

PART I: FACT PATTERN/BACKGROUND

[Image]

SUMMARY

Amirsalar Davoudi, age 30, is a prominent Iranian human lawyer. Davoudi was arrested in November 2018 and is currently serving a 15-year prison sentence in Tehran's Evin Prison for his human rights work. Davoudi is a prisoner of conscience; his conviction violates the fundamental rights of freedom of opinion and expression under the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a State Party. Davoudi's detention is arbitrary. He was denied the right to fair trial and his conviction is based on unfair proceedings, in violation of Iranian international legal obligations. Iran's judiciary should immediately release Davoudi, vacate the conviction, and provide judicial safeguards and remedies in line with international standards.

BACKGROUND

A prominent human rights lawyer, Amirsalar Davoudi is well known in the human rights community for representing human rights activists, members of ethnic and religious minorities, and other civil society activists detained for their social and political activities.¹ He previously represented Iranian Kurdish woman Zeynab Jalalian, who was sentenced to death in early 2009 after being convicted of "enmity against God" (*moharebeh*) after a grossly unfair trial. Davoudi played an instrumental role in the subsequent commutation of her death sentence and has also persistently advocated for Zeynab Jalalian's access to medical care.²

Davoudi was the technical administrator, publisher, and managing director of a channel on the Telegram mobile messaging app called "No Retouching," or "*Bedoone Rotoosh*."³ Davoudi publicized the Iranian government's violations of human rights through this Telegram channel. He also gave interviews to foreign media such as the Voice of American (VOA) Persian Service, and the Center for Human Rights in Iran. In these interviews, he raised concerns about the authorities' treatment of lawyers, the rights of trade unions and, more generally, the human rights situation in Iran.⁴ He was charged with "cooperation with a hostile government," which is believed to be based on the VOA interview, where Davoudi discussed the issues surrounding one of his clients, who was a political prisoner. In the February 2017 interview with the Center for Human Rights in Iran⁵, Davoudi is quoted discussing the case of another political prisoner client, Soheil Arabi – an Iranian blogger who was sentenced to death in Iran in 2013⁶ – but it is unclear whether this interview played a role in his verdict.

¹ "Iran: Sentencing of human rights lawyer to 30 years in prison and 111 lashes 'a shocking injustice'," AMNESTY INTERNATIONAL, (3 June 2019), <https://www.amnesty.org/en/latest/news/2019/06/iran-sentencing-of-human-rights-lawyer-to-30-years-in-prison-and-111-lashes-a-shocking-injustice/>.

² Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019) <https://www.amnesty.org/download/Documents/MDE1306362019ENGLISH.pdf>; "Jailed Lawyer on Hunger Strike," Amnesty International, (18 Feb. 2020), <https://www.amnesty.org/download/Documents/MDE1318232020ENGLISH.pdf>.

³ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721/>.

⁴ "Iran: Sentencing of human rights lawyer to 30 years in prison and 111 lashes 'a shocking injustice'," AMNESTY INTERNATIONAL, (3 June 2019), <https://www.amnesty.org/en/latest/news/2019/06/iran-sentencing-of-human-rights-lawyer-to-30-years-in-prison-and-111-lashes-a-shocking-injustice/>.

⁵ Ailing Political Prisoner Imprisoned for Facebook Posts Denied Medical Care, CENTER FOR HUMAN RIGHTS IN IRAN, (Feb. 6, 2017), <https://www.iranhumanrights.org/2017/02/ailing-political-prisoner-imprisoned-for-facebook-posts-denied-medical-care/>.

⁶ Death Sentence for "Insulting the Prophet" on Facebook, CENTER FOR HUMAN RIGHTS IN IRAN, (Sept. 16, 2014), <https://www.iranhumanrights.org/2014/09/death-sentence-facebook>.

