

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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**

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(Please use this reference in your reply)

18 May 2023

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 51/8, 44/5, 44/8 and 49/24.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of **Mr. Majid Kazemi** (aged 30), **Mr. Saeed Yaghoubi** (aged 37), **Mr. Saleh Mirhashemi** (aged 36), who were arrested on 21 November 2022. The three men are accused of taken part of the killing of three Iranian officials and are now at risk of imminent execution after being sentenced to death for the charge of moharebeh ("enmity against God").

According to the information received:

The three men - Mr. Majid Kazemi, Mr. Saeed Yaghoubi, and Mr. Saleh Mirhashemi - were arrested on 21 November 2022 in Isfahan Province.

Reportedly, the three men were arrested and detained in relation to the killing of two Basij officers and one police officer during the recent nationwide protests. They were sentenced to death on 8 January 2022 by the Isfahan Revolutionary Court on the charge of moharebeh ("enmity against God"). Their court hearings took place on 28, 29, and 31 December 2022. The last court hearing was on 8 January 2023 when the death sentences were announced. Although the men appealed the verdict, on 6 May 2023, the Supreme Court upheld their death sentences. They are currently detained at the Isfahan Central Prison (also known as "Dastgerd Prison").

Reports suggest that it remains unclear to what extent the defendants were allegedly involved in the death of the officers. The officers were allegedly killed during the protests by gunshot in Isfahan Province on 16 November 2022. However, the charges against the defendants do not explicitly accuse them of "murder". Instead, they are facing broad charges of moharebeh. Some sources claim that they were accused of the act of "drawing a [handgun] from the waist".

On 11 May 2023, the confessions of the three men regarding their alleged crime were broadcasted on State television. However, according to information received, the judicial proceedings did not fulfil the requirements for a fair trial and due process under international human rights law. There are allegations that the men were coerced into making confessions under torture. For example, in a voice note shared by civil society organisations, Mr. Majid Kazemi purportedly stated that he was subjected to repeated acts of torture and other forms of ill-treatment, such as physical assaults, in order to obtain his confessions. He has been threatened by the authorities that both his brothers would be charged for the same crimes and be executed if he did not agree to the terms of the authorities. According to reports, the sole evidence presented in the case are the forced confessions of the defendants, which have resulted from torture. Additionally, the men were not given the opportunity to choose their own lawyer. Allegedly, they were provided with a court-appointed lawyer only after the initial death sentence had been issued.

On 17 May 2023, the families were called for a visit with the men, during which prison authorities told them that this was their final visitation, leading to serious concerns that they may be executed soon.

Without prejudging the accuracy of the above-mentioned allegations, we express our concern about the fact that at least one of the men, Mr. Majid Kazemi, was allegedly subjected to severe acts of torture being inflicted on him and a possible imminent threat to his life.

The reported allegations, if they prove to be accurate, would be in contravention of the rights of every individual to life, physical integrity, the absolute prohibition of torture and other cruel, inhuman or degrading treatments or punishment, and of arbitrary deprivation of liberty, as well as the right to recognition as a person before the law, the right to a fair trial before a competent, independent, and impartial tribunal, the rights to freedom of opinion and expression, including through artistic disciplines, to freedom of association and peaceful assembly, to health and cultural rights, as established, *inter alia*, in articles 3, 5, 6, 9,10, 14, 19, 20 and 27 of the Universal Declaration of Human Rights (UDHR), articles 6, 7, 9, 14, 16, 17, 19, 21, 22, 24 and 26 read alone and in conjunction with article 2, para. 3, of the International Covenant on Civil and Political Rights (ICCPR), as well as articles 12 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified by your Excellency's Government on 24 June 1975.

We recall that the right to life, the right not to be subjected to torture and the prohibition of enforced disappearance are *jus cogens* norms, also enshrined in international customary law, from which no derogation is permitted, regardless of contexts of internal political instability or any other public emergency (Human Rights Committee, general comment no. 36, para. 2). The Islamic Republic of Iran, as a State party to the ICCPR, is required to undertake all necessary measures to prevent arbitrary deprivation of life by law enforcement officials. 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 make further reference to paragraphs 57 and 58 of the general comment no. 36, which states, *inter alia*, 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 (para. 57), and that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life, and States parties must take adequate measures to prevent the enforced disappearance of individuals and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance (para. 58).

