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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session, 23-27 November 2020

Opinion No. 83/2020 concerning Youcef Nadarkhani (Iran)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 9 July 2020, the Working Group transmitted to the Government of Iran a communication concerning Youcef Nadarkhani. The Government replied to the communication on 2 September 2020. 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

4. **Mr. Youcef Nadarkhani** is an Iranian Christian pastor, born in 1977. The place of his usual residence is Rasht, Gilan Province, Iran.

5. The source informs that Mr. Nadarkhani belongs to the Protestant Evangelical Church of Iran and has served as a pastor of a 400-member house church. Through much of his life, he has been the target of religious discrimination, for which he has been arrested, tried, and imprisoned on several occasions. His family members have also been the target of persecution by the Government because of their religion.

6. According to the information received, Mr. Nadarkhani was first arrested in December 2006, and charged with apostasy and evangelism. He was released two weeks later. He was detained once again on 13 October 2009, while attempting to register his church. Days prior to his arrest, Mr. Nadarkhani had protested a policy that forced his children to study the Quran in school. His position was that the Constitution of Iran permitted parents to raise children in their own faith. Though initially arrested for protesting, his charges were later amended to reflect evangelizing of Muslims and apostasy (renouncing his Islamic faith). Even though Mr. Nadarkhani claimed that he had never been a Muslim as an adult, prosecutors used his Islamic ancestry as the reason for the charge of apostasy.

7. Reportedly, Mr. Nadarkhani was tried on 21-22 September 2010, by the 1st Court of the Revolutionary Tribunal and found guilty of apostasy. Although he maintained that he had not observed a religion prior to turning to Christianity, he was verbally sentenced to death for the crime of apostasy. According to various sources, Pastor Nadarkhani was offered leniency if he renounced his religion, and while imprisoned in Lakan Prison, Government agents attempted to convert him to Islam. Authorities also attempted to pressure Mr. Nadarkhani into renouncing his faith by arresting his family member.

8. The source further states that refusing to renounce his religious beliefs, on 13 November 2010, he was sentenced to death by hanging, which was later affirmed by an appellate court. In June 2011, the Supreme Court of Iran overturned Mr. Nadarkhani's death sentence, concluding that he could not be executed if it was determined that he was not a Muslim after turning 15 years old, the age of maturity for boys according to Iranian law, and he repented. Ultimately, however, Mr. Nadarkhani refused to recant and was sentenced to death. In September 2012, due to mounting international pressure, Mr. Nadarkhani was acquitted of apostasy, found guilty of evangelizing Muslims instead, and released immediately having served time for the latter crime. However, on 25 December 2012, Mr. Nadarkhani was detained once more to complete the remainder of his three-year sentence for evangelizing and, subsequently, was released on 7 January 2013.

9. Mr. Nadarkhani's most recent prison sentence stems from an arrest by the authorities, which conducted various raids of Christian homes in Rasht, Iran, on 13 May 2016. At the time of his arrest, Mr. Nadarkhani was participating in a private Christian ceremony. Mr. Nadarkhani and other members of his church were detained. The arresting authorities provided no written or oral explanation of the legal justification for the arrest, including any penal code provision allegedly violated.

10. The source reports that on 24 July 2016, Mr. Nadarkhani was summoned by a text message to appear before the Islamic Revolutionary Court in Rasht and, along with other members of his church, charged with "acting against national security" by "promoting Zionist Christianity." He was asked to stop his Christian religious activities. He was released the same day on the condition that he raise a 100 million toman bail (USD \$33,000) within a week or face arrest, which he posted.

11. It is further reported that Mr. Nadarkhani's case was referred to the judicial authorities in Tehran. Secret hearings were then held in December 2016 and February and June 2017, before the 26th Branch of the Islamic Revolutionary Court in Tehran. The source notes that the presiding judge is a notorious figure in Iran's judicial system, who has drawn international condemnation for imposing excessive sentences based on unfounded charges to advance the political goals of the Islamic Revolutionary Guard.

12. On 6 July 2017, Mr. Nadarkhani was found guilty of “acting against national security” by “promoting Zionist Christianity”. He and his co-defendants were all sentenced to ten years of prison, which was backdated to 24 June 2017, and Mr. Nadarkhani received an additional two-year sentence in external exile in the city of Nik Shahr, Sistan and Baluchestan Province in Southeast Iran.

13. The source asserts that Mr. Nadarkhani’s verdict was considered one of several excessive sentences handed down by the abovementioned judge against Iranian Christians based on false charges. The source further states that the presiding judge was accused of conducting trials that completely lack due process. During the June 2017 hearing, for example, the presiding judge reportedly accused Mr. Nadarkhani’s church, the Church of Iran, of annually receiving an equivalent of 650,000 USD from a foreign Government. Moreover, during the same hearing, another judge entered the court room and remarked that “Christians make foolish claims”.

14. On 4 September 2017, Mr. Nadarkhani and his other co-defendants appealed their sentences to the 36th Branch of the Islamic Revolutionary Court in Tehran. His case was heard by two judges. Both judges are regarded as playing “prominent roles in the crackdown on the freedom of expression” in Iran.

15. On 2 May 2018, all sentences were affirmed by the Supreme Court, and, on 22 July 2018, Mr. Nadarkhani was detained by Government officials. That day, plain clothed officials raided Mr. Nadarkhani’s home, beating him, as well as attacking him and his family, neither of whom resisted. Mr. Nadarkhani was reportedly not presented with an official summons to prison at the time of his detention.

16. It is further reported that, after Mr. Nadarkhani was arrested, he was taken to Branch 2 of the Revolutionary Court of Rasht and later sent to Evin Prison. Mr. Nadarkhani was initially held in solitary confinement at Evin Prison before being transferred to Ward Eight within the same facility. According to the source, those detained in Ward Eight face “extremely poor conditions, including chronic overcrowding, excessive heat during summer, and insect infestations.”

17. In September 2019, Mr. Nadarkhani began a hunger strike to protest the educational authorities’ punishment of his children for failing to participate in Islamic studies, despite a court order condoning their non-participation. Three weeks later he ended the strike, after suffering detrimental effects. Since Mr. Nadarkhani’s latest incarceration, the authorities have continued to harass, detain, prosecute and incarcerate members of his congregation.

18. According to the source, on 5 October 2019, the lawyer of Mr. Nadarkhani was informed that the court had issued an order granting Mr. Nadarkhani a new trial or hearing. This information was further confirmed, with the new trial or hearing scheduled for 11 May 2020. The order was reportedly the result of a ruling by clerical authorities in Qom prompted by the dismissal of Mr. Nadarkhani’s trial judge for corruption. On 22 June 2020, Mr. Nadarkhani received a new sentence of six years’ imprisonment, following the retrial.

19. The source states that although the Iranian Government temporarily furloughed 85,000 prisoners nationwide as a result of the corona virus pandemic, the Government has refused to release Mr. Nadarkhani from Evin Prison because his 10-year state security sentence did not meet the furlough criteria. The source states that this refusal to release Mr. Nadarkhani from his sentence and keep him in prison when the Government’s furloughs expressly acknowledge the virus’ danger to prisoners further compounds the inhumane treatment to which he remains subjected.

20. The source asserts that the arrest and detention of Mr. Nadarkhani is arbitrary and fall under category I, category II, category III and category V of the Working Group.

21. In relation to category I, the source argues that in Mr. Nadarkhani’s case, the Government has no legal basis on which to justify his deprivation of liberty since 13 May 2016, due to the improper arrest procedures carried out by the authorities and the lack of criminal offence committed by Mr. Nadarkhani.

22. The source notes that under the Iranian Constitution, an arrest warrant is a mandatory pre-condition to any lawful arrest.¹ Moreover, under article 119 of the Iranian Criminal Code of Procedure for Public and Revolutionary Courts, competent authorities should issue arrest warrants upon presenting sufficient evidence against the person accused of a crime or any other criminal offence.

23. The source recalls that the Working Group has previously held that a failure to inform a detainee of the reasons for his arrest or any charges against him was a violation of article 9(1) and (2) of the Covenant, resulting in a failure to provide a legal basis for the arrest.² The source further asserts that failure to show an arrest warrant and promptly inform a detainee of the charges against him has, in previous cases, demonstrated that there was no legal basis or judicial order to justify arrest and detention and that the resulting deprivation of liberty falls within category I of the categories applied by the Working Group.³ Furthermore, previous cases have shown that where Iranian authorities fail to arrest and detain a person in accordance with Iranian legal provisions and international standards, this renders the arrest and subsequent detention unlawful.⁴

24. According to the source, Mr. Nadarkhani was not shown an arrest warrant at the time of his arrest in July 2018 and, as a result, the authorities failed to meet the standards of due process of law under Iranian domestic laws. Therefore, the deprivation of liberty which Mr. Nadarkhani has suffered has no legal basis on which it can be justified, which renders his detention arbitrary.

25. The source further asserts the lack of criminal offence committed by Mr. Nadarkhani. In particular, it recalls that the Working Group has previously stressed that the detention of persons solely because of the practice of their religious faith is a violation of the freedom of religion, which is a fundamental right recognized both in the Universal Declaration of Human Rights and the Covenant.⁵ Freedom to manifest one's religion under the Covenant can only be limited when the restrictions are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others and also prescribed by law (article 18 (3)). There has not been any evidence to suggest that restrictions to Mr. Nadarkhani's religious beliefs or practices and his resulting arrest and detention have been prescribed by law or are necessary to protect the rights prescribed by the Universal Declaration of Human Rights and Covenant. It is submitted that Mr. Nadarkhani has peacefully practiced his Christian beliefs and acted as pastor to his 400-member house church, which is simply an exercise of Mr. Nadarkhani's fundamental right to freedom of religion and thus warrants no basis on which his detention could be legally justified.

26. The source further submits that the detention of Mr. Nadarkhani is arbitrary and falls under category II. It recalls that a detention is arbitrary under category II when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of thought, conscience, and religion; expression; and association. It argues that in Mr. Nadarkhani's case, the Government has violated all of these rights.

