



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Dear Hadi Ghaemi,

I would like to refer to the seventy-fifth session of the Working Group on Arbitrary Detention, during which time the Working Group adopted several Opinions on cases of deprivation of liberty submitted to it.

In accordance with paragraph 18 of the Working Group's revised methods of work, I am sending to you, attached herewith, the text of Opinion No. 2/2016 (Iran) adopted on 19 April 2016, regarding a case submitted by your organization.

In conformity with its revised methods of work, the Working Group transmits its Opinions to the source of the petitions, two weeks after having transmitted it to the relevant Government.

This Opinion will be published on the website of the Working Group and reflected in its annual report to the Human Rights Council.

Yours sincerely,

Christophe Peschoux
Secretary a.i.

Working Group on Arbitrary Detention

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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016

Opinion No. 2/2016 concerning Bahareh Hedayat (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 12 February 2016 the Working Group transmitted a communication to the Government of Islamic Republic of Iran concerning Bahareh Hedayat. The Government replied to the communication on 18 April 2016. 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);

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

Submissions

Communication from the source

4. Ms. Bahareh Hedayat is a 35-year-old prominent Iranian human rights and women's rights activist. She holds a Bachelor degree in Economics and Finance from the University of Tehran. Ms. Hedayat is a member of the "Daftar-e Tahkim Vahdat" (Office for Strengthening Unity or OSU), the largest university student union in Iran.

5. Since 2002, Ms. Hedayat has been in charge of public affairs at the OSU's Central Committee. Ms. Hedayat has also held the positions of OSU spokesperson and public relations administrator. In 2005, as part of her work for gender equality, Ms. Hedayat founded the OSU Women's Commission which promotes the participation of women in universities and other educational fields. As Head of the OSU Women's Commission, Ms. Hedayat reported on cases of sexual violence against female students at various Iranian universities in 2007 and 2008.

6. Ms. Hedayat was one of the founders of the "One Million Signatures Campaign for the Change of Discrimination Laws Against Women" which called for an end to institutionalised discrimination against women in Iran. She was also a member of the Committee for the Prevention of Arbitrary Detention in Iran, working on cases related to the arrest and expulsion of Iranian students from universities as a result of their involvement in human rights activism.

7. Ms. Hedayat maintained a high public profile, giving interviews to domestic and international media outlets on the human rights situation in Iran, making videos addressing European student unions, and delivering speeches on women's rights. As a result of her advocacy work, Ms. Hedayat was nominated for various awards, including the Harald Edelstam Defence of Human Rights Award which she received in 2012 for "outstanding contributions and exceptional courage in standing up for one's beliefs in the defence of human rights".

8. According to the source, Ms. Hedayat has been arrested several times by the authorities since 2006. She was arrested for the first time on 12 June 2006 while participating in a peaceful protest at the Haft-e Tir Square in Tehran to celebrate International Women's Day and to call for an end to discrimination against women. The source states that the arrest was carried out without a warrant. The authorities took Ms. Hedayat, along with approximately 70 other women's rights activists, to Evin Prison and informed her that the charges against her were "acting against national security", "disturbing public order", and "propaganda against the State". The authorities detained Ms. Hedayat for one week at Evin Prison before releasing her on bail.

9. The source alleges that the judicial authorities did not allow Ms. Hedayat's lawyer to access her case files, which hampered the preparation of her defence. Additionally, during the trial held between 18 April and 27 May 2007, the judge did not allow Ms. Hedayat's lawyer in the courtroom, and her lawyer was not allowed to be present when the final verdict was handed down. On 27 May 2007, Branch 6 of the Revolutionary Court of

Tehran issued a two-year suspended prison sentence against Ms. Hedayat for “acting against national security by participating in an illegal gathering” under article 610 of the Iranian Penal Code. This suspended sentence was subject to a five-year statute of limitations which expired in May 2012.

10. According to the source, Ms. Hedayat was subsequently arrested on several occasions. On 9 July 2007, she was arrested while attending a sit-in in front of a university which denounced the unlawful imprisonment of Iranian students, including five members of the OSU Central Committee, for their peaceful activism. The authorities held her for one month in solitary confinement at Evin Prison before releasing her on bail. On 13 July 2008, agents from the Ministry of Intelligence raided Ms. Hedayat’s home, confiscated her laptop, flash drives and books, and arrested her. The Tehran Prosecutor General charged her with “acting against national security.” After once again spending one month in solitary confinement, Ms. Hedayat was released on bail.

