

RE. NAZANIN ZAGHARI-RATCLIFFE

Legal Opinion

I

Violations of International Human Rights Obligations by the Islamic Republic of Iran

I. INTRODUCTION

1. We have been instructed to provide a legal opinion as to whether the detention, trial and imprisonment of Mrs Nazanin Zaghari-Ratcliffe by the Islamic Republic of Iran has fallen below international human rights standards and, as a consequence, whether Iran is in violation of its international obligations towards Mrs Zaghari-Ratcliffe.
2. Mrs Zaghari-Ratcliffe is a dual British-Iranian citizen. On 3 April 2016, she was arrested and detained by the Revolutionary Guard at Tehran airport. At the time Mrs Zaghari-Ratcliffe was returning to the UK with her daughter after visiting her family in Tehran.
3. Mrs Zaghari-Ratcliffe is currently imprisoned at Evin Prison, Iran following her conviction on charges involving matters of national security that remain undisclosed. It is understood that Mrs Zaghari-Ratcliffe has been convicted of conspiring to overthrow the current regime in Iran. On 24 April 2017 the Supreme Court of Iran upheld Mrs Zaghari-Ratcliffe's conviction and sentence to five years' imprisonment.
4. On 8 October 2017 the Revolutionary Court laid two further charges against Mrs Zaghari-Ratcliffe, punishable by an additional 16 years imprisonment. The details of the charges are unknown, however it is thought that she is again accused of conspiring to overthrow the Iranian regime.
5. Mrs Zaghari-Ratcliffe's trial lawyer in Iran is unable to provide a legal opinion with regard to her treatment by the Iranian authorities due to security concerns. In late October 2016 her lawyer was prosecuted by the Iranian Revolutionary Court for 'unprofessionalism' with regard to the inclusion of reference in her grounds for appeal to a link between Mrs Zaghari-Ratcliffe's prosecution and her British nationality. Since being prosecuted, Mrs Zaghari-Ratcliffe's lawyer has refused to communicate with anyone outside of Iran about her case.
6. In summary, we consider it to be clearly established on the evidence that:
 - (1) Mrs Zaghari-Ratcliffe has been and continues to be arbitrarily detained in Iran;
 - (2) her treatment and the conditions of her detention violate her right to be treated humanely and the prohibition of cruel and inhuman treatment;

- (3) she has been denied a fair trial; and
- (4) she has been discriminated against on the grounds of her status as a dual national and a British citizen.

II. BACKGROUND FACTS

A. PERSONAL HISTORY

7. Mrs Zaghari-Ratcliffe was born in Iran on 16 September 1978. She was brought up and educated to undergraduate level in Iran until 2007 when, aged 28, she moved to the UK to undertake a Masters degree at London Metropolitan University. Before leaving Iran, Mrs Zaghari-Ratcliffe was employed by international organisations such as the World Health Organisation, the International Federation of the Red Cross and Red Crescent Societies, and the Japan International Cooperation Agency. She has lived and worked in the UK since 2007.
8. After completing her studies, Mrs Zaghari-Ratcliffe worked for a number of British charities in London, namely the Centre for Public Innovation, BBC Media Action and the Thomson Reuters Foundation ("TRF"), by whom she is currently employed.
9. Before her detention in Iran, her work for TRF involved the following:
 - a. Managing journalism training abroad (not in Iran);
 - b. Managing TRF's partnership with the Westminster Foundation for Democracy and other members of the Westminster Consortium, including the Department for International Development and the Foreign and Commonwealth Office (FCO), on a project aimed at strengthening the parliaments of other States, at those States' invitation. Such States included Lebanon;
 - c. Fundraising for and managing FCO-funded projects in Morocco, Jordan and the Turks and Caicos Islands.
10. Mrs Zaghari-Ratcliffe met her husband, Richard Ratcliffe, in November 2007. They got engaged in June 2009 and married at Winchester Registry Office on 21 August 2009, with permission of the UK Home Office. Thereafter Mrs Zaghari-Ratcliffe lived and worked in the UK on a spousal visa. She took her test for British citizenship on 26 November 2011, was granted indefinite leave to remain on 15 December 2011, and became a British citizen on 11 March 2013.
11. Mrs Zaghari-Ratcliffe and her husband have one daughter, Gabriella. Gabriella was born in the UK on 11 June 2014 and is a British citizen. She does not hold any other nationality.

12. Since she moved to the UK in 2007, Mrs Zaghari-Ratcliffe would try to visit her family in Iran for an average of 2 to 3 weeks each year, typically at the time of Iranian New Year. When she travelled to Iran she would do so on her Iranian passport, as required by Iranian law. Mrs Zaghari-Ratcliffe used her British passport for all other international travel.

B. ARREST AND DETENTION

13. On 3 April 2016, Mrs Zaghari-Ratcliffe was detained by the Revolutionary Guard at Imam Khomeini Airport, Tehran. At that time she was intending to return to the UK after she and her daughter, Gabriella, had travelled to Tehran to visit her family. Mrs Zaghari-Ratcliffe was not given any reasons for her arrest. Her daughter's British passport was confiscated and she was left in the care of Mrs Zaghari-Ratcliffe's parents.
14. On the information available to us, it appears that Mrs Zaghari-Ratcliffe was detained in Tehran for one night. She was taken, blindfolded, to an unknown location where she was questioned about her personal and work emails and social media accounts. She was pressurised into providing her interrogators with the passwords to her email and social media accounts.
15. The following day, 4 April 2016, she was flown to Kerman. There she was taken to a court where she was given a piece of paper to sign. On that piece of paper was written her accusation: "Action against national security". She was provided with no further details of the charges against her.
16. Mrs Zaghari-Ratcliffe's family in Iran heard nothing from her and received no information about her whereabouts until the end of the day on 5 April 2016, when they received a short telephone call from her in which she told them that she was alive. On 6 April 2016, the family received a further short telephone call from her in which she told them she had been informed that she would be released. She also sent a text to her husband saying that she would be released on Saturday 9 April 2016. She did not say where she was being held. She was not released on 9 April as expected.
17. On or around 12 or 13 April 2016, Mrs Zaghari-Ratcliffe's family received a telephone call from the director of a detention centre (name unknown) in Kerman in which the director informed them that Mrs Zaghari-Ratcliffe was 'safe' and being held in Kerman. The director provided no further details of her location or the reasons for her arrest and detention.
18. A few days later, Mrs Zaghari-Ratcliffe's family was informed that she was being detained in Kerman, situated approximately 1000 km from Tehran.