ARREST

On November 20, 2018, Davoudi was arrested by agents from the intelligence unit of the judiciary at his place of work in Tehran. At the time of the arrest, agents searched his office and home and confiscated documents and personal belongings before transferring him to Section 241 of Tehran's Evin prison, which is run by the security and intelligence unit of the Judiciary.⁷

PRE-TRIAL DETENTION PHASE

Davoudi was not promptly informed of his charge. Davoudi was detained prior to sentencing and was not formally informed of the charges against him until late January 2019, over one month after the time of his arrest.⁸ Davoudi was interrogated in detention without a lawyer present and was ultimately convicted and sentenced in Davoudi's absence.⁹

While being held in ward 241 of Tehran's Evin Prison, Davoudi was either in solitary confinement or held in small, locked cells with one or two other prisoners. He was placed in conditions of solitary confinement for a period of 190 days, during which he was frequently interrogated without a lawyer present, before being moved to a cell with other prisoners (more on ill treatment and prison conditions in the sections below). He was moved to Section 7 of the prison on June 2, 2019. Since his arrest, he has been allowed limited contact with his family through infrequent visits and telephone calls.¹⁰ In addition, Davoudi's wife, Tanaz Kolahchian, was summoned by the second branch of Evin Prison to be questioned about allegedly working for the "Without Retouch" Telegram app,¹¹ which illustrates the judiciary's tactic of applying pressure on family members. Davoudi has been permitted only one or two visits with his lawyer.¹²

Davoudi was initially charged with five offenses: "insulting the Supreme Leader", "spreading propaganda against the system", "gathering and colluding to commit crimes against national security", "spreading lies" and "insulting officials."¹³ All these charges were based on things he wrote in "No Retouching." Many of Davoudi posts on his Instagram and Telegram channel were used as evidence to convict him.¹⁴ The vast majority of the content on his channel dealt with labor rights and trade union issues.¹⁵

Davoudi's first lawyer, Vahid Meshgani Farahani, told IRNA that both of Amirsalar Davoudi's cases were sent to Branch 15 of Tehran's Revolutionary Court, headed by Judge Salavati, from

⁷ <https://www.amnesty.org/en/documents/mde13/0636/2019/en/>.

⁸ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721>; Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019) <https://www.amnesty.org/download/Documents/MDE1306362019ENGLISH.pdf>.

⁹ *Id.*

¹⁰ "Detained Defense Attorney to Be Tried on Four Charges for Peaceful Activities." CENTER FOR HUMAN RIGHTS IN IRAN, (April 22, 2019), <https://www.iranhumanrights.org/2019/04/detained-defense-attorney-to-be-tried-on-four-charges-for-peaceful-activities/>.

¹¹ "Detained Defense Attorney to Be Tried on Four Charges for Peaceful Activities." CENTER FOR HUMAN RIGHTS IN IRAN, (April 22, 2019), <https://www.iranhumanrights.org/2019/04/detained-defense-attorney-to-be-tried-on-four-charges-for-peaceful-activities/>.

¹² "Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019) <https://www.amnesty.org/download/Documents/MDE1306362019ENGLISH.pdf>; "Detained Defense Attorney to Be Tried on Four Charges for Peaceful Activities." CENTER FOR HUMAN RIGHTS IN IRAN, (April 22, 2019), <https://www.iranhumanrights.org/2019/04/detained-defense-attorney-to-be-tried-on-four-charges-for-peaceful-activities/>.

¹³ *Id.*

¹⁴ "Lawyer Protests Unjust Sentence by Refusing Sham Appeal Process, Demands Judicial Review," Center for Human Rights in Iran (Nov. 16, 2019), <https://www.iranhumanrights.org/2019/11/lawyer-protests-unjust-sentence-by-refusing-sham-appeal-process-demands-judicial-review/>

¹⁵ *Id.*

Branch One of Evin’s Prosecutors.¹⁶ After his case was sent to branch 15 of the Revolutionary Court in Tehran around mid-January 2019, the authorities opened a second case against him, where he was charged with two offenses: “forming a group with the purpose of disrupting national security” and “collaborating with hostile governments.”¹⁷ The latter charge was imposed specifically in relation to a Voice of America interview¹⁸ (described in greater detail below).

