

Name: Organization for Defending Victims of Violence (ODVV)

Country: Iran

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Overall the instances in the laws of the Islamic Republic of Iran which are the guarantors of the activities of human rights defenders exist which will be brought to light in the answers below. But the following should be noted in reply to all the answers:

- There might differences in points of view in the definition of human rights defenders, for example in many instances it is difficult to distinguish between political and subversive groups with human rights defenders.
- Useful laws which safeguard human rights and the activities of human rights defenders exist, but the a point that cannot be disregarded is that in application these laws might face some infringements which cannot be due to the weakness and or shortfalls of the law.
- Attention to the point that the laws need amending and bringing up-to-date is another instance that is proposed. The role that NGOs can play in this regard cannot be ignored, for example the reaction of NGOs resulted in the suspension of the draft legislation on the law monitoring the activities of NGOs in Iran, and currently the legislation is being amended.
- Daily increasing political pressures and increasing of international threats results in the atmosphere to become one of internal security. Without a doubt the more closed the atmosphere, despite the existence of necessary laws for safeguarding the activities of human rights defenders, in this particular time, their activities will become more restricted.

Question 1 a)

Iranian law has joined most United Nations human rights instruments such as: the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights, Convention on the Elimination of Discrimination Against Women, Convention on the Rights of the Child, Convention against Torture, and Convention against Torture, which means they are all enforceable within domestic laws. Furthermore, even though within Iranian laws there are no ratified independent laws with the aim of facilitating and or protecting the activities of human rights defenders, but in some of the Constitution's principles, criminal laws, and other laws, there are some regulations towards this aim within Islamic guidelines that include the following:

a) Principles from the Constitution:

- Article 3(14): securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of-all before the law; the expansion and strengthening of Islamic brotherhood and public cooperation among all the people:

- Article 8: In the Islamic Republic of Iran, al-'amr bilma'ruf wa al-nahy 'an al-munkar is a universal and reciprocal duty that must be fulfilled by the people with respect to one another, by the government with respect to the people, and by the people with respect to the government. The conditions, limits, and nature of this duty will be specified by law. (This is in accordance with the Qur'anic verse; "The believers, men and women, are guardians of one another; they enjoin the good and forbid the evil" [9:71]).
- Article 14: In accordance with the sacred verse; ("God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes" [60:8]), the government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.
- Article 21: The government must ensure the rights of women in all respects, in conformity with Islamic criteria,
- Article 22: The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.
- Article 23: The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief.
- Article 32: No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible. The violation of this article will be liable to punishment in accordance with the law.
- Article 33: No one can be banished from his place of residence, prevented from residing in the place of his choice, or compelled to reside in a given locality, except in cases provided by law.
- Article 34: It is the indisputable right of every citizen to seek justice by recourse to competent courts. All citizens have right of access to such courts, and no one can be barred from courts to which he has a legal right of recourse.
- Article 35: Both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel.
- Article 37: Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court.
- Article 38: All forms of torture for the purpose of extracting confession or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this article is liable to punishment in accordance with the law.
- Article 39: All affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished in accordance with the law, whatever form they may take, are forbidden and liable to punishment.

- Article 36: The passing and execution of a sentence must be only by a competent court and in accordance with law.

- Right of access to justice

Article 61: the function of the judiciary are to be performed by courts of justice, which are to be formed in accordance with the criteria of Islam, and are vested with the authority to examine and settle lawsuits, protect the rights of the public, dispense and enact justice, and implement the Divine limits [al-hudud al-Ilahiyyah]

- Article 156(1) and (2): The judiciary is an independent power, the protector of the rights of the individual and society, responsible for the implementation of justice, and entrusted with the following duties:

1. investigating and passing judgment on grievances, violations of rights, and complaints; the resolving of litigation; the settling of disputes; and the taking of all necessary decisions and measures in probate matters as the law may determine;

2. restoring public rights and promoting justice and legitimate freedoms;

- Article 159: The courts of justice are the official bodies to which all grievances and complaints are to be referred. The formation of courts and their jurisdiction is to be determined by law.

- Article 161: The Supreme Court is to be formed for the purpose of supervising the correct implementation of the laws by the courts, ensuring uniformity of judicial procedure, and fulfilling any other responsibilities assigned to it by law, on the basis of regulations to be established by the head of the judicial branch.

