

**PETITION TO:**  
**UNITED NATIONS**  
**WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Mr. José Guevara (Mexico)  
Vice-Chair on Communications: Ms. Leigh Toomey (Australia)  
Vice-Chair on Follow-up: Ms. Elina Steinerte (Latvia)  
Mr. Seong-Phil Hong (Republic of Korea)  
Mr. Sètonджи Roland Adjovi (Benin)

**HUMAN RIGHTS COUNCIL**  
**UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of  
**Youcef Nadarkhani,**  
Citizen of the Islamic Republic of Iran

v.

Government of the Islamic Republic of Iran

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Petition for Relief Pursuant to Human Rights Council Resolutions 1991/42, 1994/32, 1997/50,  
2000/36, 2003/31, 2006/102, 6/4, 24/7, 33/30, and 44/22.

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April 17, 2020

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY  
ARREST OR DETENTION**

**I. IDENTITY**

1. *Family Name:* Nadarkhani
2. *First Name:* Youcef
3. *Sex:* Male
4. *Age at the Time of Detention:* 39<sup>1</sup>
5. *Nationality:* Iranian
6. (a) *Identity document (if any):* Unknown  
(b) *Place of Issue:* N/A  
(c) *On (date):* N/A  
(d) *No.:* N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Youcef Nadarkhani is an Iranian Christian pastor.
8. *Address of usual residence:*  
  
Unknown  
Rasht, Gilan Province, Iran

**II. ARREST**

1. *Date of arrest:* May 13, 2016 (initial arrest); July 22, 2018 (arrest after conviction).
2. *Place of arrest (as detailed as possible):* Most recently, Pastor Nadarkhani was first arrested, along with his wife, on May 13, 2016, at his home in Rasht by Iranian Ministry of Intelligence officials.
3. *Did they show a warrant or other decision by a public authority?* No.<sup>2</sup>
4. *Authority who issued the warrant or decision:* N/A.
5. *Relevant legislation applied (if known):* No legislation was cited at the time of arrest.

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<sup>1</sup> *Note:* Born April 11, 1977. Age calculated from more recent incident that initiated his criminal trial (i.e., arrest on May 13, 2016).

<sup>2</sup> Under normal procedures, Pastor Nadarkhani should have received a summons, which, according to reports, he did not receive on July 22, 2018.

### III. DETENTION

1. *Date of detention*: Most recently, Pastor Nadarkhani's first detention began on May 13, 2016. Following Pastor Nadarkhani's conviction, his second detention began on July 22, 2018.
2. *Duration of detention (if not known, probable duration)*: The first detention lasted from May 13, 2016, to July 24, 2016 (released on the condition that he raise sufficient bail). The second detention has lasted from July 22, 2018, to the date of this communication.
3. *Forces holding the detainee under custody*: Government of the Islamic Republic of Iran.
4. *Places of detention (indicate any transfer and present place of detention)*: After his arrest, Pastor Nadarkhani was taken to Branch 2 of the Revolutionary Court of Rasht. On July 24, 2018, he was transferred to Evin Prison in Tehran, Iran.
5. *Authorities that ordered the detention*: Iranian Ministry of Intelligence and Surveillance.
6. *Reasons for the detention imputed by the authorities*: Pastor Nadarkhani was convicted of "acting against national security" by "promoting Zionist Christianity."
7. *Relevant legislation applied (if known)*: Unknown.

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

#### A. Statement of Facts

Part 1 of this Statement of Facts details the current political climate in Iran in order to illustrate the Government's pattern of violating the substantive and procedural rights of dissidents and religious minorities. Part 2 offers background information on Pastor Nadarkhani. Part 3 describes the circumstances surrounding Pastor Nadarkhani's arrest and continuing detention.

#### 1. Iran's Pattern of Political Repression and Human Rights Abuses

Civil liberties are subject to particularly severe restrictions in Iran. In many respects, the Iranian Constitution purports to protect these freedoms, but caveats enable the Government to circumvent any protections that the Constitution might offer. Although Christianity is a recognized religion under the Iranian Constitution, the Iranian authorities do not recognize converts to Christianity and consider them apostates. As a result, Christian converts are not granted access to officially recognized Christian churches, which forces them, if they want to exercise their faith in fellowship with others, to gather clandestinely and meet in the privacy of their own homes for worship services – in so-called "house churches". The Special Rapporteur on the situation of

human rights in the Islamic Republic of Iran<sup>3</sup> stated that Iranian intelligence services have continued to closely monitor churches and harass congregations.<sup>4</sup> Most Christian converts who have been arrested and detained have been charged with “propaganda against the system”, “propagation of Zionist evangelical Christianity” or “administering and managing the home churches. For example, a public statement issued in February 2018 expressed concern at the prison sentences of between 10 and 15 years imposed upon Pastor Victor Bet Tamraz and two other members of his congregation for allegedly “conducting evangelism” and “illegal house church activities”.<sup>5</sup>

Christian converts and leaders, especially those who proselytize among those from Muslim backgrounds, are under heavy surveillance by the Ministry of Intelligence and Security (MOIS).<sup>6</sup> The MOIS is also known to surveil targets’ family members.<sup>7</sup> Despite President Rouhani’s promises regarding religious freedom, Iran’s human rights record has seen no substantive change since his election; by some accounts, the country’s record has gotten worse.<sup>8</sup> Several churches have closed and their leaders arrested,<sup>9</sup> and raids on private homes of Christians and detentions have continued.<sup>10</sup>

