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"As Fragile as a Crystal Glass"

Press Freedom in Iran

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"As Fragile as a Crystal Glass"

Press Freedom in Iran

I. SUMMARY

Press freedom and state regulation of the press have emerged as crucial issues in the struggle for power between reformists and conservatives in Iran today. The independent press is the preeminent mouthpiece of the reform movement, and thus a target for conservatives. Since coming to power in August 1997, President Mohammad Khatami has been credited with presiding over greater freedom of the press and more open public discussion on a wide range of issues. But while the Iranian press has displayed great diversity and vibrancy, basic legal safeguards for freedom of expression, the right to which is enshrined in international law, are lacking. As a consequence, the press remains vulnerable to the shifting currents of Iranian politics, and journalists, writers and editors continue to be subject to recurrent waves of repression.

Mohammad Khatami is no stranger to the contentious area of regulating the press. Between 1989 and 1992 he served as minister of culture and Islamic guidance, but was forced to resign in protest against the government's extra-legal punitive actions against newspapers and journalists. The problems which led to Khatami's resignation as a minister in 1992 persist today. How these issues are resolved will provide an important indicator of President Khatami's abilities to achieve substantial change with respect to human rights protection generally. The president has spoken out in favor of greater press freedom, but he has also encouraged the press to be self-regulating and to respect the "sensitivities of the nation." If reformers are able to strengthen legal safeguards for press freedom through legislative reform, that would be a strong indication of progress in this area. This has not yet been achieved.

The independent press plays an important role in contemporary Iranian political life. Unlike the local broadcast media, which remains in the hands of conservatives, many newspapers have taken independent editorial positions and have become forums for the debate about the future direction of the Islamic republic. In the absence of legally recognized opposition political parties, independent newspapers raise public awareness about alternative viewpoints and are the major mobilizing tool of reformists seeking greater respect for rights within the Islamic Republic.

In 1998, powerful conservative forces within the government clamped down on the relative openness that followed Khatami's election, closing down newspapers and magazines, imprisoning editors and journalists, and unleashing gangs of thugs to beat up journalists and ransack

newspaper offices in the name of orthodoxy. These measures created a climate of fear within the media, and raised questions about the ability of the popularly elected president to implement protections for press freedom, an important part of his election platform. The Khatami administration can be credited for speaking out against and beginning to take steps to counter the violent activities of enforcers of religious orthodoxy with links to the government itself. The administration has publicly condemned these activities on a number of occasions, and has made some tangible progress in establishing accountability for such acts. The men who physically attacked two reformist ministers in September 1998 were convicted in January 1999 of assault and sentenced to prison terms ranging from two to three years. In early 1999, the government exposed official involvement in the killings of dissidents and intellectuals at the end of 1998 and forced the removal of the minister of information and several of his deputies. In August 1999 a government investigation held a number of law enforcement officials as well as civilian vigilantes responsible for a violent pre-dawn assault on a Tehran University dormitory the month before in which one student was reportedly killed and many injured.

Conservatives nevertheless remain determined to stifle press freedom, abetted by the violent enforcers known as the *ansar-e hezbollahi* (partisans of the party of God). Reformers still face strong opposition from those in the leadership who hold differing views about the place of rights and freedoms in Iranian society. Respect for the right to freedom of expression continues to be seriously deficient in law and practice in Iran. Ayatollah Mohammad Yazdi, the powerful Head of the Judiciary until August 1999, had directly challenged statements by President Khatami and others calling for greater press freedom, stressing the need for strict limits in this area. In May 1999, Minister of Culture and Islamic Guidance Ataollah Mohajerani narrowly survived an attempt to impeach him launched by conservative members of parliament who objected to the relative openness of the Iranian press under his stewardship.

After failing to impeach the minister most identified with press liberalization, the parliament turned in early July to revising the Press Law to impose greater control over the activities of journalists. On July 7, the same day that the proposed amendments to the law were introduced in the parliament, another reform-minded newspaper, *Salam*, was closed, and the publisher subsequently convicted by the Special Court for the Clergy on charges of misinforming the public. An editor of another newspaper was held for weeks in incommunicado detention. The press crackdown triggered demonstrations and clashes between students protesting these restrictions and supporters of the conservative clerics. Over three days in mid-July, Tehran and other major cities witnessed civil unrest that was among the worst since the turmoil of the 1979 revolution.

These developments demonstrate how crucial it is to institute legal and administrative safeguards to protect press freedom. Otherwise the press will remain hostage to such pressures and individual writers or editors will be prone to arbitrary persecution. In particular need of revision are article 24 of the Constitution of the Islamic Republic, which allows broadly conceived limits on expression by declaring that restrictions are appropriate when the material in question "is detrimental to the fundamental principles of Islam," and the Press Law of 1985, which contains similar broadly-worded language giving the government license to clamp down on press freedom more or less at will.

The ability of the press to serve as an avenue of free expression has seesawed dramatically since President Khatami took office. The present debate over authorized state regulation of the press in Iran centers on four areas: firstly, administrative closure of newspapers; secondly, decisions by judges to close publications; thirdly, the use of Revolutionary Courts and Special Clergy Courts to punish writers and journalists; and fourthly, attempts to legislate further limits on free expression. The absence of legal protections against the arbitrary use of these multiple judicial and administrative techniques to stifle free expression means that the relative autonomy presently enjoyed by the Iranian press may be transitory. The events of July 1999 show just how vulnerable

newspapers, magazines, and journals are to arbitrary closure, and publishers, editors, and journalists to persecution. Unless legal and administrative safeguards are instituted and strengthened, we may see a reversal of recent trends toward liberalization and a decline in press freedom in Iran.