- Article 166: The verdicts of courts must be well reasoned out and documented with reference to the articles and principles of the law in accordance with which they are delivered.

- Article 168: Political and press offenses will be tried openly and in the presence of a jury, in courts of justice. The manner of the selection of the jury, its powers, and the definition of political offenses, will be determined by law in accordance with the Islamic criteria.

Judges duties in refraining from application unlawful sentences

Article 170: Judges of courts are obliged to refrain from executing statutes and regulations of the government that are in conflict with the laws or the norms of Islam, or lie outside the competence of, the executive power. Everyone has the right to demand the annulment of any such regulation from the Court of Administrative Justice.

Article 171: Whenever an individual suffers moral or material loss as the result of a default or error of the judge with respect to the subject matter of a case or the verdict delivered, or the application of a rule in a particular case, the defaulting judge must stand surety for the reparation of that loss in accordance with the Islamic criteria, if it be a case of default. Otherwise, losses will be compensated for by the State. In all such cases, the repute and good standing of the accused will be restored.

Article 172: Military courts will be established by law to investigate crimes committed in connection with military or security duties by members of the Army, the Gendarmerie, the police, and the Islamic Revolution Guards Corps. They will be tried in public courts, however, for common crimes or crimes committed while serving the department of justice in executive capacity. The office of military prosecutor and the military courts

form part of the judiciary and are subject to the same principles that regulate the judiciary.

The establishment of the Court of Administrative Justice

In order to investigate the complaints, grievances, and objections of the people with respect to government officials, organs, and statutes, a court will be established to be known as the Court of Administrative Justice under the supervision of the head of the judiciary branch. The jurisdiction, powers, and mode of operation of this court will be laid down by law.

Public Prosecutor's Office and Special Court for Investigation of Civil Servants Offenses

If the aforementioned decisions and measures have criminal aspects, they shall be processed in public prosecutor's offices and special court for investigation of civil servants offenses.

Public Prosecutor's Offices and Disciplinary Courts for Judges – Monitoring Judges' Behaviour Law

In 2011 a law was ratified according to which written reprimands or added to career file have been foreseen for the disciplinary offenses of judges.

Formation of the National General Inspectorate

Article 174: In accordance with the right of the judiciary to supervise the proper conducting of affairs and the correct implementation of laws by the administrative organs of the government, an organization will be constituted under the supervision of the head of the judiciary branch to be known as the National General Inspectorate. The powers and duties of this organization will be determined by law.

b) Instances from the Criminal Prosecution Guidelines of the Public and Revolutionary Courts in Civil Matters

- Article 31 of the Public and Revolutionary Courts regulations ratified in 2000, in legal cases for the each of the sides of dispute up to two lawyers have been foreseen

c) Instances from the Criminal Prosecution Guidelines of the Public and Revolutionary Courts in Criminal Cases

Article 185 of the said guidelines (ratified in 2009) the parties at dispute in all criminal matters

are permitted to have up to 3 lawyers, and if the accused is not able to appoint a lawyer, the government is obligated to appoint him a lawyer free of charge, lawyers are clear examples of human rights who in carrying out their duties is protected by specific laws as well as general guidelines. And even according to laws related to the dignity of the lawyer in conducting defense duties is respected just like the dignity of the judge, and for those who ignored the dignity of law practice while carrying out their duties, the law has foreseen punishments for.

Limitations for the judicial plaintiffs in the beginning of the process and the arrest of suspects

In Part 2 from the first chapter of the Public and Revolutionary Courts regulations in criminal matters under the heading of the privileges of judges for the start of the investigation and arrest of suspects regulations have been set that the judges only have in that limit to issue an arrest warrant for the suspects and if the human rights defender is illegally approached according to the law he has the right to approach the judicial system to eliminate the wrongdoing committed against him.

The banning of search of homes and properties belonging to the accused and the tapping of their phone lines have been defined in these guidelines and the aforementioned is permitted only in some instances of the law.

Subpoena and arresting of suspects is only permitted in instances where the law has stated, and upon the clarification of the legal necessity the judge is obliged to release the suspect and set a lighter bail so that the accused is released from custody.

The possibility to appeal against the first trial court in the province's appeals court and in some more important cases the referral to the Supreme Court.

In the third chapter of the Criminal Prosecution guidelines in criminal matters, the court verdicts in Public and Revolutionary courts in the instances stated in Article 232 of the appealable at the supreme court.

d) In Islamic Penal Code

Government officials faults

In Chapter 10 of the said Code, the faults of government officials in articles after 570 has set punishment to government officials who unlawfully deprive individuals from their freedom or they violate their rights within the law.

e) In the Respect of Legitimate Rights and Protection of Citizen's Rights Law ratified in 2004 instances have been foreseen mainly with regards to human rights for the facilitation and protection of human rights defenders activities and prohibits searching and arresting of individuals unless there are lawful instances, and torture or illegal interrogations banned, and the arrests must be open and clear, and prosecutions proper, and in this law inspection and monitoring groups have also been foreseen.

e) Political Parties Law

Freedom of Association and Demonstration

The political parties, associations, unions and Islamic associations or recognised religious minorities associations ratified in 1981 the activities of the aforementioned has been deemed free within the framework of the law, and the same law provides the right to legal demonstrations and associations through the getting of permit from the Ministry of Interior for all the aforementioned.

In the Way to Provide Security for Legal Associations and Marches Guidelines ratified in 2002 also instances such as the way to receive a permit for holding associations and demonstrations have been specified.

f) Independence of the Bar Association (ratified in 1954) Legislation and the Law Practice Act of 1936 and the Regulations of the Law Practice Act of 1937 there are numerous guidelines on the rights and duties of lawyers in performing their duties in legal and criminal cases have been foreseen which cause their facilitation and protection of human rights defenders. Such as:

1 – Articles from the Protection of Guardianless Children Act

2 – Articles from the Labour Act

3 – The Observation of the Permission of Personal Properties of non-Shia Iranians Law

4 – Articles from the Non-litigious Matters in the Defense of the Rights of Non Compos Mentis Law

5 – Articles from the Protection of the Rights of the Disabled Comprehensive Law

6 – Articles from the Amendment of the Mandatory Third Party Insurance Law

7 – Articles from the Provisions Measures Law

8 – Articles from the Protection of Prisoners Regulations.

- 9 – The Judicial Assistance Law
- 10 – The Prohibition of the Purchase and Sale of Slaves in Iran Law
- 11 – Protection of Children and Juveniles Law
- 12 – Publication and Free Access to Information Law
- 13 –The Provision and Tools and Facilities for the Education of Children and Youths in Iran Law
- 14 – Elimination of Racial Discrimination Law
- 15 – the Prohibition of Hard labour for Children Law
- 16 – Articles from the Social Security Law
- 17 – Protection of the Rights of Writers Law
- 18 – Articles from the Family Protection Law
- 19 – Iran joining most human rights related UN conventions:
 - a) Universal Declaration of Human Rights
 - b) Convention against Torture
 - c) International Covenant on Civil and Political Rights etc.
 - d) Convention on the Rights of the Child
 - e) Convention on the Elimination of Discrimination Against Women

1 b)

Rights or laws that are usable and referable and are with the aim of facilitation or protection of the activities of human rights defenders in Iran, in instances that it is congruent with Islamic laws regardless in how its applied, is not only in conformity to international human rights standards, but if according to the said regulations which are based on Islamic laws, in some instances it can be said that they are superior to international human rights standards. Of course it must be said that the possibility of breaking laws exists in all societies, and problems might arise in the application of human rights laws. The use of some expressions and general mentions results in conflicting definitions and in some instances arbitrary definitions where unfortunately they are not congruent to international standards.

b)

Articles from the Constitution and the Criminal Prosecution Guidelines of the Public and Revolutionary Courts in Criminal Cases ratified in 1999 from the Islamic Penal Code ratified in 1991, and the Human Rights Access Law of 2004 and most of the laws made references to in paragraph one, from the theoretic aspects safeguard the legal legitimate rights of human rights defenders and prevents their illegal investigation and arrest. As well as legal guidelines, resorting to judicial authorities also often in cases where the activities of human rights defenders are not illegal and political, can prevent them from illegally being hassled.

