

Mandates of 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:
UA IRN 20/2021

21 July 2021

Excellency,

We have the honour to address you in our capacity as 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 46/18 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government **further information we have received concerning the reported imminent execution of child offender Mr. Hossein Shahbazi. He has been convicted and sentenced to death for murder, which he allegedly committed when aged 17 years old.**

There are serious concerns that his imminent execution would be a violation of the right to life. The prohibition of the execution of child offenders is absolute under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. In addition to this absolute prohibition, there are also serious concerns in this case of the use of torture to extract a forced confession that was later relied on by the judiciary in rendering a verdict, the lack of proper consideration of evidence and defences that raise doubt as to whether the guilty verdicts are well-founded, and other reported violations of due process and fair trial guarantees.

Concerns at the imminence of Mr. Shahbazi's execution, initially scheduled for June 2021, and related issues that would render his execution arbitrary under international law, were raised in a joint communication by Special Procedures mandate holders on 7 June 2021 (ref. no IRN 17/2021). Special Procedures mandate holders also raised their concerns publicly in a news release published on 24 June 2021. We note the halt of Mr. Shahbazi's execution as initially scheduled but remain deeply concerned at subsequent information suggesting that his execution has been rescheduled for 25 July.

According to the new information received:

Mr. Hossein Shahbazi's execution which was initially scheduled for 28 June 2021 was temporarily halted. Subsequent information received suggests that his execution has been rescheduled for 25 July 2021. Mr. Shahbazi remains in Shiraz Prison in Fars Province.

It is reported that the execution is scheduled to take place despite a request for judicial review still pending before the Supreme Court. The request has been assigned to Branch 40 of the Supreme Court. However, the request is pending as the judiciary has not yet made its decision on the request.

Without prejudging the accuracy of the received information, we express grave concern at the imminent execution of Mr. Hossein Shahbazi, who was a child at the time of the commission of the alleged crime, in violation of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC), to which the Islamic Republic of Iran is a party. We are also concerned by the reports in this case that the judiciary of the Islamic Republic of Iran failed to properly take into account or investigate allegations of torture and forced confessions under duress, the evidence and defences that raise serious doubt as to the guilt of the individual for the alleged crime, and the serious flaws in the investigations of these criminal allegations. The alleged violations of due process and fair trial guarantees, including the denial of a lawyer at all stages of these criminal proceedings, the reliance in part on an alleged forced confession as the basis for the court decision, and that the execution has been scheduled despite a pending request for judicial review at the Supreme Court, is an additional concern.

We are also gravely concerned that 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 ICCPR. Article 6(2) of ICCPR states that the death penalty may not be imposed when doing so would be contrary to the provisions of the ICCPR and pursuant to a final judgment rendered by a competent court.

We would also like to highlight that any judgment imposing the death sentence and execution of a child offender is incompatible with the international legal obligations undertaken by your Excellency's Government under the various instruments and is unlawful. Article 6(5) of the ICCPR, and Article 37(a) of the CRC, ratified by Iran 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 aged under 18 regardless of his or her age at the time of the trial or sentencing or of the execution of the sanction.

We note your Excellency's Government's position that it seeks to encourage reconciliation and pardon in such cases but regret that these efforts have not yielded results. Notwithstanding these efforts, we underline that the imposition of the death penalty on child offenders constitutes a violation of the Islamic Republic of Iran's obligations under international law.

The Human Rights Committee specifies that "under no circumstances can the death penalty ever be applied as a sanction against conduct the very criminalization of which violates the Covenant", (General comment No. 36, para 36). Thus, the violation of the fair trial guarantees provided for in article 14 of the ICCPR resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of article 6. Such violations might involve the use of forced confessions (concurrent violation of article 7); lack of effective representation during all stages of the criminal proceedings; failure to respect the presumption of innocence; lack of an effective right of appeal; lack of adequate time and facilities for the preparation of the

defence; and general lack of fairness of the criminal process, or lack of independence or impartiality of the trial or appeal court.

With regard to the alleged violations of due process and of fair trial guarantees, 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, the right of accused persons to communicate with counsel of their own choosing, and the right not to incriminate oneself. We also refer to General Comment No. 32 (2007) by the Human Rights Committee (CCPR/C/GC/32), the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37) and the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990, which provide for the right to legal assistance, and for the prompt access and consultation with counsel without intimidation, hindrance, harassment or improper interference.

Article 7 of the ICCPR prohibits torture and other cruel, inhuman or degrading treatment or punishment. 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.” We would also like to remind your Excellency’s Government that the absolute prohibition of torture is an international norm of jus cogens that is not subject to derogation under any circumstances, as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

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. Hossein Shahbazi, 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 him 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. Hossein Shahbazi 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 questions raised in the previous communication on this case as well as on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please explain why the execution of Hossein Shahbazi has been scheduled despite a request for judicial review still being pending for consideration by the Supreme Court?
3. Please detail the investigations undertaken by the authorities into the allegations of the use of torture and other forms of cruel, inhuman and degrading treatment during the criminal investigations into this case. If such investigations were conducted, please provide information as to their findings and the basis for the findings. If no investigations have been undertaken, please explain why.
4. Please provide detailed information as to why judges in the above-mentioned case relied in part on an alleged forced confession as the basis for their decision. Please also provide detailed information as to how the guilty decision have been justified, especially given the serious evidentiary issues outlined above, as well as other defences to the charges.
5. Please explain in detail why Hossein Shahbazi was denied legal representation in part of the investigation period. Please also provide information about why he was not provided with the gaurantees of due process and fair trial in line with international human rights law

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 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website after 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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