



General Assembly

Distr.: General
21 September 2016

Original: English

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. 28/2016 concerning Nazanin Zaghari-Ratcliffe (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 22 June 2016 the Working Group transmitted a communication to the Government of the Islamic Republic of Iran concerning Nazanin Zaghari-Ratcliffe. 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 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 other status that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Ms. Nazanin Zaghari-Ratcliffe is a 37-year-old dual British and Iranian citizen who was born in the Islamic Republic of Iran. In September 2007, Ms. Ratcliffe moved to the United Kingdom of Great Britain and Northern Ireland to pursue a masters degree in communications management. In 2009, she married a British citizen and, late in 2011, became a British citizen. Their two-year-old daughter was born in London and is also a British citizen, but does not hold any other nationality. Since 2011, Ms. Ratcliffe has been working as a project manager for a charity based in London, and is still employed in that role.

5. On 17 March 2016, Ms. Ratcliffe travelled from London to Tehran with her daughter to visit her family in the Islamic Republic of Iran. Until the day of her departure, Ms. Ratcliffe's visit in Tehran had passed without incident. She reportedly called her husband regularly during the visit without indication of any problems.

6. On 3 April 2016, Ms. Ratcliffe was arrested at Khomeini Airport in Tehran by the Iranian Revolutionary Guard just before boarding a flight home to the United Kingdom. According to the source, the Iranian Revolutionary Guard had been waiting for Ms. Ratcliffe at the airport. They took her into a small room, having stated that there was an issue with her passport and some documents. The Revolutionary Guard allowed her to briefly leave the room to hand her daughter to her family. They then took Ms. Ratcliffe into the room again and told her family not to wait as she would not be leaving on the flight, but did not provide any other information. The authorities also confiscated her daughter's British passport.

7. On 4 April 2016, Ms. Ratcliffe's family returned to the airport to enquire about her whereabouts. They spoke to the authorities at the security desk, but were not provided with any information, including the reasons for her arrest and detention and her location. Ms. Ratcliffe's family did not hear anything further until the end of the day on 5 April 2016, when they received a short telephone call from her saying that she was alive. On 6 April 2016, Ms. Ratcliffe made another short telephone call saying that she had been informed that she was to be released. She also sent her husband a text message saying that she was to be released on 9 April 2016. However, Ms. Ratcliffe was not released. She did not say where she was being held.

8. On 9 April 2016, Ms. Ratcliffe's family went back to the airport to see if any further information was available, but was unable to learn more. According to the source, Ms. Ratcliffe's family learned a few days later that she was in Kerman, situated some 1,000 kilometres from Tehran. It appears that Ms. Ratcliffe had been held in Tehran for a week and was then moved to Kerman. On 12 or 13 April 2016, Ms. Ratcliffe's family received a telephone call from an official who said he was the director of a detention centre in Kerman, where she was being held. The official did not say which detention centre and gave no further details, except to say that Ms. Ratcliffe was "safe".

9. On 27 April 2016, Ms. Ratcliffe's family received another telephone call from a person who claimed to be from the Intelligence Department of the Revolutionary Guard. According to the source, the caller stated that Ms. Ratcliffe was being held for "reasons related to national security", but gave no further details, except that she would probably be held for another two or three months until the investigation was complete. The caller asked the family to prepare some clothes and money for her use while in detention. The caller said that the family would be informed when a visit could be arranged, and that her daughter should be brought then to see her mother.

10. The source claims that, from the date of her transfer to Kerman (on or around 11 April 2016) until 18 May 2016, Ms. Ratcliffe was held in solitary confinement in an undisclosed detention centre in Kerman. During the period of solitary confinement, Ms. Ratcliffe was able to make a total of approximately 10 telephone calls to her family in Tehran, given as a "reward" at the discretion of her interrogator, who would stand over her while she made a call. She was not allowed to call her husband. From the few telephone calls that Ms. Ratcliffe was allowed to make to her family, it is known that she had to sign some kind of statement. There is no further detail as to what kind of statement it was or what kind of pressure she was put under to sign it, as she has not been allowed to talk about this in any more detail.

11. The source reports that, from conversations with other former Iranian detainees and families of detainees, Ms. Ratcliffe's husband believes that the authorities kept the lights on in her cell permanently and that she did not have access to medical treatment.