With regards to police officers and bailiffs offenses, through the public prosecutor's office and military courts, and with regards to judges offenses through public prosecutor's offices and judges disciplinary courts and with regards to wrongful verdicts that are issued, there are complaints mechanisms in higher level of the judiciary departments.

a)

Guarantees exist with regards to security related rights, which do not result in unnecessary restrictions on human rights defenders. First of all related articles from the Constitution and ordinary laws such as the Citizen's Rights Law which have protective capacities, and secondly reliance on judicial, monitoring and police authorities can be effective in the elimination of unlawful restrictions, which have been replied in the a) section of your question.

Thirdly reliance to the Islamic Parliament Constitution's Article 90 Commission and National General Inspectorate can also be effective in the elimination of unlawful restrictions.

2 b)

There are legal mechanisms within the Iranian laws for the prevention of the violation of laws and citizen's rights and other human rights instances such as freedom of expression and thought etc; such as the penal code and other laws that have been referred to in question 1a, but the Constitution's regulations are the main legal safeguard in the prevention of the application of unlawful restrictions on human rights defenders with regards to security related rights, although in application, this subject can cause the creation of the said restrictions.

3 a)

There is clear definition in penal codes in favour of the accused in view of the rule of Islamic jurisprudence and the Iranian Penal Code, meaning that for as long as the activities of human rights defenders are within the boundaries of the law, and are not the tools of foreigners for application of political pressure on the government, then their activities are not criminal. Therefore, necessary guarantee within the Iranian Criminal Law exist, but naturally it is possible for problems to occur in its application. Of course in emergency situations such as Article 79 of the Constitution, allows the government to put restrictions in emergency situations, such as war etc.

3 b)

The answer to this question is replied in question 1a.

As well the aforementioned laws as legal application guarantee, legal applications guarantees exist that depending on urgency through reliance on the judicial mechanism and in instances where an unjust verdict is issued from the initial court, through lodging a complaint in higher court (provincial court of appeals and the supreme court) gives the opportunity for unfair verdicts to be overruled and rights are fulfilled.

4 a)

In the Iranian law system, the government does not directly interfere in the practice and funds of nongovernmental organizations, although in instances it might subject them to the payment of taxes. Also the registration of nongovernmental institutions and the conducting of financial matters and activities that they have registered for within the Companies and Institutions Registration Act and articles from the Trade Act in the Companies Registration Bureau associated to National Documents and Land Registration Organization, and their activities are registered to the boundaries of the statute.

4 b)

The right to association in Iran has been provided within the framework of the Political Parties Activities Law (1981) and its Application Guidelines (1983), with the issuance of permit from the Interior Ministry. Also there is the guidelines on the provision of lawful associations and marches (2002) which are subject the Islamic boundaries and principles. The Islamic Republic of Iran's laws and guidelines on the provision of the right of association for nongovernmental organizations can be put in three categories:

- a) The Constitution
- b) General and or Specific Law
- c) Regulations, circulars, routine procedures

a) The Constitution

Article 27 of the Constitution: Public gatherings and marches may be freely held, provided arms are not carried and that they are not detrimental to the fundamental principles of Islam.

Further to the right of association and demonstrations, and overall the holding of public assemblies, is the right to establish civil institutions one of the highlighted examples of which is the establishment of nongovernmental organizations.

Article 26: The formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic republic. No one may be prevented from participating in the aforementioned groups, or be compelled to participate in them.

Although this article has given an example of Islamic or religious minorities associations for NGOs, but it can be said that the spirit of this article includes other NGOs too.

b) General and or Specific Law

General and or Specific Law can be seen in two main groups:

1 – General laws that are resulted from international covenants and conventions commitments such as the International Covenant on Civil and Political Rights, which according to Article 90 of the Civil Code, it has been deemed as a domestic law, and stresses on the freedom of association and or establishment of civil societies. Also the Universal Declaration of Human Rights and other human rights documents to which the Islamic Republic of Iran is committed to.

2 – Specific laws other than international conventions commitments

2-1 The political parties, associations, unions and Islamic associations or recognised religious minorities associations ratified in 1981 and the guidelines on the provision of lawful associations and marches (2002) although in general terms are related to civil societies other than NGOs, but there is no reason to exempt NGOs from these rights, and they must be seen in the examples of Islamic associations and religious minorities.

2-2 Trade Law (1931)

Article 584 of the Trade Law governs the right to the establishment of non-trade companies and associations and its clause

2-3 Article 182 of the Third Economic, Social and Cultural Development Programme Law governs the assistance for the establishment and strengthening of NGOs.

