



INDIVIDUAL COMPLAINT

The Case of Saeed Malekpour

To the attention of:
United Nations Working Group on Arbitrary Detention

New York, October 4, 2018

Individual Complaint brief prepared and submitted by:
The Human Rights Foundation Center for Law and Democracy
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The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of the Human Rights Foundation (HRF). HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law. HRF is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies.

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A. Procedural elements

a. Mandate of the U.N. Working Group on Arbitrary Detention

In accordance with the most recent mandate of the U.N. Working Group on Arbitrary Detention (hereinafter “WGAD”), clarified and extended by resolution 1997/50 and 24/7 of 26 September 2013, the tasks of the WGAD are:¹

- (a) To investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;
- (b) To seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives;
- (c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and to bring to their attention these cases;
- (d) To conduct field missions upon the invitation of Government, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty;
- (e) To formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty and to facilitate consideration of future cases;
- (f) To present an annual report to the Human Rights Council presenting its activities, findings, conclusions and recommendations.

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the U.N. Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights” pursuant to U.N. General Assembly Resolution 60/251, G.A. Res. 60/251, ¶ 6 (15 Mar. 2006), has further extended the mandate through Resolution 6/4, 15/18, and 20/16.

b. Standing of the Human Rights Foundation and the Raoul Wallenberg Centre for Human Rights to submit an individual complaint

Pursuant to the mandate of the WGAD, the “Manual of Operations of the Special Procedures of the Human Rights Council” (hereinafter “Manual of Operations”),² and the publication “Working with the United Nations Human Rights Programme, a Handbook for Civil Society” (hereinafter “Handbook for Civil Society”),³ the Human Rights Foundation (hereinafter “HRF”), a nongovernmental human rights organization, and the Raoul Wallenberg Centre for Human Rights (together the “Petitioners”), can provide information on a specific human rights case or situation in a particular country, or on a country’s laws and practices with human rights implications.

c. Grounds for the submission of an individual complaint

i. Working methods

According to the working methods of the WGAD, deprivation of liberty will be considered arbitrary if it falls into one of the following categories:⁴

- a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (*Category I*);
- b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13-14, and 18-21 of the Universal Declaration of Human Rights⁵ and, insofar as States parties are

² See Manual of Operations of the Special Procedures of the Human Rights Council (Aug. 2008) ¶ 23, 38 and 133, available at https://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf.

³ See Working with the United Nations Human Rights Programme, a Handbook for Civil Society (2008), available at https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

⁴ See Methods of work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/33/66 (12 July 2016), available at <https://www.ohchr.org/EN/Issues/Detention/Pages/MethodsOfWork.aspx>.

⁵ Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (2 Dec. 1948). While declarations adopted by the United Nation’s General Assembly are not always binding (this term is often used to deliberately state that the parties do not intend to create binding obligations but merely disclose certain aspirations), some instruments called “declarations,” which initially had no binding force, acquired this characteristic as a result of State practice and became customary international law. See Mary Robinson, United Nations High Commissioner for Human Rights, Statement by the High Commissioner for Human Rights at the European Colloquy, Organised by the Council of Europe (2 Sept. 1998). (In 1998, Mary Robinson, United Nations High Commissioner for Human Rights at the time, stated in this regard: “Many of the provisions of the Declaration have become

concerned, by Articles 12, 18-19, 21-22, and 25-27 of the International Covenant on Civil and Political Rights (*Category II*);⁶

- c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (*Category III*);
- d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (*Category IV*);
- e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (*Category V*).

ii. Arbitrary deprivation of liberty in the present case

The case of Saeed Malekpour falls under Categories I, II, III, and V of the working methods of the WGAD. The arbitrary detention of Malekpour, articulated in detail below, should be considered arbitrary under these categories because: (1) the State of Iran deprived Malekpour of his liberty as a result of his exercise of the rights guaranteed by Article 19 of the Universal Declaration of Human Rights (hereinafter “UDHR”) and Article 19 of the International Covenant on Civil and Political Rights (hereinafter “ICCPR”); (2) Iran’s non-observance of international norms governing the rights to freedom from torture and arbitrary detention, as well as the due process rights to a presumption of innocence and a fair trial, pursuant to Articles 5, 8, 9, 10, and 11 of the UDHR and Article 14 of the ICCPR, was sufficiently grave so as to give the deprivation of liberty an arbitrary character; and (3) because the deprivation of liberty constituted a violation of international human rights law that prohibits discrimination based on nationality, political opinion, or other statuses as enshrined in Article 7 of the UDHR and Article 26 of the ICCPR. Therefore, the Petitioners argue that the case of Saeed Malekpour adequately satisfies the requirements by which to submit an individual complaint to the WGAD.

part of customary international law, which is binding on all states whether or not they are signatories to one or more multilateral conventions concerning human rights. Thus, what started its existence as a solemn but non-binding proclamation of rights and freedoms has, at least in some respects, acquired through state practice the status of universal law.”).

⁶ International Covenant on Civil and Political Rights, 16 Dec. 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

The Petitioners will pursue the regular communications procedure before the WGAD in order to have the ability to provide comments on any State response, as well as continue rendering an opinion on the arbitrary nature of Saeed Malekpour's detention, as necessary.

d. Confidentiality waiver

In accordance with the Manual of Operations, and in communications sent to States, the identity of the petitioner can remain confidential. However, the Manual of Operations also allows the petitioner to request the publication of its identity. Accordingly, *the Petitioners waive their right to confidentiality* and request that their identity be revealed in the event that, as part of the procedure involving investigation of individual cases, an allegation letter is sent to the State of Iran in connection with the information supplied herein.

e. Consent given by the victim

Saeed Malekpour, through his sister Maryam Malekpour, has authorized the Human Rights Foundation and the Raoul Wallenberg Centre for Human Rights to jointly submit this individual complaint on his behalf to the U.N. Working Group on Arbitrary Detention.

B. Questionnaire

The following questionnaire was retrieved from the Fact Sheet No. 26 of the WGAD (Annex V), available on the website of the United Nations High Commissioner for Human Rights, in accordance with the Manual of Operations.⁷ The focus of this individual complaint is the arbitrary arrest and detention of Saeed Malekpour, which started on 4 October 2008, in retaliation for his exercise of his right to freedom of expression, as guaranteed by the UDHR and ICCPR.

a. Identity

Family name: Malekpour

First name: Saeed

Sex: Male

Birthdate: 5 June 1975

Nationality/Nationalities: Iranian

Profession: Web Programmer

⁷ See "Model Questionnaire to be Completed by Persons Alleging Arbitrary Arrest or Detention," U.N. Working Group on Arbitrary Detention, *available at* <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

Address of usual residence: Ward 2A of Evin Prison, Iran (Malekpour was living in a rental in Victoria, British Columbia before he travelled to Iran in October 2008. Following his detention in Iran for about ten years, he no longer has a Canadian address.)

b. Circumstances of the arrest

i. Date and place of arrest

On 4 October 2008, Saeed Malekpour was arrested by members of the Iranian Revolutionary Guard Corps (IRGC). No reasons for his arrest were initially provided, but two years after his arrest, he was convicted on charges of, *inter alia*, “insulting the Supreme Leader”; “insulting the sanctity of Islam”; and “spreading propaganda against the [Revolutionary] System.”⁸ However, there was no evidence against Malekpour other than the forced confession extracted under torture.

ii. Chronology of events

Saeed Malekpour is a 43-year old Iranian citizen with permanent residence in Canada. Prior to his detention, Malekpour worked as a freelance web designer and programmer. As an IT expert, Malekpour created an open source software program to improve the uploading of photographs to websites.⁹ He had no criminal history.

In October 2008, Malekpour embarked on a short trip to Iran to visit his father, who was terminally ill. Shortly after his arrival, Malekpour was abducted and arrested on 4 October 2008, near Vanik Square, in northern Tehran. Plainclothes security forces from the Cyber Crimes Unit of the Iran Revolutionary Guards Corps (IRGC), which was leading an operation called *Gerdab* (Whirlpool) to crack down on “immoral” or “un-Islamic”¹⁰ online activities, grabbed Malekpour, blindfolded him, and manhandled him into their car. One of the abductors held Malekpour down, choking him to prevent him from calling for help. His arrest was connected to an open source code—a software program designed to allow others to share photographs online, and which was used by an unknown third party to upload photographs.¹¹

⁸ Islamic Penal Code of the Islamic Republic of Iran (2013), arts. 514, 513, and 500, respectively; *see also* Saeed Malekpour, UNITED AGAINST NUCLEAR IRAN, <https://www.unitedagainstnucleariran.com/people/saeed-malekpour>; *Prisoners as Bargaining Chips: Iran’s Strategy of Coercion*, INTERNATIONAL OBSERVATORY HUMAN RIGHTS (IOHR), at 40 (18 Jan. 2018), available at <https://observatoryihr.org/wp-content/uploads/2018/01/Iran-V4-compressed-1.pdf>.

⁹ *See* Saeed Malekpour, *supra* note 8.

¹⁰ Nazila Nik, *Saeed Malekpour Turns 43 Behind Bars: You Are Not Forgotten*, AMNESTY INTERNATIONAL CANADA (28 May 2018), <https://www.amnesty.ca/blog/saeed-malekpour-turns-43-behind-bars-you-are-not-forgotten-0>.

¹¹ *Id.*

Security officials did not present an arrest warrant at the time of Malekpour's arrest, nor did they provide a reason for the arrest. Malekpour was taken to an undisclosed location, referred to by his captors as the 'technical office,' where he was brutally beaten by several individuals.¹² Thereafter, Malekpour was forced to sign papers while still blindfolded, and without being told what he was signing. He was not permitted to contact his family or legal counsel. Malekpour was then transferred to Evin Prison's notorious Ward 2A, where he was kept in solitary confinement for approximately 320 days, until 16 August 2009, in a cell less than 3.5m². The U.N. specifies that a cell's minimum acceptable size is 5.4m².¹³ Prolonged solitary confinement in such conditions is itself considered a form of torture.¹⁴ Malekpour slept on the floor and was kept blindfolded during the two times per day he was permitted to leave the cell. He was still not permitted to speak to other prisoners, his family, or consult with a lawyer.

In Evin Prison, Malekpour was repeatedly brutally beaten with cables and batons, under the guise of "interrogation." After he lost consciousness, Malekpour's torturers would douse him with cold water and continue the beatings. On at least one occasion, the beating was so severe that it left Malekpour paralysed on one half of his body. Malekpour was taken to a civilian hospital under a false name and warned that if he disclosed the truth, he would be subjected to even more severe forms of torture. An IRGC member spoke with the doctor prior to Malekpour's appointment, and the doctor refused to treat Malekpour, instead providing an official diagnosis of "stress." On another occasion, Malekpour was stripped naked and held down while an IRGC interrogator threatened to anally penetrate him with a water bottle.

In January 2009, an IRGC interrogator fractured Malekpour's jaw and destroyed several teeth. The magistrate assigned to Malekpour's case oversaw many of these torture sessions. Malekpour finally succumbed to this campaign of physical and psychological torture and was forced to make a scripted confession on national television. Malekpour was then transferred to the General Population Ward of Evin Prison, where he was allowed a small number of closely-supervised family member visits.

¹² See *The Case of Saeed Malekpour: Web Developer Jailed Since 2008*, UNITED FOR IRAN (16 Feb. 2012), <https://united4iran.org/the-case-of-saeed-malekpour-web-developer-jailed-since-2008>.

¹³ "A Prison Evaluation Checklist for Post-Conflict Settings," UNITED NATIONS, available at https://www.unodc.org/documents/justice-and-prison-reform/FINAL_GFP_Prison_Evaluation_Checklist_-_July_2014.pdf.

¹⁴ See *Solitary Confinement Should be Banned in Most Cases, UN Expert Says*, UN NEWS (18 Oct. 2011), <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.

In a smuggled-out letter, Malekpour explained the circumstances of his false confession, extracted under torture, and threats to his life and that of his family. While the Iranian regime said the software programme that Malekpour developed was used on Persian pornographic websites, Malekpour argues that this program was used without his knowledge on such websites.¹⁵

On 21 December 2009, Malekpour was again transferred to solitary confinement and remained there until 8 February 2010.

