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Human Rights Council Working Group on Arbitrary Detention

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No. 32/2012 (Iraq)

Communication addressed to the Government on 25 June 2012

Concerning Mehdi Abedi, Akram Abedini, Bahman Abedy, Aliasghar Babakan, Mohammad Reza Bagherzadeh, Sahar Bayat, Fatemeh Effati, Farhad Eshraghi, Maryam Eslami and Manijeh Farmany (residents of Camp Ashraf); and Asghar Abzari, Ali Reza Arab Najafi, Homaun Dayhim, Fatemeh Faghihi, Zahra Faiazi, Ahmad Fakhr-Attar, Effat Fattahi Massom, Jafar Ghanbari, Habib Ghorab, Robabeh Haghuo (residents of Camp Liberty)

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 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

3. According to the source, for over 25 years, the members of the Iranian group known as the People's Mujahedin Organization of Iran (PMOI), also known as the Mujahedin-e Khalq (MEK), have legally lived in Iraq, in accordance with the laws of Iraq, at Camp Ashraf. In 2003, as part of Operation Iraqi Freedom, Coalition Forces took control of Camp Ashraf and subsequently designated all the members of the PMOI as protected persons under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention). On 1 January 2009, control of Camp Ashraf was transferred to the Government of Iraq as part of the United States of America–Iraq Status of Forces Agreement. From this point onwards, the safety and well-being of the residents at the camp deteriorated.

4. It was alleged that once in control of Camp Ashraf, the Government began to block the free flow of food, maintenance and medical supplies, and denied the camp residents freedom of movement in and out of Camp Ashraf and access to their lawyers. In 2009 and 2011, Iraqi security forces carried out two unprovoked attacks on Camp Ashraf, resulting in dozens of deaths and injuries among the camp residents. The Government then declared its intention to close Camp Ashraf by the end of 2011, threatening to *refouler* the camp residents to the Islamic Republic of Iran.

5. This series of events resulted in the Office of the United Nations High Commissioner for Refugees (UNHCR) declaring the camp residents to be asylum seekers on 13 September 2011, having committed to working with the Government of Iraq to extend the State's deadline for Camp Ashraf's closure. On 25 December 2011, the United Nations and the Government of Iraq signed a Memorandum of Understanding that provided for the voluntary and safe transfer of Camp Ashraf residents to Camp Liberty, at which point their identities would be confirmed and their refugee status would be determined, and then they could voluntarily resettle in third countries. As part of this process, the Memorandum of Understanding states that the Government of Iraq will ensure that Camp Liberty meets humanitarian and human rights standards, has proper infrastructure and accommodation facilities, and allows for camp residents to work with outside vendors for the provision of life support and utilities.

6. On 18 February 2012, the first group of camp residents was transferred from Camp Ashraf to Camp Liberty. The residents immediately discovered that the conditions at Camp Liberty fell short of what they expected and what is required under the Memorandum of Understanding and international law. The residents lacked prompt access to medical treatment; adequate housing space, water, sanitation, electricity and cooling mechanisms; proper facilities for the disabled; the opportunity to receive visits from family, friends and supporters; and the means to communicate regularly and freely with the outside world. In addition, they soon learned that they would be prohibited from leaving Camp Liberty, in

alleged violation of their rights as asylum seekers. The source states that while the residents of Camp Ashraf were also detained illegally from 2009, they were at least in a safe environment with proper infrastructure, which they had built over the course of more than 25 years of living there. At Camp Liberty, the first group learned that they had been moved to a small prison under harsh conditions.

7. Moreover, the camp residents found their due process rights being violated because their detention has never been authorized by law; their lawyers are prohibited from entering Camp Liberty and thus are unable to communicate and consult with camp residents; there is no grievance mechanism or complaints procedure to address their conditions; and the residents are unable to challenge their detention in a court of law.

8. As at 27 May 2012, approximately 781 of the almost 2,000 residents of Camp Liberty had completed the verification process to re-establish their identity. Thus far, only 361 of the residents of Camp Liberty have been interviewed by UNHCR. Since arrival at Camp Liberty on 18 February 2012, not a single individual has left for a third country.

