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Human Rights Council Working Group on Arbitrary Detention

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Opinion No.27/2022 concerning Jamshid Sharmahd (the United Arab Emirates, Oman and the 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,¹ on 17 December 2021 the Working Group transmitted to the Governments of the United Arab Emirates, Oman and the Islamic Republic of Iran a communication concerning Jamshid Sharmahd. The Government of the Islamic Republic of Iran replied to the communication on 20 January 2021. The Government of Oman submitted a late reply on 16 March 2022. The Government of the United Arab Emirates did not reply to the communication. The Islamic Republic of Iran is party to the International Covenant on Civil and Political Rights while the United Arab Emirates and Oman are not.

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,

¹ [A/HRC/36/38](#).

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. Jamshid Sharmahd is a citizen of the Islamic Republic of Iran and of Germany, born in 1955. He usually resides in Ontario, United States of America.

5. The source reports that Mr. Sharmahd was born in the Islamic Republic of Iran but immigrated to Germany with his family in 1983 where he completed his formal education and received a BSc (Bachelor of Science) in electrical engineering. In 1995, Mr. Sharmahd became a German citizen through naturalization. He has established a business, Sharmahd Computing GmbH.

6. The source further explains that in 2003, Mr. Sharmahd and his family moved to the United States, where they have since been living. Although he works as a software engineer, Mr. Sharmahd is also a journalist and activist who has criticized the Government of the Islamic Republic of Iran. In 2006, he created a news website, Tondar, which is a monarchist group of Iranian exiles.

7. The source alleges that because of his support for the website, Mr. Sharmahd has experienced an attempted assassination by the Iranian authorities, however the alleged attacker has turned himself in to the United States authorities.

8. It is reported that in March of 2020, Mr. Sharmahd left the United States for a three-week trip to India and Germany for new contract opportunities. He flew to Mumbai on 5 March 2020 with a return ticket for 31 March 2020, but due to the coronavirus disease (COVID-19) pandemic he was unable to leave India and was confined to his hotel for three months, where he was unable to buy food or medicine.

9. According to the source, on 11 July 2020 Mr. Sharmahd boarded a flight to the United States with a connection in Amsterdam. However, in Amsterdam he was unable to board the connecting flight to the United States because of restrictive travel regulations at the time which permitted only United States citizens and permanent residents to enter the country. The source explains that Mr. Sharmahd has only a valid United States visa and travel on such a visa was not permitted at that time.

10. Mr. Sharmahd then travelled to Germany, the country of his citizenship, and attempted to get an appointment at the United States Embassy, but was unable to do so as it would have taken several months owing to the pandemic and associated travel restrictions.

11. The source further states that having discussed the situation with his family in the United States, Mr. Sharmahd then decided to fly back to India to take advantage of the delay by pursuing business contracts. On 25 July 2020, Mr. Sharmahd boarded a flight from Germany to Dubai where, upon landing, he awaited a connecting flight to Mumbai. As his flight kept getting delayed, Mr. Sharmahd stayed in a hotel in Dubai.

12. On 28 July 2020, Mr. Sharmahd's family was able to contact him through a video call with him in his hotel room. However, for the next two days all phone calls and texts to Mr. Sharmahd from his family went unanswered.

13. The family members were able to see his Google location, which Mr. Sharmahd had shared with them, and noticed that he had crossed the border into Oman. It is reported that on 29 July 2020, the Google pin identifying Mr. Sharmahd's location started moving from his hotel in Dubai and arrived in Al Buraimi, Oman, which according to the map, hosts an Islamic school. Mr. Sharmahd's family became increasingly worried and unsuccessfully attempted to contact him.

14. On 30 July 2020, the location pin moved from Al Buraimi to a medical clinic in the port city of Sohar, Oman. On the morning of 31 July 2020, a member of Mr. Sharmahd's family received a short text message from Mr. Sharmahd's phone number stating that he was

well and would call. It is unclear whether this message was from Mr. Sharmahd himself or was sent by someone else.

