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Towards an anti-discrimination law: strategies and opportunities in Iran

Manisha Dissanayake





A photo posted on social media shows protestors making their way towards Aychi cemetery, where Jina (Mahsa) Amini was buried, in her hometown of Saqqez, Kurdistan, 40 days after her death. 26 October 2022. *Social Networks via ZUMA Press Wire*

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Introduction

Discrimination against minorities in Iran is pervasive and worsening every day. Discriminatory practices are exacerbated by continued inaction on the part of authorities, encouragement by the state, as well as deliberate attacks on people whose identities do not conform with state parameters on ‘national identity.’ This discrimination has permeated all aspects of life, including access to justice, housing, education, health, employment, the ability to participate freely in public and political life, and access to services. Minorities are also disproportionately subjected to arbitrary arrest, prolonged imprisonment, hate speech and various forms of violence.

The longstanding marginalisation and discrimination of minorities in Iran has contributed to increasing disillusionment with the state, evinced perhaps by the numerous protests that have taken place since 2017, in which minorities have always been at the forefront. There is also mounting tension between authorities and marginalised groups, with the latter demanding that their voices be heard, and their rights vindicated.

Although the political future of Iran remains uncertain and the pathway to change is unclear at the time of writing, peaceful futures and equitable outcomes for all, including minorities, can be secured if efforts are taken to address the longstanding and structural discrimination that exists at all levels of society. It is in this context that a law on anti-discrimination for Iran has become critical, now more than ever. However, stakeholders and advocates must be conscious of the long journey to the passing of such a law, and the restrictive space they will inevitably operate in. It has become necessary, therefore, to focus collective energy, resources and expertise, not only on the drafting of a law but also on advocating, lobbying and preparing the ground for change.

This toolkit is a comprehensive analysis of the ways in which Iranian lawyers leading advocacy efforts may commence and run advocacy campaigns. It also provides recommendations on the design and substance of an anti-

discrimination law, offering context-specific solutions to possible barriers advocates and activists may face in this process. Overall, the purpose of this toolkit is to provide Iranian lawyers with practical solutions and tangible tools to navigate current circumstances, which could well be a turning point for Iran’s minorities.

Scope and methodology

Extensive research, including desk and interview research, covering a broad range of sources, was conducted during the writing of this report. These sources include civil society reports, human rights reports, Iranian and other legislation pertaining to anti-discrimination and human rights, bill, draft law, international legal standards, news articles and global resources on anti-discrimination, as well as advocacy by Minority Rights Group International.

Interviews with the following persons informed and buttressed the recommendations made in this toolkit:

- human rights lawyers
- heads of non-governmental organizations at the forefront of anti-discrimination and minority rights work
- other human rights defenders
- academics
- independent consultants
- civil society and policy experts
- Iranian legal experts.

Interviewees were selected on the basis of their topical and country-specific expertise from around the world. The questions posed in the interviews were both structured and unstructured, and pertained primarily to recommendations and strategies Iranian lawyers may employ in advocating for and drafting an anti-discrimination law for Iran.

1 Conceptualising and utilising anti-discrimination

This chapter introduces the concept of anti-discrimination and the manner in which it is effectuated in practice, with specific attention to anti-discrimination laws. It also sets out the benefits of enshrining anti-discrimination protections in law, particularly in countries such as Iran. It has become more pertinent than ever, not only to propound anti-discrimination as a concept, but to utilise it against the myriad of issues faced by vulnerable groups.

While the principle of non-discrimination is considered a peremptory norm of international law, there is no single definition of anti-discrimination. Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which Iran has ratified and is bound by, stipulates that:

.....
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
.....

This provision provides protection against discrimination for all regardless of ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’ These are usually defined in anti-discrimination laws as ‘protected characteristics’ or ‘protected grounds’. Treating individuals differently on the basis of these characteristics constitutes unlawful discrimination, and it is illegal and impermissible, not only in relation to civil and political rights, but also in relation to any other right.¹ Minorities in Iran may be subject to unlawful discrimination on the grounds of ethnicity but may also experience intersectional discrimination. Intersectional discrimination occurs when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination. For example, a Baluch girl may have fewer opportunities to access education than other women, as well as other Baluchis. Her gender and ethnicity identity markers (i.e., female and Baluchi) cumulatively create a complex convergence of discrimination.

Discrimination may also be categorised as *direct* or *indirect* discrimination.

Direct discrimination is comprised of three elements:²

- less favourable treatment of a person or a group of persons;
- when compared with how other persons or groups of persons have been, are, or would be treated, in a similar or comparable situation; and where
- the reason for this is a characteristic, which falls under a prohibited ground. (As per Article 2 of the Universal Declaration of Human Rights, prohibited grounds may include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.)

Direct discrimination can only be justified exceptionally where the discrimination is reasonable, objective and justified against strictly defined criteria. This exception is primarily intended to allow special measures that are put in place to address structural discrimination.

Indirect discrimination comprises three elements:

- A neutral law, rule, provision, criterion, policy or practice;
- which disadvantageously affects a group with a protected characteristic; (protected characteristics include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)
- when compared to others in a similar situation.

Indirect discrimination can only be justified when the law, rule, provision, criterion, policy or practice is (i) objectively justified (ii) by a legitimate aim, and (iii) the means of achieving that aim are appropriate and necessary.³

Conceptualisations of anti-discrimination include:

.....
[T]he promotion of equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct.⁴
.....

Furthermore, anti-discrimination policies may be understood as any policies or procedures put in place by governments, institutions or any other segments of public and private life, that seek to challenge unlawful discrimination, while simultaneously promoting inclusivity and diversity in society. There are several facets of anti-discrimination that need to be emphasised:

- **Equality of opportunity** must be read to mean equal opportunities to live with dignity, to benefit from the same privileges enjoyed by the majority, to pursue all aspects of life freely, and to be free from any form of prejudice or harassment.
- **Unlawful discrimination** or objectionable conduct may be perpetrated not only by the government, but also those acting with the authority of the government, corporations or other entities or individuals.
- **Anti-discrimination** is inherently tied to its ‘promotion,’ which implies that in order for anti-discrimination to be meaningful, it must be advocated for, and must be moved from a mere concept to a meaningful tool in tangibly countering discrimination.

There are several ways in which governments, organizations and other entities implement anti-discrimination measures, and these include

anti-discrimination laws, policies and practices. For the purposes of this toolkit, it is important to understand why it is critical to enshrine the principles and values of anti-discrimination in a law, particularly since:

[t]he adoption of comprehensive anti-discrimination laws – laws which have the purpose and effect of prohibiting all forms of discrimination – is an essential step in the effort to realise the right to non-discrimination. Without the enactment of laws which prohibit all forms of discrimination on the basis of all grounds recognised in international law in all areas of life regulated by law, provide for the effective enforcement of the right, and mandate positive action measures to address historic or structural discrimination, states will be unable to give effect to the right to non-discrimination. It is only through ensuring the legal protection of the right to non-discrimination that states will realise their ambitions to combat inequality.⁵

Furthermore, comprehensive equality laws are said to be ‘the only effective legislative basis to challenge the full range of discriminatory patterns affecting all groups exposed to discrimination’,⁶ thereby addressing both the causes and manifestations of discrimination.

The following benefits of an anti-discrimination law may be deduced from the above:

BENEFITS

- 1 An anti-discrimination law signals a strong condemnation of, and intolerance for, discrimination, and a firm commitment to equality.
- 2 An anti-discrimination law gives people the right to agitate for their equality and freedoms and pursue legal action if their rights are infringed, thereby empowering them.
- 3 An anti-discrimination law provides lawyers and human rights organizations with both the impetus and ability to defend the rights of those who are discriminated against, either through legal action or other means.
- 4 An anti-discrimination law places a direct responsibility on the government to uphold such a law (the positive obligations of the state in respect of anti-discrimination will be discussed in more detail in Chapter 3 of this toolkit).
- 5 An anti-discrimination law serves as a deterrent against discrimination and helps counteract social hierarchies between groups.
- 6 An anti-discrimination law gives citizens, the international community and other stakeholders another tool by which they can hold governments accountable and push for progressive change.
- 7 It provides a legitimate legal basis to challenge patterns of inequality which would otherwise continue to permeate communities and societies.



Azeri man pictured in West Azerbaijan, 2020. Still from *A Horse Has More Blood Than a Human* (2021). Abolfazi Talooni/Minority Rights Group International

It is pertinent to bear in mind that an anti-discrimination law alone is not sufficient to build a culture of respect and protection for minority rights, unless such a law is complemented by awareness raising and monitoring, while facilitating access to justice. As such, advocates and activists must also focus on sensitisation measures, awareness raising and the creation of a conducive environment, so that if a law is ultimately passed, it will have a higher chance of being effective and favourably received.

As such, the adoption of a law prohibiting discrimination is a critical starting point to help protect minorities in Iran. Lawyers in particular understand the inherent value of a law formalising and enshrining ideals for individual autonomy, dignity and well-being, for the simple reason that they defend their clients on the basis of a violation of a law, and rely on constitutional and legal guarantees of rights and freedoms to do so. Iranian lawyers will also recognise the redundancy of legal and constitutional guarantees that do not render tangible outcomes for citizens (such as Article 3 of the Iranian Constitution),⁷ and must therefore endeavour to draft and pass an anti-discrimination law that will be of tangible use in vindicating and advancing minority rights.

Iranian lawyers will find useful the authoritative guide on drafting anti-discrimination legislation in line with international legal standards, 'Protecting Minority Rights - A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation' recently published by the Office of the United Nations High Commissioner for

Human Rights (OHCHR), and the Equal Rights Trust, (See: https://www.ohchr.org/sites/default/files/documents/publications/2022-11-28/OHCHR_ERT_Protecting_Minority%20Rights_Practical_Guide_web.pdf), and which sets out the principles and international obligations that must necessarily underlie a state's impetus to enact anti-discrimination laws.

