

Mandates of 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 and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

REFERENCE:
AL IRN 27/2021

5 October 2021

Excellency,

We have the honour to address you in our capacities as 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 and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 43/4, 42/16, 43/16 and 46/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest of human rights lawyers and human rights defenders, Mr. Arash Keykhosravi and Mr. Mostafa Nili, and civil rights activist, Mr. Mehdi Mahmoudian on 14 August 2021**, on the basis of national security and public order charges and their ongoing detention which appear to be directly linked to the exercise of their profession and in violation of international human rights law. The arrests allegedly took place as they were preparing to file a legal complaint against the authorities' mismanagement of COVID-19 pandemic.

Concerns at harassment and intimidation of lawyers have formed subject of several previous communications by Special Procedures, including most recently on 10 June 2021 (ref. no IRN 16/2021) and on 6 May 2021 (ref. no IRN 12/2021). We thank you for your Excellency's Government's response of 9 August 2021 and note the response to some of the questions. However, we regret that several of the questions raised in the communication were not addressed in the response, and we also regret not having received a response to the latter communication.

Mr. Arash Keykhosravi is a human rights lawyer and human rights defender. He has represented many human rights cases throughout his career. He was previously arrested in August 2018 and sentenced to six years' imprisonment in December 2018 by Branch 15 of the Revolutionary Court. He was subsequently acquitted by the Court of Appeals in January 2020.

Mr. Mostafa Nili is a human rights lawyer and human rights defender. He has represented student unionist, protesters and political prisoners. He was arrested in December 2009 after taking part in peaceful protests, and was convicted by Branch 15 of the Revolutionary Court to three years on the charge of "gathering and colluding to act against national security" and an additional six months' imprisonment on the charge of "propaganda against the state" for having taken part in the protests and publishing critical content against the use of lethal force against protesters. Branch 54 of the Court of Appeals confirmed his sentence and he served his sentence from 18 July 2011 to 18 November 2014.

Mr. **Mehdi Mahmoudian** is a human rights defender, civil rights activist, journalist and blogger. In 2009, he was sentenced to five years' imprisonment on charges of "assembly and collusion against the state" for his role in documenting complaints of abuse of detainees at the Kahrizak Detention Center. The detention center was subsequently closed in July 2009 after Mr. Mahmoudian and others documented pervasive abuse. Mr. Mahmoudian was arrested in September 2009 and was released from prison in September 2014 after serving the five-year prison sentence. Mr. Mahmoudian has another open case against him with a pending five-year prison sentence on charges of "propaganda against the state" and "assembly and collusion against the state" for participating in the commemoration of the victims of the downing of Ukraine International Airline PS752 flight by the Islamic Revolutionary Guards Corps and for signing a statement condemning the use of force against protests in November 2019 in Islamic Republic of Iran. Branch 36 of Tehran Court of Appeals confirmed the sentences in October 2020.

According to the information received:

On 14 August 2021, Mr. Arash Keykhosravi, Mr. Mostafa Nili and Mr. Mehdi Mahmoudian were arrested in Tehran and initially taken to an unknown location. Their phones and personal belongings were also confiscated without a warrant. They were subsequently brought to Evin prison where they were held in solitary confinement in ward 241 for one month. During this period, they were not granted access to their lawyer.

On 15 September, the three men were moved from solitary confinement and to the general ward in Evin prison.

Prior to their arrest, they were reportedly working towards initiating a lawsuit against the authorities for mismanagement of the COVID-19 pandemic and the vaccination policy, causing the deaths of a high number of people

On 31 August, the spokesperson for the Judiciary announced that the charges against the three men are "disruption of public order", and "acts against national security". No further details have been provided as to the factual basis or circumstances behind the charges. According to reports, in the week of 6 September, the authorities sent their indictment to Tehran's Revolution Court. The trial is reportedly scheduled for 13 October.

