

Mandates of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL IRN 36/2021
(Please use this reference in your reply)

24 January 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; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 46/18, 42/22, 45/3, 44/5, 44/8 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning **reports of acts of torture or cruel, inhuman and degrading treatment, sometimes resulting in deaths in custody and which have reportedly not been the subject of investigations in accordance to applicable international standards. Among the recent cases reported are the video footages of abuses suffered by detainees at Evin Prison and the deaths of Mr. Shahin Naseri and Mr. Amirhossein Hatami, in State custody.**

Concerns at reports of torture and other ill-treatment and of deaths in custody of detainees have been the subject of previous communications by Special Procedures. We thank your Excellency's Government's for the responses sent to some of these communications, but regret that some communications remain without a response, including the communication sent on 21 February 2018 (ref. No IRN 6/2018). 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). We welcome the comments received to this report, but remain deeply concerned in view of the ongoing reports of deaths in custody and ill-treatment and torture of prisoners.

According to the recent information received:

Consistent reports of torture and ill-treatment in detention resulting in death

There is no publicly available official data on the number of deaths in detention in the Islamic Republic of Iran. However, civil society organizations have documented the death of at least 72 individuals while in State custody between January 2010 and September 2021, reportedly resulting from torture or other ill-treatment, excessive use of force (firearms, and tear gas) by officials in response to unrest in prisons or under suspicious circumstances. The deaths have occurred in different stages of the deprivation of liberty, beginning from the preliminary investigation and throughout judicial proceedings and serving the sentences. Due to the lack of transparency of the

Judiciary and the fear of reprisal of victims, the actual number is believed to be higher. The number excludes death in detention due to lack of timely access to medical care. Deaths in custody have been documented in over 40 prisons across 16 provinces, indicating that the issue is widespread. The documented deaths have occurred in detention facilities run by various bodies, including the investigation unit of the police (*Agahi*), facilities run by the Ministry of Intelligence, facilities run by regular city police, facilities run by border or immigration guards and in facilities run by the Cyber Police (FATA) and the Revolutionary Guards Corps (IRGC).

Out of 72 deaths documented by civil society organizations, in 46 cases, the death could be directly linked to the use of physical torture or other ill-treatment by intelligence and security agents or prison officials. In 15 cases, deaths occurred following the lethal use of firearms and/or tear gas by prison security guards to suppress unrest by inmates that erupted in March 2021 due to fear of contracting COVID-19 in detention. In the remaining 11 cases, the deaths occurred in suspicious circumstances, but no further details about potential causes were available.

None of the deaths in custody have been subject to an independent and thorough investigation. Instead, authorities ascribe deaths in custody to drug poisoning, illness or suicide, without conducting an impartial investigation through a competent authority that is independent from the detaining authority. In addition, consistent reports have been received about family members and lawyers who are often subjected to harassment and intimidation, particularly when publicly disputing the official explanation for the deaths or when pursuing legal action.

The acts perpetrated by prison officials and other State agents against individuals in State custody in the Islamic Republic of Iran that have been documented by civil society organizations include the use of prolonged solitary confinement, beatings, floggings, electric shocks, mock executions, waterboarding, sexual violence, suspension and/or forced of holding painful stress positions for prolonged periods, and deliberate deprivation of medical care.

Leaked videos of security cameras in Evin Prison in Tehran

Evin prison is located in the city of Tehran in Tehran province. On 22 August 2021, a group of hackers identifying themselves as “Edalat-e Ali” (Ali’s justice) released a number of leaked videos, which were hacked from the surveillance and security cameras of Evin Prison. The leaked videos show prison guards beating prisoners, overcrowded prison rooms, incidents of self-harm, and solitary cells with inhumane conditions.

In a video dated 31 March 2021, a prison official is seen punching and hitting a prisoner in his face in the presence of a group of prisoners, causing the victim’s nose to bleed. In another video dated 21 December 2020, two prison officials are seen pushing, shoving, hitting and kicking a handcuffed prisoner on his head and back in the presence of multiple other officials, and then dragging him on the ground.

