

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Ref.: AL IRN 4/2022
(Please use this reference in your reply)

7 April 2022

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 42/22, 43/14, 44/8 and 46/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and conviction of Mr. Hassan Sadeghi and Ms. Fatemeh Mosanna and alleged violations of their property and housing rights which appear to be justified merely for their family affiliation with a member of a dissident political-militant organization.

Mr. Sadeghi, has been the subject of a previous communication, sent by several Special Procedure mandate holders on 18 August 2017 (ref. number IRN 24/2017). Concerns at the patterns of property confiscations in reliance on article 49 of the Constitution of Islamic Republic of Iran has been the subject of a previous communication, sent by several Special Procedure mandate holders on 27 January 2021 (ref. number IRN 4/2021). We regret that, to date, we have not received responses to those communications.

According to the information received:

The case of Mr. Hassan Sadeghi and Ms. Fatemeh Mosanna

Mr. Hassan Sadeghi and Ms. Fatemeh Mosanna were arrested on 28 January 2013 for organizing a mourning ceremony for Mr. Sadeghi's father, who lived in exile at the time of his death and was a member of the banned Mojahedin-e Khalq (MEK) political-militant organization. Mr. Sadeghi and Ms. Mosanna's daughter and son, minor at the time, were also arrested along with them and were released after three and 45 days respectively. On 11 February 2014, Mr. Sadeghi and Ms. Mosanna were released on bail with the amount of 200 million tomans. They did not have access to a lawyer of their choosing during the pretrial arrest.

In 2015, Branch 26 of Tehran's Revolution Court sentenced Mr. Sadeghi and Ms. Mosanna to 15 years' imprisonment for "moharebeh" (taking up arms to take lives or property and to create fear in the public) for supporting MEK and ordered the seizure of Mr. Sadeghi's personal properties. On 30 September 2015, Ms. Mosanna was arrested and transferred to Evin Prison to serve her sentence. On 7 February 2016, Mr. Sadeghi was arrested while visiting Ms. Mosanna in Evin prison and was transferred to Rajai Shahr Prison to serve

his sentence.

Prior to his current incarceration, Mr. Sadeghi served six years in prison in the 1980s from the age of 15 to 21 for his alleged sympathy with the MEK. As a result of this first incarceration and the torture to which he was reportedly subjected, one of his eyes was badly damaged. Mr. Sadeghi still requires medical care for his eye.

In 1981, when Ms. Mosanna was 13 years old, she was arrested and detained for three years along with her mother, a political prisoner. Ms. Mosanna has intestinal colitis and has been released on medical leave since May 2021.

Since 1991, different courts have ordered different rulings with regards to confiscation of Mr. Sadeghi's property. In 1991, 1996, and 2006 the courts ruled in favor of the ownership rights of Mr. Sadeghi. In 2015, Branch 26 of Tehran's Revolution Court ordered the seizure of Mr. Sadeghi's properties. The authorities have confiscated all the property of Mr. Sadeghi, including a house in the city of Kashan and a business property in the city of Tehran, which was a means of livelihood for the family. In January 2022, it was reported that the Supreme Court upheld the initial order to seize the only remaining property of Mr. Sadeghi, which is a house in Tehran. Mr. Sadeghi and Ms. Mosanna's children as well as Ms. Mosanna's 90-year-old mother reside in this house. They have received notice for eviction. The family is unable to provide for themselves another place to live and the eviction from their family home results in them being rendered homeless.

Article 49 of the Constitution

Article 49 of the Constitution of the Islamic Republic of Iran allows the state to confiscate "illegitimate wealth resulting from usury, usurpation, bribery, embezzlement, theft, gamble, misuse of Islamic government, endowments, misuse of government contracts and transactions, uncultivated lands and others belonging to the public, houses of ill repute, and other illegitimate sources."

Under article 11 of the regulation adopted in May 2000 for the implementation of article 49 of the Constitution, the properties of Iranian expatriates with proven ties to anti-state groups are considered illegitimate and are subject to confiscation. The regulations add that their heirs in the country can claim these properties "only if they do not have proven ties" with anti-state groups. Article 19 of the same regulations exempts "a modest residence and the family's furniture" from confiscation. It adds that the court "should ensure that dependent family members are provided adequate means to live."

Without prejudging the accuracy of the information received, we wish to express serious concern about the arrest and conviction of Mr. Sadeghi and Ms. Mosanna and the seizure of Mr. Sadeghi's property, which appear to be justified for their family affiliation with an alleged member of MEK. We are particularly concerned at the use of the charge of *Moharebeh* in this connection and the lengthy prison sentence imposed, as it targets the exercise of individual rights for mere family relations. We furthermore express serious concern at the confiscation and risk of eviction from their home of Mr. Sadeghi and Ms. Mosanna's family without due

process in accordance with international standards. The seizure of this home would likely put at risk of homelessness the family members, as well as Mr. Sadeghi and Ms. Mosanna themselves upon their eventual release from prison. Such evictions would be contrary to your Government's obligation to respect, protect and fulfil the right to an adequate standard of living, including housing, as well as the right to non-discrimination and the right to freedom from arbitrary or unlawful interference with one's privacy, family and home. We are furthermore concerned that the overbroad wording of article 49 of the Constitution legalizes infringements on fundamental rights and we call for steps taken to ensure its repeal.

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 or comments you may have on the abovementioned allegations.
2. Please provide information about the factual reasons and legal basis for the arrest and detention of Mr. Sadeghi and Ms. Mosanna and the compatibility of these actions with international human rights law. In particular, please provide information about the factual justification for invoking charges of *Moharebeh* in their case, including the type of support they have allegedly provided to MEK.
3. Please provide a copy of the court decision ordering the confiscation of property of Mr. Sadeghi. Please explain how these measures are compatible with international human rights norms and standards, in particular those relating to the right to an adequate standard of living, including housing, as well as the right to non-discrimination and the right to freedom from arbitrary or unlawful interference with one's privacy.
4. Please provide information on the compatibility of article 49 of the Constitution with international human rights law, in particular the right to adequate housing, and on measures taken to bring the domestic legal framework into compliance with international standards in this area.
5. Given that lack of information on whether the Court has considered article 11 of the regulation adopted in May 2000 for the implementation of article 49 of the Constitution, please provide information on how the exemption concerning "a modest residence" was complied with.
6. Please provide information on how the State plans to ensure adequate compensation for the lost property of Mr. Sadeghi, as well as adequate alternative housing for his and Ms. Mosanna's family members.

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.

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.

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

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

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

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, and in particular articles 2, 9, 14, 17, and 26 guaranteeing the principle of non-discrimination and the right to an effective remedy by the competent national tribunals for acts violating their fundamental rights, the right not to be arbitrarily detained, the right to fair trial, and the protection from unlawful interference with privacy and home, and equal protection of the law.

In addition, we wish to recall that article 5 (1) of the ICCPR reiterates that "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant." Furthermore, article 26 of the ICCPR also provides that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground."

We would also like to draw your Excellency's attention to article 11(1) of the International Covenant on Economic, Social and Cultural Rights, ratified by the Islamic Republic of Iran on 24 June 1975, which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right [...]". It is also the obligation of States Parties to guarantee that such rights will be exercised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", pursuant to article 2(2) of the Covenant.

We further recall general comment No. 4 of the Committee on Economic Social and Cultural Rights (CESCR), which states that the right to housing applies to everyone and should be seen as the right to live in security, peace and dignity. It indicates that the right to housing includes, among others, legal security of tenure guaranteeing legal protection against forced evictions, harassment and other threats. States parties should furthermore consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection in genuine consultation with affected persons and groups. The Committee also states that it considers instances of forced eviction as *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

In its General Comment No. 7, the Committee further states that forced eviction as a punitive measure are also inconsistent with the norms of the Covenant. States have obligations to provide procedural protections against forced evictions, legal remedies to those affected by eviction orders, as well as the right to adequate compensation for any property which is affected. States also have an obligation to ensure that evictions should not result in individuals being rendered homeless or

vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

Furthermore, while we do not wish to prejudge the accuracy of the allegations, we would like to refer your Excellency's Government to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Iran on 24 June 1975, which establishes 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 preventative, curative and palliative health services (General Comment 14, Para. 34). We would like to remind your Excellency's Government of the absolute and nonderogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of jus cogens, and as expressed, 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 paragraph 1 of General Assembly Resolution 68/156, which "[c]ondemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment".