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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; 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 in the Islamic Republic of Iran; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (56-23) Health (2002-7) Iran (2011-16) G/SO 214 (53-24)
IRN 11/2013

10 July 2013

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; 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 in the Islamic Republic of Iran; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 16/4, 22/20, 15/22, 22/23, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the death in prison of Mr. Afshin Osanlou and the detention of Pastor Behnam Irani, Pastor Saeed Abedini, Messrs. Ghazi Heidari, Houtan Kian, Mohammad Reza Pourshajari, and Ayatollah Hossein Kazemeyni Boroujerdi.**

According to the information received:

Mr. Afshin Osanlou, a trade union activist, who was serving a five-year sentence, reportedly died from a heart attack in prison on 20 June 2013. Mr. Osanlou's family was not informed about his death until 22 June, when they inquired about his whereabouts. The real cause of the death of Mr. Osanlou remains unclear; prison authorities however insist that he was taken to a hospital before the heart attack.

Pastor Behnam Irani, a Protestant Christian pastor, allegedly faces a very high risk of dying in detention. Pastor Irani was reportedly violently arrested and taken to

Ghezal Hesar prison in May 2011 to serve a one-year sentence for “action against the state”. He allegedly received death threats from other inmates, was beaten regularly, held incommunicado in a small cell, and victim of forced sleep deprivation. In October 2011, Pastor Irani was sentenced to five supplemental years for “national security” crimes, seemingly related to his activities as a pastor. “Apostasy” was mentioned in his charges. In March 2013, Pastor Irani reportedly had severe pain in his back and feet, and was temporally paralyzed as a result. He has been reportedly suffering from acute stomach ulcers and bleeding, dizziness, nausea, temporary loss of consciousness, photophobia and difficulties to walk. In October 2012, he was reportedly facing conditions that seriously threatened his life. He was apparently informed that the Ministry of Intelligence has placed an order preventing him from external medical treatment. He is reportedly currently housed in an overcrowded cell with violent criminals.

Pastor Saeed Abedini, a Protestant Christian pastor and dual Iranian-American citizen, reportedly necessitates urgent medical attention in detention. Pastor Abedini was reportedly arrested in September 2012 during a humanitarian visit to the Islamic Republic of Iran and later sentenced to 8 years in prison, for endangering national security. Pastor Abedini allegedly suffered interrogation and spent four weeks in solitary confinement before being released into the general prison population. He was beaten on several occasions by fellow prisoners, without intervention by nearby guards, when he tried to pray in his cell. He reportedly has been experiencing internal bleeding since November 2012 and was denied standard painkillers by a doctor who reviewed his condition because he was “unclean,” due to his conversion to Christianity. More recently, Pastor Abedini has allegedly experienced fainting, blood in his stool, and pain in his kidney area. In March 2013, Pastor Abedini was reportedly visited in prison by three medical professionals, who apparently determined that Pastor Abedini was suffering from internal bleeding and required immediate medical treatment outside of the prison. On 8 April 2013, Pastor Abedini was apparently transferred to a hospital outside of the prison for treatment, but the doctor scheduled to see him was unavailable, and he was taken back to prison without treatment. On 29 April 2013, Pastor Abedini was placed in solitary confinement in apparent retaliation for his joining a protest with other prisoners over lack of medical care in the facility. He was removed from solitary confinement on 8 May 2013. He was reportedly accused of spying for the U.S. Government and brainwashing young Iranian Muslims to convert to “Zionist Christianity.” Following the presidential election of 14 June 2013, Pastor Abedini was allegedly threatened by prison guards and officials with relocation in a remote area of Southern Iran in the aftermath of the Islamic Republic of Iran’s presidential election. On 18 June 2013, Pastor Abedini’s most severe symptoms had apparently waned, but he was still allegedly experiencing severe pain in his abdomen and requiring medical attention.

Mr. Ghazi Heidari, an Ahwazi Arab and industrial engineer by training, allegedly faces a high risk of dying in detention. Mr. Heidari was arrested in May 2009 and allegedly held incommunicado at the Intelligence Office in Ahwaz for six months.

He was reportedly physically beaten and suffered four broken ribs, torn eardrums, and an internal infection. In November 2009, Mr. Heidari was reportedly transferred to the Karoun prison and from there he was taken to the Revolutionary Court of Ahwaz, where he was convicted and sentenced to ten and half years in prison on “national security” charges. In May 2012, Mr. Heidari was further accused by the intelligence authorities of filming the execution of a prisoner - a charge that Mr. Heidari denies. After the accusation, he was reportedly transferred from the Karoun Prison to an Intelligence Office site, where he was held incommunicado for five months. Mr. Heidari was then transferred to a prison in Shiraz, where he remains today. Mr. Heidari’s family’s request for medical furlough had not been granted in April 2013, and they are concerned that he will not survive through his prison sentence due to the severe ill-treatment and torture imposed onto him.