11. On 21 March 2009, the police arrested Ms. Hedayat without a warrant while she was participating in a peaceful protest with family members of political prisoners detained in Evin Prison. She was released on bail after three days of detention. On 15 June 2009, and in September 2009, the authorities again attempted to arrest Ms. Hedayat by raiding her home.

Current situation of Ms. Hedayat

12. According to the source, late in the night of 30 December 2009, Ministry of Intelligence agents came to Ms. Hedayat’s residence. After searching her home for three hours and confiscating some of her personal belongings, including her computer and books, the agents took Ms. Hedayat with them in the early hours of 31 December 2009. The source states that the agents were in plainclothes and did not present an arrest warrant. They did not provide any information on the relevant legislation to justify Ms. Hedayat’s arrest.

13. The source alleges that, immediately after her arrest, the authorities at Evin Prison placed Ms. Hedayat in solitary confinement, where she was interrogated for two months. In March 2010, the authorities relocated her to the General Ward of Evin Prison. Ms. Hedayat was informed of the charges against her in the absence of her lawyers. Ms. Hedayat’s lawyers were only able to access her files and prepare a statement of defence one day before her trial began.

14. On 5 May 2010, Branch 28 of the Revolutionary Court of Tehran sentenced Ms. Hedayat to 7.5 years of imprisonment consisting of:

- (i) six months of imprisonment for “insulting the President,”
- (ii) two years of imprisonment for “insulting the Leader”, and
- (iii) five years of imprisonment for “acting against national security and publishing falsehoods.”

15. Ms. Hedayat’s lawyers were not provided with a copy of the ruling. On 25 July 2010, the Appeals Court of Tehran upheld the verdict in the absence of Ms. Hedayat and her lawyers.

16. In December 2010, Ms. Hedayat received an additional six-month prison sentence on charges of “propaganda against the State” for writing a letter from prison addressing Iranian activists on International Student Day in November 2010.

17. According to the source, Ms. Hedayat had served her five-year imprisonment in May 2015 and should have been released by June 2015, at the latest. The source points to article 134 of the Iranian Penal Code which provides that in cases of multiple sentences, a

person must serve no more than the maximum sentence for the charge carrying the heaviest penalty (in this case, five years for the offence of “acting against national security and publishing falsehoods”). On 12 August 2015, the Appeals Court issued a release order for Ms. Hedayat.

18. On 17 August 2015, while Ms. Hedayat was still in prison and at the request of Tehran Prosecutor General, Branch 28 of the Revolutionary Court of Tehran ordered the enforcement of the two-year suspended prison sentence issued on 27 May 2007 by Branch 6 of the Court. This order was made despite the expiry of the five-year statute of limitations for this sentence in 2012.

19. In addition, the source alleges that neither Ms. Hedayat nor her lawyers were at any point involved in the legal proceedings to enforce her suspended sentence. Branch 28 of the Revolutionary Court of Tehran rendered its decision in the absence of Ms. Hedayat and her lawyers. The source claims that no reasons were given to justify enforcement of the sentence.

20. Ms. Hedayat remains in detention in the Women’s Section of Evin Prison. She filed a complaint to the Head of the Evin Prison Sentence Enforcement Unit against her unlawful detention between 12 and 17 August 2015. The authorities have not responded to her complaint. Ms. Hedayat has been detained for over six years, and is completing the two-year sentence enforced on 17 August 2015. She will have served almost eight years in prison by the time of her anticipated release on 17 August 2017.

21. According to the source, Ms. Hedayat’s continuing detention poses a serious risk to her health. Ms. Hedayat suffers from a chronic reproductive disease which, if left untreated, may cause irreversible damage to her health and leave her permanently sterile. The source states that prison authorities have not provided Ms. Hedayat with adequate medical care and have rejected most of her requests for medical furlough, including requests by prison doctors to allow Ms. Hedayat to be treated after she was diagnosed with gallstones in 2010. Three years later, and after posting a large bail amount, Ms. Hedayat was allowed to undergo treatment but was ordered to refrain from visits and interviews. She later had surgery, but this did not remove all her kidney stones and she remains at risk of needing further surgery. Against the advice of doctors and without post-operative care, the authorities returned Ms. Hedayat to prison shortly after her surgery.

