

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

10 May 2024

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 53/4, 53/12, 49/24, 52/5 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of **Mr. Khosrow Besharat and Mr. Kamran Sheikheh, who have been transferred to isolation cells prior to the implementation of the death penalty against them.**

Concerns about the imposition of the death penalty against Mr. Besharat and Mr. Sheikheh, based on vague and overly broad legal provisions, and following judicial proceedings that failed to uphold basic principles of a fair trial, including the right to defense and the exclusion of torture tainted confessions, were raised by Special Procedures in a previous communication sent on 25 March 2020 (reference IRN 5/2020). In this regard, we thank your Excellency's Government for its response on 8 October 2020 that provide information about the legal charges in the two cases, and other defendants. We regret however that the response did not address the reported irregularities in the legal proceedings and the serious violations of due process and did not refer to potential investigations of allegations of torture and ill-treatment with the purpose to extract coerced self-incriminating confessions, as per the State obligations under international human rights and customary law.

We remain concerned about the situation of Mr. Besharat and Mr. Sheikheh, given the recent information that they have been transferred to isolation cells prior to carrying out the death penalties against them, without due consideration or investigation of serious human rights violations, which would render this execution a form of arbitrary deprivation of life under international law. We appeal to your Excellency's Government to respond to the letter and the concern raised in this communication.

According to the new information received:

Mr. Besharat and Mr. Sheikheh, belong to the Kurdish Sunni minority in Iran.

On 3 February 2020, the Supreme Court confirmed the death sentences against them. According to the Government response to Special Procedures, sent on

8 October 2020, Mr. Besharat and Mr. Sheikheh are convicted on charges of *moharabeh* (waging war on God), and *corruption on earth* through membership in al-Qaeda terrorist group, participation in theft, harassment, and disobedience to duty officer, as well as complicity in murder of a conscript.

On 1 May 2024, Mr. Besharat and Mr. Sheikheh were transferred to isolation cells in Qezel Hesar Prison and are now facing imminent execution. This happened on the same day Mr. Besharat's co-defendant was executed. Five other co-defendants have been executed in recent months.

On 5 May 2024, Mr. Besharat's family had a brief visit with him in Qezel Hesar Prison, where they were informed by the authorities that the death sentence was imminent.

On 7 May 2024, officials from the Qezel Hesar Prison have contacted Besharat's family and requested their presence at the prison for a final visit.

Between November 2023 and January 2024, four other co-defendants were executed, while the fifth just got executed on 1 May 2024.

Through open letters published in 2019 and 2020, Mr. Besharat have described the physical and psychological torture that he had suffered while in detention, the health consequences of such inhuman treatment, the prohibition of family visits, and the imposed limitations in accessing legal assistance and representation.

It is further reported that Mr. Besharat and Mr. Sheikheh were charged following an unfair trial, which failed to grant them fundamental safeguards, such as the rights to choose their own lawyers in all stages of the proceedings. They were further sentenced to the death penalty based on a series of secretive procedures by Branch 28 and Branch 15 of the Islamic Revolutionary Court in Tehran. They were sentenced to death for charges of *moharabeh* (waging war on God) and *efsad-fil-arz* (corruption on earth) in March 2016.

Without prejudging the accuracy of the above-mentioned allegations, we express our grave concern about the alleged transfer of Mr. Besharat and Mr. Sheikheh to an isolation cell, reportedly for their imminent execution. In particular, we are alarmed that your Excellency's Government is proceeding with executions without due consideration to the allegations of torture or unfair trials, which require thorough, impartial, prompt, and transparent investigations under international law obligations on the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment. These obligations are considered *jus cogens* applicable regardless of the State ratification of treaties.

We would like to reiterate our concerns about the broad and vague national provisions on national security and *moharebeh*¹, based on which Mr. Besharat and Mr. Sheikheh have been charged, which violate the principle of legal certainty under the "principle of legal certainty" under international law, enshrined in articles 9(1) and 15 of the International Covenant on Civil and Political Rights (ICCPR) and

¹ *Moharabeh*: meaning waging war on God, an offence carrying death penalty in line with Article 279 of the Penal Code.

article 11 of the UDHR, requiring that criminal laws are sufficiently precise so it is clear what types of behavior and conduct constitute a criminal offense and what would be the consequence of committing such an offense. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse (A/73/361, para. 34.). Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.