Mr. Javid Houtan Kian, a lawyer by training, reportedly necessitates urgent medical attention in detention. Mr. Kian was arrested on 9 October 2010 and charged with “defamation of the Iranian judiciary” and other “national security” crimes, seemingly in retaliation for his defence of Ms. Sakineh Ashtiani, an Iranian woman sentenced to stoning for allegedly committing adultery, and his defense of others arrested on sodomy charges. During the first two months of his detention at Evin Prison, Mr. Kian was allegedly kept in solitary confinement, was beaten by interrogators, lost 12 of his teeth and 50 kilograms of weight, and had his nose broken from beatings. After almost two months, Mr. Kian was rushed to a hospital, where he was medically supervised for one month before being transferred to Tabriz prison. Prison authorities there immediately transferred him to the prison infirmary. On 24 January 2011, Mr. Kian was apparently banned from representing Ms. Ashtiani and has since not been permitted family visits, access to doctors, or the ability to receive monetary funds from his family to purchase personal items from the prison store. A source close to Mr. Kian alleges that he was recently transferred to a “methadone ward” inside the prison, where potentially violent substance users are housed. On 31 October 2012, Mr. Kian had reportedly not received adequate medical care despite suffering from a serious digestive illness and his physical and psychological condition.

Mr. Mohammad Reza Pourshajari, blogger, allegedly faces a very high risk of dying in detention. Mr. Pourshajari was arrested by security forces at his home in Karaj on 12 September 2010 because of his blog and was sentenced to three years in prison in December 2010 on charges of propagating against the system and insulting the Supreme Leader. In April 2012, he was sentenced to an additional year in prison on blasphemy charges. Since his arrest, Mr Pourshajari remains in prison. It was reported that during his trials, he was not allowed access to a lawyer. During his time in Prison, Mr. Pourshajari reportedly spent seven months in solitary confinement at Rajai Shahr prison. During this time, he was allegedly subject to two mock executions and tortured in front of other prisoners, who were also tortured in front of him. On 16 February 2013, Mr. Pourshajari suffered a heart attack, following which the authorities moved him to a hospital outside the prison for five days. His family subsequently requested his release due to his

health conditions. While this request was allegedly approved by prison officials, the documents were subsequently sent to the prosecutor's office for approval, and no answer has been received since. Physicians at Ghezel Hesar Prison have allegedly determined that he is not fit to serve his sentence. On 12 April 2013, he had allegedly developed an enlarged prostate, kidney stones, and disc problems, while blows to his head caused him to black out and pass out frequently, and suffers from heart problems (85% of its blood vessels experience difficulty), breathing problems, and high blood fat. He was reportedly supposed to be sent to a hospital, but was instead transferred to Ghezel Hesar prison, where the conditions were said to be worse than before. He reportedly has suffered two heart attacks. On a later occasion, he was taken to a hospital where doctors reportedly told him that he will not survive unless he undergoes open heart surgery rapidly.

Ayatollah Hossein Kazemeyni Boroujerdi reportedly necessitates urgent medical attention in detention. The Government of the Islamic Republic of Iran responded to these appeals on 7 October 2010 and indicated that Ayatollah Boroujerdi was not detained on the basis of his beliefs. Ayatollah Boroujerdi was sentenced to 11 years in jail in June 2007 for charges including acting against national security. He allegedly suffers from Parkinson's disease, diabetes and high blood pressure, problems breathing and walking, a heart condition believed to be a pulmonary oedema, and kidney stones. He has purportedly lost approximately 40 kilograms in weight and his eyesight has become increasingly impaired due to cataracts. His deteriorating health would be due to poor prison conditions, physical abuse, solitary confinement, and other forms of repeated torture and ill-treatment. During his detention, and particularly since January 2010, he has been subjected to various forms of ill-treatment, including apparent attacks on his life. From 22 to 27 April 2010, he was held in solitary confinement in the "information ward", as a punishment for speaking on the phone about the conditions and treatment at Evin Prison. During this time, the guards reportedly threatened to amputate both his hands if he spoke of the torture and ill-treatment he had been subjected to. It is also believed that on 27 April 2010, several gases were diffused in his cell. As a result, Ayatollah Boroujerdi was unable to stand easily, suffered from vertigo and vomiting, and had injuries on his vocal cords, forcing the guards to transfer him to the general ward. According to sources, in October 2011 Ayatollah Boroujerdi was allowed to visit the prison health clinic. The clinic staff allegedly recommended a transfer to a hospital as Ayatollah Boroujerdi's condition required the attention of a specialist. However, there is no indication that authorities have transferred him to a hospital nor have they granted Ayatollah Boroujerdi family's request for a medical furlough. Moreover, it has been reported that prison authorities have not given Ayatollah Boroujerdi pain killers, vitamins, and other medications brought by his family for him to the prison.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the alleged death in custody of Mr. Afshin Osanlou.