TRIAL

As stated above, Davoudi was detained prior to trial and sentencing and was not formally informed of the charges against him until approximately over one month after the time of his arrest, in late January 2019.¹⁹ Davoudi was also not given sufficient opportunity to meet with his attorney prior to the trial.²⁰ He was only permitted to meet with an attorney once before the trial for only two hours.²¹ Subsequently, Branch 15 of the Revolutionary Court in Tehran convicted Davoudi in his absence.²²

When viewing the two cases together, Judge Salavati acquitted Davoudi of the charge of “collaborating with hostile governments.” However, he convicted him on the other six charges, and sentenced him to 15 years in prison for “forming a group with the purpose of disrupting national security,” seven years and six months for “gathering and colluding to commit crimes against national security,” three years for “spreading lies,” two years and three months for “insulting the Supreme Leader,” one year and six months for “spreading propaganda against the system,” and 111 lashes for “insulting officials.”²³ The Judge initially sentenced Davoudi to 30 years in prison and 111 blows of the lash, however, after application of Article 134, the prison sentence was reduced to 15 years under Iran’s sentencing guidelines.²⁴ On July 30, 2019, Davoudi's lawyer wrote on Twitter that his sentence had been confirmed by the Appeals Court.²⁵

¹⁶ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721>; Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019) <https://www.amnesty.org/download/Documents/MDE1306362019ENGLISH.pdf>.

²⁰ “Detained Defense Attorney to Be Tried on Four Charges for Peaceful Activities." CENTER FOR HUMAN RIGHTS IN IRAN, (April 22, 2019), <https://www.iranhumanrights.org/2019/04/detained-defense-attorney-to-be-tried-on-four-charges-for-peaceful-activities/>.

²¹ *Id.*

²² “Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019) <https://www.amnesty.org/download/Documents/MDE1306362019ENGLISH.pdf>.

²³ *Id.*

²⁴ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721/>.

²⁵ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721>.

POST-TRIAL/POST-SENTENCING

Under Iran’s sentencing guidelines, he has to serve the lengthiest single sentence imposed for the most serious charge, which in his case is the charge of “forming a group with the purpose of disrupting national security.”²⁶ Davoudi was originally sentenced to 30 years and three months in prison and 111 lashes on charges stemming from his human rights work. Davoudi is only required to serve 15 years of this sentence under Iran’s sentencing guidelines, as noted above. In February 2020, Davoudi was reported to have begun a hunger strike after being denied prison leave to see his daughter.²⁷ Davoudi has stated that the reasons for his hunger strike are in protest of unlawful prison conditions since his arrest, such as prolonged periods in solitary confinement.²⁸ Prolonged solitary confinement is a form of torture and other ill-treatment, and is widespread and systematic in Iran, especially during interrogations.²⁹

PART II: INTERNATIONAL LEGAL ANALYSIS

DAVOUDI’S DETENTION IS ARBITRARY IN VIOLATION OF IRANIAN INTERNATIONAL LEGAL OBLIGATIONS

Iran is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and bound by its provisions. Moreover, under Article 9 of Iran’s Civil Code, the ICCPR, like all ratified treaties, have the same force of law and Parliamentary legislation in Iran.

ICCPR Article 9(1) prohibited Parties to the Convention from exchanging in “Arbitrary detention”, mandating:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The Human Rights Committee is the body created by the treaty charged with producing authoritative interpretations and explanations of the ICCPR. These interpretations and explanations are called General Comment. In General Comment 35 the Committee define the meaning of “arbitrary detention” establishing that:

An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

General Comment 35 continues to say:

Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17). Imprisonment after a manifestly unfair trial is arbitrary.

²⁶ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721>.

²⁷ “Iran: Further Information: Jailed Lawyer on Hunger Strike: Amirsalar Davoudi,” AMNESTY INTERNATIONAL, (Feb. 18, 2020), <https://www.amnesty.org/en/documents/mde13/1823/2020/en/>; “Amirsalar Davoudi on hunger strike,” Lawyers for Lawyers, (Feb. 25, 2020), <https://lawyersforlawyers.org/en/amirsalar-davoudi-on-hunger-strike/>.