Malekpour's trial began on 29 November 2010. While Malekpour was represented by counsel, he was not permitted to speak with his lawyer until minutes before the trial began. Malekpour's lawyer was not permitted to examine the alleged evidence against Malekpour or to have other private consultations with him. Malekpour's lawyer was given only limited access to Malekpour's case file, of which he was not permitted to make copies.

The Revolutionary Court admitted the recorded confession, ignoring Malekpour's repeated claims that this confession had been extracted under torture, and threats against his family. The court dismissed Malekpour's allegations of torture and other ill-treatment as lies. Malekpour asked the court to allow an IT expert to testify on his behalf about the technical details of the case relating to the software programme he had developed, but the court did not permit it.

In December 2010, Malekpour was convicted and sentenced to death based on the following offences under the Islamic Penal Code: i) "spreading corruption on Earth";¹⁶ ii) "insulting the Supreme Leader";¹⁷ iii) "insulting the President";¹⁸ iv) "insulting the sanctity of Islam";¹⁹ and v) "spreading propaganda against the [Revolutionary] System."²⁰ In June 2011, the Iranian Supreme Court withdrew the death sentence and ordered a retrial. The forced confession was again admitted into evidence during the retrial by a branch of the Revolutionary Court, and Malekpour was again sentenced to death in November 2011. The Supreme Court upheld this death sentence in January 2012. Under international pressure, primarily from the Canadian Government, Iran commuted Malekpour's death sentence to one of life imprisonment, in August 2013.

Malekpour continues to be subjected to torture and periods of solitary confinement in Evin Prison. He has limited communication with his family and is in poor health. A lack of proper medical and dental care has exacerbated his difficulties with

¹⁵ See Nik, *supra* note 10.

¹⁶ Islamic Penal Code of the Islamic Republic of Iran (2013), art. 286.

¹⁷ *Id.* art. 514.

¹⁸ *Id.*

¹⁹ *Id.* art. 513.

²⁰ *Id.* art. 500.

breathing and eating. Under these conditions, and with his current sentence, Malekpour will die in Evin Prison.

c. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary

i. Background information

1. Circumstances leading to new media censorship and crackdown on internet experts and activists

In the mid-2000s, the government of Iran began a rigorous media censorship campaign to block Iranians' access to the World Wide Web and substitute it with an internally-approved Iranian Internet, called "halal Internet."²¹ The aim was to regulate all online content, as "halal internet" can be better censored and shielded from cyberattacks.²²

In early 2011, Iran's top police chief deployed cyber police forces throughout Iran's cities, to curb cyber threats and Western sway. In September 2011, pro-government Mashregh News, announced that Iran was amassing a "cyber army" of 250,000 people, to battle Internet corruption and "external penetrations from the West."²³

In early January 2012, Iranian internet users were blocked from countless websites, as Iran's Cyber Police began surveillance on internet café users. After their user names and digital footprints were tracked, over 30 million Iranians lost access to various Google services, including Gmail.²⁴ The network stoppages were meant to allow only the "halal" domestic intranet that could cloister Iranian citizens from purportedly "un-Islamic culture," and eventually replace the World Wide Web.

²¹ *Revoke Execution Sentence of Web Programmer*, CENTER FOR HUMAN RIGHTS IN IRAN (1 Feb. 2012), <https://www.iranhumanrights.org/2012/02/malekpour-execution/>.

²² *See Freedom on the Net 2017: Iran*, FREEDOM HOUSE (2017), <https://freedomhouse.org/report/freedom-net/2017/iran>.

²³ Violet Blue, *Iran's Deadly Cyber Police: Indefinite Detention and Execution for Netizens*, ZDNET (16 Feb. 2012), <https://www.zdnet.com/article/irans-deadly-cyber-police-indefinite-detention-and-execution-for-netizens/>.

²⁴ *See* Gwen Ackerman and Ladane Nasseri, *Google Confirms Gmail and YouTube Blocked in Iran Since Feb. 10*, BLOOMBERG (13 Feb. 2012), <https://www.bloomberg.com/news/articles/2012-02-13/google-confirms-gmail-and-youtube-blocked-in-iran-since-feb-10>.

