

Zeinab Jalalian v. Iran
Submission to WGAD, March 2015

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I. Identity of the Complainant

A. Family Name:	Jalalian
B. First and other names:	Zeinab
C. Sex:	Female
D. Birth date or age:	August 1982 or 1983. She was 26 years old when she was arrested.
E. Nationality:	Kurdish/Iranian
F. Occupation:	Unknown; Engaged in the PJAK (Iran – Party for Free Life of Kurdistan) ¹ as a social activist
G. Identity card number (if applicable)	Unknown
H. Activities (trade union, political, religious, humanitarian/solidarity, press, etc.)	Social, political and ethnic minority activist engaged with the PJAK social/political wing
I. Address of usual residence	Damgheshlagh village near Maku, Province of West Azerbaijan. Currently detained in Khoy Prison, Iran
J. Date of Arrest	On or around 10 March 2008.
K. Place of Arrest	Ghazanchi inspection post near Kamiaran, Iran
L. Arresting Forces	Four armed Iranian Intelligence service officers
M. Warrant shown	
N. Date of detention	Unknown
O. Duration of detention	10 March 2008 to present
P. Forces holding detainee	7 years (ongoing)
Q. Places of detention	Iran Ministry of Security Naft Square Detention Centre; Kermanshah Juvenile Correction and Training Centre; Evin Prison; Dizel Abad Prison; Khoy Prison
R. Authorities ordered detention	
S. Imputed reasons for detention	Iran National Security Services Leaving Iran unlawfully, alleged membership in PJAK, alleged transportation and possession of firearms and ammunition, alleged participation in armed activities and engaging in providing propaganda for PJAK.
T. Authors	Justice for Iran and REDRESS

¹ Party Jiani Azadi Kurdistan (Party of Free Life of Kurdistan).

II. Introduction and Summary

1. Ms. Zeinab Jalalian is an Iranian citizen currently serving a sentence of life imprisonment at Khoy Prison in the Islamic Republic of Iran.²
2. Ms. Jalalian is deemed a “security” detainee, or political prisoner, and as such kept in high security conditions. As a result, it has not been possible to obtain testimony directly from Ms. Jalalian. Further, due to risks of reprisals, it has also not been possible to obtain testimony from Ms. Jalalian’s lawyers, parents or brother, who currently live in Iran.³ Reprisals against the lawyers and family members of accused and convicted individuals, and of individuals that liaise with UN treaty bodies, are common in Iran.⁴ It is very difficult for Ms. Jalalian’s parents and lawyers to obtain access to her. Even where they have a Court order granting access, Ms. Jalalian’s parents and brother have been refused entry to the prison.⁵
3. Given these difficulties, the facts set out below are based on information in the public domain; a witness statement provided by Ms. Jalalian’s sister (Ms. Deniz Jalalian) and a statement from Mr. Rebin Rahmani who was detained in the same prison as Ms. Jalalian. Ms. Deniz Jalalian has also provided the power of attorney.⁶ Although this application is submitted at the request of Ms. Deniz Jalalian, the Authors understand that Ms. Jalalian is keen for international bodies to be made aware of her current and worsening condition. Ms. Jalalian will, therefore, be referred to as the Applicant throughout this submission.
4. Mr. Rebin Rahmani’s statement includes the name, description and testimony of a woman currently detained in Dizel Abad prison⁷, where the Applicant was held until her

² Appendix 14, Committee of Human Rights Reporters, “Reversal of Death Sentence; Life Imprisonment Sentence of Zeinab Jalalian”, 15 December 2011.

³ Appendix 3, Witness Statement of Rebin Rahmani, 18 November 2014, paras. 16, 23 and 24; see also Appendix 10, Rooz Online, “Interview with Zeinab Jalalian’s father: ‘Let My Daughter Stay Alive’”, Interviewer : Fereshteh Ghazi, 29 June 2010, original available at: <http://www.roozonline.com/persian/interview/interview-item/archive/2010/june/29/article/-622c24b688.html>.

⁴ Reprisals against family members: Amnesty International, “Justice is an alien word”: Ill-treatment of political prisoners in Evin Prison, May 2014, at p.14; Reprisals for communications with UN treaty bodies or special procedures: Report of Ahmed Shaheed, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran: http://shaheedoniran.org/wp-content/uploads/2013/12/A-HRC-22-56_en.pdf 28 February 2013, paras. 5-7; Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/12/L.825, September 2009; <http://www.daneshjoonews.com/node/8058>; <http://af-express.com/1391/08/24/>; http://hrdai.net/index.php?option=com_content&view=article&id=1064:-----3-----&catid=5:2010-07-21-10-19-53; https://www.iranhumanrights.org/2012/12/kurdish_prisoners/; <http://persianbanoo.wordpress.com/2012/12/15/3-kurdish-political-prisoners-to-be-tried-on-charges-of-contact-with-un-special-rapporteur-ahmed-shaheed/>; <http://hra-news.org/1389-01-27-05-27-21/14413-1.html>; “the prisoners were reportedly detained in solitary confinement for two months, interrogated for contacting the Special Rapporteur, and severely tortured for the purpose of soliciting confessions about their contact with the Special Procedure; public campaigning.” Iranian League for Defence of Human Rights (FIDH), Iranian authorities hold political prisoners hostage, July 2012: <https://www.fidh.org/International-Federation-for-Human-Rights/asia/iran/Iranian-authorities-hold-political> “Families of political prisoners frequently face other forms of harassment. Occasionally, some family members are detained or sentenced to imprisonment merely for publicising their prisoner’s case or pursuing their fate with the judicial authorities. On other occasions, security agents meddle in the private sphere of prisoner’s family, e.g. advising wives to complain against their husbands or to divorce them.”

⁵ Appendix 2, Witness Statement of Deniz Jalalian, 9 November 2014, para. 57.

⁶ Appendix 1, Power of Attorney, signed by Deniz Jalalian on 19 November 2014.

⁷ Appendix 3, para. 22.

recent transfer to Khoy Prison.⁸ To preserve this woman's safety, and to ensure that her privileges (to be able to attend home to visit her family and speak to those outside of the prison) remain intact, we request that her name be redacted in any materials shared with the Respondent State.

Summary Background

5. The Applicant has a history of social activism and work on promoting women's rights. On or around 10 March 2008,⁹ the Applicant was arrested by four armed Iranian Intelligence service officers¹⁰ at Ghazanchi inspection post near Kamiaran.¹¹ The Applicant was violently kicked by these officers;¹² she was not informed of the reasons for the arrest, and placed in the trunk of a black Peugeot Sedan.¹³ She was taken to a detention centre run by the Ministry of Intelligence in Kermanshah known as Naft Square Detention Centre.¹⁴ She was subjected to long interrogations, was relentlessly beaten while blindfolded, held in solitary confinement for months, threatened with rape, threatened with the publication of doctored images showing her engaged in sexual activity with a fellow detainee, flogged and hit against a wall.¹⁵ The Applicant was later transferred to Kermanshah Juvenile Correction and Training Centre [*Kanoon-e eslah va tarbiat-e Kermanshah*].¹⁶ The Applicant was banned from contact with other prisoners at the Kermanshah Juvenile Correction and Training Centre. During this period, marks of torture were visible on her body.¹⁷

⁸ Appendix 6, Kurdane Radio, "Zeinab Jalalian is denied visitation rights in Khoy Prison", 8 February 2015, original available here: <http://www.kurdane.com/humanrights/item/1549-%25D8%25B2%25DB%258C%25D9%2586%25D8%25A8-%25D8%25AC%25D9%2584%25D8%25A7%25D9%2584%25DB%258C%25D8%25A7%25D9%2586-%25D8%25AF%25D8%25B1-%25D8%25B2%25D9%2586%25D8%25AF%25D8%25A7%25D9%2586-%25D8%25AE%25D9%2588%25DB%258C-%25D8%25A7%25D8%25B2-%25D8%25AD%25D9%2582-%25D9%2585%25D9%2584%25D8%25A7%25D9%2582%25D8%25A7%25D8%25AA-%25D9%2585%25D8%25AD%25D8%25B> ;

The transfer took place after both Witness Statements provided in support of this Application were finalized and signed. However, the exact date of the transfer, as confirmed by Mr. Amir Salar Davoudi, the Applicant's lawyer, on his personal Facebook page, is unknown: <https://www.facebook.com/amirsalar.davoudi?fref=ts> (28 February 2015)

⁹ A number of different dates have been put forward as regards Ms. Jalalian's arrest. Dates referred to in the followings blogs and articles, as well as the report of Mr Christof Heyns the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions before the Human Rights Council, 17th session, A-HRC-17-28-Add1, 23 May 2011, 188 indicate that Ms. Jalalian was arrested in 2007; 1) Amnesty International, USA, "Story of Two Women: Two Death Sentences in Iran", 9 July 2010: <http://blog.amnestyusa.org/middle-east/story-of-two-women-two-death-sentences-in-iran/>; 2) Amnesty International, USA, "Iran: Concern over imminent executions", 30 June 2010: <http://www.amnestyusa.org/news/press-releases/iran-concern-over-imminent-executions?id=ENGUSA20100630002&lang=e>; Iran Human Rights, "Death Sentences Now Where There Would Have Been a Three-Year Sentence Only Five Years Ago, 4 July 2010: <http://www.iranhumanrights.org/2010/07/death-sentences-now-where-there-would-have-been-a-3-year-sentence-only-five-years-ago-says-lawyer/>; Iran Human Rights, "Female Kurdish Prisoner's Death Sentence Overturned", 19 December 2011: <http://www.iranhumanrights.org/2011/12/jalalian-overturn/>. However, we believe that this may have been an error caused when translating the dates from the Persian calendar ("Jalaali calendar") to the Gregorian or Christian calendar. Multiple sources suggest that Ms. Jalalian was arrested on or around 10 or 11 March 2008. As such, we refer to these dates throughout this submission.

¹⁰ Appendix 2, para. 14; Appendix 3, para. 7; see also Appendix 7.

¹¹ Appendix 2, para. 14; see also Appendix 7.

¹² Appendix 3, para. 7.

¹³ Appendix 2, para. 14; Appendix 3, para. 7; see also Appendix 13, Committee of Human Rights Reporters, "I am not scared of death; I am ready to confront death for freedom", 6 April 2011.

¹⁴ Appendix 3, para. 10.

¹⁵ Appendix 2, para. 16; Appendix 3, paras. 10 - 12; Iranian.com, "Zeinab Jalalian: Prisoner of the Day, Life in danger due to illness in prison", 23 July 2012: <http://iranian.com/main/2012/jul/zeinab-jalalian-prisoner-day.html>.

¹⁶ Appendix 2, para. 17; Appendix 3, para. 5; Appendix 14, Committee of Human Rights Reporters, "Reversal of Death Sentence; Life Imprisonment Sentence of Zeinab Jalalian", 15 December 2011.

¹⁷ Appendix 2, para. 16; Appendix 3, paras. 20-21.

6. For months after her arrest, the Applicant was unaware of the charges brought against her and she did not have access to a lawyer. Around December 2008, after appearing before the Revolutionary Court of Kermanshah (Court of First Instance), the Applicant was able to inform her family for the first time that she was facing charges of *Moharebeh*¹⁸ and affiliation with an opposition party to the Islamic Republic of Iran.¹⁹
7. At her December 2008 hearing before the Court of First Instance, the Applicant appeared unrepresented and therefore unprepared. Mr. Ensanimehr, the Applicant's lawyer who had been appointed only three weeks before the hearing was denied the opportunity of appearing. The trial was scheduled without Mr. Ensanimehr being given prior notice. In December 2006, the Court of First Instance conducted a summary trial against the Applicant and imposed the death penalty.²⁰
8. Mr. Ensanimehr appealed the verdict.²¹ On 6 May 2009, the Appeal Court rejected the appeal.²² The Applicant's lawyer were prevented from adequately representing her at the time of her arrest and detention, and at trial.²³
9. In March 2010, the Applicant was transferred to Ward 209 in Evin Prison, where she was subjected to pressure to falsely confess that she had engaged in military cooperation with the PJAK in interviews that would be broadcast on television.²⁴ In late 2010, the Applicant's lawyer at the time, Dr. Sharif, who became involved in her case only after a final sentence upholding the trial court's decision was handed down by the Appeal Court, submitted a Plea for Clemency by the Iranian Supreme Leader, Ayatollah Ali Khamenei, before the Amnesty and Clemency Commission.
10. The Applicant's lawyer simultaneously brought an Application for Amendment of the Judgment by the Supreme Court.²⁵ It appears however that this application for review by the Supreme Court received no response.
11. In December 2011 or January 2012, the Applicant received confirmation that the clemency request has been granted and her sentence was commuted to life imprisonment.²⁶

¹⁸ The crime of *Moharebeh* is commonly translated as "enmity against God", but the idiomatic translation fails to account for the legal definition provided under Article 186 of the Islamic Penal Code of Iran (1991) and Articles 279-280 of the Amended Islamic Penal Code (2013), which essentially applies to a person brandishing or pointing a weapon at members of the public to kill, frighten and coerce them. See also Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, A/HRC/25/61, 13 March 2014, at p. 9. A more detailed discussion on the crime of *Moharebeh* under Iranian criminal law will follow,

¹⁹ Appendix 2, para. 18.

²⁰ Appendix 2, para. 25.

²¹ Appendix 11, Iran Green Voice, "Zeinab Jalalian, Sentenced to Life Imprisonment, is in Critical Health Condition", 22 July 2012, original available here: <http://www.irangreenvoice.com/article/2012/jul/22/25912>.

²² Appendix 5, Branch 4 of the Islamic Revolutionary Court, Appellate Court Verdict against Ms Jalalian, 6 May 2009

²³ Report of the Special Rapporteur above note 9 , p. 190.

²⁴ International Campaign for Human Rights in Iran, "Female Kurdish Prisoner's Death Sentence Overturned", 19 December 2011, <http://www.iranhumanrights.org/2011/12/jalalian-overturn/>.

²⁵ The Application for Amendment of Judgment was presented to the Supreme Court pursuant to Articles 272 to 277 of the *Islamic Republic of Iran's Criminal Code of Procedure for Public and Revolutionary Courts* (September 19, 1999), available online at: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>). However, the outcome of this request is not confirmed by an official decision.

²⁶ Appendix 7.

12. In or around August 2010, the Applicant was returned to Kermanshah, this time to Dizel Abad prison.²⁷ Due to the distance from their home (around 850 kilometres), the Applicant's family have struggled to meet with her. They have requested that the Applicant be transferred to a prison closer to their home so that they can visit her more regularly. However, despite the Applicant's recent transfer to Khoy Prison, she continues to be deprived of her visitation rights²⁸. On 11 April 2012, the Applicant was transferred to the Kermanshah prison hospital due to intestinal infection.²⁹ The Applicant's family are willing to pay for her medical treatment. However, the Iranian authorities have not permitted the Applicant to obtain access to the treatment she needs.³⁰

Violations

13. For the reasons set out below, the arrest and detention of the Applicant violates the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a party,³¹ the UN Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment (Body of Principles), the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules).
14. The Applicant has been subjected to arbitrary arrest, detention and torture as a result of her identification as a social and women's rights Kurdish activist. As such, the deprivation of the Applicant's liberty falls under Categories I, II and III of the Working Group's classification of cases.

III. Statement of Facts

Background

15. In 2000, the Applicant and her sister, Ms. Deniz Jalalian, left their family home together, and moved to Kurdistan, Iraq. In Iraq, the Applicant became engaged in social and political activism supported by the PJAK, in particular assisting women by providing education and social services – both in Iran and Iraq.³² However, there is no evidence that the Applicant was ever involved, either directly or indirectly, in PJAK's armed wing.³³ While as a women of ethnic minority the Applicant was socially and politically active from 2000 to her arrest in 2008, she only became involved in the PJAK since its establishment in 2004. As such, the Applicant occasionally travelled to her native Iranian Kurdistan to carry out her activities. For example, in an earlier visit to the Iranian

²⁷ Appendix 2, para. 43.

²⁸ See above note 8

²⁹ Human Rights Activists News Agency, *Zeinab Jalalian, political prisoners were transferred to Kermanshah prison*, 24 January 2012, original available here: <https://hra-news.org/fa/prisoners/1-10641>.

³⁰ Appendix 2, para. 16; Appendix 3, paras. 54-67; see also Amnesty International USA, "Iran: Kurdish woman losing sight in Iranian prison: Zeynab Jalalian", 16 June 2014, available here: <http://amnesty.org/en/library/info/MDE13/033/2014/en> (English).

³¹ Iran ratified the ICCPR on 24 June 1975.

³² Appendix 3, para. 8.

³³ Appendix 2, para. 9.

Kurdistan prior to her arrest and detention around 10 March 2008, the Applicant had visited the Iranian girls' high school *Bent-ol-Hoda in Kamiaran*, where she delivered a speech about women's rights and the importance of International Women's Day (which takes place on 8 March every year). The Applicant had distributed flowers to the students and she was received well by the students and teachers at the school.³⁴

10 March 2008: Arrest and detention of Ms. Jalalian in Iran

16. On or around 10 March 2008,³⁵ the Applicant was on a bus travelling from Kermanshah in Iran to Sanandaj (also in western Iran) when she was arrested by four armed Iranian Intelligence security officers³⁶ at Ghazanchi inspection post near Kamiaran.³⁷ She had been travelling from Iraqi Kurdistan.³⁸ The security forces ordered all passengers, excluding the Applicant, to exit the bus. Then, without telling her the reason for the arrest, the security forces while violently kicking her moved the Applicant out of the bus.³⁹ While yelling at her, they tied the Applicant's hands and feet, put her in the trunk of a black Peugeot Sedan, and took her with them.⁴⁰ For the reasons set out below, it is unlikely that they carried an arrest warrant with them.