We are further alarmed that the three men have reportedly been sentenced to death for charges that do not reach the threshold for “most serious crimes,” required under international law for the imposition of the death penalty. We would like to refer your Excellency’s Government to the report of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, indicating that “*the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting these provisions is that the death penalty can only be imposed in such a way that it complies with the stricture that it must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill which resulted in the loss of life*” ([A/HRC/4/20](#), paragraphs 39-53). In the context of repeated reporting on the imposition of the death penalty, we once again call on Iran to reconsider its longstanding position on the death penalty and urge your Excellency's Government to impose a moratorium on all death sentences.

According to the Human Rights Committee, the ICCPR requires States parties to ensure that individuals have accessible and effective remedies to vindicate their rights as provided under the Covenant and that there is a general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies (see [CCPR/C/21/Rev.1/Add.13](#), para. 15). Where investigations find human rights violations, States parties must ensure that those responsible are brought to justice. Importantly, investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates. They must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Also, under international law, States have a duty to investigate acts of torture and other cruel, inhuman, or degrading treatment or punishment via prompt, independent, transparent and impartial investigations wherever there is a ‘reasonable ground’ to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed even in the absence of a formal complaint. Persons making complaints must likewise be protected from intimidation or other risks to their personal integrity or safety. It is further prohibited to use any form of intimidation or pressure to coerce a person to confess or provide information, against their will and such information or confession shall not be admitted into any proceedings except for proceedings to establish that torture or another form of ill-treatment has been committed. We refer your Excellency’s Government to the recent report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment to the Human Rights Council, [A/HRC52/30](#), which sets out a state’s obligations including under

customary international law to investigate all allegations of torture or similar mistreatment and the protection of the rights of victims.

The allegations would also be in breach of the guarantees of a fair trial, provided by article 14 of the ICCPR, which sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

We would like to further refer your Excellency's Government to articles 12 and 2.2 of the ICESCR, which establishes that 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 preventive, curative and palliative health services (Committee on Economic, Social and Cultural Rights (CESCR), general comment no. 14, para. 34). 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).

Additionally, we would like to refer to the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175), which recognize the responsibility of States to provide health care for prisoners, free of charge without discrimination (rule 24), paying special attention to those with special healthcare needs or with health issues that hamper their rehabilitation (rule 25) and indicate that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals (rule 27).

Moreover, we wish to refer to the report of the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which he makes reference to the fact that “[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that [v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”. He also stresses that “for the right to health to be enjoyed in detention centres, health-care facilities, goods and services must be available, accessible, acceptable and of good quality”. In addition, the Special Rapporteur urges States to “[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons”.

We also wish to bring to your Excellency's Government attention general comment no. 14 adopted by the CESCR, which interprets the right to health as “an inclusive with extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food [and] nutrition” among others (CESCR, general comment no. 14, para. 11).

We would like to remind your Excellency's Government that article 9 of the ICCPR guarantees the right not to be subjected to arbitrary arrest or detention, and that the prohibition of arbitrary detention is absolute. We also recall that the arrest or

detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including the right to freedom of expression and opinion, including artistic expression (art. 19), the right of peaceful assembly (art. 21), and the right to freedom of association (art. 22) is arbitrary (see CCPR/C/GC/35, para. 17 and the jurisprudence of the Working Group on Arbitrary Detention). In addition, as reiterated by the Working Group on Arbitrary Detention, a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination, including discrimination based on gender or political or other opinion.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR; this right shall include freedom to seek, receive and impart information and ideas of all kinds either orally, in writing or in print, in the form of art, or through any other media of his choice. The Human Rights Committee underlined that the freedom of expression includes political expression and commentary on public affairs and cultural and artistic expression. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR, that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. We wish to remind your excellency's Government that, as stated by the Human Rights Committee in general comment 34, 'an attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19'.

