



# General Assembly

Distr.: General  
8 October 2019

Original: English

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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April–3 May 2019

#### Opinion No. 51/2019 concerning Nizar Zakka (Islamic Republic of Iran)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 24 January 2019, the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Nizar Zakka. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

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

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

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



**Submissions***Communication from the source*

## (a) Context

4. Nizar Zakka is a national of Lebanon and a lawful permanent resident of the United States of America. He was born on 4 November 1966. He usually resides in both Beirut and Washington, D.C.

5. According to the source, Mr. Zakka is an Internet freedom advocate. He is an information and communications technology (ICT) specialist in the field of economic development and public policy. He is also the Secretary-General of the Arab ICT Organization, which includes organizations from all the Arab countries. It works on the development of information and the elimination of the digital divide. At the time of his arrest, he was the Vice-President of the World Information Technology and Services Alliance and the Chair of its Public Policy Division, in addition to other ICT-related positions around the world, including for the International Telecommunications Union and the Internet Governance Forum.

## (b) Arrest and detention

6. The source reports that, on 11 September 2015, Mr. Zakka received an official invitation from the Vice-President for Women and Family Affairs of the Islamic Republic of Iran to attend the 2nd International Conference and Exhibition on Women in Sustainable Development. He subsequently travelled to Tehran on 14 September 2015. He was provided with a visa by the Government of the Islamic Republic of Iran, which was issued by its Embassy in Beirut. The source adds that Mr. Zakka was a keynote speaker at the conference. He presented the closing session with his host and attended the dinner intended to celebrate the event at her invitation.

7. However, on 18 September 2015, as Mr. Zakka was travelling from his hotel in Tehran to the airport by taxi, he was allegedly abducted by armed persons suspected to be members of the Islamic Revolutionary Guard Corps, who were wearing civilian clothes and driving an unmarked civilian car. Mr. Zakka was not shown any official warrant authorizing his arrest. To the best of the source's knowledge, no such warrant exists.

8. The source reports that Mr. Zakka was held incommunicado for the first two weeks of his detention. No information as to his whereabouts or condition was offered or provided to his family by those detaining him. Moreover, to the best of his knowledge, the Embassy of Lebanon in Tehran was not informed of his arrest and detention.

9. According to the source, Mr. Zakka was held in solitary confinement for three months. He was detained in solitary confinement in Section 2A of Sepah, the intelligence unit of the Islamic Revolutionary Guard Corps within Evin Prison. He was only transferred from solitary confinement on or about 18 December 2015 after he had been on hunger strike. That hunger strike lasted for 14 days, during which time he lost almost half of his body weight. Mr. Zakka was only permitted a visit from a family member after this hunger strike. He was subsequently transferred from Sepah to Detention Centre 7, Section 12, of Evin Prison.

10. The source reports that Mr. Zakka was returned to solitary confinement in April 2016, on that occasion for four months. This followed the publication of a recording of a voice message made by Mr. Zakka on television channels, including Al Arabiya, in which he called the Islamic Revolutionary Guard Corps terrorists and described his arrest and detention as an act of State terrorism.

11. According to the source, at the time of submission of the communication, Mr. Zakka remains detained in Detention Centre 7 of Evin Prison. The block consists of four cells and houses approximately 50 detainees. Mr. Zakka's cell is underground, with no access to sunlight or fresh air. He currently shares his cell with 17 other detainees. His living space measures approximately 2 m by 1.5 m. The source adds that his cell is dirty and infested with cockroaches. He and his fellow cellmates sleep on triple bunk beds and on mattresses

infested with bedbugs. There are neither kitchen facilities nor a hygienic place to prepare food.

(c) Treatment while in detention and attempts to force a confession

12. During the period he was held in solitary confinement, Mr. Zakka was allegedly urged to sign documents written in Farsi. He refused to do so, as he is not a Farsi speaker. There was no translator able to translate the documents for him. In an effort to force him to sign the documents, the detaining authority allegedly subjected Mr. Zakka to physical and mental torture. He was threatened with death and forced to stand in stress positions for long periods of time. On a number of occasions, he reportedly lost consciousness.

13. In December 2015, Mr. Zakka was reportedly asked to make a video confession admitting that he was a criminal, on the promise that if he did so he would be released. He refused. At that time, he was on hunger strike and was physically weak and close to death. According to the source, Mr. Zakka has been told that he will never see his family again, has received death threats and has been told that he will die in Evin Prison.