15. It is thus believed that the Iranian authorities transported Mr. Sharmahd to Oman to arrest him. Additionally, the source notes that according to news and media outlets at the time, the borders between Oman and Dubai were not open for travel. It concludes that the border crossing that is visible on the Google tracking must have either been illegal or the Government of Oman knew it was being used.

16. On 1 August 2020, the Iranian authorities published a video in which Mr. Sharmahd appeared blindfolded and confessed to crimes against the Government of the Islamic Republic of Iran. The source claims that he has not committed those crimes and that his confession was coerced. Furthermore, according to the source, the Minister of Intelligence of the Islamic Republic of Iran has stated that the authorities were able to capture Mr. Sharmahd through a complex operation, noting that he was arrested in the Islamic Republic of Iran. Several government news outlets have nevertheless claimed that Mr. Sharmahd was not arrested in that country.

17. The source states that the Iranian authorities did not show a warrant upon the arrest of Mr. Sharmahd, which was carried out on a decision of the Minister of Intelligence. The authorities imputed several reasons for the arrest of Mr. Sharmahd, including planning an attack on a mosque in Shiraz in 2008. Mr. Sharmahd is believed by the authorities to have been plotting other attacks, such as bombing the Ayatollah's mausoleum in Tehran in 2010, as a member of the group Tondar. The source notes, however, that Mr. Sharmahd was only a spokesperson for the group. The authorities have not provided any additional information as to why Mr. Sharmahd is being detained. The circumstances surrounding the alleged terrorist attacks in 2008 are also unknown.

18. According to the source, Mr. Sharmahd has been detained on charges of terrorism and crimes against the Government. The source notes that in the past, persons accused of taking part in the same attack have been sentenced to death and executed.

19. It is submitted that Mr. Sharmahd is possibly being kept in custody by the Iranian intelligence forces in Evin prison. The source notes that Mr. Sharmahd suffers from Parkinson's disease and diabetes and requires medication for both conditions. His health is therefore of particular concern during this prolonged detention. It is reported that he has lost over 40 pounds in weight. In addition, it is submitted that the COVID-19 pandemic is still prevalent in the Islamic Republic of Iran and that the poor conditions in prisons escalate the spread of the disease.

20. The source submits that the arrest and detention of Mr. Sharmahd are arbitrary and fall under categories II and III. Mr. Sharmahd is being deprived of his liberty as a result of exercising the right to freedom of opinion and expression. Moreover, there has been non-observance of international norms relating to the right to a fair trial.

21. In relation to category II, the source submits that Mr. Sharmahd has been arrested by the Iranian authorities because of his alleged role in planning a 2008 attack on a mosque, in which he had no role, but that he is ultimately being targeted for supporting the Tondar online group and expressing his political opinion against the Government of the Islamic Republic of Iran.

22. The source notes that Mr. Sharmahd's arrest violates article 19 of the Universal Declaration of Human Rights, which guarantees everyone the right to freedom of opinion and expression, including the right to hold opinions without interference and to impart information and ideas through any media and regardless of frontiers. The arrest is also in violation of article 19 of the International Covenant on Civil and Political Rights. Article 19 of the Covenant provides that everyone has the right to hold opinions without interference and that everyone has the right to freedom of expression and can impart information and ideas through any media of his or her choice. The source states that this applies to Mr. Sharmahd's support for the Tondar group and that any articles he might have written or any way he has expressed his support for Tondar are protected under the Covenant.

23. In relation to category III, the source submits that Mr. Sharmahd's arrest and detention are arbitrary because international norms relating to the right to a fair trial have not been

observed. It is noted that Mr. Sharmahd has neither been informed of the evidence against him nor has he been able to present his own evidence. It is also unclear whether he has had access to a lawyer, or that he has been or will be given a fair and impartial trial. It is noted that the Iranian lawyer hired by Mr. Sharmahd's family has been barred by the Iranian judiciary from meeting with Mr. Sharmahd or from accessing his file.

24. The source also notes that Mr. Sharmahd is also being denied consular visits. It is argued that this violates articles 9 and 10 of the Universal Declaration of Human Rights which guarantee that no one shall be subject to arbitrary arrest or detention and that everyone is entitled to a fair and public hearing by an independent and impartial tribunal.