(i) Solitary Confinement

19. Mrs Zaghari-Ratcliffe has been detained in solitary confinement for a total of approximately 8.5 months.

20. Between 4 April and 18 May 2016, Mrs Zaghari-Ratcliffe was held in solitary confinement at an undisclosed detention centre in Kerman before being transferred to the general women's section of Kerman central prison. On or around 13 June 2016, Mrs Zaghari-Ratcliffe was then transferred to Tehran and spent a further 7 months in solitary confinement in 2 Alef, Sepah prison. On 25 December 2016 she was transferred to Evin general section. She is currently imprisoned at Evin Prison in the political prisoners section.
21. During the period of 45 days that Mrs Zaghari-Ratcliffe was detained in solitary confinement in the Kerman detention centre, she was permitted to make approximately ten telephone calls to her family in Tehran. These telephone calls were allowed at the discretion of her interrogator as a 'reward'. The calls were made under the supervision of her interrogator, who stood over her while she made them. Mrs Zaghari-Ratcliffe was not permitted a telephone call with her husband.

(ii) Conditions of Detention

22. At Kerman, Mrs Zaghari-Ratcliffe was detained in a small cell measuring 1.5 x 3 square metres. The cell had no natural light or air. There was a washbasin that she was required to use to wash her body. The washbasin stank. Mrs Zaghari-Ratcliffe was not permitted outside to get fresh water or fresh air. She was only allowed drinking water three times a day. The only times she was permitted out of her cell was for interrogation.
23. In the general wing of Kerman Central Prison, Mrs Zaghari-Ratcliffe was detained in a crowded cell. She was forced to sleep on the floor as there was no bed for her.
24. At 2 Alef in Sepah prison, Tehran, the cell measured 1.5 x 2 square metres. Again, the cell had no window, no natural light and no fresh air. She was permitted 30 minutes of exercise (walking) twice a day. During this time Mrs Zaghari-Ratcliffe was blindfolded from the moment she left her cell and until she was returned to her cell. She was permitted a shower every two days. The food was of appalling quality.

(iii) Health and Access to Medical Care

25. Mrs Zaghari-Ratcliffe's health sharply deteriorated during the period she was first held in solitary confinement in Kerman. Her family observed at their first meeting with her, 40 days after she was first detained, that she was too weak to pick up her daughter. Instead, Mrs Zaghari-Ratcliffe remained seated and her daughter was placed on her lap for her. It is thought that she had lost at least 5kg in weight.
26. Moreover, Mrs Zaghari-Ratcliffe suffers from claustrophobia. Detention in a small, airless cells lacking natural light for extended periods of time caused her to have panic attacks, palpitations, and low confidence.

27. On 16 October 2016, Mrs Zaghari-Ratcliffe confessed to her family that she was feeling suicidal. She complained of a number of physical ailments, including blurred eyesight, back pains, dental problems and uncontrollable palpitations.
28. In November 2016, Mrs Zaghari-Ratcliffe went on hunger strike in protest against her treatment. She only broke the strike when her mother came to visit her with her daughter to plead with her to eat. Under stress, Mrs Zaghari-Ratcliffe's mother passed out in front of her, causing her daughter, Gabriella, to become panic-stricken and extremely upset.
29. In addition, Mrs Zaghari-Ratcliffe has suffered from chronic back pain. She had surgery on her left shoulder several years before her detention in Iran, and was considering further surgery on her right shoulder in order to relieve arthritis in her neck. Since being detained the arthritis has got worse due to being forced to sleep on the floor. Her neck stiffens and she has suffered extensive periods of numbness in her right hand, causing limited movement in her arms and hand. During these periods she has been unable to climb a ladder to use the prison bunk beds, has sometimes been unable to use her hands at all, and has been unable to lift her daughter during visits.
30. Following numerous repeated requests, on or around 3 February 2017 Mrs Zaghari-Ratcliffe was taken to the prison clinic, where the onsite GP x-rayed her shoulder. The GP recommended that she should be sent to a neck and shoulder specialist as a matter of urgency. On 19 February 2017, a specialised neurologist recommended immediate hospitalisation. To date the recommendation has not been acted upon by the authorities. In early March Mrs Zaghari-Ratcliffe was given an MRI scan, paid for by her family.
31. After over 3 months wait, on 15 May 2017 Mrs Zaghari-Ratcliffe was taken to hospital for an assessment of her health. The appointment lasted 2 hours and she was prescribed 20 physiotherapy sessions on her shoulder, which were administered before mid-July 2017, and paid for by her family. Her family has now been allowed to provide her with a neck brace to wear during the day. However, she continues to suffer from spasms in her back, and on one occasion passed out and could not speak when she woke up.
32. Mrs Zaghari-Ratcliffe's physical problems have caused, and been compounded by, sleep deprivation that affects her entire body. She has been unable to sleep without sleeping pills, and continues to suffer from panic attacks and stress. She has told her family that she has been feeling an inescapable pressure and depression and has written that, "Every day and every second I would submerge more and more in an ocean of doubt, fear, threat, loneliness and more than anything mistrust."¹ Mrs Zaghari-Ratcliffe was permitted to see an external psychiatrist on 19 July 2017, who diagnosed her as having "advanced depression".
33. Mrs Zaghari-Ratcliffe continues to struggle to put on weight, and suffers from hair loss.

