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# Advance Edited Version

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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022**

### **Opinion No. 20/2022 concerning Vahid Afkari and Habib Afkari (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,<sup>1</sup> on 22 December 2021 the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Vahid Afkari and Habib Afkari. The Government submitted a late response on 10 March 2022. 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).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Vahid Afkari, born on 21 June 1985, is a citizen of the Islamic Republic of Iran. He usually resides in Shiraz, Fars Province, Islamic Republic of Iran.

5. Habib Afkari, born on 3 December 1991, is a citizen of the Islamic Republic of Iran, usually residing in Shiraz. He and Vahid Afkari are brothers.

### Arrest and detention

#### i. Arrest and detention of Vahid Afkari

6. On 17 September 2018, Vahid Afkari was arrested at his house, along with a family member, by seven armed plain-clothed agents from the investigative unit of the police (the Agahi). Agents raided the house early in the morning and failed to show an arrest warrant. Prior to his arrest, Mr. Afkari had participated peacefully in protests in Shiraz between late December 2017 and early January 2018, and between late July and early August 2018.

7. In Shiraz, the protests were reportedly overwhelmingly peaceful, while some protesters engaged in violence in response to the use of force by the authorities. The source maintains that Vahid Afkari did not engage in any violent acts during the protests and notes the prosecution authorities' failure to present any credible material evidence of his involvement in violence.

8. The source also informs the Working Group that Vahid Afkari was arrested along with another brother, Navid Afkari, who had also peacefully participated in the above-mentioned protests. On 12 September 2020, Navid Afkari was executed in secret, with no prior notification provided to his family or lawyers.

9. Vahid Afkari and Navid Afkari were not informed of the accusations against them at the time of arrest. They were transferred to a detention centre run by Branch 5 of the Agahi in Shiraz. Their case was assigned to the office of the special prosecutor for criminal affairs and security offences in Shiraz. At the detention centre, officials told them that they had been arrested for fatally stabbing, on the night of 2 August 2018, an intelligence agent involved in policing anti-government protests. Navid Afkari allegedly had stabbed the victim from the back of a moving motorcycle driven by Vahid Afkari. Therefore, he was accused of being the principal perpetrator of murder and Vahid Afkari was accused of being an accessory to murder. Vahid Afkari denied the accusations and stated that they had no knowledge of the incident.

10. Furthermore, the authorities made additional accusations against the two brothers pertaining to various alleged peaceful and violent activities in the context of protests, which the authorities claimed threatened national security.

11. Following his arrest, Vahid Afkari was held in solitary confinement in a small cell until around 23 October 2018, without access to the outside world. The authorities allegedly concealed his fate and whereabouts from his family for about 12 days after his arrest.

12. Between 17 September 2018 and 23 October 2018, Vahid Afkari was repeatedly subjected to torture, to coerce him into making incriminating statements against himself and Navid Afkari. This included being beaten while blindfolded. Vahid Afkari was also reportedly subjected to psychological torture, including degrading verbal insults, invasion of privacy, death threats and threats to harm his family members, including to sexually assault them. Reportedly, the authorities arrested older family members of the brothers on 29 September 2018. One of those family members was released on bail after several hours while another was held for two days and then released on bail.

13. Vahid Afkari went on hunger strike twice in the weeks following his arrest in protest against the torture and the pressure to confess.

14. Around 21 October 2018, while on hunger strike, Vahid Afkari was transferred from the detention centre of the Agahi to Adelabad prison, where he was again placed in solitary confinement.

15. On 26 October 2018, while still on hunger strike, Vahid Afkari attempted suicide. He was urgently transferred to Namazi hospital, where he underwent surgery. On 28 October 2018, his treatment was interrupted, and he was placed in solitary confinement in Adelabad prison.

16. In a complaint to the judicial disciplinary prosecutor, dated 29 May 2019, Vahid Afkari wrote that following the interruption of his treatment, his surgical incisions became infected due to a lack of post-operative care.

17. In late November 2018, Vahid Afkari was transferred from Adelabad prison to the detention centre of the Ministry of Intelligence in Shiraz and held there incommunicado and in solitary confinement for more than a week. During this period, he was subjected to further physical and mental torture to coerce him into making incriminating statements. That time, the torture was particularly difficult to endure and it forced him to make incriminating statements.

18. Vahid Afkari was returned to Adelabad prison in February 2019. On 2 April 2019, he attempted suicide again and was admitted to Namazi hospital. When he regained consciousness, he was bound to the bed with chains. The security forces refused to grant him access to toilet facilities.

19. The authorities prematurely returned Vahid Afkari to Adelabad prison against the doctors' explicit written warnings.

20. Vahid Afkari was placed in solitary confinement in the Ershad section of the prison, without access to physical or mental health care. In that section, prisoners are reportedly stripped naked, forced to wear blood-stained prison clothes and remain without blankets and heating facilities.

21. Vahid Afkari was held in solitary confinement for about two weeks, during which he was taken several times, blindfolded, before the office of the special prosecutor for criminal affairs and security offences in Shiraz for further questioning. He was subsequently moved to one of the general wards of Adelabad prison that holds prisoners convicted of murder and drug-related offences.

22. For two months after his attempted suicide, the authorities banned Vahid Afkari from having family visits.

ii. Arrest and detention of Habib Afkari

23. On 13 December 2018, Habib Afkari was arrested on the street in Shiraz by plain-clothed Ministry of Intelligence agents. The agents failed to show an arrest warrant. Mr. Afkari was denied information about the accusations against him at the time of arrest. He was transferred to the detention centre of the Ministry of Intelligence in Shiraz, where the officials accused him of writing anti-government slogans, participating in protests, insulting the Supreme Leader, and subjecting members of the security forces to insults and physical attacks during protests.

24. Habib Afkari was arrested after he had spent months seeking information about his brothers' whereabouts and the reasons for their arrests. He had been repeatedly threatened with arrest if he did not stop inquiring.

