

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/31/69 para 67

Full recommendation

The Special Rapporteur welcomes the recent release of arbitrarily detained persons, but maintains his concern about other journalists, lawyers, religious minorities and individuals working to defend the rights of women, children, workers and ethnic minorities who are currently detained for the peaceful exercise of their fundamental human rights. He reiterates the concern of the Special Rapporteur on the situation of human rights defenders about the Government's "overly broad interpretations" of national security and propagation crimes against the State (A/HRC/25/55/Add.3), and strongly urges the authorities to release all individuals identified as arbitrarily detained by the Working Group on Arbitrary Detention and other human rights mechanisms.

Assessment using Impact Iran human rights indicators¹

The Iranian criminal justice system broadly and vaguely defines national security crimes and crimes of propaganda against the State. These vague definitions grant Iranian authorities significant discretion to impose restrictions on freedom of expression, assembly and association. Restrictions on these rights are particularly imposed when they are exercised to criticize the State, even when the exercise is peaceful and in line with international standards.

National security crimes and crimes of propaganda are codified under the Islamic Penal Code,² adopted in 2013. For instance, those participating in peaceful unauthorized assemblies can be sentenced to prison terms on charges of "gathering and colluding to commit crimes against national security" (Article 610 of the Islamic Penal Code),³ "forming a group composed of more than two people with the purpose of disrupting national security" (Article 498)⁴ and/or "membership of a group with the purpose of disrupting national security" (Article 499). Other criminal charges include "spreading propaganda against the system,"⁵ conspiracy against the

¹ CCPR.9.1.S.1; CCPR.9.3.S.1; CCPR.14.1.S.1; CCPR.14.1.S.2
CCPR.9.1.P.1; CCPR.14.1.P.3; CCPR.14.1.P.1
CCPR.9.3.O.1; CCPR.14.1.O.1; CCPR.14.1.O.7; CCPR.14.1.O.8

² The Islamic Penal Code available at: http://rc.majlis.ir/fa/law/print_version/845048

³ The new Islamic Penal Code was introduced in 2013 for an experimental period of five years and was revised in 2016. See the most updated version of the Islamic Penal Code here on the website of the Iranian parliament:
http://rc.majlis.ir/fa/law/print_version/845048

⁴ Article 498 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁵ Article 500 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

State,⁶ encouragement to “violate public morals”⁷ as well as satire.⁸ Similar vaguely worded provisions criminalize acts such as swearing at⁹ or insulting¹⁰ “the Great Prophet of Islam” as well as “sowing corruption on earth”¹¹ with the death penalty.

Similarly, the lack of legal safeguards for the rights of individuals belonging to religious minorities^{12,13} enables the Iranian authorities to criminalize activities, such as attending a house church or being part of religious conferences, as criminal acts on the basis that they can threaten the existence of the Islamic Republic and thus constitute a national security threat.¹⁴ For example, the Iranian Judiciary has reportedly prosecuted minority faith adherents, including non-*Shia* Muslims, for such activities on criminal charges such as “establishing a group that aims to disrupt national security” (Article 498), “membership in a group that aims to disrupt national security” (Article 499), and “spreading propaganda against the system” (Article 500).^{15,16}

All the aforementioned restrictions fail to meet requirements of international standards, including the principle of legality and the principle that limitations must be necessary, proportionate and in pursuit of one of a limited number of narrowly-drawn legitimate aims.¹⁷ Consequently, the current Iranian legal framework grants authorities’ significant discretion to impose overbroad and vague restrictions on individuals’ rights in contravention of Iran’s international human rights obligations.

Further, Iranian authorities often disregard the right to fair trial of individuals accused of national security and propaganda against the State related crimes. For example, the guarantee of the right to legal defence is enshrined in Article 35 of the Constitution, which ensures the right to choose a lawyer,¹⁸ as well as in Article 190 of the revised Code of Criminal Procedure (CCP), which protects the right of a suspect to “be accompanied by a lawyer during the preliminary

⁶ Article 610 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁷ Article 639 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁸ Article 700 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁹ Article 262 Islamic Penal Code 2013, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

¹⁰ Article 513 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹¹ Article 286 Islamic Penal Code 2013.

