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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March – 5 April 2023

#### Opinion No. 21/2023 concerning Saba Kord Afshari and Raheleh Ahmadi (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 51/8.
2. In accordance with its methods of work,<sup>1</sup> on 28 November 2022 the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Saba Kord Afshari and Raheleh Ahmadi. The Government has not replied to the communication within the established timeframe. 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,

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

or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

## Submissions

### *Communication from the source*

4. Saba Kord Afshari, born in 1998, is a women's rights defender and critic of the compulsory veiling. She works as an accounting assistant and lives in Tehran. She regularly participated in the "White Wednesdays" initiative by publishing videos of herself without a hijab on the social media.

5. Raheleh Ahmadi, born on 1 July 1970, is the mother of Saba Kord Afshari and would also frequently participate in the "White Wednesdays" initiative with her daughter. She is a hairstylist and lives in Tehran.

6. Under the domestic law, a woman cannot appear in public without a headscarf and must keep her arms and legs covered. Article 638 of the Islamic Penal Code provides that women, who appear in public places and roads without wearing an Islamic hijab, shall be sentenced to ten days to two months' imprisonment or a fine of fifty thousand to five hundred Rials.

7. In recent years, protests against mandatory veiling laws have become more vocal. In 2017, the "White Wednesdays" initiative has begun encouraging women protesting compulsory veiling laws to either wear white clothing or show themselves in public without a headscarf on Wednesdays. Since the start of this initiative, the Government has reportedly arrested numerous women's right defenders.

### Case of Saba Kord Afshari

8. The source informs that Ms. Kord Afshari was first arrested on 2 August 2018, after having taking part in protests against the state of economy and the alleged corruption of the Government. Prior to her trial, Ms. Kord Afshari was detained in Qarchak prison. On 17 October 2018, she was sentenced, alongside other individuals, to one year of imprisonment on the grounds of disrupting the public order. She was then detained in Evin prison. Ms. Kord Afshari has served part of her sentence and has been released on 14 February 2019, when several prisoners were pardoned on the date of the 40<sup>th</sup> anniversary of the Islamic Revolution.

9. Following her release, Ms. Kord Afshari has published an open letter denouncing detention conditions.

10. Following the arrest and enforced disappearance of a prominent women's rights defender on 10 April 2019, Ms. Kord Afshari and Ms. Ahmadi have published a video dressed in white in support of this defender. In the video, Ms. Kord Afshari appeared without a hijab, and explained that she had been contacted by the Iranian Intelligence Services and threatened with the arrest if she continued.

11. Following the publication of this video on the social media, on 1 June 2019, Ms. Kord Afshari was arrested at her house. Her house was raided, and various items were confiscated, including her cell phone, laptop, laptop bag, books, diaries, and the USB memory stick. The arrest was carried out by the Intelligence Service of the Iranian Revolutionary Guard Corps, and no warrant was presented. The legal grounds for the arrest were also unknown.

12. On 2 June 2019, Ms. Kord Afshari was charged with "assembly and collusion against national security" (article 610 of the Islamic Penal Code) for supporting political prisoners; "propaganda against the State" (article 500 of the Islamic Penal Code) for collaborating with opposition and subversive groups; and "promoting corruption and prostitution" (article 639 of the Islamic Penal Code) for appearing without a headscarf in public. Article 638 of the Islamic Penal Code provides that anyone who explicitly violates any religious taboo in public beside being punished for the act should also be imprisoned for ten days to two months or should be flogged. In a note to that article, appearing without a proper hijab is listed as a religious taboo.

13. Following her arrest, Ms. Kord Afshari's whereabouts were reportedly concealed from her family for 12 days. It was later revealed that she was held in solitary confinement for 11 days either in Vozara detention centre or in Evin prison. Ms. Kord Afshari was interrogated and asked to record videos condemning the "White Wednesdays" initiative, which she refused to do. She was then asked to make a confession under threats that her family members would be arrested or killed, and that personal pictures obtained from her phone would be publicly disseminated. In particular, she was threatened with her mother's arrest, having been shown relevant warrant. Ms. Kord Afshari has refused to confess.

14. On 11 June 2019, Ms. Kord Afshari was transferred to Qarchak prison and on 2 July 2019, to Ward 2-A of Evin prison. Ms. Kord Afshari did not have access to a lawyer following her arrest or during her pre-trial detention. She has met her lawyer for the first time in front of the judge. Her lawyer was only allowed access to parts of her case file one hour before trial, and parts of her file were censored under the pretext of confidentiality. The source reports that Ms. Kord Afshari was indicted on 7 August 2019 and her trial took place on 19 August 2019. She was transferred to the court blindfolded and in handcuffs and it is reiterated that she did not have access to her lawyer before the start of the trial.

15. On 27 August 2019, she was sentenced by the Branch 26 of the Islamic Revolution Court of Tehran for "encouraging people to commit immorality and/or prostitution" (article 639 of the Islamic Penal Code); for "gathering and collusion against internal or external security" (article 610 of the Islamic Penal Code); and for "spreading propaganda against the State" (article 500 of the Islamic Penal Code). Her sentence was reportedly increased by one-half because of the numerous charges against her and previous records. The court has also issued a ban on all social activities. In application of article 134 of the Islamic Penal Code, Ms. Kord Afshari was sentenced to serve 15 years in prison.

16. On 17 March 2020, Ms. Kord Afshari received a notification from the Evin Prosecutor's Office, informing her that she had been partially acquitted of the charges and that her sentence would thus be reduced to seven years and six months. However, on 26 May 2020, Ms. Kord Afshari was informed that the Court of Appeals had changed its verdict and reverted back to its original 15-year sentence.

17. On 9 November 2020, Branch 28 of the Supreme Court has rejected Ms. Kord Afshari's request for a retrial. Instead, she remained at Evin prison for a month before being transferred to Qarchak prison on 9 December 2020, without any prior notice.

