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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session, 19–23 November 2018

Opinion No. 83/2018 concerning Atena Daemi (Islamic Republic of Iran)

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

2. In accordance with its methods of work (A/HRC/36/38), on 30 July 2018, the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Atena Daemi. The Government has not replied to the communication. The Islamic Republic of Iran is a party to the International Covenant on Civil and Political Rights.

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

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

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

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

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

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

Submissions

Communication from the source

4. Fatima Daemi Khoshknudhani (also known as Atena Daemi) is a 30-year-old Iranian national. At the time of her initial arrest in 2014, Ms. Daemi was employed by the Revolution Sports Club (Bashgah-e Enghelab) in Tehran.

5. The source reports that Ms. Daemi is a civil rights activist who works to promote human rights in Iran. Since 2012, she has spent two years defending the rights of street children and child labourers, in addition to promoting women's rights and undertaking campaigns against the death penalty. Ms. Daemi is also known for her work in support of children in the Syrian city of Kobani.

6. At approximately 9 a.m. on 21 October 2014, Ms. Daemi was driving her car to work when it was suddenly blocked by three vehicles and a motorcycle belonging to agents of the Islamic Revolutionary Guard Corps. The agents presented Ms. Daemi with a court order dated 18 September 2014, took her into custody and transferred her back to her home, where they conducted a thorough search of her family's property. The source notes that the court order initially shown to Ms. Daemi was an arrest warrant, not a search warrant.

7. According to the source, the agents searched Ms. Daemi's entire home, including all of the drawers and closets. They confiscated her mobile telephone, her sibling's mobile telephone, the family answering machine and her private journal. After searching her parents' home, the agents proceeded to the home of her sibling, but did not confiscate any materials. The source alleges that the agents told Ms. Daemi that her friends and colleagues had identified her as the main organizer of a peaceful gathering that had taken place in front of the United Nations office in Tehran.

Charges against Ms. Daemi

8. Following Ms. Daemi's arrest, the authorities placed her in section 2A of Evin prison, which is controlled by the Islamic Revolutionary Guard Corps. The authorities informed Ms. Daemi that she would be charged with "propaganda against the State". Following a six-month period of pretrial detention, the authorities officially charged Ms. Daemi with propaganda against the State, "acting against national security" and "insulting the Supreme Leader and the sacred", among other crimes.

9. The source claims that the charges of "propaganda against the State" and "assembly and collusion against national security" relate to Ms. Daemi's participation in gatherings, including those in support of children in the Syrian city of Kobani, and her social media messages opposing Iranian policies of forcing women to wear the hijab and in carrying out capital punishment. The source further claims that the charge of "insulting the Supreme Leader and the sacred" was brought against Ms. Daemi following a search of her mobile telephone that allegedly revealed blasphemous jokes and songs by a dissident rap artist.

10. According to the source, the authorities also charged Ms. Daemi with "concealing criminal evidence" for allegedly failing to disclose the password to a friend's social media account during her interrogation. The source alleges that Ms. Daemi's file also contains an allegation that she took part in a gathering to protest against the execution of a prisoner, despite the fact that she was in prison at the time of his execution.

11. During the initial judicial proceedings, the prosecutor stated that Ms. Daemi had been arrested for several reasons, including: "pertaining to assembly and collusion to commit a crime against national security", "propaganda against the Islamic Republic of Iran", "insulting the Supreme Leader and the President in cyberspace" and "concealing the evidence of a crime with the intent to extricate a suspect". More specifically, Ms. Daemi was accused of having been involved (together with members of a student group reportedly engaged in anti-revolutionary activities) in illegal assemblies in front of the United Nations, appearing in front of Rajaee Shahr prison in support of an executed inmate and assembling in front of Evin prison in support of two inmates. Moreover, Ms. Daemi was accused of insulting the founder of the Islamic Republic of Iran, the Supreme Leader and the President.

12. The authorities further accused Ms. Daemi of making contact with the Mourning Mothers (Laleh Park); attending ceremonies and riots; forming illegal groups and disrupting security by holding meetings to protest judicial verdicts in relation to opposition groups and dissidents; writing and distributing slogans in support of condemned dissidents; and contacting and transmitting information to anti-revolutionary and hostile news agencies (such as the international campaign for human rights in the Islamic Republic of Iran). Ms. Daemi allegedly confessed to playing an active role in those gatherings and ceremonies, including in assemblies held in front of the United Nations, Evin prison and the Embassy of Turkey. In addition, Ms. Daemi allegedly confessed to changing the passwords for the social media and email accounts of an arrested individual.

Pretrial detention and trial

13. The source alleges that Ms. Daemi was held in section 2A of Evin prison for 86 days, 51 of which were spent in solitary confinement. In addition, for the first 28 days of her detention, Ms. Daemi was held in a cell that was infested with insects and had no toilet facilities. According to the source, Ms. Daemi's interrogators offered to grant her easier access to toilet facilities in exchange for her cooperation.

