

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

REFERENCE:
UA IRN 8/2019

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on minority issues and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/18, 33/9, 34/5, 35/11, 34/6 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the continued detention and lack of access to medical treatment of Mr. **Abbas Lisani** by the Iranian authorities.

Mr. Lisani is a poet, writer and Azerbaijani activist promoting the rights of the Azerbaijani Turkic minority in the Islamic Republic of Iran. Based in Ardabil Province, Mr. Lisani has been involved in peaceful advocacy on behalf of Azerbaijani Turks in the Islamic Republic of Iran for over a decade, including through gatherings at Babak Fort and publishing a calendar in the Azerbaijani Turkic language on International Mother Language Day. He has been the subject of two previous communications sent by Special Procedures dated 11 November 2006 (case no. IRN 47/2006) and 22 June 2006 (case no. IRN 28/2006).

According to new information received:

Mr. Abbas Lisani delivered a speech during the funeral of a famous artist and activist, Mr. Hesên Demirchi, on 25 June 2018. Mr. Lisani was thereafter arrested on 2 July 2018, taken to an undisclosed location in Tabriz and held in solitary confinement. Mr. Lisani initially remained in detention for just under two weeks before being released on a 500 million rial bail. He was charged with "promoting activities against the system in favour of groups opposing the system" under

Article 498 of the Islamic Penal Code and sentenced to 10 months of discretionary imprisonment (ta'ziri) at a court hearing in Tabriz on 18 September 2018.

Mr. Lisani was re-arrested on 5 January 2019. The authorities temporarily released him the next day. On 15 January 2019, he was leaving a court hearing in Tabriz when security officers arrested him and transferred him to prison in Ardabil. He was kept in solitary confinement from 15 January to 16 February 2019.

Mr. Lisani was not permitted to attend his appeal hearing in Branch 26 of the Appeals Court in Tabriz, West Azerbaijan on 13 April 2019 despite written notification from his lawyer on the need to ensure his client's presence at the hearing. On 1 May 2019, the Appeals Court upheld the 10-month sentence ruling that, "considering that the appellant has no effective objection for the sentence and no reason or evidence to stand up against the sentence, the sentence issued meets the Shariah and legal standards".

Further charges under Article 498 of the Islamic Penal Code against Mr. Lisani were brought on 26 February 2019, which included "promoting the armament of the West Azerbaijani people"; "threatening national security"; "forming an illegal group"; and "propaganda against the system". On 10 March 2019, Mr. Lisani was taken from Section 8 of the Central Prison in Ardebil to the Revolutionary Court for a second preliminary hearing. Mr. Lisani remained silent to protest his unlawful detention and charges, and did not respond to questioning.

On 8 June 2019, Mr. Lisani received a court order dated 4 May 2019 summoning him to trial on 8 June. He attended the hearing in the presence of his lawyer. Subsequent hearings took place on 15, 17 and 27 June 2019. On 8 July 2019, the Revolutionary Court of Ardabil sentenced Mr. Lisani to 8 years in prison and two years of exile to Yazd with his family for "organising a group with the intention of destabilising the security of the country". This was a new charge brought by the court. The other charges were dropped.

Mr. Lisani has gone on hunger strike on three occasions since his detention began on 2 July 2018 to protest his detention, solitary confinement and lack of fair trial guarantees. He most recently went on hunger strike from 27 May to 16 June 2019. In both cases, Mr. Lisani was only given the right to access his lawyer once his case was transferred to the trial courts. His lawyers did not have permission to attend the initial hearing nor were they present during the interrogations in prison.

Mr. Lisani suffers from acute liver problems and from slipped herniated disc pains that require continuing medical treatment which was allegedly cut off by prison authorities since Mr. Lisani's imprisonment in January 2019.

We are particularly concerned about Mr. Lisani's prolonged detention, the apparent criminalization of his right to freely and peacefully express his opinions and views, and about allegations of flagrant violations of due process in Mr. Lisani's case. We are further concerned about the discontinuation of Mr. Lisani's medical treatment for his chronic health issues and about the impact this is having on his physical and mental integrity.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the concerned individual is arbitrary or not, 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 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We call to the attention of your Excellency's Government the international standards regarding the protection of minorities, in particular article 27 of the International Covenant on Civil and Political Rights to which Iran is a party since 24 June 1975, which establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Furthermore, the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

With regards to the length of time spent in solitary confinement, we would like to recall the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the General Assembly of 5 August 2011 (A/66/268), in which solitary confinement, in accordance with the Istanbul Statement on

the Use and Effects of Solitary Confinement, is defined as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. It is observed that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged (in excess of 15 days under conditions of total or almost total isolation) or indefinite solitary confinement may never constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering.

In this context, rule 43 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela rules) state that: “In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement; (c) Placement of a prisoner in a dark or constantly lit cell; (d) Corporal punishment or the reduction of a prisoner’s diet or drinking water; (e) Collective punishment. 2. Instruments of restraint shall never be applied as a sanction for disciplinary offences. 3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Rule 44 of the Mandela rules states that, “For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Furthermore, Rule 45 states that, “Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner’s sentence. 2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.

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.”

We would also like to refer your Excellency’s Government to article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Iran on 24 June 1975, which establishes States’ 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 health services(General Comment 14, Para. 34). We would like to further refer to the UN Standard Minimum Rules for the Treatment of Prisoners (reviewed on 5 November 2015 and renamed the “Mandela Rules”) and in particular Rules 24 and 27(1). These establishes that healthcare for prisoners is a State responsibility; that prisoners should be ensured continuity of medical treatment and care, and that prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.

Finally, we would like to reiterate the enforceable right to compensation in accordance with article 9(5) of the International Covenant on Civil and Political Rights. In light of the immediate risk of harm to his health and physical integrity, we call upon Your Excellency’s Government as a matter of urgency to proceed with the immediate release of Mr. Lisani.

We would like to inform your Excellency’s Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention 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 urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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 our mandate 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 the details of the legal basis of Mr. Lisani’s continued imprisonment, especially its consistency with Iran’s obligations under international human rights law;
3. Please provide information on why Mr. Lisani was prevented from attending his appeal’s hearing;
4. Please provide information on why were his legal counsel prevented from attend the initial hearing and interrogations in prison;

5. Please provide information of any measures taken to ensure the physical and mental integrity of Mr. Lisani, including by ensuring his appropriate access to medical treatment for this chronic health conditions.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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.

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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Fernand de Varennes
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Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment