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REFERENCE:

[G/SO 218/2]

12 February 2013

Dear Saniye Karakas,

I would like to refer to the sixty-fifth session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of detention submitted to it.

In accordance with paragraph 18 of the Working Group's methods of work, I am sending to you, attached herewith, the text of Opinion No.48/2012 (Iran) regarding a case submitted by you.

This Opinion will be reflected in the Working Group's annual report to the Human Rights Council in March of this year.

Yours sincerely,

Miguel de la Lama
Secretary

Working Group on Arbitrary Detention

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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. 48/2012 (Islamic Republic of Iran)****Communication addressed to the Government on 5 July 2012****Concerning Muhammad Kaboudvand**

The Government did not reply to the communication.

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 the 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

The case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows.

3. Mr. Muhammad Kaboudvand, a national of the Islamic Republic of Iran, born in the city of Sanandaj (*Sina*), is founder of the group called "Alliance for Democracy in Iran" and of the Human Rights Organization of Kurdistan (HROK). He is also a journalist and acted as editor in chief of the "Message of the people" (*Payam-e Mardom*). Mr. Kaboudvand was awarded the prestigious British Press Award of the international journalist of the year and Human Rights Watch's Hellman/Hammett Award. He is also the author of three books, "The Other Half" (*Nimeh-ye Digar*), "The Struggle for Democracy (*Barzakh-e democracy*)" and "Social Movements" (*Jonbesh-e Ejtemaii*).

4. On 1 July 2007, Mr. Kaboudvand was arrested at his office in Vanak Square, Tehran by intelligence agents. Reportedly, Mr. Kaboudvand was not presented with an arrest warrant. He was taken to his house, which was subsequently searched. The agents seized his personal files, computer hard disk and compact disks.

5. Mr. Kaboudvand was placed in Ward 209 of Evin prison where he was in solitary confinement for five months. He was charged with "acting against national security by establishing the Human Rights Organization of Kurdistan"; "widespread propaganda against the system by disseminating news"; "opposing Islamic penal laws by publicizing punishment such as stoning and executions", and "advocating on behalf of political prisoners". The source reports that the reasons for his arrest are linked to the fact that he had reported on the conditions in Iranian prisons, including the use of torture and other ill-treatment.

6. Mr. Kaboudvand's trial began on 25 May 2008 at the 15th Branch of Revolutionary Court. Reportedly, the judges decided to hold a closed trial under article 188 of the Penal Code of the Islamic Republic of Iran. According to that provision, trials may be closed in order to protect public morals. The source contends that the case against Mr. Kaboudvand was not related to public morals. It is the source's submission that his trial was conducted in violation of article 10 of the Universal Declaration of Human Rights (UDHR) and article 14 of the International Covenant on Civil and Political Rights (ICCPR).

7. Mr. Kaboudvand was sentenced to ten years of imprisonment and an extra year of imprisonment on charges of "widespread propaganda against the system by disseminating news". Subsequently, Branch 56 of the Appeals Court of Tehran reduced Mr. Kaboudvand's sentence to ten years and six months in prison. His sentence of ten years imprisonment was later upheld by Branch 54 of the Appeals Court of Tehran.

8. The source contends that Mr. Kaboudvand's trial was postponed three times due to failure on the part of prosecutors and the judge to appear in court. Mr. Kaboudvand was kept for eight months in detention waiting for his trial due to continuous delays. The source maintains that this is contrary to article 9(3) of the ICCPR.

9. Moreover, Mr. Kaboudvand was allegedly denied effective access to his lawyer. His lawyer was allowed access only twice, before his hearing and once at the trial stage. Mr. Kaboudvand was not allowed to confer with his lawyer during the hearing. The source submits that this is contrary to article 14(b) and (d) of the ICCPR and Principle 18(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

10. The source maintains that the evidence cited in court was focused on the establishment of the "Human Rights Organization of Kurdistan" in 2005, the work of which focused on reporting human rights violation to the United Nations. Allegedly, other human rights monitoring and advocacy activities, which are

considered crimes in the Islamic Republic of Iran, were cited as evidence supporting the charges against Mr. Kaboudvand. The source claims that although the organization was not registered, it did not participate in any illegal activities.

11. Finally, the source contends that Mr. Kaboudvand's detention is directly linked to his peaceful exercise of the right to freedom of opinion and expression and the right to freedom of association as guaranteed under articles 19 and 21 of the ICCPR and article 19 and 20 of the UDHR.

12. Mr. Kaboudvand's case was, *inter alia*, reported in a note by the Secretary-General on "The Situation of Human Rights in the Islamic Republic of Iran" (UN Doc. A/66/374, 23 September 2011, para. 35). Mr. Kaboudvand has suffered from a series of chronic and acute medical problems often not attended to by medical staff, including two strokes in 2010. Although prison doctors have written to judicial authorities stating that Mr. Kaboudvand is in urgent need of specialist medical care, no action has allegedly been taken. It was only on 23 July 2010 that Mr. Kaboudvand was allowed to see a neurologist in prison. In January 2012, Mr. Kaboudvand was transferred to a hospital for tests.

13. While in detention, Mr. Kaboudvand's bail was set at 150 million toman (equivalent to approximately \$155,000 United States dollars), a sum beyond what his family could reasonably be expected to afford. The source maintains that the bail amount was not appropriate for the charges against Mr. Kaboudvand, as such high bail amounts are reserved for suspects on murder charges and similar crimes.

Response from the Government

14. The Working Group transmitted the above allegations to the Government of the Islamic Republic of Iran on 5 July 2012 requesting it to provide, in its reply, detailed information about the current situation of Mr. Kaboudvand. It is regretted that the Working Group has not received a response from the Government.

Discussion

15. In the absence of a response from the Government and based on its Methods of Work, the Working Group is able to render an opinion in light of the information submitted to it.

16. The primary question before the Working Group is to ascertain possible reasons and factors leading to the arrest and detention of Mr. Kaboudvand. In a number of similar cases from the Islamic Republic of Iran including those leading to Opinions 1/1992; 28/1994; 14/1996; 39/2000; 30/2001; 8/2003; 19/2006; 6/2009; 8/2010; 21/2011; 20/2011 and 30/2012¹ the question before the Working Group was whether the motivating factor for arrest and detention is the result of the exercise of the rights and freedoms in articles 19 (freedom of opinion and expression), and 20 (freedom of peaceful assembly and association) of the UDHR and by articles 19 (freedom of opinion and expression) and 21 (peaceful assembly, freedom of peaceful assembly and association) of the ICCPR by the detainees. As was the case in previous opinions of this Working Group, the detainee, Mr. Kaboudvand is a well known member of civil society, founder of a human rights organisation and a human rights defender who sought to bring to the attention of the people of the Islamic Republic of Iran and the international community at large, of the human rights violations of the citizens of their country. Mr. Kaboudvand is thus one of several human rights activists who have been deprived of their liberty for bringing the plight of political prisoners and their ill-treatment to the world's attention.

17. Charges against Mr. Kaboudvand consist of (i) establishment of the Human Rights Organisation of Kurdistan, an unregistered organization engaged in human rights advocacy; (ii) widespread propaganda against the Iranian system by disseminating news opposing Islamic penal laws and (iii) advocating on behalf of political prisoners. These 'offences' are outlined in articles 498-500 that form part of the overly

¹ Available at <http://www.unwgadatabase.org/un/>

general 'Security laws' of the Islamic Penal Code. The provisions of the Security Laws prohibit various forms of speech, assembly, and expression, allowing the state arbitrarily and subjectively to judge them as being "against" the nation or its security. Article 498 of the Security Laws criminalizes the establishment of any groups that aim to "disrupt national security." Article 500 sets a sentence of three months to one year of imprisonment for anyone found guilty of "in any way advertising against the order of the Islamic Republic of Iran or advertising for the benefit of groups or institutions against the order." Mr. Kaboudvand's exercise of his right to freedom of opinion and expression were thus interpreted as dangerous to national security invoking a prison sentence of 10 years as well as an additional 1 year on charges of propaganda against the system (this sentence was reduced to one year upon appeal).