10 March 2008 – December 2008: Kermanshah Intelligence Prison and Kermanshah Juvenile Correction and Training Centre

17. From the point of her arrest at Ghazanchi inspection post, the Applicant was taken to a detention centre owned and operated by the Intelligence Department in Kermanshah known as Naft Square Detention Centre.⁴¹ According to several reports, numerous Kurdish political prisoners have been held, interrogated and tortured at Naft Square Detention Centre at some point during their detention.⁴²
18. Approximately three weeks after the Applicant's arrest, an officer from Naft Square Detention Centre called the Applicant's parents and informed them of their daughter's arrest.⁴³ The Applicant's parents doubted the authenticity of the call.
19. Approximately one month after her arrest the Applicant was able to call her parents and explain – in a short three minute phone call – that she had been arrested and was

³⁴ Appendix 3, para. 8

³⁵ Appendix 7.

³⁶ Appendix 2, para. 14; see also Appendix 7.

³⁷ Appendix 2, para. 14; see also Appendix 7.

³⁸ Appendix 2, para. 16; Appendix 3, paras. 12-13.

³⁹ Appendix 3, para. 7.

⁴⁰ Appendix 2, para. 14.

⁴¹ Appendix 2, para. 14; Report of the Special Rapporteur, above note 9, p. 188.

⁴² See for example: Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 6 March 2012, A/HRC/19/66, para 16; Human Rights and Democracy for Iran, "One Person's Story: Farzad Kamangar", available here: <http://www.iranrights.org/memorial/story/-5379/farzad-kamangar>; Amnesty International, "Iran: Farzad Kamangar, (part 2) his testimony", available here: <http://www.amnesty.org.uk/blogs/30-years-amnesty-trade-union-solidarity/iran-farzad-kamangar-part-2-his-testimony>; Iran Human Rights Documentation Centre, "Witness statement of Rebin Rahmani: A Kurdish Activist", 16 January 2012, available here: <http://www.iranhrdc.org/english/publications/witness-testimony/1000000301-witness-statement-of-rebin-rahmani.html>.

⁴³ Appendix 2, para. 15.

being detained at Naft Square Detention Centre. She said that she had been relentlessly beaten while blindfolded.⁴⁴

20. In a subsequent telephone call to her parents, the Applicant described the conditions of her detention. The Applicant explained that she had been held in solitary confinement for months; that interrogators repeatedly threatened to rape her; that prison authorities flogged her under her feet during interrogations; and that they repeatedly hit her head against a wall.⁴⁵
21. Subsequently, the Applicant was transferred to Kermanshah Juvenile Correction and Training Centre [*Kanoon-e eslah va tarbiat-e Kermanshah*].⁴⁶ The Applicant was kept in harsh conditions, which included being prohibited contact with other prisoners.⁴⁷ She was accused of membership in the PJAK and questions centred on her perceived involvement in the PJAK.
22. Even after the Applicant had been transferred out of the Naft Square Detention Centre into Kermanshah Correctional Facility prison, she was still sent back to Naft Square Detention Centre for days at a time without any explanation by the Intelligence authorities. The Applicant would be interrogated at each of her visits to Naft Square Detention Centre. Officers at the Ministry of Intelligence would try to make the Applicant confess to the accusation that she was a member of the PJAK.⁴⁸

Conditions of Detention

23. On many occasions, the Applicant was asked to express her remorse for joining the PJAK in front of a camera. When she refused, officers of the intelligence service repeatedly hit her head against the wall. The details of the torture she suffered at Naft Square Detention Centre are noted and reported in a paper that one of Zeinab's former fellow prisoners wrote for the Committee of Human Rights Reporters where she described her circumstances and asked for assistance. She relayed that the interrogators flogged her under her feet for hours and then bring her unconscious body back to her cell. They would make her walk the length of the corridor on her injured feet to go back to the interrogation room and would flog her again.⁴⁹
24. On one occasion, the Applicant's forehead was fractured from being flung against a wall, causing a brain haemorrhage around the eyes. The Applicant reported this incident to the physician at the prison infirmary and said that she was experiencing

⁴⁴ *Ibid.*, para. 16.

⁴⁵ *Ibid.*, para. 16.

⁴⁶ Appendix 14, Committee of Human Rights Reporters, "Reversal of Death Sentence; Life Imprisonment Sentence of Zeinab Jalalian", 15 December 2011.

⁴⁷ Appendix 2, para. 17.

⁴⁸ *Ibid.*, para. 19; Appendix 11; Melli Mazhabi, "Zeinab Jalalian, Sentenced to Life Imprisonment, is in Critical Health Condition", 22 July 2012, available here: <http://melimazhabi.com/%D8%B2%DB%8C%D9%86%D8%A8-%D8%AC%D9%84%D8%A7%D9%84%DB%8C%D8%A7%D9%86-%D8%AF%D8%B1-%D9%85%D8%B9%D8%B1%D8%B6-%D8%AE%D8%B7%D8%B1-%D9%85%D8%B1%DA%AF-%D8%AA%D8%AF%D8%B1%DB%8C%D8%AC%DB%8C/>

⁴⁹ Appendix 2, para. 20; Appendix 13, Committee of Human Rights Reporters, "I am not scared of death; I am ready to confront death for freedom", 6 April 2011, original available here: <http://chrr.biz/spip.php?article13796>.

pressure in her eyes. The authorities later realised that the Applicant was suffering from vision problems in one eye as a result of continuous beating on her head.⁵⁰

25. During the Applicant's detention at Naft Square Detention Centre marks of torture were visible on her body.⁵¹ A fellow prisoner, charged with drug-related crimes, says that he could hear the sounds of a female prisoner being tortured between April and May 2008. When he inquired as to the identity of the female prisoner, a prison officer told him she was a member of PJAK and he eventually identified her as being Zeinab Jalalian.⁵²

Late 2008: Appearance before the Court of First Instance

26. For months after her arrest, the Applicant was unaware of the details of the charges against her and she was not given access to a lawyer. It was only after she first appeared in Court before Justice Moradi of the First Branch of the Revolutionary Court of Kermanshah (Court of First Instance) in late 2008 that Ms. Jalalian was able to tell her family that she was arrested on charges of *Moharebeh* and membership of an opposition party. In fact, the Applicant faced allegations of leaving Iran unlawfully, membership in PJAK, and transportation and possession of firearms and ammunition, participation in armed activities, and engaging in providing propaganda for PJAK.

3 December 2008: Ms. Jalalian's trial and conviction

27. The Applicant's trial before the Court of First Instance took place in December 2008. Only a few weeks prior to this date, Iranian authorities informed Ms. Jalalian's family that they could hire a lawyer for her. However, the Applicant's first lawyer, Mr. Ensanimehr, was denied the opportunity of appearing at her trial. The trial was scheduled without Mr. Ensanimehr being given prior notice. At the time of the hearing, Mr. Ensanimehr did not know it was taking place and believed that a date was yet to be scheduled. Furthermore, individuals at Kermanshah Prosecutor's Office may have threatened Mr. Ensanimehr telling him to remove himself from the file.⁵³ The Applicant was therefore unrepresented at the trial of December 2008. Nonetheless, Ms. Jalalian was found guilty and sentenced to death.
28. The judgment/verdict of the Court of First Instance is enclosed with this submission as Annex 4.⁵⁴ The date of the judgment is cited as 3 December 2008 and it indicates Mr. Ensanimehr as the legal representative representing the Applicant. Further, the judgment defines the PJAK as a terrorist group. It provides that the fact that an individual belongs to a group (the Applicant disputes her membership) which has declared an intention to compromise the security of the Respondent state is sufficient

⁵⁰ *Ibid.*, para. 21.

⁵¹ Appendix 13, Committee of Human Rights Reporters, "I am not scared of death; I am ready to confront death for freedom", 6 April 2011.

⁵² Appendix 2, para. 10.

⁵³ Appendix 2, para. 23; see also Appendix 10, Rooz Online, "Interview with Zeinab Jalalian's father: 'Let My Daughter Stay Alive'", Interviewer : Fereshteh Ghazi, 29 June 2010, original available at: <http://www.roozonline.com/persian/interview/interview-item/archive/2010/june/29/article/-622c24b688.html>.

⁵⁴ Appendix 4, Decision of the Court of First Instance, 2 December 2008.

to find that individual guilty for intending to commit crimes against the Islamic Republic of Iran.⁵⁵ The judgment finds the Applicant guilty on the basis of: undescribed “numerous reports from the intelligence department;” the Applicant’s confession to having joined the PJAK during the course of interrogations; “refraining from telling the truth about transporting arms and hand-grenades, even though such items were not found in her possession at the time of the arrest;” her lack of cooperation with the intelligence forces to identify and arrest other members of the PJAK; her unsubstantiated defence; and the Prosecutor’s indictment. The judgment does not mention, however, that the Applicant was unrepresented and did not have sufficient time to prepare a defence. The document is less than two pages long.

6 May 2009: Conviction Upheld by Court of Appeal

29. The Applicant’s lawyer at the time, Mr. Ensanimehr, appealed the judgment of the Court of First Instance. On appeal, the Fourth Branch of Kermanshah Court of Appeal (Court of Appeal) upheld the judgment on 6 May 2009.⁵⁶ From the Court of Appeal’s decision it appears that Ms. Jalalian was represented by Mr. Ensanimehr and Mr. Azhdar Panjazar Habash at the Court of Appeal.⁵⁷
30. Although a written Statement of Defence was reportedly filed in support of the appeal, the Court of Appeal’s reasons make no reference to the Applicant’s position. The decision of the Court of Appeal, dated 6 May 2009, is enclosed with this submission as Annex 5. The decision merely holds that the Applicant failed to provide convincing grounds of appeal so as to merit revoking the trial court’s judgment at the Court of First Instance; no judicial errors were made by the trial judge; the trial verdict was supported by intelligence department reports (although the details of these reports are – again – not provided); and the Applicant has confessed to the charges against her. The document is less than one page long.

November 2009: Application for Judicial Review of Conviction and Death Penalty Sentence

31. The Court of Appeal’s decision made the sentence final under Iranian law. An Application was subsequently brought for Amendment of the Judgment by the Supreme Court. Contrary to what has been reported by a number of sources indicating that the Supreme Court rejected the Applicant’s application for amendment, it appears that this application for review by the Supreme Court received no response.⁵⁸

⁵⁵ *Ibid.*, first substantive paragraph, para. 1.

⁵⁶ Appendix 5, Decision of the Court of Appeal, 6 May 2009.

⁵⁷ Although the presence of the accused or representation by an attorney is not required before the Appellate Court under Article 252 of the *Islamic Republic of Iran’s Criminal Code of Procedure for Public and Revolutionary Courts*, it is unclear whether any legal arguments have been made in writing to allow a proper review of the decision of the Court of First Instance (Islamic Republic of Iran’s Criminal Code of Procedure for Public and Revolutionary Courts (September 19, 1999), available here: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>).

⁵⁸ The Application for Amendment was presented to the Supreme Court pursuant to Articles 272 to 277 of the Islamic Republic of Iran’s Criminal Code of Procedure for Public and Revolutionary Courts (September 19, 1999), available here: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>). However, the outcome of this request is not confirmed by an official decision.

32. This is while the trial and appeal decisions include various legal and evidentiary flaws warranting the Supreme Court's intervention. Most importantly, no evidence has been provided publicly by the Iranian Prosecutors at trial to prove the Applicant's membership in PJAK, and transportation and possession of firearms and ammunition, participation in armed activities, and propaganda for PJAK. The courts below relied exclusively on a report by the Ministry of Intelligence in absence of any other evidence.⁵⁹ Further, while facing these allegations (which carried the death penalty), the Applicant's lawyers were prevented from adequately defending her.⁶⁰
33. For some time, the Applicant's family were unaware of the decisions of the courts and the sentencing of Ms. Jalalian to the death penalty.
34. When the Applicant's father contacted her regarding the courts' verdicts, he found out that Ms. Jalalian was unaware of whether a final decision was made at the Supreme Court.⁶¹ Subsequently, Ms. Jalalian wrote a letter to human rights organisations stating:

I am a 27-year-old Kurdish girl who has been sentenced to death by the Islamic Revolutionary Court. At this time I am ill due to severe torture. I have not been allowed a lawyer, and I was sentenced to death in less than a few minutes. They did not even allow me to defend myself. They told me 'Because you are a *Mohareb*, you are not entitled to defend yourself'.⁶²

March 2010: Transfer to Evin Prison

35. Sometime during the first week of March 2010, the Applicant was transferred, without prior notice, or any order from a court, from Kermanshah prison to Section 209 of Evin prison in Tehran, which is under the supervision and control of the Ministry of Intelligence. Evin prison is renowned for the political prisoners that have been, and continue to be, detained there. The Applicant's family became concerned that this move signalled that she would be subject to imminent execution.⁶³ While Ms. Jalalian was detained at Evin prison, four other Kurdish prisoners accused of involvement with the PJAK were hanged in Evin Prison, on 9 May 2010.⁶⁴
36. Evin prison is known to house political prisoners and prisoners of conscious from whom Iranian authorities extract forced "confessions" through the use of torture, and cruel, inhuman and degrading treatment.⁶⁵ As noted by Human Rights Watch, the authorities at Evin Prison "use threats of torture, threats of indefinite imprisonment and torture of family members, deception and humiliation, multiple daily interrogations lasting up to five or six hours, and denial of medical care and denial of family visits."⁶⁶ In response to

⁵⁹ Appendices 4 and 5.

⁶⁰ Report of Special Rapporteur above note 9, p. 190.

⁶¹ Appendix 2, para. 27.

⁶² Online campaign for the release of Zeinab Jalalian, uploaded on YouTube on 29 November 2009, available here: <https://www.youtube.com/watch?v=INYOXrRVGM>; see also Appendix 7.

⁶³ Appendix 2, para. 35.

⁶⁴ Appendix 3, para. 13.

⁶⁵ Human Rights Watch, "Like the Dead in Their Coffins: Torture, Detention and the Crushing of Dissent in Iran", 6 June 2004, Ex. 11.

⁶⁶ *Ibid.*, Ex. 13.

her treatment at Evin Prison, the Applicant started an open-ended hunger strike and her health further deteriorated.⁶⁷

37. The Applicant was held in Section 209 in Evin Prison for five months where she was regularly threatened, insulted, and coerced to falsely admit to collaborating with the militant wing of PJAK in a broadcast interview. The interrogators promised to suspend her death penalty in return for such an interview. However, Ms. Jalalian declined to provide such an interview. Evin prison intelligence authorities went as far as contacting Ms. Jalalian's parents during the *Norouz* holidays (late March) to ask them to "convince Zeinab to confess before a camera."⁶⁸
38. Ward 209 of Evin Prison is a "prison within a prison" fitted out for the systematic large-scale use of absolute solitary confinement, frequently for very long periods.⁶⁹ As noted by the Working Group, the Iranian government uses solitary confinement in Ward 209 to extract "confessions" followed by "public repentance", usually on television.⁷⁰
39. Local and international NGOs began to highlight the Applicant's plight. On 26 June 2010, Amnesty International expressed concern about the threat of the Applicant's imminent execution.⁷¹ On 9 July 2010, Amnesty International USA also published a report expressing similar concerns and highlighted the allegations that the Applicant had been unrepresented at her trial, subject to a summary hearing and sentenced to the death penalty.⁷² In response to the increasing international attention, the Iranian authorities heightened their attempts at obtaining a publicly aired confession from Ms. Jalalian. It is notable that, at this stage, the Applicant had already been convicted – and her conviction and sentence upheld by two appeal courts.
40. Due to the deterioration of her health, the Applicant requested access to medical treatment numerous times during her detention at Evin prison. During one visit to an infirmary, authorities had told Ms. Jalalian that she had to be first examined for virginity before she could be treated. When she refused to undergo such a test, the Applicant was returned to prison and rumours were spread that she refused medical care. As reported by the media, in a show of objection to this torture and mistreatment, Ms. Jalalian went on hunger strike.⁷³

⁶⁷ Appendix 2, para. 39.

⁶⁸ Appendix 2, para. 36; Appendix 3, paras. 14 and 15.

⁶⁹ New York Times, "Iran Sentences Human Rights Lawyer to 11 Years in Jail," William Yong, 10 January 2011; CBS News, "Iran Jails Lawyer Who has Defended Activities," 2 February 2011, Amnesty International, "Iran must end serial arrest of lawyers," 17 November 2010.

⁷⁰ Human Rights Watch above note 65 ; Commission on Human Rights, Report of the Working Group on Arbitrary Detention, Visit to the Islamic Republic of Iran, 27 June 2003, E/CN.4/2004/3/Add.2, para. 55. See also, Reports of Ahmed Shaheed, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran from 2011 and 2012, <http://shaheedoniran.org/>.

⁷¹ Amnesty International, "Iran: Concern over imminent executions", 30 June 2010, available here:

<http://www.amnestyusa.org/news/press-releases/iran-concern-over-imminent-executions?id=ENGUSA20100630002&lang=e>.

⁷² Amnesty International USA, "Story of Two Women: Two Death Sentences in Iran", 9 July 2010, available here:

<http://blog.amnestyusa.org/middle-east/story-of-two-women-two-death-sentences-in-iran>.

⁷³ Appendix 2, paras. 38-9.

