

## Concluding Observations Human Rights Committee CCPR/C/IRN/CO/3 Para 18

### Full recommendation:

*The State party should take all necessary measures to ensure that pretrial detention is not excessively long in law and in practice, particularly through independent judicial supervision and prompt access to lawyers, in full compliance with article 9 of the Covenant. The State party should also take immediate steps to eliminate incommunicado detention, taking due care to ensure compliance in practice.*

### Assessment using Impact Iran human rights indicators<sup>1</sup>

- A. The State party should take all necessary measures to ensure that pretrial detention is not excessively long in law and in practice, particularly through independent judicial supervision and prompt access to lawyers, in full compliance with article 9 of the Covenant.**

The 2015 Code of Criminal Procedures (CCP) makes pretrial detention dependent on two preconditions: 1) where there is sufficient reason and evidence to charge someone with one of the specific crimes listed in Article 237 of the CCP; 2) where the person's liberty would pose a risk either to the accused, persons involved with the trial or the trial itself. This include cases where the person's liberty would: 1) result in the destruction of evidence; 2) result in the collusion with co-accused individuals, witnesses or others who have information about the case; 3) cause witnesses to refrain from testifying; 4) pose a risk of public disorder, a risk to their own life or to the lives of others, or 5) be likely to lead to the suspect hiding or absconding.

Under Article 217 of the 2015 CCP, a number of alternative flight risk measures are provided for provisional pretrial detention, such as recognisance with an oath by the accused person to present themselves before the judicial authorities when needed, prohibition on leaving the place of residence monitored through electronic devices, and bail. The issuance of flight risk measure orders shall take into account, among other circumstances, the type and severity of the offence in question, the risk of the accused absconding, the accused's gender, age, character, and physical and psychological condition, and the accused's previous criminal record.<sup>2</sup> The investigator is granted the responsibility to determine the type of flight risk measure that shall be issued rather than an independent court.

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<sup>1</sup> CCPR.9.3.S.4  
CCPR.9.3.P.1; CCPR.9.3.P.2  
CCPR.9.1.O.1; CCPR.9.2.O.3; CCPR.9.2.O.4; CCPR.9.3.O.1; CPPR.9.4.P.1

<sup>2</sup> Code of Criminal Procedure, 2015, Article 250.

Concerning the limitation of time for pretrial detentions under Iranian law, Article 242 of the CCP provides that in cases of crimes punishable by the death penalty, life imprisonment, amputation, payment of *diya* [blood money], and *ta'zir* crimes of degree four or higher<sup>3</sup> require that investigations result in an indictment within two months or the investigator must revoke the detention order against the accused or replace it with a lighter measure. In cases of other crimes, the envisioned period is one month. If there are sufficient grounds to do so, the investigator can decide to issue or extend the detention order, or order other flight risk measures, such as bail. The accused can appeal against the order<sup>4</sup> to a competent court.<sup>5</sup> Extension of pretrial detention has to be renewed every month or every two months depending on the nature of the charges.<sup>6</sup> The accused individual can also challenge the continuation of their detention order once a month.<sup>7</sup> Under Article 242 of the CCP, “the detention period of the accused must not exceed the minimum penalty applicable to the crime. In any case, the detention period must not exceed two years in cases of crimes punishable by death and one year in cases of other offences.”

While the existence of measures to limit and challenge the extension of temporary detention is positive, the legally permissible length of one or two years is disproportionately long. Long pretrial detention may violate the right to presumption of innocence, as well as the right to trial within reasonable time or release, as guaranteed under Article 9(3) of the ICCPR.

The CCP has strengthened the application of alternative measures to pretrial detention, however it does not provide a specific legal framework for child defendants. There is no readily available information that might indicate that the Government of the Islamic Republic of Iran has applied alternative measures to pretrial detention for cases of children in conflict with the law as much as possible. Additionally, Iranian law does not limit the duration of pre-trial detention for defendants under 18 years old, which can last up to two years. Consequently, the Iranian legal framework does not guarantee that pretrial detention is applied for the shortest time possible under Iranian law.

