

Mandates of 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on violence against women, its causes and consequences; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on violence against women, its causes and consequences; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 28/9, 25/2, 24/5, 24/6, 25/18, 26/7, 28/21, 23/25, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention and continued harassment of three artists: **Fatemeh Ekhtesari**, **Mehdi Moosavi** and **Atena Farghadani** and also the poor treatment of detained human rights activist, **Narges Mohammadi**. Ms. Farghadani and Ms Mohammadi have been the subject of previous communications sent on 23 June 2010, 11 October 2011, 27 March 2012, 6 August 2014, 16 January 2015, 19 May 2015 and 4 June 2015. We acknowledge receipt of your reply dated 26 September 2012.

According to the information we received:

Ms. Ekhtesari and Mr. Moosavi were both arrested on 8 December 2013 at their respective homes. They were each held in solitary confinement at Evin Prison for more than a month. Over this period of time Ms. Ekhtesari and Mr. Moosavi were forced after prolonged interrogations to make specific “confessions.” They were then released on bail on 13 January 2014.

Ms. Ekhtesari was charged with “insulting the sacred,” “publishing unauthorized content in cyberspace,” and “propaganda against the state” for the publication of a collection of poetry online entitled “A Feminist Discussion Before Boiling the Potatoes.” The primary evidence against her was her allegedly coerced confession. She was sentenced to a total of 11 years and six months in prison.

Mr. Moosavi was charged with “insulting the sacred” for his poetry regarding social issues and sentenced to six years in prison. He was also charged with “possession of tear gas at his residence” for a can of mace, for which he had a permit, and sentenced to an additional three years. Mr. Moosavi’s conviction was also based primarily on his allegedly coerced confession. Ms. Ekhtesari and Mr. Moosavi were also charged with “illegitimate sexual relationship short of adultery” for shaking hands with a member of the opposite sex they were not related to which is criminalized under article XX of the Iran’s Penal Code.. As punishment for these handshakes, they were each sentenced to 99 lashes.

Ms. Farghadani, who has been charged for drawing and posting a cartoon depicting Iranian parliamentarians as animals, received a sentence of twelve years and six months in prison. Ms. Farghadani was also charged with “illegitimate sexual relationship short of adultery” for shaking hands with her lawyer. She has not yet stood trial on the charges, however she was ordered and forced to undergo “virginity and pregnancy testing.” Ms. Farghadani has also been subject to various other cruel acts of gender-based violence while imprisoned, including but not limited to sexual comments, insults, sexual slurs, and lewd gestures. Forced virginity tests may amount to torture or cruel, inhuman, or degrading treatment or punishment.

The treatment of Ms. Farghadani echoes the mistreatment and judicial harassment of Ms. Narges Mohammadi. Ms. Mohammadi, originally imprisoned in April 2012 for “meeting and conspiring against the Islamic Republic,” “anti-government publicity,” and “collaborating with the Centre for Human Rights Defenders,” was released on medical grounds resulting from her poor treatment in prison before serving her full term. . Nonetheless, Ms. Mohammadi was returned to Evin Prison on 5 May 2015.

Since then, Ms. Mohammadi's medical condition, which includes muscular paralysis and lung complications, has again deteriorated significantly. Following a medical emergency on 7 October 2015, when she had a nervous attack that led to partial numbness of her body, she was taken to a specialist hospital outside of prison where she received some medical attention. However, despite doctors' orders that she be immediately hospitalized, she was returned to the prison where her condition became worse. She has since 11 October been hospitalized, but remains chained hand and foot to her bed, constantly under the surveillance of three guards. Since her hospitalization, she has suffered convulsions at least in three occasions but she has been reportedly denied the treatment she needs. Moreover, Ms. Mohammadi does not have access to the comfort of family members, except for once a week during ten minute that she is allowed to interact with her sister.

We are concerned that the charges brought against Ms. Ekhtesari, Mr. Moosavi, Ms. Farghadani, and Ms. Mohammadi are in contravention of Iranian law and articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which Iran ratified on 24 June 1975 regarding the rights to freedom of expression, including in the form of art, and association, as well as article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), also ratified in 1975, protecting the right to take part in cultural life and the freedom indispensable for in creative activity. Furthermore, we are concerned that these charges come as a result of legitimate and peaceful human rights work. In addition, we are seriously concerned about the treatment suffered by the physical and psychological integrity of Ms. Farghadani and Ms. Mohammadi given their treatment while in detention.