14. The source further alleges that the officials at Evin prison denied Ms. Daemi access to a lawyer during her initial detention, which included several interrogation sessions. With the exception of weekends, Ms. Daemi was interrogated every day for a month and a half, often for several hours at a time. During most of her lengthy interrogations, she was forced to sit blindfolded and facing a wall. According to the source, the authorities attempted to link Ms. Daemi to dissident organizations during the initial phase of interrogation.

15. The source reports that it was only during Ms. Daemi's first court proceeding that she was allowed to meet with her lawyer for the first time and to sign an engagement letter to retain his services. Given that the lawyer was not able to access Ms. Daemi's case file prior to the first trial proceeding, he requested, and was granted, a continuance. However, soon after the initial proceedings, the lawyer resigned from the case. The source alleges that he resigned as a result of threats made by the Islamic Revolutionary Guard Corps.

16. Ms. Daemi's second lawyer was able to meet with her in Evin prison a few days before her trial and to secure her agreement to proceed. According to the source, the lawyer wrote a very conservative brief stating that there was no clear evidence against his client except for the claims made by her "co-conspirators" during their interrogation. When Ms. Daemi objected to this strategy, her lawyer advised her that a more assertive brief was not required because the confessions from the co-conspirators would not likely convince the judge to issue a heavy sentence. Despite Ms. Daemi's objections, the lawyer submitted the trial brief.

17. On 7 March 2015, Ms. Daemi was tried and convicted in proceedings that lasted no more than 15 minutes. On 30 May 2015, the Deputy Head of Branch 28 of the Tehran Islamic revolutionary court sentenced Ms. Daemi to 14 years' imprisonment, taking into account time already served in detention. The sentence consisted of:

(a) Seven years' imprisonment for assembly and collusion to commit a crime against national security and propaganda against the Islamic Republic of Iran under articles 524, 554 and 610 of the Islamic Penal Code;

(b) Three years' imprisonment for insulting the Supreme Leader under article 514 of the Islamic Penal Code;

(c) Four years' imprisonment for concealing evidence of a crime under article 554 of the Islamic Penal Code.

18. The source reports that Ms. Daemi's lawyer insisted on submitting the same brief for her appeal. As a result, Ms. Daemi asked the lawyer to resign from her case. A third lawyer was engaged to represent Ms. Daemi and has been performing satisfactorily in that role.

19. On 4 July 2015, the prison authorities transferred Ms. Daemi to Sadeghiyeh clinic in Tehran for one day because of the deterioration in her health resulting from long-term solitary confinement, including poor air quality, lack of sunlight and poor nutrition. The source

alleges that the detention conditions have resulted in Ms. Daemi developing a skin disease and significantly weakened her eyesight.

Appeal proceedings and rearrest

20. On or about 15 February 2016, the authorities at Evin prison released Ms. Daemi on bail of Rls 5.5 billion (approximately $131,000) pending her appeal.

21. In September 2016, branch 36 of the Court of Appeals in Tehran reduced Ms. Daemi's total sentence to seven years' imprisonment. The Court of Appeals rejected the charges against Ms. Daemi relating to concealing evidence owing to her strong denial of the charge and the weakness of the evidence presented against her. The Court also reduced the sentence for assembly and collusion from seven to five years' imprisonment and the sentence for insulting the Supreme Leader from three to two years' imprisonment.

22. According to the source, on 26 November 2016, the Islamic Revolutionary Guard Corps agents violently rearrested Ms. Daemi by raiding her parents' home. During the arrest, there was a physical altercation between the agents and Ms. Daemi's family members who tried to intervene on her behalf. The source alleges that the agents did not present a summons or warrant and that when Ms. Daemi asked to see the arrest warrant, the officials beat her and used pepper spray against her. In addition, the agents invaded Ms. Daemi's privacy and risked seeing her without a hijab for fear that she might escape. Following the arrest, the agents blindfolded Ms. Daemi and transported her to Evin prison to begin serving her seven-year sentence. The source claims that, on the way to prison, the agents told Ms. Daemi that they had "cooked up a plan so that she completely abandons the thought of ever getting released from prison".

23. Ms. Daemi filed a complaint concerning the manner in which she was rearrested. However, on 7 April 2017, branch 1163 of the Qods criminal court sentenced Ms. Daemi to an additional 91 days' imprisonment, citing a counterclaim by the Islamic Revolutionary Guard Corps agents that Ms. Daemi resisted arrest and insulted the officers in charge. The source notes that the Court failed to address Ms. Daemi's initial complaint. In its ruling, the Court stated that it had not reviewed Ms. Daemi's file and had lost her complaint, although the Court did acknowledge the concerns of the agents.

24. On 9 April 2017, Ms. Daemi began a hunger strike in protest against the additional sentence.

Transfer to Gharchak prison

25. Following complaints from other prisoners, Ms. Daemi and her cellmate were repeatedly summoned to the enforcement office at Evin prison. They refused to go, asserting that they had done nothing wrong. On 24 January 2018, at around 1 p.m., Ms. Daemi's cellmate was ordered to go to the enforcement office for interrogation, but she stated that she did not recognize the legitimacy of the interrogators and refused to go. After seven unsuccessful attempts to summon her, the prison authorities convinced another political prisoner and human rights defender to speak with the cellmate and convince her to go to the enforcement office. She eventually agreed.

