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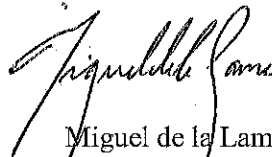
Dear Mr. Ghaemi,

I would like to refer to the sixty-fourth session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of detention submitted to it.

In accordance with paragraph 18 of the Working Group's methods of work, I am sending to you, attached herewith, the text of Opinion No. 30/2012 (Iran) regarding a case submitted by you.

This Opinion will be reflected in the Working Group's annual report to the Human Rights Council.

Yours sincerely,



Miguel de la Lama
Secretary

Working Group on Arbitrary Detention

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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012****No. 30/2012 (Islamic Republic of Iran)****Communication addressed to the Government on 30 March 2012****Concerning Hossein Mossavi, Mehdi Karoubi, Zahra Rahnava****The Government did not reply to the communication.****The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its working methods, the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

Submissions

Communication from the source

3. The cases summarized hereafter have been reported to the Working Group on Arbitrary Detention as follows:
4. **Mr. Mehdi KAROUBI**, an Iranian national, born in 1937, usually residing in Tehran, Iran, served as Speaker of Parliament from 1989 to 1992 and from 2000 to 2004. He was a presidential candidate in 2005 and 2009. Mr. Karoubi is also the head of the opposition reformist *Etemad-e Melli* (National Trust) Party and owns the banned reformist newspaper *Etemad-e Melli*.
5. **Mr. Mir Hossein MOSSAVI**, an Iranian national, born in 1941, and usually residing in Tehran, Iran, served as Prime Minister of Iran from 1981 to 1989. Mr. Mossavi was also former political advisor to President Rafsanjani from 1989 to 1997 and former senior political advisor to President Khatami from 1997 to 2005. Mr. Mossavi is a member of the Expediency Council and the Supreme Council of the Cultural Revolution, joining them in 1989 and 1996 respectively. In June 2009, Mr. Mossavi ran as presidential candidate. Moreover, Mr. Mossavi owned the operating license for *Kalame* newspaper, which was shut down in June 2009. Its website remains in use although it is censored.
6. **Mrs. Zahra RAHNAVARD**, an Iranian national, born in 1945, usually residing in Tehran, Iran, served as an advisor to President Khatami from 1997 to 2005 and as president of Al-Zahra, a women's university in Tehran, from 1998 to 2005. She is married to Mr. Mossavi and she was actively involved in his campaign for the presidential elections.
7. On 5 February 2011, Mr. Mossavi and Mr. Karoubi requested a permit from the Iranian authorities to hold a demonstration on 14 February 2012 in support of the protests taking place at the time in Egypt and Tunisia. Reportedly, the Ministry of Interior of Iran denied their request.
8. Mr. Karoubi was taken into house arrest along with his wife Mrs. Fatemeh Karoubi on 10 February 2011. Reportedly, the Iranian security forces (*Nirou-ye Entezami*) were involved in the arrest. The Iranian authorities reportedly released Mrs. Karoubi around 25 April for medical treatment.
9. Between 9 and 14 February 2011, Mr. Mossavi and Mrs. Rahnavard were also placed under house arrest at their home in Tehran. Reportedly, the Iranian security forces (*Nirou-ye Entezami*) were involved in the arrest. According to eyewitnesses' reports, at various times the house of Mr. Mossavi and Mrs. Rahnavard was surrounded by uniformed security forces and plainclothed security forces, believed to be members of the Intelligence Ministry, Islamic Revolution Guard Corps and Basij militia.
10. On 14 February, while demonstrations were taking place in Tehran and other major cities in Iran, the security forces allegedly blocked the streets leading to the homes of Mr. Karoubi and Mr. Mossavi.
11. It is reported that between 16 and 24 February 2011, Mr. Mossavi's daughters asked the security forces surrounding their parents' home if there had been any judicial order that prohibited them from seeing their parents. The security officers allegedly refused to provide any answers. It is reported that sometime between 16 and 24 February 2011, Mr. Mossavi and his wife Mrs. Rahnavard were taken to an undisclosed location, allegedly called 'safe houses'.

12. On 28 February 2011, Iran's Prosecutor General Gholam Hossein Mohseni Ejei reportedly denied that Mr. Mossavi and Mr. Karoubi had been formally arrested or placed in detention, stating that they were in their respective homes. Mr. Ejei conceded that the authorities had imposed some restrictions on them: "Judicial action has been taken (against Mossavi and Karoubi); ultimatums have been issued...In the first step, their communication, including their comings and goings, and their telephone conversations have been restricted, and if need be, other steps will be taken." This was Mr. Ejei's statement to the semi-official Iranian Students News Agency.

13. On 8 March 2011, Mr. Mossavi and his wife were allegedly returned to their home where they remain since under the regime of house arrest and under the authority of the Iranian Revolutionary Guard Corps and the Ministry of Intelligence. Mr. Karoubi also remains incommunicado at his home.

14. On 16 November 2011, Dr. Mohammad Javad Larijani, Head of the High Council for Human Rights in Iran, publicly stated that the reasons for the confinement of the opposition leaders include incitement to violence and other illegal activities.¹

Source's contention as to the alleged arbitrary character of house arrest

15. The source refers to the Working Group's Deliberation No. 1, which provides that "house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave." According to the source, Mr. Mossavi, Mrs. Rahnavard, and Mr. Karoubi have been kept incommunicado in their homes since February 2011, fully deprived by the authorities of their ability to leave. Similarly the source emphasizes that the Iranian law does not contain any provision which would authorize house arrest.

16. First, the source holds the view that the petitioners' detention results directly from their attempt to peacefully exercise their right to freedom of expression and assembly under articles 19 and 21 of the International Covenant of Civil and Political Rights (ICCPR) and under article 27 of the Iranian Constitution. It is reported that the Iranian authorities restricted their communication and movement throughout 2010 and 2011 primarily as a result of their criticism of the Government, calls for democratic reforms, and demand for respect of constitutional rights in Iran. The source maintains that there is a genuine link between the request filed by Mr. Mossavi and Mr. Karoubi to hold peaceful assembly and their ensuing house arrest. Since their arrest, Mrs. Rahnavard, Mr. Mossavi and Mr. Karoubi have not been allowed to leave the premises of their home, even for medical purposes. They were also barred from joining the demonstrations of 14 February 2011. It is reported that the petitioners have been kept incommunicado and have been deprived from making any public statements. It is also reported that members of both Mr. Mossavi's and Mr. Karoubi's families have been harassed and intimidated.

17. Second, the source conveys that the petitioners' house arrests lack any legal basis. There is no indication that any authority has issued an order sanctioning their detention. Instead, the source informs that the authorities have continuously denied any formal arrest or detention. The source points to a set of procedural violations in the present case, including article 32 of Iranian Constitution and article 24 of the Code of Criminal Procedure, which require a judge to authorize any pre-trial detention and to provide written charges within 24 hours of any arrest. Similarly, Mrs. Rahnavard, Mr. Mossavi and Mr. Karoubi have not had access to regular visitations, health care or to a lawyer. The petitioners have not been brought before a judge and have not had the opportunity to contest the legality of their house arrest.

18. The United Nations General Assembly, in a resolution adopted 21 November 2011, "[e]xpress[ed] deep concern at...[t]he continuing and sustained house arrest of leading opposition figures from the 2009

¹ Press Conference, Human Rights and Regional Development, 16 November 2011, cited in UN Doc. A/HRC/19/82, para. 28.

presidential elections.² Similarly, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, in a communication sent to the Government, raised concerns about the ongoing arrest of Mr. Mossavi and Mr. Karoubi.

19. Finally, in his recent report to the Human Rights Council, the Secretary-General expressed concerns “that the two main opposition leaders Mir Hossein Mossavi and Mehdi Karoubi remained under house arrest with limited contacts with the outside world during the elections. Such restrictions adversely affect free, fair and participatory elections.”³

Response from the Government

20. The Working Group transmitted the above allegations to the Government of the Islamic Republic of Iran requesting that it to provide, in its reply, detailed information about the current situation of Hossein Mossavi, Mehdi Karoubi and Zahra Rahnavard.

21. The Working Group regrets that it did not receive a response from the Government.

Discussion

22. In the absence of a response from the Government and based on its Methods of Work, the Working Group is able to render an Opinion in light of the information submitted to it.

23. The primary question to address here is whether house arrest constitutes deprivation of liberty amounting to ‘detention,’ and if such detention is without legal basis under existing definitions of international human rights law. The Working Group compares house arrest to deprivation of liberty “provided that it is carried out in closed premises which the person is not allowed to leave.”⁴ Deliberation No. 1 further declares that it falls on the Working Group to determine on a case to case basis whether a detention is arbitrary in nature or not. In Opinions 2/2002; 9/2004; 2/2007 and 12/2010,⁵ the Working Group declared house arrest as arbitrary detention; in particular when it lacked any of the safeguards of arrest and detention under the Universal Declaration of Human Rights (UDHR) and (for State parties), the International Covenant on Civil and Political Rights (ICCPR). In the case at hand, there is no evidence that the house arrests of Hossein Mossavi, Mehdi Karoubi, Zahra Rahnavard meet the basic requirements of relevant national and international law. The Government of the Islamic Republic of Iran has conceded placing restrictions on the detainees in question (Iran’s Prosecutor General Gholam Hossein Mohseni Ejei statement of 18 February 2011 to the press) mentioning ‘judicial action’ and placing restrictions on Mr. Mossavi and Mr. Karoubi contact with the outside world. The Working Group did not receive information or further details regarding any trial or judicial proceedings accorded to the abovementioned persons.

