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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

#### Opinion No. 7/2017 concerning Kamal Foroughi (Islamic Republic of Iran)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 20 January 2017 the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Kamal Foroughi. 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).



## Submissions

### *Communication from the source*

4. Kamal Foroughi is a 77-year-old dual Iranian-British citizen. Mr. Foroughi grew up, attended university and subsequently worked in Tehran. He moved to London in the late 1970s and became a British citizen in the 1980s. Since the early 1990s, he has been living both in the Islamic Republic of Iran and in the United Kingdom of Great Britain and Northern Ireland. Since 2004 and prior to his detention, he had been working as an oil consultant for PETRONAS, the national oil corporation of Malaysia.

5. According to the source, on the afternoon of 5 May 2011, Mr. Foroughi was arrested by five plain-clothes individuals at his home in Tehran. These individuals claimed to be *Entezami* (law enforcement) officials. Mr. Foroughi was told that if he had done nothing wrong, he would soon be released. He was then told by the officials to follow them to a car, which took them to Evin Prison in Tehran. He was not shown any arrest warrant and was not given reasons for the arrest or informed of any charge against him.

6. The source alleges that the authorities did not inform Mr. Foroughi's family members of his arrest, and that they only became aware of it two weeks later. No official information about the arrest was provided to his family. Although members of his immediate family were granted permission by a judge to visit him once a month, they were only authorized by the Evin Prison authorities to visit him twice before they left the Islamic Republic of Iran for the United Kingdom in November 2011. During those visits, Mr. Foroughi told his family that he was being investigated, but that he had not been charged with any crime. He did not say what the authorities were investigating. On several other occasions, his family spent all day in the prison waiting to visit him, only to be told that they would be unable to do so.

7. The source also advises that Mr. Foroughi has remained in Evin Prison since his arrest on 5 May 2011. He spent over 18 months in solitary confinement, from 5 May 2011 until the end of 2012. In May 2012, about a year after his arrest, he was first informed that he would be charged, but not what the charges were or why he would be charged. It took until January 2013 for him to be charged and for any processes relating to the trial to commence.

8. From 5 May 2011 to the end of 2012, apart from the two visits by his immediate family in Tehran, the only other person Mr. Foroughi saw was his lawyer. Mr. Foroughi was allowed to meet with his lawyer once in about April 2012. His lawyer confirmed that he did not have access to information about the charges or evidence against Mr. Foroughi. Furthermore, Mr. Foroughi was not allowed to receive or make international calls or to write or receive correspondence.

9. During the period from January to March 2013, Mr. Foroughi was taken to be questioned directly by a judge at closed sessions of the Revolutionary Court, with no public access and no jury. Mr. Foroughi's lawyer was only with him during his first appearance in court, when the lawyer explained the charges — which were espionage and possession of alcohol. The source alleges that the authorities never provided any evidence or explanation about the espionage charge. While Mr. Foroughi admitted to having alcohol at his residence, he denied the espionage charge. During his other appearances before the Revolutionary Court, Mr. Foroughi was without his lawyer. According to the source, there was no prosecutor or stenographer present, and there is no paperwork documenting this trial. Since the conclusion of Mr. Foroughi's trial in March 2013, his lawyer has only been allowed to see him sporadically, the most recent visit having taken place on 21 December 2016.

10. In April 2013, Mr. Foroughi was sentenced to eight years' imprisonment for espionage and to three years' imprisonment for possession of alcohol. Following an appeal process, the sentence was reduced in August 2013 to seven years and one year, respectively. The source states that the authorities have never confirmed whether the sentences are to run consecutively or concurrently, and nor have they confirmed the start date of the sentence. There is no paperwork relating to the appeal process, apart from a written confirmation that the sentences were reduced.

11. The source adds that, according to Mr. Foroughi's lawyer, under the criminal procedure laws, the start date for the sentence should be the day on which Mr. Foroughi was taken into custody, namely 5 May 2011. His lawyer also indicated that Mr. Foroughi should only serve seven years in prison, as the sentence for possession of alcohol should run concurrently. A letter sent by fax by the Evin Prison authorities on 11 December 2013 confirmed the above-mentioned two charges and the length of sentence post-appeal, with the start date being 5 May 2011. However, the details in the fax suggest that the sentence is eight years in length, ending in May 2019 rather than May 2018.

12. On 3 October 2014, the Working Group sent an urgent appeal to the Government, expressing serious concern regarding Mr. Foroughi's continued detention, and regarding the allegations that he had been detained for several months without any charge or trial. The Working Group noted that, even after having been charged, Mr. Foroughi was not able to grasp the reason for his detention and trial, and no evidence was brought against him. Grave concern was also expressed regarding Mr. Foroughi's physical and mental integrity.

13. On 9 June 2015, the Government replied to the Working Group, stating that Mr. Foroughi had been arrested and prosecuted on charges of espionage and of "assembling and complicity against national security". The Government observed that, after exhausting due process and hearings, Mr. Foroughi was sentenced to 11 years of imprisonment for his offences. Mr. Foroughi appealed the verdict. The Tehran Province Appeal Court reviewed the case and reaffirmed the verdict, except in regard to the charge of "assembling and complicity against national security", and as a result the sentence was reduced to eight years. The Government also noted that Mr. Foroughi had access to adequate medical care and to all the prison facilities, like other prisoners.

14. According to the source, during a meeting on 13 November 2015 at the Embassy of the Islamic Republic of Iran in London, the Iranian authorities indicated to Mr. Foroughi's family that he had been charged and then found not guilty in 2012 of "assembling and complicity against national security", in a trial separate to his 2013 trial. However, the source questions whether Mr. Foroughi and his lawyer had access to this trial in 2012 and whether they are aware of this development.

15. Since his detention, Mr. Foroughi has complained of memory loss and back pain. He is also very concerned about the possibility of having developed prostate cancer. Between December 2014 and October 2015, Mr. Foroughi was taken to an outside hospital for tests. However, no one was available to perform the tests. The source notes that, given his advanced age, Mr. Foroughi requires regular preventative medical care to minimize the increased risk of his health deteriorating.

16. Mr. Foroughi's family has repeatedly approached the Iranian authorities through diplomatic channels to request that medical tests be performed to assess whether Mr. Foroughi is suffering from prostate cancer or has developed an increased risk of the disease, since he had been warned about that risk by his doctor prior to his detention. As far as Mr. Foroughi's family is aware, those tests have not yet been performed.

17. According to the source, Mr. Foroughi only had two proper medical examinations in a civilian hospital during five years of detention, on 17 November 2015 and on 30 May 2016. No paperwork of the results was made available following the first medical examination, although Mr. Foroughi was told by doctors that he was in good health. In March 2016, Mr. Foroughi's doctor in London wrote a letter "to whom it may concern" expressing concern over the lack of information about the medical examination performed in November 2015 and its results. Some results were made available after the second medical examination in May 2016. However the records were incomplete, as a number of standard and cancer-specific tests were missing. It is not clear whether those tests were conducted and the results withheld, or the tests were never conducted.

18. Mr. Foroughi's family also wrote three letters to the Head of the Human Rights Council of the Judiciary in the Islamic Republic of Iran, dated 23 March 2016, 2 April 2016 and 21 July 2016, raising their concerns about Mr. Foroughi's health. The letter dated 2 April 2016 included a copy of the correspondence referred to above from Mr. Foroughi's doctor in London. In the letter of July 2016, Mr. Foroughi's family referred to the second

medical examination but noted that the results were incomplete. Mr. Foroughi's family did not receive a reply from the Iranian authorities to any of these three letters.

19. In early September 2016, Mr. Foroughi was told that he had cataracts in both eyes which required surgery to prevent blindness. The source notes that cataracts were not diagnosed during the medical examinations conducted in November 2015 and May 2016.

20. On 5 December 2016, Mr. Foroughi was taken for further tests. On 6 December 2016, he had a meeting with a doctor at the Legal Medical Organization in Tehran, where he was told he needed cataract surgery. On 1 January 2017, he was taken to hospital for several hours and given a range of tests, presumably as part of a general check-up. No specific tests were carried out on his cataracts, and the need for cataract surgery was not discussed further.

21. The source advises that Mr. Foroughi's lawyer has filed over 50 applications for his release, without receiving a formal response from the authorities. These applications fall into three categories: (a) temporary furlough (*morakhasi*), which is standard practice to allow prisoners to organize their affairs and get fuller medical treatment; (b) conditional release (*aazaadieh mashroot*), which prisoners are eligible for after having served a third of their sentence, provided that the sentence is less than 10 years' imprisonment; and (c) full pardon or clemency (*af*) granted by the Supreme Leader.

22. Mr. Foroughi's family wrote several letters to the President requesting clemency, as well as to the Supreme Leader and to the Head of the Judiciary. There has been no response to these letters. In April 2016, Mr. Foroughi's lawyer was informed that Mr. Foroughi would be granted clemency as part of *Norooz* (New Year) celebrations. The authorities also indicated in late July 2016 that Mr. Foroughi would be released on 2 August 2016. However, Mr. Foroughi remains in detention at Evin Prison. He has now been in detention for nearly six years since his arrest on 5 May 2011, despite several indications that his release was imminent.

23. The source advises that Mr. Foroughi receives no visitors, as all his close family members live in the United Kingdom. Mr. Foroughi was not allowed to call his family in the United Kingdom for three years after his arrest. He was allowed to make the first call in May 2014. The calls have to be in Farsi, which severely limits his ability to have a meaningful relationship with his family members in the United Kingdom, who speak limited Farsi or do not speak it at all.

24. On 16 September 2016, several special procedure mandate holders<sup>1</sup> issued an urgent appeal restating many of the concerns that had been expressed in regard to Mr. Foroughi's case in the previous urgent appeal of 3 October 2014. In particular, the mandate holders expressed serious concern about the alleged arbitrary arrest and detention of Mr. Foroughi, about his reported alarmingly poor health condition while in prison, which required urgent and adequate medical attention, and about his lack of access to a lawyer. The Government has not replied to that communication.

25. The source submits that Mr. Foroughi's deprivation of liberty falls under categories I, II and III of the categories applied by the Working Group. The source alleges that the Iranian authorities have subjected Mr. Foroughi to arbitrary deprivation of liberty, and unfair trial and treatment in violation of articles 7, 9, 10, 14 and 26 of the Covenant as well as the standards enshrined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

26. In relation to category I, the source submits that:

(a) Under the Iranian Criminal Code of Procedure for Public and Revolutionary Courts, competent authorities may issue arrest orders upon receiving sufficient evidence against a person accused of a crime. International standards similarly require that all forms

<sup>1</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran.

of detention or imprisonment must be subject to the effective control of a judicial authority. The authorities have not complied with these provisions and standards, and there is no evidence that Mr. Foroughi's arrest was based on an arrest warrant or judicial order.

(b) When Mr. Foroughi was arrested on 5 May 2011, the Iranian authorities did not give any reason or grounds for his arrest and detention. It was in May 2012, a year after he was arrested, that he was first informed that he would be charged. However, he was not informed about the nature of the charges or about why he would be charged. It took until January 2013 for the legal process relating to Mr. Foroughi's arrest and detention to commence, and only at that point was his lawyer provided with sufficient information to be able to explain the charges. There were therefore no grounds for arresting and detaining Mr. Foroughi for over 18 months from 5 May 2011 to December 2012. Mr. Foroughi's right to be informed of the reason for his arrest and of the charges against him, as provided for in article 9 (2) of the Covenant, was not respected.

(c) During the initial 18 months of his detention, Mr. Foroughi was held incommunicado and in solitary confinement. This violated international standards, which require that detainees must be held only in facilities where official registries, both of the detainees and of the officials responsible, are accessible to doctors, lawyers, relatives and friends. Mr. Foroughi's family was never officially informed of his arrest. It was only in May 2014, three years after his arrest, that he was allowed to make his first call to his family in the United Kingdom. Proper procedures were not followed in relation to his arrest and detention, and his arrest and detention were unlawful according to relevant Iranian legal provisions and according to article 9 (3) of the Covenant.

(d) There is no evidence to suggest that the officials arresting Mr. Foroughi informed him about his right of access to legal counsel, and he was not given access to a lawyer for a prolonged period of time. Mr. Foroughi was interrogated on an unknown number of occasions between his arrest on 5 May 2011 and first seeing his lawyer in April 2012. The Iranian authorities failed to provide Mr. Foroughi with access to legal counsel, contrary to article 128 of the country's Code of Criminal Procedure and article 35 of the Constitution, and also contrary to international norms.

(e) Mr. Foroughi was not brought before a judge until January 2013. Neither he nor his family had an opportunity to challenge the lawfulness of his arrest and detention. For one year, from May 2011 to May 2012, neither Mr. Foroughi nor his family was given any indication as to whether he would be tried for any offence. Given that pretrial detention must be based on an individualized determination of whether the detention is reasonable and necessary in all the circumstances to prevent flight, interference with evidence or the recurrence of a crime, the authorities breached articles 9 (3) and (4) of the Covenant.

27. In relation to category II, the source notes that deprivation of liberty is considered arbitrary when it results from the exercise of the rights and freedoms protected by article 26 of the Covenant, which prohibits discrimination on any ground. The source argues that the fact that no evidence of espionage is known to have been presented during Mr. Foroughi's court appearances suggests that he has been targeted for other reasons, such as his dual Iranian and British nationality. The source concludes that Mr. Foroughi's continued detention on the basis of his national or social origin is discriminatory and therefore arbitrary.

28. In relation to category III, the source submits that Mr. Foroughi suffered serious violations of his right under article 14 of the Covenant to a fair trial:

(a) Mr. Foroughi was not brought before any tribunal or court of law for more than 18 months after his arrest, and he was kept in a state of uncertainty over a long period. There is no record of any evidence having been presented, and no paperwork relating to his proceedings. No evidence or explanation has ever been made available by the Iranian authorities about the espionage charge;

(b) The appeal process was conducted without Mr. Foroughi being able to access his lawyer, whom he saw on limited occasions after March 2013. There is no paperwork, nor any records, relating to the appeal, apart from the Government's reference to those proceedings in its reply to the urgent appeal by the Working Group. There are also

indications that Mr. Foroughi was the subject of other legal proceedings in 2012, of which neither he nor his lawyer were aware at the time, relating to “assembling and conspiracy against national security”;

(c) Notwithstanding the limited access to information about the authorities’ treatment of Mr. Foroughi, sufficient information exists to suggest that they subjected Mr. Foroughi to ill-treatment. Mr. Foroughi endured over 18 months of solitary confinement, which actively impeded his right to the highest attainable standard of physical and mental health. His treatment violated the Iranian Operational Guidelines for Temporary Detention Centres, of 2006, the United Nations Standard Minimum Rules for the Treatment of Prisoners, of 2015, and article 7 of the Covenant. Mr. Foroughi also faces ongoing risks of ill-treatment. While the actual state of Mr. Foroughi’s health is unknown, there are clear grounds for serious concern, given his age, the risk of prostate cancer that he faced even before his detention, and recent reports that he is facing blindness if he does not have cataract surgery.

#### *Response from the Government*

29. On 20 January 2017, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 20 March 2017 about the current situation of Mr. Foroughi, as well as any comment that the Government may have on the source’s allegations. The Working Group also requested the Government to clarify the factual and legal grounds invoked by the authorities to justify his continued detention, and to provide details regarding the conformity of his deprivation of liberty and apparent lack of fair judicial proceedings with domestic legislation and with international human rights norms, including with the legal obligations of the Government under human rights treaties that it has ratified.

30. The Working Group regrets that it did not receive a response from the Government to the communication that it had sent. The Government did not request an extension to the time limit for its reply, as is 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 requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

33. There is also a substantial body of reliable information which supports the source’s claims, including the urgent appeals (referred to above) sent to the Government by the Working Group and by other special procedure mandate holders. In those communications, concerns relating to Mr. Foroughi’s alleged arbitrary arrest and deprivation of liberty have been repeatedly raised with the Government. Moreover, Mr. Foroughi’s case was considered so serious as to warrant a press release endorsed by several special procedure mandate holders in October 2016 calling on the Government to immediately release dual nationals, including Mr. Foroughi, and to allow them to be reunited with their families:

Arbitrarily depriving individuals of their liberty and violating their right to fair proceedings before an independent and impartial tribunal are flagrant violations of Iran’s obligations under international law ... I am concerned about the ailing health of ... Mr. Foroughi, which has been complicated as a result of (his) age.<sup>2</sup>

<sup>2</sup> The appeal, made by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, was endorsed by the Special Rapporteur on the right of everyone to the enjoyment of the

34. Similarly, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran reported the facts in relation to Mr. Foroughi's case in his March 2016 report in the context of persons who have been arrested and detained and continue to experience gross violations of their due process and fair trial rights, especially those who have been accused of violating the country's national security.<sup>3</sup>

35. In relation to the source's allegations, the Working Group considers that there have been several violations of article 9 of the Covenant in the present case. Article 9 (1) requires States to ensure that procedures for carrying out deprivation of liberty are established by law and are followed: which includes specifying which officials are authorized to arrest, when a warrant is required, where individuals may be detained, and when authorization to continue detention must be obtained from a judge.<sup>4</sup> In the present case, the source alleged that no warrant had been presented at the time of Mr. Foroughi's arrest, contrary to the Iranian Criminal Code of Procedure for Public and Revolutionary Courts. The Government could have, but did not, rebut this allegation by providing a copy of any arrest warrant or judicial order issued under Iranian law.

36. Furthermore, Mr. Foroughi was not informed of the reasons for his arrest, nor was he promptly informed of the charges against him, contrary to article 9 (2) of the Covenant. Over 18 months elapsed between Mr. Foroughi's arrest on 5 May 2011 and the beginning of a trial against him in January 2013, when he finally learned that he was charged with espionage and possession of alcohol.

37. The authorities also failed to promptly bring Mr. Foroughi before a judge, as is required under article 9 (3) of the Covenant, as over 18 months passed before he was brought to trial, in January 2013. In addition, during that period, neither Mr. Foroughi nor his family had an opportunity to challenge the lawfulness of his arrest and detention, as is required under article 9 (4) of the Covenant. Mr. Foroughi was held incommunicado and in solitary confinement for over 18 months, he had limited communication with his family, and he had no access to a lawyer until April 2012, and therefore had no accessible and effective means of bringing proceedings before a court. As the Working Group has recently restated in its Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37):

National legal systems at the highest possible level, including, where applicable, in the Constitution, must guarantee the right to take proceedings before a court to challenge the arbitrariness and lawfulness of detention and to receive without delay appropriate and accessible remedies. A comprehensive set of applicable procedures shall be enacted to ensure that the right is accessible and effective, including the provision of procedural and reasonable accommodation, for all persons in all situations of deprivation of liberty ... (principle 2).

The right to bring proceedings before a court without delay to challenge the arbitrariness and lawfulness of the deprivation of liberty and to obtain without delay appropriate and accessible remedies applies from the moment of apprehension ... (principle 8).

Procedures shall allow anyone to bring proceedings before a court to challenge the arbitrariness and lawfulness of the deprivation of liberty and to obtain without delay appropriate and accessible remedies, including the detainee, his or her legal representative, family members or other interested parties ... No restrictions may be

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highest attainable standard of physical and mental health, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Chair-Rapporteur of the Working Group. The press release is dated 7 October 2016 and is available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20653&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20653&LangID=E).

<sup>3</sup> Supplementary information on the situation of human rights in the Islamic Republic of Iran, para. 45. See [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/ListReports.aspx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/ListReports.aspx).

