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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session, 22-26 August 2016

Opinion No. 25/2016 concerning Mohammad Hossein Rafiee Fanood (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. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.
2. In accordance with its methods of work (A/HRC/30/69), on 20 June 2016 the Working Group transmitted a communication to the Government of the Islamic Republic of Iran concerning Mohammad Hossein Rafiee Fanood. 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 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);

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(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, disability, or other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Mohammad Hossein Rafiee Fanoodeh is a 71-year-old Iranian citizen who usually resides in Tehran. Mr. Rafiee is a retired professor of polymer chemistry at the University of Tehran. He is also a member of the Meli-Mazhabi political group (also known as the National Religious Alliance) and a member of the National Peace Council of the Islamic Republic of Iran. The Meli-Mazhabi is reportedly an opposition-reformist coalition in the Islamic Republic of Iran that has implemented peaceful activities for the improvement of human rights, democracy and reform within the framework of the Iranian Constitution.

5. According to the source, Mr. Rafiee was arrested in February 2001 together with other members of the Meli-Mazhabi alliance. All of the persons arrested were accused of “legal subversion of the ruling regime”, which the source submits is a contradictory charge as it is not clear how subversion could be legal. The source also submits that the charge has no grounds in Iranian law. Mr. Rafiee spent six months in Ward 59 of Evin Prison under the control of the Islamic Revolutionary Guard Corps. The source alleges that most of that time was spent in solitary confinement and that Mr. Rafiee faced psychological pressure to confess to the charge and to provide information incriminating other members of the Meli-Mazhabi. Several months later, during the hearing held at the Revolutionary Court, the prosecution failed to prove the charge and Mr. Rafiee and other members of the Meli-Mazhabi were released on bail. However, in 2003, Mr. Rafiee was charged with “membership and activity in the illegal group Meli-Mazhabi” and with “spreading propaganda against the State through his writings and statements” under articles 499 and 500 of the Islamic Penal Code. He was sentenced to three years’ imprisonment and a two-year ban on undertaking “political and journalistic activities”. The verdict has never been carried out, either for Mr. Rafiee or for most members of the Meli-Mazhabi, though the sentence was carried out in relation to three or four individuals after the 2009 presidential election.

6. In addition, the source submits that Mr. Rafiee is facing another six-year prison sentence on the same charges. In June 2014, agents from the Intelligence Ministry allegedly raided Mr. Rafiee’s house in Damavand and Tehran and confiscated his books, written documents and hard disk drives. The source states that, shortly after that raid, a new case was initiated against Mr. Rafiee in Branch 15 of the Revolutionary Court. During his trial, Mr. Rafiee was informed that he could be released if he paid a large amount of money as bail. On 25 May 2015, Mr. Rafiee was sentenced to six years’ imprisonment and received a two-year ban on undertaking political and journalistic activities.

7. According to the source, the trials of Mr. Rafiee in 2003 and 2015 were both held in closed sessions that were not open to the public and without the presence of a jury, in violation of article 168 of the Iranian Constitution. Furthermore, Mr. Rafiee was tried and sentenced twice for the same alleged conduct.

Current situation of Mr. Rafiee

8. On 16 June 2015, Mr. Rafiee was arrested on his way to his residence by officers of the Law Enforcement Forces and officers of the Intelligence and Security Forces. The source submits that Mr. Rafiee's car was forcibly stopped in Tehran and that, although the Commander of the Law Enforcement Forces showed his identification card to Mr. Rafiee, officers from the Intelligence and Security Forces did not do so. Mr. Rafiee was forcibly placed in the car belonging to the arresting authorities. The source states that no arrest warrant was produced and no explanation was given to Mr. Rafiee as to the reasons for his arrest.

9. According to the source, Mr. Rafiee was taken to the Evin Prosecution Centre, where the judge initially refused to detain him because of the absence of a warrant for his arrest and detention. However, the security forces urged the judge to contact the Tehran Prosecutor in order for him to authorize the detention of Mr. Rafiee. Several hours later, Mr. Rafiee was detained following a direct order given over the telephone by the Prosecutor. The source asserts that no explanation or reason was given for Mr. Rafiee's detention. Mr. Rafiee was then transferred to Evin Prison in Tehran, where he started a hunger strike and refused to take his medication as a means of protest against his arrest. He stopped the hunger strike four days later, after his family and friends requested him to do so.

