



PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; 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

SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)  
IRN 35/2010

23 December 2010

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; 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 General Assembly resolution 60/251 and to Human Rights Council resolutions 6/4, 8/6, 7/8, and 8/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the situation of Ms. **Nasrin Sotoudeh**, a lawyer and prominent human rights activist. Ms. Nasrin has represented clients ranging from juvenile offenders facing the death penalty to Nobel Peace Laureate Ms. Shirin Ebadi. She has also spoken openly about alleged shortcomings in the rule of law and administration of justice in the Islamic Republic of Iran. Ms. Nasrin Sotoudeh was the subject of an urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, 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 on 19 November 2010. No response from your Excellency's Government has been received yet.

According to new information:

On 4 December 2010, Ms. Sotoudeh, who remains held in solitary confinement since her arrest on 4 September 2010, resumed her dry hunger strike, refusing to absorb any food or water.

On 17 December 2010, Ms. Sotoudeh was reportedly transferred to the clinic of Evin prison in a critical condition.

Serious concern is reiterated for Ms. Sotoudeh's physical and psychological integrity while in detention. Further concern is reiterated that the arrest and detention of Ms. Sotoudeh may be related to her legitimate activities in defence of human rights.

Without expressing at this stage an opinion on the facts of the case and on whether Ms. Sotoudeh's detention is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee her right not to be deprived arbitrarily of her 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 and articles 9 and 14 of the International Covenant on Civil and Political Rights.

We should further like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Ms. Nasrin Sotoudeh. 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 and the International Covenant on Civil and Political Rights.

In this connection and with regard to the allegations, according to which Ms. Nasrin Sotoudeh remains held in solitary confinement since her arrest on 4 September 2010, we would also 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, I (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).

Furthermore, with regard to the allegations of transferring Ms. Sotoudeh to the clinic of Evin prison in a critical condition, we would like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." (Approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

With regard to the allegation that Ms. Sotoudeh's arrest and detention is related to the discharge of her functions as a human rights lawyer, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, 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, in particular to:

- Principle 16: Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; 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;

- Principle 17: Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities;

- Principle 18: Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions;

- Principle 20: Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

With a view to strengthening safeguards from unlawful interference and for the security of lawyers, the mandate of the Special Rapporteur on the independence of judges and lawyers has further recommended that "(a) [a]uthorities refrain from directly or indirectly interfering in the work and functioning of lawyers, including from any form of reprisals against them" and "(d) [w]hen a lawyer is arrested or detained, the respective legal profession should be informed immediately of the reason and be granted access to the lawyer in question, in addition to the obligations of the authorities as prescribed by law" (A/64/181, para. 108). While noting with concern the increasingly frequent attacks on the independence of inter alia lawyers, the Human Rights Council has recently "[c]all[ed] upon States to protect (...) lawyers (...) and their families against physical violence, threats, retaliation and harassment as a result of discharging their functions" (A/HRC/RES/15/3, para. 8)

We would also like to stress that it is essential that lawyers be protected against any kind of interference in the exercise of their professional duties. We urge your Excellency's Government to take all necessary measures to ensure that the principle of the independence of lawyers is respected and to take the necessary measures to ensure that Ms. Nasrin Sotoudeh is not persecuted for discharge of functions related to her profession.

With regard to the allegation that Ms. Sotoudeh's arrest and detention is related to her activities as a human rights defender, 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, and in particular to 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 the above mentioned person 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 the above-mentioned person 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. Please indicate the legal basis of the arrest, detention and prosecution of Ms. Sotoudeh, and how these measures are compatible with international norms and standards as contained, inter alia, in the International Covenant on Civil and Political Rights, and the Declaration on Human Rights Defenders.

3. Please provide information about the fate and current health condition of Ms. Sotoudeh. Is the clinic of Evin prison equipped with furnishings and pharmaceutical supplies necessary for the medical care and treatment of Ms. Sotoudeh. If this is not the case, please indicate what measures are envisaged to transfer Ms. Sotoudeh to a specialized institution or civil hospital?

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

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment