

Mandates of 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 situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on minority issues; 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

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(Please use this reference in your reply)

11 March 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on minority issues; 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 42/16, 46/18, 43/8, 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 lengthy prison sentences against **Mr. Kamal Sharifi and Mr. Hamzeh Darwish, two Iranians from the Kurdish and Sunni minority respectively, after they were both convicted of moharebeh (taking up arms to take lives or property and to create fear in the public)**. There are serious concerns in both cases related to due process, adherence to fair trial guarantees, alleged use of torture to extract forced confessions, and their health condition while in detention.

According to the information received:

Kamal Sharifi

Mr. Kamal Sharifi is a 49-year-old Iranian man from the Kurdish minority. He is currently detained in Minab prison in Hormozgan province.

On 25 May 2008, Mr. Sharifi was arrested in the city of Saqqez in Kurdistan province, during an armed confrontation between agents from the Ministry of Intelligence and a group of individuals who were allegedly affiliated with an armed Kurdish opposition group, the Kurdistan Democratic Party–Iran (KDP-I). The Islamic Republic of Iran considers the KDP-I as a terrorist group. The agents of the Ministry of Intelligence allegedly raided the hiding place of this group of individuals who had reportedly irregularly entered Iran from the Kurdistan Region of Iraq before the incident. According to the court verdict, Mr. Sharifi maintained during his trial that he did not fire any weapons during the incident.

Following his arrest, Mr. Sharifi was transferred to a detention center under the control of the Ministry of Intelligence in the city of Sanandaj in Kurdistan province. He was held in solitary confinement for six months without access to his family and lawyer. During this period, he was allegedly subjected to torture

with the aim to force him to “confess” before a video camera that he had been involved in armed activities attributed to the KDP-I. The torture methods reportedly included beatings, electric shocks, painful stress positions and shackling. As a result of torture, Mr. Sharifi continues to experience pain in his joints. He has not received medical care for these chronic injuries and only receives regular painkillers.

Mr. Sharifi’s trial reportedly lasted about five minutes. He met his lawyer for the first time at the trial and the judge did not allow him and his lawyer to speak with each other. In December 2008, the Revolution Court of Saqqez convicted Mr. Sharifi of *moharebeh* (taking up arms to take lives or property and to create fear in the public) through “armed rebellion” and membership in the KDP-I and sentenced him to 30 years’ imprisonment. The court ruled that he must serve his entire prison sentence in exile in Minab prison in Hormozgan province. The prison is about 1,600 km away from Mr. Sharifi’s home in the city of Saqqez where his family lives. The court further relied on article 193 of the Islamic Penal Code of 1991 to rule that “while serving his sentence, he shall be denied the privileges of prison leave, visits and written correspondence with others.” This article states that those convicted of *Moharebeh* who are exiled must be placed under supervision and shall not have interaction with others.

In May 2011, Mr. Sharifi started a hunger strike to protest the denial of his visitation rights. On the 48th day of his hunger strike, the authorities allowed him to have a visit with his family for the first time since his arrest. The visit took place in the presence of intelligence officials who banned him from speaking to his mother in Kurdish. He ended his hunger strike six days later in July 2011.

Shortly after his hunger strike, Mr. Sharifi suffered a stroke in 2011. He continues to experience the long-term effects of his prolonged hunger strike and stroke, including gastrointestinal complications, facial numbness, gum recession and muscle weakness, for which he has not received adequate medical care.

On 2 March 2021, Mr. Sharifi suffered a heart attack in Minab prison. He was transferred to a hospital, but after four days he was prematurely returned to prison against medical advice. On 10 March 2021, he was transferred to a hospital in the city of Bandar Abbas, in Hormozgan province, and underwent an angioplasty and stenting procedure. Prison and prosecution authorities returned him to prison after two days, against medical advice. Despite the recommendation by the surgeon to have monthly examinations, Mr. Sharifi was not provided follow-up care.

Mr. Sharifi is placed in an overcrowded cell next to prisoners convicted of violent crimes. He is denied dietary requirements and the environment free of stress that his medical condition requires. According to reports, due to the spread of COVID-19 in Minab prison since 2020, a number of prisoners suspected to have been infected have died in custody. The vaccination of prisoners started around August 2021 and Mr. Sharifi received two doses of the locally produced COVID-19 vaccine. Scientific studies indicate that two doses might not be sufficient for protection against COVID-19, particularly for

vulnerable individuals such as Mr. Sharifi with serious pre-existing medical conditions.

