

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Leader of the Islamic Republic,
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Dear Supreme Leader and President,

Judicial Harassment and Arbitrary Sentencing of Mr. Hadi Esmaeilzadeh - Members of DHRC continue to be detained without adequate medical treatment - 31 May 2014

Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

LRWC objects to the wrongful prosecution, sentencing and imprisonment of Mr. Hadi Esmaeilzadeh, a law professor, human rights lawyer and member of the Defenders of Human Rights Centre (DHRC), who is a citizen of the Islamic Republic of Iran. On 31 May 2014, Branch 15 of the Islamic Revolutionary Court informed him of his sentence of four years of imprisonment and a ban from practicing as a lawyer for two years. The charges of "assembly and collusion with intent to commit anti-security crimes" and "spreading propaganda against the State" were brought as reprisals against Mr. Esmaeilzadeh for exercising his freedom of expression to expose violations of the rights of other Iranians.

As a member of the United Nations and a state party to the ICCPR,¹ Iran has legal obligations to ensure to all individuals within its territories and subject to its jurisdiction the rights and freedoms guaranteed by, *inter alia*, the ICCPR to equality (Article 7, 2, 10), liberty (Article 3), expression (Article 19), association and assembly (Article 20), as well as freedom from arbitrary detention (Article 9), remedies for violations (Article 8) and the right to legal representation (Article 14(3)). Discharge of these obligations entails

¹ ICCPR was signed by Iran on 4 April 1968, ratified on 24 June 1975.

ensuring the right to legal representation, which the Human Rights Committee (HR Committee) has determined applies to both criminal and civil proceedings.² The state's specific duty to protect the personal and professional safety of lawyers is integral to compliance with duties to ensure rights, prevent violations and ensure access to remedies.

The prosecution and sentencing of Mr. Esmailzadeh, Adolfattah Soltani and Mohammad Seifzadeh are illegitimate. These actions contravene Iran's domestic and international legal obligations to protect the above-noted rights and themselves constitute violations of the ICCPR.

LRWC calls on the Government of Iran to protect Mr. Esmailzadeh's internationally protected rights, including rights guaranteed by the *International Covenant on Civil and Political Rights* (ICCPR), ratified by Iran in 1975, and articulated by the UN *Declaration on Human Rights Defenders* adopted by consensus of the member States of the UN General Assembly in 1999.³ LRWC urges Iran to release Mr. Esmailzadeh as well as Mr. Adolfattah Soltani and Mr. Mohammad Seifzadeh, lift the bans on practicing law put upon them and acknowledge their fair trial rights and rights to liberty pursuant to the ICCPR. In support of these requests, we provide background facts and discussion of relevant international law.

Background Facts

The DHRC was founded in 2001 by five lawyers. Two of the founding lawyers, Mr. Soltani and Mr. Seifzadeh, are currently imprisoned in Iran on an arbitrary basis, as discussed below. Other lawyers who have been harassed and prosecuted as a result their work with DHRC are Ms. Shirin Ebadi, Ms. Nasrin Sotoudeh, Mr. Mohammad Ali Dadkhah and Mr. Mohammad Sharif.

Although the DHRC's offices were closed in 2008, the organization still functions to provide pro bono representation for persons accused of political crimes or prisoners of conscience. Many of those accused are lawyers and law students.

Since the DHRC office's closure, Mr. Esmailzadeh has been interrogated by Iranian intelligence and security organizations and pressured to resign from the DHRC. For example, in 2009, Mr. Esmailzadeh was expelled from the Higher Institute of Banking of Iran. In 2010, a travel ban was imposed upon him, prohibiting him from going outside of Iran. In 2012, he was expelled from his position at the Islamic Azad University - Bam Unit because he refused to resign from the DHRC.

Violation of fair trial rights: Judicial activities from 15 April 2014 to 31 May 2014

The prosecution of Mr. Esmailzadeh illustrates how Iran continues to be in violation of the obligation to protect rights to legal representation and the rights of lawyers to engage in legal advocacy and also silences the lawful exercise of freedom of expression guaranteed by the ICCPR.