2. Iran’s response toward curbing Western internet influence and protecting “halal internet”

The Iranian regime has frequently detained and prosecuted internet experts and journalists on vaguely-defined national security charges. Those arrested have been subjected to severe torture, without access to legal defence during the investigative phases of their detentions.

As of January 2018, the Islamic Republic of Iran had arrested and detained about thirty individuals, most of them with dual nationality.²⁵ Iran’s campaign has targeted bloggers, IT experts, and any efforts to promote and facilitate free-flowing information on the internet.²⁶ The widespread arrests of human rights activists across Iran are, according to the IRGC, meant to curb a network of individuals involved in corrupt internet activities.²⁷

Vahid Asghari, a web developer who had been studying computer technology, and Ahmad Reza Hashempour, a website administrator, were targeted for their abilities to host or aid in building websites, and were arrested at the same time as Malekpour in 2008.²⁸ After unjust trials, both IT professionals were sentenced to death. Similarly, Hossein Derakhshan, an Iranian-Canadian dual-national, has been serving a nineteen-and-a-half-year sentence after introducing blogging to Iran.²⁹ Another Iranian blogger and campaigner against cyber censorship, Hossein Ronaghi Maleki, was arrested on 13 December 2009 and held in solitary confinement for one year.³⁰ Maleki has reportedly endured numerous severe beatings in order to extract a confession.³¹

This crackdown on internet experts and activists represents some of Iran’s most serious efforts to regulate the free flow of information across the internet and to instead encourage the domestic “halal internet.”

ii. The arbitrary nature of the detention pursuant to *Category I, Category II, Category III, and Category V*

As a member state of the United Nations, Iran is bound to protect, promote, and respect the individual rights and fundamental freedoms laid out in the UDHR.

²⁵ *Prisoners as Bargaining Chips*, *supra* note 8, at 3.

²⁶ Blue, *supra* note 23.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Moreover, as a state party to the ICCPR,³² Iran is also bound to uphold its commitment to respect and ensure the protection of the rights and freedoms recognised under the Covenant. The arrest and detention of Saeed Malekpour was clearly without justification and arbitrary under *Category I*, *Category II*, *Category III*, and *Category V* of the Working Group on Arbitrary Detention’s working methods.³³

a. Deprivation of liberty was arbitrary under Category I: Violation of Article 9 of the UDHR, Articles 9(2) and 14(3) of the ICCPR, and Article 32 of the Iranian Constitution

Arrest is arbitrary under *Category I* when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. Article 9 of the UDHR prohibits arbitrary arrest providing that “no one shall be subjected to arbitrary arrest, detention [...].” Articles 9(2) and 14(3) of the ICCPR require a person to be informed about the reason for arrest and the charges laid against the arrested person. The Working Group also noted in a previous opinion that when a person deprived of liberty remains ignorant of the charges against him, it is a violation of Articles 9(2) and 14(3) of the ICCPR.³⁴

Malekpour’s arrest was also in violation of Article 32 of the Iranian Constitution, which provides: “[N]o one may be arrested other than in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for the accusation must, without delay, be communicated to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of 24 hours so that the preliminaries to the trial can be completed as swiftly as possible.”³⁵

The Iranian security forces from IRGC arbitrarily arrested Malekpour and failed to promptly inform Malekpour about the reasons for his arrest—either verbally or in writing—and the charges against him, until one year later, during his trial. Furthermore, no provisional dossier was sent to the judicial authorities. Malekpour was not arraigned or formally brought before a magistrate until his trial, over one year after his initial arrest. This clearly violates international and domestic law, namely Article 9 of the UDHR; Articles 9(2) and 14(3) of the ICCPR; and Article 32

³² Iran ratified the ICCPR on 24 June 1975,

https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=81&Lang=EN.

³³ The UN Commission on Human Rights considers “arbitrary” those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by the States (Resolution 1991/42, as clarified by resolution 1997/50).

³⁴ Ernest Bennett et al v. Haiti, Working Group on Arbitrary Detention, U.N. Doc. E/ CN.4/2001/14/Add.1 at 112, ¶ 6 (2000).