Since his arrest in 2008, Mr. Sharifi has only had one family visit in nearly 14 years. He has submitted more than 20 requests for furlough to the prison and judicial authorities in the provinces of Hormozgan and Kurdistan, which have been disregarded.

Hamzeh Darwish

Mr. Hamzeh Darwish is a 28-year-old Iranian man from the Sunni minority. He is currently detained in Lakan prison in Gilan province.

In November 2014, Mr. Darwish was contacted by an individual known to him who had previously joined the Islamic State of Iraq and Syria (ISIS) group. The individual claimed he had left the ISIS and was living in Turkey at the time, but he could not leave the country because he was severely injured. He requested Mr. Darwish to travel to Turkey to help him because Mr. Darwish could speak Turkish. Mr. Darwish traveled to Turkey and assisted the individual in undergoing surgery. Mr. Darwish was then reportedly unknowingly transferred to Syria by the individual as the borders between Turkey and Syria were open at the time. After Mr. Darwish refused to join ISIS, he was arrested and held in a detention facility under the control of ISIS for six months, where he was subjected to torture and ill-treatment. He subsequently managed to escape from the detention facility and returned to Turkey. Mr. Darwish was referred to the Embassy of the Islamic Republic of Iran in Turkey and it was guaranteed that he would not be prosecuted.

In May 2015, Mr. Darwish returned to the Islamic Republic of Iran in coordination with the authorities. Upon his return, he was arrested by agents of the Ministry of Intelligence at the airport. He was transferred to ward 209 of Evin Prison and held in solitary confinement for over 50 days and was released on bail in July 2015. Following his release, Mr. Darwish was subjected to pressure by intelligence entities to cooperate with them in infiltrating fundamentalist groups.

On 10 July 2016, Mr. Darwish was arrested for the second time. He was held in solitary confinement for over 70 days in a detention facility under the control of the Ministry of Intelligence and was subjected to torture and ill-treatment. On 29 March 2017, branch 28 of the Revolution Court sentenced Mr. Darwish to 15 years' imprisonment for *moharebeh* through membership in ISIS, considered as a terrorist group by the Islamic Republic of Iran and listed as such by the UN Security Council. On 17 June 2016, he appealed to the Supreme Court, which upheld the sentence on 22 July 2016.

Mr. Darwish was transferred from Rajaei-Shahr prison to Lakan prison in May 2020. Over the course of November and December 2021, Mr. Darwish was allegedly attacked and beaten by convicts of violent crimes three times. The security entities have reportedly barred Mr. Darwish's attempts to request a retrial.

Since the start of his detention, Mr. Darwish underwent a hunger strike multiple times for 26, 32, 35, and 50 days to protest the violation of his rights in prison, including ill-treatment by prison and judicial authorities, being placed in the same ward as convicts for violent crimes, denial of access to a lawyer of his own choice, and denial of his right to request a retrial.

Undergoing multiple hunger strikes has affected Mr. Darwish's health condition. He has been transferred from prison to a general hospital for chronic headache, where he was recommended to visit a specialized doctor. Mr. Darwish's multiple requests for medical leave have been denied.

Without prejudging the accuracy of the received information, we express our serious concern at the convictions and lengthy prison sentences against Mr. Kamal Sharifi and Mr. Hamzeh Darwish for alleged involvement with terrorist groups, following flawed judicial processes allegedly based on forced confessions due to torture and other serious violations of due process and fair trial standards, as guaranteed under articles 9, 10 and 14 of the International Covenant on Political and Civil Rights (ICCPR), ratified by Iran on 24 June 1975. We underline that all individuals, regardless of the severity of the charges brought against them, have a right to due process and fair trial. In its General Comment 32 (2007) on article 14, the Human Rights Committee stressed that the right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. (CCPR/C/GC/32, para. 2). The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights (CCPR/C/GC/32, para. 6).

