

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 to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers 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 the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 46/18, 42/22, 41/12, 42/16, 44/8 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 continued solitary confinement of **Habib Afkari** and **Vahid Afkari**, in violation of international human rights law; gross due process and fair trial violations in connection with their sentencing to long prison sentences, including the use of forced confessions as evidence and lack of investigation into torture allegations.

Concerns at allegations of torture and the conviction and lengthy prison sentences against Habib Afkari and Vahid Afkari following processes in violation of international human rights law, were raised in a joint communication by Special Procedures mandate holders on 21 September 2020 (ref. no IRN 22/2020). We thank your Excellency's Government for the reply of 29 October and the additional details provided therein. We particularly note that the reply underlines that the verdicts issued in the cases of Habib and Vahid Afkari were not definitive and could be appealed. We remain concerned at the situation of Habib and Vahid Afkari, in particular due to the fact that they have remained in solitary confinement since September 2020 and in view of the recent request for retrial submitted to the Supreme Court in the case of Vahid Afkari.

According to new information received:

Vahid Akfari has been detained since 17 September 2018. Habib Afkari has been detained since 13 December 2018. Since 5 September 2020, Vahid Afkari and Habib Afkari have been held in solitary confinement in maximum security cells in Adelabad prison in Shiraz. They are held in isolation and without access to fresh air, natural light, medical care, telephone calls and face to face visit with their family. During this period they have at times been held alone in solitary confinement and at other times held together in a single cell designed for solitary confinement. At times they have also been forced to lie on the ground with their hands and feet tied.

Convictions

Vahid Afkari was sentenced to a total of 33 years and nine months' imprisonment as well as two years of "mandatory residence" in Ardabil province in the northwest of Iran and 74 lashes in three separate cases involving six charges. He was convicted for "accessory to murder" by Branch 1 of the Criminal Court of Fars Province on 15 October 2019, later upheld by Branch 39 of the Supreme Court on 25 April 2020. He was furthermore convicted for "insulting public officials on duty", "disrupting public order", and "defying public official son duty" by Branch 116 of Criminal Court 2 of Shiraz on 24 July 2019. Subsequently the initial were reduced by Branch 27 of the Appeal Court of Fars province on 8 February 2021.

Habib Afkari was sentenced to a total of 15 years and eight months' imprisonment, 74 lashes and a fine in two separate cases involving eight charges. He was convicted for "gathering and colluding to commit crimes against people's lives and properties", "defying public officials on duty", "disrupting public order", "deliberately inflicting injuries with a sharp object" and "insulting public officials on duty" by Branch 116 of Criminal Court 2 of Shiraz on 24 July 2019. Subsequently his initial 16 years and one month sentence was reduced by Branch 27 of the Appeal Court of Fars province on 8 February 2021. In addition, he was convicted for "membership in a group for the purpose of disrupting national security", "insulting the Supreme Leader", and "spreading propaganda against the system", by Branch 1 of the Revolutionary Court of Shiraz on 20 June 2020, and upheld by the Supreme Court in March 2021.

It has been reported that the convictions for "accessory to murder" and "assault" were imposed without sufficient evidence and following gross violations of due process and brief trials. These allegedly included periods without access to legal representation, the right to be promptly informed of charges, lack of an opportunity to present a defence and disregard or rejection of exculpatory evidence by the court. The conviction for "accessory to murder" and "assault" was reportedly imposed on the basis of forced confessions extracted under torture.

Vahid Afkari and Navid Afkari repeatedly retracted their "confessions" before the prosecution authorities and in court, saying they were extracted under torture and other ill-treatment.

Use of forced confessions in court and lack of investigation of torture allegations

Between April 2019 January 2020, Vahid Afkari wrote to various prosecution authorities from inside prison, detailing the torture he had suffered at the hands of Agahi officials (police intelligence) and intelligence agents during the investigation stage in order to "confess". These included a complaint to the Judicial Disciplinary Prosecutor on 29 May 2019; a complaint to the Prosecutor of Government Employees on 25 August 2019; a complaint to the Military Prosecutor of Fars province in November 2019; and a complaint to a local prosecution office in Shiraz on 24 January 2020. These complaints were all dismissed in a summary fashion without independent and impartial

investigations. Vahid Afkari also informed Branch 1 of Criminal Court 1 of Fars province that he had been tortured to “confess”. This was communicated to the court in writing including in the submission filed on 13 August 2019 and verbally in the trial sessions on 3 August 2019 and 24 September 2019. On each occasion, he explicitly requested that the court exclude their torture-tainted “confessions” and order an independent and impartial investigation.

The audio recordings of the second trial session held on 24 September 2019, reveal that the court again dismissed Vahid Afkari’s complaints without ordering investigations, in contravention to international and Iranian law. In response to their repeated requests from the court to exclude their torture-tainted “confessions” and order an investigation, the presiding judge is heard denying that it was their responsibility to investigate such matters.

Despite this, in the verdict issued several weeks later on 15 October 2019, Branch 1 of Criminal Court 1 of Fars province cited the torture-tainted “confessions” of Vahid Afkari as proof of guilt. Branch 39 of the Supreme Court also dismissed the torture allegations of Vahid Afkari without ordering an investigation. In its verdict, the Supreme Court acknowledged that Vahid Afkari had retracted his “confession” saying they were obtained under torture and other ill-treatment. Nevertheless, the Supreme Court proceeded to characterize the forced “confessions” obtained during the investigation stage as “incontrovertible” proof of guilt, and said “the allegation of coercion, duress and torture raised is not evidenced by decisive proof”.

The lawyer of Vahid Afkari brought these concerns to the attention of Branch 38 of the Supreme Court in his 9 August 2020 retrial request. The Supreme Court summarily rejecting the retrial request on 15 August 2020 and failed to provide any reasons for its decision.

Similarly, on 25 April 2019, Habib Afkari formally retracted his “confessions” before the lead investigator of Branch 10 of the Office of the Special Prosecutor for Criminal Affairs and Security Offences in Shiraz, stating in writing that they were extracted through torture while held incommunicado and in solitary confinement in the detention centre of the Ministry of Intelligence.

Despite this, Branch 116 of Criminal Court 2 of Shiraz relied on the “confessions” to convict him without ordering an investigation into the torture allegations.

In his subsequent written appeal to Branch 27 of the Appeal Court of Fars province, dated on 26 August 2019, Habib Afkari again stated that while held in the detention centre of the Ministry of Intelligence, Ministry of Intelligence agents “inflicted the most severe forms of physical and mental torture on me in order to coerce me into making false statements.” In the same submission, Habib Afkari also recalled that he had submitted a complaint against the Ministry of Intelligence agents responsible for his torture to the Prosecutor of Shiraz on 25 July 2019.

During his appeal hearing on 5 February 2020, Habib Afkari reiterated that it was unlawful for the court of first instance to rely on his forced “confessions”

and called for an investigation. Despite this, Branch 27 of the Appeal Court of Fars province ignored his serious allegations of torture and upheld his convictions on 8 February 2021. As with the verdict of Branch 116 of Criminal Court 2 of Shiraz, the verdict of Branch 27 of the Appeal Court of Fars province makes no mention of the concerns related to torture and Habib Afkari's retraction of his forced "confessions".

Lack of access to visits and medical care

Since 17 September 2020, Vahid and Habib Afkari have not been allowed to have face to face visits with their family members. Their visits have taken place from behind a glass screen every one to two weeks outside regular visitation days, which appears to be intended to isolate them and their family from other prisoners having family visits. The visit with each has typically lasted about 15 minutes. They remain held, without any reasons given, in maximum security cells intended for solitary confinement in

Vahid Afkari and Habib Afkari are also being deliberately denied access to medical care. Vahid Afkari and Habib Afkari both have from chronic spine pain; Habib Afkari also has recurrent toothaches and urgently needs specialized dental care outside prison.

