

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/37/68 para 92

Full recommendation:

The Special Rapporteur is also deeply concerned by the ongoing, numerous, and consistent reports received of due process violations, including but not limited to the use of prolonged solitary confinement and significant limitations placed upon the ability of the accused to access a lawyer. In particular she calls upon the Government to strictly limit the use of solitary confinement and ensure full access to their choice of lawyer. She further reiterates her recommendation to abolish the revolutionary tribunals and religious courts in line with the recommendations made by the Working Group on Arbitrary Detention following its visit to the country.

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur calls upon the Government to strictly limit the use of solitary confinement

The Iranian Criminal Code of Procedure (2015) lists the disciplinary punishments that may be imposed on detainees and prisoners but excludes solitary confinement, which remains prescribed under Article 175 of the Prison Regulations.² Under Iran’s Prison Regulations, any disciplinary measure may be imposed after investigation by a disciplinary council composed of judicial and prison officials, although the Regulations do not specify the offences that may be subject to punishments. If the disciplinary council finds the accused prisoner guilty by majority vote, it may impose “detention in solitary confinement for a maximum of 20 days.”³ The lack of regulations for holding detainees in solitary confinement outside of the circumstances predicted under Prison Regulations put detainees at risk of arbitrary solitary confinement, and for prolonged periods of time.

Article 175 of Iran’s Prison Regulations stipulates that solitary confinement should not exceed 20 days,⁴ while the UN Standard Minimum Rules for the Treatment of Prisoners (or Nelson Mandela’s rules) consider solitary confinement longer than 15 days as prolonged solitary

¹ CCPR.9.1.S.1.; CCPR.9.1.S.2.; CCPR.9.1.S.3.; CCPR.9.2.S.1.; CCPR.9.3.S.2.; CCPR.14.1.S.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.9.1.O.1.; CCPR.9.2.O.1.; CCPR.9.2.O.4.; CCPR.14.1.O.8.; CCPR.9.1.O.1.

² Article 524, Code of Criminal Procedure of the Islamic Republic of Iran, and Iranian Prisons Regulations, as referred to in <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

³ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁴ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

confinement.⁵ The Human Rights Committee has stipulated that the prolonged solitary confinement of detainees may amount to torture or other cruel, inhuman or degrading treatment or punishment.⁶

Reports suggest that the Section 209 of the Evin Prison in Tehran, under the control of the Ministry of Intelligence, is the place of systematic and large-scale use of solitary confinement “for its own sake and not for traditional disciplinary purposes”,^{7 8 9} as the Working Group on Arbitrary Detention firstly noted during its last visit of the prison in 2003.¹⁰ Similarly, Section 240 of Evin Prison, partially under the authority of the Ministry of Intelligence and other security and intelligence units, has been reportedly used exclusively for holding prisoners in solitary confinement.^{11 12} Section 240 of Evin Prison reportedly contains 700 to 800 solitary confinement cells.¹³

The Working Group on Arbitrary Detentions considers that such “prison within a prison” is “arbitrary in nature and must be ended.”¹⁴ The Government noted in a 2020 Special Rapporteur’s report that solitary confinement “is used only in rare instances during the judicial investigation, as well as a punitive measure in places of detention”.¹⁵ Yet, the existence of sections within Iranian prisons adapted to the use of large-scale solitary confinement suggest the contrary.

⁵ Rule 44, Nelson Mandela’s Rules or UN Standard Minimum Rules for the Treatment of Prisoners, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

⁶ General comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, para. 6.

⁷ Iran Human Rights Documentation Center, <https://iranhrdc.org/rights-disregarded-prisons-in-the-islamic-republic-of-iran/#2.1.1>

⁸ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1310212019ENGLISH.pdf>

⁹ En-HRANA, <https://www.en-hrana.org/abdul-sattar-sheikh-transferred-solitary-confinement-evin-prison?hilitte=%27solitary%27%2C%27confinement%27%2C%27evin%27%2C%27prison%27> and <https://www.hrw.org/reports/2008/iran0108/iran0108web.pdf>

¹⁰ Country Visits, Working Group on Arbitrary Detention, <https://www.ohchr.org/en/issues/detention/pages/visits.aspx>

¹¹ Amnesty International, <https://www.amnesty.org/download/Documents/8000/mde130232014en.pdf>

¹² Iran Human Rights Documentation Center, <https://iranhrdc.org/rights-disregarded-prisons-in-the-islamic-republic-of-iran/#2.1.1>

¹³ Human Rights Watch, <https://www.hrw.org/reports/2008/iran0108/iran0108web.pdf>

¹⁴ Country Visits, Working Group on Arbitrary Detention, <https://www.ohchr.org/en/issues/detention/pages/visits.aspx>

¹⁵ Report of the Special Rapporteur on the human rights situation 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

OHCHR and NGOs frequently report cases of solitary confinement in the Islamic Republic of Iran.^{16 17 18 19 20 21}

Iranian authorities regularly hold individuals in solitary confinement during the preliminary investigation phase and in cases of political and national security-related charges.²² In recent decades, human rights organizations have documented numerous cases of civil, political, ethnic and religious rights activists being held in solitary confinement for prolonged periods of time, sometimes up to several years,^{23 24}

Far from strictly limiting its use, reports indicate that Iranian authorities have resorted to solitary confinement for its own sake and on a large-scale basis.

