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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-first session, 6–10 September 2021

#### Opinion 27/2021 concerning Kamran Ghaderi (Islamic Republic of Iran)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,<sup>1</sup> on 8 June 2021 the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Kamran Ghaderi. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. 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 him or her) (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 Covenant (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 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).

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<sup>1</sup> A/HRC/36/38.



## Submissions

### *Communication from the source*

4. Kamran Ghaderi is a citizen of Austria and of the Islamic Republic of Iran. He was born in 1964 in the Islamic Republic of Iran and usually resides in Vienna.
5. Mr. Ghaderi is one of the owners of an information technology management and consulting company in Vienna. At this company, he performed the functions of managing director and a senior information technology consultant. After graduating from the University of Vienna with a doctorate in Electrical Engineering, Mr. Ghaderi worked with Middle Eastern and Iranian companies for many years and, prior to his arrest, had been travelling regularly to the Islamic Republic of Iran.
6. According to the source, Mr. Ghaderi was a member of the Austrian business delegation that accompanied the President of Austria, the Foreign Minister and the Minister of Trade and Commerce during their official visit to the Islamic Republic of Iran on 11 September 2015.
7. The source reports that on 2 January 2016, when he arrived in Tehran from Vienna on a regular business trip, Mr. Ghaderi was arrested by unknown authorities at Imam Khomeini International Airport. The persons who carried out the arrest are believed to have been from the Ministry of Intelligence. They did not show an arrest warrant nor did they inform Mr. Ghaderi of the reasons for his detention. Mr. Ghaderi's laptop and his cell phone were confiscated and have not been returned to his family to date.
8. The source recalls that Mr. Ghaderi's family in Austria was not informed of his arrest. Mr. Ghaderi's family began to make enquiries when it became apparent that he had not arrived at his final destination in Tehran. Eventually, the police at the airport were able to confirm that Mr. Ghaderi had been detained and was being held by unknown authorities.
9. The source reports that initially, having deprived Mr. Ghaderi of his liberty, the authorities informed him that he could be released on bail in the amount of 200 million rials. However, Mr. Ghaderi was not allowed to contact anyone to arrange this payment. Formally, therefore, there are documents concerning the possibility of releasing Mr. Ghaderi on bail, but in practice, Mr. Ghaderi was not afforded that possibility.
10. The source indicates that during the first three months of his deprivation of liberty, Mr. Ghaderi was sometimes held in a house at an unknown location and at other times, in a very small containment space with no windows. He was taken out of the containment area only to be interrogated. It is reported that the interrogators would not take Mr. Ghaderi out of the small containment space for periods of over one week, which led him to believe that he had been forgotten and left to die. According to the source, that was done to break Mr. Ghaderi psychologically.
11. The source submits that Mr. Ghaderi was subjected to tough interrogations, which included psychological torture, so that he would falsely confess to being involved in a plot against the Iranian regime. The source reports that at that stage, despite the pressure put on him, Mr. Ghaderi did not submit and did not sign any false confessions.
12. On 4 February 2016, Mr. Ghaderi was allowed to contact his family in Austria for six minutes, which was, according to the source, his first contact since his disappearance. On 28 February 2016, the authorities from the Ministry of Intelligence stated that only his family in Austria, namely his spouse and children, would be able to visit him.
13. On 1 March 2016, Mr. Ghaderi's spouse arrived in the Islamic Republic of Iran and was given an appointment to see her husband at the Ministry of Intelligence on 5 March 2016. On that day, instead of allowing the visit, the authorities interrogated Mr. Ghaderi's spouse for approximately three hours. She flew back to Austria on 8 March 2016 without having been allowed to see Mr. Ghaderi.
14. It is alleged that at that point, the authorities intensified the pressure on Mr. Ghaderi and falsely told him that his family members had also been arrested and subjected to torture. Mr. Ghaderi was also brought a flight ticket and told that if he signed a confession, his family would be freed and he would be able to fly back to Austria.

15. On 5 April 2016, Mr. Ghaderi was able to contact one of his family members in the Islamic Republic of Iran. He has been allowed to call that family member every Tuesday since then.

16. According to the source, on 7 April 2016, Mr. Ghaderi's family member was able to visit him for the first time in Evin prison. During the visit, Mr. Ghaderi stated that he had signed two confessions incriminating himself of espionage. The source underlines that the accusations were not based on any evidence other than Mr. Ghaderi's confessions extracted through torture.

17. The source reports that two of Mr. Ghaderi's family members are allowed to visit him once a week. Most of these visits take place with Mr. Ghaderi separated from his relatives by a pane of glass. Once a month, they are able to meet in a room with no separation.