Request for clemency

41. The Applicant's father, at considerable financial cost, visited Tehran to try and enlist two lawyers, Mr. Khalil Bahramian and Dr. Mohammad Sharif, to work on the Applicant's case. The two lawyers are both high profile human rights lawyers. Mr. Bahramian and Dr. Sharif became involved in the Applicant's case in March 2010 and attempted to obtain powers of attorney in order to effectively represent the Applicant.⁷⁴
42. Over a month after the Applicant's transfer to Evin prison, Dr. Sharif and Mr. Khalil Bahramian were told that she was not "in the system of the Iranian Prison Organisation" and her file was "transferred" to the Ministry of Intelligence.⁷⁵
43. In July 2010, Mr. Bahramian visited her in Evin prison to have her signature on power of attorney documents. However, the Iranian prison authority told him that Ms. Jalalian was not in their custody but in the Intelligence Ministry's custody.⁷⁶ Nonetheless, in late 2010, Ms. Jalalian's lawyer, Dr. Sharif submitted a clemency request to the Iranian Supreme leader, Ayatollah Ali Khamenei, to reduce Ms. Jalalian's sentence.⁷⁷
44. Neither her lawyers nor the Applicant's family were informed of the result of the request for some time. Ms. Jalalian's lawyers went through a lengthy process to follow-up on their requests to obtain a power of attorney and seek a clemency order.

August 2010: Transfer to Dizel Abad Prison and Clemency

45. In or around August of 2010, the Applicant was transferred out of Evin prison and sent back to Kermanshah, this time to Dizel Abad prison in Kermanshah.
46. In December 2011, the Applicant was able to make a telephone call to Dr. Sharif to let him know that she had been summoned by Dizel Abad Prisoner's Social Services Unit. The Unit had informed her that her penalty had been reduced to a life sentence. Ms. Jalalian was not given any official written document confirming that this was the case.⁷⁸
47. Dr. Sharif undertook some further investigations at the Revolutionary Court of Kermanshah, and eventually after a few weeks found out that the Applicant's execution had indeed been subject to a clemency order by Ali Khamenei, the Supreme Leader of Iran, by way of which Ms. Jalalian's sentence of execution was commuted to life imprisonment.

⁷⁴ *Ibid.*, paras. 40-2; see also Appendix 10, Rooz Online, "Interview with Zeinab Jalalian's father: 'Let My Daughter Stay Alive'", Interviewer : Fereshteh Ghazi, 29 June 2010, original available at: <http://www.roozonline.com/persian/interview/interview-item/archive/2010/june/29/article/-622c24b688.html>.

⁷⁵ Appendix 2, para. 41; see also Appendix 10 .

⁷⁶ Iran Human Rights, "I Ask Ayatollah Khamenei To Intervene In Zeinab Jalalian's Case," Says Lawyer, 1 July 2010, available here: <http://www.iranhumanrights.org/2010/07/i-ask-ayatollah-khamenei-to-intervene-in-zeinab-jalalians-case-says-lawyer/>; Iran Human Rights, "Death Sentences Now Where There Would Have Been a Three-Year Sentence Only Five Years Ago, says Lawyer," 4 July 2010, available here: <http://www.iranhumanrights.org/2010/07/death-sentences-now-where-there-would-have-been-a-3-year-sentence-only-five-years-ago-says-lawyer>.

⁷⁷ Appendix 2, para. 42.

⁷⁸ Appendix 7.

48. However, this amendment was not presented to the Applicant directly or in writing. For weeks, while Dr. Sharif undertook investigations, Ms. Jalalian's family were not certain of its veracity.
49. Ultimately, Dr. Sharif was able to confirm the order of the Supreme Leader to commute her sentence to life imprisonment. However, Dr. Sharif was unable to visit the Applicant to inform her of the commutation and so Ms. Jalalian remained unaware of the final order which commuted her sentence to life imprisonment for some time afterwards.
50. Dr. Sharif and Mr. Davoudi currently attempt to represent Ms. Jalalian. Due to the risks of reprisals against human rights lawyers, they seldom speak publicly about Ms. Jalalian's case.⁷⁹ One of the co-authors of this complaint, Justice for Iran, has sought to obtain information from Dr. Sharif and Mr. Davoudi. In response, in early 2014, Mr. Davoudi created a social media *Facebook* page entitled "Free Zeinab Jalalian". Mr. Davoudi published a few short *Facebook* posts about Ms. Jalalian's health condition on the "Free Zeinab Jalalian" *Facebook* page. However, Mr. Davoudi was eventually forced to close the *Facebook* page down after only a few weeks of having put it online.⁸⁰ Justice for Iran had taken a record of the information posted before it was taken offline.

Conditions of detention in Dizel Abad Prison

51. At an unknown date in early 2015, the Applicant was transferred to Khoy Prison. However, her family is still denied visitation with the Applicant.⁸¹ No further information is at hand regarding the Applicant's conditions in Khoy Prison.
52. Prior to the recent transfer, the Applicant was detained at Dizel Abad prison. She was sharing a three-person cell with six other prisoners and was entitled to less than half-an-hour of outdoor recreation time per day. The women's ward of Dizel Abad prison was not equipped with an air conditioning or a ventilation system. Although men are not allowed in the women's ward, all female prisoners must wear the complete *hijab* (headscarf, large pants or thick black socks, long and dark coat with long sleeves), which further makes the lack of ventilation and heat intolerable.
53. The Applicant's cell in Dizel Abad was searched once every two days and her personal belongings, including a book that her lawyer gave her, have been seized.⁸² From her arrest on or around 10 March 2008 at least to the recent transfer to Khoy Prison, Ms. Jalalian has been under direct and constant control by the prison's security due to the nature of the national security related charges (now convictions) against her. The

⁷⁹ Appendix 3, paras. 16 and 21.

⁸⁰ Appendix 3, para. 17.

⁸¹ Appendix 6, Kurdane Radio, "Zeinab Jalalian is denied visitation rights in Khoy Prison", 8 February 2015, original available here: <http://www.kurdane.com/humanrights/item/1549-%25D8%25B2%25DB%258C%25D9%2586%25D8%25A8-%25D8%25AC%25D9%2584%25D8%25A7%25D9%2584%25DB%258C%25D8%25A7%25D9%2586-%25D8%25AF%25D8%25B1-%25D8%25B2%25D9%2586%25D8%25AF%25D8%25A7%25D9%2586-%25D8%25AE%25D9%2588%25DB%258C-%25D8%25A7%25D8%25B2-%25D8%25AD%25D9%2582-%25D9%2585%25D9%2584%25D8%25A7%25D9%2582%25D8%25A7%25D8%25AA-%25D9%2585%25D8%25AD%25D8%25B ;> The transfer took place after both Witness Statements provided in support of this Application were finalized and signed. However, the exact date of the transfer, as confirmed by Mr. Amir Salar Davoudi, the Applicant's lawyer, on his personal *Facebook* page, is unknown: <https://www.facebook.com/amirsalar.davoodi?fref=ts> (28 February 2015)

⁸² Appendix 2, para. 51.

Applicant's fellow prisoners were warned to stay away from her. Prior to the transfer, such practices were becoming more extensive. The lights in the Applicant's cell was kept on during the night. Ms. Jalalian had restricted access to sanitary facilities, she was given access to the toilet only twice a day.⁸³

54. Moreover, the Applicant reported (to her family) that she was under close security watch at the prison and every so often the authorities search her personal belongings and confiscate her notes and journals.⁸⁴ On one occasion in the summer of 2013, Ms. Jalalian complained to her new lawyer, Mr. Davoodi, that the prison inspectors burned her only copy of a poetry book. The response of the prison authorities was to claim that it was accidental.⁸⁵ More recently, in January 2014, the Applicant complained to both Mr. Davoudi and her father that her personal belongings and private communications were increasingly being searched and controlled, which made life in prison even more difficult for her.⁸⁶
55. A co-detainee who is currently held in Dizel Abad prison, but who is given a few days of leave every few months, has been able to further describe the conditions of the Applicant's detention in Dizel Abad. In late September 2014, this co-detainee confirmed that Ms. Jalalian's condition in prison is seriously deteriorating. She states that authorities have prohibited Ms. Jalalian from being in contact with anyone outside of the detention facility, so that information about the Applicant's worsening health issues are not made public. As a result, the Applicant was becoming increasingly isolated. Further, as a result of her worsening health condition, Ms. Jalalian is reportedly in need of assistance to perform her daily personal tasks.⁸⁷
56. Considering the total lack of visitation rights or contact with the Applicant, at this date there is no information at hand regarding Zeinab Jalalian's conditions of detention in Khoj Prison. The latest information available related to Dizel Abad Prison.

Lack of access to Ms. Jalalian

57. The Applicant has been detained for seven years. During this period, Ms. Jalalian's family have only been able to visit her very seldom, and have very restricted phone access to her. All family visits have to be approved by a Court. When members of Ms. Jalalian's family are able to meet her, the prison authorities are always present.
58. Over the past two years, the Applicant's mother, father and brother as well as her lawyers have all been denied permission to visit Ms. Jalalian in person. Despite repeated requests by the Applicant's lawyer, Dr. Sharif, and numerous pleas by her family to transfer Ms. Jalalian to a prison closer to her family home in Maku, these requests were rejected without any explanation until recently.⁸⁸

⁸³ Appendix 3, para. 20.

⁸⁴ Appendix 2, para. 50.

⁸⁵ *Ibid.*, para. 52.

⁸⁶ *Ibid.*, para. 53.

⁸⁷ Appendix 3, para. 22.

⁸⁸ Appendix 2, para. 50; see also Appendix 8, Rooz Online, "Interview with Zeinab Jalalian's Family: Seven Years Without Leave and Three Years Without Visitation", Interviewer: Fereshteh Ghazi, 25 February 2014, original available here:

59. At Dizel Abad, the Applicant was permitted one phone call per week to her mother, father or brother. The phone calls were permitted to last for a maximum of two minutes. The phone calls were also monitored by prison authorities and Ms. Jalalian is constantly interrupted while on the phone.
60. Dizel Abad prison in Kermanshah is also difficult (financially and practically) for Ms. Jalalian's elderly parents to reach from Maku. The distance is approximately 850 kilometres.⁸⁹

Lack of access to health care

61. Iranian prison authorities continue to deny the Applicant access to adequate medical treatment. Ms. Jalalian is suffering intestinal infections and internal bleeding.⁹⁰ She has also experienced loss of consciousness as a result of flogging on her feet as well as head injuries caused by her interrogator's using an iron bar to hit her.⁹¹ This has made walking very difficult for Ms. Jalalian.⁹² The Applicant's family believe that the internal bleeding is a direct result of blows to her stomach, which she experienced early on during her detention at the Intelligence holding centre in Kermanshah.⁹³ On 11 April 2012, the Applicant was transferred to the Kermanshah prison hospital due to intestinal infection.⁹⁴ She was returned to Dizel Abad prison.
62. The Applicant's health is deteriorating and Dizel Abad prison's infirmary lacks the necessary medical equipment and competent staff. As a result, Ms. Jalalian is not receiving the medical treatment she urgently needs.⁹⁵ Prison authorities continue to refuse to transfer her to a civilian hospital for proper medical attention. Further, whenever the Applicant needs medical attention, she may have to wait months for an assessment by prison doctors.⁹⁶
63. Ms. Jalalian's eye condition is also worsening since July 2014. She has been diagnosed with pterygium (conjunctiva).⁹⁷
64. Dr. Amini, Dizel Abad prison's physician, has indicated that the Applicant needs eye surgery, as her eyesight has deteriorated and he is worried that she might lose her

<http://www.roozonline.com/persian/interview/interview-item/archive/2014/february/25/article/7-3-1.html>; also see above note 81.

⁸⁹ Appendix 2, para. 49.

⁹⁰ Appendix 11, Melli Mazhabi, "Zeinab Jalalian, Sentenced to Life Imprisonment, is in Critical Health Condition", 22 July 2012, available here: <http://melimazhabi.com/%D8%B2%DB%8C%D9%86%D8%A8-%D8%AC%D9%84%D8%A7%D9%84%DB%8C%D8%A7%D9%86-%D8%AF%D8%B1-%D9%85%D8%B9%D8%B1%D8%B6-%D8%AE%D8%B7%D8%B1-%D9%85%D8%B1%DA%AF-%D8%AA%D8%AF%D8%B1%DB%8C%D8%AC%DB%8C/>

⁹¹ *Ibid.*

⁹² Appendix 2, para. 54.

⁹³ *Ibid.*, para. 55.

⁹⁴ Human Rights Activists News Agency, Zeinab Jalalian, political prisoners were transferred to Kermanshah prison, 24 January 2012, original available here: <https://hra-news.org/fa/prisoners/1-10641>.

⁹⁵ Appendix 11.

⁹⁶ Appendix 2, para. 56.

⁹⁷ Appendix 3, para. 18; see also Appendix 9, Rooz Online, "Zeinab Jalalian at risk of losing her eyesight", Interviewer : Fereshteh Ghazi, 15 June 2014, original available here: <http://www.roozonline.com/persian/news/newsitem/article/-4eb446841f.html>.

eyesight.⁹⁸ The Dizel Abad prison doctor said that it is impossible to perform the necessary surgery at the Kermanshah prison infirmary; the Applicant's family have expressed their willingness to pay for her medical treatment in a civilian hospital; and the prosecutor has approved the provision of treatment at a civilian hospital.⁹⁹ Yet, prison authorities continue to refuse the Applicant's transfer to a civilian hospital for treatment. The prison authorities claim that the recommended eye surgery is not necessary and Ms. Jalalian's eye health is manageable by sterile eye drops.¹⁰⁰

65. In a phone conversation in June 2014, the Applicant told her family that she is losing vision in one eye. On 16 June 2014, Amnesty International issued an urgent action:

- a) Calling on the authorities to ensure that the Applicant is protected from torture and other ill-treatment; and is granted all necessary medical treatment she may require, including treatment at a medical facility outside the prison if required;
- b) Urging the authorities to allow her regular visits from her family;
- c) Urging that she is granted a re-trial that complies with international standards for fair trial and to disregard any evidence obtained under torture or other ill-treatment.

Later, in July 2014, in a phone conversation with her family, Ms. Jalalian complained from increased kidney pain. To this day, she has not received treatment for potential kidney infection and recurrent internal bleeding.

66. The Applicant has been taken to the prison infirmary several times, where she has been handcuffed to the bed while being treated with injections. Ms. Jalalian has not been informed of the purpose of these injections. Ms. Jalalian has told the prison physician that even though she is a prisoner, she should not be subjected to imposed treatment when the nature, reason and purpose for the treatment has not been explained to her.

IV. VIOLATIONS

67. The Applicant has been subject to arbitrary deprivation of liberty, unfair trial, and torture and ill-treatment. As a result, the arrest, detention and subsequent treatment of Ms. Jalalian violate the rights and freedoms established in the ICCPR, the UN Body of Principles, and the Bangkok Rules. The Respondent State is a party to the ICCPR.¹⁰¹ The deprivation of the Applicant's liberty falls under Categories I, II and III of the Working Group's classification of cases as described below.

Category I: No justification for the deprivation of liberty

Article 9(1) of the ICCPR requires that deprivations of liberty are lawful and not arbitrary.

⁹⁸ Appendix 3, para. 18.

⁹⁹ Appendix 2; Appendix 3; see also Amnesty International USA "Iran: Kurdish woman losing sight in Iranian prison: Zeynab Jalalian", 16 June 2014, available here: <http://amnesty.org/en/library/info/MDE13/033/2014/en> (English).

¹⁰⁰ Appendix 3, para. 18.

¹⁰¹ Iran ratified the ICCPR on 24 June 1975.

68. The grounds and procedures for arrest and detention must be prescribed by law, which must be accessible, non-retroactive, applied in a consistent and predictable way to everyone equally, and be consistent with other applicable law. Lawfulness under the ICCPR relates to both domestic and international legal standards.¹⁰²

Lawfulness of arrest and detention

69. The Applicant was ostensibly arrested for her suspected involvement with the PJAK. Since its establishment in 2003, the PJAK, according to some sources is under the leadership and logistics of the PKK in Turkey and has claimed cultural and political rights and self-determination for the Kurdish population of Iran. The PJAK is deemed a terrorist group by the Iranian authorities, and falls under the definition of such a group (*mohareb*) under domestic law.¹⁰³ The applicant was eventually charged with a number of offenses established under Iranian law:

- a) membership in PJAK as an illegal “organised association which has waged armed rebellion against the Islamic State of Iran”;¹⁰⁴
- b) *Moharebeh* i.e. disturbing public order, disrupting public security and threatening people;¹⁰⁵
- c) engaging in propaganda against the Islamic Republic of Iran, or in support of opposition groups and associations;¹⁰⁶
- d) carrying or keeping illegal weapons and arms.¹⁰⁷

70. While under Iranian law deprivation of liberty is condoned in such circumstances,¹⁰⁸ the *Criminal Code of Procedure for Public and Revolutionary Courts* provides that arrest orders must be made by a judge or an interrogator. This is consistent with international standards, where all forms of detention or imprisonment must be subject to the effective control of a judicial authority.¹⁰⁹ Competent authorities may issue arrest orders upon receiving “sufficient evidence” against a person accused of a crime.¹¹⁰ In the Applicant’s case, it is unclear whether such an order was obtained. Given the focus on obtaining a confession from the Applicant – both prior to and following her

¹⁰² Report of the Working Group on Arbitrary Detention, *Addendum, Mission to China* UN Doc. E/CN/4/2005/6/Add.4 (2004), para. 54.

¹⁰³ Islamic Republic of Iran, Islamic Penal Code (1991), available here: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/3200-islamic-penal-code-of-the-islamic-republic-of-iran-book-one-and-book-two.html>, Article 186; Amended Islamic Penal Code (2013), Articles 279-280.

¹⁰⁴ *Ibid.*

¹⁰⁵ Islamic Penal Code (1991), Article 190 which identifies a person as a “*mohareb*” a person who holds a gun against people with the purpose of scaring them. A similar definition is provided in the updated 2013 Penal Code. “*Moharebeh*” is an action aimed at disturbing public order, disrupting public security and threatening people although the offence.

¹⁰⁶ Islamic Penal Code (1991), Book V, Article 500 of the Ta’zir and Detering Punishments Act.

¹⁰⁷ Article 2-2 of the Act Aggravating the Sentences of Crimes of Weapon and Arm Smuggling (1971), available at: <http://rc.majlis.ir/fa/law/show/96769>.