## **2. Background Information on Youcef Nadarkhani**

Youcef Nadarkhani is a Christian born and living in Iran. He belongs to the Protestant evangelical Church of Iran and has served as a pastor of a 400-member house church.<sup>11</sup> 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. He is married to Fatemeh Pasandiedeh, who has also been the target of persecution by the government because of her religion. Together, they have two sons. Human rights advocates have noted that the charges brought against Pastor Nadarkhani and others Christians in Iran are “spurious,” the sentences are “excessive,” and altogether they “amount

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<sup>3</sup> See, e.g., United Nations Human Rights Office of the High Commissioner, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, U.N. Doc. A/HRC/74/188 (July 18, 2019) (hereinafter “U.N. Special Rapporteur Report 7/18/2019”), <https://undocs.org/A/74/188>

<sup>4</sup> See United Kingdom of Great Britain and Northern Ireland, Home Office, “Country policy and information note. Iran: Christians and Christian converts” (May 2019). Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/805075/Iran\\_-\\_Christians-Converts\\_-\\_CPIN\\_-\\_v5.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805075/Iran_-_Christians-Converts_-_CPIN_-_v5.0.pdf).

<sup>5</sup> OCHR, “Iran must ensure rights of Christian minority and fair trial for the accused– UN experts” (2 February 2018), [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22629&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22629&LangID=E).

<sup>6</sup> CHRISTIANS IN PARLIAMENT & FREEDOM DECLARED, CHRISTIANS IN PARLIAMENT APPG AND APPG FOR INTERNATIONAL FREEDOM OF RELIGION OR BELIEF JOINT REPORT ON THE PERSECUTION OF CHRISTIANS IN IRAN 4 (Mar. 2015), <https://appgfreedomofreligionorbelief.org/media/APPGs-report-on-Persecution-of-Christians-in-Iran.pdf> (hereinafter “AAPG Report”), at 5.

<sup>7</sup> AAPG Report at 5.

<sup>8</sup> AAPG Report at 3-4.

<sup>9</sup> AAPG Report at 6.

<sup>10</sup> AAPG Report at 7.

<sup>11</sup> *Pastor Youcef Nadarkhani*, UNITED STATES COMM. ON INT’L RELIGIOUS FREEDOM, RELIGIOUS PRISONERS OF CONSCIENCE, <https://www.uscirf.gov/https%3A/www.uscirf.gov/youcef-nadarkhani> (last visited July 22, 2019) (hereinafter “USCIRF Report”).

[...] to a criminalisation of Christian practice.”<sup>12</sup>

Pastor Nadarkhani was first arrested in December 2006, and charged with apostasy and evangelism; he was released two weeks later.<sup>13</sup> He was detained once again on October 13, 2009, while attempting to register his church.<sup>14</sup> Days prior to his arrest, Pastor Nadarkhani had protested a policy that forced his children to study the Quran in school.<sup>15</sup> His position was that the Constitution of Iran permitted parents to raise children in their own faith.<sup>16</sup> Though initially arrested for protesting, his charges were later amended to reflect evangelizing of Muslims and apostasy (renouncing his Islamic faith).<sup>17</sup> Even though Pastor Nadarkhani claimed that he had never been a Muslim as an adult, Iranian prosecutors used his Islamic ancestry as the reason for the charge of apostasy.<sup>18</sup>

Pastor Nadarkhani was tried on September 21-22, 2010, by the 1st Court of the Revolutionary Tribunal and, ultimately, found guilty of apostasy.<sup>19</sup> 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.<sup>20</sup> According to various sources, Pastor Nadarkhani was offered leniency if he renounced his religion,<sup>21</sup> and while imprisoned in Lakan Prison, Government agents attempted to convert him to Islam.<sup>22</sup> Authorities also attempted to pressure Pastor Nadarkhani into renouncing his faith by arresting his wife, Fatemeh.<sup>23</sup>

Refusing to renounce his religious beliefs, on November 13, 2010, he was sentenced to death by hanging, which was later affirmed by an appellate court.<sup>24</sup> In June 2011, the Supreme Court of Iran overturned Pastor Nadarkhani’s death sentence,<sup>25</sup> 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.<sup>26</sup> Ultimately, however, Pastor Nadarkhani refused to recant and was sentenced to death.<sup>27</sup> In September 2012, due to mounting

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<sup>12</sup> *Iranian Pastor Nadarkhani Arrested in Violent Raid*, CSW (July 23, 2018), <https://www.csw.org.uk/2018/07/23/press/4050/article.htm> (hereinafter “CSW 7/23/2018”).

<sup>13</sup> *Id.*

<sup>14</sup> *Iranian Christian Pastor Accused of ‘Apostasy’ Must Be Released*, AMNESTY INT’L (Sept. 20, 2011), <https://www.amnesty.org/en/latest/news/2011/09/iranian-christian-pastor-accused-apostasy-must-be-released/>.

<sup>15</sup> *Pastor Youcef Nadarkhani Brutally Beaten and Arrested Again, and His Young Son Tasered in Their Home by Iranian Authorities*, ACLJ (Aug. 2018), <https://aclj.org/persecuted-church/pastor-youcef-nadarkhani-brutally-beaten-and-arrested-again-and-his-young-son-tasered-in-their-home-by-iranian-authorities> (hereinafter “ACLJ”).

<sup>16</sup> USCIRF Report.

<sup>17</sup> Youcef Nadarkhani Prisoner Alert, <https://www.prisoneralert.com/214>, (hereinafter “Prisoner Alert”).

<sup>18</sup> Katrina Lantos Swett, *Georgetown Journal of International Affairs--Iran v. Its People: Abuses Against Religious Minorities*, UNITED STATES COMMISSION ON INT’L RELIGIOUS FREEDOM (June 20, 2013), <https://www.uscirf.gov/news-room/oped/georgetown-journal-international-affairs-iran-v-its-people-abuses-against-religious>.