Despite the existence of several mechanisms that ostensibly accept complaints regarding violations of citizens' rights, such as the Parliament's Article 90 Commission (established under Article 90 of the Constitution, offering a mechanism to citizens to file complaint against any of the three branches of power) and the Oversight Bodies for the exercise of Citizenship Rights in

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<sup>3</sup> Crimes for which the sentence shall be at least 5 years imprisonment and/or a fine of one hundred and eighty million rials. Islamic Penal Code, 2013, English Translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>4</sup> The appeal deadline is 10 days from the time of notification for those residing in Iran at the time of the investigator's decision and one month for those residing outside the country

<sup>5</sup> Code of Criminal Procedure, 2015, Article 270

<sup>6</sup> Code of Criminal Procedure, 2015, Article 242

<sup>7</sup> Code of Criminal Procedure, 2015, Article 241

the country's provincial courts, there is no evidence to suggest that complaints to these bodies are independently reviewed and investigated.<sup>8</sup>

Reports of disproportionately long pretrial detentions in the Islamic Republic of Iran suggest that, in practice, pretrial detention is not a measure of last resort and is not applied for the shortest time possible.<sup>9 10 11 12 13</sup>

Reports show that long pretrial detention regularly involves a lack of access to legal assistance in the Islamic Republic of Iran. Defendants in national security cases are often denied access to a lawyer in the investigative stage of the judicial process. In the hundreds of cases of individuals arrested for political reasons or suspected for ordinary crimes that the Abdorrahman Boroumand Center has investigated, all detainees were interrogated without the presence of an attorney.<sup>14</sup> Reports have shown a pattern of reported cases where prisoners remain incarcerated without proper access to legal representation during all stages of their trial process.<sup>15 16 17 18</sup> In many reported cases, especially national security cases, defendants have reported seeing their lawyer for the first time on their day of trial.<sup>19 20</sup>

The Islamic Republic of Iran has not taken all necessary measures to ensure that pretrial detention is not excessively long in law and in practice, particularly through independent judicial supervision and prompt access to lawyers, in full compliance with article 9 of the Covenant.

## **B. The State party should also take immediate steps to eliminate incommunicado detention, taking due care to ensure compliance in practice.**

<sup>8</sup> Joint submission to the Human Rights Committee, Abdorrahman Center, Iran Human Rights Documentation Center (IHRDC), Impact Iran and Human Rights Activists in Iran, 2020, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICS%2fIRN%2f42313&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICS%2fIRN%2f42313&Lang=en)

<sup>9</sup> Human Rights Watch, <https://www.hrw.org/news/2015/03/13/iran-submission-committee-rights-child>

<sup>10</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, July 2020, <https://undocs.org/A/75/213>

<sup>11</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, September 2019, <https://undocs.org/en/A/HRC/37/24>

<sup>12</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/en/A/HRC/40/67>

<sup>13</sup> Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

<sup>14</sup> Abdorrahman Boroumand Center, joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_IC\\_S\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IC_S_IRN_42313_E.pdf)

<sup>15</sup> HRANA <https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>

<sup>16</sup> HRANA <https://www.en-hrana.org/arash-sadegh-golrokh-iraicis-lawyers-access-cases>

<sup>17</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, [https://www.ohchr.org/Documents/Countries/IR/Report\\_of\\_the\\_Special\\_Rapporteur\\_on\\_the\\_situation\\_of\\_human\\_rights\\_in\\_the\\_Islamic\\_Republic\\_of\\_IranA4361.pdf](https://www.ohchr.org/Documents/Countries/IR/Report_of_the_Special_Rapporteur_on_the_situation_of_human_rights_in_the_Islamic_Republic_of_IranA4361.pdf)

<sup>18</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, July 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/27/PDF/N2019027.pdf?OpenElement>

