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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 33/2019 concerning Golrokh Ebrahimi Iraee (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 33/30.
2. In accordance with its methods of work (A/HRC/36/38), on 29 March 2019, the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Golrokh Ebrahimi Iraee. The Government replied to the communication on 24 June 2019. The Islamic Republic of Iran 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. Golrokh Ebrahimi Iraee, born in or around 1980, is an Iranian accountant. She is the wife of the Iranian political activist Arash Sadeghi.¹ Her usual place of residence is Tehran.

Background information

5. According to the source, Mr. Sadeghi is a prominent critic of the Government of the Islamic Republic of Iran and the frequent target of politically motivated prosecution since joining the student protest movement about a decade ago. Mr. Sadeghi has been arrested and jailed on numerous occasions, sometimes for peaceful protest and criticism of the Government and sometimes for no stated reason. In 2012, the authorities arrested and reportedly tortured Mr. Sadeghi, seeking to force him to confess to having connections with political opposition groups. The source adds that the Government has a history of harassing Mr. Sadeghi's family members, including aggressive intimidation of both of his parents. In 2010, Mr. Sadeghi's mother suffered a heart attack when intelligence agents ransacked her house in the middle of the night. She died several days later.

Arrest and trial

6. The source reports that, on 6 September 2014, after Mr. Sadeghi had completed a previous prison term, Ms. Iraee went to visit him at his place of business. She found that the Islamic Revolutionary Guard Corps had come to arrest Mr. Sadeghi again. Despite having a warrant to arrest only Mr. Sadeghi, the agents detained Ms. Iraee and two friends who were present. Lacking a proper warrant, the agents brought Ms. Iraee and the others to a government safe house for interrogation before transferring them to Evin Prison in Tehran. The source alleges that the Islamic Revolutionary Guard Corps also ransacked the home of Mr. Sadeghi and Ms. Iraee, confiscating a variety of papers, disks and laptops. Over the next 20 days, the agents held Ms. Iraee without access to her family, her lawyer or a judge, repeatedly subjecting her to long periods of interrogation. She was frequently blindfolded and forced to listen to interrogators threatening and abusing Mr. Sadeghi in an adjacent cell. Ms. Iraee was finally granted access to her family and her lawyer on 27 September 2014 when a judge released her on bail.

7. According to the source, the agents focused their interrogation on Ms. Iraee's activity on a social media platform and on a fictional story that they found in Ms. Iraee's private journal. In the social media posts, Ms. Iraee indicated her support for an Iranian dissident and communicated with the families of certain Iranian prisoners of conscience. The short story featured a female character who watched the film *The Stoning of Soraya* (about a woman who was stoned to death for alleged adultery) and became so upset that she burned a copy of the *Qur'an*. Ms. Iraee's fictional story has never been published, online or otherwise, and the sole copy was handwritten in her private journal.

8. The source alleges that Ms. Iraee, Mr. Sadeghi and their two friends were brought to trial in May 2015. All of the proceedings were closed to the public. The source alleges that Ms. Iraee and Mr. Sadeghi attempted to secure legal counsel, but their first lawyer was pressured to drop their case, and the Government prevented their second lawyer from accessing their case file, presenting their defence, or representing Ms. Iraee or Mr. Sadeghi at trial. During the initial hearing in May, the judge reportedly asked Ms. Iraee why she had done what she did. When Ms. Iraee's second hearing was scheduled in July 2015, she requested an adjournment, as she was scheduled to have surgery on the same day. Although Ms. Iraee presented documentation relating to the surgery, the judge refused to reschedule the hearing and she was convicted in absentia.

9. Ms. Iraee was sentenced to one year of imprisonment for the charge of spreading propaganda (Islamic Penal Code, art. 500), based on the social media posts. She was sentenced to an additional five years' imprisonment for the charge of insulting the sanctity of Islam (art. 513), based on the unpublished short story. The source alleges that, on 22

¹ Mr. Sadeghi was the subject of opinion No. 19/2018.

December 2015, an appellate court confirmed the conviction and six-year prison sentence after a brief hearing that began with the judge reportedly telling Ms. Iraee that “if it were up to me, I would execute you”.

10. According to the source, after her conviction, Ms. Iraee requested a written summons. Since she never received it, she did not report to prison. On 24 October 2016, agents from the Islamic Revolutionary Guard Corps (and not the sentence implementation office) came to Ms. Iraee’s home, blindfolded and handcuffed her, and led her to a car in front of her building. When Ms. Iraee asked that she be allowed to retrieve her asthma medication, the officers refused and one officer reportedly told her that she would not need the medicine because she was going to die in prison. Ms. Iraee was brought to Evin Prison to begin her prison term, which Mr. Sadeghi protested through a two-month hunger strike.

11. On 3 January 2017, Ms. Iraee was released from prison while a further appeal was pending. On 22 January 2017, she was arrested once more and returned to Evin Prison. In March 2017, Ms. Iraee’s sentence was reduced to 30 months as part of a Nowruz (Iranian New Year) pardon. In July 2017, Ms. Iraee’s request for judicial review was rejected by the Supreme Court of the Islamic Republic of Iran.

Conditions of detention

12. The source reports that Ms. Iraee has encountered unconscionable conditions throughout her prison term. In July 2017, Ms. Iraee and a fellow political prisoner, Atena Daemi,² issued an open letter documenting the unsanitary conditions, lack of clean water, and absence of medical attention for female prisoners at Evin Prison, where Ms. Iraee was initially detained. The source alleges that, on 24 January 2018, guards beat Ms. Iraee and Ms. Daemi before sending them to Shahr-e Rey Prison in the city of Varamin, where prisoners are routinely denied their rights, including access to sufficient food and potable water. Ms. Iraee and Ms. Daemi were kept in a ward with non-political prisoners, including potentially violent offenders. Ms. Iraee suffers from severe asthma, but has frequently been denied medical care.