¹ Letter sent to Richard Ratcliffe, 14 March 2017. Available at: <https://www.change.org/p/free-nazanin-ratcliffe/u/19698755>

(iv) Family Visits

34. In response to a joint communication sent by UN Special Procedures to Iran's Permanent Mission to the UN, that notified Iran of information received by UN Special Rapporteurs concerning Mrs Zaghari-Ratcliffe's detention, trial and sentence,² Iran states that in Kerman Mrs Zaghari-Ratcliffe had access to a telephone and enjoyed frequent family visits. Iran's response also states that, once transferred to Tehran, Mrs Zaghari-Ratcliffe was permitted daily visits from her daughter.³
35. Mrs Zaghari-Ratcliffe and her family deny this contention. For the first 40 days of detention in Kerman, Mrs Zaghari-Ratcliffe was isolated from the outside world. She was denied access to books, newspapers and family visits. She was only permitted to see her daughter on 11 May 2016. She was permitted a second visit once she had been moved to Tehran on 13 June 2016. This was two days after her daughter's second birthday. She was not permitted to call or see her daughter on her birthday.
36. The frequency of family visits varied during the course of her detention. There have been periods of a few weeks or more, particularly during the periods prior to Mrs Zaghari-Ratcliffe's trial and appeal hearing, in which she was not permitted any visits from her family or daughter. At other times promised visits were suddenly revoked, or Mrs Zaghari-Ratcliffe's family would be made to wait to be admitted to the prison for a number of hours, cutting short the duration of the visit. It is thought that the cancellation or shortening of visits was used to punish Mrs Zaghari-Ratcliffe or her family.
37. In December 2016, Mrs Zaghari-Ratcliffe was presented with an ultimatum by her interrogators: either her daughter would move into prison with her for part of the week or she should sign a waiver of her custody and visiting rights. Following her move to the general cells in Evin Prison, this ultimatum has not been pursued.
38. Since the dismissal of Mrs Zaghari-Ratcliffe's appeal in January 2017, she has been permitted weekly visits from her family, as appears to be standard practice with regard to women political prisoners. Since early April 2017 Mrs Zaghari-Ratcliffe has been permitted family visits twice a week.

(v) Consular Access

39. Since her arrest at Tehran Airport in March 2016, Mrs Zaghari-Ratcliffe has consistently and repeatedly asserted her British citizenship and made repeated requests for consular access. To date the Iranian authorities have not granted her any visits from the British consular staff.

² Letter of Special Rapporteur on the situation of human rights in Iran et al to the Permanent Mission of the Islamic Republic of Iran to the United Nations, 1 July 2016. IRN 20/2016. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=3232>

³ Letter of the Permanent Mission of the Republic of Iran to the United Nations to the Office of the UN High Commissioner for Human Rights, 25 August 2016. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=53657>

40. The FCO has stated that Mrs Zaghari-Ratcliffe's case has been raised at embassy level and periodically by the Foreign Secretary and by the Prime Minister. In response to the dismissal of her appeal by the Supreme Court, an FCO spokesperson stated:

We are deeply concerned by reports that Nazanin Zaghari-Ratcliffe's supreme court appeal has been rejected, while Iran continues to refuse the UK access to her. The prime minister and foreign secretary have both raised Mrs Zaghari-Ratcliffe's case with their counterparts in Iran.

41. The manner in which Mrs Zaghari-Ratcliffe's case has been 'raised' and the substance of any discussions is not known. However, it is understood that the UK Government has requested consular access to her, has expressed its concern following reports of her deteriorating health and requested that she received appropriate medical treatment.
42. The UK government has requested the return of Gabriella's passport; this was returned to her family in Iran on 5 May 2017.

(vi) Interrogations

43. All interrogations took place in Kerman. Throughout her detention in solitary confinement, and during interrogations, Mrs Zaghari-Ratcliffe was denied access to a lawyer. Mrs Zaghari-Ratcliffe was only given access to a lawyer 3 days before her trial. She was only permitted approximately 45 minutes consultation with her lawyer on the day before her trial, conducted in the presence of her interrogator.
44. Mrs Zaghari-Ratcliffe was subjected to repeated emotional pressure with the aim of extracting a confession to spying for the British government related to her involvement with the UK FCO or Parliament through her past employment. She was told that if she did not confess, her daughter would be taken from her and sent back to the UK. She was also told that she had lost her job and her husband had left her. Mrs Zaghari-Ratcliffe has consistently denied all accusations put to her.

C. TRIAL BY THE REVOLUTIONARY COURT

45. Mrs Zaghari-Ratcliffe was indicted by the Revolutionary Court on 11 July 2016. She was only permitted access to her lawyer on 11 August 2016. Her trial took place on 14 August 2016. On 6 September 2016, Mrs Zaghari-Ratcliffe was convicted and sentenced to 5 years' imprisonment.
46. Mrs Zaghari-Ratcliffe's case took place before Judge Salavati, Head of the 15th branch of the Islamic Revolutionary Court in Tehran. Judge Salavati is currently the subject of EU sanctions on the grounds that he is 'complicit in or responsible for directing or implementing grave violations of the right to due process'⁴, having presided over post-election 'show trials' in 2009 and having 'sentenced

⁴ Article 2(1) Council Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran.

more than a hundred political prisoners, human rights activists and demonstrators to lengthy prison sentences'.⁵

47. The court session on 14 August 2016 lasted 2.5 hours, during which time Mrs Zaghari-Ratcliffe was not given proper opportunity to testify or to cross-examine prosecution witnesses. The judge told her that he would ask questions and that she could only write down what was said. Her lawyer was given 5 minutes to defend her. At no point was Mrs Zaghari-Ratcliffe given the opportunity to testify in her own defence. Her lawyer was then ordered by the judge to prepare written submissions for her defence and submit them to court the following day.
48. During the trial and the later appeal, Mrs Zaghari-Ratcliffe was accused of working with networks of foreign media including the BBC, funded by foreign governments, with the purpose of bringing down the Iranian government. At her appeal, her interrogator from Kerman Prison was called to give evidence as an informant. He testified that he had seen Nazanin participating in demonstrations against the government in 2009. Nazanin was not in Iran at the relevant time and did not participate in any demonstrations against the Iranian government in the UK. Further, Mrs Zaghari-Ratcliffe was accused of being knowingly married to a British spy, a charge that court dismissed. She was also accused of being the Head of Recruitment of BBC Persian, a position that she has never held.⁶