A few comments must be made on the nature of the envisaged law, and it must be noted at the very outset that a 'minorities law' (i.e., a law specifically focused on a single group or minority in Iran), may face reprisal or pushback from authorities and other groups or minorities. As such, it may be advisable to couch the protections and freedoms envisaged for ethnic minorities in a 'general' anti-discrimination law. Experts interviewed for this report stressed the importance of a general law, stating that the same was not only 'strategically better but also normatively better.'⁸

On the other hand, a general law may receive less buy-in from community leaders, as they might favour a law specific to themselves or the minority they represent, fearing that a general law may dilute their own claims. Furthermore, a bill that was to provide protections to all marginalised groups (including religious minorities or sexual minorities), may be less likely to receive the required political support under the current regime. As such, exercises of this nature require striking a balance between ideals and on-the-ground realities, i.e., what kind of law will render the most benefits versus what kind of law will actually be enacted. These questions will be explored in greater detail in the following chapters.

2 Best practices and lessons learned

Advocates for legal reform are often faced with various obstacles, from uncondusive environments to harsh suppression. In providing suggestions on how to circumvent these obstacles, this chapter draws on the experiences of countries such as the United Arab Emirates (UAE), India, South Africa, Tunisia, Australia and Turkey, amongst others. These country examples have been selected for several reasons: the issues advocated for were contentious, public and governmental hostilities were rife, and often, citizens were faced with obstacles akin to the hurdles Iranian lawyers face in campaigning for an anti-discrimination law. This chapter does not present each country example as a case study, but lessons have been extracted from the respective experiences of legal reform advocacy in these countries and have been outlined herein.

Prior to the discussion on strategies that may be employed in advocating for an anti-discrimination law, it may be important to rethink the very practice of advocacy, so that it may meet the exigencies in present-day Iran. Research demonstrates that conventional practices of naming and shaming or giving interviews in the international media, while useful, must be buttressed by other nuanced, strategic and more compelling forms of advocacy.

In this regard, it has been suggested that the compilation of documentation setting out the exact scope and nature of the issues is a solid basis for human rights advocacy, so that the wider public and international community, as well as those who perpetuate discriminatory practices, are aware of the same.⁹ Research and documentation on the status quo are pertinent to ‘demonstrate patterns of discrimination and demonstrate why the existing legal framework simply isn’t working,’ and is therefore a necessary prelude to advocacy efforts.¹⁰ Specifically, the mapping of regional trends and the work of all organizations and individuals on anti-discrimination, may be useful in establishing the number of cases of discrimination that take place every year in Iran.¹¹

Furthermore, it is vital that advocacy is inherently designed to increase the participation and visibility of minorities. The focus of this toolkit will therefore be on advocacy campaigns, which are not only effective in realising outcomes as a means to an end, but also have inherent value and are an end in themselves.¹²

Five lessons on advocacy – introduction

The following section of this toolkit will focus on best practices Iranian lawyers may adopt in advocacy and includes a combination of principles and tactics. However, it must be noted that the list of principles is not exhaustive, and Iranian lawyers must ensure that other principles of advocacy such as confidentiality, accountability, clarity, etc., are employed in their work and campaigns. The principles discussed in this section were the methods relied on by interviewees and were also recurring recommendations in the case studies and research conducted.

A list of advocacy tactics is listed overleaf, all of which have been discussed in this toolkit.¹³

Five lessons on advocacy

One: Use documentation and evidence to create credibility, visibility and impetus to act

As mentioned earlier, one of the first tasks one must undertake in an advocacy exercise is documentation, which must focus on the lived experiences of the individuals in respect of whom such advocacy is carried out. Often, even civil society may be unaware of the extent of the discrimination endured by minorities, although they may be aware of its existence. The drafting of a law pertaining to violence against women in Tunisia is an important example of how the compelling and succinct presentation of the state of a vulnerable group can begin the process for change.

It all started when Monia Ben Jamia presented a fact sheet on the state of violence against women to an Expert Committee tasked with drafting a provisional Tunisian law on combatting violence against women back in 2015. The Tunisian Association of Democratic Women had developed the fact sheet, based on the Istanbul Convention, together with EuroMed Rights’ regional working group on Women’s Rights and Gender Equality.

TACTICS

- 1** Alternative entry points to influence – identifying alternative contacts and targets in respect of advocacy exercises, if high-level government advocacy, for instance, is too dangerous or will not result in tangible progress.
- 2** Identifying a less sensitive issue – if the main issue advocated for is too controversial and will result in backlash, begin with a less controversial or sensitive issue. Alternatively, couching sensitive issues in a more palatable or less controversial way, may prove effective as well.
- 3** Finding and leveraging the support of unlikely allies – advocates may establish contact and engage with allies who are not traditionally sought out. Such allies may include journalists or reporters, progressive religious leaders or lower-ranked government ministers or local government officials.
- 4** Evidence-based advocacy – the use of compelling facts and information to buttress claims and the need for advocacy.
- 5** Using international or regional mechanisms to increase pressure on national institutions – advocating for a statement or resolution by the UN High Commissioner on Human Rights to provide the government with an impetus to act, or using the Universal Period Review (UPR) process to shed light on current realities.
- 6** Use of digital communications tools – such as online blogs, podcasts, fundraising mechanisms and other online networks to raise support, funds and awareness about the cause, particularly where advocacy in the physical space is restricted or dangerous.
- 7** Strategic litigation – the use of court cases (the legal system) as a starting point to greater systematic change.
- 8** Creative cultural resistance – the use of art, sport, drama, music and popular culture to raise awareness and advocate for human rights issues in an organic manner that will not offend religious or cultural sensibilities.
- 9** Utilising current events to build social momentum – the use of events that create great impact in society or shock the consciousness of people, as a platform or starting point, to shed light on human rights issues, and garner support for the need to address them.

After this, the coalition of the 50 organizations was then set up to prepare an advocacy strategy to ensure that the draft law would pass in parliament. The fact sheet was similarly used in meetings with the Tunisian authorities to document challenges to gender equality and women's rights and formed the basis of a visibility and capacity building campaign targeting the EU Delegation in Tunisia.¹⁴

The above is an example of how the simple exercise of giving credibility and visibility to the struggles of a minority can pivot a law reform process. However, it is the voices of those subject to discrimination, specifically, that must be amplified in advocacy exercises. For instance, advocates in Honduras published videos of women sharing their experiences of secret abortions, sexual assault and the consequences of high-risk pregnancies in the

exercise of legal reform advocacy, which proved highly effective in capturing the attention of lawmakers.¹⁵

It may also well be that there is a shortage in reliable and accurate information on minorities or vulnerable groups in Iran. This was the case in Tunisia, where there was a conspicuous lack of figures and statistics on sub-Saharan migrants, who suffered the brunt of racial discrimination in Tunisia.¹⁶

In contexts where discrimination against ethnic minorities is normalised or tolerated, information on the effects of discrimination can be a useful tool to propel broader civil society (including majority groups), government officials and legislators into action. Of course, one must understand that, while the information gathered is only a starting point, it will be a useful tool for lawyers in particular, whose skillsets include the use of evidence and compelling information to present and bolster a case or cause.

In short, information for the purpose of legal reform and advocacy should be:

1. evidence-based,
2. compelling,
3. an amplification of the voices of victims of discrimination,
4. able to fill existing voids in existing databases, and
5. able to reshape narratives of the problem.

A note at this instance must be made on cyber security and data collection. All the evidence and information that is gathered must be protected, particularly as it pertains to already vulnerable individuals and groups. Organizations advocating for LGBTQI+ rights in Tunisia, for instance, are encrypting the data gathered by them, to ensure that the police and government authorities cannot gain access to information to all the LGBTQI+ persons in the capital.¹⁷

Two: Plan advocacy campaigns meticulously and grow them organically

Given current restrictions in Iran, lawyers leading advocacy efforts should begin not only with an outline of objectives and indicators of success, but also contingency plans.

It is useful to analyse examples of meticulously planned advocacy campaigns, which were grown organically and intentionally. These may provide suggestions as to how Iranian lawyers may begin or continue advocacy efforts.

- 1 Advocacy must be, to the greatest extent possible in the circumstances, an organized, formal effort, and must also be perceived as such, so that it cannot be dismissed as marginal.** In Queensland, Australia, representatives from community organizations and legal centres formed an alliance, which was publicly named the ‘Campaign for a Human Rights Act for Queensland’ and which served as a legitimate, credible platform for advocates. The benefits for lawyers leading advocacy efforts would be magnified if such lawyers present themselves as part of an organized entity with long-term goals.
- 2 Advocacy should be representative and inclusive and must bring together a range of community organizations and individuals.** It must be noted that there are varying groups that face discrimination or intersectional discrimination in Iran, and such groups must be made part of advocacy efforts. Campaigns that are representative and inclusive provide ‘a rare opportunity for intersectional conversations to occur

between movements that would ordinarily operate simultaneously in separate domains.’¹⁸

Targeting majority ethnic groups in raising awareness as to the discrimination faced by minorities, may be an effective way of expanding the reach of an advocacy campaign. Majority groups may not know the full extent of the hardships faced by fellow Iranians, and authorities may capitalise on such lack of knowledge to ‘divide and rule.’ One interviewee noted, ‘[i]t is easy to build a coalition of the most marginalised to advocate for changes that would benefit them. What’s difficult is convincing those who are in a relatively advantaged position that they also need to join that coalition.’¹⁹ Although it may be difficult to assuage those with opposing views to advocate for changes they do not agree with, it is worth pursuing other stakeholders or members of civil society who hold a neutral position on the issue in question. If documented evidence is shared with such stakeholders, there is potential for significant growth of allyship with an anti-discrimination campaign.

