposes, two of these specific mechanisms are relevant:

1. The Special Rapporteur on the Independence of Judges and Lawyers;
2. The Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran.

### Special Rapporteur on the Independence of Judges and Lawyers

The Human Rights Council's predecessor – the Commission on Human Rights - created this position in 1994. Since then, the mandate has been extended for three-year periods, with Professor Mónica Pinto from Argentina currently holding the mandate. The Special Rapporteur is assigned Rule of Law issues with a focus on the independence of judges and lawyers. Among other things, she is to:

- inquire into any allegations submitted to her,
- identify and record attacks but also progress achieved,
- identify ways to improve the judicial system,
- report back to the Human Rights Council and the General Assembly.

Issues and complaints within the mandate may be submitted directly to the Special Rapporteur, which allows access to the UN system that is separate from regular review-proceedings. The office of the Special Rapporteur has regularly requested an invitation to Iran from authorities, but is still to receive a positive response.

More information and contact details can be found on:

<http://www.ohchr.org/EN/Issues/Judiciary/Pages/MonicaPinto.aspx>.

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

In 2011, the Human Rights Council decided to establish a specific mandate with regard to the Human Rights situation in Iran. Dr. Ahmed Shaheed was appointed as the first Special Rapporteur for this mandate and still holds the position. Human rights violations may be brought to his attention at any given time. Dr. Shaheed has not yet been given the opportunity

to visit Iran, but has produced annual reports on the status of human rights in the country. The Iranian authorities have also responded to these reports every year. More information and contact details can be found on:

<http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/IR/Pages/SRIran.aspx>.

Dr. Shaheed has also created a special website providing extensive and up-to-date reporting on human rights issues in Iran and the work of the Special Rapporteur, including his blog: [www.shaheedoniran.org](http://www.shaheedoniran.org). The website contains his annual reports and Iran's responses to them, as well as relevant information and links to a number of other resources and documents.

In his latest report, Dr. Shaheed includes his observations on the Formal Attorneyship Bill and the government's influence on the legal profession.<sup>16</sup>

## The UN Human Rights Committee

As outlined in Chapter 1, the International Covenant on Civil and Political Rights (ICCPR) is the most relevant treaty for our purposes given its extensive provisions with regard to basic fair trial requirements. It is especially relevant since Iran signed and ratified the treaty without any reservations (at this point, a total of 168 States have ratified the treaty). The ICCPR has its own treaty body: the Human Rights Committee,<sup>17</sup> which comprises a group of independent, highly qualified experts, who are often professors of international law. The Committee oversees the implementation of the treaty through its three functions:

1. Individual Complaints ("Communications", First Optional Protocol ICCPR, leading to "Views" of the Committee);
2. Country Reports (leading to "Concluding Observations", article 40, para. 1 ICCPR);
3. General Comments (article 40, para. 4 ICCPR).

### Individual complaints

The First Optional Protocol includes a procedure for individuals to submit cases where their State has allegedly violated certain treaty provisions, after the individual has exhausted national procedures. Because Iran has not ratified this Protocol, this procedure is not available for the Iranian public. However, that does not mean that the work of the Committee in

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<sup>16</sup> Situation of human rights in Iran (6 October 2015; UN Doc. No. A/70/411), [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/70/411](http://www.un.org/ga/search/view_doc.asp?symbol=A/70/411)

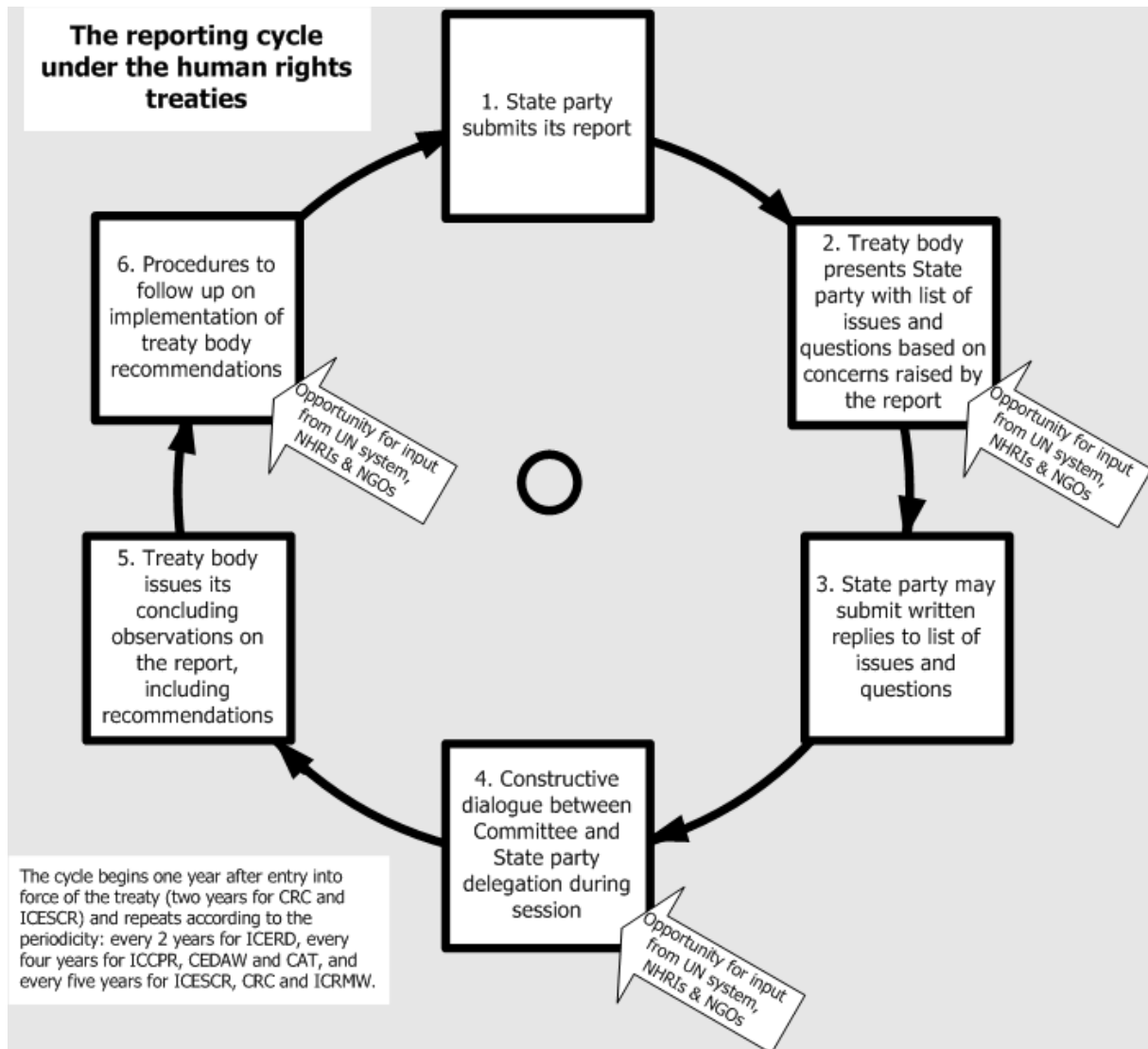
<sup>17</sup> <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