27. The source states that the right to freedom of thought, conscience, and religion is expressly protected under international and Iranian law. Under 18 (1) of the Covenant, these rights include "freedom [of an individual] to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to

¹ Iran Human Rights Documentation Center, English Translation of the Islamic Republic of Iran's Criminal Code of Procedure for Public and Revolutionary Courts (1999) (hereinafter "CCP (1999)"), <https://www.refworld.org/docid/517fb0994.html>, at art. 119 ("Arresting the accused is done by warrant. The warrant, which is similar to the content of a summon letter, should be issued to the accused."). Iranian Constitution, art. 32 ("no one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing ... within a maximum of 24 hours.").

² Opinion No. 52/2018 (Islamic Republic of Iran).

³ Opinion No. 07/2017 (Islamic Republic of Iran).

⁴ Opinion No. 28/2016 (Islamic Republic of Iran).

⁵ Opinion No. 18/2013 (Islamic Republic of Iran).

manifest his religion or belief in worship, observance, practice and teaching". These rights draw further support from article 18 of the Universal Declaration of Human Rights.⁶ The fundamental character of this right is such that it may not be derogated from - even in times of public emergency - as confirmed by article 4(2) of the Covenant.⁷ Rather, freedom to manifest one's religion or beliefs can be limited when the restrictions are "prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others" under article 18 (3) of the Covenant. The source notes that none of those circumstances are present in the case of Mr. Nadarkhani.

28. The source further argues that the Government's proclamation of the Twelver Ja'fari school of Islam as the official religion of Iran does not preclude individuals from exercising their right to freedom of thought, conscience, and religion. As Human Rights Committee's General Comment No. 22 states, "The fact that a religion is recognized as a State religion or that it is established as official or traditional [...] shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including article 18 [...] nor in any discrimination against adherents to other religions or non-believers."⁸

29. The source states that in the present case, the Government has repeatedly targeted, harassed and imprisoned Mr. Nadarkhani on the basis of his religious beliefs and practices. Mr. Nadarkhani was arrested amid raids on Christian homes in Rasht, demonstrating the Government's intent to target him on the basis of the religion. Moreover, the Mr. Nadarkhani's present conviction explicitly resulted from identifying as a Christian and preaching his religious beliefs, as he was found guilty of "promoting Zionist Christianity." The source argues that a conviction on this basis marks a clear restriction of Mr. Nadarkhani's rights under article 18 of the Covenant. Although the right to freedom of religion is not absolute, the Government failed to provide any grounds demonstrating that imprisoning Mr. Nadarkhani fell within the permissible limitations under article 18 (3). The source concludes that accordingly, Mr. Nadarkhani's detention violates article 18 of the Covenant and article 18 of the Universal Declaration of Human Rights.

30. Moreover, the source states that the Government has further violated Mr. Nadarkhani's right to freedom of expression under article 19 of the Covenant, which states, "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 article 19 of the Universal Declaration of Human Rights.

31. The source recalls the General Comment No. 34 of the Human Rights Committee that recognized freedom of expression as essential for the full development of an individual, as an indispensable element of democratic society, and as "the vehicle for the exchange and development of ideas."⁹ The source thus argues that despite these protections under international law, the Government arbitrarily detained, prosecuted and convicted Mr. Nadarkhani without due process for exercising his right to freedom of expression. Mr. Nadarkhani's conviction was based, in part, on "promoting Zionist Christianity", recalls the source.

32. The source states that although the right is not absolute, there is no arguable basis for Iran's violation of Mr. Nadarkhani's right to freedom of expression in this case. Article 19(3)

⁶ UDHR, at art. 18: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

⁷ ICCPR, at art. 4(2): "No derogation from article [] . . . 18 may be under this provision." Article 4(1) identifies the provisions that may be derogated from in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, which does not include Article 18.

⁸ Human Rights Committee, General Comment No. 22, Article 18 (Forty-eighth session, 1993) ¶ 9

⁹ Human Rights Committee, General Comment No. 34, Article 19 (Freedom of Expression) ¶ 2 (Sept. 2, 2011) (hereinafter "ICCPR Gen. Cmt. No. 34").

of the Covenant provides that freedom of expression may be restricted only when both provided by law and necessary for the respect of the rights or reputations of others, protection of national security, or public order, health, or morals. The UN Human Rights Committee has interpreted this limitation narrowly, noting that such restrictions must not “put in jeopardy the right itself.”¹⁰

33. The source also states that in its previous jurisprudence, the Working Group has held that the authorities did not have legitimate grounds for restricting a detainee’s freedom of expression because the detainee had not advocated violence, or threatened the rights or reputations of others, national security, public order, public health or morals.¹¹ It submits Mr. Nadarkhani has practiced his Christian faith peacefully and preached only to the members of his church. Mr. Nadarkhani did not criticize Islam, but he did express his faith. Mr. Nadarkhani has also complied with Iranian domestic laws and respected the religion of Islam as the official religion of Iran.

34. The source notes that in the present case, the Government has no legitimate grounds for restricting Mr. Nadarkhani’s right to freedom of expression as none of his practices warrant restriction of this right. As a result, his detention amounts to a violation of his rights under article 19 of the Covenant and article 19 of the Universal Declaration of Human Rights.

35. Furthermore, the source argues that the Government has also violated Mr. Nadarkhani’s right to freedom of association, as guaranteed by article 22 of the Covenant. Article 22(1) states, “Everyone shall have the right to freedom of association with others [...]” Article 20(1) of the Universal Declaration of Human Rights provides a similar guarantee. While most claims under article 22 of the Covenant pertain to affiliations with human rights organizations and related institutions, the same protections apply to religious associations. The source submits that Mr. Nadarkhani and others Christians were targeted by agents of the Iranian Ministry of Intelligence and Surveillance, who were conducting raids on Christian homes. At the time that Mr. Nadarkhani was arrested, he was participating in a religious ceremony along with other members of his church.

36. The source recalls that article 22(2) of Covenant establishes standards that a State must meet in order to restrict freedom of association. It prohibits restrictions “other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” Despite using Iranian domestic laws to justify its treatment of Mr. Nadarkhani based on his religious associations, these exist in contravention of international law. As such, the source submits that the Government cannot justify its violations of Mr. Nadarkhani’s rights under article 22 of the Covenant.

37. Furthermore, the source asserts that the Government’s detention of Mr. Nadarkhani also amounts to an arbitrary deprivation of liberty under category III of the Working Group. It claims that due process is one of the tenets of the right to a fair trial. The minimum international standards of due process are established in the Covenant, the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the “Body of Principles”), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”). The source states that the Government has committed numerous violations of Mr. Nadarkhani’s rights under these standards.

38. The source recalls that article 9(1) of the Covenant, which confirms the right to liberty and freedom from arbitrary detention, states, “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” This right is reiterated by Principles 2 and 36(2) of the Body of Principles and article 9 of the Universal Declaration of Human Rights. Article 9(2) of the Covenant requires that anyone

¹⁰ ICCPR General Comment No. 34, 21.

¹¹ Opinion No. 83/2018 (Islamic Republic of Iran) UN Doc. HRC/WGAD/2018/83 31. (2018), https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_83.pdf

who is arrested must be informed, at the time of arrest, of the reasons for his or her arrest and be promptly informed of any charges against him or her.

39. Furthermore, the source notes that under Iran's Constitution, an arrest warrant is a mandatory pre-condition to any arrest.¹² Further, under Iran's 2015 Code of Criminal Procedure ("Revised CCP"), a summons must be signed by a judicial authority and should include the reasons for the summons as well as the date and location of reporting and consequences of failing to report. An accused may be arrested only on the basis of an arrest warrant signed by the judicial authority and providing the reason for the arrest.¹³ The source asserts that therefore, the arrest of Mr. Nadarkhani in July 2018 violated his right to freedom from arbitrary arrest because, inter alia, it was not performed in compliance with Iranian domestic arrest procedures. Iranian authorities failed to meet the standards of Iran's own laws, as Mr. Nadarkhani was not shown an arrest warrant at the time of his arrest, thus violating multiple international laws and Iranian domestic laws.

40. The source further states that the Government violated Mr. Nadarkhani's right to a fair hearing, equality of arms, impartiality and a presumption of innocence. It recalls that article 14(1) of the Covenant guarantees the right "to a fair and public hearing by a competent, independent and impartial tribunal." The requirement of judicial independence under article 14(1) refers, in particular, to "the procedure and qualifications for the appointment of judges." As noted by the UN Human Rights Committee, "The requirement of independence refers, in particular, to [...] the actual independence of the judiciary from political interference by the executive branch and the legislature."¹⁴ The Iranian Constitution "reinforces the principle of judicial independence".¹⁵

41. Moreover, article 14(2) of the Covenant adds that "everyone charged with a criminal offence shall have the right to be presumed innocent according to law." These rights are provided under article 37 of the Iranian Constitution. Article 372 of the CCP prohibits a judge from expressing any opinion that could imply the accused person's guilt or innocence before the end of the proceedings and verdict.

42. The source argues that the trial of Mr. Nadarkhani was not a fair one, as the Iranian judiciary is not independent. The Iranian courts' routine disregard for fairness results in unjust sentences for those perceived as critics of the state. Through judges and a judicial system that lacks independence, the Government exerts influence in high-profile cases of political activists or opposition figures.

43. It further argues that the court's lack of independence was apparent in Mr. Nadarkhani's case. Mr. Nadarkhani did not receive a fair trial as the court lacked impartiality and demonstrated bias throughout the proceedings. The Judge's comments regarding the Church of Iran, during Mr. Nadarkhani's trial in June 2017, clearly demonstrate the judiciary's clear bias against the Christian minority. By convicting Mr. Nadarkhani without a fair hearing by an independent and impartial tribunal and demonstrating evident bias against him, the authorities violated Mr. Nadarkhani's right to a fair trial and right to a presumption of innocence.

44. Finally, it is submitted that the targeting of Mr. Nadarkhani because of his religion is arbitrary under category V. The source recalls that a detention is arbitrary under category V when, in violation of international law, the detention is discriminatory "based on . . . religion . . . and aims towards or can result in ignoring the equality of human rights."

45. It submits that the factual circumstances of an arrest or detention show the officials' motivation of discriminatory beliefs against a religion. Moreover, the source recalls that the

¹² Iranian Constitution, at art. 32 ("No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing").

¹³ Revised CCP, art. 181.

¹⁴ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial ¶ 19 (Aug. 23, 2007).

¹⁵ Iranian Constitution, at art. 156 ("The judiciary is an independent power, the protector of the rights of the individual and society").

Working Group contends that the restriction of a person's right to freedom of religion will also contravene their rights to equality before the law and to the equal protection of the law under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 and 26 of the Covenant.¹⁶ In a previous case, it was noted by the Working Group that arrest and detention in violation of a person's right as a religious minority also conflicts with article 27 of the Covenant, which protects a person's ability to practice and profess their own religion in community with other members of their religion.¹⁷

46. The source argues that in this case, it is evident that the Government was motivated solely by Mr. Nadarkhani's religious beliefs. His long history of persecution and prosecution, including the crimes with which he was charged, all resulting from his adherence to Christianity, demonstrate the Government's intent to target Mr. Nadarkhani because of his religion. Therefore, there is a sufficient basis on which to conclude that Mr. Nadarkhani was arrested and detained solely because of his religion, in violation of his right to freedom of religion under the multiple aforementioned international laws. The source concludes that Mr. Nadarkhani's arrest and detention is arbitrary under category V.

Response from the Government

47. On 9 July 2020, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 7 September 2020, detailed information about the situation of Mr. Nadarkhani and clarify the legal provisions justifying his continued detention, as well as its compatibility with Iran's obligations under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of the Islamic Republic of Iran to ensure Mr. Nadarkhani's physical and mental integrity.

48. On 4 August 2020, the Government requested an extension, which was granted, and a new deadline of 7 October 2020 was set. The Government submitted its reply on 2 September 2020. In its response of 2 September 2020, the Government transmitted comments from the High Council for Human Rights, which is a subdivision of the judiciary of Iran. According to the comments, Mr. Nadarkhani was sentenced to death on an apostasy charge by Division 11 of the Court of Assizes of Guilan Province after being tried in due process of law, as set forth in written judgment No. 890997134400980 of 22 September 2010. Division 27 of the Supreme Court in its judgment No. 212 of 12 June 2011 repealed the verdict and remanded the case to the Court of first instance for deficient investigation.

49. The Division 11 of the Court of Assizes of Guilan Province sitting *en banc* has heard Mr. Nadarkhani's case on 8 September 2012. Its written judgment No. 9109971314400742 of 9 September 2012 exonerated him of the apostasy charge per article 37 of the Constitution but handed down a 3-year sentence for the charge of "Christian proselytism". He was released on bail for time served.

50. Upon the announcement of the Tehran Province Justice Administration, Mr. Nadarkhani was accused in a separate case of acting against national security by establishing a home church and spreading Branhamist Christianity (a Satanist-inclined faith negated by the genuine followers of Jesus Christ) and possessing satellite receiver equipment for which he was tried in Division 26 of Islamic Revolutionary Court of Tehran. His pleadings were heard and noted in line with due process of law. The written judgment No. 25 of 24 June 2017, pursuant to article 498 of the Islamic Penal Code and Note 1 of Article 23 of the Islamic Penal Code and article 22 (A) of the Law on Combating Contrabands and Currency Smuggling and article 313 of Code of Criminal Procedure, sentenced him to 10-year

¹⁶ Opinion No. 9/2017 concerning multiple detainees (Islamic Republic of Iran) U.N. Doc HRC/WGAD/2017/9 ¶ 27 (2017)
https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_9.pdf.

¹⁷ Id. and Opinion No. 11/2019 (Russian Federation) U.N. Doc HRC/WGAD/2019/11 ¶ 47 (2019)
https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_11.pdf.

imprisonment (detention pending trial deducted), 2-year banishment to the city of Nikshahr, 6 million IRR and the seizure of the satellite receiver equipment.

51. Mr. Nadarkhani appealed to Division 36 of the Tehran Province Court of Appeals, which reviewed his case and rejected the appeal in its written judgment No. 1689 of 24 December 2017 as it failed to satisfy article 434 of Code of Procedure for Courts of Common Pleas and Islamic Revolution Courts in criminal affairs. Therefore, the verdict was upheld pursuant to article 455 (A) of the Code.