22. During her detention, Ms. Hedayat was held for approximately eight months with inmates charged with serious criminal offences. According to the source, like other inmates in this section, Ms. Hedayat had limited access to fresh air and prison facilities. Ms. Hedayat also had additional restrictions on visitation rights because of the publicity surrounding her imprisonment. The source informs that Ms. Hedayat was allowed a short furlough from 24-29 December 2015, but was then returned to prison. She currently has no access to legal counsel as her family does not have the means to hire a lawyer.

23. Ms. Hedayat was the subject of a joint urgent appeal dated 22 January 2016 addressed to the Islamic Republic of Iran by seven UN Special Procedure mandate holders.¹ The Government did not respond to the joint urgent appeal.

¹ The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; 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, and the Special Rapporteur on violence against women, its causes and consequences.

Submissions regarding arbitrary detention

24. The source submits that the detention of Ms. Hedayat is arbitrary in accordance with categories I, II and III of the categories applied by the Working Group.

25. In relation to category I, the source argues that there is no legal basis for Ms. Hedayat's detention based on the following facts:

(i) Ms. Hedayat completed her most severe sentence of five years' imprisonment in May 2015 and should have been released at that time in accordance with article 134 of the Penal Code. The authorities did not provide any relevant legal basis to justify her continued detention since May 2015. The source refers to the Working Group's Deliberation No. 9 which states that: "Any extension of the period of deprivation of liberty must be based on adequate reasons setting out a detailed justification, which must not be abstract or general in character".²;

(ii) Ms. Hedayat continued to be detained for five days between 12 August 2015 (when a judicial order for her release was issued) and 17 August 2015 (when her suspended sentence was enforced). The source notes that the UN Human Rights Committee stated in its General Comment No. 35 that detention in these circumstances is both arbitrary and unlawful.³;

(iii) There was a five-year statute of limitations adopted by Branch 6 of the Revolutionary Court when it imposed a two-year suspended sentence on Ms. Hedayat in May 2007. That statute of limitations expired in May 2012. The decision to enforce the two-year suspended sentence in August 2015 did not respect the five-year statute of limitations defined by the Court in 2007 and therefore has no legitimate legal basis.

26. In relation to category II, the source submits that the arrest, detention and sentencing of Ms. Hedayat to an additional two years of imprisonment from August 2015 was the direct result of the exercise of her rights to freedom of expression and peaceful assembly under articles 19 and 21 of the ICCPR. The source points to the multiple arrests of Ms. Hedayat between 2006 and 2009. According to the source, this sequence of events demonstrates that Ms. Hedayat's detention after completing a five-year sentence was intended to prevent her from continuing her peaceful activism.

27. The source also submits that the actions taken by the authorities against Ms. Hedayat should be considered within the broader context of a crackdown on human rights activists in Iran. For example, the source states that, in 2005, the OSU was one of the many student unions officially banned from conducting its activities and forbidden to hold meetings and elections because of its criticism of government policy and pro-democracy stance. Further, in 2009, the Iranian Ministry of Science, Technology and Research declared the OSU "illegal" as it "engaged in activities that endangered national security".

28. In addition, the source notes that Ms. Hedayat's arrest on 31 December 2009 occurred in the context of peaceful protests following the 2009 presidential election in Iran. Ms. Hedayat took part in these protests, including two large protests that were held on 18

² Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, Report of the Working Group on Arbitrary Detention, A/HRC/22/44, 24 December 2012, paragraph 67.

³ United Nations Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014. The Committee stated at paragraph 11 that: "Continued confinement of detainees in defiance of a judicial order for their release is arbitrary as well as unlawful".

September 2009 and 27 December 2009. Ms. Hedayat also recorded two video messages on International Student Day (17 November 2009) and Iranian Student Day (7 December 2009) in which she spoke out against violations of student activists' rights in Iran and welcomed the expression of solidarity by international students.

29. The source recognises that the fundamental rights to freedom of expression and peaceful assembly in the ICCPR are not absolute, but submits that they can only be subject to restrictions that are necessary to the aim pursued by the State Party, such as the protection of national security. The State Party must demonstrate the proportionality of any restriction by establishing a direct and immediate connection between the expression and the threat. The source argues that the Government offered no credible evidence in its prosecution of Ms. Hedayat of any direct link between her peaceful activism and the vague pretext of national security.

