

Mandates of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

REFERENCE:
AL IRN 15/2021

31 May 2021

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 Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 46/18, 45/3, 44/5, 43/8, 40/10, 43/20 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the decision of the official Organization of the Behesht Zahra to not allow members of the Baha'i faith to bury their dead in new gravesites at Golestan Javid cemetery in Tehran**. We are also seriously concerned that the same entity has said that the Baha'i minority will from now on need to either find space between existing graves in Golestan Javid cemetery or bury their dead in what is known as the Khavaran mass grave site. Khavaran is believed to have the buried remains of hundreds of individuals who were allegedly executed in secret in 1988 in the Islamic Republic of Iran.

Special Procedures mandate holders previously raised concerns regarding the desecration of mass grave sites of the individuals who were killed in 1988 in a communication dated 3 September 2020 (IRN 20/2020). We regret that to date we have not received a response to that communication from your Excellency's Government. Special Procedures mandate holders have also previously raised concerns about the treatment of the Baha'i religious minority in the Islamic Republic of Iran, including issues related to Baha'i burial rites and cemeteries (see, for example, IRN 8/2014, IRN 17/2014, IRN 5/2016, IRN 14/2016, IRN 15/2016, IRN 9/2019, IRN 1/2020).

According to information received:

In April 2021, a high-ranking official of the Organization of Behesht Zahra, an official body which regulates burials in Tehran, prohibited the Baha'i religious minority from burying deceased members of their faith in new burial plots at Golestan Javid cemetery in Tehran. During the 1980s, the land comprising Golestan Javid cemetery had been assigned to the Baha'i community to bury their dead. Despite the cemetery reportedly being sufficient to bury the remains of individuals for several further decades, the Organization of Behesht Zahra official said that the Baha'i community would from now on have to either find

space in between existing burial plots of deceased persons or bury their dead in the Khavaran mass grave site.

The Khavaran mass grave site reportedly contains the remains of several hundred political dissidents who were allegedly forcibly disappeared and extra-judicially executed in the Islamic Republic of Iran between July and September 1988. Khavaran has reportedly been bulldozed several times by the Iranian authorities in recent decades, raising concerns that evidence in connection to the events of 1988 may be tampered with or destroyed, hampering any possible future investigation into the allegations.

The Baha'i minority has strongly protested against the prohibition and the two choices that have been presented as alternatives. The community states that there is not enough space between existing graves to create new burial plots. The option to bury deceased individuals in the Khavaran area over the burial sites of other individuals is also unacceptable as it is contrary to the religious beliefs of the Baha'i faith. As a consequence of the prohibition and objections to the proposed alternatives, deceased individuals have remained in morgues. It is reported that at least one family has had a deceased relative buried without their knowledge and without Baha'i burial customs in an area outside of Golestan Javid cemetery. On 23 April 2021, individuals reportedly saw eight newly dug graves and two new graves marked with the names of the deceased at Khavaran.

The Baha'i minority has reportedly had their cemeteries desecrated and demolished for decades in the Islamic Republic of Iran, as well as other incidents of degrading treatment, including refusing the burials of deceased Baha'is or exhuming their bodies and relocating them to abandoned areas unlawfully and without the consent of relatives.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by reports that the Baha'i minority is again being restricted from burying deceased members of their faith in a dignified manner and in accordance with the tenets of their religion. The prohibition appears to be in violation of the right to freedom of religion or belief, which includes ritual and ceremonial acts such as burial rites. These allegations also add to ongoing concerns regarding discriminatory restrictions on the Baha'i minority in the Islamic Republic of Iran. Special Procedures mandate holders have recently communicated these concerns, including raids, confiscations and demolitions of property owned by members of the Baha'i religious minority and the criminal prosecution and imprisoning of Baha'i for exercising their right to freedom of religion (see IRN 4/2021; A/HRC/46/50, para 25-26).

