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Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016

Opinion No. 1/2016 concerning Zeinab Jalalian (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. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 12 February 2016 the Working Group transmitted a communication to the Government of the Islamic Republic of Iran concerning Zeinab Jalalian. 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 International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law 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. Ms. Jalalian is a 32-year-old Iranian citizen of Kurdish minority origin. In 2000, Ms. Jalalian moved to Iraq, where she became engaged in social and political activism, in particular assisting Kurdish women by providing education and social services in the Islamic Republic of Iran and Iraq. Ms. Jalalian’s activities included visiting an Iranian girls’ high school, where she delivered a speech about women’s rights. She occasionally travelled to the Islamic Republic of Iran to carry out her activities and had travelled from Iraq to the Islamic Republic of Iran at the time of her arrest.

5. On or around 10 March 2008, Ms. Jalalian was travelling on a bus from Kermanshah to Sanandaj in western Islamic Republic of Iran when she was arrested by four armed Iranian intelligence security officers at Ghazanchi inspection post near Kamiaran. The officers ordered all passengers, except Ms. Jalalian, to disembark. The source alleges that, without informing Ms. Jalalian of the reason for her arrest, officers violently kicked her and removed her from the bus. They tied her hands and feet, put her in the trunk of a black sedan and took her away. Given the circumstances of the arrest, the source considers it unlikely that the officers presented an arrest warrant.

6. According to the source, Ms. Jalalian was taken to Naft Square Detention Centre in Kermanshah, which is operated by the intelligence service. About three weeks after Ms. Jalalian’s arrest, an officer from the Detention Centre called her family and informed them of her arrest and detention. A week later, Ms. Jalalian called her family to confirm that she had been arrested and was detained at Naft Square Detention Centre. The source alleges that, while detained at Naft Square Detention Centre, Ms. Jalalian was subjected to long interrogations, was beaten while blindfolded and held in solitary confinement for months. The source also alleges that Ms. Jalalian’s interrogators threatened to rape her and to publish altered images showing her engaged in sexual activity with a fellow detainee, and that prison authorities flogged her under her feet during interrogations and repeatedly hit her head against a wall.

7. Ms. Jalalian was subsequently transferred to Kermanshah Juvenile Correction and Training Centre, where she was kept isolated from other prisoners. Following this transfer, she was sent back to Naft Square Detention Centre on several occasions for days at a time without explanation. While at the Naft Square Detention Centre, Ms. Jalalian was interrogated about her involvement with the Party Jiani Azadi Kurdistan (Party of Free Life of Kurdistan). The source asserts that, although Ms. Jalalian’s activism and activities were supported by the Party, there is no evidence that she was ever involved, either directly or indirectly, in the Party’s armed militant wing.

8. The source alleges that the authorities sought to coerce Ms. Jalalian into confessing that she was a member of the Party Jiani Azadi Kurdistan, and that she was asked to express remorse for joining the Party in front of a camera. When Ms. Jalalian refused, she was subjected to torture, which included having her head hit against a wall, her feet flogged and her unconscious body brought back to her cell. She was made to walk on injured feet back to the interrogation room. The source further claims that Ms. Jalalian’s forehead was fractured as a result of being flung against a wall, causing a brain haemorrhage and vision impairment in one eye. These acts allegedly occurred between April and May 2008.

9. The source reports that, for months after her arrest, Ms. Jalalian was unaware of the details of the charges that had been brought against her and did not have access to a lawyer. It was only after she appeared before Branch 1 of the Revolutionary Court of Kermanshah (the court of first instance) in late 2008 that Ms. Jalalian was able to tell her family that she had been arrested on charges of *Moharebeh*[1] and membership of an opposition party. Ms. Jalalian was charged with leaving the Islamic Republic of Iran unlawfully, being a member of the Party Jiani Azadi Kurdistan, transporting and possessing firearms and ammunition, participating in armed activities and providing propaganda for the Party.

10. Ms. Jalalian's trial before the court of first instance took place in December 2008. A few weeks before the trial, the authorities informed her family that they could hire a lawyer to represent her. However, the source claims that Ms. Jalalian was not represented during her trial because the trial had been scheduled without notice and her lawyer had not been aware that a trial date had been set. After conducting a summary trial, the court of first instance found Ms. Jalalian guilty and sentenced her to death.

11. The source points to the fact that the verdict was less than two pages long. The verdict referred to the Party Jiani Azadi Kurdistan as a terrorist group. The trial judge states that the fact that an individual belongs to a group that has declared an intention to compromise State security is sufficient to find that individual guilty of intending to commit crimes against the Islamic Republic of Iran. The verdict found Ms. Jalalian guilty on the basis of: (a) numerous reports from the intelligence department; (b) admissions made by Ms. Jalalian in the course of interrogations; (c) the fact that Ms. Jalalian had refrained from telling the truth about transporting arms and hand-grenades, even though such items were not found in her possession at the time of the arrest; (d) Ms. Jalalian's lack of cooperation with the intelligence forces to identify and arrest other members of the Party; (e) the unsubstantiated defence; and (f) the Prosecutor's indictment.

12. Ms. Jalalian's lawyer appealed the judgment of the court of first instance. On 6 May 2009, Branch 4 of the Kermanshah Court of Appeal upheld the judgment and denied the appeal. The source states that, although a written statement of defence had been filed in support of the appeal, the Court of Appeal made no reference to it in its reasoning. It is not clear whether Ms. Jalalian was legally represented during the appeal, as the name of one of the lawyers listed in the Court of Appeal's judgment was not known to her family. The Court of Appeal found that Ms. Jalalian had failed to provide convincing grounds of appeal that would merit revoking the trial court judgment; that no judicial errors had been made by the trial judge; that the trial verdict had been supported by intelligence service reports, and that Ms. Jalalian had confessed to the charges against her. The document was less than one page long.

13. According to the source, an application was made to the Supreme Court on behalf of Ms. Jalalian to amend the judgment. However, there was no response to the application. The source adds that, for some time after completion of the trial and appeal, Ms. Jalalian's family was unaware that she had been sentenced to death. Ms. Jalalian was also unaware of whether the Supreme Court had issued a final decision.

14. In March 2010, Ms. Jalalian was transferred without prior notice or any court order to Evin Prison in Tehran, where she was held for five months. The source alleges that, during that time, Ms. Jalalian was regularly threatened, insulted and pressured to admit to collaborating with the militant wing of the Party Jiani Azadi Kurdistan in an interview that would be broadcast on television. According to the source, the interrogators promised to

[1] According to the source, *Moharebeh* is an action aimed at disturbing public order, disrupting public security and threatening people. In this case, the *Moharebeh* charge was for "waging armed rebellion" against the Islamic Republic of Iran.

suspend the death penalty sentence in return for the interview. Ms. Jalalian declined to provide the interview.

15. The source reports that Ms. Jalalian requested access to medical treatment numerous times during her detention at Evin Prison. During a visit to an infirmary, authorities told her that she had to be examined for virginity before she could be treated. She refused and was returned to prison. In response to this treatment, Ms. Jalalian started an open-ended hunger strike and her health has further deteriorated.

16. Late in 2010, two human rights lawyers engaged by Ms. Jalalian's family submitted a clemency request to the Supreme Leader. Ms. Jalalian, her lawyers and her family were not informed of the result of the request for some time, which caused considerable anxiety. In or around August 2010, Ms. Jalalian was transferred to Dizel Abad Prison in Kermanshah. In December 2011, Ms. Jalalian contacted her lawyer to inform him that, according to prison authorities, her sentence had been reduced to life imprisonment. Ms. Jalalian was not given any written document confirming the reduction of her sentence. After several weeks of investigation, Ms. Jalalian's lawyer was able to confirm that clemency had been granted.

17. The source reports that the conditions at Dizel Abad Prison contributed to the serious deterioration of Ms. Jalalian's health. This included being required to wear the complete hijab while detained in a small, overcrowded cell with no ventilation, limited outdoor recreation time, limited access to sanitary facilities, denial of adequate medical care and search and seizure of her personal belongings. The source claims that Ms. Jalalian was taken to the prison infirmary several times, handcuffed to a bed and treated with injections. She was not informed of the purpose of the injections. The lights were also kept on in her cell at night.