18. On 9 March 2021, Ms. Kord Afshari was informed that her prison sentence had been reduced to 7 years and 6 months by the Branch 26 of the Tehran Court of Appeals. The ruling was a correction of what Branch 26 viewed as a judicial violation by the Tehran Revolution Court in its initial sentencing. The Revolution Court erred in giving Ms. Kord Afshari a sentence equal to 150% of her initial total sentence.

19. On 27 April 2022, the Supreme Court acquitted Ms. Kord Afshari of "encouraging people to commit immorality and/or prostitution" through unveiling and walking without a head scarf. On 29 April 2022, Ms. Kord Afshari was informed that her prison sentence had been reduced to five years, based on the application of article 134 of the Islamic Penal Code, which remains the most severe single sentence received by a womens' rights defender.

20. Ms. Kord Afshari remains detained in Qarchak Prison. According to the source, this prison is primarily used to detain women accused of violent crimes as well as female political prisoners. Prisoners are not separated by crime, and thus political prisoners are intermixed with ordinary and dangerous prisoners.

21. Ms. Kord Afshari suffers from chronic stomach disorders and ulcers, as well as anxiety attacks, which require immediate treatment. On 29 June 2020, Ms. Kord Afshari was transferred to the hospital but was sent back to the prison without receiving medical treatment.

22. On 19 September 2020, Ms. Kord Afshari was transferred to the Taleghani hospital, as her health had seriously deteriorated. On the doctors' advice, she was supposed to be given an ultrasound, a colonoscopy, and an endoscopy. Although such treatment is supposed to be paid for by the Organization of Prisons, Ms. Kord Afshari was taken back to prison after undergoing only an ultrasound, without receiving the required medical treatment, on the

grounds that she could not pay for the treatment. Her family were deliberately sent to a different hospital, so they would not be able to meet with her or pay for her treatment.

23. On 13 December 2020, Ms. Kord Afshari was reportedly attacked by prison guards, when the guards raided Ward-8 of Qarchak Prison in order to transfer another political prisoner to Evin Prison. The guards attacked all inmates in the ward and injured Ms. Kord Afshari.

24. On 26 January 2021, Ms. Kord Afshari was again physically assaulted by prison security officers and forcibly transferred from Ward-8 to Ward-6 of Qarchak Prison, which is the ward where prisoners of public-order crimes are held. While Ms. Kord Afshari was outside, the guards grabbed her by her hair, ties her hands behind her back and dragged her across the floor.

25. In March 2021, Ms. Kord Afshari repeatedly fainted since she tested positive for Covid-19. She has allegedly contracted Covid-19 as a result of the prison's practice of bringing in new prisoners without testing them, as well as the prison's lack of social distancing and quarantine guidelines.

26. On 8 May 2021, Ms. Kord Afshari began a hunger strike in order to protest the detention of her mother in Evin Prison despite issues with her health. She ended her hunger strike on 19 May 2021 after her own health has deteriorated and her mother requested that she stops.

27. On 11 August 2021, after testing positive for COVID-19 yet again, Ms. Kord Afshari was placed on a fifteen-day medical leave from Qarshak prison. It is reported that Ms. Kord Afshari receive death threats in Qarchak prison and is being harassed by dangerous inmates. On 5 September 2021, Ms. Kord Afshari was violently threatened by a dangerous inmate with a razor blade while standing outside Ward.

28. Despite complaints to prison authorities, the inmates who harass and threaten Ms. Kord Afshari have been allowed to return to Ward-6 and endanger Ms. Kord Afshari. On 23 October 2021, Ms. Kord Afshari was granted five days of medical leave. She returned to Qarshak Prison on 4 November 2021 after the authorities have rejected her request to extend her leave to continue her medical treatment. As she continues her detention, Ms. Kord Afshari remains at risk due to her underlying health conditions, psychological stress, and physical threats from other prisoners.

#### Case of Raheleh Ahmadi

29. Ms. Ahmadi was arrested on 10 July 2019 at her home in Tehran, reportedly in fulfilment of the threat that Government agents used in an attempt to coerce Ms. Kord Afshari into recording a confession. It is believed that a representative of the prosecutor was present and that a warrant has been presented at the time of the arrest.

30. Ms. Ahmadi was arrested on charges of engaging in "any type of propaganda against the Islamic Republic of Iran in support of opposition groups and association" (article 500 of the Islamic Penal Code); "assembly and collusion to act against the national security" (article 610 of the Islamic Penal Code) and "encouraging and providing for [moral] corruption and prostitution" (article 639 of the Islamic Penal Code).

31. Following her arrest, Ms. Ahmadi was taken to the prosecutor's office, and subsequently to Qarchak Prison. One hour later, she was taken to ward 2-A of Evin Prison for interrogation. Four days later, on 14 July 2019, Ms. Ahmadi was released on bail of 700 million Tomans.

32. On 16 December 2019, the Branch 26 of the Tehran Islamic Revolution Court convicted Ms. Ahmadi for "collusion to act against national security" (article 610 of the Islamic penal Code) by cooperating with opposing media and for "spreading propaganda against the State" (article 500 of the Islamic Penal Code). She was incarcerated on 20 February 2020. She is presently serving a 31-month sentence in Evin Prison, separated from her daughter.

33. On 20 November 2021, Ms. Ahmadi faced a new charge for "propaganda activities against the State having allegedly publishing statements on websites hostile to the Iranian

Government, while in detention. To face this new charge, Ms. Ahmadi was summoned before the Evin Court (Branch 1) on 22 December 2021 and 12 January 2022. On both occasions, Ms. Ahmadi refused to appear before court in the absence of her lawyer.

34. The source notes that following the outbreak of the COVID-19 pandemic, Ms. Kord Afshari's family requested that the Assistant Prosecutor Office release both Ms. Kord Afshari and her mother. They were informed that Ms. Ahmadi might be released, but not Ms. Kord Afshari. As a result, Ms. Ahmadi stated in an open letter that she will continue to be the voice of her daughter from prison.

