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Iran (27)

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Iran

Country Report

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Iran

Country Report

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I. Background

I.1. Political background

Introductory remarks

There is no doubt that the 1997 Presidential elections in Iran were perceived as a major development in Iran. The unpredicted election of Mohammed Khatami as President by nearly 70% of voters has produced a tremendous feeling of expectation in the population. Khatami speaks about civic freedoms and emphasizes the importance of civil society. Khatami stresses his commitment to dialogue between civilizations and openly declares his wish to improve relations of Iran with the rest of the world including the USA. In addition, Khatami frequently talks about the rule of law and the importance of the Iranian Constitution. On the first anniversary of his election he declared *"the foundation of our law and system is the Constitution, which has recognized the people's right to be in charge of their own destiny and has also recognized our society's right to fundamental freedom"*. It is clear that in the Constitution there are certain areas that will need amendments in order to implement and facilitate the envisaged reforms. These areas regard mainly the role and responsibilities of the religious institutions in the power structure, in particular the position of the Supreme Leader, the Guardian Council and the Assembly of Experts.

At the time of Khatami's election it was predicted that he would have a very difficult time ahead but that, if only he would manage to obtain a majority in the Majles, in the municipalities and to replace the conservative Head of the Judiciary Ayatollah Yazdi, he would have a good chance of succeeding.

In fact, despite having obtained significant majorities both in the Majles and during the municipal elections, he has not yet succeeded in significantly consolidating power to be able to effectively push forward a number of reforms that were expected.

While on the one hand there have been important developments with respect to freedom of the press, the situation of women and human rights in general, it has also become clear that the conservative, revolutionary establishment has the means to block significant efforts to produce reforms and will use all its power to do so. The

¹ Amnesty International's access to Iran has been limited since the Islamic Revolution in 1979. So far whenever Amnesty International approached the Iranian authorities to get permission to undertake research in Iran, the standard answer has been that this was not the right time. Therefore, Amnesty International does not have direct access to information from the provinces. However, Amnesty International maintains contacts with some of the many Iranians abroad, who serve as links to people who are at risk of human rights violations in Iran.

Please note that Amnesty International is currently preparing a new country report on Iran which will be accessible at <www.amnesty.org> in a short while.

conservative camp can count on the Judiciary, the Revolutionary Guards, private foundations, the families of martyrs, the Basiji or voluntary para-military forces, the Supreme Leader, part of the Bazar and part of the clerical establishment.

Conservative backlash

In June and July 1998 there was an evidently mounting pressure on supporters of the reform-oriented policies of President Khatami. Increasing attacks led to the impeachment of Abdullah Noori, Minister of the Interior, one of the closest allies of the President and one of the most powerful Ministers. Moreover, an intense campaign was mounted against the liberal mayor of Tehran, Gholamhossein Karbaschi, again one of the President's staunchest allies, who was originally sentenced to five years in prison and 60 lashes on charges of misuse of public property and bribing. The sentence was reduced to two years prison and a fine by an appeals court in December 1999 and commuted altogether in January 2000 through a pardon requested by former president Akbar Hashemi Rafsanjani from Leader Ayatollah Ali Khamenei, in a move *"seen by some analysts as part of a campaign by conservative clerics, who are led by Ayatollah Khamenei, to project a more moderate image ahead of parliamentary elections on 18 February. [...] A 10-year ban on Mr Karbaschi taking part in any political activity, imposed with his original prison sentence, has not been lifted."*²

Establishment of the Assembly of Experts

A significant event of the recent past that has been of fundamental importance is the election of the Assembly of Experts on 23 October 1998. The Assembly of Experts is a body of 83 Clerics that supervises the leadership of the country. It is a powerful organ as it has the right to dismiss the Supreme Leader or call on the creation of a Leadership Council taking on his responsibilities. The Leadership Council can be established as an interim body before the election of a new leader. The Leadership Council consists of the President, the Chief of the Judiciary and a scholar from the Council of Guardians who is selected by the Expediency Council. There are universal direct elections to the Assembly every eight years. The current Assembly is still dominated by conservatives.

Legislative elections

Local council elections took place 26 February 1999. These elections promised to offer the possibility of more decentralization, one of the cornerstones of Khatami's policy. But in reality decentralization does not exist. From UNHCR's experience with Afghan refugees in Iran, there is no devolution of power to the provincial authorities as such and most decisions are deferred to the central authority. Furthermore, although the municipal elections have confirmed Khatami's popularity and have proved to be a major defeat for the conservative revolutionary candidates, this has shown no effect in practice. Most reforms that have been initiated have been blocked by the conservatives.

Parliamentary elections took place on 18 February and 5 May (run-off) 2000. These elections were also very important as at the time of Khatami's election the Majles was

² BBC: Tehran mayor pardoned, 25 January 2000

http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_618000/618351.stm

BBC: Tehran mayor sentence reduced, 24 December 1999

http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_241000/241804.stm

still dominated by conservatives. So far the Government, however, has not benefitted from the pro-reform majority in the Majles.

Economic situation

The economic situation is very dramatic. One of the greatest failures of President Khatami in his first tenure was his inability to deal with the economic situation. The unemployment among the 25- to 35-year-olds reaches 25 percent and the per capita income is below USD 4,000, which is quite low given rising levels of education among the Iranian youth. A French journalist commented on 7 June 2001: *"The despairing youth of Iran are going to vote with their feet on Khatami's reforms."* He quotes the construction worker Mohammad with saying: *"Freedom is not about relationships between boys and girls. Anyway, I'm too busy worrying about putting bread on the table."* Another man, Ali, observed: *"Whatever the result of tomorrow's poll, many of Iran's young dream of voting with their feet. 90 percent of my friends, even those who graduated, are unemployed. Who can blame them for wanting to leave the country..."*

2001 Presidential elections

On 8 June 2001 Khatami won with a massive landslide, gaining 78% of votes. There is no reason to believe, however, that Iran is now a democracy and that Khatami's victory will bring an immediate end to human rights violations. The President is the Head of the Executive and is responsible for implementing the laws passed by the Legislature, or Majles, which is also pro-reform. Laws passed by the Majles, however, have to be approved by the conservative Council of Guardians. Furthermore, the Head of the Judiciary is appointed by the Supreme Leader who is in turn appointed by the Council of Experts, a body of 83 religious-political leaders created after the 1979 revolution, which is in fact directly elected. The Supreme Leader appoints – according to a formula – the members of the National Security Council, the head of the armed forces and of the Expediency Council. Despite Khatami's victory and the considerable gains of pro-reform candidates in the parliamentary elections the number of pro-reform laws passed that have actually been implemented has been comparatively small, as many of them have been challenged in court. Reform is not so much in the hands of the President or of the Parliament but rather depends on the goodwill of another body, the Council of Guardians, whose members are appointed to equal parts by the Leader and the Parliament.

In this context it is also worth mentioning that many commentators, including UNHCR and the UK Home Office report that the Government clamps down or limits freedom of expression. However, it is rather the judiciary, notably the Revolutionary Courts, that are responsible for the clampdown. The Government does not do anything like that; it does not have the power to do that.

Iran is a country where torture takes place, apparently with impunity; where political prisoners – who are invariably prisoners of conscience – are detained, often arbitrarily and where the judicial system is structurally prejudicial against fair trial procedures that fulfill minimum international standards. In addition, the country retains the death penalty, carrying out one of the world's highest levels of executions while cruel, inhuman and degrading punishments are regularly imposed for crimes such as repeat theft, alcohol consumption and illicit sex. Moreover, unconfirmed reports indicate that conditions in official prisons are very poor, overcrowding being a particular issue of concern. Amnesty International has no reports from the "unofficial" prisons that are widely recognised to exist.

At the same time, Iran is one of the most dynamic and energetic societies in the Middle East region and some commentators have stated that it is possibly one of the most democratic in the region, where a range of political opinions can be expressed without fear of persecution and where those most at risk of human rights violations may also be those least likely to seek asylum.

If this is indeed the case, who then is at risk in Iran and why? Why are so many Iranians seeking asylum in other, notably western, countries? To answer this question it is crucial to achieve an understanding of the political, judicial and legal structures in Iran but also to bear in mind the numerous human rights violations that have been committed in the past years.

1.2. Political power structure

Leader of the Revolution (Rahbar)

Under Art. 110 of the Constitution, the Leader has the following functions:

1. Designate the general policies of the system of the Islamic Republic of Iran after consultation with the Expediency Council.
2. Ensure the good execution of the general policies of the system.
3. Issue decrees for referenda.
4. As the Supreme Commander of the Armed Forces, Chief of Joint Staff, Chief Commander of the Islamic Revolutionary Guards Corps, High Commander of the Disciplinary Forces, declare war or peace and mobilize the military.
5. Appoint, dismiss and accept resignation of Jury members of the Guardian Council.
6. The Leader is the highest authority in the Judiciary and the head of IRIB radio and TV organization.
7. Arbitrate and settle disputes and regulate relations among the three state powers.
8. Settle problems of the system through the Expediency Council that cannot be solved through normal channels.
9. Sign the order of appointment of the President after election by the people. The competence of Presidential candidates must be verified by the Guardian Council prior to the election and in the first term by the Leader as to whether or not they meet the qualifications set forth in this Law.
10. Dismiss the President, by taking the interests of the country into consideration after the Supreme Court has given a verdict on the violation by the President of his Legal functions or the disapproval of the President by the Islamic Consultative Assembly on grounds of insufficiency according to Art. 89.
11. Pardon and/or mitigate the sentences of condemned persons within the scope of Islamic precepts, upon the recommendation of the Head of the Judiciary.

The leader may delegate some of his functions and powers to another person.

Expediency Council (Majma-e Tashkhis-e Maslehat-e Nezam)

According to Art. 112 of the Constitution the Expediency Council is established upon instruction of the Leader to look into the following:

1. If the Council of Guardians decides that a bill is contrary to Islamic law or to the Constitution and if the Majles does not act accordingly the Expediency Council can be asked to settle the matter.
2. It provides advice in matters referred to the Council by the Leader.
3. It consults with the Leader on policy matters.

Council of Guardians (Shora-e Negahban)

The 12-member Council of Guardians is established under Art. 91 of the Constitution:

1. It consists of 6 religious scholars appointed by the Leader and 6 Muslim jurists presented by the Judiciary to the Majles and appointed by vote through the Majles. Members serve a 6-year term.
2. All bills of the Majles need to be forwarded to the Council to decide on conformity of the bill with the Constitution and Islamic principles.
3. It supervises the election of the Assembly of Experts, Presidential and Majles elections and referenda.
4. It interprets the Constitution.

Committee for the Supervision of the implementation of the Constitution

This Committee was established by President Khatami to ensure that the Constitution is properly implemented, i.e. to prevent conservative forces from abusing the Constitution.

Assembly of Experts (Majles-e Khebregan)

The Assembly is elected by the people every eight years and meets once a year. It has the right to discharge the Leader and to appoint a new Leader. It consists of 83 persons and all candidates are cleared by the Council of Guardians. Another one of its tasks is to supervise the work of the Leader.

1.3. Security forces

The Iranian army comprises mostly conscripts serving a two-year term and has an estimated 540,000 men in active service. The army is known to undertake military operations, conducted in the provinces of Kurdistan (Kordestan) and Western Azerbaijan (Azarbayjan-e Gharbi), against the local Kurdish insurgency.

A second group are the Revolutionary Guards, or Sepah-e Pasdaran-e Enghelab-e Islami, which are very much feared by a lot of people. In the period immediately after the revolution of 1979 they were responsible for arresting supporters of the old regime and opponents of the new regime, while today they seem to be disappearing from urban centres. They were organized in the early days of the revolution to back and defend the revolution and to serve as a counter-influence to the regular armed forces. They have 120,000 men in service and consist of young recruits dedicated to the Islamic revolution. The Pasdaran have in the past repeatedly been deployed in crushing civilian unrest, but are now mainly engaged in fighting insurgency and what they term "*counter-revolutionary military activities*".