26. According to the source, when the guards arrived at the prison, they presented Ms. Daemi's cellmate with a document that contained both her and Ms. Daemi's names. When the women again refused to go to the enforcement office, the guards threatened to take them there by force. On 25 January 2018, the prison guards placed Ms. Daemi and her cellmate in a cell for four hours prior to taking them to a van.

27. The guards informed both women that they were to be taken away from the prison, but the women refused to be transferred until they were provided with a proper explanation. After discussion between the prisoners and the guards, including several Islamic Revolutionary Guard Corps agents, a higher-ranking officer told the women that they were to be transferred to a prison in Shahr-e-Rey, also known as Gharchak prison. Ms. Daemi and her cellmate demanded to know why and asked to be shown a written order. Eventually, the guards produced a judicial order to transfer Ms. Daemi and her cellmate to Gharchak prison,

which is located approximately 40 kilometres southeast of Tehran. The order did not provide any reasons for the transfer.

28. The source alleges that both Ms. Daemi and her cellmate refused to be transferred and were subjected to threats of physical force. Female guards were ordered to handcuff them, but they refused to use force. Another official subsequently threatened to use force against Ms. Daemi and her cellmate. The guards pushed Ms. Daemi and her cellmate into the van and one of the officials attempted to hit them, but the female guards prevented him from doing so. The women were taken in the van to Gharchak prison, with an escort of four armed Islamic Revolutionary Guard Corps agents in another vehicle.

29. Upon arriving at Gharchak prison, the guards attempted to separate Ms. Daemi and her cellmate, but they resisted. Another guard threatened the women with force if they continued to refuse being transferred to separate cells. Ms. Daemi and her cellmate told the guard that they had "already been beaten". The guards sent both women to a quarantine cell where they were told not to speak to other prisoners. The source observes that prisoners are usually held in quarantine cells for three days, but Ms. Daemi and her cellmate were held there for approximately one week.

30. According to the source, Ms. Daemi's transfer to and detention at Gharchak prison was of concern because she is a political prisoner and the prison is generally used to detain people convicted of common crimes, including violent crimes. Moreover, the conditions at the prison are harsh and substandard, and access to health facilities and medical care is limited. Ms. Daemi's physical and psychological well-being was at risk because she protested her transfer to Gharchak prison and her detention in general through several hunger strikes.

31. On or about 9 May 2018, the authorities returned Ms. Daemi and her cellmate to Evin prison. A new prosecutor appointed to the case informed Ms. Daemi's family that the decision to transfer her to Gharchak prison had been a mistake and it would not be his approach. However, the source claims that the prosecutor also indicated that if there was any further attempt to draw attention to the case, he would react more severely than the previous prosecutor. According to the source, Ms. Daemi's family members have also been repeatedly harassed and threatened so that they will remain silent.

Submissions

32. The source submits that the authorities subjected Ms. Daemi to arbitrary deprivation of liberty, unfair trial and ill-treatment in violation of articles 7, 9, 10, 14, 17, 19, 21 and 22 of the Covenant and the standards found in the Basic Principles for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). The source claims that Ms. Daemi's deprivation of liberty falls within categories II and III.

33. In relation to category II, the source submits that the authorities detained Ms. Daemi for exercising her right to freedom of expression. Her prosecution and conviction for the vague and overly broad crimes of "propaganda against the State" and "insulting the Supreme Leader" are related to her criticism of the Government's record and her other human rights-related activities. In particular, Ms. Daemi's detention was the result of her social media posts opposing Iranian policies on forced hijab-wearing and capital punishment, and the allegation that a search of her telephone revealed blasphemous jokes and songs by a dissident rapper.

34. The source argues that the authorities have no legitimate grounds for restricting Ms. Daemi's freedom of expression, as she did not advocate violence or threaten the rights or reputations of others, national security, public order, public health or morals. Furthermore, the authorities have not demonstrated that the restriction of Ms. Daemi's freedom of expression was necessary to protect a legitimate interest as set out in article 19 (3) of the Covenant.

35. In addition, Ms. Daemi's prosecution and conviction for "assembly and collusion against national security" was based in part on her association or imputed association with other human rights activists. The source submits that the authorities have violated Ms. Daemi's right to freedom of association guaranteed by article 22 of the Covenant.

36. In relation to category III, the source makes the following submissions:

(a) Ms. Daemi's arrest in 2014 did not comply with domestic or international arrest procedures. The authorities failed to comply with articles 32, 34, 35, 37 and 39 of the Iranian Constitution because they did not have a warrant to search Ms. Daemi's home. No summons or warrant was presented when Ms. Daemi was rearrested in 2016 and the arrest involved the use of physical force. The authorities violated article 9 of the Universal Declaration of Human Rights, article 9 (1) and (2) of the Covenant, principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, article 119 of the Iranian Code of Criminal Procedure (1999) and articles 170, 173, and 181 of the Iranian Revised Code of Criminal Procedure;

(b) By searching Ms. Daemi's home and seizing her personal belongings without a warrant, the authorities violated her right to privacy under article 12 of the Universal Declaration of Human Rights, article 17 of the Covenant, and articles 36 and 37 of the Iranian Charter on Citizens' Rights;

(c) After her arrest in 2014, Ms. Daemi was not brought promptly before an independent judicial authority to challenge the legality of her detention. Rather, she was detained for 86 days, including one month and a half of solitary confinement, prior to her appearance before a judge. That amounts to a violation of article 9 (3) and (4) of the Covenant and principles 4, 11, 32 (1) and 37 of the Body of Principles;

(d) The authorities denied Ms. Daemi access to a lawyer for 86 days after her arrest. Ms. Daemi's first lawyer did not meet with her until the initial court proceedings and resigned owing to threats from the Islamic Revolutionary Guard Corps. Ms. Daemi's second lawyer was able to meet with her several days before her trial, but she was not satisfied with the quality of his representation. The Government has thus violated articles 14 (3) (b) and (d) of the Covenant, article 35 of the Iranian Constitution and article 48 of the Iranian Code of Criminal Procedure;

(e) Iranian prison regulations enable law enforcement officers to scrutinize meetings between lawyers and their clients. All documents and evidence given to a lawyer by an accused person in the course of representation are subject to examination by an investigator under article 154 of the Revised Code of Criminal Procedure. Although the right to confer with counsel is guaranteed by the Covenant and under Iranian law, the prison regulations prevented Ms. Daemi from communicating confidentially with her lawyer, in violation of article 14 (3) (b) of the Covenant, principle 18 (3) of the Body of Principles, and rule 61 of the Nelson Mandela Rules;

(f) Ms. Daemi's trial was not fair. She was denied procedural rights that were afforded to the prosecution, in violation of the equality of arms principle. The Iranian judiciary and the revolutionary courts are not independent. The courts lacked impartiality and demonstrated bias against Ms. Daemi throughout the proceedings, relied on evidence and testimony that was probably secured through coercion and refused to investigate serious allegations of torture and ill-treatment both before and after Ms. Daemi's detention. In addition, Ms. Daemi's trial lasted no more than 15 minutes. By convicting Ms. Daemi without a fair hearing by an independent and impartial tribunal, the Government did not uphold Ms. Daemi's right to a fair trial and her right to the presumption of innocence, in violation of article 14 (1) and (2) of the Covenant, articles 37 and 156 of the Iranian Constitution and articles 3 and 337 of the Iranian Code of Criminal Procedure;

(g) Ms. Daemi was subjected to torture and ill-treatment. Shortly after her arrest and during her pretrial detention, Ms. Daemi was subjected to prolonged solitary confinement (51 days) and long interrogation sessions. During the interrogations, Ms. Daemi sat facing the wall and was blindfolded. Moreover, unsanitary conditions at Evin prison have resulted in the deterioration of Ms. Daemi's health. The authorities also subjected Ms. Daemi to ill-treatment by beating and spraying her with pepper when she was rearrested in 2016. When Ms. Daemi complained about her mistreatment at the hands of security agents, the judiciary failed to investigate her complaint, in violation of article 2 (3) of the Covenant. Ms. Daemi was also subjected to ill-treatment before her transfer to Gharchak prison and during her detention at the prison. In March 2018, Ms. Daemi was beaten by Gharchak prison riot guards. Fellow inmates also targeted Ms. Daemi and her cellmate with verbal and physical

assaults, which were not addressed by the prison authorities. The Government has thus violated article 5 of the Universal Declaration of Human Rights, articles 7 and 10 (1) of the Covenant, principles 6 and 21 (2) of the Body of Principles, rules 1 and 43 of the Nelson Mandela Rules and article 38 of the Iranian Constitution;

(h) Ms. Daemi was convicted and sentenced under articles 500, 514 and 610 of the Islamic Penal Code. Those provisions are broad, vague and capable of arbitrary application. By convicting Ms. Daemi of criminal offences that were too broadly worded to enable an individual to reasonably foresee that his or her conduct could be considered criminal, the authorities violated article 15 of the Covenant.

Communications from special procedures mandate holders

37. Ms. Daemi has previously been the subject of four joint urgent appeals addressed to the Government by various special procedures mandate holders on 24 June 2015, 27 October 2016, 9 May 2017 and 31 January 2018.[1] The Working Group acknowledges the responses received from the Government on 18 March 2016 and 12 October 2017.[2]

38. The special procedures mandate holders requested the Government to comment on numerous allegations, including the fact that the arrest, detention and conviction of Ms. Daemi appeared to be directly related to her human rights work and the legitimate exercise of her right to freedom of expression. The mandate holders also expressed concern in relation to the lack of due process and observance of fair trial guarantees, particularly the restrictions placed on Ms. Daemi's legal defence, as well as her alleged solitary confinement and ill-treatment.

39. In its responses, the Government confirmed Ms. Daemi's conviction and sentences, noting that the charges against her were not related to her lawful activities. The Government also confirmed that Ms. Daemi had appealed against the verdict and her sentence had been commuted to five years' imprisonment. The Government asserted that Ms. Daemi had received numerous visits from her family and adequate medical care.