25. The source reiterates that there is no evidence that Mr. Sharmahd will be put on trial and that it is not certain that any trial will be impartial because of the structure of the judicial system in the Islamic Republic of Iran, where the head of the judiciary is appointed by the Supreme Leader. Additionally, the source notes that article 14 of the Covenant provides that everyone shall be able to see the charges against them, prepare their defence with a counsel of their choosing and examine the witnesses against him. According to the source, Mr. Sharmahd has not been given access to any of these guarantees.

Response from the Governments

26. On 17 December 2021, the Working Group transmitted the allegations from the source to the Governments of the Islamic Republic of Iran, Oman and the United Arab Emirates. The Working Group requested the three Governments to provide it by 15 February 2022 with detailed information about the situation of Mr. Sharmahd and clarify the legal provisions justifying his 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. The Working Group also called upon the Government of the Islamic Republic of Iran to ensure his physical and mental integrity.

27. The Working Group regrets that it did not receive a response from the Government of the United Arab Emirates to this communication; neither did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

28. The Government of Oman submitted its response on 16 March 2022, 29 days after the deadline but did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. The Working Group cannot accept the late response as if it were presented within the time limit. In accordance with paragraph 16 of its methods of work, the Working Group will render its opinion based on all the information it has obtained.

29. On 20 January 2022, the Government of the Islamic Republic of Iran sent its response stating that the dossier of Mr. Sharmahd had been sent to the courts for the exhaustion of judicial processes, following the closure of investigations. The Government submits that according to the law, until the verdict is issued, there is no possibility of getting or issuing further information regarding this file. The Government also submits that Mr. Sharmahd benefited from all his rights during his trial.

Additional comments from the source

30. The reply of the Government of the Islamic Republic of Iran was transmitted to the source on 31 January 2022. In a response dated 1 March 2022, the source affirms the various denials relating to Mr. Sharmahd's due process rights.

Discussion

31. Noting that the allegations concerning Mr. Sharmahd's detention concern three Governments, the Working Group proceeds to examine them separately. The source has submitted that his kidnapping was effected by agents of the Iranian State, who transported Mr. Sharmahd from the United Arab Emirates to Oman.

32. At the outset, the Working Group recalls that the practice of "proxy detention", where persons are transferred from one State to another outside the realm of any international or national legal procedure ("rendition" or "extraordinary rendition") for the specific purpose

of secretly detaining them, or to exclude the possibility of review by the domestic courts of the State having custody of the detainee, or otherwise in violation of the well-entrenched principle of non-refoulement, entails exactly the same consequence. The practice of “proxy detention” involves the responsibility of both the State that is detaining the victim and the State on whose behalf or at whose behest the detention takes place.²

Allegations against the United Arab Emirates

33. In determining whether the detention of Mr. Sharmahd 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.³ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

i. Category I

34. The source submitted and the Government of the United Arab Emirates did not contest that Mr. Sharmahd’s informal transfer was effected by agents of the Iranian State, who transported him from the United Arab Emirates to Oman. While he was reportedly held in the United Arab Emirates for a short time prior to his transfer to Oman on the same day, this nevertheless amounts to deprivation of liberty.⁴

35. The right to be presented with an arrest warrant 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 and principles 2, 4, 10 and 12 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁵ By failing to present an arrest warrant and failing to inform Mr. Sharmahd of the reason for his arrest, the authorities did not invoke a legal basis for his detention.⁶

36. In addition, the Working Group considers that Mr. Sharmahd was denied the right to take proceedings before a court in the United Arab Emirates to challenge the legality of his detention, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and principles 11 and 32 of the Body of Principles.⁷ Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.⁸ Given that Mr. Sharmahd had no opportunity to challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights was violated. His deprivation of liberty falls within category I.

ii. Category III

37. The source submits that the informal transfer of Mr. Sharmahd to Oman lacked the procedural safeguards required under international law and constitutes an extraordinary rendition in violation of article 9 of the Universal Declaration of Human Rights. The Government of the United Arab Emirates has chosen not to respond to these allegations.