35. Ms. Ahmadi suffered a nervous breakdown on 9 December 2020. As a result, she suffered a significant loss of mobility in her leg. She returned to the hospital on 5 January 2021. At that time, doctors believed she could be paralyzed. Ms. Ahmadi suffers from thyroid malfunctions and the poor detention conditions make her even more vulnerable to contracting COVID-19.

36. On 15 March 2021, Ms. Ahmadi was granted a leave to allow her to receive medical attention due to her nervous stress and a ruptured disc. The prison clinic's doctor requested that she be examined by a specialist neural doctor. Prison authorities refused to approve her request to extend her medical leave that terminated on 10 April 2021.

37. Health of both Ms. Ahmadi and Ms. Kord Afshari continues to deteriorate as prison authorities fail to provide them with sufficient medical treatment.

#### Legal analysis

38. The source submits that the arrests and detentions of Ms. Kord Afshari and Ms. Ahmadi are arbitrary and fall under categories I, II, III and V of the Working Group.

39. In the context of category I, the source argues that there is no legal basis on which to justify Ms. Kord Afshari or Ms. Ahmadi's deprivation of liberty given (a) Ms. Kord Afshari's incommunicado detention for the period in which she disappeared and (b) the vague and overly broad laws used to arrest and then imprison them.

40. The source recalls that under article 9(3) of the Covenant, when a person is arrested then detained for a criminal charge that individual must be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

41. Furthermore, the U.N. Human Rights Committee has interpreted the term "promptly" to mean within approximately 48 hours, except in exceptional circumstances. Article 9(4) of the Covenant entitles such person to a court proceeding, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. These requirements apply even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity. Additionally, article 48 of the Iranian Code of Criminal Procedure (CCP) provides an individual right to a meeting with a lawyer as soon as a person is detained.

42. It is submitted that Government has violated the Covenant when it disappeared Ms. Kord Afshari after her arrest for twelve days. During her incommunicado detention she was held in solitary confinement and interrogated. From 1 June 2019 to 13 June 2019, Ms. Kord Afshari had no contact with her family or lawyer. Furthermore, Ms. Kord Afshari was not promptly brought before a judge or other judicial officer. Instead, she was transferred twice following her arrest and pre-trial detention before her indictment on 7 August 2019.

43. The facts above demonstrate that Ms. Kord Afshari's detention violated category I, as the Government effectively enforced Ms. Kord Afshari's disappearance and failed to promptly present her to a judge or judicial officer to decide the lawfulness of her detention within a reasonable time.

44. Furthermore, by using vague and overbroad laws as the legal basis for Ms. Kord Afshari's and Ms. Ahmadi's imprisonment, the Government has reportedly violated their right to know the legal basis of their detention.

45. Article 15(1) of the Covenant guarantees the individual right to know what the law is and what conduct violates the law. There must be substantive ground for arrest or detention that is prescribed by law and “defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.” The imprisonment of women’s rights defenders under vague and over broad laws is a systematic occurrence.

46. The principle of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law and regulate their conduct accordingly. It has further noted that laws that are vaguely and broadly worded may have a deterrent effect on the exercise of the rights to freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty.

47. In the case of Ms. Kord Afshari and Ms. Ahmadi, the Government has arbitrarily detained them under vague and overly broad national security provisions: articles 500, 610 and 639 of the Islamic Penal Code. The Working Group previously found that offences covered by these articles were “vaguely formulated” and contrary to the principle of legality.<sup>2</sup>

48. Article 19 of the Covenant states that everyone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The right to freedom of expression also benefits from protection under the article 19 of the Universal Declaration of Human Rights.

49. The UN Human Rights Committee has recognized freedom of expression as essential for the full development of an individual and, in its General Comment No. 34, it described this right as an indispensable element of democratic society and “the vehicle for the exchange and development of ideas.” Included in this freedom, according to the Committee, is “the right of individuals to criticize or openly and publicly evaluate their governments without fear of interference or punishment.”

50. Despite these protections, the authorities have arbitrarily detained, prosecuted, and convicted Ms. Kord Afshari and Ms. Ahmadi for exercising their right to freedom of expression. Ms. Kord Afshari’s conviction resulted from their participation in peaceful protests against compulsory veiling, which relates intimately to her political, moral, and religious beliefs. Similarly, Ms. Ahmadi’s conviction results from her participation in peaceful protests against her daughter’s detention. Article 19 of the Covenant gives Ms. Kord Afshari and Ms. Ahmadi the right to address this issue both in the private and public arenas. Their arrest and imprisonment directly violate that right. Additionally, the videos Ms. Kord Afshari posted on the Internet fall within the protection of article 19 of the Covenant.

51. The Government has no legitimate grounds for restricting Ms. Kord Afshari or Ms. Ahmadi’s right to freedom of expression because none of their posts or actions advocated for violence or otherwise threatened the rights or reputations of others, national security, public order, public health, or morals. Even if the Government could establish such grounds, it would need to show that the infringements of their right to freedom of expression were necessary to protect one of the special interests set forth in article 19(3) of the Covenant. According to the UN Human Rights Committee’s case law, “the State party must demonstrate in specific fashion the precise nature of the threat to any of the enumerated purposes.” If the Government had a legitimate reason for curtailing their right to freedom of expression, it was obliged to articulate specific reasons why the restrictions were necessary. According to the source, the authorities have not accomplished this.

52. Ms. Kord Afshari’s participation in peaceful protests, as well as her social media posts in which she appears without a hijab, do not pose any risk to national security or public order, health, or morals, and they do not violate the rights of others. The authorities have convicted and detained Ms. Kord Afshari and her mother merely because they did not approve of their attempts to connect with others with respect to their views. By doing this, the Government

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<sup>2</sup> A/HRC/WGAD/2021/15.

has deprived Ms. Kord Afshari and Ms. Ahmadi of their fundamental right to freedom of expression.

53. In relation to the category III, the source recalls violations of (a) the right to the presumption of innocence (b) the right to a public hearing, and (c) and of the right of defence. It further adds that Ms. Kord Afshari's pre-trial detention and coercion to extract forced confession is properly viewed as a violation of the prohibition of torture.