Response from the Government to the regular communication

40. On 30 July 2018, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 28 September 2018 about the current situation of Ms. Daemi. It also requested the Government to clarify the factual and legal grounds justifying her detention and its compatibility with the obligations of the Islamic Republic of Iran under international human rights law.

41. On 1 August 2018, the Government requested an extension of the deadline for response. The extension was not granted. The Government did not submit any information in response to the regular communication. Although not obliged to do so, the Working Group has decided to take into account the information received from the Government in response to the joint urgent appeals referred to earlier in the present opinion.[3]

Discussion

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

[1] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=20209, 22820, 23112 and 23611.

[2] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=32697 and 33740.

[3] According to paragraph 16 of its methods of work, the Working Group may render an opinion on the basis of all the information it has obtained. In the present case, in order to give the Government every opportunity to respond to the source's allegations, the Working Group has exercised its discretion to take into account the information submitted by the Government in response to the joint urgent appeals. See opinions No. 48/2016, No. 79/2017 and No. 19/2018 in which the Working Group took a similar approach.

43. In determining whether Ms. Daemi's deprivation of liberty is arbitrary, the Working Group has regard to the principles established in its jurisprudence regarding evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

44. The source alleges that Ms. Daemi's arrest on 21 October 2014 did not comply with domestic or international arrest procedures. According to the source, agents from the Islamic Revolutionary Guard Corps conducted an extensive search of Ms. Daemi's home, but the search was illegal because the court order presented to Ms. Daemi was an arrest warrant and not a search warrant. The source further alleges that several personal items were confiscated during the search, including Ms. Daemi's mobile telephone. Moreover, the source claims that no summons or warrant was presented when Ms. Daemi was rearrested on 26 November 2016. The Government did not challenge any of these allegations.

45. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. In the present case, the authorities failed to establish a legal basis for the arrest and detention of Ms. Daemi. They did not conduct the initial search of Ms. Daemi's home, or her subsequent rearrest, in accordance with the law. The confiscation of Ms. Daemi's property without a search warrant was particularly serious. It appears that one of the charges against Ms. Daemi (that is, "insulting the Supreme Leader") was brought following a search of her mobile telephone that allegedly revealed blasphemous jokes and songs by a dissident rap artist. If it exists, that evidence should not have been used against Ms. Daemi because it was improperly obtained without a search warrant and resulted in one of the charges being brought against her.[4] Accordingly, the Working Group finds that Ms. Daemi's right to freedom from arbitrary arrest and detention under article 9 (1) of the Covenant was violated.

46. Furthermore, according to the source, the authorities informed Ms. Daemi shortly after her transfer to Evin prison in October 2014 that she would be charged with "propaganda against the State". However, after a six-month period of pretrial detention, the authorities officially charged Ms. Daemi with "propaganda against the State", "acting against national security" and "insulting the Supreme Leader". Article 9 (2) of the Covenant requires that a person who has been arrested be given prompt notice of any charges in order to facilitate the determination of whether provisional detention is appropriate.[5] In this case, Ms. Daemi was initially informed of one charge against her but was not promptly informed of the remaining charges and did not have sufficient information to challenge the legal basis of her detention. That amounts to a failure to promptly inform Ms. Daemi of the charges against her, in violation of article 9 (2) of the Covenant.

47. The source also alleges that following Ms. Daemi's arrest on 21 October 2014, she was not brought promptly before an independent judicial authority to challenge the legality of her detention. Rather, she was detained for 86 days, including 51 days in solitary confinement, prior to her appearance before a judge. The Government did not deny this allegation. According to the Human Rights Committee, 48 hours is ordinarily sufficient to bring an individual before a judicial authority and any longer delay must remain absolutely exceptional and be justified under the circumstances.[6] In the absence of such justification, the Working Group finds that the Government violated article 9 (3) and (4) of the Covenant by failing to bring Ms. Daemi promptly before a judge after her arrest and by detaining her in solitary confinement so that she was unable to bring proceedings to challenge the legality of her detention. Judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.[7]

[4] The Working Group recently made a similar finding in its opinion No. 36/2018 (paras. 39–40).

[5] See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 30.

[6] Ibid, para. 33.

[7] See the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

48. For those reasons, the Working Group finds that the Government failed to establish a legal basis for Ms. Daemi's arrest and detention. Her deprivation of liberty is therefore arbitrary and falls within category I.

49. The source alleges that Ms. Daemi has been deprived of her liberty solely for peacefully exercising her rights under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant. In its responses to the joint urgent appeals, the Government denied this allegation, noting that the charges against Ms. Daemi were not related to her lawful activities. The Government also insisted that the allegation that Ms. Daemi was convicted because of her views on capital punishment was unfounded.

50. Given that the Government did not reply to the regular communication, the Working Group has considered other reliable information, particularly its previous opinions concerning arbitrary arrests and detention in the Islamic Republic of Iran.[8] In those cases, findings were made about the arbitrary deprivation of liberty of individuals who had peacefully exercised their rights under the Universal Declaration of Human Rights and the Covenant, demonstrating that this is a long-standing and systemic problem in the administration of criminal justice in the Islamic Republic of Iran.[9]

51. The Secretary-General and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran have also expressed concern about the detention of individuals for exercising their rights to freedom of expression, peaceful assembly and association, including with reference to the specific situation of Ms. Daemi.[10] The Working Group also takes note of the four urgent appeals issued in relation to the situation of Ms. Daemi between 2015 and 2018. Moreover, several special procedures mandate holders recently expressed concern at Ms. Daemi's ongoing detention:

> "Atena Daemi is serving a seven-year term for her human rights work, including charges related to distributing anti-death penalty leaflets and posts on Facebook and Twitter criticizing Iran's execution record … We call for the immediate release of Atena Daemi … as well as the release of all those who have been imprisoned for exercising their rights to freedom of expression and peaceful assembly … Their cases are illustrative of a continuing pattern of harassment, intimidation and imprisonment of those undertaking peaceful and legitimate activities in the defence of human rights and prisoners of conscience, often through using vaguely worded or overly broad national security-related charges."[11]

52. In the present case, the source submits that the authorities detained Ms. Daemi for exercising her right to freedom of expression. According to the source, Ms. Daemi's prosecution and conviction for the vague and overly broad crimes of "propaganda against the State" and "insulting the Supreme Leader" are related to her social media posts criticizing the Government's record on forcing women to wear the hijab and its imposition of the death penalty. The source also alleges that the charges against Ms. Daemi relate to her activities in writing and distributing slogans in support of dissidents. The Government has not offered any alternative explanation of its arrest, detention and prosecution of Ms. Daemi.

53. Under international human rights law, all public figures, including those exercising the highest political authority, such as heads of State and Government, are legitimately subject to criticism and political opposition. The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of

[8] See opinions No. 1/1992, No. 28/1994, No. 14/1996, No. 39/2000, No. 30/2001, No. 8/2003, No. 19/2006, No. 26/2006, No. 34/2008, No. 39/2008, No. 6/2009, No. 8/2010, No. 20/2011, No. 21/2011, No. 58/2011, No. 30/2012, No. 48/2012, No. 54/2012, No. 18/2013, No. 52/2013, No. 55/2013, No. 16/2015, No. 44/2015, No. 1/2016, No. 2/2016, No. 25/2016, No. 9/2017, No. 48/2017, No. 19/2018 and No. 52/2018.

[9] During its visit to the Islamic Republic of Iran in 2003, the Working Group found that infringement of the freedom of expression was a common cause of arbitrary detention. See E/CN.4/2004/3/Add.2, paras. 41–47.

[10] See, for example, A/HRC/37/68, para. 44; A/HRC/34/65, para. 57; and A/72/562, para. 50.

[11] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22843&LangID=E.

penalties.[12] The Government did not submit any evidence that Ms. Daemi's activism and social media posts involved violence or inciting others to act in a violent manner. The Working Group therefore finds that Ms. Daemi was peacefully exercising her rights and that her conduct falls within the boundaries of the right to freedom of expression. Her conviction cannot be regarded as consistent with the Universal Declaration of Human Rights or the Covenant.

54. Similarly, the source argues that Ms. Daemi was convicted in relation to her participation in peaceful assemblies in front of the United Nations office and various prisons to protest against the treatment of prison inmates and dissidents, and for making contact with other human rights activists and groups. Again, the Government has not challenged those allegations, even though it had an opportunity to do so. In the absence of any suggestion that Ms. Daemi's conduct was violent or advocated violence, the Working Group considers that Ms. Daemi was legitimately exercising her rights to freedom of peaceful assembly and of association and the right to take part in the conduct of public affairs.

55. There is nothing to suggest that the permissible restrictions on those rights set out in articles 19 (3), 21, 22 (2) and 25 of the Covenant would apply in the present case. The Government submitted no information or evidence to explain how bringing charges against Ms. Daemi was necessary to protect a legitimate interest, such as respect for the rights or reputations of others, national security, public order, public health or morals. Furthermore, the Government did not demonstrate that Ms. Daemi's conviction was a proportionate response to her activities. In any event, the Human Rights Council has called on States to refrain from imposing restrictions, including under article 19 (3) of the Covenant, that are not consistent with international human rights law.[13]

56. Further, according to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and to "meet or assemble peacefully" for the purpose of promoting and protecting human rights.[14] The source's allegations demonstrate that Ms. Daemi was detained for the exercise of her rights under the Declaration as a human rights defender. The Working Group has determined that detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant.[15]

57. The Working Group concludes that Ms. Daemi's deprivation of liberty was the result of the peaceful exercise of her rights under articles 19, 20 and 21 (1) of the Universal Declaration of Human Rights and articles 19, 21, 22 and 25 (a) of the Covenant, and was contrary to article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. Her deprivation of liberty is arbitrary and falls within category II.

