



**Perseus Strategies**  
1700 K St. NW, Suite 825  
Washington, D.C. 20006

Jared Genser  
Managing Director  
jgenser@perseus-strategies.com  
T +1 202.466.3069  
M +1 202.320.4135

VIA EMAIL [SR-INDEPENDENCEJL@OHCHR.ORG](mailto:SR-INDEPENDENCEJL@OHCHR.ORG)

August 28, 2018

Mr. Diego García-Sayán  
Special Rapporteur on the Independence of Judges and Lawyers  
c/o Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
8-14 Avenue de la Paix 1211  
Geneva 10 Switzerland

RE: Violation of the Right to An Impartial and Independent Judiciary by the Government of Iran  
in the Case of Baquer and Siamak Namazi

Dear Mr. García-Sayán,

We are writing to request action on behalf of our clients, Baquer Namazi and his son, Siamak Namazi, who have been arbitrarily detained by the Government of Iran for over two years. In October 2016, Judge Abolqasem Salavati, head of the 15th Branch of the Islamic Revolutionary Court in Tehran, violated the Namazis' right to an independent and impartial judiciary by convicting them of criminal charges for political reasons. This violation is ongoing, as they remain imprisoned on those charges today. A year ago, the U.N. Working Group on Arbitrary Detention adopted Opinion No. 49/2017, finding the deprivation of liberty of both Namazis was arbitrary and in violation of international law.<sup>1</sup>

The political influence on and political nature of the Namazis' case is evident from the total lack of a legal basis for the charges, as well as the state sponsored media smear campaigns. The Namazis were convicted of being agents of a "hostile foreign government" – the United States – yet Iran has repeatedly (and recently) reaffirmed the validity of the Treaty of Amity between the two countries, which enshrines their "firm and enduring . . . sincere friendship."<sup>2</sup> In fact, Iran instituted proceedings under the Treaty in both 2016<sup>3</sup> and 2018,<sup>4</sup> thereby recognizing that it is still in force and that this "sincere friendship" persists. Moreover, their conviction conflicts with a 2014 ruling by the Supreme Court of Iran, which explicitly

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<sup>1</sup> *Siamak Namazi and Mohammed Baquer Namazi v. Islamic Republic of Iran*, Opinion No. 49/2017, U.N. WORKING GROUP ON ARBITRARY DETENTION, A/HRC/WGAD/2017/49, Adopted Aug. 22, 2017.

<sup>2</sup> Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, 284 U.N.T.S. 93, *entered into force* June 16, 1957, at Art. 1.

<sup>3</sup> Application Instituting Proceedings, *Certain Iranian Assets (Iran v. U.S.)* (June 14, 2016), *available at* <http://www.icj-cij.org/files/case-related/164/164-20160614-APP-01-00-EN.pdf>, at ¶ 2 ("The [ICJ] has jurisdiction in relation to the above dispute . . . pursuant to . . . Article XXI (2) of the Treaty of Amity[, Economic Relations, and Consular Rights].").

<sup>4</sup> Application Instituting Proceedings, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.)* (July 16, 2018), *available at* <http://www.icj-cij.org/files/case-related/175/175-20180716-APP-01-00-EN.pdf>, at ¶ 3 ("The [ICJ] has jurisdiction in relation to the above dispute . . . pursuant to . . . Article XXI (2) of the Treaty of Amity[, Economic Relations, and Consular Rights].").

stated that “presently no government is in a state of hostility with Iran” and that “political differences” are not sufficient to classify a state as “hostile.”<sup>5</sup> Thus, Iran has violated and is still violating the Namazis’ right to an independent and impartial judiciary under Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR), Article 10 the Universal Declaration of Human Rights (UDHR), and the Body of Principles for the Protection of All Persons under Any Form of Detention.<sup>6</sup> As you are aware, Iran is a state party to the ICCPR and must therefore abide by all provisions contained therein. This situation constitutes a grave violation of international law, and it requires action.

## **Violations of International Law**

Political influence on a court or judge violates an accused’s right to an independent and impartial judiciary. Article 14(1) of the ICCPR provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law,” which is reiterated in Article 10 of the UDHR.<sup>7</sup> In addition, the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* requires a “judicial or other authority” to have the “strongest possible guarantees of competence, impartiality and independence.”<sup>8</sup> The Human Rights Committee has emphasized that “the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception”<sup>9</sup> and that states must ensure “the actual independence of the judiciary from political interference by the executive branch” and “protect[] judges from any form of political influence in their decision-making.”<sup>10</sup>

## **Overview of the Lack of Independence in the Iranian Judiciary**

Iran’s judiciary is subject to significant political influence from the executive. This is a direct result of the existing power structure. Ayatollah Ali Khamenei, the Supreme Leader of Iran, personally appoints the head of the judiciary,<sup>11</sup> who in turn has the power to nominate, promote and dismiss judges.<sup>12</sup> In addition, the Code of Criminal Procedure allows the head of the judiciary to personally overrule the Supreme Court, which has been used “to achieve the political goals of the authorities.”<sup>13</sup> The executive’s influence on the judiciary was confirmed by a former First Deputy to the head of the judiciary, who stated that, “Judges must obey the Supreme Leader and have no independence in judgment.”<sup>14</sup>

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<sup>5</sup> Case of Omid Kokabi, Decision of Oct. 11, 2014, Court Filing Ref. No. 931131, Proceeding Ref. No. 9309970925102130 (Supreme Court) (Iran).

<sup>6</sup> *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, G.A. Res. 43/173, Dec. 9, 1988, at Use of Terms (f) (defining “judicial or other authority” as “a judicial or other authority under the law whose status and tenure should afford the *strongest possible guarantees of competence, impartiality and independence*”) (emphasis added) [hereinafter *Body of Principles*].

<sup>7</sup> *Universal Declaration of Human Rights*, G.A. Res. 217(III) A, Dec. 10, 1948, at Art. 10 (“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”).

<sup>8</sup> *Body of Principles*, *supra* note 6.

<sup>9</sup> *González del Río v. Peru*, Communication No. 263/1987, CCPR/C/46/D/263/1987, U.N. HUMAN RIGHTS COMMITTEE, *adopted* Oct. 28, 1992, at ¶ 5.2.

<sup>10</sup> *General Comment 32 on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, U.N. HUMAN RIGHTS COMMITTEE, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, at ¶ 19.

<sup>11</sup> *Freedom in the World 2018: Iran Profile*, FREEDOM HOUSE, *accessed* July 27, 2018, *available at* <https://freedomhouse.org/report/freedom-world/2018/iran>.

<sup>12</sup> IRAN HUMAN RIGHTS DOCUMENTATION CENTER, *THE IRANIAN JUDICIARY: A COMPLEX AND DYSFUNCTIONAL SYSTEM*, Nov. 30, 2015, at 41, *available at* [https://www.iranrights.org/attachments/library/doc\\_379.pdf](https://www.iranrights.org/attachments/library/doc_379.pdf).

<sup>13</sup> *Id.*, at 42 (discussing Article 477 of the Code of Criminal Procedure).

<sup>14</sup> Ahmed Shaheed, *REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE ISLAMIC REPUBLIC OF IRAN*, A/HCR/25/61, Mar. 18, 2014, at ¶ 62, *available at* <http://undocs.org/A/HRC/25/61>.

U.N. bodies and experts have consistently and repeatedly condemned the lack of independence and impartiality in Iran's judiciary. In 2011, the Human Rights Committee noted that it was "concerned that the independence of the judiciary is not fully guaranteed and is compromised by undue pressure from the Executive power, including . . . senior clerics and high-ranking Government officials ahead of trials."<sup>15</sup> More recently, in 2017, the UN Special Rapporteur on the Situation of Human Rights in Iran stated bluntly that "[t]he lack of independence of the judicial system, in particular the revolutionary courts, is alarming" and that the "Revolutionary courts are viewed . . . as an extension of the coercive executive branch of the Government."<sup>16</sup> The Special Rapporteur later called for the Government "to ensure that the judiciary is free from interference of any kind."<sup>17</sup>

