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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-second session, 16 – 25 November 2011

#### No. 58/2011 (Islamic Republic of Iran)

#### Communication addressed to the Government on 12 October 2011

#### Concerning: Heshmatollah Tabarzadi

#### 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. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102; the mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

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 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, 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 the 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; 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. According to the source, Heshmatollah Tabarzadi, an Iranian national, is the Secretary-General of the banned Democratic Front of Iran opposition party. Mr. Tabarzadi was previously the editor of the student newsletter *Payam-e Daneshjou*, which was allegedly banned after complaints from numerous Government officials. He was also the President of the Islamic Students' Association and Editor-in-Chief of the weekly newsletter *Hoveyat-e-Khish*.

4. It is reported that in the morning of 27 December 2009, Mr. Tabarzadi was arrested by the Sepah-e-Pasdaran, Iranian Revolutionary Guard Corps, a branch of the Iranian military under the direct command of the Supreme Leader of Iran, Ayatollah Ali Khamenei. Allegedly, the officers in charge of Mr. Tabarzadi's arrest held a general warrant signed by the Attorney General. Mr. Tabarzadi's house was searched and the officers took two computer hard drives along with papers, articles, books and other items.

5. Days prior to his arrest, on 17 December 2009, Mr. Tabarzadi published an opinion editorial in the *Wall Street Journal* in connection with the protests against the results of the 2009 Iranian presidential election. In the evening preceding his arrest, Mr. Tabarzadi was interviewed on Voice of America Persian in connection with the Ashura protests.

6. Mr. Tabarzadi was first placed in Ward 209 of Evin prison, Tehran. Allegedly, he was beaten and held incommunicado in solitary confinement for 40 days. The source reports that Mr. Tabarzadi was threatened with the death penalty and forms of cruel, inhumane and degrading treatment, including rape. In May 2010, Mr. Tabarzadi was transferred to Rajaei Shahr Prison, located in the city of Karaj.

7. It was not until 9 June 2010, i.e. six months after his arrest, that Mr. Tabarzadi was brought before a judge for the first time. In September 2010, Mr. Tabarzadi was convicted by the Islamic Revolutionary Court on the following charges: insulting the Leader; insulting the President; propaganda against the system; gathering and colluding with intent to harm State security; and disturbing public order. He was sentenced to nine years' imprisonment and 74 lashes and banned from participating in any social activity for 10 years.

8. On appeal, his sentence was reduced to eight years and the flogging sentence was overturned following the partial acquittal for the charges of disturbing public order and propaganda against the system.

9. It is reported that Mr. Tabarzadi's lawyers were themselves arrested and sentenced, including Ms. Nasrin Sotoudeh<sup>1</sup> and Mr. Mohammad Oliyaeifard.

10. Firstly, the source argues that in the present case there is no legal basis to justify Mr. Tabarzadi's deprivation of liberty. Article 9, paragraph 2 of the International Covenant on Civil and Political Rights states that "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against

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<sup>1</sup> See Working Group on Arbitrary Detention, opinion No. 21/2011 (Islamic Republic of Iran).

him.” Article 32 of the Constitution of the Islamic Republic of Iran prohibits arbitrary arrest and requires that “if someone is detained, the subject matter of the charge, with reasons, must be immediately communicated and explained in writing to the accused.” The same provision states that “within at most 24 hours the file on the case and preliminary documentation must be referred to the competent legal authority. Legal procedures must be initiated as early as possible.” According to the source, the Iranian authorities failed to promptly bring Mr. Tabarzadi before a judge. Mr. Tabarzadi was not informed of the charges against him despite being detained for over six months. Moreover, the source informs that during the entire process preceding and following his trial, the Iranian authorities harassed and detained Mr. Tabarzadi’s lawyers.

11. Secondly, the source contends that Mr. Tabarzadi’s deprivation of liberty is a direct consequence of his peaceful exercise of the rights and freedoms recognized in articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 of the International Covenant on Civil and Political Rights. The source indicates that Mr. Tabarzadi’s arrest came immediately after his expression on live radio of support for peaceful demonstrations in Iran, and less than a month after he had published an opinion editorial in the *Wall Street Journal* regarding the same issue. According to the information received, Mr. Tabarzadi was convicted with violating provisions of the Islamic Penal Code which are manifestly related to the expression of opinions critical of the Government. The source maintains therefore that the only motivation to arrest and detain Mr. Tabarzadi was to deprive him of his freedom of opinion and expression and to prevent his criticism of the Government. Furthermore, the source contends that his detention follows directly from Mr. Tabarzadi’s exercise of the rights to freedom of peaceful assembly and association and to take part in the conduct of public affairs.

