

Mandates of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 rights to freedom of peaceful assembly and of association; 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 torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL IRN 1/2022
(Please use this reference in your reply)

2 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 rights to freedom of peaceful assembly and of association; 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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 46/18, 42/22, 44/5, 46/9, 43/4, 41/12, 42/16, 43/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, detention, imprisonment and critical health condition while in state custody of Mr. **Baktash Abtin (Mehdi Kazemi)**, a poet and human rights defender, who died in custody after contracting COVID-19 in prison.

Concerns at the outbreak of COVID-19 in the Iranian prison system and its impact on the situation of certain categories of detainees excluded from COVID-19 leave schemes have been the subject of previous communications sent by Special Procedures, including on 2 April 2020 (ref. number IRN 6/2020). We regret not having received a response to the latter communication. Concerns were also raised in the reports by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, including most recently in the report to the General Assembly in 2021 (A/76/160). Concerns at the denial of appropriate and timely medical attention to individuals in detention resulting in their death have been the subject of a communication sent by Special Procedure on 22 February 2021 (ref. number IRN 6/2021). We thank your Excellency's Government for the response dated 26 April 2021, but remain concerned in light of some unanswered concerns and the recent developments.

According to the information received:

Mr. Baktash Abtin (Mehdi Kazemi) was a human rights defender, celebrated poet, film director and a member of the Iranian Writers' Association (IWA).

On 21 April 2015, five agents from the Ministry of Intelligence searched Mr. Abtin's house by order of Branch 12 of the Culture and Media Prosecutor's Office. The agents confiscated more than a thousand films and family photos, as well as Mr. Abtin's mobile phone, laptop, and documents from the IWA. Mr. Abtin was summoned to the Ministry of Intelligence and subjected to interrogations for four days about his poems and activities at the IWA.

On 2 December 2016, Mr. Abtin was arrested along with other individuals during a peaceful assembly memorializing the anniversary of the killing of members of the IWA by state agents in the 1990s, in a series of murders by what the Government later called "rogue elements" in the Ministry of Intelligence. Mr. Abtin was released on 4 December 2016. Subsequently, Karaj Revolution Court opened a case against Mr. Abtin on the charge of "propaganda against the State", after he published a photo of a member of the IWA who was beaten by security forces during the above-mentioned anniversary.

Mr. Abtin was summoned to appear for a hearing before Branch 28 of Tehran Revolution Court on 22 January 2019 presided by Judge [REDACTED]. He was charged with "propaganda against the State" and "assembly and collusion to act against national security". Judge [REDACTED] denied Mr. Abtin's request to be represented by his lawyer, stating that he was capable of defending himself. He was subsequently arrested, after failing to meet the high amount of bail of one billion rial (approximately \$240,000 USD), set by Judge [REDACTED]. Mr. Abtin, was released on 28 January 2019 after posting the bail.

On 15 May 2019, Branch 28 of Tehran Revolution Court sentenced Mr. Abtin to five years' imprisonment on charges of "assembly and collusion to act against national security" and one year for "propaganda against the state". In December 2019, Branch 36 of the Court of Appeals of Tehran Province, presided over by Judge Ahmad Zargar, upheld the sentence. The convictions and sentences were in connection with his advocacy for freedom of expression and opposing the censorship of art and literature and his activities at the Iranian Writers' Association. The statements published by the IWA and the holding of memorial ceremonies for murdered members of the IWA constituted the basis for the charge of "assembly and collusion to act against national security".

On 26 September 2020, Mr. Abtin started to serve his sentence in Evin prison.

Mr. Abtin contracted COVID-19 twice in Evin prison. He first showed COVID-19 symptoms in April 2021. On 4 April 2021, Mr. Abtin was transferred to the clinic in Evin prison, as he suffered from what appeared to be COVID-19 related pneumonia. On 10 April 2021, the prison authorities ordered Mr. Abtin to be transferred back to the public ward in Evin prison. Mr. Abtin objected to this decision in fear of placing other inmates at risk of contracting COVID-19. Mr. Abtin continued to self-quarantine in Evin prison's Husseinieh, a site within

the prison for religious ceremonies. Requests from his lawyer and family for medical parole were unanswered.

