

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 the rights of persons with disabilities 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; Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/24, 42/22, 44/10 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 detention, conviction, and health situation of Mr. **Siamak Moghimi**, who was arrested during the November 2019 protests in Islamic Republic of Iran.

Concerns regarding the situation of detained protesters has been raised in several communications by Special Procedures mandate holders, including on 18 December and 20 November 2019 (IRN 17/2019 and IRN 16/2019). The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran has also raised concerns regarding this issue in his reports to the United Nations Human Rights Council and General Assembly (see A/HRC/46/50, A/75/213 and A/HRC/43/61).

According to the information received:

Siamak Moghimi is a 25-year-old who was arrested in the city of Parand during the nationwide protests in November 2019 while he was reportedly watching the protests as a bystander. Following his arrest, he was initially held in a detention centre of the Islamic Revolutionary Guard Corps (IRGC). Mr. Moghimi was reportedly denied access to a lawyer and was subjected to torture and ill-treatment for the purpose of obtaining a confession. After his interrogation ended, he was transferred to the Greater Tehran Central Penitentiary (*Fashafuyeh* prison).

Mr. Moghimi was first charged with *moharebeh* (taking up arms to take lives or property and to create fear in the public) which is a capital offence, but was subsequently acquitted of this charge. Instead, Branch 24 of the Revolutionary Court in Tehran Province sentenced him to a total of 10 years of imprisonment on different charges including "gathering and colluding to commit crimes against national security" and "propaganda against the state". According to article 34 of Penal code, he has to serve the longest sentence of his convictions, which is five years.

Mr. Moghimi has a psychosocial disability, and prior to his detention, he had been hospitalized several times. The arrest and conviction of Mr. Moghimi took place while he was discharged from a psychiatric hospital, only one week before his arrest in November 2019. Prison conditions have exacerbated Mr. Moghimi's health condition, and he has reportedly not received the medical care required for his condition. According to information received, he has attempted self-harm and suicide several times while in prison. He has also been denied temporary release despite the COVID-19 pandemic outbreak. He attempted suicide first on 25 January 2020 after receiving his prison sentence. His last suicide attempt took place on 24 February 2021, when he cut his wrist and abdomen. According to information received, he was prompted to attempt suicide after the prison chief addressing the detainees of the November 2019 protests stated, "You don't have any rights". He was transferred to a hospital where he received numerous sutures, and was returned one day later to the Greater Tehran Central Penitentiary and held for 18 days in a quarantine ward of the prison, without medical attention. He was returned to general ward on 15 March 2021.

Mr. Moghimi's medical documents, including the State Welfare Organization document that attests to his disability, have been submitted to the court, pleading that he cannot withstand imprisonment. However, he remains in detention in Greater Tehran Central Penitentiary (*Fashafuyeh* prison) in contravention of national law. Article 502 of the Code of Criminal Procedure on the imprisonment of individuals with physical or mental disabilities stipulates:

"If the convicted individual has physical or mental illnesses and the implementation of the sentence would exacerbate the illness or delay the recovery, the judge overseeing the implementation of sentences, would, after obtaining the opinion of the Legal Medical Organization, postpone the implementation until the time of the recovery. In cases of ta'zir crimes, if there is no prospect of recovery and the judge overseeing the implementation of sentences is satisfied that the convicted individual is ill and unfit to serve the sentence, he shall refer the case to the court that originally issued the sentence to issue an alternative appropriate sentence.

The judge overseeing the implementation of his sentence has reportedly told Mr. Moghimi's family to post bail in order to temporarily release him, but his family cannot afford it.

We express serious concern at the arrest, conviction, sentencing and subsequent detention of Mr. Moghimi. We express concerned that his case fall into the many cases of arrests following the nationwide protests in 2019, and at the alleged pattern of arrests and unfair trials against participants of the protests which fail 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 at the allegations of torture and ill treatment and the use of forced confessions as evidence leading to the Mr. Moghimi's conviction and sentence. We furthermore express serious concern at the alleged lack of measures to provide reasonable accommodation for Mr. Moghimi at all stages of his arrest, trial and detention. We express concern at the continued detention of Mr. Moghimi despite his health situation, his suicide attempts, his return from hospital to prison, and the denial of specialist medical care in detention.