9. On 13 September 2011, after receiving applications from all Ashraf residents for asylum, UNHCR declared the residents to be “asylum seekers under international law” which entitled them “to benefit from basic protection of their security and well-being”.¹ Furthermore, UNHCR stated that it would “work together with the Government of Iraq and the United Nations Assistance Mission for Iraq (UNAMI) and other concerned actors to identify a location [for asylum processing] that ensures the safety and respects the rights of all individual applicants”. As part of this, UNHCR also committed to “putting in place a process to consider these requests on an individual basis in a fair and efficient procedure”.

10. On 21 December 2011, Iraq agreed to extend its deadline for the Camp Ashraf closure to April 2012. On 25 December 2011, the United Nations and the Government of Iraq signed a Memorandum of Understanding aimed at securing a humanitarian and peaceful resolution for the residents of Camp Ashraf. The residents of Camp Ashraf were initially consulted as part of this process but an agreement was signed without them having been given the opportunity to review or approve the final text. In short, the Memorandum of Understanding allowed for the safe transfer of Camp Ashraf residents to Camp Liberty, at which point their refugee status would be determined before they voluntarily resettled in either the Islamic Republic of Iran or other third countries.

11. As at 1 June 2012, approximately 1,949 residents had been transferred from Camp Ashraf to Camp Liberty, 611 are women and 9 are under the age of 18. However, the conditions in the camp have not met the expectations of Ashraf residents, the requirements set out in the Memorandum of Understanding, or relevant provisions of international law. Camp Liberty is 658,000 square metres in size, which is significantly smaller than Camp Ashraf. Residents are living in housing units that contain six people per unit. Each unit is approximately 12 metres by 3.6 metres (43 square metres) – about 7.2 square metres per person.

12. Prior to moving from one camp to the other, Camp Ashraf residents demanded a commitment that no Iraqi police would remain inside Camp Liberty, given the prior attacks on Camp Ashraf by Iraqi security forces. The residents report, however, that there exist several police posts inside the camp, with a 24-hour presence by 150 police guards armed with heavy machine guns. The residents also report that Camp Liberty is significantly smaller than they were told it would be. Men and women are living in separate living quarters. However, the Iraqi forces have encroached 70 metres into the female section of Camp Liberty

¹ UNHCR, “Camp New Iraq (formerly Camp Ashraf) residents and the determination of their refugee status claims”, 13 September 2011. Available from www.unhcr.org/refworld/docid/4e857b3b2.html.

and settled there. This has caused tension and is a source of harassment for the women in the camp. The female residents of the camp have repeatedly, both in writing and verbally, protested against this situation to UNAMI.

13. Additionally, camp residents have reported circumstances that directly violate conditions set out in the Memorandum of Understanding. They report major inadequacies in camp conditions, including problems with drinking water and electricity, the lack of a proper sewage system, and that they are being denied free movement and access to medical services. As such, residents report that Camp Liberty is a prison rather than a temporary transit location. The provision of water and electricity are of particular concern. Because Camp Liberty is not connected to a central water source, the residents must procure their water from outside tanker trucks and from a broken internal water system.

14. The private companies bringing water to the camp, however, are faced with numerous impediments by the Iraqi security forces and are frequently prohibited from entering. Moreover, due to obstructions by the Government of Iraq, the residents of Camp Liberty have been unable to transfer their lift trucks and mechanical material needed to carry out repairs and unload supplies for daily living. The residents must purchase their food from outside contractors who face challenges getting the food into Camp Liberty. In some cases, it is reported that the Iraqis prohibit the food from being delivered, in other cases the Iraqi police threaten the drivers of the contractors, or the food is held outside for days and is no longer suitable for consumption.

15. Reliable and accessible electricity is also in short supply. Generators deliver all the power, as Camp Liberty is not connected to Baghdad's power grid. This supply problem is exacerbated by high fuel needs and costs.

16. Access to medical care, while available, is not prompt. There is a medical centre in Camp Liberty's vicinity, but those with serious medical problems must be taken to an outside hospital. There are delays of hours, and in some cases days, to transfer those who are seriously ill to a hospital.

17. Moreover, residents are prohibited from leaving the camp, which amounts to a denial of freedom of movement.

18. In the source's view, in addition to these challenging conditions, there are serious due process violations. The Government has prohibited all lawyers from obtaining access to the camp; the Iraqi lawyers representing the residents who have gone to the camp entrance have been threatened and turned away.