30. In relation to category III, the source submits that the judicial process that led to Ms. Hedayat's sentencing in May 2007 and continued detention in August 2015 was not in accordance with the right to a fair trial in articles 9 and 14 of the ICCPR. The source maintains that Ms. Hedayat's lawyer in 2007 was not allowed to access Ms. Hedayat's case files, and was not permitted to be present during the trial or when the verdict was handed down, in violation of article 14(1) and article 14(3)(b) and (d) of the ICCPR. Further, by keeping Ms. Hedayat in prison after a judicial order for her release was issued on 12 August 2015, the Government has violated article 9(1) of the ICCPR. Finally, the source points out that Ms. Hedayat and her lawyers were not involved in the process of enforcing her two-year suspended sentence, and the decision to do so was rendered in their absence, contrary to article 9(3), 14(1) and 14(3)(a), (b) and (d) of the ICCPR.

Response from the Government to the Working Group's regular communication

31. On 12 February 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 13 April 2016 about the current situation of Ms. Hedayat, noting that it would welcome any comment which the Government may wish to make on the allegations by the source. The Working Group also requested the Government to clarify the factual and legal grounds invoked by the authorities to justify Ms. Hedayat's continued detention, and to provide details regarding the conformity of her deprivation of liberty with domestic legislation and international human rights norms, including under treaties which the Islamic Republic of Iran has ratified.

32. On 18 April 2016, the Government requested an extension of one month in which to reply to the communication to allow for the relevant institutions to follow up on the matter. However, this request was not submitted within the timeframe of 60 days established under paragraph 15 of the methods of work of the Working Group. The Working Group has therefore decided not to grant the extension of time.

Discussion

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

34. 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.⁴ In this case, the Government has not challenged the *prima facie* credible allegations made by the source.

35. In the absence of information from the Government to the contrary, the Working Group considers that there was no legal basis for the detention of Ms. Hedayat. This finding applies from the time of her initial detention in June 2006 (including other periods of detention in July 2007, July 2008 and March 2009) through to May 2015 because she was detained during these periods solely as a result of her peaceful advocacy activities. There was also no legal basis for the continued detention of Ms. Hedayat after she had completed her five-year sentence in May 2015.⁵ The continuation of her detention after May 2015 appears to have been ordered in violation of article 134 of the new Iranian Penal Code⁶ and contrary to the five-year statute of limitations which expired in 2012. Ms. Hedayat was also held for five days after a judicial order for her release was issued, which amounts to an arbitrary deprivation of liberty under article 9(1) of the ICCPR.

36. In addition, when Ms. Hedayat's two-year suspended sentence was enforced on 17 August 2015, she was not brought promptly before a judge or other officer authorised by law to exercise judicial power, in violation of article 9(3) of the ICCPR. Neither Ms. Hedayat nor her lawyers were involved in these proceedings, and Ms. Hedayat was simply informed on 22 August 2015 that the Court had decided to enforce the sentence. The UN Human Rights Committee has stated that the right to be brought before a judge under article 9(3) applies even if, as in Ms. Hedayat's case, a person is already detained on one criminal charge and is also ordered to be detained to face an unrelated criminal charge. In that case, the person must be promptly brought before a judge for control of the second detention.⁷ Although it was not raised by the source in this case, there may also have been a violation of article 9(4) of the ICCPR in Ms. Hedayat's case, as it appears that she is now without legal counsel and is effectively unable to challenge the lawfulness of her deprivation of liberty.⁸

37. Thus, the deprivation of liberty of Ms. Hedayat falls within category I of the categories applied by the Working Group.

⁴ See, for example, Report of the Working Group, A/HRC/19/57, 26 December 2011, para. 68, and Opinion No. 52/2014.

⁵ Continued detention in these circumstances falls clearly within the definition of category I of the categories applied by the Working Group: "When it is clearly impossible to invoke any legal basis to justify the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence...) (category I)".

