

Special Rapporteur on the situation of human rights defenders A/HRC/31/55/Add.1 para 296

Full recommendation:

The Special Rapporteur appeals to the Government to take all necessary measures to guarantee that all human rights defenders are subject to fair proceedings before an independent and impartial tribunal.

Assessment using Impact Iran human rights indicators¹

A. The Special Rapporteur appeals to the Government to take all necessary measures to guarantee that all human rights defenders are subject to fair proceedings.

The Iranian legal framework is particularly restrictive with regards to the protection of the rights to freedom of expression, assembly and association, therefore exposing human rights defenders (HRDs) to a heightened risk of having their peaceful and professional activities prohibited under the law. Article 27 of the Constitution of the Islamic Republic of Iran² ostensibly protects the right to freedom of peaceful assembly, but only if assembly is not “in violation of the fundamental principles of Islam”, a criterion not clearly defined. Similarly, the right to freedom of expression, recognised under Article 24 of the Constitution, is restricted if the expression is “deemed harmful to the principles of Islam or the rights of the public”. Article 40 of the Constitution further allows for restrictions of rights, including peaceful assembly, if their exercise is deemed “injurious to others” or “detrimental to public interests”.

These restrictions are reiterated in the revised version of the Islamic Penal Code,³ adopted in 2013. For instance, those participating in peaceful unauthorised assemblies can be sentenced to prison terms on the charges of “gathering and colluding to commit crimes against national security” (Article 610 of the Islamic Penal Code),⁴ “forming a group composed of more than two people with the purpose of disrupting national security” (Article 498)⁵ and/or “membership of a group with the purpose of disrupting national security” (Article 499). Other criminal charges include “spreading propaganda against the system”,⁶ conspiracy against the State,⁷

¹ CCPR.14.1.S.3, CCPR.14.3.S.4
CCPR.14.3.P.2, CCPR.14.1.P.5
CCPR.14.3.O.3, CCPR.14.1.O.10

² Constitution of the Islamic Republic of Iran, English translation, <https://irandatportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

³ The Islamic Penal Code available at: http://rc.majlis.ir/fa/law/print_version/845048

⁴ The new Islamic Penal Code was introduced in 2013 for an experimental period of five years and was revised in 2016. See the most updated version of the Islamic Penal Code here on the website of the Iranian parliament:

http://rc.majlis.ir/fa/law/print_version/845048

⁵ Article 498 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁶ Article 500 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁷ Article 610 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

encouragement to “violate public morals”⁸, as well as satire.⁹ Similar vaguely worded provisions criminalise acts such as swearing at¹⁰ or insulting¹¹ “the Great Prophet of Islam”, as well as “sowing corruption on earth”¹² with the death penalty.

All the aforementioned restrictions fail to meet requirements of international standards, including the principles of legality and requirements that limitations must be necessary, proportionate and in pursuit of one of a limited number of narrowly-drawn legitimate aims.¹³ Consequently, the current Iranian legal framework grants authorities’ significant discretion to impose overbroad and vague restrictions on individuals’ rights in contravention of the Iran’s international human rights obligations. As freedom of expression, assembly and association are central to the work of HRDs, they are particularly exposed to the risk of facing criminal charges solely for the exercise of their peaceful professional work. Such risk is confirmed in practice, as Iranian authorities regularly rely on the Islamic Penal Code to prosecute HRDs.¹⁴

In addition to threats of criminalisation of peaceful dissent, the Iranian legal framework for legal procedures largely does not comply with international standards of fair trial and due process,¹⁵ which leads to the application of harsh sentences following unfair trials.¹⁶ One of the most telling examples of Iranian law failing to protect the right to a fair trial, as per Article 14 of the International Covenant on Civil and Political Right, is the lack of prompt access to legal counsel of one’s choosing.

The guarantee of the right to legal defence and the right to choose a lawyer are enshrined in the Constitution¹⁷ and the Code of Criminal Procedure of the Islamic Republic of Iran, which also permit the defendant to “demand the presence of a lawyer from the start of detention.”¹⁸ However, in many reported cases, especially those relating to national security charges (which often concern HRDs), defendants have reported seeing their lawyer for the first time on the day

⁸ Article 639 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

⁹ Article 700 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹⁰ Article 262 Islamic Penal Code 2013, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

¹¹ Article 513 Islamic Penal Code 2013, <https://iranhrdc.org/islamic-penal-code-of-the-islamic-republic-of-iran-book-five/>

¹² Article 286 Islamic Penal Code 2013.

