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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012

No. 54/2012 (Iran (Islamic Republic of))

Communication addressed to the Government on 11 September 2012

Concerning Abdolfattah Soltani

The Government did not reply to the communication within the 60-day deadline.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(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 or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 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 International Covenant on Civil and Political Rights (category II);

(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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Mr. Abdolfattah Soltani, a national of Iran (Islamic Republic of), born on 2 November 1953, holder of passport number 3524608, usually residing at unit 272, 3rd floor, entrance 8, block A1, phase 1, Shahrak Ekbatan, Tehran, is a lawyer and a founding member of the Defenders of Human Rights Centre (DHRC).

4. In the past, Mr. Soltani had been held in detention from 30 July 2005 until 6 March 2006 for allegedly “disclosing classified information, divulgence of State secrets, relations with two foreign diplomats, interviews with journalists related to State secrets subjects and propaganda against the country regime” (opinion No. 26/2006, para. 12 (A/HRC/4/40/Add.1)). The Working Group declared his detention arbitrary, in contravention of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR) and falling within categories II and III of its methods of work.

Alleged facts surrounding the arrest of Mr. Soltani and the current place of detention

5. On 10 September 2011, Mr. Soltani was arrested in Tehran, outside the Islamic Revolutionary Court, after having reviewed one of his client’s files. The arrest was carried out by plain-clothes security agents of the Ministry of Intelligence, who presented an arrest warrant. The arrest warrant was issued by the prosecutor’s office, Shahid Moghaddas Justice Department, Tehran, branch 3, based in Evin prison.

6. At approximately 1.30 p.m., Mr. Soltani was escorted by four plain-clothes security agents to his personal residence. His home was searched and agents confiscated compact discs, papers and documents belonging to Mr. Soltani. They left with Mr. Soltani at 4 p.m. It is also alleged that later on the same day the security agents raided Mr. Soltani’s offices without proper search warrants, confiscating his personal and professional documents as well as computers.

7. Mr. Soltani was subsequently placed in Section 209 of the Ministry of Intelligence where he spent four days in solitary confinement. He was then transferred to the General Ward of Section 209 where he remained until 10 March 2012. Mr. Soltani was finally transferred to the ordinary General Ward of Evin prison where he is currently held.

8. While in pretrial detention, Mr. Soltani was rarely allowed family visits and his wife’s applications for his release on bail were left unanswered. It is reported that Mr. Soltani suffers from intestinal problems that would require a suitable diet which is not possible with the conditions of detention to which he is currently exposed.

Charges brought against Mr. Soltani, trial proceedings, and sentence delivered by the Islamic Revolutionary Court (Branch 26) and partially amended on appeal

9. On 4 March 2012, the lawyers of Mr. Soltani were informed that the Islamic Revolutionary Court (Branch 26) had sentenced Mr. Soltani to 18 years of imprisonment in internal exile in the city of Borazjan, South Bushehr Province as well as to a 20-year ban on practising law under article 19 of the Penal Code of the Islamic Republic of Iran. The Borazjan prison is located approximately 1,200 km from Mr. Soltani's and his family's residence.

10. Four charges were brought against Mr. Soltani. He was charged with "forming or running a group or association outside or inside the country which seeks to undermine the security of the country", under article 498 of the Penal Code of the Islamic Republic of Iran. The Islamic Revolutionary Court (Branch 26) sentenced him to 10 years of imprisonment under this charge.

11. He was also charged with "assembly and collusion against national security" under article 610 of the Penal Code of the Islamic Republic of Iran. The Islamic Revolutionary Court (Branch 26) sentenced him to five years of imprisonment on this count.

12. A third charge brought against him related to "propaganda against the State" pursuant to article 500 of the Penal Code of the Islamic Republic of Iran. On first instance, he was sentenced to one year of imprisonment under this count.

13. Finally, the fourth charge brought against Mr. Soltani related to "earning illegitimate assets" through receiving the Nuremberg International Human Rights Award in 2009, under article 2 of the Law for Intensification of Punishments for Perpetrators of Bribery, Embezzlement and Fraud. He was sentenced to two years of imprisonment under this count by the Islamic Revolutionary Court (Branch 26).