<sup>4</sup> See Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 23.

imposed on the detainee's ability to contact his or her legal representative, family members or other interested parties (principle 10).

38. In the present case, there was no warrant for Mr. Foroughi's arrest, he was not promptly informed of the charges against him, he was not promptly brought before a court to assess the lawfulness, necessity and proportionality of his detention and he could not initiate such proceedings himself. Thus, the Working Group considers that there was no legal basis to justify the arrest and detention of Mr. Foroughi, and that his deprivation of liberty falls within category I of the categories applied by the Working Group.

39. Furthermore, the Working Group considers that the source has established a *prima facie* case that the arrest and detention of Mr. Foroughi was motivated by a discriminatory factor, namely his status as a dual Iranian-British national. The Working Group has made findings of arbitrary detention with respect to several cases involving dual nationals (see, for example, opinions Nos. 28/2016, 44/2015 and 18/2013). In its recent opinion No. 28/2016, which also concerned a dual Iranian-British national, the Working Group stated its view that there was an emerging pattern involving the arbitrary deprivation of liberty of dual nationals in the Islamic Republic of Iran.

40. In the present case, there is no evidence that Mr. Foroughi had a criminal record, including in relation to national security offences. There is also nothing to indicate that his movements between the Islamic Republic of Iran and the United Kingdom since the early 1990s were for any purpose other than legitimate business and family reasons. As the source points out, and the Government has not contested, no evidence of espionage is known to have been presented during Mr. Foroughi's court appearances. This suggests that Mr. Foroughi was targeted for other reasons, including on the basis of his "national or social origin" as a dual national, similarly to the recent pattern of detaining dual nationals on national security charges. Moreover, despite knowing that Mr. Foroughi is a dual national who has a family in the United Kingdom, the Iranian authorities have insisted that he speak only in Farsi when communicating with his family. This requirement is further indicative of the discriminatory attitude adopted by the Iranian authorities in relation to dual nationals. Accordingly, the Working Group considers that there is a sufficient basis to conclude that Mr. Foroughi has been arbitrarily deprived of his liberty according to category V because of discrimination against him as a dual national.

41. The Working Group also considers that the source's allegations disclose violations of Mr. Foroughi's right to a fair trial under articles 9, 10 and 11 of the Universal Declaration of Human Rights and article 14 of the Covenant. Specifically, Mr. Foroughi was denied the following rights:

(a) The right to be informed promptly of the charges against him, under article 14 (3) (a) of the Covenant, and to be tried without undue delay, under article 14 (3) (c) of the Covenant. There was a delay of over 18 months before Mr. Foroughi learned of the charges against him when he was finally brought to trial in January 2013. There was never any explanation of what appears to be a vague and overly broad charge of "espionage";

(b) The right to a fair and public hearing by a competent, independent and impartial tribunal established by law, under article 14 (1) of the Covenant. Mr. Foroughi's trial consisted of closed sessions of the Revolutionary Court, with no public access, no other persons present (such as a prosecutor or stenographer) and no transcript documenting the trial;

(c) The right to legal representation, under article 14 (3) (b) and (d) of the Covenant. As noted above, Mr. Foroughi only met with his lawyer for the first time in April 2012, almost a year after his arrest. His lawyer was only present with him during his first appearance in court, but not during subsequent appearances. The absence of legal counsel at the trial in 2013 was serious, given that Mr. Foroughi was facing a charge of espionage and was sentenced at the trial to eight years' imprisonment on that charge;

(d) The right to be tried in his presence, under article 14 (3) (d) of the Covenant. As the source alleges, and the Government has not denied, Mr. Foroughi was the subject of other legal proceedings in 2012 relating to a charge of "assembling and complicity against national security". Given that the Government indicates in its response to the urgent appeal



of 3 October 2014 that this charge had been reviewed and overturned on appeal, it appears that Mr. Foroughi was tried and sentenced on this charge without his or his lawyer's knowledge;

(e) The right to have his conviction and sentence reviewed by a higher tribunal, under article 14 (5) of the Covenant. It is unlikely that the appeal provided to Mr. Foroughi, if there was one, met the standards set forth in article 14 (5). The appeal process was conducted without Mr. Foroughi being able to access his lawyer, whom he only saw on limited occasions after March 2013. There is no paperwork, nor any records, relating to the appeal. Moreover, as the Human Rights Committee has observed in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the right to an appeal can only be exercised effectively if the convicted person has access to a duly reasoned, written judgment of the trial court and trial transcript (para. 49), which was not the case here.