B. The Special Rapporteur calls upon to Government to ensure full access to their choice of lawyer

Article 35 of the Iranian Constitution guarantees the right to legal defence and the right to choose a lawyer.²⁵ Article 190 of the revised Code of Criminal Procedure (CCP) protects the right of a suspect to “be accompanied by a lawyer during the preliminary investigations”. Article 48 of the Code of Criminal Procedure (CCP), revised in 2015, permits the accused to “demand the presence of a lawyer from the start of detention.”^{26 27} However, a Note to Article 48 of the 2015 CCP²⁸ specifies that individuals facing charges for certain offences, including those relating to national security and organized crime, must select their legal counsel from among a limited list of lawyers approved and announced by the Head of the Judiciary at the phase of

¹⁶ OHCHR News, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26716&LangID=E%20>

¹⁷ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2021, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F46%2F50&Language=E&DeviceType=Desktop>

¹⁸ Human Rights Watch, <https://www.hrw.org/news/2020/06/06/iran-free-students-long-solitary>

¹⁹ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF> and <https://www.amnesty.org/download/Documents/MDE0113572020ENGLISH.PDF>

²⁰ Amnesty International, <https://www.amnesty.org/en/latest/news/2020/07/iran-leaked-letters-reveal-state-denial-of-covid19-crisis-in-prisons/>

²¹ See more : Abdorrahman Boroumand Center, https://www.en-hrana.org/wp-content/uploads/2020/09/COVID19_FEAR_IN_IRANS_PRISONS_.pdf

²² https://www.ihr.org/ihr_article/violence-fa_violence-against-political-prisoners/

²³ HRW <<https://www.hrw.org/legacy/campaigns/torture/iran/>>

²⁴ HRW <<https://www.hrw.org/reports/2004/iran0604/5.htm>>;

Nobel Womens Initiative <<https://nobelwomensinitiative.org/white-torture-an-open-letter-from-narges-mohammadi/>>

²⁵ Constitution of the Islamic Republic of Iran <http://www.iranchamber.com/government/laws/constitution_ch03.php>

²⁶ 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>

²⁷ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

²⁸ 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

preliminary investigations.²⁹ In 2018, the Judiciary published the list of approved lawyers (including only 20 names for Tehran). However, many of the lawyers named are reportedly close to the security bodies or have paid to appear on the list after speaking with government officials, threatening due process and questioning the independence and neutrality of the Judiciary.³⁰ As a consequence, the right to legal assistance of one's choosing in such cases is particularly limited.

Despite the limited legislative guarantees, in many reported cases, especially national security cases, defendants have reported seeing their lawyer for the first time on their day of trial.^{31 32} Prisoners reportedly remained incarcerated without proper access to legal representation at all stages of their trial process and lawyers denied timely access to their clients' legal files.^{33 34 35} Defendants in national security cases are often denied access to a lawyer in the investigative stage of the judicial process.^{36 37} In the hundreds of cases of individuals arrested for political reasons or suspected for ordinary crimes that the Abdorrahman Boroumand Center has investigated, all detainees were interrogated without the presence of an attorney.³⁸ Members of the Sunni³⁹, Arab Ahwazi⁴⁰, Kurdish⁴¹ and *Baha'i*⁴² minorities are frequently denied legal representation.

Despite the existence of several means and mechanisms that accept complaints regarding the violation of fair trial standards in Iran, such as the Judges Disciplinary Court, the Article 90 Parliamentary Commission and, in general, any appeals courts and Supreme Court, there is no readily available information to indicate that these complaints are being addressed and adjudicated by the relevant authorities. The Islamic Republic of Iran has not ensured the right to have a lawyer of their choice.

