

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

REFERENCE: UA G/SO 218/2 G/SO 214 (56-23) G/SO 214 (33-27) G/SO 214 (53-24) Terrorism (2005-4)  
IRQ 7/2012

21 December 2012

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 promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on freedom of religion or belief; 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, 15/15, 14/11, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **detention and execution of individuals from the Followers of Imam Ahmed El Hassan El Yamani (al-Mahdi) group in the cities of Najaf, Basra and Nassiriya, Iraq.**

According to the information received:

In 1999, the Followers of Imam Ahmed El Hassan El Yamani (al-Mahdi), a religious group that believe that Imam El Yamani is the Guided One, was established in Iraq and subsequently spread to other countries after 2003. Since 2005, this religious group has allegedly been subjected to intimidation and persecution.

On 19 January 2007, information was published in the media negatively reflecting the reputation of Imam Ahmed El Hassan El Yamani and accusing the Followers of being infidels. The following day, several Followers of Imam Ahmed El Hassan El Yamani were reportedly attacked in the city of Najaf. The religious school of Imam El Yamani, 'Husseiniya', was burned down and his office closed. People inside the school were detained, and books were confiscated or burned. A

second religious school of Imam El Yamani in Najaf was also allegedly burned down.

On 18 January 2008, army and police forces reportedly raided the cities of Basra and Nassiriya, and attacked a Shi'a sanctuary along other residences and mosques. This operation led to the reported summary execution of at least 18 unarmed individuals in both cities. According to the reports, the bodies of the deceased were not handed over to their families nor buried. Moreover, it is estimated that at least 378 individuals were arrested and transferred to detention centres on that day. Detainees were purportedly subjected to torture and ill-treatment.

According to information brought to our attention, the detainees may have been subjected to torture, inhuman and degrading treatment while in detention, particularly by prison guards and officers from the Emergency Regiment of Zi Kar Governorate. Abuses reportedly included burns, electric shocks, suffocation and other forms of physical and psychological abuse. In addition, detention periods may have been extended for one to two years, while awaiting the trials. All detainees were eventually released except for 45 who were brought before courts.

On 26 February 2009, the Appeal Criminal Court of Zi Kar Governorate, in its decision number 1/j2/2009, established death sentences for 28 of the accused on charges of carrying out armed attacks in Nassiriya City on 18 January 2008. The Court based its decision on article 4 of the counter terrorism law number 13 of 2005, and articles 47, 48, 49 of the Iraqi Penal Code number 111 of 1969. Other 16 of the accused were sentenced to life imprisonment pursuant to article 4 of the counter terrorism law number 13 of 2005, and articles 47, 48, 49 and 132/1 of the Iraqi Penal Code number 111 of 1969.

The following individuals convicted and sentenced to death were reportedly moved this week from Nassiriya Prison (Al Hout) to Khadimiya prison (block 5) in Baghdad (for executions):

**Najah Taleb Salman, Ghanem Archij Salem, Rahim Bashi Awad, Sabah Nuri Dagher, Mahmoud Razzak Mohamed, Ali Attia Rahima, Haider Kadhem Doeij, Hussein Sharif Mazuk, Abdullah Naim Delli, Mohamed Sharif Mazuk, Mohamed Jawad Hussein, Aqeel Kassem Mohamed, Hassan Charif Marzuk, Hussein Abd El Zahra Ouda, Mohamed Ali Hattab, Dia' Azib Lahoud, Akil Jassem Mohamed, Azhar Thajil Edham, Fadel Mohamed Cha'in, Ali Dakhil Salem, Ala' Khalaf Abed Ali, Haidar Youssef Aziz, Thaeir Hattab Ati, Mohamed Abed Al Amir Jaafar, Kazem Wahid Hussein, Ahmed Hachem Jaber, Hussein Archik Salem and Ghassan Monzer Mahouss.**

According to reports, the appeal trials were affected by partiality on the part of the judiciary and a lack of competence and independence, as judges were reportedly described as being controlled by power or political groups; life

sentences were issued following very brief trials, and evidence allegedly extracted under duress was admitted during the proceedings. Moreover, the accused have reportedly not been informed of the charges and arrests were undertaken without arrest warrants. Additionally, access to a lawyer during important stages of the proceedings, as well as family visits, were allegedly limited or denied.

Concern is expressed that Followers of Imam Ahmed El Hassan El Yamani (al-Mahdi) are being executed, prosecuted and intimidated as a result of their choice and practice of religion. Serious concern is expressed about the imminent threat of execution, in contravention of international human rights law standards related to the imposition of the death penalty, of the forementioned persons who have been sentenced to capital punishment by decision number 1/j2/2009 of the Appeal Criminal Court of Zi Kar Governorate and recently moved to Khadimiya prison in Baghdad presumably to be executed.

In view of the urgency of the matter and of the irreversibility of the punishment of the death penalty, we call on your Excellency's Government not to execute the said 28 individuals, which, if carried out, would be inconsistent with acceptable standards of international human rights law.

We also wish to appeal to your Excellency's Government to seek clarification on the information drawn to our attention and share our concerns in relation to present circumstances in light of the applicable international human rights norms and standards.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons 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 International Covenant on Civil and Political Rights (ICCPR) that the Government of Iraq ratified on 25 January 1971.