Another unit are the Disciplinary Forces, also called Law Enforcement Forces (LEF), or *Niruha-ye Entezami*, which were created in 1990 because of the increasing reluctance

of the armed forces to be used against the protesting civilian populations. They were constituted by a merger of the police (*Shahrbani*), the Gendarmerie forces, the Islamic Revolutionary Committees (*Komiteh Enghelab-e Islami*, the religious police) and the units of the Revolutionary Guards that were responsible for security in the cities. Those units are now in charge of controlling demonstrations and riots in the cities. Those units serving as a moral police (*Komiteh, Monkarrah/Monsherrad*, 'Forces for Adjoining Good and Forbidding Evil') are today part of the LEF Unified Command, with most of their previous functions now carried out by the *Basiji*. But they also have the function, to a certain degree, and are given a free hand to monitor religious issues or what appear to be religious issues. The names *Monkarrah/Monsherrad* and *Komiteh* are no longer in use and there no longer seem to exist separate units responsible for monitoring moral conduct, but if there were units which could be called 'religious police' it would be the units succeeding the *Komiteh*.³

Concerning the power to arrest civilians, it has to be said that for standard crimes this is usually the responsibility of the combined Law Enforcement Forces (LEF). In addition, the judicial forces do have arresting officers associated with each court. It is unclear, however, if soldiers are legitimized to arrest civilians and if these kinds of arrests do actually occur.

The Mobilization of the Dispossessed, or *Sepah-e Basiji*, a paramilitary force who are some 300,000 strong. The *Basiji* were created to help the military campaign against Iraq in the years 1980-1988. Members are reportedly recruited from farms, factories, schools and government offices, i.e. from all parts of the population. Their tasks include monitoring the daily lives of the citizens, combatting social corruption including ensuring that the clothing and behaviour of women conforms to strict Islamic rules. Structurally, the *Basiji* are part of the Army, and comprise those conscripts with a more zealous religious agenda. It is not clear, however, if they are separated into special units or *bataillons* solely on this basis. Concerning connections with the *Pasdaran*, it is quite plausible that a *Pasdaran* approached a *Basij* and gave him orders. Still, this would rather have to be seen along the lines of this person being a senior military officer, someone who is notionally superior to a conscript or low-ranking officer.

Another group are the *Shura* Brigades, who reportedly comprise 17,000 Islamic militia men and women. They were created in 1993 after anti-government riots erupted in various Iranian cities. They are drawn from the Revolutionary Guards, some of them come from the *Pasdaran* and the *Basij* volunteer militia. They are particularly active in Kurdistan Province.

The Party of God, or *Ansar-e Hezbollah*, is an amorphous group composed of fanatic Islamist militants, whose members present themselves as the genuine followers of the path of the late Ayatollah Khomeini and guarantors of pure Islamic values. Although they are not officially recognized, they have occasionally supported certain conservative positions of the governments in power. Hezbollah has also been utilized

³ In telephone interviews on 3 and 8 March 2000 outside Iran, the Coordinator of the Student Movement Coordination Committee for Democracy in Iran (SMMCDI) "stated that the *Komiteh* had been "officially dissolved" but that, in Iran, "labels change very easily." In other words, these security units are no longer officially identified as the "*Komiteh*" but a similar structure continues to exist under a different name. He said that they are involved in a range of activities that include enforcing public morals, conducting investigations, and detaining people. The coordinator likened them to Islamic neighbourhood defence committees that possess broad powers. He claimed that the members are frequently armed and that many of the units have their own jails." source: Immigration and Refugee Board (IRB), Ottawa, Documentation and Research Branch: REFINFO IRN34005.E, 8 March 2000

by the most fanatic Islamic factions to suppress any manifestations of freedom of expression exhibited by those whom they portray as decadent, Westernized and liberal elements.

1.4. The Judiciary

The right to a fair and public hearing by a competent, independent and impartial tribunal established by law is essential for the preservation of human rights standards. It is a right recognised by the Universal Declaration of Human Rights, while the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of this right.

The UN's Principles on the Independence of the Judiciary were *"formulated to assist Member States in their task of securing and promoting the independence of the judiciary"* and they *"should be taken into account and respected by Governments within the framework of their national legislation and practice..."*. They state, inter alia, that: the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country; that the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason; that there shall not be any inappropriate or unwarranted interference with the judicial process; that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures and that the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

Amnesty International fully supports these standards and believes that members of the judiciary play a vital role in the forefront of human rights protection. While the Constitution guarantees the independence of the judiciary, Amnesty International is concerned that this sacred principle is undermined through law and practice in Iran.

Amnesty International believes that this lack of judicial independence and the vaguely worded laws have led to an alarming erosion in the delivery of justice, where the position of judges and lawyers has been weakened and the Bar Association depends on the judiciary for its continued existence. This has resulted in a catalogue of unfair trials, where standards have frequently fallen far short of international standards for fair trial. This includes trials in the Public and Press Courts, alongside 'special' courts, such as Revolutionary Courts or the Special Court for the Clergy, which also hear cases where, for example, freedom of expression is examined.

The UN Special Rapporteur on the Independence of Judges and Lawyers has reported on the limited progress made in the reform of the judicial system in Iran and the following is intended to contribute to the discussion underway in Iran.

Independence of the judiciary

Art. 156 of the Constitution states that the judiciary is *"an independent power which shall protect individual as well as social rights and shall be responsible for the administration of justice"*. However, the way in which judicial appointments are made has resulted in the creation of a dependent judiciary, where the requirement to pass

judgement on vague laws, as discussed below, may have contributed to the weakening of the position of judges.

The Head of the Judiciary, for example, owes his position to the Leader to such an extent that, for example, Hadi Marvi, First Deputy to the Head of the Judiciary, reportedly stated in 2000 that *"judges must obey the Supreme Leader and have no independence in judgement"*. The Special Representative of the UN Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran and the UN Special Rapporteur on the Independence of Judges and Lawyers have both voiced concern over this statement.

The Head of the Judiciary is appointed to a five-year term by the Supreme Leader, as indeed, according to Art. 162 of the constitution, are the Chief of the Supreme Court and the Prosecutor General. The Leader, according to the "Core document forming part of the reports of States Parties: Iran", *"is the highest authority in the country"* and according to Art. 110 of the Constitution, he *"has the responsibility and authority to determine general policies of the country..."*. That means that someone who fills a political position appoints the Head of the Judiciary.

The Constitution states that the role of the Head of the Judiciary is to carry out *"the responsibilities of the judiciary in all judicial, administrative and executive matters"*. According to Art. 158 of the Constitution, the Head of the Judiciary is responsible for the *"employment of just and worthy judges, their dismissal, appointment, transfer, assignment to particular duties, promotions, and carrying out similar administrative duties, in accordance with the law."*

Given that the heads of the provincial offices of the judiciary, who are appointed by the Head of the Judiciary, appoint judges in lower-ranking positions in their respective jurisdiction, in essence, all heads of the provincial judiciary indirectly owe their position to the Head of Judiciary, who is in turn appointed by the Supreme Leader. As a consequence, the judiciary is biased from the outset. What compounds this problem is the appearance of impartiality. While Art. 158 of the Constitution provides sweeping powers of appointment and removal of judges accorded to the Head of the Judiciary, Art. 164 states that *"[a] judge cannot be removed, whether temporarily or permanently, from the post he occupies except by trial and proof of his guilt, or in consequence of a violation entailing his dismissal"*. It is notable that those who will decide on the fate of a judge also appear to be appointed and dependent on the Head of the Judiciary and his appointments. Amnesty International is seeking clarification on these points.

Judges

Impartiality: the separation of powers

In 1994, the functions of investigative judge and prosecutor in Revolutionary and Public Courts were vested in the presiding judge of the case under investigation, although this amendment was not extended to the Special Court for the Clergy. Art. 27 of the Criminal Procedure Code expressly requires that *"the head or the judge of every bench shall be duty bound to carry out investigations in person"* while Art. 30 states that *"the judge of the court may personally attend preliminary investigation sessions in order to supervise the manner of the investigation."*

In other words, the functions of judge and prosecutor in Revolutionary and Public Courts were unified, i.e. a defendant's judge is also his prosecutor. One incident that highlights this problem involved the Iranian journalist Akhbar Ganji, who was forced to

wear prison garb like a common criminal in advance of a court hearing. When he initially refused, prison officials made him wear this garb by eventually beating him. He launched a complaint against the head of the Tehran judiciary, Ali Razini, who would then have had to decide whether to prosecute himself or not. Not surprisingly, Ali Razini found Akhbar Ganjis allegations of being tortured in prison insufficient and would not prosecute himself.

As Judges are also prosecutors, they can file charges. Amnesty International believes that this structure creates a confusion of roles in which judges are likely to find it difficult to maintain the impartiality required under international standards.

This structure, which contravenes Guideline 10 of the UN Guidelines on the Role of Prosecutors, namely that *"The office of prosecutors shall be strictly separated from judicial functions."*, indicates that the structure of the Public and Revolutionary Courts does not guarantee an impartial court as required under international standards for fair trial, including the provisions set out in Art. 14 (1) of the ICCPR.

Amnesty International notes with interest recent reports which indicate that a bill to re-establish the role of prosecutors has been passed by the Islamic Consultative Assembly (ICA). The draft reportedly provides for the separate hearing of civil and penal cases by suitably trained judges and provides for increased specialization in the investigation of crimes. Amnesty International has requested further information on the status of this bill.

Constitutional requirement to give a ruling and personal liability

Amnesty International has also requested clarification regarding the constitutional obligation for judges to pronounce a verdict, even where there are no clear provisions in national legislation concerning the issues in question, and the judges' personal responsibility for that decision.

Current arrangements appear to permit delivery by judges of a faulty or erroneous judgement due to the absence of relevant law. Such errors are also possible where relevant laws exist, but this does not excuse the imposition of a surety or penalty on judges: current arrangements appear to contravene Principle 16 of the UN Basic Principles on the Independence of the Judiciary which states that *"judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions."*

More specifically, Art. 167 of the Constitution states that *"The judge is bound to endeavour to judge each case on the basis of the codified law"*, but it adds that *"In case of the absence of any such law, he has to deliver his judgement on the basis of authoritative Islamic sources and authentic fatwas. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgement."* This means, that if there exist no relevant legal provisions the judge still has to deliver a verdict. This is very problematic given that there are many overworked judges, who are also prosecutors, and who are constitutionally required to deliver a verdict.

At the same time, judges must bear in mind that they might be held responsible for 'losses' incurred as a result of the decision: Art. 171 of the Constitution states that *"Whenever an individual suffers moral or material loss as the result of a default or error of the judge with respect to the subject matter of a case or the verdict delivered, or the*

application of a rule in a particular case, the defaulting judge must stand surety for the reparation of that loss in accordance with the Islamic criteria, if it be a case of default."

The impact on the administration of justice

Amnesty International is concerned that the impact on the administration of justice of a system where the judiciary does not appear to be totally independent, where there is no effective separation of powers, where a judgment is required, yet where judges are personally liable is extremely grave.

The Head of the Judiciary is appointed by a political figure. A politically appointed figure makes appointments to all lower judicial posts, who owe their allegiance to the Head of the Judiciary. He in turn appoints circuit court judges or lower court judges. Those judges have to make prosecutions and deliver a judgment, no matter if it concerns divorce suits, disputes between neighbours, etc. From that point on, however, a person could be at risk of unfair trial and human rights violations. The task faced by lower and appeal court judges seems almost impossible. They must investigate and prosecute allegations, some of which may be brought by their superior, the region's 'chief prosecutor'. The head of the court to whom the charges were allocated by the same superior is likely to view such charges, which may have been laid in reference to extremely vague laws, favourably, precisely because they originate from his superior. However, the lower court judge also understands that he must give a ruling, even in the absence of codified law.

Lawyers

Limits placed on the training and licensing of lawyers

It is a matter of concern that recent legislation requires the judiciary and security officials to control who can train, qualify and continue working as a lawyer. This legislation also provides for sweeping exclusions of individuals for reasons of association and belief that could lead to the exclusion of a lawyer from training or qualification on the basis of ethnic origin, religion, political or other opinion.

Art. 187 of the May 2000 Law on the Third Economic, Social and Cultural Development Plan, states that the judiciary *"shall be authorized to confirm the competence of the graduates of law who shall be granted licenses for the establishment of legal advisory institutes."* This provision would prevent the Bar Association from fulfilling Art. 6 of 1956's Bill on the Independence of the Bar Association authorizing the Bar to, inter alia, issue licenses to qualified lawyers, which is an internationally recognized duty of the Bar.

Amnesty International has expressed its concern that Note 1 of Art. 2 of 1997's Law Concerning Quality of Obtaining License for Justice Attorneyship, dealing with those seeking apprenticeship places with Bar Associations, states that *"Bar Associations shall inquire from the competent authorities"* whether individual applicants fulfill seven criteria, some of which question the expression, opinion and association of the applicant. The same Art. provides for sweeping exclusions regarding who can become a lawyer: it specifically excludes, amongst others, those who have *"a record of membership or activity in atheist groups, misleading denominations and groups opposed to Islam as well as groups whose manifesto is based on negating divine religions."*

The judiciary and Ministry of Intelligence therefore control who may be eligible for apprenticeship places with a Bar Association, and later entry into the legal profession. These provisions weaken the independence of the Bar Association and limit the personal freedom and professional security of the applicant, thus limiting lawyers from providing effective defence of their clients and undermining the professional security and independence required by lawyers.

Such provisions contravene Art. 23 of the Constitution, which states that *"The investigation of people's beliefs is forbidden and no one may be molested [sic] or taken to task for simply holding a belief"*, Iran's international commitments to freedom of expression and association under Art. 19 of the ICCPR, to which Iran is a state party, and Principle 10 of the UN Basic Principles on the Role of Lawyers. The latter calls for governments and professional associations to ensure that there is no discrimination against a person with respect to entry to and continued practice within the legal profession on grounds of a variety of criteria including political or other opinion.

Limits placed on the Bar Associations

Amnesty International notes the re-establishment of the Bar Association, with an executive board elected under supervision by the judiciary, in 1999. However, it remains concerned that lawyers are not guaranteed the rights - such as the right to independence - accorded to the profession under international standards which enable them to carry out their professional duties without fear or hindrance: as with the qualification as a lawyer, the judiciary retains control over who can join a Bar and stand for its leadership. In addition, duties normally carried out by the Bar have been reduced or subject to erosion by the judiciary.

Membership of the Bar

At every stage there are limits placed on the independence of lawyers and their representatives in the bar association. Under a law passed last year under the Khatami government relating to the Third Five-Year Plan special dispensation was given to the judiciary to approve the licensing of lawyers and the establishment of practices of new lawyers. It also reserves the right to the judiciary to vet and reject any of those lawyers trying to become members of the bar association.

Those who have been 'approved' by the judiciary and security officials and successfully qualified as lawyers face further examination when they apply to join a Bar: Art. 5 of the Law on the Manner of Reform of the Bar Associations, which facilitated the re-establishment of the Bar after over a decade of its abeyance, imposes sweeping conditions concerning membership of the Bar, in contravention to Iran's commitments to freedom of expression and association.

It forbids membership to, for example, pre-1979 government officials and other individuals associated with bodies that existed prior to the change of government in 1979; those convicted of having taken part in actions against the Islamic Republic of Iran; for membership in 'spy' organisations; of having 'corrupt morals'; those who 'drink alcohol' and many others.

While Amnesty International acknowledges the right of states to impose limits on joining associations on those who were involved in human rights violations or criminal offences, the organization notes that such restrictions can only be imposed on individual cases but should not be applied generally to a group or class of people. It is important for the law in this instance to be clear about who determines such limitations.

Under President Khatami's administration a remarkable law, masked as an economic law was integrated into the current Five-Year Plan. Art. 187 of the May 2001 Law on the Third Economic, Social and Cultural Development Plan provides that the judiciary will be accorded the ability to sanction, to vet, and to license lawyers. Furthermore, those who have recently graduated from law school or have a basis of legal training can set up shops and practices without any restrictions. The Bar Association protested and criticized that this would lower the level of legal expertise that could be accorded to the people who needed legal advice and representation.

Election to the Executive Committee of the Bar

Principle 24 of the UN Basic Principles on the Role of Lawyers state that lawyers shall be entitled to join self-governing professional associations to represent their interests and that the executive body of such associations *"shall be elected by its members and shall exercise its functions without external interference"* in accordance with international standards for freedom of expression and association.

The judiciary, however, along with the Ministry of Intelligence or the Revolutionary Guards controls who can stand for election to its executive committee: Art. 4 of 1997's Law Concerning Quality of Obtaining License for Justice Attorneyship states that the High Disciplinary Court of Judges *"shall investigate the eligibility of candidates to the executive committee"*, and the *"said court shall be required to inquire...about the record of candidates"*. This provision ensures that lawyers cannot freely elect representatives of their choice.

Accordingly, applicants to the supervised election of the 21st Executive Committee of the Bar Association were subject to approval - or rejection - by the Supreme Disciplinary Court of Judges. The head of that court reportedly stated that the court had no role in the investigation into the competence of those standing, since the court reportedly sent the list to the Ministry of Intelligence and merely reflected the latter's decisions regarding who could stand for election to the Executive Committee of the Bar.

