

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:
UA IRN 7/2020

7 April 2020

Excellency,

We have the honour to address you in our capacity 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, 42/16, 35/11 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, detention and sentencing to death of Messrs. **Amir Hossein Moradi**, **Saeed Tamjidi**, and **Mohammad Rajabi**, on charges of arson and property damage during the November 2019 protests in Tehran, and amid serious concerns related to due process, adherence to fair trial guarantees and alleged use of torture to extract forced confessions during a period of enforced disappearance.

According to the information received:

On 16 November 2019, Messrs. Amir Hossein Moradi, a 25-year old computer and mobile phone seller, Saeed Tamjidi, a 27-year old electrical engineering student, and Mohammad Rajabi, a 25-year old real estate agent, participated in the protests on Sattar Khan Street in Tehran.

On 19 November 2019, Mr. Hossein Moradi was reportedly identified by CCTV footage and arrested by officers from the Yousef Abad police station in Tehran, who checked his phone for footage of the November 2019 protests before handing him over to the Iranian Security Police. He was transferred to Evin Prison and placed in solitary confinement for a month in wards 209 and 240 and subjected to physical and psychological torture, including beatings, attacks with a stun gun and

threats of prolonged solitary confinement, in order to force him to confess his alleged participation in arson and damage of banks and other property. During this period, neither his lawyer nor his family were informed of his whereabouts.

On 20 November 2019, upon receiving news of Mr. Hossein Moradi's alleged arrest, and fearing for their own arrest and detention, Messrs. Saeed Tamjidi and Mohammad Rajabi decided to flee to Turkey. Upon entering the country, they were intercepted and beaten by the Turkish Border Patrol in Van Province, who confiscated their belongings, including money, before being released. They went to Van, then to Ankara, with plans to travel to Antalya. On their way to Antalya, they were arrested by the Turkish police and transferred to the local police station and then to a camp near the city. During the interrogations at the Antalya police station, they explained the reasons for their presence in Turkey, provided documents explaining their case and requested to file for asylum. The Turkish police later informed them that their asylum case was about to be processed.

However, on 26 December 2019, the police put them hand- and leg-cuffed in a bus and drove them to the city of Agri near the Iranian border along with other Iranian nationals. On 28 December 2019, they deported them and handed them over to the Iranian authorities. They were immediately arrested due to their names being allegedly listed among those who had "escaped from Evin Prison". They were transferred to the police station in Maku, Western Azerbaijan Province, where Tehran Security Police officers caught them and took them to Gisha police station in Tehran and then to Evin Prison. They were reportedly denied access to a lawyer and were subjected to enforced disappearance for a month and to torture and other ill-treatment, including beatings and placement in stress positions, including suspension from the ceiling.

Their trial took place at Branch 15 of Tehran's Revolutionary Court, on 25 and 26 January 2020. The prosecution confirmed that the men were charged with arson and damage of property and argued the men's acts were premeditated based on the fact that they participated in protests far from the place of their residence. During the trial, the three men were not allowed to be defended by a lawyer of their choice and it has been reported that one of the lawyers even expressed his "disappointment" for the alleged actions of his client. All three individuals denied the charges, stating they did not commit arson or damage any property, and Mr. Amir Hossein Moradi also stated that he confessed under duress and that his confession was filmed.

On 19 February 2020, Messrs. Amir Hossein Moradi, Saeed Tamjidi, Mohammad Rajabi were informed, through their lawyers, about the court's guilty verdict and the imposition of the death penalty. Following the court's verdict, they have submitted an appeal request and they were informed by their lawyers that the

appeal hearing should be scheduled for either April or May of this year. All three are currently held in the 5th block of the Greater Tehran Central Penitentiary, along with dozens of other individuals arrested during the November 2019 protests.

It is reported that Mr. Hossein Moradi has a pre-existing health condition and while in detention, may have contracted COVID-19. On 1 March, instead of being provided with the appropriate medical examinations or referred to a specialized hospital, Mr. Hossein Moradi and the prisoners sharing the cell with him, including Messrs. Tamjidi and Rajabi, were transferred to another prison ward, where they stayed for ten days before being sent back to their assigned ward. On 15 March, Mr. Hossein Moradi was finally admitted to the Razi Hospital in Tehran, but he reportedly did not undergo the medical checks necessary for the COVID-19 diagnosis.

