

Mandates of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL IRN 2/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/18, 42/22, 36/6, 35/15, 34/18, 41/12, 35/11, 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **protests held in various parts of Iran since 11 January 2020 and the alleged disproportionate response by law enforcement, including excessive use of force leading to injury, arbitrary arrest and detention, enforced disappearances, and ill-treatment of protesters.**

Concerns regarding the excessive use of force and other issues related to the authorities' response to protests, including in the context of the November 2019 protests, have been the subject of previous communications sent by Special Procedures mandate holders dated 20 November 2019 (case IRN 16/2019) and 18 December 2019 (case IRN 17/2019).

According to the information received:

Between 11 and 14 January 2020, sit-ins and protests triggered by the circumstances surrounding the crash of Ukraine International Airlines Flight SB752 were organized in a number of cities and Universities around the country, including in Tehran, Ahvaz, Amol, Arak, Ardabil, Babol, Gorgan, Isfahan, Karaj, Kermanshah, Mashhad, Qazvin, Qods, Rasht, Sanandaj, Sari, Semnan, Shiraz, Tabriz, Tari, Yazd and Zanzan. Participants in these sit-ins and protests honoured the memory of the 176 victims of the crash, voiced demands for accountability and effective remedies for the victims' families, and expressed frustration towards Iran's political system and leadership.

Security forces, including Special Forces of Iran's police, plain-clothes agents and the Basij militia, reportedly physically attacked the protesters by using tear gas, batons, rubber bullets and pointed pellets. Reports indicate that security forces also shot live ammunition directly at protesters, in some cases aiming at head level. Hundreds of individuals, mainly students, were arrested and interrogated without the presence of a lawyer, and some of them released on bail. Injured protesters were reportedly unable to seek medical assistance in hospitals and clinics due to the heavy presence of security forces in and around medical centers and to fears they could be arrested if they registered for medical treatment. Internet and telecommunication disruptions were also reported in protest locations, mainly in the capital Tehran.

On 14 January 2020, security forces blocked the gates of Amir Kabir University and physically attacked and arrested students trapped inside the university's campus. Security forces also temporarily closed a metro station in Tehran to prevent individuals from accessing the place of protest and reportedly fired tear gas into another metro station in the capital with individuals inside. In another incident, on 16 January, security forces raided a dormitory of the University of Tehran, and with the help of the university security personnel, reportedly arrested a number of students.

Reports indicate that physical and psychological torture and ill-treatment have been used for the purpose of extracting confessions from individuals detained for their participation in these protests. Some families who approached the authorities for information about their detained relatives have also reportedly been denied information about their fate or whereabouts and their place of detention. In some cases, security forces arrested and interrogated members of the detainees' families who approached local Intelligence Department offices to seek information about their relatives.

Iranian political, judicial and religious leaders have publicly denounced the protests and portrayed the protesters as enemies of the state. On 14 January 2020, Ahmad Alamolhoda, the Friday Prayers Imam of Mashhad, referred to the protesters as the "enemy's fifth column" and used incendiary language inciting hatred and violence against them during a public prayer. Similar statements were also made by the head of the Iranian judiciary, Ebrahim Raisi, who accused the protesters of compromising national security.

On 16 January 2020, the Tehran Police authorities reportedly stated that they had put in place a procedure of enhanced surveillance of social networks with the purpose of identifying and prosecuting all those who publish statements in support of the so-called "illegal gatherings".

Without prejudice to the accuracy of the information made available to us, we express our serious concern in relation to the alleged violent response of the Iranian security forces, including the Basij militia, to the aforementioned protests. Following our previous communication addressed to the Government of the Islamic Republic of Iran regarding the November 2019 protests, we regret to note continued reports of systematic intimidation and harassment of protesters and their family members, and the unnecessary

and disproportionate use of force, including live ammunition, rubber bullets, tear gas and other projectiles. We express our serious concern at the arrests and detentions, the reported ill-treatment for the purpose of extracting confessions, the denial of access to legal representation and of contact with relatives, refusals to provide information on their fate and whereabouts, reprisals against those seeking information on their relatives and the violent suppression of the rights to freedom of expression, peaceful assembly and association. We also note with concern that in the current reported course of events, political, judicial and religious leaders have made public statements that incite hatred and violence against protesters. Furthermore, state authorities have adopted enhanced security measures, including through Internet and telecommunication disruptions and enhanced social media surveillance with the purpose of identifying protesters who expressed dissent.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the number of injuries and possible deaths as a result of the use of force by security forces against protesters, including while in custody.
3. Please provide details and the results of any investigations and inquiries undertaken in relation to the allegations of excessive use of force, in the context of the above-mentioned protests. If no inquiries have taken place, or if they have been inconclusive, please explain the reasons.
4. Please provide details and the results of any investigations and inquiries undertaken in relation to the allegations of torture and other cruel, inhuman or degrading treatment or punishment, in the context of the above-mentioned protests. If no inquiries have taken place, or if they have been inconclusive, please explain the reasons.
5. Please provide information on the legal and factual basis for the arrests of the protesters, including any charges brought against them, and explain how they are compatible with the international human rights obligations of your Excellency's Government.
6. Please provide information on the number of people arrested and detained during the protests. Please indicate the number of those who have been

released and of those who are still in detention, as well as the specific places of their detention.

