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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26-30 August 2013

No. 28/2013 (Islamic Republic of Iran)

Communication addressed to the Government on 27 June 2013

concerning Amir Nema Hekmati

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.
2. 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 the detainee) (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; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Mr. Amir Nema Hekmati, aka Amir Mirza Hekmati (hereinafter Mr. Hekmati), is a citizen of the United States of America, born on 28 July 1983, usually residing in Michigan, United States. Mr. Hekmati previously worked as an Arabic and Farsi translator and linguist on a contractual basis for private and military businesses, including in Afghanistan. From 2001 to 2005, he served in the American military as a member of the Marine Corps, specifically as an infantry rifleman, linguist and translator. His military service included deployment in Iraq for a period.

4. On 14 August 2011, Mr. Hekmati arrived in the Islamic Republic of Iran with the purpose of visiting relatives over a two-week period. At that time he was unemployed and had enrolled to continue his education at the University of Michigan beginning in September 2011.

5. On 29 August 2011, between 1 p.m. and 3 p.m., Mr. Hekmati was arrested in his cousin's apartment in Tehran. The source indicates that Mr. Hekmati's arrest came after he had made a telephone call to his mother at 1 p.m., informing her of his plans to return to the United States at the completion of his two-week visit to Iran. When Mr. Hekmati failed to attend a family gathering in Tehran at 3 p.m. that day, his relatives inquired about him later that afternoon at his cousin's apartment. According to eyewitness accounts, the apartment had been forcibly entered into and Mr. Hekmati's belongings, including his passport, laptop, camera and mobile phone, had been seized.

6. The source received two reports from the authorities responsible for Mr. Hekmati's arrest. The first report stated that the Iranian Interests Section in Washington, D.C. had contacted Iranian authorities in Tehran upon being made aware by Mr. Hekmati himself, during his visa application process, that he had earlier served as a United States marine. The second report declared that the Iranian Ministry of Intelligence had been following Mr. Hekmati from the time of his arrival in Iran and had instructed the Iranian Revolutionary Guards to arrest him. The source conjectures that another possibility is that both authorities may be responsible for Mr. Hekmati's arrest. The source does not have any information on whether an arrest warrant was presented.

7. Mr. Hekmati continues to be detained at Evin Prison in Tehran since the date of his arrest and has reportedly spent 16 months of that time in solitary confinement. During the first three days of his detention the authorities denied that Mr. Hekmati was in their custody when inquiries were made by family members. When Mr. Hekmati was finally permitted to make phone calls to his relatives informing them that he was in Evin Prison, the relatives' attempts to visit him were denied by the authorities who stated that he was not detained at Evin Prison. Thereafter, Mr. Hekmati was detained incommunicado for a month.

8. The source indicates that when Mr. Hekmati's relatives requested details on the reason for his detention, the authorities replied that no information would be shared and no access to a lawyer would be permitted until Mr. Hekmati's interrogation had been

completed, which could last for up to four weeks. Mr. Hekmati was only given access to a lawyer and consular services 45 days following his arrest.

9. The source states that Mr. Hekmati's family requested the Swiss Ambassador to Iran to carry out a welfare whereabouts check on him through the Foreign Ministry. The Ambassador was reportedly informed that if Mr. Hekmati had entered Iran on an Iranian passport, she would have no jurisdiction to inquire about his well-being. At that time, the source reports that the authorities neither confirmed nor denied that Mr. Hekmati was detained in Evin Prison and refused to officially confirm that he was in their custody.

10. The Iranian State media reported that on 7 December 2011, an American spy had been captured and arrested. In the source's opinion the profile of the individual described in the media matches that of Mr. Hekmati, apart from the date of arrest. The source conjectures that the media decided to publicize the arrest on that date to link it to the capture of the United States drone that same month.

11. The source reports that it took the occasion of the Iranian authorities' admission in the media of Mr. Hekmati's status as a United States citizen to request, via the United States Department of State and the Swiss Ambassador to Iran, consular access to Mr. Hekmati. It reports that such access was denied by the authorities, stating that they considered Mr. Hekmati to be an Iranian citizen.

