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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 Independent Expert on minority issues; 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) Minorities (2005-4) G/SO 214 (33-27) G/SO 214 (53-24)
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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; Independent Expert on minority issues; 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, 16/6, 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 risk of imminent execution of Messrs. **Ghazi Abbasi, Abdul-Reza Amir-Khanafereh, Abdul-Amir Mojaddami, and Jasim Moghaddam Payam**, as well as the cases of Messrs. **Shahab Abbasi, Sami Jadmavinejad, and Hadi Albokhanfarnejad**.

According to the information received:

Messrs. Ghazi Abbasi, Abdul-Reza Amir-Khanafereh, Abdul-Amir Mojaddami, and Jasim Moghaddam Payam, members of the Ahwazi Arab minority, allegedly face a very high risk of being executed in the coming days, following proceedings in violation of their right to fair trial, due process guarantees, and not to be subject to torture or cruel, inhuman or degrading treatment or punishment. Furthermore, Messrs. Shahab Abbasi, Sami Jadmavinejad, and Hadi Albokhanfarnejad, also members of the Ahwazi Arab minority, are allegedly imprisoned in violation of their right to fair trial, due process guarantees, and not to be subject to torture or

cruel, inhuman or degrading treatment or punishment. All seven defendants are reportedly residents of the city of Shadegan (also known as Fallahiya in Arabic), located approximately 100 kilometres south of Ahwaz.

It is reported that on 15 August 2012, Branch 1 of the Revolutionary Court of Ahwaz, the capital of Khuzestan province, found the seven men guilty of charges of moharebeh (“enmity against God”) and ifsad fil-arz (“corruption on earth”). They were allegedly accused of the murders of Mr. Behrouz Taghavi, a police officer shot and killed in front of a bank on 26 February 2009, and Mr. Habib Jadhani, a conscripted soldier shot and killed in the spring of 2008. The Revolutionary Court reportedly found that the defendants had established a “separatist ethnic” group that “used weapons and engaged in shooting in order to create fear and panic and disrupt public security”.

Messrs. Abbasi, Amir-Khanafereh, Mojaddami, and Payam were sentenced to death, whereas Messrs. Shahab Abbasi, Sami Jadmavinejad, and Hadi Albokhanfarnejad, were sentenced to three years in prison in the north-western city of Ardebil for lower-level involvement in the shootings. In February 2013, Branch 32 of Iran’s Supreme Court reportedly upheld the sentences pronounced in each case.

According to the information received, the proceedings against the seven men were conducted in violation of their rights to a fair trial and due process. The accused were reportedly held in incommunicado pre-trial detention for months, subjected to torture and ill-treatment for the purpose of extracting confessions, and denied full access to a defence lawyer.

Allegedly, Messrs. Amir-Khanafereh and Ghazi Abbasi were temporarily detained at the detention facility of the Intelligence Ministry in Ahwaz, where agents reportedly blindfolded them, strapped them to a bed on their stomachs, and beat them with cables on their backs and feet to obtain confessions regarding their use of firearms. The two defendants also reportedly had black marks around their legs and ankles, as a result of alleged electric shocks used against them at the Intelligence Ministry detention facility.

It is further reported that all seven defendants were tried simultaneously in one session that lasted less than two hours and was held behind closed doors. Allegedly, none of the six lawyers present at the trial had an opportunity to present an adequate defence of their clients. Both the Revolutionary Court and Supreme Court judgments reportedly acknowledge that some of the defendants retracted their confessions during the trial, claiming that they had been extracted under physical and psychological torture. However, the judgments do not acknowledge the validity of those retractions. There is allegedly no record of any investigation into the allegations of torture or ill-treatment.

Finally, some members of the defendants' families were allegedly harassed and detained.

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. Ghazi Abbasi, Abdul-Reza Amir-Khanafereh, Abdul-Amir Mojaddami, and Jasim Moghaddam Payam, 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 of torture and violation of the right to a fair trial and due process in the cases of Messrs. Shahab Abbasi, Sami Jadmavinejad, and Hadi Albokhanfarnejad.

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. Ghazi Abbasi, Abdul-Reza Amir-Khanafereh, Abdul-Amir Mojaddami, and Jasim Moghaddam Payam, 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 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. Safeguard 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty 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." 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.

Without expressing at this stage an opinion on the facts of the cases and on whether the detention of the aforementioned 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 ICCPR.

Furthermore, 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 and ICCPR.

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."

Regarding the allegations of unfair trial and lack of due process, we would like to refer your Excellency's Government to article 14(1) of the ICCPR, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him[or her], or of his[or her] rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security

in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”

We would also like to refer your Excellency’s Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular principle 5, which states: “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.”

The Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, also states: “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.” (Principle 6).

We would like to further refer your Excellency’s Government to article 14(3) of the ICCPR, which states: “In the determination of any criminal charge against him[or her], everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his[or her] defence and to communicate with counsel of his own choosing.; (d) To be tried in his presence, and to defend himself[or herself] in person or through legal assistance of his own choosing; to be informed, if he[or her] does not have legal assistance, of this right; and to have legal assistance assigned to him[or her], in any case where the interests of justice so require, and without payment by him[or her] in any such case if he does not have sufficient means to pay for it.”

In its General Comment No. 32, the Human Rights Committee further indicated that: “‘Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”

The right to be assisted by a lawyer is also set forth in 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, in particular we would like to draw your Excellency’s attention to the following principles:

- Principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”;

- Principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”

- Principle 7, which states: “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and

- 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.”

Regarding the allegations that confessions were extracted under duress, we would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, 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:

- Guideline 16, which states: “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”; and

- Guideline 12, which states: “Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.”

In addition, regarding the allegations that the complaints of torture and ill-treatment were not investigated, we would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, and in particular guideline 15, which states: “Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.”

We also wish to draw the attention of your Excellency's Government to international standards relevant to the protection and promotion of the rights of minorities. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires under article 1.1 that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." In addition, article 4.1 of the Declaration establishes that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."

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 the fore-mentioned persons in compliance with the noted 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. Ghazi Abbasi, Abdul-Reza Amir-Khanafereh, Abdul-Amir Mojaddami, Jasim Moghaddam Payam, Shahab Abbasi, Sami Jadmavinejad, and Hadi Albokhanfarnejad and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
3. Has a complaint been lodged by or on behalf of the alleged victims regarding the allegations of torture and ill-treatment? In this regard, please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries, as well as any prosecutions carried out in relation to the allegations of torture and ill-treatment. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide detailed information on each stage of the judicial proceedings against Messrs. Ghazi Abbasi, Abdul-Reza Amir-Khanafereh, Abdul-Amir Mojaddami, and Jasim Moghaddam Payam and indicate how they comply with the requirement and guarantees of a fair trial and due process as enshrined in article 14 of the ICCPR, United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, the Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers.

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 afore mentioned persons are respected and, in the event that your investigations support or suggest the 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.

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