19. According to the source, the deprivation of the camp residents' freedom falls within category IV of the Working Group's classification of cases because they are asylum seekers subjected to prolonged detention without the possibility of administrative or judicial review or remedy. Specifically, the detention of the residents results from the deprivation of freedoms under the International Covenant on Civil and Political Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), and the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules). In addition, the deprivation of freedom amounts to violations of the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and the Working Group on Arbitrary Detention's Deliberation No. 5 concerning the situation of immigrants and asylum seekers (E/CN.4/2000/4, annex II).

20. The source adds that this is a straightforward situation in which the camp residents are asylum seekers who are being held arbitrarily in violation of their due process rights and the conditions under which they are being detained are in breach of minimum standards recognized under international law.

21. The source requests the Working Group to extend its prior opinion regarding the detention of 10 residents of Camp Liberty (opinion No. 16/2012) to all the residents of Camp Liberty and Camp Ashraf, in toto, as their situation is either identical to or fundamentally the same as that addressed in the opinion. In that opinion, the Working Group found the detention of the 10 camp residents to be in contravention of the obligations of Iraq under articles 9, paragraph 1, and 10, paragraph 1, of the International Covenant on Civil and Political Rights, and article 9 of the Universal Declaration of Human Rights, falling under category IV of the categories applicable to cases submitted to the Working Group for consideration.

22. The source adds that, as asylum seekers, the camp residents must be afforded protection under Covenant article 9, paragraph 1. However, for the following reasons they should be considered as being detained arbitrarily in violation of article 9, paragraph 1:

- First, their detention has not been authorized by domestic law. At no time has the Government issued legal documents authorizing the detention. Even if it had, such detention would be inconsistent with international law because, as discussed below, this would engender other human rights violations and thus would be in contravention of article 9;
- Second, the detention is both unreasonable and unnecessary. The camp residents pose no flight risk and have committed no crime. As demonstrated by their stay of over 25 years in Iraq, the camp residents are perfectly able and willing to live in Iraq in conditions similar to those found previously at Camp Ashraf before the Coalition Forces' invasion of Iraq while their asylum claims are processed. Moreover, there is no indication that the Government of Iraq has considered a less invasive means of detention;
- Third, there has been no judicial or periodic review of the detention. Even if Iraq had given legal justification for the initial detention, such authorization would now be immaterial, because for 42 months there has been no periodic judicial review of the camp residents' detention;
- Finally, Camp Liberty contains no grievance procedure or complaint mechanism, making it impossible for the residents to challenge their detention. As such, the camp residents are being detained arbitrarily.

23. The first camp residents legally entered Iraq 26 years ago and have since lived in the country in compliance with its laws. On 13 September 2011, UNHCR declared all camp residents to be asylum seekers. For these two reasons, the camp residents are considered to be "lawfully within the territory" of Iraq and thus afforded additional protection under article 12, paragraph 1, of the International Covenant on Civil and Political Rights. Moreover, the Government of Iraq has had full control of camp residents since re-acquiring control of Camp Ashraf from the United States on 1 January 2009. The Government has never provided any justification as to why such a process could only take place in the context of the camp residents' ongoing detention. Because the residents are prohibited from leaving Camp Liberty, the source submits that their right to freedom of movement under article 12, paragraph 1, is being violated.

24. According to the source, the conditions in both camps are in breach of the due process protections of the Body of Principles and the Standard Minimum Rules. Additional violations exist under the Body of Principles, namely, principles 17, paragraph 1, and 18, paragraphs 1 and 2, because the camp residents' counsels are prohibited from entering Camp Liberty, thus denying the residents the possibility to communicate and consult with them. The camp residents are also unable to challenge their detention in a court of law, in violation of principles 11 and 32.

25. The deprivation of the camp residents' freedom further violates the guarantees under Deliberation No. 5 of the Working Group. Where the Working Group determines whether the custody of an asylum seeker is arbitrary, there is also an assessment of whether certain due process guarantees contained in Deliberation No. 5 have been met. Asylum seekers in custody should be brought before a judicial authority.

26. In the source's view, residents are not permitted to leave Camp Ashraf or Camp Liberty, which constitutes detention. Established alternatives have not been considered by the Government of Iraq.

27. The source submits that these persons are being held in detention arbitrarily. They are being denied freedom of movement in violation of the International Covenant on Civil and Political Rights. Their detention conditions violate the Covenant, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Standard Minimum Rules for the Treatment of Prisoners.

Response from the Government

28. The Working Group regrets that the Government did not respond to the allegations transmitted by the Group within 60 days, in accordance with paragraph 15 of the Working Group's methods of work.

29. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render its opinion on the detention of the 20 persons subject to this case, in conformity with paragraph 16 of its methods of work.

Discussion

30. In its previous opinion concerning Camp Liberty, the Working Group found that conditions in Camp Liberty "are synonymous with those in a detention centre, as residents have no freedom of movement, nor interaction with the outside world, nor do they have freedom of movement and the semblance of a free life within the Camp. The situation of the residents of Camp Liberty is tantamount to that of detainees or prisoners" (opinion No. 16/2012, para. 16). The Working Group also considered that "there is no legal justification for holding the ... individuals in Camp Liberty, and that such detention is not in conformity with the standards and principles of international human rights law, and more specifically violates article 9 of the Universal Declaration of Human Rights and articles 9 and 10 of the International Covenant on Civil and Political Rights" (ibid., para. 17).

31. The Working Group reaffirms this rationale and considers that the same applies to the residents of Camp Ashraf. The Government chose not to rebut the fact that the 20 residents of the two camps, on whose behalf the communication was submitted, are prohibited from leaving the camp and deprived of the opportunity to receive visits from family, friends, and supporters, and that the means to communicate regularly and freely with the outside world is restricted. Indeed, the residents of both Camp Liberty and Camp Ashraf are effectively deprived of their liberty without any legal justification.

32. The residents of camps who have submitted requests for refugee status are formally asylum seekers under international law.²

33. The Working Group recalls that in its resolution 1997/50, the Commission on Human Rights requested the Working Group to devote all necessary attention to reports concerning

² See, for instance, UNHCR, "UNHCR calls for cooperation and solidarity amid efforts to find solutions for the residents of Camp 'New Iraq'", press release of 26 July 2012. Available from www.unhcr.org/501135259.html.

the situation of asylum seekers allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy.

34. The Working Group reiterates that in order to determine the arbitrary character or otherwise of the custody of an asylum seeker, it considers whether or not the person is able to enjoy, inter alia, the following guarantees: (a) to be entitled to have the decision involving administrative custody reviewed by a higher court or an equivalent competent, independent and impartial body; (b) to have the possibility of communicating by an effective medium, such as the telephone, fax or e-mail, from the place of custody, in particular with a lawyer and relatives; (c) to be assisted by counsel, both through visits in the place of custody and at any hearing; and (d) to have the possibility to benefit from alternatives to administrative custody.³

35. In the case under consideration, none of the aforementioned guarantees are met by the authorities, which leads the Working Group to conclude that the custody of these individuals is arbitrary, and specifically in violation of article 9 of the Universal Declaration of Human Rights and articles 9 and 10 of the International Covenant on Civil and Political Rights.

Disposition

36. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Mehdi Abedi, Akram Abedini, Bahman Abedy, Aliasghar Babakan, Mohammad Reza Bagherzadeh, Sahar Bayat, Fatemeh Effati, Farhad Eshraghi, Maryam Eslami, Manijeh Farmany (residents of Camp Ashraf); and Asghar Abzari, Ali Reza Arab Najafi, Homaun Dayhim, Fatemeh Faghihi, Zahra Faiazi, Ahmad Fakhr-Attar, Effat Fattahi Massom, Jafar Ghanbari, Habib Ghorab, Robabeh Haghighi (residents of Camp Liberty) is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and articles 9, paragraph 1, and 10, paragraph 1, of the International Covenant on Civil and Political Rights, falling within category IV of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

37. As a result of the opinion rendered, the Working Group requests the Government of Iraq to take all necessary steps to remedy the situation of these 20 persons and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

38. The Working Group considers that, taking into account all the circumstances of the case, an adequate remedy would be the immediate release of and lifting of all restraints upon the free movement of these persons, and provision to them of the enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

39. The Working Group urges the Government to consider alternatives to the detention of the asylum seekers in Camp Ashraf and Camp Liberty.

40. In accordance with article 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations concerning conditions in Camp Ashraf and Camp Liberty to the relevant human rights mechanisms for appropriate action.

[Adopted on 30 August 2012]

³ Report of the Working Group on Arbitrary Detention (E/CN.4/1999/63), para. 69.