¹² In its Article 19, the Constitution of the Islamic Republic of Iran omits an explicit reference provision recognizing religion or belief as a protected characteristic against discrimination. Constitution of the Islamic Republic of Iran, English translation, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

¹³ See more: Joint submission to the Human Rights Committee from All Human Rights for All in Iran, Association for Human Rights in Kurdistan – Geneva, Association for the Human Rights of the Azerbaijani People in Iran, Iran Human Rights Documentation Center, OutRight International, Siamak Pourzand Foundation, Small Media, Impact Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_42317_E.pdf

¹⁴ Joint submission to the Human Rights Committee from The World Evangelical Alliance, Open Doors, Christian Solidarity Worldwide, Middle East Concern, Article 18, 29 May 2020, https://articleeighteen.com/wp-content/uploads/2020/06/F3430b-2020-JointReport_Iran_HRCtee_ListOfIssues-dragged-1.pdf

¹⁵ Islamic Penal Code of the Islamic Republic of Iran (2013), Iran Human Rights Documentation Center, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁶ Rights Denied: Violations against ethnic and religious minorities in Iran, <https://minorityrights.org/wp-content/uploads/2018/03/Rights-Denied-Violations-against-ethnic-and-religious-minorities-in-Iran.pdf>

¹⁷ Article 19, International Covenant on Civil and Political Rights

¹⁸ The Constitution of the Islamic Republic of Iran < http://www.iranchamber.com/government/laws/constitution_ch03.php>

investigations”. Article 48 of the CCP permits the accused to “demand the presence of a lawyer from the start of detention,”^{19,20} but specifies in a note²¹ that individuals facing charges for certain offences, including those relating to national security, must select their legal counsel from among a list of lawyers approved by the Head of the Judiciary.²² In 2018, the Judiciary published the list of approved lawyers, with only 20 for the whole city of Tehran. In addition to the limited number of approved lawyers, the independence and neutrality of those appearing on the Judiciary’s list are not guaranteed and have been questioned.²³ As a consequence, the right to legal assistance of one’s choosing for individuals accused of national security related crimes is particularly limited. In May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the Code of Criminal Procedure which would allow the prosecution to delay access to a lawyer for 20 days, with a possibility of extension to the whole duration of investigation, in cases related to national security, terrorism or financial corruption.^{24 25} Such an amendment would further restrict access to legal counsel, notably for people accused of national security related crimes.

Iranian authorities frequently resort to the aforementioned legal provisions to intimidate, arrest and prosecute individuals, disproportionately minorities^{26,27}, who peacefully exercise their rights to freedom of expression, association and assembly, including journalists, media workers, trade

¹⁹ The Constitution of the Islamic Republic of Iran < http://www.iranchamber.com/government/laws/constitution_ch03.php >

²⁰ The Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the 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>

²¹ The Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the 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>

²² The former CCP had conditioned the presence of a lawyer at the investigative stage on the permission of the judge in cases with a “confidential” aspect, cases where the presence of a party other than defendant would “corrupt” proceedings as determined by the judge, and in national security cases; See the March 17, 2017 report of the UN Special Rapporteur, Asma Jahangir, on fair trial in Iran (<https://undocs.org/en/A/HRC/34/65>)

²³ “Iranian Lawyers Criticize Proposal to Deprive Defendants of Right to Choose Counsel,” Human Rights Activists in Iran, June 6, 2018 :<<https://www.iranrights.org/library/document/3443>>

²⁴ Abdorrahman Boroumand Center, <<https://www.iranrights.org/newsletter/issue/99>>

²⁵ See these reports: <www.amnesty.org/en/documents/mde13/0379/2019/en/> ;

<<https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>>

²⁶ See more: Association for the human rights of the Azerbaijani people in Iran, <http://www.ahraz.org/association-for-the-human-rights-of-the-azerbaijani-people-in-iran-ahrazs-repot-regarding-the-current-situation-of-the-azerbaijani-arrestees-that-are-arrested-during-the-recent-protests-nove/>

²⁷ See more: Kurdistan Human Rights Geneva, <https://kmmk-ge.org/sd/annual-report-2020/>

unionists, lawyers, environmental and abolitionist activists.²⁸²⁹³⁰³¹ Individuals targeted include adherents of recognized and unrecognized religions in Iran,³² including members and leaders of the *Baha'i* faith.^{33 34}

Despite the existence of several mechanisms that ostensibly accept complaints regarding violations of citizens' rights, such as the Article 90 Commission of the parliament (established based on 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.³⁵ Additionally, as the State relies on the Iranian legal framework to repress the rights to freedom of expression, assembly and association, access to justice is particularly limited. Iranian officials have not published official statistics regarding the number of prisoners charged with national security crimes.