We would like to draw your Excellency's Government's attention to article 6(2) of the ICCPR, ratified by the Islamic Republic of Iran on 24 June 1975, and the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty (resolution 1984/50), requiring States that have not abolished the death penalty, to refrain from imposing capital punishment except for the most serious crimes (intentional crimes with lethal or other extremely grave consequences), and only after a legal process which strictly upholds fair-trial guarantees, and allow convicted persons the right to seek pardon or commutation of their sentence. Moreover, the Human Rights Committee also noted that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the right to life under article 6 of the Covenant (CCPR/C/79/Add.25). Similarly, the Special Rapporteur on extrajudicial, summary or arbitrary executions explained that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

We would also like to remind your Excellency's Government that article 9 of the ICCPR guarantees the right not to be subjected to arbitrary arrest or detention, and that the prohibition of arbitrary detention is absolute. We also recall that the arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including the right to freedom of expression and opinion (art. 19), the right of peaceful assembly (art. 20), and the right to freedom of association (art. 21) is arbitrary (see CCPR/C/GC/35, para. 17 and the jurisprudence of the Working Group on Arbitrary Detention). In addition, as reiterated by the Working Group on Arbitrary Detention, a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination, including discrimination based on gender or political or other opinion.

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.

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.

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 (CCPR/C/GC/36, para. 41).

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 relation to the criminal offences concerning national security, “*moharebeh*” and terrorism (“*baghi*”), the principle of legality under Article 15 (1) of the ICCPR requires that criminal laws must be sufficiently precise so that it is clear what types of behavior and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence, so as to avoid overly broad or arbitrary application (General Comment No. 35, para. 22) and the impermissible targeting of civil society on political or other unjustified grounds (A/70/371, para. 46). Further, the definition of terrorist offences must be limited to conduct that is genuinely terrorist in nature, consistent with international standards on definition (A/HRC/16/51, para. 35).²

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

Under these circumstances, we appeal to your Excellency’s Government to immediately halt the imminent execution of Mr. Besharat and Mr. Sheikheh, to re-open their proceedings and permit international observers, and to establish a formal moratorium on implementation of the death penalty in compliance with international standards.

We also reiterate the long-standing call on the Government of the Islamic Republic of Iran to adopt all necessary measures to prevent any irreparable harm to the life and personal integrity of persons deprived of their liberty.

² As defined by the 19 United Nations sectoral conventions on terrorist offences, Security Council Resolution 1566 (2004) and the Declaration on Measures to Eliminate International Terrorism and the Declaration supplementing the 1994 Declaration on Measures to Eliminate International Terrorism, approved by the General Assembly in 1997, as well as the model definition of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (E/CN.4/2006/98, para. 72).

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. Besharat and Mr. Sheikheh in compliance with its international obligations.

We are issuing this appeal in order to safeguard the rights of Mr. Besharat and Mr. Sheikheh from irreparable harm and without prejudicing any eventual legal determination.

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 information on the factual and legal basis for the arrests of Mr. Besharat and Mr. Sheikheh and their detention and how these are compatible with Iran's obligations under international law as stated, including the international norms and standards on the right to freedom of opinion and expression.
3. Please explain how the imposition of the death penalty in the case of the two men for broad charges concerning national security, *moharabeh* and *corruption on earth* is consistent with international human rights law, notably regarding the right to life under article 6(2) of the ICCPR, and the requirement of legality under article 15 of the ICCPR. Please indicate further how Iran's definition of terrorist offences is consistent with international standards on definition.
4. Please also provide information as to what measures have been taken to ensure that the rights of Mr. Besharat and Mr. Sheikheh to due process and a fair trial have been respected, and how such measures comply with the obligations of your Excellency's Government under international human rights law.
5. Please provide detailed information on the measures which have been taken, or which are foreseen, to ensure full and impartial investigations, independent medical examinations, and judicial or other inquiries in relation to the allegations of arbitrary arrest and enforced disappearance, torture and other cruel, inhuman, or degrading treatment or punishment. If measures have been undertaken, please make available the results of the investigations. If no such measure has been taken, please explain how this is compatible with the international human rights obligations of Iran.
6. Please also provide information on the measures that have been taken to protect complainants from any form of intimidation or harassment or other violations for having made such allegations.
7. Please provide information on the legal avenues for the two men to appeal the death penalty or seek his right to request a commuting of his

sentence or pardon, according to international standards.

While awaiting a reply, we urge your Excellency's Government to halt the executions of Mr. Besharat and Mr. Sheikheh, to ensure that all necessary interim measures be taken to prevent any irreparable damage to the life and personal integrity of the two men, to halt the alleged violations and to 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 would also like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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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