D. APPEALS

49. The Appellate proceedings took place in a context of intimidation. Mrs Zaghari-Ratcliffe was prevented from meeting with her lawyer in private to prepare the appeal and to discuss her case. All contacts with her lawyer were supervised by her interrogators. Following her sentence in September 2016, and before being permitted to see her lawyer, she was forced to show her interrogator the written defence she had prepared for her appeal. She was then questioned, blindfolded, on the contents of that document by her prosecutors.
50. The Appeals Court heard Mrs Zaghari-Ratcliffe's appeal on 4 January 2017. On 22 January 2017, the spokesperson of the judiciary announced that the Appeal Court had upheld her conviction and sentence of five years' imprisonment for national security related crimes.
51. On 24 April 2017, the Supreme Court upheld Mrs Zaghari Ratcliffe's conviction and sentence.
52. Mrs Zaghari-Ratcliffe has still never been informed in writing of the exact nature of the charges against her, or the evidence on which they are said to be based.

⁵ Council Regulation (EU) No 359/2011: Annex I, 'List of natural and legal persons, entities and bodies referred to in Article 2(1)'.

⁶ On 23 January 2017 the Head of the BBC World Statement confirmed in a public statement that 'Mrs Zaghari-Ratcliffe has never worked for BBC Persian. She worked briefly for BBC Media Action, our international development charity, in a junior administrative capacity.' See Reuters, 'British-Iranian aid worker sentenced to jail for "cooperation with BBC" – family', 23 January 2017. Available at: <https://www.reuters.com/article/iran-ruling-nazanin-idUSL5N1FD3LQ>

E. PROSECUTION OF MRS ZAGHARI-RATCLIFFE'S LAWYER

53. In late October 2016, Mrs Zaghari-Ratcliffe's lawyer, Abbas Reza'i, was prosecuted for the 'unprofessionalism' with which the appeal papers in Mrs Zaghari-Ratcliffe's case were drafted. It appears that the offending statement was a reference to an offer given by Mrs Zaghari-Ratcliffe's interrogators, both members of the Revolutionary Guard, in June and July 2016 to drop her case "if the British government made the agreement".
54. As far as is known, the case against Mr Reza'i remains pending. Nevertheless it is our understanding that since the allegation of 'unprofessionalism' was made against Mr Reza'i he has been unwilling to speak with any one outside Iran about Mrs Zaghari-Ratcliffe's case. In August 2017, Mrs Zaghari-Ratcliffe appointed a second lawyer to assist with applications for medical "furlough" and related matters.

F. ADDITIONAL CHARGES

55. On 8 October the Revolutionary Court confirmed two new charges against Mrs Zaghari-Ratcliffe. The details of the charges are not known. It is thought that it is again alleged that Mrs Zaghari-Ratcliffe has sought to overthrow the Iranian government. It is understood that together the charges carry a punishment of 16 years' imprisonment.
56. The Revolutionary Court ordered that Mrs Zaghari-Ratcliffe's family must pay approximately £6000 in bail in order to prevent her being moved to solitary confinement.
57. But for these new charges, Mrs Zaghari-Ratcliffe would have been eligible to apply for early release in November 2017.

G. IRAN'S HUMAN RIGHTS RECORD

58. In her report of March 2017 the Special Rapporteur on the situation of human rights in Iran concluded that "[t]he situation relating to independence of judges and lawyers,... and use of arbitrary detention continues to be a matter of serious concern."⁷ The report makes specific reference to the finding of the Working Group on Arbitrary Detention that Mrs Zaghari-Ratcliffe is arbitrarily detained.⁸ The report is enclosed in the attached dossier.

III. INTERNATIONAL LEGAL FRAMEWORK

A. INTRODUCTION

⁷ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 17 March 2017, A/HRC/34/65, §4.

⁸ Ibid, §47.

59. Iran is a party to the International Covenant on Civil and Political Rights, 1966 (ICCPR), ratified by Iran in 1975.
60. Pursuant to article 2(1) ICCPR, each State party undertakes ‘to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized under the present Convention, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.
61. There are a number of other relevant instruments which set out the UN’s views on the principles governing detention, and which have been endorsed by the UN General Assembly. These instruments include:
- a. The UN Standard Minimum Rules for the ‘Treatment of Prisoners’;⁹
 - b. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;¹⁰
 - c. The UN Basic Rules for the ‘Treatment of Prisoners’;¹¹ and
 - d. The UN Standard Minimum Rules for Non-Custodial Measures.¹²
62. The UN Human Rights Committee and the UN Working Group on Arbitrary Detention apply the above instruments.¹³

B. ARBITRARY DETENTION

63. Article 9 ICCPR guarantees an individual’s right to liberty and security of the person, and prohibits arbitrary arrest or detention. Pursuant to article 9(1):

(1) 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.

64. For the UN’s Working Group on Arbitrary Detention (WGAD) the deprivation of a person’s liberty is arbitrary if it falls into one or more of five categories. These categories provide a helpful basis upon which the lawfulness of Mrs Zaghari-Ratcliffe’s detention under international law may be considered. The categories relevant to this case are:

- **Category I:** Cases where it is clearly impossible to invoke any legal basis justifying the deprivation of liberty;
- **Category III:** Cases where the total or partial non-observance of international norms relating to the right to a fair trial, established by the Universal Declaration of Human Rights and in the relevant

⁹ ECOSOC Res 663C(XXIV) (31 July 1957).

¹⁰ GA Res 43/173 (9 December 1988).

¹¹ GA Res 45/111 (14 December 1990).

¹² GA Res 45/110, A/RES/45/110 (1990).

¹³ See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx> and <http://www.ohchr.org/EN/Issues/Detention/Pages/standards.aspx>

international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character;

- **Category V:** Cases where the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights.