In this vein, lawyers may be able to leverage networks of lawyers, formal associations and their clients, to reach more diverse groups or individuals, to ensure an ‘intersectional and collaborative approach [is taken] as an alternative and complementary strategy focused on addressing discrimination against particular groups in isolation.’²⁰

- 3 Advocacy should focus on clear messaging that is tailored for target recipients.** It is important to have a communications strategy that caters to diverse groups of people. For instance, lawyers should avoid the use of legal jargon and use colloquial language when communicating with communities at grassroots levels. Lawyers may also use various communication platforms including podcasts and radio interviews to ensure that there are different ways people can connect.
- 4 Communications should be proactive, not reactive.** Messages and communications emanating from advocacy campaigns should be proactive, rather than solely reactive. Advocates should plan ahead to prepare for all outcomes of advocacy activities, and ensure that they are prepared to answer questions, defend their stance and present issues in a compelling and clear manner. Doing this systematically will also mean that advocates will be better prepared to ‘react’ to events that may trigger opportunities to build further momentum or allyship around their existing campaign. Finally, communications emanating from an advocacy campaign must be sustained, as hearing

regular news and views on anti-discrimination will normalise this conversation in Iran. Practical strategies may be used to ensure this, such as the use of a mailing list to the media and key stakeholders, as well as frequent news articles or press releases.

5 Advocacy campaigns may benefit from smaller groups or committees working on specific tasks and coordinating campaign activities. Lawyers engaging in these efforts must be conscious of the demands of their own jobs and professional lives, and must ensure that they have the support of groups that will take an active role in advocacy efforts. For instance, in Turkey's efforts to reform its Penal Code, a working group was set up by two organizations (Women for Women's Human Rights and New Ways), to analyse existing laws and draft amended ones.²¹ A clear division of labour of the many facets of an advocacy campaign is important to ensure its continuity and should include evaluation, follow-up and reporting structures.

6 Advocacy efforts must take a grassroots approach. Lawyers are, for the most part, a privileged group in society, and therefore, must ensure that advocacy efforts led by them are influenced and shaped by the people such efforts attempt to serve. By

ensuring that an advocacy campaign adopts a 'bottom-up' approach, one also allows advocacy to grow organically, and this is both meaningful and sustainable in the long run. For instance, 'in Morocco, a women's grassroots movement successfully advocated for equal access to collective lands. Soulaliyate women started a movement to raise awareness of the need for equal land access amongst other communities. The movement consolidated to the point where they received the support of the King, ultimately leading to legal reform that guaranteed equal land access for Soulaliyate women and men.'²² The said legal reform, as well as the consolidation of the movement in Morocco, was a result of several factors, including:²³

- a. partnerships with civil society groups, including the Democratic Association of Moroccan Women (ADFM), which 'made the movement cross social divides and create a coalition that is active to this day, reconfiguring power relations between men and women in Morocco',
- b. many letters of complaint written by women of different communities to local authorities, intimating their dire economic circumstances and issues,



Qashqai nomadic women wearing traditional clothes weave carpets in Isfahan, Iran. 22 April 2021. *Fatemeh Bahrami/Anadolu Agency via Getty Images*

- c. public action by the women and the (ADFM), which included firstly, a protest of 500 women in front of the Parliament in 2007, followed by a demonstration which drew out thousands of women all over Morocco, and
- d. the articulation of individual issues as a collective problem, where ‘the women framed the different local claims into a common movement under a unified discourse and language.’

Sustainable change requires raising awareness and advocating on behalf of a smaller community at the micro level. Additionally, engaging with tribal or community leaders may prove a more viable option, particularly where there are risks of engaging in high-level, conspicuous advocacy.²⁴

7 Advocacy efforts must be sustained. It is important to bear in mind that fatigue often sets in, and resources (both human and financial) may be depleted after what could be years of advocacy. For instance, the campaign to reform the Penal Code from a gender perspective in Turkey continued for a period of as many as three years, subsequent to which thirty amendments protecting the rights of women and girls came to fruition.²⁵ Given the restricted space for advocacy in Iran, as well as the controversy surrounding the protection of ethnic minorities, it is advisable that lawyers leading the advocacy process put in place mechanisms to ensure the sustainability of the campaign.

Sustainability is three-fold:

- a) Financial sustainability: Where possible, advocates should strive for a steady stream of funding to support advocacy activities.
- b) Institutional/organizational sustainability: Where possible, advocates must ensure seamless work, despite team turnovers and changes.
- c) Programmatic sustainability: Where possible, advocates should aim for continuation of projects and activities within the campaign, irrespective of changes in leadership or membership.

Three: Gather support, personnel and momentum

Given the hostilities and obstacles lawyers face when advocating for a law of this nature, it is pertinent that advocacy efforts are ‘backed by strong social movements.’²⁶ It is particularly important that lawyers use local, regional and international networks to create a formidable coalition that can withstand government pressure and

social backlash. Garnering the support of a variety of actors also lends itself to inclusivity, as well as laws or policies of better quality. Furthermore, it is important ‘to consolidate efforts across sectors to advocate for comprehensive anti-discrimination policies,’ to ‘ensure no one is left behind.’²⁷

In this vein, the reader will find below several examples that demonstrate how the mobilisation of large groups of persons or key players can create a snowball effect, and lends itself to stronger advocacy.²⁸ Of course, steps must be taken to ‘avoid concerted infiltration attempts by regime agents’ or those who may sabotage or undermine advocacy efforts, while protecting the inherent principles and objectives of the same,²⁹ as was done by The Tunisian League for the Defense of Human Rights (LTDH),³⁰ which included freezing new memberships to the league from time to time.

1 Attempts to abolish the death penalty in Tunisia: ‘Tunisia’s National Coalition for the Abolition of the Death Penalty has been established in June 2007 with the support of seven independent organizations, including the LTDH, AFTURD, ATFD, the Tunisian branch of Amnesty International, the Arab Institute for Human Rights, the Tunisian Federation of Cinema Clubs, and the Association of Tunisian Journalists, replaced by the National Syndicate for Tunisian Journalists. More than 100 public figures are members of the open coalition, including former ministers, lawyers, filmmakers, media personalities, and writers.’³¹

2 The reform of the Penal Code of Turkey – Due to the responsive nature of the women’s movement in Turkey, ‘Within a very short time, more than 120 women’s NGOs from all around the country joined together to initiate a major campaign, the widest coalition ever formed for a common cause since the emergence of the new feminist movement in the 1980s. The campaign was effective in gaining the support of the media and the public, creating an atmosphere where resistance to equality between men and women was viewed with scorn. In consequence, the opposition had to step back, and the campaign played a key role in the ultimate realisation of the civil code reform.’³²

3 The women's movement in Tunisia: the activism by women's rights organizations, both old and new, has contributed to vibrant discourse in Tunisia. New players in the NGO sector, such as *Egalité et Parité* ('Equity and Equality') have begun work on equality and parity, while the national labour organization UGTT (*Union Générale Tunisienne du Travail*), which furthered women's causes in the 1990's, continues to do so at present. Cumulatively, along with 'a plethora of other organizations – small and large, domestic and international, independent NGOs and political think tanks,' there is 'a dynamic and active community of political actors committed to women's issues.'³³

These are examples of 'coalition-building', which is widely considered the 'most impactful approach to guarantee effective advocacy and engagement with state

actors,' as this approach 'works to overcome the structural limits of civic space by facilitating the pooling of resources and expertise among civil society actors.'³⁴

Specialists interviewed for this report stressed the importance of securing the support of 'elites' in coalition-building, given that 'having elites is a strength to advocacy because ultimately you have to get more people on your side and apply pressure on the legislature.'³⁵ The aforementioned elites may include lawyers, activists, individuals playing key leadership roles in these spaces and progressive religious leaders, who will champion the cause through the far-reaching platforms they have.³⁶

It is apt to mention the passing of an anti-discrimination law (organic law no. 2018-50) in Tunisia at this juncture, which law benefited directly from gathering support and momentum. In 2017 and 2018, several incidents of violence against sub-Saharan migrants received significant media attention, including the killing of sub-Saharan migrant Falikou Coulibaly, president of the association of students from Ivory Coast. Subsequently, the then-president of Tunisia released a public statement categorically condemning racism and



Ahwazi Arab activists protest in London, UK against human rights abuses committed against their community in Iran. 15 April 2017. Mark Kerrison/Alamy Live News.

discrimination. Capitalising on the fact that the issue of racial discrimination was in the spotlight, the law on anti-discrimination was drafted and passed within a period of ten months. The law was pushed by the UN human rights agency, OHCHR, a local partner and the country's president (who publicly supported anti-discrimination efforts) as well as a Black Tunisian MP. These actors advocated and pushed for the law through the media and through the said MP (who became the symbol of the fight in Parliament), to mobilise political and societal support. Political will and social momentum increased further after grievous attacks on Black Tunisians and sub-Saharan migrants, and as a result, the legislators utilised the momentum on racism to develop legislation akin to the Convention on the Elimination of Racial Discrimination (CERD).

In seeking support from various entities, lawyers leading advocacy efforts may also seek support from unlikely allies. Such allies may share a common interest or concern with the campaign, even if they do not share the exact priorities of the campaign's goal. Restrictive contexts may require advocates to engage in complex partnerships to enhance the support they need. In Turkey, a group agitating for reform of the Penal Code could not gain access to the draft law through official means, but 'received a copy of the draft law through the covert action of a liberal journalist friend who had been supportive of the religious right opposition in Turkey in the past, and thus had access to key people in the new government.'³⁷

Securing political commitment, if this is possible in the Iranian context, must be pursued by advocates. Identifying leaders (from parliamentarians to officials in lower ranks) who may open doors for advocates and champion anti-discrimination, may prove critically important in agitating for an anti-discrimination law. It is often useful to reach out to individuals 'who can influence or move you up the chain, such as a minister who might look more favourably on what you are advocating for and get you into a room with the next minister up the chain, who is one step close [sic] to the ultimate decision-maker.'³⁸

This suggestion is, of course, made with the caveat that those in government or positions of power must only be engaged if their loyalty and bona fides are assured. Instances of governments turning on advocates are not uncommon, according to one interviewee, who relayed an incident where activists engaged in high-level advocacy, with direct access to the government, received a fine for an infraction they did not actually commit, and were made to leave the country in which they were conducting advocacy exercises in.³⁹

It is pertinent, therefore, not to limit coalition-building to specific groups, or to target only the

legislature while advocating for an anti-discrimination law. As one interviewee pointed out:

"[people] tend to think that legislative initiatives sit with the legislature, and therefore the legislature is the target. But we know that in realpolitik, that is not the case: there are key individuals, party leaders, speakers, and key government ministers who determine whether something goes forward or not. So, identify key individuals and network a coalition of support."⁴⁰

Jim Fitzgerald, Director of the Equal Rights Trust.