We are especially concerned that this decision appears to coerce the Baha'i minority into burying their deceased in the Khavaran mass grave site of individuals allegedly subjected to enforced disappearances and extra-judicial executions in the Islamic Republic of Iran in 1988. This would equally amount to disregard for the dignity and respect for the deceased and their families. As previously raised, we are concerned by allegations that the Iranian authorities have been involved in the destruction or tampering of mass graves of individuals who were reportedly executed in 1988. The disturbance of sites such as that at Khavaran appears to be further interference with a

potential site of interest for an investigation into the 1988 allegations, leading to continued impunity for the perpetrators of those violations, and subjecting the families of victims to multiple violations over time. Special Procedures mandate holders have previously called on the Islamic Republic of Iran to stop the interference with such sites and to investigate these allegations in line with the State's obligations under international human rights law, and we reiterate that call in this communication. The destruction of mass graves, if confirmed, would constitute a violation of the prohibition against enforced disappearance, the obligation to investigate extrajudicial killings and the right to truth.

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.

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 legal justification for the decision of the official Organization of the Behesht Zahra prohibiting members of the Baha'i religious minority to bury their dead in new gravesites at Golestan Javid cemetery and explain how this decision is necessary, proportionate and consistent with the Islamic Republic of Iran's obligation to protect the right to freedom of religion or belief, including with regard to upholding and respecting burial rites and practices.
3. Please explain how legislation and policies in the Islamic Republic of Iran protect religious minorities like the Baha'i from discrimination and other human rights violations, especially considering the Government does not officially recognize the Baha'i religion.
4. Please provide information on the steps taken to identify grave sites, preserve alleged locations including from erosion, vandalism or looting, and to conduct exhumations in line with international standards.
5. Please provide detailed information on:
 - a. Whether the Government is in possession of the complete burial registers for the period of July – September 1988?
 - b. Whether the names of individuals executed during this period were included in publicly available registers?
 - c. Known locations of mass graves in the country, including grave sites which may be mentioned in national historical records.
 - d. Known identity information, per mass gravesite in each location, as well as figures/data of unidentified persons.
 - e. Measures taken to identify desecrated mass graves, to recognize these as locations of mass burials, and to implement measures to protect or commemorate them (such as monuments, plaques, etc).

- f. Efforts made to publicly report on progress made on all of the above, and in particular, to inform all concerned families.
6. Please provide information regarding any provisions made to allow families of individuals allegedly executed in 1988 to remember and pay their respects, individually or collectively, at the site of the burials.
7. Please provide information on the steps taken to guarantee the right to truth in relation to the individuals allegedly executed in 1988, including the right to impartial, independent and effective investigation of alleged crimes, and the right to effective remedy for the victims of forcibly disappeared persons and/or their families.
8. Please provide information on the legal provisions, which would protect families of the disappeared and human rights defenders seeking information on the fate and whereabouts of victims of enforced disappearances. How does the State prevent retaliation against those who demand justice for and on behalf of the victims and their families?

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.

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's 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

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Fernand de Varennes
Special Rapporteur on minority issues

Ahmed Shaheed

Special Rapporteur on freedom of religion or belief

Nils Melzer

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

Fabian Salvioli

Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We refer to the International Covenant on Civil and Political Rights (ICCPR) which your Excellency's Government ratified on 24 June 1975, including articles 2, 6, 7, 14, 18 and 27 which guarantee the right to freedom of religion, the right of minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language, the right to remedy, the right to life, the right to be free from torture and other inhuman and degrading treatment and the right to a fair trial.

Issues concerning Baha'i burial sites

Article 18 of the International Covenant on Civil and Political Rights (ICCPR) protects everyone's right to freedom of thought, conscience and religion or belief. The Human Rights Committee in its General Comment 22 paragraph 4 advises that the freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". It elaborates that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts and the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship and ritual formulae or ceremonial acts. Places of worship include different types of properties such as cemeteries that have more than a material signification for the religious community that is attached to it.

While the manifestation of religion or belief may be restricted as per Article 18(3) of the ICCPR, to protect public safety, order, health, morals and the fundamental rights and freedoms of others, any such limitation must fulfil a number of obligatory criteria including **being non-discriminatory in intent or effect** and constituting the least restrictive measure. Even in the face of overwhelming public necessity that falls on one or more of the five grounds for permissible limitations noted in Article 18(3), if there is a less restrictive measure, a greater interference with the right to manifest one's beliefs will not be permissible.

Article 27 of ICCPR provides that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities also emphasised that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination (article 2.1), and persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life (article 2.2). Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities

to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

Issues concerning mass grave sites of alleged victims of 1988 executions

We would like to highlight that **enforced disappearance** constitutes a unique and integrated series of acts and omissions representing a grave threat to life and that states are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies (Human Rights Committee, General Comment 36).

We further remind that, according to the Declaration on the Protection of All Persons from Enforced Disappearance;

- No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance (article 6)
- no circumstances whatsoever may be invoked to justify enforced disappearances (article 7),
- that individuals should be protected from ill-treatment, intimidation or reprisal (article 13)
- that investigations should be conducted for as long as the fate of the victim remains unclarified (article 13)
- that enforced disappearance should be considered a continuing offence for as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified (article 17)

We further note that the family members have a right to truth which means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s) (General comment on the right to the truth in relation to enforced disappearance, A/HRC/16/48). We further underline that the anguish and sorrow of the family may reach the threshold of torture (Ibid). We also stress that the destruction or tampering of mass graves of individuals who were reportedly executed in 1988 would also amount to disregard for the dignity and respect for the deceased and their families.

We highlight that the **death penalty** may be imposed only for the most serious crimes which must be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing (article 6 of the ICCPR and Human Rights Committee, General Comment No. 36). Furthermore, any trial which could lead to the imposition of the death penalty, including all stages before the trial and the consideration of appeals on matters of fact and law after the trial, must rigorously comply with the guarantees set out in Article 14 of the ICCPR. In the absence of a fair trial, the imposition of a death sentence constitutes a violation of the right to life.

We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all **violations of the right to life**. We urge your Excellency's Government in line with the Principles on Effective Prevention and

Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) also provides detail on the duty to investigate potential unlawful deaths “promptly, effectively and thoroughly, with independence, impartiality and transparency.” This duty continues to apply in situations of internal disturbances and tensions, and armed conflict (para 20). In particular, we note the authorities must “conduct an investigation as soon as possible and proceed without unreasonable delays... The failure of the State promptly to investigate does not relieve it of its duty to investigate at a later time: the duty does not cease even with the passing of significant time” (para 32). The duty of promptness does not justify a rushed or unduly hurried investigation. We remind that amongst other things, investigations into alleged unlawful killings should seek to determine who was involved in the death, and their individual responsibility for it, and 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 25).

With regard to the alleged **violations of due process and of fair trial guarantees**, including the alleged decision to impose death penalties following a review by “commissions” without providing the accused with access to legal assistance and representation, we would like to recall article 14 of the ICCPR, which provides *inter alia* for the principle of equality before competent, independent and impartial courts and tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defence, and the right of accused persons to communicate with counsel of their own choosing.

We would like to recall that, as established by the Human Rights Committee in its General Comment No. 31 (paragraph 18), States have an obligation to **investigate and punish serious human rights violations**, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties.

In this regard, the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity recalls that impunity arises from a failure by States to meet their obligations to investigate violations; to ensure that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations (principle 1). Victims and their families have a right to know the truth about past events concerning the perpetration of heinous crimes as established by principles 2 and 4 of the Set of Principles.

Moreover, we would like to recall the duty of States to preserve memory of past human rights violations. As established in principle 3 of the updated Set of Principles, “a people’s knowledge of the history of its oppression is part of its heritage and, as such,

must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments".