

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/69/356 para 104

Full recommendation:

Echoes the call of the Human Rights Committee to ensure the independence of the judiciary and to investigate all allegations of torture and mistreatment of detainees.

Assessment using Impact Iran human rights indicators¹

A. Independence of the judiciary

According to the Constitution of the Islamic Republic of Iran, the head of the judicial system in Iran (the Chief Justice) is directly appointed by the Supreme Leader² and can be dismissed at any time by him.³ No other organ or institution is involved in the process.⁴ The Chief Justice is in charge of selecting high-ranking judicial officials including the Head of the Supreme Court and the country's Prosecutor General.⁵

The Law for the Selection of Judges of 1982 with subsequent amendments, as well as the Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges of 2013, are the main norms regulating the selection of judges. Mandatory criteria for selecting judges in Iran include the following: the appointed judge has to be a Muslim man, "being bound to faith" and "being loyal to the principle of the primary of the Supreme Leader."⁶ Field investigations and conducting ideological and political interviews are part of the selection process.⁷ ⁸ These discriminatory and vague criteria enable the appointment of judges based on their political loyalty and undermine the independence and impartiality of the judiciary. There are reports of formal investigations undertaken by Iranian authorities into individuals with judicial functions following accusations of corruption, bribery and abuse of

¹ CCPR.14.1.S.2; CCPR.14.1.P.3; CCPR.14.1.P.4; CCPR.14.1.O.8; CCPR.7.1.S ; CCPR.7.1.P ; CCPR.7.1.P. CCPR.7.1.P ; CCPR.7.1.O ; CCPR.7.1.O ; CCPR.7.1.O

² Article 157 Constitution of the Islamic Republic of Iran http://www.iranchamber.com/government/laws/constitution_ch11.php

³ Article 110 Constitution of the Islamic Republic of Iran http://www.iranchamber.com/government/laws/constitution_ch08.php

⁴ 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

⁵ See Articles 158 to 162 of the Constitution of the Islamic Republic of Iran http://www.iranchamber.com/government/laws/constitution_ch11.php

⁶ Article 13 Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges (2013).

⁷ Article 14 Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges (2013)

⁸ <http://rc.majlis.ir/fa/law/show/90547> ; <http://rc.majlis.ir/fa/law/show/91044>

power, yet there is a dearth of information regarding whether the motivations behind these investigations were political in nature or a result of an impartial criminal process.^{9 10}

The selection of judges in Iran impacts the judicial process and undermine due process of law. In 2014, a Judiciary's circular listed the most common complaints against judges and numerous due process violations.¹¹ These included unlawful arrest, failure to renew temporary detention orders within the prescribed time, failure to render decisions within the prescribed time, ruling prior to the conclusion of investigation and trial, issuing decisions in courts of original jurisdiction without convening a trial session, issuance of "unfounded and undocumented" rulings, issuing rulings outside the scope of the complaint, and unpleasant, inappropriate, and insulting conduct.¹² There is little transparency regarding these complaints and their outcome and not all are considered. During the Iranian year 1395 (March 20, 2016 –March 19, 2017), Iran's General Inspection office received 30,315 complaints. The office sent 3,464 emails to those who had filed complaints. Written follow-ups of local and provincial investigations amounted to 1,502.¹³ Due process violations are particularly grave in Iran in light of the strikingly high numbers of executions conducted by the State. At least 5,079 executions have been reportedly conducted Iran since the beginning of 2012 through May 27, 2020.¹⁴

B. Investigate allegations of torture of detainees

Article 38 of the Constitution prohibits the use of any form of torture to obtain confessions, and considers the confession resulting from torture acts to be inadmissible in court.¹⁵ Article 169 of the Islamic Penal Code further invalidates confessions from torture.¹⁶ In addition, Articles 6, 7 and 9 of the law on the respect for the legitimate freedoms and citizenship rights (adopted on 4 May 2004) specifies and prohibits instances of torture.¹⁷ Article 578 of the Islamic Penal Code criminalized the use of torture and imposes a punishment on the perpetrator.¹⁸

Despite these legal guarantees, the root cause of the issues in Iranian laws that ensures the perpetuation of torture is that it restricts torture to physical torture and does not recognize other

⁹ Iran International <https://iranintl.com/en/iran/president-rouhani%E2%80%99s-brother-sentenced-five-years-prison>

¹⁰ OCCRP <https://www.occrp.org/en/27-ccwatch/cc-watch-briefs/10035-iran-new-conservative-chief-justice-fires-60-corrupt-judges>

¹¹ Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Document Center, Impact Iran and Human Rights Activists in Iran, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

¹² Abdorrahman Boroumand Center, <https://www.iranrights.org/library/document/2994>

¹³ Ministry of Justice 2017 report on the accomplishments of the Judiciary in the year

1395. <https://www.justice.ir/FileSystem/View/File.aspx?FileId=5282d9cd-913e-4c78-b3d8-b39475070de2>

¹⁴ <https://www.iranrights.org/memorial>

¹⁵ Constitution of the Islamic Republic of Iran http://www.iranchamber.com/government/laws/constitution_ch03.php

¹⁶ Islamic Penal Code: <https://shenasname.ir/subjects/salamat/1571-mojazat92>

¹⁷ The Law on the Respect for the Legitimate Freedoms and Citizenship Rights: <https://rc.majlis.ir/fa/law/show/94150>

¹⁸ Islamic Penal Code: <https://shenasname.ir/subjects/salamat/1571-mojazat92>

forms, such as psychological torture. Additionally, Iran's laws do not acknowledge torture methods resulting from religious practices (*Ta'zir*), like flogging.¹⁹

The current Iranian law allows a person to complain about violations if they are subjected to torture, inhumane treatment or detention, and to seek punishment for offenders. The Judicial disciplinary courts, the Article 90 Commission of the parliament²⁰, and Oversight Bodies for the exercise of Citizenship Rights²¹ in the country's provincial courts are among the institutions tasked with receiving and reviewing complaints. High-level cases of torture allegations being raised by prisoners against prison authorities often end in the state mechanisms in charge of investigating these allegations declaring that no torture took place, resulting in the victims being accused of “propaganda against the regime.”²²

Apart from the fact that a comprehensive and transparent report on the functioning of these institutions has not yet been made publicly available, the lack of independence and impartiality of these institutions is the most important issue that questions their effectiveness in preventing repeated violations of victims' rights. In addition, Iran has for years denied international institutions, including UN mechanisms, free access to prisons and prisoners.

Recommendation Status:

This recommendation has **NOT** been implemented.²³

¹⁹ <https://www.hrw.org/world-report/2019/country-chapters/iran>

²⁰ Constitution of the Islamic Republic of Iran http://www.iranchamber.com/government/laws/constitution_ch03.php

²¹ The Law on the Respect for the Legitimate Freedoms and Citizenship Rights: <https://rc.majlis.ir/fa/law/show/94150>

²² Iran International TV channel: <https://iranintl.com/en/iran/vaezi-regime-has-right-sue-esmail-bakhshi-torture-claims>

²³ For more please see: <https://www.amnesty.org/en/latest/news/2020/09/iran-detainees-flogged-sexually-abused-and-given-electric-shocks-in-gruesome-post-protest-crackdown-new-report/>