18. The source states that after the initial three months of Mr. Ghaderi's deprivation of liberty, the authorities transferred him to section 350 of Evin prison for a period of about two months. After that, he was taken to section 209 of Evin prison, which, according to the source, is managed by the Islamic Revolutionary Guard Corps and is known for housing prisoners of conscience.

19. The source reports that on 7 May 2016, Mr. Ghaderi was visited by his lawyer for 20 minutes. Mr. Ghaderi was allowed to consult his lawyer only that once prior to the court hearing, and that meeting had to be carried out in the presence of guards. Apart from that visit, Mr. Ghaderi's lawyer was not allowed access to his client or his case file.

20. The source reports that in June 2016, Mr. Ghaderi was presented before a judge for the first time. In July 2016, the Islamic Revolutionary Court convicted Mr. Ghaderi of espionage and sentenced him to 10 years of imprisonment. The relevant legislation used by the authorities to convict Mr. Ghaderi is article 508 of the Penal Code of the Islamic Republic of Iran. This provision states that anyone who cooperates by any means with a foreign State against the Islamic Republic of Iran, if not considered *mohareb*, shall be sentenced to 10 years of imprisonment.

21. The source submits that there was no evidence for that conviction and that it was based entirely on Mr. Ghaderi's coerced confessions. The source also submits that during the hearings, Mr. Ghaderi informed the judge that he had signed the confessions as a result of being tortured by his interrogators. The judge did not take Mr. Ghaderi's statement into account and told him to stop talking. It is further alleged that the verdict was never recorded in writing, but instead only announced by the judge.

22. The source reports that upon his conviction, Mr. Ghaderi, in breach of domestic law, was taken back to section 209 of Evin prison, where the authorities continued to torture him.

23. The source also reports that in October 2016, the sentence was upheld on appeal. The court hearing was not open to the public. Mr. Ghaderi was allowed to see his lawyer on two occasions prior to the appeal hearing.

24. The source states that Mr. Ghaderi was not allowed to see any Austrian consular representatives, as the authorities had stated that he had Iranian nationality. No Austrian consular representatives were present during the court hearings.

25. According to the source, on 17 April 2017, Mr. Ghaderi was finally transferred to the general section of Evin prison. Mr. Ghaderi's mental and physical states have been very fragile ever since his isolation. After his transfer to the general section of Evin prison, he suffered from severe hip and back pain. In spring 2017, Mr. Ghaderi's condition deteriorated so much that he could not get up from his bed for three months. His requests for vital medical procedures at that time were rejected by the prosecutor. He had to take up to 30 different types of medication a day to manage his pain and receive two injections at the hospital. Mr. Ghaderi was prescribed 10 physiotherapy sessions at the hospital, but was only allowed to complete 6 of them.

26. In February 2018, having suffered severe pain for over a year, Mr. Ghaderi was allowed to undergo two operations on his spine. He was able to stay with his family in the Islamic Republic of Iran after the surgery and was required to return to prison 62 days after

the procedures, without receiving the necessary physiotherapy. Moreover, Mr. Ghaderi has a tumour on his leg that was left untreated.

27. The source reports that Mr. Ghaderi currently suffers from high blood pressure as a result of the torture he endured for over three months. He has to take medication daily to manage his condition. In December 2020, Mr. Ghaderi presented symptoms of coronavirus disease (COVID-19), similar to those of more than half of the prisoners in his unit. When he was eventually tested three weeks after the occurrence of his first symptoms, the result was negative.

28. The source reports that Mr. Ghaderi has applied for early release. In May 2021, his application was rejected and he remains in detention.

#### *Response from the Government*

29. On 8 June 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government of the Islamic Republic of Iran to provide, by 9 August 2021, detailed information about the current situation of Mr. Ghaderi and to clarify the legal provisions justifying his detention, as well as its compatibility with the obligations of the Islamic Republic of Iran under international human rights law, and in particular with regard to the treaties ratified by the State.

30. The Working Group regrets that it did not receive a response from the Government to this communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

#### **Discussion**

31. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

32. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>2</sup> In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

#### **Category I**

33. The source has submitted, and the Government has failed to contest, that Mr. Ghaderi was arrested by the Iranian authorities, believed to be from the Ministry of Intelligence, on 2 January 2016. No arrest warrant was presented and Mr. Ghaderi was not given any reasons for this arrest. Thereafter, while the police acknowledged his detention by unknown authorities to Mr. Ghaderi's family, he was held at an unknown location and first appeared before a judge in June 2016, some six months after his arrest.

34. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously stated, for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>3</sup> Indeed, international law on deprivation of liberty includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person, and the prohibition of arbitrary deprivation, under articles 3 and 9 respectively of the Universal Declaration of Human Rights and article 9 of the Covenant, as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>4</sup> Any form of detention or imprisonment should be

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<sup>2</sup> A/HRC/19/57, para. 68.

<sup>3</sup> See, e.g., opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 93/2017, No. 35/2018 and No. 79/2018.

<sup>4</sup> Opinions No. 3/2018, para. 43; No. 88/2017, para. 27; and No. 30/2018, para. 39.

ordered by, or be subjected to, the effective control of a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of that Body of Principles.

35. Moreover, the Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only promptly informed of the reasons for arrest but also promptly informed of any charges against him or her. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee noted in its general comment No. 35 (2014), “that right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment” (para. 29).

36. The Working Group notes that Mr. Ghaderi was arrested without a warrant and no reasons for his detention were given by the detaining authority. The Working Group therefore concludes that there has been a breach of article 9 (1) and (2) of the Covenant.

37. Furthermore, Mr. Ghaderi was not brought before a judicial authority for a review of his detention until some six months after his initial arrest and the Government has provided no explanation for that delay. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge to exercise judicial power. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge or other officer authorized by law following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.<sup>5</sup> The Working Group finds that Mr. Ghaderi was not brought promptly before a judicial authority, in violation of article 9 (3) of the Covenant. As a result, the authorities failed to establish the legal basis of his detention in accordance with the provisions of the Covenant.

38. Moreover, the Working Group notes the uncontested submissions by the source that Mr. Ghaderi was held at an unknown location and prevented from any contact with the outside world at least until 4 February 2016, when he was allowed a short telephone call with a family member. The Working Group considers that this amounted to enforced disappearance in breach of article 9 (1) of the Covenant. Enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.<sup>6</sup> The Working Group also finds that the failure to allow Mr. Ghaderi to notify his family of his whereabouts and the authorities’ failure to inform his family about his whereabouts is a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

39. Furthermore, the Working Group notes the uncontested allegations that Mr. Ghaderi was first granted bail but then not allowed to fulfil the bail requirements (see para. 9 above). The Working Group considers that to offer such an unrealistic alternative to detention is to disregard the requirement to make pretrial detention an exception and is therefore a breach of article 9 (3) of the Covenant.

40. Lastly, in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as provided by article 9 (4) of the Covenant. The Working Group wishes to recall that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.<sup>7</sup> This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty<sup>8</sup> and “all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures,

<sup>5</sup> Human Rights Committee, general comment No. 35 (2014), paras. 32–33.

<sup>6</sup> See opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2020, No. 77/2020 and No. 38/2021. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

<sup>7</sup> A/HRC/30/37, paras. 2–3.

<sup>8</sup> *Ibid.*, para. 11.

involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction, and detention of children for educational purposes”.<sup>9</sup> Moreover, it also applies “irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.”<sup>10</sup> This was denied to Mr. Ghaderi.

41. Furthermore, the Working Group notes that in order to ensure an effective exercise of this right, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing, as stipulated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.<sup>11</sup> This was denied to Mr. Ghaderi, which seriously and adversely affected his ability to effectively exercise his right to challenge the legality of his detention, denying him his rights under article 9 (4) of the Covenant. The Working Group recalls that judicial oversight of detention is a fundamental safeguard of personal liberty,<sup>12</sup> and is essential in ensuring that detention has a legal basis. Given that Mr. Ghaderi was unable to contact anyone, especially his lawyer, which is an essential safeguard to ensure the ability of any detainee to personally challenge his or her detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

42. Noting all of the above, the Working Group concludes that the arrest and detention of Mr. Ghaderi is arbitrary and falls under category I.

### Category III

43. The Working Group notes the serious allegations concerning the violations of Mr. Ghaderi’s right to a fair trial, which the Government has failed to address. The source has submitted that Mr. Ghaderi was prevented from meeting with his lawyer until 7 May 2016, some five months after his initial arrest. When their meeting was finally possible, the confidentiality of the meeting was breached and neither Mr. Ghaderi nor his lawyer was allowed to consult the case file. During the appeals process, Mr. Ghaderi was permitted to meet with his lawyer only twice.

44. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.<sup>13</sup> The Working Group considers that the failure to provide Mr. Ghaderi with access to his lawyer from the outset, and the subsequent limitation of his meetings with counsel to mere minutes, violated his right to adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing under article 14 (3) (b) of the Covenant.