25. For the next 35 days, Habib Afkari was held incommunicado in solitary confinement until 17 January 2019, with the authorities concealing his fate and subjecting him to enforced disappearance. He was kicked, punched, beaten, threatened and verbally abused as well as held in unsanitary conditions with a bright lamp that was always on.

26. In a document submitted on 29 July 2019 to the lead investigator of Branch 10 of the office of the special prosecutor for criminal affairs and security offences in Shiraz, and in an earlier complaint submitted to the Prosecutor General of Shiraz in May 2019, Habib Afkari wrote that between 13 December 2018 and 17 January 2019, his interrogators had repeatedly subjected him to torture to force him to write a series of incriminating statements against himself and his brothers. He had initially resisted, but as the torture had intensified there had come a point when he had been unable to withstand it. As a result of torture, his left shoulder

had been dislocated and his left wrist and one of the toes in his right foot had been fractured. An official medical note from 30 October 2019 confirms these injuries.

27. Several days in a row, the officials chained Habib Afkari to a chair and wrapped his head in a plastic sheet that obstructed his breathing, to force him to write the incriminating statements.

28. Habib Afkari was allegedly also tortured through the denial of medical care. He suffered from severe toothaches, severe headaches and seizures as a result of torture, for which he received no treatment.

29. Moreover, he was held in cells where he could hear his brother, Navid Afkari, screaming and was told that if he wrote the dictated statements that incriminated him and his brother, his brother's torture would cease. The interrogators also said that if he did not confess, they would kill his brothers and sexually assault and kill other family members.

30. Habib Afkari was moved to Adelabad prison on 17 January 2019 and placed in one of the general wards that house prisoners of conscience. He remained there until September 2020. During that time, he was allowed regular phone calls and family visits.

iii. Additional comments regarding detention

31. On 5 September 2020, it came to Vahid Afkari's attention that on 3 September 2020, Navid Afkari, who had been held on death row in a different section, had been taken to an unidentified location, raising concerns that he may be at imminent risk of secret execution. Vahid Afkari insisted that the authorities reveal the fate of Navid Afkari. Habib Afkari joined his brother in demanding this information. Soon afterwards, the authorities started beating them. Habib and Vahid Afkari were then transferred to solitary confinement in separate cells in the basement of Adelabad prison, where prisoners scheduled for imminent execution are reportedly held in inhumane conditions. There, they discovered that Navid Afkari was also being held in solitary confinement in a cell near them and the three brothers could hear each other's voices.

32. On 11 September 2020, the authorities allowed them to briefly call their family late at night. The brothers told their family that the authorities had told them that they were being transferred to a prison in Tehran the next morning. However, the next morning, the judiciary publicly announced that the execution of Navid Afkari had been carried out.

33. The fate and whereabouts of Vahid and Habib Afkari were concealed for six more days, until 17 September 2020, when they were allowed to have a 30-minute family visit in the presence of prison guards.

34. Since that visit, Vahid and Habib Afkari have only been allowed 15-minute family visits behind a glass screen. They remain held in maximum security cells intended for solitary confinement, without access to phone calls, fresh air and natural light.

35. The two brothers are also being denied access to medical care. They both suffer from chronic spinal pain; Habib Afkari also urgently needs specialized dental care. They have unsuccessfully complained to various authorities about their prolonged isolation and requested that they be moved back to the general ward.

36. As for the few charges pertaining to violent acts – “accessory to murder” in the case of Vahid Afkari and “assault” in the case of Habib Afkari – the authorities have failed to prove guilt even on the balance of probability. The convictions of Vahid and Habib Afkari of these and other charges followed allegedly arbitrary proceedings.

Trial proceedings

i. Proceedings at Branch 1 of Criminal Court 1 of Fars Province

37. Branch 1 of Criminal Court 1 of Fars Province convicted Vahid Afkari of “accessory to murder” on 15 October 2019, on the basis of the torture-tainted confessions made by him and his brother Navid Afkari.

38. At the trial session held on 24 September 2019, Vahid and Navid Afkari had requested that the prosecution explain the basis on which it was proving that the brothers had been at the crime scene and involved in the alleged crime. The presiding judge did not accept the request, and reversed the burden of proof, saying it was on the defendants to prove that they were not at the crime scene.

39. In a request for retrial filed with the Supreme Court on 9 August 2020, which was rejected without reason on 15 August 2020, Vahid Afkari's lawyer noted that, on the day of the incident, his client had given his phone to Navid Afkari to take for repair. Furthermore, eight minutes before the crime took place, the cell phone location data pinpointed the location of Navid Afkari's phone to several kilometres from the crime scene. This information was consistent with the affidavits of two witnesses, who stated that at the time of the crime, they were with Navid Afkari at the house of one of his brothers. Lastly, the lawyer complained that the expert report based on which the prosecution analysed the cell phone location data was not included in the case file, and it was not clear on what basis the prosecution had drawn their conclusion.

40. The video footage recorded at the scene of the crime reportedly has no probative value. First, information recorded in the charge sheet issued by Branch 8 of the office of the special prosecutor for criminal affairs and security offences in Shiraz on 21 February 2019 makes it clear that the footage presented by the authorities as showing the scene of the crime is a video from the closed-circuit television camera of a supermarket located several kilometres away. The video shows a man walking by the supermarket and holding a cell phone to his ear. Contrary to the authorities' claim, the footage does not, therefore, constitute incriminating evidence.

41. Moreover, it is noted that information recorded in the case file makes it clear that this video has no relevance to the case of Vahid Afkari, as he is not seen in the footage. During their trial before Branch 1 of Criminal Court 1 of Fars Province, which consisted of two brief sessions on 3 August 2019 and 24 September 2019, Vahid and Navid Afkari repeatedly asked the court to play the video footage at the session in order to give those in the courtroom an opportunity to see that the footage was of no probative value. They further protested that they had been denied the right to see the footage and have access to a copy of it; at that stage, all that Vahid and Navid Afkari knew about the footage was from the information recorded in the 16 May 2019 charge sheet. The presiding judge refused, stating that the court's video player did not work, and then stating that it was sufficient for the judges conducting the trial to have access to and review the evidence presented by the prosecution.