In an interrogation on 12 July 2011, Mr. Esmailzadeh was first notified of charges of "assembly and collusion with intent to commit anti-security crimes" based on his membership in DHRC and "spreading

² UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, para. 10.

³ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding including the ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.

propaganda against the State” for allegedly writing the monthly reports of the DHRC and sending them to human rights organizations including the UN Human Rights Council, as well as being involved with the Fair, Healthy and Free Elections Committee.

On 15 April 2014, Mr. Esmailzadeh was tried by Branch 15 of the Islamic Revolutionary Court. He was not allowed to read his file before the trial and his lawyers were not given access to the file to prepare for trial as of 22 April 2014.⁴ The judge told him after the trial that if he wished the ban on his travel abroad to be lifted, he had to “negotiate with the file experts” or his interrogators at the Ministry of Intelligence who prepared the file for the court.⁵

In these circumstances, Mr. Esmailzadeh has not been given “a fair and public hearing by a competent, independent and impartial tribunal established by law” as required by the ICCPR.

Despite these serious issues and other reports of similar situations, Iranian authorities have apparently failed to investigate or otherwise remedy the violations of the law by state officials. The practice in Iran of targeting human rights lawyers with politically motivated prosecutions, imprisonment and revocation of their licenses to practice law, in reprisal for exercising protected freedoms of expression and association and for carrying out their legitimate legal work, was recently highlighted as a grave concern by Lawyers for Lawyers, the Asian Legal Resource Centre and LRWC in a statement to the 26th Session of the UN Human Rights Council. The International Bar Association and UN Special Rapporteur⁶ have also expressed alarm at the continued erosion of the independence of the legal profession in Iran.⁷

Given the violations of international human rights in Iran which have continued unabated since the June 2013 elections, and given the treatment of Mr. Esmailzadeh to date, the sentencing on 15 April 2014 appears intended to coerce lawyers away from properly exercising their professional duties and from fully and vigorously representing their clients.

In March 2014, the UN Special Rapporteur on the human rights situation in Iran recommended that the Iranian government “prevent the intimidation of lawyers, including threats of detention and prosecution for discharging their ethical and professional responsibilities.”⁸ The case of Mr. Esmailzadeh exemplifies a misuse of criminal sanctions. The charges are intended to have a chilling effect on other human rights defenders and civil society activists working in Iran and elsewhere to expose human rights violations perpetrated systemically and on specifically identified residents of Iran.

Harassment of Lawyers affiliated with DHRC

As noted above, Mr. Soltani and Mr. Seifzadeh are currently serving long prison sentences in Tehran’s Evin prison and Karaj’s Rajaishahr prison, respectively, on charges related solely to their legitimate work as human rights defenders and lawyers.

⁴ The Law Society of Upper Canada, [Public Statement: The Law Society of Upper Canada expresses grave concerns about the trial and ongoing harassment of Hadi Esmailzadeh in Iran](#) (29 May 2014).

⁵ Observatory for the Protection of Human Rights Defenders, [Iran: Judicial harassment of Mr. Hadi Esmailzadeh](#) (11 April 2014).

⁶ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Mr. Ahmed Shaheed, A/HRC/22/56, 28 February 2013. Paragraph 23 of this report states that the Special Rapporteur is alarmed by the reports of Government action targeting lawyers.

⁷ LRWC, [Iran: Wrongful Prosecution and Imprisonment of Lawyers Report](#) (27 May 2014); UN Office of the High Commissioner on Human Rights, [Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran](#) A/HRC/22/56 (February 2013); International Bar Association, [Iran: IBA Concern over Access to Justice and Independence of the Legal Profession](#) (11 October 2007).

⁸ UN Office of the High Commissioner on Human Rights, [Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran](#) A/HRC/25/61 (March 2014).

