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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20–24 November 2017

Opinion No. 92/2017 concerning Ahmadreza Djalali (Islamic Republic of Iran)

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

2. In accordance with its methods of work (A/HRC/36/38), on 18 September 2017 the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Ahmadreza Djalali. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

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

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

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Djalali, born on 15 September 1971, is an Iranian national with a Swedish permanent residency permit. He usually resides in Stockholm. He is a medical doctor, lecturer and researcher in disaster medicine and has worked for the disaster medicine research centre at the Università Degli Studi del Piemonte Orientale, Italy, and the European Society for Emergency Medicine. Mr. Djalali teaches on the Master of Science in Disaster Medicine course, a joint programme run by the Università Degli Studi del Piemonte Orientale and the Vrije Universiteit Brussel, Brussels. He collaborates with Iranian universities and with the Karolinska Institutet in Sweden and maintains contacts with scientists worldwide, including in Israel, Saudi Arabia and the United States of America.

5. The source informs the Working Group that, in April 2016, at the invitation of the University of Tehran and Shiraz University, Mr. Djalali travelled to the Islamic Republic of Iran to attend a number of workshops on disaster medicine. He planned to stay in the country for two weeks and to return to Sweden on 28 April 2016.

6. According to the source, on 25 April 2016, Mr. Djalali was arrested by officials from the Ministry of Intelligence and Security while travelling by car from Tehran to Karaj. At the time of his arrest, the officials did not present a warrant or any other document issued by a public authority, nor did they inform Mr. Djalali of the reason(s) for his arrest.

7. The source submits that, approximately two weeks after his arrest, officials showed Mr. Djalali an allegedly fake letter, supposedly from his spouse. The Iranian authorities claimed that the letter constituted evidence that Mr. Djalali had collaborated with Israel. The source notes that it was only at that moment that Mr. Djalali understood the alleged reasons for his arrest.

8. According to the source, Mr. Djalali was initially held at an undisclosed location for a week. His family knew that he had been arrested, but did not know where he was being held. One week after his arrest, Mr. Djalali was transferred to section 209 of Evin Prison, run by the Ministry of Intelligence and Security, where he spent seven months.

9. The source further argues that, during his period of detention in section 209 of Evin Prison, Mr. Djalali spent three months in solitary confinement and four months in partial isolation with one other person in the same cell. During those seven months, Mr. Djalali was denied access to a lawyer and was allowed to call his family for only two minutes every two weeks.

10. After seven months spent in section 209 of Evin Prison, Mr. Djalali was moved to section 7 of the same facility. On 29 January 2017, he was returned, without a warning, to section 209. On 7 February 2017, the authorities transferred Mr. Djalali back to section 7. On 14 February 2017, Mr. Djalali was transferred back to section 209 again, where he remains to date.

11. The source states that Mr. Djalali's family in the Islamic Republic of Iran was informed that the investigation was related to an issue of national security. Mr. Djalali may be accused of collaboration with enemy States. The source is not aware of any evidence against Mr. Djalali.

12. The source submits that Mr. Djalali's arrest and detention are arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and fall within categories I and III of the categories applied by the Working Group.

13. With regard to category I, the source argues that, although it is not known whether Mr. Djalali was deprived of his liberty on grounds and in accordance with the procedure established by Iranian law, he was taken into custody without an arrest warrant, contrary to article 9 (1) of the Covenant, to which the Islamic Republic of Iran has been a party since 1975.

14. In addition, Mr. Djalali was not informed of the reasons for his arrest at the moment it was carried out, in violation of article 9 (2) of the Covenant. The source submits that it was

only two weeks after that event that Mr. Djalali understood the reasons for his arrest, after authorities showed him a letter, which they claimed had been written by his spouse and which allegedly constituted evidence of his collaboration with Israel. According to the Human Rights Committee, the reasons must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.¹ The source argues that the Iranian authorities not only failed to inform Mr. Djalali of the reasons for his arrest at the moment of his arrest, but also failed to provide any evidence other than a letter, which the source claims is fraudulent.

15. The source further argues that Mr. Djalali has not been promptly informed of any charges against him, in violation of article 9 (2) of the Covenant. The source asserts that, for months after his arrest, Mr. Djalali was unaware of the charges against him. The source reports that it is likely that Mr. Djalali was taken to Branch 15 of the Revolutionary Court in Tehran only on 31 January 2017, nine months after his arrest. The source asserts that, in any case, Mr. Djalali was not brought before a judge for over a week after his arrest. In this regard, the source notes that the Human Rights Committee states that delays should not exceed a few days from the time of arrest and any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.²

16. The source reports that, during the first hearing, the presiding judge formally charged Mr. Djalali with espionage, informing him that he could face the death penalty. The source adds that Mr. Djalali's lawyer was not present at that hearing. The source also adds that the prosecution has no evidence against Mr. Djalali, except the above-mentioned letter.

17. The source further argues that Mr. Djalali was not tried within a reasonable time frame, in violation of article 9 (3) of the Covenant. Mr. Djalali informed his family that his trial might be scheduled to take place during the week of 13 February 2017, nearly 10 months after his arrest. However, it was postponed because the authorities decided that the lawyer chosen by Mr. Djalali could not represent him.

18. The source reports that Mr. Djalali's trial was scheduled to take place on 24 September 2017. Mr. Djalali has met his current lawyer — his third — only once. His first and second lawyers were rejected by authorities, who provided no reason for barring lawyers of Mr. Djalali's choice from assisting him. The source therefore argues that Mr. Djalali has repeatedly been denied the right to a fair trial with a lawyer of his own choosing.

19. The source further notes that it is not known whether Mr. Djalali has been informed of his right to challenge the lawfulness of his detention in line with the provisions of article 9 (4) of the Covenant. It is argued by the source that, even if Mr. Djalali were to be informed of that right, he would have no practical means of exercising it by taking proceedings before a court, as he had no access to a lawyer for more than nine months after his arrest. The source argues that this situation is in contravention of principle 9 of 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, which stipulates that any persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during detention, including immediately after the moment of apprehension.

20. The source notes that, since his arrest, Mr. Djalali has chosen two lawyers to represent him, both of whom were subsequently rejected by the authorities. The source recalls that the Human Rights Committee states that practices that render such review effectively unavailable to an individual amount to a violation of article 9 (4) of the Covenant.³ The source argues that no effective review was possible for Mr. Djalali since he had not been afforded access to a counsel. The source therefore considers that Mr. Djalali has also been deprived of his right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful, in contravention of article 9 (4) of the Covenant.

¹ See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 25.

² *Ibid.*, para. 33.

³ *Ibid.*, para. 46.

21. With regard to category III, the source notes that, although rules on fair trial are principally aimed at ensuring fair court proceedings, they may also be applicable to the pretrial stages of criminal investigations to the extent necessary to ensure a subsequent fair trial before an independent and impartial tribunal. In this regard, the source highlights information that various international norms relating to fair trial before an independent and impartial tribunal were not observed and that Mr. Djalali's fundamental right to a fair trial is at serious risk of being ignored by the Iranian authorities.

22. The source asserts that Mr. Djalali has not been informed promptly and in detail of the nature and cause of the charge against him, in violation of article 14 (3) of the Covenant. Although Mr. Djalali was formally charged of espionage at the hearing before Branch 15 of the Revolutionary Court in Tehran on 31 January 2017, it is unclear whether he was informed of the law and of the alleged general facts on which this charge is based. The source suggests that it is likely that no actual facts have ever been presented to Mr. Djalali in order to explain the basis of the charges, in contravention of article 14 (3) of the Covenant.⁴

23. The source also reports that Mr. Djalali has not been given adequate time or facilities for the preparation of his defence. Mr. Djalali has not been allowed to communicate with a counsel of his own choosing, in violation of article 14 (3) of the Covenant.

24. The source argues that according to the Human Rights Committee, adequate facilities must include access to documents and other evidence.⁵ However, to date, Mr. Djalali has been systematically denied such access.

25. Furthermore, the source argues that the right to communicate with counsel requires that the accused be granted prompt access to counsel.⁶ The source observes that, despite this norm, Mr. Djalali's two chosen lawyers have been rejected by the judge.