<sup>19</sup> Prisoner Alert.

<sup>20</sup> USCIRF Report.

<sup>21</sup> Prisoner Alert.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Iran: Christian Pastor Faces Execution for ‘Apostasy,’* HUMAN RIGHTS WATCH (Sept. 30, 2011), <https://www.hrw.org/news/2011/09/30/iran-christian-pastor-faces-execution-apostasy>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

international pressure, Pastor Nadarkhani was acquitted of apostasy, found guilty of evangelizing Muslims instead, and released immediately having served time for the latter crime.<sup>28</sup> However, on December 25, 2012, Pastor Nadarkhani was detained once more, according to the Government, to complete the remainder of his three-year sentence for evangelizing and, subsequently, was released on January 7, 2013.<sup>29</sup>

#### **a. Arrest**

Pastor Nadarkhani's most recent prison sentence stems from an arrest by the Iranian MOIS, which conducted various raids of Christian homes in Rasht, Iran, on May 13, 2016.<sup>30</sup> At the time of his arrest, Pastor Nadarkhani was participating in a private Christian ceremony, along with his wife, Fatemeh, and three others.<sup>31</sup> Pastor Nadarkhani and his wife were detained along with Mohammadreza Omidi, Yasser Mossayebzadeh, and Saheb Fadaie, also members of his church.<sup>32</sup> The arresting authorities provided no written or oral explanation of the legal justification for the arrest, including any penal code provision allegedly violated.<sup>33</sup> On July 24, 2016, Pastor Nadarkhani was summoned by SMS text message to appear before the Islamic Revolutionary Court in Rasht and, along with Mr. Omidi, Mr. Mossayebzadeh, and Mr. Fadaie, charged with "acting against national security" by "promoting Zionist Christianity."<sup>34</sup> He was asked to stop his Christian religious activities.<sup>35</sup> He was released the same day on the condition that he raise a 100 million toman for bail (USD \$33,000) within a week or face arrest, which he posted.<sup>36</sup>

#### **b. Trial and Conviction**

Pastor Nadarkhani's case was referred to the judicial authorities in Tehran.<sup>37</sup> Secret hearings were then held in December 2016 and February and June 2017,<sup>38</sup> before Judge Mashallah Ahmadzadeh, head judge of the 26th Branch of the Islamic Revolutionary Court in Tehran.<sup>39</sup> Ahmadzadeh 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 illegal

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<sup>28</sup> *Id.* The United Nations, the European Union, and individual countries, including the United States, Australia, Mexico, Germany, Brazil, the United Kingdom, and USCIRF were among those supporting Pastor Nadarkhani's release.

<sup>29</sup> CSW 7/23/2018.

<sup>30</sup> ACLJ; Samuel Smith, *Iran Demands Pastor Youcef Nadarkhani Pay \$33K This Week or Face Re-Arrest*, CHRISTIAN POST (July 26, 2016), <https://www.christianpost.com/news/iran-demands-pastor-youcef-nadarkhani-pay-33-thousand-dollars-face-arrest.html> (hereinafter "Smith").

<sup>31</sup> Smith; *Iran: Ten Year Sentences Upheld for Four Christians*, CSW (May 9, 2018), <https://www.csw.org.uk/2018/05/09/news/3955/article.htm> (hereinafter "CSW 5/9/2018").

<sup>32</sup> CSW 5/9/2018.

<sup>33</sup> Feb. 17, 2020 correspondence of confidential reporter.

<sup>34</sup> Smith; CSW, 5/9/2018; Feb. 17, 2020 correspondence of confidential reporter.

<sup>35</sup> Feb. 17, 2020 correspondence of confidential reporter.

<sup>36</sup> Smith; Feb. 17, 2020 correspondence of confidential reporter.

<sup>37</sup> *See Iran: More Christians Receive Excessive Sentences*, CSW (July 12, 2017), <https://www.csw.org.uk/2017/07/12/press/3630/article.htm> (hereinafter "CSW 7/12/2017")

<sup>38</sup> USCIRF Report.

<sup>39</sup> CSW, 5/9/2018.

political goals of the Islamic Revolutionary Guard.<sup>40</sup> On July 6, 2017, Pastor Nadarkhani was found guilty of “acting against national security” by “promoting Zionist Christianity.”<sup>41</sup> He and his co-defendants were all sentenced to ten years of prison, which was backdated to June 24, 2017, and Pastor Nadarkhani received an additional two-year sentence in external exile in the city of Nik Shahr, Sistan and Baluchestan Province in Southeast Iran.<sup>42</sup>

Pastor Nadarkhani’s verdict was considered one of several excessive sentences handed down by Judge Ahmadzadeh against Iranian Christians based on trumped up charges.<sup>43</sup> For his part, Judge Ahmadzadeh is accused of conducting trials that completely lack due process.<sup>44</sup> According to several sources, Pastor Nadarkhani’s trial process was tainted with bias. During the June 2017 hearing, for example, Judge Ahmadzadeh reportedly accused Pastor Nadarkhani’s church, the Church of Iran, of annually receiving 500,000 pounds (650,000 USD) from the British government.<sup>45</sup> Moreover, during the same hearing, Judge Abolghasem Salavati, head judge of the 15th Branch of the Revolutionary Court, entered the court room and remarked that “Christians make foolish claims.”<sup>46</sup>

### **c. Appeal and Detention**

On September 4, 2017, Pastor Nadarkhani and his other co-defendants appealed their sentences before Judges Hassan Babaei and Ahmad Zargar, the latter being the head judge of the 26th Branch of the Islamic Revolutionary Court in Tehran.<sup>47</sup> Both judges are regarded as playing “prominent roles in the crackdown on the freedom of expression”<sup>48</sup> in Iran. Judge Zargar, a Hojratolislam, for example, is accused of being one of several Iranian officials responsible for or complicit in serious human rights violations.<sup>49</sup>

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<sup>40</sup> Feb. 17, 2020 correspondence of confidential reporter; Ministerial to Advance Religious Freedom, July 18, 2019 (signed by Bahrain, Canada, Israel, Kosovo, Marshall Islands, Ukraine, United Arab Emirates and United States), <https://www.state.gov/statement-on-iran/>.

<sup>41</sup> USCIRF Report.

<sup>42</sup> *Id. Urgent Action: Christians Sentenced to Death for Practicing Their Faith*, AMNESTY INT’L (Aug. 23, 2018), <https://www.amnesty.org/download/Documents/MDE1389812018ENGLISH.pdf>.

<sup>43</sup> *Christian Converts Issued Long Prison Sentences in Iran in Less Than Two Months in Sham Trials*, CENTER FOR HUMAN RIGHTS IN IRAN (July 20, 2017), <https://www.iranhumanrights.org/2017/07/11-christian-converts-issued-long-prison-sentences-in-iran-in-less-than-two-months/> (hereinafter “Center for Human Rights in Iran”).

<sup>44</sup> *Id.*

<sup>45</sup> USCIRF Report; CSW 7/12/2017.

<sup>46</sup> CSW 7/12/2017.

<sup>47</sup> *Iran Four Christians to Appear Before Appeal Court*, CSW (Aug. 31, 2017), <https://www.csw.org.uk/2017/08/31/press/3684/article.htm> (hereinafter “CSW 8/31/2017”).

<sup>48</sup> CSW 5/9/2018, *See* Saeed Kamali Dehghan, *Six Judges Accused of Leading Role in Iranian Crackdown on Free Speech*, THE GUARDIAN (July 31, 2014), <https://www.theguardian.com/world/2014/jul/31/six-judges-iran-crackdown-journalists-activists>.

<sup>49</sup> *Christians Asked to Renounce Their Faith at Appeal Hearing*, CSW (Jan. 18, 2019), <https://www.csw.org.uk/2019/01/18/press/4209/article.htm> (hereinafter “CSW 1/18/2019”). As a result of Zargar’s improper and excessive prison and death sentences for civil protesters, the European Union in December 2014 included him among 16 high Iranian officials subject to financial sanctions for human rights violations. European Union Consolidated Financial Sanctions List, Nov. 11, 2019, p. 70; [https://webgate.ec.europa.eu/europeaid/fsd/fsf/public/files/pdfFullSanctionsList/content?token=dG9rZW4tMjAxNw; E.U. 371/2014 \(OJ L109\), https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:32014R0371&from=EN](https://webgate.ec.europa.eu/europeaid/fsd/fsf/public/files/pdfFullSanctionsList/content?token=dG9rZW4tMjAxNw; E.U. 371/2014 (OJ L109), https://eur-lex.europa.eu/legal-content/EN/TEXT/PDF/?uri=CELEX:32014R0371&from=EN).

On May 2, 2018, all sentences were affirmed,<sup>50</sup> and, on July 22, 2018, Pastor Nadarkhani was detained by Government officials.<sup>51</sup> That Sunday morning, plain clothes officials raided the pastor's home, beating him, as well as attacking him and his son, neither of whom resisted, with a taser.<sup>52</sup> According to a source close to the family, Pastor Nadarkhani was not presented with an official summons to prison at the time of his detention.<sup>53</sup> After Pastor Nadarkhani was arrested, he was taken to Branch 2 of the Revolutionary Court of Rasht<sup>54</sup> and later sent to Evin Prison.<sup>55</sup> Pastor Nadarkhani was initially held in solitary confinement at Evin Prison before being transferred to Ward Eight within the same facility.<sup>56</sup> According to reports, those detained in Ward Eight face "extremely poor conditions, including chronic overcrowding, excessive heat during summer, and insect infestations."<sup>57</sup>

In September 2019, Pastor Nadarkhani began a hunger strike to protest educational authorities' punishment of his sons for failing to participate in Islamic studies, despite a court order condoning their nonparticipation.<sup>58</sup> Three weeks later he ended the strike, after suffering detrimental effects.<sup>59</sup> Since Pastor Nadarkhani's latest incarceration, the Iranian authorities, including Judges Babae and Zargar, have continued to harass, detain, prosecute and incarcerate members of his Rasht congregation, including at least ten such individuals in 2019.<sup>60</sup>

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<sup>50</sup> Pastor Nadarkhani goes on hunger strike, CSW (1/10/2019) <https://www.csw.org.uk/2019/10/01/press/4471/article.htm> (hereinafter "CSW 1/10/2019").

<sup>51</sup> *Id.*

<sup>52</sup> ACLJ; Stoyan Ziamov, *Iranian Pastor Youcef Nadarkhani Beaten in Front of Family, Agents Tase Son*, CHRISTIAN POST (July 24, 2018), <https://www.christianpost.com/news/iranian-pastor-yousef-nadarkhani-beaten-in-front-of-family-agents-tase-son-226346/>.

<sup>53</sup> *Iranian Pastor Youcef Nadarkhani Arrested After Police Raid His Home*, IRAN HUMAN RIGHTS MONITOR (July 23, 2018), <https://iran-hrm.com/index.php/2018/07/23/iranian-pastor-yousef-nadarkhani-arrested-after-police-raid-his-home/>.