Since September 2020, Vahid Afkari and Habib Afkari and their family have repeatedly complained to numerous prison, prosecution and judicial authorities about their prolonged isolation, and requested that they be moved back to the general ward. Complaints were addressed to the Associate Prosecutor of Adelabad prison, Mohammad Hashemi; the head of Adelabad prison, Rouhollah Rezaiee Dana; the current Prosecutor of Shiraz, Mostafa Bahraini and his predecessor Heidar Asiaby; the head of the office of State Prisons Organization in Fars province, Eshagh Ebrahimi; and the head of the Monitoring Office for the Prisons in Fars province, Afshin Marzab, among others. The authorities have not provided any explanation as to the basis on which Vahid Afkari and Habib Afkari are being held in prolonged isolation and denied their rights as prisoners. Nor have the authorities identified which official body has issued the order to keep Vahid Afkari and Habib Afkari in isolation in cells designed for solitary confinement.

New request for retrial

An initial request for retrial was submitted on 9 August 2020. The request was assigned to Branch 38 of the Supreme Court which rejected the retrial request on 15 August 2020 without providing any reasons for its decision.

In June 2021, a new request was submitted to the Supreme Court requesting a retrial of Vahid Afkari's sentence for "accessory to murder", issued by Branch 1 of Criminal Court 1 of Fars province on 15 October 2019 and upheld by Branch 39 of the Supreme Court on 25 April 2020.

Intimidation and harrasment of family and others

Members of the family and persons advocating against the solitary confinement of Vahid and Habib Afkari and about the execution of Navid

Afkari have reportedly been subjected to repeated harassment and intimidation by the authorities. Among these incidents are serious threats, including threats of reprisals against Vahid and Habib Afkari, as well use of violence by plainclothes agents and confiscation of personal phones.

Without prejudging the accuracy of the received information, we express our alarm at the continued and prolonged solitary confinement of Vahid Afkari and Habib Afkari in violation of international human rights law and at the conditions of their detention. We are particularly concerned that their solitary confinement does not seem to rest upon a legal basis. We are furthermore seriously concerned that their convictions rest upon legal basis which for the most part is incompatible with international human rights law, including on the basis of overbroad and vague charges or for purposes that are not considered as legitimate under international law. For the convictions for “accessory to murder” and “assault” we are gravely concerned that these were imposed following gross due process and fair trial violations. We are particularly concerned at the alleged use of forced confessions extracted under torture and at the courts’ disregard of torture allegations and lack of investigation into these claims. It is deeply concerning that judicial authorities appear to have disregarded any claim of torture. In view of the above information of alleged gross due process and fair trial violations, we call on your Excellency’s Government to ensure that Vahid Afkari and Habib Afkari are granted retrial in line with international human rights law. In the meantime, we call on your Excellency’s’ Government to immediately cease to hold Vahid Afkari and Habib Afkari in solitary confinement and to return to them to the public ward. We are particularly concerned about the physical, psychological and integral health of Vahid Afkari and Habib Afkari and at the denial of medical care while they are in state custody. Finally, we express serious concern at the repeated intimidation and threats against family members and other individuals who seek an end to the solitary confinement of Vahid and Habib Afkar, which appears to be aimed at preventing them from sharing information about the situation of Habib and Vahid Afkari. We underline that these acts of intimidation may constitute acts of reprisals and call on your Excellency’s Government to take all measures to halt these intimidations.

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 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 information about the legal basis for holding Vahid Afkari and Habib Afkari in solitary confinement since 5 September 2020.

3. Please provide detailed information about why no investigation or inquiry has been conducted in each of the above mentioned cases into the allegations of the use of torture and other cruel, and inhuman or degrading treatment or punishment.
4. Please provide the court decisions related to the cases of the above-mentioned individuals, including by the Supreme Court, the Revolutionary Courts and the Criminal Courts.
5. Please provide information about why Vahid Afkari and Habib Afkari have been denied access to medical care while in state custody.
6. Please provide information about any measures taken to ensure that Vahid Afkari and Habib Afkari are granted a retrial in line with the Islamic Republic of Iran's obligations under international human rights law.

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.

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 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.

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
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Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975.