³⁵ CONSTITUTION (1989) (Islamic Republic of Iran).

of the Iranian Constitution, thus rendering Malekpour's arrest and detention arbitrary under Category 1.

b. Deprivation of liberty was arbitrary under Category II: Violation of Article 19 of the UDHR and Article 19 of the ICCPR

Deprivation of liberty is arbitrary under *Category II* when it results from a violation of the exercise of rights provided under Article 19 of the UDHR and Article 19 of the ICCPR, that is, if an individual is arrested while exercising the freedom of expression, which includes seeking, receiving, and imparting information through any media. Specifically, Article 19(2) of the ICCPR provides that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Malekpour was sentenced to death on the offence of "spreading corruption on Earth" by allegedly running pornographic websites. Prior to October 2008, Malekpour, a computer programmer, designed a small software program (often called a "plugin") that could be used to efficiently display images on a website. He published the code for this plugin under a free and open-source license, meaning that anyone in the world is free to use a copy of the plugin to display images on their own website. A condition of the license was that Malekpour be given credit as the creator of the plugin. According to Malekpour's interrogators, at some point, a third party incorporated the code for Malekpour's plugin (which included Malekpour's name) into the code of certain pornographic websites.

Malekpour was thus exercising his right to facilitate the imparting of information in the form of art through a software medium which he designed not for pornographic information, but for general information, *i.e.* for uploading photos of a user's choice.

Therefore, the Iranian government violated Article 19 of the UDHR and Article 19 of the ICCPR, giving Malekpour's deprivation of liberty an arbitrary character under Category II.

c. Deprivation of liberty was arbitrary under Category III: Violation of Articles 5, 8, 10, and 11 of the UDHR, Articles 7, 9, and 14 of the ICCPR, and Article 37 of the Iranian Constitution

Detention is arbitrary under *Category III* where the "total or partial non-observance of the international norms relating to the right to a fair trial including those spelled out in the UDHR and other relevant international instruments accepted by the

States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”³⁶

The Iranian government has violated several norms of international human rights law relating to fair trial in Malekpour’s matter, including: the principle of the presumption of innocence enshrined in Article 11 of the UDHR, Article 14(2) of the ICCPR, and Article 37 of the Iranian Constitution, and the right to be brought before the court within a reasonable amount of time and without delay, as stipulated in Article 9(3) of the ICCPR. Furthermore, torture is prohibited by Article 5 of the UDHR and Article 7 of the ICCPR.³⁷ And Article 14(3)(g) of the ICCPR also provides that no one shall “be compelled to testify against himself or to confess guilt.”

Here, Malekpour was treated as guilty after being forced to confess under severe torture, and his trial was delayed unduly for about a year. This Working Group has previously held that the admission into evidence of even a single statement obtained through torture so thoroughly taints a trial, that it “renders the proceedings as a whole unfair.”³⁸ Malekpour was tortured repeatedly by the IRGC officers for nearly one year, sometimes to the point of unconsciousness, through severe beatings with metal cables and batons. Malekpour was also kicked in the face and threatened with rape and murder. The purpose of this torture was to force a false confession from Malekpour, which was then used to convict him of a capital offence.

The Iranian government also violated the right to a fair trial and public hearing by an independent and impartial court, pursuant to Article 10 of the UDHR and Article 14(1) of the ICCPR. Malekpour was unfairly tried using the evidence obtained from his confession extracted through torture. Furthermore, Malekpour’s case reflects a violation of both the right to an effective remedy under Article 8 of the UDHR, and the right to a legal defence, per Article 14(3) of the ICCPR, including preparation of a defence and the ability to communicate with counsel of Malekpour’s own choosing. Malekpour was not given sufficient time to communicate with his legal counsel or to prepare his defence effectively.

Therefore, the violations of certain provisions of the Iranian Constitution and international human rights norms give Malekpour’s deprivation of liberty an arbitrary character under Category III.

³⁶ *Individual Complaints and Urgent Appeals*, OHCHR, <https://www.ohchr.org/en/issues/detention/pages/complaints.aspx>.