(i) CATEGORY I: NO LEGAL BASIS FOR DETENTION

65. An arbitrary detention falls under Category I where it is ‘clearly impossible to invoke any legal basis justifying the detention’.¹⁴
66. The International Court of Justice in *Abmadou Sadio Diallo*¹⁵ affirmed that article 9, paragraphs (1) and (2), ICCPR apply in principle to any form of detention, ‘whatever its legal basis and the objective being pursued.’¹⁶
67. According to article 9(1), a person will not be arbitrarily detained where the detention is ‘on such grounds and in accordance with such procedure as are established by law’. The reference to ‘law’ raises the question whether it is domestic or international law that governs the legal basis for detention. In *Obaidullah v United States of America*¹⁷ the WGAD concluded that ‘legal basis’ refers to legality under both international law *and* domestic law:

Category I applies when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. Category I embodies a principle of legality. This requires a legal base for detention in domestic law that complies with international law. Mr Obaidullah’s detention does not satisfy this requirement. The domestic law used by the United States Government to detain Mr Obaidullah does not conform to human rights law and international humanitarian law because his detention is prolonged and indefinite.¹⁸

68. In Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, WGAD noted the following:

A detention, even if it is authorized by [domestic] law, may still be considered arbitrary if it is premised upon an arbitrary piece of legislation or is inherently unjust... An overly broad statute authorizing automatic and indefinite detention without any standards or review is by implication arbitrary.¹⁹

¹⁴ Report of the Working Group on Arbitrary Detention, A/HRC/16/47, 19 January 2011, Annex: ‘Revised Methods of the Working Group’, 23 [8(a)].

¹⁵ *Republic of Guinea v Democratic Republic of the Congo*, Merits, Judgment, ICJ Reports 2010, 639.

¹⁶ *Ibid*, §77.

¹⁷ Working Group on Arbitrary Detention (WGAD), Opinion No. 10/2013, UN Doc A/HRC/WGAD/2013/10 (2013).

¹⁸ *Ibid* §37.

¹⁹ Report of the WGAD, Human Rights Council, 22nd session, item 3, UN Doc A/HRC.22.44, 24 December 2012, §63.

69. Thus, even if a detention complies with domestic law it may nonetheless be arbitrary and therefore contrary to international law.

70. ‘Arbitrary’ does not only mean ‘against the law’. According to the Human Rights Committee:

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. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances.²⁰

71. Moreover, detention must be both **reasonable** and **necessary**. In *Van Alphen v. Netherlands* the UN Human Rights Committee held that:

This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.²¹

72. However, the mere assumption that the accused would, if released on bail, commit one of these activities will not suffice to justify long-term detention.²² Furthermore, it is clear that the seriousness of the crime charged cannot by itself justify continued pre-trial detention.²³

(a) Legality of Detention under Domestic Law

73. We rely upon the legal opinion of Dr Shirin Ebadi, annexed to this opinion, with regard to the violations of domestic law in Mrs Zaghari-Ratcliffe’s case.

74. In summary, it is Dr Ebadi’s unequivocal conclusion that Mrs Zaghari-Ratcliffe’s overall treatment, arrest, detention and trial involve multiple breaches of domestic law, falling well below the standards set by Iranian law and Shari’a law.

(b) Legality of Detention under International Law

75. A person’s detention will violate article 9 ICCPR, and therefore not be in compliance with international law, if the detaining power has failed to afford the person the minimum guarantees provided by this article. These guarantees include the right of an arrested person: to be informed, at the time of their arrest, of the reasons for their arrest; to be brought ‘promptly’ before a Judge; to a fair trial within a reasonable time; and to proceedings before a court so that the court may determine the lawfulness of his or her detention. Article 9, in relevant part, provides that:

²⁰ Ibid, 12 applying *Gorji-Dinka v. Cameroon*, Communication No. 1134/2002, §5.1 and *Van Alphen v. Netherlands*, Communication No. 305/1988, §5.8.

²¹ *Van Alphen v Netherlands*, §5.8.

²² *Smantster v Belarus*, Communication No. 1178/2003, §10.3.

²³ *ibid*; see also the decision of the European Court of Human Rights in *Olstowski v Poland*, Application No. 34052/96, §78: ‘the gravity of the charges cannot by itself serve to justify long periods of detention on remand’.

(2) 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.

(3) Anyone who is arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Right to be informed of reasons for arrest and to be brought promptly before a judge

76. Article 9(3) ICCPR requires that a person should be brought ‘promptly’ before a judge or other officer authorised by law to exercise judicial power.

77. The exact meaning of ‘promptly’ may vary depending on the objective circumstances. However, the jurisprudence of the Human Rights Committee indicates that delays should not exceed more than three days from the time of arrest.²⁴ A breach of article 9(3) ICCPR was found in *Borisenko v Hungary* for a delay of three days,²⁵ in *Freemantle v Jamaica* for a delay of four days²⁶ and *Jijón v Ecuador* for a delay of five days.²⁷

78. Any delays of more than 48 hours ‘must remain absolutely exceptional and be justified under the circumstances’.²⁸ This is because, in the view of the Human Rights Committee, ‘[l]onger detention in the custody of law enforcement officials without judicial control unnecessarily increased the risk of ill-treatment’.²⁹

79. Further, incommunicado detention that prevents the detained person from informing their family or friends of their arrest, and prevents the detained person from being brought promptly before the judicial authority, will constitute a violation of article 9(3).³⁰ The right to communicate with one’s family is elaborated upon by Principle 19 of the UN’s Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 (UN Body of Principles)³¹, which states that:

²⁴ *Marques de Morais v. Angola*, Communication No. 1128/2002, §6.3.

²⁵ *Borisenko v Hungary*, Communication No. 852/1999.

²⁶ *Freemantle v. Jamaica*, Communication No. 625/1995, §7.4

²⁷ *Terán Jijón v. Ecuador*, Communication No. 277/1988, §5.3

²⁸ 1787/2008, *Kovsh v. Belarus*, §§7.3–7.5.