The Executive Committee nonetheless protested to the Supreme Disciplinary Court of Judges against these limitations on its members, which exceed those set out in the law detailing the election of the Executive Committee of the Bar and allocation of training places in the 1956 Procedure Code for the Legal Bill on the Independence of the Judiciary.

Amnesty International is concerned that there is no clear, consistent or transparent criteria regarding eligibility for membership of the Bar's Executive Committee and seeks assurances that the limitations currently in force do not violate Iran's international obligations to freedom of expression or association under the ICCPR or the UN Basic Principles on the Role of Lawyers, notably Principle 24, and the right to freedom of association set out in Art. 22 (2) of the ICCPR.

Duties and Functions of the Bar

Since its re-establishment in 1999, duties and functions of the Iranian Bar Association, as they are typically carried out by bar associations internationally, have been reduced in scope from provisions that existed under the 1956 (Legal) Bill on the Independence

of the Bar Association. These reductions reinforce the limitations on lawyers, the Bar and the right to effective defence.

While it is the international norm that the Bar Association grants licenses to newly qualified lawyers, this duty has been removed under Iranian law.

Those prevented membership in the Bar are able to appeal, but this appeal does not appear to be heard by members of the legal profession, but rather by the Supreme Disciplinary Court of Judges, which can suspend or ban lawyers. The 1956 Law on the Bar Association provides for such hearings before the Lawyers' Disciplinary Courts but according to Amnesty International's information, the full scope of functions of this body has diminished: it can only consider cases referred to it, and few cases have been, save for those brought by lawyers themselves, rather than the judiciary. Amnesty International is seeking clarification regarding the status of this court.

Amnesty International is further concerned that the Bar is no longer able to discipline its members, despite legal provisions and international principles supporting this function. Under the 1956 (Legal) Bill on the Independence of the Bar Association, investigations into the malpractice of lawyers are undertaken by the Bar's Lawyers' Disciplinary Prosecutor and the Lawyers' Disciplinary Courts. Art. 17 of this law states that no lawyer can be suspended or banned from the practice of law except by a final decision by the Disciplinary Court.

The Revolutionary Court, however, has appeared to disregard this law and has detained, tried, convicted and suspended lawyers such as Nasser Zarafshan, Mohsen Rahami and Shirin Ebadi for actions that amounted to no more than carrying out their duties as lawyers.⁴

In addition to being an encroachment on the mandate of the Lawyers' Disciplinary Court, the trial of these cases in the Revolutionary Court raises serious concern about guarantees of due process and fair trials. The UN Special Representative on Iran has also expressed his concern about this, especially in connection with the lack of open trials, access to lawyers and families in this court.

Such actions are also contrary to Principle 28 of the UN Basic Principles on the role of Lawyers, which states that *"disciplinary proceedings against lawyers will be brought before an impartial disciplinary committee established by the legal profession"* or before an independent statutory authority or court and shall be subject to independent judicial review.

⁴ "Following a closed trial that ended in September, Shirin Ebadi and Mohsen Rahami, human rights defenders and lawyers, received suspended sentences and five years' suspension from practising law in connection with the production and distribution of the videotaped "confessions" of Amir Farshad Ebrahimi. His videotaped testimony included statements concerning his former group, Ansar-e Hezbollah (Partisans of the Party of God), and how the group was instructed to break up public meetings and beat up reformist activists. [...]"

In December, the trial began of 18 individuals, including former senior Ministry of Intelligence officials, charged in connection with their alleged involvement with the murder of two politicians and two writers in 1998. [...] Shirin Ebadi (see above), a lawyer representing one of the victims' families, had earlier stated that the judiciary had not given her access to the case files and in December, a lawyer for the families of the two writers, Nasser Zarafshan, was detained for suggesting that other unsolved murders formed part of the case and should be investigated and tried simultaneously." source: Amnesty International: Annual Report 2001, Iran

The first, in November 1999 coincided with the start of the electoral campaign for the parliamentary, or *Majles* (Islamic Consultative Assembly), elections to be held in February 2000. The second clampdown occurred in April 2000, prior to the second round of the *Majles* elections and following a controversial academic conference in Berlin.⁵ The third wave of repression of intellectuals and journalists marked the start of the sixth *Majles* session in July 2000. In May 2000, the outgoing *Majles* ratified a Press Law which significantly curtailed freedom of expression and which directly resulted in the imprisonment of prisoners of conscience. Incoming *Majles* members sought to amend the law, but were subject to unprecedented intervention by the Supreme Leader, Ayatollah Khamenei, who called on parliamentarians to suspend their deliberations.

In 2000, there were continued reports that scores, possibly hundreds, of political prisoners, including prisoners of conscience sentenced after unfair trials in previous years, continued to be held. Scores of the students detained following demonstrations in July 1999, including those associated with banned or tolerated secular political parties, continued to be held throughout the country that year.

Up to June 2001, Iran has witnessed the arbitrary arrest and incommunicado detention of scores of intellectuals, amongst them religious nationalists known as "Milli Mazhabi" (Iran Freedom Movement). For instance, in March 2001, 23 people were arrested in a single raid when they were meeting at a private residence.

The judicial system and lack of effective safeguards of the rights of the accused, Iran's national and international commitments notwithstanding, are important obstacles in the path to greater freedom of expression and association. Despite calls for its reform, made even by the Head of the Judiciary, Ayatollah Hashemi Shahroudi, the judicial system is, in the view of a range of commentators, the largest obstacle to an improvement in the human rights situation in Iran.

After a year in office, the Parliament gradually displays some encouraging signs, in particular concerning the Article 90 Commission, which reviews indiscretions and complaints by private citizens. The Commission does not have the judicial functions to implement these decisions but it wields considerable social power.

