

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 the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: UA IRN 12/2023

(Please use this reference in your reply)

4 July 2023

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 Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 51/8, 52/9, 49/24 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Manouchehr Bakhtiyari**, the father of Pouya Bakhtiyari, a protestor killed by a shot to his head by security forces during the November 2019 protests in the Islamic Republic of Iran. Mr. Bakhtiyari has publicly called for accountability for his son's death, including in an open letter addressed to the UN and to OHCHR. Mr. Bakhtiyari was convicted of national security charges by the Islamic Revolutionary Court and sentenced to three years and six months in prison and two years and six months exile outside the city of Tehran. Disturbing reports indicate that he is in very poor physical condition due to injuries inflicted during interrogation and torture. In addition, Mr. Bakhtiyari has developed a hernia as a result of prolonged beatings and torture.

Concerns on Mr. Bakhtiyari were raised in the report of the Secretary-General on "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights" (reference HRC 46/50 and HRC 49/73). In addition, the arrest and imprisonment of Mr. Bakhtiyari was addressed in the report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (reference [A/HRC/49/75](#), para. 64).

According to the information received:

Mr. Bakhtiyari has been arrested several times by the Iranian authorities. The first time he was arrested in January, second time in July 2020, where he was transferred to a prison in Bandar Abbas and subsequent release on 6 December 2020. Then Mr. Bakhtiyari was arrested again on 29 April 2021. Reportedly, Mr. Bakhtiyari and his wife (Ms. Sara Abbasi) were beaten violently by agents from the Ministry of Intelligence in their home during the arrest. Agents also pushed their newborn baby to the floor, while they beat Ms. Abbasi's face and head against the wooden head of the bed.

It is reported that during the second arrest, the security agents beat Mr. Bakhtiyari's face to the ground and turned his fingers backwards until they broke. He was blindfolded and taken to a detention centre. He sustained serious injuries during his arrest and during interrogation where he was subjected to physical and mental torture. He was detained incommunicado for 77 days. He was later allowed to receive visits every one other week, but visits are limited to his mother and his wife.

Also, it is reported that Mr. Bakhtiyari is prohibited from "political speech" on the phone and with other inmates. His phone calls take place in the presence of prison officials. Moreover, Mr. Bakhtiyari was not able to choose his own lawyer. His first engaged lawyer who took up his case, the authorities rejected his permission to work on the case. The same happened with the second lawyer of his own choice. A similar rejection of a lawyer of his own choice happened to the third lawyer engaged by Mr. Bakhtiyari. The fourth lawyer chosen by the family has been allowed to take on the case.

According to information received, the authorities have pressured their landlord to evict them from their rented apartment. After this, Ms. Abbasi went to live with her retired father who has to provide for the family with his limited pension.

Mr. Bakhtiyari has filed requests for temporary release on five occasions but has not received a response to any of his requests. Reportedly, Mr. Bakhtiyari's health has seriously deteriorated and requires medical assistance. However, the prison authorities denied him medical furlough. He warned several times in his voice message from prison, released on June 18, 2022, "My life is in danger!" In addition, it is reported that despite two medical assessments from two coroner offices prescribing hernia and prostate surgery and his fast-deteriorating health conditions, he is still being arbitrarily denied a medical furlough.

On 30 July 2022, the 9th chamber of the Supreme Court revoked Mr. Bakhtiyari conviction and sentence by the 1st chamber of Karaj's Revolutionary Court (on 14 July 2021) for national security related offences and reverted his case for retrial by a different chamber of the Revolutionary Court. This has yet to take place. In connection with Mr. Bakhtiyari's charge of "insulting the Supreme Leader", on 30 April 2023, the 1st chamber of the Qazvin Revolutionary Court has reverted the case back to the Prosecution Office for further evidence.

Without prejudging the accuracy of the received information, we express grave concern for Mr. Bakhtiyari health and alleged arbitrary arrest that may have been carried out solely on the basis of the peaceful exercise of his rights to freedom of expression. We are also concerned by the reports in this case that the judiciary of the Islamic Republic of Iran failed to properly take into account or investigate allegations of torture and forced confessions under duress, the evidence and defences that raise serious doubt as to the guilt of the individual for the alleged crime, and the serious flaws in the investigations of these criminal allegations. The alleged violations of due

process and fair trial guarantees, including the denial of a lawyer at all stages of these criminal proceedings.

We would like to further refer your Excellency's Government to articles 12 and 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 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 (Committee on Economic, Social and Cultural Rights (CESCR), general comment no. 14, para. 34). In addition, we would refer to 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).

Additionally, we would like to refer to the Mandela Rules, adopted unanimously by the UN General Assembly (A/RES/70/175), which recognize the responsibility of States to provide health care for prisoners, free of charge without discrimination (rule 24), paying special attention to those with special healthcare needs or with health issues that hamper their rehabilitation (rule 25) and indicate that prisoners requiring specialized treatment shall be transferred to specialized institutions or to civil hospitals (rule 27). We wish to also recall that rule 46 stresses that health-care personnel shall "pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff" and that "[h]ealth-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons."

Moreover, we wish to refer to the report of the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which he makes reference to the fact that "[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life" and that "[v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty". He also stresses that "for the right to health to be enjoyed in detention centres, health-care facilities, goods and services must be available, accessible, acceptable and of good quality". In addition, the Special Rapporteur urges States to "[f]ully abide by, and implement, the Nelson Mandela Rules, in particular as regards the provision of health care in prisons".

We also wish to bring to your Excellency's Government attention general comment no. 14 adopted by CESCR, which interprets the right to health as "an inclusive with extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food [and] nutrition" among others

(CESCR, general comment no. 14, para. 11).

We would also like to remind your Excellency's Government that article 9 of the ICCPR guarantees the right not to be subjected to arbitrary arrest or detention, and that the prohibition of arbitrary detention is absolute. We also recall that the arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including the right to freedom of expression and opinion (art. 19), the right of peaceful assembly (art. 20), and the right to freedom of association (art. 21) is arbitrary (see CCPR/C/GC/35, para. 17 and the jurisprudence of the Working Group on Arbitrary Detention). In addition, as reiterated by the Working Group on Arbitrary Detention, a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination, including discrimination based on gender or political or other opinion.

We would like to remind your Excellency's Government that restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. The Human rights Committee held in CCPR/C/GC/34 that an attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19.

With regard to the alleged violations of due process and of fair trial 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 defence, the right of accused persons to communicate with counsel of their own choosing, and the right not to incriminate oneself. We also refer to General Comment No. 32 (2007) by the Human Rights Committee (CCPR/C/GC/32), the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37) and the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990, which provide for the right to legal assistance, and for the prompt access and consultation with counsel without intimidation, hindrance, harassment or improper interference.

Article 7 of the ICCPR prohibits torture and other cruel, inhuman or degrading treatment or punishment. Paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading

treatment or punishment.” We would also like to remind your Excellency’s Government that the absolute prohibition of torture is an international norm of jus cogens that is not subject to derogation under any circumstances, as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

In view of the urgency of the matter, we call upon your Excellency’s Government to immediately provide medical access to Mr. Bakhtiyari. We further urge your Excellency’s Government to ensure that he is re-tried in compliance with international human rights law and standards.

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 Mr. Bakhtiyari in compliance with international instruments.

We also call on your Excellency’s Government to immediately provide Mr. Bakhtiyari with access to adequate medical attention, to adopt adequate measures to prevent any irreparable harm to his life and personal integrity, and to allow his lawyer to regularly visit him.

Lastly, we also reiterate the long standing call on the Government of the Islamic Republic of Iran to adopt all necessary measures to prevent any irreparable harm to the life and personal integrity of persons deprived of their liberty.

In view of the urgency of the matter, we would appreciate a response regarding the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of the abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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 factual and legal basis for Mr. Bakhtiyari arrests and detention and how this is compatible with Iran’s obligations under international law as stated, including the international norms and standards on the right to freedom of opinion and expression.

3. Please provide detailed information on elements relating to the state of health of Mr. Bakhtiyari and the measures taken to provide him with medical assistance.
4. Please also provide information as to what measures have been taken to ensure that the rights of Mr. Bakhtiyari to due process and a fair trial have been respected, and how such measures comply with the obligations of your Excellency's Government under international human rights law.
5. Please detail the investigations undertaken by the authorities into the allegations of the use of torture and other forms of cruel, inhuman and degrading treatment during the criminal investigations into this case. If such investigations were conducted, please provide information as to their findings and the basis for the findings. If no investigations have been undertaken, please explain why.
6. Please provide detailed information on the measures which have been taken, or which are foreseen, to ensure full and impartial investigations, independent medical examinations, and judicial or other inquiries in relation to the allegations of arbitrary arrest and enforced disappearance, torture and other cruel, inhuman, or degrading treatment or punishment. If measures have been undertaken, please make available the results of the investigations. If no such measure has been taken, please explain how this is compatible with the international human rights obligations of Iran. Please also provide information on the measures that have been taken to protect complainants from any form of intimidation or harassment or other violations for having made such allegations.

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.

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 the case 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 allegation letter and the regular procedure.

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 to clarify the issue/s in question.

We would appreciate receiving a response as soon as possible and within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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