Current situation of Ms. Jalalian

18. Early in 2015, Ms. Jalalian was transferred to Khoy Prison, where she is serving her life sentence. She has now been in detention for over eight years and has been transferred to five different detention centres during that period. Throughout her detention, Ms. Jalalian has been kept in high security conditions; her family has seldom been able to visit and has had very restricted telephone access to her.

19. Ms. Jalalian is believed to be suffering from intestinal and kidney infections, internal bleeding and difficulty in walking. She has an eye condition that may cause her to lose her sight if she is not permitted to leave prison to undergo surgery at a hospital at her family's expense. She has reportedly been subjected to further pressure to provide a recorded interview in return for being given access to the medical treatment that she requires, despite having already been convicted and sentenced.

20. Ms. Jalalian has been the subject of several joint urgent appeals, dated 23 April 2010, 29 September 2010 and 25 November 2010, addressed to the Islamic Republic of Iran by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on the independence of judges and lawyers.

Submissions regarding arbitrary detention

21. The source submits that the deprivation of liberty of Ms. Jalalian is arbitrary in accordance with categories I, II and III of the categories applied by the Working Group.

22. In relation to category I, the source argues that there was no justification for Ms. Jalalian’s deprivation of liberty, and that it was unlawful and arbitrary for the following reasons:

(a) The arrest and detention of Ms. Jalalian was contrary to Iranian law, including the requirement that an arrest order be issued on the basis of sufficient evidence. Given the focus on obtaining a confession from Ms. Jalalian, there has never been sufficient evidence to connect her to the alleged crimes. Other Iranian legal requirements were not met, including the facts that Ms. Jalalian was arrested by intelligence officers and detained in an intelligence service facility (both contrary to the law), the interrogators did not issue a temporary detention order and the courts did not review the continued detention of Ms. Jalalian four months after her arrest, as required by law;

(b) The arrest and detention of Ms. Jalalian involved several violations of article 9 of the Covenant, including:

(i) During her pretrial detention, from March to December 2008, she was not informed of the reasons for her arrest and was not promptly informed of the charges against her;

(ii) She was interrogated before and after her trial without legal representation and was not informed of her right to counsel until three weeks before her trial (this was also more than eight months after her arrest);

(iii) Before and after the trial, her lawyers were prevented from meeting with her and gaining access to her files, which interfered with the right to effective counsel;

(iv) Her family was not informed of her arrest until three weeks after she had been detained;

(v) She was held in incommunicado detention, not brought promptly before a judge so that the necessity of her detention could be evaluated and not informed of her right to challenge the lawfulness of her detention;

(vi) She was prevented from gaining access to adequate medical care and her right to health was actively impeded by the ill-treatment she suffered in pretrial detention.

23. In relation to category II, the source submits that the arrest and detention of Ms. Jalalian resulted from the exercise of rights and freedoms guaranteed under the Covenant, including:

(a) The right to freedom of opinion and expression under article 19 of the Covenant, and the rights to peaceful assembly and association under articles 21 and 22 of the Covenant. Ms. Jalalian was arrested and detained to punish her for conducting her activities as an activist, including the discussion of human rights and provision of education. In addition, Ms. Jalalian’s alleged membership of the Party Jiani Azadi Kurdistan was used as the basis for her conviction, even though she had been cooperating with its strictly non-militant wing in carrying out her social and educational work. There was no legitimate reason to restrict her work on the grounds of national security or public order, as she had never been involved in violent or armed activities;

(b) The right to participate in public affairs under article 25 of the Covenant; Ms. Jalalian was arrested and detained as a direct result of her exercising her right to organize herself in collaboration with others to participate in public affairs by promoting the rights of Kurdish women;

(c) The right to equal protection of the law without discrimination under article 26 of the Covenant. Ms. Jalalian was arrested and detained because of her sex, political beliefs, and national or social origin. She was targeted because of her social activism, including her promotion of women's rights. The gendered nature of the discrimination that led to her arrest is evidenced by the repeated threats of rape during her detention. Furthermore, Ms. Jalalian is a Kurdish citizen of the Islamic Republic of Iran who worked to ameliorate the situation of Kurdish people, who form part of a marginalized ethnic and religious minority in the Islamic Republic of Iran. She was targeted on the basis of her Kurdish origin. Ms. Jalalian was also arrested for her suspected involvement with the Party Jiani Azadi Kurdistan in a context where Kurds are frequently imprisoned for their political and religious beliefs.

