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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolution 16/4, 16/5, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the physical and psychological integrity of **Mr. Hilal Mammadov** while in detention. Mr. Mammadov has been a leader of Azerbaijan's ethnic Talysh minority and had shortly before his arrest become editor of the newspaper *Tolishi Sado* (Talysh Voice), the only newspaper published in the Talysh minority language of southern Azerbaijan. The newspaper has not been published since the death in custody of the previous editor-in-chief in 2009.

According to the information received:

Mr. Mammadov has been detained for more than five months after being sentenced on 22 June 2012 to three months of pre-trial detention.

On 8 November 2012, the Sabail District Court rejected a complaint filed by Mr. Mammadov denouncing acts of torture and ill-treatment he allegedly suffered during his arrest, acts which were reportedly supported by a forensic examination. On 19 November 2012, the Baku Appeals Court upheld the decision by the District Court.

On 26, 28 and 29 November 2012, Mr. Mammadov was beaten and injured by his cell mate in a Kurdakhani prison. Mr. Mammadov's cell mate reportedly suffers from a serious mental disease and his behaviour has been aggressive for some

time. Mr. Mammadov's lawyers requested on several occasions that he be removed from the cell but their requests were reportedly ignored. On 29 November, his cell mate was transferred to the medical unit of the prison hospital for treatment.

On 28 November 2012, the investigation stage into Mr. Mammadov's case was completed and he faced criminal charges under Articles 274 ("high treason"); 283.2.2 ("incitement to national, racial or religious hostility") and 234.4.3 ("illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics and psychotropic substances") of the Criminal Code of Azerbaijan.

On 21 December, the case file on Mr. Mammadov was transferred to the Court on Grave Crimes for trial.

The first hearing took place on 9 January 2013, during which Mr. Mammadov's lawyer submitted a motion requesting the audio- and video-taping of the hearing, and another motion requesting that his client be allowed to sit outside of the court cage, together with his lawyer. Both motions were reportedly rejected.

Background

On 21 June 2012, Mr. Mammadov was arrested in relation to a criminal case opened against him by the Nasimi District Police under Article 234.4.3 of the Criminal Code ("illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics and psychotropic substances"), which provides penalties ranging from confiscation of property to imprisonment for up to 12 years. On 22 June 2012, the Nasimi District Court sentenced Mr. Mammadov to three months of pre-trial detention.

On 4 July 2012, new charges were brought against Mr. Mammadov under articles 274 ("high treason") and 283.2.2 ("incitement to national, racial or religious hostility") of the Criminal Code. His notebook computer and hard drives containing information about his work were confiscated as evidence. The criminal case launched against him by the Nasimi District Prosecutor's Office was transferred to the Grave Crimes Investigation Department, under the General Prosecutor's Office.

Serious concern is expressed about the physical and psychological integrity of Mr. Mammadov while in detention and the allegations received indicating that he might have been subject to torture and ill-treatment during his arrest. Moreover, concern is expressed at allegations received indicating that the situation of Mr. Mammadov is directly linked to his human rights activities.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

We would like to draw your Excellency's Government's attention to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. I would also like to draw your Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;" .

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

Furthermore, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Regarding allegations received indicating that the situation of Mr. Mammadov is directly linked to his human rights activities, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction,

individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

In addition, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate? Kindly indicate the measures taken to ensure the physical and psychological integrity of Mr. Mammadov while in detention.

2. Kindly indicate the legal basis for the decision of the Sabail District Court and the Baku Appeals Court to dismiss the complaint filed by Mr. Mammadov denouncing acts of torture and ill-treatment he allegedly suffered during his arrest and how is this compatible with international human rights standards and principles.

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work without fear of threats or acts of intimidation, harassment or criminalization of any sort.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Hilal Mammadov are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
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