26. The source also notes that, while Mr. Djalali was prevented from meeting his first appointed lawyer, he had access to his second appointed lawyer in the presence of police officers. The source considers this insufficient to meet the standard of effective access to a lawyer, as stipulated in article 14 (3) of the Covenant. The source recalls that the Human Rights Committee states that counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.⁷

27. According to the source, Mr. Djalali was repeatedly denied the right to have counsel of his own choosing, as both lawyers appointed by Mr. Djalali were informed by the Iranian authorities that they could not take up his case. Moreover, the source asserts that the prosecution service refused to share court files with both lawyers.

28. The source suggests that the decision to systematically reject lawyers chosen by Mr. Djalali is based on article 48 of the Iranian Code of Criminal Procedure, which states that individuals facing national security-related charges are not allowed access to an independent lawyer of their own choosing throughout the entire investigation phase and may only select lawyers from a roster approved by the head of the judiciary. The source argues that this provision prevents detainees from effectively accessing lawyers of their own choosing and is in clear violation of article 14 (3) of the Covenant.

29. The source observes that Mr. Djalali's right to be tried without undue delay has not been respected, in contravention of article 14 (3) of the Covenant, and that the Human Rights Committee states that if someone suspected of a crime and detained on the basis of article 9 of the Covenant is charged with an offence but not brought to trial, the prohibitions of unduly delaying trials as provided for by articles 9 (3) and 14 (3) (c) of the Covenant may be violated at the same time.⁸ In this regard, the source highlights the fact that Mr. Djalali has been kept in a state of uncertainty about his fate for a prolonged period of time.

⁴ See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 31.

⁵ *Ibid.*, para. 33.

⁶ *Ibid.*, para. 34.

⁷ *Ibid.*

⁸ *Ibid.*, para. 61.

30. The source states that, for the same reasons outlined concerning the denial of Mr. Djalali's right to prepare his defence and to communicate with a counsel of his own choosing, he may also be denied the right to be tried in his presence and to defend himself through legal assistance of his own choosing, in violation of article 14 (3) (d) of the Covenant.

31. The source also believes that Mr. Djalali's right not to be compelled to testify against himself or to confess guilt, enshrined in article 14 (3) (g) of the Covenant, has been violated. The Human Rights Committee states that this safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession.⁹

32. In this regard, the source observes that Mr. Djalali has been put under intense pressure to sign a statement confessing to spying for a hostile Government. According to the source, Mr. Djalali has been subjected to numerous attempts to coerce him into confessing to collaborating with Israel. The source also claims that Mr. Djalali was forced to sign a confession, the contents of which are unknown. The source expresses concern that this statement may be included as evidence in the court proceedings. The source alleges that the Revolutionary Courts use confessions obtained under torture or other ill-treatment as evidence in court. The source highlights 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.

33. The source notes that its concerns about Mr. Djalali's right to a fair trial could equally be based on similar cases involving other detainees. In this regard, the source cites the most recent concluding observation of the Human Rights Committee concerning the Islamic Republic of Iran, in which the Committee expressed its concerns about frequent violations of fair trial guarantees provided for under the Covenant, especially in the Revolutionary Courts and the Evin Prison Court.¹⁰

34. The source also notes the fact that Mr. Djalali may face the death penalty. It therefore highlights that, in cases of trials leading to the imposition of the death penalty, scrupulous respect of the guarantees of fair trial is particularly important.¹¹

35. According to the source, Mr. Djalali is detained in inhuman conditions, in contravention of his right to be treated with humanity and respect for his inherent dignity. The source considers that this treatment constitutes a violation of article 10 (1) of the Covenant and falls short of the requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).¹² In addition, the source claims that the treatment to which Mr. Djalali has been subjected is a violation of 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.

36. More specifically, the source notes that Mr. Djalali was held in solitary confinement for three months. During that period, he was subjected to intense interrogations and was forced to sign statements under significant emotional and psychological pressure. The Iranian authorities allegedly insulted Mr. Djalali and threatened to transfer him to Raja'i-Shahr Prison in Karaj, to be held with other inmates on death row in extremely poor conditions of detention.

37. The source further reports that, in December 2016, the Iranian authorities put Mr. Djalali under intense psychological pressure to sign a statement "confessing" to spying for a hostile government. When he refused, the authorities allegedly stated that they would charge Mr. Djalali with enmity against God (*moharebeh*), which is a capital offence. Due to those

⁹ Ibid., para. 41.

¹⁰ See CCPR/C/IRN/CO/3, para. 21.

