

# No. 21/2011 (Islamic Republic of Iran)

## Communication addressed to the Government on 27 January 2011

**Concerning: Nasrin Sotoudeh**

### **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 in 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.
2. The Working Group, in accordance with its methods of work, forwarded a communication to the Government on 27 January 2011 and received the Government's reply on 4 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 Nasrin Sotoudeh, a lawyer and human rights activist.

#### **Submissions**

##### *Communication from the source*

5. The case has been reported to the Working Group on Arbitrary Detention as follows: Nasrin Sotoudeh is a prominent Iranian human rights lawyer who has defended high-profile human rights campaigners, political activists and juvenile offenders on death row, and her clients include the Nobel Peace laureate, Shirin Ebadi. Ms. Sotoudeh is married to Reza Khandan and mother to two young children who are 10 and 3 years old.
6. Ms. Sotoudeh has spoken out on the rule of law and administration of justice in the course of proceedings against her clients. As a result, she has been a victim of a number of actions initiated by

Government authorities. On 10 December 2008, Ms. Sotoudeh was banned from travelling to Italy to receive the first annual Human Rights Prize awarded by Human Rights International. Ms. Sotoudeh was also allegedly warned by the authorities that she could face reprisals if she continued her advocacy on behalf of her clients.

7. On 28 August 2010, Ms. Sotoudeh's house and office were searched by Government authorities. On 4 September 2010, she was arrested and summoned to appear in court. The source alleges that the arrest of Ms. Sotoudeh is an expression of the increasing desire of the Iranian authorities to prevent Iranians - particularly those facing charges relating to their peaceful exercise of their rights to freedom of expression, association and assembly - having access to legal representation.

8. After her arrest, Ms. Sotoudeh was only permitted infrequent telephone calls to her family and only limited contact with her lawyer. She was reportedly not permitted to see any of her family members but allowed a brief telephone call to them on 8 September 2010. Ms. Sotoudeh was finally permitted to call her husband on the 31 October 2010 and was finally able to meet her two children on the 3 November 2010. Her children are said to have been crying throughout their meeting, upset at finding their mother in poor condition, having lost 10 kg in weight.

9. Ms. Sotoudeh had undergone a hunger strike shortly after her arrest, beginning at the latter part of September 2010 and ending on 26 October 2010. On 31 October 2010, following a meeting in Evin Prison with Tehran's Chief Prosecutor, Ms. Sotoudeh resumed her hunger strike. This second hunger strike is reported to be a dry strike, meaning she was not drinking water. Ms. Sotoudeh was placed in solitary confinement in Evin Prison, Tehran from her arrest on 4 September. The source reports Ms. Sotoudeh may have been tortured in detention.

10. The source reports that, since her arrest, Ms. Sotoudeh's contact with her family continues to be limited. Her husband, Mr. Khandan, is prevented from seeing her, the source reports in reprisal for his public campaigning for his wife's case.

11. Ms. Sotoudeh's original lawyer, Nasim Ghanavi, has faced pressure from the authorities, including threats of arrest, apparently on account of her representation of Ms. Sotoudeh. Nasim Ghanavi has consequently been forced "to distance herself from the case, leaving her unable to effectively represent her client".

12. On 15 November 2010, Ms. Sotoudeh had a court hearing where the judge responsible for the case reportedly granted permission for her new lawyer, Abdolfattah Soltani, to meet her. During this trial session Ms. Sotoudeh faced charges of acting against national security; gathering and colluding to disturb national security; and cooperating with a human rights body, the Defenders of Human Rights Centre (DHRC). During this trial session, she was permitted to see her husband, in a crowded room full of officials.

13. On 24 November 2010, a court session that was scheduled for Ms. Sotoudeh in Branch 26 of Tehran's Revolutionary Court was cancelled due to high levels of pollution in Tehran and all Government offices were closed.

14. On 9 January 2011, Ms. Sotoudeh was sentenced to 11 years' imprisonment on the charges mentioned above. The source states that these charges relate to her human rights work after the country's disputed 2009 presidential elections. Ms. Sotoudeh was also banned from working as a lawyer for 20 years. She is barred from leaving the Islamic Republic of Iran for the next 20 years.

