

Mandates of the Working Group on Enforced or Involuntary Disappearances; 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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20 July 2023

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; 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 45/3, 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. Mojhed (Abbas) Kourkouri**, who was arrested on 20 December 2022 and subjected to enforced disappearance until April 2023. Mr. Kourkouri is accused of the killing of a child in the context of the nationwide protests in Izeh, Khuzestan province and is now at risk of imminent execution.

According to the information received:

Mr. Kourkouri was arrested on 20 December 2022 near Ghalehtol, Khuzestan Province allegedly by agents of the Ministry of Intelligence, Revolutionary Guards, and the Law Enforcement Command of the Islamic Republic of Iran (known by its Persian acronym *Faraja*).

Reportedly, Mr. Kourkouri was arrested for his alleged involvement in the killing of a child in the context of the nationwide protests in Izeh, Khuzestan province, on 16 November 2022.

It remains unclear to what extent the defendant was involved in the killing of the child. According to information received, plain clothed security officials shot the child to death while using lethal force during protests in Izeh. The authorities allegedly blamed "terrorists" for the child's death, but the child's family would have refuted these claims publicly and attributed the responsibility to the authorities.

Mr. Kourkouri forced "confessions" were allegedly aired by Iranian state media in December 2022. He was reportedly filmed in bed with his arm visibly bloody and bandaged.

However, the charges against the defendant do not explicitly accuse him of "murder". Instead, Mr. Kourkouri was charged in April 2023 with "enmity

against God” (*moharebeh*) and “corruption on earth” (*efsad-e fel arz*) and “armed rebellion against the state” (*baghi*). In addition, he was sentenced to death by the Revolutionary Court.

From his arrest in December 2022 to April 2023, the authorities subjected Mr. Kourkouri to enforced disappearance, denying his family and his lawyer information about his fate and whereabouts. However, in April 2023, Mr. Mojahed Kourkouri’s lawyer learned that he was being held in Sheiban prison in Ahvaz, Khuzestan province, and was permitted to visit him very briefly. According to information received, Mr. Kourkouri has not been permitted family visits since his arrest.

According to information received, Mr. Kourkouri was subjected to torture and other forms of ill-treatment in order to obtain a confession. In addition, it is reported that he injured his knee, and is in need of medical care. Mr. Kourkouri believes the authorities were forcibly administering chemical substances on him.

It is unclear when Mr. Kourkouri was sentenced by the Revolutionary Court. According to the information received, the verdict was announced by the judiciary a little over three months after his detention in December 2022.

Without prejudging the accuracy of the above-mentioned allegations, we express our concern about the fact that Mr. Kourkouri would have been subjected to severe acts of torture and may face an 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 enforced disappearance and torture and other cruel, inhuman or degrading treatment or punishment, and of arbitrary deprivation of liberty, as well as the right to recognition as a person before the law and the right to a fair trial, 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, 9,10,11, 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 remind 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 further stress that when the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (CCPR/C/GC/36; para. 29).

We are further alarmed that Mr. Kourkouri has reportedly been sentenced to death for charges, which 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. Article 14 of the ICCPR provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

International standards provide that lawyers are entitled to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering, or being threatened with, prosecution or any administrative or disciplinary sanctions for actions undertaken in accordance with professional duties and ethical standards.

We would like to further refer your Excellency's Government to articles 12 and 2.2 of the ICESCR, which establish 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). We wish to also remind rule 46 that stresses that health-care personnel shall "pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff" and that "[h]ealth-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons."

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. 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.

The reported serious human rights violations and impunity for such violations during the ongoing protests indicate a reoccurring pattern of State practice. Past demonstrations have seen similar acts of repression and violence against protesters from the authorities, with the use of excessive force and exacerbated forms of gender-based violence, resulting in deaths and injuries of protesters. This has also been highlighted in the different communications and reports to the Human Rights Council, lately during the 52nd session of the Human Rights Council. In this regard, we are concerned about the lack of measures to hold State actors involved in the excessive lethal use of force and resulting arbitrary killings accountable, which may enable an environment in which the violations outlined may be repeated.

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, in particular, its articles 9 to 13, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; the obligation to conduct investigations; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and

to the maintenance in every place of detention of official up-to-date registers of all detained persons. 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 and that States are called on to, "ensur[e] the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defender" (para. 49).

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

Under these circumstances, we appeal to your Excellency's Government to immediately halt the imminent execution of Mr. Kourkouri and to establish a formal moratorium on implementation of the death penalty in compliance with international standards.

We also call on your Excellency's Government to provide Mr. Kourkouri 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 and family to regularly visit him.

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 Mr. Kourkouri in compliance with its international obligations.

We are issuing this appeal in order to safeguard the rights of the Mr. Kourkouri 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 information on the factual and legal basis for Mr. Kourkouri's arrest and detention and how this is compatible with

Iran's obligations under international law.

3. Please provide detailed information on the extent to which the imposition of the death penalty in the case of Mr. Kourkouri for "enmity against God" (moharebeh) and "corruption on earth" (efsad-e fel arz) 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 Mr. Kourkouri and the measures taken to provide him with medical assistance.
5. Please also provide information as to what measures have been taken to ensure that the rights of Mr. Kourkouri 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 thorough, independent, impartial and effective 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.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable damage to the life and personal integrity of Mr. Kourkouri, to halt the alleged violations and to 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 also urge the authorities to publicly condemn violence against peaceful protesters, and immediately remove the military and security units and personnel allegedly involved in the human rights violations from managing the protests.

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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