12. Thirdly, the source maintains that the violations of Mr. Tabarzadi’s right to a fair trial were of such gravity as to render arbitrary his deprivation of liberty. Mr. Tabarzadi did not have access to counsel during the first 40 days in solitary confinement and while being subjected to allegedly repeated interrogations and ill-treatment. Moreover, his right to counsel was further undermined through systematic and continuous harassment and mistreatment of his lawyers. In the source’s view, Mr. Tabarzadi was prevented from adequately preparing his defence when charges were brought against him, at trial and upon his appeal in purported violation of article 14, paragraph 3 (b) of the Covenant.

13. In conclusion, the source submits that Mr. Tabarzadi’s deprivation of liberty is arbitrary as it lacks any legal basis, is a direct consequence of the exercise of his rights and freedoms under the Declaration and the Covenant, and follows from grave breaches of his right to a fair trial.

#### *Response from the Government*

14. By letter dated 4 November 2011, the Government informed the Working Group that Mr. Tabarzadi had been charged with propaganda against the system of the Islamic Republic of Iran, insulting the leadership of the country, endangering national security through unlawful association, conspiracy with the intention to disturb public security and disruption of public order.

15. Mr. Tabarzadi was arrested on 28 December 2009. Shortly thereafter, branch 26 of the Tehran Revolutionary Court tried the accused and found Mr. Tabarzadi guilty of all charges and sentenced him to one year of *taziri* (in Islamic jurisprudence, this term refers to sentences which carry variable levels of punishment as determined by law and the judge respectively) imprisonment for engaging in propaganda against the system of the Islamic Republic of Iran, two years of additional *taziri* imprisonment for insulting the country’s leadership, five years of *taziri* imprisonment for association and conspiracy with the

intention of endangering national security, and one year *taziri* imprisonment and 74 *taziri* lashes for disrupting public order by participating in illegal gatherings.

16. During his trial, Mr. Tabarzadi was defended by a team of attorneys, namely Mr. Mohammad Oliyaeifard, Mr. Abdolfattah Soltani, Mr. Jahangir Mahmoudi, Ms. Nasrin Sotoudeh, Ms. Giti Pourfazel and Ms. Sara Najibi.

17. The court's initial verdict was appealed by Mr. Jahangir Mahmoudi. On 1 January 2011, the Tehran Court of Appeal rejected the appeal. However, the Court cleared Mr. Tabarzadi of the particular charge of "disrupting public order through participation in illegal gatherings."

18. Before his most recent arrest – and from 1996 onwards – Mr. Tabarzadi had been convicted of different offences, including propaganda against the system of the Islamic Republic of Iran. In those instances, two of Mr. Tabarzadi's *taziri* imprisonment sentences, were replaced by fines and in another instance, he was given a suspended prison sentence. Also in 2004, Mr. Tabarzadi was sentenced to fourteen years of *taziri* imprisonment by the Tehran Revolutionary Court. The verdict was contested by Mr. Tabarzadi's attorney. The case was re-examined by the Tehran Court of Appeal and later by the Supreme Court. Ultimately, Mr. Tabarzadi was sentenced to nine years of *taziri* imprisonment and banned from engaging in social activities for ten years.

19. The Government maintains that despite his definitive conviction, Mr. Tabarzadi was given leave from prison on Islamic compassionate grounds. However, Mr. Tabarzadi abused his leave and violated his pledge to refrain from endangering national security by engaging in activities that ran contrary to the higher interests of the system of the Islamic Republic of Iran. Presently, Mr. Tabarzadi is serving his sentence and like other prisoners, is accorded his legal rights.

*Further comments from the source*

20. In the source's view, the response from the Government fails to address the key issues raised in the communication, including the following:

(a) The Government had no legal basis to justify Mr. Tabarzadi's arrest and detention. Iranian law requires that the accused be provided access to counsel through any interrogation by Government forces and to be informed of any charges immediately upon detention. The Government denied Mr. Tabarzadi these rights;

(b) At the time of his arrest, Mr. Tabarzadi was held incommunicado in solitary confinement for approximately 40 days, during which he was not provided access to counsel;

(c) For at least six months following his arrest and detention, Mr. Tabarzadi was not informed of the charges against him;

(d) The Government subjected Mr. Tabarzadi's attorneys to constant intimidation and harassment, including imprisonment, before, during and after his trial and appeal. As a result, Mr. Tabarzadi was effectively denied counsel and prevented from adequately preparing his defence at trial and appeal;

(e) The Government detained Mr. Tabarzadi in an effort to punish him for exercising the rights and freedoms guaranteed under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. This is evident from the fact that he was arrested less than a day after he had expressed support for peaceful demonstrations in Iran on live radio, and less than a month after he had published an opinion editorial in the *Wall Street Journal* regarding the same;

(f) Before and during his detention, the Government's agents physically abused Mr. Tabarzadi and subjected him to torture and cruel, inhuman and degrading treatment.