<sup>54</sup> *Id.*

<sup>55</sup> ACLJ. Numerous sources indicate that prisoners of Evin Prison are subjected to horrible conditions, interrogations, and even torture. See *Mass Hunger Strike Launched in Evin Prison Against Unlawful Treatment of Political Prisoners*, CENTER FOR HUMAN RIGHTS IN IRAN (July 18, 2019), <https://www.iranhumanrights.org/2019/07/mass-hunger-strike-launched-in-evin-prison-against-unlawful-treatment-of-political-prisoners/>; *Journalist Recounts the Absurdity and Torture of 544 Days in Iran's Evin Prison*, NPR (Jan. 22, 2019 4:33 PM), <https://www.npr.org/templates/transcript/transcript.php?storyId=687375297>; Matt Roper, *Inside 'Black Hole of Evil' Torture Jail Where Nazanin Zaghari-Ratcliffe is on Hunger Strike*, MIRROR (Jan. 14, 2019), <https://www.mirror.co.uk/news/uk-news/evin-prison-pictures-nazanin-zaghari-13854262>.

<sup>56</sup> *Iranian Christians Taken to Serve Sentences*, CSW (July 26, 2018), <https://www.csw.org.uk/2018/07/26/press/4051/article.htm> (hereinafter "CSW 7/26/2018").

<sup>57</sup> See Anna Maryam Rafiee, *'I Wonder If We Are in a Prison or a Torture Chamber': Summer Is Hell in Iran's Evin Jail*, THE GUARDIAN (Aug. 3, 2015), <https://www.theguardian.com/world/iran-blog/2015/aug/03/iran-evin-prison-like-torture-chamber>, (comparing Ward Eight to a "torture chambers" and describing the conditions there as "some of the worst... faced by other prisoners"). The Iranian Minister of Health and Medical Education from 2013 to 2019, Hassan Ghazizadeh Hashemi, is reported to have acknowledged overcrowding, inadequate sanitation and food, and struggles to manage infectious diseases in various prisons.

<sup>58</sup> "Pastor Nadarkhani ends hunger strike," CHRISTIAN SOLIDARITY WORLDWIDE, Oct. 15, 2019, <https://www.csw.org.uk/2019/10/15/press/4477/article.htm>; (hereinafter, "CSW 10/15/2019"); "Yousef Nadarkhani goes on hunger strike as son barred from school," ARTICLE 18, Sept. 27, 2019, <https://articleeighteen.com/news/4734/>.

<sup>59</sup> CSW, 10/15/2019.

<sup>60</sup> "Pastor sentenced to five years in prison," CHRISTIAN SOLIDARITY WORLDWIDE, Oct. 18, 2019, <https://www.csw.org.uk/2019/10/18/press/4480/article.htm>; "Iran continues to arrest Christians, on eve of 40<sup>th</sup> anniversary of revolution," World Watch Monitor, Feb. 13, 2019, <https://www.worldwatchmonitor.org/coe/iran-continues-to-arrest-christians-on-eve-of-40th-anniversary-of-revolution/>; "Iran: Nine converts from Rasht get five years each," Middle East Concern, Oct. 18, 2019, [meconcern.org/2019/10/18/iran-nine-converts-from-rasht-get-five-years-each/](http://meconcern.org/2019/10/18/iran-nine-converts-from-rasht-get-five-years-each/).

On October 5, 2019, the lawyer of Pastor Nadarkhani was informed that the court had issued an order granting Pastor Nadarkhani a new trial or hearing.<sup>61</sup> This information was further confirmed, with the new trial or hearing scheduled for May 11, 2020.<sup>62</sup> The order was the result of a ruling by clerical authorities in Qom prompted by the firing of Pastor Nadarkhani’s trial judge, Judge Mashallah Ahmadzadeh, for corruption.<sup>63</sup>

Although the Iranian Government temporarily furloughed of 85,000 prisoners nationwide as a result of the coronavirus pandemic, the government has refused to release Pastor Nadarkhani from Evin Prison because his 10-year state security sentence did not meet the furlough criteria.<sup>64</sup> This refusal to release Pastor Nadarkhani from his illegal sentence and keep him in prison where the government’s furloughs expressly acknowledge the virus’ danger to prisoners further compounds the inhumane treatment to which he remains subjected.

## **B. Legal Analysis**

For the reasons set forth below, the arrest and detention of Pastor Nadarkhani is arbitrary under Category I, Category II, Category III, and Category V of the Working Group’s Revised Methods of Work.<sup>65</sup>

### **1. Arbitrary Deprivation of Liberty under Category I**

A detention is arbitrary under Category I of the Working Group’s Revised Methods of Work when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.<sup>66</sup> In Pastor Nadarkhani’s case, the Government has no legal basis on which to justify Pastor Nadarkhani’s deprivation of liberty since 13 May 2016, due to the improper arrest procedures carried out by Iranian authorities and the lack of criminal offence committed by Pastor Nadarkhani.

#### **a. Improper Arrest Procedures Carried Out by Iranian Authorities**

Under the Iranian Constitution, an arrest warrant is a mandatory pre-condition to any lawful

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<sup>61</sup> March 13, 2020 conversation with confidential reporter; March 22, 2020 correspondence of confidential reporter.

<sup>62</sup> March 13, 2020 conversation with confidential reporter; March 22, 2020 correspondence of confidential reporter.

<sup>63</sup> March 13, 2020 conversation with confidential reporter; March 22, 2020 correspondence of confidential reporter.

<sup>64</sup> March 13, 2020 conversation with confidential reporter; “Iran temporarily frees 85,000 from jail including political prisoners,” Parisa Hafeza, Reuters, March 17, 2020, <https://news.yahoo.com/iran-temporarily-freed-85-000-080952653.html>.