42. In finding Vahid and Navid Afkari guilty, Branch 1 of Criminal Court 1 of Fars Province and Branch 39 of the Supreme Court stated in their verdicts that the supermarket owner had asserted that he had seen the two brothers at the place where the murder had been committed. However, the information recorded in the case file reveals that there is no statement in the prosecution's case from the supermarket owner or anybody else identifying Vahid Afkari as being at or near the place where the murder was committed. Branch 1 of Criminal Court 1 of Fars Province did not allow either brother the right to cross-examine the supermarket owner.

43. Despite this, in its 15 October 2019 verdict, Branch 1 of Criminal Court 1 of Fars Province cited the torture-tainted confessions of Vahid and Navid Afkari as proof of guilt. The Court stated that both brothers had raised allegations of torture under the influence of what they had been taught by fellow inmates to evade punishment.

44. Branch 39 of the Supreme Court similarly acknowledged that Vahid and Navid Afkari had retracted their confessions, saying they had been obtained under torture. Nevertheless, the Supreme Court proceeded to characterize the forced confessions as incontrovertible proof of guilt.

45. The source further notes that in convicting Vahid Afkari, Branch 1 of Criminal Court 1 of Fars Province and Branch 39 of the Supreme Court also deliberately ignored the alibi provided and forensic and other compelling exculpatory evidence.

## ii. Proceedings at Branch 116 of Criminal Court 2 of Shiraz

46. Moreover, on 24 July 2019, Branch 116 of Criminal Court 2 of Shiraz convicted both Vahid and Habib Afkari of “disrupting public order”, “insulting public officials on duty” and “defying public officials on duty”, without specifying in its verdict when, how and against which public officials the crimes took place. Additionally, the Court convicted Habib Afkari of “gathering and colluding to commit crimes against people’s lives and properties” and two counts of “deliberately inflicting injuries with a sharp object”.

47. The verdict does not provide any supporting evidence and simply lists the above-mentioned charges and then states that they were proven based on the content of the case file, including the indictment issued, the report of the Ministry of Intelligence and the clear confessions of the accused during the investigation stage. The source points to vague and broad charges, failure by authorities to provide any eyewitness testimony or video or photographic evidence and the ignoring of compelling exculpatory evidence.

48. On 24 April 2019, Habib Afkari formally retracted his confessions before the lead investigator of Branch 10 of the office of the special prosecutor for criminal affairs and security offences in Shiraz, stating that they had been extracted through torture. Despite this, Branch 116 of Criminal Court 2 of Shiraz relied on the confessions to convict him, instead of ordering independent investigations. In his subsequent written appeal and oral statements to Branch 27 of the Appeal Court of Fars Province, Habib Afkari again stated that intelligence agents had inflicted the most severe forms of physical and mental torture to coerce him into making false statements. Despite all this, the Appeal Court ignored his allegations of torture and upheld his convictions on 8 February 2021.

## iii. Proceedings before the Revolutionary Court of Shiraz

49. On 24 December 2020, Branch 2 of the Revolutionary Court of Shiraz convicted Vahid Afkari of “insulting the Supreme Leader” and criminal activity falling short of “spreading corruption on Earth”.

50. The verdict does not outline activities that form the basis of the charge of “insulting the Supreme Leader”. The charge sheet issued by Branch 10 of the office of the special prosecutor for criminal affairs and security offences in Shiraz on 16 May 2019 suggests that the basis of this charge is forced confessions elicited from Vahid Afkari, in which he stated that he had chanted anti-government slogans during the protests in Shiraz in December 2017 and in January and August 2018, and that he had written political slogans. The source argues that these activities, even if true, fall within the scope of the right to freedom of expression and of peaceful assembly under international human rights law.

51. On the charge of criminal activity falling short of “spreading corruption on Earth”, the verdict of Branch 2 of the Revolutionary Court suggests that it stems from extensive criminal conduct, including membership in a group consisting of four people for the purpose of disrupting national security, spreading propaganda, gathering and colluding to commit crimes against national security, and inciting and provoking people to engage in war. The verdict holds that it is evident from the confessions of Vahid and Navid Afkari that they engaged in such conduct during the riots of 2018.

52. The Revolutionary Court failed to specify the conduct and riots to which it was referring. The only specific example mentioned is the alleged involvement of Vahid Afkari in the fatal stabbing of 2 August 2018, but he had already been prosecuted for that crime before Branch 1 of Criminal Court 1 of Fars Province. Therefore, this is a clear breach of the principle of double jeopardy, which prohibits individuals from being prosecuted twice for the same conduct.

53. Turning to the proceedings against Habib Afkari, the source states that on 20 June 2020, Branch 1 of the Revolutionary Court of Shiraz convicted him of “spreading propaganda against the system”, “membership in a group for the purpose of disrupting national security” and “insulting the Supreme Leader”. The court failed to outline in its verdict the exact activities forming the basis of these vaguely worded charges. However, the charge sheet issued by Branch 10 of the office of the special prosecutor for criminal affairs and security

offences in Shiraz on 16 May 2019 shows that the case of Habib Afkari before Branch 1 of the Revolutionary Court of Shiraz constitutes a violation of the principle of double jeopardy.

