

**OPINION No. 14/2006 (ISLAMIC REPUBLIC OF IRAN)**

**Communication: addressed to the Government on 7 October 2005.**

**Concerning: Ms. Kobra Rahmanpour.**

**The State has ratified the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. (Same text as paragraph 3 of Opinion No. 38/2005.)
3. The Working Group welcomes the cooperation of the Government of the Islamic Republic of Iran, which provided the Working Group with the requested information concerning the allegations of the source. The reply by the Government was brought to the attention of the source, which made comments on it.
4. According to the information received, Ms. Kobra Rahmanpour, 22 years old; resident of Shahre Rey, near Tehran; arrested on 5 November 2000; currently imprisoned and on death row in Evin prison, Tehran, awaiting judicial execution:
  - (a) Ms. Kobra Rahmanpour was born and grown up in a very poor family and had to give up school. Her father is elderly and one of her brothers is disabled. In order to help her family to survive, she married a man older than her own father, 40 years her senior. She reportedly suffered repeated maltreatment and abuse at her husband's home. On the last incident before her arrest, her mother-in law, Ms. Farokh-shoa Sabet, reportedly attacked her with a kitchen knife. Ms. Rahmanpour claimed that she had then killed her mother-in-law in an act of self-defence;
  - (b) Ms. Rahmanpour was arrested at the house of her husband and her mother-in-law, shortly after the incident, by police officers from the Police station of Niavaran who showed her an arrest warrant. She was accused of intentional murder and kept in detention awaiting her trial;
  - (c) The source alleges that Ms. Rahmanpour was interrogated without the presence of a defence lawyer. Before she had the occasion to obtain legal representation, she was coerced to confess to the murder of her mother-in-law. During the whole phase of the investigation she could not be assisted by a defence lawyer;

(d) Ms. Kobra Rahmanpour's trial began on 21 August 2001 before Branch 1608 of the Tehran's Criminal Court and lasted five sessions, only the first being public and the remaining four held in camera. The source alleges that Ms. Rahmanpour was convicted for premeditated murder and sentenced to death, despite the fact that her defence lawyer presented a temporary-insanity defence and demonstrated the fact that her husband, Mr. Alireza Niakaniyan, had several times committed mental, physical and sexual abuse against her; rape; defamation and fraud. Ms. Rahmanpour had been the victim of continuous humiliation by her husband, her mother-in-law and other family members. In one occasion, her husband was arrested and imprisoned for physically and sexually abusing her. Ms. Rahmanpour's lawyer also demonstrated that she was severely depressed at the time the incident took place;

(e) It was also reported that Ms. Rahmanpour's lawyer filed an appeal with the Supreme Court to overturn the guilt verdict. Despite the fact that Ms. Rahmanpour always pleaded not guilty and never waived from her claim that she acted in self-defence against an attacking mother-in-law, the Supreme Court rejected her claim and confirmed the verdict on 22 August 2002;

(f) Although Ms. Rahmanpour's punishment could have been commuted to a prison sentence if she would obtain the pardon of the heirs of the victim, such was not the case. She has remained in detention on death row since the Supreme Court confirmed the verdict. Her execution has been postponed several times. It is alleged that these delays in her execution have been due to the inability of her former husband and his family to provide the necessary documents to establish their relationship to the victim and also to eventual shortage of the necessary equipment to carry out the execution;

(g) The execution of Ms. Kobra Rahmanpour was first scheduled for 10 November 2003 and later for 31 December 2003 and 28 February 2004, before being submitted to an arbitrary council in view of the possibility of obtaining, from the heirs of the victim, their acceptance of compensation or payment of blood money (*dhiye*) rather than retribution in kind (*qesas-e nafs*). In July 2005, the victim's heirs ratified their decision not to pardon Ms. Kobra Rahmanpour and not to accept blood money. Her execution was then set to be carried out on 15 April 2005 but was also postponed. Efforts by public figures and officials have not deterred the family of the victim from seeking her execution, which now may be carried out at any moment;

(h) The source considers the detention of Ms. Kobra Rahmanpour to be arbitrary because her fundamental rights were not respected. Ms. Rahmanpour was arrested by police officers at the victim's family request after the death of the victim. She did not have access to a lawyer immediately after her arrest nor during the whole investigation phase, this leading to coercion by the authorities to self-incrimination. She could not challenge the validity of her detention before her trial nor could be granted bail;

(i) The source adds that Ms. Rahmanpour's rights to a fair trial have not been respected, in particular because her trial failed to comply with international standards. In this respect, it should be mentioned that there was an absence of presumption of innocence and the

right not to testify against oneself was not respected. Ms. Rahmanpour did not have a public hearing. The source considers that the court that sentenced her was not an independent and impartial tribunal and that she was not given the full right to defend herself. It adds that the appeal was not a genuine one.