<sup>65</sup> Methods of Work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/33/66 (hereinafter “Revised Methods of Work”), at ¶ 8b, [https://digitallibrary.un.org/record/848575/files/A\\_HRC\\_33\\_66-EN.pdf](https://digitallibrary.un.org/record/848575/files/A_HRC_33_66-EN.pdf). An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 UNT.S. 171, entered into force on Mar. 23, 1976 (hereinafter “ICCPR”), at art. 9(1), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/NR0/732/59/img/NR073259.pdf>. Such a deprivation of liberty is specifically prohibited by international law. *Id.* See also *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (hereinafter “UDHR”), at art. 9, (1948) (“No one shall be subjected to arbitrary arrest, detention or exile.”), [https://undocs.org/en/a/res/217\(iii\)](https://undocs.org/en/a/res/217(iii)). See also *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (hereinafter “Body of Principles”), at principle 2 (“Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law . . .”), Revised Methods of Work at ¶ 8a.

arrest.<sup>67</sup> 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. In a previous opinion by the Working Group,<sup>68</sup> it was held that a failure to inform a detainee of the reasons for his arrest or any charges against him was a violation of articles 9(1) and 9(2) of the ICCPR and also exemplified a failure to provide a legal basis for the arrest.<sup>69</sup> The 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.<sup>70</sup> 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.<sup>71</sup> Pastor Nadarkhani was not shown an arrest warrant at the time of his arrest in July 2018 and, as a result, the Iranian authorities failed to meet the standards due process of law under Iranian domestic laws. Therefore, the deprivation of liberty which Pastor Nadarkhani has suffered, has no legal basis on which it can be justified, which renders his detention arbitrary.

**b. Lack of Criminal Offence Committed by Pastor Nadarkhani**

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 UDHR and the ICCPR.<sup>72</sup> Freedom to manifest one's religion under the ICCPR 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.<sup>73</sup> There has not been any evidence to suggest that restrictions to Pastor 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 UDHR and ICCPR. Pastor Nadarkhani has peacefully practiced his Christian beliefs and acted as pastor to his 400-member house church, which is simply an exercise of Pastor Nadarkhani's fundamental right to freedom of religion and thus warrants no basis on which his detention could be legally justified.

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<sup>67</sup> 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, *supra* note 10, 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 . . . within a maximum of 24 hours.").

<sup>68</sup> Opinion No. 52/2018 concerning Xiyue Wang (Islamic Republic of Iran), U.N. Doc. HRC/WGAD/2018/52 ¶ 27 (2017), [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session82/A\\_HRC\\_WGAD\\_2018\\_52.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session82/A_HRC_WGAD_2018_52.pdf)

<sup>69</sup> *Id.*, ¶ 27.

<sup>70</sup> Opinion No. 07/2017 concerning Kamal Foroughi (Islamic Republic of Iran), U.N. Doc. HRC/WGAD/2017/7, ¶ 38 (2017), [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A\\_HRC\\_WGAD\\_2017\\_7.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_7.pdf)

<sup>71</sup> Opinion No. 28/2016 concerning Nazanin Zaghari-Ratcliffe (Islamic Republic of Iran), U.N. Doc. HRC/WGAD.2016, ¶ 22 (2016), <https://redress.org/wp-content/uploads/2017/11/wgad-opinion-7-september-2016.pdf>

<sup>72</sup> Opinion No. 18/2013 concerning Saeed Abedinigalangashi (Islamic Republic of Iran), U.N. Doc. HRC/WGAD/2013/8, ¶ 26 (2018), <http://hrlibrary.umn.edu/wgad/18-2013.html>.

<sup>73</sup> ICCPR, *supra* note 84, art. 18(3).

## 2. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of Working Group’s Revised Methods of Work 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.<sup>74</sup> In Pastor Nadarkhani’s case, the Government has violated all of these rights.

### a. Iran Violated Pastor Nadarkhani’s Right to Freedom of Thought, Conscience, and Religion

The right to freedom of thought, conscience, and religion is expressly protected under international and Iranian law. Under the ICCPR, 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 manifest his religion or belief in worship, observance, practice and teaching.”<sup>75</sup> These rights draw further support from Article 18 of the Universal Declaration of Human Rights (“UDHR”).<sup>76</sup> Importantly, 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 ICCPR.<sup>77</sup> 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.”<sup>78</sup> None of those circumstances are present here.

Furthermore, Iran’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 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.”<sup>79</sup>

In the present case, Iran has repeatedly targeted, harassed, and imprisoned Pastor Nadarkhani on the basis of his religious beliefs and practices. In a report to the General Assembly, U.N. Special Rapporteur for Iran recently specifically cited Iran’s prosecution of Pastor

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<sup>74</sup> A detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights (category II).” Revised Methods of Work, at ¶ 8b.

<sup>75</sup> ICCPR, *supra* note 84, art. 18(1).

<sup>76</sup> 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.”

<sup>77</sup> 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. *Id.* at art. 4(1).

<sup>78</sup> *Id.* at art. 18(3).

<sup>79</sup> U.N. Human Rights Committee, General Comment No. 22, Article 18 (Forty-eighth session, 1993) ¶ 9

Nadarkhani as an example of this overreaching religious persecution.<sup>80</sup> Pastor 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 Pastor's present conviction explicitly resulted from identifying as a Christian and preaching his religious beliefs, as he was found guilty of "promoting Zionist Christianity." A conviction on this basis marks a clear restriction of Pastor Nadarkhani's rights under Article 18 of the ICCPR. Although the right to freedom of religion is not absolute, the government failed to provide any grounds demonstrating that imprisoning Pastor Nadarkhani fell within the permissible limitations under Article 18.<sup>81</sup> Accordingly, Pastor Nadarkhani's detention violates Article 18 of the ICCPR and Article 18 of the UDHR.

