

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

REFERENCE:
UA IRN 13/2020

16 June 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; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/18, 42/22, 35/15 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning recent judicial decisions in the cases of Iranian-Swedish national Mr. **Ahmadreza Djalali** and Iranian-Austrian national Mr. **Massud Mossaheb**.

The situation of Mr. Ahmadreza Djalali has been raised in five previous communications by Special Procedures mandate holders, dated 2 February 2017 (IRN 7/2017), 13 November 2017 (IRN 30/2017), 28 June 2019 (IRN 7/2019), 8 August 2019 (IRN 12/2019) and 2 April 2020 (IRN 6/2020). While we are grateful for the responses of your Excellency's Government to IRN 7/2017 and IRN 7/2019, we regret that to date we have not received responses to the other communications concerning Mr. Djalali. He has also been the subject of several press releases by Special Procedures mandate holders, with the most recent press release published on 17 April 2020. He was also the subject of Opinion No. 92/2017 (Islamic Republic of Iran), adopted on 24 November 2017 by the Working Group on Arbitrary Detention. The Working Group found that the deprivation of liberty of Mr. Djalali was arbitrary and in contravention of articles 3, 5, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, and that it fell within categories I and III of the categories applied by the Working Group. The Working Group requested the Government to take the necessary steps to remedy the situation of Mr. Djalali without delay, and to bring it into conformity with the standards and principles in the UDHR and ICCPR. The Working Group considered that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Djalali.

The situation of Mr. Massud Mossaheb has been raised in a Special Procedures communication dated 2 April 2020 (IRN 6/2020) and a Special Procedures press release published on 17 April 2020. We regret that a response to the issues raised concerning Mr. Mossaheb's situation in his communication has not yet been received.

According to the information received:

Ahmadreza Djalali

On 21 October 2017, Branch 15 of the Revolutionary Court convicted Mr. Djalali of corruption on earth and sentenced him to the death penalty. Mr. Djalali was reportedly denied access to a lawyer for many months after being arrested and detained in April 2016. He was also forced to confess under duress after being threatened with torture. His forced confession was later broadcast on Iranian state television.

On 2 December 2017, Branch 1 of Iran's Supreme Court upheld Mr. Djalali's conviction and sentence after his lawyers had lodged an appeal. His lawyers were reportedly denied the opportunity to file their submissions in support of Mr. Djalali's appeal. His lawyers were informed of the court's decision on 9 December 2017.

In December 2018/January 2019, Mr. Djalali's lawyers lodged a request for a retrial of Mr. Djalali's case with the Supreme Court of the Islamic Republic of Iran. The request reportedly provided detailed evidence in support of Mr. Djalali's innocence. It requested that his death sentence be quashed, that a retrial that adheres to fair trial standards be ordered, and that full consideration be given to the submitted documents and evidence in support of his case.

In the second week of May 2020, Mr. Djalali's lawyers were verbally informed by officials from the judiciary that the request for a retrial had been rejected, without providing a written copy of the decision to reject the appeal. It is reported that Mr. Djalali's only remaining options to overturn his conviction and sentence are through exceptional interventions by the head of the judiciary or the Supreme Leader, and that the judiciary may approve his execution at any time.

Mr. Djalali remains in detention in Evin Prison. Concerns detailed in previous communications regarding the denial of access to appropriate medical treatment for serious conditions, including leukemia, have not been addressed. There are also still reports that Mr. Djalali is at high risk of mortality if he contracts COVID-19. He has not benefitted from the judiciary's directive permitting the temporary release of prisoners in order to mitigate the risks of COVID-19 in prisons.