54. In this context, the Government allegedly violated Ms. Kord Afshari's right to a presumption of innocence. Article 14(2) of the Covenant guarantees that everyone charged with a criminal offence shall have the right to be presumed innocent according to law. Judges are prohibited from expressing any opinion that implies the accused person's guilt or innocence before the end of proceedings and verdict, under the article 372 of the Code of Criminal Procedure. The Constitution, in its article 156, also notes this right and reinforces the principles of judicial independence. As noted by the UN Human Rights Committee, the requirement of judicial independence refers to "the actual independence of the judiciary from political interference by the executive branch and legislature."

55. Ms. Kord Afshari has been denied of her right to a presumption of innocence and her case lacked impartiality based on the judge's rulings. The demonstrated bias throughout Ms. Kord Afshari's proceedings continued in her sentencing, as she was acquitted on all charges but later given an even harsher sentence without a just cause.

56. Moreover, the Government has violated Ms. Kord Afshari's right to a fair and public hearing. Article 14(1) of the Covenant states that, in the determination of any criminal charge, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal. This is an absolute requirement not capable of limitation.

57. Article 10 of the Universal Declaration of Human Rights also guarantees individuals the right to a fair and public hearing. As the Human Rights Committee has stated in General Comment No. 32, "[t]he publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large." The right to a public hearing must include a hearing open to the general public, including media, without restricting entrance to a limited number of individuals.

58. It is submitted that Ms. Kord Afshari did not receive a fair and public trial. Moreover, she was not allowed to meet with an attorney throughout her pre-trial detention, and she did not have a chance to speak with her attorney in private before her trial began. Instead, she reportedly met her attorney in front of the judge. By convicting Ms. Kord Afshari without a fair and public hearing, the Government has violated her right to a fair trial in contravention of article 14(1) of the Covenant and article 10 of the Universal Declaration of Human Rights.

59. Finally, also in relation of the category III, the Government has violated Ms. Kord Afshari and Ms. Ahmadi's right to assistance of the legal counsel. Articles 14(3)(d) and 14(3)(b) of the Covenant guarantee an individual's right to defend herself in person or through legal assistance of her own choosing and have adequate time and facilities for the preparation of her defence and communicate with counsel of her choosing. To fulfil these guarantees, the accused must also be granted prompt access to counsel. Furthermore, the right of a detainee to communicate and consult with her legal counsel "may not be suspended or restricted save in exceptional circumstances" and "shall not be denied for more than a matter of days." The inability to fully access legal counsel effectively interferes with the right to assistance. The right of access to and assistance of a lawyer is outlined in not only the Body of Principles but also in the article 9(4) of the Covenant.

60. Under the Iran's criminal procedural law, individuals charged with national security offences or political crimes cannot freely choose their lawyer but must choose from a list approved by the head of the judiciary. This regulatory limitation to the right of being assisted by a counsel of one's choosing directly infringes article 14 of the Covenant, argues the source.

61. Throughout their trials, sentencing, and detentions, Ms. Kord Afshari and Ms. Ahmadi have had little to no access to their lawyers. Ms. Kord Afshari met with her lawyer for the first time in front of her trial judge, after having been detained for almost two months, and critical information about Ms. Kord Afshari's case remained hidden. In November 2021, Ms.

Ahmadi was charged and brought before the Evin Court without proper notice or access to her lawyer. Having had no time with and access to their attorneys and the full scope of information about their cases, both Ms. Kord Afshari and Ms. Ahmadi were effectively denied the right to prepare a defence.

62. Finally, the source submits that the detention of Ms. Kord Afshari and Ms. Ahmadi is arbitrary under category V as it is based on their gender. The source recalls that the arrest or detention of women on the basis of their sex or gender is *prima facie* discriminatory and violates both the Covenant and Universal Declaration of Human Rights.

63. Women are treated differentially in many aspects of Iranian law and the judicial system, solely on account of their gender. Those who peacefully advocate for women's rights are often detained and imprisoned, where they endure harsh treatment.

64. The source argues that factual circumstances of Ms. Kord Afshari and Ms. Ahmadi's arrests, detentions, and sentencing show that they were targeted because of their gender and as women's rights defenders. There is a pattern of persecution of women's rights defenders who oppose Iran's compulsory veiling laws.

#### *Response from the Government*

65. On 28 November 2022, the Working Group transmitted the allegations made by the source to the Government through its regular communications procedure. The Working Group requested the Government to provide, by 27 January 2023, detailed information about the current situation of Ms. Afshari and Ms. Ahmadi and clarify the legal provisions justifying their continued detention.

66. The Working Group regrets that the Government did not submit a response within the established timeframe.<sup>3</sup> The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. Consequently, the Working Group cannot accept the reply as if it were presented within the time limit.

### **Discussion**

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

68. In determining whether the detention of Ms. Afshari and Ms. Ahmadi is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case for breach of the international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>4</sup> In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

#### i. Category I

##### Arrest and detention

69. The source argues that there is no legal basis on which to justify Ms. Kord Afshari or Ms. Ahmadi's deprivation of liberty. On 1 June 2019, Ms. Kord Afshari was arrested at her house. No warrant was presented to Ms. Kord Afshari or to her family and the legal grounds for the arrest were also unknown. Conversely, it is shown that a warrant was presented to Ms. Ahmadi.

70. The Working Group recalls that for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law that might authorize the arrest. The authorities must invoke

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<sup>3</sup> The Government replied to the communication on 14 April 2023, after the adoption of the present opinion.

<sup>4</sup> [A/HRC/19/57](#), para. 68.



that legal basis and apply it to the circumstances of the case through an arrest warrant.<sup>5</sup> International law includes the right to be presented with an arrest warrant, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary detention under articles 3 and 9 of the Universal Declaration of Human Rights, article 9(1) of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group therefore finds a violation of article 9(1) as well as article 9(2) of the Covenant as Ms. Kord Afshari was not informed, at the time of arrest, of the reasons for the arrest.

