

## Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/23/47/Add.5 para 55

### Full recommendation:

*The Special Rapporteur thanks the Government of the Islamic Republic of Iran for its reply, which includes inter alia information on the case of Mr. Younos Aghayan (referred to in the communication as Mr. Yunes Aghayan). He would appreciate to receive detailed information on the legal grounds and evidence used to sentence the defendant to death, as well as on the compliance of each judicial proceeding with the international human rights law provision of most serious crime, and standards on fair trial and due process safeguards. He calls upon the authorities in the Islamic Republic of Iran to ensure the highest level of respect of the rights and freedoms of Mr. Aghayan.*

### Assessment using Impact Iran human rights indicators<sup>1</sup>

According to information received by the UN Special Procedures, Mr. Aghayan, a follower of the Ahl-e Haqq (Yarsan/Yari) faith, was arrested around November 2004 for his participation in disagreements between the police and followers of his faith, allegedly initiated by the refusal of Ahl-e Haqq followers to take down religious slogans at the entrance of their cattle farm in Uch Tepe, West Azerbaijan Province. Mr. Aghayan was tried and sentenced to death on the charge of “*moharebeh*” (enmity against God) on the basis of “armed resistance against the Islamic Republic of Iran”. His sentence was upheld by the Supreme Court in April 2005.<sup>2</sup>

In its response to the Special Procedures’ communication,<sup>3</sup> the Government of the Islamic Republic of Iran failed to provide additional information as to the evidence of the case or the legal merits of Mr. Aghayan’s death sentence. Further, the Government did not provide information to confirm that the charges of *moharebeh* on the basis of “armed rebellion against the Islamic” held against Mr. Aghayan amounted to what is considered “most serious crimes” under international law.

In its latest General Comment on Article 6, the Human Rights Committee explicitly stipulated that the term “the most serious crimes” must “be read restrictively and appertain only to crimes of extreme gravity, involving intentional killing. Crimes not resulting directly and intentionally in death [...], although serious in nature, can never serve as the basis, within the framework of Article 6, for the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, [...], cannot justify the imposition of the death penalty.”<sup>4</sup>

The crime of *moharebeh* (“enmity against God”) is defined under Article 279 of the Islamic Penal Code (2013) “as drawing a weapon on the life, property or chastity of people or to cause terror as it creates the

<sup>1</sup> CCPR.6.2.S.1

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<sup>2</sup> Communication IRN 17/2012,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19734>

<sup>3</sup> Reply of the Government of the Islamic Republic of Iran to the Special Procedures’ communication IRN 17/2012

<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=31062>

<sup>4</sup> [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/I\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/I_Global/CCPR_C_GC_36_8785_E.pdf)

atmosphere of insecurity.”<sup>5</sup> Judges have discretion to punish a crime of *moharebeh* with either the death penalty, crucifixion, amputation of the right arm and the left leg, or banishment.<sup>6</sup> Although permitting the death penalty, the definition of *morahebeh* suggests that it also includes offences that do not involve intentional killing, which therefore cannot be considered as “most serious crime” and cannot receive the death penalty. Additionally, terms as such ‘terror’, ‘atmosphere of insecurity’ or ‘national security’ are not defined under the Islamic Penal Code. Further, under Article 220 of the Islamic Penal Code and Article 167 of the Iranian Constitution, a judge may refer to Islamic law – namely authoritative Islamic sources and *fatwas* (a ruling on a point of Islamic law given by a recognized authority) – to convict and sentence individuals to crimes and punishments not explicitly codified by the law. The Human Rights Committee explicitly stipulated that the imposition of the death penalty cannot “be based on vaguely defined criminal provisions, whose application to the convicted individual would depend on subjective or discretionary considerations the application of which is not reasonably foreseeable.”<sup>7</sup> The lack of precision and clarity about what constitutes a crime of *moharebeh* grants judges broad interpretive discretion and does not satisfy the principle of *nulla poena sine lege* (principle of legality).

Although Mr. Aghayan’s sentence was reportedly commuted to life imprisonment in 2015,<sup>8</sup> the Government repeatedly failed to ensure that death penalty sentences for charges of *moharebeh* complied with international law systematically and in all cases. Despite the existence of several means and mechanisms that accept complaints regarding the violation of rights in Iran, such as the Judge’s Disciplinary Court, the Article 90 Parliamentary Commission and, in general, any appeals courts including the Supreme Court, there is no readily available information that might suggest that complaints regarding cases of arbitrary deprivation of life are properly addressed, investigated and adjudicated.

Further, and without a detailed response from the concerned State party, information received suggests that Mr. Aghayan’s arrest and sentence were related to the legitimate exercise of his right to freedom of religion or belief. Additionally, conditions of his detention may have violated his due process. Allegedly, Mr. Aghayan’s father was only permitted to briefly meet with him once (as of time of the Special Procedures’ communication in 2012).<sup>9</sup> As stipulated by the Human Rights Committee in its General Comment no.35, denial of access to family may amount to a violation of the procedural safeguards provided under Article 9 of the Covenant.

Without a response from the Government of the Islamic Republic of Iran, there is no information that might indicate that the rights and freedoms of Mr. Aghayan were respected to the highest level. Rather, information received seems to suggest otherwise.

#### Recommendation Status:

This recommendation has **NOT** been implemented.

<sup>5</sup> Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>6</sup> The Islamic Penal Code (2013), Articles 282 and 283, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>7</sup> [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)

<sup>8</sup> <https://www.en-hrana.org/yunes-aghayan-deprived-furlough-12th-year-imprisonment>

<sup>9</sup> Communication IRN 17/2012,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19734>