Mr. Soltani has been imprisoned in 2005, 2009 and in 2011. The most recent imprisonment came after an arrest on 10 September 2011, while he preparing to defend a group of Baha'i defendants.⁹ He received an 18 year prison sentence in 2012 and was banned for an additional 20 years from practicing law, which was modified in January 2013, the UN Working Group on Arbitrary Detention declared that Mr. Soltani's detention was arbitrary. Mr. Soltani suffers from serious health problems but does not have adequate access to medical care or outside medical facilities. LRWC has written to the Iranian authorities with respect Mr. Soltani in 2005, 2009 and 2012.¹⁰

On 30 October 2010, Mr. Seifzadeh was sentenced by Branch 15 of the Revolutionary Court in Tehran to nine years in prison because of his involvement in the establishment of the DHRC. He was also prohibited from practising law for a period of ten years. In an [interview](#) with the International Campaign for Human Rights in Iran, Mr. Seifzadeh referred to his trial as "illegal" and an "inquisition". He particularly noted the political nature of the trial and the fact that he was constantly asked questions that were entirely unrelated to the purported charges.¹¹ On 23 April 2011, Mr. Seifzadeh was arrested and detained in the city of Urumiyeh, in the north-west of Iran, and denied access to his lawyer. On February 20, 2013, it was reported that Mr. Seifzadeh received a new sentence of six years in prison and remains detained, in worsening medical condition.¹²

Violation of the right of human rights defenders to be protected from retaliation

Human rights defenders are entitled to conduct peaceful human rights advocacy and to be protected from retaliation including malicious prosecution and judicial harassment. The *Declaration on Human Rights Defenders*, adopted 9 December 1998 by consensus of the member States of the UN General Assembly,¹³ states that:

- "everyone has the right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national and international levels" (Article 12.1);
- "everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms" (Article 1);
- "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration" (Article 12.2); and
- "[i]n the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject *only to such limitations as are in accordance with applicable international obligations* and are established by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of

⁹ Amnesty International, [Iran: Overturn jail sentence and release human rights lawyer](#) (5 March 2012. Archived on 2 October 2012).

¹⁰ [Mr. Abdolfattah Soltani, lawyer arrested and incommunicado detention](#) (4 August 2009); [Iran: Human Rights Lawyer Abdolfattah Soltani arbitrarily detained](#) (25 April 2013); [Abdolfattah Soltani – Lawyer and Founding member of Defenders of Human Right Centre](#) (26 March 2012).

¹¹ Lawyers for Lawyers, *News*, "[Iran Court of Appeal upholds prison sentence Mohammad Seifzadeh](#)" (20 October 2013).

¹² Law Society of Upper Canada, [Iran – Lawyer Seifzadeh](#) (April 2013); International Campaign for Human Rights in Iran, [Abrupt Reversal of Ceased Prosecution Keeps Seifzadeh in Prison](#) (10 April 2013).

¹³ *Supra* note 3.

meeting the just requirements of morality, public order and the general welfare in a democratic society” (Article 17, emphasis added).

This is a clear case of *de jure* and *de facto* retaliation against Mr. Esmailzadeh for his legitimate human rights work by intelligence agents, prosecutors and judges of the Revolutionary Courts. Iran has a duty to ensure the protection of Mr. Esmailzadeh, Mr. Soltani and Mr. Seifzadeh as human rights defenders.

LRWC urges the government of the Islamic Republic of Iran and its agents to:

1. Immediately release Mr. Esmailzadeh, Mr. Abdolfattah Soltani and Mr. Mohammad Seifzadeh, lift the bans on practicing law put upon them and acknowledge their fair trial rights and rights to liberty pursuant to the ICCPR.
2. Immediately cease all reprisals against Mr. Esmailzadeh and withdraw all criminal charges against him;
3. Enable the DHRC to continue with its activities and to safeguard the personal and professional security and freedom of all DHRC members;
4. Respect Iran’s international law obligations to provide adequate medical treatment for detained lawyers and other prisoners; and
5. Comply with the UN *Guiding Principles on Business and Human Rights*¹⁴ by respecting human rights including the UN *Declaration on Human Rights Defenders*.

We look forward to your early reply.

Sincerely,



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¹⁴ UN Human Rights Council, [UN Guiding Principles on Business and Human Rights Implementing: the United Nations “Protect, Respect and Remedy” Framework](#), A/HRC/RES/17/4.

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