

**Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 396**

**Full recommendation:**

*(Regarding post-election violence killings of 5 students and 7 others. killing of students Fatemeh Barati, Kasra Sharafi, Mobina Ehterami, Kambiz Sho'a'i and Mohsen Imani along with at least seven other protesters and the arbitrary detention of dozens of opposition activists following recent elections in Iran.) Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.*

**Assessment drafted using Impact Iran indicators<sup>1</sup>**

**A. Take all necessary measures to guarantee the right not to be deprived arbitrarily of liberty.**

Article 32 of the Iranian Constitution guarantees that no one shall be arrested except according to the procedures prescribed by law. The 2015 Iranian Code of Criminal Procedure (CCP)<sup>2</sup> is the relevant legislation which elaborates on the law regarding arrest and detention. Article 181 of the CCP, provides that, in most circumstances, accused individuals are to be arrested pursuant to a warrant which specifies a reason for the arrest and details pertaining to this reason, signed by an investigating judge. Law enforcement officers may only arrest an individual without a magistrate-issued arrest warrant for so called 'evident crimes'<sup>3</sup> and in such circumstances the authorities may not detain the suspect for longer than 24 hours without a judge granting an arrest warrant.

Article 46 of the CCP states that where law-enforcement officers observe a crime in progress and make an arrest, they must communicate charges and evidence in written form to the arrested person "immediately" and present relevant information to the Prosecutor's Office as a matter of urgency. Officers may not hold an individual for more than 24 hours in such circumstances.

<sup>1</sup> CCPR.9.1.S.1; CCPR.9.1.P.1; CCPR.14.3.S.1; CCPR.9.2.O.1; CCPR.9.1.O.1; CCPR.9.3.O.1; CCPR.9.4.P.1

<sup>2</sup>2014 CPC: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103250/125277/F1666226145/IRN-2014-L-103250.pdf>

1999 CPC: <https://www.refworld.org/docid/517fb0994.html>

<sup>3</sup> See Art. 21 Iran: Criminal Code of Procedure for Public and Revolutionary Courts (repealed) (1999)

Crimes are considered 'evident' if (1) committed the crime in view of judiciary officers, or the officers arrive on the scene immediately afterwards (2) If two or more people witness the crime or a victim identifies an offender immediately after the crime is committed (3) If obvious evidence or proof of the crime is found in the accused's possession or belong to the accused (4) If the accused intends to abscond, or is escaping or is arrested immediately after the crime is committed (5) If a resident asks for the presence of the officers in his or her home immediately after the crime is committed. (6) If the accused is a vagrant.

Following the announcement of the victory of incumbent president Mahmoud Ahmadinejad in the presidential election on June 12<sup>th</sup>, 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.<sup>4</sup> 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.<sup>5</sup> Similarly, it is hard to ascertain the exact figures of individuals detained in connection to the protests, as official sources indicate around 2500 individuals were arrested in Tehran alone by July 12<sup>th</sup>.<sup>6</sup> Non-governmental sources estimate over 4000 arrests, which were conducted mainly by agents in plain clothes, without identification document and lacking any sort of arrest warrant.<sup>7</sup>

**B. Take all necessary measures to guarantee the right to fair proceedings before an independent and impartial tribunal.**

The guarantee of the right to legal defense is enshrined in Article 35 of the Constitution which ensures the right to choose a lawyer.<sup>8</sup> 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.”<sup>9</sup> <sup>10</sup> However, a Note to Article 48 of the 2015 CCP,<sup>11</sup> 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 preliminary investigations.<sup>12</sup>

<sup>4</sup> Iran Human Rights Documentation Center, 2013 <https://iranhrdc.org/violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran/>

<sup>5</sup> Iran Human Rights Documentation Center, 2013, <https://iranhrdc.org/violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran/>

<sup>6</sup> <https://www.iranhumanrights.org/2009/06/list/>

<sup>7</sup> Amnesty International, Iran – Election Contested, Repression Compounded, December 2009.

<https://www.amnesty.org/download/Documents/48000/mde131232009en.pdf>

<sup>8</sup> Constitution of the Islamic Republic of Iran < [http://www.iranchamber.com/government/laws/constitution\\_ch03.php](http://www.iranchamber.com/government/laws/constitution_ch03.php)>

<sup>9</sup> 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\\_ICJ\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>10</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

<sup>11</sup> 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\\_ICJ\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>12</sup> 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>)

Article 32 of the Constitution stipulates that the subject of the charge must be immediately notified to the accused in writing.<sup>13</sup> The revised Code of Criminal Procedure (CCP)<sup>14</sup> introduces disciplinary measures for anyone who summons or arrests an individual without sufficient reason.<sup>15</sup> Article 181 of the revised CCP provides that accused individuals are to be arrested pursuant to a warrant which specifies a reason for the arrest and details pertaining to this reason, signed by an investigating judge.<sup>16</sup> However, there is no requirement for including an explanation of the legal provision under which an individual is being arrested, enabling arrests on the basis of vaguely defined terms such as “national security”.<sup>17</sup> The 2015 CCP does not set out a clear timeframe within which the suspect must be informed of the formal charges held against them.<sup>18</sup> Such shortcomings enabled the temporary detention of a number of individuals for an inappropriate amount of time before they could be finally notified of their charges and begin their judicial process.<sup>19</sup>

