

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: AL
IRN 16/2015:

29 October 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 25/13, 26/7, 28/21, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the execution of Mr Behrouz Alkhani**.

According to information received:

On 26 August 2015, Mr Behrouz Alkhani, a 30-year-old Kurdish man, was executed while awaiting the outcome of a Supreme Court appeal. Authorities have reportedly so far refused to return his body to his family for burial.

Mr Behrouz Alkhani was arrested in January 2010 in Salmas, in West Azerbaijan, and he was reportedly held in solitary confinement for more than a year without having access to a lawyer. In 2011, he was convicted and sentenced to death by a Revolutionary Court on charges of "effective collaboration with PJAK" (Party of Free Life of Kurdistan) and "enmity against God (moharebeh)", for his alleged role in the assassination of the Prosecutor of Khoy, in the West Azerbaijan province. He was sentenced to an additional 10 years imprisonment in relation to the possession and procurement of arms.

His sentence was later overturned by the Supreme Court and sent back to Branch 10 of the Appeal Court of the Oroumieh province for a retrial. The Appeal Court however sentenced Mr Behrouz Alkhani to death once again. He then appealed

the sentence, but was executed on 26 August 2015 while awaiting the outcome of this appeal.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern that the death penalty may have been imposed and carried out against the aforementioned individual following judicial procedures that may not fulfill the most stringent guarantees of fair trial and due process, in particular access to legal counsel at all stages of the procedures, and that Mr. Alkhani may have not exhausted all of his appeal rights. We also raise serious concern on the alleged refusal of the authorities to return the body of Mr Alkhani to his family for burial, considering the extreme mental suffering that this would cause to his relatives, amounting to cruel and inhuman treatment.

While we do not wish to prejudge the accuracy of these allegations, they indicate a prima facie violation of the right of every individual to life, security, and not to be arbitrarily deprived of his or her life, as set forth in articles 3 of the Universal Declaration of Human Rights (UDHR) and 6 of the International Covenant on Civil and Political Rights (ICCPR).

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the execution of Mr Behrouz Alkhani, and how his execution was compatible with international human rights norms and standards.
3. Please provide detailed information on each stage of the judicial proceedings against Mr Alkhani, and indicate how they complied with the requirement and guarantees of a fair trial and due process, as enshrined inter alia in article 14 of the ICCPR.

We would appreciate receiving a response within 60 days.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Juan E. Méndez

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

Mónica Pinto

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw your Excellency's Government's attention to Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights, ratified by your Government on 24 June 1975, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

We would also like to recall that article 6.2 of the ICCPR provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court. Moreover, article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty (UN Safeguards) provides that capital punishment may only be carried out following a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. In addition, article 6 of the UN Safeguards stipulates that anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

Furthermore, article 6.4 of ICCPR establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

Under international legal standards, the Government must promptly return the body to the family or give them information about the whereabouts of the remains.

With regards to solitary confinement, we refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that the use of prolonged solitary confinement in itself runs afoul of this absolute prohibition. Moreover, due to the prisoner's lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment. We also recall paragraph 6 of General Comment No. 20 of the Human Rights Committee (adopted at the 44th session of the Human Rights Committee, 1992), which states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR.

In this connection, we would like to recall Article 14(3) of the International Covenant on Civil and Political Rights, which provides that: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing"; [and] (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require,

and without payment by him in any such case if he does not have sufficient means to pay for it.”

We also would like to refer Your Excellency’s Government to the Basic Principles on the Role of Lawyers, and in particular Principle 1 that establishes that “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”; as well as Principle 8, that provides that “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”