12. On the advice of the British Foreign and Commonwealth Office, Ms. Ratcliffe's husband did not immediately release the news of his wife's arrest to the public. However, after 37 days without progress, he decided to inform the public. On 9 May 2016, he started a petition on the website change.org, calling on the United Kingdom Prime Minister to use his influence to bring his wife home. The source reports that the petition was signed by more than 765,000 people showing their support for Ms. Ratcliffe. Ms. Ratcliffe's husband subsequently presented the petition to the Government of the United Kingdom. On 10 May 2016, Ms. Ratcliffe's husband issued a press release with details of his wife's arrest, resulting in a number of newspaper articles being published on or around that date.

13. On 11 May 2016, Ms. Ratcliffe's family was allowed to visit her in a hotel room in Kerman. Guards were present throughout the visit, and she could not discuss any details regarding the investigation or the location of her detention. According to the source, Ms. Ratcliffe was visibly unwell. She was seated when her family arrived and was unable to stand up. She had lost weight and was very weak. Ms. Ratcliffe was allowed to play with her daughter. However, her daughter had to be placed on her lap as Ms. Ratcliffe was unable to lift her up. The meeting lasted a couple of hours and Ms. Ratcliffe was allowed to have lunch with her family. The source reports that, although she was very happy to see her daughter, she was also quiet and subdued.

14. On 18 May 2016, Ms. Ratcliffe was moved from solitary confinement to the general women's wing in Kerman Prison. The source claims that, by that stage, Ms. Ratcliffe had been in solitary confinement for a total of 45 days. After her solitary confinement, she had great difficulty walking and suffered frequent blackouts. Her hair started to fall out and she had lost five kilograms in weight. Prior to her arrest, she was healthy and had no ailments.

15. Following her transfer to the general women's wing, Ms. Ratcliffe shared a cell with several other detainees. Generally, the conditions were an improvement on those in solitary confinement, as Ms. Ratcliffe had better access to shower facilities, although the prison did not always have hot water. However, Ms. Ratcliffe was obliged to sleep on the floor of the cell, as no bed was available, even though the other detainees had bunks. Furthermore, the food in the general women's wing was limited to only one hot meal a day and no regular

fresh fruit or salad. After Ms. Ratcliffe's family had provided her with money, she was able to buy tea and biscuits from the prison shop and occasionally alternative meals and tinned food. She was allowed to visit the mosque daily.

16. According to the source, Ms. Ratcliffe was allowed one 15-minute telephone call per day to her family, for which she had to queue with others. She was able to call her husband on only four occasions at the end of May 2016. Ms. Ratcliffe's husband published the details of his telephone call with her on 28 May 2016 on his blog on change.org, and after that the authorities prevented her from calling him again.

17. On 5 June 2016, Ms. Ratcliffe called her family to say that she was going to be released. However, on the same day, an official called a few hours later to say that she was mistaken. After that, there was no news of Ms. Ratcliffe for more than a week. On 13 June 2016, she called her family to say that she had been moved to Evin Prison in Tehran. Later that day, Ms. Ratcliffe's family brought her daughter to visit in the prison.

18. On 15 June 2016, the Iranian media reported an announcement by the Revolutionary Guard that Ms. Ratcliffe had been involved in "subversion". The report confirmed that she had been arrested at Khomeini Airport and held in Kerman. The report also accused the foreign media, especially in the United Kingdom, of "evil". In a statement released on the same day, the Iranian Revolutionary Guard reportedly accused Ms. Ratcliffe of leading a hostile network plotting the "soft overthrow" of the Government of the Islamic Republic of Iran.

19. The source alleges that Ms. Ratcliffe has had no access to a lawyer since her arrest. Ms. Ratcliffe's family has employed a lawyer to act on her behalf but, on the basis of information obtained by her husband, it is believed that the lawyer has not been able to speak with or meet her. The source also claims that the authorities have not allowed Ms. Ratcliffe to receive visits from British consular officials, despite the fact that she is a British citizen. The British Red Cross reportedly tried to deliver a message to her, but was not allowed to do so.