<sup>19</sup> Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_IC\\_S\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IC_S_IRN_42313_E.pdf)

<sup>20</sup> Human Rights Watch <https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>

The current prisons operational regulations,<sup>21</sup> passed in 1986, put the management of all prisons and detention centers and affiliated bodies under the responsibility of the Prisons Organisation.<sup>22</sup> Such provision is reiterated under Article 18 of the Prison Regulations passed in 2001.<sup>23</sup> However, the existence of secret detention centers or facilities run outside the supervision of the Prisons Organisation is not explicitly prohibited. Secret detention centers run by security and intelligence bodies, notably the Ministry of Intelligence and the intelligence unit of the Revolutionary Guards, are reportedly regularly used in the Islamic Republic of Iran.<sup>24</sup> Additionally, security and intelligence bodies can, with the approval<sup>25</sup> and under the supervision of the Prisons Organization,<sup>26</sup> set up “security detention facilities”.

Prosecution authorities are obliged to inspect security detention facilities regularly and submit a report to the judiciary.<sup>27</sup> Under the Law on Respect for Legitimate Freedoms and Protection of Citizens’ Rights, the head of the judiciary is obliged to set up a committee to ensure that prisons’ and detention centers’ regulations are respected and that those responsible for committing abuses are held accountable.<sup>28</sup> Reportedly, these legal safeguards are not applied in practice, enabling intelligence and security bodies to operate outside the Iranian legal framework and without accountability.<sup>29</sup> Unofficial secret detention centers are not regulated under Iranian law and are not registered under the Prisons Organisation, which prevents the detainees from knowing the exact location of where they are being held. This is in contradiction to the Law on Respect for Legitimate Freedoms and Protection of Citizen’s Rights which states that law enforcement officials and interrogators must refrain from transferring detainees to unidentified locations.<sup>30</sup> There is no readily available information that might indicate that the committee established by the head of the judiciary is effectively ensuring that cases of enforced disappearances are properly investigated and adjudicated and that those responsible are held accountable.<sup>31</sup>

Unofficial and secret detention centres facilitate the perpetration of enforced disappearances. The lack of proper oversight of secret and unofficial detention facilities in the Islamic Republic of Iran hinders, if not prevents, accountability for perpetrators. Without proper legal safeguards

<sup>21</sup> Full title: The Law Replacing the Supervisory Council on Prisons and Security and Corrective Measures with the State Prisons Organization and Security and Corrective Measures, 1986.

<sup>22</sup> Prison Regulations, Article 18. In 1986, the Prisons Organization replaced the Supervisory Council on Prisons and Security and Corrective Measures. The 2001 Prison Regulations were subjected to amendments in 2002 and 2010.

<sup>23</sup> The 2001 Prison Regulations were subjected to amendments in 2002 and 2010

<sup>24</sup> See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

<sup>25</sup> Prohibition of Forming Special Detention Facilities and Allocation of One Detention Facility for Security Crimes in Each Province; Executive Regulations for Management of Security Detention Facilities, 21 November 2006, Note to Article 3.

<sup>26</sup> Executive Regulations for Management of Security Detention Facilities, 21 November 2006, Articles 2 and 4-6,

<sup>27</sup> Executive Regulations for Management of Security Detention Facilities, 21 November 2006, Article 2, See also the Law on Respect for Legitimate Freedoms and Protection of Citizens’ Rights, 5 May 2004, Article 1(13).

<sup>28</sup> The Law on Respect for Legitimate Freedoms and Protection of Citizens’ Rights, 5 May 2004, Article 1(15).

<sup>29</sup> See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

<sup>30</sup> The Law on Respect for Legitimate Freedoms and Protection of Citizens’ Rights, 5 May 2004, Article 1(7).

<sup>31</sup> See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

enforced in practice, complaints of disappearances cannot be properly investigated, and culprits cannot be punished accordingly.