¹⁰⁸ Article 35 of the Islamic Republic of Iran's Criminal Code of Procedure for Public and Revolutionary Courts (September 19, 1999), available here: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>.

¹⁰⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, principle 4; UN General Assembly resolution 65/205, para. 20; Human Rights Council resolution 15/18 on arbitrary detention, para. 4(c); Commission on Human Rights resolution 2005/27 on enforced or involuntary disappearances, para. 4(c).

¹¹⁰ Criminal Code of Procedure for Public and Revolutionary Courts, available here: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html#.U6G7APldXOE>.

conviction – it seems that there has never been sufficient evidence connecting the Applicant to the crimes she is alleged to have committed. Further information is provided in the fair trial section under “Category III” below.

71. Further, Article 15 of the *Criminal Code of Procedure for Public and Revolutionary Courts* provides that only specific entities are eligible to perform an arrest, and cites appropriate places of pre-trial detention. The list of authorised entities eligible to arrest does not include intelligence agents. Intelligence agencies are excluded from the list of facilities appropriate for pre-trial detention.¹¹¹ Yet, the Applicant was arrested by intelligence agents, and detained in an intelligence facility for months, where she was tortured, including by having her feet flogged, being threatened with rape, having her head hit against a wall, and being placed in solitary confinement for a period of months. This runs counter to international standards according to which detainees must be held only in facilities officially acknowledged as places of detention.¹¹² Registries of both detainees and responsible officials must be accessible to those concerned, including doctors, lawyers, relatives and friends.¹¹³ They are an essential safeguard in the prevention of torture that are also necessary for the protection of persons in any form of detention against arbitrary detention and infringement of personal security.¹¹⁴ Further information is provided under the torture section under “Category III” below.
72. Under Article 35 subparagraphs (h) and (s) of the *Modifying the Establishment of Public and Revolutionary Courts Act*, an interrogator must issue a Temporary Detention Order at any point following a person’s arrest where a person is implicated in crimes for which the legal punishment is execution or life imprisonment.¹¹⁵ There is no information indicating that such an order was obtained in the Applicant’s case.
73. Indeed, the circumstances of the Applicant’s arrest (without an arrest order and months of incommunicado detention); the treatment she experienced subsequently while held (unlawfully) in an intelligence agency operated detention centre (flogging, beating, solitary confinement, and threats of rape); and summary trial (without time to adequately prepare a defence, have access to counsel or have access to the evidence against her) suggest that proper procedures were not followed in relation to her arrest or detention.
74. Under Iranian law, the Criminal Court should have reviewed the decision to continue to detain the Applicant four months after her arrest, in July 2008. However, given that the Applicant first appeared before court in December 2008 – to face trial – it appears that her continued and pro-longed pre-trial detention was never reviewed by the Iranian authorities.

¹¹¹ Article 15 of the Criminal Code of Procedure for Public and Revolutionary Courts; see also Consultative Opinion, Judiciary, 28 June 1987, which states that Intelligence agents are not judicial officers and courts cannot authorise them to engage in arrests and other judicial attributes described in Article 15 of the Criminal Code of Procedure for Public and Revolutionary Courts.

¹¹² UNHRC, *General Comment No 35: Article 9 (Liberty and Security of Person)*, UN Doc. CCPR/C/GC/35 (2014), para. 58, and UNHRC, *General Comment No 20: concerning prohibition of torture and cruel treatment or punishment*, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994) para. 11.

¹¹³ Body of Principles above note 109, principle 15.

¹¹⁴ *Ibid.*

¹¹⁵ Article 35 Criminal Code of Procedure for Public and Revolutionary Courts.

75. The authorities failed to arrest and detain the Applicant in accordance with the relevant Iranian legal provisions (as outlined above), rendering her arrest and detention unlawful.

Arbitrary detention

76. Even where an arrest or detention is authorised by domestic law, it may nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law,¹¹⁶ as well as elements of reasonableness, necessity, and proportionality.”¹¹⁷ As per the statement of facts, the Applicant’s arrest and subsequent detention was arbitrary and contrary to Article 9 of the ICCPR.

A. Right to be informed of reasons for arrest and promptly informed of the charges

77. Article 9(2) of the ICCPR requires that persons deprived of their liberty be informed of the reasons for their arrest and be promptly informed of any charges against them.¹¹⁸ Iranian Operational Guidelines for Temporary Detention Centres (2006) recognise the rights of detainees to be informed, at the time of arrest, of the reasons for their arrest and to be informed promptly of any charges against them. Article 32 of Iran’s Constitution prohibits arbitrary arrest and requires that “[i]f someone is detained, the subject matter of the charge, with reasons (for bringing it) must be immediately communicated and explained in writing to the accused.”

Right to be informed of reasons for arrest

78. The right not to be subject to arbitrary detention means that every person arrested should “be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest.”¹¹⁹
79. Between March 2008 and December 2008, during the Applicant’s period of pre-trial detention, she only loosely understood that she was being detained because of her alleged membership in the PJAK. She was eventually charged on four separate grounds: i) waging armed rebellion against the sacred regime of the Islamic Republic of Iran (i.e. *Muharebeh*); ii) membership in the PJAK; iii) the transport and possession of illegal weapons and military apparatus; iv) propaganda activities in the interest of groups opposing the current regime of the Respondent State. However, at the time of her arrest she was not provided with “a minimum of information about each of the crimes being investigated”¹²⁰ against her.

¹¹⁶ UNHRC, *Gorji-Dinka v Cameroon*, Communication No. 1134/2002, UN Doc. CCPR/C/83/D/1134/2002 (2005), para. 5.1.

¹¹⁷ UNHRC, General Comment No. 35, Article 9 (Liberty and Security of Person), UN Doc. CCPR/C/GC/35 (2014), para. 58, para. 12.

¹¹⁸ Article 9(2) ICCPR; General Comment 35, *ibid*, para. 24.

¹¹⁹ *Fox, Campbell and Hartley v United Kingdom* App. no. 12383/86 (ECHR 1990), paras. 40-41; UNHRC General Comment 35, above note 109, para. 58; Body of Principles above note 109, principles 13-14.

¹²⁰ *Lutsenko v Ukraine* App. no. 6492/11 (ECHR 2012), para. 77.

Right to be informed of charges

80. The Applicant was arrested on or around 10 March 2008, and experienced months of detention without being informed of the charges (if any) that she was facing. In December 2008 after appearing before the Court of First Instance, the Applicant was able to inform her family (for the first time) that she was facing charges of *muharabeh* and affiliation with an opposition party to the Islamic Republic of Iran.¹²¹
81. It has been impossible to obtain access to the Applicant or inquire into the procedural aspects of the case from her lawyers, mainly due to security reasons and fear of reprisal. It is therefore unclear whether the Applicant was informed of the charges against her prior to her appearance before the Court of First Instance in December 2008. However, considering the circumstances of the Applicant's arrest and first months of detention, it is highly unlikely that she had been informed of the charges prior to that date. If she had been, she would have most probably told her parents during one of the short three minute phone calls she was able to make to her parents from April 2008, as there was no reason not to communicate such an important fact.

B. Right to legal counsel

82. Every person who is arrested or detained must be informed of the right to have the assistance of legal counsel: either a lawyer of choice or an appointed lawyer¹²² and authorities must do all that they can to facilitate a detainee's access to a lawyer.¹²³ Notice of the right to legal counsel should be provided immediately upon arrest or detention, before any questioning and when an individual is charged.¹²⁴ A person should have the assistance of counsel during questioning (whether undertaken by police or an investigating judge). This right applies even if the individual exercises her right to remain silent.¹²⁵ The Special Rapporteur on Torture has recommended that anyone who has been arrested "should be given access to legal counsel no later than 24 hours after the arrest."¹²⁶
83. Article 128 of the Iranian Code of Criminal Procedure gives individuals accused of crimes the right to have an attorney present throughout any interrogation by government forces.¹²⁷ Article 35 of the Iranian Constitution provides that: "both parties to a lawsuit have the right to all courts of law, to select an attorney, and if they unable

¹²¹ Appendix 2, para. 18.

¹²² Article 16(4) of the Arab Charter on Human Rights; Principle 17(10) of the Body of Principles above note 109; Principle 3 paras. 43(a) and 2 para. 2(c)-(d) and Guideline 4 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; CAT General Comment 2 Implementation of article 2 by States Parties, CAT/C/GC/2/CRP. 1/Rev.4 (2007), para. 13; UNHRC General Comment 32: Article 14, Right to equality before courts and tribunals and to a fair trial, UN Doc. , CCPR/C/GC/32 (2007), para. 34.

¹²³ *Abdurahman Nacer Abdullah al-Dahmane al-Chehri I Abdelghani Saad Muhamad al-Nahi al-Chehri v Saudi Arabia* Communication No. 12/2006, UN Doc. A/HRC/4/40/Add.1, (Ex. 62).

¹²⁴ Body of Principles above note 109 , principle 17(1); Principle 8 of the Principles on Legal Aid (above note 122).

¹²⁵ Guideline 3 para. 43(b) of the Principles on Legal Aid.

¹²⁶ Special Rapporteur on torture, UN Doc. A/56/156 (2010) para. 39(f).

¹²⁷ Interpretative Note 3 to Article 128 of the Code of Criminal procedure states that in situations of national security, revolutionary courts have the authority to exclude counsel at their discretion from being heard in cases covered by the Article. However, as the Working Group as observed on its 2003 country visit to Iran, there is no constitutional authority for this power, which directly violates Article 32 of Iran's constitution, see Report of the Working Group on Arbitrary Detention, Visit to the Islamic Republic of Iran, 27 June 2003, UN Doc. E/CN.4/2004/3/Add.2, para 51.

to do so, arrangements must be made to provide them with legal counsel.” Iranian guidelines (the Operational Guidelines of Temporary Detention Centres (2006)) also recognise the right of detainees to have access to legal counsel.

84. The Applicant was interrogated numerous times between her arrest in March 2008 and before her trial (which was held in December 2008). The Applicant was not granted access to counsel at any of these interrogations. Further, since her conviction, the Applicant has again been interrogated numerous times in the absence of a lawyer, most noticeably between March 2010 and August 2010 when the Applicant was held in Evin prison in Tehran.
85. Several human rights bodies have expressed concern about laws and practices delaying access to counsel to persons suspected of national security and terrorism-related offences. For example, the Committee against Torture has raised concern that access to legal counsel was denied for 24 hours to persons arrested under an anti-terrorism law in Turkey.¹²⁸ The Human Rights Committee recommended that “anyone arrested or detained on a criminal charge, including persons suspected of terrorism, has immediate access to a lawyer.”¹²⁹ In a case where an individual was arrested under anti-terrorism legislation in Northern Ireland and asked to see a lawyer on arrival at a police station, but the authorities delayed his access to counsel for more than 48 hours and repeatedly questioned him during that time, the European Court of Human Rights considered that his rights had been violated.¹³⁰ Persons suspected of particularly serious offences may be at particular risk of torture or other ill-treatment, and most in need of access to a lawyer.¹³¹
86. The right to legal counsel is all the more important when a person’s deprivation of liberty can result in the imposition of the death penalty. The Applicant faced charges that resulted in the death penalty being imposed. It is imperative that death penalty cases should not proceed unless the accused is assisted by competent and effective counsel.¹³² The Applicant was not informed of her right to obtain a lawyer until three weeks prior to her appearance before a trial judge in December 2008. This was more than eight months after her arrest in March 2008 resulting in a violation of her right to legal counsel.

C. Right to effective counsel

87. Lawyers should be able to advise and represent detainees without restrictions, influence, pressure or improper interference from any quarter.¹³³ States have a positive obligation to safeguard lawyers threatened as a result of discharging their duties.¹³⁴

¹²⁸ CAT, *Concluding Observations: Turkey*, UN Doc. CAT/C/TUR/CO/3 (2010) para. 11.

¹²⁹ UNHRC, *Concluding Observations: United Kingdom*, UN Doc. CCPR/C/GBR/CO/6 (2008), para. 19.

¹³⁰ *Magee v United Kingdom* App. No. 28135/95 (ECHR 2000), paras. 42-46.

¹³¹ CPT 21st General Report, CPT/Inf (2011)28 para. 21; *Salduz v Turkey* App. No. 36391/02 (ECHR 2008), para. 54.

¹³² *Robinson v Jamaica*, Communication No. 223/1987, UN Doc. CCPR/C/35/D/223/1987, para. 10.2-10.3.

¹³³ Principles 2, paras. 16 and 12 of the Principles on Legal Aid (above note); HRC General Comment 32 (above note 122), para. 38.

¹³⁴ Special Rapporteur on the independence of judges and lawyers, UN Doc. A/64/181 (2009) paras. 68-69.

88. In Iran, more than forty-two lawyers have reportedly faced detention, prosecution or harassment by security forces since 2009.¹³⁵ Several lawyers have been stripped of their professional licences by Iranian courts and lawyers have also reported that they and their colleagues were often harassed or intimidated by judicial and/or intelligence authorities for carrying out their work, including for their defence of political (“security”) detainees.¹³⁶ Iranian lawyers have also reported that, in serious cases, judges threatened lawyers with prosecution for doing their work and lawyers were charged and/or had been sentenced for “insulting” judges or “disrupting the court” in apparent retaliation for their professional defence of individuals accused of political or “security” crimes.¹³⁷
89. Lawyers have also reported that judicial and/or intelligence authorities intimidated lawyers or otherwise prevented them from carrying out their work by, for example, withholding necessary and relevant case documents or preventing timely face-to-face client meetings. The Special Rapporteur on Iran recently reported the case of one lawyer who stated that, on several occasions, judges had refused him entry to the courtroom when he attempted to make procedural requests, and that he had been threatened, in many cases by the judges themselves. The same lawyer also reported that, when attempting to present his/her defence in a “security” case, a presiding judge told the lawyer to “save it for your own trial.” The lawyer further reported that, in another trial where a group of women alleged rape by members of a criminal gang, a judge commented at the end of the trial that the victims certainly “also had something to do with it”, despite the conviction of the men implicated in the rapes. When the lawyer requested a record of the judge’s statement for the purposes of filing an official complaint, the judge threatened to charge the lawyer instead.¹³⁸
90. Such treatment is emblematic of the way in which lawyers are treated in Iran, and has led to a decline in the number of lawyers willing to work on sensitive cases. Those that do still work on sensitive cases risk arrest or other negative repercussions.¹³⁹ The Special Rapporteur on Iran recently reported that lawyers are also deterred from reporting torture, and the hiring of a lawyer can be seen as an admission of guilt by the judiciary.¹⁴⁰ Further, the Iranian government’s recent decision to resume the process of adopting the Formal Attorneyship Bill, by presenting it to the parliament, has re-ignited concerns among Iranian lawyers and jurists over the potential impact of the proposed bill in further undermining the independence of lawyers in Iran.¹⁴¹
91. In February 2011,¹⁴² Mr. Bahramian, who has represented many political prisoners – including the Applicant (and other members of Iran’s Kurdish minority) in 2010 – was

¹³⁵ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, above note 18, para. 67, available here: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/61.

¹³⁶ *Ibid.*

¹³⁷ *Id.*, para. 67, footnote 58.

¹³⁸ *Id.*, paras. 67, 69.

¹³⁹ *Id.*, para. 70.

¹⁴⁰ *Id.*, para. 71. See also: Report of Ahmed Shaheed, Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 28 February 2013, para. 23, available here: http://shaheedoniran.org/wp-content/uploads/2013/12/A-HRC-22-56_en.pdf

¹⁴¹ *Ibid.*, para 21.

¹⁴² Amnesty International and International Commission of Jurists Joint Statement, *Rights organizations condemn continued persecution campaign against lawyers in Iran*, May 2011: available here:

sentenced to eighteen months in prison and banned from practicing law for ten years by Branch 28 of Tehran's Revolutionary Court on charges of "propaganda against the system" and "insulting the Head of the Judiciary. Prior to that date, Mr. Bahramian had been practising law in Iran for forty-six years.¹⁴³

92. It appears from Deniz Jalalian's witness statement that the Applicant's first lawyer, Mr. Ensanimehr, was hired a few weeks before her trial in December 2008. However, Mr. Ensanimehr did not attend court during the Applicant's hearing before the Court of First Instance. Further, he was threatened and encouraged to withdraw from the case. These allegations are consistent with the experience of many lawyers in the country.
93. State interference with the right to counsel during pre-trial criminal detention, in particular during interrogations, constitutes a violation of Article 9 of the ICCPR.¹⁴⁴ The Applicant was not provided with the assistance of counsel during interrogations nor at her trial. In addition, the harassment of Mr. Ensanimehr constitutes interference. Furthermore, the Applicant's subsequent lawyers found it difficult to obtain powers of attorney to represent her. They were told that the Applicant's files were not accessible, have been transferred to other units, or requests to meet with her to obtain a power of attorney in person were ignored. All such acts constitute state interference with the right to counsel (both prior to and after trial) in violation of the Applicant's rights under Articles 9 and 14 of the ICCPR.

D. Right to inform family and friends of arrest

94. Anyone who is arrested, detained, or imprisoned has the right to inform, or have the authorities notify, someone in the outside world that they have been taken into custody and where they are being held.¹⁴⁵ Any exceptions should be clearly defined in law, absolutely necessary to ensure the effectiveness of the investigation and strictly limited in time. Delays should not exceed a matter of days.¹⁴⁶ Detainees also have the right to inform a third person if they are transferred from a place of detention.¹⁴⁷
95. The right to have one's family informed of the reasons and place of arrest and detention is also provided for under Iranian law, under Article 5 of the Act on Safeguarding Legitimate Liberties and Citizens' Rights. Approximately three weeks after the Applicant's arrest, an officer from Naft Square Detention Centre called the Applicant's parents and informed them of their daughter's arrest.¹⁴⁸ Approximately one month of her arrest the Applicant was able to call her parents and explain – in a short three minute phone call – that she had been arrested and was being detained at Naft

<http://www.amnesty.org/en/library/asset/MDE13/052/2011/en/1abe2957-362e-4e9a-96d7-b39d18d5a965/mde130522011en.html>.

