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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021****Opinion No. 85/2021 concerning Anoosheh Ashoori (Islamic Republic of Iran)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work ([A/HRC/36/38](#)), on 13 August 2021, the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Anoosheh Ashoori. The Government has not replied to the communication within the established time frame. 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);
  - (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. Anoosheh Ashoori is a 67-year-old British-Iranian dual national, born in the Islamic Republic of Iran in 1954. His family has been settled in the United Kingdom of Great Britain and Northern Ireland since 2006.

5. The source reports that Mr. Ashoori is a retired engineer with an interest in science, space and civil engineering. In 1993, when he was living in the Islamic Republic of Iran, Mr. Ashoori was awarded a gold medal by the Minister of Housing and Urban Planning for innovation in construction engineering for his creation of Roofix metal formwork – a product that helps in building earthquake-resistant homes. Mr. Ashoori’s company operated in the Islamic Republic of Iran and the United Kingdom until 2015. He never held any government posts, was never politically active and never worked for any government or its agents, either directly or indirectly.

6. From 2006 until his retirement in 2015, Mr. Ashoori travelled to the Islamic Republic of Iran for work and personal matters. Since 2015, he has travelled only to see his elderly relatives. During recent visits, he would stay a few weeks or for a month at a time, depending on the health of his relatives.

#### a. Arrest and detention

7. On 2 August 2017, Mr. Ashoori travelled to the Islamic Republic of Iran for 20 days to visit an elderly relative in Tehran. He entered with his Iranian passport, but he also carried his British passport. He renewed his Iranian passport and received it by post on the morning of the same day that he was arrested.

8. On 13 August 2017 in the afternoon, Mr. Ashoori was kidnapped near his relative’s home. The source reports that four men in plain clothes forced him into a car with tinted windows. The driver showed a paper to Mr. Ashoori, but he could only read “anti-espionage department” and was immediately blindfolded. He was not informed of the charges or reasons for his detention.

9. The source alleges that Mr. Ashoori was driven to a clandestine interrogation room containing pictures of the Supreme Leader. The men who kidnapped him were intelligence agents. Three interrogators told Mr. Ashoori that he was a spy. Several hours later, they took him to the house of his relative, who was not present at the time, to collect his mobile telephone, computer, wallet and British passport, before transferring him to Evin prison. Mr. Ashoori’s interrogator later stated that they had chosen to arrest him on that day because they knew that his relative would be away from home and there would be no disruption to his arrest.

10. The next day, Mr. Ashoori made a telephone call to his relative in the Islamic Republic of Iran for less than 30 seconds and two weeks later made another brief call. In October 2017, his relative visited him in Evin prison. The visit took place with a glass screen between them and with a guard present behind Mr. Ashoori. For over two months until 21 October 2017, Mr. Ashoori was not allowed to call his family in the United Kingdom. During his first two-minute call to his family in the United Kingdom, he warned them not to travel to the Islamic Republic of Iran. According to the source, Mr. Ashoori was punished for this and on 21 November 2017, he was taken to a detention centre, called 1A or 59, under the control of the Revolutionary Guards outside Tehran for two weeks until early December 2017.

11. The source further states that on 4 and 7 September 2017, Mr. Ashoori made two unsuccessful suicide attempts, due to the alleged pressure to admit to actions that he had never committed, lack of sleep and threats to harm his family. On 8 September 2017, he started a hunger strike and lost 17 kgs in 17 days.

12. According to the source, Mr. Ashoori was tortured, interrogated and denied access to a lawyer. He was filmed for “training” purposes and the guards threatened to kill him “without a trace”. Furthermore, he was forced to take a polygraph test. His interrogators were particularly interested in his British citizenship, his sources of income, his spouse’s income and his connections with foreign companies. The authorities retrieved documents related to

his businesses with a foreign company from his computer and claimed that earnings from an engineering consultancy were “illicit” and needed to be repaid to the Islamic Republic of Iran.

13. On 5 December 2017, Mr. Ashoori was sent to ward 7 of Evin prison, where security prisoners are kept and where he currently remains. He was able to make regular telephone calls to his family in the United Kingdom several times a week for 20–30 minutes until February 2021, when access to his telephone card was revoked by the authorities due to his denouncing his detention conditions.

14. The source claims that from August to December 2017, except for brief monitored calls to his relative in the Islamic Republic of Iran and family in the United Kingdom, Mr. Ashoori was held incommunicado and in solitary confinement in section 209 of Evin prison, under the control of the Ministry of Intelligence. During that time, he was only taken out of his cell blindfolded to be interrogated repeatedly by members of the Revolutionary Guard for up to 12 hours continuously each time.

15. The interrogations were allegedly conducted under torture, with Mr. Ashoori blindfolded or facing a wall in a small room, and without hydration in extreme heat. According to the source, he was threatened with death, transfer to units with members of Islamic State in Iraq and the Levant (ISIL) or Somali pirates, and harm to his family. After some of these day-long interrogations, Mr. Ashoori was not allowed to sleep. His interrogators gave him 50 blank pages, ordering him to fill them up by the morning with all the possible scenarios as to why he had been detained and threatened him if he failed to do so. In the morning, he was taken back for interrogation. He was asked for his family’s British passports and was told that his spouse needed to come to the Islamic Republic of Iran for interrogation. The interrogators warned Mr. Ashoori that his family was under surveillance by Iranian intelligence agents in the United Kingdom and provided specific details showing that they knew about their movements. Mr. Ashoori was forced to provide all his passwords.

16. Mr. Ashoori was not provided with any opportunity to appear before an independent judge or lawyer. The source alleges that he was forced to sign multiple documents, but refused to sign a confession. One month after Mr. Ashoori’s arrest, one of his elderly relatives was allegedly harassed at home by intelligence officers who searched for Mr. Ashoori’s company computers and documents.

b. Trial and appellate proceedings

17. On 8 January 2018, after almost five months of detention and multiple interrogations under torture, Mr. Ashoori was taken to Branch 15 of the Revolution Courts and brought before a judge for the first time. The source claims that the judge overseeing his case is known for violations of the human rights of foreigners and dual citizens.

18. Mr. Ashoori sought the approval of the court for his chosen legal representative. The source notes that even though Mr. Ashoori’s first choice was a qualified lawyer who taught law in the Islamic Republic of Iran and had formerly represented an international detainee in a similar situation, the judge rejected the lawyer as unqualified. The judge read Mr. Ashoori’s indictment and made him sign it.

19. During the following six months, Mr. Ashoori tried to obtain access to the files of his case and to a lawyer of his choosing. According to the source, six lawyers were rejected. It appears that the judge was interested in the lawyers’ fees because the judiciary receives a percentage of those fees. The judge appointed a lawyer for Mr. Ashoori. When Mr. Ashoori refused to accept that lawyer, the judge made him sign a document stating that he refused legal representation and would represent himself. Mr. Ashoori proposed five other lawyers, all of whom were rejected by the judge without explanation.

20. The source submits that Mr. Ashoori faced a grossly unfair trial and was denied a lawyer of his choosing. The trial consisted of two hearings. On 21 July 2018, the trial commenced without counsel, access to the files, or any explanation of the charges and legal procedures. Only the judge and Mr. Ashoori were in the room and the hearing lasted for a maximum of 20 minutes. The prosecutor was not present. The interrogator presented a report,

statements obtained under torture and the polygraph test result as evidence. Mr. Ashoori was forced to sign the files.

21. On 16 September 2018, another court session lasted for a maximum of 30 minutes and Mr. Ashoori caught glimpses of the contents of the case file, which included his emails and family pictures. The prosecutor told the judge that Mr. Ashoori was providing information about Roofix to “the enemy”. Mr. Ashoori was not allowed to call witnesses. The source observes that interrogators have an interest in obtaining confessions, as they receive a commission for the trial. No consular or diplomatic presence monitored the trial and Mr. Ashoori could not prepare his defence.

22. On 8 October 2018, Mr. Ashoori was sentenced to 10 years’ imprisonment for “cooperating with a hostile State against the Islamic Republic”, a charge based on article 508 of the Islamic Penal Code, and 2 concurrent years for allegedly obtaining 33,000 euros in “illicit funds”, which he must pay to the State upon release. The judge reportedly laughed as he read the verdict and asked Mr. Ashoori for the money. Mr. Ashoori was given 40 days to appeal.

23. On 27 October 2018, Mr. Ashoori filed an appeal before Branch 36 of the Court of Appeal of the Revolution Courts, describing the unfairness of his trial and asserting his innocence. His lawyer was again denied adequate time and facilities to prepare his defence and was granted access to the case files only one hour before the second and final hearing. Mr. Ashoori had two hearings on 25 December 2018 and 20 February 2019, at which he was again asked to pay money and was interrogated about his family properties and the British citizenship of his family. A different judge was assigned to his case. The first question that this judge asked Mr. Ashoori was whether he was a dual national. No new evidence was allowed, other than the interrogator’s report and polygraph test results, which Mr. Ashoori never saw. The judge forced him to sign a document expressing remorse and requested further information about projects that used Roofix.

24. On 21 July 2019, Branch 36 of the Court of Appeal upheld Mr. Ashoori’s conviction and sentence. On 27 August 2019, a spokesperson for the Iranian judiciary announced that Mr. Ashoori was sentenced to 10 years’ imprisonment for “spying” and 2 years for obtaining “illicit funds”. He stated that Mr. Ashoori had been connected to a foreign intelligence agency to which he had “relayed a lot of intelligence” about the Islamic Republic of Iran. Under Iranian sentencing guidelines, Mr. Ashoori must serve the longest sentence imposed for the most serious charge.

25. On 9 December 2019, Mr. Ashoori’s lawyer filed a motion for a retrial, which if successful, would bring the case before the initial judge again. The motion received no response. In February 2020, Mr. Ashoori filed a request for a judicial review, which is pending before the Supreme Court. According to the source, any such review would be conducted in a judicial system that lacks impartiality and independence and which would be unable to address the human rights violations that Mr. Ashoori suffered as a hostage. Moreover, according to the source, the judiciary takes part in the hostage-taking scheme.

26. The source states that on 22 December 2020, Mr. Ashoori filed for conditional release from jail, having served one third of his sentence. On 24 February 2021, this was granted, conditional on payment of a bail amount of 1.7 billion tomans (one toman=10 rials) or the deeds from Mr. Ashoori’s properties in the Islamic Republic of Iran. The deed from his elderly relative’s home was rejected and the furlough process was extended until 15 March 2021, with inspectors going to the properties, the family paying for an evaluator to confirm the value and the transfer of the deeds to the Government.

27. Nevertheless, Mr. Ashoori was not released on furlough until 27 March 2021 and then only for three days with a two-day extension. He returned to Evin prison on 1 April 2021. During his release, the British Ambassador visited Mr. Ashoori. While on furlough, Mr. Ashoori tested negative for coronavirus disease (COVID-19) and showed no antibodies for the virus, which increases concern as to the likelihood of him contracting the virus in prison. In several instances, Mr. Ashoori has shown all the main COVID-19 symptoms.

## c. Conditions of detention

28. The source argues that the conditions of Mr. Ashoori's detention reach the threshold of torture and have interfered severely with his ability to defend himself from arbitrary detention. Evin prison is notorious for human rights violations. Mr. Ashoori spent four months incommunicado in solitary confinement in ward 209 of Evin prison, including two weeks in a detention centre run by the Revolutionary Guard outside Tehran and six days in the "quarantine" area, and was then held in wards 7 and 4 of Evin prison.

29. Prisoners charged with espionage are held in ward 209, which is under the control of the Iranian Ministry of Intelligence and the Islamic Revolutionary Guard Corps, rather than the Iranian Prison Authority. Mr. Ashoori spent almost four months in ward 209, with no bathroom, in solitary confinement, in extreme heat, deprived of sleep, food and potable water, and witnessing the suffering of other prisoners. He slept on a concrete floor with only three blankets and had constantly to deal with ants, rats and bugs. He had no social interaction and was blindfolded when moved to interrogation rooms. He has endured extreme physical and psychological abuse, including constant artificial light, 12-hour interrogation sessions, threats against his relatives, beatings and confinement in cells with dangerous prisoners.

30. Mr. Ashoori is currently held in a 4m x 9m room holding 10 three-story bunk beds with at least 14 other prisoners. His cell is infested with bed bugs, rats and cockroaches. He has no access to adequate nutrition or to health care that meets the minimum standards under international law. He is currently showing signs of COVID-19. There have been several confirmed cases of COVID-19 in Evin prison, where there are reports of the virus spreading among detainees and of several deaths. The authorities at the prison have failed to take appropriate measures to mitigate the spread of COVID-19. They have continued to bring in new detainees and have failed to provide adequate COVID-19 testing and medical care. There is worsening and chronic overcrowding in the prison, which makes social distancing impossible, and sanitary conditions, characterized by water shortages and insufficient hygiene products and protective equipment, are poor.

31. In March 2020, the authorities issued a directive releasing thousands of prisoners due to the COVID-19 pandemic, but excluding dual and foreign nationals convicted of national security offences with a sentence of over five years, even those who are in high-risk categories due to their age and health. Mr. Ashoori's physical and mental health have deteriorated significantly. He suffers headaches, vomiting, extreme anxiety, tooth infections, weight loss, knee problems and suicidal thoughts. His detention has severely interrupted his family life.

32. The source recalls that international law prohibits hostage-taking and refers to article 1 (1) of the widely-ratified International Convention against the Taking of Hostages, which defines the offence of hostage-taking. The Convention complements the protection of the right to life, liberty and security enshrined in the Universal Declaration of Human Rights and the Covenant. Furthermore, the Convention states that "the taking of hostages is an offence of grave concern to the international community" and "that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages".

33. The Working Group has recognized a practice in the Islamic Republic of Iran of targeting foreign nationals,<sup>1</sup> dual nationals<sup>2</sup> and Iranian nationals with permanent residence in another country<sup>3</sup> for prosecution for crimes that are "vague and overly broad".<sup>4</sup> Mr. Ashoori's case falls within this proven pattern of arrest, followed by confiscation of computers and passports; lengthy, often incommunicado, detention and solitary confinement; denial of access to legal counsel; forced confessions; prosecution under vaguely worded offences; closed trial and appeal processes conducted by courts that lack independence; disproportionately harsh sentencing; and torture and ill-treatment and denial of medical care.

<sup>1</sup> See opinions No. 50/2016 and No. 52/2018.

<sup>2</sup> See opinions No. 18/2013, No. 28/2013, No. 44/2015 and No. 49/2017. See also opinions No. 28/2016 and No. 7/2017.

<sup>3</sup> See opinions No. 92/2017, No. 32/2019 and No. 51/2019.

<sup>4</sup> Opinion No. 52/2018, para. 78.

The Working Group has found that this may constitute crimes against humanity.<sup>5</sup> Moreover, the Secretary-General, the High Commissioner for Human Rights, special procedure mandate holders and the universal periodic review have all recommended that the Islamic Republic of Iran unconditionally release dual nationals unjustly detained under vague security charges and urged at least their immediate temporary release due to COVID-19.<sup>6</sup>

34. The source submits that Mr. Ashoori's detention is arbitrary under categories I, II, III and V.

i. Category I

35. The source recalls that category I is violated when it is clearly impossible to invoke any legal basis justifying detention in domestic or international law. There is clear evidence that Mr. Ashoori is a victim of hostage-taking and that he is being used for diplomatic leverage. His case falls into a pattern of targeting and arbitrary detention of dual nationals and constitutes an international crime, as described in the International Convention against the Taking of Hostages. Hostage-taking of dual nationals is a grave threat to peace and security, an international crime and a violation of article 9 (1) and (2) of the Covenant.

36. Given that the Islamic Republic of Iran does not recognize Mr. Ashoori's British citizenship, he continues to be denied effective diplomatic or consular access or assistance. The source states that when a hostage situation arises, the Iranian authorities should respect article 36 of the Vienna Convention on Consular Relations, notify the country of citizenship of the person under arrest and immediately grant the right to maintain communication with the sending country and to receive visits in person and independent legal advice. Rule 62 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) further enshrines this right.

37. Mr. Ashoori was kidnapped and detained by intelligence officers in plain clothes who, according to the Working Group's findings in similar cases, had no legal authority to arrest him. He was twice taken blindfolded to undisclosed facilities, once at the time of his arrest, where he was interrogated before his transfer to Evin prison, and on another occasion in retaliation for warning his family not to travel to the Islamic Republic of Iran. He was kidnapped on 13 August 2017 by unidentified agents of the Iranian Revolutionary Guard Corps without a legitimate warrant. He was not given the reasons for his arrest, in violation of article 9 (1) and (2) of the Covenant. Both domestic and international law require that deprivation of liberty should be conducted by authorized State agents identifying themselves, with an arrest warrant issued by an independent judge and without abuse.<sup>7</sup>

38. The Iranian authorities failed to establish a legal basis for Mr. Ashoori's detention. The formal charges against him were not clear and his indictment was only read to him, without access to the written version, almost five months after his arrest. That is not only a violation of article 9 (2) of the Covenant, but also of Iranian law. Article 32 of the Iranian Constitution provides that "no one may be arrested other than in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for the accusation must, without delay, be communicated to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of 24 hours so that the preliminaries to the trial can be completed as swiftly as possible".

39. Furthermore, Mr. Ashoori's detention and conviction violate Iranian domestic laws, because there is no evidence to show that he committed acts to satisfy the elements of the crime defined by the Islamic Penal Code. Mr. Ashoori was visiting a sick, elderly family member. He has never worked for a foreign government or its agents directly or indirectly.

40. The source emphasized that Mr. Ashoori was held incommunicado, tortured and placed in solitary confinement for more than 14 weeks, which removed him from judicial protection. Between 25 September and 21 November 2017, he was transferred to different pods in Evin prison, and on 21 November 2017 to other unknown detention facilities outside

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<sup>5</sup> See, for example, opinions No. 47/2012, para. 22, No. 52/2018, para. 86, and No. 32/2019, para. 52.

<sup>6</sup> See, for example, [A/75/287](#), paras. 11–12.

<sup>7</sup> Opinion No. 28/2016, paras. 44 and 46.

Tehran, without any justification, due process or judicial protection. Article 9 (3) of the Covenant requires States to immediately bring a person detained in custody before a judge. Mr. Ashoori was de facto taken away from any judicial protection. His detention was not subject to effective oversight and control by the judiciary, and he was taken before a judge (who was not independent) for the first time almost five months after his detention. He was deprived of his right to challenge the lawfulness of his detention under article 9 (4) of the Covenant.

