

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

REFERENCE:
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30 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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 34/19.

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. **Saleh Shariati** who was sentenced to death for murder following judicial proceedings that do not appear to have fulfilled the most stringent guarantees of fair trial, including alleged use of torture to extract confessions and despite having been 16 years old at the time of the alleged commission of the crime .

According to information received:

On 11 April 2012, Mr. Saleh Shariati, who was 16 year old at the time, went to work at a farm in Bushehr to undertake seasonal agricultural labour with his father. At the farm one of the workers fell in a well and died. It is alleged that the well was not adequately safeguarded, and such concerns had been raised in the past by workers.

Following the death, Mr. Shariati was summoned to the Asaluyeh Prosecutor's Office for questioning as a witness after the deceased's family filed a complaint against the owner of the farm. In August 2017, Mr. Shariati was taken into custody for interrogation and charged with the murder of the deceased. His case was transferred to a different jurisdiction of Fasa, Fars Province, where members of the immediate family of the deceased resided. In Fasa, it is alleged that Mr. Shariati was subjected to torture and other ill-treatment and confessed to the alleged crime under torture. It is further alleged that he was unable to walk to the courthouse owing to injuries sustained under torture, and further bore marks of torture upon his body.

Following the interrogation his case was referred to Branch 3 of Fars Province Criminal Court. During the trial, the only evidence presented to convict Mr. Shariati was the confession obtained under torture and a single eyewitness account. It is understood that the eyewitness repeatedly stated however that they did not see the

crime being committed, and forensic medical examination did not provide evidence linking Mr. Shariati to the murder.

The judges found the case to be “lowth,” as set out in the Islamic Penal Code, which applies when, there is an absence of sufficient evidence but there is suspicion based on some incriminating indications, and as such in the case of “intentional homicide” the deceased’s family is asked to have fifty of their male relatives to take an oath (qassameh) that the suspect is guilty of intentional homicide without having witnessed or having any direct knowledge of the murder. Accordingly, and pursuant to the judge’s request, the plaintiff introduced 57 people to the court who swore an oath that Mr. Shariati was guilty of murder, despite not having been present at the scene. The judges subsequently found Mr. Shariati guilty and issued a death sentence on 14 March 2016.

Branch 20 of the Supreme Court subsequently overturned the guilty verdict and ordered a retrial. The case was then referred back to the same Branch 3 of Fars Province Criminal Court where family members of the plaintiff were summoned again to swear the same oath. It is understood that the lawyer of Mr. Shariati protested that not all of those who swore the qassameh oath were indeed relatives as required by law, and that the court had referred this issue to the government birth records office for verification. On February 2018, the judges found Mr. Shariati guilty and once more issued a death sentence. The case has now been sent to the Supreme Court.

We express grave concern that the death penalty may be carried out against Mr. Shariati, who was a child at the time of the commission of the alleged crime, and following judicial proceedings that do not appear to have fulfilled the most stringent guarantees of fair trial including alleged use of torture to extract confessions in violation of the international human rights treaties to which the Islamic Republic of Iran is a party.

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 draw your Excellency’s Government’s attention to the fact 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 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 would like to stress that the Government has the obligation to protect the right to physical and mental integrity of all persons. In this regard, the alleged treatment of Mr. Shariati further violates the absolute and non-derogable prohibition of torture and cruel, inhumane or degrading treatment or punishment, as codified, inter alia, in Article 7 of the ICCPR and reflected in Human Rights Council Resolution 25/13 and in paragraph 1 of General Assembly Resolution 68/156.

Moreover, with regard to the allegations according to which the court proceeded to use the confession as part of the basis for the ruling, we would like to draw your Excellency's Government's attention to paragraph 6c of Human Rights Council resolution 8/8 of 2008 which 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". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in article 7 of the ICCPR.

Furthermore, we are deeply concerned by the use of oaths by individuals who were not present in the vicinity of the alleged crime or witnessed the alleged crime as part of the basis for the ruling. In this regard, we would like to refer your Excellency's Government to article 14 of the ICCPR and article 40 of the CRC, which enshrine the right to a fair trial. The imposition of a death sentence following a trial in which these provisions have not been respected constitutes a violation of the right to life. Moreover, we noted that the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty (ECOSOC resolution 1984/50) provides that capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts" (safeguard 4).

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 any steps being taken toward the execution of Mr. Shariati**, 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 full 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.

We would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Shariati 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. Shariati identified above, and the legal basis and evidence used in court to sentence him to death. 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 detailed information on the measures taken to provide Mr. Shariati 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 use of oaths by persons who did witness the alleged crime as part of the basis of conviction.
4. Please indicate what measures have been taken to investigate the allegations of torture and other cruel inhuman, or degrading treatment or punishment to which the prisoners have been subjected to and if proved true; the measures taken to stop them and ensure that they do not recur; and prosecute or punish any public official or person acting on their behalf found to be responsible. If no investigation has taken place, please explain why. Please explain how this is compatible with the universal prohibition of torture as a norm of international customary law.
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 presently 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

Nils Melzer

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