20. Ms. Ratcliffe has now been in detention for over four months since 3 April 2016. She has been detained without charge in undisclosed detention centres in Kerman and in Tehran, and in Kerman Prison and Evin Prison in Tehran. Ms. Ratcliffe's husband has not seen his daughter since 17 March 2016. She remains in the care of Ms. Ratcliffe's family in the Islamic Republic of Iran, and could not leave the country, even if her passport was returned. The source states that, under Iranian law, a minor cannot travel abroad unless accompanied by his or her mother or father. The daughter turned two on 11 June 2016, while her mother was in detention.

Submissions regarding arbitrary detention

21. The source submits that the deprivation of liberty of Ms. Ratcliffe is arbitrary in accordance with categories I, II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. The source argues that the detention of Ms. Ratcliffe without charge, the separation from her two-year-old daughter and her placement in incommunicado detention and solitary confinement violates articles 7, 9, 10, 14 and 26 of the Covenant. The source submits that:

(a) There is no evidence to suggest that there had been any grounds for arresting and detaining Ms. Ratcliffe, let alone for reasons of national security;

(b) The authorities had failed to arrest and detain Ms. Ratcliffe in accordance with relevant Iranian legal provisions and international standards, rendering her arrest and detention unlawful;

(c) The authorities had failed to provide Ms. Ratcliffe with access to legal representation, contrary to domestic and international law, thereby rendering her detention arbitrary;

(d) The violation of Ms. Ratcliffe's right to communicate with the outside world is particularly egregious and damaging, given the separation from her daughter, who was only a one year old at the time Ms. Ratcliffe was first taken into custody;

(e) At no point since her arrest on 3 April 2016 has the necessity of Ms. Ratcliffe's detention been evaluated by a judicial authority, contrary to article 9 (3) and (4) of the Covenant;

(f) The authorities intentionally subjected Ms. Ratcliffe to ill-treatment, if not torture, in violation of article 7 of the Covenant.

22. In relation to category I, the source submits that, under the Iranian Criminal Code of Procedure for Public and Revolutionary Courts, competent authorities may issue arrest orders upon receiving "sufficient evidence" against a person accused of a crime. In the present case, the authorities did not comply with those provisions and standards and there is no evidence to suggest that the arrest had been based on a judicial order. At the time of Ms. Ratcliffe's arrest on 3 April 2016, the authorities failed to provide an arrest warrant and did not give any reason or grounds for the arrest, and subsequently failed to provide grounds for her detention.

23. In addition, the source submits that the circumstances of Ms. Ratcliffe's arrest — including the absence of any arrest order or information concerning the reasons for arrest, the absence of charges, the placement in incommunicado detention and interrogation in solitary confinement, and the lack of access to legal counsel — suggest that proper procedures were not followed in relation to her arrest and detention. Article 15 of the Iranian Criminal Code of Procedure for Public and Revolutionary Courts provides that only specific entities are eligible to perform an arrest, and specifically cites appropriate places of pretrial detention. The list of authorized entities eligible to arrest does not include intelligence agents. Intelligence agencies are excluded from the list of facilities appropriate for pretrial detention. The call to Ms. Ratcliffe's family on 27 April 2016 from the Intelligence Department of the Revolutionary Guard suggests that, contrary to article 15, Ms. Ratcliffe was arrested by intelligence agents. Ms. Ratcliffe was subsequently detained in two undisclosed detention centres (one in Tehran and one in Kerman, in southern Islamic Republic of Iran) for 45 days, where she was placed in solitary confinement. The source claims that this is contrary to domestic law and to international standards, according to which detainees must be held only in facilities officially acknowledged as places of detention.

24. The source refers to article 9 (2) of the Covenant, article 32 of the Iranian Constitution, and the Iranian Operational Guidelines for Temporary Detention Centres (2006), which recognize the rights of detainees to be informed, at the time of arrest, of the reasons for their arrest and to be informed promptly of any charges against them. The source notes that the only information that Ms. Ratcliffe and her family were given between 3 April 2016 and 15 June 2016 was that Ms. Ratcliffe was being detained for "reasons of national security", and the authorities failed to provide any further details.