Four: Equip communities by sharing knowledge

The goal of equipping communities is inextricably tied to the notion that law-making must be 'victim centred.' By adopting such an approach, power is placed in the hands of those who have been denied it. The process of advocating for an anti-discrimination law in Iran should be no different, for the sole reason that 'building community power is central to legal empowerment' and affords people with an opportunity to shape the law.⁴¹

The most important thing is recognising that communities and civil society have agency. There are many instances where their lived experiences are not given due regard. We must not forget those who have to live with and navigate not only these experiences, but also the consequences of whatever litigation or advocacy they might be engaged in.

Dumiso Gatsha, civil society and global policy expert⁴²

For instance, the women's movement in Tunisia regularly offered workshops, seminars and other types of gender training to further women's rights, targeted towards politicians and local NGOs.⁴³ In the case of South Africa, efforts were made to conduct workshops to build capacity and formulate national campaign strategies. Furthermore, again in South Africa, the People's Health Movement held 'empowerment workshops in communities which analysed the links between the broader social determinants of health and the specific health problems of each community.'⁴⁴

It is critical that Iranian lawyers equip communities by sharing knowledge on the rights vested in them, existing legal and constitutional protections, and mechanisms to avail themselves of such rights. These knowledge-sharing sessions may be organised, structured and facilitated in any manner chosen by lawyers, which presents the least

calculated risk to both lawyers and communities. Most importantly, they must reiterate to minorities, the significance of endeavours such as this, and how an anti-discrimination law is a stepping stone to tangible change, as this cognisance will result in better outcomes for advocacy campaigns as well. For instance, it is reported that the lack of political will to implement the National Health Insurance (NHI) Campaign in South Africa was due to the fact that ‘civil society, the people who used public health facilities, are not being adequately engaged on why the NHI is integral to their existence and prosperity.’⁴⁵

A specialist in constitutional studies and discrimination law also stressed the importance of educating or equipping key actors in NGOs, minorities and communities. For example, education and training on anti-discrimination and related legal concepts was conducted through online courses in India to bridge the knowledge gap on these issues, which existed despite India’s long experience of adjudication on human rights issues.⁴⁶

It must be borne in mind that lawyers need training too. They must have a sound understanding of the constitutional and legal frameworks underpinning human rights and anti-discrimination, in order to undertake the legal work that may arise from advocacy of this nature. Training for lawyers is a widespread practice the world over: for instance, Minority Rights Group International, in collaboration with the OHCHR Tunisia, organized several training events for Tunisian lawyers ‘on national law as well as regional and international standards against racial discrimination, with a total of 160 lawyers trained,’ between November 2019 and July 2020.⁴⁷ The International Bar Association and Equal Rights Trust are other training providers offering relevant courses for lawyers.

Five: Petitioning and engaging the international community

Engaging the international community and international human rights organizations is an important part of advocacy, and advocacy efforts must not be insulated from the outside world, particularly in the face of challenging internal circumstances. The benefits of international engagement can be immense: lawyers advocating for an anti-discrimination law can garner more visibility to the cause, which may increase pressure on the government to accede to their demands, and can also benefit from the intellectual and practical support that international entities may offer.

One specific avenue of engaging the international community and the United Nations is through shadow reports to treaty bodies or UPR procedures. Non-governmental organizations are encouraged to submit such reports as they are ‘often bold, credible and provide

information usually ignored by government agencies’. This strategy proved effective in Tunisia, where it has been noted that:

‘The official discourse changed after the revolution with regard to alternative or parallel reports. A minister in charge of relations with constitutional bodies, civil society and human rights, summed up this change when he declared that the National Committee for Coordination, Preparation, Submission and Follow Up of Human Rights Recommendations, assigned to prepare Tunisia’s report to the Human Rights Council wanted to seriously engage with CSOs working on parallel reports to exchange views and information on issues raised in these reports.’⁴⁸

Given that Iran frequently participates in the UPR, and has cooperated with treaty body mechanisms, advocates may avail themselves of the commitments and issues raised therein.

Another avenue for obtaining the support of international entities is by recourse to the Sustainable Development Goals (SDGs) for 2030, propounded by the United Nations. Every year, UN member-state delegations gather for the High-Level Political Forum (HLPF) to assess progress towards achieving the SDGs. Governments conduct what are known as voluntary national reviews (VNRs); Iran has yet to do so. Nevertheless, the SDG process has broad international backing, so reference to the SDGs can be a powerful tool in local advocacy. The relevant SDG in the context of an anti-discrimination law for Iranian ethnic and religious minorities is Goal 10, especially Target 10.2 as follows:

By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.

Iranian lawyers may also consider engaging organizations that offer varied forms of support for states working towards the SDGs, three of which have been listed below:⁴⁹

- **Advocacy: Justice and SDGs (2016)**, by the Transparency, Accountability and Participation (TAP) Network, is a useful toolkit for civil society, activists and policy practitioners who are working to promote legal empowerment and access to justice in relation to the SDGs. See: <http://tapnetwork2030.org/accesstojustice/>
- **The SDGs-enabling Law Reform Drive** is a global initiative launched by a consortium of international

law firms that seek to help developing countries undertake law reforms aimed at enabling effective implementation of the SDGs through their national action plans. See: <https://www.leeg-net.org/sdgs-enabling-law-reform-drive>

- **Namati** is a global organization dedicated to putting the power of the law in the hands of the people. It facilitates a Global Legal Empowerment Network that brings together 1,500+ organizations and 6,000+ individuals dedicated to grassroots justice. See: <https://namati.org/network/>

Iranian lawyers advocating for non-discrimination may also engage international stakeholders such as human rights divisions of foreign ministries that participate in bilateral dialogues with the Iranian government, including the European Union (EU), Switzerland, Japan, Brazil, Indonesia, Denmark and Italy, among others. In terms of international advocacy, these bilateral human rights dialogues serve as one of the most effective ways for countries to pressure the Iranian government on human rights violations. Specifically, these talks provide an opportunity for countries to leverage their relationship with Iran to push the government to adopt specific laws while offering technical assistance in the enforcement process.

Turkey is an example of an international stakeholder having a clear impact on anti-discrimination laws. In working toward the EU-Turkey refugee deal of 2016, the EU set out a ‘visa liberalisation roadmap’ that stipulated requirements for Turkey to meet. As a precondition to the deal, the EU emphasised ‘the need [for Turkey] to enact comprehensive anti-discrimination legislation, including the prohibition of discrimination and hate speech on the grounds of ethnicity, religion, sexual orientation, gender or gender identity, and to include the prohibition of such discrimination in a new Constitution.’⁵⁰ On 6 April 2016, the Turkish parliament adopted the Law on the Human Rights and Equality Institution of Turkey, announced by the Deputy Prime Minister and government spokesman on 11 January 2016. The law replaced the Human Rights Institution of Turkey, which had been established in 2012, with the Human Rights and Equality Institution of Turkey; it represented an adopted and revised version of an anti-discrimination law, which had been pending at the Ministry of Interior since 2009. What is more, given that the enactment of the law was part of the EU trade deal, Turkey was required to abide by directives set out by the European Commission in implementing the law. However, it should be noted that as some directives are not transposed into law, the Turkish government has failed to take specific action to meet them (such as the



Simon Saidiyan (left), member of an Iranian Jewish family which has been continuing their antique business started in the city of Isfahan 200 years ago, is seen at his shop established 76 years ago in Tehran, Iran on 18 January 2023. *Fatemeh Bahrami/Anadolu Agency via Getty Images*

directive to disseminate information about legal protection against discrimination).⁵¹

Iranian lawyers must ensure that engaging the international community or foreign organizations does not detract from the authenticity or organic nature of the work they are doing, and must not succumb to any pressure to conform to international models of advocacy, that may be unsuitable in Iran.

Having said that, the support of the international community, if harnessed appropriately and effectively, may

be a very powerful tool in internal advocacy and activism, and is also nearer and more accessible in an age of media and internet connectivity. As this toolkit is being written, global uproar rages concerning the plight of women and marginalised communities in Iran, triggered by the death of Mahsa Amini, the twenty-two-year-old Kurdish woman who died in custody after being arrested by the morality police of Iran's Law Enforcement Command. It is a reminder that the suffering endured by minorities is felt across the world, and Iranian lawyers may garner this support in their advocacy.

Reformist, constructive and incremental approaches – the way forward?

Specific approaches and new ideas for advocacy will be explored in the final section of this chapter, to encourage lawyers, advocates and activists to think of unorthodox ways to agitate for an anti-discrimination law in Iran.

A reformist approach

The approach entails the use of gradual reform that is less contentious and eases the 'us versus them' mentality that is prevalent in many societies with strong majoritarian views. In this context, the reformist approach would be to couch anti-discrimination within existing or accepted policy principles, such as the Iranian Constitution, which, in Article 3, provides for '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.'