Four videos show an incident on 26 April 2021 where a prisoner faints in the prison courtyard after stepping out of a car. Guards are seen recklessly neglecting him and then dragging him semi-conscious along the ground, through the prison and up a staircase. Prison staff members are seen watching the incident or passing by the injured man.

Three videos dated 11 June 2016, 15 January 2020, and 4 February 2021 show overcrowded prison rooms with rows of triple sleeper bunk beds accommodating between 15 and 18 people in one room. Another clip, which is undated, shows a small bed-less solitary confinement cell, with a squat toilet in the corner.

On 24 August 2021, the head of the Prisons Organization, commenting on the leaked videos, accepted responsibility for the “unacceptable behaviour” and promised to investigate abuses and prevent further violations. On 6 September 2021, the head of the Prisons Organization stated on a post on social media that many of the delinquencies shown in the videos from Evin prison had already been investigated or were under investigation. He added that two prison staff shown clashing with each other in one of the videos had been punished two months prior to the release of the videos. There are no further information considering the investigation of other violations shown in the leaked videos.

The leaked videos are from the public wards of Evin prison and do not include footage from two prison wards of Evin prison controlled by intelligence agencies. Political prisoners are often held in those wards. Consistent reports have been received of widespread use of physical and psychological torture and ill-treatment in those wards.

It has been reported that Evin prison has a higher standard of hygiene and access to medical care compared to other prisons, in particular those far from the capital and the secret detention centers under the control of the Ministry of Intelligence and the Intelligence Organization of the IRGC. The secret nature of these detention centers without oversight, raises concerns about a high risk of abuses and human rights violations against prisoners. Among cases reported from such secret detention centres of the Ministry of Intelligence and IRGC in Orumiye, Sanandaj, and Kermanshah are different methods of torture and ill-treatment reportedly used against detained Kurdish political activists. Between 1 January and 30 November 2021, civil society organizations have documented the death of at least eleven Kurdish prisoners in unclear circumstances in prison.

Among the recent cases of suspicious deaths in custody, the following cases of deaths in the Great Tehran Penitentiary (Fashafuyeh) took place in the course of one week:

Death in prison of Mr. Shahin Naseri

Mr. Shahin Naseri was a 49-year-old Iranian man. Mr. Naseri was a fellow inmate of Mr. Navid Afkari. The latter was arrested in September 2018, sentenced to death and was secretly executed on 12 September 2020, despite an international outcry. Mr. Navid Afkari has been the subject of a previous

communication by Special Procedures (ref. no IRN 22/2020).

In support of the torture complaints lodged by Mr. Afkari prior to his death, Mr. Naseri submitted multiple written affidavits to various prosecution and judicial authorities in 2019 and 2020.

Mr. Naseri had given testimonies of witnessing the torturing of Mr. Navid Afkari in October 2018 by plain-clothes agents in a detention centre run by *Agahi* in the city of Shiraz in province of Fars. Mr. Naseri submitted at least five affidavits regarding the torturing of Mr. Afkari as follows: to the Criminal Court 1 of Fars province on 24 September 2019, to the lead investigator at Branch 10 of the Office of the Special Prosecutor for Criminal Affairs and Security Offences on 25 September 2019, to Branch 5 of the Assistant Prosecution Office in Shiraz on 14 October 2019, to the Supreme Court on 31 October 2019, and to Criminal Court 2 of Shiraz on 20 January 2020.

Mr. Naseri stated in his affidavit that: “I saw two plainclothes agents severely beating Navid Afkari with tubes and batons while he was lying on the ground and covering his head with his hands. They hit his hand several times forcefully and, while yelling insults and swear words, they told him that the truth was whatever they said.” Mr. Naseri added that several hours later, he saw Mr. Navid Afkari again, and Mr. Navid Afkari told him while crying that during the beatings one of the interrogators had broken his hand.

