

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/28/70 para 95

Full recommendation:

The Special Rapporteur welcomes the prosecution of Saeed Mortazavi for his role in facilitating illegal detentions, but notes that such investigations and rulings appear to be exceedingly rare, especially when compared with the high volume of similar reports of arbitrary detention, torture and ill-treatment of detainees emanating from the country. He calls on the authorities to prosecute and sentence appropriately all officials found responsible for the torture and ill-treatment of detainees, in line with Iranian and international law. He encourages the Government to address the substandard detention conditions identified previously by the human rights mechanisms and in the present and previous reports of the Special Rapporteur that may have been identified by its own audit. He implores the Government to ensure adequate access to medical treatment in line with international standards.

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur calls on the Iranian authorities to prosecute and sentence appropriately all officials found responsible for the torture and ill-treatment of detainees, in line with Iranian and international law

The former Tehran Prosecutor General at the time of the 2009 post-elections unrests, Saeed Mortazavi, was subject to the Special Parliamentary Committee investigation in 2010. The Committee found that Saeed Mortazavi was one of the main individuals responsible for the transfer and mistreatment of demonstrators at the Kahrizak prison.² However, it is two years later, in 2012, that the Iranian authorities opened a criminal case against Saeed Mortazavi, then head of the Iran's Social Security Organization.³ The investigation looked into the alleged post-election abuses at Kahrizak prison, where three demonstrators reportedly died as a result of torture and ill-treatments.⁴ In 2018 a court ultimately convicted Saeed Mortazavi for the death of one of the three above-mentioned demonstrators and sentenced him to two years of prison.⁵ However, Saeed Mortazavi was reportedly released in September 2019.⁶ Only one complaint

¹ CCPR.7.1.S.1; CCPR.14.1.S.2; CCPR.9.3.S.2; CCPR.9.1.S.1; CCPR.9.1.S.2; CCPR.9.2.S.1
CCPR.7.1.P.2; CCPR.14.1.P.3; CCPR.9.5.P.2; CCPR.9.1.P.1; CCPR.9.1.P.2; CCPR.9.1.P.5; CCPR.9.1.P.6; CCPR.9.2.P.1;
CCPR.9.3.P.1
CCPR.7.1.O.2; CCPR.7.1.O.3; CCPR.14.1.O.5; CCPR.14.1.O.6; CCPR.14.1.O.8; CCPR.9.2.O.4; CCPR.9.1.O.1; CCPR.9.2.O.1;
CCPR.9.2.O.4; CCPR.9.1.O.1

² Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/27/iran-bring-notorious-abuser-justice>

³ Ibid.

⁴ Ibid.

⁵ Human Rights Watch, 2018, <https://www.hrw.org/news/2018/04/24/notorious-iranian-prosecutor-behind-bars-now>

⁶ Radio Farda, 2019, <https://en.radiofarda.com/a/iran-releases-notorious-former-prosecutor-mortazavi-jailed-for-prisoner-deaths/30151955.html>

against Mr. Mortazavi has been investigated and brought before a court. During his imprisonment, he was repeatedly released from prison on furlough (while other prisoners face severe restrictions to enjoy this right)⁷ and traveled abroad (Iraq).⁹ He is currently free. Although Mr. Saeed Mortazavi was prosecuted and ultimately convicted, there have been no other cases of members of Iranian authorities and law enforcement officials being convicted for their involvement in cases of torture. Further, Mr. Saeed Mortazavi's case suggest that Iranian officials, even when convicted, are not held to account for their crimes in the Islamic republic of Iran.

The Iranian legal framework does not protect fully against the perpetration of torture and limits accountability for perpetrators. Article 38 of the Constitution of the Islamic Republic of Iran prohibits torture and other ill-treatment, but only when it is “used to extract an admission of guilt or to obtain information”.¹⁰ Similarly, Article 578 of the Islamic Penal Code asserts “any civil servant or judicial or non-judicial agent who corporally mistreats and abuses an accused person in order to force him to confess shall be sentenced [...]”.¹¹ Such provision is reiterated under Article 60 of the Code of Criminal Procedure. Article 169 of the Prison Regulations prohibits “corporal punishment of the accused or convicts, and imposing violent, excruciating or humiliating punishments, in all penal institutions and prisons” and punishments are provided under Article 587 of the Islamic Penal Code.¹²

While Iranian law prohibits - conditionally - torture and certain abusive conducts during interrogations, it does not provide a definition of torture *per se*. Torture and other ill-treatment inflicted on an individual for other purposes than extracting confessions and/or information is not, therefore, explicitly prohibited.

The prohibition of torture and other ill-treatment is a *jus cogens* norm under international law and cannot be restricted in any circumstances,¹³ including by conflicting domestic laws. However, the Iranian legal framework does not adequately protect individuals from torture and further other-ill-treatment and may well facilitate impunity. While Iranian laws provide for the accountability of officials and authorities who infringed individuals' rights and punishes the use of torture in order to force confession, these provisions do not criminalize torture nor do they use the term “torture”. The absence of a crime of torture in itself under Iranian law prevents prosecution, which is limited only to cases of torture provided under the law.

⁷ Iran Human Rights Documentation Center, <https://iranhrdc.org/rights-disregarded-prisons-in-the-islamic-republic-of-iran/#3.2.4>

⁸ OHCHR News, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26244&LangID=E>

⁹ <https://www.farsnews.ir/news/13970631000545/> and <https://www.khabaronline.ir/news/1223819/>

¹⁰ Constitution of the Islamic Republic of Iran English translation

http://www.iranchamber.com/government/laws/constitution_ch03.php

¹¹ Islamic Penal Code of the Islamic Republic of Iran (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹² Ibid.

¹³ CCPR General Comment No. 20: Article 7, 10 March 1992, <https://www.refworld.org/docid/453883fb0.html>

There are mechanisms to receive and investigate complaints of torture and ill-treatment as provided under Iranian law in the Islamic Republic of Iran. The Supervision and Inspection Board, established under the Law on Respect for Legitimate Freedoms and Safeguarding Citizen's Rights, monitors the compliance of policies and conducts with the law and confront those in breach. The Board's missions include submitting "the complaints it receives to the relevant bodies and pursuing the investigation until it yields an outcome"; "deploying inspection groups to the bodies"; and "preparing reports on the implementation of laws in the country every three months and making them available to the public every three months."¹⁴ The Supervision and Inspection Board also has set up a database enabling victims and witnesses to submit their complaints. On the occasion of its 2019 Universal Periodic Review, the Islamic Republic of Iran stated that "the prosecutors, through judges stationed in prisons as well as the Secretariat of the Protection of Citizenship Rights and provincial supervisory boards, conduct regular inspections and investigate any reports or complaints" with regard to allegations of torture.¹⁵ There is no readily available information that might indicate that complaints have been properly investigated and adjudicated either by the Board or the Secretariat. Additionally, there is no readily available information suggesting that Iranian authorities allegedly perpetrating acts of torture go through any sort of disciplinary measure. Instead, prisoners reporting torture to investigative mechanisms have faced reprisal and been charged of "propaganda against the regime".¹⁶ Security agencies notably have been escaping accountability in the Islamic Republic of Iran. For example, the head of the Islamic Revolutionary Guard Corps (IRGC) reports directly to the Supreme Leader and in effect is not accountable to either the government or the judiciary. In turn, the Supreme Leader, who appoints, dismisses and accepts resignation of the chief commander of the IRGC,¹⁷ is not accountable to any institution. Consequently, the possibility to challenge the actions of the Islamic Revolutionary Guard Corps, including acts of torture allegedly perpetrated by its agents, is severely limited.

Reports of cases of torture in the Islamic Republic of Iran are regular.^{18 19} Amnesty International reported widespread and systematic use of torture by Iranian authorities against protestors during and after the November 2019 protests.²⁰ As of January 2021, there is no readily available information that might indicate that Iranian authorities have opened investigations compliant

¹⁴ See Executive By-law of Article 1(15) of the Law on Respect for Legitimate Freedoms and Safeguarding Citizens' Rights, available at bit.ly/1nRuftq (accessed on 3 February 2016).

¹⁵ Report of the Working Group on the Universal Periodic Review, February 2020, <https://undocs.org/en/A/HRC/43/12/Add.1>

¹⁶ <https://iranintl.com/en/iran/vaezi-regime-has-right-sue-esmail-bakhshi-torture-claims>

¹⁷ Article 110, Constitution of the Islamic Republic of Iran, English translation, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

¹⁸ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, March 2018, <https://undocs.org/A/HRC/37/68>

¹⁹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/021/53/PDF/G2002153.pdf?OpenElement>

²⁰ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

with international standards into allegations of torture committed by police, security and intelligence agents and prison officials in the context of the November 2019 protests.

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 the country's provincial courts, there is no evidence to suggest that complaints to these bodies are independently reviewed and investigated.²¹ Additionally and as aforementioned, the absence of a crime of torture in itself under Iranian law prevents prosecution, which is limited to cases of torture provided under the law, and therefore hindering access to justice for victims.