14. In January 2016, Mr. Zakka was taken to meet the assistant prosecutor. During this meeting, he complained about his treatment and, in particular, that he had been subjected to physical and mental torture. The assistant prosecutor was dismissive and said something to the effect that: "You are just like a bad schoolboy who gives the teachers a hard time and you are being punished for that".

15. According to the source, Mr. Zakka has been on six hunger strikes in total throughout his detention. A hunger strike is the only means available to him to protest against his detention and treatment by the Islamic Revolutionary Guard Corps.

(d) Denial of access to a lawyer and consular access

16. The source reports that Mr. Zakka's requests for access to a lawyer and consular access were repeatedly denied during the early stage of his detention.

17. The source adds that the first time Mr. Zakka was able to meet with an official from the Embassy of Lebanon was in January 2017, one year and four months after his arrest. Since then, he has met four times with Embassy staff – twice with the Consul and twice with the Ambassador. However, he has received no consular assistance.

18. According to the source, Mr. Zakka was first permitted to have access to a lawyer in December 2015. He was permitted no more than a 20-minute consultation and was required to select a lawyer from a list approved by the Revolutionary Court. At this meeting, Mr. Zakka was asked to sign a power of attorney written in Farsi. He asked his lawyer to translate the text, but the lawyer refused. He also refused Mr. Zakka's request to provide him with a hard copy of the document. Mr. Zakka decided not to continue having this lawyer represent him because he could not be confident that the lawyer was acting in his best interests.

19. In August 2016, Mr. Zakka's family reportedly instructed a second lawyer, an English speaker, on Mr. Zakka's behalf. This second lawyer also had to be approved by the Revolutionary Court. He represented Mr. Zakka at his trial before the Revolutionary Court in September 2016.

20. The source reports that Mr. Zakka's lawyers in the Islamic Republic of Iran have not spoken or collaborated with his lawyers in Lebanon or the United States.

21. In May 2018, the Embassy of Lebanon was able to deliver a document to Mr. Zakka to enable him to sign over power of attorney to his Lebanese lawyer and a member of his family. The authorities at the Evin Prison have allegedly seized and continue to withhold these documents. The source suspects that this is a clear attempt to obstruct the management of Mr. Zakka's business and personal affairs, including the distribution of his mother's estate following her death. In a letter to Mr. Zakka's lawyer dated 9 November 2018, the Ambassador of Lebanon to the Islamic Republic of Iran explained that the authorities in the Evin Prison had seized those documents in order to conduct an audit of their contents, that they would return the documents through the Ministry of Foreign

Affairs of the Islamic Republic of Iran and that, despite the Embassy's repeated inquiries, they had not yet done so.

(e) Trial and appeal

22. According to the source, neither Mr. Zakka nor his lawyer have been provided with a written confirmation of the charges against him or the indictment upon which Mr. Zakka was tried. At the trial hearing, no evidence was submitted in support of the prosecutor's case. It was only on the date of his trial and sentence by the Revolutionary Court in August 2016, 11 months after his arrest, that Mr Zakka learned of the charges against him.

23. The source reports that Mr. Zakka was tried in the Revolutionary Court by a judge who is currently the subject of European Union sanctions on the grounds that he is "complicit in or responsible for directing or implementing grave violations of the right to due process",<sup>1</sup> for having presided over post-election "show trials" in 2009, and for having "sentenced more than a hundred political prisoners, human rights activists and demonstrators to lengthy prison sentences".<sup>2</sup>

24. According to the source, the judge apologized to Mr. Zakka for his treatment but nevertheless sentenced him to 10 years of imprisonment for "cooperating with countries that are in conflict with the Islamic Republic of Iran". Additional charges were reportedly added after the fact, including a charge of "corruption of the Earth".

25. The judge also ordered Mr. Zakka to pay a fine of \$4,221,000. That sum is equivalent to the funding that the Arab ICT Organization supposedly received in order to finance three projects. The source adds that these projects have never been developed beyond a concept note submitted by a consultant to the potential donor. The Arab ICT Organization has never received any such funding and the projects have never come to fruition. The source also adds that Mr. Zakka has never conducted any business in the Islamic Republic of Iran without first ensuring that the Iranian authorities were informed of all his activities.

26. According to the source, in October 2016, Mr. Zakka's lawyer lodged an appeal against his conviction and sentence. The appeal was scheduled to be heard in January 2017 by another judge of the Revolutionary Court.

27. However, Mr. Zakka was reportedly not provided with any resources to prepare his appeal or his defence. He wrote his defence on an old napkin as he had no paper at his disposal, and he was only permitted a 20-minute consultation with his lawyer before the appeal hearing.