¹⁴³ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, above note 18, para. 67, available here: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/61, para. 67.

¹⁴⁴ UNHRC, Concluding Observations: Republic of Korea, UN Doc. CCPR/C/KR/CO/3(2006) at para. 14.

¹⁴⁵ CAT General Comment 2, para. 13.

¹⁴⁶ Special Rapporteur on torture, UN Doc. A/HRC/13/39/Add.5 (2010) para. 82.

¹⁴⁷ Article 14(3) of the Arab Charter; Body of Principles above note 109, principle 16(1); Guideline 3 para. 43(e) of the Principles on Legal Aid; Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

¹⁴⁸ Appendix 2, para. 15.

Square Detention Centre. Three weeks falls outside the recognised time period by which to inform the relatives of the arrest.

96. Further, detained and imprisoned persons have a right to communicate with the outside world, subject only to reasonable conditions and restrictions that are proportionate to a legitimate aim.¹⁴⁹ Rights of persons held in police custody and pre-trial detention to access doctors, families and lawyers should be enshrined in law. The Committee against Torture calls for detainees to be given access to a lawyer, a doctor and their family from the time that they are taken into custody, including police custody.¹⁵⁰ Detainees (regardless of what they are accused of)¹⁵¹ including those held in police custody or on remand pending trial, are to be given all reasonable facilities to communicate with and receive visits from family and friends.¹⁵² In order to facilitate visits from their lawyer and family, a detainee's place of detention should be as close as possible to their home.¹⁵³ Denying visits may amount to inhuman treatment.¹⁵⁴
97. The Applicant's dispersal to Kermanshah and then Tehran has significantly impeded the ability of her family to visit her. The Applicant's family have sought her transfer to a prison closer to her home. However, this request has thus far not been acted upon.

E. Judicial control: Being bought promptly before a judge

98. Under article 9(3) of the ICCPR, a detainee must be brought promptly before a judge or other competent authority and (under article 9(4)) has the right to have a court determine the lawfulness of the detention. The right to challenge detention applies in principle from the moment of arrest, and any substantial waiting period is impermissible.¹⁵⁵ The term "promptly" has been interpreted to mean within a maximum of forty-eight hours after arrest, with any longer period constituting an exception that must be justified by the circumstances.¹⁵⁶
99. Incommunicado detention violates Article 9(3) of the ICCPR.¹⁵⁷ Concern has been expressed about practices that deny persons suspected of crimes such as terrorism prompt and automatic judicial scrutiny of the legality of their detention. The Working Group on Arbitrary Detention has underlined the importance of ensuring that all persons deprived of their liberty in connection with terrorism-related activity enjoy the effective right to *habeas corpus*.¹⁵⁸ Incommunicado detention facilitates torture and may on some occasions amount to torture.¹⁵⁹ The Committee against Torture has held

¹⁴⁹ Body of Principles above note 109 , principle 19; Rule 92 of the Standard Minimum Rules.

¹⁵⁰ See e.g. CAT, *Concluding Observations: Russian Federation*, UN Doc. CAT/C/CR/28/4 (2002), para. 8(b). See also CPT Standards, CPT/Inf/(92)3, para. 36, CPT/Inf (2002)15, para. 40; UN General Assembly resolution 65/205, para. 20.

¹⁵¹ See *Marc Romulus v Haiti* (Case 1992), Inter-American Commission (1977).

¹⁵² Article 16(2) of the Arab Charter; Rules 26-28, 92 of the Standard Minimum Rules (above note 147).

¹⁵³ Body of Principles above note 109 , principle 20; Rule 4 of the UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules) ECOSOC Resolution 2010/16, Annex.

¹⁵⁴ *Civil Liberties Organisation v Nigeria* (151/96), African Commission, 13th Annual Report (1999), para. 27.

¹⁵⁵ UNHRC, General Comment 35 (above note 109), para. 42.

¹⁵⁶ *Ibid*, para. 33.

¹⁵⁷ *Id*, para. 35.

¹⁵⁸ WGAD, UN Doc. A/HRC/10/21 (2009) paras. 53, 54(e)-(f).

¹⁵⁹ UNHRC, General Comment 35 (above note 109) para. 56; see also HRC General Comment No. 20: *concerning prohibition of torture and cruel treatment or punishment*, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 2.

that incommunicado detention should be prohibited altogether.¹⁶⁰ Incommunicado detention may also violate the rights of family members.¹⁶¹

100. The Applicant was held in incommunicado detention for months from her arrest in March 2008. From April 2008, she was granted weekly three minute phone calls with her family but was not brought before a judge or granted access to a lawyer until December 2008. This violates her right not to be subjected to incommunicado detention.
101. Courts or special tribunals must either be independent of the executive and legislative branches or must enjoy judicial independence in deciding legal matters in proceedings that are judicial in nature.¹⁶² Laws that exclude a particular category of detainees (such as “security” detainees or terrorist suspects) from the review (requiring mandatory detention) violate the ICCPR and are inconsistent with the presumption of innocence, the presumption of release pending trial and the right to trial within a reasonable time or release.¹⁶³ Further, practices may render a review effectively unavailable to an individual, including when they are held in incommunicado detention, not provided access to counsel, and not informed of their right to challenge the lawfulness of their detention. This also amounts to a violation of Article 9 of the ICCPR.¹⁶⁴
102. Detention pending trial must be based on an individualised determination that it is reasonable and necessary in all the circumstances, for such purposes as to: prevent flight; interference with evidence; or the recurrence of crime.¹⁶⁵ The relevant factors should be specified in law, and should not include vague and expansive standards such as in the interests of “public security.”¹⁶⁶
103. At no point between her arrest on or around 10 March 2008, and her appearance before the Court of First Instance in December 2008, was the necessity of the Applicant’s continued detention evaluated.

F. Right to doctors and health care in custody

104. Prompt and regular access to independent medical personnel is an important safeguard against both torture and arbitrary detention.¹⁶⁷ Everyone, including an individual in custody, has the right to the highest attainable standard of physical and mental health.¹⁶⁸ The right to health extends not only to timely and appropriate health care, but also to underlying determinants of health, such as adequate food, water and sanitation. Law enforcement officials and prison authorities are responsible for protecting the health of people in their custody.¹⁶⁹ Health care should be provided

¹⁶⁰ CAT Concluding Observations: Yemen, UN doc. CAT/C/YEM/CO.2/Rev1 (2010) para. 12. See further HRC General Comment 20, *ibid*, para. 11.

¹⁶¹ See e.g. HRC: *Bashasha v Libyan Arab Jamahiriya*, UN Doc. CCPR/C/100/D/1776/2008 (2010), para. 7.4-7.5.

¹⁶² UNHRC, General Comment 35 (above note 109), para. 45.

¹⁶³ *Ibid*, para. 46.

¹⁶⁴ *Id*, para. 46.

¹⁶⁵ *Id*, para. 38.

¹⁶⁶ See UNHRC, Concluding observations Bosnia and Herzegovina, November 2006, UN Doc. CCPR/C/BIH/CO/1, para. 18.

¹⁶⁷ See Body of Principles above note 109, principles 17-19, 24; UNHRC, General Comment No. 35, above note 109, para. 58.

¹⁶⁸ Article 12 of the ICESCR; Article 39 of the Arab Charter; CESCR General Comment 14, paras. 34, 4, 11, 43 and 44.

¹⁶⁹ Article 6 of the Code of Conduct for Law Enforcement Officials.

promptly and free of charge.¹⁷⁰ The protection of detainees requires that each person detained be afforded prompt and regular access to doctors.¹⁷¹ Health services in places of detention should include medical, psychiatric and dental care and be organised in close co-ordination with health services in the country generally.¹⁷² Health care must also include gender-specific health services which are available in the community.¹⁷³

105. The state's duty of care to inmates includes prevention, screening and treatment. The failure to provide access to adequate health care has been held to violate the rights to respect for dignity¹⁷⁴ and health¹⁷⁵ as well as the prohibition of inhuman or degrading treatment.¹⁷⁶ The UN General Assembly and the Human Rights Council have also repeatedly underscored the importance of prompt and regular medical care in preventing torture and other ill-treatment.¹⁷⁷ Requests to see a doctor should not be screened by police officers.¹⁷⁸

106. The Applicant was not only prohibited from accessing the medical care she required, her right to to the highest attainable standard of physical and mental health was actively impeded by the ill-treatment she suffered in pre-trial detention. This is further described in the torture part of Category III violations.

Category II: Deprivation of freedoms

When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR

A. Non-Discrimination

107. Article 26 ICCPR prohibits discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under Category II of the Working Group's classifications of deprivations of liberty, the latter will be arbitrary when it results from the exercise by an individual of the rights and freedoms protected by, *inter alia*, article 26 ICCPR.

108. The Applicant was arrested and detained for discriminatory reasons based on her sex and/or political belief and national/social origin, making her arrest and detention arbitrary.

¹⁷⁰ Body of Principles above note 109, principle 24; CAT Concluding Observations: Cameroon, UN Doc. CAT/C/CR/31/6 (2004) paras. 4b, 8d; Article 14(4) of the Arab Charter; Rule 24 of the Standard Minimum Rules (above note 147).

¹⁷¹ HRC General Comment 20 (above note 151), para. 11.

¹⁷² Rule 22 of the Standard Minimum Rules (above note 147); See Rules 10-18 of the Bangkok Rules (above note 153).

¹⁷³ Rule 10(1) of the Bangkok Rules, *ibid*.

¹⁷⁴ *Engo v Cameroon* Communication No. 1397/2005, UN Doc. CCPR/C/96/D/1397/2005, para. 7.

¹⁷⁵ *Media Rights Agenda and Constitutional Rights Project v Nigeria* (105/93, 128/94, 130/94 and 152/96), African Commission, 12th Annual Report (1998) para. 91, *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v Nigeria* (137/94, 139/94, 154/96 and 161/97) African Commission, 12th Annual Report (1998) para. 112.

¹⁷⁶ See e.g. *Abdel Rahman al-Shaghouri v Syrian Arab Republic*, UN Doc. E/CN.4/2006/7/Add.1, Opinion No.4/2005, para. 13.

¹⁷⁷ For example, General Assembly resolution 65/205, para. 20; Human Rights Council resolution 13/19 (2010) para. 5.

¹⁷⁸ CAT: Sweden, UN Doc. CAT/OP/SWE/1(2008) para. 64.

Sex

109. The Applicant has a history of social activism and work on promoting women's rights in Kurdistan, Iraq and Iran.¹⁷⁹ Days prior to her arrest and detention, she visited a girls' school in Iran where she delivered a speech about women's rights.
110. Women's human rights defenders often face particular stigmatisation by virtue of their sex. As noted by the Special Rapporteur on the situation of Human Rights Defenders, such work can be perceived as challenging established socio-cultural norms, tradition or perceptions about the role and status of women in society.¹⁸⁰
111. With respect to Iran, UN human rights bodies have expressed concern about "the persisting discrimination against girls and women".¹⁸¹ According to the Special Rapporteur on violence against women, gender inequality in Iran:

is upheld and perpetuated by two interrelated factors: (a) patriarchal values and attitudes based on male supremacy, and (b) State-promoted institutional structures based on gender-biased, hard-line interpretations of religious principles. ... Both factors represent male-empowering values, laws and practices, making it difficult for women to escape public and private violence.¹⁸²

112. The Applicant was targeted because of her social activism, including her promotion of women's rights. The gendered nature of the discrimination against the Applicant which led to her arrest is further evidenced by the fact that she was repeatedly threatened with rape during her detention.¹⁸³

Political or religious belief, national origin

113. The Applicant is a Kurdish citizen of Iran who worked to ameliorate the situation of the Kurdish people, particularly women.¹⁸⁴ She was interested in Kurdish rights and was involved in social and educational work with the East Kurdistan Women Union.
114. Kurds in Iran have long been subject to discrimination as both an ethnic and religious minority (most Kurds are Sunni Muslims, while most Muslims in Iran follow the Shia branch of Islam) and in relation to their political beliefs.¹⁸⁵ In a March 2014 report to the UN Human Rights Council, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran noted numerous cases of detention of Sunni Muslims,

¹⁷⁹ Appendix 2, paras. 9-12.

¹⁸⁰ UN Special Rapporteur on the situation of human rights defenders, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, (July 2011), 15-16.

¹⁸¹ CRC, *Concluding Observations on Islamic Republic of Iran*, UN Doc. CRC/C/146 (2005) 88, para. 459.

¹⁸² Report on the Special Rapporteur on violence against women, 'Integration of the Human Rights of Women and a Gender Perspective: Violence against Women: Mission to the Islamic Republic of Iran', 29 January to 6 February 2005, UN Doc. E/CN.4/2006/61/Add.3 (2006), 2.

¹⁸³ Appendix 2, para 16.

¹⁸⁴ *Ibid*, paras 9-12.

¹⁸⁵ Amnesty International, *Iran: Human Rights Abuses against the Kurdish Minority* (2008), available here: <http://www.amnesty.org/en/library/asset/MDE13/088/2008/en/d140767b-5e45-11dd-a592-c739f9b70de8/mde130882008eng.pdf>

who, according to the Special Rapporteur “routinely face multiple levels of discrimination.”¹⁸⁶ Some Sunnis are prosecuted for crimes that involve alleged acts of political violence, including *muharabeh*, some of which have alleged that their convictions were based on confessions made under torture.¹⁸⁷ Human rights groups told the Special Rapporteur that the majority of Sunnis were detained for peaceful religious activism or theological reasons.¹⁸⁸ Twenty out of twenty-seven of the reported cases of imprisonment concern ethnic and minority civil activists are from Kurdish origin.¹⁸⁹ In one case, five Kurdish prisoners were allegedly charged with contacting the office of the Special Rapporteur, and reporting prison news to human rights organisations.¹⁹⁰ Human Rights Watch has noted:

Under the current penal code authorities have executed at least 36 people since January 2010 on the charge of “enmity against God” or “sowing corruption on earth” for their alleged ties to armed or terrorist groups. At least 28 Kurdish prisoners are also known to be awaiting execution on various national security charges, including “enmity against God.”

Human Rights Watch believes that in a number of these cases, Iran’s judicial authorities convicted, sentenced, and executed individuals simply because they were political dissidents, and not because they had committed terrorist acts.¹⁹¹

115. The Applicant’s arrest, ostensibly for her suspected involvement with the PJAK (an affiliation which the Applicant denies), comes against a background in which Kurds are being imprisoned on the basis of their political and/or religious belief. Detaining persons on the basis of their actual or perceived political belief, particularly in instances in which charges are not promptly brought against the detained individuals, makes the detention arbitrary.¹⁹²

Intersectional discrimination

116. The Special Rapporteur on violence against women has recognised that violence against women “frequently occurs at the intersection of different types of discrimination.”¹⁹³ Kurdish women in Iran face discrimination on the basis of both their sex and on their ethnic origin (as part of the marginalised Kurdish community).¹⁹⁴ In addition, the Special

¹⁸⁶ Report of the Special Rapporteur on the situation of human rights in Iran, March 2014 (above note 18), para 43.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*, Annex 1, p. 51.

¹⁹⁰ *Ibid.*, para. 6. See also Human Rights Watch, “Iran: Halt Execution of 33 Sunnis”, 13 June 2014, available here: <http://www.hrw.org/news/2014/06/12/iran-halt-execution-33-sunnis>, which describes a case involving four prisoners on death row where the men maintain that they were targeted solely on the basis of their faith; and Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran* (2013), UN Doc. A/HRC/22/56, available at: http://www.ohchr.org/Documents/Countries/IR/A-HRC-22-56_en.pdf, which cites cases of reprisals against Kurds.

¹⁹¹ HRW, “Codifying Repression An Assessment of Iran’s New Penal Code”, 2012: http://www.hrw.org/sites/default/files/reports/iran0812webwcover_0.pdf, 3; also see above note 28.

¹⁹² African Commission on Human and Peoples’ Rights, *Constitutional Rights Project, Civil liberties Organization and Media Rights Agenda v. Nigeria*, Communications No. 140/94, 141/94 and 145/95, November 1999, para. 51.

¹⁹³ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/HRC/17/26, 2 May 2011, para 49.

¹⁹⁴ Amnesty International, *Iran: Human Rights Abuses against the Kurdish Minority* (2008), available here: <http://www.amnesty.org/en/library/asset/MDE13/088/2008/en/d140767b-5e45-11dd-a592-c739f9b70de8/mde130882008eng.pdf>, 14

Rapporteur on Human Rights Defenders has recognised that human rights defenders particularly at risk include “women defenders working on the rights of religious and national minorities.”¹⁹⁵

117. In the Applicant’s case, her work as a woman human rights defender promoting women’s rights was inextricably linked to her identity as a Kurdish citizen of Iran *and* her political belief in the importance of ameliorating the situation of the Kurdish people. The responses of the Iranian authorities to her work constituted intersectional discrimination as a woman and a member of an ethnic minority.

Applicant’s arrest and detention

118. The Applicant was ostensibly detained on charges of *Moharebeh* and membership of the PJAK (although she did not discover these charges until some months after her arrest). However, the Applicant had never been a member of or involved in the militant wing of the PJAK.¹⁹⁶ She was therefore imprisoned solely on the basis of her political beliefs. The arrest and detention of the Applicant was arbitrary on the basis that it represented discrimination against her as both a politically active woman, failing to abide by prevailing gender norms,¹⁹⁷ and as an ethnic minority Kurd working to promote Kurdish rights.