10. The source alleges that, after one month in detention, Mr. Rafiee was verbally informed that he had been arrested in order to serve the three-year prison sentence that had been imposed on him in 2003. No written warrant or decision by a public or judicial authority has been provided to Mr. Rafiee to verify the reason for his detention.

11. The source submits that Mr. Rafiee's appeal hearing was held in January 2016 at Branch 54 of the Revolutionary Court without his presence. Mr. Rafiee was supposed to be present at the hearing, but he was not taken to court by the prison authorities. According to the source, a request was made by Mr. Rafiee's lawyer to postpone the hearing, but the request was denied. The hearing was held in closed session in the presence of the judge, the prosecution, representatives of the Intelligence Ministry and Mr. Rafiee's lawyer. On 22 February 2016, the result of the appeal was announced. The Appeal Court upheld the trial verdict of May 2015 by which Mr. Rafiee had been sentenced to six years' imprisonment and a two-year ban on engaging in political and journalistic activities. The source submits that Mr. Rafiee could communicate with his lawyer by telephone, but has not met with his lawyer in prison. According to the source, a request was not made for a visit in person between Mr. Rafiee and his lawyer, and it is not clear whether permission for such a visit would have been granted.

12. According to the source, Mr. Rafiee has been detained since his arrest in Ward 8 of Evin Prison, which is believed to hold prisoners convicted of financial crimes, drug trafficking and piracy. The source alleges that this violates Iranian prison regulations, which require prisoners to be separated on the basis of their nationality, crimes and sentences. In addition, Mr. Rafiee has been reportedly subjected to harsh detention conditions and degrading treatment. During the first few months of his detention, Mr. Rafiee slept on the floor of the hallway as there were not enough beds. The general hygiene of the ward is poor, particularly during the summer months. The ward does not contain a sufficient number of functioning toilets and showers, and the quality and quantity of food is poor. The prison infirmary has shortages of medicine, and prisoners with communicable diseases, such as HIV/AIDS and Hepatitis B and C, do not receive treatment, putting other prisoners in the overcrowded conditions at risk of infection.

13. The source states that the conditions in which Mr. Rafiee is being detained aggravate his serious health issues. Mr. Rafiee suffers from a heart condition, high blood pressure, a thyroid disorder, occasional paralysis of his right hand, advanced varicose veins, blurred vision and severe allergies, and is at risk of embolism, stroke and heart attack. The source alleges that Mr. Rafiee has not had access to a physician and the authorities have, on at least one occasion, refused to give Mr. Rafiee medicines brought to the prison by his family.

14. According to the source, prisoners are entitled under Iranian law to three days of leave every month. However, requests made throughout 2015 for Mr. Rafiee to be granted such leave were refused. In May 2016, the Tehran Prosecutor approved a three-day furlough for Mr. Rafiee, but he was not permitted by security and intelligence agents to leave the prison.

15. In addition, the source states that the lawyer acting for Mr. Rafiee has objected to his detention on several occasions. Mr. Rafiee's lawyer has also provided references to the relevant provisions of the Iranian Constitution and legislation to the Evin Prosecution Centre and the Tehran Prosecutor. To date, no official response has been received. The source further submits that the prosecution authorities have verbally indicated to Mr. Rafiee's lawyer that, owing to the passage of time, the 2003 sentence imposed on Mr. Rafiee is no longer valid and that he should therefore be released. Mr. Rafiee has written several letters from prison about his case to the President of Iran, the Head of the Judiciary and the Prosecutor General of the Islamic Republic of Iran, but no response has been received. Mr. Rafiee has now been in detention for over a year since his arrest on 16 June 2015.

Urgent appeals

16. Mr. Rafiee has been the subject of two urgent appeals to the Government of the Islamic Republic of Iran, on 1 February 2016 and 22 April 2016, by several special procedure mandate holders.¹ In those urgent appeals, the mandate holders sought information from the Government regarding the treatment of Mr. Rafiee and urged the Government to safeguard his rights. The mandate holders also requested that the Government comment on the allegations made and that it provide further information regarding Mr. Rafiee's situation, particularly:

(a) The measures taken to provide Mr. Rafiee with the guarantees of due process and fair trial, and effective access to a lawyer;

(b) The measures adopted to respect and protect Mr. Rafiee's human rights in detention, including his physical and psychological well-being, and the policies and regulations in place to ensure that prisoners in a similar situation have access to proper and adequate medical treatment;

(c) The measures adopted or planned to protect the human rights of vulnerable prison populations and those convicted of political or national security crimes, including the provisions of the State Prisons Organizations related to separating prisoners on the basis of their convictions and sentences.

¹ The Vice Chair of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran. The Working Group joined the urgent appeal in February 2016, but not the urgent appeal in April 2016. See communications reports of special procedures A/HRC/32/53 and A/HRC/33/32.

17. The Working Group regrets that no response was received from the Government to the two urgent appeals in relation to Mr. Rafiee's case.

Submissions regarding arbitrary detention

18. The source submits that the deprivation of liberty of Mr. Rafiee is arbitrary in accordance with categories I, II and III of the categories applied by the Working Group.

19. In relation to category I, the source submits that there is no legal basis for the continued deprivation of liberty of Mr. Rafiee. The source points to the failure of the authorities to produce an arrest warrant when Mr. Rafiee was arrested and to notify him of the reasons for his arrest and detention. Moreover, since the sentence imposed on Mr. Rafiee in 2003 was not carried out for more than 10 years, it is no longer valid according to article 104 of the Islamic Penal Code. The arrest of Mr. Rafiee on 16 June 2015 on the basis of the sentence imposed in 2003 and his continued detention is therefore unlawful. Furthermore, the source claims that Mr. Rafiee should have, but has not, benefitted from an amnesty law. According to the source, article 10 of the Amnesty Directive of March 2016 stipulates that imprisoned persons over 65 years of age who have served one fifth of their sentence should be released. Mr. Rafiee is 71 years old and has been in prison for over a year (from June 2015 to the present); he was also imprisoned previously for six months in 2001, which means that he has fulfilled both conditions of the amnesty law. The source reports that the authorities have considered Mr. Rafiee for amnesty and sent his name to the prosecution service, but the prosecutor has denied an order of release.

20. In relation to category II, the source submits that, according to article 168 of the Iranian Constitution, political parties are permitted to operate unless they are banned as a result of an open trial with the attendance of a jury. The source states that no trial has been held to determine the legality of the operations of the Meli-Mazhabi, which has not been declared an illegal or banned group. Furthermore, no evidence supporting the charges against Mr. Rafiee of "spreading propaganda against the State" was presented at any point in the legal proceedings against him. The source concludes that the charges against Mr. Rafiee were therefore solely directed at restricting his right to freedom of opinion and expression and his right to freedom of association, in violation of the Iranian Constitution, articles 18, 19 and 20 of the Universal Declaration of Human Rights, and articles 18, 19 and 22 of the Covenant.

21. In relation to category III, the source points to several serious instances of non-observance of the international norms relating to the right to a fair trial, such as the conducting of Mr. Rafiee's trials in closed session without the presence of a jury. Mr. Rafiee was also tried and sentenced twice for the same alleged conduct, in violation of article 14 of the Covenant.

Response from the Government

22. On 20 June 2016, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 19 August 2016 about the current situation of Mr. Rafiee, noting that it would welcome any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds invoked to justify Mr. Rafiee's continued detention and to provide details regarding the conformity of his deprivation of liberty and apparent lack of fair judicial proceedings with domestic legislation and international human rights treaties to which the Islamic Republic of Iran is a party.

23. The Working Group regrets that it did not receive a response from the Government to that communication. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

24. In the absence of a response from the Government, the Working Group has decided to render this Opinion in conformity with paragraph 15 of its methods of work.

