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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fifth session, 14–18 November 2022**

### **Opinion No. 82/2022 concerning Zara Mohammadi (Islamic Republic of Iran)**

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. 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 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 27 June 2022 the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Zara Mohammadi. The Government submitted a late response on 31 August 2022. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> A/HRC/36/38.

## Submissions

### *Communication from the source*

4. Zara Mohammadi, is citizen of the Islamic Republic of Iran, of Kurdish ethnicity, born in 1990. Ms. Mohammadi usual residence is in the city of Sanandaj, Islamic Republic of Iran.

5. Ms. Mohammadi has an MA in political sciences and had begun taking courses for a PhD in political sciences. She is a co-founder of the Nojin Cultural Association, a civil society organization with an official license from the Ministry of the Interior, certified in 2011. As part of the organization's efforts to empower the Kurdish community, Ms. Mohammadi was a teacher of the Kurdish language and literature to children in and around Sanandaj. In addition to her educational work, Ms. Mohammadi collected donations for victims of an earthquake in the city of Kermanshah and initiated a campaign to disinfect the streets and public places in Kurdistan Province during the coronavirus disease (COVID-19) pandemic.

6. At the time of her arrest, on 23 May 2019, Ms. Mohammadi was at her home in Sanandaj with three other friends, all of whom are members of the Nojin Cultural Association. In a sudden raid, without any legal warrant, 30 plain clothes agents belonging to the Islamic Revolutionary Guards Corps raided her house. They arrested Ms. Mohammadi and two of her colleagues and confiscated all of her personal belongings, including her cell phone, laptop and computer.

7. The source emphasizes that no warrant or decision was issued for the arrest of Ms. Mohammadi. Furthermore, no reasons were imputed by the authorities at the time of her arrest. While, according to Iranian domestic law, law enforcement officers are required to provide evidence or justification for arrests, they failed to do so during Ms. Mohammadi's arrest.

8. Ms. Mohammadi and her friends were taken to an undisclosed detention facility in Sanandaj belonging to the Islamic Revolutionary Guard Corps . Ms. Mohammadi was kept in solitary confinement in that undisclosed facility for eight days, during which time she underwent intense interrogation, resembling psychological torture. Interrogation tactics included threats of life imprisonment, the death penalty and reprisals against her family, including death threats. During her detention, her family was not informed of her whereabouts and she was denied visitation rights and access to phone calls.

9. Eight days later, on 31 May 2019, she was transferred to Sanandaj Central Prison. From 6 July to 16 September 2019, Ms. Mohammadi was again held in incommunicado detention at an undisclosed location.

10. On 18 September 2019, Ms. Mohammadi was transferred to Branch One of the Islamic Revolutionary Court of Sanandaj Province for a hearing, without prior notice being provided to her lawyers. The hearing was postponed. On 2 December 2019, after six months and 10 days of detention, Ms. Mohammadi was released on bail for 700,000,000 Iranian rials (approximately €14,811) without receiving any official documentation from the authorities.

11. Ms. Mohammadi was charged with national security offenses in relation to her civil society work in the Kurdish community. On 14 July 2020, Ms. Mohammadi was sentenced to 10 years in jail by Branch One of the Islamic Revolutionary Court of Sanandaj Province on the charge of establishing a committee and a group that oppose the stability and security of the State system.

12. Several attempts have been made to overturn Ms. Mohammadi's sentence. Her lawyers requested a retrial and her case was appealed before the Court of Appeals of Sanandaj Province and the Supreme Court on the basis of article 477 of the Iranian Islamic Criminal Code. Those appeals were unsuccessful; the sentence was confirmed by the Chief Justice of Kurdistan Province and sent forward to the Enforcement of Judgments Office of Kurdistan Province. Finally, in October 2020, Branch 4 of the Court of Appeals of Sanandaj Province reduced Ms. Mohammadi's sentence to five years in prison.

13. On 28 December 2021, Ms. Mohammadi was informed by the judiciary of Sanandaj Province that she was required to surrender herself to commence her sentence by 8 January 2022. She is currently in Sanandaj Central Prison serving out that sentence.

