

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 214 (3-3-16) Iran (2011-16) G/SO 214 (33-27) G/SO 214 (53-24)
IRN 9/2012

4 May 2012

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 17/2, 16/9, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received indicating that execution in Iran of Mr. Hamid Ghassemi-Shall, a dual national of Iran and Canada, may be imminent.

According to the information received:

Mr. Hamid Ghassemi-Shall was arrested on 24 May 2008 while visiting his mother in Iran. He was subsequently placed in solitary confinement in Evin prison for a period of 18 months without any legal representation. While in pretrial detention, he was allegedly forced to confess to the charges brought against him.

In November 2009, Mr. Hamid Ghassemi-Shall was sentenced to death following an allegedly unfair trial by a Revolutionary Court. Pursuant to article 186 of the Penal Code of Iran, he was convicted of enmity against God (moharebeh) relating to alleged espionage and cooperation with the banned People's Mojahedin Organization of Iran (PMOI). The evidence used as a basis for his conviction consisted of a confession made under duress that he had obtained confidential military information from his brother who had worked as a mechanical engineer in the Iranian army as well as an e-mail the authorities alleged he had sent to his

brother. Mr. Hamid Ghassemi-Shall denied sending any such e-mail. On 7 November 2009, the Supreme Court upheld his sentence to death.

On 15 April 2012, Mr. Hamid Ghassemi-Shall was allowed a visit by members of his family. The meeting took place at the office of a judge from the Office for the Implementation of Sentences. The judge was present during the meeting and told the family that Mr. Hamid Ghassemi-Shall's death sentence was on his desk and that he was awaiting orders from Tehran Province's Chief Prosecutor to carry out his execution.

We are concerned that the execution of Mr. Hamid Ghassemi-Shall may be carried out, following a trial conducted in violation of procedural safeguards and based on evidence obtained under duress. Therefore, we would like to seek clarification of the circumstances regarding his case.

In light of the information conveyed to us, we wish to draw to the attention of your Excellency's Government the international norms and standards applicable to the case of Mr. Hamid Ghassemi-Shall. In a number of communications, we have pointed out to issues of concern regarding the sentencing to death on charges of *moharebeh*.

Without in any way prejudging the accuracy of the allegations summarized above, we would like to reiterate that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes" in accordance with Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a party. The United Nations Human Rights Committee has consistently interpreted Article 6(2) as excluding the imposition of the death penalty for offences that do not result in the loss of life. Similar conclusion has been reached in a report of the mandate on extrajudicial, arbitrary or summary executions to the Human Rights Council following a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the "most serious crimes" provision (A/HRC/4/20, para. 53). Offences such as *moharebeh* do not meet the threshold of "most serious crimes".

Moreover, regarding the allegations that Mr. Hamid Ghassemi-Shall was sentenced to death on the basis of evidence obtained under duress and without having been able to benefit from legal representation or assistance throughout the 18 months spent in pretrial detention, we would like to remind your Excellency's Government of the obligation of all States to ensure that the individuals' right to a fair trial and the guarantees thereof are respected in accordance with article 14 of the ICCPR and Safeguard 4 of the Safeguards guaranteeing protection of the rights of those facing the death penalty. The latter provision provides that "[c]apital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." and under article 14(g) of the ICCPR, no one shall be compelled to testify against himself or to confess guilt.

In this respect, we further wish to underline that “[w]hen prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, ... they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice, in accordance with the Guidelines on the Role of Prosecutors (guideline 16), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

A fundamental guarantee attached to the right to a fair trial further includes the defendant's right to have adequate time and facilities for the preparation of his legal defence, to communicate with a lawyer of his own choosing and to have access to legal assistance and representation during judicial proceedings as required under Articles 14(b) and (d) of the ICCPR. Such right applies to all stages of criminal proceedings in accordance with the Basic Principles on the Role of Lawyers, principle 1, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and is critical in death penalty cases.

Furthermore, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights (UDHR), the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would like to draw your Excellency's Government's attention to paragraph 6 of General Comment 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights, (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged” (adopted by the General Assembly by resolution 45/111 of 14 December 1990).

We would like to draw your Excellency's Government's attention to paragraph 7 (b) of Resolution 8/8 of the Human Rights Council, which stated 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 to torture;”

We therefore urge your Excellency's Government to take immediate measures not to proceed with the execution of Mr. Hamid Ghassemi-Shall, which on the basis of the information communicated to us, manifestly violates international human rights law and specific international obligations incumbent on the Islamic Republic of Iran. We would respectfully appeal to your Excellency's Government to take all necessary measures to commute the death sentence against Mr. Hamid Ghassemi-Shall. In the event that your investigations corroborate the above allegations, the accountability of any person responsible for the violations should be ensured.

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate the specific conduct Mr. Hamid Ghassemi-Shall has been found guilty of and the legal basis of the death sentence imposed against him. Please explain how this is compatible with international norms, and in particular with the "most serious crimes" requirement set forth in Article 6(2) of the ICCPR.
3. Please provide detailed information on each stage of judicial proceedings and indicate how they comply with the requirement and guarantees of a fair trial, as enshrined *inter alia* in Article 14 of the ICCPR and Safeguard 4 of the Safeguards guaranteeing protection of the rights of those facing the death penalty.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
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