71. According to the source, Ms. Kord Afshari was not promptly brought before a judge or other judicial officer. Instead, she was transferred twice following her arrest and pre-trial detention before her indictment on 7 August 2019. As the Working Group has reiterated in its jurisprudence, and the Human Rights Committee has specified, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee promptly before a judge; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.<sup>6</sup> The Working Group therefore finds a violation of article 9(3) of the Covenant, of the right to be brought promptly before a judge.

72. Article 9(3) of the Covenant further states that it is not to be the general rule that persons awaiting trial are to be detained in custody. The Working Group recalls the view of the Human Rights Committee, as well as its own recurrent findings, that pretrial detention must be the exception and not the rule; should be ordered for as short a time as possible;<sup>7</sup> and must be based on an individualized determination that it is reasonable and necessary, taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Courts must examine whether alternatives to pretrial detention would render detention unnecessary in the case in question.<sup>8</sup> Moreover, pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.<sup>9</sup> In the case of Ms. Kord Afshari, the Working Group concludes that an individualized determination of her circumstances was absent, and as a result, her detention lacked a legal basis and was ordered in violation of article 9 (3) of the Covenant. In reaching this conclusion, the Working Group notes that the Government did not submit any information to suggest that such a determination took place or to rebut the source's submissions. Other international standards also require that non-custodial measures be prioritized for women.<sup>10</sup>

73. The Working Group also finds that Ms. Kord Afshari was not afforded the right to bring proceedings before a court so that the court could decide without delay on the lawfulness of her detention in accordance with article 9(4) of the Covenant, articles 3, 8 and 9 of the Universal Declaration on Human Rights and principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Judicial oversight of deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that there is a legal basis for the detention.<sup>11</sup> Her detention also violated their rights under article 8 of the Universal Declaration on Human Rights and article 2(3) of the Covenant, as she was denied an effective remedy.

74. The source also submits following her arrest, Ms. Kord Afshari's whereabouts were reportedly concealed from her family for 12 days from 1 June 2019 to 13 June 2019, during which time she had no contact with her family or lawyer. It was later revealed that she was held in solitary confinement for 11 days either in Vozara detention centre or in Evin prison.

<sup>5</sup> Opinions No. 46/2017, 66/2017, 75/2017, 35/2018, 79/2018 and 15/2021, para. 50.

<sup>6</sup> Opinions No. 60/2020 and 66/2020, and Human Rights Committee, general comment No. 35 (2014), para. 33.

<sup>7</sup> Opinions No. 57/2014, para. 26; 8/2020, para. 54; 5/2021, para. 43; and 6/2021, para. 50. See also Human Rights Committee, general comment No. 35, para. 38; and [A/HRC/19/57](#), paras. 48–58.

<sup>8</sup> [A/HRC/19/57](#), paras. 48–58.

<sup>9</sup> Human Rights Committee, general comment No. 35, para. 38.

<sup>10</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), sect. III. See also [A/HRC/48/55](#), annex, paras. 7–9; and opinion No. 40/2021, para. 82, 54/2022, para. 75.

<sup>11</sup> Opinions No. 35/2018, para. 27; 83/2018, para. 47; 32/2019, para. 30; 33/2019, para. 50; 44/2019, para. 54; 45/2019, para. 53; 59/2019, para. 51; and 65/2019, para. 64.

In the absence of timely response from the Government, the Working Group finds to be credible the source's allegations that that Ms. Kord Afshari was deprived of her liberty against her will, with the involvement of government agents who did not disclose her whereabouts. She was therefore subjected to enforced disappearance.<sup>12</sup> The Working Group recalls that enforced disappearance constitutes an aggravated form of arbitrary detention that has no legal basis and amounts to a violation of article 9 of the Universal Declaration of Human Rights.<sup>13</sup>

75. She was also detained *incommunicado* during this period. The Working Group recalls that, holding persons *incommunicado* violates their right to challenge the lawfulness of their detention before a court under article 9(3)<sup>14</sup> and (4) of the Covenant.<sup>15</sup> *Incommunicado* detention, especially during the early stage of the investigation, is an environment conducive to torture and might be used as a coercion to force a detainee to admit guilt. In the case of Ms. Kord Afshari, the source alleges that she was interrogated, and asked to record videos condemning the "White Wednesdays" initiative. She was also threatened that unless she confessed, her family members would be arrested or killed, and that personal pictures in her phone would be publicly disseminated. In particular, she was threatened with her mother's arrest, and was shown a warrant for her mother's arrest. As the source as submitted, her mother was subsequently arrested and detained.

76. The Working Group recalls that prompt and regular access to family members, as well as to independent medical personnel and lawyers, is an essential safeguard for the prevention of torture as well as for protection against arbitrary detention.<sup>16</sup> It finds that Kord Afshari's right to have contact with the outside world under rules 43(3) and 58(1) of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment have been contravened.

77. The source argues that the Government arbitrarily detained Ms. Kord Afshari and Ms. Ahmadi, under vague and overly broad national security provisions: articles 500, 610 and 639 of the Islamic Penal Code. As noted by the source, the Working Group previously found that offences covered by these articles were "vaguely formulated" and contrary to the principle of legality.<sup>17</sup> The source submits that the imprisonment of women's rights defenders under vague and over broad laws is a systematic occurrence.

78. The Working Group has raised the issue of prosecution under vague and overly broad penal laws with the Government on several occasions,<sup>18</sup> including charges of threatening national security<sup>19</sup> and spreading propaganda and insulting the sanctity of Islam.<sup>20</sup> As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and regulate his or her conduct accordingly.<sup>21</sup> The Working Group emphasizes that these laws are incompatible with international human rights law. These laws cannot be considered to fulfil the requirement of being prescribed by law and defined with sufficient precision due to their vague and overly broad language.<sup>22</sup> The detention and prosecution Ms. Kord Afshari and Ms. Ahmadi under these vague provisions are incompatible with article 11(2) of the Universal Declaration of Human Rights and articles 9 (1) and 15 (1) of the Covenant.