54. The convictions for “insulting the Supreme Leader” and “spreading propaganda against the system” were reportedly imposed in connection with the same alleged peaceful activities involving chanting and writing slogans on walls, which were cited as evidence of criminal activity in the case before Branch 116 of Criminal Court 2 of Shiraz to convict Habib Afkari of “disrupting public order”, “insulting public officials on duty” and “defying public officials on duty”. His conviction of “membership in a group for the purpose of disrupting national security” was also imposed for exactly the same activities that formed the basis of his conviction for “gathering and colluding to commit crimes against people’s lives and properties” in the case before Branch 116 of Criminal Court 2.

iv. Legal representation

55. On 29 September 2018, Vahid Afkari’s family were told by the lead investigator of Branch 8 of the office of the special prosecutor for criminal affairs and security offences in Shiraz that he was not allowed to choose his own lawyer, but he could retain a lawyer approved by the authorities. The next day, a State-approved lawyer was formally retained by Mr. Afkari’s family. The lawyer never met with Mr. Afkari and failed to act while he was undergoing intense interrogations under torture.

56. That lawyer resigned on 25 December 2018. For the next five months, Vahid Afkari had no legal representation. On 24 April 2019, the authorities appointed another lawyer to represent him with respect to the charges that were later tried before Branch 116 of Criminal Court 2 and the Revolutionary Court.

57. On 24 April 2019, Vahid Afkari was taken before Branch 10 of the office of the special prosecutor for criminal affairs and security offences in Shiraz for a final formal round of questioning and met the newly appointed lawyer for the first time. There, Mr. Afkari formally retracted his confessions in writing and declared that they were made under torture. The State-appointed lawyer did not take any action to support Mr. Afkari’s request to exclude confessions as evidence and to investigate allegations of torture.

58. That lawyer did not attend Vahid Afkari’s trial before Branch 116 of Criminal Court 2 on 9 July 2019. Nor did the lawyer present any written submissions in Mr. Afkari’s defence. Mr. Afkari represented himself at his trial before Branch 116 of Criminal Court 2 and in his subsequent appeal before Branch 27 of the Appeal Court of Fars Province, which led to a sentence of one year and nine months’ imprisonment.

59. For the case that was tried before Branch 1 of Criminal Court 1 of Fars Province, which led to the 25-year prison sentence, the authorities appointed a lawyer for Vahid Afkari on 15 June 2019. This lawyer similarly failed to provide effective representation. He met his client for the first time at the initial trial session, on 3 August 2019. The same day, Mr. Afkari dismissed the lawyer due to lack of trust. On 7 August 2019, the authorities appointed another lawyer. That lawyer reportedly did not take any action either and did not seek to meet with his client to discuss the defence strategy. He simply attended the second trial session, on 24 September 2019. There, Mr. Afkari declared that he did not trust him and wished to represent himself. Mr. Afkari also represented himself in his subsequent written appeal to Branch 39 of the Supreme Court. Following the rejection of his appeal on 25 April 2020, in July 2020, he was finally permitted to retain a lawyer of his own choosing, who submitted a retrial request on his behalf, on 9 August 2020.

60. Vahid Afkari was able to appoint a lawyer of his own choosing for the trial stage of his third case before the Revolutionary Court, which led to a sentence of seven years’ imprisonment. However, he was not allowed to meet with his lawyer prior to his trial, which took place on 23 July 2020.

61. Habib Afkari was also denied his right to the assistance of a lawyer at the time of arrest and throughout the investigation, from December 2018 to May 2019. He represented himself at his trial before Branch 116 of Criminal Court 2 of Shiraz and throughout his appeal before Branch 27 of the Appeal Court of Fars Province, owing to mistrust.

62. Habib Afkari also represented himself at the trial for his second case before Branch 1 of the Revolutionary Court of Shiraz, which led to a sentence of eight years' imprisonment. To appeal this before the Supreme Court, he retained a lawyer of his own choosing.

v. Right to prepare a defence

63. The prosecution and prison officials violated Vahid and Habib Afkari's right to prepare a defence by preventing them from receiving law books from their family. On 6 July 2019, Adelabad prison officials also confiscated written notes that Vahid and Habib Afkari had prepared for their defence on the day that they were scheduled to be taken before the Revolutionary Court of Shiraz.

64. In the case that was tried before Branch 1 of Criminal Court 1 of Fars Province, Vahid Afkari had no access to his case file or other evidence that the prosecution had in its possession when his trial sessions took place, on 13 August and 24 September 2019. Vahid and Navid Afkari submitted at least four letters to Branch 1 of Criminal Court 1 of Fars Province, on 13 June 2019, 2 August 2019, 13 August 2019 and 8 September 2019, asking for a copy of their case file and complaining that they would not be able to adequately defend themselves without knowing the basis of the charges against them.

65. The presiding judge had initially dismissed the issue, but at the end of the session on 24 September 2019, he promised to ensure that access to the case file would be granted and to schedule another session to hear their defence. Despite this, the authorities refused to provide Vahid and Navid Afkari with a copy of the case file.

66. Finally, after repeated follow-ups, the Associate Prosecutor of Adelabad prison agreed to summon Vahid and Navid Afkari to his office, around 7 or 8 October 2019, to give them about five to six hours to review the case file, which consisted of 582 pages, and take notes. They tried to prepare themselves for the second session that the judge at Branch 1 of Criminal Court 1 of Fars Province had promised, but, on 15 October 2019, they were suddenly informed that the court had issued its verdict, sentencing Navid Afkari to death for "murder" and Vahid Afkari to 25 years' imprisonment for being an "accessory to murder".

67. In the cases that were tried before the Revolutionary Court, Vahid and Habib Afkari experienced similar violations of their right to adequate time and facilities to prepare a defence. Habib Afkari had no access to the relevant information on his case when he was tried, convicted and sentenced before the Revolutionary Court of Shiraz, all in one day, on 20 June 2020. In the following days, he retained a lawyer to appeal his case to the Supreme Court. The same lawyer took up the case of Vahid Afkari, whose trial before the Revolutionary Court of Shiraz was scheduled for one month later, on 23 July 2020. In mid-July 2020, after repeated follow-ups, the authorities allowed the lawyer of Vahid and Habib Afkari to read their case files, once, at the office of the Revolutionary Court of Shiraz and take notes, to prepare Habib Afkari's appeal to the Supreme Court and Vahid Afkari's defence submission for his trial before the Revolutionary Court of Shiraz on 23 July 2020.

vi. Right to fair trial

68. The sessions before Branch 1 of Criminal Court 1 of Fars Province, Branch 116 of Criminal Court 2 of Shiraz and the Revolutionary Court of Shiraz, which led to the issuance of heavy prison sentences against Vahid and Habib Afkari, violated their right to a fair, public hearing before an independent and impartial tribunal.

69. The trial of Vahid Afkari before Branch 1 of Criminal Court 1 of Fars Province was conducted jointly with the trial of Navid Afkari. Two brief sessions on 3 August 2019 and 24 September 2019 were open only to one relative of the defendants, two of their friends and the family of the deceased. The first session lasted about 90 minutes and the defendants were not provided with an opportunity to defend themselves. The second session lasted about three hours.

70. The presiding judge did not allow official audio recording of the trial, in breach of the Code of Criminal Procedure. The judge also repeatedly announced that the audience was not allowed to take notes. Unofficial audio-recording reveals the judge's conduct.



71. Vahid and Navid Afkari requested the judge to not ask leading questions and to respect the principle of impartiality. In response, the judge is heard ordering them to stay quiet. The recordings reveal that when Vahid and Navid Afkari presented their defence, the judge repeatedly interrupted them. The defendants are heard insisting that they want to question the prosecution and its witnesses. The judge dismissed their request.

72. The defendants also asked the judge why the various pieces of video footage mentioned by the prosecution were not played in the court. The judge accused the defendants of disrupting the courtroom. He also refused to hear the witnesses that the defendants wished to call.

73. The trials of Vahid and Habib Afkari before Branch 116 of Criminal Court 2 of Shiraz and the Revolutionary Court of Shiraz were closed to observers, even more hasty and secretive in nature, and lasted, in each case, less than one hour. In the case of Habib Afkari, the proceedings before the Revolutionary Court of Shiraz, which led to eight years' imprisonment, were summary in the extreme, as his trial, conviction and sentencing all took place in one day, on 20 June 2020.

74. Vahid Afkari has been sentenced to a total of 33 years and nine months' imprisonment, as well as two years of mandatory residence in Ardabil Province in the northwest of the Islamic Republic of Iran and 74 lashes, in three separate cases involving six charges. Specifically, the punishment consists of:

(a) Twenty-five years' imprisonment for being "an accessory to murder", imposed by Branch 1 of Criminal Court 1 of Fars Province on 15 October 2019 and upheld by Branch 39 of the Supreme Court on 25 April 2020;

(b) One year and nine months' imprisonment and 74 lashes for (i) "disrupting public order" (seven and a half months and 74 lashes), (ii) "insulting public officials on duty" (six months) and (iii) "defying public officials on duty" (seven and a half months). The original sentence imposed by Branch 116 of Criminal Court 2 of Shiraz on 24 July 2019 for these charges was four years and six months' imprisonment, but this was reduced by Branch 27 of the Appeal Court of Fars Province on 8 February 2021;

(c) Seven years' imprisonment, followed by two years of mandatory residence in Ardabil Province, which is over 1,000 km away from his home province of Fars, for (i) criminal activity falling short of "spreading corruption on earth", as per the explanatory note to article 286 of the 2013 Islamic Penal Code (five years and mandatory residence), and (ii) "insulting the Supreme Leader" (two years), imposed by Branch 2 of the Revolutionary Court of Shiraz on 24 December 2020, and upheld by Branch 39 of the Supreme Court on 23 February 2021.

75. Habib Afkari has been sentenced to a total of 15 years and eight months' imprisonment, 74 lashes and a fine in two separate cases involving eight charges. Specifically, the punishment consists of:

(a) Seven years and eight months' imprisonment, 74 lashes and a fine for (i) "gathering and colluding to commit crimes against people's lives and properties" (four years), (ii) "defying public officials on duty" (two years and four months), (iii) "disrupting public order" (eight months and 74 lashes), (iv) two counts of "deliberately inflicting injuries with a sharp object" (eight months), and (v) "insulting public officials on duty" (a fine). The original sentence imposed by Branch 116 of Criminal Court 2 of Shiraz on 24 July 2019 was 16 years and one month of imprisonment, but this was reduced by Branch 27 of the Appeal Court of Fars Province on 8 February 2021;

(b) Eight years' imprisonment for (i) "membership in a group for the purpose of disrupting national security" (five years), (ii) "insulting the Supreme Leader" (two years), and (iii) "spreading propaganda against the system" (one year), imposed by Branch 1 of the Revolutionary Court of Shiraz on 20 June 2020, and upheld by the Supreme Court in March 2021.

*Response from the Government*

76. On 22 December 2021, 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 21 February 2022 about the current situations of Vahid and Habib Afkari. The Working Group also requested the Government to clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of the Islamic Republic of Iran under international human rights law and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of the two men.

77. The Government submitted its response on 10 March 2022, which was after the set deadline. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. Consequently, the Working Group cannot accept the reply as if it were presented within the time limit.

*Update from the source*

78. By way of an update, the source has informed the Working Group that on 5 March 2022, Habib Afkari was conditionally released from prison.

**Discussion**

79. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

80. In determining whether the detention of Vahid and Habib Afkari 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 for breach of 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>2</sup> In the present case, the Government has chosen not to challenge in a timely fashion the prima facie credible allegations made by the source.

81. The Working Group further observes that the conditional release of Habib Afkari reported by the source does not prevent the Working Group from adopting an opinion, as there is no provision in its methods of work that precludes consideration of a case in such circumstances. Indeed, the Working Group considers it necessary to render an opinion given that the allegations relating to Habib Afkari's deprivation of liberty are serious and warrant further attention.