13. According to the source, Ms. Iraee began a hunger strike on 3 February 2018 to protest her mistreatment and transfer to Shahr-e Rey Prison. By March 2018, she had begun to experience significant health problems, including severe hypotension and weight loss. On 12 March 2018, the guards transferred several violent offenders into the unit that housed Ms. Iraee and Ms. Daemi. The source alleges that the transferred prisoners verbally and physically assaulted Ms. Iraee and Ms. Daemi, but the riot guards responded to the disturbance by beating both women.

14. In early April 2018, Ms. Iraee was transferred to hospital in a critical condition after experiencing severe nausea, vomiting and gallbladder issues. On 24 April 2018, after 81 days, Ms. Iraee ended her hunger strike. On 12 May 2018, she was transferred from Shahr-e Rey Prison to Evin Prison.

15. Ms. Iraee was the subject of three urgent appeals sent by several special procedure mandate holders on 31 January 2018 (IRN 3/2018), 23 March 2017 (IRN 9/2017) and 27 October 2016 (IRN 28/2016).³ The Working Group acknowledges the Government’s responses of 11 July 2017 and 29 December 2016.⁴

² Ms. Daemi was the subject of opinion No. 83/2018.

³ The urgent appeals are available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23611>;
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23034>;
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22820>.

⁴ The Government’s responses are available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33570>;
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33335>.

Legal analysis

16. The source submits that Ms. Iraee's detention is arbitrary according to categories II and III.

17. In relation to category II, the source submits that Ms. Iraee was arrested, detained and convicted for exercising her freedoms of thought, conscience and religion, expression, and association. While restrictions on these rights can apply under certain circumstances, such circumstances are entirely absent in this case.

18. The source argues that the authorities violated Ms. Iraee's freedom of thought, conscience and religion by convicting her of insulting the sanctity of Islam on the basis of a story she wrote in her private diary. This freedom is protected by article 18 of the Universal Declaration of Human Rights and article 18 of the Covenant, and any restrictions must be prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others. The establishment of a State religion cannot preclude individuals from exercising this right. Ms. Iraee's exercise of her freedom did not constitute a threat to any other individual or to public safety, and her detention as a result of a story that the Government found to be insulting to Islam is impermissible.

19. According to the source, the authorities also violated Ms. Iraee's right to freedom of expression guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The source recalls that, under article 19 (2) of the Covenant, everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The Human Rights Committee has recognized the right of individuals to criticize or openly and publicly evaluate their governments without fear of interference or punishment.⁵ The source notes that a government may restrict this freedom only when provided by law and necessary for the respect of the rights or reputations of others, protection of national security, or public order, health or morals. None of these exceptions is applicable in this case. Instead, the authorities violated Ms. Iraee's rights by convicting her of insulting the sanctity of Islam for writing a fictional story in her private journal, and for spreading propaganda based on social media posts in which she communicated with the families of prisoners of conscience and expressed support for a dissident rapper living abroad.

20. The source argues that Ms. Iraee's right to freedom of association was violated. The source notes that article 22 (1) of the Covenant states that everyone shall have the right to freedom of association with others and that article 20 of the Universal Declaration of Human Rights provides a similar guarantee. The source argues that the right to association should extend to marriage. The importance of government non-interference with family ties is emphasized throughout international human rights law, for instance, in articles 12 and 16 of the Universal Declaration of Human Rights and articles 17 and 23 of the Covenant. Targeting an individual for her choice of spouse amounts to an impermissible encroachment upon the most intimate choice of with whom to enter into marriage. The Government has targeted Ms. Iraee because of her relationship with Mr. Sadeghi, an association that is protected and cannot possibly serve as legitimate grounds for her arrest, detention and conviction.

21. In relation to category III, the source submits that the authorities denied Ms. Iraee her rights under articles 5, 9, 10, 11 (1) and 12 of the Universal Declaration of Human Rights and articles 7, 9, 10, 14, 15 and 17 of the Covenant; rules 1, 43, 58, 61 and 106 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and principles 2, 4, 6, 11, 18 (3), 19, 21 (2), 32 (1), 36 (2), 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the Body of Principles). The source claims that the following due process violations occurred:

(a) Ms. Iraee's right not to be subjected to arbitrary arrest was denied, in violation of article 9 of the Universal Declaration of Human Rights, articles 9 (1) and 9 (2) of the Covenant, and principles 2 and 36 (2) of the Body of Principles. Ms. Iraee was not shown an arrest warrant at the time of her arrest in 2014, and she was denied her right to speak with a

⁵ *Marques de Moraes v. Angola* (CCPR/C/83/D/1128/2002), para. 6.7.

lawyer upon her arrest and for the first 20 days of her detention, in violation of national arrest procedures. Following her conviction, Ms. Iraee was arrested on 24 October 2016 without being shown a written summons after requesting one on 4 October 2016, in violation of national law;

(b) Ms. Iraee's right not to be subjected to unlawful searches of her home was denied, in violation of article 12 of the Universal Declaration of Human Rights and article 17 of the Covenant. Ms. Iraee was arrested without any warrant or formal charge against her. After her arrest, the authorities searched Ms. Iraee's home without a warrant and seized personal belongings, including Ms. Iraee's writings, poetry, photographs, videos and the diary in which she had written the story that became the basis for the charge of insulting the sanctity of Islam;

(c) Ms. Iraee's right to habeas corpus was denied, in violation of article 9 (3) and (4) of the Covenant and principles 4, 11, 32 (1) and 37 of the Body of Principles. After Ms. Iraee's arrest on 6 September 2014, she was not brought promptly before a judge to challenge the legality of her detention. Ms. Iraee only appeared before a judge after 20 days of detention;

(d) Ms. Iraee's right to be tried without undue delay was denied, in violation of article 14 (3) (c) of the Covenant and principle 38 of the Body of Principles. Ms. Iraee was arrested on 6 September 2014 but her trial did not begin until May 2015. There was no basis for the long delay between Ms. Iraee's arrest and her initial hearing;

