

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/40/67 para 70(i)

Full recommendation:

The Special Rapporteur recommends that the Government and Parliament, ensure that all those arrested for the peaceful exercise of their rights to freedom of opinion, expression, assembly and association are released. Promptly report to the families the whereabouts and situation of individuals taken into custody.

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur recommends that the Government and Parliament, ensure that all those arrested for the peaceful exercise of their rights to freedom of opinion, expression, assembly and association are released.

While Article 27 of the Constitution ostensibly protects the right to freedom of peaceful assembly, the guarantee falls short of international standards set out in the International Covenant on Civil and Political Rights (ICCPR) by requiring that participants are not “in violation of the fundamental principles of Islam”. There is no clear definition or criteria that define what can be considered “fundamental principles of Islam.” Under Article 2 of the Law on Political Crimes, adopted in 2016, participation in an unauthorized assembly, even if it is peaceful, can effectively be considered a political offence.² Unauthorized assemblies had previously been prohibited under the 1981 Law on the Activities of Parties, Populations and Political and Trade Unions and Islamic Associations or Recognized Religious Minorities.³ Those participating in peaceful unauthorized assemblies are often charged and sentenced to prison terms under Article 610 of the Islamic Penal Code.⁴

The right to freedom of expression, recognised under Article 24 of the Constitution is similarly undermined by vague qualifications, such as being “deemed harmful to the principles of Islam or the rights of the public.” Article 40 further allows for restrictions of rights, including peaceful assembly, if their exercise is deemed “injurious to others” or “detrimental to public interests.” Similar provisions restrict the right to freedom of expression online through the criminalization of vaguely worded offences such as the “dissemination of lies” and what is deemed to offend

¹ CCPR.19.1.S.1; CCPR.19.2.S.1; CCPR.21.1.S.1; CCPR.22.1.S.1; CCPR.21.1.P.2; CCPR.21.1.O.2; CCPR.21.1.O.3; CCPR.22.1.O.2

² The 2016 Law on Political Crimes, available at: <https://rc.majlis.ir/fa/law/show/968421>

³ The 1981 Law on the Activities of Parties, Populations and Political and Trade Unions and Islamic Associations or Recognised Religious

Minorities, available at: <https://rc.majlis.ir/fa/law/show/90226>

⁴ 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

“public morality and chastity.”⁵ These restrictions fail to meet requirements of international standards that limitations are necessary and proportionate, and in pursuit of one of a limited number of narrowly-drawn legitimate aims, per Article 19 of the ICCPR. This grants authorities’ significant discretion to impose overbroad and vague restrictions on individuals’ rights in violation of the country’s international human rights obligations.

The revised version of the Islamic Penal Code,⁶ adopted in 2013, maintains numerous provisions which criminalise the exercise of the right to freedom of expression, association and peaceful assembly, in contravention of international human rights law and standards. To name a few, under the Penal Code, the establishment or leadership of a group that “aims to perturb the security of the country” is criminalized,⁷ as well as a variety of acts considered as propaganda⁸ or conspiracy against the state (which has been interpreted to include peaceful protests).⁹ Encouragement to “violate public morals”¹⁰ as well as satire are also penalized.¹¹ Similar vaguely worded provisions criminalize acts such as swearing at¹² or insulting¹³ “the Great Prophet of Islam” as well as “sowing corruption on earth”¹⁴ with the death penalty.

The authorities frequently resort to these provisions in order to intimidate, arrest and prosecute individuals who peacefully exercise their rights to freedom of expression, association and assembly including journalists and media workers, trade unionists, and lawyers.^{15 16 17 18 19}

⁵ “Islamic Republic of Iran: Computer Crimes Law,” ARTICLE19, 2012.

