

**Special Rapporteur on extrajudicial, summary or arbitrary executions  
A/HRC/14/24/Add.1 para 434**

**Full recommendation:**

*I therefore urge your Excellency's Government to take all necessary measures to guarantee that Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi are not deprived of their lives in violation of the obligations your Excellency's Government has entered into under international law. Considering the irreversible nature of capital punishment, this can only mean suspension of the death sentence against them until the question whether the acts they were found guilty of satisfy the international criteria as to what constitutes "most serious crimes" has been clarified. In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi in compliance with your Government's international legal obligations.*

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

**A. The Special Rapporteur urges the State party to take all necessary measures to guarantee that Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi are not deprived of their lives in violation of the Government's obligations under international law.**

In 2009, Habibollah Latifi Ehsan (Esma'il) Fattahian and Sherko Moarefi were convicted on charges of *moharebeh* ("enmity against God"), which carries the death penalty, for their alleged membership of and/or activities on the behalf of a prohibited Kurdish armed group. Sentences were upheld in appeal and confirmed by the Supreme Court. Reportedly, all three trials were not in compliance in with international standards.<sup>2 3 4 5 6 7 8</sup> There is no available evidence that might indicate the alleged offences amount to the "most serious crime" beyond reasonable doubts.<sup>9</sup>

Habibollah Latifi's execution was postponed when his case became public, and 300 people gathered outside Sanandaj prison on December 25<sup>th</sup> 2010, the night before he would have

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

CCPR.6.2.P.1

<sup>2</sup> <https://www.amnesty.org/download/Documents/40000/mde131172010en.pdf>

<sup>3</sup> <https://www.amnesty.org/en/documents/MDE13/035/2011/en/>

<sup>4</sup> <https://www.theguardian.com/world/2010/dec/25/iran-execute-student-kurd-terrorist>

<sup>5</sup> <https://www.amnesty.org/download/Documents/48000/mde131192009en.pdf>

<sup>6</sup> <https://www.amnesty.org/en/latest/news/2009/11/iran-must-halt-imminent-execution-kurdish-man-20091110/>

<sup>7</sup> <https://www.amnesty.org/en/latest/news/2010/01/kurdish-man-imminent-risk-execution-iran-20100122/>

<sup>8</sup> <https://www.hrw.org/news/2011/04/30/iran-halt-execution-kurdish-activist>

<sup>9</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/145/06/pdf/G1014506.pdf?OpenElement>

faced the death penalty.<sup>10 11</sup> Mr. Latifi reportedly remains in prison with a suspended death sentence, despite reports indicating he was pardoned by amnesty in 2015.<sup>12</sup>

Ehsan (Esma'il) Fattahian was reportedly executed on 11 November 2009.<sup>13</sup>

Sherko Moarefi was reportedly executed on 4 November 2013.<sup>14</sup>

In its latest General Comment on Article 6, the Human Rights Committee explicitly stipulated that the phrase “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>15</sup> Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi were convicted for their membership and/or activities on the behalf of a prohibited Kurdish armed group. Their convictions did not contain substantial proof that they were directly involved in “the most serious crime”. Without proof of participation in “the most serious crime”, their executions may constitute arbitrary deprivation of life.<sup>16</sup>

The crime of *moharebeh* (“enmity against God”) is defined under Article 279 of the Islamic Penal Code (2013) as “as drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity.”<sup>17</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>18</sup> Despite allowing for the death penalty, the definition of *moharebeh* suggests that it also includes offences that do not involve intentional killing, which therefore cannot be considered as a “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

<sup>10</sup> <https://iranhrdc.org/the-iran-human-rights-documentation-center-urges-iran-to-set-aside-habibollah-latifis-conviction-and-death-sentence/>

<sup>11</sup> <https://iranhr.net/en/articles/641>

<sup>12</sup> <https://www.en-irana.org/9th-year-death-row-habibollah-latifi>

<sup>13</sup> <https://www.hrw.org/news/2009/11/10/iran-kurdish-activist-executed>

<sup>14</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19688>

<sup>15</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>16</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>17</sup> Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

<sup>18</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/>

considerations the application of which is not reasonably foreseeable.”<sup>19</sup> The lack of precision and clarity concerning crimes of *moharebeh* provides judges with broad discretion in interpretation and does not satisfy the principle of *nulla poena sine lege* (principle of legality).

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.<sup>20</sup> There is no readily available information indicating the number of complaints following the imposition of the death penalty on charges of *moharebeh* received and investigated by the Article 90 Commission.

Although the cases of Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi have been raised by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Government of the Islamic Republic of Iran did not provide any further information to ensure that sentences were applied and carried out in compliance with international standards.<sup>21</sup> Reportedly, the three individuals were convicted of crimes that do not satisfy the international criteria of what constitutes “most serious crimes”, and the accused were not found guilty beyond reasonable doubt. Without wishing to prejudge the accuracy of these allegations, the absence of replies from the Iranian Government might well indicate a lack of willingness to shed light on the cases of Habibollah Latifi, Ehsan (Esma'il) Fattahian and Sherko Moarefi. Based on available information, the executions of Mr. Fattahian and Mr. Moarefi constitute arbitrary deprivation of life. While he was reportedly pardoned in 2015, available information suggests that Mr. Latifi has been in the death row ever since his first trial in 2009.<sup>22</sup>

Recommendation Status:

This recommendation has **NOT** been implemented.

<sup>19</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>20</sup> Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

<sup>21</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19688>

<sup>22</sup> <https://www.en-hrana.org/9th-year-death-row-habibollah-latifi>