28. On the day of his appeal hearing, the Court reportedly informed Mr. Zakka that it required an investigation into the connection, if any, between International Relief and Development and the Government of the United States. The source notes that it was on the basis of an assertion that International Relief and Development was part of the United States State Department that it was alleged that Mr. Zakka in fact worked for the Government of the United States against the interests of the Islamic Republic of Iran.

29. In this respect, the source also notes that Mr. Zakka is not employed by International Relief and Development. The Arab ICT Organization has a contract with International Relief and Development to construct a website for non-governmental organizations (NGOs) focused on women's issues throughout the Middle East, North Africa and Central Asia. Some of these NGOs focus on women's issues in the Islamic Republic of Iran.

30. Mr. Zakka had reportedly requested permission to submit evidence to this effect and to show that International Relief and Development was an independent organization, funded by a number of donors, including the European Union.

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<sup>1</sup> Council Regulation (EU) No. 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran, second preambular paragraph.

<sup>2</sup> Ibid., annex I.

31. The source reports that the court-ordered investigation took nearly 12 months to complete and to confirm that International Relief and Development was not part of the State Department. Nevertheless, upon completion of that investigation, and in spite of the lack of evidence to support the allegation that Mr. Zakka was working for the Government of the United States against the interests of the Islamic Republic of Iran, the Court of Appeal confirmed his conviction and sentence.

32. According to the source, Human Rights Watch has reported that, in November 2015, the Mashregh news website, which is close to the Islamic Revolutionary Guard Corps, published articles accusing Mr. Zakka of being part of the United States project for the Islamic Republic of Iran after its withdrawal from the Joint Comprehensive Plan of Action.<sup>3</sup>

33. The source further reports that, in January 2018, Mr. Zakka was told that he would be released in three months if he fulfilled the following three conditions: (a) stop the media campaign for his release; (b) stop his hunger strike (which lasted 21 days); and (c) arrange for the Minister of Foreign Affairs of Lebanon to send a letter to his Iranian counterpart requesting Mr. Zakka's release.

34. According to the source, Mr. Zakka and his family did everything they could to fulfil all three conditions. The Minister of Foreign Affairs of Lebanon indicated that he would, and did, send a letter to his counterpart requesting Mr. Zakka's release. However, the Islamic Revolutionary Guard Corps informed Mr. Zakka's family that it never received such a letter and it appears that the letter was in fact never issued.

35. The source notes that Mr. Zakka's family has sent a number of letters to the Ministry of Foreign Affairs and the Ministry of Justice of Lebanon, and open letters to the President of Lebanon and to the President of Parliament.

36. The source also notes that, due to the fact that Mr. Zakka is a lawful permanent resident of the United States and the Arab ICT Organization has offices in the United States, he has been included in several United States congressional resolutions urging the Government of the United States and other stakeholders in the present case to do everything possible to secure his unconditional release.

37. In addition, on 20 November 2017, a letter was sent on behalf of Mr. Zakka to the General Secretariat of the Arab League asking it to intervene. The family of Mr. Zakka has also tried to pursue a number of other international remedies to secure his release.

38. The source reports that, on 17 December 2018, Mr. Zakka was placed in incommunicado detention and solitary confinement. The source expresses serious concern that Mr. Zakka's continued detention and treatment are severely affecting his health and mental well-being. Furthermore, the source expresses concern that, given the record of his inhuman treatment by the detaining authority, Mr. Zakka may have been subjected to torture or inhuman or degrading treatment while being held incommunicado. According to the source, on that occasion, Mr. Zakka remained incommunicado for a period of approximately 40 days.

(f) Analysis of violations

39. In the light of the above, the source submits that the detention of Mr. Zakka is arbitrary according to categories I, III and V of the categories applicable to cases submitted to the Working Group.

(i) Category I

40. The source submits that Mr. Zakka's detention falls under category I, as there is no legal basis for his detention under domestic or international law. In this respect, the source

<sup>3</sup> Human Rights Watch, "Iran: targeting of dual citizens, foreigners: prolonged detention, absence of due process", 26 September 2018. The Joint Comprehensive Plan of Action is the agreement between the Islamic Republic of Iran, and China, France, Germany, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States (now withdrawn) aimed at restricting and monitoring the nuclear programme of the Islamic Republic of Iran.

submits that Mr. Zakka's arrest and detention have violated the most basic guarantees of legality under international human rights law and are therefore arbitrary for the following reasons:

(a) In violation of articles 9 (2) and 14 (3) of the Covenant, Mr. Zakka was not informed promptly of the details of the charges against him, neither at the time of his arrest nor shortly thereafter. It was only on the day of his trial at the Revolutionary Court in August 2016, 11 months after his arrest, that he learned of the charges against him;

(b) In violation of article 9 (3) of the Covenant, Mr. Zakka was denied the right to be brought promptly before a judge to determine the legality of his detention. Furthermore, he was denied access to a lawyer throughout his pretrial detention, effectively preventing him from exercising his right to challenge the legality of his detention, in violation of article 9 (4) of the Covenant and principles 8 and 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(c) In violation of article 9 (3) of the Covenant and principle 19 of the Body of Principles, the incommunicado detention of Mr. Zakka for 14 days immediately following his arrest violated his right to communicate with his family and to inform his family of the details of his arrest and detention.

41. The source also submits that the treatment of Mr. Zakka amounts to torture or inhuman or degrading treatment. In this respect, the source asserts that the detention of Mr. Zakka in solitary confinement for a total of approximately seven months in appalling conditions amounts to a clear violation of:

(a) The prohibition against torture or cruel, inhuman or degrading treatment or punishment, as provided for in article 7 of the Covenant and customary international law;

(b) His right as a detainee to be treated with humanity, as guaranteed by article 10 of the Covenant.

42. The source adds that, not only was Mr. Zakka's solitary confinement inhuman and in violation of international human rights law, but it would appear that he was placed in solitary confinement in order to exert psychological pressure on him to confess. The source submits that this is a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(ii) Category III

43. The source submits that Mr. Zakka's detention is arbitrary as he has been denied the most basic guarantees of a fair trial. The source adds that his imprisonment is the result of a sentence passed after an unfair trial involving a number of breaches of the fundamental rights of accused persons stipulated in article 14 of the Covenant. Taken together, the degree to which articles 9 and 14 have been violated is particularly serious and amounts to the total denial of Mr. Zakka's right to a fair trial for the following reasons:

(a) There is a real concern that the tribunals of first instance and appeal were neither independent nor impartial, in violation of article 14 (1) of the Covenant. Compounding this concern is the fact that Mr. Zakka's trial was presided over by a judge who is currently subject to European Union sanctions;

(b) Having been denied access to a lawyer throughout the first three months of his detention, in violation of article 9 of the Covenant and principles 7 and 8 of the Basic Principles on the Role of Lawyers, Mr. Zakka was eventually permitted to instruct a lawyer, but only on condition that the lawyer was approved by the Revolutionary Court, thus infringing his right to be represented by counsel of his own choosing;

(c) Mr. Zakka was denied adequate time and facilities to prepare his defence, in violation of article 14 (3) (b) of the Covenant:

(i) He has never been informed of the details of the charges against him, in violation of article 14 (3) (a) of the Covenant;

(ii) He was only permitted a 20-minute consultation with his lawyer before the appeal hearing. The intermittent presence of a guard raises a concern that the confidentiality of this meeting was not respected;

(iii) He was not provided with proper and adequate materials with which to prepare his defence, having been forced to write his defence on a napkin;

(iv) He has never been provided with an interpreter. His interrogator was the only official who could have translated for him, thereby undermining his right to confidentiality and to legal privilege;

(d) At his trial and appeal hearings, Mr. Zakka was not given an opportunity to examine or have examined on his behalf the prosecution witnesses, or to call witnesses in his defence, in violation of article 14 (3) (e) of the Covenant:

(i) Mr. Zakka's trial and appeal were a rubber-stamping exercise. The prosecution did not produce any evidence in support of the charges against Mr. Zakka. The judge merely apologized to him and then sentenced him to 10 years' imprisonment;

(ii) Mr. Zakka's ability effectively to contest the prosecution's arguments was heavily undermined by the failure to inform him of the nature of the charges against him;

(iii) The Revolutionary Court allegedly demonstrated no interest in hearing the arguments of the defence or in examining the strength of the prosecution's arguments. When faced with the results of a fruitless 12-month investigation ordered by the Court of Appeal in order to establish whether International Relief and Development was in fact part of the United States State Department, the Court of Appeal nevertheless confirmed Mr. Zakka's conviction and sentence;

(e) The source states that, given the fact that Mr. Zakka was denied an opportunity to submit evidence, examine or have examined witnesses on his behalf and, therefore, to test the evidence against him, it is doubtful that his fundamental right to a presumption of innocence was met. This constitutes a particularly serious violation of a *jus cogens* norm and, specifically, article 14 (2) of the Covenant.