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II. RECOMMENDATIONS

To the Government of Iran

C Amend the constitution in order to revise the sweeping language of article 24, so that restrictions on expression are in accord with the norms of free expression set out in article 19 of the International Covenant on Civil and Political Rights and other international instruments to which Iran is a party.

C Replace the Press Law of 1985 with legislation that maximizes the right to freedom of expression and ensure that any restrictions on the exercise of freedom of expression are specific and narrowly defined so as not to place in jeopardy the right to free expression itself.

C Oppose the proposed amendments to the Press Law currently before the parliament that would further restrict freedom of expression.

C Cease punitive measures against editors, journalists, writers, and publishers whose sole offense is their criticism of the government and its policies;

C In the event of a publication being closed by administrative order, there should be the safeguard of immediate appeal to an independent judicial body to protect the right to freedom of expression.

C Establish procedures whereby writers, journalists, and editors accused of violating the law are judged in a fair and public hearing by a competent, independent, and impartial tribunal, in accordance with international law. In those cases where criminal penalties may be imposed, defendants must receive the full guarantees for fair trial provided for in article 14 of the International Covenant on Civil and Political Rights, including the right of appeal to a higher tribunal.

C Cease prosecuting journalists, writers, and others in Revolutionary Courts and the Special Court for the Clergy for expressing opinions that in no way threaten public order or national security as these terms are understood in international law.

C Reform press courts as well as other judicial bodies to ensure that they are fully independent and impartial, and not susceptible to outside interference or pressure.

C Investigate and prosecute leaders and members of the violent groups known as *ansar-e hezbollahi* who intimidate individuals, destroy property, and threaten the lives of journalists, publishers, and others exercising their right to express themselves freely.

C Lift restrictions on domestic human rights monitors and cooperate with international human

rights monitors from the United Nations and independent nongovernmental organizations.

To the International Community

C Encourage the government of Iran to adopt legislation and regulations with regard to freedom of expression that comport with international standards, and urge Iranian officials to implement the recommendations contained in this report.

C Make clear that Iran will continue to be subject to special procedures under the U.N. Human Rights Commission until the government halts grave abuses such as the arbitrary detention and prosecution of journalists and writers and the failure to investigate and prosecute persons accused of assaults against them.

C Encourage Iran to open its doors to formal visits by United Nations human rights bodies and independent nongovernmental human rights organizations.

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III. THE PRESS UNDER PRESIDENT KHATAMI

Immediately following his election, President Khatami served notice of his intention to deliver on his promises to uphold the freedom of the press by appointing Dr. Ataollah Mohajerani to the key post of Minister of Culture and Islamic Guidance. In his first speech as minister before the Islamic Consultative Assembly (*Majles*), the conservative-dominated Iranian parliament, in September 1997, Mohajerani declared: "I am in favor of cultural tolerance.... We must create a climate in the Islamic Republic in which individuals will be able to express their views on various issues."

Soon after, however, militants from the *ansar-e hezbollahi*, the self-proclaimed partisans of the party of God, ransacked the offices of the independent *Iran-e Farda* (Tomorrow's Iran) magazine. Minister of Culture Mohajerani promptly condemned the attack: "This kind of action will lead to anarchy. All protests against the contents of a publication must be done through legal channels and in a rational manner."¹ Although it was unprecedented for a minister to speak out against the brazen actions of the hezbollahi, no legal action was taken against the attackers or their leaders. Nevertheless, from the outset both Khatami and Mohajerani denounced such violent actions as serious threats to the rule of law.

The new administration followed through on its commitments by restoring licenses to a number of banned publications expressing different ideological viewpoints. For example, in October 1997, the authorities restored the license of the radical daily *Jahan -e Eslam* (World of Islam), published by Hadi Khamene'i, brother of Supreme Leader Ayatollah Khamenei, after a two-and-a-half-year ban. In November 1997 the newspaper *Payam-e Daneshju* (Students' Message), which the Press Court (see below) had banned for five years in 1996, was permitted to resume its operations. Earlier the culture and Islamic guidance ministry had lifted the ban, imposed prior to the May 1997 elections, on *Aftab-Gardoun* (Orbit of the Sun), a youth-oriented newspaper published by the then-mayor of Tehran, Gholam Hossain Karbaschi. However, the judge of the Press Court immediately issued a statement saying that the ministry lacked authority to overturn a court order and decreed that *Aftab-Gardoun* remain closed.

By the end of 1997 the press was growing in confidence and beginning to insist that powerful state institutions should be accountable for their actions and carry out their functions in a transparent manner. After Head of the Judiciary Mohammad Yazdi said publicly in January 1998 that it was none of the media's business who he sent to jail, the Tehran media protested vigorously. In his speech, Ayatollah Yazdi exploded in anger against the media in general. "What is going on?," he asked. "We tell those people: What is your business? Why would we tell you what is going on? It does not concern you.... Do we have to tell you the reason for an arrest?"² *Salam* (Hello), a pro-Khatami daily, complained on December 30 that Yazdi "believes the judiciary is not answerable to the public.... Why should the judiciary react with anger to questions put to it by the public? Why are such questions not recognized as the legitimate rights of Muslim citizens?" The Journalists' Union, which had been established a few weeks after President

Khatami's inauguration, issued a public statement one week after Ayatollah Yazdi's speech charging that "any measure to obstruct the free dissemination of the news and information...is considered interference with freedom of the press."³