41. Finally, the authorities use vague and overly broad charges as a pretext to detain foreigners or people with ties to Western countries. As recognized by the Working Group, the charges are not defined with sufficient precision to avoid arbitrary interpretation or application. Mr. Ashoori spent more than a year in pretrial detention without procedural safeguards, without access to a lawyer of his choice and in incommunicado detention, which has seriously and adversely affected his ability to effectively exercise his right to challenge the lawfulness of his detention under article 9 (4) of the Covenant.

ii. Category II

42. The source recalls that detention is arbitrary when it results from depriving individuals of exercising their fundamental rights or freedoms under international law, including the right to circulation and to leave and return to any country, including one's own, without fear of being arbitrarily detained, as enshrined in article 13 of the Universal Declaration of Human Rights. Article 15 (2) of the Declaration establishes that: "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

43. Dual nationality is common for Iranians living abroad. There is a large Iranian diaspora in Western countries, preserving their cultural heritage and relationships with family still in the Islamic Republic of Iran. Article 12 of the Universal Declaration of Human Rights protects individuals against interference with or attacks upon their family. Article 7 further ensures that all are equal before the law. Both the preamble and article 26 of the Covenant echo these provisions.

44. At the time of his kidnapping, Mr. Ashoori was exercising his right to visit his ageing relative in the Islamic Republic of Iran and return home to the United Kingdom. Although he is a British citizen settled in the United Kingdom, Iranian law required him to enter the country on his Iranian passport. Avoiding travel to the Islamic Republic of Iran is not an option for many dual nationals.

45. The authorities failed to notify the United Kingdom of Mr. Ashoori's arrest and rejected several requests from the United Kingdom for consular access, in violation of article 36 of the Vienna Convention on Consular Relations and rule 62 of the Nelson Mandela Rules. Consular protection is invaluable for all foreign nationals, as it not only serves the interests of the detained foreign individual and of the interested State, but also facilitates international exchange and reduces friction between States over the treatment of their nationals.

iii. Category III

46. The source submits that Mr. Ashoori was not aware of the charges against him. His violent arrest did not allow for a prompt explanation of the reasons or the reading of charges against him, nor were those legal reasons completely clear during his trial and appeal. On 8 January 2018, almost five months after his arrest, he was forced to sign his indictment in court, without a lawyer or access to the files. The entire process was tainted, as Mr. Ashoori could not comprehend the scope of the charges.

47. According to the source, the Iranian officials were primarily interested in Mr. Ashoori's British passport and the financial commission that they would gain from his case. Mr. Ashoori was shocked when he was convicted. On 27 August 2019, after his sentence was upheld, the spokesperson for the Iranian judiciary publicly stated that Mr. Ashoori had been connected to a foreign intelligence agency and had "relayed a lot of intelligence" about the Islamic Republic of Iran. According to the source, Mr. Ashoori had never worked for a foreign country.

48. In addition, the Revolution Courts that tried Mr. Ashoori and heard his appeal were not an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. Judges must not be influenced by personal bias or prejudice, nor harbour preconceptions about a particular case, and tribunals must appear to a reasonable observer to be impartial. The judge who tried Mr. Ashoori is notorious for his partiality and for human rights abuses, having sentenced several other individuals who have been the subject of Working Group opinions. Like those individuals, Mr. Ashoori was convicted of vague espionage charges and the judge laughed as he read his verdict and obstructed Mr. Ashoori's lawyers, asking for money. The source concludes that this judge cannot be considered impartial to a reasonable observer.

49. Mr. Ashoori's trial also violated his right to a hearing before a competent, independent and impartial tribunal. The Iranian justice system is not independent from the executive. The Islamic Revolutionary Guard Corps influences or controls the Revolution Courts and elements of the Iranian intelligence services, as part of a sustained pattern of targeting dual citizens and foreigners based on vague charges and in the absence of due process.

50. Mr. Ashoori's hearing was closed to the public without any legitimate reason, in violation of his right under article 14 (1) of the Covenant to a public hearing. The trial consisted of sessions of a maximum of 30 minutes, which began on 21 July 2018 with only Mr. Ashoori and the judge in the room. Mr. Ashoori was repeatedly denied the right to a counsel of his choice. The exclusion of the public cannot be justified by the national security and public order exception, as Mr. Ashoori's conduct did not implicate the national security of the Islamic Republic of Iran. Mr. Ashoori was never in possession of any classified information that would be discussed during the proceedings and is not connected to any espionage network. The only evidence presented during his trial came from interrogation reports and documents that he was forced to sign under torture. A trial should only be closed in exceptional circumstances and "the judgment, including the essential findings, evidence and legal reasoning must be made public".<sup>8</sup>

51. Mr. Ashoori's right to present a competent defence at trial under article 14 (3) of the Covenant was violated. The State must provide access to all materials, including documents and other evidence, that the prosecution plans to use in court and ensure that lawyers are able to advise and represent persons charged with a criminal offence, in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue influence from any quarter.<sup>9</sup>

52. Mr. Ashoori's trial was secret, he was repeatedly denied the counsel of his choosing and was not allowed access to evidence. Mr. Ashoori presented six different lawyers to the court during the process, each of whom was rejected by the judge. At the appeal stage, Mr. Ashoori's lawyer was obstructed from accessing case files and taking instructions from and advising Mr. Ashoori. The trial began without legal representation. Even though the only evidence against Mr. Ashoori consisted of interrogation reports, a polygraph test and signed documents obtained through torture, Mr. Ashoori was not given access to that evidence.

53. Mr. Ashoori did not have access to counsel, was not presumed innocent and was unable to refute the accusations with exculpatory evidence. That constitutes a further violation of his right to access all the materials to be presented against him at trial. Similar violations of his rights took place during the appeal process in October 2018. Mr. Ashoori drafted his own appeal, describing the deficiencies of his trial and asserting his innocence. At the appellate stage, Mr. Ashoori's lawyer was granted access to the case files only one hour before the second and final appeal hearing. Mr. Ashoori was interrogated about the property he owned and about his dual citizenship, as well as that of his family. The appeal was denied. That constitutes a violation of articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) and (3) of the Covenant.

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<sup>8</sup> Human Rights Committee, general comment No. 32 (2007), para. 29. The only exceptions are when "the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children".

<sup>9</sup> Ibid., para. 34.



54. In addition, Mr. Ashoori was tortured, held in cruel and inhumane conditions, incommunicado, without a counsel of his choice, and in solitary confinement for weeks at a time. He was forced to sign documents and write fictitious scenarios about why he was arrested after severe stress and sleep deprivation. He was subjected to a polygraph test in the absence of a lawyer. Mr. Ashoori was not presumed innocent; his pretrial and post-trial detention was neither revised nor justified. More than 11 months passed between when he was detained and when his trial began, and he was never allowed representation by a counsel of his choice at trial.