25. Furthermore, the statement reportedly released to the media by the Iranian Revolutionary Guard on 15 June 2016, more than two months after Ms. Ratcliffe's arrest, mentioned neither the legal or factual grounds for her arrest nor any formal legal charges or evidence against her. In the statement, it was alleged that Ms. Ratcliffe was one of the leaders of a group of foreigners, including foreign companies, that aimed to overthrow the Islamic Republic of Iran. It was also alleged that Ms. Ratcliffe had been working under the guidance and support of foreign intelligence and media services engaging in criminal

activities over a number of years. As a result, 75 days after her arrest, Ms. Ratcliffe had still not been informed of the charges (if any) she faces. The source submits that the allegations made in the statement by the Iranian Revolutionary Guard violated Ms. Ratcliffe's right to be presumed innocent.

26. With respect to the right of anyone to be brought promptly before a judge or other competent authority, the source claims that Ms. Ratcliffe still has not been brought before a judge and neither she nor her family have had an opportunity to challenge the lawfulness of her arrest and detention, contrary to article 9 (3) and (4) of the Covenant. Ms. Ratcliffe and her family have been given no indication if or when she is to be tried for any offence.

27. In relation to categories II and V, the source submits that the arrest of Ms. Ratcliffe was discriminatory on the basis of her national or social origin and therefore arbitrary. The statement released by the Iranian Revolutionary Guard on 15 June 2016, which mentions Ms. Ratcliffe's alleged links to foreign companies and Governments, suggests that she may have been targeted owing to her dual Iranian/British nationality and her perceived foreign background. The source claims that the arrest of Ms. Ratcliffe comes in the context of a recent increase in arrests of dual nationals by the Iranian authorities. The source further claims that the authorities have been increasingly arresting Iranians with foreign passports on obscure, politically motivated grounds.

28. In relation to category III, the source refers to the right to have the assistance of legal counsel upon arrest or detention, before any questioning, and when an individual is charged, according to article 35 of the Iranian Constitution, article 128 of the Iranian Code of Criminal Procedure, and the Operational Guidelines for Temporary Detention Centres (2006). The source submits that there is no evidence to suggest that the authorities who arrested Ms. Ratcliffe had informed her about her right of access to legal counsel. Furthermore, Ms. Ratcliffe has been interrogated on a number of occasions between her arrest on 3 April 2016 and the date of the present submission. On none of those occasions was she granted access to legal counsel. Her family in the Islamic Republic of Iran has hired a lawyer on her behalf, but there is no information to suggest that the lawyer has been given access to Ms. Ratcliffe.

29. The source also refers to article 5 of the Iranian Act on Safeguarding Legitimate Liberties and Citizens' Rights in relation to the right of anyone who is arrested, detained or imprisoned to inform, or have the authorities notify, someone in the outside world that they have been taken into custody and where they are being held. In the present case, Ms. Ratcliffe was held incommunicado for more than 48 hours from the moment of her arrest on 3 April 2016 at around 9 a.m. until the end of the day on 5 April 2016. She was again held incommunicado from 7 to 12 or 13 April 2016 and from 6 to 13 June 2016.

30. The source also alleges that, notwithstanding the limited access to information about the authorities' treatment of Ms. Ratcliffe, sufficient information exists to suggest that the authorities have subjected her to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant. Ms. Ratcliffe endured 45 days of solitary confinement before she was moved to a shared cell, contrary to the Operational Guidelines for Temporary Detention Centres (2006), which prohibit solitary confinement, torture and other forms of force. The effects of that detention regime were aggravated by intensive interrogation, by the fact that the authorities separated Ms. Ratcliffe from her daughter, and by the uncertainty about her future. That treatment resulted in the deliberate infliction of severe pain and suffering, evident also in Ms. Ratcliffe's deterioration in health, including her weight loss, her difficulty in walking, and lack of physical strength. Furthermore, although Ms. Ratcliffe has been unable to confirm this, it is believed that her time in solitary confinement resulted in a forced confession. Finally, the source submits that the Iranian authorities' treatment of detainees in the past raises serious concerns about the treatment of Ms. Ratcliffe while she remains in custody.

Further update from the source

31. The source provided the Working Group with an additional update dated 5 August 2016 on Ms. Ratcliffe's current situation. On 11 August 2016, the allegations contained in the update were forwarded to the Government for its comment, but no response was received.