¹¹ See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 59.

¹² Rules 1 and 24–27.

threats, there are serious fears for Mr. Djalali's life. Mr. Djalali also allegedly received a number threats relating to the lives of his family members in Sweden.

38. Finally, the source claims that Mr. Djalali has been prevented from accessing adequate medical care, similarly to many other prisoners in the Islamic Republic of Iran and in Evin Prison. Mr. Djalali's health has seriously deteriorated since he entered Evin Prison. He currently suffers from kidney pain and has blood in his urine. In addition, he has very low blood pressure, has lost consciousness on a number of occasions and his weight has dropped by 24 kg.

39. The source reports that Mr. Djalali has gone on hunger strike on several occasions in protest against his arrest and detention. The first three such protests lasted a week each, while the fourth started on 26 December 2016 and lasted for 49 days, until 12 February 2017. Mr. Djalali began his fifth hunger strike on 15 February 2017, when he was informed that his chosen lawyer was not allowed to represent him.

40. The source points to the inhuman conditions in Evin Prison, highlighting that, in its most recent concluding observations concerning the Islamic Republic of Iran, the Human Rights Committee also expressed its concerns about poor conditions in Evin Prison, the use of solitary confinement, unreasonable limits on family visits and the reported denial of medical treatment for many prisoners in Ward 350/Correctional Facility 3 of Evin Prison.¹³

41. Mr. Djalali was the subject of a joint urgent appeal sent to the Government of the Islamic Republic of Iran on 10 February 2017 by the Working Group on Arbitrary Detention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran. The Working Group acknowledges the reply of the Government to this joint urgent appeal, received on 25 August 2017.

Response from the Government

42. On 18 September 2017, the Working Group transmitted the source's allegations to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 17 November 2017, detailed information about the current situation of Mr. Djalali and any comments on the source's allegations.

43. The Working Group regrets that it did not receive a response from the Government, nor did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

44. 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.

45. The Working Group has, in its jurisprudence, established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

46. The source has submitted, and the Government has chosen not to contest, allegations that the arrest and detention of Mr. Djalali are arbitrary and fall within categories I and III of the Working Group. The Working Group shall consider these allegations in turn.

47. The source argues that the detention of Mr. Djalali was arbitrary and falls within category I, as he was arrested on 25 April 2016 without an arrest warrant, he was not informed of any charges against him until 31 January 2017 and he was unable to challenge the lawfulness of his detention due to lack of legal assistance.

¹³ See CCPR/C/IRN/CO/3, para. 19.

48. The Working Group notes that Mr. Djalali was arrested without a warrant and that he did not learn of any of the accusations against him until some two weeks later when he deduced them from the contents of a letter he was shown; however, this disclosure did not constitute an official presentation of charges. Consequently, even though the said letter was shown to Mr. Djalali, the authorities failed to formally notify Mr. Djalali of any of the charges against him. The only formal notification of charges appears to have taken place on 31 January 2017, more than nine months after Mr. Djalali's arrest.

49. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is promptly informed not only of the reasons for his or her arrest but also of any charges against him or her. The right to be promptly informed of charges applies to notice of criminal charges and, as the Human Rights Committee states, that right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.¹⁴ This right was not observed in the case of Mr. Djalali.

50. Furthermore, anyone detained has the right to take proceedings before a court in order to establish the lawfulness of his or her detention, as envisaged by article 9 (4) of the Covenant. The Working Group wishes to recall that the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.¹⁵ This right, which is in fact a peremptory norm of international law, applies to all forms of arbitrary deprivation of liberty¹⁶ and to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures, involuntary confinement in medical or psychiatric facilities, migration detention, detention for extradition, arbitrary arrests, house arrest, solitary confinement, detention for vagrancy or drug addiction and detention of children for educational purposes.¹⁷ Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.¹⁸

51. The Working Group notes that, in order to ensure the effective exercise of this right, detained persons should have access to legal assistance of their own choosing. This choice was denied to Mr. Djalali, seriously adversely affecting his ability to effectively exercise his right to challenge the lawfulness of his detention. Moreover, the Working Group attaches special importance to the allegation, uncontested by the Government, that Mr. Djalali was held in detention for a week at an undisclosed location. This is akin to incommunicado detention and effectively prevented him from challenging the lawfulness of his detention, denying him his rights under article 9 (4) of the Covenant.

