

Mandates of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on freedom of religion or belief 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 capacity as Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/24, 44/5, 40/10 and 43/20.

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. **Hafez Abdolrahim Kouhi** and Mr. **Mowlavi Amanollah Balouchi**, two Iranian Sunni clerics from the Balochi minority, who have reportedly been convicted of baghi (armed rebellion). There are serious concerns related to due process, adherence to fair trial guarantees, a lack of evidence and alleged use of torture to extract forced confessions in these cases.

According to the information received:

On 18 January 2021, Mr. Hafez Abdolrahim Kouhi and Mr. Mowlavi Amanollah Balouchi were reportedly transferred to the quarantine unit of Zahedan Central Prison in preparation for the enforcement of their death sentences. According to information received their executions will take place on the morning of 21 January 2021.

On 19 November 2015, Mr. Kouhi and Mr. Balouchi were arrested by security forces and charged with "bombing and creating insecurity in the region". At the time of their arrest, the two men were teaching at Sunni seminary schools in Sistan and Baluchistan Province. They were accused of carrying explosives and complicity in the alleged murder of a government official, an accusation that the two men deny. Mr. Kouhi and Mr. Balouchi have stated that, at the time that the murder occurred, they were 200 kilometres away from where it happened.

After their arrest, the two men were reportedly held in Intelligence Ministry and Islamic Revolutionary Guard Corps (IRGC) detention centres in Zahedan where they were severely tortured. On 18 March 2016, the two individuals were transferred to Zahedan Central Prison. Regarding the torture allegations, it is reported that the ill-treatment included being beaten from head to toe with a clutch wire to the point where they were not able to sit for several days. Unable to endure further mistreatment, the individuals provided forced

confessions to the authorities.

The two individuals reportedly raised the torture allegations the first time that they were taken to a court. The court reportedly dismissed these allegations without conducting an investigation. On 27 August 2019, a Revolutionary Court in Zahedan reportedly convicted Mr. Kouhi and Mr. Balouchi on the charge of baghi (armed rebellion) and sentenced them to death. The court reportedly based its verdict solely on the forced confessions extracted by torture, and received no other evidence that supported the conviction and sentence.

As well as the forced confessions, the two men were reportedly denied legal representation during their detention and court proceedings.

Furthermore, it is not known if the court decision has been reviewed by an appeals court or the Supreme Court of the Islamic Republic of Iran, but it is understood that a request for a retrial in both cases was submitted but officially refused. There is no information about why the two men were tried by the Revolutionary Court and not by the Special Court of the Clergy as required by Iranian law.

It has been reported that Mr. Kouhi and Mr. Balouchi will be executed unless three men from a banned Balouchi group turn themselves in to Iranian authorities before 21 January 2021.

Without prejudging the accuracy of the received information, we express our alarm at the reported imminent executions of Messrs. Kouhi and Balouchi. We are particularly concerned at the reported use of forced confessions extracted by torture by the courts to convict and sentence these individuals to the death penalty, the lack of any other evidence apart from the alleged forced confessions for the charges brought against them, trial proceedings that appear not to have upheld international fair trial standards, and the subsequent convictions. We deeply regret that we continue to receive reports of the authorities in Iran using torture and other ill-treatment to forcibly extract confessions, including in cases where there is a lack of incriminating evidence, and the use of these forced confessions as the basis for convictions and death sentences by the courts. We 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 are also deeply concerned that the possible executions of these two Sunni clerics is emblematic of a reported series of executions of members of minority groups in the last month.

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 and pursuant to a final judgement rendered by a competent court.

The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and progressive development of human rights. Therefore, the death penalty violates the right to life under article 6 of the International Covenant on Civil and Political Rights and does amount to cruel or inhuman treatment under article 7.

The Covenant permits retentionist States such as Iran to continue applying the death penalty but such 'dispensation' does not make the execution of a death sentence strictly speaking legal. (A/67/275) There are exemptions for retentionist States parties, provided that the death penalty is applied within stringent parameters, that is, it is carried out only for the most serious crimes and by a method causing the least possible suffering. Only full respect for the most stringent due process guarantees distinguishes capital punishment, as possibly permitted under international law, from an arbitrary execution.

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, if the sanctioning of the conduct would constitute 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 sentence 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 all 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.”

We would like to respectfully remind your Excellency’s Government of its obligations under the ICCPR, and in particular article 18, which guarantees the right to freedom of thought, conscience and religion or belief. Any limitations to this right should be strictly interpreted and be proportionate to the specific need on which they are predicated and are not to be applied in a manner that would vitiate the rights guaranteed by the article 18.

We wish also to recall the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1): “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief.” In Article 4 (1), the General Assembly further states that: “All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]”.

We would like to recall that the General Assembly, in its resolution 63/181 paragraph 9 (j) urges States “To ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of fulfilling their official duties, respect all religions or beliefs and do not discriminate for reasons based on religion or belief, and that all necessary and appropriate education or training is provided.”

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 of restricted regimes of confinement.

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 and gravity 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 execution of Mr. Hafez Abdolrahim Kouhi and Mr. Mowlavi Amanollah Balouchi, 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 the aforementioned individuals 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 all 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 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 the above-mentioned individuals, bearing in mind their incompatibility with international human rights law.
3. Please provide detailed information about whether any investigation or inquiry has been conducted in each of the above mentioned cases into the allegations of the use of torture and other cruel, inhuman or degrading treatment or punishment, as well as allegations of enforced disappearances. 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 each of the above mentioned cases, including confirmation of the dates on which the individuals were arrested, detained, and charged, as well as the dates of every court decision in their individual cases. Please also confirm the charges, convictions and sentences against each of the individuals as well as details on their access to legal assistance.
5. Please provide all court decisions related to the cases of the above-mentioned individuals. Please also provide information about the justification for denying 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 each individual named above, 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'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.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

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