58. The Working Group considers that the charges relating to "assembly and collusion to commit a crime against national security", "propaganda against the State", and "insulting the Supreme Leader" under the Islamic Penal Code are so vague and overly broad that they could, as in the present case, result in penalties being imposed on individuals who have merely exercised their rights under international law. The determination of what constitutes an offence under these provisions appears to be left entirely to the discretion of the authorities. As the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision that the individual can access and understand the law, and regulate his or her conduct accordingly.[16] In the present case, the application of vague and overly broad provisions adds weight to the Working Group's conclusion that Ms. Daemi's deprivation of liberty falls within category II. Moreover, the Working Group

[12] See Human Rights Committee, general comment No. 34 (2011) on freedoms of opinion and expression, para. 38.

[13] See Human Rights Council resolution 12/16, para. 5 (p).

[14] See also General Assembly resolution 70/161, para. 8.

[15] See, for example, opinions No. 75/2017, No. 79/2017 and No. 36/2018.

[16] See, for example, opinion No. 41/2017, paras. 98–101.

considers that, in some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

59. Given its finding that the deprivation of liberty of Ms. Daemi was arbitrary and falls within category II, the Working Group emphasizes that no trial of Ms. Daemi should have taken place. However, she was tried and convicted on 7 March 2015 and subsequently sentenced by branch 28 of the Tehran Islamic revolutionary court. Her appeal was heard by branch 36 of the Tehran Court of Appeals in September 2016. The Working Group considers that there were multiple violations of her right to a fair trial during these proceedings, none of which was denied by the Government.

60. The source alleges that Ms. Daemi was held in prolonged solitary confinement for 51 days following her arrest. According to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority. Those conditions do not appear to have been observed in the present case. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b) and 44 of the Nelson Mandela Rules.

61. In addition, the source claims that Ms. Daemi's trial was unfair because she was denied the equality of arms and the courts demonstrated bias against her by relying on testimony that was likely to have been secured through coercion and by refusing to investigate her serious allegations of torture and ill-treatment. The Working Group considers that those allegations are credible and that Ms. Daemi did not receive an impartial hearing. As the Working Group has emphasized, the revolutionary courts that tried Ms. Daemi do not meet the standards of an independent and impartial tribunal under article 14 (1) of the Covenant.[17] Moreover, despite the fact that Ms. Daemi was charged with multiple serious national security offences, her trial lasted no more than 15 minutes and a heavy penalty of 14 years' imprisonment was imposed following minimal consideration of the case. While the sentence was reduced on appeal, Ms Daemi is still serving a lengthy sentence of seven years. As the Working Group has previously noted, a very brief trial for serious criminal offences suggests that Ms. Daemi's guilt had been predetermined, in violation of her right to the presumption of innocence under article 14 (2) of the Covenant.[18] Further, the source cited instances in which Ms. Daemi was clearly treated unfairly, including the addition of 91 days to Ms. Daemi's sentence on 7 April 2017 by branch 1163 of the Qods criminal court. The court took into account claims made by the agents who rearrested Ms. Daemi, but completely overlooked Ms. Daemi's version of events and admitted that it had lost her complaint.

62. According to the source, the authorities at Evin prison denied Ms. Daemi access to a lawyer for 86 days after her arrest until the initial court proceedings against her and she was subjected to interrogation without the presence of legal counsel. Moreover, Ms. Daemi was not able to communicate confidentially with her lawyer owing to the Iranian prison regulations and other provisions that allow officials to examine meetings and documents exchanged between lawyers and their clients. In those circumstances, the Working Group finds that Ms. Daemi was denied access to legal assistance following her arrest, in violation of her right to adequate time and facilities for the preparation of her defence and to communicate with counsel under article 14 (3) (b) of the Covenant. The Working Group recalls that all persons deprived of their liberty have the right to the legal assistance of a counsel of their choice at any time during their detention, including immediately after their apprehension, and such access shall be provided without delay.[19] The confidentiality of lawyer-client communication must be respected and information obtained in violation of that principle is inadmissible as evidence.[20]

[17] See E/CN.4/2004/3/Add.2, para. 65. The Working Group considers that its finding regarding the revolutionary courts in that report remains current (see opinions No. 19/2018, para. 34, and No. 52/2018, para. 79 (f)).

[18] See, for example, opinions No. 75/2017 and No. 36/2018.

[19] See the United Nations Basic Principles and Guidelines, principle 9 and guideline 8.

[20] Ibid., principle 9, para. 15, and guideline 8, para. 69. See also the Nelson Mandela Rules, rule 61 (1).

63. Furthermore, the source alleges that Ms. Daemi's first lawyer resigned as a result of threats made by the Islamic Revolutionary Guard Corps. The Working Group is alarmed by this allegation and considers that it amounts to improper interference with the legal representation provided to Ms. Daemi, in violation of her right under article 14 (3) (d) of the Covenant to defend herself through legal assistance of her choosing. It is essential for legal counsel to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.[21] The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.

64. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give Ms. Daemi's deprivation of liberty an arbitrary character within category III. Given the serious violations of Ms. Daemi's rights, the Working Group refers this case to the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran.