The Law for the Selection of Judges of 1982 with subsequent amendments, as well as the Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges of 2013, are the main norms regulating the selection of judges. Mandatory criteria for selecting judges in Iran include the following: the appointed judge has to be a Muslim man, “being bound to faith” and “being loyal to the principle of the primary of the Supreme Leader”.<sup>20</sup> Field investigations and conducting ideological and political interviews are part of the selection process.<sup>21 22</sup> These discriminatory and vague criteria enable the appointment of judges based on their political loyalty and undermine the independence and impartiality of the judiciary. There are reports of formal investigations undertaken by Iranian authorities into individuals with judicial functions following accusations of corruption, bribery and abuse of power, yet there is a dearth of information regarding whether the motivations behind these investigations were political in nature or a result of an impartial criminal process.<sup>23 24</sup>

<sup>13</sup> Constitution of the Islamic Republic of Iran < [http://www.iranchamber.com/government/laws/constitution\\_ch03.php](http://www.iranchamber.com/government/laws/constitution_ch03.php) >

<sup>14</sup> Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

<sup>15</sup> Amnesty International < <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF> >

<sup>16</sup> 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\\_ICJ\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf)

<sup>17</sup> Amnesty International < <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF> >

<sup>18</sup> Amnesty International < <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF> >

<sup>19</sup> UNPO < <https://unpo.org/article/21430> >

<sup>20</sup> Article 13 Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges (2013).

<sup>21</sup> Article 14 Guidelines for the Recruitment, Selection, and Apprenticeship of Applicants for Judgeship and Employment of Judges (2013)

<sup>22</sup> <http://rc.majlis.ir/fa/law/show/90547> ; <http://rc.majlis.ir/fa/law/show/91044>

<sup>23</sup> Iran International <https://iranintl.com/en/iran/president-rouhani%E2%80%99s-brother-sentenced-five-years-prison>

<sup>24</sup> OCCRP <https://www.occrp.org/en/27-ccwatch/cc-watch-briefs/10035-iran-new-conservative-chief-justice-fires-60-corrupt-judges>

In 2014, a Judiciary’s circular listed the most common complaints against judges and numerous due process violations.<sup>25</sup> These included unlawful arrest, failure to renew temporary detention orders within the prescribed time, failure to render decisions within the prescribed time, ruling prior to the conclusion of investigation and trial, issuing decisions in courts of original jurisdiction without convening a trial session, issuance of “unfounded and undocumented” rulings, issuing rulings outside the scope of the complaint, and unpleasant, inappropriate, and insulting conduct.<sup>26</sup> There is little transparency regarding these complaints and their outcome. At times, they are not considered at all. During the Iranian year 1395 (March 20, 2016 –March 19, 2017), Iran’s General Inspection office received 30,315 complaints.

During the 2009 post-election protests, the majority of individuals arrested were held incommunicado with no access to legal representation and without having charges brought against them for long periods of time. According to Amnesty International, the families of the arrestees were not notified of their arrest, and in instances where they were notified, details about their loved ones’ whereabouts or about the possibility of visitations were not revealed by authorities.<sup>27</sup> Most of the detainees were released by December 2009, yet some, including political prisoners and important opposition figures remained in jail until well after that date due to long sentences. Such figures include Behzad Nabavi, a reformist MP and member of the Mujahedin of the Islamic Revolution Party, who was only released in 2014 after serving a sentence of 6 years.<sup>28</sup> Another prominent member of the reformist party, Mohsen Mirdamdi was similarly sentenced to 6 years and released on bail in 2010.<sup>29 30</sup>

Recommendation status:

This recommendation has **NOT** been implemented

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<sup>25</sup> Joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Document Center, Impact Iran and Human Rights Activists in Iran, 2020,

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT\\_CCPR\\_IC\\_S\\_IRN\\_42313\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_IC_S_IRN_42313_E.pdf)

<sup>26</sup> Abdorrahman Boroumand Center, <https://www.iranrights.org/library/document/2994>

<sup>27</sup> Amnesty International, Iran – Election Contested, Repression Compounded, December 2009.

<https://www.amnesty.org/download/Documents/48000/mde131232009en.pdf>

<sup>28</sup> Payvand News: <http://www.payvand.com/news/14/may/1140.html>

<sup>29</sup> Radio Free Europe, Radio Liberty:

[https://www.rferl.org/a/Iran\\_Releases\\_Reformist\\_Filmmaker\\_Journalist\\_On\\_Bail/1987129.html](https://www.rferl.org/a/Iran_Releases_Reformist_Filmmaker_Journalist_On_Bail/1987129.html)

<sup>30</sup> For more, please see: Amnesty International, Iran – Election Contested, Repression Compounded, December 2009.

<https://www.amnesty.org/download/Documents/48000/mde131232009en.pdf>