

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; and the Special Rapporteur on minority issues

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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; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 43/24, 42/22, 36/6, 44/5 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the imminent executions of **Mr. Heidar Ghorbani and Mr. Arsalan Khodkam, two Iranians from the Kurdish minority, after they were both sentenced to death for *baghi* (armed rebellion against the state) and *moharebeh* (taking up arms to take lives or property and to create fear in the public) respectively.** There are serious concerns in both cases related to due process, adherence to fair trial guarantees, a lack of evidence and alleged use of torture to extract forced confessions.

According to the information received:

Heidar Ghorbani

Mr. Heidar Ghorbani is a 47-year-old Iranian man and member of the Kurdish minority. On 12 October 2016, 10 members of Iran's Ministry of Intelligence arrested Mr. Ghorbani during a house raid where they did not present an arrest warrant. He was arrested in connection with the alleged killing of three men affiliated to the Basij paramilitary forces in September and October 2016 by individuals associated with an armed opposition group, the Kurdish Democratic Party of Iran. For three months after his arrest, no information was provided to his family of his whereabouts or his condition. On 5 January 2017, he was able to make a telephone call to his family, but they were not informed of his whereabouts until April 2017 when he was transferred to the Central Prison in Sanandaj, Kurdistan Province.

Mr. Ghorbani stated that, during the period when his whereabouts were unknown to his family, he was first taken to a detention centre in Kamyaran, Kurdistan Province run by an investigation unit of the Iranian police force, before being taken to a Ministry of Intelligence detention centre in Sanandaj. In the Ministry of Intelligence detention centre, he was held in solitary

confinement for several months and his interrogators imposed sleep deprivation, kicked and punched him, and lay him on the ground and walked on his chest, creating a feeling that he was suffocating, in an attempt to get Mr. Ghorbani to make a forced confession. Mr. Ghorbani eventually did make a forced confession, which was broadcasted prior to his trial on the state-run, English-language channel “Press TV” on 8 March 2017. During the broadcast, Mr. Ghorbani is shown to say that he assisted those who carried out the attack on the Basij members by acting as their driver. Mr. Ghorbani was reportedly refused a lawyer during the investigation stage and his lawyer did not have full access to his casefile during his trial.

On 6 October 2019, Mr. Ghorbani was convicted by Branch 1 of Criminal Court 1 of Kurdistan Province of aiding and abetting murder, attempted kidnapping and assisting the perpetrators of the attack to escape. He was sentenced to a total of 118 years and 6 months in prison, as well as 200 lashes.

On 21 January 2020, a Revolutionary Court in Sanandaj, Kurdistan Province convicted Mr. Ghorbani of *baghi* (armed rebellion against the state) and sentenced him to the death penalty. This is despite a note in Mr. Ghorbani’s casefile by his investigator reportedly stating that there was no evidence to charge him with *baghi*. The court reportedly acknowledged that Mr. Ghorbani was not armed and relied on his forced confession to reach its verdict.

On 6 August 2020, the Supreme Court of Iran upheld the death sentence against Mr. Ghorbani. The court reportedly did not address evidential and due process issues raised by his lawyers concerning his conviction, including the use of torture to extract a forced confession. On 5 September 2020, the Supreme Court also rejected a request for judicial review in his case. His execution is understood to be imminent and, without any further legal course to overturn the decision, could take place at any time.

Arsalan Khodkam

Mr. Arsalan Khodkam is a 47-year-old Iranian man and member of the Kurdish minority. He worked as a low-ranking officer at an Islamic Revolutionary Guards Corp (IRGC) military base in Urumieh, West Azerbaijan Province. On 23 April 2018, Mr. Khodkam was arrested and transferred to a detention facility of the IRGC in Almahdi military barracks in Urumieh. He was accused of espionage for the Kurdish Democratic Party of Iran (KDPI), including providing sensitive information to the KDPI concerning the military affairs of the IRGC and assisting the KDPI’s armed operations. Mr. Khodkam denied these allegations, stating that he has not been a KDPI member since the 1980s. It is alleged that Mr. Khodkam did tell a relative who is a KDPI member of proposed actions by IRGC forces against April 2018 strikes and protests in Baneh, and non-sensitive information about IRGC officials with whom he worked.

Mr. Khodkam was held in solitary confinement in this facility for 36 days, without access to his family or lawyer, during which time his interrogators subjected him to torture in an effort to have him confess. His torture reportedly included repeated flogging, punching and kicking, and handcuffing him in painful ways for long periods and denying him access to toilet facilities. He was consequently either forced to urinate on himself or hold his urine resulting in bladder and kidney pain. The interrogators kicked and punched his back, where he has a surgical implant, causing him extra pain and to faint several times. He was also sleep deprived. Mr. Khodkam signed statements admitting to the alleged crimes after suffering the physical torture and also the psychological torture of the IRGC detaining his wife for two days and threatening to harm her and their son.