²⁹ General Comment No.35, §33. See for example concluding observations: Hungary (CCPR/CO/74/HUN, 2002), §8

³⁰ *ibid*, §35.

³¹ Adopted by UN General Assembly resolution 43/173 of 9 December 1988.

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

80. Judicial control over detention must be automatic – it cannot be made to depend on an application for bail or another form of review by the detained person. Moreover, a merely formal review of detention will not be sufficient: there must be ‘a proper weighing, by the judicial authorities, of the possibility of releasing him on bail’.³² This is so even where applications for bail are not made.³³

Conditions of Detention

81. Torture or other cruel, inhuman or degrading treatment or punishment is prohibited under article 7 ICCPR and as a matter of customary international law.
82. Article 10 ICCPR complements the prohibition of torture, providing that all persons deprived of their liberty ‘shall be treated with humanity and with respect for the inherent dignity of the human person’.
83. It is well established that prolonged solitary confinement will be regarded as a violation of a person’s right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.³⁴ Further, where the conditions of detention are inadequate, such as where cells are dirty, with dirty water and toilets, or where the space afforded to detainees is insufficient, this will also amount to a violation of the detainee’s right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.³⁵
84. In his report to the General Assembly of 5 August 2011³⁶ the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, defined solitary confinement as ‘the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day’.³⁷ This definition is in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement.³⁸
85. ‘Prolonged’ solitary confinement is defined as ‘any period of solitary confinement in excess of 15 days’.³⁹ The threshold of 15 days is used as evidence shows that after this period ‘some of the harmful psychological effects of isolation can become irreversible’.⁴⁰

³² *Barroso v Panama*, Communication No. 473/1991, §8.2.

³³ *Marinich v Belarus*, Communication No. 1502/2006; *Kulov v Kyrgyzstan*, Communication No. 1369/2005.

³⁴ *ibid*, §56; *Tripathi v Nepal*, Communication No. 2111/2011, §3.3.

³⁵ *ibid*; *Tripathi v Nepal*, §3.4.

³⁶ Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2011. A/66/268.

³⁷ *Ibid*, §26.

³⁸ Istanbul Statement on the Use and Effects of Solitary Confinement, Annex to Interim Report of Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 28 July 2008. A/63/175.

³⁹ Interim report of the Special Rapporteur, 5 August 2011, §26.

⁴⁰ *Ibid*.

86. With regard to the use of solitary confinement during pre-trial detention, the Special Rapporteur has observed that:

...the practice of solitary confinement during pretrial detention creates a de facto situation of psychological pressure which can influence detainees to make confessions or statements against others and undermines the integrity of the investigation. When solitary confinement is used intentionally during pretrial detention as a technique for the purpose of obtaining information or a confession, it amounts to torture as defined in article 1 or to cruel, inhuman or degrading treatment or punishment under article 16 of the Convention against Torture...⁴¹

87. Importantly, the Special Rapporteur urges that solitary confinement should only be used in exceptional circumstances, for the shortest duration possible, and for a definite term that is announced and properly communicated to the detainee.⁴²

Right to Judicial Review of the Lawfulness of Detention

88. Article 19(4) ICCPR provides that any detained person has the right to challenge the lawfulness of his or her detention before a court. This right enshrines the principle of *habeas corpus*, and is an important aspect of the right to due process.

89. In *Abbasi*, the English Court of Appeal recognised an individual's right of challenge the legitimacy of his or her detention before any court or tribunal as 'a fundamental principle of law'.⁴³

90. In order to ensure the detainee's rights pursuant to article 19(4), the State is under an obligation to ensure that there are procedures in place to facilitate effective review. For example, detainees should be informed, in a language they understand, of their right to judicial review of the grounds for their detention, and should be afforded 'prompt and regular' access to legal counsel.⁴⁴

91. Principle 11 of the UN Body of Principles⁴⁵ provides that a detainee is entitled to the assistance of legal counsel at any hearing at which a judge assesses the legality or necessity of his detention.⁴⁶

92. Moreover, principle 8 of the UN'S Body of Principles provides that:

All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

⁴¹ Ibid, §73.

⁴² Ibid, §75.

⁴³ R (*Abbasi & Anor*) v *Secretary of State for Foreign and Commonwealth Affairs and Anor* [2002] EWCA Civ 1598, [64] & [107].

⁴⁴ *ibid* and see UN's Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment approved by the General Assembly in its resolution 43/173 (Body of Principles), Principles 13–14.

⁴⁵ Adopted by UN General Assembly resolution 43/173 of 9 December 1988.

⁴⁶ *ibid*.

(ii) CATEGORY III: NON-OBSERVANCE OF RIGHT TO FAIR TRIAL

93. According to the UN Human Rights Committee, the ‘fundamental principles of fair trial’ constitute peremptory norms of customary international law from which it is not possible to derogate.⁴⁷
94. Article 14 ICCPR guarantees an individual’s right to equality before the courts and to a fair trial, and the State’s duty to ensure the independence and impartiality of the judiciary. The right to equality before the courts and the independence of the judiciary is a general guarantee that applies to all judicial proceedings, whatever the subject matter.⁴⁸
95. Articles 14(1) and (2) ICCPR provide that:
- (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
 - (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
96. The Human Rights Committee has stated that the guarantee of the presumption of innocence until proven guilty, provided by article 14(2) ICCPR, is one of the ‘fundamental principles of fair trial’ and is a *jus cogens* norm.⁴⁹ The right to presumption of innocence applies from the moment of accusation until the final determination of proceedings. In this regard, State authorities must refrain from prejudging or influencing the outcome of a criminal trial, and the judiciary must not conduct the trial with any preconceived idea of the defendant’s guilt. The burden of proof must rest on the prosecution, and the case must be decided in the defendant’s favour where any reasonable doubt exists.⁵⁰
97. The provisions of article 14 apply to all courts, whether civilian or military, or general or specialised in nature.⁵¹ The Human Rights Committee has stressed that special tribunals, established in order to try persons for participation in terrorist activity or other threats to national security, that suffer from ‘irregularities’ such as the exclusion of the public of proceedings, restriction on the accused’s right to communicate with his or her lawyer, threats to the lawyers, inadequate time for preparation of the defence case, or severe restrictions on the accused’s right to examine or call witnesses, ‘do not satisfy basic standards of fair trial and, in particular, the requirement that the tribunal must be independent and impartial’.⁵²

⁴⁷ General Comment 29, HRI/GEN/1/Rev.9 (Vol 1), 234, §11; General Comment 32, HRI/GEN/1/Rev.9 (Vol 1), 248, §6.