Additionally, a number of restrictive provisions under Iranian law prevent relatives of detainees from being informed of the detainees' arrests when deemed "necessary".<sup>32</sup> Further, relatives cannot inquire about the detainees' whereabouts if it "infringe[s] on the social and familial status of the detainees",<sup>33</sup> these conditions are not further defined and therefore seemingly arbitrary. The right of detainees to communicate with and receive visits of family members is restricted under Article 180 of the Prisons Regulations when judicial officials determine that correspondence is not in the interest of a "good trial proceeding", without clarifying what could contravene "good proceedings" and without setting limitation as to the period of restriction.<sup>34</sup> Competent judicial authorities can allow correspondence and/or visit during the prohibition period, however such decision does not appear to be subject to review by another official or body. Ultimately this means that judges can, in practice, deprive detainees of their right to communication with the outside world for an unlimited period of time. Such provisions facilitate the perpetration of incommunicado detentions and enforced disappearances by Iranian authorities.<sup>35</sup>

Reports of enforced disappearances in the Islamic Republic of Iran are regular. The Working Group on Enforced or Involuntary Disappearances issued communications on alleged cases of enforced disappearances as recently as 2019, mentioning the lack of investigation and follow-up on unconfirmed reports of death.<sup>36</sup> The Working Group also noted that the Government had not given information concerning alleged lack of investigation into the disappearance and extrajudicial execution of 5,000 political prisoners in the Islamic Republic of Iran in the 1980s.<sup>37</sup> Amnesty International reported wide-scale patterns of enforced disappearances in the aftermath of the November 2019 and the lack -if not absence- of accountability for perpetrators.<sup>38</sup> The UN

<sup>32</sup> Article 50 of the revised Code of Criminal Procedure (2015) entitles individuals in custody to inform their relatives of their arrest but permits "judicial officers" to impose restrictions on such right when deemed "necessary", without clarifying when and for how long such restrictions are allowed or specifying a competent official responsible for the approval of such decision. Relatives then must refer to judicial officials.

<sup>33</sup> Article 49 of the revised Code of Criminal Procedure (2015) entitles relatives of detainees to inquire about them to the local Office of the Prosecutor, the Provincial Prosecutor, and the Head of the Justice Department in each province but only "to the extent that it does not infringe on the social and familial status of the detainees" without specifying what constitute such infringement.

<sup>34</sup> Article 180 Executive Regulations of the Prisons Organization.

<sup>35</sup> See more: Amnesty International, <https://www.amnestyusa.org/wp-content/uploads/2020/09/Trampling-humanity-Mass-arrests-disappearances-and-torture-since-Irans-November-2019-protests.pdf>

<sup>36</sup> Communications transmitted, cases examined, observations made and other activities conducted by the Working Group on Enforced or Involuntary Disappearances, July 2019, [https://www.ohchr.org/Documents/Issues/Disappearances/A\\_HRC\\_WGEID\\_118\\_1\\_Advance.pdf](https://www.ohchr.org/Documents/Issues/Disappearances/A_HRC_WGEID_118_1_Advance.pdf)

<sup>37</sup> Communications, cases examined, observations and other activities conducted by the Working Group on Enforced or Involuntary Disappearances, May 2019, [https://www.ohchr.org/Documents/Issues/Disappearances/A\\_HRC\\_WGEID\\_117\\_1\\_ADVANCE.pdf](https://www.ohchr.org/Documents/Issues/Disappearances/A_HRC_WGEID_117_1_ADVANCE.pdf)

<sup>38</sup> Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran raised serious concerns about the lack of investigation and accountability into the November 2019 protests.<sup>39</sup> In light of the above, the Government of the Islamic Republic of Iran has not taken immediate steps to eliminate incommunicado detention, taking due care to ensure compliance in practice.

Recommendation Status:

This recommendation has **NOT** been implemented.

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<sup>39</sup> Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, July 2020, <https://undocs.org/A/75/213>