On 29 June 2021, Mr. Abtin was summoned for an additional investigation about statements he had made related to medical neglect in Evin prison, including the spread of COVID-19.

On 18 July 2021, after experiencing severe pain Mr. Abtin was transferred to a hospital under the surveillance of prison authorities. A doctor had reportedly identified a mass in his body four months earlier, but he was then denied hospital care. During the hospitalization, Mr. Abtin was shackled to his bed.

In September 2021, Mr. Abtin received five days furlough to visit a severely ill family member.

In December 2021, Mr. Abtin showed COVID-19 symptoms for the second time in prison. Mr. Abtin was denied immediate medical care for four days. On 8 December 2021, he was transferred in shackles to a hospital overnight without notifying his family. His family was kept unaware of his medical condition for two days after his transfer to the hospital. After a further significant deterioration in his condition, he was granted medical leave to be transferred to a hospital outside of the prison system, where his family could be consulted about his treatment. Mr. Abtin was placed on a ventilator due to the severity of his COVID-19 symptoms. On 1 January 2022, Mr. Abtin was put in an induced coma. On 8 January 2022, Mr. Abtin passed away in hospital.

On 8 January 2022, the Prisons Organization released a statement regarding the death of Mr. Abtin. The statement says; “Prisoner Baktash Abtin, who was serving a five-year sentence in Evin Detention Center for propaganda against the national security of the country, referred to the medical center with symptoms of sinusitis on 5 December. He received the relevant medication as prescribed by the doctor. The medications continued after his following visits to the health center on 6 and 7 December. He was also tested for COVID-19, which was negative. Subsequently, due to further symptoms, he was transferred to Taleghani Hospital at the discretion of the doctor of the detention center for further diagnosis and treatment of COVID-19. After two days of hospitalization, he was transferred to a private hospital at the discretion of his family.”

Without prejudging the accuracy of the received information, we express grave concern at the death of human rights defender and poet Mr. Baktash Abtin while in state custody. We are gravely concerned that his death followed a prolonged period during which Mr. Abtin was in a critical health condition, including due to having contracted COVID-19, during which he was denied access to appropriate and timely medical care. We also express concern at the inhuman treatment of Mr. Abtin through keeping him in shackles during medical assessments, and at the authorities’ contradictory statement subsequent to his death. We are furthermore concerned at what appears to be a pattern of denial of appropriate and timely access to medical care of certain individuals in detention in Islamic Republic of Iran.

In addition, we raise serious concern at the imprisonment of Mr. Abtin in the first place, as the overbroad and vague legal basis for which Mr. Abtin was arrested, convicted and imprisoned are incompatible with the permissible restrictions for the exercise of the rights to freedom of opinion, expression, association and peaceful assembly and to take part in cultural life under international human rights law. In particular, we note that his conviction relates to the legitimate exercise of his right to freedom of opinion and expression and to peacefully participate in a cultural event memorializing past violations of human rights. We also express serious concern at the lack of fair trial and due process, including the denial of legal representation. We are concerned that this case, through the multiple violations that have occurred at all stages, demonstrates the harassment and persecution that civil society actors in the Islamic Republic of Iran are subjected to, in particular those deemed to have dissenting, independent or critical views. We would like to remind your Excellency's Government that the criminalization of "propaganda against the State" is incompatible with international human rights law. We call upon your Excellency's Government to bring your national legislation into line with international human rights law.

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 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the factual and legal basis for the repeated arrest and conviction of Mr. Abtin, and information as to how his arrests and detention was compatible with Islamic Republic of Iran's international human rights obligations. In particular, please provide detailed information about the justification for bringing national security charges against him.
3. Please provide information about how the charge of "assembly and collusion to act against national security" is compatible with international human rights law, and about measures taken to ensure that such charges are not brought against the exercise of the rights to freedom of opinion and expression, association and assembly or to take part in cultural life, in particular against those that may voice dissenting or critical opinions.
4. Please provide information about the legal basis upon which Mr. Abtin was denied legal representation. Please provide information about how this denial and the trial against him is compatible with international human rights standards for fair trial.
5. Please provide information on any measures taken to ensure the physical and psychological integrity of Mr. Abtin, including measures to ensure

his access to appropriate medical care and treatment following contracting COVID-19 and as advised by relevant health care professionals.

6. Please provide information about the justification for continuing the detention of Mr. Abtin after contracting COVID-19.
7. Please provide information about any investigation conducted into the death of Mr. Abtin. Please include information on their current status, the specific investigative steps taken and on compliance with international standards including the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
8. Please indicate what measures your Excellency's Government has adopted or is planning to adopt in order to ensure that human rights defenders are able to carry out their legitimate human rights work free of repression or threat.

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.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

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.

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

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

Annex

Reference to international human rights law

The above allegations appear to be in contravention of provisions of international law, in particular the right to life, to not be deprived arbitrarily of liberty, to fair proceedings before an independent and impartial tribunal, to freedom of expression, inhuman or degrading treatment and to non-discrimination in accordance with articles 6, 9, 14, 19 and 26 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Islamic Republic of Iran on 24 June 1975.

In this context, we would like to refer to article 9 of the UDHR, prohibiting arbitration detentions, and article 9 of the ICCPR, enshrining the right to liberty and security of person. The latter establishes, in particular, that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. Additionally, article 14 of the ICCPR guarantees individuals' right to a fair trial and public hearing by a competent, independent and impartial tribunal established by law. Article 14(3) specifically protects one's right to be informed promptly and in detail of the charges against them, the right to have adequate time and facilities for the preparation of their defence, and the right to communicate with counsel of their choosing. The right to have assistance of a legal counsel and to communicate and consult with such counsel is also enshrined in Principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("the Body of Principles"), and Principles 7 and 8 of the Basic Principles on the Role of Lawyers.

In addition, we would like to highlight Articles 19 and 20 of the ICCPR which guarantees the right to freedom of opinion and expression and of peaceful assembly. Under Article 19, "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." As interpreted by the Human Rights Committee, such information and ideas include, amongst others, political discourse, commentary on one's own and public affairs, cultural and artistic expression, and discussion on human rights (CCPR/C/GC/34, para 11).

Restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR. They must be provided by law, and be necessary to achieve a legitimate purpose, namely the protection of national security, public order, public health or morals. The restrictions must be proportional in the sense that they must be appropriate to achieve their protective function; and the restriction must be provided by law. The Human Rights Committee has highlighted that provisions relating to national security, must be crafted and applied in a manner that confirms to the strict requirements of paragraph 3. We reiterate that the legal basis of "propaganda against the State", and arrests and detention related to the exercise of freedom of expression are in clear violation of the conditions for permissible restrictions to that right under Article 19(3) of the ICCPR.

As indicated by the Human Rights Committee, attacks against individuals for exercising their right to freedom of expression, including through arbitrary detention, torture, inhuman or degrading treatment or punishment, and enforced disappearance is

incompatible with the ICCPR (see CCPR/C/GC/34 para. 23).). Additionally, as per the jurisprudence of the Working Group on Arbitrary Detention, any detention due to the peaceful exercise of rights is arbitrary.

Furthermore, we would like to refer your Excellency's Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Islamic Republic of Iran on 24 June 1975, 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. The Special Rapporteur in the field of cultural rights stresses that all persons enjoy the right to freedom of artistic expression and creativity, which 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. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 85 and 89 d). Furthermore, we would like to draw the attention of your Excellency's Government to the report of the Special Rapporteur in the field of cultural rights on memorialization processes (A/HRC/25/49). In it, the Special Rapporteur reminded that memorialization, as a contribution to guarantees of non-recurrence, demands that the past inform the present and facilitate the understanding of contemporary issues relating to democracy, human rights and equality. Therefore, memorial practices should foster critical thought, analytic learning and open spaces for debate. States and other stakeholders should neither engage in nor support policies of denial that prevent the construction of memorialization processes (§ 101 and 105).

We would also like to remind your Excellency's Government of its obligations under Article 12 of of the ICESCR 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.

States have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health. A heightened duty to protect the right to life also applies to individuals quartered in

liberty-restricting State-run facilities, such as mental health facilities (General Comment 36).

Furthermore, we 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.