On 28 September 2019, the lead investigator at Branch 10 of the Office of the Special Prosecutor for Criminal Affairs and Security Offences which was mandated with investigating Mr. Afkari’s torture complaint summoned Mr. Naseri and reportedly threatened him with criminal prosecution and lengthy imprisonment if he testified to having witnessed the beating of Mr. Navid Afkari. Mr. Naseri reiterated his testimony. The incident and the threat are documented in a written complaint by Mr. Afkari addressed to the Prosecutor of Government Employees. Despite the threats of reprisals, Mr. Naseri reiterated his testimony.

In September 2020, Mr. Naseri was transferred from Adelabad prison in Shiraz, to a detention facility run by the Ministry of Intelligence in Shiraz, known as “Pelak-e 100” (Number 100). He was held there for about two weeks. During this period, officials of the Ministry of Intelligence reportedly subjected Mr. Naseri to coercive interrogations while blindfolding him to pressure him to recant his testimony about witnessing Mr. Afkari’s torture. Mr. Naseri suspected that interrogators drugged his drinking water with an unknown substance as he felt unwell and requested to see a doctor. During this period, Mr. Navid Afkari was forcibly disappeared until his execution on 12 September 2020.

On or about 12 September 2021, on the one year anniversary of Mr. Afkari’s execution, Mr. Shahin Naseri was transferred from the public ward of the Greater Tehran Penitentiary Detention to an unknown location. The authorities refused to inform the family of Mr. Naseri of his whereabouts and he was subjected to enforced disappearance. The transfer and enforced disappearance appeared to be an attempt to prevent Mr. Naseri from making

phone calls and giving interviews to news outlets on the anniversary of Mr. Afkari's execution.

On 20 September 2021, one day prior to the death of Mr. Naseri, he used the phone of another prisoner and made at least two calls. Over the phone call, he indicated that he had been transferred from his ward to a cell intended for solitary confinement, which was used at that time to detain several prisoners. He added that he was in the prison clinic and expressed fears about his life being at risk and requested help.

On 21 September 2021, nine days after the transfer of Mr. Naseri out of the public ward, other prisoners in the Greater Tehran Penitentiary Detention informed people associated with him of Mr. Naseri's death.

On 23 September 2021, the Prisons Organization issued a statement confirming the death of Mr. Naseri in prison. The statement notes that "Mr. Naseri was referred to the prison clinic and due to his urgent condition, the prison clinic staff operated resuscitation operations (cardiac massage, artificial respiration and epinephrine injection and IV Line fix) for 45 minutes". The statement further lists Mr. Naseri's convictions.

On 21 October 2021, the spokesperson for the Judiciary announced that the forensic results had identified drug poisoning as the cause of Mr. Naseri's death. The spokesperson did not provide any further details. The post mortem examination was conducted by the Legal Medicine Organization which is under the authority of the Judiciary like the Prisons Organization.

In an audio message published by media after his death, Mr. Naseri stated he was a witness to "medieval torture" against Mr. Afkari. He also said that authorities had threatened him not to testify about Mr. Afkari.

Death in prison of Mr. Amirhossein Hatami

Mr. Amirhossein Hatami was a 23-year-old Iranian man, of the Kurdish minority. On 15 September 2021, Mr. Amir Hossein Hatami was arrested for taking part in a street fight and transferred to the Great Tehran Penitentiary to serve a nine-month prison sentence.

On 21 September 2021, Mr. Hatami made a brief phone call to people associated with him and stated that he was severely beaten by the prison guards by baton to the point that "he could not speak". He added he would be taken to hospital. According to witness testimonies, several prison guards forced Mr. Hatami down and beat him on the head and body with batons.

On 22 September 2021 at 10:00 a.m. the prison authorities announced the death of Mr. Hatami in prison due to "heart attack".

On 25 September 2021, Mr. Hatami's body was transferred for burial to his birthplace in the province of Ilam. According to witnesses who saw the body, there were signs of beating and bruises on the body of Mr. Hatami.

On 25 September 2021, the Prisons Organization announced in a statement that a committee has been set up to probe the death of Mr. Amir Hossein Hatami in the Great Tehran Penitentiary. At the time of the writing of this communication, no information has been received about the outcome of the investigation by this committee.

Without prejudging the accuracy of the received information, we express our deep concern at the reports received about the deaths of Mr. Shahin Naseri and Mr. Amirhossein Hatami while in State custody, which based on the information received may constitute arbitrary deprivation of life. We are further concerned that these deaths took place not as isolated incidents but after Mr. Naseri and Mr. Hatami having endured repeated episodes of violence by prison and other officials amounting to torture or other cruel, inhuman or degrading treatment or punishment. We are concerned that none of these deaths nor the use of violence and allegations of torture have apparently been subject to investigations in full accordance with applicable international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death; and that no person or entity have been held accountable. We are gravely concerned at the denial of the authorities to conduct genuine investigations into these deaths in line with international standards. We furthermore raise concerns that in Mr. Naseri's case, the statement by the Prisons Organization includes references to Mr. Naseri's convictions in what appears to be an attempt to dehumanize him.

We also express our grave concern regarding the consistent reports and documentation of the various forms of violent acts amounting to torture and ill-treatment in prisons, including treatment that has resulted in an alarming number of deaths of prisoners across detention facilities in the Islamic Republic of Iran. The reported deaths of at least 72 individuals who have died in custody since January 2010, including reportedly as a result of torture or other ill-treatment or the excessive use of force by officials are alarming. The leaked videos from Evin prison confirm the consistent reports of ill-treatment, poor hygiene, and denial of medical care to detainees in prisons in the Islamic Republic of Iran seem to reflect a systematic pattern of torture and ill-treatment of prisoners. We regret that there appears to be no follow up to the recommendations and concerns raised by Special Procedures for several years regarding the use of torture and ill-treatment in detention and at the lack of independent investigations into such acts.

We would like to remind that in detaining an individual states assume responsibility to care for their lives and bodily integrity and deaths resulting in a failure to meet this obligation may amount to an arbitrary deprivation of life for which the state is responsible. Furthermore, when an individual dies due to unnatural circumstances while in State custody, there is always a presumption of State responsibility which can only be rebutted following an investigation that must be (i) prompt; (ii) effective and thorough; (iii) independent and impartial; and (iv) transparent. A failure to investigate in line with international standards can in and of itself give rise to a separate breach of the right to life. We are concerned by information that there have not been fully independent investigations into the deaths of Mr. Naseri and Mr. Hatami meaning the presumption of state responsibility for their deaths remains. We remind your Excellency's Government that failure to investigate and, should violations be found, to punish and remedy violations is itself a violation of international law and can result in personal responsibility for those responsible.

Accordingly, we look forward to receiving, in response to the present communication, the details of all investigations into the deaths in custody and the violence reportedly committed against Messrs. Naseri and Hatami. We reiterate that international law requires that such investigations be conducted impartially, to be in line with international standards including the *UN Minnesota Protocol on the Investigation of Potentially Unlawful Death*,¹ and must be carried out by those not alleged to be involved in the underlying offense or belonging to their units, institutions or agencies. We stand ready to provide technical support where necessary, including on the implementation of the *UN Minnesota Protocol on the Investigation of Potentially Unlawful Death* and to further engage with your Excellency's Government on this issue, including through conducting country visits.

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 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 the observations of your Excellency's Government 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 any investigation that has been conducted into deaths in custody since 2010. Please include information on the extent to which these investigations complied with international standards including the *UN Minnesota Protocol on the Investigation of Potentially Unlawful Death*. Please provide information about the number of prison and other officials held accountable for acts resulting in the death of prisoners.
3. Please provide information about any investigation conducted into allegations of torture and other ill-treatment perpetrated against detainees since 2010. Please provide information about the number of prison and other officials held accountable for such acts.
4. Please provide the details, and where available the results, of independent investigation, or other inquiries carried out into the deaths of of Messes. Naseri and Hatami while in detention in the Greater Tehran Penitentiary Detention. Please include details on the specific investigative steps taken and the extent to which the investigations complied with international standards including the *UN Minnesota Protocol on the Investigation of Potentially Unlawful Death*. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with obligations of the State under international human rights law. Please provide information on any investigation undertaken into the enforced disappearance of Mr.

¹ Available at <https://www.ohchr.org/en/issues/executions/pages/revisionoftheunmanualpreventionextralegalbitrary.aspx>

Shahin Naseri and whether those responsible have been identified, prosecuted and sanctioned.

5. Please provide information about measures taken to ensure the establishment of independent oversight bodies for prisons and other detention centres.
6. Please provide information about measures taken to investigate prison officials identified in the leaked videos from Evin prison who are seen using violence against detainees.
7. Please provide information about concrete measures taken to improve the prison conditions following the statement by the head of the Prisons Organization on 24 August 2021.
8. Please provide information about existing oversight mechanisms for the situation in prisons and for the investigation of deaths in prison.

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 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

Elina Steinerte
Chair-Rapporteur of the Working Group on Arbitrary Detention

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

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

Annex

Reference to international human rights law

Right to Liberty and Security of person:

We would like to refer your Excellency's Government to article 9 International Covenant on Civil and Political Rights (ICCPR, ratified by the Islamic Republic of Iran on 24 June 1975), enshrining the right to liberty and security of person and establishing 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. In its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary. As reiterated in the Working Group on Arbitrary Detention's jurisprudence and in the Human Rights Committee's General Comment No. 35, enforced disappearance constitutes a particularly aggravated form of arbitrary detention.²

Right to Life:

Article 6 of the ICCPR recognizes the inherent right of every person to life and not to be arbitrarily deprived of life.

As stated in para. 2 of General Comment No. 36 of the Human Rights Committee, the right to life is "the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threatens the life of the nation. The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed by other human rights."

In accordance with articles 2 of the Universal Declaration of Human Rights and 6 of the ICCPR, everyone is entitled to the protection of the right to life without distinction or discrimination of any kind, and all persons shall be guaranteed equal and effective access to remedies for the violation of that right. The right not to be arbitrarily deprived of one's life is recognized as part of customary international law and the general principles of law, and is also recognized as a *jus cogens* norm, universally binding at all times. (A/HRC/35/23, paras 25-26).

As stated in paragraph 3 of General Comment No. 36, the right to life entitles all individuals "to be free from acts or omissions that are intended or may be expected to cause their unnatural or premature death". A death is by definition arbitrary if it is caused by a violation of international or domestic law, including international human rights law. (GC 36, para. 12)

When the State detains an individual, it has "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 life and bodily integrity, and they may not rely on lack of financial resources or other logistical

² Opinions No. 34/2021, No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020; HRC, CCPR/C/GC/35, para. 17.

problems to reduce this responsibility." (GC 36, para. 25) The State "becomes the guarantor of their fundamental rights". (A/HRC/38/44, para 62). The "duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriately regular monitoring of their health, shielding them from inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities." (GC 36, para. 25)

When an individual dies due to unnatural circumstances while in State custody, there is a presumption of State responsibility. In order to overcome this presumption, the State must investigate and this investigation must be (i) prompt; (ii) effective and thorough; (iii) independent and impartial; and (iv) transparent. In 1989, the U.N. Economic and Social Council adopted the well-regarded Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ("1989 U.N. Principles").³ The United Nations adopted the Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions⁴ ("1991 U.N. Manual") to complement the 1989 Principles. In 2016, the United Nations published the Minnesota Protocol on the Investigation of Potentially Unlawful Death ("Minnesota Protocol") to reaffirm and extend the principles contained in the 1991 U.N. Manual. A/HRC/41/CRP.1, paras. 270-71. The 1989 U.N. Principles, the 1991 U.N. Manual, and the Minnesota Protocol outline the procedures that should be followed in any investigation of a detainee's death in a prison of the Islamic Republic of Iran, including, as addressed in this Communication, those of Messrs. Naseri and Hatami.