(e) Ms. Iraee's right to communicate with and have the assistance of counsel was denied, in violation of article 14 (3) (b) and (d) of the Covenant. Ms. Iraee was denied access to a lawyer for the first 20 days after her arrest. Her first lawyer was reportedly pressured to withdraw from representing her. Her second lawyer was not allowed to review the case files, present a defence or be present during her criminal hearing. Moreover, Ms. Iraee's right to confidential communications with counsel was denied, in violation of article 14 (3) (b) of the Covenant, principle 18 (3) of the Body of Principles and rule 61 of the Nelson Mandela Rules. Although the right to confer with counsel is guaranteed by the Covenant, national law prevents confidential communication between lawyers and their clients. These policies prevented Ms. Iraee from communicating confidentially with her lawyer over the course of her proceedings;

(f) Ms. Iraee's right to be present and defend herself at her own trial was denied, in violation of article 14 (3) (d) and (e) of the Covenant. Ms. Iraee was not able to be present at the hearing that led to her conviction because she was physically incapable of attending due to her surgery. Prior to Ms. Iraee's hearing, medical documents were submitted to the court on her behalf as part of a formal request to reschedule her hearing, yet the court denied Ms. Iraee's request and convicted her in absentia;

(g) Ms. Iraee's right to be visited by family was denied, in violation of article 9 (3) and (4) of the Covenant, principle 19 of the Body of Principles and rules 43, 58 and 106 of the Nelson Mandela Rules. During her initial detention in 2014, Ms. Iraee was held for 20 days without access to her family;

(h) Ms. Iraee's right to a public hearing was denied, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. In Ms. Iraee's case, both the initial criminal hearings and the appellate hearing were closed to the public;

(i) Ms. Iraee's rights to an independent and impartial tribunal, equality before the court and the presumption of innocence were denied, in violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights and articles 14 (1) and (2) of the Covenant. The lack of an independent and impartial tribunal, the inequality of arms and the denial of Ms. Iraee's presumption of innocence was evidenced by the court convicting Ms. Iraee in absentia; the dependence of the judiciary on the executive branch; the judges' hostile comments that assumed Ms. Iraee's guilt prior to ruling on the case and the first hearing's focus on her husband's activities, rather than Ms. Iraee's own actions and the charges against her;

(j) Ms. Iraee's right to freedom from torture and cruel, inhuman or degrading treatment was denied, in violation of article 5 of the Universal Declaration of Human Rights, articles 7, 10 (1) and 14 (3) (g) of the Covenant, principles 6 and 21 (2) of the Body of Principles, and rules 1 and 43 of the Nelson Mandela Rules. Ms. Iraee was beaten on several

occasions during her detention. During her interrogation, she was repeatedly pressured to confess under threat of execution and was forced to listen to her husband being abused in the adjacent cell. Ms. Iraee was denied medical care and kept in harsh prison conditions;

(k) Ms. Iraee's right to a genuine review and reasoned appeal of her conviction was denied, in violation of article 14 (5) of the Covenant. Although Ms. Iraee was granted an appeal, the hearing lasted only a few minutes. Ms. Iraee was not afforded any time to defend herself or advocate her position. The appellate court did not review any evidence during the hearing, but used the short time to berate and threaten Ms. Iraee;

(l) Ms. Iraee's right not to be convicted for an act that does not constitute a criminal offence was denied, in violation of article 15 of the Covenant. Both laws used to convict Ms. Iraee are so ambiguous and overly broad that her conviction violates the principle of legality. Ms. Iraee was found guilty under a law that prohibits engaging in any type of propaganda against the Islamic Republic of Iran for writing posts on social media, in which she supported a dissident Iranian rapper and communicated with families of Iranian prisoners of conscience. Ms. Iraee could never have foreseen that her innocuous social media communications would constitute propaganda. Ms. Iraee was also convicted under a law that punishes anyone who insults the sanctity of Islam. This law is unclear in communicating what constitutes an insult to the sanctity of Islam, making it impossible for Ms. Iraee to foresee that her fictional story, especially one written privately, might constitute a violation.

Response from the Government

22. On 29 March 2019, 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 28 May 2019 about the current situation of Ms. Iraee. The Working Group also requested the Government to clarify the legal provisions justifying her detention, as well as its compatibility with the obligations of the Islamic Republic of Iran under international human rights law. Moreover, the Working Group called upon the Government to ensure Ms. Iraee's physical and mental integrity.

23. On 26 May 2019, the Government requested an extension of the deadline for response. The extension was granted with a new deadline of 28 June 2019. The Government submitted its response on 24 June 2019.

24. According to the Government, on 14 August 2014, the Prosecutor's Office issued a search and arrest warrant against Mr. Sadeghi. On 31 August 2014, the Chief Inspector of the Second Division issued a written summons for Mr. Sadeghi and instructed enforcement agents to search his residence for incriminating evidence. Given the urgency of the matter and concerns about the destruction of evidence, the agents were instructed to enter the house immediately and, if there was no obvious sign that a crime had been committed, to serve Mr. Sadeghi with the summons. Otherwise, the agents were tasked with detaining Mr. Sadeghi to prevent him from absconding, and bringing him before a judge or holding him in a detention centre supervised by the national authority of prisons for up to 24 hours if no competent judicial authority was available.

25. The agents went to Mr. Sadeghi's workplace and served him with the summons. Ms. Iraee and two of her friends arrived, engaged with the agents and disarmed one of them. The agents contacted the on-call judge and received arrest warrants for all the persons present, in compliance with article 34 of the Code of Criminal Procedure. Having arrested all of the individuals present, the agents took them to Mr. Sadeghi's residence and seized evidence in accordance with the judicial order of 31 August 2014.

26. All of the persons present were taken to a detention centre under the instructions of the on-call judge, and subsequently brought before the investigating judge on 7 September 2014. Ms. Iraee was granted bail of 300 million rials. She was entitled to object to the bail, but did not do so and was transferred to Ward 2A of Evin Prison. Ward 2A is under the supervision of the national authority of prisons and may be inspected by prison judges at any time. In relation to Ms. Iraee's initial detention, the Government states that rest times during interrogations are specified in the Prosecutor General's instructions. In addition, Ms. Iraee could not have overheard the interrogation of her husband, as the male and female wards of the prison are completely separate.

