

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

REFERENCE:
UA IRN 24/2020

8 October 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 43/20 and 43/24.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the imminent risk of amputation of **Mr. Hadi Rostami, Mr. Mehdi Sharfian, Mr. Mehdi Shahivand and Mr. Kasra Karami**, following their convictions under Article 278 of Iran's Islamic Penal Code (IPC).

According to this provision of the IPC, a person found guilty of theft should be punished by amputation of the four fingers on his or her right hand in cases of the first commission of this crime. In cases of repetition, the amputation of the left leg is imposed. On the third instance of commission, the convict is sentenced to life imprisonment and on the fourth instance to the death penalty, even if the crime occurs in prison. We also raise concerns that the conviction and sentencing of these individuals occurred after processes that did not guarantee international fair trial standards, including allegations of the use of torture to force individuals to make false confessions.

In this context, we would like to note that concerns have been raised regarding the application of corporal punishments in previous communications on 28 June 2013 (IRN 9/2013), 20 August 2015 (IRN 14/2015) and 19 April 2017 (IRN 15/2017). We thank your Excellency's Government response to the latter dated 4 August 2017.

According to the information received:

The case of Mr. Kasra Karami

Mr. Karami was arrested on 12 October 2015. During his detention by the Investigation Unit of Iran's Police (*Agahi*) in Urmia, he was allegedly subjected to torture to force him to confess to charges of theft. He was denied legal representation and his confession was later used as evidence to convict him in Court.

The initial sentence of the Criminal Court 1, in West Azerbaijan Province, on 12 February 2017, to have Mr. Karami's fingers amputated was quashed by Branch 27 of the Supreme Court, on grounds that the complainant had not sought the punishment of amputation. Therefore, the case was returned to the

same court of first instance for further examination. However, the sentence was reinstated, on 23 September 2017 and, this time, the Supreme Court upheld it, on 10 December 2017. A subsequent request for judicial review was rejected by the Supreme Court.

The cases of Mr. Hadi Rostami, Mr. Mehdi Sarfian and Mr. Mehdi Shahivand

On 19 November 2019, the Criminal Court 1, in West Azerbaijan province, sentenced all three men to have their fingers amputated, over charges of breaking into the houses of four individuals and robbing safes containing gold and cash. The court reportedly relied on forced confessions obtained under duress, during their detention by the *Agahi*, without access to their lawyers.

During interrogations, Mr. Rostami was regularly punched, kicked and beaten by the *Agahi* officers, until he reached a state of mental and physical collapse. He was then forced to sign a piece of blank paper to which the prosecution authorities added, without his knowledge, the details of his charges, to simulate that he had accepted them.

Mr. Rostami has repeatedly denied the charges brought against him and retracted his confession in court, stating that it was made under torture. However, the Criminal Court 1, in West Azerbaijan province, and Branch 13 of the Supreme Court failed to investigate those allegations or exclude the confession as evidence.

Since his arrest, four years ago, Mr. Rostami left his wife with no means to care for their child, who has a permanent disability. Mr. Sarfian and Mr. Shahivand had also stated in court that they committed theft due to poverty and extreme financial needs.

The four aforementioned men are currently held in Urmia prison, in West Azerbaijan province, and are sentenced to have four fingers on their right hands amputated, leaving only their thumbs, in accordance with article 278 of the IPC.

It is unclear when the sentences against the four men will be implemented, however, the recent referral of the cases to the Centre for the Implementation of Sentences suggests the risk of an imminent amputation.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the imminent amputation of Mr. Hadi Rostami, Mr. Mehdi Sarfian, Mr. Mehdi Shahivand and Mr. Kasra Karami. We would like to remind your Excellency's Government that corporal punishments, such as amputation, violate the absolute and non-derogable prohibition of torture and cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in article 7 of the International Covenant on Civil and Political Rights (ICCPR), which Iran ratified on 24 June 1975. The ICCPR states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The Human Rights Committee has also called for the abolition of judicial corporal punishment, in paragraph 5 of General Comment No. 20 (1992), the Committee stated that the prohibition of torture and ill-treatment

must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime as an educative or disciplinary measure.

We would further like to draw your Excellency's Government's attention to the report of the UN Special Rapporteur on Torture to the 60th session of the General Assembly (2005), in which he concluded, with reference to the jurisprudence of UN treaty bodies, that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The Rapporteur also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28, A/60/316, 2005). This position has been reiterated in the 2012 report to the General Assembly of the Special Rapporteur on Torture (para. 28, A/67/279, 2012).

Further concerns are expressed at the allegations according to which Mr. Rostami and Mr. Karami were forced to confess under duress, and that the court failed to investigate the allegations and exclude the confessions as evidence. In this regard, we would like to remind your Excellency's Government of its duty to ensure that complaints of torture are promptly and impartially investigated by competent authorities. We would also like to highlight that the deprivation of fundamental safeguards, if confirmed, would contravene international standards of fair trials and due process, in particular article 9 of the ICCPR.

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 person(s) 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 information concerning the punishment of Mr. Rostami, Mr. Sarfian, Mr. Shahivand and Mr. Karami, including the amputation, and indicate how these measures comply with the norms and standards developed under international law, in particular with the absolute prohibition of torture and other ill-treatment under ICCPR.
3. Please provide detailed information on the measures taken to provide the four above-mentioned men with the guarantees of due process, fair trial, notably the effective access to a legal assistance of their choosing as established under international human rights law
4. Please provide information on investigations conducted, or foreseen, into the allegations of forced confessions under torture and any

outcome. If no inquiries have taken place or if they have been inconclusive, please explain why.

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.

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

Nils Melzer

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

Javaid Rehman

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