Without expressing at this stage an opinion on the facts of the case and on whether the reported detentions was arbitrary, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of the detained person in this case not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975. Equally, we refer to articles 13 and 14 of the Convention on the Rights of Persons with Disabilities (CRPD), acceded by the Islamic Republic of Iran on 23 October 2009, which guarantee the right to access to justice by persons with disabilities on an equal basis with others, and the obligation to provide reasonable accommodation to persons with disabilities who are deprived of their liberty.

In this connection, we recall that the Human Rights Committee in General Comment no. 35 affirms that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), and freedom of assembly (art. 21) and freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17). Furthermore, the jurisprudence of the Working Group on Arbitrary Detention confirms the same.

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 further recall that in its 2019 annual report, the Working Group on Arbitrary Detention, which states that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty. This right applies from the moment of deprivation of liberty and across all settings of detention, including criminal justice. It must be ensured from the moment of deprivation of liberty and, in the context of the criminal justice setting, prior to questioning by the authorities. All persons deprived of their liberty must be made aware of their right to legal assistance from the moment of

detention and should have access to legal aid services if they cannot afford such assistance themselves. The right to legal assistance is also essential to preserve the right to fair trial, as it safeguards the principle of the equality of arms envisaged in articles 10 and 11 (1) of the Universal Declaration of Human Rights.

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, 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 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 (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.

We also remind that states have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health. A heightened duty to protect the right to life also applies to individuals quartered in liberty-restricting State-run facilities, such as mental health facilities (General Comment 36).

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 that an 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 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases, as well as Rule 58 which establishes that prisoners shall be allowed to communicate with their family and friends at regular intervals.

Additionally, we wish to bring to your Excellency’s Government’s attention the International Principles and Guidelines on Access to Justice for Persons with Disabilities¹, which provide guidance to States on how to ensure effective access to justice for persons with disabilities on an equal basis with others, in line with their obligations under international human rights law. In particular, principle 5² reaffirms that persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process. In this regard, States shall (5.1) ensure that all substantive and procedural safeguards recognized in international law, whether in criminal, civil or administrative procedures [...] are afforded to all persons with disabilities, on an equal basis with others. Accordingly, States shall (5.2) (g) ensure that health-care and psychosocial support are available at the request of persons with disabilities, based on their free and informed consent, irrespective of the outcome of any police action or judicial proceedings, and not contingent on a plea bargain, confession or conviction.

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 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 arrest and detention of Mr. Moghimi and indicate how the charges against him are compatible with international human rights law.

¹ See https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf

² See also guideline 5.2 (g):

3. Please provide information on whether Mr. Moghimi was granted access to lawyer from the outset of his detention.
4. Please provide information on measures taken to provide him with guarantees of due process and fair trial, , as well as the effective access to legal counsel of their choosing as established under international human rights law. In particular, please provide information about measures taken to provide reasonable accommodation to Mr. Moghimi, in particular with a view to his psycho-social disability.
5. Please provide information about the evidence used to convict Mr. Moghimi. In particular, please provide information about whether the allegations of torture were considered during the trial, and if so, if any investigation was initiated.
6. Please provide information about the legal basis for the detention of Mr. Moghimi despite his psychosocial disability, and apparent violation of article 502 of the Code of Criminal Procedure.
7. Please provide information on the condition of his detention, including details about how his physical and psychological well-being is being monitored, and about whether any professional health care, including mental health care and psychosocial support has been offered to him in prison, upon his request and with his explicit consent.

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.

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 urgent appeal and the regular procedure.

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

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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

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Special Rapporteur on the rights of persons with disabilities

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