This approach has been adopted in other contexts, such as in advocacy efforts for women in Tunisia: '[W]omen may use a reformist view as a tool of empowerment to argue that Sharia is not in conflict with human rights and gender equality.'⁵²

A constructive approach

A constructive approach entails the engagement of government or other state entities in advocacy campaign, in a more collaborative, united effort. While lawyers who work on the ground may be well placed to defend their advocacy campaigns, a constructive approach to advocating for an anti-discrimination law might result in less hostility at the very outset, particularly where the suppression of, or discrimination against minorities, is state-sanctioned or perpetrated by the state. For instance, in the campaign for the Domestic Violence Act in South Africa, '[w]hile firm demands were clearly placed on the table, every attempt was made to assist the government to address legitimate constraints and to

facilitate an implementation process.'⁵³ In Iraq, efforts to draft an anti-discrimination law were led by civil society in collaboration with the Iraqi Human Rights Committee.

Therefore, should the opportunity arise (and if one can be certain that it will not in any way derail or prejudice advocacy efforts, or place advocates at enhanced risk), Iranian lawyers may choose to seek opportunities to work *with* amenable or sympathetic actors in the government. This can be a particularly useful approach when new governments are elected or new political systems are established, opening space for new collaborations.

An incremental approach

It may be strategically favourable to consider beginning advocacy efforts as an action plan, as opposed to lobbying for a new law from the very outset, if the former is less controversial and less likely to be met with debilitating backlash. This approach has been adopted in the legal reform process in Turkey, where an action plan set out 'measurable and monitorable' goals and steps to enhance human rights and liberties has been initiated.⁵⁴ However, this is purely at the discretion of those leading the advocacy process, and in any event, an action plan must not be the end goal of advocacy efforts, but a means to an end.

In conclusion, it must be reiterated that 'there is no one-size-fits-all approach to advocacy for comprehensive equality laws,'⁵⁵ and that Iranian lawyers leading advocacy efforts must only implement activities or initiatives that are organic and congruous with the country's socio-political climate. They should not import or appropriate the experiences of other countries, without critical evaluation of their efficacy or suitability in the Iranian context.

3 Drafting an anti-discrimination law for Iran

This chapter sets out ways in which an anti-discrimination law for Iran may be drafted. Suggestions will be based on laws or bills passed in the United Arab Emirates (UAE), Serbia, Sweden, India, South Africa and Croatia, which were selected on the basis of their holistic, nuanced approach to anti-discrimination, the efficacy of the relief provided, and suitability to inform an anti-discrimination law for Iran. The relevant statutes and bills are as follows:⁵⁶

- 1 **UAE** – *Federal Decree Law No. 2 of 2015, Issued on 15/7/2015, On Combating Discrimination and Hatred.*
- 2 **Serbia** – *The Law on the Prohibition of Discrimination (2009).*
- 3 **Sweden** – *Discrimination Act (2008:567).*
- 4 **India** – *Anti-Discrimination and Equality Bill No. 289 of 2016.*
- 5 **South Africa** – *Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002.*
- 6 **Croatia** – *The Anti-Discrimination Act, Class: 011-01/08-01/89 and Reg. No.: 71-05-03/1-08-2.*

The purpose of this chapter is to equip Iranian lawyers with the practical knowledge and ability to draft (or train or inform relevant personnel on drafting) a law that will ensure a broad range of protections for Iranian minorities, and that will also be favourably received and passed. It is also intended to assist in drafting an anti-discrimination law that may be used as a basis for legal action, in a climate that is not necessarily conducive to advancing minority rights.

The principles underpinning an anti-discrimination law

Those drafting an anti-discrimination law for Iran should be cognisant of the underlying principles upon which such laws are predicated. The following principles must inform and guide drafters of the envisaged law, as well as the lawyers leading the advocacy process of legal reform.

- 1 **The right to equality** – the fundamental right vested in all human beings, by virtue of their humanity, to be treated equally in dignity and opportunity, and to enjoy equal protection before the law.
- 2 **Equal treatment** – the right to be treated equally, and not be discriminated against on the basis of race, gender, religion and so on. It must be noted that equal treatment does not equate to identical treatment: at times, individuals who are inherently disadvantaged must be treated differently to ensure that they are placed on the same footing to enjoy equality.
- 3 **The right to non-discrimination** – this is an integral part of the principle of equality and requires that individuals not be treated prejudicially based on factors that are outside their control.

Points to note when drafting an anti-discrimination law

This section sets out provisions that an anti-discrimination law must necessarily include, to ensure holistic and meaningful protection to minorities. As

mentioned in the introduction to this toolkit, an effort has been made to couch such provisions as a general anti-discrimination law, as opposed to a specific ‘minority’ law, and in doing so, references will be made to anti-discrimination laws and bills from the UAE, Sweden, South Africa, India, Serbia and Croatia. Drafters of an anti-discrimination law must be conscious of the following:

- a) Definitions of terms (especially in respect of what constitutes discrimination) must be clear and unambiguous.
- b) The law should provide for the possibility of others litigating on behalf of minorities, given that victims of discrimination may not be able to bring a claim themselves. This is a question of ‘standing’ that will be discussed more fully later in this chapter.
- c) Given that the law envisaged for Iran is a general anti-discrimination law, it may be useful to set out various illustrations of anti-discrimination in a schedule, or enlarge the scope of definitions of discrimination, to ensure that all types of discrimination faced by minorities in Iran fall within its purview.
- d) In the event a criminal law (and not a civil law) is envisaged for Iran, the penalties must be set at adequate levels and must correspond to those of other criminal offenses in Iran, in order to ensure deterrence.⁵⁷ Furthermore, the principles of necessity and proportionality vis-à-vis the proscribed actions must be adhered to, to maintain the legitimacy of the anti-discrimination law.
- e) The focus of the anti-discrimination law must not be solely on penalties for perpetrators but must serve the principles of compensatory justice (including the award of monetary compensation, where appropriate) in an attempt to place victims of discrimination as close to a position they may have been in, had the discrimination in question not taken place. The law must also be forward-looking and cast positive obligations on the state and relevant state actors, to ensure that steps to address the root causes of discrimination are taken. The concept of positive obligations on the state will be discussed more fully in this chapter.
- f) The law must also set out checks and balances and monitoring mechanisms within the law itself. This may be in the form of commissions or monitoring authorities.
- g) The law must address questions on the jurisdiction of courts and clearly enunciate the legal processes/proceedings through which an anti-discrimination case may be litigated.
- h) The law must envisage and plan for practical issues, such as what may be done in the event the provisions of the anti-discrimination law are in conflict with existing legislation, such as the Penal Code.
- i) The law may either be criminal or civil. A civil law for anti-discrimination may be preferable to the former, given that if an anti-discrimination law is criminal, ‘the definition of discrimination will remain narrow, the victim will have no enforcement powers, and even if the victim wins, the victim would probably not get any damages,’ and as such, ‘the civil character is quite important.’⁵⁸

Bearing the above in mind, the following section of this chapter will suggest the potential scope of an anti-discrimination law for Iran, drawing examples from the laws and bills set out in the introduction to this chapter.

Key provisions in an anti-discrimination law

1 The subject matter of the law

A chapter or provision of the envisaged law must set out what constitutes discrimination, and the scope of actions and/or failures that are reviewable by a court.

Drafters should elaborate on the types of discrimination covered by the law and may include harassment and hate speech within the definition of discrimination, as has been done in other anti-discrimination laws.⁵⁹

The subject matter of the Act may also be summarised by way of one provision, as in Article 1 of The Anti-Discrimination Act of Croatia, which is laid out below:

Subject matter of the Act

- (1) This Act provides for the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia, creates prerequisites for the realisation of equal opportunities and regulates protection against discrimination on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation.
- (2) Placing of any person, or a person related to that person by kinship or other relationship, in a less favourable position on the grounds referred to in paragraph 1 of this Article shall be, within the meaning of this Act, deemed to be discrimination.
- (3) Placing of a person in a less favourable position based on a misconception of the existence of the grounds referred to in paragraph 1 of this Article shall also be, within the meaning of this Act, deemed to be discrimination.

Article 1 of The Law on the Prohibition of Discrimination (Serbia) also states:

This Law shall regulate the general prohibition of discrimination, the forms and cases of discrimination, as well as the methods of protection against discrimination.

This Law shall establish the Commissioner for the Protection of Equality (hereinafter referred to as: the Commissioner), as an independent state organ, independent when it comes to performing the tasks prescribed by this Law.

2 Definitions

The definitions of pertinent terms are important in ensuring that the law is applied and interpreted in a manner that achieves its purpose. For a comprehensive list, please see Article 1 of the Federal Decree Law No. 2 of 2015, On Combating Discrimination and Hatred

(UAE) and Chapter 1, section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002. Of course, the terms in these laws are not exhaustive, and in the event the Iranian anti-discrimination law uses different terminology, such terms must be included in the list of definitions.

It must be noted that a broad meaning should be given to the term ‘discrimination’, so as not to place certain violations out of reach of the law. At the same time, there must be a clear focus on addressing only impermissible or unjust discrimination, to ensure that the normal appointments and elections on the basis of merit/qualifications/experience that take place within a given society, are not unduly disrupted. Discrimination may encompass direct and indirect discrimination, as well as discrimination by omission and other means, such as expressive wrongs (e.g., harassment or hate speech) and segregation. An example of a discrimination definition can be found in section 1 of South Africa’s Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002, which reads as follows:

‘Discrimination’ means any act or omission, including a policy, law, rule, practice, condition of situation which directly or indirectly –

- (a) Imposes burdens, obligations or disadvantage on; or
- (b) Withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds.

The Iranian law may also set out what will not constitute discrimination, in the form of exceptions to the prohibition of discrimination. An example may be found in Article 9 of The Anti-Discrimination Act of Croatia, which sets out ten exceptions to the rule that ‘discrimination is prohibited in all its manifestations.’ This is particularly important because often (as discussed in this chapter) disadvantaged groups should be given preferential treatment to ensure that they have equal opportunities in society.