45. Moreover, the Working Group recalls that legal consultations may be within sight but not within hearing of the authorities, and all communications with counsel must remain confidential.<sup>14</sup> This provision was also breached in relation to Mr. Ghaderi in another violation of article 14 (3) (b) and (d) of the Covenant. Lastly, the denial of full access to the case file to Mr. Ghaderi and his lawyer was yet a further violation of Mr. Ghaderi’s rights under article 14 (1) and (3) (b) and (e) of the Covenant.

46. The source has also alleged and the Government does not contest that Mr. Ghaderi was coerced into signing false confessions following torture. When this was brought to the attention of the court, the source alleges and the Government does not contest that no action was taken by the judge to investigate the allegations.

<sup>9</sup> Ibid., annex, guideline 1, para. 47 (a).

<sup>10</sup> Ibid., annex, guideline 1, para. 47 (b).

<sup>11</sup> Ibid., annex, principle 9, paras. 12–15.

<sup>12</sup> Ibid., para. 3.

<sup>13</sup> Ibid., annex, principle 9 and guideline 8; Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>14</sup> The Nelson Mandela Rules, rule 61 (1); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 18; A/HRC/30/37, annex, guideline 8.

47. As the Working Group has stated before, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>15</sup> Furthermore, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.<sup>16</sup> The burden is on the Government to prove that Mr. Ghaderi's statements were given freely,<sup>17</sup> but in this case it has not done so. In the present case, the Working Group finds that Mr. Ghaderi's right to be presumed innocent under article 14 (2) of the Covenant and his right not to be compelled to confess guilt under article 14 (3) (g) were violated.

48. Moreover, noting the failure of the judge to act when the allegations of forced statements were brought to court's attention, the Working Group also finds a breach of article 14 (1) of the Covenant since the failure of the court to halt the proceedings when allegations of ill-treatment were made means that the court failed to act in a fair and impartial manner.<sup>18</sup> The Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the independence of judges and lawyers for appropriate action.

49. Furthermore, the source submits, and the Government does not contest, that Mr. Ghaderi was sentenced to 10 years of imprisonment through a judgment which was never published, but merely read out by the judge. The appeal hearing was not open to the public.

50. As the Human Rights Committee stated its general comment No. 32 (2007) (para. 29):

Article 14, paragraph 1, acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons.

51. The Working Group notes that the case of Mr. Ghaderi clearly did not fall into any of the prescribed exceptions to the general obligation of public trials under article 14 (1) of the Covenant, and most importantly, the Government of the Islamic Republic of Iran has not invoked any of those exceptions to justify the closed trial. The Working Group thus finds a violation of article 14 (1) of the Covenant and wishes to emphasize that this violation is particularly grave as the appeal hearing was also closed to the public.

52. Moreover, as the Human Rights Committee noted in its general comment No. 32 (2007) (para. 49):

The right to have one's conviction reviewed can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned, written judgment of the trial court, and, at least in the court of first appeal where domestic law provides for several instances of appeal, also to other documents, such as trial transcripts, necessary to enjoy the effective exercise of the right to appeal.

53. In the present case, the Working Group notes the failure to provide a reasoned written judgment and concludes that a breach of Mr. Ghaderi's rights under article 14 (5) of the Covenant took place as he was effectively prevented, as prospective appellant, from enjoying the effective exercise of the right to appeal.

54. Lastly, the source has argued, and the Government does not dispute, that Mr. Ghaderi, a dual national of Austria and of the Islamic Republic of Iran, was denied Austrian consular assistance by the Iranian authorities. The Working Group recalls that consular assistance or

<sup>15</sup> A/HRC/45/16, para. 53. See also opinions No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; and No. 73/2019, para. 91; and E/CN.4/2003/68, para. 26 (e).

<sup>16</sup> Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

<sup>17</sup> Human Rights Committee, general comment No. 32 (2007), para. 41.

<sup>18</sup> Opinion No. 54/2020, para. 98.

consular protection constitutes an important safeguard for individuals who are arrested and detained in a foreign State to ensure compliance with international standards. It provides such detainees and consular officials of the detainee's nationality with certain consular rights which include, *inter alia*, the right to freely communicate with and have access to their detained nationals and to be informed about the arrest without delay. These rights are embodied in rule 62 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principle 16 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and were violated in the case of Mr. Ghaderi.

55. Noting all of the above, the Working Group concludes that the detention of Mr. Ghaderi is arbitrary and falls under category III.