21. In the source's view, by failing to address these key arguments, the Government, has failed to answer the prima facie case established in the communication relating to the deprivation of Mr. Tabarzadi's liberty under categories I, II and III of the Working Group's classification of cases. Instead, the Government's response makes two categorical assertions: (1) it suggests that Mr. Tabarzadi was defended by a team of attorneys during the trial and on appeal; and (2) it provides a recitation of the offences for which Mr. Tabarzadi was charged and convicted.

22. Regarding the first point, as described in the communication – and uncontested by the Government – although Mr. Tabarzadi had counsel, the Iranian Government subjected his attorneys to constant imprisonment and harassment. The Government also arrested two of Mr. Tabarzadi's attorneys, Ms. Nasrin Sotoudeh and Mr. Mohammad Oliyaeifard, and sentenced them to imprisonment, in part for their representation of Mr. Tabarzadi. The Government also harassed and detained three of Mr. Tabarzadi's other attorneys, Mr. Jahangir Mahmoudi, Ms. Giti Pourfazel and Mr. Abdolfattah Soltani, again depriving Mr. Tabarzadi of their effective counsel.

23. The source maintains that a superficial statement that an individual has access to counsel is insufficient to satisfy the rights to counsel and to prepare one's defence as provided for under article 10 of the Universal Declaration of Human Rights, article 14, paragraph 3 of the International Covenant on Civil and Political Rights and principle 18, paragraphs 1 and 2, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>2</sup> When the State interferes with those rights, the right to counsel and to prepare a defence are effectively denied.

24. As to the second point, the source notes that a recitation of the offences for which an individual is charged and convicted, is insufficient to refute prima facie evidence of the deprivation of one's liberties. The Government's mere recitation of the offences with and for which it charged and convicted Mr. Tabarzadi fails to address the prima facie case concerning the arbitrary deprivation of his rights and freedoms as described in the submission.

25. The source reiterates that the deprivation of Mr. Tabarzadi's liberty falls under categories I, II and III of the Working Group's classification of cases.

## Discussion

26. The Working Group notes that Mr. Tabarzadi was arrested the day after giving an interview to Voice of America Persian in connection with the Ashura protests, and ten days after his opinion editorial was published in the *Wall Street Journal* in connection with the protests against the results of the Iranian presidential election.

27. The Government has failed to provide information on any specific acts allegedly committed by Mr. Tabarzadi which would constitute the offences for which he has been convicted. Instead, the Government's response merely lists the offences for which Mr. Tabarzadi was convicted. In the Working Group's view, such listing is not sufficient to rebut the genuine link between Mr. Tabarzadi's interview and opinion editorial and his subsequent arrest and detention.

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<sup>2</sup> General Assembly resolution 43/173, annex.

28. The Working Group notes that for six months after the arrest, Mr. Tabarzadi was not brought before a judge or any competent authority, and could not challenge the lawfulness of his detention; nor was he informed of the charges brought against him.

29. The Government has not refuted the allegation that, although Mr. Tabarzadi had formal counsel, the authorities subjected his attorneys to regular imprisonment and harassment during the entire process preceding and following his trial.

30. Indeed, in its opinion No. 21/2011, the Working Group found that the deprivation of liberty of one of Mr. Tabarzadi's counsels, namely, Ms. Nasrin Sotoudeh, was 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 Covenant. Similarly, the Government has failed to rebut the allegation that another of Mr. Tabarzadi's attorneys, Mr. Mohammad Oliyaefard, was also arrested and imprisoned, in part for his representation of Mr. Tabarzadi. Further allegations that the Government harassed and detained three of Mr. Tabarzadi's other attorneys, Mr. Jahangir Mahmoudi, Ms. Giti Pourfazel and Mr. Abdolfattah Soltani were not contested either.

31. The right to be effectively defended by a lawyer, as provided for in article 14, paragraph 3, of the Covenant, is one of the core features of a fair trial. For this reason, the Working Group considers that the fact of hindering lawyers from fulfilling their task effectively and in a timely manner constitutes a grave violation of the fundamental right to a fair trial.

32. Accordingly, the Working Group concludes that Mr. Tabarzadi's arrest and detention violates rights and fundamental freedoms established in articles 9, 10, 11, 18, 19 and 21 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a State party.

### **Disposition**

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

The deprivation of liberty of Mr. Tabarzadi is arbitrary, being in contravention of articles 9, 10, 11, 18, 19 and 21 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

34. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Tabarzadi and bring it into conformity with the norms and standards set forth in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

35. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Tabarzadi and accord him an enforceable right to compensation pursuant to article 9, paragraph 5 of the International Covenant on Civil and Political Rights.

36. The Working Group refers the allegations of torture and cruel, inhuman and degrading treatment of Mr. Tabarzadi to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in accordance with paragraph 33 (a) of its methods of work.

*[Adopted on 18 November 2011]*