

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 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

REFERENCE:
UA IRN 6/2017

2 February 2017

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 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 33/30, 28/9, 25/2, 33/9 and 28/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the serious health status of Mr. **Keywan Karimi**.

Mr. Karimi is a prominent Kurdish film maker who has been jailed since 23 November 2016. He was the subject of one previous urgent appeal sent by several Special Procedure mandate holders on 1 December 2016 (IRN 31/2016).

In our previous urgent appeal, we expressed concern that the arrest, detention and sentencing, including flogging, of Mr. Karimi was related to the peaceful exercise of his right to artistic expression and creativity, resulting in undue restrictions on the right of all persons in Iran to enjoy and have access to the arts. Concern was also expressed that Mr. Karimi was subjected to serious due process and fair trial violations, including prolonged solitary confinement.

We would like to thank the Government of your Excellency for the response sent to this communication. In its response, the Government indicates that Mr. Karimi was charged with insult against sanctities, sentenced to 6 years' imprisonment on the basis of article 513 of the Islamic Penal Code, payment of cash fine of 400,000 Tomans and 50 slashes as well as a payment of cash fine of 800,000 Tomans and 74 slashes for smoking opium.

The Government, however, did not respond to the allegations of fair trial violations, of prolonged solitary confinement and to concerns expressed about the growing number of reports concerning similar cases that seem to point towards a harder line of repression against artists and professionals from the field of culture in Iran.

According to new information received:

Mr. Karimi has been taken to the clinic in Tehran's Evin prison several times in January 2017 after coughing up blood. The clinic doctors have diagnosed him with bronchitis and an acute lung infection and have advised that he be urgently transferred to a hospital outside prison to receive adequate healthcare, including specialized medical treatment. However, Evin prison authorities have so far refused to authorize the transfer.

According to reports received, Mr. Karimi is currently only receiving sedatives. He also suffers from a pre-existing bone condition called aneurysmal bone cyst (blood-filled fibrous cysts that expand the bone and can cause pain, swelling and fractures), for which he needs specialized medical care. Around 10 years ago, he had surgery to remove a cyst in his shin bone, and his doctors have said that he requires ongoing monitoring in case further surgery is needed.

Serious concern is expressed about the physical and psychological integrity of Mr. Karimi. In this connection, we are particularly concerned that, despite the doctors' advice indicating that he should be urgently transferred to a hospital outside prison to receive specialized medical treatment, the prison authorities have refused to authorize such transfer. We reiterate our concern that this detention might be related to the artistic activities of Mr. Karimi.

In view of the urgency of the matter, we call upon your Excellency's Government as a matter of urgency to proceed with the immediate release of Mr. Karimi and to ensure that he receives the medical care he urgently requires.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Iran on 24 June 1975, 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 (General Comment 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), and draw the attention of the Government to the UN Standard Minimum Rules for the Treatment of Prisoners (reviewed on 5 November 2015 and renamed the "Mandela Rules") and in particular Rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

We would also like to take this opportunity to refer your Excellency's Government to article 502 of the Iranian Criminal Code, which states that "[i]f a prisoner

is suffering from physical or mental illness and his imprisonment would make his illness worse or delay his recovery, the judge can postpone the sentence being served until the prisoner regains his health after consultation with his physician.”

The above allegations also appear to be in contravention of his right to be free from torture or to cruel, inhuman or degrading treatment or punishment, as set out in article 7 of the ICCPR. We would also like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), which states that the use of prolonged solitary confinement in itself runs afoul of this absolute prohibition.

We would like also to reiterate our appeal to your Excellency's Government to take all necessary measures to guarantee the right of Mr. Karimi not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), the latter having being ratified by Iran on 24 June 1975.

We also reiterate our call on 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.”

Furthermore, we would like to refer your Excellency's Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have also undertaken to respect inter alia the freedom indispensable for creative activity. This 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. (A/HRC/23/34, paras. 85 and 89 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 and any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for the arrest and detention of Mr. Karimi.
3. Please provide information concerning the measures taken by your Excellency's Government to ensure the physical and psychological integrity of Mr. Karimi and please provide information regarding current policies and regulations in place to ensure that prisoners in similar situations have access to adequate healthcare, including specialized treatment;
4. Please provide additional information regarding the allegations made in our previous urgent appeal concerning the 12 days of solitary confinement;
5. Please provide information of any measures taken to ensure the due process and fair trial rights of Mr. Karimi;
6. In view of the numerous recommendations made by international human rights mechanisms concerning the inhuman and degrading practice of flogging, please inform of any measure taken, if any, to outlaw this practice;
7. Please provide information concerning the national legislation related to freedom of opinion and expression, including in the form of arts, and how these are in conformity with the international norms and standards mentioned above.

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.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

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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Vice Chair of the Working Group on Arbitrary Detention

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