7. Please provide information on the measures undertaken to ensure fair trial guarantees for individuals charged with a criminal offence, including their right not to be compelled to testify against themselves, their right to access legal counsel, as well as other due process measures.
8. Please provide information about the basis for allegedly denying detainees contact with their families, and refusing to provide information on their fate and whereabouts and explain how this is compatible with Iran's obligations under international human rights law.
9. Please provide information on how the alleged Internet and telecommunication service disruptions are consistent with Iran's obligations under Articles 19 and 21 of the International Covenant on Civil and Political Rights. In particular, please provide information on the legal basis and the necessity and proportionality of measures that disrupt Internet and telecommunication services.

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
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David Kaye
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Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran on 24 June 1975.

Without expressing at this stage an opinion on the facts of the case and on whether reported detentions were arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of all detained persons in this case not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR.

Use of force

We would like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In particular, principle 12 of the Basic Principles provides that "everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the ICCPR. Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14." These provisions restrict the use of firearms to situations of violent assemblies and provide that force and firearms may only be used as a last resort when unavoidable and require exercising the utmost restraint. In addition, pursuant to principle 5(c), law enforcement officials should ensure the provision of timely medical assistance to anyone injured as a result of the use of force or firearms.

The compilation of practical recommendations for the proper management of assemblies (A/HRC/31/66) recalls that the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality (para. 57). These principles apply to the use of all force, including potentially lethal force. Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Furthermore, firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60).

Freedom of peaceful assembly

With regard to the duty to protect, promote and fulfil the right of freedom of peaceful assembly, we would also like to refer to Human Rights Council resolution

24/5 (operative paragraph 2), in which the Council “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We also recall that according to Article 21 of the ICCPR, “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” The ‘provided by law’ requirement means that any restriction ‘must be made accessible to the public’ and ‘formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly’ (CCPR/C/GC/34). Moreover, it ‘must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution’. The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions ‘target a specific objective and do not unduly intrude upon the rights of targeted persons. The ensuing interference with third parties’ rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be ‘the least intrusive instrument among those which might achieve the desired result’.

We would also like to recall that states do not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/41/41).

Access to lawyers

We would also like to draw your attention to article 14 of the ICCPR, which provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to communicate with counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

We would also like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990. Principle one establishes that "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. Principle two states that "Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction". Principle seven establishes that "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention. Finally, principle sixteen requires governments to take all appropriate measures to ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference".

In addition, Principle 9 of the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court states that those "deprived of their liberty shall have the right to legal assistance (...) at any time during their detention, including immediately after the moment of apprehension." Moreover, Guideline 8 stresses that such access to legal counsel shall be provided "at the latest prior to any questioning by an authority." (A/HRC/30/37)

Freedom of expression

Article 19 of the ICCPR provides for the right to freedom of expression. Paragraph 3 of article 19 sets out the requirement that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law. While national security, under Article 19 (3), is a legitimate basis for restricting the right to freedom of expression, any such restriction must be strictly construed and necessary for the protection of the national security of the State. Furthermore, the restriction must be proportionate. It must be appropriate to achieve its protective function and be the least restrictive means to achieve the protective function, and be proportionate to the interest to be protected, see CCPR/C/GC/34 para. 34.

As expressed by the Human Rights Committee, "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights", *id.* para. 13. "States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom", see *id.* para 16. The interference in the freedom of the press is therefore a particularly serious restriction of the rights under Article 19 of the ICCPR. As further expressed by the Committee, "the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, *id.* para. 42. Furthermore, and as generally held, attacks against individuals for the exercise of their

right to freedom of expression is incompatible with the Covenant, see CCPR/C/GC/34 para 23. Any such attacks should be subject to independent and impartial investigations, id.

Torture and ill-treatment

In addition, we would like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result." This also applied to persons in custody or detention as stated in Principle 15.

Furthermore, Principle 5 provides that, "[w]henver the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

In conclusion, we would like to recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment."

Enforced Disappearances

We would also like to refer your Excellency's Government to the 1992 Declaration on the Protection of all Persons from Enforced Disappearance, in particular that no State shall practise, permit or tolerate enforced disappearance (Article 2.1) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (Article 7). Furthermore, we highlight that any person deprived of liberty shall be held in an officially recognized place of detention and, accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, and their counsel (Article 10) and that any person having knowledge or a legitimate interest who

alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and steps shall be taken to ensure individuals, are protected against ill-treatment, intimidation or reprisal and that any such acts are appropriately punished (Article 13).