(iii) Category V

44. The source notes that there are strong grounds to suggest that Mr. Zakka was targeted because of the nature of his work, promoting Internet freedom, and because of his status as a lawful permanent resident of the United States. The source states that, following the agreement by the Islamic Republic of Iran to sign the Joint Comprehensive Plan of Action, Iranian officials have expressed concerns about Western intervention in Iranian politics. In particular, concerns have been expressed that further negotiations with the West will open the door to Western cultural, political, economic and security infiltration, which is deemed to be a threat to national security. The source thus submits that it is this concern or fear of Western influence that underlies a pattern of targeting of foreign and dual citizens who work for foreign organizations associated with "bridge-building" between the Islamic Republic of Iran and the West.

45. The source adds that the charges against Mr. Zakka are based on the spurious accusation that he in fact works for the United States State Department because the Arab ICT Organization has received funding from the Government of the United States and is therefore acting on behalf of an enemy of the Islamic Republic of Iran. The source adds that there is no evidence to support this allegation.

46. Moreover, the source submits that Mr. Zakka has been targeted because he is an advocate for Internet freedom. Because of his work, and his opinions, Mr. Zakka is associated with opening up the Islamic Republic of Iran to the West, a position that the Islamic Revolutionary Guard Corps appears to be wholly against and in fear of. On this basis, it is submitted that his detention is discriminatory on the basis of his national or social origin, his opinions and the nature of his employment. It is therefore arbitrary and in violation of article 26 of the Covenant.

*Response from the Government*

47. On 24 January 2019, the Working Group transmitted the allegations made by the source to the Government through its regular communication procedure. The Working Group requested the Government to provide, by 25 March 2019, detailed information about the current situation of Mr. Zakka and any comments on the source's allegations, while calling upon the Government to ensure Mr. Zakka's physical and mental integrity.

48. On 1 February 2019, the Government sought an extension of the deadline to respond. The extension was granted with the new deadline set for 8 April 2019. The Working Group regrets that it did not receive a response from the Government.

*Recent developments*

49. It has come to the Working Group's attention that Mr. Zakka was released from detention on 11 June 2019, after over four years of detention. It appears that his supposed conviction and the fine of \$4,221,000 have been expunged.

50. Upon his release, Mr. Zakka was returned to Lebanon. Shortly thereafter, he returned to the United States. His mental and physical health continues to suffer as a result of his ordeal.

**Discussion**

51. At the outset, the Working Group welcomes the release of Mr. Zakka on 11 June 2019. Following his release, the Working Group has the option of filing the case or rendering an opinion as to the arbitrariness of the detention, in conformity with paragraph 17 (a) of its methods of work. In this particular case, the Working Group has decided to render an opinion with respect to Mr. Zakka, in conformity with paragraph 15 of its methods of work. In making this decision, the Working Group gives particular weight to the fact that, although he has been released: (a) the circumstances in which he was detained were serious and warrant further attention; and (b) he was deprived of his liberty for more than four years.

52. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68).<sup>4</sup> In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

53. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and other applicable international and regional instruments.<sup>5</sup> Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and

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<sup>4</sup> See, for example, opinions No. 50/2017, para. 54; No. 61/2017, para. 26; No. 62/2017, para. 45; No. 69/2017, para. 24; No. 70/2017, para. 48; No. 75/2017, para. 34; No. 79/2017, para. 47; No. 11/2018, para. 41; No. 19/2018, para. 25; No. 35/2018, para. 24; No. 36/2018, para. 37; No. 37/2018, para. 27; No. 40/2018, para. 42; No. 43/2018, para. 71; No. 44/2018, para. 78; No. 45/2018, para. 39; No. 46/2018, para. 45; No. 52/2018, para. 68; No. 67/2018, para. 69; No. 70/2018, para. 31; No. 75/2018, para. 57; No. 78/2018, para. 67; No. 79/2018, para. 68; and No. 90/2018, para. 29.

<sup>5</sup> General Assembly resolution 72/180, fifth preambular paragraph; Human Rights Council resolution 10/9, para. 4 (b); and opinions No. 41/2014, para. 24; No. 28/2015, para. 41; No. 76/2017, para. 62; No. 83/2017, paras. 51 and 70; No. 88/2017, para. 32; No. 94/2017, para. 59; No. 38/2018, para. 60; No. 68/2018, para. 37; No. 82/2018, para. 25; and No. 87/2018, para. 51.



obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>6</sup>

#### *Category I*

54. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

55. The source submits, and the Government does not contest, that Mr. Zakka was not presented with an arrest warrant or informed of the reasons for his arrest at the time of his arrest on 18 September 2015, and that he was not promptly informed of any charges against him.