Massud Mossaheb

On 20 May 2020, Branch 15 of the Revolutionary Court in Tehran convicted Mr. Mossaheb of spying for Israel and Germany and sentenced him to 10 years' imprisonment. The charge of "spreading corruption on earth" was removed, as was another charge that accused Mr. Mossaheb of receiving from the Mossad USD 429,000 for espionage work over 30 years. The presiding judge did not allow Mr. Mossaheb to have his chosen lawyer represent him at trial. The judge also reportedly stated that he "already has his sentence in his drawer" prior to the trial. Mr. Mossaheb was reportedly coerced into giving a false confession under duress after his interrogators threatened that he would receive the death penalty and lashes if he did not provide a confession. His forced confession was reportedly recorded for possible broadcast on state television, although it has not yet been broadcast. No reasonable evidence connecting Mr. Mossaheb to the alleged espionage activities was presented during the trial. Mr. Mossaheb reportedly stated to the judge orally that he would appeal his conviction and sentence. The judge reportedly replied that he should be thankful he did not receive a 20-year prison sentence and that it is a disgrace that he is appealing the decision. Notification in writing that he will appeal is awaiting collection. He has been informed that he will be allowed to have his chosen lawyer represent him on appeal.

Mr. Mossaheb continues to suffer from several chronic medical conditions, for which he is reportedly not receiving continuous and appropriate medical treatment. His conditions include diabetes, hernia, extreme cardiac disturbances, high blood pressure, thyroid issues, mitral valve insufficiency, chronic recurrent diverticulitis, fatty liver and kidney stones. There is reportedly an inadequate level of medical examination and treatment from the clinic inside Evin Prison where he is detained, with most of Mr. Mossaheb's medication having to be brought into him by relatives. There are reports that prison officials either delay or fail to give Mr. Mossaheb the medication his family sends to him.

From approximately February 2020, Mr. Mossaheb has attended the medical clinic several times at Evin Prison to receive medical assistance due to acute cardiac symptoms and shortness of breath. Following several requests for medical examinations that were disregarded by the prison clinic's personnel, Mr. Mossaheb was finally reviewed by a doctor at the prison's clinic. The doctor prescribed nitroglycerin and aspirin for the acute cardiac symptoms, and also performed an electrocardiogram (ECG) procedure. The ECG procedure was reportedly performed in the prison.

Mr. Mossaheb's shortness of breath issues reportedly increased from mid-April 2020 onwards. After several requests for further medical assistance, the same doctor in the prison clinic did an auscultation. After performing the auscultation, the doctor suspected Mr. Mossaheb was suffering from pulmonary edema. One of the many medical treatments that Mr. Mossaheb had been prescribed in Austria for his various chronic conditions could have possibly avoided the development of excess fluid in his lungs. However, prison authorities had not ensured Mr. Mossaheb's continued use of this medication.

Mr. Mossaheb has had two blood tests in recent months. The tests were prescribed by doctors at the Taleghani University Hospital in Tehran and were undertaken in Evin Prison. He either did not receive the results of these blood tests at all or received the results after several weeks. In late May 2020, an Evin Prison doctor informed Mr. Mossaheb that one blood test showed he is affected by high cholesterol and triglyceride levels. The doctor recommended a specific diet and regular running to reverse these results, however the diet cannot be provided in prison and Mr. Mossaheb cannot run as he can only walk in pain with the help of a crutch.

In mid-May 2020, a state medical officer visited Mr. Mossaheb in Evin Prison and organized for him to be seen at Taleghani University Hospital in Tehran. It is unclear who arranged for the state medical officer to come see Mr. Mossaheb at Evin Prison, although it is assumed that Mr. Amin Vaziri from the prosecutor's office may have organized the examination. Doctors at the Taleghani University Hospital ordered several medical tests, and asked for a follow-up visit on 2 June 2020. On 2 June, the doctors at the Taleghani University Hospital prescribed a lung x-ray to confirm the diagnosis of a pulmonary edema at the request of Mr. Mossaheb. The Taleghani University Hospital doctors also prescribed upon his request a diuretic medication that he was previously prescribed in Austria that helps prevent the development of fluid in the lungs. This medication has reportedly improved his shortness of breath.

On 6 June, the x-ray was performed at Evin Prison and x-ray pictures were produced, although a medical report was reportedly not written. Mr. Mossaheb noticed irregularities in the x-ray pictures, including a shadow over part of the lungs and a node on the lungs. He asked the doctor about these issues, but the doctor reportedly said these were "nothing". Mr. Mossaheb also reportedly requires further appropriate medical treatment, including full blood tests, especially for his heart and lung related issues; ultrasound examinations for thrombosis in his right leg, heart issues, and umbilical hernia; and adequate medication for his various ailments in adequate doses.