³⁷ Both provide that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

³⁸ *Abdallah Hamoud Al-Twijri v. Iraq*, Working Group on Arbitrary Detention, Opinion No. 43/2012, U.N. Doc. A/HRC/WGAD/2012/43, 51 (2012).

d. Deprivation of liberty was arbitrary under Category V: Violation of Article 7 of the UDHR and Article 26 of the ICCPR

Equality before the law and non-discrimination are other vital principles of international human rights law. Detention is arbitrary under *Category V* when “the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinions; gender; sexual orientation; or disability or another status, and which aims towards or can result in ignoring the equality of human rights.”³⁹

Article 7 of the UDHR provides that “[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law.” Article 26 of the ICCPR provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law [...] and the law shall prohibit any discrimination [...] such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Discrimination based on country of residence or nationality is therefore a violation of international law, as stipulated by Article 26 of the ICCPR.

Malekpour was targeted by the Iranian regime because he was a permanent resident of Canada. Diplomatic relations between Iran and Canada have not been harmonious. The countries first exchanged ambassadors in 1996, but Canada has limited the scope of bilateral talks with Iran to human rights issues, as well as Iran’s nuclear ambitions. Canada has repeatedly called on the government of Iran to redress human rights abuses in Iran. In 2003, Iran arrested Zahra Kazemi, a Canadian-Iranian journalist who was covering a protest in Tehran. Kazemi was tortured to death while in custody. Canada responded by drafting a U.N. resolution condemning human rights abuses by the Iranian regime, and Kazemi’s death.

In 2006, Canada adopted economic sanctions against Iran which targeted senior Iranian officials. Stricter sanctions were imposed in 2010, and the adoption of these sanctions led to a further break-down in relations between the two countries. Iran accused Canada of sheltering spies in its Tehran embassy, and in 2007, Canada rejected the credentials of senior Iranian diplomats, when evidence emerged that they had taken part in the 1979 Hostage Crisis at the U.S. Embassy in Tehran. In 2012, Canada expelled all Iranian diplomats and closed its embassy in Tehran, in response to Iran’s support for the Assad regime in Syria.

This geopolitical context can help explain Malekpour’s situation: his arrest, torture, and sentencing to death and later, life imprisonment, can be linked to this state of affairs. Malekpour has been reduced to a human bargaining chip, to be used by the government of Iran in back-channel negotiations with Canada. In particular, the

³⁹ *Individual Complaints and Urgent Appeals*, *supra* note 36.

commutation of Malekpour's death sentence was part of an attempt to dissuade Canada from breaking off diplomatic relations.

Malekpour's questionable verdict is thus a form of discrimination based on his current resident status as permanent resident of Canada, and other statuses such as his career as a software engineer and computer programmer.

Therefore, the Iranian government violated Article 7 of the UDHR and Article 26 of the ICCPR, giving Malekpour's deprivation of liberty an arbitrary character under Category V.

C. Identity of the person submitting the case

1. Family name: Assaf-Boustani
2. First name(s): Celine
3. Status: International legal associate at the Human Rights Foundation
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5. Please state whether you want your identity to be kept confidential: As stated above, the Petitioners waive their right to confidentiality.

D. Petition

In accordance with resolution 24/7 of 26 September 2013, the Petitioners hereby submit this individual complaint to the U.N. Working Group on Arbitrary Detention, and respectfully call on the Working Group to initiate the procedure involving the investigation of individual cases toward reaching an opinion of the WGAD declaring Saeed Malekpour's detention to be arbitrary and in violation of international law. To this end, as mentioned in a previous section, the Petitioners will pursue the regular communications procedure before the WGAD in order to have the ability to provide comments on any State response. Specifically, the Petitioners call on the WGAD to:

- a. To initiate a procedure involving the investigation of Saeed Malekpour's case, and send an allegation letter to the State of Iran inquiring about the case generally, and specifically about the legal basis for his arrest, detention, and sentencing, and/or torture, each of which is in violation of international law;

- b. To issue an opinion declaring that Saeed Malekpour's deprivation of liberty and detention was arbitrary and in violation of international law as a result of *Category I*, *Category II*, *Category III*, and *Category V* violations; and
- c. To ask the State of Iran to take measures to release Saeed Malekpour from life imprisonment and guarantee that Malekpour will not be further subjected to arbitrary detention or any other measure as a result of his exercise of the rights to freedom of opinion and expression, as guaranteed under international law.