¹³ Article 19, International Covenant on Civil and Political Rights

¹⁴ Joint submission to the Human Rights Committee 2020, ARTICLE 19, Small Media, Human Rights Activists in Iran Impact Iran, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICS_IRN_42315_E.pdf

¹⁵ See more: Flawed Reforms: Iran’s New Code of Criminal Procedure, Amnesty International, 2016, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹⁶ Abdorrahman Boroumand Center (ABC), Iran Human Rights Documentation Center (IHRDC) Impact Iran, Human Rights Activists in Iran, NGO submission to the Human Rights Committee, 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICS_IRN_42313_E.pdf

¹⁷ Article 35 of the Constitution of the Islamic Republic of Iran, English translation, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

¹⁸ Articles 48 and 190, Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

of trial.^{19 20} Prisoners reportedly remained incarcerated without proper access to legal representation at all stages of their trial process and lawyers were reportedly denied timely access to their clients' legal files.^{21 22 23} In May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the Code of Criminal Procedure which would allow the prosecution to delay access to a lawyer for 20 days, with a possibility of extension to the whole duration of investigation, in cases related to national security and terrorism (charges often held against HRDs) or financial corruption.^{24 25} Such amendment would further restrict access to legal counsel during the investigation phase. Yet, the Human Rights Committee has explicitly stipulated that the accused should be granted prompt access to legal counsel,²⁶ including during the pre-trial phase.²⁷

Regarding the right to access legal counsel of one's choosing, a Note to Article 48 of the 2015 Criminal Code of Procedure²⁸ specifies that individuals facing charges for certain offences, including those relating to national security and organized crime (charges often held against HRDs), 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.²⁹ In 2018, the Judiciary published the list of approved lawyers, which included only 20 names for Tehran. However, many of the lawyers named are reportedly close to the security bodies or had paid to appear on the list after speaking to government officials, threatening due process and calling into question the independence and neutrality of the Judiciary.³⁰ As a consequence, the right to legal assistance of one's choosing, as protected under Article 14 of the International Covenant on Civil and Political Right, is particularly limited.

Defendants in national security cases are often denied access to a lawyer in the investigative stage of the judicial process. In the hundreds of cases of individuals arrested for political reasons

¹⁹ 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

²⁰ HRW <https://www.hrw.org/news/2016/03/24/iran-detainees-denied-fair-legal-representation>

²¹ HRANA <https://www.en-hrana.org/arash-sadegh-golrokh-iraicis-lawyers-access-cases>

²² HRANA <https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>

²³ HRANA <https://www.en-hrana.org/court-prevents-lawyer-accessing-files-five-sunni-prisoners>

²⁴ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

²⁵ www.amnesty.org/en/documents/mde13/0379/2019/en/; <https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>

²⁶ CCR General Comment No.32 <https://undocs.org/CCPR/C/GC/32>

²⁷ HRC, Concluding observations on Georgia, CCPR/C/79/Add.75, para. 27, available at bit.ly/20caB7i; HRC, Concluding observations on the Netherlands, CCPR/C/NLD/CO/4, para. 11, available at www.refworld.org/docid/4aa7aa642.html

²⁸ 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

²⁹ 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>)

³⁰ "Iranian Lawyers Criticize Proposal to Deprive Defendants of Right to Choose Counsel," Human Rights Activists in Iran, June 6, 2018 (<https://www.iranrights.org/library/document/3443>)

or suspected for ordinary crimes that the Abdorrahman Boroumand Center has investigated, all detainees were interrogated without the presence of an attorney.³¹ Reports have shown a pattern of cases where prisoners remain incarcerated without proper access to legal representation at all stages of their trial process.³²³³

HRDs face a heightened risk of being prosecuted, sentenced on charges of national security, and subjected to legal procedures that regularly deny them access to legal counsel, among other violations of their right to fair trial. NGOs³⁴ and OHCHR^{35 36 37 38} regularly report on cases of HRDs being sentenced solely for their peaceful activities and following unfair trials.^{39 40 41 42}

B. The Special Rapporteur appeals to the Government to take all necessary measures to guarantee that all human rights defenders are subject to fair proceedings before an independent and impartial tribunal.

Proceedings related to charges concerned with national security, which often concern human rights defenders (HRDs), are tried before the Revolutionary courts of the Islamic Republic of Iran.