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<sup>12</sup> A/HRC/16/48/Add.3, para. 21. Opinions No. 37/2021, para. 65; and 41/2020, para. 61.

<sup>13</sup> Human Rights Committee, general comment No. 35 (2014), para. 17, and opinion No. 37/2021, para. 65.

<sup>14</sup> Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>15</sup> Opinions No. 45/2017, 46/2017, 69/2017, 35/2018, 9/2019, 44/2019 and 45/2019.

<sup>16</sup> Human Rights Committee, general comment No. 35 (2014), para. 58, Opinion No. 34/2021, para. 77; 5/2022, para. 72.

<sup>17</sup> Opinion No. 41/2017, paras. 98–101; 62/2018, paras. 57–59; 11/2021, para 67; 46/2022, para. 63.

<sup>18</sup> Opinions No. 55/2013, para. 14; 19/2018, para. 33; No. 52/2018, para. 78; 83/2018, para. 58; and 29/2021, para. 52.

<sup>19</sup> Opinions No. 9/2017, para. 23; 19/2018, para. 33; and 83/2018, para. 58.

<sup>20</sup> Opinion No. 33/2019, para. 51.

<sup>21</sup> Opinion No. 41/2017, paras. 98–101; 62/2018, paras. 57–59; and 33/2019, para. 51. See further Human Rights Committee, general comment No. 35 (2014), para. 22.

<sup>22</sup> Human Rights Committee, general comment No. 34, para. 25.

79. For the reasons above, the Working Group considers that the deprivation of liberty of Ms. Kord Afshari and Ms. Ahmadi lacks legal basis and is thus arbitrary, falling under category I.

ii. Category II

80. The source submits and the Government has not contested that the Government has violated the right to freedom of opinion and expression of Ms. Kord Afshari and Ms. Ahmadi as well as their right to freedom of assembly, and association protected by articles 19, 21 and 22 of the Covenant and articles 19 and 20 of the Universal Declaration.

81. The Working Group recalls that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person; they are essential for any society and constitute the foundation stone for every free and democratic society.<sup>23</sup> The Human Rights Committee has further stated that the freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers. That right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.<sup>24</sup>

82. In the present case, the Government had the opportunity to explain the detention and subsequent charges against Ms. Kord Afshari and Ms. Ahmadi but has not. The source, on the other hand, has explained their arrest and detention as being based on their activities as a women's rights activist, taking active part in expressing opinions against the compulsory use of the hijab in the Islamic Republic of Iran. There is no information that their activities have been anything but peaceful nor is there any indication of them inciting others to violence.

83. The Working Group has found that social media posts criticizing government policy, such as its compulsory hijab, fall within the right to freedom of expression.<sup>25</sup> It is therefore clear to the Working Group that the basis for the arrest and subsequent detention of Ms. Kord Afshari and Ms. Ahmadi was the exercise of their right to freedom of opinion and expression and freedom of assembly. While freedom of expression is not an absolute right, the Human Rights Committee has stated in its general comment No. 34 that when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Moreover, it stipulates that article 19 (3) may never be invoked as a justification for the suppressing of any advocacy of multi-party democracy, democratic tenets, and human rights. The permitted restrictions on the right may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals. In the same general comment, the Committee stipulates that restrictions are not allowed on grounds not specified in article 19(3), even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. The Government, did not present any argument to the Working Group to invoke any of these limitations, nor did it demonstrate why bringing charges against the women was a legitimate, necessary, and proportionate response to their peaceful online activities. According to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, the judiciary imposed heavy sentences on individuals who peacefully exercised their freedom of expression.<sup>26</sup> This case indicates that the situation continues.

84. The Working Group wishes to express its concern over the types of crimes that Ms. Kord Afshari and Ms. Ahmadi charged with and appear to have been ultimately sentenced for: vaguely formulated and overly broad national security offences: gathering and collusion and internal and external security (article 610) and spreading propaganda against the state (article 500). The vague and overly broad laws fall outside of principles of legality and unduly

<sup>23</sup> Ibid, para. 2.

<sup>24</sup> Ibid., para. 11.

<sup>25</sup> Opinions No. 83/2018, paras. 33, 45 and 52–55; 33/2019, para. 21.; 15/2021, para. 60, 54/2022, para. 82.

<sup>26</sup> [A/70/411](#), para. 23.

limit universal freedoms. As discussed in category I, the Working Group observes that vague and overly broad laws are consistently used in the Islamic Republic of Iran to criminalize the exercise of the rights to freedom of expression, association, and peaceful assembly.<sup>27</sup>

85. The Working Group reiterates that the principle of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law and regulate their conduct accordingly.<sup>28</sup> It further notes that laws that are vaguely and broadly worded may have a deterrent effect on the exercise of the rights to freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association.<sup>29</sup>

86. The Working Group recalls the report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, in which he highlighted the vague national security laws and their criminalization of free expression and free association.<sup>30</sup> Specifically, the Special Rapporteur has cited articles 500 and 610 of the Penal Code as vaguely defined and has stated that they contravene international human rights law and unduly limit freedom of expression, association and assembly. The Special Rapporteur concluded that these laws allow for arbitrary application and the abuse of power.<sup>31</sup> In the present case, these articles were used to stifle the freedoms legitimately exercised by Ms. Kord Afshari and Ms. Ahmadi.

87. The Working Group consequently finds that the detention of Ms. Kord Afshari and Ms. Ahmadi resulted from their legitimate exercise of freedom of opinion, expression, and assembly, as protected by articles 19, 21 and 22 of the Covenant and articles 19 and 20 of the Universal Declaration and was therefore arbitrary, falling under category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

iii. Category III

88. Given its finding that the deprivation of liberty of is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. However, Ms. Kord Afshari was tried and sentenced to 15 years and Ms. Ahmadi is presently serving a 31-month sentence in Evin Prison.