The April 1998 arrest of Tehran mayor Karbaschi, a prominent ally of President Khatami, and the alleged torture in detention of several municipal officials, brought forth more outspoken media criticism of the judiciary. Sectors of the judiciary retaliated by ordering police raids on three Tehran newspapers which had been supportive of the mayor: *Hamshahri* (Fellow Citizen), *Iran*, and *Jame'eh* (Society). Editors said that police came with search warrants signed by a Tehran district court and insisted on seeing advance copies of editions being readied for printing. The three targeted papers had strongly criticized "The Campaign to End Crimes of Honor" and the detention of Karbaschi, stating bluntly that some officials were abusing the law for political purposes. The Ministry of Culture and Islamic Guidance, which has responsibility for overseeing the media, said it had not been informed of the searches and learned about them only after the targeted papers had complained. Minister Mohajerani angrily stated that the searches were a violation of existing laws.⁴ On April 18, the ministry formally condemned the police raids and demanded that judicial and security authorities provide an official explanation of the action. Deputy Minister Ahmad Borghani, whose office was responsible for the press and had authorized the statement, was summoned by the Prosecutor's Office of Tehran (*Dadsara-e Tehran*) to answer charges that he had "published lies."⁵ Although no further action appears to have been taken in this proceeding, Borghani resigned in protest in January 1999.

There were further raids on other newspapers. In quick succession in early August 1998, *Panshambehah* (Thursdays), *Gozarash-e Rouz* (Daily Report), and *Khanneh* (Home) were forced to close under official pressure. Hojatoleslam Mohammed Reza Zaeri, editor of *Khanneh*, and Mohammed Mahdavi, editor of *Gozarash-e Rouz*, were also imprisoned by order of a general court prosecutor. They were released after one week, but *Khanneh* remains closed and *Gozarash-e Rouz* was only able to resume publication in November 1998.

The parliament then stepped into the struggle over press regulation, seeking to limit the ability of the media to debate sensitive issues relating to the role of women in society and family law. In April 1998 the parliament passed a bill "on the exploitation of women," making it a crime "to create division between women and men through defending [women's] rights outside the legal and Sharia [Islamic law] frameworks." The law also forbade publishing pictures of unveiled women. Minister of Culture Mohajerani opposed the bill, but his objections were overruled by the conservative majority in the parliament. The bill passed a second reading in parliament in August 1998 and became law. By the end of 1998, the conservatives appeared to have gained the upper hand with the closure of several independent newspapers, including the popular daily *Jame'eh* (Society).

The story of *Jame'eh* illustrates the mixed fortunes of the independent press under President Khatami. After beginning publication in February 1998, *Jame'eh* had quickly established itself as one of Iran's most popular newspapers by providing a forum for open debate about a broad range of political, social, and cultural issues. For example, in March 1998 it carried a sympathetic story about the work of Amnesty International (AI) after an AI delegation attended a U.N. human rights meeting in Tehran. It led the way in critical coverage of the treatment of Mayor Karbaschi and his staff. This sparked resentment by conservative forces within the government, who used the broad language of the Press Law to bring about its closure. In June 1998 the Press Court ruled *Jame'eh* to be in violation of the Press Law for allegedly misquoting the commander of the *Pasdaran* (Revolutionary Guards Corps), but the jury recommended that the court not impose the maximum punishment because it was the daily's first offense. Two days later, however, the judge revoked *Jame'eh*'s license and shut it down. The Ministry of Culture swiftly announced that *Jame'eh* could continue publication while it appealed revocation of its license. *Jame'eh* was the first publication

to have its license revoked after President Khatami's inauguration, but others were to follow.

Jame'eh faced charges arising from four separate complaints from different parts of the government. General Rahim Safavi, the commander of the Revolutionary Guards, objected when it quoted him as saying that the *Pasdaran* "are seeking to root out counter-revolutionaries wherever they are. We have to cut the throats of some and cut out the tongues of others."⁶ In another speech, also in June 1998, General Safavi remarked that counter-revolutionaries had been "left free to set up their newspapers" and stated, "we will go after them when the time is ripe."⁷ The prisons administration objected to *Jame'eh*'s coverage of the high cost of prison food. Mohsen Rafiq Dost, the head of the Foundation of the Dispossessed, objected to allegations of corruption in his running of the conglomerate. The public prosecutor complained about the publication of a photograph alleged to show an image of the deposed first president of the Islamic Republic, Abol-Hassan Bani-Sadr. Minister Mohajerani, calling publication of the photograph "a flagrant sign of the abuse of freedom," remarked that the opponents of liberty could also be those who do not respect the limits of freedom.⁸ The court, ruling against *Jame'eh*'s appeal, ordered the paper closed for, in its words, "publishing lies and disrupting public order." The appeal hearing had taken place in secret, contrary to international due process standards, and the newspaper was informed of the verdict without even knowing that the hearing had taken place.

Within a few days of the closure, a new daily appeared under the title *Tous*, produced by the same editorial team and with much the same content as the banned *Jame-eh*. "The publication of a previously forbidden newspaper under a new name is illegal," Head of the Judiciary Yazdi objected. "We are asking the ministry of culture to take action before someone else does."⁹ In fact, article 7 of the Press Law, which sets out reasons for banning newspapers, prohibits publication of a newspaper using the same name as an existing title or a previously banned title but does not mention a newspaper using essentially the same staff under a new title. Yazdi's words appear to have been taken as a signal by hezbollahi enforcers, who shortly thereafter attacked the paper's editorial offices and beat up the editor, Mashallah Shamsolvaezin.

The conflict over freedom of the press continued to intensify in the latter half of 1998 and led to a stand-off between President Khatami and the leader, Ayatollah Khamene'i. On September 10, hezbollahi physically assaulted culture minister Mohajerani and Vice-President Abdullah Nouri as they were attending ceremonies in honor of Iranians killed during the war with Iraq. Responding to this provocation, President Khatami asserted that "the authorities must not dither or show mercy in dealing with this ugly vengeance against the rule of law and freedom. The law breakers, who are either ignorant or have a mission, understand no logic but force."¹⁰ (In January 1999, those alleged responsible for the assault were arrested, tried, convicted, and sentenced to prison terms.)

