

Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/14/24/Add.1 para 442

Full recommendation

Only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Messrs Ali Saedi, Walid Naisi, Majid Fardipour (Majid Mahawi), Doayr Mahawi, Maher Mahawi, Ahmad Saedi, and Yousuf Leftehpour are respected. Considering the irreversible nature of capital punishment, this can only mean suspension of the death sentence against the seven men until the question of whether fair trial guarantees were respected has been clarified and the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled.

Assessment using Impact Iran human rights indicators¹

A. The death sentences against the seven men should be suspended until the question of whether fair trial guarantees were respected has been clarified.

According to information received by UN Special Procedures, seven men were arrested in 2007 and held in incommunicado by intelligence services for three to fifteen months. The Special Rapporteur on Extrajudicial, Summary and or Arbitrary executions raised concerns that during this time period, the seven men were subject to torture in order to extract confessions from them.² They were later transferred to Karoun Prison in Ahvaz city. In 2009, the seven men were tried, convicted and sentenced to death for the offences of “acting against national security” and the 2007 killing of a *Shi'a* cleric, Sheikh Hesam al-Sameyri.

Article 35 of the Constitution guarantees the right to legal defence, which includes the right to choose a lawyer.³ Article 190 of the revised Code of Criminal Procedure (CCP) protects the right of a suspect to “be accompanied by a lawyer during the preliminary investigations”. Article 48 of the Code of Criminal Procedure (CCP), revised in 2015, provides the accused the opportunity to “demand the presence of a lawyer from the start of detention.”^{4 5} However,

¹ CCPR.7.1.S.1; CCPR.9.2.S.1; CCPR.10.1.S.1; CCPR.14.1.S.1; CCPR.14.3.S.1; CCPR.7.1.P.1; CCPR.9.2.P.2
CCPR.14.3.O.3; CCPR.7.1.O.1

² Report of the Special Rapporteur on extrajudicial summary or arbitrary executions, June 2010, <https://undocs.org/A/HRC/14/24/Add.1>

³ Constitution of the Islamic Republic of Iran, English translation, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

⁴ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICJ_IRN_42313_E.pdf

⁵ Code of Criminal Procedure of the Islamic Republic of Iran (2015) original version <http://dotic.ir/print/5584>

a Note in Article 48 of the 2015 CCP,⁶ specifies that individuals facing charges for certain offences, including those relating to national security and organized crime, must select legal counsel from a limited list of lawyers approved and announced by the Head of the Judiciary at the phase of preliminary investigations.⁷ Consequently, the right to legal assistance of one's choosing in cases related to national security and organized crime is particularly limited. For instance, in 2018, the Judiciary published the list of approved lawyers, which included only 20 names for Tehran. Many of the lawyers listed are reportedly close to the security bodies or paid to appear on the list, threatening due process and undermining the independence and neutrality of the Judiciary.⁸ Additionally, although the CCP guarantees the right to free legal assistance for those without adequate financial resources, the applicability of this right is differentiated between the pre-trial and trial phases.⁹ For instance, the CCP does not ensure access to free legal assistance during the investigation phase in cases where the accused faces charges other than those punishable by severe punishments, such as the death penalty or life imprisonment. As a consequence, safeguards provided in the Iranian legal framework fail to protect the accused person's right to access legal counsel in the pre-trial phase in cases not punishable by severe punishments. In May 2019, the Iranian legal and judicial parliamentary commission proposed an amendment to Article 48 of the Code of Criminal Procedure which would allow the prosecution to delay access to a lawyer for 20 days, with a possibility of extension to the whole duration of investigation, in cases related to national security, terrorism or financial corruption.¹⁰ ¹¹ Such amendment would further restrict access to legal counsel during the investigation phase. Article 14 of the ICCPR protects the right "to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing". Additionally, the Human Rights Committee has explicitly stipulated that the accused should be granted prompt access to legal counsel,¹² including during the pre-trial phase.¹³

Following an urgent appeal sent by UN Special Procedures on 29 October 2009, the Government of the Islamic Republic of Iran informed by letter, dated 7 October 2010, that Messrs. Yousef Laftepour, Damir Mahavi, Ahmad Savaedi, Maher Mahavi, Valid Nisi, Majed Fowadi were sentenced to five year's imprisonment, while Mr. Ali Savaed was

⁶ Code of Criminal Procedure of the Islamic Republic of Iran (2015) as referenced in the joint submission to the Human Rights Committee from the Abdorrahman Boroumand Center, Iran Human Rights Documentation Center, Impact Iran, Human Rights Activists in Iran, 2020, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_ICES_IRN_42313_E.pdf

⁷ The former CCP had conditioned the presence of a lawyer at the investigative stage on the permission of the judge in cases with a "confidential" aspect, cases where the presence of a party other than defendant would "corrupt" proceedings as determined by the judge, and in national security cases; See the March 17, 2017 report of the UN Special Rapporteur, Asma Jahangir, on fair trial in Iran (<https://undocs.org/en/A/HRC/34/65>)

⁸ "Iranian Lawyers Criticize Proposal to Deprive Defendants of Right to Choose Counsel," Human Rights Activists in Iran, June 6, 2018 (<https://www.iranrights.org/library/document/3443>)

⁹ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹⁰ Abdorrahman Boroumand Center, <https://www.iranrights.org/newsletter/issue/99>

¹¹ www.amnesty.org/en/documents/mde13/0379/2019/en/ ; <https://www.amnesty.org/en/latest/news/2019/05/iran-proposed-law-restricting-access-to-lawyer-would-be-crushing-blow-for-justice/>