89. The source argues that Ms. Kord Afshari has been denied of her right to a presumption of innocence and her case lacked impartiality based on the judge's rulings. The source submits that the demonstrated bias throughout Ms. Kord Afshari's proceedings continued in her sentencing, as she was acquitted on all charges but later given an even harsher sentence without a just cause or an explanation. In particular, on 17 March 2020, Ms. Kord Afshari received a notification from the Evin Prosecutor's Office, informing her that she had been partially acquitted of the charges and that her sentence would thus be reduced to seven years and six months. The ruling was a correction of what Branch 26 viewed as a judicial violation by the Tehran Revolution Court in its initial sentencing. The Revolution Court erred in giving Ms. Kord Afshari a sentence equal to 150% of her initial total sentence. However, on 26 May 2020, Ms. Kord Afshari was informed that the Court of Appeals had changed its verdict and reverted back to its original 15-year sentence. The Working Group is concerned by the inconsistent sentencing that Ms. Kord Afshari has been subjected to. As the Working Group has previously stated, the Revolution Courts do not meet international standards of independence or impartiality.<sup>32</sup> The Working Group therefore finds a violation of article 14(1) of the Covenant, as any person facing criminal charges has a right to a hearing before a competent, independent, and impartial tribunal established by law.

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<sup>27</sup> Opinions 19/2018, para. 33; 85/2021, para. 41.

<sup>28</sup> See, e.g., Opinions Nos. 41/2017, paras. 98–101; 62/2018, paras. 57–59.

<sup>29</sup> Opinions No. 10/2018, para. 55; 15/2021, para. 65.

<sup>30</sup> [A/HRC/19/66](#), para. 13; and [A/HRC/49/75](#), para. 22.

<sup>31</sup> [A/70/411](#), para. 23.

<sup>32</sup> [E/CN.4/2004/3/Add.2](#), para. 65 (1). Opinions Nos. 19/2018, para. 34; 52/2018, para. 79 (f); 32/2019, para. 44; 33/2019, para. 67; 51/2019, para. 65; and 85/2021, para. 87. See also [CCPR/C/IRN/CO/3](#), paras. 21–22.

90. The presentation of Ms. Kord Afshari in the court while blindfolded and handcuffed compounds this violation. According to the Human Rights Committee's General Comment No. 32 on the right to equality before court and tribunals and a fair trial, which states that "defendants should not be presented to the court in a manner indicating that they may be dangerous criminals as this violates the presumption of innocence."<sup>33</sup> The Working Group has previously found a violation of the right to be presumed innocent on the basis of facts that included presentation of the applicant in handcuffs.<sup>34</sup>

91. According to the source, the Government has violated Ms. Kord Afshari and Ms. Ahmadi's right to assistance of the legal counsel. It is submitted that throughout their trials, sentencing, and detentions, Ms. Kord Afshari and Ms. Ahmadi have had little to no access to their lawyers. Ms. Kord Afshari met with her lawyer for the first time in front of her trial judge, after having been detained for almost two months, and critical information about Ms. Kord Afshari's case remained hidden. In November 2021, Ms. Ahmadi was charged and brought before the Evin Court without proper notice or access to her lawyer. Under the Iran's criminal procedural law, individuals charged with national security offences or political crimes cannot freely choose their lawyer but must choose from a list approved by the head of the judiciary.

92. All persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided without delay.<sup>35</sup> The Working Group considers that the failure to provide Ms. Kord Afshari and Ms. Ahmadi's with access to counsel from the outset, seriously affected their ability to prepare a defence. The fact that both are facing serious national security charges made these violations of due process all the more egregious. The Working Group notes that this case is another example of instances when legal representation was denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in the Islamic Republic of Iran.<sup>36</sup>

93. In these circumstances, the Working Group finds that their right to adequate time and facilities for the preparation of their defence and to communicate with counsel of their choosing under article 14(3)(b) of the Covenant, and principles 17(1) and 18(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was violated, as was their right to present an effective defence through counsel of their choosing under article 14(3)(d) of Covenant. The Working Group finds that Ms. Kord Afshari and Ms. Ahmadi means to prepare their defence were deliberately restricted. Pursuant to article 14(3)(b) of the Covenant, any detainee must be given sufficient time and adequate facilities to prepare a defence. This provision is an important element of the guarantee of fair trial. Facilities are only adequate if they include access to documents and other evidence, which reportedly was denied in the case of Ms. Kord Afshari.<sup>37</sup>

94. The source makes an uncontested submission that Ms. Kord Afshari was kept in solitary confinement for 11 days during her pre-trial detention. The Working Group notes that according to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, and must be subject to independent review and authorized by a competent authority.

95. The Working Group notes with grave concern health issues of both individuals, some of which were exacerbated or caused by their conditions of detention. As a result, both require consistent medical attention. In light of the source's detailed submissions that both Ms. Kord Afshari and Ms. Ahmadi's medical problems and the difficulties they are facing in accessing

<sup>33</sup> General Comment No. 32, para. 30; Hamdi Al Ta'mari and Mohamad Baran v. Israel, Opinion No. 5/2010, , para. 30.

<sup>34</sup> Opinion No. 5/2010, para. 30.

<sup>35</sup> A/HRC/30/37, annex, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35, para. 35. See also General Assembly resolution 73/181; CCPR/C/IRN/CO/3, para. 21; and A/HRC/45/16, para. 51.

<sup>36</sup> A/HRC/40/24, para. 13.

