

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 40/18, 40/10 and 34/19.

In this context, we would like to draw the attention of your Excellency's Government to information we have received concerning the **risk of execution, as a result of what appears to be an unfair trial, of Mr. Houshmand Alipour and the alleged unfair trial of Mr. Mohammad Ostadghader.**

According to the information received:

Mr. Houshmand Alipour was born on 6 November 1993 in Sardasht Azerbaijan). Mr. Alipour attended school for six years. He then started working to help his family until 2009.

On 18 March 2009, when he was 16-year-old, Mr. Alipour was arrested and sentenced to four years imprisonment for cooperation with Kurdish political parties, actions against the State and threat to national security. According to his family, Mr. Alipour was subjected to torture and forced to make false confessions. He served the four years of imprisonment in Urumiyeh Darya Central Prison and was released at the age of 22.

After he was released, he escaped to Iraq, where he worked one year in construction in Sulaimanya.

In 2013, Mr. Alipour left Iraq and went to Nevshahir, in Turkey, and applied for asylum. He was registered by the Office of the United Nations High Commissioner for Refugees in Ankara.

In the same year, he returned to Iraq and joined the Democratic Party of Iranian Kurdistan (PDKI). After a few months, he also joined the Kurdistan Freedom Party (PAK) to fight against the Islamic State of Iraq and the Levant (ISIL). He

fought with the PAK's Peshmerga until 2018, in particular in the regions of Makhmur and Kerkuk.

On 3 August 2018, while he was on a mission for the PAK in Iran, he was arrested with Mr. Mohammad Ostadghader during an ambush in a village called Sabadlou in Baneh.

Mr. Ostadghader was injured. Mr. Alipour was armed but he reportedly did not use any weapon during the ambush. A third person who was member of the team escaped the ambush.

Four days after their arrest, on 7 August 2018, the Islamic Republic of Iran official television channel called Seda va Sima TV, at 20:30, aired a program showing Mr. Alipour and Mr. Ostaghader confessing their political affiliations and their military actions against the country.

It is submitted that the confessions were extracted under torture as both Mr. Alipour and Mr. Ostaghader were part of a political mission, not a military operation team.

After being detained for three months in Saez Central Prison Branch 2, Mr. Alipour and Mr. Ostaghader were transferred to the Ettela'at Prison in Sanandaj.

On 9 August 2018, the Kurdistan Freedom Party (PAK) issued a statement taking responsibility for the attack of 3 August 2018, and declaring that Mr. Alipour and Mr. Ostaghader had been on the location of the attack to rescue injured PAK members who had taken part in it.

On 14 September 2018, the Sanandaj Revolutionary Court, Branch 1, sentenced Mr. Alipour and Mr. Ostaghader for "armed rebellion against the State", "propaganda against the state" and "membership of a group with the aim to overthrow the government". Mr. Alipour was sentenced to 16 years of imprisonment and Mr. Ostaghader to 11 years.

They reportedly could not contact their families and did not have to access a lawyer for almost four months.

On 29 December 2019, Branch 3 of the Islamic Revolutionary Court of Sanandaj sentenced Mr. Alipour to the death penalty and Mr. Ostaghader to five years of imprisonment.

On 15 January 2020, the lawyer of Mr. Alipour appealed against the death penalty before the Supreme Court in Sanandaj.

It is submitted that the death penalty was imposed on Mr. Alipour due to his family's political background.

Furthermore, according to Mr. Alipour's family, both Mr. Alipour and Mr. Ostaghader are members of the PAK but have not been involved in armed activities against Iran.

While we do not wish to prejudge the accuracy of the information provided, we would like to express our concerns at the above-mentioned allegations which, if confirmed, would be in contravention of the rights of everyone to life; not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; to liberty and security; to be treated with humanity and with respect of dignity when deprived of liberty; to a fair trial; and to freedom of thought, conscience or religion, as set forth in Articles 3, 5, 10 and 18 of the Universal Declaration of Human Rights; as well as in Articles 6, 7, 9, 10, 14 and 18 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran in 1975.