56. The customary international norms on detention include the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles.<sup>7</sup> The Working Group finds no valid grounds, such as arrest in flagrante delicto, to justify an exception to this principle in the present case.

57. The Working Group also finds that, in order to ascertain a legal basis for deprivation of liberty, the authorities should have informed Mr. Zakka of the reasons for his arrest, at the time of arrest, and of the charges against him promptly; their failure to do so violates article 9 of the Universal Declaration of Human Rights and article 9 (2) of the Covenant, as well as principle 10 of the Body of Principles. In fact, as he was not formally charged until August 2016, his detention for the first 11 months after his arrest was without any legal basis.

58. The source further maintains, and the Government again does not dispute, that Mr. Zakka was held incommunicado for the first two weeks of his detention and also, later on, for approximately 40 days, beginning 17 December 2018. Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of a person or to acknowledge their detention lacks any valid legal basis under any circumstance and is inherently arbitrary as it places the person outside the protection of the law in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.<sup>8</sup>

59. The Working Group notes that Mr. Zakka was not brought promptly before a judge, within 48 hours of his arrest barring absolutely exceptional circumstances, in accordance with the international standard,<sup>9</sup> or afforded the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration, articles 2 (3) and 9 (1), (3) and (4) of the Covenant and principles 11, 32 and 37 of the Body of Principles. In addition, the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court indicate that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). This right, which is in fact a

<sup>6</sup> See, for example, opinions No. 1/1998, para. 13; No. 5/1999, para. 15; No. 1/2003, para. 17; No. 33/2015, para. 80; No. 94/2017, paras. 47–48; No. 38/2018, para. 60; No. 68/2018, para. 37; No. 82/2018, para. 25; and No. 87/2018, para. 51.

<sup>7</sup> See, for example, opinions No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; and No. 82/2018, para. 29.

<sup>8</sup> See General Assembly resolution 47/133. See also opinion No. 82/2018, para. 28.

<sup>9</sup> Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33, citing *Kovsh v. Belarus* (CCPR/C/107/D/1787/2008), paras. 7.3–7.5. See also CCPR/C/79/Add.89, para. 17; CCPR/C/SLV/CO/6, para. 14; and CCPR/CO/70/GAB, para. 13.

peremptory norm of international law, applies to all forms and situations of deprivation of liberty.<sup>10</sup>

60. The Working Group therefore considers that Mr. Zakka's deprivation of liberty between 18 September 2015 and August 2016, as well as his detention beginning 17 December 2018 for approximately 40 days, lacks a legal basis and is thus arbitrary, falling under category I.

### *Category III*

61. The Working Group will now consider whether the alleged violations of the right to a fair trial and due process were of such gravity as to give the deprivation of liberty an arbitrary character, so as to fall within category III.

62. At the outset, the Working Group notes with concern a number of cases over the past few years in which the Government has subjected its citizens and foreign nationals to multiple violations of the right to a fair trial, as well as the generalized use of incommunicado detention.<sup>11</sup>

63. The Working Group notes that the authorities failed to respect Mr. Zakka's right to legal assistance at all times – which is inherent in the right to liberty and security of person – or the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant. His interrogation, while being held incommunicado, without the presence of his lawyers, deprived him of his right to legal counsel at the critical stage of criminal proceedings, and removed the effective checks against torture and other coercive means used in the attempt to extract his confession. His two lawyers during the trial had to be approved by the Revolutionary Court and their handling of his legal defence was problematic. Mr. Zakka's first lawyer consulted him for no more than 20 minutes in the presence of a guard and refused to translate the power of attorney written in Farsi or to provide a hard copy; while his second lawyer did not speak or collaborate with his lawyers in Lebanon or the United States. The Working Group therefore finds serious violations of article 11 (1) of the Universal Declaration and article 14 (3) (b) and (d) of the Covenant.

64. The Working Group must raise further concerns with the conduct of the trial. The prosecution failed to disclose the details of the charges levelled against Mr. Zakka. Furthermore, he was forced to write his defence on a napkin as no adequate materials were available for him, thus putting him at a distinct disadvantage in preparing for his defence, in violation of article 14 (3) (a) and (b) of the Covenant. Also, Mr. Zakka was not provided with an interpreter, and his interrogator was the only available translator. The Working Group cannot consider this as meaningful linguistic assistance for the purpose of article 14 (3) (f) of the Covenant or principle 14 of the Body of Principles.

