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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-seventh session, 21-25 November 2016

Opinion No. 50/2016 concerning Robert Levinson (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. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.
2. In accordance with its methods of work (A/HRC/30/69), on 14 September 2016 the Working Group transmitted a communication to the Government of the Islamic Republic of Iran concerning Robert Levinson. 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 or her sentence or despite an amnesty law applicable to him or her) (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 Covenant (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 any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Robert Levinson, born on 10 March 1948, is a citizen of United States of America. Prior to his detention, Mr. Levinson resided in Florida, United States of America. Mr. Levinson is a retired civil servant. At the time of his detention, he was self-employed as a subcontractor for several companies. Mr. Levinson was reportedly suffering from diabetes, high blood pressure and gouty arthritis.

5. According to the information received, Mr. Levinson travelled to the island of Kish in the Islamic Republic of Iran to hold a series of business meetings on 8 and 9 March 2007 in the lobby of the Hotel Maryam, where he stayed. However, on 9 March 2007, he was detained in the lobby of his hotel, as he was leaving for the airport. It is alleged that Mr. Levinson was detained by Iranian security agents in plain clothes. An eyewitness of Mr. Levinson's detention was also detained in connection to meeting Mr. Levinson.

6. The source notes that Mr. Levinson had complied with all visa requirements to enter and stay in the Islamic Republic of Iran. The source adds that visitors to the island of Kish are not required to obtain any special visa. Nevertheless, tourists on the island of Kish are required to turn over their passports when they check into hotels. The source maintains that Mr. Levinson's name figured on the Kish Airline flight passenger lists and on the guest list of the Hotel Maryam. Despite those records, it is sustained that his name was not on any flight list of passengers leaving the country and his passport has not appeared outside the Islamic Republic of Iran after the date of his detention.

7. The source reports that, since his detention in March 2007, Mr. Levinson has been held in an unknown location without access to consular services or legal counsel. Moreover, he has not been granted permission to contact his family throughout the entire period of his detention.

8. The source submits that Mr. Levinson was reported missing by the Government of the United States in a series of diplomatic notes that were made in 2007 and 2008, beginning just after his detention in March 2007.

9. In December 2007, Mr. Levinson's family travelled to Tehran and to the island of Kish. The family was informed by officials that there was an ongoing investigation into Mr. Levinson's disappearance and that they would receive a report once the investigation was complete. It is sustained that the family has never received that report, in spite of numerous requests submitted over the years to Iranian officials and through the media.

10. The source points to documents that appeared in 2010, some dated one day prior to Mr. Levinson's detention, detailing the order of his arrest by Iranian intelligence officials, as well as information on his detention and the illnesses he was suffering from in detention. When approached, Iranian authorities allegedly did not provide any comment. From information contained in the above-mentioned documents, it is believed that Mr. Levinson might have fallen into a diabetic coma and may have suffered a peptic ulcer, a recurring eye

infection and a severe persistent cough. Furthermore, the source points to indirect evidence indicating that Mr. Levinson may be receiving medical attention for those conditions.

11. The source adds that, in 2010 and in 2011, the family of Mr. Levinson received video and photographs proving that Mr. Levinson was alive and being held in detention. The source notes that, since Mr. Levinson's detention, Iranian authorities have alternated between acknowledging his presence in the Islamic Republic of Iran and denying it. In July 2016, Iranian authorities reportedly expressed their lack of knowledge of Mr. Levinson's whereabouts. However, until now, there has been no justification for his arrest and subsequent detention, and his family has had no information about any legal proceedings against him.

12. The source submits that Mr. Levinson's family subsequently hired a local attorney who filed a motion with the court in Tehran to have the only known witness to Mr. Levinson's detention testify before the court. The source however notes that this motion was ignored, dismissed or never ruled on. Allegedly, this points to the lack of due process and further proof of arbitrary detention.

13. The source concludes that Mr. Levinson's detention is arbitrary under category III.

Response from the Government

14. The Working Group sent a communication to the Government of the Islamic Republic of Iran on 14 September 2016. However, the Government failed to respond within the 60-day time frame and did not seek any extension. The Working Group deeply regrets such lack of cooperation by the Islamic Republic of Iran.

Additional information from the source

15. After the communication was sent to the Government, the Working Group had an opportunity to further hear from the source and other stakeholders. The information provided was consistent with what was already sent to the Government and did not require any further communication.

Discussion

16. 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.

17. 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 (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

18. Based on the totality of the information received, the Working Group is of the view that the source has provided prima facie credible allegations that could be summarized as follows: Mr. Levinson was arrested on 9 March 2007 and has been detained since then by the Iranian authorities. A witness provided his family with information regarding his arrest, which was later confirmed through additional proof that, among other things, he was alive. The family has conducted its own investigations and taken the appropriate and reasonable legal actions required in the Islamic Republic of Iran, albeit in vain, as the courts have not even addressed their motion.

19. The Working Group therefore considers it to be an established fact that Mr. Levinson was arrested without any legal ground, in violation of his rights as established in article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, and

has been detained since then. This violation is further aggravated by the time elapsed — almost 10 years — and the lack of due diligence by the authorities of the Islamic Republic of Iran. Moreover, the time that Mr. Levinson has spent in detention is such that the situation appears to have satisfied *prima facie* all three criteria to qualify the present case as an enforced disappearance, and it should be referred to the appropriate special procedure mandate holder for further action.

20. 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 the present case, and in other communications to the Working Group (see e.g. the opinions of the Working Group on the Islamic Republic of Iran, Nos. 28/2016, 25/2016, 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).

Disposition

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

The deprivation of liberty of Robert Levinson, being in contravention of article 9 of the Universal Declaration of Human Rights and of article 9 of the International Covenant on Civil and Political Rights, is arbitrary and falls within category I.

22. The Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Levinson without any further delay and bring it in conformity with its international obligations as per the Universal Declaration of Human Rights and the Covenant.

23. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Mr. Levinson immediately and accord to him an enforceable right to compensation in accordance with article 9 (5) of the Covenant.

24. Finally, the Working Group considers it necessary and appropriate to refer the present case to the Working Group on Enforced and Involuntary Disappearances for any further action it could take within its mandate to assist further Mr. Levinson and his family.

Follow-up procedure

25. 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 action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Levinson has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Levinson;
- (c) Whether an investigation has been conducted into the violation of Mr. Levinson'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.

26. The Government is 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.

27. 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 right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

28. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them 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.¹

[Adopted on 23 November 2016]

¹ See Human Rights Council resolution 33/30, paras. 3 and 7.