

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 human rights of migrants 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 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 human rights of migrants 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, 34/21 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of arrest, violent pushback and excessive use of force by Iranian border officials against 46 Afghan migrants, including children, who attempted to cross the border from Afghanistan into Iran, leading to the death of at least 10 individuals, including one child, and 15 individuals missing.**

According to the information received:

Since the outbreak of COVID-19 in Iran in mid-February 2020, the International Organization for Migration (IOM) estimated that over 150,000 Afghan migrant workers in Iran, many of whom are the sole breadwinners of the families, had returned to Afghanistan. Although most returns are believed to be voluntary, between 8 and 14 March, IOM recorded 3407 deportations from Iran of Afghan migrant workers.

On the night of 30 April 2020, a group of 46 Afghan migrants, all male and mainly from Herat and Faryab, sought to enter Iran from Afghanistan for the purpose of employment. There were several children in the group, including one boy as young as 12 years old. The group crossed the border by a boat made of tires and entered the territory of Iran where they were arrested by Iranian border officials at the Ibrahim Khani border checkpoint at approximately 2 pm on 1 May 2020. The migrants were reportedly beaten and subsequently taken to the border command centre, where there were other Afghan migrants waiting. They were registered and kept in a room.

On 2 May 2020, the border guards reportedly brought the migrants out of the room, subjected them to severe beatings and forced them to collect garbage around the checkpoint. In the afternoon that same day, a number of guards transported the migrants to the bank of the Harirud River by bus, and also took

20,000 tomans (approximately USD 5) from each of them as a transportation fee. The guards then ordered the migrants to cross the Harirud River, a river with a fast-flowing mountain torrent. The migrants stated to the guards that they were unable to cross the river due to the strong torrent, upon which Iranian border officials started to shoot at them and threatened to kill them if they did not proceed with crossing the river. About eight of the migrants were able to cross, but due to the strong torrent and deep water, the majority of them were unable to and were carried away by the water or drowned. According to an initial investigation by the Afghanistan Independent Human Rights Commission, at least 10 individuals were found dead, 21 were rescued and 15 individuals are still missing.

On 6 May 2020, Afghanistan's Foreign Ministry stated that the Government of Iran had agreed to conduct a joint investigation into the incident. The joint investigation was reportedly launched on 13 May and on 26 May, an Iranian diplomatic mission reached Kabul as part of the investigation.

Without prejudging the accuracy of the information made available to us, we express serious concern at the allegations of arrest, ill-treatment and the excessive use of force by Iranian border officials against 46 Afghan migrants, several of them children, leading to the extrajudicial killing of at least ten individuals and including at least one child. We are particularly alarmed at the fact that none of them seemed to have posed a threat to life or serious injury to the border officials that could justify the use of force. We express further concern at information suggesting violent pushback by Iranian border officials, including excessive force, against migrants seeking to cross the border into Iran.

We welcome the agreement of the Iranian Government to a joint investigation into the incident with the Afghan Government. In this context, we would like to underscore that investigations into alleged unlawful killings and incidents of ill-treatment or torture should be conducted in a thorough, prompt and impartial manner as required by international standards and that perpetrators should be brought to justice. We also highlight the importance of ensuring fair and adequate compensation to victim's families within a reasonable period of time.

The above allegations, if confirmed, would be in violation of the right to life, liberty and security of the person, as well as the prohibition of torture and other forms of ill-treatment, as set forth in Articles 6, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran on 24 June 1975. In the context of border control, we wish to stress that States should ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration, are in accordance with the principle of non-refoulement and the prohibition of arbitrary or collective expulsions. In this context, we recall the obligation of the law enforcement officials to follow the duly established procedures for carrying out an arrest of which unnecessary and/or excessive use of force is not part of. In addition, border officials must respect international human rights instruments pertaining to law enforcement, including the principles governing the detention of individuals and on the use of force by law enforcement officials. We underline that law enforcement officials may use force only when and to the extent strictly necessary for the performance of their duty and in a

manner proportionate to the threat to be addressed. More precisely, the use of lethal force is only legitimate “to save the life of a person or to protect a person from serious injury; as said, such force must be necessary and proportionate and it cannot be used in a discriminatory fashion¹. Killing or causing deadly injury resulting from the use of force in the absence of an imminent threat of death or serious injury may amount to arbitrary deprivation of life. We note that articles 6 and 7 of the ICCPR guarantee these rights for all human beings, without distinction of any kind, including on the basis of nationality. As highlighted by the Human Rights Committee, “States have a duty to prevent and redress unjustifiable use of force in law enforcement” (CCPR/C/GC/35, para. 9).

