

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

REFERENCE:
UA IRN 24/2021

27 August 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; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on minority issues and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 46/18, 45/3, 44/5, 43/8 and 43/20.

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. **Heidar Ghorbani**, an Iranian from the Kurdish minority. We are particularly concerned that Mr. Ghorbani has exhausted all possible legal options for appealing his conviction and death penalty sentence, and that none of the serious allegations of fair trial and due process violations during his detention and court proceedings, including the use of forced confessions extracted by torture as the basis for his conviction and sentence, have been reviewed or addressed by the Judiciary.

Special Procedures mandate holders previously raised Mr. Ghorbani's situation with your Excellency's Government via a communication dated 1 October 2020 (see IRN 23/2020). We thank your Excellency's Government for your response to this communication. However, we regret that your response did not address several questions posed to your Excellency's Government in the original communication, especially the lack of information concerning the process undertaken, if any, to investigate the serious allegations of forced confessions extracted under torture and other forms of duress. We respectfully request that your Excellency's Government respond in detail to all questions posed in this communication and in IRN 23/2020.

According to information received:

Mr. Heidar Ghorbani is an Iranian and member of the Kurdish minority. As detailed in communication IRN 23/2020, Mr. Ghorbani has been convicted of *baghi* (armed rebellion against the State) and sentenced to the death penalty, despite allegations that authorities subjected him to torture and other cruel, inhuman and degrading treatment in order to extract a forced confession later used against him to justify the conviction.

In August 2021, it was learned that an appeal filed in September 2020 to the head of the Judiciary to exercise his powers under Article 477 of Iran's Code of Criminal Procedure to order a review of the case on the basis that the

verdict contravenes Iranian and Shari'a law had been rejected. Consequently, Mr. Ghorbani's legal avenues for appealing his conviction and death sentence have now been exhausted. It is understood that the relevant authorities now consider the verdict in Mr. Ghorbani's case to be final, and that his death sentence can be implemented at any time. There is no information about any date scheduled for the implementation of his death sentence.

Without prejudging the accuracy of the received information, we express our alarm that Mr. Ghorbani's appeal has not been accepted, that he has no further legal options to appeal against his conviction and death sentence, and that he is at imminent risk of execution. We also reiterate our deep concerns regarding his original conviction and death sentence, as well as his lengthy prison sentence and sentence to lashes. The convictions, as well as the death, prison and flogging sentences, followed deeply flawed judicial processes allegedly based on forced confessions due to torture and other serious violations of due process and of fair trial standards. We deeply regret that the authorities in the Islamic Republic of Iran continue to use torture and other ill-treatment to forcibly extract confessions, including in cases where there is a lack of incriminating evidence, and to broadcast forced confessions on State television, and would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*. While we acknowledge the receipt of your Excellency's Government's response to the previous communication, the information received does not allay our serious concerns. In certain respects, the Government's response further indicates that the imposition of the death penalty against Mr. Ghorbani will be a violation of the Islamic Republic of Iran's obligations under international human rights law.

We would like to remind your Excellency's Government of its obligations under international human rights law. Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975, states that the death penalty may not be imposed when doing so would be contrary to the provisions of the ICCPR. In General Comment No. 36 (part IV), the Human Rights Committee has noted that the imposition of the death penalty is lawful only if it is implemented in a non-arbitrary manner. That is, if it is imposed for the "most serious crimes", and in accordance with other obligations incumbent on the State under the Covenant.

Importantly, the Human Rights Committee stated the deprivation of life of individuals through acts or omissions that violate provisions of the Covenant other than article 6 is, as a rule, arbitrary in nature (para. 36). Thus, the passing of a death sentence following a trial which failed to meet the due process requirements of article 14 would render the award of the death penalty 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, and the right of accused persons to communicate with counsel of their own choosing. We also refer to General Comment No. 32 (2007) by the Human Rights Committee (CCPR/C/GC/32), and 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).

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.”

With regard to the alleged enforced disappearance addressed in IRN 23/2020, we would like to underline that enforced disappearances constitute an interference in the right to life of individuals for which the State is accountable and also constitute a violation of article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), article 9 (liberty and security of persons), and article 16 (right to recognition of a person before the law), read alone and in conjunction with article 2, para. 3 (right to an effective remedy) of the ICCPR (Human Rights Committee, General Comment 36, CCPR/C/GC/36). Furthermore, enforced disappearance also violates article 7, read alone and in conjunction with article 2, para. 3, of the ICCPR with regard to the relatives of the disappeared person. We are further drawing your Excellency’s Government’s attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes the prohibition to practice, permit or tolerate enforced disappearances (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7). The Declaration recognizes the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty (article 9), the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention (article 10). The same article of the Declaration establishes the obligation of the detaining authorities to make available accurate information on the detention of persons and their place or places of detention, including transfers, to their family, counsel or other persons with a legitimate interest (article 10). The Declaration also establishes the obligation to make the findings of an investigation into the circumstances of the disappearance available upon request to all persons

concerned and to ensure that all involved in the investigation are protected against ill-treatment, intimidation or reprisal (article 13). That States parties to the ICCPR must take adequate measures to prevent the enforced disappearance of individuals, bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation has also been reiterated in General Comment 36.

Finally, recognizing that the individual affected is a member of a minority in the Islamic Republic of Iran, we would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

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, 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 towards the execution of Mr. Heidar Ghorbani, 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 Mr. Ghorbani is annulled and that he is re-tried in full compliance with international human rights law and standards. We would also appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of Mr. Ghorbani 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 detailed information about the legal and factual basis for the conviction and sentencing to death of Mr. Ghorbani, and their compatibility with international human rights law.
3. Please provide detailed information about why there has not been any investigation or inquiry into the allegations of forced confessions and the use of torture and other cruel, inhuman or degrading treatment or punishment, as well as allegations of enforced disappearance.

4. Please provide detailed information about the criminal investigation and judicial processes in this case, including confirmation of the dates on which Mr. Ghorbani was arrested, detained, and charged, as well as the dates of every court decision. Please also confirm the charges, convictions and sentences against Mr. Ghorbani, as well as details on his access to legal assistance.
5. Please provide the court decisions related to the prosecution of Mr. Ghorbani, including by the Supreme Court, the Revolutionary Courts, the Military Courts and the Criminal Courts. Please also provide information about the justification for using closed and secret trials; as well as the justification to deny the right to present a defence against the evidence presented before the courts and the denial to provide effective access to counsel of his choosing.
6. Please provide information on the conditions in detention for Mr. Ghorbani, including any details about time spent in solitary confinement, family visits and communication with his lawyers, as well as about the state of his physical and psychological well-being.

While awaiting a reply, to prevent any irreparable damage to the life and personal integrity of Mr. Ghorbani, 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 issues in question.

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.

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

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