

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

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

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

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 218/2 G/SO 214 (56-23) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (33-27)
IRN 10/2011

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/5, 14/11, 17/2, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr. X, a Protestant pastor living in the Islamic Republic of Iran. His case was already subject of an urgent appeal we sent jointly on 30 December 2010 (A/HRC/17/28/Add.1, pp. 181-183), to which we have not yet received a reply from your Excellency's Government.

According to the new information received;

Mr. X, a 33-year-old member of the Church of Iran ministry and pastor of an approximately 400-person congregation in the city of Rasht, has been in prison in Lakan since 12 October 2009. On 21 and 22 September 2010, Mr. X was put on trial, found guilty of apostasy and verbally given a death sentence. The written verdict was delivered on 13 November 2010 by the First Court of the Revolutionary Tribunal.

Following Mr. X's appeal, the Supreme Court of the Islamic Republic of Iran reportedly upheld the death sentence in a written verdict of 12 June 2011. The written verdict states that unless the accused decides to recant, i.e. to renounce his Christianity, Mr. X will be executed by hanging. The Supreme Court also asked

the court in Rasht, which issued the original death sentence, to re-examine some procedural flaws in the case.

The written verdict of 12 June 2011 was only made available to Mr. X's lawyer, Mr. Y, in July 2011. Furthermore, Mr. Y was reportedly sentenced on 3 July 2011 by a court in Teheran to nine years imprisonment and a ten-year ban on practicing law or teaching at university allegedly for "actions and propaganda against the Islamic regime". It is reported that Mr. Y is currently appealing this sentence.

Without expressing an opinion on the facts of the case and on whether the detention of Mr. X 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).

We also wish to draw to the attention of your Excellency's Government that carrying out the execution of Mr. X would be incompatible with the international obligations that the Islamic Republic of Iran has undertaken under various instruments. Article 6(2) of the ICCPR, which the Islamic Republic of Iran ratified on 24 June 1975, stipulates that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide." The death penalty is limited to the "most serious crimes". As observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, para. 8).

On 21 December 2010, the General Assembly adopted resolution 65/226 on the situation of human rights in the Islamic Republic of Iran, in which the Assembly expressed deep concern at serious ongoing and recurring human rights violations in the Islamic Republic of Iran relating to, *inter alia*: "[...] (d) The imposition of the death penalty for crimes that lack a precise and explicit definition, [...] or for crimes that do not qualify as the most serious crimes, in violation of international law" (resolution 65/226, para. 2)

Moreover, we would like to appeal to your Excellency's Government to ensure that Mr. X enjoy the right to freedom of religion or belief in accordance with article 18 of

the UDHR and article 18 of the ICCPR. Furthermore, the General Assembly, in its resolution 65/211, “urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end: (a) To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practise freely one’s religion, including the right to change one’s religion or belief, is violated; (b) To ensure that existing legislation is not implemented in a discriminatory way or does not result in discrimination based on religion or belief, and that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights” (resolution 65/211, para. 12).

We are further concerned that the prosecution of Mr. Y, his sentence to nine years’ imprisonment and to a ten-year ban on practising law on the charges of “actions and propaganda against the Islamic regime” may be related to his work as defence lawyer of Mr. Nadarkhan. In this regard, we wish to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers (adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990), in particular to principles 16 and 18, which respectively stipulates that:- “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.” and that “Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency’s attention to the right to physical and mental integrity of Mr. X and Mr. Y.

In this connection, 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the

legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. X and Mr. Y are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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. X and Mr. Y in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. X and Mr. Y?

3. Please specify how the imposition of the death sentence upon Mr. X is compatible with the requirement contained in article 6(2) of the ICCPR.

4. Please indicate the specific conduct on the basis of which Mr. Y has been sentenced on 3 July 2011, and how this judgment is compatible with international norms, specifically with international norms and standards as contained, *inter alia*, in the ICCPR and the Basic Principles on the Role of Lawyers.

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.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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