24. In relation to category III, the source submits that there were numerous violations of Ms. Jalalian's right to a fair trial under article 14 of the Covenant, particularly given that this was a capital case where fair trial standards must be scrupulously observed. The alleged violations included denial of the following rights:

(a) The right to adequate facilities to prepare her defence at trial and on appeal, as she did not have access to the case file, witness lists or the evidence against her;

(b) The right to remain silent, as she was found guilty by the trial court on the basis of failing to provide information about Party Jiani Azadi Kurdistan operatives, and on the basis of a confession made by Ms. Jalalian as a result of torture;

(c) The presumption of innocence, in convicting her without substantive evidence;

(d) The right to a competent, independent and impartial tribunal, as the trial court relied on a confession — extracted under torture — evidence produced by the intelligence service, which was neither described nor disclosed, and information contained in the Prosecutor's indictment, as the basis of the conviction;

(e) The right to be present in person or represented by counsel at her trial and appeal, including being notified of the date of the trial hearing and having the statement of defence taken into account on appeal;

(f) The right to a public judgment, including a well-reasoned verdict;

(g) The right to review of the conviction and sentence. The appeal and review procedures under articles 252 and 272-77 of the Iranian Criminal Code of Procedure for Public and Revolutionary Courts do not meet the essential features of an appeal, as there is no right to a hearing and the presence of the accused or their lawyer is not required.

25. Furthermore, the source submits that the punishment in this case was disproportionate and involved the imposition of a discriminatory penalty for vague charges of *Moharebeh*. The legal proceedings were shrouded in secrecy at every stage, including the lack of information as to the clemency order made in relation to Ms. Jalalian's case. Once her sentence was commuted to life imprisonment, she did not benefit from a review of the prospects for her release.

26. In addition, the source argues that Ms. Jalalian has not benefited from a change in the law that occurred when the new Iranian Penal Code came into effect in May 2013. According to the source, the amended law prohibits the imposition of the death penalty for *Moharebeh* in cases not involving the use of a weapon. It therefore allows anyone convicted of *Moharebeh* in accordance with the former law, such as Ms. Jalalian, to apply for an amendment of the judgment. Furthermore, under the new provisions, the mere support of a group that has waged armed rebellion against the Islamic Republic of Iran does not fall within the definition of *Moharebeh*. Ms. Jalalian is therefore entitled to, but has not been given, a retrial in accordance with the legislation currently in effect.

27. Finally, the source alleges that Ms. Jalalian has been subjected to torture and has been denied access to timely and appropriate health care to deal with the results of torture, contrary to article 7 of the Covenant. This includes demands to undergo virginity testing, forced injections at the prison infirmary, the extreme anxiety caused by not knowing whether or when she was to be executed and the cumulative effects of the conditions in which she has been detained. Ms. Jalalian has experienced suffering beyond what is normally associated with the fact of detention.

Response from the Government

28. On 12 February 2016, 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 13 April 2016 about the current situation of Ms. Jalalian, noting that it would welcome any comment 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 Ms. Jalalian's detention and to provide details regarding the conformity of her deprivation of liberty with domestic legislation and international human rights norms.

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

Discussion

30. 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.

31. 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, then the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.[2] In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

32. The Working Group considers that there have been several violations of article 9 of the Covenant during the arrest and pretrial detention of Ms. Jalalian. Article 9 (1) requires States to ensure that procedures for carrying out deprivation of liberty are established by law and that those procedures are followed. These procedures include specification of 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.[3] In the present case, the Working Group accepts the source's assertion that an arrest warrant is unlikely to have been presented at the time of Ms. Jalalian's arrest. The Government could have, but did not, rebut this allegation by presenting a copy of any arrest order issued under Iranian law.[4] The source has also provided credible information that other procedural

[2] See, for example, the 2011 report of the Working Group on Arbitrary Detention (A/HRC/19/57, para. 68), and opinion No. 52/2014.