52. The Working Group therefore concludes that, in the light of Mr. Djalali's detention without an arrest warrant, the fact that no formal charges were brought against him for nearly 10 months and the fact that he was effectively prevented from exercising his right to challenge the lawfulness of his detention, his arrest and detention are arbitrary and fall within category I.

53. The source has further submitted that the detention of Mr. Djalali is arbitrary and also falls within category III, as he was prevented from having a lawyer of his own choosing, was unable to communicate with his lawyer properly, was not afforded sufficient opportunity to prepare his defence, was forced to sign a self-incriminating confession, was denied medical care and was held in inhuman detention conditions. The Government has chosen not to respond to any of these allegations.

¹⁴ See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 29.

¹⁵ See A/HRC/30/37, paras. 2 and 3.

¹⁶ *Ibid.*, para. 11.

¹⁷ 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, para. 47 (a).

¹⁸ *Ibid.*, para. 47 (b).

54. The Working Group is of the view that these allegations reveal serious breaches of the right to fair trial. Mr. Djalali was unable to choose his own lawyer as the authorities rejected the two lawyers he chose. The third lawyer, who was not chosen by Mr. Djalali, was approved but even then he was not allowed to communicate freely with his client. Denial of legal assistance is a violation of article 14 (3) (b) of the Covenant and principle 17 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as well as of principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. The Working Group also observes that Mr. Djalali's right to adequate time and facilities for the preparation of the defence under article 14 (3) (b) of the Covenant was violated. Furthermore, Mr. Djalali's lawyer was unable to access all the necessary files and the authorities did not promptly notify Mr. Djalali of the charges against him.

55. The Working Group is alarmed at the submission stating that Mr. Djalali, while held incommunicado, was forced to sign self-incriminating confessions, and finds that this constitutes a prima facie breach of the presumption of innocence under article 14 (2) of the Covenant and the right not to testify against himself under article 14 (3) (g) of the Covenant, as well as a breach of the absolute prohibition of torture and ill-treatment, which is a peremptory norm of international law. This situation also constitutes a breach of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as of principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and of rule 1 of the Nelson Mandela Rules.

56. Moreover, although the Working Group's mandate does not cover conditions of detention or the treatment of prisoners, it must consider to what extent detention conditions can negatively affect the ability of detainees to prepare their defence as well as their chances of a fair trial.¹⁹ The detention of Mr. Djalali took place in poor conditions, a fact which is especially alarming given his status as an unconvicted person and which constitutes a breach of article 10 (2) of the Covenant. He was also denied medication and treatment for serious health conditions, in violation of the Nelson Mandela Rules, in particular rules 24, 25, 27 and 30.

57. The Working Group further finds that the Iranian authorities' failure to inform Mr. Djalali's family of his whereabouts or to allow him to do so constitutes a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

58. The Working Group therefore concludes that there has been a non-observance of the international norms relating to a fair trial, as established in the Universal Declaration of Human Rights and in relevant international instruments accepted by the Islamic Republic of Iran, of such gravity as to give Mr. Djalali's deprivation of liberty an arbitrary character, falling within category III.

59. Given the seriousness of the issues raised by this case, 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.

60. The Working Group would welcome the opportunity to conduct a country visit to the Islamic Republic of Iran, so that it can constructively engage with the Government and offer assistance in addressing its serious concerns relating to the arbitrary deprivation of liberty. The Working Group considers that now is an appropriate time to conduct such a visit, noting the significant period of time that has passed since its most recent visit to the Islamic Republic of Iran in 2003. The Working Group notes that the Government issued a standing invitation to all thematic special procedure mandate holders on 24 July 2002 and looks forward to a positive response from the Government to its country visit request, which was made on 10 August 2016.

¹⁹ See E/CN.4/2004/3/Add.3, para. 33.

Disposition

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

The deprivation of liberty of Ahmadreza Djalali, being in contravention of articles 3, 5, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

62. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Mr. Djalali 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.

63. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Djalali immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

Follow-up procedure

65. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

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

66. 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.

67. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

68. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²⁰

[Adopted on 24 November 2017]

²⁰ See Human Rights Council resolution 33/30, paras. 3 and 7.