We reiterate the concerns previously expressed by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran in relation to reports that individuals from the Kurdish community may be arrested, imprisoned and sentenced to death for their real or imputed political affiliation or beliefs¹ and call on the Government and the judiciary of Iran (Islamic Republic of) to ensure that all those accused of crimes go through court proceedings that adhere to international fair trial standards, including the presumption of innocence, as per its international human rights obligations.

Under international human rights law the admission of evidence obtained under torture into any proceeding is prohibited without exception and that competent authorities must conduct prompt and impartial investigation whenever there are reasonable grounds to believe that torture has been inflicted, with a view to bringing those responsible to justice (Human Rights Committee, General Comment No. 20).

Therefore, if carried out in the present circumstances, as these allegations indicate, the death penalty against Mr. Houshmand Alipour would constitute an arbitrary execution. On these grounds, we respectfully urge the relevant authorities of your Excellency's Government to ensure that Mr. Alipour is not executed, to annul his death sentence and to also ensure that he, as well as Mr. Ostaghader, are retried in accordance with the international human rights norms that are binding on Iran.

We also respectfully call on your Excellency's Government to establish a moratorium on executions with a view to fully abolishing the death penalty.

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.

¹ A/74/188: <https://undocs.org/A/74/188>

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 your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the factual and legal ground for the arrest, detention and trial of Mr. Alipour and Mr. Ostadghader, as well as the details of the judicial proceedings brought against them and explain how they are compatible with Iran's international human rights obligations, particularly in relation to the prohibition of torture and the rights due process and fair trial standards.
3. Please provide information as to whether any investigation has been carried out into the allegations that the two men were tortured, and that information obtained in these conditions may have been used against them in their trial; and what have been the results of these investigations. If no investigation was launched, please explain why, and how this is compatible for Iran's obligations under Article 7 of the ICCPR.

We would appreciate receiving a response within 60 days. Passed this delay, 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 responsible of the alleged violations.

Given the seriousness of the matter and the irreversibility of the execution of the death penalty, we believe that this is a matter that requires the most serious attention on the part Your Excellency's Government, and would thus appreciate a response to this communication at your earliest convenience. For the same reason, we may be considering to publicly express our concern in the case. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Javaid Rehman

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

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

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 above alleged facts and concerns, we would like to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights (UDHR) which states that "Everyone has the right to life, liberty and security of person".

Furthermore, Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

Pursuant to Article 5 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984, "(c)apital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the [ICCPR], including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings".

Article 5 of the UDHR and Article 7 of the ICCPR state that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Furthermore, Article 10 of the ICCPR provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

In Article 12 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the General Assembly expressly stated that "any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence ... in any proceedings". The rationale behind the exclusionary rule is manifold and includes the public policy objective of removing any incentive to undertake torture anywhere in the world by discouraging law enforcement agencies from resorting to the use of torture. Furthermore, confessions and other information extracted under torture or ill-treatment are not considered reliable enough as a source of evidence in any legal proceeding. Finally, their admission violates the rights of due process and a fair trial. As the prohibition against torture and other ill-treatment is absolute and non-derogable under any circumstances, it follows that the exclusionary rule must also be non-derogable under any circumstances, including in respect of national security. Further, since the prohibition of torture and other ill-treatment is part of customary international law, it follows that the exclusionary rule, as a

component of that prohibition, must also apply to States that are not party to the Convention against Torture².

Article 10 of the UDHR states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”. Likewise, Article 14 of the ICCPR provides that “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. (...) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (...) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing (...)”.

In this regard, we note that in accordance with Article 2, paragraph 3(a), of the ICCPR, Iran (Islamic Republic of) is under an obligation to provide the above-mentioned individuals with an effective remedy. The remedy should include a new trial that would comply with fair trial guarantees of Article 14. The State is also under an obligation to prevent similar violations in the future.

Article 18 of the UDHR and Article 18 of the ICCPR provide that everyone shall have the right to freedom of thought, conscience and religion [...] while article 19 of the ICCPR guarantees everyone the right to hold opinions without interference. Article 26 of the ICCPR also stresses all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground [...].

² A/HRC/25/60:

<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>