

Mandates of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
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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; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 40/18, 42/22, 35/15, 42/16 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the judiciary's directives and the President's announcement for the temporary release of prisoners in Iran to mitigate the outbreak of the COVID-19 virus in prisons.**

According to the information received:

COVID-19 in the Islamic Republic of Iran

The first two reported deaths due to COVID-19 in Iran were reported in Qom on 19 February 2020. COVID-19 has since rapidly spread in Iran. According to official figures, as of 2 June 2020, at least 7,942 people have died from COVID-19 in Iran, with a total of 157,562 cases. On 17 March 2020, a World Health Organization official stated that COVID-19 figures in the Islamic Republic of Iran could be five times higher than those officially reported. According to reports, at least five to 11 prisoners may have died after exhibiting symptoms associated with COVID-19. The Head of Iran's Prison Organization has denied allegations of any deaths related to COVID-19 in Iran's prisons.

Judiciary's directive to grant temporary furlough

Concerns that COVID-19 may be spreading in Iran's prisons were raised in late February 2020. On 26 February 2020, the Head of the Judiciary issued a directive to address these concerns. The directive allowed prisoners who are eligible for furlough under Iran's Prison Regulations and prisoners imprisoned for failure to pay *diya* or other financial penalties to be granted temporary furlough after posting suitable bail. The measure attempted to mitigate the possible spread of

COVID-19 in prisons by lowering the prison population. The furlough would last until 3 April 2020 under the initial directive.

The directive excluded the following prisoners from being eligible for furlough: prisoners convicted of armed robbery; prisoners convicted of robbery and sentenced to more than five years' imprisonment; prisoners convicted of espionage; prisoners sentenced to more than five years' imprisonment on national security charges; prisoners convicted of kidnapping, acid attacks, and firearms trafficking; prisoners convicted of fraud with multiple victims; prisoners sentenced to death and *qisas*; and prisoners convicted for *hudud* offences. Individuals in pre-trial detention were also reportedly excluded under this directive. Prisoners who came under these exclusionary criteria were reportedly still eligible for temporary furlough if they were pregnant or breastfeeding, a woman over 60 years old or a man over 70 years old, or a prisoner diagnosed with severe diseases, and if they had not been sentenced to death, after providing documents and after approval by the prosecutor in consultation with the security division.

On 29 February 2020, the Head of the Judiciary issued another directive requesting courts to extend the release on bail of all prisoners whose sentences had been finalized until April 19 and to not call them to start their prison sentences until that date. The directive also requested a reduction in the number of temporary detention orders except for "essential" cases. The criteria for "essential" cases was not defined in the directive.

The Spokesperson for the Judiciary indicated that as of 4 March 2020, 54,000 prisoners were granted temporary furlough under the directive. On 17 March 2020, he announced that 83,000 prisoners had been released, including more than 50 per cent of national security-related prisoners. On 29 March 2020, the same spokesperson announced that the number of released prisoners had risen to 100,000 and that the furlough of prisoners is to be extended from 3 April until 19 April 2020. He also announced that a new directive allows a committee comprised of the Chief Justice of the Province, the Provincial General Prosecutor, the Prosecutor for the case, and a representative of the police to decide to grant temporary furlough to prisoners previously deprived of furlough for any reason. The Prison Classification Council was tasked with submitting temporary furlough proposals to this committee for those who had been unable to benefit from the furlough but who the council deems to be eligible for furlough because of their "good manner" in prison. On 19 April 2020, President Rouhani announced the furlough of prisoners "whose release is not considered a risk against the society" will be extended for one more month.

In a separate announcement on 19 April 2020, the Judiciary's spokesperson announced that it had established 500 committees in judicial districts nationwide to examine the cases of prisoners who were granted temporary furlough as well as those eligible for furlough but who were not released because they failed to provide bail. The committees are reportedly mandated to identify those prisoners eligible for parole and for the suspension of their sentences. According to the

judiciary's spokesperson, following the assessment of the committees on the basis of the above criteria, a large number of temporarily furloughed prisoners could be granted permanent release. The judiciary's spokesperson also stated that the results of the assessments by the committees would be finalised by the end of April. To date, there are no reports received regarding the results of these assessments.