*Category I*

82. The source submits that Vahid Afkari was arrested by seven plain-clothed agents at his house on 17 September 2018. Habib Afkari was arrested in the street by plain-clothed agents in Shiraz on 13 December 2018.

83. Both Vahid and Habib Afkari were arrested without an arrest warrant and were not provided promptly with any information on the charges against them when arrested. For a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that might authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>3</sup> International law includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary detention under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Any form of imprisonment should be ordered by, or be subject to the

<sup>2</sup> A/HRC/19/57, para. 68.

<sup>3</sup> See opinions No. 46/2017, No. 66/2017, No. 75/2017, No. 35/2018, No. 79/2018 and No. 15/2021, para. 50.

effective control of, a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles. Vahid and Habib Afkari were arrested in clear violation of above-mentioned rights. The circumstances of the arrest of Habib Afkari only strengthen the conclusion that his arrest was without legal basis, being in retaliation for his attempts to locate his family members in detention, as he had been repeatedly threatened with arrest if he did not stop seeking information.

84. The source submits that until their trials before the various courts, which took place about one year after their arrests, Vahid and Habib Afkari were never brought before a judge to address the lawfulness of their detention. Their detention orders were authorized and renewed by the office of the special prosecutor for criminal affairs and security offences, the same body that finalized their charges. According to the source, these serious fair trial violations result from a systematic flaw in the country's Code of Criminal Procedure, which tasks the investigators based in the office of the prosecutor, rather than an objective, independent and impartial judicial authority, with the power to issue and approve detention orders and confirm charges.

85. The Working Group notes that, in violation of article 9 (3) of the Covenant, neither man was brought promptly before a judge. As the Working Group has reiterated in its jurisprudence, and the Human Rights Committee has specified, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee promptly before a judge; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.<sup>4</sup>

86. The Working Group also finds that neither Vahid Afkari nor Habib Afkari was afforded the right to bring proceedings before a court so that the court could decide without delay on the lawfulness of their detention in accordance with article 9 (3) and (4) of the Covenant, articles 3, 8 and 9 of the Universal Declaration on Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that there is a legal basis for the detention.<sup>5</sup> Their detention also violated their rights under article 8 of the Universal Declaration on Human Rights and article 2 (3) of the Covenant, as they were denied an effective remedy.

87. In its late reply, the Government submits that allegations suggesting the use of prolonged solitary confinement against Vahid and Habib Afkari are unfounded. The source alleges that both men were held in incommunicado in solitary confinement. The Working Group recalls that, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court under article 9 (3)<sup>6</sup> and (4) of the Covenant.<sup>7</sup> Incommunicado detention, especially during the early stage of the investigation, is an environment conducive to torture and might be used as a coercion to force a detainee to admit guilt.

88. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, whereby some of the harmful psychological effects of isolation can become irreversible, and prolonged incommunicado detention in a secret place might amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>8</sup>

<sup>4</sup> See, for example, opinions No. 60/2020 and No. 66/2020, and Human Rights Committee, general comment No. 35 (2014), para. 33.

<sup>5</sup> Opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

<sup>6</sup> Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>7</sup> See opinions No. 45/2017, No. 46/2017, No. 69/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

<sup>8</sup> [A/66/268](#), paras. 26 and 61. See also General Assembly resolution 68/156, para. 27; [A/56/156](#), paras. 14 and 39 (f); Human Rights Committee, general comment No. 35 (2014), paras. 35 and 56; and [A/63/175](#), para. 56.

89. The Working Group also notes that, pursuant to rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must be used only in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorized by a competent authority. The Working Group finds credible the source's allegations on the use of prolonged solitary confinement, which appears in the present case to have been used as a further means to punish. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules.

90. The Working Group notes that prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential safeguard for the prevention of torture as well as for protection against arbitrary detention.<sup>9</sup> It finds that the right of Vahid and Habib Afkari to have contact with the outside world under rules 43 (3) and 58 (1) of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been violated.

91. Additionally, the source submits that Vahid Afkari was disappeared for 12 days. Enforced disappearance constitutes a particularly aggravated form of arbitrary detention, in violation of article 9 (1) of the Covenant and article 6 of the Universal Declaration of Human Rights.<sup>10</sup>

92. For these reasons, the Working Group considers that the deprivation of liberty of Vahid and Habib Afkari lacks legal basis and is thus arbitrary, falling under category I.

#### *Category II*

93. The source argues that most charges brought against Vahid and Habib Afkari are vague and overly broad national-security related charges, which do not meet the principle of legality and have been consistently used in the Islamic Republic of Iran to criminalize the exercise of the rights to freedom of expression, association and peaceful assembly. While the source acknowledges that some protesters engaged in violent behaviour, there is no indication that the brothers' activities were violent, nor is there any evidence of them inciting violence.<sup>11</sup>

94. The permitted restrictions on the rights to freedom of opinion, expression and association may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals, none of which arise here.

95. The Working Group has raised the issue of prosecution under vague and overly broad penal laws with the Government on several occasions.<sup>12</sup> In the present case, the vaguely formulated offences of "disrupting public order", "insulting public officials on duty", "spreading corruption on Earth", "insulting the Supreme Leader", "gathering and colluding to commit crimes against people's lives and properties" and "defying public officials on duty" were used to restrict freedoms legitimately exercised by Vahid and Habib Afkari. According to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, the Iranian judiciary imposes heavy sentences on individuals who peacefully exercise their freedom of expression.<sup>13</sup> The present case indicates that the situation persists.

96. The Working Group reiterates that the principle of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law and regulate their conduct accordingly.<sup>14</sup> It further notes that vague laws may have a

<sup>9</sup> Opinion No. 34/2021, para. 77.

<sup>10</sup> Human Rights Committee, general comment No. 35 (2014), para. 17; and opinions No. 5/2020; No. 6/2020; No. 11/2020; and 13/2020.

<sup>11</sup> Isolated acts of violence by some participants in an assembly should not be attributed to others, to the organizers or to the assembly as such (Human Rights Committee, general comment No. 37 (2020)), para. 17.

<sup>12</sup> See, for example, opinion No. 9/2017, para. 23.

<sup>13</sup> A/70/411, para. 23.

<sup>14</sup> Opinion No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59.

deterrent effect on the exercise of fundamental freedoms as they have the potential for abuse, including the arbitrary deprivation of liberty.<sup>15</sup>

97. The Working Group consequently finds that the detention of Vahid and Habib Afkari resulted from their legitimate exercise of freedom of opinion and expression, as protected under articles 19 and 21 of the Covenant, and was therefore arbitrary, falling under category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

### *Category III*

98. Given its finding that the deprivation of liberty of Vahid and Habib Afkari is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, both men have been tried and convicted, and the source points to due process and fair trial violations throughout the proceedings.

99. The source points to violations throughout the proceedings, which included denial of the right to the adequate assistance of a lawyer of the defendants' choosing; to be informed promptly on the nature and cause of the accusation; to be brought promptly before a judge; to challenge the lawfulness of detention before an independent, impartial tribunal; not to incriminate oneself; to obtain full access to relevant evidence; to examine and cross-examine witnesses; to challenge the authenticity of evidence; to receive a fair, public hearing before a competent, independent and impartial tribunal; and to have a meaningful review of the conviction by a higher court. The Government in its late reply states that both men were convicted of multiple charges and that international standards of a fair trial under article 14 of the Covenant have been fully respected.

100. On 16 May 2019, Vahid Afkari was charged with multiple national security-related offences, in addition to the charge of "accessory to murder" dating from an incident on 21 February 2019. The source alleges that all charges were essentially based on torture-tainted confessions, which the Government denies.

101. The Working Group notes with grave concern serious allegations of torture, including making threats to Vahid Afkari about killing and arresting older family members; and wrapping Habib Afkari's head in plastic to suffocate him and exposing him to the sounds of his brother being tortured.

102. The source further submits that Vahid Afkari attempted suicide twice and went on hunger strike, indicating the severity of the torture. The Government in its late reply denies these allegations.

103. The source also submits that both men also faced deliberate denial of medical attention and suffer from the physical consequences of torture.

104. The Working Group has previously concluded that when it is not possible for a person who is subjected to torture to prepare an adequate defence for a trial that respects the equality of both parties, this amounts to a fair trial violation.<sup>16</sup> Given the severity of the alleged torture, the Working Group considers it extremely unlikely that Vahid and Habib Afkari would have been able to effectively participate in their own defence during the proceedings, thus adding to the conclusion that the alleged torture violated their right to a fair trial.<sup>17</sup> The Working Group also recalls that the denial of medical care can constitute a form of torture.<sup>18</sup> Given the alleged denial of medical care, the Working Group also refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

<sup>15</sup> Opinion No. 10/2018, para. 55; and No. 15/2021, para. 65.

<sup>16</sup> Opinion No. 32/2019, para. 42.

<sup>17</sup> See also opinions No. 47/2017, para. 28; and No. 53/2018, para. 77 (c). See also [E/CN.4/2004/3/Add.3](#), para. 33.

<sup>18</sup> [A/HRC/38/36](#), para. 18.

105. Moreover, in the Working Group's view, torture also compromises the right not to be compelled to testify against oneself or to confess guilt.<sup>19</sup> The right to freedom from torture is set out in article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant, and the right not to be compelled to testify against oneself or to confess guilt is set out under article 14 (3) (g) of the Covenant. Moreover, the extraction of forced confessions violates rule 1 of the Nelson Mandela Rules, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and article 5 of the Universal Declaration of Human Rights and the *jus cogens* norm that it enshrines. The Working Group considers that confessions made in the absence of legal counsel are inadmissible as evidence in criminal proceedings.<sup>20</sup> The Working Group has determined that the conviction of an individual based on information extracted under torture from another person is unreliable and cannot be the basis for deprivation of liberty.<sup>21</sup>

106. The Working Group further finds that confession extracted through ill-treatment breaches article 10 of the Universal Declaration of Human Rights and principle 21 of the Body of Principles.<sup>22</sup> It also recalls article 15 of the Convention against Torture, whereby any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings. The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

107. The Working Group finds to be credible the allegations of the denial of effective legal assistance and concludes that the rights of Vahid and Habib Afkari in this regard were violated, in breach of article 14 (3) (b) of the Covenant, article 11 of the Universal Declaration of Human Rights and principle 18 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

108. The Working Group also finds a violation of their right to a fair, public hearing before an independent and impartial tribunal. This conclusion is strengthened by the source's credible submission that when Vahid Afkari tried to report torture and asked the judge to exclude torture-tainted confessions as evidence and order an investigation, the judge refused to hear the allegations.

109. The source submits that on 24 April 2019, Vahid Afkari was taken before Branch 10 of the office of the special prosecutor for criminal affairs and security offences, where he formally retracted his confessions, declaring that they had been made under torture. The Working Group considers that the conduct of the judicial actors violates the right of Vahid and Habib Afkari to be tried by an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.<sup>23</sup> The prosecutor was also obliged to investigate these complaints in keeping with the duty under guideline 12 of the Guidelines on the Role of Prosecutors to protect human dignity and uphold human rights.

110. The Working Group notes with concern that the judge reversed the burden of proof by stating that it was on Vahid Afkari to prove that he was not at the crime scene. This violates the presumption of innocence set out in article 14 (2) of the Covenant and article 11 (1) of the Universal Declaration of Human Rights. The brevity of the trials strengthens this conclusion. As previously noted, a short trial for serious criminal offences indicates that guilt had been determined prior to the trial.<sup>24</sup> The Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers.