14. On 10 June 2012, the relatives of Mr. Soltani were informed that the Appeals Court of Tehran Province (Branch 54) had reduced Mr. Soltani's sentence to 13 years of imprisonment in internal exile in the city of Borazjan and reduced the ban on practising law to 10 years. The Appeals Court repealed the charge of "assembly and collusion against national security" and the corresponding five years of imprisonment.

15. During the trial proceedings, Mr. Soltani was represented by his defence lawyers, who presented evidence allegedly demonstrating that the charges brought against him were arbitrary and unfounded. They also pointed out several irregularities regarding his arrest, his initial incommunicado detention and restrictions placed on family visits.

16. Mr. Soltani did not attend his trial hearing as he did not recognize the competence of the court and did not hold it to be impartial. All defence motions filed by Mr. Soltani's lawyers and submitted to both the Islamic Revolutionary Court (Branch 26) and the Appeals Court of Tehran Province (Branch 54) were reportedly rejected without taking into account the arguments contained therein. The source notes that the lower court's verdict against Mr. Soltani explicitly referred to statements dated 13 March 2012 by Baroness Ashton, European Union High Representative for Foreign Affairs, and the Mayor of Nuremberg, to demonstrate the collusion between them and Mr. Soltani in relation to threats against national security. This charge was later repealed by the Appeals Court but, according to the source, this shows the overall lack of impartiality of the proceedings against Mr. Soltani.

17. Finally, the source points out that Mr. Soltani was not released pending his appeal trial in alleged contravention of the Iranian legislation.

The source's contention regarding the alleged arbitrary character of Mr. Soltani's detention

18. The source indicates that over the past decade, Mr. Soltani has travelled across the country, providing legal assistance to human rights defenders, monitoring trials of political opponents and investigating human rights violations. For example, Mr. Soltani defended Iranian political prisoners and trade unionists from the Syndicate of Workers of Tehran and Suburbs Bus Company. He also supported the political opponent and journalist, Mr. Akbar Ganji, and the family of Ms. Zahra Kazemi, a photojournalist who died in Evin prison following alleged acts of torture and ill-treatment. Mr. Soltani also represented prisoners of conscience belonging to the Baha'i community. Indeed, his arrest intervened after he had reviewed one of their case files.

19. The source contends that Mr. Soltani has pursued legitimate and peaceful human rights activities in accordance with international human rights law notwithstanding acts of harassment and pressure to which he has been subjected.

20. In addition to the period of detention considered by the Working Group in 2006, Mr. Soltani also spent two months in detention in 2009. Amid a series of arrests of DHRC members, the Centre was forcibly closed by the authorities in 2008. The acts of harassment, inter alia, directed at DHRC members increased following the 2009 presidential election.

21. Despite the severe obstacles faced by Mr. Soltani and his colleagues in defending human rights, he has continuously challenged the arbitrary restrictions imposed by the authorities. The professional and impartial human rights-related activities of Mr. Soltani and of the DHRC have been recognized and acknowledged domestically and internationally. They have been awarded several prizes, including the 2003 Human Rights Prize of the French Republic and the 2009 Nuremberg International Human Rights Award. On that occasion, a travel ban imposed by the authorities prevented Mr. Soltani from travelling to Nuremberg, Germany, to receive the award.

22. The source submits that the sentencing and detention of Mr. Soltani result from his peaceful exercise of universally recognized fundamental freedoms, including those of expression and association pursuant to articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) and articles 19 and 21 of the ICCPR.

Response from the Government

23. The Government has not responded to the Working Group's communication of 11 September 2012.

Discussion

24. In the absence of a response from the Government, the Working Group is able, based on its revised methods of work, to render an opinion in the light of the information submitted to it.

25. The Working Group has previously had cases concerning Mr. Soltani (see opinion No. 26/2006 and several urgent appeals).¹ It has previously addressed the role of the

¹ See also statements by other special mandate holders, for instance, by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and the Special Rapporteur on the situation of human rights defenders, who on 4 May 2012 highlighted the plight of other human rights defenders arrested or convicted for carrying out their legitimate work, mentioning "Abdolfattah Soltani and Nasrin Sotoudeh, two lawyers who have represented many high-profile political and human rights activists".

revolutionary courts in its report on its visit to the Islamic Republic of Iran.² The Working Group expressed concern over the non-compliance of the revolutionary courts with the fair-trial standards in article 14 of the ICCPR and “stressed that the jurisprudence of these courts is extremely restrictive of freedom of opinion and expression” (opinion No. 26/2006, para. 16).