25. 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.² In this case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

26. The Working Group considers that the source has demonstrated that there was no legal basis justifying the deprivation of liberty of Mr. Rafiee. The source submitted, and the Government failed to rebut, that Mr. Rafiee was taken into custody without an arrest warrant, contrary to article 9 (1) of the Covenant. In addition, at the time of his arrest, Mr. Rafiee was not informed of the reasons for his arrest, contrary to article 9 (2) of the Covenant. According to the source, Mr. Rafiee was only informed after spending one month in detention that he had been arrested in order to serve the three-year prison sentence that had been imposed on him in 2003. Furthermore, the Working Group finds, in the absence of any submissions to the contrary from the Government, that Mr. Rafiee was eligible for amnesty and early release as of March 2016, but has not benefitted from the relevant directive. Thus, the deprivation of liberty of Mr. Rafiee falls within category I of the categories applied by the Working Group.

27. The Working Group does not have sufficient information to express a view on the source's argument that the sentence imposed on Mr. Rafiee in 2003 has not been carried out for more than 10 years and is no longer valid according to article 104 of the Islamic Penal Code. A recent report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran specifically refers to Mr. Rafiee's case, noting that, according to the Islamic Penal Code, sentences for crimes that range from two to five years lapse after 10 years if they have not been implemented. However, the report also notes that other provisions of the Code specifically exempt national security crimes from the statute of limitations provisions, and it is not clear whether the charges against Mr. Rafiee would fall into this exemption.

28. In the absence of any information from the Government, the Working Group considers that the source has also demonstrated that Mr. Rafiee was deprived of his liberty as a result of his membership of the Meli-Mazhabi political alliance. There are several factors that, when taken together, support this conclusion. These include reports from the source that the prosecution had failed to present sufficient evidence to prove charges of subversion against Mr. Rafiee in 2001 and that no evidence supporting the charge against Mr. Rafiee of "spreading propaganda against the State" had been presented at any point in the legal proceedings against him. In addition, the authorities had sought repeatedly to try Mr. Rafiee for his membership of Meli-Mazhabi in proceedings in 2003 and 2015. Despite those repeated proceedings against Mr. Rafiee, the authorities had failed to carry out the initial sentence of three years' imprisonment imposed on him in 2003, which suggests that the proceedings had been motivated by a desire to deter Mr. Rafiee from participating in the

² See, for example, A/HRC/19/57, para. 68, and opinion No. 52/2014.

Meli-Mazhabi rather than ensuring that alleged crimes involving national security were appropriately punished. Indeed, a two-year ban on undertaking political and journalistic activities had been imposed on Mr. Rafiee at both of his trials in 2003 and 2015, and affirmed by the appeal court in 2016.

29. The Working Group considers that Mr. Rafiee was detained for exercising his rights to freedom of opinion and expression, his right to freedom of association, and his right to take part in the conduct of public affairs through a political group, in violation of articles 19, 20 and 21 of the Universal Declaration of Human Rights, and articles 19, 22 and 25 of the Covenant. Given that the Government has not responded in this case, there is no suggestion that any permissible restrictions in these articles, such as the protection of national security, public safety and public order, apply in this case. Thus, the deprivation of liberty of Mr. Rafiee falls within category II of the categories applied by the Working Group.

30. The Working Group also finds several serious violations of the international norms relating to the right to a fair trial, including the fact that the trials of Mr. Rafiee in 2003 and 2015 were both held in closed sessions, contrary to article 14 (1) of the Covenant. The Government has not presented any arguments that any exceptions to this requirement apply in this case. Moreover, Mr. Rafiee has only had access to his lawyer over the telephone and not in person, which the Working Group considers insufficient within the circumstances of this case to meet the standard of effective access to a lawyer required by article 14 (3) (b) of the Covenant. As the Human Rights Committee stated paragraph 34 of in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, counsel should be able to meet with clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.