Without prejudging the accuracy of these allegations, we express concern at the arrest and arbitrary detention of lawyers Mr. Keykhosravi, Mr. Nili and civil rights activist and journalist Mr. Mahmoudian. We are seriously concerned at the use of broad and unspecific national security legislation which provide for harsh penalties, and which appear to be directly linked to the exercise of their profession and civil rights activities, in particular for what appears to be their intention of filing a lawsuit against the authorities for the handling of the COVID-19 pandemic. The use of criminal charges in the context of possible legal action into a public health issue raises additional concerns and is detrimental to the building of public trust in the Government's efforts to address the pandemic. We are furthermore concerned at the violation of their due process rights, including the absence of any justification for the charges brought against them, the initial incommunicado detention and their subsequent one-month solitary confinement. We are concerned that the charges

against them equate the exercise of freedom of opinion and expression, the legal profession and human rights work with serious criminal offences and characterize their work as illegal. It appears that the arrest and arbitrary detention of these lawyers and civil rights activist is illustrative of the shrinking space for civil society in the Islamic Republic of Iran.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the factual and legal basis for the arrest and detention of Mr. Arash Keykhosravi, Mr. Mostafa Nili and Mr. Mehdi Mahmoudian. In particular, please provide detailed information about the justification for bringing national security and public order charges against them.
3. Please provide information about the legal basis and justification for keeping the three individuals in solitary confinement for a month.
4. Please provide further information on the conditions of detention and the current health status of Mr. Keykhosravi, Mr. Nili and Mr. Mahmoudian, and the measures taken to ensure their physical and psychological integrity and respect for their health as detainees during the COVID-19 pandemic.
5. Please provide information about the legal process initiated against the three men and about why this process is initiated before the Revolution Court instead of ordinary courts.
6. Please indicate what measures have been taken to ensure that human rights defenders in Iran, including civil society, lawyers and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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.

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(s) responsible for 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.

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

Irene Khan

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

Tlaleng Mofokeng

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Javaid Rehman

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In this regard, we would like to refer your Excellency's Government to articles 9, 14, and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975, which guarantees that everyone has the right to liberty and security and anyone who is arrested shall be informed the reasons of the arrest and charges faced at the time of the arrest; the right to a fair hearing before a competent, independent and impartial tribunal established by law, which includes the right to have access to counsel and to be presumed innocent until proven guilty; and the right to freedom of opinion and expression.

We would like to draw your Excellency's particular attention to article 9 of the ICCPR which states that "everyone has the right to liberty and security. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." With regard to the arbitrary detention and continued imprisonment of Mr. Keykhosravi, Mr. Nili and Mr. Mahmoudian we refer to the above mentioned articles, underlining that all individuals should be informed of the reason for their detention and allowed the right to access a lawyer and to a fair, public and impartial trial.

We would furthermore like to recall the prohibition of incommunicado detention as a priori violating article 9 (4) of the Covenant. Enforced disappearances violate numerous substantive and procedural provisions of the Covenant and constitute a particularly aggravated form of arbitrary detention. We also recall that Human Rights Committee's General Comment no. 35 affirms that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21) and freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17).

With regard to the alleged violations of due process guarantees, we would like to recall article 14 of the ICCPR, which provides inter alia for the principle of equality before competent, independent and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defense, and the right of accused persons to communicate with counsel of their own choosing.

We would also like to remind your Excellency's Government of its obligations under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Islamic Republic of Iran on 24 June 1975, which guarantees all individuals, including prisoners and detainees, the right to the highest attainable standard of physical and mental health. 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). We also recall that States have a duty to protect the health of prisoners and detainees, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, (reviewed on 17 December 2015 and renamed the “Mandela Rules”), in particular Rule 24 that establishes that the provision of health care for prisoners is a State responsibility and rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases.

We would like to draw the attention of your Excellency’s Government to the Human Rights Council resolution 12/16, which calls on States to recognise the right to freedom of opinion and expression as an essential human right. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

Furthermore, 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:

- article 5 points a), b) which provide for the right to meet or assemble peacefully; to form, join and participate in non-governmental organizations, associations or groups;
- article 6 point a) which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provide for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.