

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 defenders and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

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(Please use this reference in your reply)

16 May 2022

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 defenders and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 42/22, 45/3, 44/5, 43/4, 41/12, 43/16 and 46/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of the enforced disappearance of Mr. **Ebrahim Babaei** since 21 December 2021.

According to the information received:

Mr. Ebrahim Babaei is the father of human rights defender and women's rights activist Ms. Shima Babaei. Mr. Babaei faces a prison and flogging sentence in two different cases stemming from his peaceful activism, including support of his daughter's campaigning against compulsory veiling laws. He has several underlying health conditions for which he needs medical treatment and medication, including a heart condition.

On 21 December 2021, Mr. Babaei informed people associated with him that he was in Maku, West Azerbaijan Province waiting for smugglers to transport him out of Iran and to Turkey. Since this date, nobody has heard from him. Turkish authorities have confirmed that based on their investigations, Mr. Babaei never entered Turkey.

Following his disappearance, people associated with him visited the investigation unit of Iran's police in Tehran to ask about his fate and whereabouts. The officials reportedly refused to provide any information or to confirm whether or not Mr. Babaei was detained. The police in Tehran also refused to file a missing person's report. Weeks later, people associated with him managed to file a missing person's report in Miandorud, Mazandaran Province. Since then, judicial authorities in Miandorud transferred the case to Maku, but this has reportedly not resulted in any investigation.

Persons associated with Mr. Babaei subsequently have learned informally from an intelligence official that Mr. Babaei is alive and that he is being held in secret detention in what is known as “khaneye amn” (safe house). However, there is to date no official confirmation of his detention and his fate and whereabouts remain unknown.

Prior arrests and convictions

Mr. Babaei has been arrested on several occasions before. In February 1984, he was arrested in Mazandaran Province and spent 16 months in prison after being convicted of national security related charges stemming from reading “anti-Islamic Republic” leaflets and being in possession of banned books. He was re-arrested in February 2010 after he participated in a peaceful protest in December 2009. He was tried before a Revolutionary Court in Tehran and subsequently released on bail around December 2010. In 2011, while he was out on bail, he was sentenced to over five years of imprisonment and 74 lashes on charges of “gathering and colluding to commit crimes against national security”, “spreading propaganda against the system”, and “disturbing public opinion”. He was arrested in October 2011 to begin serving his sentence. He was released in September 2013 after being granted pardon in light of his health situation. While still in prison, Mr. Babaei found out that the authorities had opened another case against him, without his knowledge, and sentenced him in absentia to a five year suspended sentence in relation to peaceful acts in prison, including for hunger strikes and writing joint statements about prison conditions. He was also sentenced to 74 lashes in another case in September 2018 in relation to his support of his daughter’s, Ms. Shima Babaei’s activities.

While we do not wish to prejudge the above mentioned allegations, we would like to express our serious concern regarding the ongoing enforced disappearance of Mr. Babaei, which places him outside the protection of the law, constitutes a grave threat to his right to life and entails violations of the right to recognition as a person before the law, the right to liberty and security and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. Moreover, we emphasize that the enforced disappearance of Mr. Babaei inflicts severe suffering on his family. Furthermore, we express our serious concerns that these acts appear to have been carried out in retaliation for Mr. Babaei’s exercise of his legitimate human rights activities, including his right to freedom of expression and peaceful assembly.

We would like to stress that the failure to acknowledge deprivation of liberty by State agents and refusal to acknowledge detention are constitutive elements of an enforced disappearance. We reiterate that enforced disappearance is a serious violation of multiple human rights including the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, unequivocally forbidden under international law.¹ Paragraph 27 of General Assembly Resolution 68/156 (February 2014), “[r]eminds all States that prolonged incommunicado detention or detention in

¹ See, Communication No. 449/1991, *Mojica v Dominican Republic*, Views adopted by the Human Rights Committee on 15 July 1994, para. 5.7.

secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished". In this respect, the alleged enforced disappearance of Mr. Babaei would contravene Iran's obligations under the International Covenant on Civil and Political Rights (ICCPR), articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2, para. 3, of the International Covenant on Civil and Political Rights ICCPR, as well as its obligations under the United Nations Declaration on the Protection of All Persons from Enforced Disappearances.

The 1992 Declaration on the Protection of All Persons from Enforced Disappearance establishes the prohibition to practice, permit or tolerate enforced disappearances (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7). The Declaration recognizes the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty (article 9), the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention (article 10). The same article of the Declaration establishes the obligation of the detaining authorities to make available accurate information on the detention of persons and their place or places of detention, including transfers, to their family, counsel or other persons with a legitimate interest (article 10). The Declaration also establishes the obligation to make the findings of an investigation into the circumstances of the disappearance available upon request to all persons concerned and to ensure that all involved in the investigation are protected against ill-treatment, intimidation or reprisal (article 13).

The alleged enforced disappearance of Mr. Babaei, a crime of a singular and integrated set of acts and omissions, is inextricably linked to a possible violation of his right to life. In this connection, we wish to draw your Excellency's Government's attention to Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the ICCPR, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life. We recall that "Extreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life" (General Comment 36, para. 57). We remind your Excellency's Government of its obligation as a State Party to the ICCPR to take specific and effective measures to prevent disappearances, which in too frequent cases lead to arbitrary deprivation of life. In this regard, States should establish effective institutions and procedures to thoroughly investigate cases of missing and disappeared persons in circumstances which may involve a violation of the right to life (General Comment 6, para. 4).

Enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention. Such deprivation of liberty,

entailing a refusal to disclose the fate or whereabouts of the persons concerned lacks any valid legal basis under any circumstance. It is also inherently arbitrary, as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.

We urge your Excellency's Government to promptly provide information on the current place of detention, as well as on the state of health of Mr. Babaei, whose fate and whereabouts remain unknown.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Babaei in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of Mr. Babaei 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 any comment you may have on the above-mentioned allegations.
2. Please provide the name and location of the place where Mr. Babaei is held and the authority responsible for the place of deprivation of liberty.
3. Please provide information about the legal basis for the alleged arrest and continued detention of Mr. Babaei.
4. Please provide information about measures taken to ensure that Mr. Babaei receives adequate medical care while in detention and that his right to life and security is safeguarded. In particular, please provide information about the health situation of Mr. Babaei in view of his multiple underlying health conditions.
5. Please provide information on what measures have been taken to ensure that human rights defenders and civil society can exercise their rights to freedom of expression and of association and carry out their legitimate work freely and in a safe and enabling environment without acts of intimidation and harassment of any sort.

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 responsible of the alleged violations.

We would like to bring to the attention of your Excellency's Government that should sources submit the allegations concerning Mr. Babaei for the consideration of the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure, the case will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

Further, 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.

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.

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

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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