⁶ The Working Group understands that provisions of the new Iranian Penal Code came into force in May 2013. There was nothing in the source's submission, and no information from the Government, to indicate any restriction in applying article 134 to sentences imposed before May 2013, as is the case for Ms. Hedayat. Recent reports from UN Special Procedures accept that article 134 applies to detainees convicted of crimes following the 2009 Iranian presidential election: Supplementary information on the situation of human rights in the Islamic Republic of Iran, A/HRC/31/CRP.5, 10 March 2016, paragraph 22. This is consistent with article 15(1) of the ICCPR which states: "If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby".

⁷ United Nations Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paragraph 32, citing *Morrison v. Jamaica*, Communication No. 635/1995, paras. 22.2–22.3 and *Jensen v. Australia*, Communication No. 762/1997, para. 6.3.

⁸ 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, A/HRC/30/37, 6 July 2015, principles 3, 8 and 9.

38. Further, in the absence of information from the Government, the Working Group has had regard to other reliable information which supports the source's claims in relation to category II. In particular, the Working Group refers to its previous opinions concerning individual communications received from various sources on arbitrary arrests and detention in the Islamic Republic of Iran.⁹ In these cases, findings have been made about the arbitrary deprivation of liberty of human rights defenders who peacefully exercised their rights under the UDHR and ICCPR, demonstrating that this is a systemic problem in the administration of criminal justice in Iran. The UN Secretary-General and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran have also expressed concern at the detention of human rights defenders in Iran for exercising their rights to freedom of expression, association and peaceful assembly, including with reference to the specific situation of Ms. Hedayat.¹⁰

39. The Working Group concludes that Ms. Hedayat has been deprived of liberty in violation of her rights to freedom of expression and assembly under articles 19 and 20 of the UDHR and articles 19 and 21 of the ICCPR. The Working Group considers that Ms. Hedayat was deprived of her liberty for exercising her rights from the time of her initial detention in June 2006 (including other periods of detention in July 2007, July 2008 and March 2009) through to the present. The deprivation of liberty of Ms. Hedayat therefore falls within category II of the categories applied by the Working Group.

40. The Working Group considers that the source's allegations disclose violations of Ms. Hedayat's right to a fair trial. Specifically, Ms. Hedayat has been deprived of the right to equality of arms, the right to adequate time and facilities to prepare a defence, and the right to defend herself through counsel of her choosing under article 14(1) and 14(3)(b) and (d) of the ICCPR. The Working Group concludes that the breaches of articles 10 and 11 of the UDHR and article 14 of the ICCPR are of such gravity as to give Ms. Hedayat's deprivation of liberty an arbitrary character, falling within category III of the categories applied by the Working Group.

41. Finally, the Working Group wishes to record its grave concern about Ms. Hedayat's deteriorating health since her detention in December 2009, particularly the allegations made by the source that she has not been provided with adequate medical care and that this may result in irreparable harm to her health and leave her permanently sterile. The Working Group considers that the treatment of Ms. Hedayat violates her right under article 10(1) of the ICCPR to be treated with humanity and with respect for her inherent dignity.

Disposition

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

The deprivation of liberty of Bahareh Hedayat was arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the UDHR and articles 9, 10, 14, 19 and 21 of the ICCPR, and falls within categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group.

43. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Hedayat without

⁹ See, for example, Opinion Nos. 54/2012, 48/2012, 21/2011, 26/2006.

¹⁰ Report of the Secretary-General on the situation of human rights in Iran, A/HRC/31/26, 3 March 2016, paragraphs 4, 30 and 32; Supplementary information on the situation of human rights in the Islamic Republic of Iran, A/HRC/31/CRP.5, 10 March 2016 (referring to the case of Bahareh Hedayat at paragraph 24).

delay and bring it into conformity with the standards and principles in the UDHR and ICCPR.

44. Taking into account all the circumstances of the case, especially the risk of irreparable harm to Ms. Hedayat's health and physical integrity, the Working Group considers that the adequate remedy would be to release Ms. Hedayat immediately, and accord her an enforceable right to compensation in accordance with article 9, paragraph 5 of the ICCPR.

45. In accordance with paragraph 33(a) of its methods of work, and given that the arbitrary deprivation of liberty of Ms. Hedayat appears to have been intended to prevent her from carrying out her work as a human rights defender, the Working Group refers the case to the Special Rapporteur on the situation of human rights defenders for appropriate action.

[Adopted on 19 April 2016]
