PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of Heshmatollah Tabarzadi,

v.

Government of the Islamic Republic of Iran

URGENT ACTION REQUESTED

And Petition for Relief Pursuant to Resolutions 1997/60, 2000/36, 2003/31

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August 15, 2011

BASIS FOR "URGENT ACTION" REQUEST

In the past two years, the United Nations Working Group on Arbitrary Detention (the "Working Group") has had the opportunity to rule on the unlawful and arbitrary detention of individuals arrested in the aftermath of Iran's controversial 2009 Presidential elections. On May 6, 2010, the Working Group determined that the deprivation of liberty of Mr. Isa Saharkhiz – a prominent Iranian journalist on whose behalf we filed a petition before the Working Group – was arbitrary and fell within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.[1] On May 6, 2011, the Working Group determined that the deprivation of liberty and treatment of Mr. Kiarash Kamrani – an ordinary student who peacefully protested in anti-government rallies – was also arbitrary, and fell within categories II and III. In both matters, the Working Group requested that the Government of Islami Republic of Iran ("Iran") take the necessary steps to remedy the situations, including the immediate release of Messrs. Saharkhiz and Kamrani and payment of adequate reparations.[2] To date, the Iranian government has ignored the Working Group's rulings and refused to remedy the situation. The Iranian government continues to arbitrarily deprive Messrs. Saharkhiz and Kamrani of their fundamental rights under the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Iran's Constitution, and other applicable international and national laws.

The present petition on behalf of Mr. Heshmatollah ("Heshmat") Tabarzadi (hereinafter "Mr. Tabarzadi" or "Petitioner") represents yet another instance of Iran's systematic and continuous abuse of the rights and freedoms following the contested June 2009 elections. Mr. Tabarzadi requests that the Working Group consider this Petition pursuant to the Working Group's "Urgent Action" procedure.[3] In addition, the Petitioner requests that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolutions 2000/36 and 2003/31.

Mr. Tabarzadi is the leader of the banned Democratic Front of Iran opposition party and viewed as one of the leaders of the student protests of July 9, 1999.[4] On December 27, 2009, Mr. Tabarzadi was arrested by the *Sepah-e-Pasdaran* ("Iranian Revolutionary Guard Corps"), a branch of the Iranian military under the direct command of the Supreme Leader of Iran, Ayatollah Ali Khamenei (hereinafter "Khamenei"), with an invalid arrest warrant after openly supporting peaceful protests by Iranian dissidents.[5]

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[1] *See Isa Saharkhiz v. Islamic Republic of Iran*, Opinion No. 8/2010, slip op. (2010) (Ex. 1).

[2] *See Kiarash Kamrani v. Islamic Republic of Iran*, Opinion No. 20/2011, slip op. (2011) (Ex. 2).

[3] Report of the Working Group on Arbitrary Detention, E/CN.4/1998/44 (Dec. 19, 1997), Annex 1 at ¶¶ 22-24 (Ex. 3).

[4] *See* Iran: *Political Activist at Risk of Torture in Iran: Heshmatollah Tabarzadi,* AMNESTY INTERNATIONAL (Mar. 16, 2010) (Ex. 4).

[5] *See id.*

Mr. Tabarzadi was initially detained in Ward 209 of Iran's most notorious prison, Evin, located in northwestern Iran.[6] After protesting the execution of Kurdish activists in May 2010, Mr. Tabarzadi was transferred to, and is currently being held in, Rajaee Shahr Prison, a prison notorious for poor conditions located in the city of Karaj.[7] Upon his unlawful arrest, Iranian authorities brutally beat Mr. Tabarzadi and held him *incommunicado* in solitary confinement for 40 days.[8] He was also threatened with the death penalty and other forms of cruel, inhumane and degrading treatment, including rape.[9]

In September 2010, Mr. Tabarzadi was convicted by the Islamic Revolutionary Court and sentenced to nine years imprisonment and 74 lashes after being convicted of five charges: "insulting the Leader," "insulting the President," "propaganda against the system," "gathering and colluding with intent to harm state security," and "disturbing public order."[10] He has also been banned from participating in any social activities for ten years.[11] On appeal, the sentence was reduced to eight years and the flogging sentence was overturned after Mr. Tabarzadi was reportedly acquitted of "disturbing public order" and "propaganda against the system."[12]

Since the time of his indictment, conviction, and appeal, the government of Iran has constantly harassed Mr. Tabarzadi's attorneys in Iran, due, in large part, to their representation of him and other prisoners of conscience. Indeed, prior to his trial, two of Mr. Tabarzadi's lawyers were themselves arrested and sentenced to prison terms for opposition to the government: (1) Ms. Nasrin Sotoudeh was sentenced to 11 years imprisonment and barred from practicing law and leaving the country for 20 years; and (2) Mr. Mohammad Oliyaeifard was sentenced to one year imprisonment.[13]

Evin Prison, where Petitioner was detained, is known to house political prisoners and prisoners of conscious from whom the Iranian authorities extract forced "confessions" through the use of torture and cruel, inhuman and degrading treatment.[14] The Iranian authorities have

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[6] *See Prominent Iranian Activist Given Long Prison Term, Lashes*, RADIO FREE EUROPE/RADIO FREE LIBERTY (Oct. 5, 2010) (Ex. 5).

[7] *See id.*

[8] *See* Court Defense of Heshmatollah Tabarzadi, INTERNATIONAL CAMPAIGN FOR HUMAN RIGHTS IN IRAN (Oct. 6, 2010) (Ex. 6).

[9] *See id.*

[10] *See Urgent Action: Political Activist Remains Jailed After Appeal,* AMNESTY INTERNATIONAL (Apr. 6, 2011) (Ex. 7).

[11] *See id.*

[12] *See id.*

[13] *See generally* William Yong, *Iran Sentences Human Rights Lawyer to 11 Years in Jail*, NEW YORK TIMES (Jan. 10, 2011) (Ex. 8); *Iran Jails Lawyer Who Has Defended Activists*, CBS NEWS (Feb. 2, 2011) (Ex. 9); *Iran must end serial arrest of lawyers*, AMNESTY INTERNATIONAL (Nov. 17, 2010) (Ex. 10).

[14] *See generally, "Like the Dead in Their Coffins:" Torture, Detention, and the Crushing of Dissent in Iran*, HUMAN RIGHTS WATCH (June 6, 2004) (Ex. 11).

physically injured Petitioner and subjected him to malnourishment that has caused him to lose significant weight. For all the foregoing reasons, the Petitioner requests that the Working Group consider this Petition pursuant to the Working Group's "Urgent Action" procedure.

MODEL QUESTIONNAIRE[15]

I. IDENTITY OF THE PERSON ARRESTED OR DETAINED

1. **Family Name:** Tabarzadi

2. **First Name:** Heshmatollah ("Heshmat")

3. **Sex:** Male

4. **Birth date or age (at time of detention):** 53 years old

5. **Nationality/Nationalities:** Citizen of the Islamic Republic of Iran

6. (a) **Identity document (if any):** Iranian National I.D. Card[16]

   (b) **Issued by:** Islamic Republic of Iran

   (c) **On (date):** 1/1/1338 (Persian Calendar)

   (d) **No.:** 121-901708-4

7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** A the time of his arrest, Mr. Tabarzadi was a democratic activist in Tehran and leader of the Iran Democratic Front.

8. **Address of usual residence:** Saadat Abad, Kaj Square, West 16th Street, Sadaf Building, 3rd Floor, No. 59, Postal Code: 1997986445

II. ARREST

1. **Date:** December 27, 2009

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[15] Lack of direct access to the Petitioner renders it impossible to obtain all of the information requested in the Working Group's model questionnaire at this time. The Working Group has consistently stated that inability to provide all of the information requested in the model questionnaire "shall not directly or indirectly result in the inadmissibility of the communication." *See, e.g.,* Report of the Working Group on Arbitrary Detention, E/CN.4/1997/4 (Dec. 17, 1996), Annex 1, at ¶ 8 (Ex. 12). As such, the information in this Petition is based on news reports and information obtained from the member of Mr. Tabarzadi's family who authorized submission of this Petition.

[16] *See Heshmatollah Tabarzadi*, Iranian National I.D. Card (Ex. 13).

2. **Place of arrest:** Tehran, Iran

3. **Forces who carried out the arrest or are believed to have carried it out:** Four individuals who claimed to be representatives of the Prosecutor's Office.

4. **Did they show a warrant or other decision by a public authority?** Yes.

5. **Authority who issued the warrant or decision:** Not known.

6. **Relevant legislation applied (if known):** Detention in Iran is generally guided by Article 32 of Iran's Constitution which prohibits arbitrary arrest and detention. *See* "Detention," below.

III. DETENTION

1. **Date of detention:** December 27, 2009.

2. **Duration of detention:** The Petitioner has been detained for approximately 19 months since his arrest on December 27, 2009.

3. **Forces holding the detainee under custody:** Iranian security forces and the Revolutionary Guard Corps.

4. **Places of detention (indicate any transfer and present place of detention):** At the time of his arrest, the Petitioner was taken to Evin Prison, in Tehran, Iran, where he spent 40 days in solitary confinement. After four months he was transferred to Kachouei Prison and then, after a month, transferred to Rajee Shahr Prison where he is currently detained.

5. **Authorities that ordered the detention:** Unknown.

6. **Reasons for the detention imputed by the authorities:** Mr. Tabarzadi was convicted of "insulting the Leader," "insulting the President," "propaganda against the system," "gathering and colluding with intent to harm state security," and "disturbing public order."[17] On appeal, Mr. Tabarzadi was reportedly acquitted of "disturbing public order" and "propaganda against the system."[18]

7. **Relevant legislation applied (if known):** Mr. Tabarzadi was convicted of five charges under the Islamic Penal Code: "insulting the Leader," "insulting the President," "propaganda against the system," "gathering and colluding with intent to harm state security," and "disturbing public order." On appeal, he was reportedly acquitted of charges of "disturbing public order" and "propaganda against the system."

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[17] *See* Ex. 7.

[18] *See id.*

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

This Statement of Facts details what is known about the circumstances surrounding the arrest and continuing detention of the Petitioner as well as the current political climate in Iran.