31. Furthermore, Mr. Rafiee's appeal hearing in January 2016 was conducted in his absence. While article 14 (3) (d) of the Covenant only provides criminal defendants with the right to be tried in their presence, as opposed to their presence at an appeal hearing, the Working Group is not convinced that Mr. Rafiee received a fair appellate review under article 14 (5) of the Covenant if he was expecting to attend the appeal hearing with his lawyer, but was not permitted to do so. This is especially so given that Mr. Rafiee had not been able to meet with his lawyer in person in prison. Finally, Mr. Rafiee was sentenced in 2015 for the same alleged conduct for which he had already received a sentence in 2003, contrary to article 14 (7) of the Covenant. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give Mr. Rafiee's deprivation of liberty an arbitrary character according to category III of the categories applied by the Working Group.

32. The Working Group wishes to record its grave concern about Mr. Rafiee's deteriorating health since his detention in June 2015. The Working Group refers in particular to the allegations made by the source that Mr. Rafiee has not been provided with necessary medical treatment despite his serious illnesses, and that the conditions of his detention are contributing to those illnesses. The Working Group considers that this treatment violates Mr. Rafiee's right under article 10 (1) of the Covenant to be treated with humanity and respect for his inherent dignity, and falls significantly short of the requirements of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).³

³ See, for example, rules 1, 11-13, 15,16, 21, 22, 24-27, 30-33 and 35.

33. The present case is one of several that have been brought to the attention of the Working Group in the past year concerning the deprivation of liberty of persons in the Islamic Republic of Iran solely for having peacefully exercised their civil and political rights. Most of the cases have involved detainees who are seriously ill, as in the present case. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity.⁴ The Working Group would welcome an invitation to conduct a country visit to the Islamic Republic of Iran so that it can engage with the Government constructively and offer assistance in addressing concerns relating to the arbitrary deprivation of liberty.

34. Finally, the Working Group notes with concern the silence on the part of the Government in not availing itself of the opportunity to respond to the serious allegations made in this case, and in other communications to the Working Group (see, for example, the Working Group's opinions on the Islamic Republic of Iran Nos. 1/2016, 44/2015, 16/2015, 55/2013, 52/2013, 28/2013, 18/2013, 54/2012, 48/2012, 30/2012, 8/2010, 2/2010, 6/2009, 39/2008, 34/2008, 39/2000, 14/1996, 28/1994 and 1/1992).⁵

Disposition

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

The deprivation of liberty of Mohammad Hossein Rafiee Fanood was arbitrary, being in contravention of articles 9, 10, 11, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 10, 14, 19, 22 and 25 of the Covenant, and falls within categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

36. The Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Rafiee without delay and bring it into conformity with the standards and principles in the Universal Declaration of Human Rights and Covenant.

37. Taking into account all the circumstances of the case, especially the risk of harm to Mr. Rafiee's health and physical integrity, the Working Group considers that the adequate remedy would be to release Mr. Rafiee immediately, and accord him an enforceable right to compensation in accordance with article 9 (5) of the Covenant.

38. The Working Group urges the Government to fully investigate the circumstances surrounding Mr. Rafiee's arbitrary deprivation of liberty and to take appropriate measures against those responsible for the violation of his rights.

Follow-up procedure

39. 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 follow-up action taken on the recommendations made in this Opinion, including:

- (a) Whether Mr. Rafiee has been released, and if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Rafiee;

⁴ See, for example, opinion No. 47/2012, para. 22.

⁵ In the past, the Islamic Republic of Iran has provided information to the Working Group on various communications, see opinions Nos. 58/2011, 21/2011, 20/2011, 4/2008, 26/2006, 19/2006, 14/2006, 8/2003 and 30/2001, but has discontinued the provision of a response to the Working Group in more recent cases.

(c) Whether an investigation has been conducted into the violation of Mr. Rafiee's rights, and if so, the outcome of that investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

40. The Government is further 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.

41. 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 possibility of undertaking its own follow-up of the opinion if new concerns in relation to the case are brought to its attention. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as any failure to take action.

42. The Working Group recalls that the Human Rights Council has called for all States to cooperate with the Working Group, 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.⁶

[Adopted on 22 August 2016]

⁶ See Human Rights Council resolution 24/7, para. 3.