65. As the Working Group has previously observed, the Revolutionary Court, which tried, convicted and sentenced Mr. Zakka to 10 years in prison and a fine of \$4,221,000, is a court that does not meet the minimum standards of an independent and impartial tribunal.<sup>12</sup> Mr. Zakka's appeal process does not dispel the Working Group's concerns. The Working Group therefore refers this case to the Special Rapporteur on the independence of judges and lawyers.

66. The Working Group cannot fail to express its concern at the allegations of torture and ill-treatment, including prolonged incommunicado detention for the extraction of confessions, in violation of article 5 of the Universal Declaration of Human Rights and articles 7 and 10 (1) of the Covenant, which have not been refuted by the Government. The treatment described suggests a *prima facie* breach of the absolute prohibition of torture, which is a peremptory norm of international law, of principle 6 of the Body of Principles and of rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners

<sup>10</sup> Opinion No. 39/2018, para. 35.

<sup>11</sup> Opinion No. 52/2018, para. 79; and E/CN.4/2004/3/Add.2, paras. 49–55.

<sup>12</sup> E/CN.4/2004/3/Add.2, para. 65.

(the Nelson Mandela Rules). The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.<sup>13</sup>

67. In the Working Group's view, not only is torture a grave violation of human rights in itself, but it seriously undermines the ability of persons to defend themselves and hinders their exercise of the right to a fair trial, especially in light of the right not to be compelled to testify against oneself or to confess guilt under article 14 (3) (g) of the Covenant. The use of a confession extracted through ill-treatment also constitutes a violation of principle 21 of the Body of Principles.<sup>14</sup>

68. The Working Group also notes that the Government appears not to have fully implemented the formal procedures necessary to establish the legal basis for the arrest and detention of a foreign national under the provisions of article 36 of the Vienna Convention on Consular Relations, to which the Islamic Republic of Iran is a party.<sup>15</sup>

69. Article 36 (1) (b) of the Convention provides that a foreign national arrested or committed to prison or to custody pending trial or detained in any other manner should be informed without delay of his or her rights to inform consular officers about his or her detention and to have any communication addressed to them forwarded without delay. This is in addition to the right of consular officers to be informed of the detention and to maintain communication (art. 36 (1) (b)) and their right to arrange for legal representation and to visit in person (art. 36 (1) (c)).

70. The Working Group notes that the General Assembly has reaffirmed the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations, in particular with regard to the right of all foreign nationals, regardless of their migration status, to communicate with a consular official of the sending State in case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention.<sup>16</sup>

71. Furthermore, the importance of consular assistance for a detained or imprisoned foreign national is recognized in the Body of Principles (principle 16 (2)) by specifically mentioning his or her right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he or she is a national. The Nelson Mandela Rules also provide, in rule 62 (1), that prisoners who are foreign nationals are to be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

72. Given the limited availability of remedies for individuals in the international sphere, consular protection is invaluable for foreign nationals who are disadvantaged by the lack of familiarity with the local law, customs and even language. Furthermore, it should be noted that the institution of consular protection not only serves the interests of the detained foreign individual and of the State that espouses such interests, but also furthers the interests of the international community as a whole by facilitating international exchange and reducing the potential for friction between States over the treatment of their nationals.<sup>17</sup>

73. In the light of the factual and legal considerations noted above, the Working Group considers that the Government's failure to respect Mr. Zakka's right to consular protection under customary international law, as codified in article 36 of the Vienna Convention on Consular Relations, during his initial arrest and detention, is in violation of articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights, articles 9 (1) and 14 (1) of the Covenant and principle 16 (2) of the Body of Principles.

<sup>13</sup> Opinion No. 39/2018, para. 42.

<sup>14</sup> See also opinions No. 48/2016, No. 3/2017, No. 6/2017, No. 29/2017 and No. 39/2018.

<sup>15</sup> Opinion No. 30/2018, para. 51.

<sup>16</sup> General Assembly resolution 72/179, para. 4 (k). See also General Assembly resolutions 72/149, para. 32, and 73/180, para. 16 (g); and Human Rights Council resolution 40/20, para. 2 (j).

<sup>17</sup> Opinions No. 58/2017, para. 64; and No. 30/2018, para. 56.

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

#### Category V

75. The Working Group will now examine whether Mr. Zakka's deprivation of liberty constitutes illegal discrimination under international law, falling under category V.

76. The Working Group notes that Mr. Zakka's deprivation of liberty resulted from the Government's claim that he was a foreign agent, as the Arab ICT Organization supposedly received funding from the United States Department of State and International Relief and Development. He became the target of official persecution because of his foreign nationality and residence in a foreign State.

