

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Communications to and from Governments, A/HRC/14/24/Add.1, 18 June 2010: Iran

Concern about executions based on charges of homosexuality

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: 7 males and 3 minors

Character of reply: No response

Observations of the Special Rapporteur: The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent Appeal dated 22 December 2009

450. In this connection, I would like to draw the attention of your Government to information I have received regarding several cases of men sentenced to death on charges of homosexuality.

According to the information received:

Articles 108 to 111 of the Islamic Penal Code of Iran provide for the death penalty for sexual intercourse with penetration between "mature, sane and consenting" men (lavat). Article 114 requires that lavat be proven by the testimony of four male eyewitnesses. Under article 120 of the Code, however, if there are no four male eyewitnesses supporting a charge of lavat, the judge may issue a verdict and death sentence "on the basis of the knowledge which he has acquired through generally accepted methods". Nemat Safavi was arrested on charges of lavat in June 2006, when he was aged 16. The Criminal Court of Ardabil found him guilty and sentenced him to death in 2008. In November 2009, the Supreme Court quashed the sentence and sent the case back to a different section of the Criminal Court of Ardabil. Ghaseem Bashkool, a university student born in 1984, and another man were arrested on charges of lavat on 31 May 2007. The First District of the Criminal Court of Ardabil found the two men guilty of lavat and sentenced them to death. Reportedly, the conviction was based on "the knowledge of the judge". The current state of the proceedings against him is unknown. In or briefly before February 2008, Hamze Chavoshi (aged 19 at the time) and Loghman Hemzepour (aged 18 at the time) were arrested on charges of lavat. The current state of the proceedings against them is unknown.

In July 2008, the Second District of the Criminal Court of Tabriz found Mahdi Pooran (reportedly aged 17), Hamid Taghi, Ebrahim Hamidi, and Mehdi Rezaii guilty of lavat and sentenced them to death. The four defendants are accused by a fifth man of having raped him. Reportedly, there is enmity between the alleged victim's family and the family of Ebrahim Hamidi. The alleged victim initially stated that there were no witnesses to the rape. At the trial, however, three relatives of the alleged victim were introduced

as witnesses to the rape. As that did not meet the requirement of four male witnesses, the judge convicted the four defendants on the basis of "the knowledge of the judge". The case is currently pending before the Supreme Court. On an unspecified date the Criminal Court of Shiraz found Mohsen Ghabraii guilty of lavat and sentenced him to death. The judgment has been upheld on appeal by the Supreme Court and there is a risk that execution might be imminent.

451. While I do not wish to prejudge the accuracy of these allegations, I would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I have observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is 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). Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report under the Covenant of your Excellency's Government that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant.

452. With regard to the cases of Nemat Safavi and Mahdi Pooran, I would further like to draw your Government's attention once again to the fact that any further judgments imposing the death sentence and executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

453. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? Please provide detailed information on the current state of criminal proceedings on charges of lavat against Nemat Safavi, Ghaseem Bashkool and the man arrested together with him, Hamze Chavoshi and Loghman Hemzepour, Mahdi Pooran, Hamid Taghi, Ebrahim Hamidi, and Mehdi Rezaii, and Mohsen Ghabraii.

2. Is the information summarized above concerning the relevant provisions of the Islamic Penal Code of Iran accurate? Please explain the concept of a guilty finding based on "the knowledge of the judge".

3. Please provide statistics as to the number of persons sentenced to death for the offence of lavat and the number of those executed in the past five years.