5. The Government in its reply states that Ms. Kobra Rahmanpour has been accused of first-degree murder of her mother-in-law and following due process of law in competent court with full access to legal counsel of her choice has been sentenced to capital punishment. The sentence was upheld by the Supreme Court; however, it was not carried out based on direct orders from the Head of the Judiciary for the purpose of further consideration, including consultation between the accused and the victim's heirs. The Head of the Judiciary referred the case to the Arbitration Council so that the consent of the victim's heirs may be established through relevant mechanisms. A number of meetings between the Judiciary and the victim's heirs have so far failed to reach a satisfactory conclusion. Arbitration efforts are still ongoing and the sentence is still stayed despite the fact that it was sustained by the Supreme Court almost one year ago:

(a) Protecting the rights of a perpetrator of a crime must not preclude the system of justice from protecting those of the victim, who, in this case, has been deprived of her most essential rights of all, which is her Right to Life. Paragraph 2 of the resolution 1994/45 of the Commission on Human Rights, entitled "Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women" has endorsed sub-article (c), article 4, of the Declaration of Elimination of Violence against Women, which reads "... to punish acts of violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons";

(b) According to article 7 of "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty", contained in Economic and Social Council resolution 1984/50, Ms. Rahmanpour has the right to seek pardon or commutation of sentence. She has done so and, as stated above, the Judiciary of the Islamic Republic of Iran, according to article 8 of the same guidelines, has refrained from carrying out the sentence, "pending appeal or other recourse or other proceeding relating to pardon or commutation of the sentence".

6. The complaint raised with regard to Ms. Rahmanpour's case relies on two allegations. Firstly it is contended that the criminal proceedings against her were not fair, secondly it was argued that the qualification of the acts for which Ms. Rahmanpour stood trial was incorrect under applicable Iranian law.

7. The Working Group emphasizes from the outset that whereas it is mandated to examine whether Ms. Rahmanpour was given a fair trial in the context of her detention, its competence does not extend to assess, whether the capital punishments taken against her complies with the applicable domestic law. Hence, the only aspect of Ms. Rahmanpour's case, which comes within the Working Group's purview, is whether the criminal proceedings conducted against her withstand the scrutiny of the relevant international standards.

8. Therefore, in what follows, the Working Group will concentrate to the due process aspects of the criminal proceedings against Ms. Rahmanpour.

9. The principal objection of the source to the proceedings is that Ms. Rahmanpour was, after her arrest, interrogated without the presence of a defence lawyer; more specifically, she was coerced to confess the murder of her mother-in-law before having the opportunity to obtain any legal representation. In sum, it is contended that during the whole phase of the investigation she could not resort to the assistance of a defence lawyer.

10. Contrariwise, the Government submitted, without giving more details thereon, that “Ms. Rahmanpour had full access to legal counsel to her choice.”

11. The Working Group notes that the contradiction between the two allegations is only apparent. The statement of the Government shall obviously be understood as meaning that the defence counsel was made available for the accused during the entire trial. The Government neither confirmed, nor contested that before the trial began, Ms. Rahmanpour lacked legal representation.

12. This interpretation of the Government’s statement is supported by the Working Group’s own experience gained during its visit to the Islamic Republic of Iran in 2003. During this visit the host authorities explained to the delegation that under Iranian law the participation of defence lawyers is not required from the very beginning of the investigation. This also applies to the investigation of capital cases. Since the Working Group held that on this point the domestic law is at variance with international law and practice, it made the following recommendation in its report on the visit (E/CN.4/2004/3/Add.2): “The active involvement of counsel must be provided for, whatever the nature of the case, starting with the custody, or, the very least, the investigation phase, throughout the trial and the appeals stage.” For all these reasons the submission of the Government may be construed as not challenging the allegation of the source that Ms. Rahmanpour could not accede to the services of a defence lawyer between her being taken into custody and the beginning of the trial.

13. The lack of legal representation in the investigation of a capital charge may seriously jeopardise a supreme human value: the life of the accused. It is the position of the Working Group that in the instant case the lack of defence counsel from the initial stage of the investigation is so detrimental to the interests of justice in general, and to the interests of the person charged in particular that it confers to the criminal proceedings an unfair character.

14. On that basis the Working Group concludes that:

The deprivation of liberty of Ms. Rahmanpour is arbitrary as being in contravention of article 14 of the International Covenant on Civil and Political Rights and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

15. The Working Group requests the Government of the Islamic Republic of Iran to remedy the situation of Ms. Kobra Rahmanpour. Under the specific circumstances of this case and bearing in mind that she is being held on death row for a long time, the most appropriate remedy would be to obtain her exemption from the implementation of the capital punishment. Such a generous measure, the Working Group believes, would be broadly welcomed and highly appreciated by the international community.

Adopted on 11 May 2006.