

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 freedom of religion or belief; and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

REFERENCE:
UA IRN 25/2017

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Excellency,

We have the honour to address you in our capacity as the Working Group on Arbitrary Detention; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 33/30, 34/19, 33/9, 31/16, and 34/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Seyed Hossein Kazemeini Boroujerdi, an Iranian cleric, who has been placed under house arrest without a judicial order after his release from prison on temporary medical leave on 4 January 2017, and who is reportedly facing continued intimidation and death threats by Iranian authorities.**

Mr. Boroujerdi has been the subject of a number of previous communications, sent by several Special Procedure mandate holders on 2 October 2014 (see case IRN 19/2014), on 10 July 2013 (IRN 11/2013), on 5 May 2010 (IRN 14/2010), on 3 June 2009 (IRN 16/2009), on 30 August 2007 (IRN 41/2007), and on 20 December 2006 (IRN 52/2006). We thank your Excellency's Government for the reply received on 9 February 2015. Nevertheless, new information was received that raise serious concerns.

Mr. Boroujerdi, who has long advocated for secularism in Iran, was sentenced to 11 years in jail in 2007 on charges including "waging war against God" (Moharebeh) and acting against national security, and he was defrocked. While in detention, he reportedly suffered physical abuse, solitary confinement and other forms of repeated torture and ill-treatment. Currently, eleven months remain on his sentence.

According to the new information received:

Since Mr. Boroujerdi's release from prison on temporary medical leave on 4 January 2017, he has been effectively placed under house arrest, notably in the absence of a judicial order or oversight, and subject to intense pressure from the authorities. His home in Tehran is reportedly under 24 hour surveillance and he is

only allowed to leave for medical appointments and hospital visits. He is not permitted any visitors and he has reportedly been banned from writing and distributing publications, delivering speeches, continuing his teachings and organizing ideological or doctrinal meetings.

Mr. Boroujerdi has been summoned to the court twice since his temporary release. On 15 April 2017, he was warned by the Special Prosecutor for the Clergy against making any statements about the presidential elections or he would be returned to prison. On 8 August 2017, he was questioned about an encounter in which some followers and students visited him in the parking lot of a hospital where he had an appointment. He was told that he would not be allowed to return to the hospital again if he saw them. Officials from the court have reportedly paid frequent visits to his house, threatening to kill him if he speaks to the media.

Mr. Boroujerdi's health condition is in a poor state. Since his release, he has undergone tests and treatment, but continues to suffer from numerous health conditions, including heart disease, kidney problems, severe arthritis, lumbar herniated disc, and spinal stenosis. He has shortness of breath, numbness and tingling in his hands and feet, back and leg pain, and has difficulty walking and performing daily tasks. He collapses frequently. His poor health condition is reportedly the result of years in prison in unsanitary conditions with inadequate nutrition and lack of appropriate health care.

Prior to his medical leave, Mr. Boroujerdi had to give written undertakings to three separate security bodies that he would not talk to the media or participate in gatherings of more than 10 people. He was reportedly denied specialized medical care while in prison, despite being told prior to his release that he might have a herniated spinal disc and should have a magnetic resonance imaging (MRI) scan.

While we do not prejudge the accuracy of the information received, we would like to express concern about the placement under house arrest and the alleged continuous harassment of Mr. Boroujerdi, which seems to be related to the legitimate exercise of his right to freedom of religion or belief and freedom of opinion and expression. We are particularly concerned about the allegations of death threats by Iran authorities since his release from prison. In addition, we are seriously concerned about his poor health condition, which is reportedly the result of years in prison in unsanitary conditions with inadequate nutrition and lack of appropriate health care.

We would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would like also 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."

We would also like to refer to article 18 of the ICCPR, which 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."

With regard to the alleged threats and intimidations against Mr. Boroujerdi, paragraph 8(a) of the Human Rights Council resolution 16/23, recalls States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or torture."

With regard to the allegations concerning the conditions under which Mr. Boroujerdi is currently being held, we would like to remind your Excellency's Government that in accordance the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world."

With regards to Mr. Boroujerdi's poor health condition, we would like to refer your Excellency's Government to 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 of 1977. 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”.

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 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. Are the facts alleged in the summary of the case accurate?
2. Please provide information concerning the legal grounds for the continued detention of Mr. Boroujerdi under house arrest with 24 hour surveillance and how this is compatible with articles 9, 14, 18 and 19 of the ICCPR.
3. Please explain why Mr. Boroujerdi has not been allowed to receive visits, communicate or meet with others.
4. Please explain the legal basis on which Mr. Boroujerdi had to give written undertakings that he would not talk to the media or participate in gatherings of more than 10 people.

5. Please clarify the legal justification for banning Mr. Boroujerdi from writing and distributing publications, delivering speeches, continuing his teachings and organizing ideological or doctrinal meetings. How are these bans compatible with international legal standards that guarantee the right to freedom of religion or belief ?
6. Please indicate what measures have been taken to guarantee the physical and psychological integrity of Mr. Boroujerdi while being deprived of his liberty by State authorities, so as to ensure that he is protected against any form of abuse of power that may amount to torture or other cruel, inhumane, degrading treatment or punishment as defined in the Convention Against Torture.
7. Please provide details of any measures taken to ensure adequate living conditions and health standards, in particular access to adequate health care and availability of essential medicines to Mr. Boroujerdi.

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 prejudge 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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