38. Involuntary expulsion to a foreign State without a hearing by judicial authorities cannot be in conformity with due process.⁹ The international law regarding extradition provides procedures that must be observed in returning individuals to face criminal proceedings in another country and in ensuring that their right to a fair trial is protected.¹⁰

² A/HRC/13/42, para. 36.

³ A/HRC/19/57, para. 68.

⁴ Opinion No. 67/2017, para. 19.

⁵ Opinions No. 33/2020, para. 54, and No. 65/2020, para. 75.

⁶ Opinions No. 45/2019, para. 51, and No. 4/2021, para. 83.

⁷ Opinion No. 33/2020, para. 56.

⁸ A/HRC/30/37, para. 3.

⁹ A/HRC/48/55, para. 54.

¹⁰ Opinion No. 88/2020, para. 88.

39. The source has established a credible case, not rebutted by the Government of the United Arab Emirates, that those procedures were not observed in this case. The Government of the United Arab Emirates could have transferred Mr. Sharmahd through extradition channels but chose to circumvent that process by facilitating his transfer to Oman and in so doing, denied him his right to a fair trial. The deprivation of liberty of Mr. Sharmahd, being in contravention of articles, 3, 8 and 9 of the Universal Declaration of Human Rights, therefore also falls within category III.

40. The Working Group considers that the Government of the United Arab Emirates is responsible for its own actions in the detention and forcible transfer of Mr. Sharmahd, as well as the subsequent violations of his rights in the Islamic Republic of Iran.¹¹

Allegations against Oman

41. The source believes that the Iranian authorities transported Mr. Sharmahd to Oman for arrest, noting that it was reported that at the time the borders between the United Arab Emirates and Oman were not open for travel, so such travel would have been illegal or known to the Government of Oman.

42. In its late reply, the Government submits that upon learning of the kidnapping of Mr. Sharmahd in the United Arab Emirates and his subsequent transfer to the Islamic Republic of Iran via Oman in August 2020, the Omani authorities initiated a close and continuous coordination with the authorities in the United Arab Emirates, which concluded that he had managed to infiltrate Oman from the United Arab Emirates with a group of facilitators, after which he was able to illegally leave Omani territory to get to the Islamic Republic of Iran by sea crossing. All investigations conducted so far have led to the same finding that Mr. Sharmahd arrived in the Islamic Republic of Iran of his own free will and on his own initiative.

43. The Working Group observes that it is highly improbable that having been kidnapped in the United Arab Emirates, which is how the Government of Oman describes his illegal transfer, Mr. Sharmahd then arrived in the Islamic Republic of Iran of his own free will and on his own initiative, as the Government of Oman submits. The Working Group notes the source's submission that Mr. Sharmahd, who was kidnapped in the United Arab Emirates while in transit on his way home to the United States, had left the Islamic Republic of Iran in 1983 and had reportedly faced an attempted assassination by the Iranian authorities in the past. Such circumstances do not indicate that he would have returned to the Islamic Republic of Iran of his own free will.

44. Nonetheless, based on the information provided by the source, which raises the possibility that Mr. Sharmahd could have crossed illegally, most likely without the knowledge of the Government of Oman, the Working Group does not have sufficient information to conclude that Oman was aware of or involved in Mr. Sharmahd's extraordinary rendition through the country at the time it occurred. In addition, the response of the Government of Oman is predicated on investigating the illegal transfer after the event, which supports the conclusion that it was not aware of it when it was effected.

Allegations against the Islamic Republic of Iran

45. The Working Group thanks the source and the Government of the Islamic Republic of Iran for their submissions.

46. In determining whether the deprivation of liberty of Mr. Sharmahd 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 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.¹²

¹¹ Opinion No. 8/2022, para. 88.

¹² [A/HRC/19/57](#), para. 68.