B. Freedom of opinion and expression

119. The right to freedom of opinion and expression is protected by Article 19 ICCPR. Freedom of opinion is subject to no interference and freedom of expression may only be subject to such restrictions as are provided by law and are necessary “[f]or respect of the rights and reputations of others” or “for the protection of national security or of public order (*ordre public*) or of public health or morals”.¹⁹⁸ Restrictions must be “absolutely necessary” and “proportionate to the aim pursued.”¹⁹⁹ No limitation imposed can impair the right itself.²⁰⁰ Freedom of expression protects ideas that “may offend public figures, including political leaders.”²⁰¹ The Human Rights Committee has made clear that under no circumstances “can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19.”²⁰² Freedom of expression includes political discourse, discussion of human rights and teaching.²⁰³

120. The Working Group has found that most situations of arbitrary detention in Iran are linked to infringements of freedom of opinion and expression (as well as to problems in

¹⁹⁵ Special Rapporteur on the situation of human rights defenders, Commentary on Human Rights Defenders, July 2011, 16.

¹⁹⁶ Appendix 2, para. 10.

¹⁹⁷ Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, UN Doc. A/HRC/17/26, 2 May 2011, para 95.

¹⁹⁸ Article 19(3) ICCPR.

¹⁹⁹ *Abdel Rahman al-Shaghouri v Syrian Arab Republic*, UN Doc. E/CN.4/2006/7/Add.1, Opinion No.4/2005, para 13.

²⁰⁰ *Ibid.*

²⁰¹ *Mohammed Abbou v Tunisia*, A/HRC/4/40/Add.1, Opinion No. 41/2005, para. 48.

²⁰² HRC, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 23.

²⁰³ HRC, General Comment No. 34, para 11

the administration of justice).²⁰⁴ On multiple occasions, including in its 2003 Report on Iran, the Working Group has found that the jurisprudence of Iranian courts restricts significantly freedom of opinion and expression.²⁰⁵

121. The Applicant's activities as a Kurdish social, political and ethnic minorities rights activist, providing education and social services to Kurdish women in both Iran and Iraq, and her interest in Kurdish rights, come within the recognised categories of political discourse, discussion of human rights and are therefore covered by the scope of the right to freedom of opinion and expression. The Applicant's arrest, detention, threat of rape and other forms of torture and ill-treatment, and her continued imprisonment to this day, were measures taken in response to, *inter alia*, her exercise of freedom of opinion and expression. There were no legitimate grounds within Article 19 for the interference with her rights. The Applicant had never been involved in any violent or armed activities carried out by the PJAK and has exercised her freedom of assembly and association in an entirely non-violent fashion.²⁰⁶ The arrest and detention were therefore not necessary for the protection of national security or public order. These measures were designed to punish the Applicant for exercising her freedom of opinion and expression, and therefore amount to a deprivation of liberty within Category II.

C. Rights to freedom of assembly and association

122. The right to freedom of assembly and association is protected by Articles 21 and 22 of the ICCPR. It is also protected by Article 27 of the Constitution of Iran. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The right to freedom of assembly and association applies to membership of a political party. The Human Rights Committee General Comment No. 25 stipulates that: "[T]he right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process."
123. The Applicant's alleged membership of the PJAK (which she denies), was used as the basis for her detention and conviction. PJAK is designated a terrorist group by the Iranian authorities.²⁰⁷ However, the PJAK has a strictly non-militant wing run by Kurdistan youth and social activists (including the women's branch, the East Kurdistan Women Union (YJRK)), and it was with this non-militant wing that the Applicant cooperated with in carrying out her social and educational work with Kurdish women.

²⁰⁴ Working Group on Arbitrary Detention, "Visit to the Islamic Republic of Iran, E/CN.4/2004/3/Add.2, 27 June 2003, para. 41.

²⁰⁵ *Ibid.*, para 65. The Working Group on Arbitrary Detention found the deprivation of liberty to result from the exercise of freedom of expression in, e.g., *Abdolfattah Soltani v Islamic Republic of Iran*, opinion No. 26/2006, (A/HRC/4/40/Add.1)); *Arash Sigarchi v Islamic Republic of Iran* E/CN.4/2004/3/Add.1, Opinion No. 8/2003; *Abbas Amir-Entezam v Islamic Republic of Iran*, E/CN.4/2002/77/Add.1, Opinion No. 29/2000.

²⁰⁶ Appendix 2, para 11.

²⁰⁷ Islamic Penal Code (1991), Article 186; Amended Islamic Penal Code (2013), Articles 279-280.

She had never been involved in any way in the militant wing of the group nor in any militant operation or action involving the use of force or arms.²⁰⁸

124. Restrictions on the rights to freedom of assembly and association must be prescribed by law. Laws imposing limitations on the exercise of human rights must not be arbitrary or unreasonable.²⁰⁹ The Iranian law under which the Applicant was convicted²¹⁰ was vague and arbitrary. Human Rights Watch explains:

Under articles 186 and 190-91 of the old code, which effectively amounted to anti-terrorism laws, anyone found responsible for taking up arms against the state, or belonging to an organization taking up arms against the state, was considered guilty of “enmity against God” and sentenced to death. The crime of *efsad-e fel arz*, or “sowing corruption on earth” had been used almost interchangeably with “enmity against God,” and the definitions were one and the same. In addition, one of the most serious criticisms of the old code is that it fails to differentiate between individuals of a group who actually use violence or take up arms, and those who are merely members (or supporters) of organizations that have announced their willingness to engage in armed struggle to reach their objectives, but have never resorted to violence. Both are subject to the death penalty (or other cruel punishments such as amputation, crucifixion, or internal exile).²¹¹

125. Given that the Applicant had never been involved in the militant wing of PJAK, her detention was not necessary to avert a real danger to national security. The Human Rights Committee has cautioned countries against overly broad statutory definitions of terrorism and membership of a terrorist group.²¹² Although the Applicant was convicted (without due process) of membership of the PJAK, subsequent to her conviction she was tortured in an attempt to obtain a televised confession, suggesting that any evidence relied on to secure a conviction was weak or non-existent, rendering her arrest and detention unnecessary and disproportionate.
126. The Applicant’s arrest, detention and torture were a punishment for her exercise of her right to freedom of association and assembly; the applicant’s detention thus falls within Category II.

D. Participation in public affairs

127. Article 25 of the ICCPR provides that “[e]very citizen shall have the right and the opportunity (...) to take part in the conduct of public affairs.” The enjoyment of this

²⁰⁸ Appendix 2, para. 12.

²⁰⁹ United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, para. 15.

²¹⁰ The Islamic Penal Code of the Islamic Republic of Iran. Note this law has now been amended.

²¹¹ Human Rights Watch, “Codifying Repression An Assessment of Iran’s New Penal Code”, 2012, available at: http://www.hrw.org/sites/default/files/reports/iran0812webwcover_0.pdf, 37-38 [footnotes omitted]; also see above note 28.

²¹² General Assembly, Fifty-Eighth Session, Report of the Human Rights Committee, 76th-78th Session, A/58/40 vol. 1 (2003), para 79(8) regarding Estonia. See also General Assembly, Fifty-Ninth Session, Report of the Human Rights Committee, 79th-81st Session, A/59/40 vol 1 (2003), para 64(20), where the HRC expressed concern over the Russian Federation’s over broad definition of ‘extreme activity’ and the arbitrariness of its application.

right is contingent on fulfilment of the rights guaranteed in Articles 19, 20 and 21 ICCPR as set out above. The scope of the right guaranteed under Article 25 is broad and includes citizens taking part, “in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.”²¹³

128. The Applicant’s activities promoting women’s and Kurdish ethnic minority rights fall squarely and entirely within Article 25. Article 8(2) of the Declaration on Human Rights Defenders recognises the right of human rights defenders “to draw attention to any aspect of [the work of government bodies, agencies and organisations concerned with public affairs] that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”²¹⁴
129. The Special Rapporteur on Human Rights Defenders has recognised a particularly worrying trend of “criminalization of the activities carried out by women human rights defenders.”²¹⁵ The Human Rights Committee has expressed its concern about the “arrests and arbitrary detention of human rights defenders” in Iran and noted in particular “the large number of women’s rights activists who have been arrested and detained.”²¹⁶
130. The arrest, detention and imprisonment of the Applicant resulted directly from her exercise of her Article 25 right to organise herself in collaboration with others to participate in public affairs by promoting the rights of Kurdish women, and, as such, was designed to deny her this right. Her detention was thus arbitrary and falls within Category II.

Category III: Fair Trial; and Torture and Ill-Treatment

A. Fair trial

131. Fair trial rights are set out in Article 14 of the ICCPR.²¹⁷ Proceedings in capital cases must scrupulously observe all fair trial standards, regardless of the crime an accused is alleged to have committed.²¹⁸ All individuals who risk the death penalty must benefit from competent defence counsel at every stage of proceedings.²¹⁹ They must be presumed innocent until their guilt has been proved based upon clear and convincing evidence leaving no room for an alternative explanation of the facts, in strict application of the highest standards for gathering and assessing evidence.²²⁰ In

²¹³ *Ibid*, para. 8

²¹⁴ General Assembly, Fifty-third session, *Declaration on Human Rights Defenders*, UN Doc. A/RES/53/144 (1999), Annex 1, fourth preambular paragraph; Article 8(2).

²¹⁵ Special Rapporteur on the situation of human rights defenders, *Commentary on Human Rights Defenders* (July 2011), 16.

²¹⁶ HRC, *Concluding Observations on the Islamic Republic of Iran*, November 2011, UN Doc. CCPR/C/IRN/CO/3, para. 26.

²¹⁷ ICCPR, Article 14.

²¹⁸ UN, *Safeguards guaranteeing protection of the rights of those facing the death penalty*, Economic and Social Council, RES/1996/15, 23 July 1996, available at: <http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm>, para. 5; UN Human Rights Committee, *General Comment No. 6: Implementation of Article 6 by States Parties: Right to life*, INT/CCPR/GEC/6630, para. 7; UN Human Rights Committee, *General Comment No. 32: Implementation of Article 14 by States Parties: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, para. 59.

²¹⁹ *Daniel Pinto v. Trinidad and Tobago* Communication No. 232/1987, UN Doc. CCPR/C/39/D/232/1987, para. 12.5.

²²⁰ ICCPR, Article 10(2)(a).

addition, all mitigating factors must be taken into account.²²¹ The proceedings must guarantee the right to review of both the factual and the legal aspects of the case by a higher tribunal, composed of judges who did not hear the case at first instance.²²² Further, the individual's right to seek pardon, commutation of sentence or clemency must be ensured.²²³

132. Iran's Constitution protects equality before the law, providing that all citizens, both women and men, have equal legal protection, and enjoy the presumption of innocence.²²⁴

133. The Applicant faced capital charges but was not afforded a fair trial, and was denied the right to adequately defend herself. She was arrested on or around 10 March 2008 and is not known to have been informed of the charges she faced until her first appearance before the Court of First Instance (some nine months after her arrest). Furthermore, the Applicant's right to effective counsel has been consistently thwarted by the Iranian authorities as she:

- a) was subjected to numerous interrogations without any representation between her arrest on or around 10 March 2008 and her appearance before the Court of First Instance in early December 2008;
- b) was not provided with access to a lawyer until a few weeks prior to her appearance before the Court of First Instance in early December 2008;
- c) was unrepresented in her trial before the Court of First Instance in early December 2008, her counsel at the time, Mr. Ensanimehr, was not given notice of her trial date;
- d) did not have effective counsel in the preparation of her defence at trial and afterwards. There are allegations that Mr. Ensanimehr was intimidated by the Kermanshah Prosecutor's Office and encouraged to remove himself from Ms. Jalalian's case. This is consistent with the experience of other lawyers who have worked on "security" cases;
- e) was not able to effectively prepare for her appeal. The Applicant's counsel at the time, Mr. Ensanimehr and his co-counsel, filed an appeal against her conviction, however, it is unclear whether the Applicant was represented before the Court of Appeal and what (if any) preparation her lawyers were able to undertake in order to prepare for her appeal.

134. The Applicant was equally denied the right to adequate facilities to prepare her defence, and she and her counsel were prevented prompt access to relevant information.²²⁵ For example, she did not have access to the case record, including witness lists and information, documents and other evidence on which the prosecution intended to rely (inculpatory material), nor to exculpatory material. Nor was she

²²¹ Report on extrajudicial, summary or arbitrary executions prepared by Mr. Bacre Waly Ndiaye, Special Rapporteur of the Commission on Human Rights, UN Doc. A/51/457 (1996), para. 111.

²²² *Ibid.*

²²³ *Ibid.*

²²⁴ Constitution of the Islamic Republic of Iran, 24 October 1979 (as amended), available at: <http://www.iranchamber.com/government/laws/constitution.php>, Article 3(14).

²²⁵ Basic Principles on the Role of Lawyers, Principle 21, Principles on Legal Aid, Principle 12 para. 36; UNHRC General Comment No. 32 (above note 122), para. 33.

afforded the right to present her evidence. The lack of access to information while detained in pre-trial detention and the summary nature of the proceedings before the Court of First Instance and the Court of Appeal (without the Applicant being able to make any representations, with or without the support of her appointed legal counsel), meant that she was not able to respond substantively to the allegations against her.

135. If the prosecution is relying on specific evidence, or a confession, it must provide information about the circumstances in which the confession or other evidence was obtained, to enable the defence to assess or challenge its admissibility or weight.²²⁶ No statement or confession made by a person deprived of their liberty, except one made in the presence of a lawyer or judge, should have probative value in court, except as evidence against a person accused of obtaining the statement by unlawful means.²²⁷ Despite this, the Courts based their decision to convict Ms. Jalalian of all the charges, and sentence her to the death penalty, primarily on her (false) admission of membership in the PJAK (see decision of the Court of First Instance dated 2 December 2008 (Appendix 4) and the decision of the Court of Appeal dated 6 May 2009 (Appendix 5)). Any admission would have been made in the period between March 2008 and November 2008, during which time, the Applicant did not have access to counsel, and alleges that she was subjected to various forms of torture. These factors should have rendered any confession inadmissible.
136. The judgment of the Court of First Instance notes that no arms or hand-grenades were found in the Applicant's possession at the time of her arrest. It states that her "refraining from telling the truth about transporting arms and hand-grenades...in addition to her lack of cooperation with the intelligence forces to identify and arrest other members of the group, as well as the lack of substantiated defence put forth by the accused's lawyer, and further circumstantial evidence preferred by the Prosecutor make the accused's guilt, in relation to all the charges against her, clear and evident to the Court."²²⁸ However, the Court did not provide any information as to the nature of the circumstantial evidence, except to refer to the indictment issued by the Prosecutor. Further, as regards the "lack of cooperation with the intelligence forces," it indicated that the applicant failed to provide information about PJAK operatives. However, the prosecution carries the burden of proof, and the Applicant has the right to remain silent if she wishes.²²⁹ This right is also provided for under Iranian law.²³⁰
137. The decisions of the Court of First Instance and the Court of Appeal also refer to an authorised report of the intelligence department as official evidence. However, the document was not disclosed to the Applicant and therefore she was prevented from substantively addressing any allegations against her contained therein.

²²⁶ UNHRC, General Comment No. 32, *ibid*, para. 33.

²²⁷ Special Rapporteur on torture, UN Doc. A/61/259 (2006) para. 56.

²²⁸ Appendix 4.

²²⁹ Principles on Legal Aid, Guideline 3 para. 43(b); Human Rights Council resolution 13/19, para. 6.

²³⁰ *Criminal Code of Procedure*, 1999 (CCP), Articles 129 and 197.

Right to be Presumed Innocent

138. Everyone has the right to be presumed innocent, and treated as innocent, unless and until that person is convicted according to law in the course of proceedings which meet at least the minimum prescribed requirements of fairness.²³¹ The presumption of innocence is violated when a trial judge asks the prosecution leading questions and refuses to allow defence witnesses to testify about the accused's alibi, and where senior officials made widely reported public statements portraying the accused as guilty.²³²
139. In her open letter of November 2009, the Applicant indicated that 'They did not even allow me to defend myself. They told me "Because you are a *Mohareb*, you are not entitled to defend yourself"'.²³³
140. The courts did not consider seriously the claim that no substantive evidence had been put forward which indicated that the Applicant had been involved in criminal activities. Instead, the Iranian courts appear to have assumed the Applicant's guilt, rather than allow for her to benefit from the presumption of innocence.

Right to trial by a competent, independent and impartial tribunal established by law

141. The jurisdiction of Iranian Courts is governed by the nature of the allegations. The Revolutionary Courts' jurisdiction has largely expanded since their early establishment in 1979. Since the latest amendments of the *Act Establishing Public and Revolutionary Courts (1994)* in 2002, the Revolutionary Courts hear cases involving security-related crimes such as offences against the internal and external security of the State, *Moharebeh* and Corruption on Earth; insulting the founder of the Islamic Republic of Iran and the Supreme Leader; narcotic drugs-related crimes; terrorism and armed insurgency against the State and its institutions; use of arms, espionage and smuggling, or offences linked to state-related embezzlement; and all other acts that undermine the system of the Islamic Republic of Iran.²³⁴ Many prisoners of conscience are prosecuted by the Revolutionary Courts, as was the Applicant.²³⁵
142. The Head of the Judiciary, who is appointed by the Supreme Leader, appoints and dismisses judges of the general and Revolutionary Courts; to define their jobs; and to issue judicial promotions and transfers.²³⁶ The Head of Judiciary also appoints the Prosecutor General and the President of the Supreme Court.²³⁷ The Special Rapporteur

²³¹ ICCPR, Article 10(2)(a) and Article 14(2); Arab Charter, Article 16; Body of Principles (above note 109), principle 36(1). It is worth noting that Article 37 of the Iranian Constitution recognizes the principles of fair prosecution and the presumption of innocence.

²³² *Larrañaga v The Philippines* Communication No. 1421/2005, UN Doc. CCPR/C/87/D/1421/2005, para. 7.4.