²⁸ “Iran: Further Information: Jailed Lawyer on Hunger Strike: Amirsalar Davoudi,” AMNESTY INTERNATIONAL, (Feb. 18, 2020), <https://www.amnesty.org/en/documents/mde13/1823/2020/en/>.

²⁹ “Iran: Further Information: Jailed Lawyer on Hunger Strike: Amirsalar Davoudi,” AMNESTY INTERNATIONAL (Feb. 18, 2020), <https://www.amnesty.org/en/documents/mde13/1823/2020/en/>.

In other words, General Comments 35 clarifies that even if a detention is authorized by law, if that detention is a punishment for a right protected by the ICCPR then that detention is still arbitrary and a violation of the ICCPR. It can also be arbitrary simply because the trial was manifestly unfair.

While Davoudi's detention arises from at least six prosecutions, no less than nine specific criminal charges are punishing his peaceful exercise of freedom of opinion and expression under Article 19 of the ICCPR. Davoudi's acts include publicizing human rights violations through the Telegram channel, speaking to media outlets where he raised concerns about the human rights situation in Iran, and his representation of minorities through his capacity as an attorney. In all these cases, his expression was protected (discussed in detail below) by the ICCPR and as such, the punitive imprisonment for this detention was their form of arbitrary detention in violation of Iran's legal obligation under Article 9 of the ICCPR. Additionally, Davoudi's detention can also be said to be arbitrary because his very limited access to his lawyer made the trial manifestly unfair (discussed in detail below).

DAVOUDI WAS DENIED THE RIGHT TO FAIR TRIAL: CONVICTION BASED ON UNFAIR PROCEEDINGS IN VIOLATION OF IRAN'S INTERNATIONAL LEGAL OBLIGATIONS

ICCPR Article 14 (1) makes clear that *Article 14* "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

In **General Comment 32**, the Committee highlights the circumstances of "special tribunals," such as those with where the case is excluded from the public.³⁰

The Committee further clarifies in special tribunal courts:

"...even if the identity and status of such judges has been verified by an independent authority, often suffer not only from the fact that the identity and status of the judges is not made known to the accused persons but also from irregularities such as exclusion of the public or even the accused or their representatives from the proceedings; restrictions of the right to a lawyer of their own choice; severe restrictions or denial of the right to communicate with their lawyers, particularly when held incommunicado; threats to the lawyers..."³¹

The Committee reaffirms that such circumstances involving a special tribunal do not satisfy basic standards of fair trial and, in particular, the requirement that the tribunal must be independent and impartial.

Iranian Revolutionary Courts are specialized courts that deal with particular serious crimes, including high-profile political cases and national security crimes. There are no juries in Revolutionary Courts.³² It is also worth noting that the Revolutionary Courts are responsible for the vast majority of executions in Iran.³³ The procedures of these courts are often not public, verdicts are not published, and the courts illustrate a pattern of limited fair trial and due process safeguards. Therefore, Iranian Revolutionary

³⁰ UN Human Rights Committee (HRC), Paragraph 23, General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, available at: <https://www.refworld.org/docid/478b2b2f2.html>.

³¹ UN Human Rights Committee (HRC), Paragraph 23, General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, available at: <https://www.refworld.org/docid/478b2b2f2.html>.

³² Naji, Kasra. "Jason Rezaian trial: What are Iran's Islamic Revolutionary Courts?" BBC NEWS (May 26, 2015), <https://www.bbc.com/news/world-middle-east-32890565>

³³ Revolutionary Courts Responsible for Majority of Executions Human Rights, IRAN HUMAN RIGHTS (Apr. 14, 2017), <https://iranhr.net/en/articles/2839/>.

Courts can be considered special tribunals, and under the ICCPR Davoudi's conviction by a Revolutionary Court does not satisfy basic standards of fair trial.