55. The source recalls the clear prohibition of forced confessions. The Covenant requires that domestic law prohibit the use of forced confessions as evidence. The Working Group considers forced confessions as “a prima facie breach” of article 14 (2) and (3) (g) of the Covenant, tainting the entire proceedings, regardless of whether other evidence was available to support the verdict.<sup>10</sup> Mr. Ashoori’s treatment constitutes torture, in violation of article 5 of the Universal Declaration of Human Rights and articles 7 and 10 (1) of the Covenant. His treatment violates the prohibition of torture as a peremptory norm of international law, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 1 of the Nelson Mandela Rules.

56. The overcrowded, unhygienic and inhumane conditions of Mr. Ashoori’s detention further hindered his ability to participate in or prepare his defence.<sup>11</sup> That violation is particularly acute when the detainee is effectively held incommunicado and in prolonged solitary confinement prior to trial. Extreme limitations on communications with family also violate principles 15, 16 and 19 of the Body of Principles.<sup>12</sup>

57. After his arrest, Mr. Ashoori was held incommunicado and in solitary confinement for over 14 weeks, and taken out of his cell only to endure torture under the guise of interrogation, in order to obtain a false confession. Incommunicado detention lacks a legal basis and is inherently arbitrary, as it places the person outside the protection of the law, contrary to article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. It prevents prompt presentation before a judge under article 9 (3) of the Covenant.<sup>13</sup> The authorities failed to observe the minimum international norms relating to a fair trial.

iv. Category V

58. The source maintains that Mr. Ashoori’s detention was motivated by a discriminatory factor, namely his status as a dual Iranian-British national. His detention took place in the context of several Iranians who hold dual nationality being arrested by the Iranian authorities during a visit to the Islamic Republic of Iran to be used as leverage. Immediately after his arrest, instead of being presented before a judge, Mr. Ashoori was transferred to his relative’s house to locate his British passport and other personal possessions.

59. There is no evidence that Mr. Ashoori was in the Islamic Republic of Iran for any other reason than exercising his right to visit his elderly and sick relative. He had no criminal record, nor is there any evidence that he was intending to conduct espionage for any foreign country. The charges brought against him are usually used for detaining dual nationals, fitting into the pattern identified by the Working Group.

60. The source notes that despite knowing that Mr. Ashoori was a dual national with family members in the United Kingdom, the Iranian authorities denied the consular or diplomatic assistance that he was entitled to under international law. The authorities used national security laws permitting extended periods of pretrial detention to force Mr. Ashoori to select a counsel from a list of lawyers chosen by the head of the Iranian judiciary. Under ordinary criminal laws, the authorities are required to provide a detainee with written criminal

<sup>10</sup> Opinions No. 52/2018, para. 79 (i), and No. 51/2019, para. 66.

<sup>11</sup> Opinion No. 92/2017, para. 56.

<sup>12</sup> Opinions No. 51/2019, para. 58, and No. 7/2017, para. 42.

<sup>13</sup> Opinion No. 60/2016, para. 24; *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.7; and Human Rights Committee, general comment No. 35 (2014), para. 35.

charges within 24 hours of arrest and the ability to select their own counsel. Judges may also restrict defendants' access to the evidence supporting their indictment.

61. Furthermore, the measures designed to mitigate the spread of the COVID-19 pandemic have been used in a discriminatory way against prisoners with dual nationality. Mr. Ashoori's sentence of 10 years' imprisonment, with 2 concurrent years, fits the pattern of heavy sentences following the conviction of other dual nationals. There is an absolute lack of evidence of any criminal activity or prior record. Mr. Ashoori was detained on a discriminatory basis, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and his detention falls under category V.

#### *Response from the Government*

62. On 13 August 2021, the Working Group transmitted the allegations to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 12 October 2021 about the situation of Mr. Ashoori and to clarify the legal provisions justifying his continued detention.

63. On 8 October 2021, the Government sought an extension of the deadline to submit its response. The Working Group granted an extension until 27 October 2021. The Working Group regrets that the Government did not submit a response within the established timeframe.<sup>14</sup>

#### **Discussion**

64. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 16 of its methods of work.

65. In determining whether the detention of Mr. Ashoori is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case of breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>15</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

#### Category I

66. The source alleges that on 13 August 2017, Mr. Ashoori was kidnapped by unidentified intelligence agents without a warrant. Four men in plain clothes forced him into a car with tinted windows. The driver showed a paper to Mr. Ashoori, but he could only read "anti-espionage department" and was immediately blindfolded. He was not informed of the charges against him or the reasons for his arrest. The next day, Mr. Ashoori made a telephone call to his relative in Iran for less than 30 seconds. The Government did not respond to these allegations.

67. According to the source, the unidentified agents who kidnapped Mr. Ashoori were from the Revolutionary Guard Corps. Mr. Ashoori was informed that they had chosen to arrest him on a particular day because they knew that his relative would be away from home and there would be no disruption to his arrest, suggesting an intention to conceal the arrest. Mr. Ashoori was deprived of liberty against his will, with the involvement of government officials, who appear to have refused to disclose his fate and whereabouts.<sup>16</sup> The Working Group considers that Mr. Ashoori was subjected to enforced disappearance from his kidnapping on 13 August 2017 until he was able to call his relative the next day. It therefore refers this case to the Working Group on Enforced or Involuntary Disappearances.

68. Enforced disappearances violate numerous substantive and procedural provisions of the Covenant, including articles 9 and 14, and constitute an aggravated form of arbitrary

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<sup>14</sup> The Government replied to the communication on 11 January 2022, after the adoption of the present opinion.

<sup>15</sup> [A/HRC/19/57](#), para. 68.

<sup>16</sup> [A/HRC/16/48/Add.3](#), para. 21, and opinion No. 37/2021, para. 64.

detention.<sup>17</sup> The kidnapping of Mr. Ashoori on 13 August 2017 took place outside established legal processes, in violation of the requirement under article 9 (1) of the Covenant that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. The source has provided credible information, which was not rebutted by the Government, that Mr. Ashoori was arrested without an arrest warrant, in violation of article 9 (1).<sup>18</sup> Mr. Ashoori was arrested while visiting an elderly relative in the Islamic Republic of Iran and there were no circumstances to give reasonable cause for arrest in flagrante delicto.<sup>19</sup> As a result, the authorities did not establish a legal basis for the arrest of Mr. Ashoori in accordance with the Covenant.

69. Article 9 (2) of the Covenant provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and shall be promptly informed of the charges against them. The reasons for arrest must be provided immediately upon arrest<sup>20</sup> and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.<sup>21</sup> The source claims, and the Government does not dispute, that Mr. Ashoori was arrested without being informed of the reasons for his arrest. The paper referring to the “anti-espionage department” did not satisfy the requirement for reasons to be given. An arrest is arbitrary when it is carried out without informing the arrested person of the reasons for the arrest.<sup>22</sup>

70. Furthermore, the Working Group is satisfied that Mr. Ashoori was not promptly informed of the charges against him. While Mr. Ashoori’s interrogators reportedly told him that he was a spy, that does not amount to notification of the charges against him. On 8 January 2018, almost five months after his arrest, Mr. Ashoori was forced to sign the indictment, which was read to him in court. That appears to be the first time that he was made aware of the charges, contrary to articles 9 (2) and 14 (3) (a) of the Covenant.

71. The source further alleges that Mr. Ashoori was taken before a judge for the first time on 8 January 2018, almost five months after his arrest. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances.<sup>23</sup> In the absence of any justification from the Government, the Working Group finds that Mr. Ashoori was not brought promptly before a judge to challenge the legal basis of his detention, in violation of article 9 (3) of the Covenant.

72. Similarly, Mr. Ashoori was not afforded the right to take proceedings before a court, so that it might decide without delay on the lawfulness of his detention under article 9 (4) of the Covenant. The right to bring proceedings applies in principle from the moment of arrest and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible.<sup>24</sup> The source claims that Mr. Ashoori was held incommunicado between August and December 2017, but acknowledged that he made brief, monitored calls to his family in the Islamic Republic of Iran and the United Kingdom during this period, and that a relative visited him in Evin prison in October 2017. The Working Group does not consider

<sup>17</sup> Human Rights Committee, general comment No. 35 (2014), para. 17, and opinion No. 37/2021, para. 65.

<sup>18</sup> It is not sufficient that there exists a law authorizing the arrest. The authorities must invoke that legal basis and apply it through an arrest warrant. See, for example, opinions No. 44/2019, para. 52, and No. 45/2019, para. 51.

<sup>19</sup> Opinion No. 9/2018, para. 38.

<sup>20</sup> Human Rights Committee, general comment No. 35 (2014), para. 27, and opinion No. 30/2017, paras. 58–59.

<sup>21</sup> General comment No. 35 (2014), para. 25, and opinion No. 25/2018, para. 36.

<sup>22</sup> Opinions No. 59/2019, para. 46, and No. 46/2020, para. 40.

<sup>23</sup> General comment No. 35 (2014), para. 33.

<sup>24</sup> *Ibid.*, para. 42, and 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, principle 8 and guideline 7.

that Mr. Ashoori was held incommunicado during this period,<sup>25</sup> but recognizes that there was no meaningful contact between him and his family that would have assisted him to challenge the legality of his detention.

73. Moreover, it appears from the source's submissions, which were not challenged by the Government, that Mr. Ashoori did not have access to a lawyer prior to his trial. Mr. Ashoori was deprived of an essential safeguard in taking proceedings before a court under article 9 (4) of the Covenant.<sup>26</sup> Given that he was unable to challenge the legality of his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

74. Finally, the source reports that Mr. Ashoori was convicted of "cooperating with a hostile State against the Islamic Republic". According to a spokesperson for the Iranian judiciary, Mr. Ashoori was convicted of "spying". In the view of the Working Group, these crimes are so vague that it is impossible to invoke a legal basis for Mr. Ashoori's detention. The Working Group has previously raised with the Government the issue of prosecution under vague penal laws, noting that the offences of cooperation with a hostile State<sup>27</sup> and espionage<sup>28</sup> are vague and overly broad. The principle of legality requires that laws be formulated with sufficient precision that individuals can access and understand the law and regulate their conduct accordingly.<sup>29</sup> Mr. Ashoori could not have foreseen that travelling to visit a sick, elderly relative in the Islamic Republic of Iran would amount to cooperation with a hostile State or spying. His imprisonment under vague provisions is incompatible with article 11 (2) of the Universal Declaration of Human Rights and articles 9 (1) and 15 (1) of the Covenant.

75. The Working Group concludes that there is no legal basis for Mr. Ashoori's detention, which is arbitrary under category I.

#### Category II

76. The source argues that, at the time of his kidnapping Mr. Ashoori was exercising his right to visit his elderly relative in the Islamic Republic of Iran and to return home to the United Kingdom. According to the source, his detention is arbitrary because it resulted from the exercise of his right to leave and return to any country that is enshrined in article 13 of the Universal Declaration of Human Rights.

77. The Working Group considers that there is insufficient basis to conclude that Mr. Ashoori's detention was related to his exercise of the right to freedom of movement under article 13 of the Universal Declaration of Human Rights and article 12 of the Covenant. Although he was arrested following his return to the Islamic Republic of Iran, the Working Group is not convinced that he was detained as a result of exercising his right to freedom of movement.<sup>30</sup> That is, Mr. Ashoori was not prosecuted for any offences relating to entering or attempting to leave the Islamic Republic of Iran. Rather, his detention was related to his status as a dual national, discussed under category V.

#### Category III

78. On 8 October 2018, Mr. Ashoori was sentenced to 10 years' imprisonment for "cooperating with a hostile State against the Islamic Republic", a charge based on article 508 of the Islamic Penal Code, and 2 concurrent years for allegedly obtaining "illicit funds". On 21 July 2019, Branch 36 of the Court of Appeal upheld his conviction and sentence. The information provided by the source discloses violations of Mr. Ashoori's rights throughout

<sup>25</sup> Holding persons incommunicado violates their right to challenge the lawfulness of detention under article 9 (4). See, for example, opinions No. 16/2020, para. 62, and No. 36/2020, para. 53; and [A/54/426](#), para. 42.

<sup>26</sup> Opinions No. 40/2020, para. 29, and No. 61/2020, para. 70; and general comment No. 35 (2014), para. 46.

<sup>27</sup> Opinion No. 52/2018, para. 78.

<sup>28</sup> Opinions No. 7/2017, para. 41 (a), and No. 9/2017, para. 23.

<sup>29</sup> Opinions No. 41/2017, paras. 98–101, and No. 62/2018, paras. 57–59; and general comment No. 35 (2014), para. 22.

