

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 459

Full recommendation:

Finally, without expressing at this stage an opinion on whether the arrests of protestors on 27 December 2009 are arbitrary or not, we would like to appeal to your 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 using Impact Iran human rights indicators¹

A. The right of protestors on 27 December 2009 not to be deprived arbitrarily of their liberty should be guaranteed.

On 27 December 2009, marking the *Ashura* holyday as well as the seventh day of mourning for the cleric Grand Ayatollah Hossein Ali Montazeri, mass demonstrations in Iran were met with violent governmental crackdown.^{2 3} While the Special Rapporteur on Extrajudicial, summary or arbitrary executions noted about 300 arrests were made on that day,⁴ other reports estimated more than 1,000 arrests.⁵ Additionally, by the end of the year 2009, reportedly over 5,000 people were detained after the contested presidential elections in June.⁶

Article 32 of the Constitution of the Islamic Republic of Iran stipulates that “No one may be arrested except by the order and in accordance with the procedure laid down by law.”⁷ This is reiterated in Article 4 of the revised Code of Criminal Procedure (2015). However, restrictive, broad and/or vague provisions within the Iranian legal framework fail to fully and effectively protect the right of individuals not to be deprived arbitrarily of their liberty.⁸

NGOs have reported a large number of arbitrary arrests against protestors following the demonstrations during *Ashura*.^{9 10} On 30 December 2009, then-UN Human Rights High Commissioner expressed concern about reports of arrests of political activists, journalists and human rights defenders.¹¹ The Working Group on Arbitrary Detention considered cases of

¹ CCPR.9.1.S.1; CCPR.14.1.S.1; CCPR.14.1.S.2; CCPR.14.2.S.1; CCPR.14.3.S.1
CCPR.9.1.P.1; CCPR.14.2.P.1; CCPR.14.2.P.3; CCPR.14.3.P.1
CCPR.9.1.O.1; CCPR.14.2.O.2; CCPR.14.1.O.4; CCPR.14.1.O.8

² https://iranhrdc.org/violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran/#_Toc252545048

³ UNGA report, September 2010, https://www.ecoi.net/en/file/local/1042102/1226_1291059004_n1053532.pdf

⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/145/06/pdf/G1014506.pdf?OpenElement>

⁵ See more : Iran Human Rights Documentation Center, https://iranhrdc.org/violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran/#_Toc252545048

⁶ <https://www.iranhumanrights.org/2010/07/malek-mohammadi-nasim-ghanavi/>

⁷ <https://www.refworld.org/docid/3ae6b56710.html>

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

⁹ <https://www.iranhumanrights.org/2009/12/release-arrested/>

¹⁰ <https://www.amnesty.org/download/Documents/40000/mde130202010eng.pdf>

¹¹ <https://news.un.org/en/story/2009/12/325452-iran-un-rights-chief-shocked-deadly-violence>

arrests in the context of the 27 December protests and issued opinions on what it considered to be arbitrary detentions.^{12 13}

There is no readily available information that might indicate the existence of trainings to prevent the abuse of power, regarding arrest and detention, by law enforcement officials in the Islamic Republic of Iran. Additionally, although 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,¹⁴ there is no readily available information that might indicate that abuse arrests are being promptly addressed, properly investigated or adequately adjudicated.

In the light of the reported facts, the Government did not take all necessary measures to guarantee the right of protestors not to be deprived arbitrarily of their liberty.

B. The right of protestors on 27 December 2009 to fair proceedings before an independent and impartial tribunal should be guaranteed.

A significant number of protestors arrested in the aftermath of the *Ashura* protests were charged with national security offences, notably *moharebeh* (“enmity against God”), and had their cases tried before revolutionary courts. Revolutionary courts have jurisdiction over crimes against national and external security, including *moharebeh*, *efsad-e fel-arz* (“corruption on earth”), *baghi* (“armed rebellion against the state”),¹⁵ “gathering and colluding against the Islamic Republic”, and “insulting the founder of the Islamic Republic and the Supreme Leader”.¹⁶ Reportedly, a significant number of legal proceedings before revolutionary courts have violated due process and right to fair trial.^{17 18 19 20 21} NGO reports suggest that trials before revolutionary courts disproportionately target civil rights activists and members of religious minorities such as the *Baha’is*.²²

The Constitution of the Islamic Republic of Iran protects key aspects of the right to fair trial and due process, including access to legal counsel, presumption of innocence, equality before the court, and the right to an open hearing.²³ However, the right to fair trial within the Iranian legal framework is not fully in compliance with international standards, notably due to vague

¹² <https://www.unwgadatabase.org/un/Document.aspx?id=2764>

¹³ <https://www.unwgadatabase.org/un/Document.aspx?id=2832>

¹⁴ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

¹⁵ 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/>

¹⁶ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹⁷ <https://www.hrw.org/news/2011/08/29/human-rights-issues-regarding-islamic-republic-iran>

¹⁸ Omid memorial case of Ahmad Nasiri, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-8023/ahmad-nasiri>)

¹⁹ Letter of Zahedan Prison inmates, May 13, 2019, Abdorrahman Boroumand Center (<https://www.iranrights.org/library/document/3577>)

²⁰ EN-HRANA, <https://www.en-hrana.org/case-ahmadinejads-former-vp-sent-revolutionary-court?hilitte=%27revolutionary%27%2C%27court%27>

²¹ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/61>

²² EN-HRANA, <https://www.en-hrana.org/?s=revolutionary+court>

²³ Constitution of the Islamic Republic of Iran, English translation, <https://www.refworld.org/docid/3ae6b56710.html>

and/or restrictive provisions under the Islamic Penal Code (2013) and the Code of Criminal Procedure (2015). Reportedly, a significant number of trials do not meet international standards laid out under Articles 9 and 14 of the ICCPR.²⁴

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.²⁵ There is no readily available information indicating the number of cases concerning violations of the right of fair trial, for protestors arrested in connection with the *Ashura* demonstrations, that the Article 90 Commission received and investigated.

Following the *Ashura* protests, senior clerics and high-ranking Government officials repeatedly called for protestors to be dealt with harshly on charges of *moharebeh*, which carries the death penalty.^{26 27 2829} Reports following the 27 December 2009 protests have shown wide-scale patterns of violations of due process in a vast number of legal proceedings and trials, disproportionately targeting members of the *Baha'i* faith and civil rights activists.
30 31 32 33 34 35 36 37

In the light of the reported facts, the Government of the Islamic Republic of Iran did not take all necessary measures to guarantee the right of protestors to fair proceedings before an independent and impartial tribunal.

Recommendation Status:

This recommendation has **NOT** been implemented.

²⁴ See more: Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

²⁵ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

²⁶ Thomas Erdbrink and William Branigin, *Iran Vows To Make Example of Arrestees*, Washington Post, June 24, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/23/AR2009062300155.html>.

²⁷ *jei az Idam-i 3 Nafar az Dastgir Shudigan-i Ashura Khabar Dad* [Ejei Spoke of the Execution of Three of Ashura Arrestees], Rah-e Sabz, Jan. 1, 2010, available at <http://www.rahesabz.net/story/ezheie>

²⁸ *azir-i Kishvar: Ba'd az Ruz-i Ashura Iqtishashgaran Hukm-i Muharib ra Darand* [Minister of Interior: After the Day of Ashura, the Rioters Are Deemed Muharib], IRNA, Jan. 5, 2009, available at <http://www.irna.ir/View/FullStory/?NewsId=878674>

²⁹ UNGA report, September 2010, https://www.ecoi.net/en/file/local/1042102/1226_1291059004_n1053532.pdf

³⁰ <https://www.iranhumanrights.org/2010/10/intelligence-and-security-organizations-influenced-the-nine-year-sentence-2/>

³¹ <https://www.iranhumanrights.org/2010/07/bahareh-hedayat-max-sentence-lawyer/>

³² <https://www.iranhumanrights.org/2010/10/no-dying-for-beliefs/>

³³ <https://www.iranhumanrights.org/2010/05/judge-death-sentence-pressure/>

³⁴ <https://www.iranhumanrights.org/2010/01/fear-executions-bahais/>

³⁵ <https://www.amnesty.org/download/Documents/40000/mde130202010eng.pdf>

³⁶ <https://www.amnestyusa.org/reports/annual-report-iran-2010/>

³⁷ See more: Iran Human Rights Documentation Center, https://iranhrdc.org/violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran/#_Toc252545048