1. Background on Heshmatollah Tabarzadi

Mr. Tabarzadi was born in Iran on March 18, 1961. He is the leader of the banned Democratic Front of Iran opposition party and viewed as one of the leaders of the student protests of July 9, 1999. Mr. Tabarzadi was previously the editor of the student newsletter *Payam-e Daneshjou* ("Students' Message"), which was banned after complaints from numerous government officials.[19]

In 1998, shortly after he reportedly criticized the Iranian leadership in *Payam-e Daneshjou*, Mr. Tabarzadi was attacked and beaten by a group of unknown men who raided the office of the Islamic Students' Association.[20] He later became the president of the Association as well as the editor-in-chief of the weekly newsletter *Hoveyat-e-Khish* ("Our Identity").[21]

In 1999, Mr. Tabarzadi participated in the student protests of July 9, 1999. The protests began on July 8 with peaceful demonstrations in Tehran against the closure of the reformist newspaper, *Salam* ("Hello").[22] Following the demonstrations, a student dormitory was raided by riot police during which numerous students were seriously injured.[23] The raid sparked six days of demonstrations and rioting throughout the country.[24] During those demonstrations at least three other people were killed and more than 200 injured.[25]

Viewed by the Iranian government as one of the leaders of the student protests, Mr. Tabarzadi was arrested after being summoned to a tribunal at the office of the revolutionary prosecutor.[26] The day prior to being arrested, Mr. Tabarzadi gave a radio interview in which he reportedly criticized aspects of government policy.[27] He also reportedly criticized then-President

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[19] *See Iran: Fear for Safety*, AMNESTY INTERNATIONAL (June 22, 1999) (Ex. 14).

[20] *Id.*

[21] *Id.*

[22] *See Six days that shook Iran*, BBC NEWS (July 11, 2000) (Ex. 15).

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *See* Ex. 14.

[27] *Id.*

Mohammad Khatami's position on the arrest of at least 13 people thought to include Iranian Jews, rabbis and religious teachers, who had been charged with espionage and spying for the United States and Israel.[28]

A Revolutionary Court sentenced Mr. Tabarzadi to 10 years imprisonment for founding the Democratic Front, two years for insulting Khamenei, one year for propaganda against the state, one year for disturbing public opinion, and an additional 10 years for "social deprivation." An appeal court shortened the sentence to 7 years. Mr. Tabarzadi spent the subsequent six years in Evin Prison - two of them in solitary confinement.[29] He was released on May 25, 2008.

Following his release, Mr. Tabarzadi continued his political activism. Prior to his recent arrest in 2009, Mr. Tabarzadi was Secretary General of the Democratic Party of Iran.

2. Iran's Tenth Presidential Election and Post-Election Violence

On June 12, 2009, Iran held its tenth presidential election since the Iranian Revolution in 1979.[30] After vetting and excluding hundreds of interested candidates, the election featured a re-election bid by incumbent President Mahmoud Ahmadinejad (hereinafter "Ahmadinejad") against three challengers: Mir-Hossein Mousavi (hereinafter "Mousavi"), Mehdi Karroubi (hereinafter "Karroubi"), and Mohsen Rezai.[31]

Just two hours after polls closed in Iran, Iran's election commission, which is part of Iran's Ministry of Interior, announced that the incumbent candidate, President Ahmadinejad, had garnered 62.63% of the vote while his closest challenger, Mousavi, purportedly received only 33.75%.[32] The Ministry announced that the two other candidates won a much smaller percentage of the vote with Rezai gaining 1.73% and Karroubi just 0.85%.[33]

Shortly following the closure of polls in Iran, evidence emerged of voting irregularities and fraud in the election results.[34] On June 13, 2009, Mousavi announced that there was

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[28] *Id.*

[29] Heshmat Tabarzadi, *What I See on the Frontline in Iran*, WALL STREET JOURNAL (Dec. 17, 2009) (Ex. 16).

[30] The Iranian President is the highest popularly elected official in the Iran, but subordinate to the Supreme Leader. The President is elected for a four-year term by the direct vote of the people and may not serve for more than two consecutive years. *See* The Constitution of the Islamic Republic of Iran, Article 114 (Ex. 17) ("The President is elected for a four-year term by the direct vote of the people. His re-election for a successive term is permissible only once.").

[31] Kayhan Barzegar, *The List: Iran's Presidential Wannabes*, FOREIGN POLICY (June 2009) (Ex. 18).

[32] *See generally Ahmadinejad Wins Landslide*, IRAN DAILY (June 14, 2009) (Ex. 19).

[33] *Id.*

[34] *See generally* Scott Peterson, *Was Iran's Election Rigged?*, CHRISTIAN SCIENCE MONITOR (June 16, 2009) (Ex. 20) (10 million votes were missing personal identification numbers; 39.2 million handwritten ballots were counted within hours of polls closing); Dan Murphy, *Was*

(continued...)

evidence of blatant violations of electoral laws and fraudulent behavior.[35] Protests against the election results began almost immediately.[36] For the next few days, millions of Iranians protested the electoral outcome, chanting "down with the dictator," and "give us our votes back."[37] The street protests continued until June 18, 2009, drawing hundreds of thousands of Iranians in almost every major city of Iran.[38]

During the same time, both plainclothes officers and groups of paramilitaries known as the *basij* (which operate under the command of Ayatollah Khamenei) attempted to suppress the protests using pepper spray, batons and firearms.[39] The police also arrested major reform and human rights leaders including former vice-president Mohammad-Ali Abtahi, former presidential advisor Saeed Hajjarian, and human rights lawyer Abdolfattah Soltani.[40] In total, it is estimated that by June 18, 2009, the Iranian government had arrested and detained approximately 500 individuals.[41] During this time, numerous protestors were also killed by individuals operating under the Iranian government's command and control.

On June 19, 2009, during a weekly religious sermon, Khamenei commanded all protests to cease, claiming that protesters would be "responsible for [future] bloodshed and chaos" if they

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Iran's Election Stolen? New Study Makes a Forceful Case, CHRISTIAN SCIENCE MONITOR (June 22, 2009) (Ex. 21); Daniel Berman & Thomas Rintoul, *Preliminary Analysis of the Voting Figures in Iran's 2009 Presidential Election*, CHANTHAM HOUSE (June 21, 2009) (Ex. 22) ("In two conservative provinces, Mazandaran and Yazd, a turnout of more than 100 % was recorded. . . . In a third of all provinces, the official results would require that Ahmadinejad took not only all former conservative voters, all former centrist voters, and all new voters, but also up to 44% of former reformist voters, despite a decade of conflict between these two groups.").

[35] *See generally* Robert F. Worth & Nazila Fathi, *Both Sides Claim Victory in Presidential Election in Iran*, NEW YORK TIMES (June 13, 2009) (Ex. 23).

[36] *See generally* Robert F. Worth & Nazila Fathi, *Protests Flare in Tehran as Opposition Disputes Vote*, NEW YORK TIMES (June 14, 2009) (Ex. 24).

[37] *See generally Ahmadinejad Claims Iran Elections "Real And Free,"* NATIONAL PUBLIC RADIO (June 14, 2009) (transcript of Weekend Edition Sunday) (Ex. 25); Robert Tait, *Iranian protesters' slogans target Khamenei as the real enemy*, THE GUARDIAN (June 17, 2009) (Ex. 26).

[38] *See generally Fresh rally takes place in Tehran*, BBC NEWS (June 18, 2009) (Ex. 27); *Masses mourn protesters in Iran*, BBC NEWS (June 18, 2009) (Ex. 28).

[39] *See generally* Neil MacFarquhar, *Shadowy Iranian Vigilantes Vow Bolder Action*, NEW YORK TIMES (June 19, 2009) (Ex. 29); *Iran: Investigate Protester Deaths*, HUMAN RIGHTS WATCH (June 18, 2009) (Ex. 30).

[40] *See generally* Angus MacSwan, *Leading Iranian reformist arrested, his office says*, REUTERS (June 16, 2009) (Ex. 31); Mark Memmott, *Iran's Human Rights Activists Being Arrested, Nobel Prize Winner Tells NPR*, NATIONAL PUBLIC RADIO (June 16, 2009) (Ex. 32).

[41] Robert Tait & Julian Borger, *Iran elections: mass arrests and campus raids as regime hits back*, THE GUARDIAN (June 17, 2009) (Ex. 33).

continued.[42] The same day, plainclothes officers raided Mousavi's headquarters, arrested staffers, and ordered Mousavi to remain silent.[43] Hours after the sermon, defeated candidate Karroubi called for the election results to be voided.[44]

The following day, both governmental forces and the *basij* began a series of violent crackdowns against protestors; arresting over 457 people, injuring 100 and killing approximately 10.[45] Among the dead was 26-year-old Neda Agha-Soltan, a philosophy student who was a bystander to the protests when she was shot in the chest.[46] Iran's top prosecutor, Qolam Hossein Mohseni Ejei, warned that further unrest would not be tolerated, stating, "From now on, we will show no mercy toward anyone who acts against national security. They will be confronted firmly."[47]

3. The Student Protests of December 7, 2009 and Mr. Tabarzadi's Wall Street Journal Article

On December 7, 2009, a day recognized in Iran as "Students' Day,"[48] large student protests broke out in opposition to the 2009 Iranian Presidential election.[49] Tens of thousands of students at universities nationwide protested against the Iranian government.

According to reports, more than 200 people were arrested in Tehran alone during the Students' Day protests and many were injured.[50]

Shortly after the protests, on December 17, 2009, Mr. Tabarzadi published an opinion piece in the *Wall Street Journal*.[51] In his op-ed, Mr. Tabarzadi recounted the violence he had

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[42] *See generally* Nazila Fathi, *Iran's Top Leader Dashes Hopes for a Compromise*, NEW YORK TIMES (June 20, 2009) (Ex. 34).

[43] *See generally* Mohsen Makhmalbaf, *I speak for Mousavi. And Iran: The man Iranians want as their leader has been silenced. This is what he wants you to know*, THE GUARDIAN (June 19, 2009) (Ex. 35).

[44] *See generally Iran's Karoubi calls for election cancellation*, REUTERS (June 19, 2009) (Ex. 36).

[45] *Iran: Violent Crackdown on Protesters Widens*, HUMAN RIGHTS WATCH (June 23, 2009) (Ex. 37).

[46] *Id.*

[47] *Iran Protest Continues, Under Siege*, WALL STREET JOURNAL (Dec. 9, 2009) (Ex. 38).

[48] "Students' Day" is an annual commemoration of the killing of three students at a protest at Tehran University on December 7, 1953, in the aftermath of a coup supported by the American and British governments to restore the Shah to power and topple the country's elected prime minister.

[49] *The Lede: Dec 7: Updates on Student Protests in Iran*, N.Y. TIMES (Dec. 7, 2009) (Ex. 39).

[50] *Id.*

[51] Ex. 16.

witnessed by government officials: "In Enghelab Square, I saw a woman in her late 20s get kicked so hard in her spine that she flew through the air. On Ghods Street, near Tehran University, I saw another young woman as her head was pounded into a car by the basij. All the while, they screamed disgusting epithets like 'whore' and worse."[52] Mr. Tabarzadi also wrote: "Dec. 7 proved that the movement for a free, democratic Iran is robust and only growing in strength. If the government continues to opt for violence, there very well may be another revolution in Iran. One side has to step down. And that side is the government – not the people."[53]

4. The Ashura Protests of December 27, 2010 and Mr. Tabarzadi's Arrest

On December 27, 2009, hundreds of thousands of opposition supporters held demonstrations in several cities throughout Iran in commemoration of the day of Ashura, the climax of the Islamic month of Muharram and a period of mourning for the martyrdom of Husayn ibn Ali, the grandson of the Islamic Prophet Muhammad.[54] Iranian authorities responded to the protests by trying to disperse protestors.[55] As a result, violent clashes between the police and protestors occurred, resulting in the police firing shots into the crowds and killing approximately seven individuals, including the nephew of opposition leader Mousavi.[56] Hundreds of individuals were also arrested by Iranian authorities.[57] Of those arrested, Iran's Prosecutor's Office has requested death sentences for at least eleven individuals for committing "crimes against God."[58]

That evening Mr. Tabarzadi was interviewed on Voice of America Persian. He said he had never seen such vast protests, and he cautioned the demonstrators against resorting to violence.[59] The following morning, on December 28, 2009, four individuals who claimed to be representatives of the Prosecutor's Office entered Mr. Tabarzadi's home without presenting an arrest warrant, showing only a general warrant signed by the Attorney General.[60] After searching the house, the officers took two computer hard drives along with papers, articles, books and other items. Considering the officers' actions illegal, Mr. Tabarzadi did not sign a form containing the list of the items confiscated. He was arrested and taken to Ward 209 of

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[52] *Id.*

[53] *Id.*

[54] *On a Holy Day, Protest and Carnage in Tehran*, TIME (Dec. 28, 2009) (Ex. 40).

[55] *Iran protesters killed, including Mousavi's nephew*, BBC NEWS (Dec. 27, 2009) (Ex. 41).

[56] *Abdolreza Ghanbari, Another Ashura Protester, Receives Death Sentence*, INTERNATIONAL CAMPAIGN FOR HUMAN RIGHTS IN IRAN (Mar. 17, 2010) (Ex. 42).

[57] *Id.*

[58] *Id.*

[59] *Dissident Iran Rises*, WALL STREET JOURNAL (Dec. 30, 2009) (Ex. 43).

[60] *Id.*

Iran's Evin prison, a detention center for Iran's political prisoners said to be run by Iran's Intelligence Ministry.[61]

After a short question and answer period, officials threatened to falsely charge Mr. Tabarzadi with being a Communist and to sexually assault him. Officials then began beating Mr. Tabarzadi before throwing him into solitary confinement for approximately 40 days. While in solitary confinement, Mr. Tabarzadi endured repeated interrogations consisting of insults, intimidations, and character assassination.

After approximately 40 days, Mr. Tabarzadi was transferred to another cell in Ward 209 where he remained for 61 days. He was then transferred to Kachouei Prison, located in the city of Karaj. In May 2010, after protesting the execution of Farzad Kamangar, a Kurdish civil society activist, Mr. Tabarzadi was transferred to Rajaee Shahr Prison in the city of Karaj that is notorious for poor conditions, where he remains incarcerated.

Mr. Tabarzadi was not brought before a judge until June 9, 2010 - six months after being unlawfully detained. In September 2010, Mr. Tabarzadi was convicted of five offenses: "insulting the Leader", "insulting the President", "propaganda against the system", "gathering and colluding with intent to harm state security", and "disturbing public order." He was sentenced to nine years in prison and 74 lashes. At his sentencing hearing, Mr. Tabarzadi issued a letter of defense to the Court, which was later secretly released to the public and the press.[62] In that statement, Mr. Tabarzadi and his attorneys objected to his detention and trial on multiple grounds: (1) the trial violated Article 168 of Iran's Constitution, which prescribes that press offenses shall be tried in public and in the presence of a jury (Mr. Tabarzadi was not permitted a trial by jury and his court trial was conducted behind closed doors); (2) Mr. Tabarzadi was subjected to physical torture during his initial two months of imprisonment; (3) Mr. Tabarzadi's imprisonment has been arbitrarily extended on numerous occasions without legal justification; (4) Mr. Tabarzadi's exile to Rajai Shahr prison in the city of Karaj, a prison notorious for inhumane conditions; and (5) the role of Iranian Intelligence units and the Revolutionary Guard in pressuring the judge and their unjust effects on the judicial process.[63] The letter also protested the government's arrest of two of Mr. Tabarzadi's attorneys, Ms. Nasrin Sotoudeh and Mr. Mohammad Oliaifar.[64]

On appeal, Mr. Tabarzadi's sentence was reduced to 8 years in prison and the flogging sentence overturned, after he was reportedly acquitted of "disturbing public order" and "propaganda against the system." He has also been banned from participating in any social activities for ten years.

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[61] *Iran: Former Inmates Shed Light On Secret Prison Ward*, RADIO FREE EUROPE/RADIO LIBERTY (Sept. 27, 2007) (Ex. 44).

[62] Ex. 9.

[63] *Id.*

[64] *Id.*

Since the time of his indictment, conviction, and appeal, the government of Iran has constantly denied Mr. Tabarzadi the right to counsel by denying him access to his attorneys and personally attacking the attorneys themselves. Prior to his trial, two of Mr. Tabarzadi's attorneys were arrested and later sentenced to prison terms for opposition to the government: (1) Ms. Sotoudeh was sentenced to 11 years imprisonment and barred from practicing law and leaving the country for 20 years; and (2) Mr. Oliyaeifard was sentenced to one year imprisonment.[65] Two of Mr. Tabarzadi's other attorneys have also been subjected to harassment and detention: (1) in December 2010, Mr. Jahangir Mahmoudi was detained for 20 days, charged with crimes against the state due, in part, to his representation of Mr. Tabarzadi, and sentenced to 100 days in prison; and (2) in the Fall 2010, Ms. Giti Pourfazel was summoned to court by Iranian authorities and subjected to harassment. The Iranian government's harassment and intimidation of these attorneys stems from a common fact: the attorneys have defended several political prisoners, including Mr. Tabarzadi, and have been accused of publicity against the regime or acting against national security because they publicized flaws in the judicial process that led to the arrest and sentencing of their clients.

On May 1, 2011, Mr. Tabarzadi was informed of new charges against him for propagating lies. It is believed that the new charges are related to the release and publication of Mr. Tabarzadi's defense.

Since his detention over 16 months ago, Mr. Tabarzadi has lost considerable weight suffered from illness and malnourishment as a result of extremely poor detention conditions. Mr. Tabarzadi has also participated in several long-term hunger strikes in protest of the Iranian government's abuse of political prisoners. The combination of these hunger strikes and poor detention conditions have placed Mr. Tabarzadi's life in serious jeopardy.

5. The Iranian Government's Abuse of Detainees

Iran is a party to the International Covenant on Civil and Political Rights ("ICCPR") which prohibits subjecting any person to "cruel, inhuman, or degrading treatment or punishment."[66] The prohibition of torture is also recognized in the Iranian Constitution under Article 38.[67] However, Iran has a widely documented history of violating its obligations under the ICCPR.[68]

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[65] *See generally* Exs. 8, 9, 10.

[66] International Covenant on Civil and Political Rights, G.A. Res. 2200a (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976 (Ex. 45).

[67] Ex. 5.

[68] *See generally* Report of the Working Group on Arbitrary Detention, *Visit to the Islamic Republic of Iran,* E/CN.4/2004/3/Add.2 (June 27, 2003) (Ex. 46); Resolution Adopted by the General Assembly, 63rd Sess., 63/191 (Feb. 24, 2009) (Ex. 47); Resolution Adopted by the General Assembly, 62rd Sess., 62/168 (March 20, 2008) (Ex. 48); Resolution Adopted by the General Assembly, 61st Sess., 61/176 (March 1, 2007) (Ex. 49).

The use of torture and cruel, inhuman and degrading treatment is particularly common in Evin Prison, a detention center located in northwestern Iran. Evin is the primary prison used to detain political prisoners and prisoners of conscience.[69] As noted by Human Rights Watch, the authorities at Evin Prison "use threats of torture, threats of indefinite imprisonment and torture of family members, deception and humiliation, multiple daily interrogations lasting up to five or six hours, denial of medical care, and denial of family visits."[70]

Alongside the official prison system in Iran there also exists a system of hidden prisons called the "*nahad-eh movazi*" ("parallel institutions"), which are operated by plainclothes officers and generally believed to be run by the Iranian Revolutionary Guards Corp and the *basij* militia.[71] These hidden prisons specialize in the use of solitary confinement to mentally "break" prisoners, thereby facilitating written or videotaped confessions of guilt.[72] Evin is the site of one such institution, Ward 209. Ward 209 is a "'prison within a prison', fitted out for the systematic, large-scale use of absolute solitary confinement, frequently for very long periods."[73] As noted by the Working Group, the Iranian government uses solitary confinement in Ward 209 to extract "confessions" followed by "public repentance", usually on television.[74]

Since the June 12th elections, there is strong evidence that Iranian authorities have systematically abused detainees arrested during demonstrations who had protested the election results.[75] Documented reports evidence a pattern of actual and threatened physical assault of detainees, threats to detainees' family members, threats of indefinite detention, multiple daily interrogations lasting up to six hours, sexual harassment, beatings, forced stress positions, amputation of limbs, and execution.[76] In addition, there is evidence that both male and female prisoners have been subjected to systematic rape and genital mutilation.[77]

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[69] *See generally* Ex. 11.

[70] *Id.* at 13.

[71] *Id.* at 13-14.

[72] *Id.* at 15-20.

[73] Ex. 46 at ¶ 54.

[74] *Id.*

[75] *See generally* Nazila Fathi, *Reformist Details Evidence of Abuse in Iran's Prisons*, NEW YORK TIMES (Sept. 15, 2009) (Ex. 50) (Leading opposition leader, Mehdi Karroubi, issues statement alleging use of rape in Iranian prisons as means of coercion.); Nazila Fathi, *Iran Opposition Leader's Aide is Freed*, NEW YORK TIMES (Sept. 14, 2009) (Ex. 51) (Political aide arrested for investigating prisoner abuse.); Ramin Mostaghim and Borzou Daragahi, *Iranian cleric stands his ground against authorities*, L.A. TIMES (Sept. 9, 2009) (Ex. 52) (Iranian cleric stands by allegations of rape as tool of coercion used in Iranian prisons); The Secretary-General, *Report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, delivered to the General Assembly*, U.N. Doc. A/63/459 (Oct. 1, 2008), at ¶¶ 21-33 (Ex. 53) (Multiple confirmed reports, as well as allegations of physical and mental abuse, amputation of limbs, and corporeal punishment commonly used in Iranian prisons.); Ex. 11 (Detailing the widespread use of solitary confinement as a means to "break" prisoners and extract confessions).

[76] *See generally Witness Statement of Omid Memarian*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Aug. 6, 2009) at 3-5, 8-9 (Ex. 54) (Detainee was beaten, left in

(continued...)

In a sign of the extreme severity and overwhelming evidence of the current violations, the Iranian government itself has admitted that abuses have occurred and that protestors were subject to extensive torture and rape.[78]

B. Analysis

For the reasons stated below, the arrest and detention of Heshmat Tabarzadi violates rights and fundamental freedoms established in the Universal Declaration of Human Rights ("UDHR"),[79] the International Covenant on Civil and Political Rights,[80] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles"),[81] and the Standard Minimum Rules for the Treatment of Prisoners.[82]

The deprivation of the Petitioner's liberty falls under Categories I, II and III of the Working Group's classification of cases.

This case involves Category I because the Iranian government cannot invoke any legal basis for justifying the Petitioner's deprivation of liberty. As the Working Group held in Opinion No. 12/2006, there is no legal basis for the Petitioner's deprivation of liberty where the authorities denied him access to a lawyer and failed to bring him before a judge in the five months since his arrest.[83] In this case, the Iranian authorities failed to promptly bring Mr.

(...continued from previous page)
solitary confinement, suffered threats to his family's safety, threats of indefinite detention, was sexually harassed, threatened with rape.); *Witness Statement of Arash Sigarchi*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Oct. 23, 2008) at 6, 12 (Ex. 55) (Detainee was beaten, left in solitary confinement for 20 days, strapped to an operating ceiling fan, had wrists and ankles tied while being hung upside down.); *Iran: Detainees Describe Beatings, Pressure to Confess*, HUMAN RIGHTS WATCH (July 8, 2009) (Ex. 56).

[77] Michael Slackman, *Reformer in Iran Publishes Account of a Prison Rape,* NEW YORK TIMES (Aug. 25, 2009) (Ex. 57).

[78] Ali Akbar Dareini, *Iranian Police Chief Admits Prisoner Abuse,* THE ASSOCIATED PRESS (Aug. 9, 2009) (Ex. 58).

[79] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) (Ex. 59).

[80] Ex. 45.

[81] Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) (Ex. 60).

[82] Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977) (Ex. 61).

[83] *See generally Abdurahman Nacer Abdullah al-Dahmane al-Chehri & Abdelghani Saad Muhamad al-Nahi al-Chehri v. Saudi Arabia*, A/HRC/4/40/Add.1, Opinion No. 12/2006 (Ex. 62).

Tabarzadi before an independent judiciary – waiting over 6 months after his detention before permitting him access to a court.

This case also involves Category II because the Petitioner's deprivation of liberty is the result of his exercise of fundamental rights and freedoms guaranteed under the UDHR and the ICCPR. As the Working Group held in Opinion No. 15/2006,[84] the deprivation of liberty resulting from one's exercise of the rights to opinion and association is in contravention of articles 9, 10, 19, and 20 of the UDHR and articles 9, 14, 19, and 21 of the ICCPR.[85] Here, the underlying acts resulting in Petitioner's arrest and detention were his exercise of the right to free opinion and expression, to peaceful assembly and association, and to take part in the conduct of public affairs.

Lastly, this case involves Category III because the Iranian government is violating numerous international norms including those relating to the right to a fair trial in such a grave manner that it has deemed the deprivation of liberty arbitrary in character. The Iranian government is violating many of the international norms to fair trial by preventing him access to counsel through their systematic and continuous harassment and detention of Mr. Tabarzadi's lawyers.

CATEGORY I

V. THE IRANIAN GOVERNMENT HAS NO LEGAL BASIS FOR JUSTIFYING THE PETITIONER'S ARREST AND DETENTION

Iran is a party to the UDHR and the ICCPR.[86] Under Article 9 of the UDHR and Article 9 of the ICCPR, "[n]o one shall be subjected to arbitrary arrest, detention, or exile."[87] According to the Human Rights Committee, the interpretative body for the ICCPR, even in the case of "preventative detentions" for reasons of public security, neither arrest nor detention may be arbitrary and must be based on lawful procedures, information of the reasons must be given, and court control of the detention must be available, as well as compensation in the case of a breach.[88]

Mr. Tabarzadi's arrest and detention is in contravention of these international norms and Iranian law. Article 32 of Iran's Constitution prohibits arbitrary arrest and requires that "[i]f someone is detained, the subject matter of the charge, with reasons (for bringing it), must be

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[84] *Ryad Hamoud Al-Darrar v. Syrian Arab Republic*, A/HRC/4/40/Add.1, Opinion No. 15/2006, at ¶ 17 (Ex. 63).

[85] Iran ratified the ICCPR on June 24, 1975.

[86] *See generally* Ex. 45.

[87] *See* Ex. 59; Ex. 45.

[88] *General Comment No. 8*, U.N. Human Rights Committee, 16th Sess., 30/06/82 (1982), at ¶ 4 (Ex. 64).

immediately communicated and explained in writing to the accused."[89] The same provision states that "[w]ithin at most 24 hours the file on the case and preliminary documentation must be referred to the competent legal authority. Legal procedures must be initiated as early as possible."[90]

This right is also guaranteed under article 9(2) of the ICCPR, which states that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."[91]

Article 35 of the Iranian Constitution states that "both parties to a lawsuit have the right in all courts of law to select an attorney, and if they are unable to do so, arrangements must be made to provide them with legal counsel."[92] Article 128 of the Iranian *Code of Criminal Procedure*, extends this right and gives the accused the right to have an attorney present throughout any interrogation by government forces.[93] On May 2, 2004, the Iranian parliament expanded this right with passage of the *Law of Protection of Citizens' Rights and Respect to Legitimate Freedom.* Article 3 of that law obligates the courts to observe the right of a defendant to defend himself or herself and provides the accused the opportunity to obtain an attorney and an expert.

Mr. Tabarzadi was not informed of the charges pending against him despite being detained in prison for over six (6) months. Moreover, during the entire process, the Iranian government continuously harassed and detained Mr. Tabarzadi's lawyers, effectively denying him access to counsel. The authorities placed the Petitioner in solitary confinement for approximately 40 days, indicted and convicted him, and denied his appeal, without allowing him effective access to counsel. Accordingly, there can be no legal justification for Mr. Tabarzadi's detention under Iranian law and his continued detention is arbitrary and in violation of Article 9 of the UDHR and the ICCPR.

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[89] Ex. 5.

[90] *Id.*

[91] Ex. 45. The ICCPR and all international conventions ratified by the Iranian Government are incorporated into Iranian domestic law under Article 9 of the Iranian Civil Code which states that international conventions ratified by Iran are equal to any law passed by the parliament.

[92] Ex. 5.

[93] Interpretative Note 3 to Article 128 of the Code of Criminal Procedure states that in situations of national security, revolutionary courts have the authority to exclude counsel at their discretion from being heard in cases covered by the Article. However, as the Working Group in has observed its Reports on the Country Visit to Iran, there is no constitutional authority for this power since it directly violates Article 32 of Iran's Constitution. Ex. 46 at ¶ 51. Moreover, the subsequent enactment of the *Law of Protection of Citizens' Rights and Respect to Legitimate Freedom* creates an unequivocal right to have counsel during all judicial proceedings without either limitation or restriction. Altogether, this supports the Working Group's position that there is "no constitutional legitimacy" and "questionable authority" by Iranian courts to exclude counsel at their discretion from hearings. *Id.*

CATEGORY II

VI. THE PETITIONER IS BEING HELD BECAUSE OF THE EXERCISE OF HIS FUNDAMENTAL RIGHTS AND FREEDOMS

The deprivation of liberty is arbitrary when it results from a judgment or sentence punishing the exercise of rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and also by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR.[94] These fundamental rights include the right of all people to exercise the freedom of opinion and expression, to peaceful assembly and association, and to take part in the conduct of public affairs. Mr. Tabarzadi was detained for peacefully exercising these fundamental rights and for peacefully supporting public protests against the Iranian government and for publishing his viewpoints regarding the Iranian government.[95] As such, the government's detention of Mr. Tabarzadi since December 28, 2009 is arbitrary within the meaning of Category II of the principles applicable in the consideration of cases submitted to the Working Group.

A. The Petitioner's Detention is Based on the Exercise of His Right to Freedom of Opinion and Expression

Article 19 of the UDHR and the ICCPR guarantees the fundamental right that "[e]veryone has [to] freedom of opinion and expression."[96] This right includes the "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[97] The right to freedom of opinion and expression that Article 19 guarantees may only be restricted when the restriction is necessary "[f]or respect of the rights or reputations of others" or "[f]or the protection of national security or of public order (*ordre public*), or of public health or morals."[98]

Despite these restrictions, there can be no limitation imposed on the right to free opinion and expression that would impair the right itself.[99] As noted by the Human Rights Committee, the interpretative body of the ICCPR:

> States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States

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[94] *See Hu Shigen v. China*, A/HRC/4/40/Add.1, Opinion No. 38/2005, at ¶ 3 (Ex. 65).

[95] Ex. 59 at Article 19; Ex. 45 at Article 19.

[96] Ex. 59; Ex. 45.

[97] Ex. 59 at Article 19; Ex. 45 at Article 19.