We would 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, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

While we do not wish to prejudge the accuracy of these allegations and on whether Pastor Behnam Irani, Pastor Saeed Abedini, Messrs. Ghazi Heidari, Houtan Kian, Mohammad Reza Pourshajari, and Ayatollah Hossein Kazemeyni Boroujerdi, received adequate health care and attention or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their fundamental human rights. Of the utmost importance is their right to adequate health care.

We should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR and the ICCPR.

With regard to the alleged death in custody of Mr. Afshin Osanlou, we would like 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. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermi Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermi committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant." In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). We urge your Excellency's Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of the above-mentioned person, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his family. In this respect we note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold responsible not only those who perpetrate torture, but also those "who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed."

With regard to Pastor Irani and Pastor Abedini, we would like to remind your Excellency's Government that article 18(1) of ICCPR stipulates that "everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." Furthermore, article 27 of ICCPR provides that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

With regard to the alleged "apostasy" by Pastor Irani, we would like to respectfully remind your Excellency's Government that article 18(2) of the ICCPR provides that "no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." Moreover, as the Human Rights Committee has emphasized in paragraph 3 of its General Comment no. 22 (1993), "article 18 does not permit any limitations on whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief on one's choice." In paragraph 5 of the same Comment, the Committee further observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18(2) bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. [...]"

With regard to all cases mentioned above, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to refer to the recommendation made by the previous Special Rapporteur on torture which states "countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill-treatment. Training programmes should be considered to sensitize prison officials to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated according to gender, age and seriousness of the crime, alleged/committed;

first-time prisoners should be segregated from repeat offenders and pre-trial detainees from convicted prisoners" (E/CN.4/2003/68, para. 26 (j)).

In addition, we would like to draw your Excellency's Government's attention to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the ICCPR (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your Excellency's Government's attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged" (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

We would also appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of the above-mentioned individuals. This right is reflected, *inter alia*, in the article 12 of the International Covenant on Economic, Social and Cultural Rights (ratified by your country on 24 June 1975), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

We also wish to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that, "States are under the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services..." (para.34). Furthermore, we would also like to refer to the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (principle 9).

We would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers". While Rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." With regard to general conditions in prisons, Rule 10 holds that, "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to

cubic content of air, minimum floor space, lighting, heating and ventilation”. According to Rule 20(1), “Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served”.

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 Pastor Behnam Irani, Pastor Saeed Abedini, Mr. Ghazi Heidari, Mr. Houtan Kian, Mr. Mohammad Reza Pourshajari, and Ayatollah Hossein Kazemeyni Boroujerdi in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim(s)?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide details and where available the results of the investigation carried out in relation to the alleged death in custody of Mr. Afshin Osanlou. Please indicate whether an autopsy has been carried out. If not, please explain why.
5. Please provide the full details of how the prosecution and imprisonment of Pastor Behnam Irani and Pastor Saeed Abedini are in compliance with international human rights, in particular with the freedom of religion and belief.
6. Please indicate whether compensation has been provided to the victim or the family of the victim.
7. Please provide information on the measures taken to ensure the safety of the aforementioned persons.
8. Please provide details of any measures taken to ensure adequate living conditions and health standards, access to health care and availability of essential medicines to alleged victims.
9. Please provide details of any actions taken to ensure the enjoyment of the right to physical and mental health of people detained in the prisons of the Islamic Republic of Iran.

10. Please provide legal basis upon which Mr. Mohammad Reza Pourshajari was sentenced to four years imprisonment and how that is compatible with the international norms and standards on the right to freedom of opinion and expression.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Pastor Behnam Irani, Pastor Saeed Abedini, Mr. Ghazi Heidari, Mr. Houtan Kian, Mr. Mohammad Reza Pourshajari, and Ayatollah Hossein Kazemeyni Boroujerdi are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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opinion and expression

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