

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; 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:
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22 April 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; 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 35/15, 42/22, 36/6, 34/18, 41/12, 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 physical abuse and deportation to Iran of Messrs. Saeed Tamjidi and Mohammad Rajabi. The two men were later prosecuted and sentenced to death by the Iranian authorities on charges of arson and property damage allegedly caused during the November 2019 protests in Tehran. Their prosecution and sentencing to death occurred amid serious concerns related to due process, adherence to fair trial guarantees and use of torture to extract forced confessions during a period when they were forcibly disappeared.**

According to the information received:

On 16 November 2019, Mr. Saeed Tamjidi, a 27-year old electrical engineering student, and Mr. Mohammad Rajabi, a 25-year old real estate agent, participated in protests on Sattar Khan Street in Tehran to express their opposition to the Government's economic policies.

On 20 November 2019, upon receiving news of the arrest of one of their friends, 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 releasing them. 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 interrogation at the Antalya police

station, they explained the reasons for their presence in Turkey, provided documents explaining their case and applied 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 who arrested them, allegedly because their names were listed among those of whom had “escaped from Evin Prison”. They were transferred to the police station in Maku, Western Azerbaijan Province, from where Tehran security police officers took them to Gisha police station in Tehran and then to Evin Prison. The two men were forcibly disappeared for a month during which they were subjected to torture and other ill-treatment, including beatings, placement in stress positions and suspension from the ceiling. During that period they were denied access to a lawyer.

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 on 19 February 2020, they were informed, through their lawyers, that they were found guilty and sentenced to death. Following the verdict, they submitted an appeal and were subsequently informed by their lawyers that the appeal hearing should be scheduled for either April or May 2020. They 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.

Without prejudging the accuracy of the information received, we express serious concern at the deportation of Messrs. Saeed Tamjidi and Mohammad Rajabi, which apparently took place before a fair examination of their asylum case was carried out. A fair assessment of that claim should have included a thorough evaluation of the risk of torture and other irreparable harm, such as a death sentence, enforced disappearance or other serious breaches of human rights obligations binding on Turkey that the two men may face, including their fear of persecution due to their participation in the mass protests of November 2019 in Tehran. The reported handing over of the individuals to Iranian authorities at the border between the countries violates Turkey’s human rights obligations under the Convention against Torture (CAT) which it ratified on 2 August 1988. Article 3 of that Convention provides for the protection of any person from return (refouler) or extradition to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. As highlighted by the Human Rights Committee in its General Comment no. 7 (1992) and General Comment no. 36, a similar obligation applies under Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003. Instead, the two men were reportedly detained, ill-treated, had their personal belongings confiscated, and were quickly handed over to the Iranian authorities, without being given a fair chance to challenge the decision to deport them.

With regard to the allegations of violence and degrading treatment suffered by Messrs. Saeed Tamjidi and Mohammad Rajabi by the Turkish Border Patrol, we would like to also recall article 7 of the ICCPR, which prohibits torture and other cruel, inhuman or degrading treatment or punishment.

We are also concerned that the reported actions by Turkish authorities also breach obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, in particular articles 6, 9, 16, 19 and 21.

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 your observations on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.
2. Please provide information on the existing policies, procedures and implementation mechanisms in place in Turkey to enable individuals fleeing persecution to seek protection and apply for asylum.
3. Please provide detailed information on the measures that were taken by the Turkish authorities to enable Messrs. Saeed Tamjidi and Mohammad Rajabi to seek their protection and apply for asylum. Who were the competent authorities involved in the process?
4. Please provide information on measures taken to provide these two individuals all the necessary assistance, including interpreters and lawyers, to defend their case and to substantiate their asylum request.
5. Please explain the factual and legal grounds for the deportation to Iran of the two men and indicate how this is compatible with existing asylum policy and procedures in Turkey, and Turkey's obligations under international human rights law.
6. What guarantees did the Turkish authorities seek from Iranian authorities that the two individuals would not be subjected to torture, the imposition of the death penalty or other serious violations of their rights, should they be handed over to them? Were any such guarantee obtained? Please provide any evidence to that effect.
7. Has any investigation been conducted into the handling by the Turkish authorities, in particular the Border Patrol Police in Van province, who

initially arrested and allegedly abused them, and the police in Antalya, of the request for asylum of the two men ? If no inquiries have taken place, or if they have been inconclusive, please explain the reasons.

8. Please provide information on the measures in place to prevent the deportation of individuals to countries where there are substantial grounds to believe that they would be in danger of torture, the death penalty, enforced disappearance or other serious violations of their internationally-recognized rights.

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 existing mechanisms (regulations, procedures, institutions) at the provincial and local levels to respond to requests for asylum be reviewed so that they are effectively implemented in line with Turkey's obligations under the conventions it has ratified, so as to prevent the recurrence of the violations described in this communication.

We would also like to inform you that a similar communication on this case is also being sent to the Islamic Republic of Iran.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

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

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

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of the international human rights standards regarding the principle of non-refoulement, and in particular article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Turkey on 2 August 1988, which provides for the protection of any person from return (refouler) or extradition to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In addition, in its General Comment No. 4 (2017), the Committee against Torture has stressed that the principle of "non-refoulement" is absolute, similarly to the prohibition of torture, as defined in article 1 of the Convention, and that each case of return should be examined individually, impartially and independently by the State party through competent administrative and/or judicial authorities, in a prompt and transparent manner and by including a review process of the deportation decision through an appeal with suspensive effect. Collective deportation without an objective examination of the individual cases with regard to personal risk, should be considered as a violation of the principle of non-refoulement (CAT/C/GC/4, paragraphs 9 and 13).

We would also like to refer to the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003 and highlight that enforced disappearances constitute an interference in the right to life of individuals for which the State is accountable and also constitutes 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). (Human Rights Committee, General Comment 36, CCPR/C/GC/36). We remind that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance (Declaration on the Protection of all Persons from Enforced Disappearance).

Furthermore, we would like to refer your Excellency's Government to articles 19 and 21 ICCPR of the Universal Declaration of Human Right 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. The duty to respect and ensure the rights of the Covenant entails a positive obligation to prevent attacks by other actors, including other States, see CCPR/C/21/Rev.1/Add. 13. Where the State expulses individuals from its territory contrary to the prohibition of *refoulement*, and the risk faced by the individual in the third State stems from his or her exercise of the rights under articles 19 and 21 of the ICCPR, the expulsion constitutes a concurrent violation of Articles 19 and 21 of the Covenant