Since 2016, the Working Group on Arbitrary Detention (WGAD) has found at least 38 cases of arbitrary detention in the Islamic Republic of Iran, including individuals accused of national security and propaganda against the state related crimes. Although there have been sporadic releases,³⁶ many remain in detention as of January 2021.³⁷

Additionally, the WGAD “has repeatedly found a practice in the Islamic Republic of Iran of targeting foreign nationals for detention”.³⁸ Despite the Working Group opinions concluding that their detention is arbitrary, foreign and dual nationals Mr. Siamak Namazi³⁹ and Mr. Mohammad

²⁸ See more : ARTICLE 19, Small Media, Human Rights Activists in Iran, Impact Iran, Human Rights Committee, 129th session (Geneva) 29 June – 24 July 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42315_E.pdf

²⁹ See more: Iran Human Rights, <https://www.iranhr.net/en/reports/23/>

³⁰ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/controlled-and-pursued-labor-activism-in-contemporary-iran/>

³¹ See more: Ensemble Contre la Peine de Mort, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

³² See more: United For Iran, <https://ipa.united4iran.org/en/prisoner/>

³³ Center for Human Rights in Iran, <https://iranhumanrights.org/2020/10/more-bahais-begin-serving-prison-sentences-in-iran-simply-for-their-beliefs/>

³⁴ See more: Joint submission to the Human Rights Committee from All Human Rights for All in Iran, Association for Human Rights in Kurdistan – Geneva, Association for the Human Rights of the Azerbaijani People in Iran, Iran Human Rights Documentation Center, OutRight International, Siamak Pourzand Foundation, Small Media, Impact Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_42317_E.pdf

³⁵ 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

³⁶ Recent releases include the one of Ms. Narges Mohammadi, United For Iran, <https://ipa.united4iran.org/en/prisoner/2340/>

³⁷ Including but not limited to: Mr. Arash Sadeghi (Opinion no. 19/2018), Ms. Golrokh Ebrahimi Iraee (WGAD Opinion no. 33/2019), Ms. Atena Daemi (WGAD Opinion no. 83/2018). See more: United for Iran, <https://ipa.united4iran.org/en/prisoner/>

³⁸ Working Group on Arbitrary Detention, Opinion No. 52/2018, para 82.

³⁹ United For Iran, <https://ipa.united4iran.org/en/prisoner/2157/>

Bager Namazi⁴⁰ (Opinion no. 49/2017) as well as Ms. Nazanin Zaghari-Ratcliffe⁴¹ (Opinion no. 28/2016) remain in detention as of January 2021. Mr. Ahmad Reza Djalali, whose detention was found arbitrary by the WGAD in 2017,⁴² faces imminent execution.⁴³ Mr. Robert Levinson, whose detention was found arbitrary by the Working Group in 2016,⁴⁴ reportedly died in Iranian custody.⁴⁵

The Islamic Republic of Iran has not released all individuals identified as arbitrarily detained by the Working Group on arbitrary detention and other human rights mechanisms.

Recommendation Status:

This recommendation has **NOT** been implemented.

⁴⁰ United For Iran, <https://ipa.united4iran.org/en/prisoner/2400/>

⁴¹ United For Iran, <https://ipa.united4iran.org/en/prisoner/2481/>

⁴² Working Group on Arbitrary Detention, Opinion no. 92/2017, <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions80thSession.aspx>

⁴³ United For Iran, <https://ipa.united4iran.org/en/prisoner/3126/>

⁴⁴ Working Group on Arbitrary Detention, Opinion no. 50/2016, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WGAD/2016/50

⁴⁵ United For Iran, <https://ipa.united4iran.org/en/prisoner/3488/>