#### **b. Iran Violated Pastor Nadarkhani's Right to Freedom of Expression**

Iran has further violated Pastor Nadarkhani's right to freedom of expression under Article 19 of the ICCPR, 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."<sup>82</sup> <sup>83</sup> The right to freedom of expression also benefits from protection under Article 19 of the UDHR.<sup>84</sup>

In its General Comment No. 34, the UN Human Rights Committee ("UNHRC") has 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."<sup>85</sup> As the Special Rapporteur on freedom of religion or belief has noted, "[f]reedom of religion or belief and freedom of expression are closely interrelated and mutually reinforcing rights."<sup>86</sup> Despite these protections under international law, Iran arbitrarily detained, prosecuted, and convicted Pastor Nadarkhani without due process for exercising his right to freedom of expression. Pastor Nadarkhani's conviction was based, in part, on "promoting Zionist Christianity."<sup>87</sup>

Though the right is not absolute, there is no arguable basis for Iran's violation of Pastor Nadarkhani's right to freedom of expression in this case. Article 19(3) of the ICCPR provides that

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<sup>80</sup> U.N. Special Rapporteur Report, 7/18/2019, *see also* United Nations Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, March 17, 2017, A/HRC/34/65, [https://digitallibrary.un.org/record/1298034/files/A\\_HRC\\_34\\_65-EN.pdf](https://digitallibrary.un.org/record/1298034/files/A_HRC_34_65-EN.pdf), ¶ 35 (hereinafter "U.N. Special Rapporteur Report, 3/17/2017").

<sup>81</sup> ICCPR, at art. 18(3): "Freedom to manifest one's religion or beliefs 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."

<sup>82</sup> ICCPR, at art. 19(2): "Everyone shall have the right to 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."

<sup>83</sup> *See also* ICCPR, at art. 19(1): "Everyone shall have the right to hold opinions without interference."

<sup>84</sup> UDHR, at art. 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

<sup>85</sup> U.N. Human Rights Committee, *General Comment No. 34, Article 19 (Freedom of Expression)* ¶ 2 (Sept. 12, 2011) (*hereinafter* "ICCPR Gen. Cmt. No. 34").

<sup>86</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief*, U.N. Doc. A/HRC/40/58, ¶ 55 (Mar. 5, 2019), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/060/28/PDF/G1906028.pdf>.

<sup>87</sup> Smith; CSW 7/23/2018.

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 UNHRC has interpreted this limitation narrowly, noting that such restrictions must not “put in jeopardy the right itself.”<sup>88</sup>

In a previous Working Group case,<sup>89</sup> it was held that Iranian 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. Pastor Nadarkhani has practiced his Christian faith peacefully and preached only to the members of his church. Pastor Nadarkhani did not criticize Islam, but he did express his faith. Pastor Nadarkhani has also complied with Iranian domestic laws and respected the religion of Islam as the official religion of Iran.

Here, the Government has no legitimate grounds for restricting Pastor 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 ICCPR and Article 19 of the UDHR.

**c. Iran Violated Pastor Nadarkhani’s Right to Freedom of Association**

Iran has also violated Pastor Nadarkhani’s right to freedom of association, as guaranteed by Article 22 of the ICCPR. Article 22(1) states, “Everyone shall have the right to freedom of association with others [...]”<sup>90</sup> Article 20(1) of the UDHR provides a similar guarantee.<sup>91</sup> While most claims under Article 22 of the ICCPR pertain to affiliations with human rights organizations and related institutions,<sup>92</sup> the same protections apply to religious associations.<sup>93</sup> Pastor 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 Pastor Nadarkhani and his wife were arrested, they were participating in a religious ceremony along with other members of their church. Indeed, it would be difficult to explain Pastor Nadarkhani’s arrest in the first place if it were not for the practice of his faith along with others.

Article 22(2) establishes standards that a State must meet in order to restrict freedom of association. Article 22(2) 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

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<sup>88</sup> ICCPR Gen. Cmt. No. 34, ¶ 21.

<sup>89</sup> Opinion No. 83/2018 concerning Atena Daemi (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](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_83.pdf)

<sup>90</sup> ICCPR, at art. 22(1).

<sup>91</sup> UDHR, at art. 20(1).

<sup>92</sup> See, e.g., Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session (Islamic Republic of Iran)*, Opinion No. 49/2017, U.N. Doc. A/HRC/WGAD/2017/49 (Aug. 21–25, 2017), [http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A\\_HRC\\_WGAD\\_2017\\_49\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session79/A_HRC_WGAD_2017_49_EN.pdf).

<sup>93</sup> See COLE DURHAM, *FREEDOM OF RELIGION OR BELIEF: LAWS AFFECTING THE STRUCTURING OF RELIGIOUS COMMUNITIES* (1999), at § 2.2, <https://www.refworld.org/pdfid/3e283bd01.pdf>.

of others.”<sup>94</sup> Despite using Iranian domestic laws to justify its treatment of Pastor Nadarkhani based on his religious associations, these exist in contravention of international law. As such, Iran cannot justify its violations of Pastor Nadarkhani’s rights under Article 22 of the ICCPR.

### **3. Arbitrary Deprivation of Liberty under Category III**

Iran’s detention of Pastor Nadarkhani also amounts to an arbitrary deprivation of liberty under Category III<sup>95</sup> of the Working Group’s Revised Methods of Work. 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 ICCPR, the UDHR, 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”). Iran has committed numerous violations of Pastor Nadarkhani’s rights under these standards.

#### **a. Iran Violated Pastor Nadarkhani’s Right Not to Be Subjected to Arbitrary Arrest**

Article 9(1) of the ICCPR, 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.”<sup>96</sup> This right is reiterated by Principles 2 and 36(2) of the Body of Principles<sup>97</sup> and Article 9 of the UDHR.<sup>98</sup> Article 9(2) of the ICCPR requires that anyone 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.<sup>99</sup>

Under Iran’s Constitution, an arrest warrant is a mandatory pre-condition to any arrest.<sup>100</sup> 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.<sup>101</sup> Further, 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.<sup>102</sup> Therefore, the arrest of Pastor 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 Pastor Nadarkhani was not shown an arrest warrant at the time of his arrest, thus violating

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<sup>94</sup> ICCPR, at art. 22(2).

<sup>95</sup> According to Category III, a deprivation of liberty is arbitrary “[w]hen 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.”

<sup>96</sup> ICCPR, at art. 9(1).

<sup>97</sup> Body of Principles, at principles 2 and 36(2).

<sup>98</sup> UDHR, at art. 9.

<sup>99</sup> ICCPR, at art. 9(2).

<sup>100</sup> 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”).

<sup>101</sup> Islamic Republic of Iran’s Criminal Code of Procedure for Public and Revolutionary Courts, (official English translation), Khorsandy Publication (2016) (*hereinafter* “Revised CCP”), article 169-170.

<sup>102</sup> Revised CCP, art. 181.

multiple international laws and Iranian domestic laws.

**b. Iran Violated Pastor Nadarkhani’s Right to a Fair Hearing, Equality of Arms, Impartiality and a Presumption of Innocence**

Article 14(1) of the ICCPR guarantees the right “to a fair and public hearing by a competent, independent and impartial tribunal.”<sup>103</sup> The requirement of judicial independence under Article 14(1) refers, in particular, to “the procedure and qualifications for the appointment of judges.”<sup>104</sup> As noted by the UNHRC, “The requirement of independence refers, in particular, to [...] the actual independence of the judiciary from political interference by the executive branch and the legislature.”<sup>105</sup> The Iranian Constitution “reinforces the principle of judicial independence”<sup>106</sup>.

Article 14(2) of the ICCPR adds that “everyone charged with a criminal offence shall have the right to be presumed innocent according to law.” These rights are by 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.<sup>107</sup> In the March 2017 report of the Special Rapporteur on the situation of human rights in Iran, it was concluded that “[t]he situation relating to independence of judges and lawyers, freedom of expression and use of arbitrary detention continues to be a matter of serious concern.”<sup>108</sup>

The trial of Pastor 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 biased judges and a judicial system that lacks independence, the Government exerts influence in high-profile cases of political activists or opposition figures. The court’s lack of independence was readily apparent in Pastor Nadarkhani’s case. Pastor Nadarkhani did not receive a fair trial as the court lacked impartiality and demonstrated bias throughout the proceedings. Judge Ahmadzadeh’s outburst regarding the Church of Iran, during Pastor Nadarkhani’s trial in June 2017,<sup>109</sup> clearly demonstrates the judiciary’s clear bias against the Christian minority. By convicting Pastor Nadarkhani without a fair hearing by an independent and impartial tribunal and demonstrating evident bias against him, Iran violated Pastor Nadarkhani’s right to a fair trial and right to a presumption of innocence.

**4. Arbitrary Detention of Liberty under Category V**

The targeting of Pastor Nadarkhani because of his religion is arbitrary under Category V.

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<sup>103</sup> ICCPR, at art. 14(1).

<sup>104</sup> ICCPR, at art. 14(1).

<sup>105</sup> U.N. 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).

<sup>106</sup> Iranian Constitution, at art. 156 (“The judiciary is an independent power, the protector of the rights of the individual and society”).

<sup>107</sup> Revised CCP, at art. 372.

<sup>108</sup> U.N. Special Rapporteur Report, 3/17/2017, §4.

<sup>109</sup> USCIRF Report.

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.”<sup>110</sup> The factual circumstances of an arrest or detention can show Government officials’ motivation of discriminatory beliefs against a religion.<sup>111</sup> Moreover, the 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 UDHR and articles 2 and 26 of the ICCPR.<sup>112</sup> 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 ICCPR, which protects a person’s ability to practice and profess their own religion in community with other members of their religion.<sup>113</sup>

In this case, it is evident that the Government was motivated solely by Pastor 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 Pastor Nadarkhani because of his religion. Therefore, there is a sufficient basis on which to conclude that Pastor 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. Therefore, Pastor Nadarkhani’s arrest and detention is arbitrary under Category V.

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

Pastor Nadarkhani appealed his most recent conviction to the 26<sup>th</sup> Branch of the Islamic Revolutionary Court in Tehran. The Supreme Court affirmed Pastor Nadarkhani’s conviction on May 2, 2018.

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<sup>110</sup> Revised Methods of Work, at § III(8)(e) (“When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth, national, ethnic, or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or other status, that aims towards or can result in ignoring the equality of human rights.”).

<sup>111</sup> *See, e.g., Jalilov v. Uzbekistan*, UN Working Group on Arbitrary Detention, Opinion No. 4/2013, Adopted Jul. 25, 2013, at ¶ 76 (concerning the case of a Muslim man who advocated for the disenfranchised Muslim-minority communities in Uzbekistan, where the Working Group relied upon Category V to find that his detention was arbitrary after noting that, “The Working Group also considers that in the case Mr. Jalilov has been deprived of his liberty for being a practicing Muslim for reasons of discrimination based on religion”).

<sup>112</sup> 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](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_9.pdf).

<sup>113</sup> *Id.* and Opinion No. 11/2019 concerning Dmitriy Mikhaylov (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](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_11.pdf).

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

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Date: April 17, 2020

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