[3] See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 23.

[4] See opinion No. 41/2013, in which the Working Group recalled that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he was entitled, the burden to prove the negative fact is on the public authority, because it is "generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out" (see *Diallo (Republic*

requirements under Iranian law were not met. Ms. Jalalian was arrested by intelligence officers who had no legal authority to arrest her or to detain her in an intelligence facility, a temporary detention order was not issued and no review was undertaken by the courts of Ms. Jalalian's detention, as required four months after her arrest.

33. In addition, when she was arrested, Ms. Jalalian was neither informed of the reasons for her arrest, nor promptly informed of the charges against her, contrary to her rights under article 9 (2) of the Covenant. Indeed, she did not know what charges had been brought against her until her trial in December 2008, more than eight months after her arrest. The authorities did not promptly bring Ms. Jalalian before a judge, as required by article 9 (3), and did not inform her of her right to challenge the lawfulness of her detention under article 9 (4). Even if she had been informed about that right, she had no practical means of exercising it as she was held incommunicado during the first month of her detention, and had no access to a lawyer for eight months after her arrest. As the Working Group has recently restated:[5]

> Any individual who is deprived of liberty … has the right to take proceedings before a court in the State's jurisdiction to challenge the arbitrariness and lawfulness of his or her deprivation of liberty and to receive without delay appropriate and accessible remedies (Principle 3).
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> Persons deprived of their liberty shall be informed about their rights and obligations under law through appropriate and accessible means. Among other procedural safeguards, this includes the right to be informed, in a language and a means, mode or format that the detainee understands, of the reasons justifying the deprivation of liberty, the possible judicial avenue to challenge the arbitrariness and lawfulness of the deprivation of liberty and the right to bring proceedings before the court and to obtain without delay appropriate and accessible remedies (Principle 7).
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> Persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons shall be promptly informed of this right (Principle 9).

34. In the present case, there was no warrant for Ms. Jalalian's arrest and other domestic procedures were not followed in relation to her arrest and detention; there were no charges brought to her attention during the pretrial detention period; and no assessment was made by a court as to the lawfulness, necessity and proportionality of the detention. Thus, the Working Group considers that there was no legal basis to justify the arrest and detention of Ms. Jalalian, and her deprivation of liberty falls within category I of the categories applied by the Working Group.

35. Furthermore, the Working Group is of the view that Ms. Jalalian was detained as a direct result of the exercise of her rights and freedoms under the Covenant. Her activities as a social and political activist for the rights of Kurdish women clearly fall within the protection given by article 19 of the Covenant to freedom of opinion and expression.[6] It appears that Ms. Jalalian's freedom of opinion and expression was targeted through charges of conducting "propaganda activities" and references to her in the trial court judgment as

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of Guinea v. Democratic Republic of the Congo), International Court of Justice, Judgment, 30 November 2010, para. 55).

[5] 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 (A/HRC/30/37).

[6] See general comment No. 34 (2011) on the freedoms of opinion and expression para. 11, in which the Human Rights Committee notes that political discourse, discussion of human rights and teaching are protected by article 19.

having “attracted many to the organization through propaganda”. Similarly, Ms. Jalalian’s activities in working with the non-militant wing of the Party Jiani Azadi Kurdistan were also targeted, in violation of her rights to peaceful assembly and association under articles 21 and 22 of the Covenant. She was prosecuted for being a member of the Party, and the trial court judgment refers to her as being part of that group. The Government did not provide any information to the Working Group that Ms. Jalalian had been involved in violent activities with the Party, and there were no legitimate grounds to restrict the exercise of her freedoms.

36. In addition, Ms. Jalalian appears to have been prosecuted as a result of exercising her right to take part in the conduct of public affairs under article 25 (a) of the Covenant. The Human Rights Committee has given a broad interpretation to this provision, noting that citizens take part in the conduct of public affairs by “exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves”.[7] Ms. Jalalian’s activist work in promoting the rights of Kurdish women falls within this definition. The trial court judgment refers to Ms. Jalalian as “having attempted to influence public opinion against the regime”, which assumes a degree of involvement in public affairs.

37. Ms. Jalalian also appears to have been arrested and detained because of her sex, political opinions and national or social origin, in violation of her right to equal protection of the law under article 26 of the Covenant. Her advocacy focuses on women’s rights, and she was targeted in detention on the basis of her sex (through threats of rape and demands for virginity testing). Recent information from other special procedures of the Human Rights Council indicates that Ms. Jalalian is one of many women detained for the exercise of their freedoms, and she appears to be the only female political prisoner currently sentenced to life imprisonment in the Islamic Republic of Iran. There is also credible information to suggest that she was targeted as a Kurdish woman seeking to help other Kurds and because of her involvement in political activism with the Party Jiani Azadi Kurdistan.

38. The Working Group concludes that Ms. Jalalian has been deprived of liberty in violation of her rights under articles 7, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21, 22, 25 and 26 of the Covenant. The deprivation of liberty of Ms. Jalalian therefore falls within category II of the categories applied by the Working Group. The Working Group also considers, for the reasons outlined in the previous paragraph, that the deprivation of Ms. Jalalian constitutes a violation of international law for reasons of discrimination based on national, ethnic or social origin, political or other opinion and gender, and was aimed towards ignoring the equality of human rights. Her deprivation of liberty therefore falls within category V of the categories applied by the Working Group.

39. The source’s allegations also disclose serious violations of Ms. Jalalian’s right to a fair trial, particularly under articles 10 and 11 of the Universal Declaration of Human Rights and article 14 (1)-(3) (a), (b) and (d) of the Covenant. Specifically, Ms. Jalalian was not informed of her right to counsel until three weeks before her trial and was not legally represented during her trial because it was held without notice. Furthermore, it is not clear whether she had legal representation during her appeal, as no mention was made in the Court of Appeal’s reasons to arguments put forward in her statement of defence. In the interests of justice, Ms. Jalalian should have had access to counsel of her choosing for her

[7] See general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 8.

appeal given that she was subject to a death penalty sentence.[8] She did not have access to prosecution evidence at any stage, including any exculpatory evidence, and was not able to respond to the allegations against her, yet was convicted on the basis of the prosecutor's indictment. Moreover, Ms. Jalalian does not appear to have had the benefit of the presumption of innocence or an independent and impartial tribunal. The trial judge referred to Ms. Jalalian as "perhaps even having been involved in terrorist operations and refraining from telling the truth in transporting arms … even though such items were not found in her possession at the time of the arrest". Both the trial judge and the Court of Appeal relied on unnamed reports from the intelligence service that were not disclosed to Ms. Jalalian. The short judgments of both courts do not suggest a substantive consideration of the facts, evidence and law to the high standard of review required under article 14 (5) of the Covenant in a death penalty case.

40. In addition, the Working Group notes the allegations that Ms. Jalalian has, on numerous occasions, been subject to attempts to coerce her into providing a recorded statement in which she confesses to her alleged crimes, both before and after her trial was completed. When she refused to do so, she was allegedly tortured and refused medical treatment. Both the verdict of the court of first instance and the findings of the Court of Appeal refer to admissions made by Ms. Jalalian in finding her guilty and refusing her appeal, without any apparent attempt to evaluate the circumstances in which these admissions were made. As the Human Rights Committee has stated, it is unacceptable according to article 14 (3) (g) of the Covenant to torture or subject a person to other ill-treatment in order to obtain a confession, and the burden is on the State to prove that statements made by the accused have been given of their own free will.[9] The Working Group concurs with the European Court of Human Rights, which considers that the admission of statements obtained as a result of torture or of other ill-treatment as evidence in criminal proceedings renders the proceedings as a whole unfair.[10]

41. For these reasons, the Working Group concludes that the breaches of articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the Covenant are of such gravity as to give Ms. Jalalian's deprivation of liberty an arbitrary character, falling within category III of the categories applied by the Working Group.