Moreover, **ICCPR Article 14(3)** sets forth several additional minimum requirements for fair proceedings for anyone charged with a crime that require the accused be (a) charged "promptly", (b) have access to a lawyer.

(a) DAVOUDI WAS NOT PROMPTLY INFORMED OF HIS CHARGE

Internationally recognized standards of fair trial recognize the right to be brought promptly before a judge for anyone arrested or detained in connection with a criminal charge. While the promptness is determined according to the particular circumstances of each case, in most cases, delays of more than 48 hours following the arrest or detention have been considered excessive.³⁴

ICCPR Article 9(2) provides that:

"anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be **promptly** informed of any charges against him."³⁵

In General Comment 35 on Article 9, paragraph 33, the Committee affirms a 48-hour window for a person to be informed of the charges against him:

"48 hours are ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances."

In a context where torture of detainees was found to be systematic, the Committee against Torture recommended that the law be amended to require detainees to be brought before a court within 24 hours, and judges to be available at all times for this purpose.³⁶ Iranian law actually requires the accused to be charged in 24 hours.³⁷

Article 14(3)(a) established promptness of charges as part of fair trial standards, stating the accused has the right "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him."³⁸ In General Comment 32 on Article 14, paragraph 31, the Committee goes on to clarify the meaning of "promptly," establishing that "the right to be informed of the charge 'promptly' requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law,³⁹ or the individual is publicly named as such."⁴⁰

Davoudi detention is in violation of fair trial standards of promptness because of the delay in being informed of his charges (Davoudi was detained prior to sentencing and was not formally informed of the

³⁴ HRC Concluding Observations: El Salvador, UN Doc. CCPR/C/SLV/CO/6 (2010) §14; Special Rapporteur on torture, UN Doc. E/CN.4/2003/68 (2002) §26(g) and UN Doc. A/65/273 (2010) §75; See CAT Concluding Observations: Venezuela, UN Doc.

³⁵ HRC Concluding Observations: El Salvador, UN Doc. CCPR/C/SLV/CO/6 (2010) §14; Special Rapporteur on torture, UN Doc. E/CN.4/2003/68 (2002) §26(g) and UN Doc. A/65/273 (2010) §75; See CAT Concluding Observations: Venezuela, UN Doc.

³⁶ CAT Report under Article 20: Mexico, UN Doc. CAT/C/75 (2003) §220(b).

³⁷ Flawed Reforms: Iran's New Code of Criminal Procedure, AMNESTY INTERNATIONAL, (2016) <https://www.amnesty.org/download/Documents/MDE1327082016ENGLISH.PDF>.

³⁸ UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, <https://www.refworld.org/docid/478b2b2f2.html>.

³⁹ Communications No. 1128/2002, *Márques de Morais v. Angola*, para. 5.4 and 253/1987, *Kelly v. Jamaica*, para. 5.8.

⁴⁰ "Rights of Persons Charged with A Criminal Offence," General Comment No. 32, HUMAN RIGHTS COMMITTEE, CCPR/C/GC/32, (23 August 2007).

charges against him until approximately over one month after the time of his arrest, in late January 2019⁴¹ and his very limited access to his lawyer⁴² (discussed in detail below).

(B) DAVOUDI DENIED PROPER ACCESS TO LEGAL COUNSEL

ICCPR Article 14 (3)(b) provides that anyone charged with a criminal offense shall “have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”⁴³

ICCPR Article 14 paragraph 3 (d) contains three distinct guarantees with regard to access to legal counsel:

“To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”⁴⁴

In General Comment 32, the Committee further clarifies that paragraph 3 (d) requires that: 1) accused persons are entitled to be present during their trial; 2) the right of all accused of a criminal charge to defend themselves in person or through legal counsel of their own choosing and to be informed of this right; 3) guarantees the right to have legal assistance assigned to accused persons whenever the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it.⁴⁵ The General Comments clarifies that in trials in absentia, article 14, paragraph 3 (a) requires that “all due steps have been taken to inform accused persons of the charges and to notify them of the proceedings.”⁴⁶ Additionally, the Special Rapporteur on torture has recommended that anyone who has been arrested “should be given access to legal counsel no later than 24 hours after the arrest.”⁴⁷

At a minimum in this case, Davoudi’s detention is in violation of ICCPR Article 14 fair trial protections because Davoudi was detained prior to sentencing and was not formally informed of the charges against him until approximately over one month after the time of his arrest, in late January 2019.⁴⁸ This is also in violation of Article 14 because Davoudi has been permitted only one or two visits with his lawyer.⁴⁹ Davoudi’s detention is also in violation of fair trial standards with regard to access to legal counsel, as Davoudi was interrogated in detention without a lawyer present, and was ultimately convicted and sentenced in his absence, in violation of Article 14.⁵⁰

⁴¹ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721>; Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019) <https://www.amnesty.org/download/Documents/MDE1306362019ENGLISH.pdf>.

⁴² Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721>; Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019)

⁴³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series s, vol. 999, p. 171.

⁴⁴ UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, <https://www.refworld.org/docid/478b2b2f2.html>.

⁴⁵ UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, <https://www.refworld.org/docid/478b2b2f2.html>.

⁴⁶ Id.

⁴⁷ Special Rapporteur on torture, UN Doc. E/CN.4/1990/17 (1989) §272(c); See Special Rapporteur on torture: UN Doc. E/CN.4/1995/34 (1995) §926(d), UN Doc. A/56/156 (2010) §39(f).

⁴⁸ Iran Prison Atlas, UNITED 4 IRAN, <https://ipa.united4iran.org/en/prisoner/4721>; Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019) <https://www.amnesty.org/download/Documents/MDE1306362019ENGLISH.pdf>.

⁴⁹ “Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019) <https://www.amnesty.org/download/Documents/MDE1306362019ENGLISH.pdf>; “Detained Defense Attorney to Be Tried on Four Charges for Peaceful Activities." CENTER FOR HUMAN RIGHTS IN IRAN, (April 22, 2019), <https://www.iranhumanrights.org/2019/04/detained-defense-attorney-to-be-tried-on-four-charges-for-peaceful-activities/>.

⁵⁰ Urgent Action: Lawyer Sentenced to Over 29 Years in Prison," AMNESTY INTERNATIONAL, (5 July 2019).

DAVOUDI’S CONVICTION VIOLATES THE FUNDAMENTAL RIGHTS OF FREEDOM OF OPINION AND EXPRESSION

The right to freedom of expression is a fundamental right guaranteed under Article 19 the ICCPR. Freedom of opinion and freedom of expression are “indispensable conditions for the full development of the person [and] are essential for any society.”⁵¹ The obligation to respect freedoms of opinion and expression is binding on State parties,⁵² as the State must guarantee the right to freedom of expression, including the “right to seek, receive and impart information and ideas of all kinds, regardless of frontiers.”⁵³

ICCPR Article 19 also states:

"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."

In General Comment 34, the UN Human Rights Committee clarifies the scope of freedoms guaranteed by Article 19, stating that it “protects all forms of expression and the means of their dissemination,”⁵⁴ and includes “political discourse, commentary on public affairs, discussion of human rights, journalism,” etc.⁵⁵ General Comment Paragraph 2 requires States parties to guarantee the right to freedom of expression.⁵⁶ The Committee further specifies that Article 19 protects:

“...all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression.”

Moreover, in the General Comment, the Committee specifically highlights “internet and mobile based electronic information dissemination systems” as part of the “global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries.”⁵⁷ Davoudi’s use of the Telegram app would fall under this category and is therefore a protected means of expression.

In General Comment 34 paragraph 23, the position of the Committee on protecting such activities is clear:

“Under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing,

⁵¹ UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.html>; Also see communication No. 1173/2003, *Benhadj v. Algeria*, Views adopted on 20 July 2007, No. 628/1995, *Park v. Republic of Korea*, Views adopted on 5 July 1996

⁵² UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.html>.