We wish to emphasize that, in circumstances of public debate concerning public figures and institutions, the value placed by the ICCPR upon uninhibited expression is particularly high and the fact that forms of expression are considered to be critical of public figures is not sufficient to justify the imposition of penalties (CCPR/C/CG/34, para. 38). The Human Rights Committee has expressly called upon States to consider the decriminalization of defamation and, in any case, has stated that the application of the criminal law should only be countenanced in the most serious of cases and imprisonment should never be an appropriate penalty. We also draw your attention to the report of the Special Rapporteur in the field of cultural rights, emphasizing 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, para. 89 d).

Additionally we believe that the treatment of Ms. Farghadani and Ms. Mohammadi violates the absolute and non-derogable prohibition of torture and cruel, inhumane or degrading treatment or punishment, as codified, inter alia, in the ICCPR and, in Human Rights Council Resolution 25/13 and in paragraph 1 of General Assembly Resolution 68/156.

Coerced “virginity testing” is internationally recognized as a form of violence and discrimination against women and girls, as it violates their right to physical integrity, dignity, privacy, and the right to be free from torture and cruel and inhuman and degrading treatment. In this connection, we wish to draw the attention of your Excellency’s Government to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53), which points to the fact that so-called “virginity-testing” can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression, and that this method lacks scientific backing and risks contributing to stigma.

Moreover, we would like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement in itself runs afoul of this absolute prohibition. Moreover, due to the prisoner’s lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment.

We also wish to recall also recall that paragraph 7c of Human Rights Council Resolution 16/23 which urges States to ensure that no statement made as a result of torture be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

We also would like to recall international human rights norms and standards in relation to access to justice, due process and fair trial, in particular articles 9, 14 and 15 of the ICCPR, as well as the UN Basic Principles on the Role of Lawyers, especially Principles 1 and 8, providing for an effective access to a lawyer of his/her own choosing, with adequate time and facilities for the preparation of the defence.

Regarding the situation of Ms. Mohammadi, we would like to refer your Excellency’s Government to article 12 of the ICESCR, which establishes that States have 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 (General Comment 14, Para.34). Moreover, the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, indicate that prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

We also draw the attention of your Excellency's Government to article 22 of the ICCPR providing that everyone shall have the right to freedom of association. We recall Human Rights Council resolution 24/5 which reminds States of their obligation to respect and fully protect the rights of all individuals to associate freely, including persons espousing minority or dissenting views or beliefs, and human rights defenders. It calls on States to take all necessary measures to ensure that any restrictions on the free exercise of the right to association is in accordance with their obligations under international human rights law.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12, and the United Nations Declaration on the Elimination of Violence against Women, in particular, article 4 (b), (c) and (d).

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 the above-mentioned person(s) 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 you may have regarding the above mentioned allegations.
2. Please provide information regarding current policies for ensuring that prisoners are not subject to cruel, inhumane or degrading treatment or punishment, including measures taken to ban coerced virginity tests.
3. Please indicate which measures, legislation, and policies your Excellency's Government has adopted to provide proper medical treatment for prisoners. More specifically, please provide information about the situation of Ms. Mohammadi and the medical assistance and treatment she is receiving.
4. Please indicate which measures, legislation, and policies your Excellency's Government has adopted to comply with articles 19 and 22 of the ICCPR regarding freedoms of expression, including in the form of art, and freedom of association, together with article 15 of the ICESCR regarding the right to take part in cultural life and the freedom indispensable for creative activity.

5. Please provide detailed information on the measures taken to provide, to the above-mentioned individuals, the guarantees of due process and fair trial, and effective access to a lawyer, as established in international human rights law, in particular articles 9, 14 and 15 of the ICCPR and the UN Basic Principles on the Role of Lawyers.

6. Please indicate what measures have been taken to ensure that human rights defenders can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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