In light of the above, the Government of the Islamic Republic of Iran has not duly investigated complaints of torture and ill-treatment, and the shortcomings of the Iranian legal framework hinder accountability for perpetrators. The Iranian authorities have not prosecuted and sentenced appropriately all officials found responsible for the torture and ill-treatment of detainees, in line with Iranian and international law.

B. The Special Rapporteur encourages the Government of the Islamic Republic of Iran to address the substandard detention conditions identified previously by the human rights mechanisms and in the present and previous reports of the Special Rapporteur that may have been identified by its own audit.

Article 39 of the Constitution of the Islamic Republic of Iran stipulates that “All affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished in accordance with the law, whatever form they may take, are forbidden and liable to punishment.”²² Additionally, there are two sets of regulations ruling over the management of prison facilities in the Islamic Republic of Iran, one for police detention centers and one for security detention centers.²³ Both sets of regulations are often referred to together as Iran's Prison Regulations. Notably, Iran's Prison Regulations provide for the management and supervision of all prisons and detention center in the country, including the conditions of detentions such as access to adequate food and water and medical care for detainees, visits and communications with the family. Prison

²¹ 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%2fCS%2fIRN%2f42313&Lang=en

²² Constitution of the Islamic Republic of Iran, English Translation, Iran Data Portal, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

²³ Dastour.ir <http://www.dastour.ir/brows/?lid=224404> ; <http://www.dastour.ir/brows/?lid=224414>

regulations include the right for detainees to have a bed²⁴ and also stipulate that prisons should have enough showers to enable detainees to shower at least once a week.²⁵

Iran's Prison Regulations mandates the relevant authorities in charge of the supervision and inspection of detention centers. In its 2019 National Report to the Universal Periodic Review, the Government of the Islamic Republic of Iran reported that the Citizenship Rights Watch Board carries periodic inspections within prisons and detention centers. According to the Government the body has "received and handled 3,275 complaints and reports, through the complaint system, in relation with civil rights violations. Between 2015 and 2018, a number of 28,504 inspections were carried out to prosecutors' offices, prisons and detention centers."²⁶ There is no readily available information about the outcome of such inspections and whether they led to the improvements of detention conditions. However, institutions in charge of inspections and investigations reportedly lack independence from judicial authorities, which may well result in biased inspections into cases of complaints of, notably, torture and ill-treatment against detainees in prison facilities.²⁷ Regular reports of ill-treatment of detainees in Iranian prisons suggest that inspections and investigations do not lead to accountability for perpetrators and/or the improvement of prison's conditions for detainees.^{28 29 30}

The Iranian Prisons Organization, the governmental agency in charge of overseeing prisons in the country, has reportedly faced challenges in terms of funding and investments. In 2017, then-Head of the Organization stated in an interview that there were not enough funds to provide three adequate meals to prisoners.³¹ The Government has been increasing the annual budget of the Organization.³² Reportedly, the budget of the Organization is spent notably on the provision of food and clothing for prisoners, as well as health care services.³³

However, despite the lack of readily official and available information, NGO reports suggest that investments to improve the conditions of detention of persons deprived of their liberty are insufficient.

²⁴ Article 71, Regulatory Code of 11 Dec. 2005 (Governing the Prisons Organization and Security and Corrective Measures), available at <http://www.prisons.ir/index.php?Module=SMMPageMaster&SMMPop=View&PageId=27>.

²⁵ Article 108, Regulatory Code of 11 Dec. 2005 (Governing the Prisons Organization and Security and Corrective Measures), available at <http://www.prisons.ir/index.php?Module=SMMPageMaster&SMMPop=View&PageId=27>.

²⁶ National Report, UPR 2019, Islamic Republic of Iran, <https://undocs.org/A/HRC/WG.6/34/IRN/1>

²⁷ HRANA <https://www.en-hrana.org/prisoners-zahedan-prison-threatened-not-talk-inspectors> ; UN <https://news.un.org/en/story/2019/07/1042141> ;

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

²⁸ 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

²⁹ 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

³⁰ Amnesty International, <https://www.amnesty.org/en/documents/mde13/2891/2020/en/>

³¹ Aftab News, <https://aftabnews.ir/fa/news/499098/>

³² ILNA News, <https://www.ilna.news/fa/tiny/news-707499>

³³ Mehr News, www.mehrnews.com/xQMTN

Reportedly, prisons in Iran lack showers and adequate sleep amenities for their detainees.³⁴ As reported by Amnesty International as of June 2020,³⁵ according to recent official statements,³⁶ Iran's prison population was around 211,000, two and half times more than the officially declared capacity of 85,000.³⁷

Numerous reports received by OHCHR have indicated that detainees are regularly kept in poor conditions in Iranian prisons, notably due to overcrowding and serious lack of basic hygiene, lack of adequate food and water and denial of access to medical care.^{38 39 40} The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran received numerous reports of abusive use of torture to extract confessions, use of solitary confinement, and medical treatments conditional upon confession.⁴¹ Additionally, numerous reports have documented deaths and cases of ill-treatment of persons detained during the November 2019 protests.^{42 43}

In light of the above, the Government of the Islamic Republic of Iran has not addressed the substandard detention conditions identified previously by the human rights mechanisms and in the present and previous reports of the Special Rapporteur.

