

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

Full recommendation:

The Special Rapporteur recommends that the Government, the judiciary and the parliament: Ensure that prisoners and detainees are protected from all forms of torture and ill-treatment and that confessions obtained through torture or ill-treatment are never admitted as evidence against the accused.

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur recommends that the Government, the judiciary and parliament: ensure that prisoners and detainees are protected from all forms of torture and other ill-treatment.

Article 38 of the Constitution of the Islamic Republic of Iran only prohibits torture and other ill-treatment when it is “used to extract an admission of guilt or to obtain information”.² Additionally, Article 39 prohibits all affronts to the dignity of detained or imprisoned persons. 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 [...]”.³ 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.⁴ While Iranian law conditionally prohibits torture and certain abusive conduct 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,⁵ including by conflicting domestic laws.

¹ CCPR.7.1.S.1

CCPR.7.1.P.1

CCPR.7.1.O.1; CCPR.7.1.O.2

² Constitution of the Islamic Republic of Iran English translation

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

³ 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/>

⁴ 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/>

⁵ CCPR General Comment No. 20: Article 7, 10 March 1992, <https://www.refworld.org/docid/453883fb0.html>

The Iranian legal framework does not adequately protect individuals from torture and other-ill-treatment and may well facilitate impunity. While Iranian laws provide for the accountability of officials and authorities who infringe 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 under Iranian law prevents prosecution, which is limited only to cases of torture provided under the law.

There are mechanisms competent to receive and investigate complaints of torture and ill-treatment 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."⁶ The Supervision and Inspection Board also 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.⁷ There is no readily available information that might indicate that complaints have been properly investigated and adjudicated either by the Board or the Secretariat.

Prisoners in the Islamic Republic of Iran are often exposed to the risk of being held in solitary confinement for prolonged periods of time. While Article 175 of Iran's Prison Regulations stipulates that solitary confinement should not exceed 20 days,⁸ 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 confinement.⁹ 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.¹⁰ Reports have shown that prolonged solitary confinement, sometimes lasting several month, is often used in the Islamic Republic of Iran.

⁶ 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).

⁷ Report of the Working Group on the Universal Periodic Review, February 2020, <https://undocs.org/en/A/HRC/43/12/Add.1>

⁸ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁹ 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

¹⁰ General comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, para. 6.

Reports of cases of torture in the Islamic Republic of Iran are regular.^{11 12} Amnesty International reported widespread and systematic use of torture by Iranian authorities against protestors during and after the November 2019 protests.¹³ As of November 2020, there is no readily available information that might indicate that Iranian authorities have opened investigations 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 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.¹⁴ 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.

The Government, Judiciary and Parliament of the Islamic Republic of Iran do not ensure that prisoners are protected from all forms of torture and other ill-treatment.

B. The Special Rapporteur recommends that the Government, judiciary and parliament: ensure that confessions obtained through torture or ill-treatment are never admitted as evidence against the accused

Article 38 of the Constitution of the Islamic Republic of Iran stipulates “all forms of torture for the purpose of extracting confession or acquiring information are forbidden” and that “testimony, confession or oath obtained under duress is devoid of value and credence”.¹⁵ This is reiterated under Article 1(9) of the Law on Respect for Legitimate Freedom and Safeguarding Citizens’ Rights, and Article 168 of the 2013 Islamic Penal Code, which deems a confession “admissible only if at the time of confession the confessor is sane, pubescent, intended [to make the confession] and free.”¹⁶

¹¹ 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>

¹² 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>

¹³ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

¹⁴ 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

¹⁵ Constitution of the Islamic Republic of Iran, English translation, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

¹⁶ Islamic Penal Code (2013), English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

Despite these provisions, the prohibition on admitting evidence obtained through ill-treatment is only formulated as a general principle. Iranian laws do not contain “detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence” considered by the Committee Against Torture as “one of the essential means in preventing torture”.¹⁷

For example, while Article 169 of the Islamic Penal Code and Article 360 of the Code of Criminal Procedure (2015) stipulate that a confession taken under duress or involuntary shall be inadmissible before a court, there is no provision detailing what constitutes an involuntary confession and who bears the burden of proving that a statement has been voluntary. The Penal Code and Criminal Code remain silent on specific procedures of investigation judges and prosecutors should follow to establish whether a confession is lawful and admissible. Such assessment appears to be at the discretion of the judge.

In practice, the Iranian criminal justice system relies heavily on confessions as admissible evidence.¹⁸ Confessions obtained under torture and other ill-treatment is facilitated by the denial of prompt access to legal counsel and encouraged by courts that routinely allow such “confessions” as admissible evidence. NGOs^{19 20 21} and OHCHR²² have reported numerous cases of confessions extracted from torture, used as primary evidence and on which judges have based their verdicts, including in death penalty cases.

The Government and Parliament of the Islamic Republic of Iran do not ensure that confessions obtained through torture and ill-treatment are never admitted as evidence against the accused.

Recommendation Status:

This recommendation has **NOT** been implemented.

¹⁷ Committee Against Torture, Report to the General Assembly, A/54/44, para. 45, referring to Yugoslavia.

¹⁸ Under Article 171 of the Islamic Penal Code, confessions are accorded the primary weight. Islamic Penal Code (2013) English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

¹⁹ Cases documented by the Abdorrahman Boroumand Center

Omid memorial case of Ehsanollah Ehsani, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-8037/ehsanollah-ehsani>)

Omid memorial case of Kamal Molaii, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-7624/kamal-molaii>)

Omid memorial case of HadiRashedi, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/71726/hadi-rashedi>)

Omid memorial case of Loqman Moradi, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-8169/loqman-moradi>)

Omid memorial case of Sattar Beheshti, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-7809/sattar-beheshti>)

²⁰ Center for Human Rights in Iran, <https://www.iranhumanrights.org/2020/05/they-aimed-at-my-sons-head-report-reveals-carnage-in-crushed-iran-protests/>

²¹ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

²² 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>