52. Mr. Nadarkhani appealed to Division 33 of the Supreme Court which in its written judgment No. 582 of 18 September 2019 endorsed re-trial in accordance with article 474 of the Code of Criminal Procedure. The case was remanded to Division 54 of the Tehran Province Court of Appeals for review which held in its judgment No. 726 of 16 May 2020, pursuant to articles 480 and 459 of the Code of Criminal Procedure, that he had been proselytising an emerging Christian faith by spreading home church for the purposes of harming national security. Archbishops, acting legally in Iran, and official religions reject and refuse to recognise Mr. Nadarkhani's novel faith, his followers are considered "scattered, deviant and anti-religion Occidentalists clique". Article 498 of the Islamic Penal Code was applied to him. The retrial is rejected and in accordance with article 37 and Note 3 of article 134 of the Islamic Penal Code the written judgment is revised and Mr. Nadarkhani's 10-year imprisonment is commuted to 6-year imprisonment, which is final.

53. As Mr. Nadarkhani's sentence was enforced on 23 July 2018, his release date is expected to be 11 June 2028, conditional on paying the pecuniary fine decided by the court.

Further comments from the source

54. In its response, the source observes that the Government fails to address, let alone rebut, the source's allegations or to present any credible evidence in support of the Government's claims. Rather, the Government does little more than confirm its contempt for and violation of Mr. Nadarkhani's Christian beliefs and practices.

55. According to the source, the Government: (1) admits that Mr. Nadarkhani is "of Christian faith" but goes on to repeatedly denigrate his particular Christian beliefs and practices as unworthy of legal protection because they are "novel," "satanic," "negated by the genuine followers of Jesus Christ," "scattered, deviant and anti-religious"; (2) describes in a superficial, summary fashion the Government's own version of the entire 10-year history of Mr. Nadarkhani's criminal prosecutions by the Government, but ignores the source's detailed allegations of improper and illegal treatment of Mr. Nadarkhani for his legitimate exercise of his religious and other rights under Iranian and international procedural and substantive law; (3) presents allegations that are unsubstantiated such as the claim that Mr. Nadarkhani was involved in spreading "Branhamist Christianity"; and (4) grounds its case on umbrella national security grounds, for which there exists no evidence.

Discussion

56. The Working Group thanks the source and the Government for their timely and detailed submissions.

57. In determining whether the deprivation of liberty of Mr. Nadarkhani is arbitrary, 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 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. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (see A/HRC/19/57, para. 68).

58. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty of person, 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, the Covenant, the Convention against Torture and other applicable

international and regional instruments.¹⁸ Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and 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.¹⁹

59. The Working Group also wishes to reiterate that it applies a heightened standard of review in cases where the rights to freedom of movement and residence, freedom of asylum, 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, are restricted or where human rights defenders are involved.²⁰ Mr. Nadarkhani's role as a lifelong member of a persecuted religious minority in Iran requires the Working Group to undertake this kind of strict scrutiny.

i. Category I

60. 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.

61. The source submits, and the Government has failed to rebut, that Mr. Nadarkhani was not presented with an arrest warrant or informed of the reasons for his arrest at the time of arrest on 13 May 2016.

62. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was not implemented in the present case.²¹

63. International law on deprivation of liberty includes 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 personal liberty and security 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 for the Protection of All Persons under Any Form of Detention or Imprisonment.²² The Working Group has been presented with no valid grounds to justify any exception to this principle in the present case.

¹⁸ See General Assembly resolution 72/180, preambular para. 5; Human Rights Council resolution 41/2, preambular para.2; resolution 41/6, para.5 (b); resolution 41/10, para.6; resolution 41/17, preambular para.1; resolution 43/26, preambular para.13; resolution 44/16, preambular para.25; resolution 45/19, preambular para.9; resolution 45/20, preambular para.2; resolution 45/21, preambular para.3; and resolution 45/29, preambular para. 3. See also Commission on Human Rights resolutions 1991/42, para. 2, and 1997/50, para.15; Human Rights Council resolutions 6/4, para.1 (a), and 10/9, para.4 (b); Opinions No. 41/2014, para.24; No. 3/2018, para.39; No. 18/2019, para.24; No. 36/2019, para.33; No. 42/2019, para.43; No. 51/2019, para.53; No. 56/2019, para.74; No. 76/2019, para.36; No. 6/2020, para.36; No. 13/2020, para.39; No. 14/2020, para.45; and No. 32/2020, para. 29.

¹⁹ See Opinions No. 1/1998, para.13; No. 82/2018, para.25; No. 36/2019, para.33; No. 42/2019, para.43; No. 51/2019, para.53; No. 56/2019, para.74; No. 76/2019, para.36; No. 6/2020, para.36; No. 13/2020, para.39; No. 14/2020, para.45; and No. 32/2020, para. 29.

²⁰ See Opinions No. 21/2011, para.29; No. 47/2018, para.54; No. 51/2018, para.77, No. 55/2018, para.62; No. 61/2018, para.45; No. 82/2018, para. 26.

²¹ See, for example, Opinions No. 93/2017, para. 44; No. 10/2018, par. 45-46; No. 36/2018, paras. 40; No. 46/2018, par. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; No. 46/2019, para. 51; No. 65/2019, para.59; No. 71/2019, para.70; No. 72/2019, para.40; No. 82/2019, para.74; No. 6/2020, par. 39; No. 11/2020, para.37; No. 13/2020, para.46; No. 14/2020, para.49; No. 31/2020, para.40; No. 32/2020, para.32; No. 33/2020, paras.53 and 71; and No. 34/2020, para. 44.