Freedom of Expression

The limitations on the administration of justice are compounded by vague laws that restrict freedom of expression:

Indeed, Amnesty International is specifically concerned that the right to freedom of expression and association as recognized by Iran's Constitution and international human rights treaties to which Iran is a state party, remains subject to restrictions in national law that go beyond those permitted under the Constitution and international law. Some laws impose explicit restrictions on the right to freedom of expression with penalties including imprisonment, flogging and fines. Such restrictions under national law are exacerbated by irregular trial procedures or interference in the judicial process. Other laws are vaguely worded and open to abuse. This situation has over the years produced a catalogue of victims of arbitrary detention, imprisonment after unfair trials

⁵ HRW: Stifling Dissent: The Human Rights Consequences of Inter-Factional Struggle in Iran, May 2001. <<http://www.hrw.org/reports/2001/iran>>

and other punishment for no reason other than the expression of their conscientiously held beliefs. Such practices are not only contrary to international human rights standards, but they are also contrary to Iran's own Constitution.

The Islamic Human Rights Committee has stated that *"...when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself"*. In the January 2000 report to the UN Commission on Human Rights the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression urged *"all Governments to ensure that press offences are no longer punishable by terms of imprisonment, except in cases involving racist or discriminatory comments or calls to violence. In the case of offences such as "libeling", "insulting" or "defaming" the head of State and publishing or broadcasting "false" or "alarmist" information, prison terms are both reprehensible and out of proportion to the harm suffered by the victim. In all such cases, imprisonment as punishment for the peaceful expression of an opinion constitutes a serious violation of human rights."* (E/CN.4/2000/63, para 205)

Developments in 2000

Writers who addressed political and social reform or who were critical of the actions of political leaders were detained, charged and imprisoned, frequently under vaguely worded charges. In 2000, at least 30 publications, the majority supportive of reformist views were suspended by judiciary order. At least 12 journalists, writers and intellectuals were arrested and tried, usually after unfair trials. More specifically, a massive clampdown on freedom of expression occurred in the period before the second round of parliamentary elections in April 2000, before the passing of a very restrictive Press Code on 18 April 2000 by the outgoing Majles. The new law includes provisions such as forbidding publication of newspapers that have been suspended under another name, requiring newspaper licenses to be approved by the Ministry of Intelligence and the State Security Court's power to close down any newspaper immediately for a two-month period.

Those imprisoned include Mohammed Rhesa Khatami, the President's brother, who won the highest number of votes in the Tehran constituency in the parliamentary elections; Fereyduh Verdinejad, head of the official news agency IRNA; two presidential advisers; Faezeh Hashemi, director of the daily Zan magazine; Saeed Hajarian, who was seriously wounded in an assassination attempt; Mohammed Hassan Ziaifar, the head of the Islamic Human Rights Commission, who was doing his utmost to establish an independent and effective human rights body.

Dariush Foruhar from the banned Iran Nation Party, frequent critic of the government, in particular concerning human rights, and his wife Parvaneh Eskandari were stabbed to death in their home on 22 November 1998. Majid Sharif, the journalist of Iran-e Farda, went missing on 20 November 1998 in northeastern Iran. On 26 November, his brother was summoned to a mortuary in Tehran to identify the body.

Pirouz Davani, a journalist, disappeared and his whereabouts remain unknown. Mohammed Mokhari, poet and literary critic, disappeared on 3 December 1999. The body was identified by the family in the Tehran mortuary on 9 December, bearing marks of torture. Another writer, Mohammed Jafar Puyandeh, who, together with other writers, including Mohammed Mokhari, had participated in an active campaign to establish the Independent Writers' Association, disappeared on 9 December 1999, his body was found one day later.

It is important that such disciplinary proceedings against lawyers are not contrary to Principle 16 of the UN Basic Principles on the role of lawyers, which requires governments to ensure that lawyers *"are able to perform all their professional functions without intimidation, harassment or improper interference."*

In essence, then, you have to be vetted by the Ministry of Intelligence, no matter if you intend to become a lawyer, a member of the Bar Association or a member of the Executive Committee. Amnesty International is concerned that lawyers in Iran do not enjoy the right to professional security as the Bar appears to be dependent on the goodwill of the judiciary. In a speech of February 2001, the Head of the Bar Association, Zaid Mohammed Shahari, referred to the limited personal security of Bar members and assaults by groups who do not accept the independence of the Bar.

Administration of justice

Art. 14 of the ICCPR sets out the minimum requirements for fair trial. In addition to a competent, independent and impartial court, these include prompt information of the individual about the charges against him; provision of adequate time for the preparation of his defence and communication with counsel of his own choosing, trial in a public hearing without undue delay, in the presence of the defendant and with assigned legal assistance in any case where the interests of justice so require. In addition, Art. 14 (5) of the ICCPR states that everyone convicted of a crime shall have the right that his conviction and sentence be reviewed by a higher tribunal according to law.

In practice, however, these minimum international legal obligations are often violated by procedural irregularities in the Press and 'special' courts, such as Islamic Revolutionary Courts and the Special Court for the Clergy.

Those who exercise freedom of expression and association are reportedly often arrested without being informed of the reasons for their arrest and, contrary to Art. 9 (3) and (4) of the ICCPR, they may be subject to prolonged pre-trial detention without access to family or legal counsel, and without adequate opportunity to challenge the lawfulness of the detention order before a judicial authority.

Although many of the detained lawyers face serious charges, contrary to Principle 1 of the Basic Principles on the role of lawyers, they are not regularly given adequate opportunity to consult with legal counsel, and lawyers are frequently denied prompt access to their clients and sometimes have no access at all. They further have been obstructed in their preparation of the defence by not having access to the full case dossier.

Such practice appears common in cases relating to freedom of expression, irrespective of the nature of the court trying the case, or the specific charges concerned. Thus, not only are the laws under which they are charged unfair, but defendants then face procedures that violate international standards for fair trial.