27. The Government adds that Ms. Iraee made all her statements in her own handwriting and verified them with her signature and fingerprints. On 17 September 2014, she appeared in court, where she defended her case. However, in light of further evidence and her initial confession, the bail was raised to 800 million rials. Ms. Iraee lodged no objection and was kept on remand. She was released on 27 September 2014 upon posting the required bond.

28. On 4 February 2015, the judge scheduled the first trial hearing through a written summons that was served on Ms. Iraee on 21 February 2015, in compliance with article 68 of the Code of Civil Procedure. The same summons was sent to Mr. Sadeghi's lawyer on 18 February 2015.

29. At the first trial hearing on 6 May 2015, which was attended by all the individuals who had been charged, a lawyer appeared on Ms. Iraee's behalf. On 12 May 2015, the judge ordered that the individuals and their lawyers be served with written notices of the next hearing. The second hearing was held on 21 July 2015. At this hearing, Ms. Iraee's lawyer requested an adjournment, noting that Ms. Iraee could not attend due to the need to rest before her surgery. The Government considers that medical rest should in principle be sought after surgery, and that this request was an excuse to delay the trial. Moreover, given that Ms. Iraee's lawyer was present at the trial, there was no need to adjourn. The medical documents submitted by the defence stated that the surgery was scheduled for 24 July 2015, and Ms. Iraee could have attended the second hearing. Ms. Iraee's lawyer presented a four-page pleading on behalf of Ms. Iraee during the second hearing. The Government states that the sentence was issued on 26 July 2015, and there was therefore no sentencing in absentia.

30. The Government denies that Ms. Iraee's trial was closed to the public, noting that the failure of the public to attend is not the same as a closed trial. In any event, closed trials are permitted under article 352 (B) of the Code of Criminal Procedure.

31. Ms. Iraee was sentenced to one year of imprisonment on the charge of spreading propaganda against the Islamic Republic of Iran and five years of imprisonment on the charge of blasphemy and sacrilege. In accordance with article 134 of the Islamic Penal Code, only the longest sentence of five years was imposed, and the time that Ms. Iraee had already served was taken into account.

32. The Government states that Ms. Iraee's criminal acts included posting offensive content on social media in relation to an Imam and voicing support for a blasphemous singer; burning two copies of the *Qur'an*; opposing the Islamic decree of *qisas* by calling for the abolition of capital punishment; publishing satirical materials online; distributing false materials and inciting others to take subversive measures; scoffing at the Hijab and Chastity programme; advocating on behalf of a terrorist organization; and creating, editing and sharing "anti-security content" on social media. The restrictions imposed on Ms. Iraee were intended to protect and uphold other people's rights and dignity, and to preserve national security, public order and morality, in line with articles 18 (3) and 19 (3) of the Covenant.

33. Ms. Iraee appealed the sentence through a three-page pleading before the Tehran Court of Appeal. Following a lengthy examination, the Court of Appeal upheld the initial sentence in its entirety. The Government denies that any statement was made by a judge in relation to the execution of Ms. Iraee, as the Court of Appeal hears matters with several judges present and not just one judge, and issuing an order for capital punishment was not possible as the Court can only examine the initial sentence. Ms. Iraee requested a retrial, which was denied by the Supreme Court on 10 June 2016 as it did not meet the requirements of article 474 of the Code of Criminal Procedure.

34. According to the Government, a written summons was issued on 8 May 2016 requesting Ms. Iraee's presence at the Enforcement Division within five days of it having been served. The summons was served on 5 June 2016. Ms. Iraee did not present herself to the authorities, and a judge issued an arrest warrant on 25 September 2016. Ms. Iraee was arrested at her home on 24 October 2016, and subsequently transferred to Evin Prison to serve her sentence. The Government denies that Ms. Iraee was prevented from collecting her asthma medication, asserting that agents cannot provide medication to accused persons who could use it to attempt suicide, and it is for the prison doctor to prescribe medication.

35. The Government alleges that Ms. Iraee and Ms. Daemi abused other prisoners and disturbed the prison order, insulted the Supreme Leader, defied the orders of prison staff and violated prison regulations. As a result, they were transferred to the female ward of Shahr-e Rey Prison, where Ms. Iraee commenced a hunger strike on 4 April 2018 to force her return to Evin Prison. During her incarceration, Ms. Iraee could receive visits from her family and lawyer, as well as specialist medical treatment outside the prison and in the prison infirmary, including during her hunger strike. Ms. Iraee ended her hunger strike on 25 April 2018, and was transferred back to Evin Prison on 9 May 2018.

36. In relation to Ms. Iraee's claims about the unsanitary conditions in Evin Prison, the Government states that Evin Prison is one of the best penitentiaries in the country in every respect, particularly as regards sanitation and food services. It has been given the highest quality rating and most inmates have named it "Evin Hotel".

37. In addition, the Government alleges that, while serving her sentence, Ms. Iraee disturbed the prison order by her aggressive behaviour. In September 2018, she verbally abused the prison staff and disturbed other prisoners. As a result, the Prison Disciplinary Committee imposed a ban on her meeting with her family and lawyer. In November and December 2018, Ms. Iraee refused to go to the Prosecutor's Office, in defiance of judicial orders. An indictment was sent to the Prosecutor's Office which, after examining the new case brought against Ms. Iraee, granted her bail of 30 million rials on 6 January 2019. Ms. Iraee posted this amount and was released on 21 March 2019 after fully serving her previous conviction. Upon the instruction of the Supreme Leader on the birthday of the Prophet's daughter (which is designated as Women's Day in the Islamic Republic of Iran), Ms. Iraee was granted amnesty for half of her sentence (900 days) on 27 May 2019, which reduced her final sentence to two and a half years of imprisonment.

