

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 paragraph 394

Full Recommendation:

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstance regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Assessment using Impact Iran human rights indicators¹

Following the announcement of the victory of incumbent president Mahmoud Ahmadinejad in the presidential election on June 12th, 2009, thousands of demonstrators took to the streets in Iran to protest against the results. In response to the protests, the Islamic Republic sent the Islamic Revolutionary Guard Corps and the *Basij* militia (a volunteer paramilitary force) to repress the demonstrations.² Due to the lack of official information about the whereabouts of victims, the total number of those killed in the 2009 post-elections protests remains largely unknown.³ Although the government stated in September 2009 that a total of 36 people, including security forces, had been killed,⁴ reports from human rights organizations have reported over 60 individuals being shot dead during the 2009 events;⁵ dozens of demonstrators killed by security forces,⁶ and several deaths of detainees after they were subjected to torture and ill-treatment.^{7 8}

Article 38 of the Constitution of the Islamic Republic of Iran prohibits torture and other ill-treatment, but only when it is “used to extract an admission of guilt or to obtain information”.⁹ Similarly, Article 578 of the Islamic Penal Code asserts “any civil servant or judicial or non-

¹ CCPR.6.1.S.2 ; CCPR.7.1.S.1;
CCPR.6.1.P.1 ; CCPR.6.1.P.2; CCPR.7.1.P.1
CCPR.6.1.O.2 ; CCPR.7.1.O.1 ; CCPR.7.1.O.2

² Iran Human Rights Documentation Center, 2013 <https://iranhrdc.org/violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran/>

³ Iran Human Rights Documentation Center, 2013, <https://iranhrdc.org/violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran/>

⁴ Iran Human Rights Documentation Center, 2013, <https://iranhrdc.org/violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran/> See also: Amar-i Tazih va Mutafavit-i Yik Maqam-i Nizammiyih Iran az Qurbaniyan-i Khushunatha [New and Different Statistics of the Victims of Violence by an Iranian Law Enforcement Official], BBC Persian, Sept. 11, 2009, available at http://www.bbc.co.uk/persian/iran/2009/09/090910_si_violence_victims.shtml

⁵ Amnesty International, Submission to the Human Rights Committee, 2011, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_103_9081_E.pdf

⁶ Human Rights Watch, Submission to the Human Rights Committee, 2011, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_103_9079_E.pdf

⁷ Human Rights Watch, Submission to the Human Rights Committee, 2011, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_103_9079_E.pdf

⁸ Amnesty International, 2009, <https://www.amnesty.org/download/Documents/48000/mde131232009en.pdf>

⁹ Constitution of the Islamic Republic of Iran English translation
http://www.iranchamber.com/government/laws/constitution_ch03.php

judicial agent who corporally mistreats and abuses an accused person in order to force him to confess shall be sentenced [...]”.¹⁰ The prohibition is reinforced by the 2004 Law on Respect for Legitimate Freedoms and Safeguarding Citizen’s Rights¹¹ and Article 60 of the revised Code of Criminal Procedure (2015).¹² None of these provisions exclude torture and other ill-treatment inflicted on an individual for other purposes than extracting confessions or acquiring information. Furthermore, the Iranian legislation does not provide a definition of torture nor recognize a specific crime of torture.

Such shortcomings in the Iranian legal framework do not provide appropriate safeguards against torture and other ill-treatment, including concerning accountability for the perpetrators. Indeed, the absence of a specific crime of torture in Iranian law, added to restrictive legal provisions, both in their definition and scope of application, hinder the possibility of prosecutions for crimes of torture and other ill-treatments.

Article 570 of the Islamic Penal Code (2013) provides for the criminalization of officials and authorities affiliated with state institutions and bodies who violate the rights of individuals.¹³ Article 578 stipulates the sentence for civil servant or judicial or non-judicial agent “who corporally mistreats and abuses an accused person in order to force him to confess” and adds “if it is done under someone’s order, only the person who has issued the order shall be sentenced”.¹⁴ Additionally, under Article 578, “if the accused person dies as a result of the abuses [...] the person who has issued the order shall be sentenced to the punishment provided for a person who has ordered a murder”.¹⁵ The article, however, does not criminalize torture, nor does it use the term “torture”, and limits the punishable violation to physical assault when it is “in order to force him [the victim] to confess”.¹⁶ Furthermore, the Islamic Penal Code (2013) prescribes different penalties depending on the religion of the perpetrator and/or the victim in cases of murder (Article 310), where sentences are harsher for non-Muslims.¹⁷

