

No. 20/2011 (Islamic Republic of Iran)

Communication addressed to the Government on 10 December 2010

Concerning: Kiarash Kamrani

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. The mandate of the Working Group was clarified and extended by Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.
2. The Working Group, in accordance with its methods of work, forwarded a communication to the Government on 10 December 2010 and received the Government's reply on 7 February 2011. The Working Group welcomes the cooperation of the Government.
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 sentence or despite an amnesty law applicable to him) (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 the 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; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).
4. The case concerns Kiarash Kamrani, a student who took part in the protest over the 2009 presidential elections.

Submissions

Communication from the source

5. The case has been reported to the Working Group on Arbitrary Detention as follows: Kiarash Kamrani is a citizen of the Islamic Republic of Iran, born in November 1131, usually resident in Tehran and is a student at the Payam-e Noor University in Tehran.

6. On 27 December 2009, while participating in the Ashura protests after the presidential elections, Mr. Kamrani was arrested by the basij militia, a paramilitary force of the Iranian Revolutionary Guard (Sepah-e-Pasdaran).

7. He was taken to an undisclosed location and held incommunicado in solitary confinement. He was subject to severe physical abuse. Members of the basij militia and other forces involved in Mr. Kamrani's detention brutally beat him, striking him in his face with their fists, batons and feet and stamping on his face, threatening to kill him in the process. Mr. Kamrani lost over 26 pounds as a result of malnourishment during his detention. Transferred from solitary confinement, he was told that he was being detained in Evin Prison under the surveillance of the Iranian Revolutionary Guard, and that he had no right to talk to a lawyer. He was allowed one call to his family and was interrogated for 10-12 hours each day. He was accused of arson and told to confess to that allegation. After the period of interrogation, he was placed back in solitary confinement for another 20 days inside Section 209 of Evin Prison, run by the Iranian Ministry of Intelligence. In Branch 15 of the Revolutionary Court in Tehran he was informed of the charges against him. The charges were televised nationally throughout Iran.

8. Mr. Kamrani's family engaged a lawyer for him, who has never been able to confer with Mr. Kamrani, and has been prevented from appearing in court on Mr. Kamrani's behalf.

9. On 27 February 2010, the Court sentenced Mr. Kamrani to six years in prison and a monetary sanction of 400 US\$. He was convicted and sentenced under articles 500, 609 and 610 of the Islamic Penal Code, which prohibit "propaganda against the state", "insults" to any leader of the Government of the Islamic Republic of Iran and "assembly and collusion to commit a crime", respectively. Mr. Kamrani filed a handwritten appeal to Branch 54 of the Tehran Province Appeal Court which was denied on 24 April 2010. Mr. Kamrani's family has been granted a limited access to visit him. The source reports that on 10 June 2010, Mr. Kamrani's brother was arrested visiting Mr. Kamrani. He was allegedly accused of writing political slogans on the prison wall and detained for one month. Mr. Kamrani's father and sister were also arrested and detained for approximately four hours. In October 2010, Mr. Kamrani was allowed to spend two weeks with his family after paying temporary bail of 7000 US\$.

Response from the Government

10. The Working Group forwarded a communication to the Government on 10 December 2010 and received the Government's reply on 7 February 2011.

11. The Government states that Kiarash Kamrani was arrested on charges of assembly and conspiracy against national security, disobedience of Government officials in the course of discharging their duties, propaganda against the system of the Islamic Republic of Iran, insults against the late leader of the Islamic Revolution and officials of the country.

12. Following preliminary investigations and completion of relevant legal procedures and hearing the plea of the accused and his defence lawyer, Branch 15 of Tehran's Court of the Revolution found Mr. Kamrani guilty and issued verdict No. 1131 dated 27 February 2010. The verdict was based on article 610 of the Islamic Penal Code.

13. Mr. Kamrani was subsequently sentenced to four years of imprisonment under article 500 of the Islamic Penal Code, an additional six months prison sentence under article 607 of the Islamic Penal Code, another six month prison sentence under article 514 of the Islamic Penal Code and the payment of 1 million rials in a fine under article 609 of the Islamic Penal Code.

14. The verdict was appealed. As a result the case was re-examined by Branch 54 of Tehran Province Court of Appeal. The court, according to article 257 (a), upheld the judgment in its verdict No. 102 dated 24 April 2010.