#### Category V

56. The Working Group observes that Mr. Ghaderi is a dual Austrian-Iranian national and notes in this connection the Government's past practice of arbitrarily depriving of their liberty persons of dual or foreign nationality or residence on the grounds of State security.<sup>19</sup> It has also received communications and found violations submitted by dual nationals, such as Mr. Ghaderi, over many years.<sup>20</sup> The Working Group specifically notes the joint urgent appeal sent to the Islamic Republic of Iran on 18 January 2021 concerning four dual nationals, including Mr. Ghaderi.<sup>21</sup>

57. The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran also recognized this pattern, noting in late 2017 that estimates suggested that at least 30 foreign and dual nationals, as well as Iranians with permanent residence in another country, had been imprisoned since 2015.<sup>22</sup>

58. The Working Group is thus of the view that discrimination by the Government stemming from a systematic bias may be the only plausible explanation for the arrest, detention and imprisonment of Mr. Ghaderi. The Working Group therefore concludes that Mr. Ghaderi has been arbitrarily deprived of his liberty because of his dual nationality, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and that his deprivation of liberty falls under category V.

#### Concluding remarks

59. The Working Group would like to express its concern about the poor conditions in which Mr. Ghaderi is held, his treatment, enforced disappearance and the denial of medical assistance. The uncontested allegations that Mr. Ghaderi was held in a small containment space without windows and in fact feared that he had been left there to die (see para. 10 above) are particularly disturbing to the Working Group. The Working Group is obliged to remind the Government that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person, and that denial of medical assistance constitutes a violation of the Nelson Mandela Rules, particularly rules 24, 25, 27 and 30.

60. Furthermore, the Working Group notes the absence of a response from the Government in relation to allegations made by the source concerning the denial to Mr. Ghaderi of contact with his family. The Working Group therefore finds a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>19</sup> See, e.g., opinions No. 28/2013, No. 28/2016, No. 50/2016 and No. 92/2017.

<sup>20</sup> See opinions No. 18/2013, No. 44/2015, No. 28/2016, No. 7/2017 and No. 49/2017.

<sup>21</sup> IRN 2/2021, available from <https://spcommreports.ohchr.org/TmSearch/Results?page=2>.

<sup>22</sup> A/HRC/37/68, paras. 51–57. The Secretary-General has also expressed concern relating to such prosecutions in the Islamic Republic of Iran (A/HRC/37/24, paras. 56–57).



61. In its 28-year history, the Working Group has adopted numerous opinions in relation to the Islamic Republic of Iran.<sup>23</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in the country, which amounts to a serious violation of international law. The duty to comply with international human rights standards that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary deprivation of liberty and life, as well as torture and enforced disappearance, rests with all State organs, officers and agents, as well as all other natural and legal persons.<sup>24</sup>

62. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>25</sup> The Working Group refers the case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran for further action.

### Disposition

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

The deprivation of liberty of Kamran Ghaderi, being in contravention of articles 2, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

64. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Mr. Ghaderi without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

65. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ghaderi immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Ghaderi.

66. The Working Group urges the Government to ensure a full and independent investigation into the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ghaderi and to take appropriate measures against those responsible for the violation of his rights.

67. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, the Special Rapporteur on torture and other cruel, inhuman or degrading

<sup>23</sup> See decisions No. 1/1992, No. 28/1994, and No. 14/1996; and opinions No. 39/2000, No. 30/2001, No. 8/2003, No. 14/2006, No. 19/2006, No. 26/2006, No. 4/2008, No. 34/2008, No. 39/2008, No. 6/2009, No. 2/2010, No. 8/2010, No. 20/2011, No. 21/2011, No. 58/2011, No. 30/2012, No. 48/2012, No. 54/2012, No. 18/2013, No. 28/2013, No. 52/2013, No. 55/2013, No. 16/2015, No. 44/2015, No. 1/2016, No. 2/2016, No. 25/2016, No. 28/2016, No. 50/2016, No. 7/2017, No. 9/2017, No. 48/2017, No. 49/2017, No. 92/2017, No. 19/2018, No. 52/2018 and No. 83/2018.

<sup>24</sup> The domestic political and judicial organs are under a positive obligation to ensure an effective remedy and reparation for violations of international human rights law by removing the statute of limitations, sovereign immunity, *forum non conveniens* doctrine or other procedural obstacles to redress in such cases through legislative or judicial action. See opinion No. 52/2014, para. 51. See also CAT/C/CAN/CO/6, para. 15; and CAT/C/CAN/CO/7, paras. 40–41.

<sup>25</sup> A/HRC/13/42, para. 30; and opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

treatment or punishment, and the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

68. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

69. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Ghaderi has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ghaderi;
- (c) Whether an investigation has been conducted into the violation of Mr. Ghaderi's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Islamic Republic of Iran with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

70. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

71. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

72. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>26</sup>

*[Adopted on 6 September 2021]*

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<sup>26</sup> Human Rights Council resolution 42/22, paras. 3 and 7.