15. Ms. Sotoudeh's husband, Reza Khandan, is subject to parallel prosecution relating to that of his wife.

16. According to the source, Ms. Sotoudeh's lawyers are planning to appeal the verdict issued by Branch 26 of the Revolutionary Court in Tehran as she has never belonged to DHRC. The Centre was co-founded by Nobel Peace laureate Shirin Ebadi, for whom Nasrin Sotoudeh has acted as defence lawyer. It was closed down by the Iranian authorities in December 2008.

#### *Response from the Government*

17. The Working Group forwarded a communication to the Government on 27 January 2011 and received the Government's reply 4 February 2011.

18. The Government, in its reply, provided the Working Group with the information that Ms. Sotoudeh has been charged with (a) assembly and conspiracy with the intention to commit offences against the security of the State through continued and object-oriented conspiracy and cooperation

with foreign and hostile media as well as instrumental use of her occupation to provide propaganda fodder for domestic and foreign elements and centres; (b) propaganda activities against the system of the Islamic Republic of Iran; (c) membership in an illegal organization known as “The Centre for Human Rights Defenders”.

19. After examination of the case and hearing the defence presented by Ms. Sotoudeh’s lawyers and completion of the relevant legal procedures, the Tehran Province Court of the Islamic Revolution, through its verdict No. 391 based on articles 499, 500 and 610 of the Islamic Penal code, sentenced Ms. Sotoudeh to five years of Ta’ziri imprisonment (which we understand may be translated with “correctional imprisonment”); taking into account her earlier detention, for assembly and conspiracy with the intention of committing offences against the security of the State; to one year of Ta’ziri imprisonment for membership in an illegal organization known as “The Centre for Human Rights Defenders”. Also by virtue of articles 19 and 62 of the Islamic Penal Code, as well as paragraph 3 of article 16 of the Passport Law, and a corresponding punishment, she was banned from leaving the country and practising law for twenty years.

20. The Government in its reply also provided the Working Group with the information that the judgment is not final and subject to appeal.

#### *Comments from the source*

21. The Working Group forwarded the Government’s reply to the source for comments.

22. The source maintains that the charges are baseless and aim at sanctioning her human rights activities. On 4 September 2010, Ms. Sotoudeh had been summoned by the Revolutionary Prosecutor’s Office to Evin Prison court on charges of “propaganda against the State” and “collusion and gathering with the aim of acting against national security”. After questioning by a magistrate, Ms. Sotoudeh was arrested. Before going to the court, she had received a phone call from the Ministry of Intelligence agents asking her to stop representing Ms. Ebadi otherwise she would face punishment. Her lawyers were not permitted to be present during the questioning.

23. The source adds that Ms. Sotoudeh has been active in the defence of children and women’s rights. She has provided legal assistance to Ms. Ebadi, the founder of DHRC. Ms. Sotoudeh has defended abused children and women. She has defended juveniles facing death penalty. The source adds that Ms. Sotoudeh is also one of the first members of the “One Million Signatures Campaign”, a movement which has issued a petition in support of changing discriminatory laws against women in the Islamic Republic of Iran. She was the legal representative for several of the campaign activists who have been arrested.

24. Ms. Sotoudeh has furthermore represented imprisoned Iranian opposition activists and politicians following the disputed June 2009 Iranian presidential elections. The source states that Ms. Sotoudeh’s legitimate activities as a lawyer have neither included assembling nor conspiring with the intention to commit offences against the security of the state or propaganda against the regime. Ms. Sotoudeh is not a member of DHRC. As a lawyer, she represented the organization in several cases.

25. In another case against her, Ms. Sotoudeh was tried by Branch 26 of the Islamic Revolution Court in late December 2010 and February 2011, and sentenced on 19 April 2011 to a 500,000 Iranian rials fine (roughly 40 US\$) for failing “to observe the *hejab*” (Islamic dress code), as on a video message to a ceremony in Italy on the occasion of a human rights prize being awarded to her, she had not worn the headscarf.

#### **Discussion**

26. The United Nations High Commissioner for Human Rights, Navi Pillay, expressing renewed concern for the fate of human rights defenders in Iran on 23 November 2010, particularly mentioned Ms. Sotoudeh who was on hunger strike for several weeks in Tehran’s Evin Prison. The High Commissioner stated her concerns “that Nasrin Sotoudeh’s case is part of a much broader crackdown, and that the situation of human rights defenders in Iran is growing more and more difficult” and urged “the Iranian authorities to review her case urgently and expedite her release”.