individual cases has no value in Iranian law. On the contrary, the case law of the committee provides valuable guidance for the application and interpretation of specific treaty provisions. Like any case law under any jurisdiction, the findings of the Committee are valid for all States bound by the treaty and, therefore, the case law should also play a role in Iranian courts.

Ultimately, it is up to lawyers to inform the courts about the relevant case law and have them apply the findings of the Committee, where they may be considered relevant for a specific case. In Chapter 3, some of the Committee's case law will be discussed.

### Country reports

Under the ICCPR, the Committee also has a responsibility to review periodically the status of the application of treaty provisions by member States. The procedure has similarities with the UPR procedure of the Human Rights Council, but is focused exclusively on the question of adherence to the ICCPR. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has made a chart featuring the mechanism of this review process, which includes timelines and the positions of the various actors:



The chart<sup>18</sup> shows that all Member States must submit reports to the Committee, while other UN bodies, civil society and National Human Rights Institutes (NHRIs) can also contribute information to the process. The reporting cycle usually spans four years, but in practice, this is not always strictly adhered to. The interesting point about this procedure is that civil society organizations are also able to submit reports and recommendations to the Committee. This can be done by national and international organizations alike, as long as they take an interest in issues relating to the effective application of the treaty. Since it is not related to the individual complaints procedure, civil society organizations within States that have not ratified the individual complaints protocol are also able to participate in these proceedings. The Human Rights Committee provides its analysis of the situation in a particular country based on the input it receives from the sources mentioned in the chart.

<sup>18</sup> Source: <http://www2.ohchr.org/english/bodies/docs/ReportingCycle.gif>.

The most recent report on Iran dates from 29 November 2011, which means – given the four-year time period – that it is almost time to revisit the situation in the country.<sup>19</sup> In any event, the report makes it possible to review any progress made since 2011, since it explores the ICCPR provisions and Iran’s implementation of them in detail. It also includes findings on fair trial rights and the position of lawyers.

## General Comments

One of the most interesting and useful practices of the Human Rights Committee is its drafting of so-called “General Comments” on specific Treaty provisions. In these extensive reports, the committee provides its analysis of the provision at stake, largely based on the Committee’s case law. Thus, the committee has published General Comment No. 32 on Article 14 of the ICCPR, the provision that provides for fair trial guarantees.<sup>20</sup> At the outset, the Committee underlines the central function of fair trial rights with regard to the application of all human rights:

*“The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. Article 14 of the Covenant aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights.” (para.2)*

In addition, the Committee stresses the central role of the binding force of this provision to all States:

*“Article 14 contains guarantees that States parties must respect, regardless of their legal traditions and their domestic law. While they should report on how these guarantees are interpreted in relation to their respective legal systems, the Committee notes that it cannot be left to the sole discretion of domestic law to determine the essential content of Covenant guarantees.” (para. 4)*

The analysis and overview of the Committee’s case law that follows is thorough, but at the same time, because it dates from 2007, does not provide the full picture. The case law provided in Chapter 3 helps to make up for this. However, when dealing with a specific case, it is always important to check the most recent findings of the Committee through its website.

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<sup>19</sup> Human Rights Committee – Iran’s implementation of ICCPR (29 November 2011, UN Doc. CCPR/C/IRN/CO/3) ([http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRN/CO/3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/IRN/CO/3&Lang=en))

<sup>20</sup> CCPR/C/GC/32, 23 August 2007, go to: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en).

## Conclusion

There are many mechanisms within the UN system that deal with the human rights situation in individual States. In the course of relevant proceedings, extensive attention has been paid to the status of respect for, and implementation of, human rights that are also binding in Iran. These reports provide useful tools for lawyers' daily practice in Iran, since they deal with specific legal provisions and obligations, to which lawyers should be able to refer when they act on behalf of individual clients.

In addition, lawyers and/or their organizations may be able to make use of the UN mechanisms themselves by submitting materials to them, either on individual cases or with regard to clear trends in Iranian law.



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# CHAPTER THREE

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Case Law

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## Chapter 3. Case Law

### Introduction

As set out above, one of the three functions of the Human Rights Committee is to deal with individual complaints submitted to the Committee under the First Optional Protocol. Although the Committee is not a Court, its findings are authoritative and supposed to be respected and executed by the State that was the subject of a particular finding. The terminology used by the Committee reflects the fact that it is not acting as a court: complaints are named “Communications,” the plaintiff is called the “Author,” and the proceedings do not lead to a judgment but to the “Views” of the Committee. In principle, proceedings before the Committee are conducted in writing, but the Committee may decide it needs to hear the parties in person. In this case, sessions take place in Geneva, Switzerland, the seat of the Committee.

What follows are several groups of decisions (“Views”) that the Committee reached in various individual complaints/cases. Also included are some examples of “Concluding Observations;” these are the findings of the Committee at the end of its periodic report with regard to a specific State (see *Country Reports* in Chapter 2). We include these in this section because the findings are often as important as a finding (“View”) in an individual case; both provide for the most authoritative interpretation of the treaty provision in question and both may, therefore, be used in similar ways.

The difference between a “View” and “Concluding Observations” in the cases below can be established by the title. Individual cases have names in italics (*X v. Y*), while a country report begins with the name of the State in bold. Be sure to always read this case law together with General Comment 32 (see above) and to also look up the most recent findings of the Committee in order to get the whole picture with regard to the particular issue you are looking for.

### (Free) Legal Assistance/Own Choice

#### **Lyaskevich v Uzbekistan**

[1552/2007](#) Views of Committee, 23 March 2010

“9.7 (...) In the circumstances, and in the absence of any other information by the parties, the Committee concludes that denying the author son's access to the legal counsel of his choice for one day and interrogating him and conducting other investigation acts with him during that time constitutes a violation of Mr. Lyashkevich's rights under article 14, paragraph 3 (b). (...)”

**Serbia** ICCPR, A/66/40 vol 1 (2011) 90 at para 19

“(18) While noting the information provided by the State party that the Law on Criminal Procedure allows for free legal aid to be granted in certain criminal cases, the Committee is concerned that no comprehensive system on the granting of legal aid exists in the State party, and that neither legislation nor practice provides for free legal aid in civil cases (arts. 9 and 14). The State party should review its free legal aid scheme to provide for free legal assistance in any case where the interests of justice so requires.”

### Effectiveness of appointed lawyers and State Responsibility

**Brown v. Jamaica** (CCPR/C/65/D/775/1997 11 May 1999)

“The Committee refers to its jurisprudence that it is axiomatic that legal assistance be available at all stages of criminal proceedings, particularly in capital cases. (...)

The Committee recalls its jurisprudence that the State party should ensure that counsel, once assigned, provide effective representation of the accused. The Committee considers that it should have been apparent to the trial judge that counsel was not providing effective representation of the accused, at the latest when he noticed that counsel was absent when he started his summing-up. Consequently, article 14, paragraph 3(d), has been violated in the author's case.”

**Argentina** ICCPR, A/65/40, vol. 1 (2010) 71

“(20) The Committee notes with concern that, despite the fact that a large percentage of persons who have been arrested and charged do not have legal counsel of their choosing and must use the services of the Office of the Public Defender, the Office does not have the necessary means to provide adequate legal assistance in every case.

The State party should take measures designed to ensure that the Office of the Public Defender can provide all persons suspected of having committed a crime with appropriate and effective services as from the time of their apprehension by the police in order to protect the rights set out in the Covenant. The State party should also take steps to guarantee the budgetary and operational independence of the Office of the Defender from other State organs.”

**Mongolia** ICCPR, A/66/40 vol 1 (2011) 91, para 22

“(22) While welcoming the progress made in the provision of legal aid services through legal aid centers, the Committee remains concerned about the information provided alleging the lack of independence of the lawyers in the exercise of their profession, and the limited availability of legal aid services due to the lack of financial and human resources (art. 14 of the

Covenant). The State party should take all the necessary measures to guarantee the independence of lawyers and of the Law Association. It should also ensure that the necessary budgetary allocation and human resources are provided to the legal centers, including in the rural areas, paying special attention to strengthening the access to legal aid services.”

**Islamic Republic of Iran**, A/67/40 vol 1 (2012) 107, para 21

“The Committee is deeply concerned about the frequent violations of fair trial guarantees provided for under the Covenant, especially in the Revolutionary Courts and the Evin Prison Court. (...) The State party should ensure that all legal proceedings are conducted in full accordance with article 14 of the Covenant, including guaranteeing (a) the right to legal assistance of one’s own choosing, including for pre-trial detainees; (b) the right to be informed promptly of the nature and cause of the criminal charges; (c) the intervention and presence of lawyers in all cases, including during the investigation stage; (d) the presumption of innocence; (e) the right to a public hearing; and (f) the right to appeal a ruling. (...) The Committee reminds the State party of its General Comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.”