<sup>30</sup> See, for example, opinions No. 36/2007, No. 33/2016, and No. 29/2021, para. 45.

the proceedings. The Government did not respond to any of the allegations made by the source.

79. The source alleges that Mr. Ashoori was denied access to a lawyer of his choosing prior to and during his trial. Mr. Ashoori sought the approval of the court for his chosen legal representative who, despite being well qualified, was rejected by the judge. Mr. Ashoori presented six different lawyers, each of whom was rejected by the judge without any reason being given. The judge appointed a lawyer for Mr. Ashoori. When Mr. Ashoori refused the appointment, the judge made him sign a document stating that he refused legal representation and would represent himself. It is clear from these circumstances that Mr. Ashoori was not able to choose his legal counsel.

80. All persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.<sup>31</sup> The information provided by the source indicates that Mr. Ashoori did not have legal representation of his choice following his arrest in August 2017 and prior to his trial. Notably, he did not have a lawyer during his interrogation. The failure to provide Mr. Ashoori with a lawyer from the outset of his detention, and regular access to a lawyer thereafter, seriously impaired his ability to prepare a defence. Mr. Ashoori's rights to adequate time and facilities for the preparation of his defence, to communicate with a lawyer of his choice and to defend himself through legal assistance of his choosing, under article 14 (3) (b) and (d) of the Covenant were violated.

81. Similarly, the source alleges that the Islamic Republic of Iran does not recognize Mr. Ashoori's British citizenship and he has been denied consular assistance. The authorities failed to notify the United Kingdom of Mr. Ashoori's arrest and rejected several requests by representatives of the United Kingdom for consular access. There was no consular or diplomatic presence during his trial.

82. Consular assistance constitutes an important safeguard for individuals who are detained in a foreign State. It provides detainees and consular officials of the detainee's nationality with certain rights, including for the latter to communicate freely with and have access to their detained nationals and to be informed about an arrest without delay. These rights are embodied in article 36 of the Vienna Convention on Consular Relations, to which the Islamic Republic of Iran is a party; rule 62 (1) of the Nelson Mandela Rules; and principle 16 (2) of the Body of Principles, all of which were violated in Mr. Ashoori's case.<sup>32</sup>

83. The source further alleges that Mr. Ashoori was denied access to his case file at trial, including the interrogation reports, polygraph test and other signed documents. Mr. Ashoori reportedly caught glimpses of the case file during his trial. During his appeal, his lawyer was granted access to the case file only one hour before the second and final hearing.

84. Every individual deprived of liberty has the right to access material related to their detention.<sup>33</sup> However, that right is not absolute and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, and if the State has demonstrated that less restrictive measures would be unable to achieve the same result, such as providing redacted summaries that clearly point to the factual basis for the detention.<sup>34</sup> The Government did not provide any justification for denying access to the case files at trial or late access during the appeal, in violation of Mr. Ashoori's rights under articles 14 (1) and 14 (3) (b) of the Covenant to a fair hearing and to adequate time and facilities for the preparation of a defence.<sup>35</sup> Furthermore, Mr. Ashoori was not allowed to call witnesses, in violation of article 14 (3) (e) of the Covenant.

<sup>31</sup> 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, principle 9 and guideline 8, and [A/HRC/45/16](#), para. 51.

<sup>32</sup> See also General Assembly resolutions 72/179, para. 4 (k), and 73/180, para. 16 (g), and Human Rights Council resolution 40/20, para. 2 (j).

<sup>33</sup> Basic Principles, principle 12 and guidelines 11 and 13.

<sup>34</sup> *Ibid.*, guideline 13, paras. 80–81.

<sup>35</sup> Opinions No. 18/2018, para. 53, and No. 78/2018, paras. 78–79.

85. The source argues that Mr. Ashoori's trial was closed to the public without legitimate reason. The trial began on 21 July 2018 with only Mr. Ashoori and the judge present. The Government has not demonstrated that any of the exceptions allowing for a closed trial, such as public order or national security, were applicable in this case. The Working Group finds that Mr. Ashoori was denied his right to a public hearing under article 14 (1) of the Covenant.<sup>36</sup>

86. In addition, the source argues that the Revolution Courts that tried Mr. Ashoori and heard his appeal did not meet the standard of an independent and impartial tribunal. The trial judge, who is reportedly known for his unfair treatment of foreign and dual nationals, laughed as he read the verdict and obstructed Mr. Ashoori's lawyers, asking for money. The trial judge also rejected six lawyers presented by Mr. Ashoori and allowed his trial to proceed in the absence of counsel. Moreover, the source claims that the Revolutionary Guard Corps controls or influences the Revolution Courts.

87. In the absence of a response from the Government, the Working Group considers that Mr. Ashoori was not tried by an independent and impartial tribunal, in violation of article 14 (1) of the Covenant. The Revolution Courts do not meet international standards of independence or impartiality.<sup>37</sup> The Working Group therefore refers the case to the Special Rapporteur on the independence of judges and lawyers.

88. The source indicates that Mr. Ashoori's trial consisted of two hearings: the first hearing on 21 July 2018, which lasted for a maximum of 20 minutes, and the second hearing on 16 September 2018, which lasted for a maximum of 30 minutes. In total, it appears that the trial hearings did not even last for one hour, despite the serious charges and the heavy sentence ultimately imposed. A short trial for a serious criminal offence suggests that the defendant's guilt has been determined prior to the proceedings.<sup>38</sup> The brief duration of the trial, together with the lack of access to the evidence and the uncontested allegations relating to the behaviour of the trial judge in refusing Mr. Ashoori's choice of legal counsel and laughing while reading the verdict, resulted in the denial of Mr. Ashoori's right to the presumption of innocence under article 14 (2) of the Covenant.

89. Furthermore, the source alleges that Mr. Ashoori was subjected to torture during his interrogations, including being blindfolded and held without hydration in extreme heat. He was threatened with death, transfer to units with members of ISIL or Somali pirates, and harm to his family. Mr. Ashoori endured extreme physical and psychological abuse, including solitary confinement, constant artificial light, 12-hour interrogation sessions, sleep deprivation, beatings and confinement in cells with dangerous prisoners. He was forced to fill blank pages writing fictitious reasons as to why he was detained.