We would further like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief of the Followers of Imam Ahmed El Hassan El Yamani (al-Mahdi) in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the UDHR as well as of the ICCPR, which your Excellency's Government has ratified on 25 January 1971.

We would also like to recall that the General Assembly, in its resolution 64/164, urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end "(b) To ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to

justice all perpetrators of violations of these rights; [...] (g) To ensure, in particular, the right of all persons to worship, assemble or teach in connection with a religion or belief and their right to establish and maintain places for these purposes [...].”

In addition, we would like to refer to General Assembly resolution 63/181, in which the Assembly urged States to step up their efforts to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights.

Further, the Commission on Human Rights in resolution 2005/40 8 (a) urges States to “[T]o step up their efforts to eliminate intolerance and discrimination based on religion or belief, notably by taking all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to religious minorities, [...] including in the exercise of their right to freedom of thought, conscience, religion or belief”.

Furthermore, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR, the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

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 would also like to draw the attention of your Excellency’s Government to article 15 of the CAT, which provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

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 like to draw your Excellency’s Government’s attention to article 4 of the CAT which requires States Parties to ensure that all acts of torture are offences under its criminal law and to make the offences punishable by appropriate penalties. In this regard, we would also like to draw your attention to article 12 of the CAT, 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 CAT, which requires States Parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency’s Government’s attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, “Stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes 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;”.

With regard to the information on the risk of imminent execution of 28 followers, we would like to respectfully remind your Excellency’s Government that, in countries that have not yet abolished the death penalty, capital punishment can be imposed only for the most serious crimes. In this respect, we would like to recall that article 6(2) of the ICCPR 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, 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. This applies also to cases of terrorism-related offences, which do not constitute a most serious crime under international human rights law, unless they involved intentional loss of life.

Moreover, under international human rights law, the death penalty may be imposed only following a trial that complied with fair trial safeguards, as provided in articles 6(2) and 14 of the ICCPR. The United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, in particular Safeguard 5 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. Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards.

With respect to the reported summary execution of at least 18 unarmed followers following raids in Basra and Nassiriya on 18 January 2008, we would like to refer your Excellency's Government to Article 6(1) of the ICCPR, recognizing that every human being has the right not to be arbitrarily deprived of his or her life. In this regard the Human Rights Committee has said that "The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity."

We would like therefore to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life, including those alleged to have been committed by the security forces. The investigation of such cases shall be thorough, prompt and impartial, in accordance with Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Furthermore, Principle 12 states that the body of the deceased person shall not be disposed of until an adequate autopsy is conducted, while Principle 16 stipulates that the body of the deceased shall be returned to their families upon completion of the investigation.

In that context, we would further like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/63/223, paragraph 43), in which the Special Rapporteur emphasizes that "any trial for terrorism offences which could lead to the imposition of the death penalty, as well as all stages before the trial and the consideration of appeals on matter of fact and law after the trial, must rigourously comply with all aspects of a fair trial."

Concern is expressed that the charge of "terrorism" is used in order to punish the defendants for the religious or political beliefs and convictions they hold..

While being conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism, we would like to underline that General Assembly resolution 59/191, in its paragraph 1, stresses that: "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law", as does Security Council resolution 1456 (2003) in its paragraph 6.

We would also like to draw your Excellency's Government's attention to the right to a fair trial as one of the fundamental guarantees of human rights and the rules of law embodied in article 14 of the International Covenant on Civil and Political Rights. In his report on the protection of human rights and fundamental freedoms while countering terrorism (A/63/223, para. 31), the Special Rapporteur on the promotion and protection of human rights while countering terrorism notes that article 14(3)(g) of the International Covenant on Civil and Political Rights is also invoked where "methods violating the provisions of article 7 (torture and any other inhumane treatment) are used in order to

compel a person to confess or testify.” In that report, the Special Rapporteur further stresses that the practical implementation of article 14 (3)(g) of the Covenant is dependent on safeguards and procedural rules that ban in law and practice statements made involuntarily (A/63/223, para. 32).

In the event that your investigations support or suggest the allegations to be correct, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the Followers of Imam Ahmed El Hassan El Yamani (al-Mahdi) are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

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 summary of the cases accurate?
2. Have complaints been lodged by or on behalf of members of the Followers of Imam Ahmed El Hassan El Yamani (al-Mahdi) who have allegedly been detained, tortured and executed?
3. Please indicate the specific crime for which the 28 individuals have been found guilty of and the legal basis of the death sentence imposed against them, as well as provide information on each stage of the judicial proceedings against them. Please indicate how these are compatible with international human rights law, specifically with the “most serious crime” provision and the requirement for stringent respect of a fair trial and due process as enshrined *inter alia* in article 14 of the ICCPR.
4. Please provide information concerning the legal grounds for the arrest, detention and conviction of the above mentioned persons and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR.
5. 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.
6. Please indicate what measures have been taken by your Excellency’s Government to protect the life and security of the Followers of Imam Ahmed El Hassan El Yamani (al-Mahdi).

7. Please indicate what measures have been taken by your Excellency's Government to ensure that freedom of religion or belief and freedom of expression are protected in Iraq.

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 the above mentioned persons 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

Ben Emmerson  
Special Rapporteur on the promotion and protection of human rights and  
fundamental freedoms while countering terrorism

Heiner Bielefeldt  
Special Rapporteur on freedom of religion or belief

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