

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL IRN 33/2021

(Please use this reference in your reply)

20 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 43/4, 46/18 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning **the re-arrest of human rights defender Ms. Narges Mohammadi**.

Ms. Mohammadi is a human rights defender and deputy director of the Defenders of Human Rights Centre (DHRC). She was sentenced to 16 years in prison in September 2016, of which she was to serve a maximum of 10 years. She was released early, in October 2020. During her time in detention, she became a vocal advocate for prisoner rights, in particular against the death penalty and the use of prolonged periods in solitary confinement.

Ms. Mohammadi has been the subject of seven previous communications (IRN 12/2021, IRN 6/2020, IRN 6/2019, IRN 21/2016, IRN 8/2016, IRN 20/2015 and IRN 5/2015) by Special Procedures mandate holders. Her previous period in detention had been the subject of Opinion 48/2017 by the UN Working Group on Arbitrary Detention, which found her detention to be arbitrary and urged for her to be released.

The most recent communication on her case, IRN 12/2021 was sent on 6 May 2021. It reported that despite her release in early October 2020, she remained under investigation for "disturbing prison order" in relation to her advocacy for prisoner rights during her previous term in detention. We regret that no reply has yet been received to this communication.

According to the latest information received:

On 22 May 2021, Ms. Mohammadi was informed that she had been convicted of "propaganda against the state" under Article 500 of the Iranian Penal Code, and sentenced to 30 months in prison, 80 lashes and two fines, one amounting to 100 million IRR, and the other yet undetermined. She was sentenced by Branch 1177 of Tehran Criminal Court. The charges are largely related to "disturbing prison order" specifically, accusations that she held a sit-in protest, insulted and disobeyed prison personnel and shared information about the death penalty and acts of torture, and broke windows in the prison. Ms. Mohammadi

chose not to participate in the court proceedings as she believed the charges against her were related to her human rights work.

On 26 September 2021, Ms. Mohammadi was summoned to serve her sentence, though she refused to present herself.

On 16 November 2021, Ms. Mohammadi was violently arrested, without the presentation of a warrant, while attending a ceremony in the city of Karaj on the second anniversary of the death of a protester during the nation-wide protests of 2019. She was informed that her 30 month sentence of May 2021 would take immediate effect.

On 17 November 2021, Ms. Mohammadi was sent to solitary confinement in Ward 2A of Evin prison, where she remains at the time of writing. Ward 2A is controlled by the Islamic Revolutionary Guard Corps.

On 22 November 2021, Ms. Mohammadi was brought before Shahid Moqadas Court, in Evin prison, where she was reportedly presented with new charges against her. The exact charges are unclear at the time of writing, though they reportedly relate to human rights activities that she engaged in during the time that she was released from prison between October 2020 and November 2021. Among the list of activities which the court stated she was under investigation for, are her participation in a memorial event for victims of Ukraine International Airlines Flight 752, and her work sharing testimonies of prisoners who faced prolonged pre-trial detention, ill-treatment and sexual abuse in prison.

Without prejudging the accuracy of this information, we express our concern at the re-arrest and detention of Ms. Mohammadi, after just over a year following her release from prison. We are deeply disturbed that she seems to have been incarcerated once again in relation to her human rights work, this time for her peaceful advocacy for the rights of prisoners while in detention. Particularly concerning are reports that Ms. Mohammadi has been held in solitary confinement, where she remains at the time of writing. Ms. Mohammadi had campaigned against the use of prolonged periods in solitary confinement during her previous term in prison, after witnessing the effects it had on other prisoners, which may amount to ill-treatment or torture. Additionally concerning are allegations that Ms. Mohammadi faces additional charges, related to activities that she engaged in following her release from prison in October 2020. We are deeply concerned by this continuous cycle of persecution, which appears to criminalise Ms. Mohammadi for her critical or dissenting opinions.

Should these new allegations be confirmed, they would violate article 9 of the ICCPR enshrining protecting 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 arrest. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before an independent and competent judicial authority.

In connection with these allegations 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 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 clarify what the charges are against Ms. Mohammadi, that led to her re-arrest and re-incarceration;
3. Please provide information on the factual and legal basis for these charges and how this is consistent with Iran's obligations under international human rights law.
4. In particular, please clarify the ground for charging and convicting her of "propaganda against the state" under Article 500 of the Iranian Penal Code, and sentenced to 30 months;
5. Please provide information about the conditions of detention since her re-arrest, and in particular with regard to her alleged detention in solitary confinement, and the rationale and duration of such treatment;
6. Please, provide precise information about the new charges that Ms. Mohammadi is alleged to be facing, including how the activities she is alleged to have engaged in constitute criminal activity. Please explain how this conforms with Iran's obligations under international law.
7. Please provide information on the measures in place to guarantee the welfare of Ms. Mohammadi and other detainees, in compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules), as well as measures to prevent and investigate alleged instances of torture. Please also explain how the alleged use of prolonged periods in solitary confinement are consistent with your obligations under international law.

We would appreciate receiving a response within 60 days. Past 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.

We would welcome a prompt and substantive response to this letter, and to our letter ref: IRN 12/2021 sent on 6 May 2021. While awaiting for these replies, we respectfully urge that steps be taken to respect and guarantee the rights of Ms. Mohammadi as a citizen and a prisoner; to prevent their re-occurrence and in the event that an independent investigation shows these allegations are correct, to ensure the accountability of any person(s) responsible for the violations.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

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. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. 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 state that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation. Furthermore, 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 peaceful assembly (art. 21), freedom of association (art. 22) and freedom of religion (art. 18). 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 would furthermore like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture or to cruel, inhuman or degrading treatment or punishment, as stipulated in article 7 of the ICCPR, and set forth in article 5 of the Universal Declaration of Human Rights (UDHR).

We would also like to refer your Excellency's Government to article 10 of the ICCPR, which guarantees the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. In this connection, we draw your attention to paragraph 3 of the General Comment 21 of the Human Rights Committee, which states that article 10 (1) of the ICCPR imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the ICCPR. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons.

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. We note with concern the apparent retaliatory measures taken against prisoners, including Ms. Mohammadi, for exercising their right to freedom of expression. Legitimate restrictions to freedom of expression may be implemented in accordance with the requirements of 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 the Human Rights Committee has found 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).

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.