International organizations have also denounced the political influence on Iran's judiciary. In its 2016/2017 report on Iran, Amnesty International concluded that trials were generally unfair and the judiciary was not independent.<sup>18</sup> Similarly, in its 2016 report on Iran, Freedom House concluded that "the judicial system is used as a tool to silence critics and opposition members" and that, under the current head of the judiciary, "the security apparatus's influence over judges has reportedly grown."<sup>19</sup>

### **The Namazis' Arrest and Detention**

Baquer Namazi and his family fled Iran in 1983 and ultimately settled in the United States, where he was naturalized and became a citizen. From 1984 to 1997, he served as a UNICEF representative and worked in countries such as Kenya, Somalia, and Egypt, helping vulnerable people and providing aid to women and children affected by war. After retirement, Baquer and his wife returned to Iran.

Born in Iran, Siamak Namazi was naturalized and became an American citizen in 1993. He obtained his undergraduate degree from Tufts University and a master's degree from Rutgers University. In 2005 and 2006, he held fellowships at the Woodrow Wilson Center for International Scholars and the National Endowment for Democracy. In 2007, the World Economic Forum recognized him as a Young Global Leader. In 2011, Siamak earned a second master's degree, this one from London Business School. He has never formally engaged in politics. Prior to his arrest and detention, he lived in the United Arab Emirates.

In July 2015, Siamak travelled to Tehran to visit his parents. On July 18, 2015, as he was preparing to return back to the United Arab Emirates, the Islamic Revolutionary Guard Corps (IRGC) intercepted him on his way into Tehran Airport. Before he could reach the first passport control checkpoint, IRGC guards dressed in civilian clothes surrounded him. The IRGC guards escorted Siamak to a parked car in the airport parking lot and forced him into the backseat. From there, the IRGC guards questioned Siamak for several hours. All of his electronic devices, including his laptop, tablet, and mobile devices were immediately confiscated. The IRGC also seized Siamak's U.S. and Iranian passports. When the IRGC guards were finished questioning him, they told Siamak they would "keep in

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<sup>15</sup> Human Rights Committee, *Concluding Observations: Iran*, U.N. Doc. CCPR/C/IRN/CO/3, Nov. 29, 2011, at ¶ 22, available at <http://undocs.org/CCPR/C/IRN/CO/3/>.

<sup>16</sup> Asma Jahangir, REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE ISLAMIC REPUBLIC OF IRAN, A/72/322, Aug. 14, 2017, at ¶ 110, available at <https://undocs.org/A/72/322/>.

<sup>17</sup> Asma Jahangir, REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE ISLAMIC REPUBLIC OF IRAN, A/HRC/37/68, Mar. 5, 2018, at ¶ 93, available at <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ListReports.aspx>.

<sup>18</sup> AMNESTY INTERNATIONAL REPORT 2016/17, AMNESTY INTERNATIONAL, 2017, at 193, available at <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.

<sup>19</sup> *Freedom in the World: Iran*, FREEDOM HOUSE, accessed July 27, 2018, available at <https://freedomhouse.org/report/freedom-world/2016/iran>.

touch” and instructed him not to leave Tehran. They gave Siamak a handwritten receipt of the confiscated items.

It is noteworthy that this interrogation occurred just four days after the finalization of the Joint Comprehensive Plan of Action, which was viewed as a defeat for conservative hardliners in Iran, who wanted to maintain a hostile policy towards the United States.

During the following three months, Siamak was regularly interrogated by the IRGC. The interrogations occurred at an unmarked location and were completely private – only Siamak and IRGC guards were present. The questions focused mostly on Siamak’s association with the West. Siamak had hired an attorney to represent him, but the lawyer’s ability to defend Siamak was severely limited. Siamak was told that, per official policy, anyone accused of a crime relating to national security could only be represented by an “approved lawyer.”<sup>20</sup> Siamak repeatedly asked to see the list of approved lawyers, but he was never shown the purported list. As a result, he didn’t have a lawyer who could be present during any of the interrogations.