⁴⁸ For comment on the corresponding provision provided by article 14 ICCPR see General Comment No32, 23 August 2007, CCPR/C/GC/32, §3.

⁴⁹ General Comment 29, §11.

⁵⁰ General Comment 13, §7.

⁵¹ General Comment 32, §22.

⁵² *Ibid*, §23.

98. The minimum guarantees required to ensure the right to fair trial of an individual in criminal proceedings are provided by article 14(3) ICCPR. Such guarantees include the right to the presumption of innocence, the right to legal assistance, the right to adequate time and facilities to prepare a defence, and the right not to be compelled to confess guilt. Article 14(3) provides, in relevant part:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; ...

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

[...]

99. Aspects of the right to a fair trial are also elaborated upon in a number of declarations and guiding principles, including the UN Basic Principles on the Independence of the Judiciary⁵³ and the UN Basic Principles on the Role of Lawyers.⁵⁴

Right to be Informed Promptly and in Detail of the Nature and Cause of the Charge

100. Article 14(3)(a) provides that all persons charged with a criminal offence must be informed promptly of the charges brought against them. International standards require that the person be informed of the legal basis and essential factual details of the allegation in simple terms, and in a language they understand.⁵⁵

101. The term ‘promptly’ requires that a person be informed of the details of the allegations against them as soon as they are formally charged, either orally or in writing.⁵⁶

Adequate Facilities for the Preparation of the Defence

⁵³ General Assembly resolution 30/32 (29 November 1985), Annex.

⁵⁴ A/CONF.144/28/Rev.1, 118 (1990)

⁵⁵ General Comment No.32, §31; General Comment No.35, §§24-26; UN Body of Principles, Principles 13 & 14.

⁵⁶ Ibid, §27

102. The requirement that an accused person has adequate facilities for the preparation of his or her defence is fundamental to the application of the principle of equality of arms. The level of assistance and time required will depend on the nature and complexity of each case. However, as a minimum, ‘adequate facilities’ must include access full disclosure of evidence and exculpatory material.⁵⁷

103. The right to legal counsel is elaborated upon in Principle 7 of the UN Basic Principles on the Role of Lawyers, which provides:

Governments shall ... ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

104. Furthermore, the right to prompt access to a lawyer is complemented by the principle that all persons arrested and detained should be able to communicate with their lawyer in full confidence. As Principle 8 of the UN Basic Principles on the Role of Lawyers states:

All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Right to Examine or Have Examined Prosecution Witnesses

105. The right of an accused person to examine or have examined witnesses on his or her behalf is an application of the principle of equality of arms, and is a guarantee ‘important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution’.⁵⁸

(iii) CATEGORY V: DISCRIMINATION

106. A detention will be arbitrary and will constitute a violation of international law on the grounds of discrimination based on, *inter alia*, national, ethnic or social origin (protected status pursuant to article 26 ICCPR), that aims towards or can result in ignoring the equality of human rights.

**IV. APPLICATION OF THE LEGAL FRAMEWORK TO
MRS ZAGHARI-RATCLIFFE’S CASE**

107. For the reasons set out below, it is our view that an application of the above legal framework to the facts of Mrs Zaghari-Ratcliffe’s case leads to the clear conclusion that:

⁵⁷ *Harvard v Norway*, CCPR/C/51/D/451/1991 (16 August 1994).

⁵⁸ General Comment no.32, §39.

- (1) Mrs Zaghari-Ratcliffe has been and continues to be arbitrarily detained in Iran;
- (2) her treatment and the conditions of her detention violate her right to be treated humanely and the prohibition of cruel and inhuman treatment;
- (3) she has been denied a fair trial; and
- (4) she has been discriminated against on the grounds of her status as a dual national and a British citizen.

A. NO LEGAL BASIS FOR DETENTION

108. In our view, it is clear and uncontroversial that Mrs Zaghari-Ratcliffe's arrest and detention violated the most basic guarantees of legality under international human rights law, and are therefore arbitrary for the following reasons:

- a. According to Dr Ebadi's opinion, there is no legal basis for Mrs Zaghari-Ratcliffe's detention in Iranian law.
- b. In violation of article 9(3) ICCPR, Mrs Zaghari-Ratcliffe was denied the right to be brought promptly before a judge to determine the legality of her detention. Further, Mrs Zaghari-Ratcliffe was denied access to a lawyer throughout her pre-trial detention, effectively preventing her from exercising her right to challenge the legality of her detention, in violation of article 9(4) ICCPR.
- c. Mrs Zaghari-Ratcliffe was not informed promptly of the details of the charges against her, either at the time of her arrest or at all. Indeed, the details of the allegations against her remain wholly unclear. This is a clear violation of articles 9(2) and 14(3)(a) ICCPR.
- d. Her detention incommunicado, initially for 48 hours following her arrest and then, following her transfer to Kerman, for a period of approximately one week, violated her right to communicate with her family and to inform her family of the details of her arrest and detention, contrary to article 9(3) ICCPR.
- e. By transporting Mrs Zaghari-Ratcliffe to Kerman, over 1000km away from her family, the detaining authority effectively prevented her family and her then 22-month old daughter from visiting her except for a single meeting in a hotel room on 11 May after 5 weeks of detention. The separation of Mrs Zaghari-Ratcliffe from her young daughter, and later the revocation of family visits as a form of punishment, is a particularly egregious violation of the principle that a detained person must be treated humanely in accordance with article 10 ICCPR.

- f. The detention of Mrs Zaghari-Ratcliffe in solitary confinement for approximately 8.5 months, and in appalling conditions that resulted in a severe deterioration in her health, exacerbated by the denial of access to adequate medical care, amounts to a clear violation of (1) the prohibition against torture and other cruel, inhuman or degrading treatment, as provided by article 7 ICCPR and customary international law, and (2) her right as a detainee to be treated humanely, as guaranteed by article 10 ICCPR. Not only were the conditions of her detention in solitary confinement in themselves inhuman and in breach of international human rights law, but it would appear that Mrs Zaghari-Ratcliffe was placed in solitary confinement in order to exert psychological pressure on her in order to extract a confession.

B. NON-OBSERVANCE OF FAIR TRIAL RIGHTS

109. Mrs Zaghari-Ratcliffe's current imprisonment is the result of a sentence passed after what was, in our view, an unfair trial involving a number of breaches of the fundamental rights of accused persons under article 14 ICCPR. Taken together, the degree to which articles 9 and 14 have been violated is in our view particularly grave, and amounts to the total non-observance of Mrs Zaghari-Ratcliffe's right to a fair trial.

- a. The information available to us raises a real concern that the tribunal of first instance, and the tribunals of appeal, were neither independent nor impartial, contrary to article 14(1) ICCPR. These concerns are compounded by the fact that the trial was presided over by Judge Salavati, currently the subject of EU sanctions because of his history of complicity in or responsibility for directing or implementing grave violations of the right to due process.
- b. The prosecuting authority has never disclosed the details of the charges against Mrs Zaghari-Ratcliffe, in clear violation of article 14(3)(a) ICCPR.
- c. At both trial and appeal, Mrs Zaghari-Ratcliffe's lawyer was afforded no more than 5 minutes to put her case (in the case of the trial, this was in the context of a 2.5 hour hearing), thereby precluding her lawyer from properly presenting her defence.
- d. At her trial and appeal hearings, Mrs Zaghari-Ratcliffe was given no opportunity to examine or have examined on her behalf the prosecution witnesses, or to call witnesses for the defence, contrary to article 14(3)(e). In any event, her ability effectively to contest the prosecution case was heavily undermined by the failure to inform her of the nature of the charges against her.
- e. Having been denied the opportunity to call evidence, examine or have examined witnesses on her behalf, and accordingly to test the evidence against her, it is doubtful that Mrs Zaghari-Ratcliffe's fundamental right to presumption of innocence has been met. This constitutes a particularly grave violation of a *jus cogens* norm and article 14(2) ICCPR.

- f. Having been denied access to a lawyer throughout her pre-trial detention, contrary to article 9 ICCPR, when Mrs Zaghari-Ratcliffe was eventually able to instruct a lawyer, immediately before her trial, she was denied adequate time and facilities to prepare her defence contrary to article 14(3)(b) ICCPR:
1. As set out above, Mrs Zaghari-Ratcliffe has never been informed of the details of the charges against her, in violation of article 14(3)(a) ICCPR.
 2. Mrs Zaghari-Ratcliffe was only allowed one 30-minute meeting with her lawyer, three days before her trial.
 3. That meeting was conducted in the presence of her interrogator, in clear violation of the principle of legal privilege and her right to communicate with her lawyer openly and in full confidence.
 4. Furthermore, before being allowed to see her lawyer in order to prepare her appeal, she was required to disclose to her interrogators and prosecutors the written defence she had prepared for the purpose of her appeal and to answer their questions on that document while blindfolded.
- g. There is a real concern that the prosecution of Mrs Zaghari-Ratcliffe's lawyer for 'unprofessionalism', based on his putting her case in the appeal documents, amounts to intimidation. The effect of this prosecution has been that that Mr Reza'i is no longer willing to open himself up to further accusation by providing any comment or opinion about her case, thus hampering her attempts to obtain legal redress.

C. DISCRIMINATION

110. There are strong grounds to suggest that Mrs Zaghari-Ratcliffe was targeted because she is a dual national and a British citizen. In our view her detention is discriminatory on the basis of her national or social origin, and therefore arbitrary.

111. Mrs Zaghari-Ratcliffe's arrest and detention is not exceptional in this regard. There have been a number of arrests of dual nationals by the Revolutionary Guard in the past decade. Indeed, following Mrs Zaghari-Ratcliffe's arrest by the Revolutionary Guard, the FCO acknowledged the risk to dual nationals of arrest and detention in its travel advice to persons travelling to Iran, and their particular vulnerability as the British Embassy will not be able to provide routine consular assistance, as 'The Iranian authorities don't recognise dual nationality for Iranian citizens'.⁵⁹

⁵⁹ Foreign and Commonwealth Office, Foreign travel advice: Iran, updated 28 February 2017. Still current at 12 September 2017. Available at: <https://www.gov.uk/foreign-travel-advice/iran/safety-and-security>.

V. CONCLUSION

112. We are of the view that it is clearly established on evidence that Mrs Zaghari-Ratcliffe is detained arbitrarily in Iran and has been subjected to a series of grave violations of her fundamental rights to a fair trial and to be treated humanely for the following reasons:
- a. There is no legal basis for her detention under domestic or international law;
 - b. The conditions of her detention have fallen far below international standards; and
 - c. Mrs Zaghari-Ratcliffe has been denied the most basic guarantees required for a fair trial under international law.
 - d. Moreover, there are strong grounds to suggest that Mrs Zaghari-Ratcliffe has been targeted and discriminated against by the Revolutionary Guard because she is a dual national and a British Citizen.
113. Mrs Zaghari-Ratcliffe has exhausted all avenues for appeal against her conviction and sentence in Iran. Furthermore, the laying of fresh charges against Mrs Zaghari-Ratcliffe by the Revolutionary Court has stymied the prospect that she might be granted early release in November 2017. This raises the question whether a remedy may be provided by international law. In our view, the only effective means under international law by which the grave harm suffered by Mrs Zaghari-Ratcliffe may be repaired lies in the UK's right to exercise diplomatic protection on her behalf.

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Matrix Chambers

16 October 2017