

**Country Visit Report Working Group on Arbitrary Detention E/CN.4/2004/3/Add.2
para 65(1)**

Full recommendation

1. On the reduction of the proliferation of judicial decision-making bodies. It should be recalled that the Article 90 Parliamentary Commission highlighted, in receiving the Working Group, “the injustices and inconsistencies resulting from the proliferation of judicial decision-making bodies”. The revolutionary tribunals, one such group of bodies, as well as the religious courts, should be abolished for the following reasons and in the following manner.

Historically the revolutionary tribunals were established essentially to judge “collaborators” with the former regime. There seems to be no rationale for their continued existence. Moreover, since these tribunals have no constitutional basis, their absorption by the ordinary courts would not require reform of the Constitution. A further reason: owing to their jurisprudence, which is extremely restrictive of freedom of opinion and expression on the one hand and of due process and the right to a fair trial on the other, they are responsible for many of the cases of arbitrary detention for crimes of opinion, as noted by the Working Group.

This reform would have the merit of reflecting recent developments: a first stage has just been completed with the reform reinstating the prosecution service by merging prosecutors in the revolutionary tribunals with those in the ordinary courts. From this standpoint this would constitute a second stage in the current modernization of the system of justice sought by the head of the judiciary, Ayatollah Hachemi Chahrudi, who, speaking before senior members of the judiciary in early March 2003, stated that restructuring of the system of justice would be his priority.

A further stage concerning religious courts could be completed in due course to further reduce the proliferation of judicial decision-making bodies. The competence of these courts - which also have no constitutional basis - would be transferred to the ordinary courts. There are two reasons: according to the second division of the Tehran Special Clerical Court, these courts were originally established to prosecute usurpers who, taking advantage of the early confusion in the revolution, styled themselves “clerics”. As this problem is in the past, this special competence no longer seems justified. These progressive abolitions would also have the merit of restoring respect for article 20 of the Constitution, which embodies the principle of the equality of all citizens before the law and thus before the system of justice.

Assessment using Impact Iran human rights indicators¹

A. The State party should abolish revolutionary tribunals, as well as religious courts.

Ad-hoc revolutionary tribunals and special religious courts, established in the aftermath of the revolution, are still in place today in the Islamic Republic of Iran.² The Law on Formation of General and Revolutionary Courts was adopted in 1994,³ subsequently amended in 2002.⁴ The Code of Criminal Procedure for General and Revolutionary Courts was enacted in 1999.⁵ Despite its trial period stipulated for three years, it remained in place until the entry into force of the new Code of Criminal Procedure (CCP) in 2015.⁶ Revolutionary courts are among Iran's criminal courts listed under Article 294 of the new CCP (2015) and, according to Article 297, are to be established in the capital of each of the state's provinces.⁷ Revolutionary courts have jurisdiction over crimes against national and external security, *moharebeh* ("enmity against God"), *efsad-e fel-arz* ("corruption on earth"), *baghi* ("armed rebellion against the state"),⁸ "gathering and colluding against the Islamic Republic", armed activities, arson and "destruction and plunder of resources with the purpose of opposing the system", "insulting the founder of the Islamic Republic and the Supreme Leader", all smuggling of restricted items and drug-related offences and other offences whose investigation fall under the revolutionary court's jurisdiction.⁹ In 2018, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran stated that the pattern of reported violations related to due process and fair trial in the country often occurred within the context of revolutionary courts,¹⁰ which reportedly issue the most death sentences.¹¹ Similarly, NGO reports seem to suggest that trials before revolutionary courts disproportionately target civil rights activists and members of religious minorities such as the

¹ CCPR.9.2.S.1; CCPR.9.3.S.1

CCPR.9.2.P.1

CCPR.9.1.O.1; CCPR.9.2.O.4

² NGO 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_ICJ_IRN_42313_E.pdf

³ The Law on Formation of General and Revolutionary Courts, 13 July 1994, available at rc.majlis.ir/fa/law/show/90416

⁴ Amendments to the Law on Formation of General and Revolutionary Courts, 3 November 2002, available at rc.majlis.ir/fa/law/show/93837

⁵ The Code of Criminal Procedure for General and Revolutionary Courts, 19 September 1999, available at rc.majlis.ir/fa/law/show/93219

⁶ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁷ Iran Human Rights Documentation Center, <https://iranhrdc.org/amendments-to-the-islamic-republic-of-irans-code-of-criminal-procedure-part-1/>

⁸ Defined under Articles 279 to 285 and Articles 286 to 288 of the Islamic Penal Code (2013), Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁹ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹⁰ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, March 2018, <https://undocs.org/en/A/HRC/37/68>

¹¹ See Iran Human Rights <https://iranhr.net/en/articles/2839/>

Baha'is.¹² Additionally, recent reported cases of unjustifiably lengthy pretrial detentions before revolutionary courts may well have amounted to arbitrary detention.^{13 14 15 16}