47. As a preliminary matter, the Working Group would like to address the submission by the Government of the Islamic Republic of Iran that according to the law, until the verdict is issued, there is no possibility of getting or issuing further information regarding Mr. Sharmahd's file. As the Working Group has previously stated in its jurisprudence, it is not sufficient for a Government to argue that the law prevents it from providing information on a case.¹³ The Working Group was created to serve the needs of victims of arbitrary arrests and detention worldwide and for Member States to hold each other accountable; Member States must therefore have intended for the mechanism to resolve the disputes brought by victims. That was also the motivation of the Human Rights Council when it reminded States to cooperate fully with the Working Group in its resolution 33/30. The Government's contention that until a verdict is issued, the law (its national legislation) prevents it from providing information is incompatible with that requirement.¹⁴ The Working Group would like to clarify that there is no provision in its methods of work that prevents it from considering communications owing to the lack of exhaustion of domestic remedies or processes in the country concerned, such as an ongoing judicial proceedings in the present case.

i. Category I

48. The source states that the Iranian authorities did not show a warrant when they arrested Mr. Sharmahd, an arrest that was executed based on a decision of the Iranian Minister of Intelligence. The Government has not rebutted this specific allegation.

49. The source refers to conflicting information originating from the Government as to where Mr. Sharmahd was arrested. Nonetheless, the Working Group finds credible the source's submission that Mr. Sharmahd was kidnapped by Iranian authorities in Dubai and transferred to the Islamic Republic of Iran via Oman. As the Working Group has observed, "both human rights law and the anti-terror conventions adopted under the auspices of the United Nations enshrine a clear preference for extradition as the legal framework for such transfers. The practice of so-called 'renditions', on the contrary, because it is aimed at avoiding all procedural safeguards, is not compatible with international law".¹⁵

50. The circumstances of Mr. Sharmahd's arrest render his detention contrary to applicable international norms and constitute a violation of the right to liberty, irrespective of the nature and motives of the accusations against him.¹⁶ The Working Group therefore finds a violation of article 9 of the Covenant.

51. The circumstances that led to Mr. Sharmahd's detention, namely being kidnapped, ("rendition" or "extraordinary rendition") can only lead to the conclusion that his detention is devoid of any legal basis. Forcible transfers which fail to respect the fundamental requirements of due process can never have a legal basis and will therefore always fall within category I.¹⁷

52. The source submits that Mr. Sharmahd is possibly being kept in custody by the Iranian intelligence forces in Evin prison. However the source does not appear to be certain of his present location. He has been deprived of liberty against his will, with the involvement of government officials, who appear to have refused to disclose his fate and whereabouts.¹⁸ The Working Group considers that Mr. Sharmahd was subjected to enforced disappearance from his kidnapping on 29 July until his appearance on 1 August 2020. The Working Group therefore refers this case to the Working Group on Enforced or Involuntary Disappearances.

53. The Working Group recalls that enforced disappearances violate numerous substantive and procedural provisions of the Covenant, including articles 9 and 14, and

¹³ Opinions No. 70/2018, para. 32; No. 59/2020, para. 53; and No.40/2021, paras. 58–60.

¹⁴ Opinion No. 70/2018, paras. 32–33. See also Human Rights Council resolution 42/22, paras. 7 and 9, and [A/HRC/36/38](#), para. 15.

¹⁵ [A/HRC/4/40](#), para. 2.

¹⁶ Opinion No. 19/2007, para. 20.

¹⁷ [A/HRC/48/55](#), para. 55.

¹⁸ [A/HRC/16/48/Add.3](#), para. 21, and opinions No. 37/2021, para. 64, and No. 65/2021, paras. 67–68.

constitute an aggravated form of arbitrary detention.¹⁹ The kidnapping of Mr. Sharmahd on 29 July 2020 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 procedures as are established by law.

54. The authorities must invoke that legal basis and apply it through an arrest warrant.²⁰ In the present case, the arresting officers did not present an arrest warrant at the time of arrest.²¹ The source has provided credible information, which was not rebutted by the Government, that Mr. Sharmahd was arrested without an arrest warrant, in violation of articles 3 and 9 of the Universal Declaration of Human Rights²² and article 9 (1) of the Covenant.²³ Mr. Sharmahd was kidnapped while waiting for a connecting flight in Dubai and there were no circumstances to give reasonable cause for arrest in flagrante delicto.²⁴ As a result, the authorities did not establish a legal basis for the arrest of Mr. Sharmahd in accordance with the Covenant.