[98] Ex. 45 at Article 19(3).

[99] *See 'Abdel Rahman al-Shaghouri v. Syrian Arab Republic*, E/CN.4/2006/7/Add.1, Opinion No. 4/2005, at ¶ 13 (Ex. 66) (holding that substantiated references by the Government to the interests of national security and the reputation of the country are insufficient reasons to curb the right to freedom of expression. The Government must demonstrate that the restrictions were "absolutely necessary and were proportionate to the aim pursued.").

must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.[100]

The Working Group has also noted that the "freedom of expression protects not only opinions and ideas that are favorably received or considered inoffensive or of no account, but also opinions and ideas that may offend public figures, including political leaders."[101] Particularly where the expression of an opinion is not couched in violent terms, the government may not detain an individual strictly because the opinion is one critical of the State.[102]

With respect to Iran, the Working Group has found on multiple occasions, including in its *Report on the Visit to the Islamic Republic of Iran*, that the jurisprudence of Iranian courts is extremely restrictive of freedom of opinion and expression.[103]

The Petitioner's arrest came less than a day after he expressed support for peaceful demonstrations in Iran on live radio and less than a month after publishing an opinion editorial in the Wall Street Journal regarding the same. The Petitioner did not engage in, nor was he charged with engaging in, violent conduct. Indeed, the government convicted the Petitioner with violating provisions of the Islamic Penal Code which outlaw "insulting the Leader," "insulting

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[100] *General Comment No. 31*, U.N. Human Rights Committee, 18th Sess., CCPR/C/21/Rev.1/Add.13 (2004), at ¶ 6 (Ex. 67).

[101] *See Mohammed Abbou v. Tunisia*, A/HRC/4/40/Add.1, Opinion No. 41/2005, at ¶ 28 (Ex. 68).

[102] *Id.* at ¶ 27; *see also Peng Ming v. China*, A/HRC/4/40/Add.1, Opinion No. 43/2005, at ¶ 23 (Ex. 69) ("Working Group considers that any limitation of Mr. Peng Ming's legitimate political and non-violent activities carried out peacefully and in exercise of his rights to freedom of association and expression would be contrary to the international human rights law enshrined in the Universal Declaration of Human Rights."); *see also Abdenacer Younes Meftah Al Rabassi v. Libyan Arab Jamahiriya*, E/CN.4/2006/7/Add.1, Opinion No. 27/2005, at ¶ 10 (Ex. 70) ("It is the position of the Working Group that freedom of expression protects not only opinions and ideas that are favourably received or regarded as inoffensive, or as a matter of indifference, but also those that may offend actors in public life and politicians, including political leaders. The peaceful expression of one's opinion, including through e-mail, if it is not carried out violently, and does not constitute incitement to national, racial or religious hatred or violence, is within the boundaries of freedom of expression.").

[103] *See generally* Ex. 46; Ex. 1 at ¶ 25; *Abdolfattah Soltani v. Islamic Republic of Iran*, A/HRC/4/40/Add.1, Opinion No. 26/2006, at ¶ 16 (Ex. 71); *Arash Sigarchi v. Islamic Republic of Iran*, A/HRC/4/40/Add.1, Opinion No. 19/2006, at ¶ 9 (Ex. 72); *Syamak Pourzand v. Islamic Republic of Iran*, E/CN.4/2004/3/Add.1, Opinion No. 8/2003, at ¶ 8 (Ex. 73); *Ezzatollah et al. v. Islamic Republic of Iran*, E/CN.4/2003/8/Add.1, Opinion No. 30/2001, at ¶ 6 (Ex. 74); *Abbas Amir-Entezam v. Islamic Republic of Iran*, E/CN.4/2002/77/Add.1, Opinion No. 39/2000, at ¶ 6 (Ex. 75); *Ali-Akbar Saidi-Sirjani et al. v. Islamic Republic of Iran*, E/CN.4/1997/4/Add.1, Opinion No. 14/1996, at ¶ 7 (Ex. 76); *Manouchehr Karimzadeh v. Islamic Republic of Iran*, E/CN.4/1995/31/Add.2, Opinion No. 28/1994, at ¶ 6 (Ex. 77); *Ali Ardalan et al. v. Islamic Republic of Iran*, E/CN.4/1993/24, Opinion No. 1/1992, at ¶ 6 (Ex. 78).

the President," "propaganda against the system," "gathering and colluding with intent to harm state security," and "disturbing public order." These provisions of the Penal Code are generally used – and were used against the Petitioner – to target the expression of opinions which oppose the current government. Accordingly, the only motivation to imprison Mr. Tabarzadi is to deprive him of his freedom of opinion and expression and prevent him from speaking out against the State. The Petitioner's detention is part of an effort to silence his peaceful expression of opinion and therefore incompatible with his freedom of opinion and expression.

B. The Petitioner's Detention is Based on the Exercise of His Right to Freedom of Peaceful Assembly and Association

Article 20 of the UDHR and Articles 21 and 22 of the ICCPR protect the right that everyone has to "freedom of peaceful assembly and association."[104] Peaceful assembly is also expressly guaranteed by the Constitution of Iran under Article 27.[105] The Human Rights Committee has noted that "attacks against human rights defenders and persons participating in peaceful demonstrations should be promptly investigated and the perpetrators disciplined or punished as required."[106] The right is also violated when the government prohibits or forcibly disperses peaceful demonstrations organized by civil society while allowing the organization of marches in support of the President in power.[107] The discriminatory nature of these actions constitute a violation of the government's obligation under Article 2(1) of the ICCPR to respect and ensure the right to free assembly and association to all persons within its territory without distinction of any kind, including political opinion.[108]

Despite the protections afforded to peaceful protestors under both Iranian and international law, the Petitioner was arrested and detained after peacefully supporting demonstrations that had occurred on December 7 and 27, 2009. The Petitioner's arrest was part of the Ahmadinejad government's systematic efforts to arrest and detain all individuals supporting opposition candidates.[109] The Petitioner's detention is therefore incompatible with his right to freedom of peaceful assembly and association.

C. The Petitioner's Detention is Based on the Exercise of His Right to Take Part in the Conduct of Public Affairs

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[104] Ex. 59; Ex. 45.

[105] Ex. 5 ("Unarmed assemblies and marches may be freely organize, provided that no violation of the foundations of Islam is involved.").

[106] *Concluding observations of the Human Rights Committee: Argentina, 03/11/2000*, U.N. Human Rights Committee, 17th Sess., CCPR/CO/70/ARG (2000), at ¶ 13 (Ex. 79).

[107] *Concluding observations of the Human Rights Committee: Togo*, U.N. Human Rights Committee, 76th Sess., CCPR/CO/76/TGO (2002), at ¶ 18 (Ex. 80).

[108] *See generally General Comment No. 18*, U.N. Human Rights Committee, 37th Sess., 10/11/89 (1989) (Ex. 81).

[109] *See IRAN: Five charged over Ashura protests as long list of prominent detainees emerges,* THE LOS ANGELES TIMES (Jan. 7, 2010) (Ex. 82).

Article 25 of the ICCPR provides that "[e]very citizen shall have the right and the opportunity . . . to take part in the conduct of public affairs."[110] To "take part in public affairs" includes the right to express one's views nonviolently about the government, to debate issues pertaining to a country's leadership, and to communicate nonviolently with leaders.[111] As noted by the Human Rights Committee, "[f]reedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected."[112] Individuals take part in the conduct of public affairs "by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association."[113]

The Human Rights Committee has concluded that without the right to free expression of opinion, association, and peaceful assembly, there can be no enjoyment of the right to take part in the conduct of public affairs:

> In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.[114]

As such, the right to freedom of association and to engage in political activity, either individually or collectively, "is an essential adjunct to the rights protected by article 25."[115]

Mr. Tabarzadi was arrested and is being detained on account of supporting public protests on December 7 and 27, 2009 and for speaking out against the Iranian government. His arrest is part of a series of arrests of protestors who were critical of the Iranian government. It was precisely for this reason that Mr. Tabarzadi was arrested the morning following his appearance on Voice of America Persian where he publicly supported Iranian protestors. The government's deprivation of the Petitioner's freedom is therefore in breach of his right to take part in the conduct of public affairs.

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[110] Ex. 45.

[111] *See generally General Comment No. 25*, U.N. Human Rights Committee, 57th Sess., CCPR/C/21/Rev.1/Add.7 (1996) (Ex. 83).

[112] *Id.* ¶ 12.

[113] *Id.* ¶ 8.

[114] *Id.* ¶ 25.

[115] *Id.* ¶ 26.

D. The Petitioner's Arrest Violated the Rights Described in the Body of Principles

The arrest and detention of the Petitioner also violated the right to be assisted by counsel as described in the Body of Principles, which reinforces its arbitrariness. Under Principle 11, "[a] detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law."[116] Mr. Tabarzadi has been actively denied the right to be fully assisted by counsel. The government kept Mr. Tabarzadi in solitary confinement for almost 40 days without access to counsel. Prior to trial, the Iranian government constantly harassed Mr. Tabarzadi's lawyers, including arresting and imprisoning two of his trial attorneys. These actions effectively denied Mr. Tabarzadi of assistance to counsel. The Iranian government has thus violated the fundamental rights enshrined under Principle 11.

CATEGORY III

VII. THE PETITIONER'S DETENTION IS ARBITRARY IN CHARACTER BECAUSE IT VIOLATES FUNDAMENTAL NORMS OF THE RIGHT TO FAIR TRIAL

As explained in the preceding sections, Iran's detention of Mr. Tabarzadi is arbitrary because it denied him the right to exercise his fundamental freedoms of opinion, expression, peaceful assembly and association, and the right to participate in public affairs. The government exacerbated these violations by effectively denying Mr. Tabarzadi the right to counsel through their systematic and continuous harassment and mistreatment of Mr. Tabarzadi's lawyers. The government of Iran has also violated Mr. Tabarzadi's right to be free from torture and cruel, inhumane, and degrading treatment.

A. The Right to Counsel and to Prepare a Defense Has Been Violated

As detailed above, the government has detained Mr. Tabarzadi and denied him the opportunity to freely and confidentially consult with an attorney. As such, the government's actions violate Article 10 of the UDHR, Article 14(3) of the ICCPR, and Principles 18(1) (right to consult with counsel), 18(2) (right to be allowed time to consult with counsel), and 18(3) (right to communicate with counsel confidentially) of the Body of Principles.

As noted by the Human Rights Council, "[t]he right to counsel is a due process right that is fundamental to ensuring fairness and justice in proceedings."[117] As such, Article 14(3) of the

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[116] Ex. 60.

[117] *Report of the Special Rapporteur on the human rights of migrants: United States*, U.N. Human Rights Council, 7th Sess., A/HRC/7/12/Add.2 (2008), at ¶ 114 (Ex. 84); *see also Yong Hun Choi v. China*, E/CN.4/2006/7/Add.1, Opinion No. 20/2005, at ¶ 20 (Ex. 85) ("The Working Group has many times emphasized that the right of the accused to receive assistance from counsel of his own choosing and, where appropriate, from a court-appointed attorney is a fundamental right of any person accused of a criminal offence, and particularly when the person is deprived of liberty.").

ICCPR guarantees anyone accused of a criminal charge "adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."[118] The Human Rights Committee has held that "the right to counsel arises at the moment of arrest."[119] State interference with the right to counsel during pre-trial criminal detention, in particular during interrogations, is a violation of Article 9 of the ICCPR.[120]

Mr. Tabarzadi was not permitted any right to counsel for the first 40 days of his detention, during which time he was subject to solitary confinement and repeated interrogation. Mr. Tabarzadi's lawyers were also subject to constant harassment. Two of his principal lawyers were imprisoned prior to Mr. Tabarzadi's trial due, in part, to their representation of him. The Iranian government's effective denial of counsel during this time prevented Mr. Tabarzadi from adequately preparing his defense when charges were brought against him and when he was brought to trial and upon his appeal. The Petitioner has, therefore, been denied the right to counsel under Article 10 of the UDHR and Article 14 of the ICCPR.

B. The Petitioner Has Been Subject to Torture and Cruel, Inhuman and Degrading Treatment

Under Iranian law, law enforcement officers are prohibited from using "any kind of torture to extract a confession of guilt or to obtain information."[121] Article 5 of the UDHR also guarantees that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[122] This right is also afforded under Article 7 of the ICCPR.[123] The Human Rights Committee has stipulated that use of prolonged solitary confinement can amount to a breach of Article 7.[124] Principle 7 of the UN Basic Principles for the Treatment of Prisoners also states that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged."[125]

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[118] Ex. 45.

[119] *Concluding Observations of the Human Rights Committee: Tajikistan*, U.N. Human Rights Committee, 84th Sess., CCPR/CO/84/TJK (2005), at ¶ 11 (Ex. 86).

[120] *See Concluding Observations of the Human Rights Committee: Republic of Korea*, U.N. Human Rights Committee, 88th Sess., CCPR/C/KOR/CO/3 (2006), at ¶ 14 (Ex. 87).

[121] Ex. 5 at Article 38. Article 38 also notes that "compelling people to give evidence, or confess or take an oath is not allowed. Such evidence or confession or oath is null and void. Any person infringing this principle is to be punished in accordance with the law."

[122] Ex. 45.

[123] *Id.* ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.").

[124] *General Comment No. 20*, U.N. Human Rights Committee, 44th Sess., 10/03/92 (1992), at ¶ 6 (Ex. 88).

[125] U.N. Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990), at Principle 7 (Ex. 89).

The UN Committee against Torture has made similar statements,[126] with particular reference to the use of solitary confinement during pre-trial detention.[127] As noted by the Human Rights Committee, "solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need."[128] As such the use of solitary confinement constitutes torture where it is not a measure of last resort, used for a short period of time, under strict supervision, and with a possibility of judicial review.[129] With respect to Iran, the Working Group has already held that the use of pre-trial solitary confinement, particularly when it is of long duration "can be likened to inhumane torture within the meaning of the Convention against Torture."[130]

Upon his arrest, the Petitioner was detained for almost 40 days in solitary confinement without access to counsel or any possibility of judicial review. Petitioner was interrogated for an extensive period of time and subject to severe physical beatings. He was also threatened with false charges and sexual assault. As a result his detention and malnourishment, the Petitioner has lost significant weight. The government's prolonged detention of Mr. Tabarzadi, coupled with the use of excessive force, violated Petitioner's fundamental right to be free from torture and cruel, inhuman and degrading treatment.

CONCLUSION

VIII. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

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[126] Although Iran is not a party to the Convention Against Torture, the views of the U.N. Committee Against Torture are highly persuasive as the foremost legal authority on the interpretation and question of torture.

[127] *See generally Conclusions and recommendations of the Committee against Torture: Denmark*, U.N. Committee Against Torture, 38th Sess., CAT/C/DNK/CO/5 (2007), at ¶ 14 (Ex. 90); *Conclusions and recommendations of the Committee against Torture: Norway*, U.N. Committee Against Torture, 28th Sess., CAT/C/CR/28/3 (2002), at ¶ 5 (Ex. 91); *Conclusions and recommendations of the Committee against Torture: Luxembourg*, U.N. Committee Against Torture, 28th Sess., CAT/C/CR/28/2 (2002), at ¶ 5 (Ex. 92).

[128] *Concluding observations of the Human Rights Committee: Denmark*, U.N. Human Rights Committee, 70th Sess., CCPR/CO/70/DNK (2000), at ¶ 12 (Ex. 93).

[129] *See* Ex. 91 at ¶ 14.

[130] Ex. 46 at ¶ 54.

According to Resolution 1 (XXIV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, exhaustion of domestic remedies is not required "if it appears that such remedies would be ineffective or unreasonably prolonged."[131]

In this case, no effective domestic remedies are available to the Petitioner. The Iranian government has made every effort to thwart the Petitioner's attempts to obtain justice, including detaining him in solitary confinement, effectively denying him access to his attorney, and preventing him from obtaining access to an impartial judiciary. The Petitioner has no other recourse but to petition the United Nations Working Group on Arbitrary Detention.

IX. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

Bahram Seyedin-Noor
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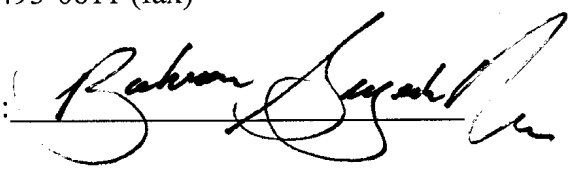
Signature: 

[131] *See* Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1 (XXIV), E/CN.4/1070 at 50-51(1971) (Ex. 94).

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REFERENCE: G/SO 218/2

10 November 2011

Dear Mr. Milaninia,

Following the communication received from your organization on 15 August 2011, the Working Group on Arbitrary Detention transmitted the case of detention of Mr. Heshmatollah Tabarzadi to the Government of the Islamic Republic of Iran. On 4 November 2011, the Working Group received the attached reply.

In order to consider this case during its 62nd session, which will take place in Geneva from 16 to 25 November 2011, the Working Group would like to know your comments or observations to the Government's reply at your earliest convenience through our fax number +41 22 917 90 06, our e-email address (wgad@ohchr.org) or our postal address:

Working Group on Arbitrary Detention
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix,
CH-1211 Genéve 10
Switzerland

Please note that all information given to you by the Working Group on this matter should be treated with utmost discretion.

Thank you again for your cooperation with the Working Group.

Yours sincerely,

Miguel de la Lama
Secretary
Working Group on Arbitrary Detention

Mr. Nema Milaninia
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In connection with Mr. Heshmatollah Tabarzadi's case, the High Council for Human Rights, affiliated to the judiciary of the Islamic Republic of Iran, has approached all pertinent judicial authorities and courts. According to information received, Mr. Tabarzadi has been charged with propaganda against the system of the Islamic Republic of Iran, insulting the leadership of the country, endangering national security through unlawful association, conspiracy with the intention to disturb public security and disruption of public order.

Mr. Tabarzadi was arrested on 28 December 2009. Sometime later branch 26 of Tehran Court of Revolution tried the accused and by virtue of articles 500, 514, 610 and 618 of the Islamic Penal Code (IPC) found Mr. Tabarzadi guilty of all charges and sentenced him to one year of *Ta'ziri* (in Islamic jurisprudence/Figh this term refers to sentences which carry variable levels of punishment, as determined by law and the judge respectively) imprisonment for engaging in propaganda against the system of the Islamic Republic of Iran, two years of additional *Taziri* imprisonment for insulting the country's Leadership, also five years of *Taziri* imprisonment for association and conspiracy with the intention of endangering national security, and one year *Taziri* imprisonment and 74 *Taziri* lashes for disrupting public order by participating in illegal gatherings.

During his trial, Mr. Tabarzadi was defended by a team of attorneys -- namely Mr. Mohammad Oliayi-Fard, Mr. Abdolfattah Soltani, Mr. Jahangir Mahmoudi-nejad, Ms. Nasrin Sotoudeh, Ms. Giti Pourfazel and Ms. Sara Najibi. The court's initial verdict was appealed by Mr. Jahangir Mahmoudi-nejad. As a result branch 54 of Tehran's court of appeals reexamined the verdict. However, on the basis of Para a of IPC article 275, the Court, through its verdict No. 968 dated 1 January 2011, rejected the appeal. However, the court cleared Mr. Tabarzadi of the particular charge of "disrupting public order through participation in illegal gatherings".

It is worth noting that before his most recent arrest -- and from 1996 onwards -- Mr. Tabarzadi had been convicted of different offenses, including propaganda against the system of the Islamic Republic of Iran. In those instances two of Mr. Tabarzadi's *Taziri* imprisonment sentences, were replaced by fines and in another instance he was given a suspended prison sentence. Also in 2004, Mr. Tabarzadi was sentenced to fourteen years of *Taziri* imprisonment by Tehran's court of revolution (verdict No. 150/26/83 dated 20 December 2004). The court's verdict was based on articles 498, 500, 514 and 698 of the IPC. The verdict was contested by Mr. Tabarzadi's attorney; Mr. Ali Akbar Behmanesh. As a result the case was reexamined by branch 36 of Tehran appeal court and later by branch 7 of the Supreme Court. Ultimately Mr. Tabarzadi was sentenced to nine years of *Taziri* imprisonment and banned from engaging in social activities for 10 years.

According to information provided to the High Council for Human Rights, despite his definitive conviction, on Islamic compassionate grounds, Mr. Tabarzadi was given leave from prison. However, Mr. Tabarzadi abused his leave and violated his pledge to refrain from endangering national security by engaging in activities that ran contrary to the higher interests of the system of the Islamic Republic of Iran.