Discriminatory criteria and application of the directive

It is reported that some prisoners considered to be prisoners of conscience, human rights defenders, lawyers, conservationists, and dual and foreign nationals have been granted temporary release under the judiciary's directive. However, it is also reported that many prisoners with these profiles are ineligible for temporary furlough under the directive's criteria due to the convictions and sentences they have received. This includes individuals who are at high risk vis-à-vis COVID-19 due to their age or underlying health conditions. It is also reported that prisoners who are considered ineligible under the criteria, and who have tested positive for COVID-19 in prison, have not been granted temporary release nor are they reportedly provided with appropriate health-care. A number of prisoners of conscience have also reportedly been returned to prisons in early May 2020 after requests for the extension of their furlough were denied. There are some concerns that returning prisoners may bring the virus into the prison system. There are also reports that the criteria announced to be eligible for furlough has been inconsistently and arbitrarily applied.

On 21 April 2020, the judiciary's spokesperson dismissed a joint statement by United Nations Special Procedures mandate holders dated 17 April 2020 that raised concerns that many prisoners of conscience and dual and foreign nationals had not been released under the directive. The relevant spokesperson stated that Iran's judiciary acted justly and without discrimination against prisoners of various nationalities. He stated that more than 1,000 foreign inmates had been granted furloughs after the outbreak of COVID-19. He also stated that the judiciary's criterion for granting furlough is the crime committed by the individual, the sentence imposed, the risk the individual poses to society, the serving time, and the amount of bail.

Supreme Leader's Pardoning of Prisoners

On 18 March 2020, the Supreme Leader declared the annual pardon of prisoners on the occasion of Nowruz celebrations. The Spokesperson for the Judiciary estimated that 10,000 prisoners would benefit from these pardons. According to the Head of Iran's Prison Organization, as of 27 March 2020, 4,200 prisoners have been identified as being eligible for the Supreme Leader's pardon.

The pardon decree applies to prisoners with only one previous conviction who have not benefited from pardon previously. The eligibility criteria for pardon include the following categories: an individual who has served one-third of their sentence if the sentence is less than ten years' imprisonment; an individual who

has served half of their sentence if the sentence is more than ten years' imprisonment; women prisoners who are the heads of households and have served one-fifth of their sentence; and prisoners diagnosed by the Forensic Medicine Commission as suffering from serious chronic disease. However, prisoners sentenced to more than five years' imprisonment on national security charges are amongst the categories of prisoners who are excluded from the pardon.

We acknowledge the positive steps that the Iranian authorities have taken to temporarily release 100,000 prisoners to mitigate the risk of COVID-19. We wish to seize this opportunity to also recall that, from the very beginning of the COVID-19 pandemic, a number of United Nations individual experts, treaty bodies and United Nations agencies have warned against the disproportionate impact of COVID-19 on all persons deprived of their liberty and on the serious risks to their life. The United Nations Inter-Agency Standing Committee (WHO and OHCHR); the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the United Nations High Commissioner for Human Rights, as well as the United Nations Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of the judges and lawyers have pointed to the specific vulnerabilities of people deprived of their liberty, including their underlying health status and the risks of mass contamination, and have called on the authorities to effectively implement their obligations to respect and protect the right to life of detainees, without discrimination. They have specifically called on States to immediately and unconditionally release all prisoners whose incarceration is illegal or arbitrary under international law, such as political prisoners; abandon or exclude detention as a sanction for persons found to be in breach of COVID-19 related measures, such as curfews; reduce the overall size of the prison population; and help tackle associated overcrowding through a review of the prison population and consideration of alternative sentencing to imprisonment for minor crimes.¹