We would like to refer to article 9.1 of the ICCPR that states that everyone has the right to liberty and security, and that no person should be the subject of arbitrary arrest or detention. This article also provides that in accordance with international law, no individual should be deprived of his liberty without cause. Article 9.2 states that upon arrest, any person must be informed of the reasons for their arrest and charges they face, and part 3 of the same article stating that anyone brought into custody should be brought promptly before a judge, and a trial and/or release should be scheduled at the earliest possible date. We also wish to refer to article 9.4 of the ICCPR, whereby individuals deprived of their liberty have the right to be brought before a court without delay to decide on the lawfulness of their detention. We wish to emphasize that this right, which is in fact a peremptory norm of international law, applied to all forms of deprivation of liberty. We further recall that in order to ensure an effective exercise of this right, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing. We also draw attention to article 10.1 of the ICCPR, which enshrines the right of all persons deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person.

We also recall article 14 (1) of the ICCPR, which provides that under international law all individuals are equal before the law, and everyone has the right to a fair, free and public trial before an independent and impartial tribunal. We draw your attention to article 14 (2) that all persons are presumed innocent until proven guilty according to law, article 14.2 (c) that all persons shall be tried without undue delay, and (d) all persons tried must be present and permitted to defend themselves in person or through legal assistance 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.

We would also like to recall the previous jurisprudence of the Working Group in which it considered that the charges relating to "assembly and collusion to commit a crime against national security", "propaganda against the state", and "insulting the Supreme Leader" under the Islamic Penal Code are so vague and overly broad that they could, as in the present case, result in penalties being imposed on individuals who had merely exercised their rights under international law. The determination of what constitutes an offence under these provisions appears to be left entirely to the discretion of the authorities. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct

accordingly”.¹

Article 7 of the ICCPR prohibits torture and other cruel, inhuman or degrading treatment or punishment. We recall the absolute prohibition of torture, which is a peremptory norm of international law as well as of the UN Convention against Torture as well as of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6 and the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 1.

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.” 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. The Working Group on Arbitrary Detention in its previous jurisprudence has stated that a forced confession taints the entire proceedings, regardless of whether other evidence was available to support the verdict².

We wish also to refer to articles 19 and 21 of the ICCPR which guarantee the right to freedom of opinion and expression and of peaceful assembly. As indicated by the Human Rights Committee, attacks, including through arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance, for exercising their right to freedom of expression is incompatible with the ICCPR, see CCPR/C/GC/34 para. 23. In an assembly, individuals who have committed acts of violence, must benefit from a fair trial with all guarantees of due process. Those acts of violence must be duly and impartially investigated. The failure to investigate may constitute a separate violation of the Covenant, see General Comment no 31, para. 15.

We would like to refer your Excellency’s Government to General Comment No 35 of the Human Rights Committee, which holds 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 (article 19), freedom of assembly (article 21), freedom of association (article 22) and freedom of religion (article 18).

We wish to emphasize that the prohibition of arbitrary deprivation of liberty is absolute and universal and note that detention for the peaceful exercise of rights is arbitrary in accordance with Resolution 24/5 of the Human Rights Council and the

¹ See Opinion 83/2018

² See Opinions 54/2020

Committee on Human Rights, General Comment No. 35, article 9 of the Covenant and General Comment 37 (2020), as well as the jurisprudence of the Working Group on Arbitrary Detention.

In this regard, we would also like to remind your Excellency's Government of its obligations under Article 12 of ICESCR, which guarantees all individuals, including prisoners and detainees, the right to the highest attainable standard of physical and mental health. 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 recall that States have a duty to protect the health of prisoners and detainees, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, (reviewed on 17 December 2015 and renamed the "Mandela Rules"), in particular Rule 24 that establishes that the provision of health care for prisoners is a State responsibility and rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases.

Moreover, we refer to the UN Basic Principles on the Role of Lawyers, the guiding principles that specify both lawyers' and governments' rights and responsibilities to guarantee that the right to a fair trial is upheld. We draw particular attention to article 1, which outlines the principle right of defendants to choose their own representation. We draw particular attention to article 23, which acknowledges that lawyers are entitled to freedom of expression, belief, association and assembly.