Presently, Mr. Tabarzadi is serving his sentence and like other prisoners, is accorded his legal rights.

November 14, 2011

VIA E-MAIL & FASCMILE

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Re: In the Matter of Heshmatollah Tabarzadi v. Government of the Islamic Republic of Iran – Comment to Government's Reply

To the Working Group on Arbitrary Detention:

We write to provide the Working Group our comments on the Government of the Islamic Republic of Iran's (the "Government") reply dated 4 November 2011 in the matter of Heshmatollah Tabarzadi (the "Reply"). This matter is currently scheduled for consideration by the Working Group during its 62nd Session from 16 to 25 November 2011.

We are in receipt of the Working Group's letter dated 10 November 2011 attaching the Reply. It is unclear from the letter whether the enclosed Reply was intended to be complete or whether it was just a portion of a larger response by the Government. On its face, the enclosed Reply fails to address the key issues raised in the Petition for Relief, including the following:

(1) The Government had no legal basis justifying Mr. Tabarzadi's arrest and detention. Iranian law requires that the accused be provided access to counsel through any interrogation by government forces and to be informed of any charges immediately upon detention. The Government denied Mr. Tabarzadi these rights.

(2) At the time of his arrest, Mr. Tabarzadi was held *incommunicado* in solitary confinement for approximately 40 days during which time he was not provided access to counsel.

(3) For at least six months following his arrest and detention, Mr. Tabarzadi was not informed of the charges against him.

(4) The Government subjected Mr. Tabarzadi's attorneys to constant intimidation and harassment, including imprisonment, before, during and after his trial and appeal. As a result, Mr. Tabarzadi was effectively denied counsel or from adequately preparing his defense at trial and appeal.

(5) The Government detained Mr. Tabarzadi in an effort to punish him for his exercise of rights and freedoms guaranteed under the Universal Declaration of Human Rights ("UDHR") and the International Covenant for Civil and Political Rights ("ICCPR"). This is evident by the fact that he was arrested less than a day after he expressed support for peaceful demonstrations in Iran on live radio and less than a month after publishing an opinion editorial in the Wall Street Journal regarding the same.

(6) Before and during his detention, the Government's agents physically abused Mr. Tabarzadi and subjected him to torture and cruel, inhuman and degrading treatment.

By failing to address these key arguments, the Government has failed to answer the *prima facie* case established in the Petition of the Government's deprivation of Mr. Tabarzadi's liberty under Categories I, II and III of the Working Group's classification of cases. Instead, the Government's Reply makes two categorical assertions: (1) it suggests that Mr. Tabarzadi was defended by a team of attorneys at trial and on appeal; and (2) it provides a recitation of the laws Mr. Tabarzadi was found charged and convicted under.

Regarding the Government's first point, as described in the Petition – and uncontested by the Government – although Mr. Tabarzadi had counsel, the Iranian Government subjected his attorneys to constant imprisonment and harassment. The Government also arrested two of Mr. Tabarzadi's attorneys, Ms. Nasrin Sotoudeh and Mr. Mohammad Oliyaeifard, and sentenced them to prison terms in part for their representation of Mr. Tabarzadi. The Government also harassed and detained three of Mr. Tabarzadi's other attorneys, Mr. Jahangir Mahmoudi, Ms. Giti Pourfazel, and Mr. Abdolfattah Soltani, again depriving Mr. Tabarzadi of their effective counsel.

A superficial showing, as made by the Government, that an individual has counsel is insufficient to satisfy the rights to counsel and to prepare a defense afforded under Article 10 of the UDHR, Article 14(3) of the ICCPR, and Principles 18(1) and (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. When the state interferes with those rights, as the Government has done here, then the right to counsel and to prepare a defense are effectively denied.[1]

[1] *See Concluding Observations of the Human Rights Committee: Republic of Korea*, U.N. Human Rights Committee, 88th Sess., CCPR/C/KOR/CO/3 (2006), at ¶ 14.

As to the Government's second point, a recitation of the offenses an individual is charged and convicted of is insufficient to refute a *prima facie* showing concerning the deprivation of one's liberties. In *Kiarash Kamrani v. Islamic Republic of Iran*, Opinion No. 20/2011 (2011), the Working Group expressly rejected similar arguments posed by the Government. In *Kamrani*, the Working Group held that "[a] mere listing up of the judgments and other decisions is not sufficient" to answer a *prima facie* case.[2] The Working Group noted that the Government must provide "information that directly rebuts the claims that human rights guarantees have been violated." On that basis, the Working Group rejected the Government's arguments and held that "[t]he Government has not contested the *prima facie* case in a way which gives this Working Group any alternative but to reach the conclusion the detention of Mr. Kiarash Kamrani follows from the exercise of the rights and freedoms as mentioned above, and that there are no grounds to justify the restriction of those rights."[3] As in *Kamrani*, the Government's mere recitation of the offenses with which it charged and convicted Mr. Tabarzadi fails to address his *prima facie* case concerning the arbitrary deprivation of his rights and freedoms described in the Petition.

To the extent the Government has raised additional arguments before the Working Group that were not transmitted to Petitioner, the Petitioner respectfully requests an opportunity to respond to those points as well.

For the reasons above, as well as those submitted by Petitioner in his original petition, we respectfully submit that the deprivation of Mr. Tabarzadi's liberty falls under Categories I, II and III of the Working Group's classification of cases.

If you have any questions or would like any further information, please feel free to contact me at (650) 565-3747 or nmilaninia@wsgr.com.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI

Nema Milaninia

[2] *See Kiarash Kamrani v. Islamic Republic of Iran*, Opinion No. 20/2011, slip op. (2010), ¶21
[3] *Id.* ¶ 22.

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REFERENCE: G/SO 218/2

9 January 2012

Dear Mr. Milaninia,

I would like to refer to the sixty-second session of the Working Group on Arbitrary Detention, during which the Working Group adopted several Opinions on cases of detention submitted to it.

In accordance with paragraph 18 of the Working Group's methods of work, I am sending to you, attached herewith, the text of Opinion No. 58/2011 (Islamic Republic of Iran) regarding a case submitted by your organization.

This Opinion will be reproduced in the Working Group's annual report to the Human Rights Council.

Yours sincerely,

pp Miguel de la Lama
Secretary
Working Group on Arbitrary Detention

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OPINION No. 58/2011 (ISLAMIC REPUBLIC OF IRAN)

Concerning **Mr. Heshmatollah Tabarzadi** (hereinafter Mr. Tabarzadi)

Communication addressed to the Government on 12 October 2011

The Government replied on 4 November 2011

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102. The mandate was extended for a further three-year period by resolution 15/18 adopted on 30 September 2010.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);

II. 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 ('UDHR') and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights ('ICCPR') (Category II);

III. 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).

IV. When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);

V. When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

Submissions

Communication from the Source

3. Mr. Tabarzadi, Iranian national, is the Secretary-General of the banned Democratic Front of Iran opposition party. Mr. Tabarzadi was previously the editor of the student newsletter Payam-e Daneshjou, which was allegedly banned after complaints from numerous government officials. He was also the President of the Islamic Students' Association and Editor-in-Chief of the weekly newsletter Hoveyat-e-Khish.

4. It is reported that in the morning of 27 December 2009, Mr. Tabarzadi was arrested by the Sepah-e-Pasdaran, Iranian Revolutionary Guard Corps, a branch of the Iranian military under the direct command of the Supreme Leader of Iran, Ayatollah Ali Khamenei. Allegedly, the officers in charge of Mr. Tabarzadi's arrest held a general warrant signed by the Attorney General. Mr. Tabarzadi's house was searched and the officers took two computer hard drives along with papers, articles, books and other items.

5. Days prior to his arrest, on 17 December 2009, Mr. Tabarzadi published an opinion editorial in the Wall Street Journal in connection with the protests against the results of the Iranian Presidential election. In the evening preceding his arrest, Mr. Tabarzadi was interviewed on the Voice of America Persian in connection with the Ashura protests.

6. Mr. Tabarzadi was first placed in Ward 209 of Evin prison, Tehran. Allegedly, he was beaten and held incommunicado in solitary confinement for 40 days. The source reports that Mr. Tabarzadi was threatened with the death penalty and forms of cruel, inhumane and degrading treatment, including rape. In May 2010, Mr. Tabarzadi was transferred to Rajaee Shahr Prison, located in the city of Karaj.

7. It was not until 9 June 2010, i.e. six months after his arrest, that Mr. Tabarzadi was for the first time brought before a judge. In September 2010, Mr. Tabarzadi was convicted by the Islamic Revolutionary Court and sentenced to nine years of imprisonment and 74 lashes. He was convicted on the following charges: "insulting the Leader"; "insulting the President"; "propaganda against the system"; "gathering and colluding with intent to harm State security"; and "disturbing public order". He was also banned from participating in any social activity for ten years.

8. On appeal, his sentence was reduced to eight years and the flogging sentence was overturned following the partial acquittal on the basis of charges of "disturbing public order" and "propaganda against the system".

9. It is reported that Mr. Tabarzadi's lawyers were themselves arrested and sentenced, including Ms. Nasrin Sotoudeh (WGAD Opinion No. 21/2011) and Mr. Mohammad Oliyaeifard.

10. First, the source argues that in the present case there is no legal basis to justify Mr. Tabarzadi's deprivation of liberty. Article 9(2) of the ICCPR provides that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for

his arrest and shall be promptly informed of any charges against him". Article 32 of the Islamic Republic of Iran's Constitution prohibits arbitrary arrest and requires that "[i]f someone is detained, the subject matter of the charge, with reasons, must be immediately communicated and explained in writing to the accused". The same provision indicates that "[w]ithin at most 24 hours the file on the case and preliminary documentation must be referred to the competent legal authority. Legal procedures must be initiated as early as possible". According to the source, the Iranian authorities failed to promptly bring Mr. Tabarzadi before a judge. Mr. Tabarzadi was not informed of the charges pending against him despite being detained for over six months. Moreover, the source informs that during the entire process preceding and following his trial, the Iranian authorities harassed and detained Mr. Tabarzadi's lawyers.