²³³ Online campaign for the release of Zeinab Jalalian, uploaded on YouTube on 29 November 2009, available here: <https://www.youtube.com/watch?v=INYOXrRVGM>; see also Appendix 7.

²³⁴ Article 5 of the *Amended Act Establishing Public and Revolutionary Courts*, available online at: http://www.dadkhahi.net/law/Ghavanin/Gh_Tashkil_dadgah_omoumi.htm (in Farsi only); see also March 2014 Report of the Special Rapporteur on Iran, above note 18, para. 60 and Human Rights Watch, "Religious minorities", 1997, available from www.hrw.org/reports/1997/iran/iran-05.htm.

²³⁵ March 2014 Report of the Special Rapporteur, above note 18, para. 60.

²³⁶ Constitution of the Islamic Republic of Iran, Articles 157, 158 and 164.

²³⁷ *Ibid.*, article 162.

on Iran has stated that this structure subjects the Prosecutor General and the President of the Supreme Court to the whims of the Head of the Judiciary.²³⁸ Furthermore, the Supreme Leader's influence over the judiciary has been a repeated subject of concern noted by UN Special Procedure mandate holders,²³⁹ including in 2001, following a statement reportedly made by the First Deputy to the head of the judiciary that "judges must obey the Supreme Leader and have no independence in judgement."²⁴⁰

143. Judges are vetted through the *gozinesh* process, which involves investigations conducted by the Supreme Selection Council and the Ministry of Intelligence. Investigations focus on: the acceptability of an applicant's beliefs; previous political opinions and affiliations; and repentance of any former political opinions and affiliations set forth in the Selection Law based on the Religious and Ethical Standards of 1995.²⁴¹ Candidates for judgeship or prosecutorial positions are required to "have faith, be just."

144. In his March 2014 report, the Special Rapporteur on Iran reported that lawyers believed that judges, particularly those in Revolutionary Courts:

made their decisions almost exclusively on the basis of reports submitted by arresting and investigating intelligence officials (and confessions, if available). This approach was indeed reflected in the evolutionary court verdicts reviewed by the Special Rapporteur, which made extensive reference to the reports of the Ministry of Intelligence. Lawyers also reported that, in their experience, judges rarely considered evidence provided by the defence, and frequently chose to ignore allegations that confessions had been obtained under torture.²⁴²

145. Indeed, this was the Applicant's experience. The three main grounds relied upon by the Court of First Instance to convict the Applicant were: i) her alleged confession of membership in the PJAK (extracted under torture); ii) evidence put forward by the intelligence services, but not described or disclosed; and iii) information contained in the Prosecutor's indictment.

Right to be Present at Trial and Appeal

146. All criminal proceedings must provide the accused with the right to an oral hearing, at which he or she may appear in person or be represented by counsel and may bring evidence and examine witnesses.²⁴³ This requires the authorities to notify the accused (and defence counsel) in sufficient time of the date and location of the hearing(s) and

²³⁸ March 2014 Report of the Special Rapporteur, above note 18, para. 60, citing Amnesty International, "Iran: Violations of human rights 1987-1990", 1 December 1990, available from www.amnesty.org/en/library/info/MDE13/021/1990/en, para. 2.1.2.

²³⁹ March 2014 Report *Ibid.*, para. 62.

²⁴⁰ Report of the Special Rapporteur, *Independence of judges and lawyers* UN Doc. E/CN.4/2001/65, para. 116.

²⁴¹ March 2014 Report above note 18, para. 64; International Campaign for Human Rights in Iran, *UN Rapporteur Slams Iran for Lack of Judiciary Independence and Execution Surge*, available online at <http://www.iranhumanrights.org/2014/03/shaheed-report-march-2014>, citing Submission by Amnesty International to the Committee on Economic, Social and Cultural Rights, p.

5.

²⁴² March 2014 Report, *Ibid.*, para. 65.

²⁴³ *UNHRC*, General Comment No. 32 (above note 122), paras. 23, 28.

any changes thereto, to invite the accused to attend and not to improperly exclude the accused from the trial.²⁴⁴

147. The Applicant appeared before the Court of First Instance, but was only given three weeks' notice of the trial. Further, the Applicant's counsel did not have the opportunity to appear before the Court of First Instance and it is unclear whether the legal arguments made on behalf of Ms. Jalalian on appeal were duly considered by the Court of Appeal.
148. Although the presence of the accused or representation by counsel is not required before the Appellate Court under Article 252 of the *Islamic Republic of Iran's Criminal Code of Procedure for Public and Revolutionary Courts*²⁴⁵, it is unclear whether any legal arguments have been made in writing to allow a proper review of the decision of the Court of First Instance. While a Statement of Defence was reportedly filed in support of the appeal, no reference is made thereto in the Court of Appeal's reasons.

Right to a public judgment

149. The right to a public judgment require courts to give reasons for their judgments,²⁴⁶ which would include the essential findings, evidence, legal reasoning and conclusions. A reasoned judgment should provide enough information to rule out the risk of arbitrariness and to ensure that the accused can understand the reason for the ruling. In cases which are heard and decided by professional judges rather than lay juries, the ruling must address facts and issues essential to the determination of each aspect of the case, although it need not give a detailed answer to every argument raised.²⁴⁷ Particular attention must be given to the evaluation of witness testimony identifying an alleged perpetrator.
150. Iranian law obliges courts to deliver a well-reasoned verdict with reference to the law (codified by statute, jurisprudential or on the basis of authoritative Islamic sources and authentic fatwa) upon which the decision is based.²⁴⁸
151. In the Applicant's case, the judgement of the Court of First Instance only provided summary information as to the evidence. The Court outlined in summary fashion that the reasons for finding the Applicant guilty of the charges against her are based on: i) her alleged confession of membership in the PJAK (extracted under torture); ii) evidence put forward by the intelligence services (not described or disclosed to the Applicant); and iii) the Prosecutor's indictment (which includes "circumstantial evidence"). While no compelling evidence was advanced by the Prosecution in support of these accusations, the court relied on unrelated and unsubstantiated information to

²⁴⁴ *Mbenge v Zaire* Communication No. 16/1977, U.N. Doc. CCPR/C/OP/2 at 76, para. 14.1-14.2; See *UNHRC*, General Comment No. 32, paras. 31, 36.

²⁴⁵ Available online at: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>.

²⁴⁶ HRC General Comment 32 (above note 122), para. 29.

²⁴⁷ *Taxquet v Belgium* App. No. 926/05 (ECHR 2010), para. 91; ICTY Appeals Chamber: *Prosecutor v Kvočka et al* (IT- 98-30/1-A), (28 February 2005) para. 23; *Prosecutor v Hadžihasanović and Kubura* (IT-01-47-A), (22 April 2008), para. 13.

²⁴⁸ Law on Protection of Citizens, Articles 166 and 167.

the effect that the Applicant would have entered the country illegally on several occasions and would have attempted to influence public opinion against the regime of the Islamic Republic of Iran. The court then went on to hold that the Applicant was “perhaps even (...) involved in terrorist operations and refraining from telling the truth about transporting arms and hand-grenades, even though such items were not found in her possession at the time of the arrest.”

152. The Court of Appeal reiterated much of the information in the trial judgement without addressing any of the grounds of review that it found not to be “convincing and substantial”. Considering the inadequate and inconclusive reasons provided by the Court of Appeal, it is submitted that whatever grounds of appeal that were raised by the Applicant’s counsel appear not to have been adequately appraised.

Right to Appeal and Retrials

153. Under Article 14(5) of the ICCPR anyone convicted of a criminal offence has the right to have his or her conviction and sentence reviewed by a higher tribunal.²⁴⁹ This right requires that measures are in place to ensure that the right can be accessed and exercised effectively, such as reasonable time to lodge an appeal, access to the trial transcript, reasoned judgments (of the trial court and any appeals) and rulings on the appeal within a reasonable time. The Principles on Legal Aid provide that anyone charged with a criminal offence punishable by imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process, including appeals.²⁵⁰
154. It is respectfully submitted that the Iranian criminal procedure currently in effect does not comply with the ICCPR’s standards of fair trial as they includes the right to appeal. As explained earlier, both the so-called appeal process under Article 252 and the review process under Articles 272-277 of the *Islamic Republic of Iran’s Criminal Code of Procedure for Public and Revolutionary Courts*²⁵¹ are deficient as they do not represent the essential features of an appeal. There is no right to a hearing and the presence of the accused or their legal representative is not required, although the possibility to be present or represented by counsel exists on appeal but rarely applied. In cases such as the present, despite the lack of procedural safeguards, the death sentence becomes final and enforceable after Article 252 appeal process is exhausted, the only avenues of review being the application for review under the limited grounds of Article 272 or a Plea for Clemency. As such, none of these procedures allow a full and substantive review of the legal basis and the sufficiency of the evidence upon which the trial court’s decision was rendered.
155. The jurisprudence of the UN Human Rights Committee has consistently emphasized that in order for there to be compliance with the standards of the right to appeal under

²⁴⁹ ICCPR, Article 14(5); Convention on the Rights of the Child, Article 40(2)(b)(v); Migrant Workers Convention, Article 18(5); American Convention, Article 8(2)(h); Arab Charter, Article 16(7); European Convention, Protocol 7, Article 2(1); Principles on Fair Trial in Africa, Section N(10)(a); ICC Statute, Article 81(1)(b) and 81(2); Rwanda Statute, Article 24; Yugoslavia Statute, Article 25; See African Charter, Article 7(1)(a).

²⁵⁰ Principles on Legal Aid, Principle 3 and see Guidelines 5 and 6.

²⁵¹ *Islamic Republic of Iran’s Criminal Code of Procedure for Public and Revolutionary Courts* (September 19, 1999), available online at: <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>

article 14(5) of the ICCPR, the conviction and sentence must be “review[ed] substantively, both on the basis of sufficiency of the evidence and of the law, (...) such that the procedure allows for due consideration of the nature of the case.”²⁵² The focus is on the substance or adequacy of the review, not the name given to the remedy.²⁵³

156. It is submitted that due to the procedural and institutional restrictions, the Applicant was deprived of her right to appeal as required by the ICCPR standards of fair trial.
157. In addition to the procedural flaws outlined above, the Applicant was not provided with a reasoned judgment by the Court of First Instance or the Court of Appeal, Further, counsel were unable to represent her meaningfully at any stage of the proceedings. In fact, while the Applicant was present at the hearing before the Court of First Instance, she was deprived of adequate legal representation and was therefore unable to present her defence and evidence efficiently.

Punishments

158. Disproportionately severe punishments as well as punishments for acts that should not be criminalised violate international standards. Punishments involving deprivation of liberty should only be imposed to serve a pressing social need and should be proportionate to that need.²⁵⁴ Time spent in pre-trial detention should be taken into account when imposing any sentence, whether or not it involves imprisonment, and should be deducted from any term of imprisonment imposed.²⁵⁵
159. Concern has been expressed about the discriminatory imposition of the death penalty, including the disproportionate imposition of the death penalty on particular ethnic or racial groups in Iran. For instance, the death penalty is reportedly applied in a discriminatory fashion to the Kurdish minority both for purported affiliation with PKK/PJAK and other accusations related to Kurds being of Sunni faith.²⁵⁶ As Amnesty International has reported, “Members of ethnic minority groups also faced a high risk of prosecution on vague charges such as “*Moharebeh*” and “corruption on earth”, which could carry the death penalty.”²⁵⁷
160. The Applicant’s legal proceedings were shrouded in secrecy and lacked transparency at every level of trial and appeals. The lack of information available as to where and when

²⁵² General Comment 32, above note 122, at para. 48; *Bandajevsky v. Belarus*, Views, Human Rights Comm. 86th Sess., Mar. 13-31, 2006, para. 10.13, U.N. Doc. CCPR/C/86/D/1100/2002 (Mar. 28, 2006); *Aboushanif v. Norway*, Views, Human Rights Comm. 93d Sess., July 7-25, 2008, para. 7.2, U.N. Doc. CCPR/C/93/D/1542/2007 (July 17, 2008)

²⁵³ *Vazquez v. Spain*, Views, Human Rights Comm. 69th Sess., July 10-28, 2000, para. 11.1, U.N. Doc. CCPR/C/69/D/701/1996 (July 20, 2000).

²⁵⁴ WGAD, UN Doc. E/CN.4/2006/7, (2005) para. 63.

²⁵⁵ WGAD: UN Doc. E/CN.4/2006/7/Add.3.(2005) paras. 72-74, 87; UN Doc. E/CN.4/2001/14 (2000) para. 96.

²⁵⁶ See, e.g., Joint civil society letter, ‘Iran: Halt Execution of 33 Sunnis: Accounts of Cases Raise Fair Trial Concerns’, 13 June 2014, available at: <http://www.hrw.org/news/2014/06/12/iran-halt-execution-33-sunnis>; Amnesty International, ‘Iran: Lives of two death row inmates from Kurdish minority at risk amid surge in executions’, 28 October 2013, at:

<https://www.amnesty.org/en/articles/news/2013/10/iran-lives-two-kurdish-death-row-inmates-risk-amid-surge-executions/>;

International Campaign for Human Rights in Iran, ‘Kurdish Political Prisoners on Hunger Strike Threatened with Further Prosecution and Execution’ 19 December 2014, at: <http://www.iranhumanrights.org/2014/12/kurdish-prisoners/>; HRW, “*Codifying Repression An Assessment of Iran’s New Penal Code*”, 2012, at

http://www.hrw.org/sites/default/files/reports/iran0812webwcover_0.pdf, pages 3, 37-8;

²⁵⁷ Amnesty International Report 2014/15: Islamic Republic of Iran.

she would be executed meant that the Applicant and her family were concerned that she would be subject to imminent execution while detained at Evin Prison between March and August 2010. The Applicant was also not properly informed when she benefitted from a clemency order from the Supreme Leader reducing her sentence from the death penalty to life imprisonment.

161. Once her sentence was commuted to life imprisonment, she did not benefit from the possibility of review by the authorities or any prospect of release. Periodic reviews should consider the appropriateness of commutation, remission, termination or conditional release in light of the individual's progress towards rehabilitation or model behaviour.

Failure to implement change in the law

162. The new Islamic Penal Code (IPC) came into effect 15 days after its publication in the Official Gazette on 15 May 2013.²⁵⁸ The amended law prohibits the imposition of the death penalty for *Moharebeh* for cases not involving the use of a weapon. It therefore allows anyone convicted of *Moharebeh* in accordance with the former law (as was the Applicant), to apply for an amendment of the judgment.
163. As opposed to the repealed definition of the crime of *Moharebeh*²⁵⁹, under the new law mere sympathy or support of "a group or an organized association which have waged armed rebellion against the Islamic State" does not fall under the definition of *Moharebeh*.²⁶⁰ As such, every person convicted under section 186 of the old Islamic Penal Code is entitled to a re-trial. Despite this change in the law, the Applicant has not benefitted from a re-trial in accordance with the legislation currently in effect.²⁶¹

²⁵⁸ Available online at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

²⁵⁹ Available online at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/3200-islamic-penal-code-of-the-islamic-republic-of-iran-book-one-and-book-two.html#31> (repealed in 2013): Article 183 - Any person who resorts to weapons to cause terror and fear or to breach public security and freedom shall be considered as a *mohareb* and corrupt on earth [*mofsed fel-arz*]. Note 1 -A person who draws weapons on people, but due to inability does not cause fear to anyone shall not be considered as a *mohareb*. Note 2 -If a person draws weapons on one or several specific persons because of personal enmities, and his/her act is not against the public, [s/he] shall not be regarded as a *mohareb*. Note 3 -There is no difference between firearms and other weapons.

Article 184 -Any person or group that resorts to weapons in order to fight with *moharebs* or to eliminate corruption on earth shall not be considered as a *mohareb*.

Article 186 -All the members and supporters of a group or an organized association which have waged armed rebellion against the Islamic State, whilst the core of that organization or group exists, shall be regarded as *moharebs* provided that they know the stance of that group or organization and have effective activities and efforts in support of its aims; even though, they are not engaged in the military subdivision. Note -A united front composed of various groups and individuals shall be regarded as one [organization].

²⁶⁰ Amended Islamic Penal Code (IPC) of the Islamic Republic of Iran (publication in the Official Gazette on 15 May 2013): available online at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html> : Article 279- *Moharebeh* is defined as drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity. When a person draws a weapon on one or several specific persons because of personal enmities and his act is not against the public, and also a person who draws a weapon on people, but, due to inability does not cause insecurity, shall not be considered as a *mohareb* [i.e. a person who commits *moharebeh*]. Article 280- Any person or group that resorts to weapons in order to fight with *moharebs* shall not be considered as a *mohareb*.

²⁶¹ Pursuant to a combined reading of Articles 288 and 19 of the *Amended Islamic Penal Code* (2013), reproduced below, the Applicant's sentence should be reduced to a 10-15 year imprisonment, should all of the Prosecution's allegations of the Applicant's purported membership in the PJAk be established. See <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>:

B. Torture and Cruel, Inhuman and Degrading Treatment

164. The Applicant has endured a regular pattern of abuse during interrogations from the time of her arrest in March 2008 until the present, involving multiple forms of torture and ill-treatment. Article 7 of the ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Iranian law enforcement officers are prohibited from using “any kind of torture to extract a confession of guilt or to obtain information” under Article 38 of the Iranian Constitution. Furthermore, Iranian guidelines (the Operational Guidelines of Temporary Detention Centres (2006)) contain a prohibition against detainees being held in solitary confinement or subjected to torture or other forms of force.

