

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran A/HRC/43/61 para 70(n)

Full recommendation:

The Special Rapporteur recommends that the Government, the judiciary and the parliament, as appropriate: Ensure that deaths in custody and allegations of violations of due process and of ill-treatment are promptly, independently, impartially and effectively investigated by an independent competent authority with a view to holding perpetrators accountable and in compliance with the right to a fair trial.

Assessment using Impact Iran human rights indicators¹

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”.² Article 39 of the Constitution bans “all affront to the dignity and repute of persons arrested, detained, imprisoned”. Article 570 of the Islamic Penal Code (2013) criminalizes violations of individuals’ freedoms and rights enshrined in the Constitution committed by officials and authorities. 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 The Article adds that if the detainee “dies as a result of the abuses, the principal to the murder shall be sentenced to the punishment provided for a murdered, and the person who has issued the order shall be sentenced to the punishment provided for a person who has ordered a murder”. A similar 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 prohibits - conditionally - torture and certain abusive conducts 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.

¹ CCPR.7.1.S.1; CCPR.10.1.S.1
CCPR.7.1.P.1; CCPR.10.3.P.2 ; CCPR.10.3.P.3
CCPR.7.1.O.1;

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/>

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.

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 infringed 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 in itself under Iranian law prevents prosecution, which is limited only to cases of torture provided under the law.

There are mechanisms 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 has 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. Additionally, there is no readily available information on cases where torture may have led to the death of the detainee and whether investigations are effectively carried. Despite a Special Procedures communication on the matter, the Government of the Islamic Republic of Iran, as of November 2020, remained silent on the alleged custodial death of the labor activist Mr. Shakrokh Zamani.⁸

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

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 Case no: IRN 17/2015 State reply: none to date Alleged custodial death of a political prisoner in Iran, Mr. Shahrokh Zamani <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19158>

Reports of cases of torture and ill-treatment in the Islamic Republic of Iran are regular, including within detention centers.⁹ ¹⁰ Amnesty International reported widespread and systematic use of torture and ill-treatment by Iranian authorities against protestors during and after the November 2019 protests, as well as cases of death while in Iranian custody.¹¹ According to Iran Human Rights, all death row prisoners they have been in contact with have testified that they were subjected to torture in order to confess to the crime they were charged with.¹² As of December 2020, there is no readily available information that might indicate that Iranian authorities have opened investigations compliant with international standards into allegations of torture and killings 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.¹³ 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 of the Islamic Republic of Iran has not ensured that deaths in custody and allegations of violations of due process and of ill-treatment are promptly, independently, impartially and effectively investigated by an independent competent authority with a view to holding perpetrators accountable and in compliance with the right to a fair trial.

Recommendation Status:

This recommendation has **NOT** been implemented.

⁹ 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>

¹⁰ 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>

¹¹ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>

¹² <https://iranhr.net/en/articles/4732/>

¹³ 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%2fCS%2fIRN%2f42313&Lang=en