### Adequate time and facilities/Confidential communications

**Gridin v. Russia** CCPR/C/69/D/770/1997, 18 July 2000

“The Committee finds that *denying the author access to legal counsel after he had requested such access and interrogating him during that time* constitutes a violation of the author's rights under article 14, paragraph 3 (b). Furthermore, the Committee considers that the fact that the author was *unable to consult with his lawyer in private*, (...) also constitutes a violation of article 14, paragraph 3 (b) of the Covenant.” (italics added)

**Poland** ICCPR, A/66/40 vol. I (2011) 84 at para. 20.

“(20) The Committee reiterates its concern that persons detained cannot enjoy their right to legal aid from the beginning of their detention. It notes with concern that prosecutors, or a person authorized by the prosecutor, are allowed to be present at meetings between a suspect and his/her counsel, and that prosecutors can order that a suspect’s correspondence with counsel be inspected. (...)

The State party should ensure that persons deprived of their liberty: (a) have immediate access to legal counsel from the beginning of their detention; (b) are able to meet with their lawyers in private, including prior to a court hearing; and (c) can correspond with their lawyer confidentially in all instances, without external monitoring, and in an expeditious manner.”

**Ramil Rayos v. Philippines** (27 July 2004)

“7.3 With respect to the claim of a violation of article 14, paragraph 3 (b), as the author was not granted sufficient time to prepare his defense and communicate with counsel, the Committee notes that the State party does not contest this claim. Since the author was only granted a few moments each day during the trial to communicate with counsel, the Committee finds a violation of article 14, paragraph 3 (b), of the Covenant. As the author's death sentence was affirmed after the conclusion of proceedings in which the requirements for a fair trial set out in article 14 of the Covenant were not met, it must be concluded that the author's right protected under article 6 has also been violated.”

**Van Hulst v The Netherlands** (2004)

“7.6 The Committee has noted the author's argument that clients can no longer rely on the confidentiality of communication with their lawyer, if there is a risk that the content of such communication may be intercepted and used against them, (...). (...) the Committee must also weigh the need for States parties to take effective measures for the prevention and investigation of criminal offences. As the laws regulating the interceptions are clearly demarcated and interceptions have to be authorized by the investigative judge, the interference is sufficiently safeguarded. The Committee therefore finds that the recording and interception did not disproportionately affect author's right to communicate confidentially with his lawyer (...).”

**Further examples in this category:**

**Little v Jamaica** (1989) (8.3-8.4): Thirty minutes before the trial, thirty minutes during the trial and no possibility to instruct appeal were deemed insufficient to prepare an adequate defense.

**Leaford Smith v Jamaica** (1993) (10.4): The defense was prepared on the day of the trial. The appointed lawyer was then replaced by one who withdrew on the day before the trial. Eventually, new counsel had only four hours to communicate with the client and seek professional assistance, which was deemed insufficient for an adequate defense.

**Larranaga v The Philippines** (2006) (7.5): In a capital case, when counsel for the defendant requests an adjournment because he is not given enough time to acquaint himself with the case, the court must ensure the defendant is given an opportunity to prepare his defense.

**Chan v Guyana** (2006) (6.3): The defense lawyer was absent on the first day, asked for an adjournment and received two days, during which time the lawyer was engaged on another case. The court must ensure that an adjournment provides sufficient time.

**Phillip v Trinidad and Tobago** (1998) (7.2): Counsel asked for an adjournment either for the author to find new counsel, or to prepare himself better, as he was young and inexperienced in capital cases. This was denied, which amounted to a breach.

### Access to lawyers

**Kazakhstan** ICCPR A/66/40 vol 1 (2011) 94, at para 20

“(20) The Committee is concerned at reports of undue restrictions on access to lawyers by individuals, especially in cases involving State secrets where lawyers are, inter alia, required to seek State clearance before representing their clients. The Committee is also concerned at the lack of legal obligation on the part of police officers to inform accused persons of their right to legal assistance (art. 14).

The State party should ensure that any measures taken to protect State secrets should not involve undue restrictions on an individual’s right to access lawyers of their choice. Furthermore, the State party should ensure that in all cases of arrest, the arresting officers execute the obligation, at the time of arrest, of informing accused persons of their right to a lawyer.”

### No Hindrance of Lawyers

**Guatemala**, ICCPR, A/56/40 vol. I (2001) 93 at para 85(21).

“It is of concern that members of various sectors of society, particularly members of the judiciary, lawyers, human rights activists and trade unionists, are being intimidated, threatened with death and even killed; the lawful exercise of their functions is thus being seriously hampered (articles 6, 7 and 9). It is regretted that effective measures to prevent the repetition of such acts have still not been taken. All necessary preventive and protective measures should be taken to ensure that the members of various sectors of society, particularly members of the judiciary, lawyers, human rights activists and trade unionists, can carry out their functions without intimidation of any kind.”

**Tajikistan**, ICCPR, A/60/40 vol. I (2005) 70 at para. 92(11)

“(11) The Committee is concerned about the widespread accounts of detainees’ access to a lawyer being obstructed, particularly in the period immediately following arrest.... The State party should take measures to ensure...that any instances where law enforcement officers are alleged to have obstructed access to a lawyer are fully investigated and appropriately punished.”

**Kazakhstan**, ICCPR A/66/40 vol 1 (2011) 94, at para 20

“(20) The Committee is concerned at reports of undue restrictions on access to lawyers by individuals, especially in cases involving State secrets where lawyers are, inter alia, required to seek State clearance before representing their clients. The Committee is also concerned at

the lack of legal obligation on the part of police officers to inform accused persons of their right to legal assistance (art. 14).