We underline that States are expected to take all necessary measures to prevent excessive use of force by their law enforcement officials and highlight the importance of swift actions to ensure that no further incidents occur. We further highlight the importance of a clear accountability system in place within the border patrol system so that border officials know that they are accountable for any human rights violations committed in the discharge of their duties.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide a detailed description of the circumstances that led to the reported arrest, and use of force against 46 men and children in connection with the incident described above, including the confirmed deaths of ten individuals.
3. Please provide the details, and where available, the results, of the investigations and judicial or other inquiry being undertaken in relation to the allegations about the excessive use of force by Iranian border officials. Please provide information if perpetrators have been identified and steps taken to ensure accountability for their actions in line with international human rights standards. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information on the training provided to border officials, on the internal procedures in place within the border patrol regulating the use of force, including weapons; as well as existing accountability mechanisms

¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Unlawful death of refugees and migrants (A/72/335)

within the border patrol and the judiciary for violations of human rights committed by these personnel in the conduct of their duties.

5. In the case that investigations confirm the responsibility of Iranian border patrol officials, please provide information about steps taken to ensure that compensation is provided to the victims and their families.

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(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that a copy of this communication will be shared with the Government of the Islamic Republic of Afghanistan.

Finally, we would like to inform your Excellency's Government that having transmitted an allegation letter 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 communications in no way prejudice 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

Felipe González Morales
Special Rapporteur on the human rights of migrants

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

Annex
Reference to international human rights law

Right to life and prohibition against torture and other forms of ill-treatment

In connection with the above alleged facts and concerns, we refer to articles 6 (1), 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran on 24 June 1975, which guarantees the inherent right to life of every individual and provide that this right shall be protected by law and that no one shall be arbitrarily deprived of his life, the right to liberty and security of the person, as well as the prohibition against torture.

The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The Human Rights Committee has found that detention in the course of proceedings for the control of immigration is not per se arbitrary but that the detention must be justified as “reasonable, necessary and proportionate in light of the circumstances, and reassessed as it extends in time.” Detaining migrants and asylum seekers who have entered unlawfully onto a State party’s territory for more than a “brief initial period” while their claims are being resolved is “arbitrary absent particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security.” The decision must “consider relevant factors case-by-case, and not be based on a mandatory rule for a broad category”. The Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces as well as by private parties or entities. States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13). Moreover, we refer to Deliberation No 5 of the Working Group on Arbitrary Detention, noting that the detention in the migration context should be a measure of last resort and follow individual assessment of the necessity and proportionality to detain; and that children should never be detained.

We furthermore refer to the Convention on the Rights of the Child (CRC), ratified by Iran on 13 July 1994, which prescribes the minimum standards which States must adhere to regarding the treatment of children on their territory. The CRC provides in article 2 that all rights contained in the Convention apply to all children within the jurisdiction of the State Parties without discrimination of any kind. Article 3 provides that the best interests of the child shall be a primary consideration in all actions concerning children. Article 6 sets out the right to life, survival and development of the child.

Use of force and firearms

With regards to the reported excessive use of force by border officials, we would like to stress that under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality

is an arbitrary deprivation of life and therefore illegal. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990 (Basic Principles), and the UN Code of Conduct for Law Enforcement Officials, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary. Law enforcement officials includes military authorities who exercise police powers.

We would also like to draw the attention of your Excellency's Government to the Report of the Special Rapporteur on Torture (A/72/178) regarding extra-custodial use of force, which in paragraph 47 indicates that "extra-custodial use of force involves the intentional and purposeful infliction of pain or suffering on a powerless person as a vehicle for achieving a particular purpose will always amount to an aggravated form of cruel, inhuman or degrading treatment or punishment, irrespective of considerations of lawful purpose, necessity or proportionality and irrespective of its qualification as torture under the applicable treaty definition".

Investigations

Furthermore, according to Principle 9 of the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, there is an obligation to conduct thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death. The Minnesota Protocol on the Investigation of Potentially Unlawful Death which in 2016 updated the original UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions of 1991; and the UN Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989), states that an investigation must be a) prompt; b) effective and thorough; c) independent and impartial; and d) transparent.

Compensation

Additionally, principle 20 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (resolution 1989/65 Economic and Social Council) states the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

Preventive measures and training

We further highlight that according to Human Rights Committee General Comment 36, States parties are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials. These measures include appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human

life, mandatory reporting, review, and investigation of lethal incidents amongst others. In particular, all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169)(1979) and the Basic Principles law enforcement officials should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life.