65. Further, the Working Group is convinced that Ms. Daemi was targeted because of her activities as a human rights defender. Ms. Daemi is a civil rights activist, who is known for her work in support of the rights of women and children and campaigns against the death penalty. The charges against Ms. Daemi related to her social media posts and protests in support of human rights and her contact with other human rights defenders and organizations. The Working Group has in the past concluded that being a human rights defender is a status protected by article 26 of the Covenant.[22] Accordingly, the Working Group finds that Ms. Daemi was deprived of her liberty on discriminatory grounds, that is owing to her status as a human rights defender, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. Her deprivation of liberty is arbitrary and falls within category V. The Working Group refers this case to the Special Rapporteur on the situation of human rights defenders.

66. The Working Group wishes to express its serious concern about Ms. Daemi's health, which has reportedly deteriorated as a result of prolonged solitary confinement and being held in unsanitary conditions. Ms. Daemi has engaged in several hunger strikes that have affected her well-being, has developed a skin disease and suffers weakened eyesight. In addition, the source alleges that Ms. Daemi has been subjected to torture and ill-treatment, including prolonged solitary confinement, long interrogation sessions in which she was blindfolded, denial of access to toilet facilities, excessive force when she was rearrested including the use of pepper spray, transfer to a prison away from her family home in Tehran, beatings prior to and during her detention in Gharchak prison and verbal and physical assault by other inmates. In its responses to the joint urgent appeals sent by the special procedures mandate holders, the Government noted that Ms. Daemi benefits from medical care and, if required, she is sent to medical clinics outside the prison. The Government did not respond to the allegations of torture and ill-treatment.

67. In the view of the Working Group, Ms. Daemi's treatment falls short of the standards set out, inter alia, in rules 1, 14, 15, 43, 45 and 59 of the Nelson Mandela Rules. Ms. Daemi has now been in detention since 21 October 2014, apart from a nine-month period between February and November 2016 during which she was released on bail, pending the outcome of her appeal. The Working Group urges the Government to immediately release Ms. Daemi, and ensure that she receives the necessary medical care. The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

68. This case is one of a number of cases brought before the Working Group in the last five years concerning the arbitrary deprivation of liberty in the Islamic Republic of Iran.[23]

[21] See principle 9, para. 15. See also opinions No. 38/2017, paras. 78 and 81, and No. 45/2017, para. 32, and Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 34.

[22] See, for example, opinions No. 48/2017, No. 50/2017 and No. 19/2018, and A/HRC/36/37, para. 49.

[23] See, for example, opinions No. 18/2013, No. 28/2013, No. 52/2013, No. 55/2013, No. 16/2015, No. 44/2015, No. 1/2016, No. 2/2016, No. 25/2016, No. 28/2016, No. 50/2016, No. 7/2017, No. 9/2017, No. 48/2017, No. 49/2017, No. 92/2017, No. 19/2018 and No. 52/2018.

The Working Group notes that many of those cases follow a familiar pattern of arrest and detention outside legal procedures; lengthy pretrial detention with no access to judicial review; incommunicado detention and prolonged solitary confinement; denial of access to legal counsel; prosecution under vaguely worded criminal offences with inadequate evidence to support the allegations; a closed trial and appeal by courts lacking in independence; disproportionately harsh sentencing; torture and ill-treatment; and denial of medical care. The Working Group recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law, may constitute crimes against humanity.[24]

69. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary deprivation of liberty in the Islamic Republic of Iran. Given that a significant period of time has passed since its most recent visit to the country in February 2003, the Working Group considers that it is now an appropriate time to conduct another visit. The Working Group recalls that the Government issued a standing invitation to all thematic special procedures mandate holders on 24 July 2002 and looks forward to a positive response to its previous request to visit made on 10 August 2016.

70. As the human rights record of the Islamic Republic of Iran will be reviewed during the third cycle of the universal periodic review in November 2019, the Government may wish to seize the present opportunity to enhance its cooperation with the special procedures and to bring its laws into conformity with international human rights law.

Disposition

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

> The deprivation of liberty of Atena Daemi, being in contravention of articles 2, 7, 9, 10, 11 (1), 19, 20 and 21 (1) of the Universal Declaration of Human Rights and articles 2 (1), 9, 14, 19, 21, 22, 25 (a) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

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

73. The Working Group considers that, taking into account all the circumstances of the case, in particular the risk of harm to Ms. Daemi's health, the appropriate remedy would be to release Ms. Daemi immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law.

74. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Daemi and to take appropriate measures against those responsible for the violation of her rights.

75. The Working Group requests the Government to bring its laws, particularly articles 500, 514 and 610 of the Islamic Penal Code, into conformity with the recommendations made in the present opinion and with the commitments made by the Islamic Republic of Iran under international human rights law.

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

[24] See, for example, opinion No. 47/2012, para. 22.

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

Follow-up procedure

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

(a) Whether Ms. Daemi has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. Daemi;

(c) Whether an investigation has been conducted into the violation of Ms. Daemi's rights and, if so, the outcome of the investigation;

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

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

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

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

81. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[25]

[*Adopted on 22 November 2018*]

[25] See Human Rights Council resolution 33/30, paras. 3 and 7.