24. The second issue under consideration of the Working Group relates to possible reasons for placing Mr. Mossavi *et al* under house arrest. As in other similar cases from the Islamic Republic of Iran including those leading to Opinions 1/1992; 28/1994; 14/1996; 39/2000; 30/2001; 8/2003; 19/2006; 6/2009; 8/2010; 21/2011; 20/2011⁶, the question before the Working Group was whether the motivating factor for arrest and detention is the result of the exercise of the rights and freedoms in articles 19 (freedom of opinion and expression), 20 (freedom of peaceful assembly and association) and 21 (the right to take part in the government of his country, directly or through freely chosen representatives) of the UDHR and by articles 19 (freedom of opinion and expression) and 21 (freedom of peaceful assembly and association) of the ICCPR. As was in previous cases, Mr. Mossavi *et al* are prominent members of the Iranian opposition, who

² A/C.3/66/L.56

³ A/HRC/19/82, para. 28.

⁴ E/CN.4/1993/24 (page 9),

⁵ Opinions are available from the Working Group on Arbitrary Detention database : www.unwgadatabase.org/un

⁶ Ibid, footnote 5

in former regimes had held high political offices. Their detention followed after they sought permission to organise a demonstration, and to which the request was denied. Dr. Mohammad Javad Larijani, head of the High Council for Human Rights in Iran cited the reasons for the confinement of the opposition leaders which refers to “incitement to violence and other illegal activities,”⁷ lending credence to the view that Mr. Mossavi *et al* met their present fate due to the exercise of their rights to freedom of expression and opinion and participation in the political activities of the country.

25. Finally, there is the question of the right to be charged and brought to trial for any alleged violation of national laws. In this regard, not only has the Government and its functionaries violated international human rights laws, but also Iranian laws on the subject. Article 32 of the Islamic Republic of Iran’s Constitution prohibits arbitrary arrest and requires that “[i]f someone is detained, the subject matter of the charge, with reasons, must be immediately communicated and explained in writing to the accused”. The same provision indicates that “[w]ithin at most 24 hours the file on the case and preliminary documentation must be referred to the competent legal authority. Legal procedures must be initiated as early as possible.” Continued house arrest interspersed with detention in unknown locations; not being informed of the reasons for detention, failure to be presented promptly before a judge, to have access to legal counsel, to a public, free, fair and impartial trial, all constitute the core of rights that have been compromised in the case at hand.

26. The Working Group considers that detention in this matter is arbitrary (and thus prohibited), if it follows from the exercise of the rights and freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the UDHR and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR. The case under consideration demonstrates that this has indeed been the cause of the detention of Mossavi *et al* since February 2011, in order to prevent them from participating in demonstrations against the results of the elections in Iran.

27. The Working Group notes the pattern of human rights violations documented over the years making the case at hand and others of a similar nature, a matter of grave concern. As noted in Opinion 20/2011 (para. 25) “the Working Group refers to the critical findings of human rights violations occurring in the Islamic Republic of Iran by United Nations human rights bodies, including this Working Group (see, for example, report of the Working Group on its visit to the Islamic Republic of Iran, E/CN.4/2004/3/Add.2 and Corr.1; see also General Assembly resolution 65/226 “Situation of human rights in the Islamic Republic of Iran” and Human Rights Council resolution 16/9 “Situation of human rights in the Islamic Republic of Iran”).” More recently the Working Group refers to the “Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran⁸” as well as “The situation of human rights in the Islamic Republic of Iran.”⁹

Disposition

28. In the light of the preceding, the Working Group on Arbitrary Detention renders the following Opinion:

29. The deprivation of liberty of Hossein Mossavi, Mehdi Karoubi, Zahra Rahnavard is arbitrary, being in contravention of articles 9, 10, 11, 18, 19 and 21 of the UDHR and articles 9, 14 and 19 of the ICCPR, and falls within categories I, II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

⁷ Press Conference, Human Rights and Regional Development, 16 November 2011, cited in UN Doc. A/HRC/19/82 para. 28

⁸ United Nations Document, A/HRC/19/82

⁹ UN Doc. A/66/374

30. Consequent upon the Opinion rendered, the Working Group requests the Government to release Hossein Mossavi, Mehdi Karoubi, Zahra Rahnavard.

31. The Working Group believes that, taking into account all the circumstances of the case, the Government of the Islamic Republic of Iran ought to accord Hossein Mossavi, Mehdi Karoubi, Zahra Rahnavard an enforceable right to compensation pursuant to article 9(5) of the ICCPR.

[Adopted on 29 August 2012]