55. The source submits that Mr. Sharmahd's last contact with his family was on 22 September 2021, when he was allowed a brief, supervised call to them. The Working Group recalls that 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.²⁵ Moreover, as the Working Group has consistently argued, holding persons incommunicado violates their right to challenge the lawfulness of their detention before a court (arts. 9 (3) and (4) of the Covenant).²⁶

56. For the reasons set out above, the Working Group concludes that the arrest and detention of Mr. Sharmahd was arbitrary and falls under category I as lacking legal basis.

ii. Category II

57. The source submits that Mr. Sharmahd was arrested by the Iranian authorities because of his alleged role in planning an attack on a mosque in 2008. The circumstances surrounding the alleged terrorist attacks in 2008 are unknown. The source submits that Mr. Sharmahd had no role in the attack but is being targeted for supporting the Tondar online group and expressing his political opinion about the Government of the Islamic Republic of Iran. The source notes that Mr. Sharmahd was only a spokesperson for the group and submits that the authorities have not provided any additional information as to why Mr. Sharmahd is being detained.

58. The Working Group recalls that freedom of opinion and freedom of expression, as expressed in article 19 of the Covenant, are indispensable conditions for the full development of the person; they are essential for any society and constitute the foundation stone for every free and democratic society.²⁷ The Human Rights Committee has further stated that freedom of expression includes the right to seek, receive and impart information and ideas of all kinds,

¹⁹ Human Rights Committee, general comment No. 35 (2014), para. 17, and opinion No. 37/2021, para. 65.

²⁰ Opinions No. 10/2018, para. 45; No. 36/2018, para. 40; No. 46/2018, para. 48; and No. 46/2019, para. 51.

²¹ Opinions No. 45/2019, para. 50, and No. 71/2019, para. 70.

²² Opinions No. 82/2018, para. 29; No. 31/2020, para. 41; No. 33/2020, para. 54; No. 37/2020, para. 52; and No. 65/2020, para. 75.

²³ It is not sufficient that there is a law authorizing the arrest. The authorities must invoke that legal basis and apply it through an arrest warrant. See, for example, opinions No. 10/2018, para. 45; No. 36/2018, paras. 39–40; No. 46/2018, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

²⁴ Opinion No. 9/2018, para. 38.

²⁵ See the Declaration on the Protection of All Persons from Enforced Disappearance and opinions No. 56/2019, para. 79; No. 33/2020, para. 91; and No. 72/2021, para. 84.

²⁶ Opinions No. 28/2016, para. 51; No. 60/2016, para. 24; No. 79/2017, para. 49; No. 93/2017, para. 40; No. 33/2020, para. 91; and No. 86/2020, paras. 63–64. See also *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.7, and Human Rights Committee, general comment No. 35 (2014), para. 35.

²⁷ Human Rights Committee, general comment No. 34 (2011), para. 2.

regardless of frontiers. That right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.²⁸

59. While freedom of expression is not an absolute right, the Human Rights Committee has stated in its general comment No. 34 (2011) that when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Moreover, it stipulates that article 19 (3) of the Covenant may never be invoked as a justification for the muzzling of any advocacy of multiparty democracy, democratic tenets and human rights. The permitted restrictions on the right 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. In the same general comment, the Committee stipulates that restrictions are not allowed on grounds not specified in article 19 (3), even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. As the Government has not responded by noting any of the permitted restrictions, the Working Group concludes that the basis for the arrest and subsequent detention of Mr. Sharmahd was the exercise of his right to freedom of opinion and expression.

60. The Working Group considers that Mr. Sharmahd was arrested and detained for peacefully exercising his rights under article 19 of the Covenant and that his conduct does not fall under the permitted restrictions of that article. The Working Group consequently finds that the detention of Mr. Sharmahd resulted from his legitimate exercise of freedom of opinion and expression, as protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

61. For these reasons, the Working Group considers that the deprivation of liberty of Mr. Sharmahd lacks a legal basis and is thus arbitrary, falling within 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.

iii. Category III

62. Given its finding that the deprivation of liberty of Mr. Sharmahd was arbitrary under category II, the Working Group wishes to emphasize that his trial should not have taken place. However, the source has submitted, and the Government has confirmed, that Mr. Sharmahd's trial is ongoing.

63. The source submits that Mr. Sharmahd's arrest and detention violated international norms relating to the right to a fair trial. As the Working Group has observed, international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country and in ensuring that their right to a fair trial is protected.²⁹

64. The source alleges that Mr. Sharmahd was denied access to a lawyer of his choosing prior to and during his trial. It is noted that the Iranian lawyer hired by Mr. Sharmahd's family has been barred by the Iranian judiciary from meeting with Mr. Sharmahd. It is clear from these circumstances that Mr. Sharmahd was not able to choose his legal counsel. It is noted that Mr. Sharmahd has neither been informed of the evidence against him, nor has he been able to present his own evidence.

65. 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.³⁰ The information provided by the source indicates that Mr. Sharmahd did not have legal representation of his choice following his kidnapping on 29 July 2020. The failure to provide Mr. Sharmahd with a lawyer

²⁸ Ibid., para. 11.

²⁹ See, for example, opinions No. 57/2013, No. 2/2015, No. 11/2018 and No. 23/2020.

³⁰ 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.

from the outset of his detention, and regular access to a lawyer thereafter, has seriously impaired his ability to prepare a defence. Mr. Sharmahd'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 and principle 18 of the Body of Principles have been violated.

66. The source submits that Mr. Sharmahd has not been informed of the evidence against him and that his lawyer of choice has been barred from accessing his case file. Every individual deprived of liberty has the right to access material related to their detention.³¹ 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.³² The Government has not provided any justification for denying access to the case file in violation of Mr. Sharmahd's rights under article 14 (1) and (3) (b) of the Covenant to a fair hearing and to adequate time and facilities for the preparation of a defence.³³

67. The source also notes that Mr. Sharmahd is being denied consular visits. The Working Group observes that consular assistance constitutes an important safeguard for individuals who are detained in a foreign State to ensure that international standards are being complied with. 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 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); and principle 16 (2) of the Body of Principles, all of which were violated in Mr. Sharmahd's case.³⁴

68. The source submits that on 1 August 2020, the Iranian authorities published a video showing Mr. Sharmahd blindfolded and confessing to crimes against the Government. The source claims that he did not commit those crimes and that he was subject to coerced confession.

69. The burden is on the Government to prove that the statement was given freely,³⁵ but it has not done so. Having been kidnapped while he was in transit on his way home and being blindfolded while delivering a public "confession" are factors that indicate that Mr. Sharmahd was coerced and did not confess freely and willingly.

70. The Working Group has observed that the extraction of "confessions" followed by "public repentance" (for example on television) are not only degrading in nature, but that such statements are manifestly inadmissible as evidence in criminal proceedings.³⁶ The Covenant requires that domestic law prohibit the use of forced confessions as evidence. Moreover, principle 21 of the Body of Principles protects a detainee from self-incrimination or coerced confessions.

71. The Working Group finds that the authorities violated Mr. Sharmahd's rights to the presumption of innocence and to not be compelled to confess guilt under article 14 (2) and (3) (g) of the Covenant.

72. The source notes that Mr. Sharmahd suffers from Parkinson's disease and diabetes, requires medication for both conditions and has reportedly lost over 40 pounds in weight. The source further indicates that he is not being provided with the necessary medication. The

³¹ Basic Principles, principle 12 and guidelines 11 and 13.

³² *Ibid.*, guideline 13, paras. 80–81.

³³ Opinions No. 18/2018, para. 53, and No. 78/2018, paras. 78–79.

³⁴ Opinions No. 30/2018, para. 51; No. 51/2019 para. 68; and No. 81/2021, para. 107. See also General Assembly resolutions 72/179, para. 4 (k), and 73/180, para. 16 (g); Human Rights Council resolution 40/20, para. 2 (j) and A/HRC48/55, paras. 55–63.

³⁵ Human Rights Committee, general comment No. 32 (2007), para. 41.

³⁶ E/CN.4/2003/68, para. 26 (e); E/CN.4/2005/6/Add.3, para. 48; A/HRC/45/16, para. 53; and opinion No. 41/2020, para. 70.