The State party should ensure that any measures taken to protect State secrets should not involve undue restrictions on an individual's right to access lawyers of their choice. Furthermore, the State party should ensure that in all cases of arrest, the arresting officers execute the obligation, at the time of arrest, of informing accused persons of their right to a lawyer."

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# CHAPTER ■ FOUR ■

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Basic Principles on  
the Role of Lawyers

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## Chapter 4. Basic Principles on the Role of Lawyers

### Introduction

In the founding document of the United Nations, “we the peoples” stipulate as one of the purposes of the UN the aim “to achieve international cooperation in [...] promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion [...]”.<sup>21</sup> The first result of that commitment was the adoption of the Universal Declaration of Human Rights in 1948 (see Chapter 1), which contains the founding language for the principle of equality before the law and fair trial principles.

The UN document, “Basic Principles on the Role of Lawyers,”<sup>22</sup> builds on these two UN documents and also directly on the International Covenant on Civil and Political Rights (see Annex 1 for the full text of this document). This document was adopted by consensus in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Iran was officially represented during the vote on this and other documents.

The document was formulated after a long negotiating history and is without any doubt the most authoritative set of international norms relating to the position of lawyers. It provides the standard for all issues relating to the position of lawyers as crucial players in service of the Rule of Law and as guarantors of fair trial norms. These are the topics covered by the Basic Principles:

- **Access to lawyers and legal services**
- **Special safeguards in criminal justice matters**
- **Qualifications and training**
- **Duties and responsibilities**
- **Guarantees for the functioning of lawyers**
- **Freedom of expression and association**
- **Professional associations of lawyers**
- **Disciplinary proceedings.**

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<sup>21</sup> Charter of the United Nations, article 1, para. 3,  
<https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>.

<sup>22</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>, translated in Farsi:  
<http://www.advocatenvooradvocaten.nl/wp-content/uploads/Basic-Principles-on-the-Role-of-Lawyers-PDF-Persian.pdf>.

## Spotlight on Selected Principles

Although all of the Principles listed in this document are of great importance, the two regarding duties and responsibilities, and guarantees for the functioning of lawyers deserve specific attention. These are briefly discussed below.

### Duties and responsibilities

By definition, lawyers are partisan, since it is their role to stand for and defend the legal position of their clients, which is not the same as always agreeing with the acts or opinions of their clients. However, it is a duty for lawyers to defend the fundamental right of his or her client to have opinions (see also Chapter 5, below).

At the same time, the outside world, including State authorities, should not treat lawyers who represent persons who have allegedly committed serious crimes as complicit to those crimes. Criminalizing lawyers by associating them with the actions or beliefs of their clients is a method frequently used by governments to undermine lawyers who may oppose them.

Both these issues, which are actually two sides of the same coin, are dealt with in the Basic Principles. Article 15 stipulates:

*“Lawyers shall always loyally respect the interests of their clients.”*

While the other issue is covered by Article 18:

*“Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”*

### Guarantees for the functioning of lawyers

The Basic Principles define lawyers as “essential agents of the administration of justice” (Principle 12), which responsibility carries with it the duties that are defined in these Principles. However, this also necessitates guarantees for lawyers to be able to do a proper job. For this purpose, the Basic Principles clearly stipulate that lawyers should not be hindered or restricted by government authorities; on the contrary, when lawyers are threatened by anyone to prevent them from properly carrying out their duties, government authorities are under an obligation to protect them. Articles 16 and 17 state:

“Governments shall ensure that lawyers

- a. are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; ( ... ) and

c. shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”

“Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”

Another aspect of the responsibility of governments to enable lawyers to effectively discharge their professional duties is to guarantee strict confidentiality for all communications between lawyers and their clients. This obligation is laid down in Principle 22: “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”

This means the government should not interfere with lawyer-client communications in any way (see also the case law discussed in Chapter 3).

## The Legal Status of the Basic Principles

The Basic Principles do not have the legal status of a Treaty. Since the document is not signed or ratified by the States that have adopted it, it is neither a treaty, nor a Resolution of the General Assembly of the United Nations. However, it is certainly more than a position paper. The document received the support of the global community, including Iran, when it was adopted in 1990 and the General Assembly also later “welcomed” the adoption of the Principles (18 December 1990, UN Doc. A/RES/45/166). It may even be considered to reflect “subsequent practice, as defined in Article 31, para. 3 (b) of the Vienna Convention on the Law of Treaties. On this basis, the Basic Principles have a significant role to play in the interpretation of existing treaty law. For our purposes, the ICCPR is the existing law, which then may be interpreted along the lines of the Basic Principles.

In conclusion, the decisive fact is that a number of high-profile international courts, including the UN Human Rights Committee, have applied the Basic Principles in support of interpreting fair trial provisions of international conventions. Some examples are provided below.

## Application of Basic Principles by International Courts/Organs

The European Court of Human Rights has used the Basic Principles in several of its Judgements:

- *Kyprianou v. Cyprus*, 15 December 2009<sup>23</sup>
- *Nikula v. Finland*, 21 March 2003<sup>24</sup>
- *Kulikowski v. Poland*, 19 May 2009<sup>25</sup>
- *Elci and others v. Turkey*, 13 November 2003<sup>26</sup>.