²² The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decisions No. 1/1993, paras. 6-7; No. 3/1993, paras. 6 and 7; No. 4/1993, para. 6; No. 5/1993, paras. 6, 8 and 9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; No. 44/1993, paras. 6-7. For more recent jurisprudence, see Opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No.

64. The Working Group also finds that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed Mr. Nadarkhani of the reasons for his arrest, at the time of arrest, and promptly informed him of the charges against him on 13 May 2016.²³ Their failure to do so violates articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) and (2) of the Covenant, as well as principle 10 of the Body of Principles, and renders his arrest devoid of any legal basis.

65. Moreover, the Working Group has also made clear in its jurisprudence that detention pursuant to a domestic law that on its face manifestly violates the international obligation to respect, protect and fulfil fundamental human rights, as codified in the Universal Declaration of Human Rights, the Covenant and other relevant international instruments or embedded in customary international law, lacks legal basis as such and is therefore arbitrary.²⁴

66. In the case at hand, Mr. Nadarkhani's deprivation of liberty since 13 May 2016 for "acting against national security" and "promoting Zionist Christianity" charges has thus no legal basis.

67. The Working Group therefore considers that the deprivation of liberty of Mr. Nadarkhani lacks a legal basis and is thus arbitrary, falling under category I.

ii. Category II

68. The source submits, and the Government does not contest, that Mr. Nadarkhani has been repeatedly arrested, tried and convicted for his service in his 400-member house church. This case thus concerns alleged violations of the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression as well as freedom of assembly and association.

69. Mr. Nadarkhani's religious activities clearly fall within the ambit of the exercise of the right to freedom of religion. Article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by General Assembly resolution 36/55 of 25 November 1981, affirms that the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

21/2017, para. 46; No. 63/2017, para. 66; 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; No. 82/2018, para.29; No. 6/2020, para.40; No. 11/2020, para.38; No. 13/2020, para.47; No. 14/2020, para.50; No. 31/2020, para.41; No. 32/2020, para.33; No. 33/2020, para.54; and No. 34/2020, para. 46.

²³ See, for example, Opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 33/2019, para.48; No. 44/2019, para.52; No. 45/2019, para.51; No. 46/2019, para.51; No. 51/2019, para.57; No. 56/2019, para.78; No. 65/2019, para.60; No. 71/2019, para.71; No. 82/2019, para.74; No. 6/2020, para.41; No. 13/2020, para.48; No. 14/2020, para.51; No. 31/2020, para.42; No. 33/2020, para.55; and No. 34/2020, para. 47.

²⁴ See, for example, detention pursuant to a law criminalizing consensual same-sex relations between adults (Opinions No. 25/2009, paras. 24-31; No. 14/2017, paras. 47-49. Contrast Opinions No. 7/2002; No. 22/2006; 42/2008) and a *lèse-majesté* law (Opinions No. 4/2019, para. 49. Contrast Opinions No. 44/2016; 20/2017, paras. 49-52; No. 51/2017; No. 56/2017; No. 3/2018).

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

(i) To establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels.

70. Article 29 (2) of the Universal Declaration of Human Rights provides that the only legitimate limitations to the exercise of one's rights and freedoms must be for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Similarly, article 18 (3) of the Covenant provides that the freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

71. In the Working Group's view, the principle of necessity and proportionality inheres equally in all fundamental human rights. The Working Group, in its deliberation No. 9, confirmed that the notion of "arbitrary" *strict sensu* includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary (A/HRC/22/44, para. 61). In its jurisprudence, with regard to the application of the principle of proportionality, the Working Group has applied the four-tier test of: (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.²⁵

72. In view of the standard described above, the Working Group finds that the situation in the present case falls short of such requirement. The Government did not demonstrate that the conditions for applying the permissible limitations in article 19(3), 21 and 22(2) of the Covenant were met. The Working Group also notes that there is no evidence of any violence or incitement to violence. It therefore considers that the standard for permissible restriction of the right, requiring a legitimate aim or objective in a free and democratic society, has not been met.

73. The Working Group therefore finds that Mr. Nadarkhani's deprivation of liberty is arbitrary, falling within category II, as it resulted from his legitimate exercise of the rights and freedoms under articles 18, 19 and 20 (1) of the Universal Declaration and articles 19 (1), 21 and 22 (1) of the Covenant. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on freedom of religion or belief, for appropriate action.

iii. Category III

74. Given its finding that Mr. Nadarkhani's deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that in such circumstances no trial should take place. However, as his trial has taken place, the Working Group will now consider the alleged violations of the right to a fair trial and due process.