On October 13, 2015, Siamak was summoned once again for an interrogation. Later that day, members of the IRGC arrested him on unknown charges. Without receiving any further information, Siamak was taken to the special wing of Evin Prison that is under the full control of the IRGC. The family had no access, no information and no word from Siamak for some time after his arrest. He was held *incommunicado*.

Following Siamak’s arrest and imprisonment, Baquer attempted to visit him at Evin Prison two to three times each week but was never granted access. On February 22, returning home from a visit to Dubai having been promised an opportunity to finally visit Siamak, Baquer flew into Tehran Airport, where he was intercepted by IRGC guards. They drove Baquer back to his home, where about a half-dozen guards searched the house. The IRGC showed Baquer and his wife a document they claimed was a search warrant for Baquer’s belongings. They looked through everything in the house, including Baquer’s wife’s personal effects. The IRGC’s search and occupation of the house continued through midnight, after which Baquer was taken away.

Like Siamak, Baquer’s personal electronics were confiscated, as were his passports. Additionally, the IRGC seized various personal photos and documents, including those belonging to his wife and deceased mother-in-law. Days later, copies of many photos were broadcast by Iranian state media in coverage connected with this case. Baquer was immediately taken to Evin Prison and brought into the same IRGC-controlled wing as Siamak.

Leading up to their court hearings, Siamak and Baquer had extremely limited access to legal counsel. They were allowed to meet with their attorneys for only thirty minutes a few days before the hearings, despite numerous attempts to meet earlier. Moreover, the attorneys were given access to court files and evidence only a few days ahead of trial and were not allowed to make or retain their own copies, making it practically impossible to prepare a meaningful defense. It is unknown whether the files they were given were even complete.

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<sup>20</sup> See *Amendments to the Islamic Republic of Iran’s Code of Criminal Procedure -- Part 1*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER, accessed July 27, 2018, available at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000602-amendments-to-the-islamic-republic-of-iran%E2%80%99s-new-code-of-criminal-procedure.html> (explaining that a note was recently added to Article 48 of Iran’s Criminal Procedure Code “which stated that in cases involving serious charges . . . during the pre-trial investigative phase a defendant may only choose attorneys that have been previously approved by the head of the judiciary”).

The first and only hearings at the trial level occurred in early October 2016 – Siamak’s on October 1, and Baquer’s on October 5. Both hearings were held in secret and excluded members of the press and public. The hearings took place before Judge Salavati, who is known for meting out harsh sentences in political cases.

The trial hearings only lasted a few hours, during which the Namazis were denied fundamental due process rights. They were not allowed to present any evidence, call witnesses, or meaningfully challenge any charges or evidence – despite the fact that the IRGC had been relentlessly interrogating them for months without legal representation.

On October 17, 2016, both were sentenced to 10 years in prison for collaborating with a “hostile foreign government,” in reference to the United States. This is the maximum penalty that can be imposed under Article 508 of Iran’s Penal Code. The Namazis were not given written copies of the verdicts. At the same time, the IRGC-affiliated websites and media were running a continuous negative campaign against the Namazis, claiming that they were U.S. “infiltrators” and showing copies of their passports and the photos that had been taken from their house by the IRGC.

The Namazis immediately appealed the convictions and sentences, though they could do so only in the most general sense, as they did not have access to the evidence used against them or the trial court’s final verdict.

The appeal hearing for both cases took place before the 36th Branch of the Appeals Court on March 1, 2017. The hearing for both the Namazis lasted less than three hours. Siamak was brought to the hearing late because the guards escorting him claimed they got “lost” – though this was likely a deliberate attempt to undermine the appeal process. The judge did not reschedule or extend the hearing to make up for this lost time. As a result, Baquer’s case was considered for approximately two hours, while Siamak’s lasted only 30-45 minutes. The appeal was supposed to have been heard by a panel of three judges, but only one judge was actually present. The press and the public were barred from the appeal hearing. On August 22, 2017, the Appeals Court upheld the convictions, though no written appellate decision was provided to the family.