In addition, the UN Human Rights Committee has applied the Principles in several instances. See, for example the Committee's finding in its Concluding Observations with regard to the Russian Federation [CCPR/C/RUS/CO/6]<sup>27</sup>:

22. The Committee expresses concern about the potential impact of the proposed draft law on lawyers' activity and the Bar on the independence of the legal profession and the right to a fair trial as stipulated in article 14 of the Covenant. In particular, it notes with concern that the bill proposes to enable the State Registration Agency to remove a lawyer's license to practice through a court action without prior approval of the Chambers of Lawyers under certain circumstances, and to obtain access to the legal files of lawyers under investigation and demand information on any case in which they are involved (art. 14).

The State party should review the compatibility of the proposed draft law on lawyers' activity and the Bar with its obligations under article 14 of the Covenant, as well as article 22 of the Basic Principles on the Role of Lawyers and refrain from taking any measures that constitute harassment or persecution of lawyers and unnecessarily interfere with their defense of clients.

## Demonstrating the Use of the Basic Principles

Lawyers for Lawyers (L4L) recently started a campaign aiming to familiarize the legal profession, parliamentarians and governments with the Basic Principles in support of their Rule of Law efforts. To launch the campaign, L4L added a special section to its website containing the text of the Basic Principles translated into each of the six official UN languages, as well as a translation into Farsi. Further translations will be decided as the L4L campaign continues.

This section also contains a database, updated annually, with over 500 links to documents in which a reference is made to the Basic Principles. If you come across any official document

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<sup>23</sup> <http://hudoc.echr.coe.int/eng?i=001-71671>.

<sup>24</sup> <http://hudoc.echr.coe.int/eng?i=001-60333>.

<sup>25</sup> <http://hudoc.echr.coe.int/eng?i=001-92611>.

<sup>26</sup> <http://hudoc.echr.coe.int/eng?i=001-61442>.

<sup>27</sup> <http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.RUS.CO.6.pdf>.

(regardless of the language used) that refers to the Principles, please send it by email to [info@lawyersforlawyers.org](mailto:info@lawyersforlawyers.org). The database can be accessed at:

<http://www.advocatenvooradvocaten.nl/basic-principles> .

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# CHAPTER ■ FIVE ■

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Using International Law  
in the Iranian Context

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## Chapter 5. Using International Law in the Iranian Context

### Why is it important to use International Law in Iranian Courts?

International norms, as mentioned in previous chapters, are those standards that are accepted and respected by the majority of countries and jurisdictions. Therefore, there is broad consensus that they are universal and applicable around the world. No country considers itself a violator of recognized global human rights standards. It is therefore important for lawyers to familiarize themselves with these standards and apply them to ensure domestic laws guarantee human rights.

### Is it possible to refer to international treaties in Iranian courts?

According to Article 9 of the Civil Code, treaty stipulations, which have been, in accordance with the Constitutional Law, concluded between the Iranian Government and any other government, shall have the force of law. This means that, after passing the legal process of ratification, international treaties have the same force as regular laws of the country for legal purposes.

### The Relationship between International law and Iranian Law

Generally, unless stated otherwise, treaties are binding for an indefinite period of time for all parties. States may have the right to withdraw from a treaty if the treaty allows for this. In such cases, the specifics of the withdrawal procedure are included in the treaty. If a treaty is silent on withdrawal, it is widely assumed this implies that withdrawal is not possible.<sup>28</sup> The International Covenant on Civil and Political Rights (ICCPR) is an example of a treaty that does not allow for withdrawal. Iran has never indicated a desire to withdraw from treaties it signed before the 1979 Islamic Revolution.

Iran follows the dualism system and therefore the Islamic Consultative Assembly must approve international treaties, protocols, contracts, and agreements.<sup>29</sup> According to the 1989 Constitution<sup>30</sup>, the President or his legal representative are endowed with the authority to sign treaties, protocols, contracts and agreements concluded by the Iranian government with other governments, as well as agreements pertaining to international organisations, after

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<sup>28</sup> See UN Publication *Final Clauses of Multilateral Treaties*, Ch. IV (B); 2003, <https://treaties.un.org/doc/source/publications/FC/English.pdf>.

<sup>29</sup> Article 77 of the Constitution.

<sup>30</sup> [http://rc.majlis.ir/fa/content/iran\\_constitution](http://rc.majlis.ir/fa/content/iran_constitution).

obtaining the approval of the Majles.<sup>31</sup> Therefore, in relation to Iran's accession to international treaties, the executive will first decide whether it is necessary for the State to become a party to the treaty and then seek approval from the Majles. The procedure calls on the executive to prepare a bill and send it to the Majles. If the latter ratifies it and the Guardian Council approves the bill, the executive can then sign the treaty. A treaty concluded between the Iranian government and any other government shall bear the force of law.<sup>32</sup>

#### Priority (or not) of the Constitution over International law

"Generally speaking, the treaties that Iran has ratified enjoy the same legal status as laws passed by Majlis. These two both are subordinate to the Iranian constitution and should be consistent with the Islamic law. Iran's joining of ICCPR and ICESCR and also its signing of the Vienna Convention (that have been discussed in this leaflet) happened before the revolution. After the revolution, there was a change in the constitution and new regulations replaced the previous constitution — now laws were to be only valid pending the ratification of the Guardian Council. For some jurists and lawyers, a new question was raised: How valid were the laws that had been passed in the previous regime, now that there was an Islamic Republic in power? Could they be referred to? Knowing this is very relevant to the issue under discussion. If the pre-revolutionary law is considered non-credible, then Iran's joining of the said conventions should be ratified by the new parliament to find legal status. In July 1987, the Guardian Council expressed its opinion on the matter: "Because the current laws of the country are only considered invalid by the constitution in case they come into conflict with the constitution; and Because if any of the current legislation violates any of the articles of the constitution, it is up to the Guardian Council to interpret them; be it resolved that until the Guardian Council hasn't issued its interpretation, these laws are not considered invalid and are legally guaranteed as before".