11. Second, the source contends that Mr. Tabarzadi's deprivation of liberty is a direct consequence of his peaceful exercise of the rights and freedoms recognized in Articles 19 and 20 of the UDHR and Articles 19, 21, 22 and 25 of the ICCPR. The source indicates that Mr. Tabarzadi's arrest was immediately preceded by his expression on live radio of support for peaceful demonstrations in Iran and took place less than a month after having published an opinion editorial in the Wall Street Journal regarding the same issue. According to the information received, Mr. Tabarzadi was convicted with violating provisions of the Islamic Penal Code which are manifestly related to the expression of opinions critical of the Government. The source maintains therefore that the only motivation to arrest and detain Mr. Tabarzadi was to deprive him of his freedom of opinion and expression and to prevent his criticism of the Government. Further, the source contends that his detention follows directly from Mr. Tabarzadi's exercise of the right to freedom of peaceful assembly and association and the right to take part in the conduct of public affairs.

12. Third, the source maintains that the violations of Mr. Tabarzadi's right to a fair trial were of such gravity as to render arbitrary his deprivation of liberty. Mr. Tabarzadi did not have access to counsel during the first 40 days in solitary confinement and while being subjected to allegedly repeated interrogations and ill-treatment.
Moreover, his right to counsel was further undermined through systematic and continuous harassment and mistreatment of his lawyers. In the source's view, Mr. Tabarzadi was prevented from adequately preparing his defence when charges were brought against him, at trial and upon his appeal in purported violation of Article 14(3)(b).

13. In conclusion, the source submits that Mr. Tabarzadi's deprivation of liberty is arbitrary as it lacks any legal basis, is a direct consequence of the exercise of his rights and freedoms under the UDHR and ICCPR, and follows from grave breaches of his right to a fair trial.

Response from the Government

14. By letter dated 4 November 2011, the Government informed that Mr. Tabarzadi has been charged with propaganda against the system of the Islamic Republic of Iran, insulting the leadership of the country, endangering national security through unlawful association, conspiracy with the intention to disturb public security and disruption of public order.

15. Mr. Tabarzadi was arrested on 28 December 2009. Shortly thereafter, branch 26 of the Tehran Court of Revolution tried the accused and found Mr. Tabarzadi guilty of all charges and sentenced him to one year of Taziri (in Islamic jurisprudence this term refers to sentences which carry variable levels of punishment, as determined by law and the judge respectively) imprisonment for engaging in propaganda against the system of the Islamic Republic of Iran, two years of additional Taziri imprisonment for insulting the country's leadership, five years of Taziri imprisonment for association and conspiracy with the intention of endangering national security, and one year Taziri imprisonment and 74 Taziri lashes for disrupting public order by participating in illegal gatherings.

16. During his trial, Mr. Tabarzadi was defended by a team of attorneys - namely Mr. Mohammad Oliyaeifard, Mr. Abdolfattah Soltani, Mr. Jahangir Mahmoudi, Ms. Nasrin Sotoudeh, Ms. Giti Pourfazel and Ms. Sara Najibi.

17. The court's initial verdict was appealed by Mr. Jahangir Mahmoudi. As a result, Tehran's Court of Appeals, on 1 January 2011, rejected the appeal. However, the Court cleared Mr. Tabarzadi of the particular charge of "disrupting public order through participation in illegal gatherings".

18. Before his most recent arrest – and from 1996 onwards – Mr. Tabarzadi had been convicted of different offences, including propaganda against the system of the Islamic Republic of Iran. In those instances two of Mr. Tabarzadi's Taziri imprisonment sentences, were replaced by fines and in another instance he was given a suspended prison sentence. Also in 2004, Mr. Tabarzadi was sentenced to fourteen years of Taziri imprisonment by Tehran's court of revolution. The verdict was contested by Mr. Tabarzadi's attorney. The case was re-examined by Tehran appeal court and later by the Supreme Court. Ultimately, Mr. Tabarzadi was sentenced to nine years of Taziri imprisonment and banned from engaging in social activities for ten years.

19. The Government maintains that despite his definitive conviction, on Islamic compassionate grounds, Mr. Tabarzadi was given leave from prison. However, Mr. Tabarzadi abused his leave and violated his pledge to refrain from endangering national security by engaging in activities that ran contrary to the higher interests of the system of the Islamic Republic of Iran. Presently, Mr. Tabarzadi is serving his sentence and like other prisoners, is accorded his legal rights.

Further Comments of the Source

20. In the source's view, the reply from the Government fails to address the key issues raised in the communication, including:

(1) The Government had no legal basis justifying Mr. Tabarzadi's arrest and detention. Iranian law requires that the accused be provided access to counsel through any interrogation by government forces and to be informed of any charges immediately upon detention. The Government denied Mr. Tabarzadi these rights;

(2) At the time of his arrest, Mr. Tabarzadi was held incommunicado in solitary confinement for approximately 40 days during which time he was not provided access to counsel;

(3) For at least six months following his arrest and detention, Mr. Tabarzadi

was not informed of the charges against him;
(4) The Government subjected Mr. Tabarzadi's attorneys to constant intimidation and harassment, including imprisonment, before, during and after his trial and appeal. As a result, Mr. Tabarzadi was effectively denied counsel or from adequately preparing his defense at trial and appeal;
(5) The Government detained Mr. Tabarzadi in an effort to punish him for his exercise of rights and freedoms guaranteed under the UDHR and the ICCPR. This is evident by the fact that he was arrested less than a day after he expressed support for peaceful demonstrations in Iran on live radio and less than a month after publishing an opinion editorial in the Wall Street Journal regarding the same;
(6) Before and during his detention, the Government's agents physically abused Mr. Tabarzadi and subjected him to torture and cruel, inhuman and degrading treatment.

21. By failing to address these key arguments, the Government, in the source's view, has failed to answer the *prima facie* case established in the communication of the deprivation of Mr. Tabarzadi's liberty under Categories I, II and III of the Working Group's classification of cases. Instead, the Government's reply makes two categorical assertions: (1) it suggests that Mr. Tabarzadi was defended by a team of attorneys during the trial and on appeal; and (2) it provides a recitation of the laws Mr. Tabarzadi was found charged and convicted under.

22. Regarding the Government's first point, as described in the communication – and uncontested by the Government – although Mr. Tabarzadi had counsel, the Iranian Government subjected his attorneys to constant imprisonment and harassment. The Government also arrested two of Mr. Tabarzadi's attorneys, Ms. Nasrin Sotoudeh and Mr. Mohammad Oliyaeifard, and sentenced them to prison terms in part for their representation of Mr. Tabarzadi. The Government also harassed and detained three of Mr. Tabarzadi's other attorneys, Mr. Jahangir Mahmoudi, Ms. Giti Pourfazel, and Mr. Abdolfattah Soltani, again depriving Mr. Tabarzadi of their effective counsel.

23. The source maintains that a superficial showing that an individual has counsel is insufficient to satisfy the rights to counsel and to prepare a defence afforded under Article 10 of the UDHR, Article 14(3) of the ICCPR, and Principles 18(1) and (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. When the State interferes with those rights, then the right to counsel and to prepare a defence are effectively denied.

24. As to the Government's second point, the source notes that a recitation of the offences an individual is charged with and convicted of, is insufficient to refute a *prima facie* showing concerning the deprivation of one's liberties. The Government's mere recitation of the offences with which it charged and convicted Mr. Tabarzadi fails to address the *prima facie* case concerning the arbitrary deprivation of his rights and freedoms described in the submission.

25. The source reiterates that the deprivation of Mr. Tabarzadi's liberty falls under Categories I, II and III of the Working Group's classification of cases.

Discussion

26. The Working Group notes that Mr. Tabarzadi was arrested the day after giving an interview to Voice of America Persian in connection with the Ashura protests, and ten days after his opinion editorial had been published in the Wall Street Journal in connection with the protests against the results of the Iranian Presidential election.

27. The Government has failed to provide information on any specific acts allegedly committed by Mr. Tabarzadi which would constitute the offences for which he was convicted. Instead, the Government's reply merely lists the titles of the offences for which Mr. Tabarzadi was convicted. In the Working Group's view, such listing is not sufficient to rebut the genuine link between Mr. Tabarzadi interview and opinion editorial and his subsequent arrest and detention.

28. The Working Group notes that for six months after the arrest, Mr. Tabarzadi was not brought before a judge or any competent authority and could not challenge the lawfulness of his detention. Nor was he informed of the charges brought against him.

29. The Government has not refuted the allegation that, although Mr. Tabarzadi had formally counsel, the authorities subjected his attorneys to regular imprisonment and harassment during the entire process preceding and following his trial.

30. In fact, in its Opinion No. 21/2011, the Working Group did find that the deprivation of liberty of one of Mr. Tabarzadi's counsels, namely Ms. Nasrin Sotoudeh, was arbitrary in violation of articles 9, 10, 19, 20 and 21 of the UDHR and articles 9, 14, 19, 21 and 22 of the ICCPR. Similarly, the Government has failed to rebut the allegation that another Mr. Tabarzadi's attorney, Mr. Mohammad Oliyaeifard, was also arrested and sentenced to prison terms in part for his representation of Mr. Tabarzadi. Further allegation that the Government harassed and detained three of Mr. Tabarzadi's other attorneys, Mr. Jahangir Mahmoudi, Ms. Giti Pourfazel, and Mr. Abdolfattah Soltani is not contested either.

31. The right to be effectively defended by a lawyer contained in Article 14(3) of the ICCPR is one of the core features of a fair trial. For this reason, the Working Group considers that the fact of hindering lawyers from fulfilling their task effectively and timely constitutes a grave violation of the fundamental right to a fair trial.

32. Accordingly, the Working Group concludes that Mr. Tabarzadi's arrest and detention violates rights and fundamental freedoms established in articles 9, 10, 11, 18, 19 and 21 of the UDHR and articles 9, 14 and 19 of the ICCPR, to which the Islamic Republic of Iran is a State Party.

Disposition

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

> The deprivation of liberty of Mr. Tabarzadi is arbitrary, being in contravention of articles 9, 10, 11, 18, 19 and 21 of the UDHR and articles 9, 14 and 19 of the ICCPR, and falls within categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

34. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Tabarzadi and bring it into conformity with the norms and standards set forth in the ICCPR and the UDHR.

35. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Tabarzadi and accord him an enforceable right to compensation pursuant to article 9(5) of the ICCPR.

36. The Working Group refers the allegations of torture and cruel, inhuman and degrading treatment of Mr. Tabarzadi to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in accordance with paragraph 33(a) of its Methods of Work.

Adopted on 18 November 2011