26. In a response of 26 September 2012 from the Government of the Islamic Republic of Iran to one of the several urgent appeals directed to it, the Government refers to the judgement against Mr. Soltani in the court of appeal. The Government notes that:

After careful deliberation, the court of appeal, by virtue of paragraph 1 of article 257 and paragraph 5 of article 6 of the code governing the rules of procedures for general and revolutionary courts when hearing criminal cases, dismissed a portion of the original verdict which had condemned Mr. Soltani to five years in prison (... association and conspiracy with intent to commit crimes against national security) and pertained to article 610 of the Islamic Penal Code (IPC). The court also reduced Mr. Soltani’s original prohibition from practising law after his release from prison to 10 years.

However the appellate court by virtue of paragraph 1 of article 257 of the code governing the procedure for general and revolutionary courts when hearing criminal cases, endorsed the remainder of the lower court’s verdict.

27. The issues in opinion 26/2006 of the Working Group are adumbrated in paragraphs 14-15 from the opinion cited below:

The Working Group notes that in its reply, the Government did not contest that Mr. Soltani was, from his arrest on 30 July 2005 until his release on bail in March 2006, detained virtually incommunicado, and that he has been denied the right of access to his lawyers. The Working Group also observes that Mr. Soltani has been detained and convicted on the charges of disclosing classified information and divulging of State secrets to diplomats and journalists. The Government did not give any indication of the nature of the alleged classified intelligence or State secret that a lawyer and human rights activist could hold and is under an obligation to not disclose.

In the absence of any convincing argument, the Working Group concludes that the detention of Mr. Soltani is motivated exclusively by his human rights and/or political activities, activities constituting the peaceful exercise of the right to freedom of expression as guaranteed by article 19 of the International Covenant on Civil and Political Rights to which the Islamic Republic of Iran is party.

28. Article 9 of the UDHR and article 9 of the ICCPR prohibit arbitrary deprivation of liberty. The Working Group regards arrest and detention as arbitrary if it follows from the exercise of the rights and freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the UDHR and by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant.

29. The Working Group subjects interventions against individuals who may qualify as human rights defenders to particular review (see, for instance, opinion No. 21/2011 (Iran, Islamic Republic of)). Mr. Soltani’s role as a lawyer defending individuals invoking human rights obligations and his own role in human rights work, require the Working Group to undertake this kind of intensive review. The Working Group refers to article 9, paragraph 3, of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the General Assembly (resolution 53/144), which provides that:

[E]veryone has the right, individually and in association with others ...

² Visit to the Islamic Republic of Iran: report of the Working Group on Arbitrary Detention (E/CN.4/2004/3/Add.2 and Corr.1).

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

30. Mr. Soltani was convicted in first instance on charges of: “Participation in propaganda against the system”, under article 500 of the Islamic Penal Code (IPC), which provides for prison sentences ranging from 3 months to 1 year for “anyone who undertakes any form of propaganda against the State”; “Participation in the creation of the illegal and anti-security Defenders of Human Rights Centre”, under articles 498 of the IPC, which provides for prison sentences ranging from 2 to 10 years for anyone “forming or joining a group or association outside or inside the country which seeks to disturb the security of the country”; “Assembly and collusion against national security”, under article 610 of the IPC, which provides for prison sentences ranging from 2 to 5 years; “Earning illegitimate assets” through receiving the Nuremberg International Human Rights Award in 2009, under article 2 of the Law for Intensification of Punishments for Perpetrators of Bribery, Embezzlement and Fraud, which provides for prison sentences ranging from 3 months to 2 years.

31. In this case, the first question is whether the deprivation of liberty is the result of the exercise of the rights and freedoms in articles 18 (freedom of thought), 19 (freedom of opinion and expression), 20 (freedom of peaceful assembly and association) and 21 (the right to take part in the government of his country, directly or through freely chosen representatives) of the UDHR and by articles 18 (freedom of thought), 19 (freedom of opinion and expression), 21 (peaceful assembly, freedom of peaceful assembly and association) and 22 (freedom of association) of the ICCPR. In a number of opinions in cases relating to the Islamic Republic of Iran, including opinions Nos. 1/1992; 28/1994; 14/1996; 39/2000; 30/2001; 8/2003; 26/2006; 6/2009; 8/2010; 20/2011; 21/2011, 30/2012 and 48/2012, the Working Group has held that the deprivation of liberty is the result of the exercise of these rights and freedoms.