42. The Working Group wishes to record its grave concern about Ms. Jalalian's physical and mental well-being since her detention in March 2008. The Government has not refuted allegations that Ms. Jalalian was repeatedly tortured, held in prolonged solitary confinement, deprived of adequate medical treatment, including urgently needed surgery, subjected to demands for virginity testing, forced to receive injections, detained in inadequate conditions with limited access to family members, repeatedly transferred without explanation and subjected to extreme anxiety owing to the uncertainty surrounding her death sentence. The Working Group is particularly concerned about the allegations made by the source that Ms. Jalalian may suffer irreparable harm in losing her sight if she does not receive the necessary surgery. This treatment violates Ms. Jalalian's right under

8 See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, where the Human Rights Committee states, in para. 38, that "in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings" and, in para. 51, that "the right of appeal is of particular importance in death penalty cases".

9 Ibid, paragraph 41.

10 See, for instance, *Gäfgen v. Germany*, No. 22978/05, European Court of Human Rights [Grand Chamber], 1 June 2010, para. 166; *El Haski v. Belgique*, No. 649/08, 25 September 2012, para. 85. This finding applies irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction.

article 10 (1) of the Covenant to be treated with humanity and respect for her inherent dignity. It also violates the prohibition of torture or other cruel, inhuman or degrading treatment or punishment under article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant. The Working Group refers the matter to the relevant Special Rapporteur for appropriate action.

43. The Working Group reminds the Islamic Republic of Iran of its duties to comply with international human rights obligations, not to detain arbitrarily, to release persons who are arbitrarily detained and to provide compensation to them. The Working Group has recalled that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity. The duties to comply with international human rights that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary detention, lie not only with the Government but with all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person should contribute to human rights violations.[11]

44. Finally, the Working Group notes with concern the silence on the part of the Government in not availing itself of the opportunity to respond to the serious allegations made in the present case, and in other communications to the Working Group (see, for example, the opinions on the Islamic Republic of Iran Nos. 44/2015, 16/2015, 55/2013, 52/2013, 28/2013, 18/2013, 54/2012, 48/2012, 30/2012, 8/2010, 2/2010, 6/2009, 39/2008, 34/2008, 39/2000, 14/1996, 28/1994 and 1/1992).[12]

45. The Working Group recalls that the Human Rights Council has called for all States to cooperate with the Working Group, 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.[13]

Disposition

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

> The deprivation of liberty of Zeinab Jalalian was arbitrary, being in contravention of articles 5, 7, 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 7, 9, 10, 14, 19, 21, 22, 25 and 26 of the International Covenant on Civil and Political Rights, and falls within categories I, II, III and V of the categories applicable to the consideration of cases submitted to the Working Group.

47. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Jalalian without delay and bring it into conformity with the standards and principles in the Universal Declaration of Human Rights and the Covenant.

48. Taking into account all the circumstances of the case, especially the risk of irreparable harm to Ms. Jalalian’s health and physical integrity, the Working Group considers that the adequate remedy would be to release Ms. Jalalian immediately and accord her an enforceable right to compensation in accordance with article 9 (5) of the Covenant.

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[11] See, for example, opinion No. 47/2012, para. 22.

[12] In the past, the Islamic Republic of Iran has provided information to the Working Group on various communications, see opinion Nos. 58/2011, 21/2011, 20/2011, 4/2008, 26/2006, 19/2006, 14/2006, 8/2003 and 30/2001, but has not provided a response to the Working Group in more recent cases.

[13] See Human Rights Council resolution 24/7, para. 3.

49. The Working Group urges the Government to ensure that Ms. Jalalian is not subjected to further torture or ill-treatment. The Working Group also urges the Government to fully investigate the circumstances surrounding her arbitrary deprivation of liberty and to take appropriate measures against those responsible for the violation of her rights.

50. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the allegations of torture and ill-treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[*Adopted on 18 April 2016*]