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AUX DROITS DE L'HOMME

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of 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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 214 (3-3-16) Iran (2011-16) 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 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 17/2, 19/12, 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 concerning the **imminent execution of five members of one family Mr. Abd Al-Rahman Heidari, Mr. Taha Heidari, Mr. Jamshid Heidari, Mr. Mansour Heidari and Mr. Amir Muawi.**

According to information received:

On 20 April 2011, security forces arrested Mr. Abd Al-Rahman, Mr. Taha, Mr. Jamshid, Mr. Mansour and Mr. Amir on charges of killing a law enforcement official in 2011. All five Ahwazi Arabs were arrested in Malashiyeh district; amid residents of Khuzestan were organizing Day of Rage protests across the province, to mark the 6th anniversary of 2005 unrest. Following the arrests, they were taken to a detention facility run by the Ministry of Intelligence in the Chahar Sheer district, Ahwaz City, where they were subjected to torture and other forms of inhuman treatments. The men were coerced to confess to the murder charges. Based on the confession, all five were convicted of Moharebeh (enmity against God) for killing a law enforcement official in 2011 and were sentenced to death. The death sentence was upheld by the Supreme Court on 18 March 2012. During the trial, the court forced family members of the accused to take a Government appointed lawyer, which resulted in the case not being sufficiently defended.

On 9 June 2012, the prisoners were transferred to an undisclosed location for the execution of the sentence. Although the exact date of the execution is not known, it is feared the execution will be carried out any moment. Moreover, on 8 June 2012, authorities summoned Mr Jalil Heidari, the fourth and elder brother of Mr. Al-Rahman Heidari, Mr. Taha Heidari and Mr. Jamshid Heidari to apparently sign the execution consent. Mr Jalili was apparently taken into custody and his whereabouts remains unknown.

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

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to article 6, paragraph 2, of the International Covenant on Civil and Political Rights (ICCPR), ratified on 24 June 1975, which states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court." Only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. On the basis of the available information, it transpires that the defendants were forced to confess in violation of Article 14(2) of the ICCPR. Similarly, the defendants have reportedly not benefited from an unimpeded access to a lawyer of their own choosing, which is contrary to Article 14(3)(b) of the ICCPR.

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 Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

We would also like to draw your Excellency's Government's attention to article 15 of the Convention against Torture 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". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

Further, we would like to refer your Excellency's Government to article 14 (3) of the International Covenant on Civil and Political Rights, which was ratified by your Government, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

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:

- Principle 1: "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: "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."

Regarding the allegations that confessions were obtained by unlawful methods, we would also 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: "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".

In this connection, we would further like to refer Your Excellency's Government to 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. In particular, principle 6 which 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."

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 above-mentioned persons 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 above summary of the case accurate?
2. Please provide detailed information on each stage of judicial proceedings and indicate how they comply with the requirements and guarantees of a fair trial as enshrined in article 14 of the ICCPR, the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, and the Guidelines on the Role of Prosecutors.
3. Please indicate what measures have been taken to investigate the allegations of torture and ill-treatment, as well as any measures taken to punish the perpetrators of these acts.
4. Please provide information on the measures taken to ensure the safety of Mr. Abd Al-Rahman Heidari, Mr. Taha Heidari, Mr. Jamshid Heidari, Mr. Mansour Heidari and Mr. Amir Muawi.

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 person(s) 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.

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
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