Further comments from the source

38. The source informed the Working Group that Ms. Iraee was released from prison on 8 April 2019 after posting bail.

39. According to the source, the Government does not deny that Ms. Iraee was arrested, convicted and imprisoned based on her social media posts and her unpublished, fictional story written in her private diary. Instead, the Government refers to several alleged crimes committed by Ms. Iraee, some of them new, without any detail or evidentiary support, but which, nonetheless, confirm that Ms. Iraee was imprisoned for the exercise of her human rights. The Government attempts to invoke the narrow exceptions under articles 18 (3) and 19 (3) of the Covenant, but offers only conclusory assertions and no explanation of how Ms. Iraee's conduct threatened any of the interests included in those exceptions.

40. The source submits that the Government's response offers unsupported and implausible assertions and fails to rebut the allegations. For example, the Government's assertion that Ms. Iraee – an accountant with no prior criminal record – was arrested because she "disarmed" an agent is implausible. Furthermore, the Government does not explain why agents examined Ms. Iraee's property when conducting a search aimed at her husband. The Government does not respond to other claims, including that Ms. Iraee had no access to family, a lawyer or a court for 20 days and could not communicate confidentially with counsel, and makes unsupported claims in relation to Ms. Iraee's surgery. Finally, the Government offers no evidence in support of its claims that Ms. Iraee's trial was not closed and that her appeal hearing involved a "lengthy examination"; neither does it address the allegations of judicial bias or the alleged torture and ill-treatment of Ms. Iraee.

Discussion

41. The Working Group thanks the source and the Government for their timely submissions.

42. The Working Group welcomes the release of Ms. Iraee from detention. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of

the person concerned. Prior to her release, Ms. Iraee was arrested on three occasions⁶ and deprived of her liberty for 30 months. Serious violations of her human rights allegedly occurred during the arrests and throughout her detention. The Working Group wishes to examine the circumstances in which Ms. Iraee was arrested and detained and has decided to render an opinion in this case.

43. In determining whether the deprivation of liberty of Ms. Iraee was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

44. The source alleges that the authorities did not comply with Iranian or international arrest and search procedures. According to the source, Ms. Iraee was not shown an arrest warrant at the time of her initial arrest on 6 September 2014. Following her arrest, agents from the Islamic Revolutionary Guard Corps searched Ms. Iraee's home without a search warrant and seized her personal belongings, including the private journal where she had written the story that became the basis for the charge of insulting the sanctity of Islam. In addition, Ms. Iraee was arrested on 24 October 2016 without having received a written summons to report to prison to serve her sentence, despite having previously requested such a summons.

45. In its response, the Government claims that Ms. Iraee and two friends arrived at Mr. Sadeghi's workplace while agents were serving a summons on him. According to the Government, Ms. Iraee and the two friends disarmed one of the agents, and a warrant was obtained from the on-call judge for their arrest. The agents took the four individuals to Mr. Sadeghi's residence and seized relevant evidence pursuant to a judicial order of 31 August 2014. The Government also states that a written summons was served on Ms. Iraee on 5 June 2016 following her conviction. Ms. Iraee did not present herself to the authorities, and a judge issued an arrest warrant on 25 September 2016. Ms. Iraee was arrested at her home on 24 October 2016 and returned to Evin Prison to serve her sentence.

46. Having examined the submissions from both parties, the Working Group considers that the version of events put forward by the source is the most credible. Although the Government had access to the arrest warrant that it claims was issued against Ms. Iraee and her friends, it provided no details concerning that warrant (for example, the identity of the issuing judge, the warrant number, the alleged offence by Ms. Iraee).⁷ Moreover, according to the Government, Ms. Iraee's involvement in the disarming of an agent was serious enough to obtain an arrest warrant against her. However, it is implausible that Ms. Iraee could have disarmed an agent, and the Government did not explain why no charges relating to this incident appear to have been brought against Ms. Iraee. The Government has not demonstrated that an arrest warrant was issued for Ms. Iraee's arrest on 6 September 2014. Similarly, the Government provided few details in relation to the arrest warrant that it claims was issued against Ms. Iraee on 25 September 2016, leading to her arrest on 24 October 2016.

47. In addition, the Government states that the search of the home of Mr. Sadeghi and Ms. Iraee took place pursuant to an arrest and search warrant issued in relation to Mr. Sadeghi on 14 August 2014 and a summons issued against him on 31 August 2014. However, the Government's description of the warrant and summons makes no reference to Ms. Iraee or her belongings. Indeed, the warrant and summons were issued well before Ms. Iraee's arrest on 6 September 2014, and do not appear to authorize the seizure of her personal belongings.

⁶ According to the source, Ms. Iraee was arrested on 6 September 2014 (initial arrest), 24 October 2016 (arrest after her conviction) and 22 January 2017 (re-arrest after release while her appeal was pending). The Government does not deny the allegation that Ms. Iraee was arrested on these three occasions.

⁷ Opinion No. 41/2013, paras. 27–28 (recognizing that the source and the State do not always have equal access to the evidence, and frequently the State alone has the relevant information).

48. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. The Government has not rebutted the source's allegations that Ms. Iraee was arrested without a warrant and summons on 6 September 2014 and 24 October 2016. In order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.⁸ Furthermore, the Government has not demonstrated that the search warrant issued in relation to Mr. Sadeghi allowed the agents to seize Ms. Iraee's journal and other personal belongings. As a result, the Working Group finds that the seized material was improperly obtained and used in the proceedings against her.⁹ The Working Group finds that Ms. Iraee's right to freedom from arbitrary arrest and detention under article 9 (1) of the Covenant, and her right to privacy under article 17 of the Covenant, were violated.

49. The source further alleges that Ms. Iraee was not brought promptly before a judge to challenge the legality of her detention, having only appeared before a judge on 27 September 2014, 20 days after her arrest. The Government states that Ms. Iraee was brought before the investigating judge on 7 September 2014, the day after her arrest,¹⁰ and again on 17 September 2014 when Ms. Iraee's bail was increased in the light of her "initial confession". The Government did not, however, provide any details about either hearing, particularly the judge's reasoning and conclusions on the legal basis for Ms. Iraee's detention. Accordingly, the Working Group considers that the Government has not rebutted the source's allegations.

50. According to the Human Rights Committee, 48 hours is ordinarily sufficient to bring an individual before a judicial authority, and any longer delay must remain absolutely exceptional and be justified under the circumstances.¹¹ In the absence of such justification, the Working Group finds that the Government violated article 9 (3) and (4) of the Covenant by failing to promptly bring Ms. Iraee before a judge after her arrest, and by detaining her without access to her family and lawyer¹² so that she could not bring proceedings to challenge the legality of her detention. Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty¹³ and is essential in ensuring that detention has a legal basis.

51. Finally, the Working Group considers that the charges under which Ms. Iraee was convicted, namely spreading propaganda and insulting the sanctity of Islam¹⁴ under articles 500 and 513 of the Islamic Penal Code, are so vague and overly broad that it was impossible to invoke a legal basis for her deprivation of liberty. The Working Group has raised the issue of prosecution under vague and overly broad penal laws with the Government on several occasions.¹⁵ In addition, as the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.¹⁶ Ms. Iraee could not

⁸ See, for example, opinions No. 46/2018, para. 48; and No. 36/2018, paras. 39–40.

⁹ The Working Group made a similar finding in opinion No. 36/2018 when evidence was obtained without a search warrant and used in court proceedings (paras. 39–40). See also opinion No. 83/2018, paras. 44–45.

¹⁰ The Government does not clearly state Ms. Iraee's date of arrest, though it appears (through its reference to holding Ms. Iraee and others for less than 24 hours before their court appearance on 7 September 2014) that it is referring to 6 September 2014.

¹¹ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33.

¹² In its response, the Government makes no reference to Ms. Iraee having a lawyer between her arrest on 6 September 2014 and her release on bail on 27 September 2014. In fact, the Government refers to Ms. Iraee as having been sent to court on 17 September 2014 where she "defended her case".

¹³ See 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.

¹⁴ The Government refers to the convictions for "launching propaganda against the Islamic Republic of Iran" and "blasphemy and sacrilege".

¹⁵ See, for example, opinions No. 83/2018, para. 58; No. 52/2018, para. 78; No. 19/2018, para. 33; and No. 55/2013, para. 14.

¹⁶ See, for example, opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59; and general comment No. 35, para. 22.

have foreseen that social media posts and a story written in a private journal would amount to criminal conduct under these provisions.

52. For these reasons, the Working Group finds that the Government failed to establish a legal basis for Ms. Iraee's arrest and detention. Her deprivation of liberty was arbitrary under category I.

53. In addition, the source alleges that Ms. Iraee was arrested, detained and convicted solely for peacefully exercising her rights to freedom of thought, conscience and religion, expression and association under articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19 and 22 of the Covenant. According to the source, the authorities convicted Ms. Iraee of insulting the sanctity of Islam based on a fictional story that she had written in her private journal, and for spreading propaganda based on social media posts in which she communicated with the families of prisoners of conscience and expressed support for a dissident rapper living abroad.¹⁷

54. The Government did not address the source's allegations that Ms. Iraee was detained for exercising her rights through her private writing and social media posts. Instead, the Government submits that Ms. Iraee was convicted for committing numerous criminal acts. These included posting offensive content on social media; voicing support for a blasphemous singer; burning two copies of the *Qur'an* in 2009; calling for the abolition of capital punishment; publishing satirical materials; distributing false materials and inciting others to take subversive measures; scoffing at the Hijab programme; advocating on behalf of a terrorist organization; and creating, editing and sharing "anti-security content" on social media. The Government did not elaborate on any specific actions by Ms. Iraee that amounted to inciting others to take subversive measures or advocating on behalf of a terrorist organization.

55. The Working Group will examine each of the source's arguments. First, the source argues that the authorities violated Ms. Iraee's freedom of thought, conscience and religion under article 18 of the Universal Declaration of Human Rights and article 18 of the Covenant by convicting her of insulting the sanctity of Islam on the basis of a story that she wrote in her private diary. According to the source, Ms. Iraee's detention as a result of a story that the Government found to be insulting to Islam is impermissible.

56. According to the Human Rights Committee, the right to freedom of thought, conscience and religion in article 18 (1) of the Covenant encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.¹⁸ Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.¹⁹ The Working Group considers that the fictional story written by Ms. Iraee about a female character who burns a copy of the *Qur'an* after watching a film about a woman stoned to death for alleged adultery falls within the protection of thought, conscience and religion under article 18 (1) of the Covenant. The story conveys Ms. Iraee's thoughts, personal convictions and beliefs. The story also has moral and religious themes, as it appears to oppose the practice of stoning for adultery, and it was certainly interpreted that way by the authorities who convicted Ms. Iraee for insulting the sanctity of Islam. The Working Group considers that Ms. Iraee's right to disagree with a religious practice is protected under article 18 of the Covenant and that her deprivation of liberty resulted from exercising that right.

57. In addition, the Working Group considers that Ms. Iraee's writing of a fictional story in a private journal falls within her absolutely protected right under article 18 (1) of the Covenant to have or adopt a religion or belief, which cannot be subject to limitation under article 18 (3) of the Covenant.²⁰ The source claims, and the Government does not deny, that the story was never published, and there is no suggestion that Ms. Iraee ever intended to publish it. Therefore, the story cannot be considered a manifestation of religion or belief that

¹⁷ See also A/HRC/34/65, para. 56; and A/HRC/34/40, paras. 38 and 61.

¹⁸ Human Rights Committee, general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 1.

¹⁹ Ibid., para. 2.

²⁰ See opinions No. 69/2018 and No. 40/2018.

is subject to limitation under article 18 (3). Moreover, even if the short story was a manifestation of religion or belief, the Government has not demonstrated how the requirements of article 18 (3) were met. The Government argues that the restrictions imposed on Ms. Iraee were intended to protect and uphold other people's rights and dignity, and to preserve national security, public order and morality, in line with articles 18 (3) and 19 (3) of the Covenant. However, the Government did not explain how writing a story in a private journal posed any threat to other people, nor why the prosecution of Ms. Iraee for writing the unpublished story was necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

58. Furthermore, the source argues that the authorities violated Ms. Iraee's rights by convicting her for writing a fictional story and for her social media posts communicating with the families of prisoners of conscience and expressing support for a dissident rapper.²¹ The Working Group considers that Ms. Iraee's story and social media posts fall clearly within the boundaries of the right to freedom of expression protected under article 19 (2) of the Covenant, which includes the expression of every form of idea and opinion capable of transmission to others, subject to the provisions of articles 19 (3) and 20.²² As noted earlier, the Government did not explain how prosecuting Ms. Iraee was necessary to protect a legitimate interest under article 19 (3), such as respect for the rights or reputations of others, national security, public order, public health or morals. Furthermore, the Government did not demonstrate that Ms. Iraee's prosecution was a proportionate response to her activities. In any event, the Human Rights Council has called on States to refrain from imposing restrictions, including under article 19 (3) of the Covenant, that are not consistent with international human rights law.²³

59. Finally, the source argues that Ms. Iraee was targeted because of her marriage to Mr. Sadeghi, an association protected under article 20 of the Universal Declaration of Human Rights and article 22 (1) of the Covenant,²⁴ which cannot serve as grounds for her detention. Given its findings in relation to articles 18 and 19 of the Covenant, the Working Group does not consider it necessary to reach a conclusion on this point.

60. The Working Group concludes that Ms. Iraee's deprivation of liberty was the result of the peaceful exercise of her rights under articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant. Her deprivation of liberty was arbitrary under category II. The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on freedom of religion or belief.

61. Given its finding that Ms. Iraee's deprivation of liberty was arbitrary under category II, the Working Group emphasizes that no trial of Ms. Iraee should have taken place. However, she was tried, convicted and later sentenced on 26 July 2015 by Branch 15 of the Revolutionary Court. Her conviction was confirmed by the Tehran Court of Appeal on 22 December 2015. The Working Group considers that there were multiple violations of her right to a fair trial during these proceedings.

62. The source alleges that Ms. Iraee was denied the right to communicate with and have the assistance of counsel. According to the source, Ms. Iraee had no access to a lawyer for the first 20 days after her arrest. Her first lawyer was pressured to withdraw from representing her. Her second lawyer was not allowed to review the case files, present a defence or be present during her hearings. Moreover, Ms. Iraee was not able to communicate confidentially with her lawyer owing to laws that prevent confidential lawyer-client communications. In its response, the Government states that Ms. Iraee's lawyer was present at and represented Ms.

²¹ In opinion No. 83/2018, the Working Group found that social media posts criticizing government policy (such as forced hijab and the death penalty), as well as support for dissidents and the possession of blasphemous songs by a dissident rapper, fell within the right to freedom of expression protected by article 19 (2) of the Covenant (paras. 33, 45 and 52–55).

²² Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, para. 11.

²³ Human Rights Council resolution 12/16, para. 5 (p).

²⁴ The source did not refer to any findings of human rights mechanisms to support this argument.

Iraee at both of the trial hearings on 6 May 2015 and 21 July 2015. The Government did not, however, dispute the allegations that Ms. Iraee had no lawyer for the first 20 days after her arrest, that her first lawyer was pressured to withdraw and her second lawyer could not review the case files, and that communications were not confidential.

63. The Working Group finds that Ms. Iraee was denied access to legal assistance for 20 days following her arrest and was not able to communicate confidentially with her lawyer throughout her proceedings.²⁵ This violated Ms. Iraee's right to adequate time and facilities for the preparation of her defence and to communicate with counsel under article 14 (3) (b) of the Covenant. The Working Group recalls that 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 shall be provided without delay.²⁶ Furthermore, the Working Group is alarmed by the allegations that Ms. Iraee's first lawyer was pressured to withdraw, and that her second lawyer could not review the case files. This prevented Ms. Iraee from exercising her right under article 14 (3) (d) of the Covenant to defend herself through legal assistance of her choosing. It is essential for legal counsel to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.²⁷ The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.

64. In addition, the source alleges that Ms. Iraee was not present at the hearing on 21 July 2015 that led to her conviction because she was having surgery that day. According to the source, the court denied Ms. Iraee's request for an adjournment and convicted her in absentia. The Government argues, without providing evidence, that there was no need to adjourn because Ms. Iraee's lawyer was present at the hearing and, in any event, Ms. Iraee's surgery was scheduled for three days after the second hearing. The Government notes that Ms. Iraee was not sentenced in absentia. The Working Group considers that Ms. Iraee had the right to be present at all of her trial hearings. The failure to grant an adjournment of the second hearing violated her right to be tried in her presence under article 14 (3) (d) of the Covenant.

65. The source alleges that during her initial detention in 2014, Ms. Iraee was held for 20 days without access to her family. The Government does not deny this allegation. Accordingly, the Working Group finds that Ms. Iraee's right to contact with the outside world was denied, in violation of principles 15 and 19 of the Body of Principles and rule 58 of the Nelson Mandela Rules. In addition, the Working Group takes note of the Government's reference to a ban on family and lawyer visits being imposed on Ms. Iraee in September 2018 as a result of her alleged misconduct in Evin Prison. This amounts to a violation of rule 43 (3) of the Nelson Mandela Rules, which states that disciplinary sanctions or restrictive measures shall not include the prohibition of family contact.

66. According to the source, Ms. Iraee's trial and appellate hearings were closed to the public. The Government denies this allegation and notes that, in any event, closed trials are permitted under the Code of Criminal Procedure. The Government did not provide any details from court records to demonstrate that the hearings were open. Moreover, there is nothing to suggest that any of the permissible exceptions to a public trial under article 14 (1) of the Covenant applied in the present case. The fact that closed trials may be permissible under national law does not make such trials acceptable under international law. Accordingly, the Working Group finds that Ms. Iraee's right to a public hearing under article 14 (1) of the Covenant was violated.