3 The objectives of the law

The objectives set out the purpose of the law or what it is meant to accomplish. For example Section 1 of the Discrimination Act (2008:567) of Sweden:

The purpose of this Act is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

Article 1(1) of The Anti-Discrimination Act of Croatia provides as follows:

This Act provides for the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia, creates prerequisites for the realisation of equal opportunities and regulates protection against discrimination on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation.

Objectives can either be drafted in a more general sense (as in the above examples) or in a more detailed manner. For a more detailed set of objectives, please see Chapter 1, section 1 of South Africa's Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002.

4 Applicability of the act

The law must set out who it applies to, clearly and unambiguously. Section 1(2) of the Anti-Discrimination and Equality Bill No. 289 of 2016 of India states that the Act 'extends to the whole of India', as well as 'protected groups' and 'disadvantaged groups' that may seek redress by recourse to the law (under sections 4 and 5 of the Bill).

The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002, section 5(1) emphasises the fact that the law 'binds the state and all other persons.' This is of particular importance insofar as the state is often a perpetrator of serious fundamental rights abuses, and the actions or failures of the state or its officials must be subject to the review and scrutiny of the courts.

As such, drafters of Iran's anti-discrimination law must extend the applicability of the law to the state, corporations and persons (including citizens and other individuals in Iran), so as not to limit its scope and effect.

5 Specifying violations pertaining to discrimination

An anti-discrimination law may also set out specific violations within the purview of discrimination, and this is particularly important since discrimination can be perpetrated in many different ways.⁶⁰ For instance, the Federal Decree Law No. 2 of 2015 of the UAE prohibits the following acts, among others:

- a. Encouraging discrimination in Article 13
- b. Setting up organizations or associations to perpetuate discrimination in Article 13
- c. Providing funds or material support to aid discrimination in Article 16
- d. Possessing material intended to be used to further discrimination in Article 12
- e. Misusing religion to label others as infidels in Article 10.

Drafters may also consider the inclusion of a provision pertaining to discriminatory violence, given the serious issues faced by minorities in this regard. Article 11(1) of the Anti-Discrimination and Equality Bill No. 289 of 2016 may be useful to note:

Any abetment, support, encouragement, facilitation or use of violence or coercion that is targeted against members of a protected group shall be deemed to be a discriminatory violence for the purpose of this Act.

For more examples of specific acts, omissions or violations pertaining to discrimination that may be included in the Iranian law, please see Articles 8 – 27 of The Law on the Prohibition of Discrimination of Serbia and Articles 4 – 15 of the Discrimination Act (2008:567) of Sweden.

6 Penalties

As noted above, penalties must serve as both a deterrent and signalling message of the state's intolerance of discriminatory practices. These penalties may either be in the form of fines and/or imprisonment, at the discretion of drafters and stakeholders. The envisaged law must also be compatible with the body of laws prevalent in Iran and must reflect the doctrines of necessity and proportionality.

Thus, penalties must be crafted as per the severity of the offence and the perpetrator. For instance, Articles 9 and 10 of the Federal Decree Law No. 2 of 2015 (UAE) stipulates greater penalties, if certain offences in question were committed by a public officer or in a place of religious worship. This is important in changing the behaviour of the state apparatus, but also in setting an acceptable standard for the rest of society.

It may also be necessary to include certain caveats in regard to how the penalties of an anti-discrimination law will apply, in light of penalties stipulated in other statutes. For instance, Article 2 of UAE's Federal Decree Law No. 2 of 2015 states:

Without prejudice to any other greater penalty specified by any other Law, the penalties referred to in this Decree Law shall be applied to the crimes mentioned therein.

7 Remedies

It is important to consider a range of remedies that can be made available to those who seek redress under the envisaged law. It is also important to distinguish who may provide these remedies to individuals discriminated against. For instance, Chapter IV of the 2016 Anti-Discrimination and Equality Bill No. 289 of India provides for remedies by both the State Equality Commission and a Magistrate. If drafters of the Iranian law wish to follow a similar approach, the different procedures must be clearly set out in the law, and the various remedies available subsequent to pursuing the different avenues must be explored as well. The remedies may include orders, declarations, injunctions, reliefs or awards to remedy, or protection orders from the Magistrates' Court (as in the aforementioned Indian Bill).

Compensation may be another form of redress provided for in the law, as demonstrated by Article 11 of The Anti-Discrimination Act of Croatia, which provides as follows:

Pursuant to provisions of this Act, a victim of discrimination shall be entitled to damage compensation pursuant to regulations from the area of obligatory relations.

In the event compensation is provided for in the envisaged law, the calculation or computation of such compensation, too, must be clearly stipulated. There are several ways of doing so. For instance, Article 33 (3) and (4) of the 2016 Anti-Discrimination and Equality Bill No. 289 of India sets the computation of damages against the salaries of a Member of Parliament or the President of India.

Drafters may also pursue certain forms of relief that send a strong message to the wider society, as provided in Article 24(2)(3) of The Anti-Discrimination Act of Croatia, which states:

In the legal action referred to in paragraph 1, the following claims may be brought before the court:
3. to publish in the media the ruling establishing violation of the right to equal treatment, at the defendant's cost.

It is apt to mention Section 1, Chapter 5 of Sweden's Discrimination Act (2008:567), which stipulates that

'[w]hen compensation is decided, particular attention shall be given to the purpose of discouraging such infringements of the Act.'

8 Burden of proof

Most of the statutes analysed in this chapter contain provisions pertaining to the burden of proof, with all provisions stating that the burden of proof (to demonstrate that the alleged discrimination has not taken place) is on the defendant to the action. This is particularly important in shifting the evidentiary burden from the more vulnerable and disadvantaged party asserting her or his rights, and will also have an impact on tackling discrimination in the long run.

Examples in the laws being discussed are as follows:

- Section 13 of South Africa's Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002,
- Article 45 of The Law on the Prohibition of Discrimination of Serbia, and
- Section 3, Chapter 6 of Sweden's Discrimination Act (2008:567).

This shifting of the burden of proof onto the defendant is critical to the vindication of rights and even the success of claims, and also reinforces the victim's right to effective access to justice.

Shifting the burden of proof is] a recognition of the fact that in discrimination cases, the evidence that might be required, is frequently in the mind and possession of the discriminating party. So you cannot follow the normal rules of evidence and proof. The burden of proof is both about addressing the inherent imbalance pertaining to the inequality of resources, and also addressing fundamental challenge in proving discrimination. These are technical points but they are absolutely fundamental and without doing these things correctly the laws don't work.⁶¹

Jim Fitzgerald, Director of the Equal Rights Trust

9 The institutional and legal framework

The institutional and legal framework within which the envisaged anti-discrimination law will operate, is pertinent in operationalising the remedies and relief provided for in the law.

Many anti-discrimination laws establish a distinct entity responsible for addressing discrimination and ensuring compliance with the law, among other things.

For instance, Chapter 4 of The Anti-Discrimination Act of Croatia establishes a ‘central body responsible for the suppression of discrimination’, led by an ombudsman; Chapter 3 of the 2016 Anti-Discrimination and Equality Bill No. 289 of India makes provision for a ‘Central Equality Commission’. Furthermore, Chapter 4 of Serbia’s Law on the Prohibition of Discrimination provides for ‘The Commissioner for the Protection of Equality’, and Chapter 4 of Sweden’s Discrimination Act (2008:567) provides for an ‘Equality Ombudsman.’

Such appointments may prove useful in ensuring that the objectives of the law are realised, particularly in contexts where there is little political will or governmental support to advance minority rights. It is pertinent that entities or individuals of this nature are given wide powers to take necessary measures to address discrimination holistically.

Furthermore, drafters of an anti-discrimination law for Iran must clearly set out the manner in which a case pertaining to discrimination may be brought before national courts. For instance, Article 17 of the Anti-Discrimination Act of Croatia provides for ‘[s]pecial legal actions for the protection against discrimination,’ which are in turn regulated by the Civil Procedure Act.

The question of effective access to justice becomes relevant here. Given that litigants will most likely be minorities in an already disadvantaged position, it may be beneficial for drafters to consider simple, low-cost procedures for litigation, so that the process of litigation does not impose fatigue and undue hardship on those seeking legal redress. It may also prove critical that advocates mobilise lawyers for legal aid and pro bono cases, to ensure that there are positive outcomes in court from the very outset, to promote a sense of confidence in the new law and encourage other victims to litigate.

The question of jurisdiction also assumes relevance here and involves questions as to which courts in Iran may hear discrimination cases,⁶² the rules and proceedings governing litigation,⁶³ the powers and functions of such courts,⁶⁴ and appeal procedures.⁶⁵

10 Standing

The question of standing refers to who may bring a claim to court or has the right to do so. Petitioners seeking a legal remedy must be able to demonstrate that they have a material interest in the matter, or that they have suffered prejudice or harm as a result of what they seek to challenge in court. It is also important to allow standing for civil society organizations and other activists or entities so that they may litigate on behalf of persons or groups discriminated against, as the latter are in inherently weakened positions.

Many anti-discrimination laws adopt an extended approach to standing. For instance, Article 24 of the Anti-Discrimination Act of Croatia allows for joint legal action by ‘associations, bodies, institutions or other organizations set up in line with the law and having a justified interest in protecting collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment,’ and for participation by third parties in litigation, in Article 21 of the said Act, which states that ‘[i]n a litigation... a plaintiff may be joined by an intervenor, being a body, organization, institution, association or another person that, within its scope of activities, deals with the protection of the right to equal treatment in relation to groups whose rights are decided upon in the proceedings.’

Similarly, Article 20 of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002 provides for a range of individuals and bodies that may litigate on behalf of any person, extending standing to associations and individuals acting in the public interest. Other similar provisions may be found in Article 46 of the Law on the Prohibition of Discrimination and Chapter 6, Section 2, of the Discrimination Act (2008: 567).

11 A positive obligation on the state

It is pertinent that drafters of the envisaged law consider the inclusion of provisions that impose an obligation on the state. Doing so would place:

.....
...a strong and serious positive obligation of the duty-bearer (the State) to take steps to realising equality in a proactive way and with societal reform in mind. This approach does not diminish the role of legal enforcement of the right to non-discrimination by individual or group claimants but enables more comprehensive measures of improving the position of disadvantaged groups in society.⁶⁶
.....

Positive obligations on governments/states have been enshrined in anti-discrimination laws the world over. For instance, Articles 24 and 25 of South Africa’s Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002 stipulates that the state has a ‘duty and responsibility’ to promote equality, while Chapter 5 of the Act provides for the promotion of equality in general. Furthermore, Section 16 of Sweden’s Discrimination Act (2008: 567) specifies that the state has an ‘[o]bligation to investigate and take measures against harassment.’

The concept of positive obligations on the part of the state is common and well-accepted, particularly where

human rights violations and abuses are rife or state-sanctioned. Casting legal duties on a state to take measures against discrimination will not only deter the state from committing such harms itself but will also underscore the importance of upholding and furthering anti-discrimination. Often, positive measures are also required to reverse the impacts of decades of direct or indirect discrimination that have resulted in the marginalisation and/or disadvantage of a particular group or community (e.g., poorer educational outcomes, higher poverty rates, poorer maternal health, etc.).

12 Other provisions

Interpretation – drafters of the envisaged law must be conscious of the manner in which such law must be interpreted, vis-à-vis the rules pertaining to the interpretation of statutes, as practiced in Iran. Section 3 of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002 provides for a holistic interpretation of the South African law that is also in line with practical considerations.

Entry into force – The anti-discrimination law must provide for the date and manner in which the law will come into operation, as per the stipulations in Iran. For instance, Article 31 of the Anti-Discrimination Act of Croatia states, ‘[t]his Act shall be published in the Official Gazette and it shall enter into force on 1 January 2009.’

Section 35 of South Africa’s Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002 provides that:

-
- (1) This Act...comes into operations on a date fixed by the President by proclamation in the Gazette.
 - (2) Different dates may be so fixed in respect of different provisions of this Act.
-

Illustrative lists – discrimination may be perpetuated in a multitude of ways and in varied settings. As such, drafters may use an illustrative list or a complementary commentary to articulate the ways or instances in which minorities in Iran face discrimination, in order to ensure that the scope of the envisaged law for Iran is wide and captures all aspects of discrimination. The Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002 is a good example and sets out unfair practices in various settings. Alternatively, instances or issues pertaining to discrimination may be set

out in the main body of the statute, as in the cases of Sweden’s Discrimination Act (2008:567) and Serbia’s Law on the Prohibition of Discrimination.

It should be noted that these provisions do not constitute an exhaustive list, and in any event, drafters of the Iranian anti-discrimination law need not follow other country’s laws prescriptively. Instead, they must endeavour to draft a law that is organic and sensitive to both the socio-political climate of Iran and, more importantly, the needs of its minorities. As suggested by an advisor to Iraqi legislators, ‘[t]here are no set rules to drafting an anti-discrimination law: you just have to see what the market will bear. It seems to me that one should offer a maximum selection of options for an MP, and then sit down with the MP and suggest the pros and cons of various approaches and see what their sensitivities are.’⁶⁷

Furthermore, the provisions in the envisaged law for Iran must be coherent, so that they can be read together in a way that gives meaning to the entire statutory scheme. It must be noted that a ‘patchwork of non-discrimination provisions...together, fail to provide comprehensive protection both between and within groups.’⁶⁸

Sharing the draft law with multiple groups, including academics and lawyers, as a means of receiving useful feedback, will prove useful in testing the efficacy and quality of the proposed text. The experiences of other countries have demonstrated the benefits of reaching out to influential and well-versed civil servants, to anticipate potential difficulties and seek advice in mitigating them. Furthermore, this process of conversation, feedback and public participation can also act as a catalyst and a tool to educate, mobilise and empower groups. Such activities can also assist in creating a helpful ambience in which the passage of the law is considered a shared societal contribution rather than the result of an interested pressure group, as was the case in India, where the draft Bill on anti-discrimination ‘generated a civil society conversation and many newspaper op-eds’ and is also taught ‘by academics in their classrooms.’⁶⁹

Experts interviewed for this report have suggested that the existence of a draft law is crucial to the exercise of advocacy itself, on the basis that it ‘allows peoples to talk about it realistically, rather than conceptually.’⁷⁰ This approach also allows for building consensus. According to an expert on human rights and governance, ‘[i]t’s not just about the action on anti-discrimination, which we accept as a truth unto ourselves, but also consensus on what we are actually proposing. That consensus would be very valuable before one were to do any advocacy: I would say that’s a prerequisite.’⁷¹

4 Barriers and avenues

This chapter explores potential barriers Iranian lawyers may face in advocacy and law-making, as well as possible solutions and ways to navigate them.

.....
Ultimately what you need is the “x-factor,” which is the political space, will and opportunity. These things are out of the control of civil society, but there are things they can do to foster a politically conducive climate. You have regular political windows and you have cataclysmically revolutionary events. Being prepared with what you are asking for, why is it necessary, who is supporting you, and how it will be achieved, means that when that opportunity arrives, you can exploit it.⁷²

.....
Jim Fitzgerald, Director of Equal Rights Trust
.....

Barriers to advocacy and avenues for circumvention

1 Internal issues among minorities or within communities

As discussed previously in this toolkit, minority groups and coalitions may have internal disagreements on the inherent nature of the law or how advocacy campaigns will be run. This issue is likely in the Iranian context, given the compelling and critical needs of all minorities. Therefore, it is important that lawyers leading this process break down silos that cause divisions between groups, and ensure that the comprehensive, inclusive character of the envisaged law is preserved.

Furthermore, a clear strategy and a detailed plan devised at the inception of the advocacy campaign is necessary to ensure that all stakeholders are in agreement with regard to the purpose of the campaign and the content of the envisaged law.

2 Barriers within the legislative process

Previous endeavours to realise law reform in Iran indicate that the proposed anti-discrimination law is likely to face barriers within the legislative process. For instance, while the Child Spouse Bill was approved in 2018, it was subject to the mandatory review of the Judicial Parliamentary

Committee, which sent the Bill back to the Rouhani administration for amendments. The Bill amending Articles 976-5 of the Civil Code was also sent back to Parliament by the Guardian Council. The Bill on the Protection of Women against Violence was sent to the Qom Seminary for religious advice, subsequent to which Parliament eliminated close to half of the Articles in the Bill.

It is important to understand that while these barriers are difficult to surmount, they must be met by sustained commitment and tenacity. An Iranian legal expert suggests the only solution in such instances is for lawyers and advocates to continue lobbying, particularly when the envisaged law is debated in the Parliament.⁷³

Another strategic way to lobby for the envisaged law is to cite the state’s international commitments, to pressure it into action. These commitments may be in relation to the SDGs of the United Nations or to international treaties that compel states to take administrative, judicial and legislative measures to protect the rights enshrined therein and to provide effective remedies. These include the ICCPR, CESCRC, CERD, CRC and CRPD,⁷⁴ all of which Iran is a party to.



An Iranian-Christian woman looks on as she prays during a New Year mass prayer ceremony in the Saint Gregory Church in Tehran. 1 January 2021.
Morteza Nikoubazi/NurPhoto/Alamy

3 Pushback against a general law

The benefits of a general anti-discrimination law have been addressed in this toolkit, but it is important to consider the fact that certain minorities may (understandably) resist a general law due to concerns that their protections and specific concerns may be lost in a more generalised approach. A specialist in legal theory, constitutional studies and discrimination law suggested three ways in which this pushback might be surmounted.⁷⁵

- a) **The moral argument:** Multiple aspects of an individual's identity may change as circumstances do (e.g., with aging or with migration), and people may become vulnerable to discrimination in different ways. For example, individuals may develop disabilities in old age and might face challenges in ableist societies. In other words, 'we are all minorities in some way, if not now, then perhaps in the future. Nobody is a perfect majority.'⁷⁶ A general law on anti-discrimination assures wider protection for all groups, protecting against all forms of discrimination at all junctures of an individual's life.
- b) **Coalition-building:** Building a coalition is in the best interest of a minority, as larger, stronger groups have a greater chance of going further in the advocacy and legal process.
- c) **General anti-discrimination laws:** General anti-discrimination laws are the global norm, as demonstrated by the statutes and Bills discussed in Chapter 3 of this toolkit. They often form the ballast from which other more specific protections pertaining to specified classes of individuals can emerge, to strengthen the human rights framework.

4 Negative perceptions

There is the possibility that advocacy for an anti-discrimination law may be perceived as western propaganda or an affront to local culture or religion. One of the most effective ways to allay these concerns is to use Islam's guarantees of equality, and the reiteration of Islam as a religion that has placed equality at its centre. Lawyers may, therefore, pivot their advocacy on the constitutional

protections offered to all citizens, such as Article 3 of the Constitution. Using the language of the Qur'an and theology may also serve as a legitimate basis for furthering claims of equality and is a method which has been used by reformists in Iran.

A civil society and policy expert suggests that when presenting controversial matters such as anti-discrimination laws, '[i]t is so important to reframe issues and present them in a more palatable way, without taking away the essence of what that means.'⁷⁷ This also has resonance with the suggestions made in chapter two, regarding the communications emanating from advocacy campaigns.

5 Resistance and reprisal

It is inevitable that advocacy campaigns of this nature will be met with resistance by the state and other groups that have a vested interest in the status quo. In such instances, it is important for lawyers leading these efforts to make strategic calls as to when they must 'lay low.' Lawyers must prepare for various eventualities and secure the support of entities such as the Iran Central Bar Association, pro bono legal services and lawyers, who may be ready to assist when the need arises. It is also advisable to secure the support of international organizations such as the International Bar Association, Lawyers for Lawyers, Frontline Defenders and other NGOs providing support to human rights defenders.⁷⁸

Taking the path of least resistance in restrictive spaces is advisable, according to William Spencer, who stated the following in respect of his experiences working in Iraq:

.....
A lot of activists in Iraq are part of social welfare agencies – they are social workers first, and advocates second. So, while they provide healthcare and food and assistance to communities, they also pursue a political agenda. For example, one NGO has a huge domestic violence effort underway, and that's because they provide counselling for women who are victims of domestic violence, and how do they do it? Through their health clinics. Usually, a woman comes in and says her husband [assaults her], and the social worker documents it. They pursue a political agenda while keeping a low profile.⁷⁹
.....

5 Summary and conclusion

The following points are a summary of the contents of this toolkit.

- An anti-discrimination law is critical to signal formal condemnation of discrimination and discriminatory practices, and is an important starting point for social and political change. It will also give both lawyers and victims a platform upon which the rights of minorities can be vindicated.
- The exercise of advocating for an anti-discrimination law has inherent value in itself, quite apart from being a means to an end. Advocacy is a useful tool to spark conversations, normalise controversial matters and may be a catalyst for wider societal changes or movements.
- When embarking on an advocacy campaign, Iranian lawyers should:
 - gather documentation and compelling evidence of discrimination to demonstrate the severity of the problem.
 - plan campaigns meticulously, focusing on coherent strategies, external communications, representation, inclusivity and sustainability, and managing internal issues.
 - build strong, organized coalitions so that advocacy efforts can withstand government pressure and societal backlash.
 - work towards securing political commitments even if it is an arduous process.
 - inform, educate and equip minorities, and ensure that they are an intrinsic part of the advocacy and drafting process.
 - engage the international community and international organizations.
 - consider the adoption of reformist, constructive and incremental approaches.
- A general law on anti-discrimination, as opposed to a minority-specific statute, is preferable in the Iranian context, both in terms of utility and viability.
- Those drafting an anti-discrimination law for Iran must ensure that it:
 - creates effective access to justice (questions of standing, scope and burden of proof).
 - is easy to navigate and implement (questions of the style of drafting, the way the provisions are set out, and proceedings in court).
 - is a check and balance against the actions of the government (questions of monitoring mechanisms and implementation).
 - creates a deterrent effect (questions of penalties and the civil vs. criminal character of the legislation).
 - is meaningful (questions of remedies, tangible impact and the conferring of positive obligations on the state).
- Strategic campaigns, sustained lobbying, and the use of Islam's guarantees of equality may be employed to combat barriers within the advocacy and legislative process. These barriers must be envisaged at the very outset of a campaign and planned for in order to be met successfully.

Concluding remarks

It is important to conclude on a note of encouragement. Mention was previously made of the movement that erupted in Iran sparked by the death of Jina (Mahsa) Amini where thousands of Iranian citizens took to the streets to protest Amini's death, and by extension, the violation of their own human rights. It is clear that a window of opportunity has opened in Iran, despite the unyielding political terrain and uncondusive environment, and that a space to protest, advocate and rethink the country's trajectory has been willed into existence through the sheer determination of the people, unimaginable even a few months ago.

Iranian lawyers must seize opportunities such as this, and prepare for moments in which they can platform advocacy activities and a draft law. The advocacy and drafting exercises set out in this toolkit are useful tools to combat and erode entrenched norms that perpetuate discrimination, and are therefore an end in themselves.

In any event, an anti-discrimination law is widely perceived as the need of the hour for Iranian minorities, and those who embark on the journey to draft and advocate for the passing of such a law, must do so, bearing in mind that opportunities for change, both small and monumental, are here.



Kurds protest in London's Trafalgar Square, over the death of Jina (Mahsa) Amini in the custody of Iran's morality police. 15 October 2022.
Thomas Krych/ZUMA Press Wire/Alamy Live News

Notes

- 1 Other treaties pertaining to anti-discrimination include the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, the Discrimination (Employment and Occupation) Convention, the Convention Against Discrimination in Education, the Equal Remuneration Convention, the Equality of Treatment (Social Security) Convention, 1962, and Protocol 12 to the European Convention on Human Rights. Other core international human rights instruments include the Universal Declaration of Human Rights (1948) and the Charter of the United Nations (1945).
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- 6 Equal Rights Trust, 'Together for Equality', 2021, Equal Rights Trust website, retrieved 29 December 2022, <https://www.equalrightstrust.org/sites/default/files/ertdocs/Together%20for%20Equality%20-%202021.pdf>.
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- 9 Aruni Jayakody, human rights consultant, online interview held on 17 September 2022.
- 10 Jim Fitzgerald, Director of Equal Rights Trust, online interview held on 13 October 2022.
- 11 Omar Fassatoui, human rights expert, online interview held on 4 November 2022.
- 12 More reading on this on Jenny Onyx et al, *Advocacy with Gloves On: The 'manners' of strategy used by some third sector organizations undertaking advocacy in NSW and Queensland*, (2010) 21(1) VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations.
- 13 For more information on these advocacy tactics, please see: Lifeline Fund, *Advocacy in Restrictive Spaces: A Toolkit for Civil Society Organizations*. Available in Farsi here: www.csolifeline.org.
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- 56 Links to these laws or bills may be found here: UAE: <https://www.moj.gov.ae/assets/2020/Federal%20Law%20No%202%20On%20Combating%20Discrimination%20and%20Hatred.pdf.aspx> Serbia: <http://azil.rs/en/wp-content/uploads/2017/04/antidiscrimination-law-serbia.pdf>

- Sweden: https://www.government.se/4a788f/contentassets/6732121a2cb54ee3b21da9c628b6bdc7/oversattning-diskrimineringslagen_eng.pdf.
- India: <http://164.100.47.4/billtexts/lbills/asintroduced/2991.pdf>
- South Africa: <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/56231/65195/E00ZAF01.htm>
- Croatia: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81608/124509/F1336968463/HRV81608%20Eng.pdf>
- 57 This will be elaborated on further in point (h) below.
- 58 Tarunabh Khaitan, Head of Research at the Bonavero Institute of Human Rights at the University of Oxford, online interview held on 23 October 2022.
- 59 See Articles 6 and 7 of the Federal Decree Law No. 2 of 2015, Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002 and Section 8 of the Anti-Discrimination and Equality Bill No. 289 of 2016.
- 60 Alternatively, the law may be specific as to what discrimination is in terms of a water-tight definition and allow for broad interpretations as to where and how discrimination may take place. These strategic decisions must be made by advocates, having considered which method may be more viable and feasible in terms of offering protection and redress.
- 61 Jim Fitzgerald, Director of Equal Rights Trust, online interview held on 13th October 2022.
- 62 See Chapter 4 of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002, where the South African law provides for 'Equality Courts.'
- 63 See Section 19 of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002, and Chapter 6 of the Discrimination Act (2008:567).
- 64 See Section 21 of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002.
- 65 See Section 23 of the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act 52 of 2002.
- 66 Equal Rights Trust, Croatian Law Center, 'HOMO' Association for Protection of Human Rights and Citizens' Freedoms, 'Implementing Anti-Discrimination Law: A Toolkit for Civil Society,' June 2013, Equal Rights Trust website, retrieved 29 December 2022, <https://www.equalrightstrust.org/ertdocumentbank/Toolkit%20on%20Anti-Discrimination%20Law%20ENGLISH.pdf>
- 67 William Spencer, Executive Director of the Institute for International Law and Human Rights, online interview held on 21 October 2022.
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- 71 William Spencer, Executive Director of the Institute for International Law and Human Rights, online interview held on 21 October 2022.
- 72 Jim Fitzgerald, Director of Equal Rights Trust, online interview held on 13 October 2022.
- 73 Leila Alikarami, Lawyer and human rights advocate, online interview on 21 October 2022
- 74 The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Rights of the Child, and the UN Convention on the Rights of Persons with Disabilities, respectively.
- 75 Tarunabh Khaitan, Head of Research at the Bonavero Institute of Human Rights at the University of Oxford, online interview on 23 October 2022.
- 76 *Ibid.*
- 77 Dumiso Gatsha, Civil Society and Global Policy Expert, online interview on 26 September 2022.
- 78 These international organizations were recommended by Leila Alikarami, Lawyer and human rights advocate, online interview on 21 October 2022.
- 79 William Spencer, Executive Director of the Institute for International Law and Human Rights, online interview on 21 October 2022.

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Towards an anti-discrimination law: strategies and opportunities in Iran

Faced with the unyielding political terrain in Iran, a space to protest, advocate and rethink the country's trajectory has been willed into existence by civil society. This toolkit intends to help lawyers to navigate and utilize opportunities for reform or change in this shifting social and political space.

Specifically, the toolkit offers guidance for drafting and advocating for anti-discrimination legislation in Iran with a view to slowly tackling longstanding and structural discrimination and building a peaceful and safe future for all, including the country's minorities. Identity-based discrimination in Iran has permeated all aspects of life, including access to justice, housing, education, health, employment, standards of living, the ability to participate freely in public and political life and access to services. Minorities are also disproportionately subjected to arbitrary arrest, prolonged imprisonment, hate speech and various forms of violence.

This toolkit is a comprehensive analysis of the ways in which Iranian lawyers leading advocacy efforts can commence and conduct advocacy campaigns. Drawing on existing legislation in a wide range of other countries, it also provides recommendations on the design and substance of an anti-discrimination law, offering context-specific solutions to possible barriers lawyers and activists may face in this process. The advocacy and drafting exercises set out in this toolkit are in themselves useful tools for combatting and eroding entrenched norms that perpetuate discrimination, and which are therefore an end in themselves.

Overall, the purpose of this toolkit is to provide Iranian lawyers with practical solutions and tangible tools to navigate current circumstances, which could prove to be a turning point for Iran's minorities.



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