²⁹ 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>)

³⁰ “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>)

³¹ 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

³² HRW <<https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>>

³³ HRANA <<https://www.en-hrana.org/arash-sadegh-golrokh-iraeis-lawyers-access-cases>>

³⁴ HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

³⁵ HRANA <<https://www.en-hrana.org/court-prevents-lawyer-accessing-files-five-sunni-prisoners>>

³⁶ Abdorrahman Boroumand Center, 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

³⁷ HRW <<https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>>

³⁸ Abdorrahman Boroumand Center, 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

³⁹ HRANA <<https://www.en-hrana.org/court-prevents-lawyer-accessing-files-five-sunni-prisoners>>

⁴⁰ UNPO <<https://unpo.org/article/21430>>

⁴¹ HRANA <<https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>>

⁴² HRANA <<https://www.en-hrana.org/uncertain-situation-of-seven-bahai-detainees-in-rajaie-shahr-prison>>

C. The Special Rapporteur further reiterates her recommendation to abolish the revolutionary tribunals and religious courts in line with the recommendations made by the Working Group on Arbitrary Detention following its visit to the country.

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.⁴³ The Law on Formation of General and Revolutionary Courts was adopted in 1994,⁴⁴ subsequently amended in 2002.⁴⁵ The Code of Criminal Procedure for General and Revolutionary Courts was enacted in 1999.⁴⁶ Despite its stipulated three-year trial period, it remained in place until the entry into force of the new Code of Criminal Procedure (CCP) in 2015.⁴⁷ 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.⁴⁸

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”),⁴⁹ “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.⁵⁰ 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,⁵¹ which reportedly issue the most death sentences.⁵² Similarly, NGO reports seem to suggest that trials before revolutionary courts disproportionately target civil rights activists and members of religious minorities such as the *Baha’is*.⁵³ Additionally, recent reported cases of

⁴³ 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

⁴⁴ The Law on Formation of General and Revolutionary Courts, 13 July 1994, available at rc.majlis.ir/fa/law/show/90416

⁴⁵ Amendments to the Law on Formation of General and Revolutionary Courts, 3 November 2002, available at <https://rc.majlis.ir/fa/law/show/93837>

⁴⁶ The Code of Criminal Procedure for General and Revolutionary Courts, 19 September 1999, available at <https://rc.majlis.ir/fa/law/show/93219>

⁴⁷ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁴⁸ Iran Human Rights Documentation Center, <https://iranhrdc.org/amendments-to-the-islamic-republic-of-irans-code-of-criminal-procedure-part-1/>

⁴⁹ 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/>

⁵⁰ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁵¹ 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>

⁵² See Iran Human Rights <https://iranhr.net/en/articles/2839/>

⁵³ EN-HRANA, <https://www.en-hrana.org/?s=revolutionary+court>

unjustifiably lengthy pretrial detentions before revolutionary courts may well have amounted to arbitrary detention.^{54 55 56 57}

The Special Court for the Clergy were established by a directive from then Supreme Leader Ayatollah Khomeini in 1979 and does 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.⁵⁸ The special courts for the clergy have jurisdiction over offences committed by clerics and acts considered 'contrary to the clergy's dignity'.⁵⁹ 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.^{60 61} Additionally, Article 42 of the Code of Procedure for the Special Court for the Clergy⁶² 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."⁶³ Consequently, the absence of legal substantive grounds for the existence of the special courts grants judges wide interpretative powers, already significant due to the general lack of clarity and precision of offences provided under Iranian law.⁶⁴ 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",⁶⁵ and therefore should also enjoy the equal protection of the system of justice.

⁵⁴ Omid memorial case of Ahmad Nasiri, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-8023/ahmad-nasiri>)

⁵⁵ Letter of Zahedan Prison inmates, May 13, 2019, Abdorrahman Boroumand Center (<https://www.iranrights.org/library/document/3577>)

⁵⁶ EN-HRANA, <https://www.en-hrana.org/case-ahmadinejads-former-vp-sent-revolutionary-court?hilite=%27revolutionary%27%2C%27court%27>

⁵⁷ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/61>

⁵⁸ En-HRANA, <https://www.en-hrana.org/four-decades-special-court-clerics-special-report?hilite=%27special%27%2C%27court%27>

⁵⁹ 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>

⁶⁰ See more: en-HRANA, <https://www.en-hrana.org/four-decades-special-court-clerics-special-report?hilite=%27special%27%2C%27court%27>

⁶¹ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/special-court-for-the-clergy-raison-detre-development-structure-and-function/>

⁶² The Procedure Code for the Special Court for the Clergy, 5 August 1990, available at www.vekalatonline.ir/laws/11456/

⁶³ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁶⁴ See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁶⁵ Constitution of the Islamic Republic of Iran, English translation, <https://www.refworld.org/docid/3ae6b56710.html>

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.⁶⁶ There is no readily available information on data relating to the number of complaints 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”⁶⁷ and reportedly is composed mostly of government and judicial officials.⁶⁸ 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”.⁶⁹ In 2021, 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.

⁶⁶ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

⁶⁷ 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

⁶⁸ Amnesty International, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_103_9081_E.pdf

⁶⁹ Working Group on Arbitrary Detention, 2004, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/147/77/pdf/G0314777.pdf?OpenElement>