14. The source submits that Ms. Mohammadi's deprivation of liberty falls within categories I, II, III and V of the Working Group. In relation to category I, it is argued that Ms. Mohammadi's deprivation of liberty is not authorized by the Constitution nor under domestic law. More specifically, the source explains that article 15 of the Constitution of the Islamic Republic of Iran states that "the use of regional and tribal languages in the press and mass media, as well as for teaching of their literature in schools, is allowed in addition to Persian", the official language of the State. Hence, according to the Constitution, Ms. Mohammadi has not committed an act which would result in deprivation of her liberty.

15. The source further adds that, although the Constitution authorizes, in addition to Persian, the use of regional and tribal languages in the press and mass media, as well as for teaching of their literature in schools, currently none of the non-Persian languages are allowed to be taught in Iranian schools. Furthermore, it is submitted that the authorities have criminalized calling for education in and about regional and tribal languages by accusing regional and tribal language and cultural rights activists of threatening the national unity of the country. It is reported that the authorities have consistently and systematically targeted such activists.

16. In relation to category II, the source submits that Ms. Mohammadi has been deprived of liberty and of the exercise of her rights and freedoms guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

17. The allegation against Ms. Mohammadi is that she is forming groups and association with the intention of disturbing the national security with the aim of overthrowing the Government. The claim is based on Ms. Mohammadi work as a founding member and director of the Nojin Cultural Association, which consisted of teaching the Kurdish language and literature to the community.

18. According to the source, the Nojin Cultural Association is a civil society organization dedicated to promoting the right of the Kurdish language through non-violent means in accordance with the law. The right of linguistic minorities is affirmed under article 27 of the Covenant. Furthermore, the article sets out that those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right to use their own language.

19. The source recalls the views of the Human Rights Committee in the case of *Mavlonov and Sa'di v. Uzbekistan*, in which it explained, quoting its general comment No. 23 (1994), that article 27 of the Covenant "establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant. It specifically noted that the 'protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned'. Finally, the Committee has emphasized that article 27 requires State parties to employ '[p]ositive measures of protection [...] against the acts of the State party itself, whether through its legislative, judicial or administrative authorities [...]'"<sup>2</sup>

20. The source further observes that, having ratified the Covenant in 1975, the Islamic Republic of Iran remains obliged to foster and promote an inclusive environment for ethnic, racial, religious and other minorities. The source argues, however, that nothing within the case indicates that the law is being applied, as exemplified by the detention of Ms. Mohammadi, a teacher promoting the usage of her mother tongue to others within the Kurdish community. The source states that in detaining Ms. Mohammadi, it cannot be said that the actions of the State fall in line with article 27, giving rise to violations under the Covenant. The source submits that the members of the Kurdish community continue to be denied the right to request that their native language be used in education and are criminalized when speaking out. Article 27 also pertains to those within religious minorities, to which Ms.

<sup>2</sup> CCPR/C/95/D/1334/2004, para. 8.6.

Mohammadi, being a Sunni Muslim, belongs. According to the source, Sunni Muslims have faced discriminatory policies within the Islamic Republic of Iran.

21. In addition, the source recalls that under article 26 of the Covenant, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Furthermore, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, region, political or other opinion, national or social origin, property, birth or other status. The same standards are set out under article 7 of the Universal Declaration of Human Rights.

22. The source further recalls the definition of discrimination presented by the Human Rights Committee in its general comment 18 (1989) on non-discrimination. The Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>3</sup>

23. The source submits that Ms. Mohammadi has suffered from discrimination based on her gender, religion and language. The Human Rights Committee describes direct discrimination as “when an individual is treated less favourably than another person in a similar situation related to a prohibited ground”.<sup>4</sup> The source argues that the discrimination of the Kurdish community in the Islamic Republic of Iran is entrenched in domestic legal frameworks, policies and cultural attitudes that exist both within private and public spaces. The source states that the systematic discrimination against Kurds and Ms. Mohammadi demonstrates a failure to uphold the provisions laid down within article 26 of the Covenant and article 7 of the Universal Declaration on Human Rights.

24. In relation to category III, the source submits that Ms. Mohammadi’s right to a fair trial has been violated and that a pivotal defence against such abuse is the right of the individual to be brought before a judge promptly after detention or arrest. Article 9 (3) of the Covenant affirms that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgment.

25. In the view of the Human Rights Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and justified.<sup>5</sup> In that context, the source recalls that Ms. Mohammadi was brought before the Islamic Revolutionary Court in Sanandaj Province on 18 September 2019, almost four months after her initial arrest on 23 May 2019.

26. The court sentenced Ms. Mohammadi after she had remained in detention for six months to serve a 10-year sentence. The source highlights that Ms. Mohammadi was not given her right to be brought before a judge within the 48-hour time frame. Instead, she was detained in an undisclosed location before being sent directly to Sanandaj Central Prison. The treatment of Ms. Mohammadi is thus in direct violation of article 9 (3) of the Covenant.

27. Moreover, the source recalls that, under article 10 (1) of the Covenant, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. All those detained are to be treated humanely while in police custody. In determining whether the conditions of detention violate this standard, the nature and context of the treatment, its duration and its physical or mental effects should be considered, as well as the characteristics of the individuals concerned. The source submits

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<sup>3</sup> See Human Rights Committee, general comment No. 18 (1989) on non-discrimination.

<sup>4</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social, and cultural rights concerning art. 2, para. 2, of the Covenant.

<sup>5</sup> Human Rights Committee, general comment No. 35 (2014), para. 33.

that while in police custody, Ms. Mohammadi has been subjected to intense interrogation methods, including physiological torture, which have affected both her physical and mental state. Ms. Mohammadi has suffered from threats, including being told she would be given the death penalty if she did not confess to her alleged crimes. The treatment of Ms. Mohammadi while in detention thus gives rise to violations under article 10 of the Covenant.

28. Finally, in relation to category V, the source submits that Ms. Mohammadi has been discriminated against based on ethnicity and gender. The source recalls that Ms. Mohammadi belongs to the marginalized Kurdish ethnic minority, that she is also a woman and that she is a Sunni Muslim. According to the source, these identities place her at the intersection of different types of discrimination.

#### *Response from the Government*

29. On 27 June 2022, 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 about the current situation of Ms. Mohammadi by 26 August 2022. The Working Group also requested the Government to clarify the legal provisions justifying its continued detention of Ms. Mohammadi, as well as its compatibility with the obligations of the Islamic Republic of Iran under international human rights law and, in particular, with regard to the treaties ratified by the State. The Working Group also called upon the Government to ensure her physical and mental integrity.

30. The Government submitted its response on 31 August 2022, after the set deadline. Since the Government did not request an extension of the time limit for its reply, as provided for under the Working Group's methods of work, it cannot accept the response of the Government as if it were presented within the time limit.

#### **Discussion**

31. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion in conformity with paragraph 15 of its methods of work.

32. In determining whether the detention of Ms. Mohammadi is 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 international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>6</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source in a timely fashion.

#### i. Category I

##### Arrest and detention

33. The source submits that on 23 May 2019, Ms. Mohammadi, along with three friends who are also members of the Nojin Cultural Association, were arrested at her home by 30 plain clothes agents of the Islamic Revolutionary Guard Corps in a sudden raid. No arrest warrant or reasons for arrest were provided by the agents. In its late reply, the Government notes that on 23 May 2019, Ms. Mohammadi and several other people were arrested on judicial order but provides no further information about when and which authority issued such order. The Working Group therefore finds the source's submission to be credible.

34. The Working Group recalls that for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that might authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>7</sup> International law includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of

<sup>6</sup> A/HRC/19/57, para. 68.

<sup>7</sup> Opinions No. 46/2017; No. 66/2017; No. 75/2017; No. 35/2018; No. 79/2018; and No. 15/2021, para. 50.

arbitrary detention under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group therefore finds a violation of article 9 (1) as well as article 9 (2) of the Covenant as Ms. Mohammadi was not informed, at the time of arrest, of the reasons for her arrest.