While it is technically possible to file complaints about violations if individuals are subjected to torture, inhumane treatment or detention, there is, as of now, no evidence that judicial actions are taken in response to complaints. The judicial disciplinary courts, the Armed Forces Judicial Court, the Article 90 Commission of the Parliament and Oversight Bodies for the exercise of the

¹⁰ Islamic Penal Code (2013), Iran Human Rights Documentation Center, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹¹ Article 1(6), 1(7), 1(9) 2004 Law on Respect for Legitimate Freedoms and Safeguarding Citizen’s Rights as referenced by Amnesty International, 2016, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹² Code of Criminal Procedure (2015) as referenced by Amnesty International, 2016, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹³ Iran Human Rights Documentation Centre, Islamic Penal Code of the Islamic Republic of Iran - Book Five , available at <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁴ Iran Human Rights Documentation Centre, Islamic Penal Code of the Islamic Republic of Iran - Book Five, available at <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁵ Iran Human Rights Documentation Centre, Islamic Penal Code of the Islamic Republic of Iran - Book Five, available at <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁶ Iran Human Rights Documentation Centre, Islamic Penal Code of the Islamic Republic of Iran - Book Five, available at <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁷ Islamic Penal Code (2013) as referenced by Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

Citizenship Rights in the country's provincial courts are among the institutions tasked with receiving and reviewing complaints. There is as yet no readily available information as to how many complaints have been made and whether investigations are promptly and impartially investigated, or whether remedies are made available to victims.¹⁸

The post-election unrest of 2009 was not investigated by the Article 90 Committee, but by the Special Parliamentary Committee to Investigate the Status of Post-Election Arrestees, which was set up for the purpose in 2009.¹⁹ However, MPs candidates are subject to government-run committees' and the Guardian Council's screenings before being able to run for elections, notably to ensure that they are loyal to the Islamic Republic of Iran and the religious system of law.^{20 21} Furthermore, following the adoption of the Law on the Parliament Supervision on Conduct of Representatives in 2012, MPs' activities are scrutinized by a committee that can issue verdicts in regard to alleged offences such as "unethical behaviors" and "acts deemed against national security".²² Due to the vagueness of Iranian laws relating to national security and the lack of clear and specific definitions of what can constitute a threat to national security, the law increases the risk for MPs to be criminalized when voicing their dissent against the government and official figures. As a consequence, the impartiality and independence of the parliament's investigation is not guaranteed.

With regards to the conduct of Iranian authority during the 2009 demonstrations, under Article 11 of the 1993 Law on the Use of Weapons by Agents of the Armed Forces In Case of Necessity, the military and security forces (including the Revolutionary Guards Corps and the *Basij* militia) "shall use weapons as directed by the law in instances when they cooperate with the Police Force under the law and during assignments given to them".²³ However, there has been no readily available information suggesting that executive regulations to implement Article 11 have been made public or even drawn up. The lack of clarification around the provisions given under Article 11 of the 1993 hinders accountability for security forces who used weapons against demonstrators and superiors who decided on "assignments". Among the people shot in the events of 2009, a much-publicized killing was that of Neda Agha Soltan, shot on 20 June 2009, which reportedly was never properly investigated.²⁴

¹⁸ 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%2fICES%2fIRN%2f42313&Lang=en

¹⁹ Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/27/iran-bring-notorious-abuser-justice#>

²⁰ Reuters, 2020, <https://www.reuters.com/article/us-iran-election-factbox/factbox-choices-curtailed-irans-parliamentary-election-idUSKBN20B0C5>

²¹ Brookings, 2016, <https://www.brookings.edu/blog/markaz/2016/02/09/demystifying-irans-parliamentary-election-process/>

²² Iran Data Portal, Law on the Parliament supervision on conduct of representatives, 2012, <https://irandataportal.syr.edu/the-parliament-majlis/the-rules-of-procedure-of-the-islamic-parliament-of-iran>

²³ Law on the Use of Weapons by Agents of the Armed Forces in Case of Necessity (1993), as referenced by Amnesty International, submission to the Human Rights Committee, 2011, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_103_9081_E.pdf

²⁴ Amnesty International, Submission to the Human Rights Committee, 2011, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_103_9081_E.pdf

In December 2009, a military court charged 11 police officers who allegedly collaborated with the police, with murder over the deaths of demonstrators who have been detained at the Kahrizak prison.²⁵ However the court acquitted of all charges the highest-ranking defendant, General Azizollah Rajabzadeh, who headed Tehran’s police force at the time.²⁶ Additionally, the court did not examine high-ranking judicial and police officials such as Saeed Mortazavi, then Tehran Prosecutor General, Dehnavi (then Mortazavi’s deputy), Heidarifard (then Mortazavi’s deputy), Esmail Ahmadi Moghadam (then commander of the Law Enforcement Forces), and Ahmad-Reza Radan (then deputy commander of the Law Enforcement Forces).²⁷

The management and supervision of “judicial officers” (commanders, officers, rank-and-file police officers, as well as prison chiefs, prison guards, officials of the Ministry of Intelligence the *Basij* forces and the Intelligence Organization of the Revolutionary Guards)²⁸ is the responsibility of the Prosecutor, also responsible for holding regular training courses for judicial officers.²⁹ The revised Code of Criminal Procedure (2015) does not provide the type of action the Prosecutor is required to take in cases where “judicial officers” are in breach of regulations or in cases of misconduct.³⁰ The recognition of security and intelligence officials as “judicial officers” empower them to take actions such as arrests, detention and investigation. In the absence of adequate laws that clearly define the chain of command and establish effective oversight, the independence of the judicial system is impaired, ultimately enabling security and intelligence bodies to act without accountability.³¹

The former Tehran Prosecutor General at the time of the 2009 post-elections unrests, Saeed Mortazavi, was subject to the Special Parliamentary Committee investigation in 2010. The Committee found that Saeed Mortazavi was one of the main individuals responsible for the transfer and mistreatment of demonstrators at the Kahrizak prison.³² However, it is two years later, in 2012, that the Iranian authorities opened a criminal case against Saeed Mortazavi, then head of the Iran’s Social Security Organization.³³ The investigation looked into the alleged post-election abuses at Kahrizak prison, where three demonstrators reportedly died as a result of torture and ill-treatments.³⁴ In 2018 a court ultimately convicted Saeed Mortazavi for the death of one of the three

²⁵ Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/27/iran-bring-notorious-abuser-justice>

²⁶ Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/27/iran-bring-notorious-abuser-justice#>

²⁷ Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/27/iran-bring-notorious-abuser-justice#>

²⁸ Article 29 Revised Code of Criminal Procedure (2015), as referenced by Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

²⁹ Article 28, Revised Code of Criminal Procedure (2015), as referenced by Amnesty International, 2016, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

³⁰ Amnesty International, 2016, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

³¹ Amnesty International, 2016, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

³² Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/27/iran-bring-notorious-abuser-justice>

³³ Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/27/iran-bring-notorious-abuser-justice>

³⁴ Human Rights Watch, 2012, <https://www.hrw.org/news/2012/09/27/iran-bring-notorious-abuser-justice#>

above-mentioned demonstrators and sentenced him to two years of prison.³⁵ However, Saeed Mortazavi was reportedly released in September 2019.³⁶

Cases of killings and torture and other ill-treatments during and following the 2009 protests have been largely reported and documented. Although Iranian authorities set up a parliamentary committee to investigate cases of post-election arrestees, the process of selection of MPs candidates added to the threat of being accused on the charge of “national security” impair MPs’ impartiality. Furthermore, the lack of legal safeguards against torture and other ill-treatments, and the lack of oversight over security forces’ activities during protests, do not set the appropriate legal framework to prosecute and hold accountable those responsible for abuses. Although low-ranking officials have been prosecuted and convicted for abuses notably in the Kahrizak prison³⁷ most of the highest-ranking officials involved in the 2009 protests’ human rights violations have been either acquitted, sentenced to short prison sentences, or haven’t been prosecuted. As a result, the Iranian Government has not established impartial and independent investigation into killings, torture and other ill treatments during and following the 2009 presidential elections and didn’t hold all officials into account.

Recommendation Status:

This recommendation has **NOT** been implemented.

³⁵ Human Rights Watch, 2018, <https://www.hrw.org/news/2018/04/24/notorious-iranian-prosecutor-behind-bars-now>

³⁶ Radio Farda, 2019, <https://en.radiofarda.com/a/iran-releases-notorious-former-prosecutor-mortazavi-jailed-for-prisoner-deaths/30151955.html>

³⁷ Human Rights Watch, 2014, <https://www.hrw.org/news/2014/11/19/iran-ruling-official-linked-protester-deaths>