Within this context, we remain concerned that the directive for temporary furlough in some respects contains vague criteria, leading to inconsistent, arbitrary and discriminatory application. We are also concerned that the eligibility criteria excludes many prisoners with certain profiles, including human rights defenders, lawyers, conservationists and dual and foreign nationals, due to their convictions and sentences. This concern is exacerbated by reports that the convictions and sentences in a vast majority of cases are on a legal basis that criminalizes the legitimate exercise of fundamental rights, and following trials that did not follow due process guarantees or that otherwise violated international human rights obligations. We are also concerned that the exceptions for individuals who may be ineligible under the established criteria due to their conviction and sentence have reportedly not been applied in certain individual cases

¹ <https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>;
<https://undocs.org/CAT/OP/10>;
https://www.ohchr.org/Documents/Issues/Executions/HumanRightsDispatch_2_PlacesofDetention.pdf;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E>;
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25810&LangID=E>.

where there is a high risk vis-a-vis COVID-19 due to their age or underlying health condition. The reported denial of furlough extensions and consequent return of furloughed individuals to prisons also raises concerns of renewed risks of a further COVID-19 outbreak in Iran's prisons and possible increased risks to the health of those who have had furlough extensions denied.

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 current eligibility criteria, including any exceptions, for the grant of temporary furlough to prisoners and the extension of temporary furlough under the judiciary's directives or the President's announcement.
3. Please provide information on the mechanisms in place to assess applications for temporary furlough or the extension of temporary furlough, and how these mechanisms make these assessments.
4. Please provide information on how the judiciary and relevant government entities are overseeing the application of the judiciary's directives, including in a manner consistent with Iran's international human rights obligations.
5. Please provide information on mechanisms in place for the review of decisions to deny the grant of furlough or an extension of temporary furlough.
6. Please provide information on the work of the judicial district committees that have been established, including how the committees are assessing cases for temporary furlough, parole and for permanent release.
7. Please provide information on measures in place to ensure that prisoners returning to prison from furlough have not contracted COVID-19 and that they will not infect with the virus those who remained in prison.
8. Please provide information on the measures taken to ensure appropriate health-care for prisoners that either have contracted COVID-19 or are suspected of being asymptomatic carriers of the virus, including those returning from furlough.

9. Please provide information on the criteria for receiving the Supreme Leader's pardon and the process that is applied. Specifically, please provide information on whether the COVID-19 pandemic is being factored into the decision-making process for the grant of pardons.

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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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

Annex

Reference to international human rights law

In this connection, we refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (CESCR), ratified by Iran on 24 June 1975, which establishes the obligation of States to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 34). We would also like to specifically highlight article 12(2)(c), which obliges States to take the steps necessary for “the prevention, treatment and control of epidemic, endemic, occupational and other diseases” (General Comment No. 14, para. 16). In addition, we would like to underline the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, according to which prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

We also draw your attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (reviewed on 17 December 2015 and also known as the “Mandela Rules”) in particular to Rule 24 that establishes that the provision of health care for prisoners is a State responsibility that should ensure continuity of treatment and care, including for infectious diseases; Rule 25 that indicates that prisons’ health-care services shall protect and improve prisoners’ health, particularly of prisoners with special health-care needs or with health issues that hamper their rehabilitation, and Rule 30(d) which states that in cases where prisoners are suspected of having contagious diseases, clinical isolation and adequate treatment shall be provided during the infectious period. We would like to underline the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) adopted by the General Assembly in resolution 65/229, which complement the United Nations Standard Minimum Rules for the Treatment of Prisoners, providing guidance for specific characteristics and needs of women in prison, in particular Rules 10, 11, 12 and 13.

We further refer to the right of all detained persons not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of International Covenant on Civil and Political Rights (ICCPR), ratified by Iran on 24 June 1975.

The directive’s discriminatory formulation and application to prisoners of conscience, human rights defenders and lawyers, conservationists and foreign and dual nationals, appears to be in violation of article 14 of the ICCPR, which provides inter alia for the principle of equality before the courts and tribunals, the right to a fair and public hearing before a competent, independent and impartial tribunal established by law, and the presumption of innocence.