2-4 Article 100 paragraphs (c) and (d) of the Fourth Economic, Social and Cultural Development Programme Law is the provision of necessary freedom and security for the development of social institutions

Article 140 paragraphs (a) and (b) for the establishment and development of NGOs

2-5 Formation of the National General Inspectorate Law (ratified in 1981 and amended in 1996 and 2008)

Article 11 is on the benefits from the strengthening of NGOs and also article 65 of the application guidelines of the said law.

2-6 Article 10 Promotion of the Administrative System's Health and Fight against Corruption (2011) states the necessity for Interior Ministry's support for the establishment of NGOs to fight corruption.

c) Regulations, circulars, routine procedures

The right of association and or the establishment of civil society institutions have been confirmed in the third group of the laws and regulations of the Islamic Republic of Iran. Some of them are as follows:

1 – Article 4 of the Executive Guidelines on the establishment and activities of NGOs (ratified by the Cabinet on the right to establish NGOs (2005) Article 2.

2 – The Amendment of the Registration of Non-trade Organizations and Institutions Guidelines (1958) on how civil societies are formed (Articles 1, 2...)

3 – From scientific, literature and arts NGOs aspect, the legislation on the establishment and issuance of permits for the establishment of scientific, literature and arts associations (1996) ratified by the Cultural Revolution High Council (Articles 1 and 2)

4 – Regarding the assistance for the activities of cultural, social and sports institutions, the Tehran City Council ratification (November 1999)

5 – The Executive Guidelines of National General Inspectorate Law (amendment 2008)

6 – Guidelines on Interaction with NGOs, and the Head of Judiciary's Circular (2011) on the utilization of honorary inspectors.

5 a)

The activities of human rights defenders is not restricted unless it is beyond the boundaries of the law, such as lawful publications or provision assistance to victims of violence. But on principle the activities of associations are in the boundaries of the law provided they are registered in the Interior Ministry and have acquired legal permits for their activities.

5 b)

On principle the failure to register and organization and failure to acquire a legal permit, may hinder the activities of unregistered NGOs. But for those registered organizations not forbidden within the boundaries set by the law, although in some instances some sensitivity might be applied which result in the restriction of these activities such as those included in Article 79 of the Constitution.

The answer to this question is such that have been answered in questions 1 and 2. and in brief the guarantee of the restraint from omission of information for human rights defenders, and their not being investigated, for the activities and search and publication of human rights related information, in the lawful activities boundaries firstly is the legal applications guarantee which in numerous laws these rights for the people have been recognised, and secondly the guarantee of approaching judicial authorities in instances where their rights are violated these guarantees are conditional to the activities of the human rights defenders are within the boundaries of the law and not deemed illegal, such as the activities of the government opposition under the title of human rights defender.

7 a)

First of all law mechanisms are done through judicial approach with offenders who have committed the said actions, in such way that the title of criminality is true to their actions. Secondly through cultural solutions and religious persuasion and dialogue among civilisations, and the elimination of cultural and faith misunderstandings can prevent the aforementioned negative actions from taking place.

7 b)

The correct application of the law and observation of Islamic principles and national religious sensitivities result in human rights defenders often times not being able to conduct their legitimate activities within the framework of Islamic laws.

In the Constitution and Criminal Code there are also guarantees in this regard in the protection of the individual and social rights, although in their implementation there might be some problems.

8

The answer to this question is in the same way as in question 1 and 2. Further added, in numerous instances such as articles from the Iranian Constitution and also various ordinary laws such as the Respect of Legitimate Freedoms and Protection of Citizen's Rights Law (2004), instances from the Islamic Penal Code, and the Criminal Prosecution Guidelines of the Public and Revolutionary Courts in Criminal Matters, can be used to set the activity of human rights defenders in Iran, and these regulations can be the provision and guarantee of the activities of human rights defenders within the framework of domestic laws.

But overall in view of religious sensitivities that exist in Iran the activities of human rights defenders are looked upon with suspicion, that they are the government's opposition who support western countries. And further international interaction and communication must take place to remove the mutual misunderstandings, and the basis for further activities be more open and positive for human rights defenders in Iran, in view of the readiness of domestic laws and international human rights conventions to which Iran is party to.