

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
UA IRN 7/2018

27 April 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 35/15 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the imminent execution of Mr. **Mohammad Kalhori** who was convicted of murder and sentenced to death despite being 15 years old at the time of the alleged commission of the crime.

According to information received:

Mr. Mohammad Kalhori is a student from Boroujerd city who was convicted by Branch 1 of the Criminal Court of Lorestan of stabbing to death his teacher on 22 November 2014 when he was 15 years old.

Mr. Kalhori was subsequently sentenced to three years imprisonment and ordered to pay compensation to the victim's parents by the Court. The report of the medical examiner of Lorestan Province stated that Mr. Mohammad Kalhori was not mentally mature at the time of the crime. The verdict was subsequently appealed.

It is alleged that following interventions by a member of Parliament and a senior Government official, Branch 31 of the Supreme Court overturned the verdict and ordered a new trial. Subsequently Branch 2 of the Criminal Court in Lorestan sentenced him to death. The verdict was then approved by the Supreme Court in February 2018.

The Head of the Judiciary has now approved the death sentence passed against Mr. Kalhori, and the case has been sent to the Sentence Implementation Branch. Mr. Kalhori was also transferred from Lorestan Correctional Centre to Boroujerd Central Prison in February 2018 after turning 18 years age.

It is understood that the lawyer of Mr. Mohammad Kalhori has now requested a retrial on the basis of Article 91 of the Penal Code which grants judges discretion

not to apply the death sentence to children who do not understand the nature of the crime committed or its prohibition, or if there is a doubt about their mental development. No response to his request has been received thusfar.

We express grave concern that the death penalty may be carried out against Mr. Mohammad Kalhori, who was a child at the time of the commission of the alleged crime, in violation of the international human rights treaties to which the Islamic Republic of Iran is a party. We are also concerned by reports of the apparent interference in the independence of the judiciary by a senior Government official and Member of Parliament in contradiction of the fundamental principle of the separation of powers and international human rights standards.

While we do not wish to prejudge the accuracy of these allegations, the above information seems to indicate a prima facie violation of the right of every individual to life and security and not to be arbitrarily deprived of his life or liberty, as set forth in articles 6 (1) and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975, and article 3 of the Universal Declaration of Human Rights (UDHR).

We would also like to highlight that any judgment imposing the death sentence and execution of a juvenile offender is incompatible with the international legal obligations undertaken by your Excellency Government under the various instruments and is unlawful. Article 6 (5) of the ICCPR, and Article 37(a) of the Convention on the Rights of the Child, ratified on 13 July 1994, expressly prohibit the imposition of the death penalty for offences committed by persons below 18 years of age. The Committee on the Rights of the Child, in its General Comment No. 10 on children's rights in juvenile justice, has interpreted article 37(a) of CRC to mean that the death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.

We further recall that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, as enshrined in the Basic Principles on the Independence of the Judiciary and the International Covenant on Civil and Political Rights.

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, we call upon your Excellency's Government to immediately halt the execution of Mr. Mohammad Kalhori, which, on the basis of the information made available to us would violate international human rights law and standards, and thus constitute an arbitrary execution. We further urge your Excellency's Government to ensure that the death sentence against the aforementioned individual is annulled and that he is re-tried in compliance with international human rights law and standards.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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. Mohammad Kalhori in compliance with international instruments.

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 your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide the details of the proceedings against Mr. Mohammad Kalhori identified above, and the legal basis and evidence used in court to sentence him to death, including in light of information received suggesting that the report of the medical examiner of Lorestan Province stated that Mr. Mohammad Kalhori was not mentally mature at the time of the crime. In addition, please provide specific information regarding the application in this case of the provisions of the Juvenile Sentencing Guidelines relating to alternative punishments to the death penalty.
3. Please provide information on the application of Article 91 of the 2013 Islamic Penal Code, including in light of Mr. Mohammad Kalhori's most recent request for a retrial.
4. Please provide detailed information on the measures taken to provide Mr. Mohammad Kalhori with a fair trial and due process guarantees, as provided in under international human rights law, in particular articles 9, 14 and 15 of the ICCPR, including in light of the allegations of apparent interference in the independence of the judiciary.
5. Please provide updated detailed information on all children sentenced to death and/or executed in Iran in 2017 and 2018 thus far and those who remain on death row for crimes committed under the age of 18.

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 responsible of the alleged violations.

We intend to publicly express our concerns as, in our view, the information upon which the press release is 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's to clarify the issues in question.

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.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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