On 14 July 2018, Branch 1 of the Military Court in West Azerbaijan Province sentenced him for *moharebeh* through espionage. He met his trial lawyer on the day of the trial and the lawyer did not present a defence. The trial reportedly lasted only 30 minutes, with the verdict relying on the forced confessions Mr. Khodkam made after experiencing torture. Branch 32 of Iran's Supreme Court subsequently dismissed his appeal summarily without addressing the torture allegations and forced confessions which were used to convict Mr. Khodkam. A request for judicial review to the Supreme Court was also dismissed on 3 October 2018. In February 2020, his lawyer attempted to access his court documents in order to prepare a clemency application. His lawyer was informed that he was not allowed to represent Mr. Khodkam and that a previous clemency application was rejected. In May 2020, the authorities informed that his execution is imminent.

Mr. Khodkam has also reportedly been refused treatment outside of prison for vision issues and back pain and was only provided with painkiller injections.

Without prejudging the accuracy of the received information, we express our alarm at the convictions and death sentences against Mr. Heidar Ghorbani and Mr. Arsalan Khodkam, both members of the Kurdish minority, as well as Mr. Ghorbani's lengthy prison sentence and sentence to lashes. The convictions, as well as the death, prison and flogging sentences, followed deeply flawed judicial processes allegedly based on forced confessions due to torture and other serious violations of due process and of fair trial standards. We deeply regret that the authorities 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 to broadcast forced confessions on state television, and would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*.

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 (ICCPR), ratified by the Islamic Republic of Iran on

24 June 1975, states that the death penalty may not be imposed when doing so would be contrary to the provisions of the ICCPR. In General Comment No. 36 (part IV), the Human Rights Committee has noted that the imposition of the death penalty is lawful only if it is implemented in a non-arbitrary manner. That is, if it is imposed for the most serious crimes, and in accordance with other obligations incumbent on the State under the Covenant.

Importantly, the Human Rights Committee specifies that “under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant” (para. 36). Thus, the sanctioning of the conduct that constitutes a violation of the fair trial guarantees provided for in article 14 of the ICCPR in proceedings resulting in the imposition of the death penalty, would render the award of the death penalty arbitrary in nature, and in violation of article 6. Such violations might involve the use of forced confessions (concurrent violation of article 7); lack of effective representation during all stages of the criminal proceedings; failure to respect the presumption of innocence; lack of an effective right of appeal; lack of adequate time and facilities for the preparation of the defence; and general lack of fairness of the criminal process, or lack of independence or impartiality of the trial or appeal court.

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 the 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, 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.”

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 are further drawing your Excellency’s Government’s attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes the prohibition to practice, permit or tolerate enforced disappearances (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3) and that 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 (article 7). The Declaration recognizes the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty (article 9), the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention (article 10). The same article of the Declaration establishes the obligation of the detaining authorities to make available accurate information on the detention of persons and their place or places of detention, including transfers, to their family, counsel or other persons with a legitimate interest (article 10). The Declaration also establishes the obligation to make the findings of an investigation into the circumstances of the disappearance available upon request to all persons concerned and to ensure that all involved in the investigation are protected against ill-treatment, intimidation or reprisal (article 13). That 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 has also been reiterated in General Comment 36.

Furthermore, we would like to recall Principle 17 of the United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, which stipulates that the adoption of specific measures are required under international law to ensure meaningful access to the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and receive without delay appropriate remedies by certain groups of detainees. This includes, but is not limited to, persons detained in solitary confinement or other forms of incommunicado detention or restricted regimes of confinement.

Finally, recognizing that the individuals affected are members of minorities in Iran, we would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

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, and of the irreversibility of the punishment of the death penalty, **we call upon your Excellency's Government to immediately halt any steps being taken towards the executions of Mr. Heidar Ghorbani and Mr. Arsalan Khodkam**, which, on the basis of the information made available to us would violate international human rights law and standards, and thus constitute an arbitrary execution. **We further urge your Excellency's Government to ensure that the death sentences against them are annulled and that they are re-tried in full compliance with international human rights law and standards.** We would also appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of Mr. Ghorbani and Mr. Khodkam 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 your observations 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 conviction and sentencing to death of Mr. Ghorbani and Mr. Khodkam, and their compatibility with international human rights law.
3. Please provide detailed information about whether any investigation or inquiry has been conducted into the allegations of the use of torture and other cruel, inhuman or degrading treatment or punishment, as well as allegations of enforced disappearances, in both these cases. If no such investigations have taken place and no-one has been held accountable, please explain why.

4. Please provide detailed information about the criminal investigation and judicial processes in these cases, including confirmation of the dates on which Mr. Ghorbani and Mr. Khodkam were arrested, detained, and charged, as well as the dates of every court decision. Please also confirm the charges, convictions and sentences against Mr. Ghorbani and Mr. Khodkam, as well as details on their access to legal assistance.
5. Please provide the court decisions related to the prosecution of Mr. Ghorbani and Mr. Khodkam, including by the Supreme Court, the Revolutionary Courts, the Military Courts and the Criminal Courts. Please also provide information about the justification for using closed and secret trials; as well as the justification to deny the right to present a defence against the evidence presented before the courts and the denial to provide effective access to counsel of their choosing.
6. Please provide information on the conditions in detention for Mr. Ghorbani and Mr. Khodkam, 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.

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 to clarify the issues in question.

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.

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.

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

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