90. The source has presented a credible case, not disputed by the Government, that Mr. Ashoori was subjected to torture and ill-treatment. His alleged treatment appears to violate the absolute prohibition of torture as a peremptory norm of international law, article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant. Mr. Ashoori was held in inhumane conditions, which together with the alleged torture and ill-treatment, hindered his ability to participate in his own defence.<sup>39</sup> The Working Group therefore refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

91. Mr. Ashoori was forced to sign multiple documents, but refused to sign a confession. However, he was subjected to a polygraph test in the absence of legal assistance, with the results of that test presented as evidence at trial. Self-incriminating statements made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>40</sup> The admission into evidence of a statement obtained through torture or ill-treatment renders the

<sup>36</sup> Opinions No. 36/2020, para. 72, and No. 81/2020, para. 85.

<sup>37</sup> Opinions No. 19/2018, para. 34, No. 52/2018, para. 79 (f), and No. 51/2019, para. 65; E/CN.4/2004/3/Add.2, para. 65; and CCPR/C/IRN/CO/3, paras. 21–22.

<sup>38</sup> Opinion No. 15/2020, para. 78. See also opinions No. 46/2018, No. 44/2019 and No. 45/2019.

<sup>39</sup> Opinion No. 92/2017, para. 56.

<sup>40</sup> Opinion No. 41/2020, para. 70; E/CN.4/2003/68, para. 26 (e); and A/HRC/45/16, para. 53.

entire proceedings unfair, regardless of whether other evidence exists to support the verdict.<sup>41</sup> The burden is on the Government to prove that the statement was given freely,<sup>42</sup> but it has not done so. The authorities violated Mr. Ashoori's rights to the presumption of innocence and to not be compelled to confess guilt under articles 14 (2) and 14 (3) (g) of the Covenant.

92. The Working Group finds that these fair trial violations are of such gravity as to give Mr. Ashoori's detention an arbitrary character under category III.

iv. Category V

93. The source claims that Mr. Ashoori's detention was motivated by his status as a dual Iranian-British national. His detention took place in the context of several Iranians with dual nationality being arrested during a visit to the Islamic Republic of Iran. The Government has not addressed the source's allegations.

94. The Working Group considers that Mr. Ashoori's detention was motivated by his dual nationality. In reaching this conclusion, the Working Group has noted several factors which, taken together, demonstrate that Mr. Ashoori's dual nationality, and particularly his British citizenship, resulted in his arrest and detention.

95. First, there is no evidence that Mr. Ashoori was in the Islamic Republic of Iran for any other reason than visiting his elderly relative. Indeed, he had previously visited the Islamic Republic of Iran between 2006 and 2015 for work and personal matters without incident. Second, Mr. Ashoori's British citizenship was the focus of the investigation. Immediately after his arrest, he was taken to his relative's house to locate his British passport. Mr. Ashoori's interrogators were interested in his British citizenship and that of his family. During the appeal proceedings, the first question asked by the judge was whether Mr. Ashoori was a dual national. Third, Mr. Ashoori's sentence of 10 years' imprisonment appears to be disproportionate,<sup>43</sup> as there is no evidence that he had a criminal record, nor that he had cooperated with any foreign government, engaged in spying, or obtained illicit funds.

96. The Working Group has identified a practice in the Islamic Republic of Iran of arbitrarily detaining persons of foreign or dual nationality or residence on the grounds of State security.<sup>44</sup> The present case is part of that pattern. Mr. Ashoori was detained on a discriminatory basis, namely his dual nationality, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His detention falls under category V.

97. The Working Group refers this case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran.

v. Concluding remarks

98. The source reports that from August 2017 to December 2017, Mr. Ashoori was held in solitary confinement in Evin prison. Prolonged solitary confinement exceeding 15 consecutive days violates rules 43–45 of the Nelson Mandela Rules. According to rule 45, solitary confinement must only be used as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority.<sup>45</sup> Solitary confinement may amount to torture or ill-treatment.<sup>46</sup> The Government is obliged to treat all persons deprived of liberty with respect for their inherent dignity under article 10 (1) of the Covenant. The Working Group includes the alleged solitary confinement in its referral to the Special Rapporteur on torture.

<sup>41</sup> Opinion No. 41/2020, para. 70.

<sup>42</sup> Human Rights Committee, general comment No. 32 (2007), para. 41.

<sup>43</sup> Opinion No. 52/2018, para. 81.

<sup>44</sup> See, for example, opinions No. 18/2013, No. 28/2013, No. 44/2015, No. 28/2016, No. 50/2016, No. 7/2017, No. 49/2017, No. 92/2017, No. 52/2018, No. 32/2019, No. 51/2019, No. 27/2021 and No. 29/2021; and [A/HRC/43/12](#), paras. 26.151–152; [A/HRC/43/20](#), paras. 14–15; [A/HRC/43/61](#), paras. 27–28; [A/HRC/47/22](#), para. 36; and [A/75/287](#), paras. 11–12.

<sup>45</sup> Opinions No. 52/2018, para. 79 (d), and No. 61/2020, para. 85.

<sup>46</sup> General Assembly resolution 68/156, para. 28; [A/66/268](#), para. 71; and [E/CN.4/2004/3/Add.2](#), paras. 54–55.

99. The Working Group has grave concerns for the welfare of Mr. Ashoori. He has attempted suicide twice and his physical and mental health have reportedly deteriorated significantly. The Working Group urges the Government to release him immediately and unconditionally and to ensure that he receives the necessary health care. The Working Group refers this case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### **Disposition**

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

The deprivation of liberty of Anoosheh Ashoori, being in contravention of articles 2, 7, 8, 9, 10 and 11 (1) and (2) of the Universal Declaration of Human Rights and articles 2 (1) and (3), 9, 14, 15 (1) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

101. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Mr. Ashoori without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

102. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ashoori immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.<sup>47</sup> In the current context of the COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Ashoori.

103. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Mr. Ashoori and to take appropriate measures against those responsible for the violation of his rights.

104. The Working Group requests the Government to bring its laws, particularly article 508 of the Islamic Penal Code, into conformity with the present opinion and with its obligations under international human rights law.

105. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

106. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

### **Follow-up procedure**

107. 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. Ashoori has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ashoori;
- (c) Whether an investigation has been conducted into the violation of the rights of Mr. Ashoori 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 Islamic Republic of Iran with its international obligations in line with the present opinion;

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<sup>47</sup> See deliberation No. 10 (A/HRC/45/16, annex I).



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

108. 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.

109. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of 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.

110. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has 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.<sup>48</sup>

*[Adopted on 19 November 2021]*

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<sup>48</sup> Human Rights Council resolution 42/22, paras. 3 and 7.