12. Four months after his arrest, the source received reports that Mr. Hekmati would be charged with espionage for the United States on the basis of his former service as a United States marine and his work in Afghanistan and Iraq. On 9 January 2012, Mr. Hekmati was formally charged as "waging war against God" and being a "corruption on Earth" for allegedly spying for the United States and attempting to sell false information to Iranian intelligence officials. According to the source, testimony submitted on behalf of Mr. Hekmati's friends and relatives, negating the allegations of espionage, were neither accepted nor included in his file.

13. In February 2012, the source indicates that the Attorney-General, Gholam-Hossein Mohseni-Ejei, reviewed Mr. Hekmati's case and annulled his death sentence. The source stated that Mr. Hekmati's lawyer had submitted all possible appeals to defend his innocence.

14. The source submits that Mr. Hekmati's detention is arbitrary. It contends that Mr. Hekmati has not been permitted regular contact with his family, lawyer, or the Swiss Ambassador. The majority of attempts to communicate with him through in-person visits, telephone calls, or letters have been denied by the authorities. Over the duration of his detention he has been permitted to receive only eight visits from family members, regardless of prior permission having been granted.

15. According to the source, Mr. Hekmati's lawyer is only permitted to communicate with him during his court appearances and does not have access to his legal file, which is archived in the Ministry of Intelligence. Over the course of his detention, the lawyer has only been permitted to see Mr. Hekmati three times, for a total of 90 minutes.

16. The source reports that the authorities told Mr. Hekmati his situation would be made worse in detention if he were to contact the United States Government, the United Nations, or the media to raise awareness about his detention.

17. According to the source, Mr. Hekmati has been kept incommunicado since June 2012 and therefore it has no details about his current physical or emotional state or the developments of his case. The source has been informed that during this time Mr. Hekmati fell unconscious, having endured a hunger strike whilst in solitary confinement, and was moved to a different ward at Evin Prison in order to receive medical attention.

Response from the Government

18. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group on 26 June 2013.

19. Despite the absence of any information from the Government, the Working Group considers it is in a position to render its opinion on the detention of Mr. Hekmati in conformity with paragraph 16 of its Methods of Work.

Discussion

20. The Government opted not to rebut the allegations submitted by the source, including those of serious violations of article 10 of the Universal Declaration of Human Rights (UDHR), and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

21. Pursuant to article 14.3 (a) of the ICCPR, in the determination of any criminal charge against him, everyone has the right to be informed promptly and in detail of the nature and cause of the charge against him. Furthermore, according to article 9.2 of the ICCPR, anyone who is arrested shall be promptly informed of any charges against him. In violation of the above provisions of the ICCPR, Mr. Hekmati, having been arrested in August 2011, was formally charged only in January 2012, i.e. almost half a year after the arrest.

22. In violation of article 14.3 (b) of the ICCPR, Mr. Hekmati has been effectively deprived of his right to prepare his defence and communicate with counsel. He was only given access to a lawyer 45 days following his arrest. The lawyer has only been permitted to communicate with Mr. Hekmati during his court appearances. Over the course of two years of his detention, the lawyer was only permitted to see Mr. Hekmati three times, for a total of 90 minutes.

23. Moreover, the lawyer had no access to Mr. Hekmati's case file which prevented the accused from preparing his defence in violation of article 14.3 (b).

24. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, namely article 10 of the UDHR and article 14.3 (b), of the ICCPR, in this case is of such gravity as to give the deprivation of liberty of Mr. Hekmati an arbitrary character. Thus the deprivation of liberty of Mr. Hekmati falls within category III of the categories applicable to the consideration of cases submitted to the Group.

Disposition

25. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Hekmati has been arbitrary, being in contravention of article 10 of the UDHR, and article 14 (3) of the ICCPR; it falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

26. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Hekmati and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

27. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Hekmati and accord him an enforceable right to compensation in accordance with article 9.5 of the ICCPR.

28. The Working Group recalls the Human Rights Council's call for all States to take into account the Group's views and, where necessary, to take the appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty. States are also invited to extend their cooperation to the Group's requests for information and to give due consideration to the recommendations it has made.¹

[Adopted on 29 August 2013]

¹ Human Rights Council resolution 15/18 on arbitrary detention, paras. 3, 4 (a) and 9.