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PROCEDURES SPECIALES DU
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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) Iran (2011-16) G/SO 214 (33-27) G/SO 214 (53-24)
IRN 16/2013

26 September 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 17/2, 22/23, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to the information we have received regarding the cases of **Messrs. Kamal Malaie, Jahangir Dehghani, Jamshed Dehghani and Hamed Ahmadi**, who are reportedly at risk of imminent execution.

According to information received:

Messrs. Kamal Malaie, Jahangir Dehghani, Jamshed Dehghani and Hamed Ahmadi, all members of the Kurdish minority of Sunni Muslim faith, were arrested in 2009. They were accused of involvement in the assassination of a senior Sunni cleric, and, consequently, sentenced to death on charges of Moharebeh (enmity against God) and Ifsad filarz (corruption on earth). Their death sentences have recently been upheld by the Supreme Court. Officials from the Ghezal Hesar Prison, where they are reportedly held at present, have recently informed the four men that their execution is imminent and will be carried out soon. It is alleged that Mr. Hamed Ahmadi and another detainee were transferred to a solitary confinement cell on 25 September 2013, where they risk being executed imminently. Reportedly, Messrs. Kamal Malaie, Jahangir Dehghani, and Jamshed Dehghani and one more detainee may also be transferred to a solitary

confinement cell any time, where they would be at imminent risk of execution as well.

The defendants reportedly denied any involvement in the assassination of the cleric, claiming that their arrest and detention occurred several months before the killing of the cleric took place. Furthermore, the four men were also reportedly subject to torture and ill-treatment while in detention, and were forced to confess and sign papers without being allowed to read them. They were reportedly denied access to a lawyer before and during their trials and their contacts with family members were also restricted. Allegedly, the four defendants were also threatened that their family members would be arrested.

Without making a judgment as to the accuracy of the information made available to us, we would like to express our concerns regarding the high risk of imminent execution and the imposition of the death penalty against Messrs. Kamal Malaie, Jahangir Dehghani, Jamshed Dehghani and Hamed Ahmadi, after proceedings which did not comply with international human rights law standards regarding the right to a fair trial and due process guarantees. We are also concerned about the allegations that the defendants were subjected to torture and ill-treatment while in detention.

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to prevent the execution of Messrs. Kamal Malaie, Jahangir Dehghani, Jamshed Dehghani and Hamed Ahmadi, which, if carried out, would be inconsistent with acceptable standards of international human rights law. We call upon your Excellency's Government not to execute them and to commute without delay the death sentences imposed against them.

In light of the above allegations, we wish to draw the attention of your Excellency's Government to the international norms and standards applicable to the present cases. The sentencing to death following proceedings which did not comply with international human rights law has been the subject of extensive communications to your Excellency's Government.

In this regard, we wish to refer to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) that the Islamic Republic of Iran ratified on 24 June 1975, stipulating that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Although international law does not prohibit the death penalty, it nonetheless provides that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner.

Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as permissible under international law from a summary execution, which by definition violates international human rights law standards. Safeguard 4 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty stipulates that "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative

explanation of the facts”. Safeguard 5 further provides that “Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Kamal Malaie, Mr. Jahangir Dehghani, Mr. Jamshed Dehghani and Mr. Hamed Ahmadi is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), and articles 9 and 14 of the ICCPR.

Furthermore, we wish to draw your Excellency's attention to the right to physical and mental integrity of Mr. Kamal Malaie, Mr. Jahangir Dehghani, Mr. Jamshed Dehghani and Mr. Hamed Ahmadi.

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.”

We also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States “To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;”

We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, 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 and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

With regard to allegations that the accused persons were denied access to a lawyer before and during their trials, we would like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Messrs. Kamal Malaie, Jahangir Dehghani, Jamshed Dehghani and Hamed Ahmadi in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Messrs. Kamal Malaie, Jahangir Dehghani, Jamshed Dehghani and Hamed Ahmadi and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
3. Please provide detailed information on each stage of the judicial proceedings against Messrs. Kamal Malaie, Jahangir Dehghani, Jamshed Dehghani and Hamed Ahmadi, and indicate how they comply with the requirement and guarantees of a fair trial as enshrined in article 14 of the ICCPR, United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, and the Basic Principles on the Role of Lawyers.
4. Please provide details, and where available the results, of any inquiries, medical examination, and judicial or other inquiries carried out in relation to the allegations of torture and ill-treatment of the defendants. If no inquiries have taken place, or if they have been inconclusive, please explain why.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit 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. Kamal Malaie, Mr. Jahangir Dehghani, Mr. Jamshed Dehghani and Mr. Hamed Ahmadi 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.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Ahmed Shaheed
Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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