

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/43/61 para 68(b)

Full recommendation:

The Special Rapporteur recommends that the Government, the judiciary and the parliament: Ensure that all those arrested, including those arrested during the November 2019 protests, for the peaceful exercise of their rights to freedom of opinion, expression, assembly and association are released, and ensure also that the detaining authorities promptly report the whereabouts and situation of detainees to their families;

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur recommends that the Government the judiciary and the parliament: Ensure that all those arrested, including those arrested during the November 2019 protests, 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 defines 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 were previously prohibited under the 1981 Law on the Activities of Parties, Populations and Political and Trade Unions and Islamic Associations or Recognised 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

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

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 “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 for which the punishment is death.

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}

⁵ “Islamic Republic of Iran: Computer Crimes Law,” ARTICLE19, 2012. <https://bit.ly/1RecP6R>

⁶ The Islamic Penal Code available at: http://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 : 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

¹⁶ See more: Iran Human Rights, <https://www.iranhr.net/en/reports/23/>

¹⁷ See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/controlled-and-pursued-labor-activism-in-contemporary-iran/>

¹⁸ See more: Ensemble Contre la Peine de Mort, <https://www.ecpm.org/wp-content/uploads/Rapport-iran-2020-gb-070420-WEB.pdf>

NGOs have reported a pattern of violations to the aforementioned human rights disproportionately targeting members of minority or marginalised groups.^{19 20 21 22 23 24}

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.^{25 26} 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.^{27 28}

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.²⁹ 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.

In light of the above, the Government the judiciary and the parliament of the Islamic Republic of Iran have not ensured that all those arrested, including those arrested during the November 2019

¹⁹ 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-ahraz-repot-regarding-the-current-situation-of-the-azerbaijani-arrestees-that-are-arrested-during-the-recent-protests-nove/>

²⁰ See more: Kurdistan Human Rights Geneva, <https://kmmk-ge.org/sd/annual-report-2020/>

²¹ See more: United For Iran, <https://ipa.united4iran.org/en/prisoner/>

²² Center for Human Rights in Iran, <https://iranhumanrights.org/2020/10/more-bahais-begin-serving-prison-sentences-in-iran-simply-for-their-beliefs/>

²³ 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

²⁴ “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>

²⁵ “November Protests; the details of the case of three prisoners who were sentenced to death,” HRANA.5 March 2020.

<https://www.enhrana.org/november-protests-the-details-of-the-case-of-three-prisoners-who-were-sentenced-to-death>

²⁶ 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%2f42315&Lang=en

²⁷ See more: United For Iran, <https://ipa.united4iran.org/en/prisoner/>

²⁸ 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>

²⁹ 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

protests, 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, the judiciary and the parliament: ensure also that the detaining authorities promptly report the whereabouts and situation of detainees to their families

A number of restrictive provisions under Iranian law prevent relatives of detainees from being informed of the detainees' arrests when deemed "necessary",³⁰ further, relatives cannot inquire about the detainees' whereabouts if it "infringe[s] on the social and familial status of the detainees",³¹ 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.³² 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 alleged cases of enforced disappearances as recently as 2019, mentioning the lack of investigation and follow-up on unconfirmed reports of death.³³

In light of the above, the Government, the judiciary and the parliament have not ensured that the detaining authorities promptly report the whereabouts and situation of detainees to their families.

³⁰ 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.

³¹ 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.

³² Executive Regulations of the Prisons Organization, 11 December 2005, www.prisons.ir/page-main/fa/0/form/pld77

³³ 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

Recommendation Status:

This recommendation has **NOT** been implemented.