18. The Working Group is concerned at the excessive length of these prison sentences which are in no way proportionate to the so-called 'offences' as these are no more than an exercise of basic fundamental rights of opinion and expression under international human rights instruments including the UDHR and the ICCPR, to which the Government of the Islamic Republic of Iran is a party.

19. Regarding the actual procedures followed after the arrest and detention of Mr. Kaboudvand, the Working Group expresses its serious concerns at the disregard of minimum standards at all stages in the handling of this case. The Working Group is informed (and the Government has not challenged this due to a lack of response) that Mr. Kaboudvand was arrested without a warrant. His house was searched and his personal belongings were confiscated without any search warrant. He was kept in solitary confinement for 5 months (which goes beyond detention into the realm of ill-treatment, abuse and even torture) after which his trial began. The Human Rights Committee has noted that "prolonged solitary confinement may amount to a violation of the prohibition against torture and ill-treatment in article 7 of the International Covenant on Civil and Political Rights." It should be noted that Mr. Kaboudvand was arrested on 1 July 2007 and his trial began on the 25 May 2008. There were repeated delays in hearing the case, therefore violating article 9(3) of the ICCPR.

20. With regards to the trial, its processes and procedures, information from the source points to grave violations of the right to a fair trial under national and international law; in particular a number of provisions of article 14 of the ICCPR. The source reports that the judges held a closed trial invoking article 188 of the Penal Code of Iran where this procedure is permissible in the interest of public morals; a situation unrelated to that of Mr. Kaboudvand. This process of a closed trial violates both article 10 of the UDHR and 14 of the ICCPR.

21. Access to a defense counsel must be effective i.e., the detainee must have access which is frequent, private and without interference from the State authorities. This right of Mr. Kaboudvand was violated as he was not allowed adequate access to meet and confer with his lawyer amounting to violations of article 14 (b) and (d) of the ICCPR and Principle 18 (1) of the Body of Principles for the Protection of All persons under any Forms of Detention or Imprisonment.

22. The appeal process too failed to meet minimum standards under international human rights law to which Iran is a party. The only encouraging outcome of the appeal was that Mr. Kaboudvand's extra one year sentence was reduced to six months (the 10 year sentence remained intact). It has been reported that one of the lawyers at appeal, Ms. Nasrin Sotoudeh has herself been imprisoned and was the subject of an opinion of this Working Group.²

23. Mr. Kaboudvand is suffering from ill-health including two strokes for which medical attention is critical. Despite written orders from the judicial authorities to extend medical care, delayed action was taken only in January 2012 and he was taken to hospital for tests.

24. Finally, the Working Group notes that the authorities placed an extremely high sum as bail money for the release of Mr. Kaboudvand (Toman 150 million equivalent to US \$150,000). This exorbitant sum

² Opinion 21/2011 (Islamic Republic of Iran) available at <http://www.unwgadatabase.org/un/>

usually set for grave offences such as murder is disproportionate to the charges against Mr. Kaboudvand and tantamount to a denial of justice.

Disposition

25. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Kaboudvand is arbitrary, being in contravention of articles 9, 10, 11, 18, 19 and 21 of the UDHR and articles 9, 14 and 19 of the ICCPR, and falls within categories I, II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

27. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation which includes ensuring that Mr. Kaboudvand receives appropriate medical care.

28. The Working Group believes that, taking into account all the circumstances of the case, the Government of the Islamic Republic of Iran should release Mr. Kaboudvand forthwith and accord him an enforceable right to compensation pursuant to article 9(5) of the ICCPR.

29. The Working Group reminds of the Human Rights Council's call for States to take into account the Working Group's views and, where necessary, to take the appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty. States are also requested to extend their co-operation to the Working Group's requests for information and to give due consideration to the recommendations it has made.³

[Adopted on 16 November 2012]

³ Human Rights Council, 15th session, Arbitrary Detention, 30 September 2010, (A/HRC/RES/15/18) paras. 3, 4(a), 9