32. The Working Group also refers to the concluding observations of the Human Rights Committee on the Islamic Republic of Iran (29 November 2011) where the Committee expressed its concern over “continuing reports of harassment or intimidation, prohibition and forceful breaking up of demonstrations, and arrests and arbitrary detentions of human rights defenders. It notes with concern that human rights defenders and defence lawyers often serve prison sentences based on vaguely formulated crimes such as *mohareb* or the spreading of propaganda against the establishment”.³

33. The source has documented the extensive work that Mr. Soltani has undertaken as a human rights defender. The Government has not contested the prima facie case which supports the conclusion that the detention of Mr. Soltani follows from the exercise of the rights and freedoms as mentioned above and his work as a human rights defender, and that there are no grounds to justify the restriction of those rights. The Working Group will need information that directly rebuts the claims that human rights guarantees have been violated.

³ Concluding observations of the Human Rights Committee on the Islamic Republic of Iran (CCPR/C/IRN/CO/3), para. 26.

The Working Group has in its constant jurisprudence established the ways in which it deals with evidential issues (see, inter alia, opinion No. 21/2011 (Iran (Islamic Republic of)).

34. There are also violations of the relevant international standards as contained in article 10 the UDHR and in article 14 of the Covenant relating to the right to a fair trial of such gravity as to confer on the detention an arbitrary character.

35. The overbroad criminal offences that have been applied in Mr. Soltani's case are the subject of analysis in opinion No. 48/2012 (Iran (Islamic Republic of)), and further in opinion No. 27/2012 (Viet Nam), paras. 35-39, where the Working Group's case law is set out. The overbroad offences will in the current case constitute an unjustified restriction on rights to freedom of expression and a fair trial.

36. The international law fair trial rights must "guarantee not rights that are theoretical or illusory but rights that are practical and effective".⁴ The submissions by the source are supported by the conclusions in the Working Group's report from the country visit to the Islamic Republic of Iran on the non-compliance of the revolutionary courts with the fair-trial standards in article 14 of the ICCPR, and that the jurisprudence of these courts is extremely restrictive of freedom of opinion and expression,⁵ as well as by the Working Group's findings in its opinions in individual cases, inter alia, opinion No. 48/2012 (Iran (Islamic Republic of)).

37. Article 9, paragraph 5, of the ICCPR provides the right to an enforceable right of compensation. The Working Group has in its jurisprudence continued to develop, based on general principles, the right to a remedy, which primarily is a right to immediate release and to compensation. In this case, it is clear that Mr. Soltani has a claim to compensation under article 9, paragraph 5, of the Covenant, which is an expression of general principles. The reasons that may be given for the detention of Mr. Soltani cannot be used against a claim for compensation.

38. In conclusion, the Working Group refers to the critical findings by United Nations human rights bodies of human rights violations occurring in the Islamic Republic of Iran, and adds to those cited above General Assembly resolution 65/226 on the situation of human rights in the Islamic Republic of Iran and Human Rights Council resolution 16/9 on the situation of human rights in the Islamic Republic of Iran. The Working Group reminds the Government of the Islamic Republic of Iran of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations.

Disposition

39. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Abdolfattah Soltani is arbitrary in violation of articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights, and falls

⁴ European Court of Human Rights, *Imbrioscia v. Switzerland*, Application No. 1397/88, Judgment of 24 November 1993, Series A No. 275, para. 38. See also the Working Group's constant jurisprudence, inter alia, opinion No. 21/2011 (Iran (Islamic Republic of)), including that assigning a lawyer does not in itself ensure the effectiveness of the assistance he may afford an accused.

⁵ E/CN.4/2004/3/Add.2 and Corr.1 (see footnote 2 above).

into categories II and III of the categories applicable to the cases submitted to the Working Group.

40. The Working Group requests the Government to take the necessary steps to remedy the situation, which include the immediate release of Mr. Abdolfattah Soltani and adequate reparation to him.

41. The Working Group invites the Government of the Islamic Republic of Iran to continue its cooperation with the Working Group, including timely provision of the information that the Working Group requires to fulfil its mandate.

42. In accordance with article 33 (a) of its revised methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran.

[Adopted on 19 November 2012]