A few days after the president's remarks, however, on September 15, 1998, Leader Ayatollah Khamene'i threatened to silence independent newspapers through other means should the government of President Khatami fail to do so. Khamene'i characterized the offending media as "a dangerous, creeping cultural movement...writing against Islam.... I'm now waiting to see what the officials will do. Of course, stopping these vicious actions is not difficult, and I do not care what the international organizations would say. We will never care about them."¹¹ The next day, *Tous* managers Hamid Reza Jalei-Pour and Mohammad Sadegh Javadi Hessar, editor Mashallah Shamsolvaezin, and staff writer Seyyed Ebrahim Nabavi were arrested by order of the Islamic Revolutionary Courts (see below) on charges of publishing articles "against security and general interests." The newspaper was ordered closed by the Supervisory Board within the Ministry of Culture and Islamic Guidance.

Apparently buckling under political pressure, Minister of Culture and Islamic Guidance Mohajerani supported the closure of *Tous*, even though the procedures followed bypassed the Press Court (see below). That same month more than two thirds of the members of parliament

signed a letter calling for trials of accused journalists before Islamic Revolutionary Courts, without the jury trial safeguards provided for in the constitution. Also in September, the judiciary declared that it was creating a special body to monitor the conduct of the press and to refer offending writers to Islamic Revolutionary Courts. The Ministry of Culture and Islamic Guidance protested, insisting that "it is necessary to deal with press violations according to the law, in general courts and with the presence of a jury."¹² The four *Tous* newspapermen, Jalei-Pour, Javadi Hesar, Shamsolvaezin, and Nabavi, were released in October, but as of August 1999 the charges before the Islamic Revolutionary Courts still stood, including the charge of "enmity with God" which carries the death penalty.

On November 26, 1998, President Khatami, speaking to newspaper editors and publishers, clearly endorsed regulation of the press in accordance with existing legal safeguards:

There is no doubt about it, every complaint against the press should go, in the first instance, before a press court with a jury. If it is not done like that, then the press should be the first to protest.¹³

The president also supported the principle of freedom of expression. "We can block expression of an opinion for a short period of time," he said, "but if we do it, then that opinion will be forced underground and will result in a later explosion." Rather than advocating a heavy state regulatory hand, the president urged the press to be self-regulating and to "understand the sensitivities of the society."¹⁴

Speaking at Friday prayers just two days later, former Head of the Judiciary Ayatollah Yazdi presented a contrary view: "The constitution does not give freedom to those who are mocking religious sanctities," he asserted.

The press is not free to question fundamental Islamic principles. Those writers who questioned inheritance and blood money law, or who talk about *velayat-e faqih* [rule of the Supreme Jurist¹⁵], who gave them the right to talk about these subjects? If there is no boundary then corruption will start. Our constitution does not give the press this freedom.¹⁶

After the closure of *Tous* in September 1998, pressure on the press continued to mount. The independent newspapers *Rah-e No* (New Way), *Tavana* (Capable), *Jame'eh, Salem* (Healthy Society), *Navid Esfahan* (Gospel of Isfahan), *Iran-e Farda* (Tomorrow's Iran), and *Mubayyin* (Announcer) were closed by the Press Court. *Adineh* (Friday), a cultural monthly not previously known to have been the subject of complaints, was ordered closed by the Press Court in February 1999. In the cases of *Jame-eh Salem* and *Adineh*, the jury found them in violation of the Press Law but recommended minimum punishment, not including closure. The judge disregarded the jury's recommendations and closed them both. However, it is important to note that all of the above titles with the exception of *Tous* continue to publish despite the closure orders issued by the court. They justified their continued operation on the grounds that they had not received the formal closure order.

Following the *Adineh* decision, the jury protested the judge's action in that case by not attending the next hearing, involving a complaint against *Keyhan* (Galaxy) newspaper. This forced a postponement in the proceedings. At the second *Keyhan* hearing, the judge dismissed the six jurors who had absented themselves. Since then the Press Court in Tehran has not been able to convene because of the unavailability of the six jurors, who filed a lawsuit with the High Judicial Disciplinary tribunal against the judge claiming that he had acted improperly in dismissing them. In August 1999, the tribunal found that Saeid Mortazavi, the judge in the press court in Tehran, had exceeded his authority in ordering the dismissal of the jurors, but recommended no punishment. He remains in office.¹⁷ President Khatami also established a special commission to

review the functioning of the press courts, but the result of the commission's review has not yet been published.

The role of the jury in press courts is one among many contentious elements in the system of regulation of the press. A second is the ability of the Supervisory Press Board (see below) to close newspapers by administrative order. For example, in January 1999, *Shalamcheh*, a radical weekly, and *Fakour* (Thinker), a monthly, were ordered closed by the board, applying the same administrative procedure employed in the initial closure of *Tous*.

A third crucial issue in the field of press regulation is the use of courts other than the press courts to punish writers for views expressed in the media. In the case of *Tous*, charges were brought against writers, editor, and publishers in the Revolutionary Court. These courts do not meet international standard for independent, impartial tribunals, nor do they provide for a fair and public hearing as also required in article 14 (1) of the ICCPR. In other cases, Special Courts for the Clergy (see below) have been used to prosecute clerics promoting independent ideas in the press. For example, in June 1998, Mohssen Saeidzadeh was detained and charges brought against him by a Special Court for the Clergy arising from articles he had written promoting reform in family law and respect for women's rights. In February 1999, Mohssen Kadivar was detained and a case brought against him in a Special Court for the Clergy arising from his journalistic writings. Such courts have also been used to prosecute clerics who have expressed dissident opinions in their preaching and teaching.

In November 1998, *Hamshahri* reported that the Parliamentary Research Center was drafting legislation that would make writers, and editors, and publishers in some circumstances, liable to prosecution in courts other than presscourts if articles are found to be offensive.¹⁸ On March 4, 1999, a Special Court for the Clergy ruled that it would prosecute any newspaper that even mentioned the name of Ayatollah Hossein-Ali Montazeri,¹⁹ whom Ayatollah Khomeini had designated as his successor as Leader and who has emerged as a persistent critic of the institution of *velayat-e faqih*. Since Ayatollah Montazeri's removal as designated successor to the Leader by Ayatollah Khomeini in 1988, Montazeri and his relatives and followers have been subjected to persecution because of their beliefs.

In March 1999, *Zan* (Woman) magazine was ordered closed by an Islamic Revolutionary Court for publishing part of a New Year's greeting to the Iranian people from the formerqueen, Farah Pahlavi, now living in exile, and for a publishing a cartoon deemed to be defamatory of the Islamic juridical tradition of *diyah* (blood money). Other magazines published Farah Pahlavi's message in full without any repercussions.

In June 1999, a Revolutionary Court ordered the closure of the student bi-weekly newspaper *Hoveyat-e Khish* (Self Identity). Its editor, Heshmatollah Tabarzadi, and director, Hossein Kashani were detained on accusations of "spreading anti-Islamic propaganda." Kashani was released in June but as of mid-August Tabarzadi remained in detention.

On July 7, 1999, in a further use of an exceptional court to close an independent newspaper, a Special Court for the Clergy ordered the closure of *Salam* on accusations of having "confused public opinion." The publication was ordered to remain closed until the court finished its inquiries. The closure came after *Salam* had published documents appearing to reveal high-level plans to silence the independent media by various means, including the deadly attacks against at least five writers and activists in last months of 1998 and the amendments to the Press Law that were introduced in parliament that same day, July 7. 20

This increasing recourse to special courts to punish the independent press has been part of an unrelenting conservative campaign against the Ministry of Culture and Islamic Guidance. In

January 1999, Deputy Minister Ahmed Borghani resigned over the constant interference in press freedom. "I wanted to be witness to the rebirth of the press, not its death," he said in a farewell speech to his colleagues in the ministry:

They accuse us of trying to create a free press. They accuse us of closing our eyes to violations of press regulations. It was not clear what the legal rights of the press are...their focus is to close the windows which bring in fresh air, and this pressure is from all sides.²¹

Minister of Culture Mohajerani commented that he had not wanted Borghani to resign, and asserted that "our policy is the continuation of the president's policy of promoting the rule of law. Within the press law, the rights of the press are clear." Mohajerani nonetheless accepted Borghani's resignation in the context of steps in parliament for his own impeachment. When the attempt to impeach Mohajerani came to a vote in the parliament in May 1999, the minister stated that "tolerance does not mean a weakening of values, a thought has to be responded to with another thought. Freedom is as fragile as ... a crystal glass."²²

Mohajerani survived the impeachment motion by a vote of 135 to 121. Nevertheless, the pressure on Mohajerani and others associated with greater press freedom continued. During May charges were prepared against a senior official in the Ministry of Culture and Islamic Guidance, Issa Sakharkhiz. He faces up to three years in prison after granting permission to *Zan* newspaper to produce a special edition for the Tehran International Book Fair while the newspaper was under a closure order. His trial opened before a Special Court for Public Employees on May 31, 1999 and was continuing as of August 1999.

The judge of the Tehran Press Court, Saeid Mortazavi, unable to proceed with trials after dismissal of the jurors, required that accused persons post high bail in order to avoid detention. On May 29 two prominent supporters of President Khatami, Fereydoun Verdinejad, the director of the official Islamic Republic News Agency (IRNA), and Mohammed Reza Zohdi, the publisher of *Arya*, a daily newspaper, were arrested. Verdinejad was released after six hours on payment of the equivalent of the equivalent of U.S.\$50,000 bail. Zohdi was released on June 2, 1999 after paying the equivalent of U.S.\$30,000 bail. In two separate prosecutions, Mr. Zohdi faces charges before a press court of "publishing slanderous material, disturbing public opinion and exposing military secrets." Mr. Verdinejad faces similar charges before the Special Court for Public Employees, in addition to charges of "mockery of public organizations" and embezzlement.

In what appears to be part of the same wave of pressure on the independent media, the publishers of *Sobh-e Emrouz* (This Morning), *Zaman* (Time) and *Neshat* (Happiness) were summoned to appear before the Press Court on May 30, 1999. Hojatolislam Abdullah Nouri, the impeached former minister of the interior, elected leader of Tehran City Council, and publisher of *Khordad*, was also summoned to appear before a Special Court for the Clergy on the same day. As of August 1999 they were all at liberty awaiting trial.

On May 30, 1999, in response to this pressure, the Journalists Union issued a statement protesting these judicial actions against press freedom, noting that "[u]nfortunately in the past few months the press community is witnessing a series of measures by certain judicial sources which give cause for concern." The statement called on the judiciary to "prevent moves which tend to disturb journalists' activities."²³ Supporters of the independent press within the government also responded. On June 3, the deputy minister of culture for the press, Shaban Shahidi, questioned the function of the Press Court. "Why are journalists being treated like criminals?" he asked, noting the high bail demanded by the court in recent cases and the fact that journalists were being brought to the court "one after another" in recent weeks.²⁴

Kazem Shukri, editor of the center feature pages of *Sobh-e Emrouz*, a reformist daily, was

detained by order of the Press Court on July 20, 1999, following publication of an article which, according to the Tehran public prosecutor, distorted and insulted Islam. The Press Affairs department of the Ministry of Culture and Islamic Guidance issued a statement on July 21 protesting that Shukri's detention and interrogation were "unprecedented" and in violation of the Press Law. As of mid-August, Shukri was free pending trial.

Having failed to control the press through closures, prosecutions of editors and publishers, and intimidation, the conservatives turned to promoting amendments to the Press Law. The proposed amendments to the Press Law which had been prepared and submitted to the Majlis by twenty conservative deputies were passed in a first reading on July 7, 1999 by 125 votes to ninety with fifty-five deputies absent.

The proposed amendments would change the composition of the five-person Press Supervisory Board and the three-person selection board of the press jury by adding representatives of the Islamic Propagation Organization and the Friday Congregational Prayer leader. The amendments would also authorize Revolutionary Courts to prosecute writers and journalists who overstep the bounds of permitted criticism. "If this situation continues then a lot of independent newspapers will not be able to continue publication," observed the editor of *Khordad*, Ali Hekmat.²⁵ Conservative parliamentarians, like Speaker Ali Akbar Nateq-Nuri, defended the proposed amendments. "The press is a gateway for cultural invasion, so let us take measures," he said.²⁶

The proposed amendments to the Press Law would allow courts to force news reporters to reveal their sources, bar those involved in "anti-establishment" activities from holding any posts in any press institution in the country, and hold the press responsible for any articles that incite or encourage acts of violence against national security or the "interests of the Islamic establishment."²⁷ "The aim of those who have prepared these amendments," noted Azam Nouri, legal and parliamentary deputy of the Ministry of Culture and Islamic Guidance, "was not to clear up ambiguities in the present Press Law."²⁸ The amendments were denounced by reformists including Minister of Culture Mohajerani, who told the parliament during the debate that "we have to create laws in accordance with freedom, not freedom according to our laws."²⁹ Supporters of President Khatami generally tried to play down the significance of the new draft amendments, set to be adopted after a detailed examination by parliament in the next few months, pointing out that there was still a period of months of negotiation before a final vote on new amendments would be taken.

1 *Iran Times*, Washington D.C., October 7, 1997.

2 *Iran Times*, January 9, 1998. Ayatollah Yazdi retired in August 1999 and was replaced by Ayatollah Seyyed Mahmoud Hashemi Shahroudi. Ayatollah Yazdi remains influential in the leadership and was appointed a member of the Council of Guardians.

3 *Iran Times*, January 9, 1998.

4 *Iran Times*, April 24, 1998.

5 *Jame'eh*, May 30, 1998.

6 *Jame'eh*, June 7, 1998.

7 *Iran Times*, June 12, 1998.

8 Ibid.

9 *Iran Times*, August 8, 1998.

10 *Iran Times*, September 11, 1998.

11 *Keyhan*, September 20, 1998.

12 *Iran Times*, September 11, 1998.

13 *Iran*, November 26, 1998, p. 2.

14 Ibid

15 The system of government established after the 1979 revolution in Iran whereby the Leader of the Islamic Republic is a senior cleric.

16 *Hamshafiri*, November 28, 1998.

17 *Neshat*, August 17, 1999.

18 *Hamshahri*, November 5, 1998.

19 "Religious Court Bans Mention of Iranian Cleric," Agence France Press, March 4, 1999.

20 "Iran Closes Down Newspaper," *BBC News*, July 7, 1999. The memorandum, which named several members of parliament as linked to the planned campaign against the press, had been authored by Saeid Ememi, the former Information Ministry official identified by the government as responsible for the assassinations of at least five independent writers and activists in late 1998.

21 *Sobh-e Emrouz* (This Morning), February 2, 1999.

22 "Iranian moderate escapes impeachment," *BBC News*, *BBC Online Network*, May 1, 1999.

23 "Journalists' Guild Condemns Recent Pressures on Press." *Ettela'at International*, June 1, 1999.

24 "Why are Journalists Treated like Criminals?," *Hamshari*, June 3, 1999.

25 Jonathan Lyons, "Iran's Hardliners take aim at Press Freedoms," Reuters, July 7, 1999.

26 "Iran Closes Down Newspaper," *BBC News*, July 7, 1999.

27 R. Frank Lebowitz, "Controversial new law limits press freedom in Iran," Digital Freedom Network, www.dfn.org, 8/18/99.

28 *Hamshahri*, a daily newspaper, July 8, 1999.

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IV. THE IRANIAN LEGAL FRAMEWORK AND INTERNATIONAL LAW

Freedom of expression and freedom of the press are not adequately protected in Iranian law. The established regulatory structures are often violated or at best disregarded in practice. Article 24 of the Constitution of the Islamic Republic of Iran (1979), establishing the right to freedom of expression, qualifies that right by wide-ranging restrictions on its exercise:

Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law.

Article 168 of the constitution sets special conditions for the way in which press offenses are to be dealt with, stating that "political and press offenses will be tried openly and in the presence of a jury in courts of justice...."

In 1985 the Iranian parliament passed a press law which detailed the legal procedures for dealing with offenses by the press, defined to include all periodicals, including procedures to be followed in Press Courts. Article 2 of the law establishes the purpose of the press:

- a) To enlighten public opinion and raise public knowledge and understanding....
- b) To advance the objectives set forth in the Constitution of the Islamic Republic of Iran;
- c) To strive to eliminate false and divisive social boundaries and to avoid setting different-social groups and classes against each other by classifying them on the basis of ethnicity, language, mores, and local customs;
- d) To fight against the manifestation of colonial culture (profligacy, love of luxury, rejection of religiosity, propagation of prostitution);
- e) To maintain and strengthen the policy of "neither east nor west."²⁹

In addition, the law is open to broad interpretation and arbitrary application in its sweeping prohibition of "discourse harmful to the principles of Islam" (*mabani va ahkam-e Islami*) or to "the public interest" (*houghugh omumi*).³⁰ In this regard, the terms of the Press Law give little meaningful guidance to journalists and editors, while providing officials with ample opportunity to censor, restrict, and find offense. This lack of clarity in the law was highlighted by Minister of Culture and Islamic Guidance Mohajerani in his statement before parliament prior to a vote on his impeachment on May 1, 1999. The constitution's article 24, he remarked,

says the press have freedom of expression, except when it is detrimental to the fundamental

principles of Islam or the rights of the public. The article moreover says: The details of the exception will be specified by the law.... The fact, however, is these details have not yet been specified.³⁰

Article 34 of the Press Law requires that press offenses should be prosecuted in a general court before a specially constituted press jury. Under articles 12 and 36 of the Press Law, prosecutions are initiated by a council within the Ministry of Culture and Islamic Guidance, which is empowered to refer cases to the press court.³¹ Press courts are a form of general court which also try ordinary criminal and civil cases, although in such cases without the presence of a jury. The press courts are empowered to impose criminal penalties on individuals as well as to order closures of newspapers and periodicals. Although the constitution provides for the separation of powers and speaks in aspirational terms about judicial independence, such independence is lacking in practice.³² The open proceedings of press courts and the presence of a jury have meant that those proceedings have tended to be fairer than in other types of Iranian courts. Verdicts of the press court have the same status as verdicts of other general courts and as such may be appealed to a higher appeals court.

A press jury of seven is chosen from a pool of fourteen individuals, selected every two years by the Head of the Judiciary and made up of representatives of the Ministry of Culture and Islamic Guidance and the city council in each locality where the court is convened. In any given trial, seven serve as the jury while the other seven remain in reserve. The law states that those who serve on a press jury must be at least thirty years of age, have no criminal record and be "known for trustworthiness and sincerity and have a good reputation" (article 31). In practice, such juries have been made up of a mixture of clerics, government officials, and editors of government-controlled newspapers. The jury, after hearing a case, is empowered to make recommendations to the judge in two areas: on the guilt or innocence of the defendant and, if recommending a conviction, on the severity of the penalty to be imposed. The jury's advice is not binding on the court in either regard. Some legal commentators have seen a contradiction in the role of the press jury, created as a safeguard for press freedom but having only an advisory capacity. It is unclear from the law whether the press jury must also be convened for the appeal hearing.

The law stipulates that in exceptional circumstances the Supervisory Press Board within the Ministry of Information is empowered to close newspapers or magazines by administrative order.³³ The two instances specified in the law are for insulting the Supreme Leader of the Islamic Republic or the "recognized sources of emulation" (*marja-e taghlid*),³⁴ and for repeatedly insulting public morals.³⁵

The Press Law forbids censorship while at the same time it broadly establishes a basis for the harsh punishment of content deemed inappropriate. Article 4 declares that "no official or unofficial authority has the right to exert pressure on the press for the publication of any material or article, or to attempt to censor or control the press." But article 6 forbids, among other things, publishing material which "creates divisions among the different strata of society," or "harms the bases of the Islamic Republic." Such sweeping language is open to abuse.³⁶

The authorities have also employed other courts, such as Islamic Revolutionary Courts, to prosecute publishers, editors and journalists for their press activities, in apparent contradiction to the constitution's stipulation in article 168 that "political and press offences will be tried openly and in the presence of a jury...." The Islamic Revolutionary Courts, established as a temporary measure in 1979, have become a permanent fixture of the Islamic Republic's justice system. They are empowered to try "any offense against internal or external security."³⁷ Procedures in such courts fall far short of international standards: Defendants may be held indefinitely in incommunicado pretrial detention, proceedings are held in secret, and the defendant has no right of access to counsel. A second exceptional court, the Special Court for the Clergy, has also been

used in some press-related cases where the defendants have been Muslim clerics. These courts, which also offer few safeguards to the defendant and whose hearings are usually held in secret, are used to discipline dissident clerics and to stifle religious opinions regarded as heretical.

The powers of the Supervisory Press Board are not clearly defined in the Press Law. A debate has arisen over whether the board's powers to order the closure of newspapers (article 27 of the Press Law) contravenes the provisions of article 168 of the constitution as they concern the function of press courts. Iranian legal scholars have argued that the constitutional provision should take precedence, and have called for the revision of the Press Law to do away with any ambiguity over the need for all proceedings against the press to be dealt with "openly ... in courts of justice" rather than through the administrative channel of the press board.³⁸ Impartial, transparent judicial control over the regulation of constitutional freedoms such as freedom of the press would be more likely to result in such freedom being upheld in practice.

At a November 1998 press conference, in addressing the terms of the Press Law, Minister of Culture Mohajerani acknowledged that "in some instances they are ambiguous and in need of interpretation, but the ambiguities are not intended to impede the activities of the press." He acknowledged also that there were two views on the legality of the Supervisory Press Board's power to revoke publication licenses, but endorsed the status quo, characterizing as "extreme" both those who call for reform of the press law to bolster press freedom and those who think the law too permissive.³⁹

On July 7, 1999 the parliament passed the first reading of amendments to the Press Law designed to increase restrictions on the freedom of the press. The parliament has yet to agree on the details of the proposed amendments, which will further restrict the ability of Iran's independent press to function freely.

The thrust of these measures is to undermine the protections of the right to freedom of expression provided in international human rights law. In the language of the Universal Declaration of Human Rights,

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Iran in 1975, reads in part:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The ICCPR requires that restrictions on expression "will only be such as are provided by law and are necessary: a) For respect of the rights or reputations of others; b) For the protection of national security or of public order (*ordre public*), or of public health or morals" (article 19 (3)). The practice of the Iranian government clearly exceeds these narrowly drawn limits on restrictions of freedom of expression in which, for instance, national security grounds are permissible only in serious instances of political or military threat to the entire nation.⁴⁰

Article 14(1) of the ICCPR further provides that "in the determination...of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent,

independent and impartial tribunal established by law." In cases where rights such as freedom of expression are at stake, administrative actions such as newspaper closures should be subject to immediate appeal to an independent judicial authority, in keeping with the obligation of states under article 2(3) of the ICCPR to encourage judicial remedies to civil and political rights violations. In Iran, the Supervisory Press Board, dominated by members of the executive branch of government, is neither independent nor impartial and its rulings are not subject to judicial review. Moreover, in practice it exceeds the powers assigned to it in domestic law. Because there is no right to appeal an administrative decision, and because of the law's catch-all restrictions on freedom of expression, the government falls short of its obligation under article 2 (3)(a) of the ICCPR to provide an effective remedy to those whose right to freedom of expression is violated, "notwithstanding that the violation has been committed by persons acting in an official capacity."

The U.N. Human Rights Committee has noted that the manner in which a state defines and restricts expression determines the extent to which individuals enjoy the right to freedom of expression: "It is the interplay between the principle of freedom of expression and such limitations and restrictions which determine the actual scope of the individual's right.... [W]hen a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself."⁴¹ The restrictions on freedom of expression in Iranian law and practice create unacceptable infringements of the right to freedom of expression.

29 Press Law, article 6.

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"Iranian culture ministers's defense," *BBC News*, May 1, 1999.

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31 According to article 10 of the Press Law, the council is composed of a senior judge appointed by the head of the judiciary, a representative of the Ministry of Culture and Islamic Guidance, a member of parliament selected by the parliament, a university professor selected by the minister of science and higher education, and a newspaper publisher selected by other newspaper publishers.

32 For a detailed discussion of judicial independence in the Islamic republic see, Lawyers Committee for Human Rights, *The Justice System of the Islamic Republic of Iran* (New York: 1993).

33 The current members of the Supervisory Board are: Hojatolislam Nayyeri, representative of the judiciary; Dr. Kamrani, Majles representative; Dr. Mehrpour, representative of the Ministry of Higher Education and Science; Dr. Ebtekhari Jahroumi, representative of newspaper publishers; and Dr. Mohajerani, the Minister of Culture and Islamic Guidance.

34 Press Law, Article 27.

35 Press Law, Article 28.

36 For a fuller discussion of the Press Law see Middle East Watch (Now Human Rights Watch/Middle East and North Africa), *Guardians of Thought*, (New York: Human Rights Watch, 1993), pp. 24 - 26.

37 This description is from *A Glimpse of the Judicial System of the Islamic Republic of Iran*, an official document prepared by the judicial deputy to the head of the judiciary and circulated by the

Iranian government in 1991.

38 Dr. Nasser Katouzian, *Iran Farda*, vol. 47, September 1998, p.10.

39 "Press law adequate in spite of ambiguities," *Ettela'at International*, December 1, 1998.

40 Manfred Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary* (Strasbourg: N.P. Engel, 1993), p.355.

41 United Nations, *Compilation of General Comments and general Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.2, March 29, 1996, p.11.

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V. CONCLUSION

The outcome of the political struggle within Iran's clerical elite remains uncertain. Nevertheless, it is possible to arrive at some conclusions about the conditions which have resulted in the closure of newspapers, the detention and prosecution of journalists and editors, and the attacks on writers and newspaper offices by hezbollahi groups.

The issue of freedom of the press is bound up with the increasingly public contest between reformers associated with President Khatami and conservatives within the clerical leadership. As the U.N. special representative on Iran, Maurice Copithorne observed, "in practical terms, the contest is impeding improvements" in the human rights situation.⁴² Control over the press will become increasingly important as the February 2000 date for parliamentary elections approaches.

As long as the right to freedom of expression remains unprotected in Iranian law the press will be vulnerable to changing winds of political fortune. Progress in the first months of President Khatami's rule was the result of the personal influence of the president himself and his key ministers. As subsequent events have shown, this is not a stable basis on which to build respect for this fundamental human right.

Respect for the rule of law is essential for the protection of the freedom of the press in Iran. If officials resort to arbitrary administrative acts to close newspapers, or extend controls on the press through the Islamic Revolutionary Courts or Special Courts for the Clergy, then the safeguards contained within the law regulating the press are worthless. Moreover, the sinister presence of violent organized groups with links to leading establishment figures, and the personal control of special security forces by rival officials, have a chilling effect on the exercise of this and other basic freedoms. The close alliance between these groups and conservative elements within the government was made clear again in the recent clashes between student supporters of reform and the authorities. Public figures' private enforcers played a prominent role in the violent clashes with students at Tehran University in the early hours of July 9, 1999, which escalated into widespread violent street clashes several days later.

The freedom of the press fostered by President Khatami and his supporters is a limited one that exists only within the limits drawn by the clerical leadership. Those opposed to clerical rule still have no place in public debate in Iran. Within the permitted arena of discourse there are issues, such as the question of the role of the Supreme Leader of the Islamic Republic and the system of velayat-e faqih, around which a red line has been drawn.

The unpredictable and arbitrary force with which officials have responded to some independent journalists and publications contributes to a climate of fear among journalists. As Human Rights Watch noted in a 1993 report, "the hands of the government need descend on relatively few to silence many others."⁴³ The Iranian independent press appears far from being silenced at this

time, but the cost it may have to pay for its insistence in exercising its basic right to freedom of expression could be great if the conflict between different visions of the political future of the Islamic Republic continues to be carried on at the expense of fundamental freedoms.

42 Report on the Situation of Human Rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights, Mr. Maurice Copithorne, U.N. doc. E/CN.4/1999/32, December 1998.

43 Middle East Watch , *Guardians of Thought*.

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