Treatment during interrogations

Naft Square Detention Centre

165. At Naft Square Detention Centre, security personnel blindfolded the Applicant, beat her feet, banged her head against the wall, struck her in the stomach, and threatened her with rape.²⁶² On one occasion security personnel banged the Applicant head against the wall so hard that she suffered a brain haemorrhage which has affected her vision.²⁶³ During her detention at Naft Square Detention Centre, security staff also kept the Applicant in solitary confinement²⁶⁴ and lashed her feet for hours at a time, which rendered her unconscious at the time, and has impaired her ability to walk.²⁶⁵ In addition, there is reason to believe that the Applicant is suffering persistent internal bleeding after sustaining repeated blows to her stomach inflicted on her by security staff during her detention at Naft Square Detention Centre and subsequent transfers to the Centre while detained at Kermanshah Juvenile Correction and Training Centre.²⁶⁶

166. The Applicant was denied access to the outside world during her period of pre-trial detention at Naft Square Detention Centre. This period of incommunicado detention from March 2008 increased her vulnerability and anxiety thereby causing suffering. Further, blindfolding and subjecting her to beatings, blows to the stomach, flogging on her feet and solitary confinement heightened her sense of powerlessness during this period.

Solitary confinement – Naft Square Detention Centre and Evin Prison

Article 288- When members of the rebel group are arrested before any conflict occurs or a weapon is used, if the organization or core of that group exists, they shall be sentenced to a ta'zir imprisonment of the third degree, and if the organization or core of that group cease to exist, they shall be sentenced to a ta'zir imprisonment of the fifth degree.

Article 19- Ta'zir punishments are divided into eight degrees: (...)Third Degree: - Imprisonment from ten to fifteen years; - Fine from three hundred and sixty million (360,000,000) Rials to fifty-five million (550,000,000) Rials (...)

²⁶² Appendix 2, Witness Statement of Deniz Jalalian, 9 November 2014, paras. 16; Open letter to human rights organisations, November 2009, paras. 20, 35.

²⁶³ *Ibid.*, para. 21.

²⁶⁴ Appendix 2, para. 16.

²⁶⁵ *Ibid.*, para. 20.

²⁶⁶ Appendix 2, para. 55.

167. The Applicant informed her family that she experienced “months” of solitary confinement at Naft Square Detention Centre following her arrest in March 2008.²⁶⁷ It is highly likely that she was also held in solitary confinement during her five-month stay in Ward 209 of Evin Prison between March and August 2010.²⁶⁸ During the Applicant’s detention in Evin Prison she was subjected to this same pattern of abuse. Authorities tried to coerce her into admitting to collaborating with the militant wing of PJAK in a broadcast interview. However, she refused to provide such a confession.²⁶⁹

Lack of access to healthcare

168. Where allegations of torture and other ill-treatment are made, or there are grounds to suspect that torture or other ill-treatment has occurred, detainees should be examined by an independent doctor in a manner consistent with the Istanbul Protocol.²⁷⁰ Failure to provide access to adequate health care violates the right to respect for dignity and health, as well as the prohibition on inhuman or degrading treatment. Delay in the provision of medical care may also amount to inhuman or degrading treatment.²⁷¹

169. The Applicant has been and continues to be in need of medical treatment. She is suffering intestinal infections, internal bleeding, and a degenerative eye condition known as conjunctiva.²⁷² In the past, she has also experienced a loss of consciousness from persistent beatings at the hands of security personnel. The Applicant’s eye condition is worsening. According to the prison physician at Dizel Abad prison (where she was detained until recently), the Applicant needs surgery to avoid losing her eyesight.²⁷³ The prison infirmary did not have capacity to perform surgery of that nature and so the physician has recommended that she be transferred to a civilian hospital. The Applicant’s family has requested that she be sent to a civilian hospital at the family’s expense.²⁷⁴ The Prosecutor of Kermanshah has agreed to the request.²⁷⁵ Nonetheless, prison authorities have refused to proceed accordingly, insisting that the Applicant’s eye condition can be adequately treated in prison by administering sterile eye drops.²⁷⁶ The Applicant now cannot perform everyday tasks without assistance.²⁷⁷ This conveys a significant reduction in her health from 2008 to the current period.

170. The Applicant’s intestinal infections and internal bleeding are also causing her discomfort and require specialist treatment.²⁷⁸ On 11 April 2012, she was admitted to the Kermanshah prison hospital but doctors were unable to provide lasting relief for her

²⁶⁷ Appendix 2, para. 16.

²⁶⁸ *Ibid*, para. 2; Human Rights Watch, above note 65, Ex. 11.

²⁶⁹ Appendix 2, para. 36.

²⁷⁰ Convention against Torture, Articles 12 and 13; CAT General Comment 3, para. 25; See Istanbul Protocol, paras. 69-73, 83.

²⁷¹ *Aleksanyan v Russia* App. no. 46468/06 (ECHR 2008), para. 158, *Ghavitadze v Georgia* App. no. 23204/07 (ECHR 2009), para. 76, *Harutyunyan v Armenia* App. no. 34334/04 (ECHR 2010), paras. 104, 114-116, *Sarban v Moldova* App. no. 3456/05 (ECHR 2005), paras. 86-87, 90-91, *Kucherik v Ukraine* App. no. 2570/04 (ECHR 2007), paras. 147-152, *Kotsaftis v Greece* App. No. 39780/06 (ECHR 2008), paras. 47-61.

²⁷² Appendix 3, para. 18; see also Appendix 9.

²⁷³ Appendix 2, para. 58.

²⁷⁴ *Ibid*.

²⁷⁵ Appendix 3, para. 18.

²⁷⁶ *Ibid*.

²⁷⁷ Appendix 3, para. 22.

²⁷⁸ Appendix 2, paras. 54.

intestinal infection. Prison authorities have denied her requests to be transferred to a civilian hospital for proper treatment.²⁷⁹

171. Failure to provide the specialised treatment the Applicant requires is a dereliction of the prison authorities' duty to ensure the protection of the Applicant's right to the highest attainable standard of physical and mental health. There is no justification for the authorities inaction. There is no suggestion or credible evidence that the Applicant is a flight risk or that she would pose a threat to the public if she were to be transferred temporarily to a civilian hospital for treatment. Indeed, she is struggling to undertake everyday tasks without assistance and would thus be unable to flee from the site of a civilian hospital.
172. The Applicant's current symptoms result from her experience of torture at Naft Square Detention Centre.²⁸⁰ Throughout, she has been denied access to timely and appropriate health care, violating article 7 of the ICCPR.

Forced virginity testing as torture

173. Officials in places of confinement must not take advantage of their position to commit acts of sexual violence including rape and threats of rape, invasive body searches, "virginity tests," or more subtle forms of abuse such as insults and humiliation of a sexual nature.²⁸¹ Virginity testing is a painful and humiliating invasion of a woman's physical and mental integrity.²⁸² In the context of detention, this experience compounds a woman's vulnerability and constitutes a fundamental abuse of authority.²⁸³
174. During the Applicant's detention in Ward 209 at Evin prison, authorities denied her treatment at the prison infirmary when she refused to undergo a prior virginity test.²⁸⁴ Although she was able to refuse a virginity test she was barred from medical treatment as a result. This amounted to discrimination, an attempt to humiliate and a form of punishment. In societies where virginity is considered a symbol of female virtue, unmarried women who receive a "negative" test result (indicating that they have been sexually active) are at risk of being stigmatised and exposed to sexual abuse.²⁸⁵ Refusal of the test may be perceived as an admission of pre-marital sexual activity, leading to the same consequences. Indeed, the Applicant was returned to Evin

²⁷⁹ Appendix 2, para. 56.

²⁸⁰ Appendix 2, paras. 20, 21, 55.

²⁸¹ Special Rapporteur on torture, UN Doc. A/HRC/7/3 (2008) paras. 34, 42.

²⁸² The Special Rapporteur on Torture has described virginity testing as a gender-specific form of torture: Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, fifty-fifth session, A/55/290, para. 5.

²⁸³ The Committee on the Elimination of Discrimination against Women has expressed its 'gravest concern' at the 'practice of forced gynaecological examinations of women...including women prisoners while in custody', describing such coercive practices as 'degrading, discriminatory, and unsafe and [constituting] a violation by state authorities of the bodily integrity, person and dignity of women': Committee on the Elimination of Discrimination against Women, Sixteenth session, 13-31 January 1997, Supplement No 38(1/52/38/Rev 1), para. 178.

²⁸⁴ Appendix 2, para. 38.

²⁸⁵ Amnesty International, "Turkey: end sexual violence against women in custody!", 26 February 2003, EUR 44/006/2003, available at: http://iiavnl/epublications/2003/Turkey_End_sexual_violence_against_women_incustody.pdf, p. 30.

Prison after refusing to perform the test, whereupon rumours began to spread about her sexual “integrity.”²⁸⁶

Denial of the right to give informed consent and to refuse treatment

175. The Applicant was subjected to injections without informing her of the purpose of the injections and without her consent. She was handcuffed to the hospital bed each time.²⁸⁷ She was entitled to receive but was denied information about the nature and purpose of the injections in order to take an informed decision. The use of such coercive treatment constituted cruel, inhuman and degrading treatment within the meaning of article 7 of the ICCPR.

Uncertainty of execution date

176. The Applicant was transferred to Evin Prison in March 2010. She and her family feared that she would be subjected to imminent execution. Further, at that point the Applicant was not informed of whether the Supreme Court had rendered a decision regarding her conviction and sentence. She was also not properly informed when she ultimately benefitted from a clemency order from the Supreme Leader reducing her sentence from the death penalty to life imprisonment. The lack of transparency in relation to the Applicant’s sentence, the likely date of execution, and the grant of the clemency order meant that she and her family experienced constant uncertainty over her fate. These factors, also given the practice of Iran to carry out secret executions,²⁸⁸ resulted in extreme anxiety and is incompatible with the state’s duty to respect the dignity and integrity of the Applicant and her family.

177. Secrecy around the use of the death penalty is not compatible with the rights of the condemned individuals, their families and the public at large. Such secrecy violates the rights to a fair and public trial, the prohibition of cruel, inhuman and degrading treatment and the right to information. The uncertainty as to her sentence due to the failure of the authorities to inform the Applicant and her family amounted to a violation of their respective rights under Article 7 of the ICCPR.

Prison conditions

178. Inadequate detention conditions, by themselves, may be considered cruel, inhuman or degrading treatment where they cause detainees a degree of suffering and humiliation beyond that which is inherent to imprisonment. According to the Human Rights Committee, prison conditions that pose a serious threat to a detainee’s health will constitute a violation of article 7 of the ICCPR.²⁸⁹

²⁸⁶ Appendix 2, para. 38.

²⁸⁷ Appendix 2, para. 65.

²⁸⁸ Amnesty International, ‘Iran’s execution of five tortured political prisoners condemned’, 10 May 2010, at: <http://www.amnesty.org.uk/press-releases/irans-execution-five-tortured-political-prisoners-condemned>; Iran Human Rights, *Annual Report 2013*, pages 2, 19, 20, 22, at: http://www.academicsforabolition.net/repositorio/ficheros/417_232.pdf. Iran Human Rights, ‘Secret Mass-Executions of Drug-Convicts in Kerman Prison (Southeastern Iran)’, 30 December 2014, at: <http://iranhr.net/2014/12/secret-mass-executions-of-drug-convicts-in-kerman-prison-southeastern-iran/>.

²⁸⁹ *Moriana Hernandez Valentini de Bazzano v Uruguay* Communication No. 5/1977, CCPR/C/7/d/5/1977.

179. The Applicant's current conditions of detention in Khoy prison, where she was transferred to in early 2015, are unknown due to the total lack of access to her.
180. The general living conditions in the Applicant's latest place of detention (Dizel Abad prison) on which some information is at hand, were inadequate:
- a) cells were overcrowded; the Applicant shared a three-person cell with six other detainees;
 - b) the female ward had no ventilation in spite of the fact that in the warm season there was an average high of 39°C and low of 19°C; and
 - c) female prisoners must wear the complete *hijab* (headscarf, large pants or thick black socks, long and dark coat with long sleeves), which further makes the lack of ventilation and heat intolerable.²⁹⁰
181. Due to the Applicant's status as a "security" or political prisoner she was closely scrutinised by prison authorities and subject to a series of restrictions and repressive measures:
- a) her fellow detainees were instructed not to associate with her – compounding her sense of isolation;
 - b) prison authorities conducted regular searches of the Applicant's cell and seized her possessions, including a copy of a poetry book which they burnt without reason;
 - c) the Applicant's access to outdoor recreation time was limited to 30 minutes a day;
 - d) the Applicant was only allowed to go to the toilet twice a day;
 - e) the lights in the Applicant's cell were kept on during the night;
 - f) the Applicant was denied proper attention for her medical conditions;
 - g) at various times prison authorities denied the Applicant's family and lawyers from visiting her in person. Due to the long distance between the prison and her hometown her family were seldom able to visit prison. During the last year her only contact with her family has been a weekly two-minute telephone conversation, closely monitored by prison authorities.²⁹¹
182. The cumulative effects of the Applicant's conditions of detention have caused suffering and humiliation beyond what can be normally associated with the fact of detention. Her isolation from the outside world and other prisoners alone is enough to break her physical and moral resistance.²⁹²
183. The most plausible inference to draw from the restrictive regime applied to the Applicant is that authorities intended to intimidate her by weakening her resolve in the face of further interrogations and to discriminate against her (as a result of her perceived work for the Kurdish liberation movement, and her identity as a Kurdish woman). The conditions of her imprisonment constitute a further violation of the

²⁹⁰ Appendix 3, para. 20.

²⁹¹ *Ibid.*, See also: Appendix 2, Witness Statement of Deniz Jalalian, 9 November 2014, para. 51.

²⁹² *Peers v Greece*, Application No. 28524/95 (ECHR 2001).

protection against cruel, inhuman and degrading treatment under section 7 of the ICCPR.

Family visits

184. The Applicant's family have been refused entry to the prison – in spite of having a court order authorising the visit. Over the past two years, the Applicant's mother, father and brother as well as her lawyers have all been denied permission to visit the Applicant in person. Further, their repeated requests to have her moved to a detention facility closer to them have been ignored. It is likely that the Applicant has not received a visit from her family since 2012. No family visits with the Applicant have been allowed since her transfer to Khoy Prison.

Purposes

185. Underlying the torture of the Applicant was a number of prohibited purposes, including:

- *Obtaining information:* the Applicant was perceived as a member of PJAK and interrogators sought information about the activities and membership of the PJAK from her consistently throughout her period of detention in March 2008 to (at least) August 2010;
- *Punishment:* the Applicant was being punished for her alleged conspiracy against the Islamic Republic of Iran by virtue of her suspected involvement in the PJAK. Lashings, solitary confinement and the denial of medical treatment formed part of the punitive measures taken against her;
- *Intimidation:* interrogators sought a confession from the Applicant as regards her perceived membership in and activities with the PJAK and intimidated her with a view to obtaining such a confession. Both the Applicant and her mother, father and brothers received threats and were intimidated to coerce the Applicant into providing a publicly televised confession, particularly during her detention at Evin prison;
- *Discrimination:* the Applicant was discriminated against on the basis of her gender. Security personnel used threats of rape to subjugate the Applicant and similarly have ordered that she undertake virginity tests with a view to humiliating her on account of her gender.

Pain and suffering

186. The methods used against the Applicant at Naft Square Detention Centre, Kermanshah Juvenile Correction and Training Centre, Evin Prison and Dizel Abad prison, singly and in combination, resulted in the deliberate infliction of severe pain and suffering. This treatment amounted to torture in violation of Article 7 of the ICCPR.

Remedies Sought

187. In accordance with the ICCPR, the Applicant seeks a swift remedy from the government of the Islamic Republic of Iran for release from ongoing unlawful detention, and reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²⁹³ It is well-established that in cases of unlawful detention such as at the present, reparation includes release.²⁹⁴
188. The right to reparation applies to persons whose detention or arrest has violated national laws or procedures, or international standards, or both.²⁹⁵ The issue in such cases is whether or not the detention itself was lawful, irrespective of whether the individual was subsequently convicted or acquitted.²⁹⁶
189. In its General Comment 35, the Human Rights Committee has clarified that financial compensation required by Article 9(5) relates specifically to the pecuniary and non-pecuniary harms resulting from the unlawful arrest or detention.²⁹⁷ The Committee has further held that when the unlawfulness of the arrest arises from the violation of other human rights, such as freedom of expression, the state responsible may have further obligations to provide compensation or other reparation in relation to those other violations, as required by Article 2(3) of the ICCPR.²⁹⁸
190. Notwithstanding the above, the Applicant seeks immediate access to adequate and effective medical care to address the grievous injuries she sustained as a result of her detention and torture. Furthermore, the Applicant seeks her visitations rights and right to seek leave from prison to be restored and respected.

²⁹³ Basic Principles and Guidelines on Reparation, Articles 18-23, available online at

<http://www.ohchr.org/Documents/Issues/Detention/DraftPrinciplesAndGuidelinesRightCourtReview.pdf>

²⁹⁴ *Ibid*, Principle 19.

²⁹⁵ *Marques de Morais v Angola*, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, para. 6.6; see also 328/1988, *Zelaya Blanco v Nicaragua* Communication No. 328/1988, U.N. Doc. CCPR/C/51/D/328/1988, para. 10.3 (arbitrary detention); *Sahadeo v Guyana* Communication No. 728/1996, CCPR/C/73/D/728/1996, para. 11 (violation of article 9(3)); *Edgardo Dante Santullo Valcada v Uruguay*, Communication No. R. 2/9, U.N. Doc. Supp. No. 40 (A/35/40) at 107, para. 13 (violation of article 9(4)); *W.B.E. v Netherlands* Communication No. 432/1990, U.N. Doc. CCPR/C/46/D/432/1990, para. 6.5; *Uebergang v Austria*, Communication No.963/2001, U.N. Doc. CCPR/C/71/D/963/2001, para. 4.4.

²⁹⁶ UNHRC, General Comment 35, para. 51.

²⁹⁷ *Ibid*, para. 52.

²⁹⁸ General Comment No. 31, para. 16.

²⁹⁸ UNHRC, General Comment 35, para. 52.