

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL IRN 22/2021

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4, 41/12, 46/18, 40/16 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 sentencing of human rights defender Mr. **Zia Nabavi** in apparent retaliation for his defence of human rights and for exercising his right to peaceful assembly and freedom of opinion and expression.

Mr. Zia Nabavi is a student, human rights defender and co-founder of the Defend your Rights to Education Committee (DREC). He founded the organisation in 2008 with other students who had reportedly been denied access to university in Iran. He is also a member of the "United Students Associations", which consists of 35 Iranian student unions who have advocated since 2017 for increased student union rights. The United Students' Associations is reportedly not recognised by the Iranian authorities. Mr. Nabavi's name was raised in the list of imprisoned students activists in the 2012 report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran to the Human Rights Council (A/HRC/19/66).

According to the information received:

Mr. Nabavi was first arrested in 2009, after having participated in peaceful protests contesting the elections, and charged with amongst others "gathering and colluding against national security", "propaganda against the system", "disturbing public order", "moharebeh" and for membership in a banned group. His charges were reportedly linked to his work with the Defend the Rights to Education Committee. He was sentenced to 15 years imprisonment and 74 lashes by Branch 26 of the Tehran Revolution Court which was subsequently reduced to ten years upon appeal. In 2018, on his third retrial, the Supreme Court overturned his sentence and he was released. Mr. Nabavi served eight years and eight months in prison.

On 25 February 2020, Mr. Zia Nabavi was again arrested at his home by security forces with a warrant and charged with “propaganda activities against the State” under Article 500 of the Islamic Penal Code. He had an oral hearing the following day, during which bail was set at 1 billion IRR. On 29 February, Mr. Nabavi received an additional charge of “gathering and colluding against national security” (Article 610 of the Islamic Penal Code), and his bail was increased to 3 billion IRR.

During interrogation, Mr. Nabavi was reportedly threatened that one of his family members would be arrested if he did not cooperate. He was also allegedly punched in the face by one of the officers. Interrogations took place without the presence of his lawyer. On 3 March 2020, he was released on bail.

The charges were reportedly brought against him on the basis of his advocacy against the downing of Ukraine International Airlines Flight 752 by the Islamic Revolutionary Guard Corps (IRGC) on 11 January 2020. Mr. Nabavi participated in a peaceful protest organised by “Amirkabir Progressive Student”, which is a member of the United Students’ Association, at Amirkabir University, and posted a number of tweets related to the incident.

Mr. Nabavi stood trial on 7 April 2021 and 29 May 2021 at Branch 26 of the Tehran Revolution Court. He was represented by his lawyer at both hearings.

On 29 June 2021, Mr. Zia Nabavi was informed that he had been found guilty of “propaganda activities against the State” and was sentenced to one year in prison and a two-year travel ban by Branch 26 of the Tehran Revolutionary Court. The court acquitted him of “gathering and collusion against national security”. His sentence also requires him to carry out community service at Behesht Zahra cemetery and the Centre for People with Disabilities from the Iran-Iraq war, as well as undergo anxiety management courses. Mr. Nabavi has appealed the conviction.

Without prejudging the accuracy of these allegations, we express great concern at the criminalisation of Mr. Zia Nabavi’s exercise of fundamental rights, who appears to be yet again criminalised for his engagement in human rights activities and for exercising his rights to freedom of opinion, expression, peaceful assembly and association. We are particularly concerned by the use of Article 500 of the Islamic Penal Code to sentence those legitimately exercising fundamental freedoms protected by international human rights law. We fear that the overly broad charge of “propaganda against the State” allows prosecutors discretionary power to criminalise dissenting views, conflating voices they deem undesirable as a threat to national security.

We have highlighted on a number of occasions our concerns that certain provisions of the Islamic Penal Code are used as a tool to unduly restrict the work of civil society and actors working peacefully to defend human rights, most recently in IRN 12/2021, sent on 6 May 2021. We regret that no response has been received to this communication to date. Finally, we are deeply concerned by allegations that Mr. Nabavi was physically abused and threatened during interrogation sessions.

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.

We are issuing this appeal in order to safeguard the rights of the abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the legal and factual basis for the conviction of Mr. Nabavi for “propaganda against the State”, with reference to how this is compatible with your obligations under international law.
3. Please provide information on any measures taken since Mr. Nabavi’s previous acquittal to prevent future instances where individuals, and in particular human rights defenders, are wrongfully convicted. If no measures have been taken, please explain why.
4. Please provide information on any investigation launched into the inhumane and degrading treatment of Mr. Nabavi during his interrogation.
5. Please provide details on measures taken to ensure that all have access to education in Iran, without discrimination on the basis of their identity, political belief, family background or any other discrimination.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). 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 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 allegation letter and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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

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

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

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 or "the Covenant"), ratified by the Islamic Republic of Iran on 24 June 1975.

We would like to refer to article 9 of the ICCPR enshrining the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention. In its General Comment No 35, the Human Rights Committee has found 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), freedom of assembly (art. 21) and freedom of association (art. 22) (CCPR/C/GC/35, para. 17). This has also been established in consistent jurisprudence of the Working Group on Arbitrary Detention. It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary. Furthermore, article 14 upholds the right to a fair trial and equality of all persons before the courts and tribunals, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as the right to legal assistance.

We also recall article 19 of the ICCPR, which guarantees that everyone shall have the right to hold opinions without interference, and the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on one's own and on public affairs, cultural and artistic expression, and discussion of human rights (Paragraph 11) as well as expression of criticism or dissent. We note with concern the apparent retaliatory measures taken against human rights defenders, including Mr. Nabavi, for exercising their right to freedom of expression. Restrictions to freedom of expression can only be imposed if adhering to the strict criteria established in article 19 (3) of the Covenant.

Restrictions must meet the standards of *legality*, meaning that they are publicly provided by a law which meets standards of clarity and precision, and are interpreted by independent judicial authorities; *necessity and proportionality*, meaning that they are the least intrusive measure necessary to achieve the legitimate interest at hand, and do not imperil the essence of the right; and *legitimacy*, meaning that they must be in pursuit of an enumerated legitimate interest, namely the protection of rights or reputations of others, national security or public order, or public health or morals. Although article 19 (3) recognizes "national security" as a legitimate aim, national security considerations should be "limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group". States should "demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and

proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight” (A/71/373). In this context, we underscore that “It is not compatible with article 19 (3), for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.” (CCPR/C/GC/34 para. 30). As interpreted by the Human Rights Committee, article 19 (3) may never be invoked to justify the muzzling of any advocacy of human rights (*idem*, paragraph 23).

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We furthermore remind you of article 5 of the Declaration which states that everyone has the right:

- a) To meet or assemble peacefully;
- b) To form, join and participate in non-governmental organizations, associations or groups;
- c) To communicate with non-governmental or intergovernmental organizations.

And Article 6:

- b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

We further bring to your attention article 13 of the International Covenant on Economic, Social and Cultural Rights, to which Iran is a party since 24 June 1975, which establishes that States Parties recognise the right of everyone to education (article 13(1)) and that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means (article 13(2)(c))

Finally, we would like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not

hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.