In addition to the opinion of the Guardian Council that clarifies the status of the conventions passed before the revolution, a group of jurists believe that treaties that have been ratified before the current constitution (i.e. 1979) can't be subordinated to the constitution or Islamic law because such "reservation" hasn't been declared when they were signed and ratified. This is also true about the treaties ratified after 1979 if no "reservation" was made when they were signed (Also look to Chapter One, above). One should remember that Iran has signed the Vienna Convention which states that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

Since the Guardian Council has so far not expressed an opinion that states an incompatibility between the conventions and the constitution of the Islamic Republic, we can

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<sup>31</sup> Iran's Constitution, Article 125.

<sup>32</sup> Iran's Civil Code, Article 9 (.



see that, no matter with what arguments and what methods we approach the law, the conventions that Iran has joined are valid law in Iran and the is upon the courts to observe the regulations in them."

### Fair trial/access to lawyers

International norms and standards have recognized the right to defense and right to counsel for all peoples and stressed the need for the independence of lawyers. Article 14 of the ICCPR has recognized the right to have access to a lawyer and fair trial. The preamble of the UN Basic Principles on the Role of Lawyers reads:

"The adequate protection of the human rights and fundamental freedoms to which all persons are entitled - be they economic, social and cultural, or civil and political - requires that all persons will have effective access to legal services provided by independent and professional lawyers."

Moreover, referring to "self-governing" professional associations, which shall be able to "exercise their functions without external interference," article 24 of the Principles stipulates that:

*"Lawyers shall be entitled to form or to join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of these professional associations shall be elected by their respective members and shall exercise its functions without outside interference."*

Iranian law also recognizes the right of legal defense. Article 35 of the Iranian Constitution stipulates that:

*"In all courts of law, both parties to a lawsuit have the right to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel."*

Other laws, too, such as Iran's Law of Attorneyship and the Iranian Criminal Procedure Code, emphasize the right of legal defense and the services of a defense attorney.

However, the authorities, sometimes including judges, do not always apply these fundamental national and international norms correctly. For example, despite the constitutional and legal requirement for courts to conduct hearings in the presence of a defense lawyer, in practice, some defendants are denied this right. Judges allow themselves

the discretion to bar defendants' access to lawyers in "sensitive cases." Defendants are often routinely barred from access to a lawyer during the investigative stage of their detention, which can be extended indefinitely. There are many cases in which people have been detained for months in pre-trial detention centers with no access to a lawyer, and only limited access to family members. Their lawyers are only granted access to their clients' files once the investigation has been completed, which may only be days before a trial hearing is scheduled, although applications for delay may be made to allow more time for preparation.

All of this is in spite of the fact that Article 3 of the Law on respect for legitimate freedoms and safeguarding citizens' rights, enacted in 2004, requires courts and prosecutors' offices to respect the right of the accused and defendants to a legal defense, and provide them with the opportunity to be represented by a lawyer and use the services of experts.

The practice referred to in the previous paragraph constitutes a violation of Iran's domestic laws as well as its international obligations. Therefore, lawyers should insist that the judiciary respect the rule of law and to that end, they should train themselves as to:

4. How to conduct oneself in a court of law,
5. How to address a judge,
6. How to believe in themselves,
7. How to prepare a defense,
8. How to appear in the court,
9. How to react to a breach of the law by the court,
10. How to maintain their independence,
11. How to present arguments based on International Treaties to a Judge not necessarily interested in hearing them.

In addition, it is important for human rights lawyers to share their experiences regarding different cases they have defended. They should try, for example, to organize a system of "book-keeping" that may work as the basis for lobbying efforts aimed at bringing about a higher quality of judicial process.

**What skills does a human rights lawyer need to defend complex or sensitive cases?**

A fair trial does not exist without an independent lawyer. Lawyers should try to establish a professional and respectful relationship with judges and court officials.

Lawyers should also always base their arguments with the judge on the law, avoid discussions with the judge on irrelevant matters, and avoid becoming angry if a judge takes a particular position. At the same time, lawyers should also instruct clients to not be provoked by irrelevant questions, and instead urge the prosecutor to make his case based on written information.

Lawyers need to document all their communications with the court. They should write down everything they want to ask from the judge, register it, and put it in the case. Sometimes, court officials try to take a lawyer's papers and assure him or her they will put the papers in the case file. However, all too often, these papers simply disappear. Again, sometimes without any reason, the judge does not accept the lawyer's written papers and tells him or her there is no need to put them in the case. It is crucial for the lawyer, in such circumstances, to ask the judge to write down the fact that he does not accept these papers.

In many cases, court officials ask the lawyer to look at the verdict in court rather than sending it to him or her. This is improper, and the lawyer needs to ask the court to respect the law in this regard.

### How to use international law

We mentioned that upon ratification by the Majles and approval by the GC, a treaty becomes part of domestic law. Apart from that, treaties pre-dating 1979 and treaties to which no pertinent reservations have been made will at all times prevail above national law, including the Constitution. Therefore, lawyers can use these international instruments in their oral and written pleadings.