Article 15 of ICESCR recognizes the right of everyone to take part in cultural life. Under this provision, States Parties have undertaken to respect inter alia the freedom indispensable for creative activity. The Special Rapporteur in the field of cultural rights stresses that all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision (A/HRC/23/34, paras. 85 and 89d). As stated in general comment no. 21, contribution to cultural life is also to be understood as a right to take part in the development of the society to which one belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights (para. 15(c)).

States have the challenge of ensuring the full implementation of artistic freedoms and may resort to limitations only when absolutely necessary (A/HRC/23/34, paras. 3 and 32). Regarding the imposition of sanctions, including criminal sanctions, deprivation of liberty and the closing of public space, we would like to recall the recommendations made by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur in the field of cultural rights to

distinguish between a) expression that constitutes a criminal offence; (b) expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and respect for the rights of others (A/66/290, para. 18; A/HRC/23/34, para. 31). What may be morally objectionable (from one point of view) may not necessarily be legally inadmissible or condemnable. Criminal sanctions should be the very last resort measures only, to be applied in strictly justifiable situations. In this regard, we would like to draw your Excellency's Government attention to a particularly useful suggestion in the Rabat Plan of Action, to use a six-part threshold test for those expressions that are criminally prohibited, implying an analysis of the context, speaker, content or form (which implicitly also refers to "the form of art"), extent of the speech, and likelihood, including imminence (A/HRC/22/17/Add.4).

We draw your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances. We also recall that the Declaration sets out the necessary guarantees to be offered by the State. We further draw your Excellency's Government's attention to the absolute and non-derogable prohibition of enforced disappearances (articles 2 and 7) which has attained the status of jus cogens. We also further make reference to the study of the Working Group on Enforced or Involuntary Disappearances on enforced disappearance and economic, social and cultural rights (A/HRC/30/38/Add.5), in particular paragraphs 33-37 which highlight the chilling effect of the disappearance of journalists and human rights defenders.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

**Under these circumstances, we appeal to your Excellency's Government to immediately provide Mr. Majid Kasemi and the two other men with access to adequate medical attention, to adopt adequate measures to prevent any irreparable harm to his life and personal integrity, and to allow his lawyer to regularly visit him.**

**We also call on your Excellency's Government to halt the imminent execution of the three men and to establish a formal moratorium on implementation of the death penalty in compliance with international standards.**

**Lastly, we also reiterate the long-standing call on the Government of the Islamic Republic of Iran to adopt all necessary measures to prevent any irreparable harm to the life and personal integrity of persons deprived of their liberty.**

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 the above-mentioned persons in compliance with international instruments.

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 information on the factual and legal basis for the arrest and detention of Mr. Majid Kazemi, Mr. Saeed Yaghoubi, and Mr. Saleh Mirhashemi and how this is compatible with Iran's obligations under international law as stated, including the international norms and standards on the right to freedom of opinion and expression, including in the form of art, the right to take part in cultural life and the freedom indispensable for creative activities.
3. Please provide detailed information on the extent to which the imposition of the death penalty in the case of Mr. Majid Kazemi, Mr. Saeed Yaghoubi, and Mr. Saleh Mirhashemi for "enmity against God" is consistent with international human rights law, including the United Nations Safeguards for the Protection of the Rights of Persons Facing the Death Penalty.
4. Please provide detailed information on elements relating to the state of health of the three men and the measures taken to provide them with medical assistance.
5. Please also provide information as to what measures have been taken to ensure that the rights of the three men to due process and a fair trial have been respected, and how such measures comply with the obligations of your Excellency's Government under international human rights law.
6. Please provide detailed information on the measures which have been taken, or which are foreseen, to ensure full and impartial investigations, independent medical examinations, and judicial or other inquiries in relation to the allegations of arbitrary arrest and enforced disappearance, torture and other cruel, inhuman, or degrading treatment or punishment. If measures have been undertaken, please make available the results of the investigations. If no such measure has been taken, please explain how this is compatible with the international human rights obligations of Iran. Please also provide information on the measures that have been taken to protect complainants from any form of intimidation or harassment or other violations for having made such allegations.
7. Please indicate what measures have been taken to ensure that civil society actors in Iran are free to exercise their fundamental rights to freedom of expression, of peaceful assembly and of association in a safe and enabling environment without fear of threats or 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 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

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

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