35. The source submits that Ms. Mohammadi was brought before a judge for the first time on 18 September 2019, nearly four months after her arrest on 23 May 2019. In its late reply, the Government does not contest this allegation, merely noting that all due legal formalities have been completed. As the Working Group has reiterated in its jurisprudence and as specified by the Human Rights Committee, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee promptly before a judge; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.<sup>8</sup> The Working Group therefore finds a violation of article 9 (3) of the Covenant, of the right to be brought promptly before a judge.

36. The Working Group also finds that Ms. Mohammadi was not afforded the right to bring proceedings before a court so that the court could decide without delay on the lawfulness of her detention in accordance with article 9 (4) of the Covenant, articles 3, 8 and 9 of the Universal Declaration on Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that there is a legal basis for the detention.<sup>9</sup> The detention of Ms. Mohammadi also violated her rights under article 8 of the Universal Declaration on Human Rights and article 2 (3) of the Covenant as she was denied an effective remedy.

37. The source also submits that after their arrest, Ms. Mohammadi and her friends were taken to an undisclosed detention facility for eight days where she was kept in solitary confinement and underwent intense interrogation akin to psychological torture. During this detention, her family was unaware of her whereabouts and she was denied family contact. In its late response, the Government denies that she was held in solitary confinement, stating that she was referred to the women's ward in a correctional facility on 28 May 2019. The Working Group notes, however, that this assertion does not rebut the allegation that her whereabouts was concealed during that period of time. It therefore finds credible the source's allegations that Ms. Mohammadi was deprived of her liberty against her will, with the involvement of government agents who did not disclose her whereabouts. She was therefore subjected to enforced disappearance.<sup>10</sup> The Working Group recalls that enforced disappearance constitutes an aggravated form of arbitrary detention that has no legal basis and amounts to a violation of article 9 of the Universal Declaration of Human Rights.<sup>11</sup>

38. Aside from the eight days noted above, it is submitted that Ms. Mohammadi was also detained incommunicado from 6 July to 16 September 2019. The Working Group recalls that, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court under article 9 (3)<sup>12</sup> and (4) of the Covenant.<sup>13</sup> Incommunicado detention, especially during the early stage of the investigation, creates an environment conducive to torture and might be used as a coercion to force a detainee to admit guilt. In the case of Ms. Mohammadi, the source alleges that she was subjected to threats of life imprisonment, the death penalty and reprisals against her family. The Working Group notes that prompt and regular access to family members, as well as to independent medical

<sup>8</sup> Opinions No. 60/2020 and No. 66/2020; see also Human Rights Committee, general comment No. 35 (2014), para. 33.

<sup>9</sup> Opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

<sup>10</sup> A/HRC/16/48/Add.3, para. 21, and E/CN.4/1996/38, para. 55; see also Opinions No. 37/2021, para. 65; and No. 41/2020, para. 61.

<sup>11</sup> Human Rights Committee, general comment No. 35 (2014), para. 17; see also Opinion No. 37/2021, para. 65.

<sup>12</sup> Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>13</sup> See Opinions No. 45/2017; No. 46/2017; No. 69/2017; No. 35/2018; No. 9/2019; No. 44/2019; and No. 45/2019.

personnel and lawyers, is an essential safeguard for the prevention of torture as well as for protection against arbitrary detention.<sup>14</sup> It finds that Ms. Mohammadi's right to have contact with the outside world under rules 43 (3) and 58 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated.

39. For the reasons outlined above, the Working Group considers that the deprivation of liberty of Ms. Mohammadi was arbitrary and falls under category I as lacking legal basis.

ii. Category II

40. The source submits that Ms. Mohammadi was charged with national security offenses in relation to her civil society work in the Kurdish community and has been deprived of her liberty as a result of exercising her fundamental rights and freedoms, specifically under article 27 of the Covenant.

41. Article 27 of the Covenant provides that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The right contained in article 27 is an individual right, although one that also exists in common with a community, which belongs to those who are members of a common cultural, religious or linguistic group.<sup>15</sup>

42. While article 27 of the Covenant does not contain a limitation clause, some balancing of the interests of minorities against the interests of Governments may nonetheless be permissible. The Human Rights Committee has distinguished between measures that deny a person his right to enjoy their culture and those that "have a certain limited impact on the way of life of persons belong to a minority", and do not necessarily violate article 27.<sup>16</sup> Article 27 must also be exercised in a manner that is consistent with other fundamental human rights.<sup>17</sup>

43. In his 2020 report to the Human Rights Council, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran highlighted the detention of Ms. Mohammadi, noting that while reports indicate that her arrest was linked to her teaching of the Kurdish language, the Government has accused her of cooperating with illegal opposition parties.<sup>18</sup>

44. The Working Group recalls its earlier observation that vague and overly broad laws are consistently used in the Islamic Republic of Iran to criminalize the exercise of the rights to freedom of expression, association and peaceful assembly.<sup>19</sup> It finds that in the present case, the vaguely formulated offences relating to national security were used to restrict freedoms legitimately exercised by Ms. Mohammadi. In this regard, the Working Group further recalls that in his 2022 report, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran stated that, between January and October 2021, close to 500 Kurdish individuals, including teachers, border couriers, artists, human rights and environmental rights defenders, journalists, artists and lawyers, were arrested or detained, of whom at least 140 were charged with national security-related crimes.<sup>20</sup>

<sup>14</sup> Human Rights Committee, general comment No. 35 (2014), para. 58; see also Opinions No. 34/2021, para. 77; and No. 5/2022, para. 72.

<sup>15</sup> Human Rights Committee, general comment No. 23 (1994), para. 1.

<sup>16</sup> CCPR/C/ 83/D/1023/2001, para. 7.3.

<sup>17</sup> Human Rights Committee general comment No. 23 (1994), para. 8; see also, Opinion No. 9/2017, para. 27 ("Furthermore, the 24 individuals were arrested and detained in violation of their right as a religious minority under article 27 of the Covenant not to be denied the ability to profess and practise their own religion.").

<sup>18</sup> A/HRC/43/61, para. 44.

<sup>19</sup> Opinion No. 46/2022, para. 63.

<sup>20</sup> A/HRC/49/75, para. 46.

45. The Working Group has raised the issue of prosecution under vague and overly broad penal laws with the Government on several occasions.<sup>21</sup> The Working Group reiterates that the principle of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law and regulate their conduct accordingly.<sup>22</sup> It further notes that vague laws may have a deterrent effect on the exercise of fundamental freedoms as they have the potential for abuse, including the arbitrary deprivation of liberty.<sup>23</sup>

46. In the view of the Working Group, Ms. Mohammadi was arrested and detained in violation of her rights as an ethnic and linguistic minority under article 27 of the Covenant. The Working Group consequently finds that the detention of Ms. Mohammadi resulted from the legitimate exercise of her rights under article 27 of Covenant, and was therefore arbitrary, falling under category II. The Working Group refers the case to the Special Rapporteur on minority issues.

iii. Category III

47. Given its finding that the deprivation of liberty of Ms. Mohammadi is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, Ms. Mohammadi was tried and, on 14 July 2020, sentenced to 10 years in jail having been convicted on the charge of “establishing a committee and group that is against the stability and security of the system”. In its late reply, the Government submitted that her sentence was reduced to five years on appeal upon completion of the legal procedures.

48. In its further comments, the source argues Ms. Mohammadi conviction under national security laws, were based on fabricated evidence. Although Ms. Mohammadi’s lawyer requested evidence related to the accusations of carrying and smuggling weapon, none was provided. The Government, in its late reply, states that all formalities for a fair trial were observed but does not address these specific issues. In the light of the source’s credible submissions, the Working Group finds that Ms. Mohammadi’s means to prepare her defence were deliberately restricted. Pursuant to article 14 (3) (b) of the Covenant, any detainee must be given sufficient time and adequate facilities to prepare a defence. This provision is an important element of the guarantee of fair trial. Facilities are only adequate if they include access to documents and to other evidence; the provision of such access was reportedly denied in the case of Ms. Mohammadi.<sup>24</sup>