42. The Working Group notes that Mr. Foroughi was effectively held incommunicado (with only one visit from his lawyer and extremely limited family contact) and in prolonged solitary confinement for over 18 months prior to his trial. The detention of Mr. Foroughi under these circumstances violated international standards, including his right to have contact with the outside world and the prohibition of solitary confinement for longer than 15 consecutive days under rules 43, 44, 58 and 62 of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).<sup>5</sup> Over the last six years of his detention, Mr. Foroughi has had very limited communication with his family, as he was not permitted to communicate with family members in the United Kingdom for three years after his arrest and is now only allowed to speak with them in Farsi. These restrictions also violate the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principles 15, 16 and 19).

43. The Working Group therefore concludes that these violations of the right to a fair trial are of such gravity as to give Mr. Foroughi's deprivation of liberty an arbitrary character according to category III of the categories applied by the Working Group.

44. The Working Group wishes to record its grave concern about Mr. Foroughi's deteriorating health since his arrest and detention in May 2011. The Working Group is particularly concerned that Mr. Foroughi, a 77-year-old man facing significant health risks of prostate cancer and of blindness due to untreated cataracts, continues to be detained, having already endured prolonged solitary confinement. The risk of irreparable harm to Mr. Foroughi's health, including his death in prison, is heightened as a result of his ongoing detention. He is entirely dependent on the authorities at Evin Prison for medical tests and surgery to diagnose and treat these conditions, yet he continues to be denied adequate medical care. The Working Group considers that this treatment violates his right under article 10 (1) of the Covenant to be treated with humanity and respect for his inherent dignity. The Working Group has decided to refer this case to the relevant special procedures for further investigation (see paragraph 51 below), including whether article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant have also been violated.

45. The Working Group considers that there is no legitimate reason to continue to detain an elderly and unwell man who has already served nearly six years of a sentence imposed contrary to his human rights, and to deprive him of the opportunity to live the remainder of his life with his family. The Working Group calls upon the Government to immediately release Mr. Foroughi and to ensure that he receives the necessary medical attention after his release.

46. Finally, the Working Group would welcome the opportunity to conduct a country visit to the Islamic Republic of Iran so that it can engage with the Government constructively and offer assistance in addressing its serious concerns relating to the arbitrary deprivation of liberty. The Working Group considers that it is now an appropriate time to conduct such a visit, as a follow-up to its earlier visit to the Islamic Republic of Iran

<sup>5</sup> See General Assembly resolution 70/175.

in 2003. The Working Group notes that the Government issued a standing invitation to all thematic special procedure mandate holders on 24 July 2002, and looks forward to a positive response from the Government to a country visit request made in 2016.

### **Disposition**

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

The deprivation of liberty of Kamal Foroughi, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

48. The Working Group requests the Government to take the steps necessary to remedy the situation of Mr. Foroughi 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.

49. The Working Group considers that, taking into account all the circumstances of the case, especially the risk of irreparable harm to Mr. Foroughi's health and to his physical and mental integrity, the appropriate remedy would be to release Mr. Foroughi immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

51. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the allegations of ill-treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action. The Working Group also refers the case to the Independent Expert on the enjoyment of all human rights by older persons, for appropriate action.

### **Follow-up procedure**

52. 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. Foroughi has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to him;
- (c) Whether an investigation has been conducted into the violation of his 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.

53. 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.

54. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

55. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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>6</sup>

*[Adopted on 19 April 2017]*

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<sup>6</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.