27. Her case has been subject to an urgent appeals issued on 19 November 2010 and 23 December 2010 by the Chair of this Working Group together with the Special Rapporteur on Torture, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the

situation of human rights defenders. Urgent appeals are made to Governments to take the necessary measures to ensure the detained persons' rights to life and to physical safety, according to the Working Group's methods of work without prejudging whether a detention is arbitrary or not. The Working Group is now turning to its assessment of the full merits of the case.

28. Article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights prohibit arbitrary arrest and 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 Universal Declaration and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant.

29. The Working Group subjects interventions against individuals who may qualify as human rights defenders to particular review. Ms. Sotoudeh's role as a lawyer defending individuals invoking human rights obligations, and her own role in human rights work, requires the Working Group to undertake this kind of intense review. The Working Group refers to article 9, paragraph 3, of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the General Assembly, which provides that:

"Everyone has the right, individually and in association with others ...

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms".

30. In this case, the first question is whether the deprivation of liberty is the result of the exercise of the rights and freedoms in articles 18 (freedom of thought), 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 of Human Rights and by articles 18 (freedom of thought), 19 (freedom of opinion and expression), 21 (peaceful assembly, freedom of peaceful assembly and association) and 22 (freedom of association) of the International Covenant on Civil and Political Rights.

31. The source has documented the extensive work that Ms. Sotoudeh has undertaken as a human rights defender. The Government has not answered the *prima facie* case that has been made out that the detention of Ms. Sotoudeh follows from the exercise of the rights and freedoms as mentioned and her work as a human rights defender. 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, paragraph 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".

32. The Government has not contested the *prima facie* case in a way which gives this Working Group any alternative but to reach the conclusion that the detention of Ms. Sotoudeh follows from the exercise of the rights and freedoms as mentioned above and her work as a human rights defender, and that there are no grounds to justify the restriction of those rights.

33. There are also violations of the relevant international standards as contained in article 10 the Universal Declaration of Human Rights 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. Ms. Nasrin Sotoudeh was denied the right to legal counsel as guaranteed by article 14, paragraph 3 (b), of the Covenant, which provides that everyone charged with a criminal offence is to be entitled “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”.

34. In its general comment No. 2 on implementation of article 2 by States parties, the Committee against Torture stated:

“Certain basic guarantees apply to all persons deprived of liberty. Some of these are specified in the Convention, and the Committee consistently calls upon the States parties to use them. The Committee’s recommendations concerning effective measures aim to clarify the current baseline and are not exhaustive. Such guarantees include, inter alia ... the right promptly to receive independent legal assistance”.

35. The Working Group has found further guidance in the jurisprudence of the European Court of Human Rights which, in the Working Group’s view, expresses the customary international law requirements to a fair trial when it states that the fair trial rights must “guarantee not rights that are theoretical or illusory but rights that are practical and effective” and that assigning a lawyer does not in itself ensure the effectiveness of the assistance he may afford an accused (see its case law following *Imbrioscia v. Switzerland*, Judgment of 24 November 1993, Series A No. 275, para. 38).

36. The source has provided the Working Group with information about serious restrictions on the work of Ms. Sotoudeh’s lawyers. She has had only limited contact with them, and they have been subject to pressure making their work difficult. The source states that her first lawyer was forced “to distance herself from the case” and left unable to effectively represent her client.

37. The Government has not answered the prima facie case that has been made out that Ms. Sotoudeh’s lawyers have been prevented from providing her with effective assistance as required by the fair trial guarantees in article 10 of the Universal Declaration and in particular article 14, paragraph 3 (b), of the Covenant.

38. 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 Ms. Sotoudeh has a claim to compensation under article 9, paragraph 5, of the Covenant, which is an expression of general principles. The reasons that may be given for the detention of Ms. Sotoudeh cannot be used against a claim for compensation.

39. 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**

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

The deprivation of liberty of Nasrin Sotoudeh is arbitrary in violation of articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights, and falls into categories II and III of the categories applicable to the cases submitted to the Working Group.

41. The Working Group requests the Government to take the necessary steps to remedy the situation, which include the immediate release of Ms. Sotoudeh and adequate reparation to her.  
[Adopted on 6 May 2011]