32. According to the source, on 25 June 2016, in a press release issued by the Kerman Branch of the Revolutionary Guard and publicized by Iranian media, the authorities made further allegations that Ms. Ratcliffe had been involved in the "green movement", that is, the protests surrounding the elections in 2010. The source states that Ms. Ratcliffe's family has not been directly informed of these allegations, and learned about them in the media report. The authorities later indicated to the family that the contents of the press statement had not been accurate.

33. On 11 July 2016, during a press conference held in Tehran by the Prosecutor's Office, it was announced that Ms. Ratcliffe and three other foreign/dual nationals were to be indicted on charges of "sowing unrest". No further details were provided.

34. On 1 August 2016, Ms. Ratcliffe was allowed to contact her family and informed them that she had been taken to court that morning. The source believes that this was Ms. Ratcliffe's only court appearance since her arrest and detention on 3 April 2016. According to the source, Ms. Ratcliffe told her family that she is being prosecuted. However, she was not allowed to disclose further details about the process. Ms. Ratcliffe was informed by the authorities that she would be allowed to have a lawyer and that her family would be contacted by the Revolutionary Guard about the process.

35. The source further submits that, on 1 August 2016, the judge in charge of Ms. Ratcliffe's case approved the lawyer who had been proposed by her family in May 2016. The family members and the lawyer were also given papers for Ms. Ratcliffe to sign granting the lawyer power of attorney to represent her. The papers were taken to Evin Prison. As at the evening of 3 August 2016, Ms. Ratcliffe had not yet seen the papers.

36. The source suggests that only after the judge receives the signed power of attorney will the lawyer be given any further information, including on the charges against Ms. Ratcliffe. According to the source, it will be at the judge's discretion to decide what the lawyer will be told and allowed to see. The authorities have not yet provided any information on when the court proceedings will commence, when the lawyer will be able to see Ms. Ratcliffe and when he will be given information on the nature of charges against her.

37. Since the source filed its original communication with the Working Group, Ms. Ratcliffe has been allowed to see some family members on four occasions: on 21 June and on 2, 13 and 27 July 2016. The meetings lasted approximately one hour and took place in the presence of the authorities.

38. Ms. Ratcliffe is reportedly receiving better treatment in detention and has been provided with better food. However, her hair is still falling out and she is having difficulty regaining weight. Her family was allowed to give her a novel to read. Since 3 April 2016, Ms. Ratcliffe has been allowed to speak to her husband on two occasions for no longer than 10 minutes. Each of those telephone calls was monitored and Ms. Ratcliffe was restricted in what she could speak about during the conversations. The exchange of written correspondence has proved to be impossible, as a letter that Ms. Ratcliffe wrote to her husband was confiscated and a letter from her husband was never received.

39. The source submits that a request has been made to the Iranian authorities in London to obtain a visa for Ms. Ratcliffe's lawyer in the United Kingdom and members of her family to attend Ms. Ratcliffe's trial. As at 5 August 2016, no response to the request for a visa had been received from the Iranian authorities in Tehran.

Response from the Government

40. On 22 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 22 August 2016 about the current situation of Ms. Ratcliffe, and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying Ms. Ratcliffe's continued detention and to provide details regarding the conformity of the legal proceedings against her with international human rights treaties to which the Islamic Republic of Iran is a party.

41. The Working Group regrets that it has not received a response from the Government to that communication. The Government has not requested an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

42. 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.

43. 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.¹ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

44. The Working Group considers that there have been several violations of article 9 of the Covenant during the arrest and detention of Ms. Ratcliffe. Article 9 (1) requires States to ensure that procedures for carrying out deprivation of liberty are established by law and followed. This includes specifying which officials are authorized to carry out an arrest, when a warrant is required, where individuals may be detained, and when authorization to continue detention must be obtained from a judge.² In the present case, the source alleges that no warrant was presented at the time of Ms. Ratcliffe's arrest. The Government could have, but did not, rebut that allegation by providing a copy of any arrest order issued under Iranian law. The source has also provided credible information that Ms. Ratcliffe was arrested by intelligence officers who had no legal authority to arrest her, and that she was detained in two undisclosed detention centres in Tehran and Kerman, which may not have been facilities officially acknowledged as places of detention.

45. In addition, Ms. Ratcliffe was neither informed of the reasons for her arrest nor promptly informed of the charges against her, contrary to article 9 (2) of the Covenant. It has been now more than four months since her arrest and she still does not know what legal charges will be brought against her. The authorities did not promptly bring Ms. Ratcliffe before a judge, as required by article 9 (3), and did not inform her of her right to challenge the lawfulness of her detention, under article 9 (4). Even if she had been informed about

¹ See, for example, A/HRC/19/57 (para. 68) and opinion No. 52/2014.

² See Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 23.

that right, she had no practical means of exercising it as she was held incommunicado at various points and has had no access to a lawyer for the entire period of her detention. In 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, the Working Group has recently restated the following:

Any individual who is deprived of liberty ... has the right to take proceedings before a court in the State's jurisdiction to challenge the arbitrariness and lawfulness of his or her deprivation of liberty and to receive without delay appropriate and accessible remedies (Principle 3).

Persons deprived of their liberty shall be informed about their rights and obligations under law through appropriate and accessible means. Among other procedural safeguards, this includes the right to be informed, in a language and a means, mode or format that the detainee understands, of the reasons justifying the deprivation of liberty, the possible judicial avenue to challenge the arbitrariness and lawfulness of the deprivation of liberty and the right to bring proceedings before the court and to obtain without delay appropriate and accessible remedies (Principle 7).

Persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension. Upon apprehension, all persons shall be promptly informed of this right (Principle 9).

Appropriate and tailored measures shall be taken into account in the provision of accessibility and reasonable accommodation to ensure the ability of women and girls to exercise their right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and to receive without delay appropriate and accessible remedies (Principle 19).

46. In the present case, there was no warrant for Ms. Ratcliffe's arrest and other domestic procedures were not followed in relation to her arrest and detention, there have been no charges brought against her, and no assessment has been made by a court of the lawfulness, necessity and proportionality of her detention. Her deprivation of liberty is both unlawful and arbitrary. Thus, the Working Group considers that there was no legal basis to justify the arrest and detention of Ms. Ratcliffe and her deprivation of liberty falls within category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

47. Furthermore, the Working Group considers that the source has established a prima facie case that the arrest and detention of Ms. Ratcliffe was motivated by a discriminatory factor, namely, her status as a dual Iranian-British national. The Working Group has considered several facts presented by the source that the Government has not disputed. First, a report was made public by the Iranian media on 15 June 2016 in which foreign media, particularly the British media, were accused of unspecified "evil". Second, the statement released by the Iranian Revolutionary Guard that day referred to Ms. Ratcliffe's "English background", her "membership of foreign companies and institutions" and her alleged role as "one of the key ringleaders connected to foreigners, who had performed various missions for furthering the malicious goals of the enemies of the regime".

48. The Working Group has made findings of arbitrary detention with respect to several cases involving dual nationals (see, for example, opinions No. 44/2015 and No. 18/2013). In addition, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran has referred in a recent report to the detention of dual nationals, including a dual Iranian-British national. The Working Group considers that there is an emerging pattern involving the arbitrary deprivation of liberty of dual nationals in the Islamic Republic of Iran.

49. Furthermore, there is no evidence that Ms. Ratcliffe had a criminal record, including in relation to national security offences, and there is nothing to indicate that she had been in the Islamic Republic of Iran for any other purpose than visiting her family with her child. The Working Group therefore considers that Ms. Ratcliffe was targeted on the basis of her “national or social origin” as a dual national. In the present case, there is an insufficient basis for the Working Group to conclude that Ms. Ratcliffe’s arrest and detention were linked to the exercise of any specific right and would therefore fall within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. However, there is a sufficient basis to conclude that Ms. Ratcliffe has been arbitrarily deprived of her liberty according to category V because of the discrimination against her as a dual national.

50. The Working Group also considers that the source’s allegations disclose violations of Ms. Ratcliffe’s right to a fair trial. Specifically, Ms. Ratcliffe has been denied the presumption of innocence under article 14 (2) of the Covenant. The Human Rights Committee has stated that it is the duty of all public authorities to refrain from prejudging the outcome of a trial, including by abstaining from making public statements affirming the guilt of the accused.³ The statement issued by the Revolutionary Guard on 15 June 2016 has seriously undermined the presumption of innocence. Ms. Ratcliffe has also been denied her right to be informed promptly of the charges against her under article 14 (3) (a) of the Covenant, and her right to legal representation under article 14 (3) (b) and (d) of the Covenant. While the Working Group takes note of the recent approval of a lawyer for Ms. Ratcliffe, she has still not been allowed access to that lawyer. The absence of legal counsel was serious in the present case, given that Ms. Ratcliffe is thought to be facing charges involving national security.

51. In addition, the Working Group notes that Ms. Ratcliffe has been held incommunicado, with limited access to her family and no access to legal or consular assistance or support from the British Red Cross. Ms. Ratcliffe was also held in prolonged solitary confinement for 45 days. The detention of Ms. Ratcliffe under these circumstances violated international standards, including her right to have contact with the outside world and the prohibition of solitary confinement for longer than 15 consecutive days under rules 43, 44, 58 and 62 of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela Rules”). It is also believed that Ms. Ratcliffe was required to sign a statement while in solitary confinement. The Working Group considers that there is not enough information to indicate whether Ms. Ratcliffe was forced to provide a confession or the content of such a statement. However, the Working Group reminds the Government that it is unacceptable according to article 14 (3) (g) of the Covenant to torture or subject a person to other ill-treatment in order to obtain a confession.

52. The Working Group concludes that the breaches of article 14 of the Covenant are of such gravity as to give Ms. Ratcliffe’s deprivation of liberty an arbitrary character, falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

53. The Working Group wishes to record its grave concern about Ms. Ratcliffe’s deteriorating health since her arrest and detention in April 2016. The Working Group refers to the allegations that Ms. Ratcliffe was previously in good health but, as a direct result of prolonged solitary confinement and being away from her child, she has suffered health problems for which she has not received medical care. The Working Group considers that this treatment violates Ms. Ratcliffe’s right under article 10 (1) of the Covenant to be

³ See Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

treated with humanity and respect for her inherent dignity, and falls significantly short of the requirements of the Nelson Mandela Rules.⁴ The Working Group refers this case to the relevant special procedure mandate holders for further investigation, including into whether article 7 of the Covenant has been violated.

54. The present case is one of several that have been brought to the attention of the Working Group in the past year concerning the arbitrary deprivation of liberty of persons in the Islamic Republic of Iran. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.⁵ 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.

55. 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).⁶ The present case involves a two-year-old child, who has been deprived of access to both of her parents, as her mother is in detention and she cannot return to the United Kingdom to be with her father. These circumstances demanded a compelling justification for Ms. Ratcliffe's arrest and detention, which has not been provided by the Government.

Disposition

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

The deprivation of liberty of Nazanin Zaghari-Ratcliffe was arbitrary, in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the Covenant, and falls within categories I, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

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

58. Taking into account all the circumstances of the case, especially the risk of harm to Ms. Ratcliffe's health and physical integrity and to the well-being of her child, the Working Group considers that the adequate remedy would be to release Ms. Ratcliffe immediately and accord her an enforceable right to compensation in accordance with article 9 (5) of the Covenant.

59. The Working Group urges the Government to fully investigate the circumstances surrounding Ms. Ratcliffe's arbitrary deprivation of liberty and to take appropriate measures against those responsible for the violation of her rights.

⁴ See, for example, rules 1-3, 12-13, 15-16, 21-22, 24, 27, 30-31, 33-35, 42-45, 58-59, 61-62, 68, 111-114, 118-120 and 122.

⁵ See, for example, opinion No. 47/2012, para. 22.

⁶ In the past, the Islamic Republic of Iran has provided information to the Working Group, see opinions Nos. 58/2011, 21/2011, 20/2011, 4/2008, 26/2006, 19/2006, 14/2006, 8/2003 and 30/2001, but has not responded in more recent cases.

60. In accordance with paragraph 33(a) of its methods of work, the Working Group refers Ms. Ratcliffe's case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

Follow-up procedure

61. 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 the present opinion, including:

- (a) Whether Ms. Ratcliffe has been released, and if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Ratcliffe;
- (c) Whether an investigation has been conducted into the violation of Ms. Ratcliffe'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 Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

62. 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.

63. 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.

64. 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.⁷

[Adopted on 23 August 2016]

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