Comments from the source

15. The Working Group forwarded the Government's reply to the source for comments.

16. The source maintains that the Government had failed to address the key issues, including that: (a) at the time of his arrest, Mr. Kamrani was held incommunicado in solitary confinement for approximately 40 days; (b) at the time of his indictment, conviction, and appeal, the Government denied Mr. Kamrani access to legal counsel; (c) before and during his detention, the Government's agents physically abused Mr. Kamrani and subjected him to torture and cruel, inhuman and

degrading treatment; and (d) the Government detained Mr. Kamrani in an effort to punish him for his exercise of rights and freedoms guaranteed under the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

17. According to the source, the information provided by the Government regarding the conviction of Mr. Kamrani is not consistent with the information available to Mr. Kamrani and his family. The judgment by the Tehran Province Court of Appeal states that Mr. Kamrani was sentenced to six years' imprisonment based on the following purported violations of the Islamic Penal Code: (a) four years for a violation of article 610 of the Islamic Penal Code; (b) six months for a violation of article 500 of the Islamic Penal Code; (c) six months for a violation of article 607 of the Islamic Penal Code; and (d) one year for a violation of article 514 of the Islamic Penal Code.

18. The Government officials verbally informed Mr. Kamrani that his sentence was reduced by the Court by two and a half years to a total of three and a half years. Neither Mr. Kamrani nor his family was provided with any documentation to confirm the reduced sentence. The Government's concession in this regard does not change the nature of the charges against him. They were used to prosecute the expression of protected speech and opinions. The only apparent motivation to imprison Mr. Kamrani was to deprive him of his freedom of opinion and expression and punish him for speaking out against the Government during the 27 December 2009 Ashura protests.

Discussion

19. Article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant on Civil and Political Rights prohibit arbitrary detention. The Working Group regards detention as arbitrary if it follows from the exercise of the rights and freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Declaration and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant.

20. In this case, the first pressing question is whether the deprivation of liberty 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 Universal Declaration and by articles 19 (freedom of opinion and expression) and 21 (peaceful assembly, freedom of peaceful assembly and association) of the Covenant.

21. The Government has not answered the prima facie case that has been made out by the source supporting that the detention of Mr. Kamrani follow from the exercise of the rights and freedoms in articles 19, 20 and 21 of the Universal Declaration and articles 19 and 21 of the Covenant. A mere listing up of the judgments and other decisions is not sufficient in this respect. The Working Group will need information that directly rebuts the claims that human rights guarantees have been violated. The Working Group has in its constant jurisprudence established the ways in which it deals with evidentiary issues, in accordance with the ruling of the International Court of Justice in *Diallo (Guinea v. Democratic Republic of the Congo)*, Judgment of 30 November 2010, establishing the evidentiary position for claims to succeed in human rights cases, a position which this Working Group takes this occasion to adopt for its own opinions in individual cases. The International Court of Justice had previously placed the burden of proof on the applicant in *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment of 20 April 2010, para. 162. However, in paragraph 55 of the *Diallo* judgment, the Court made it clear that this could not apply to human rights cases, in particular where "it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he was entitled".

22. The Government has not contested the prima facie case in a way which gives this Working Group any alternative but to reach the conclusion the detention of Kiarash Kamrani follows from the exercise of the rights and freedoms as mentioned above, and that there are no grounds to justify the restriction of those rights. The arbitrary detention falls into category II of the categories applicable to the cases submitted to the Working Group.

23. There are also violations of the relevant international standards contained in article 10 of the Universal Declaration and in article 14 of the Covenant relating to the right to a fair trial of such gravity as to confer on the detention an arbitrary character. The Working Group refers to the discussion of the rights to legal counsel in its opinion No. 21/2011 concerning Nasrin Sotoudeh of

the same date as the present opinion. It would add that, according to its own constant jurisprudence, and with support of that of other human rights bodies (see, for example, the European Court of Human Rights, *Salduz v. Turkey*, Judgment of 27 November 2008, application No. 36391/02, as an expression of the customary international law requirements), the right to legal counsel also applies to the detention period before the formal trial. Mr. Kamrani was held incommunicado in solitary confinement for an extended period, not promptly informed of the charges against him, did not go promptly before judge, was denied legal counsel and subjected to degrading and inhumane treatment. The arbitrary detention thus falls into category III of the categories applicable to the cases submitted to the Working Group.

24. Article 9, paragraph 5, of the Covenant provides the right to an enforceable right of compensation. The Working Group has in its jurisprudence continued to develop, based on general principles, the right to a remedy, which primarily is a right to immediate release and to compensation. In this case, it is clear that Mr. Kamrani has a claim to compensation under article 9, paragraph 5, of the Covenant on Civil and Political Rights, which is an expression of general principles. The reasons that may be given for the detention of Mr. Kamrani cannot be used against a claim for compensation.

25. In conclusion, 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; opinions Nos. 34/2008, 39/2008 and 6/2009; 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"). The Working Group reminds the Government of the Islamic Republic of Iran of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations.

Disposition

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

The deprivation of liberty of Kiarash Kamrani, being in contravention of articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights, is arbitrary, and falls into categories II and III of the categories applicable to the cases submitted to the Working Group.

27. The Working Group requests the Government to take the necessary steps to remedy the situation, which include the immediate release of Mr. Kamrani and adequate reparation to him.

[Adopted on 6 May 2011]