[https://www.article19.org/data/files/medialibrary/2921/12-01-30-FINAL-iran-WEB\[4\].pdf](https://www.article19.org/data/files/medialibrary/2921/12-01-30-FINAL-iran-WEB[4].pdf)

⁶ The Islamic Penal Code available at: https://rc.majlis.ir/fa/law/print_version/845048

⁷ Article 498 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁸ Article 500 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁹ Article 610 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁰ Article 639 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹¹ Article 700 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹² Article 262 Islamic Penal Code 2013, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

¹³ Article 513 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁴ Article 286 Islamic Penal Code 2013

¹⁵ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/projects/timeline>

¹⁶ 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

¹⁷ See more: Iran Human Rights, <https://www.iranhr.net/en/reports/23/>

¹⁸ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/controlled-and-pursued-labor-activism-in-contemporary-iran/>

¹⁹ See more: Ensemble Contre la Peine de Mort, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

^{20 21 22} NGOs have reported a pattern of violations to the aforementioned human rights targeting disproportionately members of minority or marginalised groups. ^{23 24 25 26 27 28}

The authorities have continued to respond to protests with excessive and unlawful force. In November 2019, authorities violently repressed protests across the country. Around 7,000 persons were arrested and detained according to a spokesperson for Iran’s parliamentary committee for national security and foreign policy.^{29 30} Numerous reports show that the Government continues to arrest individuals solely exercising their rights to freedom of opinion, expression and association, who remain currently in detention.^{31 32}

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.³³ Additionally, the possibility to submit complaints is particularly limited as freedom of expression, assembly and association are legally restricted in the Islamic Republic of Iran.

²⁰ 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

²¹ See more: United for Iran, database of Iran’s prisons and political prisoners available at <https://ipa.united4iran.org/en/>

²² See more: EN-Human Rights Activists News Agency, <https://www.en-hrana.org/?s=activists>

²³ See more: Association for the human rights of the Azerbaijani people in Iran, <http://www.ahrz.org/association-for-the-human-rights-of-the-azerbaijani-people-in-iran-ahrz-repot-regarding-the-current-situation-of-the-azerbaijani-arresteesthat-are-arrested-during-the-recent-protests-nove/>

²⁴ See more: Kurdistan Human Rights Geneva, <https://kmmk-ge.org/sd/annual-report-2020/>

²⁵ See more: United For Iran, <https://ipa.united4iran.org/en/prisoner/>

²⁶ Center for Human Rights in Iran, <https://iranhumanrights.org/2020/10/more-bahais-begin-serving-prison-sentences-in-iran-simply-for-their-beliefs/>

²⁷ 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

²⁸ “Iran arrests 29 linked to protests against compulsory hijab laws”, New York Times, 2 February 2018. <https://www.nytimes.com/2018/02/02/world/middleeast/iran-hijab-protests-arrests.html>

²⁹ “November Protests; the details of the case of three prisoners who were sentenced to death,” HRANA.5 March 2020. <https://www.en-hrana.org/november-protests-the-details-of-the-case-of-three-prisoners-who-were-sentenced-to-death>

³⁰ See more : Article 19, Small Media, Human Rights Activists in Iran, Impact Iran, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICS%2fIRN%2f42313&Lang=en

³¹ See more: United For Iran, <https://ipa.united4iran.org/en/prisoner/>

³² 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>

³³ 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

In light of the above, the Government and Parliament of the Islamic Republic of Iran have not ensured that all those arrested for the peaceful exercise of their rights to freedom of opinion, expression, assembly and association are released.

B. The Special Rapporteur recommends that the Government and Parliament promptly report to the families the whereabouts and situation of individuals taken into custody