In many situations, the precise meaning of a particular provision of a human rights treaty is not immediately clear by its language. As pointed out above, the Human Rights Committee is responsible for the interpretation of the ICCPR's provisions and for providing detailed explanations to the State's parties (see Chapter 2 above). The example below regarding Article 19 of the ICCPR aims to clarify this.

### Article 19 of the ICCPR on Freedom of Expression

The freedom of expression provision of the ICCPR reads as follows:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others;
  - b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

To help a judge understand how to apply this provision, reference may be made to the most authoritative analysis of this provision, which is provided by the UN Human Rights Committee under the ICCPR. In addition, quoting from the case law of the Human Rights Committee (see Chapter 3 above) may be useful.

### The application of article 19 (3)

The Committee has the authority to interpret the articles of the Convention. General Comment 34<sup>33</sup> deals with article 19. After explaining the meaning of freedom of opinion and expression, it also illustrates the limitations.

Paragraph 3 expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason, two limitative areas of restrictions on the right are permitted, which may relate either to respecting the rights or reputations of others, or to the protection of national security or of public order (*ordre public*) or public health or morals.

Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed. The restrictions must be:

1. “provided by law”;
2. pursue a legitimate aim;
3. conform to a strict test of necessity and proportionality.

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<sup>33</sup> <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

### Restrictions must be provided by law

The law may include laws of parliamentary privilege and laws of contempt of court. Since any restriction on freedom of expression constitutes a serious curtailment of human rights, it is not compatible with the Covenant for a restriction to be enshrined in traditional, religious or other such customary law. For the purposes of paragraph 3, a norm, to be characterized as a “law,” must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly, and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.

Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain which types of expression are properly restricted and which are not.

The first of the legitimate grounds for restriction listed in paragraph 3 is that of respect for the rights or reputations of others. The second legitimate ground is that of the protection of national security or of public order (*ordre public*), or of public health or morals.

Extreme care must be taken by the State’s parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information items of legitimate public interest that do not harm national security, or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.

Restrictions must be “necessary” for a legitimate purpose. Thus, for instance, a prohibition on commercial advertising in one language, with a view to protecting the language of a particular community, violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.

Restrictions must also conform to the strict test of necessity and proportionality. States parties to the ICCPR are obliged to ensure that legitimate restrictions on the right to freedom of expression are allowed only if they are necessary and proportionate.

General Comment 34 provides detailed information on the application of article 19. Therefore, it is important that all lawyers study the sources dealt with in the previous chapters to understand first the meaning of each of the articles involved and then prepare a defense that will be solid enough to make the judge listen and understand, before he or she reaches a conclusion.

Law is the only tool available to lawyers. Lawyers should make the sources of fundamental principles accessible and understandable for judges who are not used to think in these terms. Being empathic to the fact that a judge may need some support to understand the relevance of these fundamental norms by trying to create a constructive dialogue in courts will help serve the cause of justice and reinforce the sanctity of universal human rights.

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# CHAPTER SIX

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## Sources

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## Chapter 6. Sources

United Nations Charter

<https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>

Universal Declaration of Human Rights

[http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

International Covenant on Economic, Social and Cultural Rights

<http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

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General Comment 32

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en)

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<http://indicators.ohchr.org>

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UN Human Rights Council

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UN Human Rights Committee

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European Court of Human Rights –Case files

<http://hudoc.echr.coe.int/>

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Basic Principles on the Role of Lawyers

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Final Clauses of Multilateral Treaties, (UN Publication)

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[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/70/L.45](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.45).

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UPR Iran

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Constitution of Iran

[http://rc.majlis.ir/fa/content/iran\\_constitution](http://rc.majlis.ir/fa/content/iran_constitution)

Civil Code of Iran

<http://rc.majlis.ir/fa/law/show/97937>

Lawyers for Lawyers

<http://www.lawyersforlawyers.org>

Lawyers for Lawyers Database

<http://www.advocatenvooradvocaten.nl/basic-principles>

## Annex 1. Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that

all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper

restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

#### **Access to lawyers and legal services**

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

#### **Special safeguards in criminal justice matters**

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

### **Qualifications and training**

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.
11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

### **Duties and responsibilities**

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
13. The duties of lawyers towards their clients shall include:
  - (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients. Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad;

and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

**Freedom of expression and association**

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

**Professional associations of lawyers**

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

**Disciplinary proceedings**

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

## Annex 2. Format for documentation

Documentation of violations			
Name		Profession	
City		Email	
Age		Telephone No	
Gender		Other contact details	
Which treaty or other international document or domestic legislation has been violated?			
ICCPR: Article(s).....			
Basic Principles on the Role of Lawyers: Principle(s).....			
UDHR: Article(s).....			
General Comment: No ..... Article(s).....			
Other:.....			
Detailed description of the violation			
This document may be used in reports		YES/NO	
Further Comments: .....			
Date		Signature	





The reason for this toolkit is to help Iranian lawyers strengthen their ability to advocate for human rights. It contains a rough outline of the basics of human rights law and the vital role of lawyers. We hope this kit will help improve understanding of the concept of a fair trial under international law, through selected case studies that demonstrate the application of international norms in other jurisdictions. The toolkit includes links leading to further sources that should open a window on the international law arena. We hope lawyers will keep this toolkit in mind in all their cases and strive to apply Iranian law in a manner consistent with the norms of international human rights law. We welcome your feedback at [human-rightstoolkit@gmail.com](mailto:human-rightstoolkit@gmail.com) in order to continuously improve and update the toolkit.