<sup>37</sup> Human Rights Committee, General Comment No. 32, para. 32 et seq.

treatment, the Working Group recalls that the denial of medical care can constitute a form of torture.<sup>38</sup> According to article 10(1) of the Covenant, all persons deprived of their liberty must be treated with humanity and dignity, including receiving appropriate medical care.<sup>39</sup> The Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

96. The Working Group also notes with alarm the source's submission that Ms. Kord Afshari has been repeatedly attacked by prison guards and inmates and is being held with violent offenders. This concern is echoed by Secretary General in his 2021 report on the situation of human rights in Iran who expressed concerns about reports of transfers of human rights defenders and political prisoners to the ward of violent offenders, including Ms. Kord Afshari.<sup>40</sup>

97. The Working Group considers that these circumstance substantially undermined Ms. Kord Afshari and Ms. Ahmadi's capacity to defend themselves in the judicial proceedings.<sup>41</sup> The Working Group finds such treatment and conditions of detention violated rules 1, 13, 21, 22(1) and 23(1) of the Nelson Mandela Rules, impacted their ability to prepare a defence, jeopardized the principle of equality of both parties and violated their right to a fair trial.<sup>42</sup>

98. In light of these numerous violations, the Working Group concludes that the breaches of the fair trial and due process rights of Ms. Kord Afshari and Ms. Ahmadi's are of such gravity as to give her deprivation of liberty an arbitrary character, falling within category III.

iv. Category V

99. The present case concerns a mother and daughter who were arrested and detained due to their engagement in public protest to express their opposition to the compulsory wearing of the hijab in the Islamic Republic of Iran ("White Wednesdays" initiative). In this context, the Working Group finds that Ms. Kord Afshari and Ms. Ahmadi were detained because of their gender. As a women's rights activists, they engaged in gender-specific type of protest by taking off their hijabs online.<sup>43</sup>

100. The Working Group has previously considered cases involving women who has expressed their opposition to the compulsory wearing of hijab in the Islamic Republic of Iran.<sup>44</sup> In his 2021, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran reported that the authorities continue to arrest and imprison women's rights advocates who have challenged compulsory veiling on national security and morality-based charges.<sup>45</sup> In 2022, the Acting High Commissioner of the OHCHR called on the Iranian authorities to stop targeting, harassing, and detaining women who do not abide by the hijab rules<sup>46</sup> Relatedly, in its Resolution S35/1, on the deteriorating situation of human rights in the Islamic Republic of Iran, especially with respect to women and children, the Human Rights Council decided to establish an independent international fact-finding mission on the Islamic Republic of Iran.

101. In the light of the above, the Working Group finds that Ms. Kord Afshari and Ms. Ahmadi were deprived of their liberty on discriminatory grounds, on the basis of their gender, political or other opinion in opposing the compulsory veiling laws. Their deprivation of liberty violates their right to equality before the law and equal protection of the law under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2(1) and 26 of the

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<sup>38</sup> A/HRC/38/36, para. 18; Opinions no. 54/2022, para. 91; 20/2022, para. 104; 46/2022, para. 83.

<sup>39</sup> Opinion No. 26/2017, para. 66.

<sup>40</sup> Report of the Secretary General, Situation of human right in the Islamic Republic of Iran, A/76/268, August 2021, para. 27.

<sup>41</sup> A/HRC/30/37, paras. 12, 15, 67 and 71.

<sup>42</sup> Opinions No. 92/2017, para. 56; 32/2019, para. 42; 47/2017, para. 28; 52/2018, para. 79 (j); and 53/2018, para. 77 (c). See further E/CN.4/2004/3/Add.3, para. 33.

<sup>43</sup> Opinion No. 15/2021.

<sup>44</sup> Opinions No. 15/2021, 54/2022.

<sup>45</sup> A/HRC/46/50 January 2021, para. 54.

<sup>46</sup> <https://www.ohchr.org/en/press-releases/2022/09/mahsa-amini-acting-un-human-rights-chief-urges-impartial-probe-death-iran>20 September 2022.

Covenant and was arbitrary under category V.<sup>47</sup> The Working Group refers the case to the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on Violence against Women and the Working Group on discrimination against women and girls for appropriate action.

V. Concluding remarks

102. The Working Group considers that Ms. Kord Afshari and Ms. Ahmadi were deprived of their liberty in violation of international human rights law and should never have been subjected to any form of criminal punishment for their peaceful activities. The Working Group echoes the call of several UN experts to Iranian authorities to heed the legitimate demands of women who have for decades peacefully protest against the compulsory hijab rules and want their fundamental human rights respected.<sup>48</sup>

103. The present case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty in the Islamic Republic of Iran.<sup>49</sup> The Working Group is concerned that this indicates widespread or systemic arbitrary detention in the country, which amounts to a serious violation of international law. The duty to comply with international human rights standards rests with all State organs, officers, and agents. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>50</sup> The Working Group refers the present case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran for appropriate action.

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

**Disposition**

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

The deprivation of liberty of Saba Kord Afshari and Raheleh Ahmadi being in contravention of articles 2, 3, 7, 8, 9, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 15, 19, 21, 22 and 26 of the International Covenant on Civil and Political Right, is arbitrary and falls within categories I, II III and V.

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

<sup>47</sup> Opinions Nos. 75/2017, 79/2017, 35/2018, 36/2018, 45/2018, 46/2018, 9/2019, 44/2019 and 45/2019.

<sup>48</sup> <https://www.ohchr.org/en/press-releases/2022/09/iran-un-experts-demand-accountability-death-mahsa-amini-call-end-violence>.

<sup>49</sup> Opinions Nos. 18/2013, 28/2013 52/2013, 55/2013, 16/2015, 44/2015, 1/2016, 2/2016, 25/2016, 28/2016, 50/2016, 7/2017, 9/2017, 48/2017, 49/2017, 92/2017, 19/2018, 52/2018, 83/2018, 32/2019 and 33/2019.

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

107. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Ms. Kord Afshari and Ms. Ahmadi immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

108. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Kord Afshari and Ms. Ahmadi, and to take appropriate measures against those responsible for the violation of their rights.

109. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (a) the Special Rapporteur on Violence Against Women and (b) the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, for appropriate action.

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

#### **Follow-up procedure**

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

(a) Whether Ms. Kord Afshari and Ms. Ahmadi have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. Kord Afshari and Ms. Ahmadi;

(d) Whether an investigation has been conducted into the violation of the rights of Ms. Kord Afshari and Ms. Ahmadi, and, if so, the outcome of the investigation;

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

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

112. 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.

113. 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.

114. 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>51</sup>

*[Adopted on 30 March 2023]*

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<sup>51</sup> Human Rights Council resolution 51/8, paras. 6 and 9.