¹² UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, available at: <https://www.refworld.org/docid/478b2b2f2.html> < <https://www.refworld.org/docid/478b2b2f2.html> >

¹³ Human Rights Committee, Concluding observations on Georgia, CCPR/C/79/Add.75, para. 27, available at bit.ly/20caB7i; HRC, Concluding observations on the Netherlands, CCPR/C/NLD/CO/4, para. 11, available at www.refworld.org/docid/4aa7aa642.html

sentenced to death. His sentence was upheld in appeal [the spelling of the names as contained in the response differ from the one provided by the source]. The Government did not provide further information on appeals or trials before the Supreme Court. Additionally, the Government remained silent regarding the allegations of torture while in detained incommunicado and if investigations were conducted. Although the Government mentioned in its letter that defendants had a lawyer to represent them, no information was provided as to whether and at what stage of the proceedings the defendants had access to counsel and whether they were given the option to choose their own counsel.¹⁴

Although Messrs. Yousef Laftepour, Damir Mahavi, Ahmad Savaedi, Maher Mahavi, Valid Nisi, Majed Fowadi had their sentences commuted to five years of prison, Mr. Ali Savaed [the spelling of the names as contained in the response differ from the one provided by the source] was executed despite the request of the Special Procedures' request. The Government of the Islamic Republic of Iran did not discuss whether fair trial guarantees were respected.

B. The death sentences against the seven men should be suspended until the allegation of torture have been thoroughly investigated and all doubts in this respect dispelled.

Article 38 of the Constitution of the Islamic Republic of Iran only prohibits torture and other ill-treatment when it is “for the purpose of extracting confession or acquiring information”. Article 39 prohibits “all affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished”.¹⁵ This prohibition is reinforced by Article 19 of the 2004 Law on Respect for Legitimate Freedoms and Safeguarding Citizen’s Rights. Additionally, Article 60 of the new Criminal Code of Procedure (2015) prohibits the use of “force, coercion, insulting language, leading questions and questions irrelevant to the charges” during interrogations and invalidates coerced statements. However, Iranian law does not define torture *per se*, nor does it provide for a separate crime of torture. Because there is no defined crime of torture and the prohibition of ill-treatment is limited to cases of extraction of confessions, the Iranian legal framework fails to establish adequate provisions for investigation and punishment of those responsible, or opportunity for victims to seek remedy or reparation. The Human Rights Committee explicitly stipulated that the ill-treatment of “persons against whom criminal charges are brought and to force them to make or sign, under duress, a confession admitting guilt violates both Article 7 of the Covenant prohibiting torture and inhuman, cruel or degrading treatment and article 14, paragraph 3 (g) prohibiting compulsion to testify against oneself or confess guilt.”¹⁶ The Government of the Islamic Republic of Iran did not provide information as to whether the allegations of torture against the seven men have been thoroughly investigated.

¹⁴ Report of the Special Rapporteur on independence of judges and lawyers, May 2011,

https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-30-Add1_EFS.pdf

¹⁵ Constitution of the Islamic Republic of Iran, English translation, <https://irandataportal.syr.edu/wp-content/uploads/constitution-english-1368.pdf>

¹⁶ UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, available at: <https://www.refworld.org/docid/478b2b2f2.html>
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Iran's Prison Regulations do not explicitly prohibit the use of unofficial or secret detention centers. Intelligence and security bodies are permitted to run special detention facilities for people accused of national security offences.¹⁷ While the revised Code of Criminal Procedure (2015) requires the maintenance of an official records of all detainees, the provisions do not require records as to location or health status.¹⁸ UN Special Procedures have argued that incommunicado detention is inconsistent with international human rights law,¹⁹ including the right to fair trial, and that prolonged incommunicado detention creates conditions that may lead to the perpetration of torture.²⁰ The Government of the Islamic Republic of Iran did not provide information as to whether investigation into allegations of torture have been conducted.

The Article 90 Commission of the Parliament is in charge of investigating complaints from citizens made against the operations of the Parliament itself, the Executive and the Judiciary.²¹ There is no publicly available information on data relating to the number of complaints received and investigated vis-à-vis cases of torture perpetrated during detention and incommunicado detention. The Iranian High Council for Human Rights has been established as a “national coordinating and policy-making institution in the field of human rights”²² and is reportedly composed mostly of government and judicial officials.²³ There is no readily available information that might indicate that the institution monitors the compliance of prisons and unofficial/secret detention facilities with international human rights standards.

Although Messrs. Yousef Laftepour, Damir Mahavi, Ahmad Savaedi, Maher Mahavi, Valid Nisi, Majed Fowadi had their sentences commuted to five years of prison, Mr. Ali Savaed [the spelling of the names as contained in the response differ from the one provided by the source] was executed despite the request of the Special Procedures' request. The Government of the Islamic Republic of Iran did not answer the questions whether fair trial guarantees were respected and whether allegations of torture were thoroughly investigated.

Recommendation Status:

This recommendation has **NOT** been implemented.

¹⁷ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹⁸ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>

¹⁹ Working Group on Arbitrary Detention (See opinions Nos. 53/2016 and 56/2016.) Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (see A/HRC/13/39/Add.5, para. 156).

²⁰ Committee Against Torture (see A/54/44, para. 182(a)). General Assembly (see (A/54/44)

²¹ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

²² National Report Submitted In Accordance With Paragraph 15 (A) Of The Annex To Human Rights Council Resolution 5/1: Islamic Republic of Iran, UN Doc. A/HRC/WG.6/7/IRN/1, 18 November 2009, para. 65

²³ https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRN/INT_CCPR_NGO_IRN_103_9081_E.pdf