Revolutionary courts are among Iran’s criminal courts listed under Article 294 of the new CCP (2015) and, according to Article 297, are to be established in the capital of each of the state’s provinces.⁴³ Revolutionary courts have jurisdiction over crimes against national and external security, *moharebeh* (“enmity against God”), *efsad-e fel-arz* (“corruption on earth”), *baghi* (“armed rebellion against the state”),⁴⁴ “gathering and colluding against the Islamic Republic”, armed activities, arson and “destruction and plunder of resources with the purpose of opposing the system”, “insulting the founder of the Islamic Republic and the Supreme Leader”, all

³¹ Abdorrahman Boroumand Center, 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

³² HRANA <https://www.en-hrana.org/political-prisoner-denied-access-to-an-attorney>

³³ HRANA <https://www.en-hrana.org/arash-sadegh-golrokh-iraeis-lawyers-access-cases>

³⁴ Human Rights Watch, <https://www.hrw.org/news/2020/02/19/iran-environmentalists-unjust-sentences-upheld>

³⁵ OHCHR news, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24333&LangID=E>

³⁶ OHCHR News, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26543&LangID=E>

³⁷ OHCHR News, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26106&LangID=E>

³⁸ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2020, https://www.ohchr.org/Documents/Countries/IR/Report_of_the_Special_Rapporteur_on_the_situation_of_human_rights_in_the_Islamic_Republic_of_IranA4361.pdf

³⁹ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/projects/timeline>

⁴⁰ See more : ARTICLE 19, Small Media, Human Rights Activists in Iran, Impact Iran, Human Rights Committee, 129th session (Geneva) 29 June – 24 July 2020,

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42315_E.pdf

⁴¹ See more: Iran Human Rights, <https://www.iranhr.net/en/reports/23/>

⁴² See more: Iran Human Rights Documentation Center, <https://iranhrdc.org/controlled-and-pursued-labor-activism-in-contemporary-iran/>

⁴³ Iran Human Rights Documentation Center, <https://iranhrdc.org/amendments-to-the-islamic-republic-of-irans-code-of-criminal-procedure-part-1/>

⁴⁴ 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/>

smuggling of restricted items and drug-related offences and other offences whose investigation fall under the revolutionary court's jurisdiction.⁴⁵

In 2018, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran repeatedly noted patterns of violations of due process and fair trial, often occurring within the context of revolutionary courts,⁴⁶ where reportedly most death sentences are issued.⁴⁷ Previous mandates of the Special Rapporteur raised concerns about the lack of independence of revolutionary courts and the influence of Iranian security forces over them, leading these courts to be viewed as “an extension of the coercive executive branch of the Government that operates to control all criticism or independent actions for securing rights”.^{48,49} Similarly, NGO reports suggest that trials before revolutionary courts disproportionately target civil rights activists and members of religious minorities such as the *Baha'is*,⁵⁰ and often do not respect the human rights safeguards provided under the right to a fair trial.^{51,52,53,54}

Despite the existence of several mechanisms that ostensibly accept complaints regarding violations of citizens' rights, such as the Parliament's Article 90 Commission (established under 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.⁵⁵ Additionally, as Iranian authorities rely on the State's legal framework to restrict the work of HRDs, access to justice is particularly limited.

The Government did not take all necessary measures to guarantee that all human rights defenders are subject to fair proceedings before an independent and impartial tribunal.

Recommendation Status:

This recommendation has **NOT** been implemented.

⁴⁵ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

⁴⁶ <https://undocs.org/en/A/HRC/37/68>

⁴⁷ See <https://iranhr.net/en/articles/2839/>

⁴⁸ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, August 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/256/24/PDF/N1725624.pdf?OpenElement>

⁴⁹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, March 2014, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/120/75/PDF/G1412075.pdf?OpenElement>

⁵⁰ EN-HRANA, <https://www.en-hrana.org/?s=revolutionary+court>

⁵¹ Omid memorial case of Ahmad Nasiri, Abdorrahman Boroumand Center (<https://www.iranrights.org/memorial/story/-8023/ahmad-nasiri>)

⁵² Letter of Zahedan Prison inmates, May 13, 2019, Abdorrahman Boroumand Center <https://www.iranrights.org/library/document/3577>

⁵³ EN-HRANA, <https://www.en-hrana.org/case-ahmadinejads-former-vp-sent-revolutionary-court?hilite=%27revolutionary%27%2C%27court%27>

⁵⁴ See more: Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/61>

⁵⁵ 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