While in detention, Messrs. Amir Hossein Moradi, Saeed Tamjidi and Mohammad Rajabi are allowed to receive family visits, which due to the COVID-19 outbreak are taking place behind a protective glass frame, and they have access to the prison's phones.

Without prejudging the accuracy of the received information, we express serious concern at the arrest and detention of Messrs. Amir Hossein Moradi, Saeed Tamjidi and Mohammad Rajabi and we deeply regret the recent decision of the court to impose the death penalty on alleged criminal acts, which clearly do not meet the threshold of "most serious crimes", and following what appeared to be a judicial process allegedly based on forced confessions during a period of enforced disappearance and other serious violations of due process and of fair trial standards. We deeply regret that security forces in Iran continue to use torture and other ill-treatment to forcibly extract confessions, including in cases where there is a lack of incriminating evidence, and we note with concern the substandard detention conditions and the non-respect of the individuals' right to health while in detention, including with regard to access to adequate and timely medical screening and treatment in the current context of the COVID-19 outbreak in the Iranian prison system.

We would like to remind your Excellency's Government of its obligations under international human rights law. Article 6(2) of the International Covenant on Civil and Political Rights, ratified by the Islamic Republic of Iran on 24 June 1975, states that the death penalty may be imposed only for the most serious crimes. In General Comment No. 36 (para. 35), the Human Rights Committee has noted that the term "most serious crimes" must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing.

Without expressing at this stage an opinion on the facts of the case and on whether the 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.

With regard to the alleged violations of due process and of fair trial guarantees, including the imposed limitations in the access of legal assistance and representation, and the allegations of delays in the judicial proceedings, we would like to recall article 14 of the ICCPR, which provides *inter alia* for the principle of equality before competent, independent and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defence, and the right of accused persons to communicate with counsel of their own choosing. We also refer to General Comment No. 32 (2007) by the Human Rights Committee (CCPR/C/GC/32), 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 (A/HRC/30/37) and 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, which provide for the right to legal assistance, and for the prompt access and consultation with counsel without intimidation, hindrance, harassment or improper interference.

Article 7 of the ICCPR prohibits torture and other cruel, inhuman or degrading treatment or punishment. 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."

We wish also to refer to articles 19 and 21 of the ICCPR which guarantee the right to freedom of opinion and expression and of peaceful assembly. As indicated by the Human Rights Committee, attacks against individuals for exercising their right to freedom of expression, including through the arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is incompatible with the ICCPR, see CCPR/C/GC/34 para. 23. In an assembly, individuals who have committed acts of violence, must benefit from a fair trial with all guarantees of due process. Those acts of violence must be duly and impartially investigated.

With regards to the alleged enforced disappearance, we would like to underline that enforced disappearances constitute an interference in the right to life of individuals for which the State is accountable and also constitute a violation of article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (liberty and security of persons), and article 16 (right to recognition of a person before the law) of the ICCPR (Human Rights Committee, General Comment 36, CCPR/C/GC/36). We remind that no State shall practise, permit or tolerate enforced disappearances and 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 (Declaration on the Protection of all Persons from Enforced Disappearance). States parties must take adequate measures to prevent the enforced disappearance of individuals, bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation (General Comment 36).

Finally, we would like to remind your Excellency's Government of article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Iran on 24 June 1975, which enshrines the right to physical and mental health. The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 (E/C.12/2000/4) has stressed that the right to health is an inclusive right extending not only to timely and appropriate health care but also to the enjoyment of other human rights. The Committee has also stressed that the right to treatment includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, as well as the control of diseases through effective actions for infectious disease control.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 detailed information about the legal and factual basis for the arrest and detention of the above-mentioned individuals and indicate

how the charges against them are compatible with international human rights law.

3. Please provide information on measures taken to provide the individuals with due process and fair trial guarantees, including with regard to their right to present a defence against the evidence presented before the courts, to ensure evidence extracted under torture or other forms of duress is inadmissible, and to provide effective access to counsel of their choosing as established under international human rights law.
4. Please provide information on the condition of their detention, including any details about time spent in solitary confinement, family visits and communication with their lawyers, as well as about the state of their physical and psychological well-being, especially in light of the COVID-19 outbreak in Iran's prison system.
5. Please provide details and the results of any investigations and inquiries undertaken in relation to the allegations of enforced disappearance, torture and other cruel, inhuman or degrading treatment or punishment. If no inquiries have taken place, or if they have been inconclusive, please explain the reasons.

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 recurrence 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 after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Javaid Rehman
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
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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