77. The Working Group notes in this connection the Government's past practice of arbitrarily depriving persons of foreign nationality or residence of their liberty on the grounds of State security.<sup>18</sup> It has also received communications and found violations therein submitted by dual nationals, such as Mr. Zakka, over many years.<sup>19</sup>

78. The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran also recently recognized this pattern, noting that current estimates suggested that at least 30 foreign and dual nationals, as well as Iranians with permanent residency in another country, had been imprisoned since 2015.<sup>20</sup>

79. The Working Group is thus of the view that discrimination by the Government stemming from a systematic bias may be the only plausible explanation for the arrest, detention and imprisonment of Mr. Zakka. The Working Group therefore concludes that Mr. Zakka has been arbitrarily deprived of his liberty because of his foreign nationality, his permanent foreign residence status and his work for the Arab ICT Organization, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and that his deprivation of liberty falls under category V.

80. In its 28-year history, the Working Group has adopted 40 opinions in relation to the Islamic Republic of Iran.<sup>21</sup> The Working Group is concerned that this indicates a systemic problem with arbitrary detention in the country, which amounts to a serious violation of international law. The duty to comply with international human rights standards that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary deprivation of liberty and life, as well as torture and enforced disappearance, rests with all State organs, officers and agents, as well as all other natural and legal persons.<sup>22</sup> The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>23</sup>

<sup>18</sup> See opinions No. 28/2013, No. 50/2016 and No. 92/2017.

<sup>19</sup> See opinions No. 18/2013, No. 44/2015, No. 28/2016, No. 7/2017 and No. 49/2017.

<sup>20</sup> A/HRC/37/68, paras. 51–57. The Secretary-General has also expressed concern relating to such prosecutions in the Islamic Republic of Iran (A/HRC/37/24, paras. 56–57).

<sup>21</sup> See decisions No. 1/1992, No. 28/1994, and No. 14/1996; and opinions No. 39/2000, No. 30/2001, No. 8/2003, No. 14/2006, No. 19/2006, No. 26/2006, No. 4/2008, No. 34/2008, No. 39/2008, No. 6/2009, No. 2/2010, No. 8/2010, No. 20/2011, No. 21/2011, No. 58/2011, No. 30/2012, No. 48/2012, No. 54/2012, No. 18/2013, No. 28/2013, No. 52/2013, No. 55/2013, No. 16/2015, No. 44/2015, No. 1/2016, No. 2/2016, No. 25/2016, No. 28/2016, No. 50/2016, No. 7/2017, No. 9/2017, No. 48/2017, No. 49/2017, No. 92/2017, No. 19/2018, No. 52/2018 and No. 83/2018.

<sup>22</sup> The domestic political and judicial organs are under a positive obligation to ensure an effective remedy and reparation for violations of international human rights law by removing the statute of limitations, sovereign immunity, *forum non conveniens* doctrine or other procedural obstacles to redress in such cases through legislative or judicial action. See opinion No. 52/2014, para. 51. See also CAT/C/CAN/CO/6, para. 15; and CAT/C/CAN/CO/7, paras. 40–41.

<sup>23</sup> A/HRC/13/42, para. 30; and opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35;

81. The Working Group considers that the present case involves serious human rights violations and has decided to refer the present case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, for appropriate action.

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

### **Disposition**

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

The deprivation of liberty of Nizar Zakka, being in contravention of articles 2, 3, 5, 6, 7, 8, 9, 10, 11 (1), 20 (1), 23 (1) and 25 (1) of the Universal Declaration of Human Rights and articles 2 (1) and (3), 7, 9 (1), (2), (3) and (4), 10 (1), 14 (1) and (3) (a), (b), (d), (f) and (g), 16, 22 (1) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

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

85. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

87. The Working Group requests the Government to bring its laws into conformity with the recommendations made in the present opinion and with the commitments made by the Islamic Republic of Iran under international human rights law.

88. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; (b) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and (c) the Special Rapporteur on the independence of judges and lawyers.

89. The Working Group recommends that the Government ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court.

90. The Working Group requests the Government to translate, publish and disseminate the present opinion through all available means and as widely as possible.

### **Follow-up procedure**

91. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

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No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

- (a) Whether compensation or other reparations have been made to Mr. Zakka;
- (b) Whether an investigation has been conducted into the violation of Mr. Zakka's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Islamic Republic of Iran with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

92. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

93. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

94. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>24</sup>

*[Adopted on 16 August 2019]*

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<sup>24</sup> Human Rights Council resolution 33/30, paras. 3 and 7.