C. The Special Rapporteur implores the Government to ensure adequate access to medical treatment in line with international standards

Iran's Prison Regulations provide for the management and supervision of all prisons and detention center in the country, including the conditions of detentions such access to adequate food and water and medical care for detainees, visits and communications with the family. The Regulations specify that all prisoners should have access to medical care, including regular

³⁴ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/rights-disregarded-prisons-in-the-islamic-republic-of-iran/#3.2.3>

³⁵ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/07/iran-leaked-letters-reveal-state-denial-of-covid19-crisis-in-prisons/>

³⁶ <https://www.irna.ir/news/83819418/۲۱۱-هزار-نفر-در-زندان-های-کشور-هستند>

³⁷ <https://www.tasnimnews.com/fa/news/1398/02/25/2011935/داریم-زندانی-ظرفیت-زندان-ها-2-5-بر-ایر-ظرفیت-زندان-داریم>

³⁸ 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

³⁹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, July 2020, <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F213&Language=E&DeviceType=Desktop>

⁴⁰ UN News, <https://news.un.org/en/story/2020/10/1074722>

⁴¹ 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

⁴² Ibid.

⁴³ Amnesty International, <https://www.amnesty.org/en/documents/mde13/2891/2020/en/>

medical check-ups, and that their medical needs should be addressed to the extent possible unless transfer to treatment centers outside the prison is considered necessary.^{44 45}

Special Procedures of the UN have sent numerous communications raising concerns about the health conditions of a number of prisoners while in detention, more recently raising concerns about added health risks brought in detention by the COVID-19 pandemic. Cases highlighted by UN Special Procedures include, but are not limited to, Mr. Arash Sadeghi^{46 47} Mr. Farhad Meysami^{48 49 50} and Mr. Soheil Arabi.^{51 52}

A report published by the Abdorrahman Boroumand Center in partnership with the Human Rights Activists News Agency found that conditions of detentions have further deteriorated since the COVID-19 pandemic started. Prisons' overcrowding facilitated the proliferation of COVID-19 cases in several prisons.⁵³ Such concerns have been echoed by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran in his report published in July 2020.⁵⁴ Documents recently leaked to Amnesty International indicate that Iran's Ministry of Health has repeatedly ignored urgent appeals from the Prisons Organization to remedy the widespread shortages of the protective equipment, disinfectant products, and medical supplies needed to fight the pandemic.⁵⁵

There is insufficient information to indicate whether the Iranian authorities adequately address and adjudicate detainees' complaints of violations of their right to access medical treatment. Reports mentioned above indicate that detainees' have been regularly denied adequate access to medical treatment.

Recommendation Status:

This recommendation has **NOT** been implemented.

⁴⁴ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/rights-disregarded-prisons-in-the-islamic-republic-of-iran/>

⁴⁵ See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1341962016ENGLISH.PDF>

⁴⁶ United For Iran, <https://ipa.united4iran.org/en/prisoner/1931/>

⁴⁷ Special Procedures Communication sent to the Government of the Islamic Republic of Iran, 8 September 2020, UA IRN 21/2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25522>

⁴⁸ United For Iran, <https://ipa.united4iran.org/en/prisoner/4599/>

⁴⁹ Special Procedures Communication sent to the Government of the Islamic Republic of Iran, 3 October 2018, UA IRN 12/2018, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24120>

⁵⁰ Front Line Defenders, <https://www.frontlinedefenders.org/en/case/human-rights-defender-farhad-meysami-spends-eight-days-solitary-confinement-after-contracting>

⁵¹ United For Iran, <https://ipa.united4iran.org/en/prisoner/1917/>

⁵² Front Line Defenders, <https://www.frontlinedefenders.org/en/case/continued-detention-iranian-blogger-soheil-arabi-and-judicial-harassment-his-mother>

⁵³ HRANA, https://www.en-hrana.org/wp-content/uploads/2020/09/COVID19_FEAR_IN_IRANS_PRISONS_.pdf

⁵⁴ 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>

⁵⁵ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/07/iran-leaked-letters-reveal-state-denial-of-covid19-crisis-in-prisons/>