Siamak has been intimidated and continually interrogated by the IRGC, even after his conviction. He has been subjected to extended periods of solitary confinement and tortured by the IRGC guards. They have beaten and tased him and forced him to watch government propaganda attacking him and showing his father in prison.

Baquer, who is 82-years-old, has been held in similarly harsh prison conditions, including extensive periods of solitary confinement. He has serious heart conditions, including arrhythmia, that require him to take special medications, and he previously had a triple bypass heart surgery. Baquer has lost at least 30 pounds (~14 kilograms) during his imprisonment and his energy is greatly diminished. In a highly unusual move that demonstrates the severity of his current condition, the IRGC transferred Baquer to a hospital on eight separate occasions, without explanation to his family. He is now out of Evin Prison on a temporary medical leave, which could be revoked at any time.

As noted earlier in August 2017, the U.N. Working Group on Arbitrary Detention adopted an opinion on the Namazis case, declaring that they are being arbitrarily detained.<sup>21</sup> The Working Group further pointed out numerous due process violations – their trial was unfair, they did not have access to legal representation, they were not given the opportunity to examine witnesses or access the evidence

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<sup>21</sup> *Siamak Namazi and Mohammed Baquer Namazi v. Islamic Republic of Iran*, Opinion No. 49/2017, U.N. WORKING GROUP ON ARBITRARY DETENTION, A/HRC/WGAD/2017/49, Adopted Aug. 22, 2017.

against them, they were denied the presumption of innocence, and they were never given written copies of the judgments against them. This is not an exhaustive list of the violations identified in the Working Group's Opinion.

### **Political Influence in the Namazis' Case**

The Government of Iran violated the Namazis' right to an independent and impartial judiciary by convicting them of criminal charges for political reasons. The political influence in their case is clearly demonstrated by the legal absurdity of the charges against them. The Namazis were convicted of cooperating with a "hostile foreign government" – the U.S. – but there are at least two reasons why the U.S. cannot be considered a "hostile foreign government."

First, in 1955, Iran and the U.S. signed (and both later ratified) the Treaty of Amity, Economic Relations, and Consular Rights,<sup>22</sup> which enshrines the "firm and enduring peace and sincere friendship between" the two countries. On multiple occasions since then, Iran has invoked this treaty, thereby recognizing that it is still in force. For example, in July 1988, Iran filed a complaint with the International Court of Justice, alleging that the U.S. violated the treaty by firing upon a civilian aircraft in Iranian airspace.<sup>23</sup> In 1992, Iran again invoked the treaty, claiming that U.S. violated it by attacking its oil platforms.<sup>24</sup> In 2016, Iran instituted proceedings under the treaty to challenge monetary judgments awarded by U.S. courts against it for its involvement in terrorist activities.<sup>25</sup> Finally, in July 2018, Iran filed suit in the International Court of Justice, alleging that recent U.S. sanctions violated the treaty.<sup>26</sup> Iran cannot, on the one hand, invoke the Treaty of Amity – a friendship treaty – when filing claims against the U.S. with the ICJ, and then, on the other hand, classify the U.S. as a "hostile" government in order to convict the Namazis. Thus, because Iran has repeatedly invoked and recognized the Treaty of Amity, the U.S. cannot be a "hostile foreign government."

Second, and importantly, the Supreme Court of Iran has ruled that the U.S. cannot be considered a "hostile foreign government."<sup>27</sup> In 2014, the Court considered a case (quite similar to the Namazis') in which Omid Kokabi, an Iranian national, was charged with collaborating with hostile foreign governments (including, notably, the United States) under Article 508 of the Penal Code, the same Article used against Baquer and Siamak. However, the Supreme Court, referencing official statements from the Foreign Ministry and Iran's Judiciary, held that "presently no government is in a state of hostility with Iran" for purposes of Article 508 and that mere "political differences" cannot be the basis for classifying a country as "hostile." The Supreme Court therefore vacated the conviction and remanded the case for further proceedings. Given this 2014 ruling, as well as Iran's continued reliance on and recognition of the

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<sup>22</sup> Treaty of Amity, Economic Relations, and Consular Rights, U.S.-Iran, 284 U.N.T.S. 93, *entered into force* June 16, 1957, at Art. 1 [*hereinafter* Treaty of Amity].

<sup>23</sup> Aerial Incident of 3 July 1988 (Iran v. U.S.), Judgment, 1996 I.C.J. 9 (Feb. 22).

<sup>24</sup> *Oil Platforms Case (Iran v United States of America)*, Oxford Public International Law, *accessed* July 27, 2019, *available at* <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e188> (describing the case).

<sup>25</sup> Application Instituting Proceedings, Certain Iranian Assets (Iran v. U.S.) (June 14, 2016), *available at* <http://www.icj-cij.org/files/case-related/164/164-20160614-APP-01-00-EN.pdf>, at ¶ 2 ("The [ICJ] has jurisdiction in relation to the above dispute . . . pursuant to . . . Article XXI (2) of the Treaty of Amity[, Economic Relations, and Consular Rights].").

<sup>26</sup> Application Instituting Proceedings, Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.) (July 16, 2018), *available at* <http://www.icj-cij.org/files/case-related/175/175-20180716-APP-01-00-EN.pdf>, at ¶ 3 ("The Court has jurisdiction in relation to the above dispute . . . pursuant to . . . Article XXI (2) of the Treaty of Amity[, Economic Relations, and Consular Rights].").

<sup>27</sup> Case of Omid Kokabi, Decision of Oct. 11, 2014, Court Filing Ref. No. 931131, Proceeding Ref. No. 9309970925102130 (Supreme Court) (Iran).

Treaty of Amity (as recently as July 2018, long after the Namazis' arrest and conviction), there was simply no legal basis to charge the Namazis with collaborating with a "hostile foreign government," much less to convict them and deny their appeal. In fact, the Namazis were convicted by the very same judge (Judge Salavati) that convicted Omid Kokabi, and their appeal was rejected by the same appeals court that rejected Omid Kokabi's appeal. This means that, after being overruled by the Supreme Court in the Kokabi case and explicitly told that the U.S. is not a hostile state, Judge Salavati proceeded to convict the Namazis of collaborating with the U.S., a hostile state, and the appeals court upheld their convictions. In doing so, they were clearly not acting in good conscience or according to the law.

Third, the Working Group on Arbitrary Detention noted the political nature of the Namazis' case in its opinion finding that they are being arbitrarily detained – "[T]he present case [regarding the Namazis] follows a pattern . . . in the way that those affiliated with different pro-democracy institutions of the West – especially those with dual nationality – are treated in the Islamic Republic of Iran . . . . The source has established a prima facie case that the arrest and detention of the Namazis were motivated by . . . their status as dual Iranian-United States nationals and their links with various organizations located outside of the Islamic Republic of Iran."<sup>28</sup>

Finally, by convicting and imprisoning the Namazis on politically-motivated charges with no basis in domestic law, Iran has violated the Treaty of Amity, which requires it to give U.S. citizens "the most constant protection and security."<sup>29</sup> Iran has violated this provision before. In 1979, the U.S. instituted proceedings in the ICJ against Iran for its failure to prevent militants from seizing the U.S. embassy in Tehran or take meaningful action to retake control or rescue the hostages.<sup>30</sup> Among other treaties, the U.S. invoked the Treaty of Amity.<sup>31</sup> As a preliminary matter, the ICJ noted that, under Article XXI(2) of the treaty, it had jurisdiction over any dispute under the treaty that was "not satisfactorily adjusted by diplomacy . . . unless the High Contracting Parties agree to settlement by some other pacific means."<sup>32</sup> The Court explained that Iran's "refusal . . . to enter into any discussion of the matter" meant that the dispute could not be solved by diplomacy and that the parties had not agreed to any other means of resolution; therefore, the Court had jurisdiction.<sup>33</sup> On the merits, the Court pointed out that Iran had not made a serious attempt to stop the militants or free the remaining hostages.<sup>34</sup> This, the Court held, breached Iran's obligation under Article II(4) of the Treaty of Amity to give U.S. nationals "the most constant protection and security" within its territory.<sup>35</sup>

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<sup>28</sup> *Siamak Namazi and Mohammed Baquer Namazi v. Iran*, Opinion No. 49/2017, U.N. Doc.

A/HRC/WGAD/2017/49, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Aug. 22, 2017, at ¶ 43.

<sup>29</sup> Treaty of Amity, *supra* note 22, at art. II(4).

<sup>30</sup> Application Instituting Proceedings, United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran) (Nov. 29, 1979), *available at* <https://www.icj-cij.org/files/case-related/64/9545.pdf>.

<sup>31</sup> *Id.* at 5.

<sup>32</sup> United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. 1 (May 24), *available at* <https://www.icj-cij.org/files/case-related/64/064-19800524-JUD-01-00-EN.pdf>, at ¶ 51.

<sup>33</sup> *Id.* at ¶¶ 51-52.

<sup>34</sup> *Id.* at ¶ 66 ("[D]espite assurances previously given by [Iranian authorities] to the United States Government and despite repeated and urgent calls for help, they took no apparent steps either to prevent the militants from invading the Embassy or to persuade or to compel them to withdraw. Furthermore, after the militants had forced an entry into the premises of the Embassy, the Iranian authorities made no effort to compel or even to persuade them to withdraw from the Embassy and to free the diplomatic and consular staff whom they had made prisoner.").

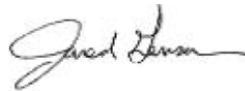
<sup>35</sup> *Id.* at ¶ 67 ("This inaction of the Iranian Government by itself constituted clear and serious violation of Iran's obligations to the United States . . . under Article II, paragraph 4, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights which . . . requires the parties to ensure 'the most constant protection and security' to each other's nationals in their respective territories."); *see also id.* at ¶ 80 ("The facts of the present case . . . speak loudly and clearly of successive and still continuing breaches by Iran of its obligations to the United States . . . under the Treaty of [Amity].").

This same analysis applies in the Namazis' case. Just as Iran refused to discuss the hostages in 1979, which conferred jurisdiction on the ICJ, Iran is now refusing to discuss the Namazis' unlawful imprisonment. In fact, Iran is refusing to communicate with the U.S. at all – Ayatollah Ali Khamenei recently declared, "I ban holding any talks with America."<sup>36</sup> Therefore, the ICJ has jurisdiction under the Treaty of Amity to hear a complaint from the U.S. regarding the Namazis' imprisonment. In addition, just as the unlawful detention of the hostages in 1979 and Iran's failure to help them breached the Treaty of Amity, so too does the unlawful detention of the Namazis and Iran's failure to free them constitute a breach. Judge Salavati convicted the Namazis and the appeals court upheld their convictions, knowing full well that they were acting contrary to Supreme Court precedent and in violation of Iran's obligations under international law. Iran has clearly failed to give the Namazis "the most constant protection and security."

## **Conclusion**

Baquer and Siamak Namazi were convicted, in a sham trial, of a crime that appears legally impossible under Iran's own laws and which directly contradicts Iran's repeated reliance on the Treaty of Amity. Their convictions, and their ongoing detention, constitute a severe denial of their right to an independent and impartial judiciary. We respectfully request that, in accordance with your working methods, you immediately send an urgent appeal to the Government of Iran imploring it to uphold its obligations under the ICCPR.

Sincerely,



Jared Genser  
International Counsel to Baquer and Siamak Namazi

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<sup>36</sup> Parisa Hafezi, *Iran's Khamenei Rejects Trump Offer of Talks, Chides Government Over Economy*, REUTERS, Aug. 13, 2018, available at <https://www.reuters.com/article/us-iran-khamenei-economy/irans-khamenei-rejects-trump-offer-of-talks-chides-government-over-economy-idUSKBN1KY0U1>.