49. The source has submitted that Ms. Mohammadi suffered from intense interrogation methods, including physiological torture, which impacts both her physical and mental state. Ms. Mohammadi suffered from threats, including being told she would be subjected to the death penalty if she did not confess to her crimes. In its late reply, the Government stated that Ms. Mohammadi confessed to the prosecutor’s office that the education classes were a guise for her cooperation with terrorist and separatist groups such as the Kurdistan Free Life Party (PJAK), the Komala Party of Iranian Kurdistan and the Kurdistan Democratic Party. The Working Group recalls that confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>25</sup> While the burden is on the Government to prove that the confessions were given freely,<sup>26</sup> it has not done so. In these circumstances, Ms. Mohammadi’s right to be presumed innocent and not to be compelled to confess guilt under article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant have been violated.

50. The source submits that Ms. Mohammadi was kept in solitary confinement for eight days during the period she was interrogated. In its late reply, the Government denies allegations of solitary confinement. However, considering the alleged circumstances of Ms.

<sup>21</sup> See, for example, Opinions No. 55/2013, para. 14; No. 19/2018, para. 33; No. 52/2018, para. 78; No. 83/2018, para. 58; No. 9/2017, para. 23, and No. 29/2021, para. 52.

<sup>22</sup> Opinions No. 41/2017, paras. 98–101; and No. 62/2018, paras. 57–59.

<sup>23</sup> Opinions No. 10/2018, para. 55; and No. 15/2021, para. 65.

<sup>24</sup> Human Rights Committee, general comment No. 32 (2007), paras. 32–41.

<sup>25</sup> Opinion No. 59/2019, para. 70; see also A/HRC/45/16, para. 53.

<sup>26</sup> Opinion No. 61/2020, para. 86.



Mohammadi's arrest and detention, the Working Group finds credible the source's allegations on the use of solitary confinement, which, in the view of the Working Group, appears to have been used as a means of coercion. The Working Group notes that, pursuant to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must be used only in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorized by a competent authority.<sup>27</sup>

51. In addition, the source points to violations of the right to be informed promptly of the nature and cause of the accusation; to be brought promptly before a judge; and to challenge the lawfulness of detention, which have been addressed in the discussion on category I. In the light of the numerous violations set out above, the Working Group concludes that the breaches of fair trial and due process rights of Ms. Mohammadi are of such gravity as to give her deprivation of liberty an arbitrary character, falling within category III.

iv. Category V

52. In relation to category V, the source submits that Ms. Mohammadi has been discriminated against based on her ethnicity and gender. The source recalls that Ms. Mohammadi belongs to the marginalized Kurdish ethnic minority, that she is a woman and that she is a Sunni Muslim. The Government, in its late reply, denied discrimination of any kind.

53. The Working Group observes a pattern of harassment against the Kurdish ethnic minority community in the Islamic Republic of Iran. The Working Group recalls that in his 2022 report, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran stated that between January and October 2021, close to 500 Kurdish individuals, including teachers, border couriers, artists, human rights and environmental rights defenders, journalists, artists and lawyers, were arrested or detained.<sup>28</sup> In his 2020 report, the Special Rapporteur referred to worrying reports of violations of the economic, social and cultural rights of minorities, noting that the Kurdish, Ahwazi Arab and Azerbaijani-Turk communities are concerned about the limited access they have to education in their mother tongues.<sup>29</sup> The Working Group has consistently found discrimination when it is apparent that persons have been deprived of their liberty specifically on the basis of their own or perceived distinguishing characteristics or because of their real or suspected membership of a distinct (and often minority) group.<sup>30</sup> In this case, it is recalled that Ms. Mohammadi belongs to the Kurdish ethnic minority community.

54. Moreover, as established in the discussion above concerning category II, Ms. Mohammadi's detention resulted from the peaceful exercise of her fundamental rights under international law. When detention has resulted from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination.<sup>31</sup>

55. For these reasons, the Working Group finds that Ms. Mohammadi was deprived of her liberty on discriminatory grounds, on the basis of her ethnicity and language. Her detention therefore violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant and is therefore arbitrary according to category V.<sup>32</sup>

*Concluding remarks*

56. The Working Group wishes to emphasize that the reduction of Ms. Mohammadi's sentence on appeal does not change the arbitrary nature of the deprivation of liberty in the present case. As indicated above, the Working Group considers that Ms. Mohammadi was

<sup>27</sup> General Assembly resolution 70/175, annex.

<sup>28</sup> A/HRC/49/75, para. 46.

<sup>29</sup> A/HRC/43/61, para. 44.

<sup>30</sup> A/HRC/36/37, para. 48.

<sup>31</sup> Opinions No. 59/2019, para. 79; No. 13/2018, para. 34; and No. 88/2017, para. 43.

<sup>32</sup> Opinions No. 45/2019; No. 44/2019; No. 9/2019; No. 46/2018; No. 45/2018, No. 36/2018; No. 35/2018; No. 79/2017; and No. 75/2017.

deprived of her liberty in violation of international human rights law and should never have been subjected to any form of criminal punishment for her peaceful activities. Furthermore, the imposition of lengthy sentences at trial is likely to have a significant chilling effect upon the peaceful exercise of rights and freedoms by minorities in the Islamic Republic of Iran.<sup>33</sup>

57. In its further comments, the source noted that Ms. Mohammadi had benefitted from permission to leave prison to visit her ailing father and subsequently attend his funeral. It adds that Ms. Mohammadi is suffering from physical and psychological health issues but is not permitted to see a doctor. Finally, the source argues that detaining Ms. Mohammadi in a block with women sentenced to death might be seen as a further act of intimidation in the light of the threats she has received from her arrest until the present day. The Working Group recalls that according to article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity.

58. The present 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.<sup>34</sup> The Working Group is concerned that this indicates widespread or systemic arbitrary detention in the country, which amounts to a serious violation of international law. The duty to comply with international human rights standards rests with all State organs, officers and agents. 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.<sup>35</sup> The Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran for appropriate action.

59. 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 now an appropriate time to conduct another visit. The Working Group made a request to the Government on 19 July 2019 to conduct a country visit. The Working Group recalls that the Government issued a standing invitation on 24 July 2002 to all thematic special procedure mandate holders and awaits a positive response to its request to visit.

### Disposition

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

The deprivation of liberty of Zara Mohammadi, being in contravention of articles 2, 3, 7, 8, 9 and 11 of the Universal Declaration of Human Rights and articles 2, 9, 14, 26 and 27 of the International Covenant on Civil and Political Right, is arbitrary and falls within categories I, II, III and V.

61. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Ms. Mohammadi without delay and to bring them 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.

<sup>33</sup> Opinion No. 9/2017, para. 33.

<sup>34</sup> See, for example, Opinions No. 18/2013; No. 28/2013; No. 52/2013; No. 55/2013; No. 16/2015; No. 44/2015; No. 1/2016; No. 2/2016; No. 25/2016; No. 28/2016; No. 50/2016; No. 7/2017; No. 9/2017; No. 48/2017; No. 49/2017, No. 92/2017; No. 19/2018; No. 52/2018; No. 83/2018; No. 32/2019; and No. 33/2019.

<sup>35</sup> A/HRC/13/42, para. 30; see also Opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

62. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Mohammadi immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Ms. Mohammadi.

63. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Mohammadi and to take appropriate measures against those responsible for the violation of her rights.

64. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteurs on minority issues and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran for appropriate action.

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

### **Follow-up procedure**

66. 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 Ms. Mohammadi has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Mohammadi;
- (c) Whether an investigation has been conducted into the violation of the rights of Ms. Mohammadi, and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Islamic Republic of Iran with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

67. 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.

68. 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.

69. 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.<sup>36</sup>

*[Adopted on 17 November 2022]*

<sup>36</sup> Human Rights Council resolution 51/8, paras. 6 and 9.