75. The Working Group recalls that article 14(1) of the Covenant guarantees the right "to a fair and public hearing by a competent, independent and impartial tribunal." The

²⁵ See Opinions No. 54/2015, para. 89; No. 41/2017, para. 86; No. 56/2017, para. 51; No. 58/2017, para. 48; No. 76/2017, para. 68; No. 82/2018, para.38; No. 87/2018, para.64; and No. 32/2020, para. 49.

requirement of judicial independence under article 14(1) refers, in particular, to “the procedure and qualifications for the appointment of judges.”²⁶

76. In the present case, however, the Working Group notes that the members of the judiciary involved in this case occasionally expressed opinions that could imply the accused person’s guilt or innocence before the end of the proceedings and that the trial judge was dismissed on charges of corruption. The Government chose not to address this allegation. This casts serious doubts about the fairness, impartiality and independence of the judiciary. The Working Group therefore considers that Mr. Nadarkhani was not afforded a fair and public hearing by a competent, independent and impartial tribunal in accordance with article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.

77. 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. Nadarkhani’s deprivation of liberty an arbitrary character that falls within category III.

iv. Category V

78. The Working Group will now examine whether Mr. Nadarkhani’s deprivation of liberty constitutes discrimination under international law for the purpose of category V.

79. The Working Group notes the harsh persecution against Mr. Nadarkhani for his religious belief by the Government and courts. In the view of the Working Group, it is difficult to explain his numerous arrests, detention and imprisonment since December 2006 other than through such religiously motivated persecution.

80. Moreover, the Working Group also expresses its grave concern at the allegation of beatings of Mr. Nadarkhani and his family members, threats to arrest his family members as well as the offer of lenient punishment to coerce him into converting to Islam. The Government has raised no objection to the source’s allegation. In the view of the Working Group, this constitutes a clear evidence of discriminatory attitude against Mr. Nadarkhani.

81. The Working Group therefore considers that Mr. Nadarkhani’s deprivation of liberty constitutes a violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant as well as principle 5 of the Body of Principles on the grounds of discrimination based on religious belief. His deprivation of liberty therefore falls under category V.

82. The Working Group expresses its grave concern at death sentence passed on Mr. Nadarkhani by court on 13 November 2010, which was only overturned almost 2 years later on 9 September 2012.

83. The Working Group reminds the Government that the General Assembly has consistently called upon all States to establish a moratorium on executions with a view to abolishing the death penalty since its resolution 62/149 of 18 December 2007 (para. 2 (d)). Most recently, General Assembly resolution 73/175 of 17 December 2018 called upon all states to respect the Safeguards guaranteeing protection of the rights of those facing the death penalty²⁷, to progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below 18 years of age, to reduce the number of offences for which the death penalty may be imposed, and to ensure that the death penalty is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law, as well as to establish a moratorium on executions with a view to abolishing the death penalty (para. 7).²⁸ The Working Group refers the present case to the

²⁶ CCPR/C/GC/32, para 19.

²⁷ <https://www.ohchr.org/en/professionalinterest/pages/deathpenalty.aspx>

²⁸ A draft resolution on the moratorium on the use of the death penalty adopted by the Third Committee of the 75th General Assembly on 17 November 2020 (A/C.3/75/L.41) additionally calls upon all States to ensure that children whose parents or parental caregivers are on death row, the inmates themselves, their families and their legal representatives are provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted person, the return of the body to the family for burial or to inform on where the body is located, unless this is not in the best interests of the child in paragraph 6 (g). <https://undocs.org/A/C.3/75/L.41>

Special Rapporteur on extrajudicial, summary or arbitrary executions as well as the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

84. Moreover, the Working Group notes that Mr. Nadarkhani has been held in solitary confinement at Evin Prison before being transferred to Ward Eight within the same facility, where he faced extremely poor conditions, including chronic overcrowding, excessive heat during summer and insect infestations. The Working Group recalls the obligation of the Government to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person, in accordance with article 10(1) of the Covenant. The Working Group also recalls that solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.²⁹

85. In its 29-year history, the Working Group has found Iran in violation of its international human rights obligations in about 40 cases.³⁰ The Working Group is concerned that this indicates a widespread or systemic arbitrary detention in Iran, 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 as well as all other natural and legal persons. 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.³¹

Disposition

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

The deprivation of liberty of Youcef Nadarkhani, being in contravention of articles 2, 3, 7, 9, 10, 18, 19 and 20 (1) of the Universal Declaration of Human Rights and articles 2 (1), 9 (1) and (2), 14 (1), 19 (1), 21 and 22 (1), and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

87. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Mr. Nadarkhani 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.

88. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Nadarkhani immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Nadarkhani.

²⁹ See Rule 45 of the United Nations standard minimum rules for the treatment of prisoners (the Nelson Mandela Rules)

³⁰ 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, No. 83/2018, No. 32/2019, No. 33/2019 and No. 51/2019.

³¹ See A/HRC/13/42 (20 May 2010), para.30; and Opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 35/2014, para. 19; No. 34/2014, para. 34; 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.

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

90. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (i) the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; (ii) the Special Rapporteur on freedom of religion or belief; and (iii) the Special Rapporteur on extrajudicial, summary or arbitrary executions; (iv) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and (v) the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

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

Follow-up procedure

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

93. 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.

94. 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.

95. 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.³²

[Adopted on 26 November 2020]

³² See Human Rights Council resolution 42/22, paras. 3 and 7.