111. Furthermore, the source submits that Vahid and Habib Afkari were also denied the right to have a meaningful review of their convictions by a higher court. The appeal verdicts are brief and do not include any reasoning demonstrating that the courts heard the defendants and conducted a genuine review to ensure that convictions based on insufficient evidence or resulting from breaches of fair trial rights would not become final.

<sup>19</sup> Opinion No. 22/2019, para. 78; No. 26/2019, para. 104; and No. 56/2019, para. 88.

<sup>20</sup> A/HRC/45/16, para. 53.

<sup>21</sup> Opinions No. 47/2017, para. 27; No. 75/2018, para. 75; and No. 45/2019, para. 69.

<sup>22</sup> Opinions No. 48/2016, para. 52; No. 3/2017, para. 33; 47/2017, para. 27; and No. 39/2018, para. 43.

<sup>23</sup> Opinion No. 24/2020, para. 108; No. 31/2020, para. 56; and No. 61/2020, para. 88.

<sup>24</sup> See opinions No. 75/2017 and No. 36/2018.

112. The source submits that in the case of Vahid Afkari before Branch 1 of Criminal Court 1 of Fars Province, a request for retrial was submitted on 9 August 2020, to the Supreme Court. This was rejected without reason on 15 August 2020. The source argues that this is a very rushed response for the review of a case file of over 500 pages involving serious charges.

113. In the absence of a rebuttal by the Government, the Working Group concludes that the conduct of the appeal and retrial processes demonstrate that Vahid Afkari's right to have his conviction and sentence reviewed by a higher tribunal was not respected, in violation of articles 8, 10 and 11 (1) of the Universal Declaration of Human Rights<sup>25</sup> and article 14 (5) of the Covenant.

114. The source further submits that the Court failed to specify in its verdict the "conduct" and "riots" to which it was referring. The only specific example mentioned was the alleged involvement of Vahid Afkari in the fatal stabbing incident of 2 August 2018, but he had already been prosecuted for that alleged crime before Branch 1 of Criminal Court 1 of Fars Province. The Working Group finds to be credible the allegations of double jeopardy, which prohibits individuals from being prosecuted twice for substantially the same conduct, and find the convictions of Vahid and Habib Afkari to be contrary to article 14 (7) of the Covenant.

115. For the reasons above, the Working Group concludes that the breaches of the fair trial and due process rights of Vahid and Habib Afkari are of such gravity as to give their deprivation of liberty an arbitrary character, falling within category III.

#### *Concluding remarks*

116. The Working Group notes that according to the submission by the source, on 17 January 2019, Habib Afkari was placed in one of the general wards of Adelabad prison, where he remained until September 2020. The Working Group has previously found this practice of holding pretrial detainees alongside the general prison population to be in violation of minimum international legal standards.<sup>26</sup>

117. The Working Group also notes that the allegations against Navid and Vahid Afkari concern the killing of a police officer. The present opinion should not be understood as in any way minimizing the gravity of this crime. It is adopted without prejudice to their guilt or otherwise or that of anyone else. However, States must afford due process to defendants in all stages of criminal proceedings.

118. The present case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty in the Islamic Republic of Iran.<sup>27</sup> The Working Group is concerned that this indicates widespread or systemic arbitrary detention in the country, which amounts to a serious violation of international law. The duty to comply with international human rights standards rests with all State organs, officers and agents. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>28</sup> The Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran for appropriate action.

<sup>25</sup> Opinions and No. 31/2020, para. 61; and No. 61/2020, para. 90. See also [A/HRC/29/26/Add.2](#), paras. 61 and 115.

<sup>26</sup> Opinion No. 45/2016.

<sup>27</sup> See, for example, opinions No. 18/2013, No. 28/2013, No. 52/2013, No. 55/2013, No. 16/2015, No. 44/2015, No. 1/2016, No. 2/2016, No. 25/2016, No. 28/2016, No. 50/2016, No. 7/2017, No. 9/2017, No. 48/2017, No. 49/2017, No. 92/2017, No. 19/2018, No. 52/2018, No. 83/2018, No. 32/2019 and No. 33/2019.

<sup>28</sup> [A/HRC/13/42](#), para. 30; and opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

119. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary deprivation of liberty in the Islamic Republic of Iran. Given that a significant period of time has passed since its most recent country visit to the Islamic Republic of Iran, in February 2003, the Working Group considers that it is now an appropriate time to conduct another visit. The Working Group made a request to the Government on 19 July 2019 to conduct a country visit. The Working Group recalls that the Government issued a standing invitation on 24 July 2002 to all thematic special procedure mandate holders and awaits a positive response to its request to visit.

### **Disposition**

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

The deprivation of liberty of Vahid Afkari and Habib Afkari, being in contravention of articles 3, 5, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 7, 9, 14, 19 and 21 of the International Covenant on Civil and Political Right, is arbitrary and falls within categories I, II and III.

121. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situations of Vahid and Habib Afkari without delay and bring them 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.

122. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Vahid and Habib Afkari immediately and unconditionally and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (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 Vahid Afkari.

123. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Vahid and Habib Afkari and to take appropriate measures against those responsible for the violation of their rights.

124. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to 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, 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran for appropriate action.

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

### **Follow-up procedure**

126. 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 Vahid Afkari has been released and, if so, on what date;
- (b) Whether Habib Afkari has been released unconditionally and, if so, on what date;
- (c) Whether compensation or other reparations have been made to Vahid and Habib Afkari;
- (d) Whether an investigation has been conducted into the violation of the rights of Vahid and Habib Afkari and, if so, the outcome of the investigation;



(e) 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;

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

127. 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.

128. 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.

129. 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>29</sup>

*[Adopted on 4 April 2022]*

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<sup>29</sup> Human Rights Council resolution 42/22, paras. 3 and 7.