In cases involving a death while in detention, an autopsy should be performed, and if it is not done, the reason should be justified in writing and subject to judicial review (see Minnesota Protocol, para. 25). In performing this autopsy, the Minnesota Protocol's detailed guidelines on autopsies should be followed (see paras. 73-250).

In addition to an autopsy, an effective and thorough investigation would require the collection of "all testimonial, documentary and physical evidence." (Minnesota Protocol para. 24). Investigations must "seek to identify not only direct perpetrators but also all others who were responsible for the death, including, for example, officials in the chain of command who were complicit in the death. The investigation should seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death, and identify patterns where they exist." (para. 26).

This duty to investigate is "central to upholding the right to life. It asserts the inviolability and inherent value of the right to life through mechanisms of accountability, while simultaneously promoting remedies where violations have occurred. To this end, the duty gives practical effect and worth to a State's obligations to respect and protect life." (A/HRC/41/CRP.1, para. 258).⁵ The "consequences of non-investigation are extremely serious, including the violation of the right to life; the continuation of policies and practices which may impact on the right to life; and the perpetuation of a range of violations and bad practices because of the veil of ignorance or secrecy surrounding them." (para. 261).

³ U.N. Doc. E/RES/1989/65 (May 24, 1989)

⁴ U.N. Doc. E/ST/CSDHA/12 (1991)

Torture:

Article 7 of the ICCPR prohibits torture and other cruel, inhuman or degrading treatment or punishment. We recall the absolute prohibition of torture, which is a peremptory norm of international law as well as of the UN Convention against Torture as well as of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6 and the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 1.

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.” Furthermore, we would like to recall Principle 17 of the United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, which stipulates that the adoption of specific measures are required under international law to ensure meaningful access to the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and receive without delay appropriate remedies by certain groups of detainees. This includes, but is not limited to, persons detained in solitary confinement or other forms of incommunicado detention or restricted regimes of confinement. The Working Group on Arbitrary Detention in its previous jurisprudence has stated that a forced confession taints the entire proceedings, regardless of whether other evidence was available to support the verdict⁶.

Enforced Disappearance:

“There is no time limit, no matter how short, for an enforced disappearance to occur. Every minute counts when a person is put outside the protection of the law. And when a person is disappeared, every anguished minute spent by his or her relatives without news of that person is a minute too long.”⁷

In connection with the above alleged facts and concerns, we would like to remind your Excellency’s Government of that enforced disappearances are absolutely forbidden and can be considered, where committed as part of a widespread or systematic practice, amount to a crime against humanity. The Declaration on the Protection of All Persons from Enforced Disappearances expressed deep concern about persons being detained against their will by officials of the Government, “followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.” It condemned any “act of enforced disappearance “as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights”. We also recall that the Declaration on the Protection of All Persons from Enforced Disappearances sets out the necessary

⁶ See Opinions 54/2020

⁷ Press Release, Committee on Enforced Disappearances and Working Group on Enforced or Involuntary Disappearances, August 26, 2016.

protection by the State, in particular articles 9, 10, 11 and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons.

Enforced disappearances must be investigated and prosecuted (Art.13 Declaration on the Protection of All Persons from Enforced Disappearances). The key components of such an investigation are: (a) investigative authorities should have access to any place of detention, official or not, (b) the investigation should be undertaken without delay, even ex officio, without formal complaint, (c) those suspected of having been involved in the disappearance should not have the possibility of influencing the investigation through pressure, acts of intimidation or reprisals; (d) State agencies the members of which could be involved in the disappearance should not participate in the investigations; (e) authorities should have the necessary powers to compel the attendance of witnesses and the production of the relevant documents, including military, police and intelligence files.” (A/HRC/39/46, para. 62).