²⁵ The confidentiality of lawyer-client communications must be respected as an essential fair trial guarantee. See 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, principle 9, para. 15, and guideline 8, para. 69; and the Nelson Mandela Rules, rule 61 (1). See also opinion No. 83/2018, paras. 62–63.

²⁶ 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, principle 9 and guideline 8.

²⁷ *Ibid.*, principle 9, para. 15. See also opinions No. 45/2017, para. 32; No. 38/2017, paras. 78 and 81; and Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 34.

67. The source argues that Ms. Iraee's rights to an independent and impartial tribunal, equality before the court and the presumption of innocence were denied. In particular, Ms. Iraee was subject to prejudging and hostility from the judges at her hearings, with the trial judge asking Ms. Iraee why she had "done" the things for which she was accused. According to the source, the appellate court judge told Ms. Iraee before ruling that he would have had her executed, suggesting that he had already formed a view that Ms. Iraee's prison sentence was too lenient. The source also points to the focus of the first hearing on Mr. Sadeghi's activities, rather than Ms. Iraee's own actions and the charges against her. The Government denies that any statement was made by a judge in relation to the execution of Ms. Iraee, though it does not deny the other allegations. The Working Group finds that Ms. Iraee's right to an independent and impartial tribunal and to the presumption of innocence under article 14 (1) and (2) of the Covenant was violated. As the Working Group has stated, the revolutionary courts do not meet the standards of an independent and impartial tribunal under article 14 (1) of the Covenant.²⁸

68. The source claims that Ms. Iraee's right to freedom from torture and ill-treatment was denied, as she was beaten on several occasions during her detention. She was pressured to confess under threat of execution during her interrogation, and was forced to listen to her husband being abused in the adjacent cell. According to the source, Ms. Iraee was also denied medical care and kept in harsh prison conditions. The Government denies the allegations in relation to Mr. Sadeghi being abused in the adjacent cell and the prison conditions, but does not deny that Ms. Iraee was threatened and beaten. The Government refers to an "initial confession" by Ms. Iraee, though it is unclear how this confession was obtained. The Working Group emphasizes that it is absolutely prohibited according to article 14 (3) (g) of the Covenant to torture or subject a person to ill-treatment in order to obtain a confession. The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

69. Finally, the source alleges that Ms. Iraee's right to a genuine review and reasoned appeal of her conviction was denied because her appeal hearing lasted only a few minutes. According to the source, Ms. Iraee was not afforded time to defend herself and the court did not review any evidence during the hearing. The Government refers to the appellate court as having upheld the initial sentence "following a lengthy examination", but provided no details of the matters considered by the court. The Working Group finds that Ms. Iraee's right to a review of her conviction and sentence under article 14 (5) of the Covenant was violated.

70. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give Ms. Iraee's deprivation of liberty an arbitrary character under category III.

71. The Working Group considers that the present case involves serious human rights violations and has decided to refer it to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran.

72. This case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty in the Islamic Republic of Iran.²⁹ The Working Group notes that many cases involving the Islamic Republic of Iran follow a pattern of arrest that does not comply with international norms; denial of access to legal counsel; prosecution under vaguely worded offences for the peaceful exercise of human rights; a closed trial and appeal by courts lacking in independence; disproportionate sentencing; torture and ill-treatment; and denial of medical care. 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.³⁰

²⁸ E/CN.4/2004/3/Add.2, para. 65. The Working Group considers that this finding remains current: see opinions No. 32/2019, para. 44; No. 52/2018, para. 79 (f); and No. 19/2018, para. 34.

²⁹ See, for example, opinions Nos. 32/2019, 83/2018, 52/2018, 19/2018, 92/2017, 49/2017, 48/2017, 9/2017, 7/2017, 50/2016, 28/2016, 25/2016, 2/2016, 1/2016, 44/2015, 16/2015, 55/2013, 52/2013, 28/2013 and 18/2013.

³⁰ Opinion No. 47/2012, para. 22.

73. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary deprivation of liberty in the Islamic Republic of Iran. Given that a significant period of time has passed since its most recent country visit to the Islamic Republic of Iran in February 2003, the Working Group considers that it is an appropriate time to conduct another visit. The Working Group recalls 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 to its previous request to visit made on 19 July 2019.

74. As the human rights record of the Islamic Republic of Iran will be reviewed during the third cycle of the universal periodic review in November 2019, the Government may wish to seize the present opportunity to enhance its cooperation with the special procedures and to bring its laws into conformity with international human rights law.

Disposition

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

The deprivation of liberty of Golrokh Ebrahimi Iraee, being in contravention of articles 9, 10, 11, 12, 18 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 17, 18 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

76. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Ms. Iraee 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.

77. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Ms. Iraee an enforceable right to compensation and other reparations, in accordance with international law.

78. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Iraee, including the allegations that she was beaten while in detention, and to take appropriate measures against those responsible for the violation of her rights.

79. The Working Group requests the Government to bring its laws, particularly articles 500 and 513 of the Islamic Penal Code, into conformity with the recommendations made in the present opinion and with the commitments made by the Islamic Republic of Iran under international human rights law.

80. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; (b) the Special Rapporteur on freedom of religion or belief; (c) the Special Rapporteur on the independence of judges and lawyers; (d) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and (e) the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, for appropriate action.

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

Follow-up procedure

82. 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 compensation or other reparations have been made to Ms. Iraee;
- (b) Whether an investigation has been conducted into the violation of Ms. Iraee's rights and, if so, the outcome of the investigation;
- (c) 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;

(d) Whether any other action has been taken to implement the present opinion.

83. 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.

84. 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.

85. 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.³¹

[Adopted on 12 August 2019]

³¹ See Human Rights Council resolution 33/30, paras. 3 and 7.