The current prisons operational regulations,³⁴ passed in 1986, put the management of all prisons and detention centers and affiliated bodies under the responsibility of the Prisons Organization.³⁵ Such provision is reiterated under Article 18 of the Prison Regulations passed in 2001. However, the existence of secret detention centers or facilities run outside the supervision of the Prisons Organization 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, remain reportedly prevalent in the Islamic Republic of Iran.³⁶ Additionally, security and intelligence bodies can, with the approval³⁷ and under the supervision of the Prisons Organization,³⁸ set up “security detention facilities”. Prosecution authorities are obliged to inspect security detention facilities regularly and submit a report to the judiciary.³⁹ Under the Law on Respect for Legitimate Freedoms and Protection of Citizens’ Rights, the head of the judiciary is obliged to set a committee to ensure that prisons and detention centers regulations are respected and that those responsible for committing abuses are held to account.⁴⁰ Reportedly, these legal safeguards are not applied in practice, enabling intelligence and security bodies to operate outside the Iranian legal framework and without accountability.⁴¹ Unofficial secret detention centers are not regulated under Iranian law and are not registered under the Prisons Organization, which prevents the detainees from knowing the exact location of where they are being held. This is in contradiction of the Law on Respect for Legitimate Freedoms and Protection of Citizen’s Rights which provides that law enforcement officials and interrogators

³⁴ 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.

³⁵ Prison Regulations, Article 18. In 1986, the Prisons Organization replaced the Supervisory Council on Prisons and Security and Corrective Measures. See the Law Replacing the Supervisory Council on Prisons and Security and Corrective Measures with the State Prisons Organization and Security and Corrective Measures, 26 January 1986, available on the website of the Islamic Parliament Research Centre at <https://rc.majlis.ir/fa/law/show/91160>. Article 9 of the Law required the passage of an executive by-law which was passed in July 2001, 15 years after the adoption of the Law of Alteration in 1986. The 2001 Prison Regulations were subjected to amendments in 2002 and 2010.

³⁶ See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

³⁷ Prohibition of Forming Special Detention Facilities and Allocation of One Detention Facility for Security Crimes in Each Province, www.rc.majlis.ir/fa/law/show/131562 ; Executive Regulations for Management of Security Detention Facilities, 21 November 2006, Note to Article 3, <https://bit.ly/3loEKSf>

³⁸ Executive Regulations for Management of Security Detention Facilities, 21 November 2006, Articles 2 and 4-6, <https://bit.ly/3o9sqak>

³⁹ Executive Regulations for Management of Security Detention Facilities, 21 November 2006, Article 2, www.bit.ly/2Fu8rlx; See also the Law on Respect for Legitimate Freedoms and Protection of Citizens’ Rights, 5 May 2004, Article 1(13), www.rc.majlis.ir/fa/law/show/94150

⁴⁰ The Law on Respect for Legitimate Freedoms and Protection of Citizens’ Rights, 5 May 2004, Article 1(15), www.rc.majlis.ir/fa/law/show/94150

⁴¹ See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

must refrain from transferring detainees to unidentified locations.⁴² There is no readily available information that might indicate that 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 into account.

Unofficial and secret detention facilities 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 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",⁴³ further, relatives cannot inquire about the detainees' whereabouts if it "infringe[s] on the social and familial status of the detainees",⁴⁴ conditions that are not further defined and seemingly therefore 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.⁴⁵ 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 have access to the outside world for an unlimited period of time. Such provisions enable Iranian authorities to keep information as to the whereabouts of individuals taken into custody from their families and facilitate the perpetration of enforced disappearances.

Reports of enforced disappearances in the Islamic Republic of Iran are regular, with numerous families left without any information as to the whereabouts of their relatives held into custody. The Working Group on Enforced or Involuntary Disappearances issued communications on

⁴² The Law on Respect for Legitimate Freedoms and Protection of Citizens' Rights, 5 May 2004, Article 1(7), www.rc.majlis.ir/fa/law/show/94150

⁴³ 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.

⁴⁴ 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.

⁴⁵ Executive Regulations of the Prisons Organization, 11 December 2005, www.prisons.ir/page-main/fa/0/form/pId77

alleged cases of enforced disappearances as recently as 2019, mentioning the lack of investigation and follow-up on unconfirmed reports of death.⁴⁶

In light of the above, the Government and Parliament of the Islamic Republic of Iran have not promptly reported to the families the whereabouts and situation of individuals taken into custody.

Recommendation Status:

This recommendation has **NOT** been implemented.

⁴⁶ 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