Working Group notes with concern that Mr. Sharmahd's poor health and unmet health needs make it unlikely that he is able to effectively assist with and participate in his own defence, strengthening the conclusion that his right to a fair trial has been violated.³⁷

73. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Sharmahd's deprivation of liberty an arbitrary character that falls within category III.

74. The Working Group considers that the Government of the Islamic Republic of Iran is responsible for the kidnapping in and forcible transfer of Mr. Sharmahd from the United Arab Emirates, which resulted from the actions of Iranian State actors.³⁸

Concluding remarks

75. In light of the conditions raised by the source pertaining to Mr. Sharmahd's age, health and lack of access to medication, the Working Group recalls article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, which hold that all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including by being allowed to enjoy the same standards of health care that are available in the community. States should treat detainees over 60 years of age and those with underlying health conditions as vulnerable to COVID-19, refrain from holding them in facilities where the risk to their life is heightened and implement early release schemes whenever possible.³⁹

76. The Working Group 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 and the Independent Expert on the enjoyment of all human rights by older persons for appropriate action.

77. 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.⁴⁰ 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.⁴¹ 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.

78. 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.

³⁷ In opinion No. 29/2017, the Working Group stated that, although its mandate did not cover conditions of detention or the treatment of prisoners, it had to consider to what extent conditions of detention could negatively affect the ability of detainees to prepare their defence and their chances of a fair trial (para. 63). See also opinions No. 47/2017, para. 28; No. 52/2018, para. 79 (j); and No. 53/2018, para. 77 (c); and [E/CN.4/2004/3/Add.3](#), para. 33.

³⁸ Opinions No. 84/2020, para. 72, and No. 8/2022, para. 108.

³⁹ Deliberation No. 11 ([A/HRC/45/16](#), annex II), paras. 15–16.

⁴⁰ 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.

⁴¹ [A/HRC/13/42](#), para. 30; and opinions No. 39/2011, para. 17; No. 60/2012, para. 21; No. 36/2013, paras. 32, 34 and 36; No. 35/2014, para. 19; and No. 56/2017, para. 72.

Disposition

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

In relation to the United Arab Emirates

The deprivation of liberty of Jamshid Sharmahd, being in contravention of articles 3, 8 and 9 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

In relation to Oman

The Working Group does not have sufficient information to conclude that Oman was aware of or involved in Mr. Sharmahd's deprivation of liberty and extraordinary rendition through Oman.

In relation to the Islamic Republic of Iran

The deprivation of liberty of Mr. Sharmahd, being in contravention of articles 3, 6, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 16, 19 of the International Covenant on Civil and Political Rights is arbitrary and falls within categories I, II and III.

80. The Working Group requests the Governments of the United Arab Emirates and the Islamic Republic of Iran to take the steps necessary to remedy the situation of Mr. Sharmahd 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. The Working Group urges the Government of the United Arab Emirates to accede to the International Covenant on Civil and Political Rights.

81. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be for the Government of the Islamic Republic of Iran to release Mr. Sharmahd immediately and for the Governments of the Islamic Republic of Iran and the United Arab Emirates to accord him an enforceable right to compensation and other reparations, in accordance with international law. 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 of the Islamic Republic of Iran to take urgent action to ensure the immediate unconditional release of Mr. Sharmahd.

82. The Working Group urges the Governments of the Islamic Republic of Iran and the United Arab Emirates to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Sharmahd and to take appropriate measures against those responsible for the violation of his rights.

83. In accordance with paragraph 33 (a) of its methods of work, the Working Group 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, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran and the Independent Expert on the enjoyment of all human rights by older persons, for appropriate action.

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

Follow-up procedure

85. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Governments of the Islamic Republic of Iran and the United Arab Emirates to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

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

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Islamic Republic of Iran and the United Arab Emirates with their international obligations in line with the present opinion;

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

86. The Governments of the Islamic Republic of Iran and the United Arab Emirates are invited to inform the Working Group of any difficulties they 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.

87. The Working Group requests the source and the Governments of the Islamic Republic of Iran and the United Arab Emirates 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.

88. 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.⁴²

[Adopted on 5 April 2022]

⁴² Human Rights Council resolution 42/22, paras. 3 and 7.