Moreover, we are deeply concerned by the allegations of torture and ill-treatment of Mr. Kamal Sharifi, for the purpose of extracting forced confessions, and of Mr. Hamzeh Darwish, during his detention. The mandate of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while countering terrorism (A/63/223, para. 31), has noted that article 14(3)(g) of the International Covenant on Civil and Political Rights, which provides for protection against self-incrimination, is also invoked where "methods violating the provisions of article 7 (torture and any other inhumane treatment) are used in order to compel a person to confess or testify."

We remind your Excellency's that while a number of provisions of the ICCPR enable limitations on the basis of national security (e.g., Article 21), any such limitations must be legally based, necessary, proportionate, and non-discriminatory.

We are also concerned that Mr. Sharifi and Mr. Darwish may not be receiving the necessary specialized and continuous medical treatment for their different chronic conditions in line with professional medical advice nor for the injuries and health concerns sustained as a result of torture and ill-treatment. Furthermore, we are concerned that Mr. Sharifi is at heightened risk of severe illness or death if he contracts COVID-19 in prison due to his serious pre-existing conditions. We are concerned at the denial of family visits and furlough over the last 14 years, which in addition has caused Mr. Sharifi severe mental distress. Finally, we are concerned that Mr. Darwish has been denied his right to request a retrial and at the risk to his life due to his detention in the same ward as convicts of violent crimes.

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 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 detailed information about the legal and factual basis for the conviction and sentencing of Mr. Sharifi and Mr. Darwish, and explain the compatibility of the charges and convictions with international human rights law.
3. Please provide information about how the provision “moharebeh” is interpreted, the applicable prison sentence for this charge, and about the conditions which need to be fulfilled for this provision to be applied. Please also indicate how the above provision is compatible with the principle of legal certainty under the ICCPR.
4. Please provide detailed information about whether any investigation or inquiry has been conducted into the allegations of the use of torture and other cruel, inhuman or degrading treatment or punishment, as well as allegations of enforced disappearances, in both these cases. If no such investigations have taken place and no one has been held accountable, please explain why.
5. Please provide information on the conditions in detention of Mr. Sharifi and Mr. Darwish, 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.
6. Please provide information about the legal basis for denying Mr. Sharifi of family visit, except on one occasion, and leave for the past 14 years, and how this is compatible with international human rights 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.

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.

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

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standard of physical and mental health

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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 norms and standards applicable to the present case.

With regard to the alleged violations of the right to liberty and security of person as well as due process and of fair trial guarantees, we would like to recall 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, which provides *inter alia* for the freedom from arbitrary arrest or detention and 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 defense, 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.

With regard to allegations of torture and ill-treatment, 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, and as mirrored, *inter alia*, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. In this context, we would also like to draw the attention of your Excellency's Government to article 7 of the International Covenant on Civil and Political Rights, provides that "[n]o one shall be subjected to torture or to 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".

With regards to the solitary confinement of the abovementioned individuals, we would like to recall the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which he concluded that prolonged or indefinite solitary confinement runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may also give rise to other acts of torture or ill-treatment. We would also like to recall paragraph 6 of General Comment

No. 20 of the Human Rights Committee (1992), which states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR, as well as rule 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), expressly prohibiting the prolonged solitary confinement.

We also like to bring to your Excellency's Government attention the legal and procedural safeguards against torture and ill-treatment including the right to legal counsel and to contact one's family from the outset of arrest provided in the UN Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (Body of Principles). According to body of principles the "Communication of the detained or imprisoned person with the outside world, and in particular his family . . . shall not be denied for more than a matter of days."(Principle 15). Notwithstanding, the right to immediately inform a person of his choice of the arrest (Principle 16.1) and to further correspond with family "detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world."(Principle 19). Furthermore, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reiterated, "The risk of torture and ill-treatment is greatest in the first hours of custody and during incommunicado detention. Therefore, preventive safeguards must be implemented immediately after arrest, including the notification of a third party, access to a lawyer and a physician and the furnishing of the detainee with information on their rights, available remedies and the reasons for arrest.."(A/73/207).

We would also like to remind your Excellency's Government of its obligations under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Islamic Republic of Iran on 24 June 1975, 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.

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.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354

(2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law contained therein.

Finally, recognizing that the individuals affected are members of minorities in Iran, we would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).