The Special Court for the Clergy were established by a directive from then Supreme Leader Ayatollah Khomeini in 1979 and do not have basis in the Constitution. These courts operate directly under the control of the Supreme Leader, outside of the framework of the judiciary. The Supreme Leader appoints the head judge of the first branch of the Special Court for the Clergy, while other judges shall be appointed according to the Supreme Leader's opinion. The Supreme Leader also appoints the Special Clerical Attorney, the Special Prosecutor for the clerics as well as the staff of the Prosecution's office.¹⁷ The special courts for the clergy have jurisdiction over offences committed by clerics and acts considered 'contrary to the clergy's dignity'.¹⁸ The secrecy under which trials before these courts are held make it difficult to assess the legality and compliance with international standards of its uncodified judicial process.^{19 20} Additionally, Article 42 of the Code of Procedure for the Special Court for the Clergy²¹ stipulates "On exceptional subjects, and subjects for which *Shari'a* and Iranian law have not specified punishments, the judge can issue a sentence based on his own viewpoint, within reason."²² Consequently, the absence of legal substantive grounds for the existence of the special courts grant judge with wide interpretative powers, already significant due to the general lack of clarity and precision of offences provided under Iranian law.²³ Such extensive discretion undermines the legality of judges' decisions and legal certainty. Further, the existence of special courts for the clergy is inconsistent with Article 20 of the Constitution of the Islamic Republic of Iran, which stipulates that all citizens of the Islamic Republic of Iran "equally enjoy the protection of the law",²⁴ and therefore should also enjoy the equal protection of the system of justice.

The Article 90 Commission of the Parliament is in charge of investigating complaints from citizens made against the operations of the Parliament itself, the executive and the judiciary.²⁵ There is no readily available information on data relating to the number of complaints

¹² EN-HRANA, <https://www.en-hrana.org/?s=revolutionary+court>

¹³ Omid memorial case of Ahmad Nasiri, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-8023/ahmad-nasiri>)

¹⁴ Letter of Zahedan Prison inmates, May 13, 2019, Abdorrahman Boroumand Center (<https://www.iranrights.org/library/document/3577>)

¹⁵ EN-HRANA, <https://www.en-hrana.org/case-ahmadinejads-former-vp-sent-revolutionary-court?hilite=%27revolutionary%27%2C%27court%27>

¹⁶ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/61>

¹⁷ En-HRANA, <https://www.en-hrana.org/four-decades-special-court-clerics-special-report?hilite=%27special%27%2C%27court%27>

¹⁸ Article 13 bylaw of the Special Courts for the Clergy, en-HRANA, <https://www.en-hrana.org/four-decades-special-court-clerics-special-report?hilite=%27special%27%2C%27court%27>

¹⁹ See more: en-HRANA, <https://www.en-hrana.org/four-decades-special-court-clerics-special-report?hilite=%27special%27%2C%27court%27>

²⁰ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/special-court-for-the-clergy-raison-detre-development-structure-and-function/>

²¹ The Procedure Code for the Special Court for the Clergy, 5 August 1990, available at www.vekalatonline.ir/laws/11456/

²² Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

²³ See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

²⁴ Constitution of the Islamic Republic of Iran, English translation, <https://www.refworld.org/docid/3ae6b56710.html>

²⁵ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

received and investigated, including vis-à-vis cases of arbitrary detentions before revolutionary courts and special clerical courts. The Iranian High Council for Human Rights has been established as a “national coordinating and policy-making institution in the field of human rights”²⁶ and reportedly is composed mostly of government and judicial officials.²⁷ There is no readily available information that might indicate that the institution monitors the compliance of revolutionary and special clerical courts with international human rights standards.

In 2004 the Working Group on Arbitrary Detention recommended the “progressive transfer of authority from the revolutionary tribunals and clerical courts to the ordinary courts to reduce the proliferation of judicial decision-making bodies”.²⁸ In 2020, revolutionary tribunals and special clerical courts are still in existence in the Islamic Republic of Iran. The new Criminal Code of Procedure (2015) and the Code of Procedure for the Special Court of the Clergy suggest that a transfer of revolutionary and special clerical tribunals to ordinary courts is not envisaged in the near future.

Recommendation Status:

This recommendation has **NOT** been implemented.

²⁶ National Report Submitted In Accordance With Paragraph 15 (A) Of The Annex To Human Rights Council Resolution 5/1: Islamic Republic of Iran, UN Doc. A/HRC/WG.6/7/IRN/1, 18 November 2009, para. 65

²⁷ Amnesty International,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_103_9081_E.pdf

²⁸ Working Group on Arbitrary Detention, 2004, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/147/77/pdf/G0314777.pdf?OpenElement>