⁵³ UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.html>.

⁵⁴ Id.

⁵⁵ UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.html>.

⁵⁶ UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.html>.

⁵⁷ UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.html>.

be compatible with Article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.”⁵⁸

Accordingly, Davoudi’s detention does not comply with international human rights law, including Iran’s obligations under the ICCPR. The charges against Davoudi stem from his act of publicizing human rights violations through the Telegram channel, speaking to media outlets where he raised concerns about the human rights situation in Iran, and his representation of minorities through his capacity as an attorney. Crimes under Islamic Penal Code such as “spreading propaganda against the system”, “gathering and colluding against national security” and “insulting the founder of the Islamic Republic” are used to curb the peaceful exercise of the rights to freedom of expression, association, and peaceful assembly. Davoudi’s conviction and sentence under the Islamic Penal Code arise solely from the peaceful exercise of his fundamental right to freedom of expression, association and peaceful assembly. Davoudi’s conviction is incompatible with international human rights law, including Iran’s obligations under Article 19 of the ICCPR.

DAVOUDI WAS SUBJECTED TO CRUEL AND INHUMAN TREATMENT

ICCPR Article 7 imposes an obligation on State parties, including Iran, to refrain from committing acts amounting to torture or to cruel, inhumane or degrading treatment of punishment against any individual under their jurisdiction. Such prohibition is absolute and does not allow for any exception. Furthermore, Article 10 of the ICCPR clearly states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

In General Comment 20, on the Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee states that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7.”

Furthermore, the UN Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules) defines prolonged solitary confinement as “solitary confinement for a time period in excess of 15 consecutive days.”

After his arrest in November 2018, Davoudi was held in solitary confinement in ward 241 of Tehran’s Evin Prison –which is run by the intelligence unit of the judiciary –during which he was frequently interrogated without a lawyer present.⁵⁹ Moreover, the structure of Ward 241 in Evin Prison is known to have either solitary cells or small locked cells called “Suites,” which are controlled by the Ministry of Intelligence (MOIS)⁶⁰ that similarly resemble the conditions of solitary confinement. To this end, Davoudi’s 190-day confinement in ward 241 indicates that he

⁵⁸ UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, <https://www.refworld.org/docid/4ed34b562.html>.

⁵⁹ “Iran: Further Information: Jailed Lawyer on Hunger Strike: Amirsalar Davoudi,” AMNESTY INTERNATIONAL, (Feb. 18, 2020), <https://www.amnesty.org/en/documents/mde13/1823/2020/en/>.

⁶⁰ A Glimpse of Evin Prison, Iran’s Most Notorious Jail, IRAN HUMAN RIGHTS MONITOR (Oct. 28, 2018), <https://iran-hrm.com/index.php/2018/10/28/iran-evin-prison-irans-most-notorious-jail/>

was in solitary confinement for a period of time well over 15 days and indicates a form of ill treatment under Article 7 of the ICCPR.⁶¹

In February 2020, Davoudi was reported to have begun a hunger strike after being denied prison leave to see his daughter.⁶² Davoudi has stated that the reasons for his hunger strike are in protest of unlawful prison conditions since his arrest, such as prolonged periods in solitary confinement, which would amount to torture or other inhumane treatment.⁶³

⁶¹ *Id.*

⁶² "Iran: Further Information: Jailed Lawyer on Hunger Strike: Amirsalar Davoudi," AMNESTY INTERNATIONAL, (Feb. 18, 2020), <https://www.amnesty.org/en/documents/mde13/1823/2020/en/>; "Amirsalar Davoudi on hunger strike," LAWYERS FOR LAWYERS, (Feb. 25, 2020), <https://lawyersforlawyers.org/en/amirsalar-davoudi-on-hunger-strike/>.

⁶³ "Iran: Further Information: Jailed Lawyer on Hunger Strike: Amirsalar Davoudi," AMNESTY INTERNATIONAL, (Feb. 18, 2020), <https://www.amnesty.org/en/documents/mde13/1823/2020/en/>.