General prison conditions are also reportedly unsanitary in Evin Prison. In early May 2020, there was reportedly an infestation of 300 to 400 cockroaches that were coming out of the walls of Evin Prison. Mr. Mossaheb's blanket was also reportedly covered in 50 to 100 bedbugs, requiring him to dispose of it.

Mr. Mossaheb has not received temporary furlough under the judiciary's directive for the temporary release of prisoners due to the possible spread of COVID-19 in Iranian prisons. While Mr. Mossaheb appears to be excluded from benefiting from this directive due to his conviction and sentence under the general criteria, he should be eligible under the exceptions as a man over 70 years of age and due to his serious medical condition.

Without prejudging the accuracy of the received information, we express serious concern at the decision of the Supreme Court to reject the request for a retrial in the case of Mr. Djalali despite reports of serious inadequacies concerning the first instance decision. We are particularly alarmed that this decision may lead to the imminent execution of Mr. Djalali. We also express serious concern that Mr. Mossaheb has also received a lengthy prison sentence from the Revolutionary Court. The serious concerns expressed relate to the Iranian courts in both cases failing to adhere to international fair trial standards and due process guarantees, including the right to be represented by a lawyer of one's own choice and the presumption of innocence. We are also seriously concerned that the convictions and sentences in both cases are based on forced confessions made under the threat of torture, as well as other reports of ill-treatment in detention. We also draw attention to the reports of the denial or delay of appropriate medical treatment and care to both Mr. Djalali and Mr. Mossaheb for serious medical conditions, and specific concerns of their high risk of mortality if they contract COVID-19.

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.

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.” In addition, we would like to recall to your Excellency’s Government that, under article 14(3)(g) of the Covenant, everyone is entitled to not be compelled to testify against himself or to confess guilt.

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.

Without expressing at this stage an opinion on the facts of the case of Mr. Mossaheb and on whether his reported detention is arbitrary or not, we would also like to appeal to your Excellency’s Government to take all necessary measures to guarantee the right of Mr. Mossaheb not to be deprived arbitrarily of his 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. In the case of Mr. Djalali, we reiterate the finding of the Working Group on Arbitrary Detention in Opinion No. 92/2017 (Islamic Republic of Iran), adopted on 24 November 2017, that the deprivation of liberty of Mr. Djalali is arbitrary and that the appropriate remedy would be to release him.

We would like to further refer your Excellency’s Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Iran on 24 June 1975, which establishes the obligation 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, CESCR General Comment 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” (see also CESCR General Comment 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 UN Standard Minimum Rules for the Treatment of Prisoners (reviewed on 17 December 2015 and renamed the “Mandela Rules”), in particular to Rule 24 that establishes that the provision of health care for prisoners is a State responsibility and that the State should ensure continuity of medical treatment for chronic conditions; Rule 26(2) establishing that clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff; Rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases and prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals, as well as Rule 58 which establishes that prisoners shall be allowed to communicate with their family and friends at regular intervals.

In the particular case of Mr. Djalali, if his death penalty sentence is carried out in the present circumstances, it would constitute an arbitrary execution. On these grounds, we respectfully urge the relevant authorities of your Excellency’s Government to ensure that Mr. Djalali is not executed, to annul his death sentence and to ensure that he is 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.

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/or comment(s) 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 them with guarantees of due process and fair trial, including with regard to the type of incriminating evidence presented before the courts, as well as the 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 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.
5. Please indicate what measures have been taken to protect the physical and mental integrity of Mr. Djalali and Mr. Mossaheb, including measures to ensure they both have access to appropriate medical care and treatment as advised by relevant health care professionals.
6. 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, while in detention and during interrogation. If no inquiries have taken place, or if they have been inconclusive, please explain the reasons.

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.

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's to clarify the issue/s in question.

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

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case 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.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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