

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Ref.: UA IRN 22/2023
(Please use this reference in your reply)

22 December 2023

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 51/8, 46/9, 52/9, 50/17, 51/21 and 49/24.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning **Mr. Toomaj Salehi, an Iranian musician who was violently arrested and detained again for raising his voice through protest songs and his YouTube channel.**

Concerns on Mr. Toomaj Salehi were raised by Special Procedures in previous communication on 30 November 2022 (IRN 26/2022) and 19 May 2023 (IRN 6/2023). In this regard, we thank your Excellency's Government for your response on 27 January 2023 and 31 May 2023 that provide information about the case of Mr. Toomaj Salehi. However, we remain concerned about the situation of Mr. Toomaj Salehi, given his recent arrest and deteriorating health conditions. We appeal to your Excellency's Government to respond to the letter and the concern raised in this communication.

According to the new information received:

On 18 November 2023, Mr. Toomaj Salehi was released on bail following 386 days in prison, including 252 days in solitary confinement.

Just 12 days later, on 30 November 2023, Mr. Toomaj Salehi was arrested again in the northern city of Babol by plainclothes agents and was taken to an undisclosed location for several days. He has since been transferred to Dastgerd Prison in Esfahan.

Reportedly, the Revolutionary Court of Esfahan has initiated a new case against him. According to Mizan news agency (linked to the judiciary), Mr. Toomaj Salehi is accused of "publishing false information and disturbing public opinion".

The re-arrest followed the online posting of what appears to be a video by Mr. Toomaj Salehi, where he updates on his current situation and his time in

prison, including the torture he allegedly experienced while in prison. Further, Mr. Toomaj Salehi criticizes the intelligence services.

As stated in the previous communications (IRN 6/2023), Mr. Toomaj Salehi was reportedly tortured or otherwise ill-treated in detention to force him to provide “confessions”. When he appeared on state television, Mr. Toomaj Salehi was blindfolded and bruising on his face could be observed. Reportedly, his left eye was badly damaged by the security forces. Since his arrest, he has not received proper medical attention. Mr. Toomaj’s right ankle was broken as a result of alleged torture and physical abuse, and he may need surgery, while the injuries on his eye are yet to be assessed by a doctor. His health condition reportedly deteriorated after having been in solitary confinement at Dastgerd Prison while he was prison.

Since his rearrest, Mr. Toomaj Salehi has only been allowed to meet with his family once. The date of his trial has not been communicated yet.

Without prejudging the accuracy of the above-mentioned allegations, we reiterate our concern that the arrest and detention of Mr. Toomaj Salehi may be solely related to the exercise of his right to freedom of artistic expression and freedom of peaceful assembly.

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 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, 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 access to quality 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; paragraph 29).

We are further alarmed that Mr. Toomaj Salehi 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.

These guarantees 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 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). 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. 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'.

We also remind your Excellency's Government that Article 21 of the ICCPR protects the right to peaceful assembly. The Human Rights Committee has confirmed that Article 2 'protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs' (CCPR/C/GC/37, para. 6). Restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government, challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination. (CCPR/C/MDG/CO/4, para. 51). They should not be used to prohibit insults to the honour and reputation of officials or State organs" (CCPR/C/GC/37, para. 49).

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 89 d). 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).

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 provide Mr. Toomaj Salehi 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 stop criminalising peaceful protesters, including artists, for the legitimate exercise of their rights to freedom of opinion and expression, including artistic expression, association and peaceful assembly; to end intimidation and punishment of protesters that cause severe physical or mental pain and suffering; and to investigate all allegations of enforced disappearance, arbitrary detention and torture or ill-treatment.

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 regarding the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of the abovementioned individual 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. Toomaj Salehi rearrests and arbitrary detention and how this is compatible with Iran's obligations under international law, including 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 rights and freedoms indispensable for creative activities.
3. Please provide detailed information on elements relating to the state of health of Mr. Toomaj Salehi and his ability to access quality healthcare, including whether he has been seen by a doctor.
4. Please also provide information as to what measures have been taken to ensure that the rights of Mr. Toomaj Salehi 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.
5. 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.
6. 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 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 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 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.

Matthew Gillett
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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