For example, in December 2000, Ali Afshari and Ezzatollah Sahabi were arrested following speeches they gave at Amir Kabir University. Ali Afshari's speech reportedly called for a referendum on the *velayat-e faqih*, or rule of the jurisprudent, by which the Leader of Iran is chosen. However, he reportedly stated in court that he had been denied the opportunity of consulting his lawyer and the court reportedly refused to pass on to Ali Afshari's lawyer the file of the case. The two men were reportedly held in

incommunicado detention, possibly for up to five months, and their families had not been informed of their whereabouts. In late May 2001, both men made 'confessions' in unclear circumstances while still in incommunicado detention.

Additionally, in March 2001, scores of individuals reportedly associated with the *Milli Mazhabi*, or Religious Nationalist movement, were arrested. At least one, Mohammad Bastehnegar, was reportedly charged with "*acting against Islam*", which is punishable by death and held in incommunicado detention, without access to a lawyer, until he was permitted to meet with his wife on 13 May.

Right to Fair Trial and Appeal

Art. 14 (5) of the ICCPR states that everyone convicted of a crime has the right to appeal the conviction and the sentence. Art. 44 of the Theologians' Law, however, states that "*Verdicts of courts for theologians' affairs shall be final...*" and there is also only a limited scope for appeal in Islamic Revolutionary Courts which are based on the defendant's challenge of the competency of the judge or if the verdict deals with execution or corporal punishment. Such limitations do not conform to the internationally recognized right for a person convicted to challenge his or her conviction and sentence in a higher court.

In particular, the SCC is not subject to the jurisdiction of the judiciary. As it is an extraordinary court it violates international human rights standards which provide the right for people to be tried by ordinary courts using established judicial procedures.

A flawed judicial system where the judiciary possesses overwhelming powers is not independent, due to ineffective defense by lawyers, to limits imposed by the judiciary, coupled with vague criminal laws.

1.5. Human rights

Overview

Right after Khatami's election in August 1997, there was a short period of grace. Nonetheless, in the latter half of 1998, human rights issues in Iran were marked by an increase in human rights violations (HRVs) centering on disappearances and subsequent extrajudicial executions of journalists and intellectuals that came to be known as the 'serial murders'. In the latter part of the same year, signs of a growing clampdown on freedom of expression and association appeared which was coupled with increasing domestic debate and dissent over regulations concerning other social issues and freedoms, such as the dress code and moral attitudes.

These issues continued to dominate the human rights agenda in 1999 and 2000, marked by a growing polarisation in domestic politics between the "reformist" and "conservative" groups, culminating in student demonstrations in July 1999 over the closure of a popular newspaper called 'Salam' (Peace). The numerous arrests - often arbitrary - in the aftermath of the widespread student demonstration, were marked by incidences of torture and resulted in the death sentence for 4 student leaders in September 1999 which was reduced to life-term prison sentences on 30 April 2000.

It was followed by three distinct periods during which journalists and intellectuals have been targeted, detained, tried and imprisoned and newspapers closed.

Freedom of Expression and Association has certainly been the defining human rights issue since the latter part of 1998, through to 2001. The closure of the newspaper Salam (Peace/Hello) in July 1999 resulted in mass demonstrations and numerous arrests, many of which were arbitrary and resulted in unfair trials. Mashallah Shamsolvaezin (of Salam and its successor newspapers) and Hojjatoleslam val Moslemin Abdollah Nouri (of Khordad) were put on trial in November 1999. This was followed by the wholesale closure of over 20 newspapers in April 2000, with subsequent closures and frequent arbitrary detentions throughout the year. At the end of 2000, at least 34 journalists, writers and human rights defenders had been questioned, detained and tried, some of them tortured. All of them have been adopted as POCs by Amnesty International.

Laws pertaining to freedom of expression

Legal safeguards of freedom of expression and association are found in Iranian law. In addition, Art. 19 of the ICCPR states:

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.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall 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.

Iran's Constitution provides the basis for individual freedom of expression: Art. 23 states that *"The investigation of individuals' beliefs is forbidden" and "no one may be molested or taken to task simply for holding a certain belief"*. Art. 24 provides for freedom of expression in press and publications, stating that *"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"*.

Amnesty International is, however, concerned that restrictive, contradictory and vaguely worded provisions contained in the Penal Code, the Theologians' Law and the Public Courts and Revolutionary Tribunals Procedural Law undermine the full exercise of the right to freedom of opinion and expression. Such limitations in national law would go beyond those permitted under Iran's constitution and Art. 19 (3) of the ICCPR. The following sections examine these laws and the various aspects of how they impermissibly restrict the exercise of the right to freedom of expression.

Forming or joining an association and "acts against state security"

The Penal Code contains a number of vaguely worded articles relating to association and "national security" which prohibit a range of activities, such as those connected with journalism or public discourse, which do not amount to recognizable criminal offences. These include Art. 498 and 499 which state that whoever forms or joins a group or association either inside or outside the country which seeks to *"disturb the*

security of the country" will be sentenced to between two and 10 years' imprisonment. There is no definition of 'disturb' or 'security of the country' in the Code. Such restrictions need to be clearly set in national law and should be consistent with international standards.

Art. 500 and 610, addressing national security, are similarly vaguely worded. Art. 500 states that "...anyone who undertakes any form of propaganda (*har nahv-e tablighati*) against the state...will be sentenced to between three months and one year in prison." Art. 610 states that where two or more persons gather and collude to be the perpetrators of a crime against internal or external security of the nation, or to facilitate it, where or not they are considered '*mohareb*'⁶, will be imprisoned for between two and five years. 'Security' and 'propaganda' are not defined in the Penal Code, and in practice these articles have been used to detain, try and convict journalists, intellectuals and social commentators, whether in connection with their writing or statements made in public, amounting to no more than the expression of their beliefs or opinions.

For example, 29 individuals who participated in or supported a conference entitled *Iran After the Elections* held at the Heinrich Böll Institute in Berlin in April 2000 were tried in November and December 2000 by the Islamic Revolutionary Court on charges including "acts against state security" (*aqdam 'aleye amniyat-e melli*), "collaboration with counter-revolutionary groups", "forming or membership of a group or association that seeks to disturb state security", "propaganda against the state" (*tabligh-e 'almi 'aleye nizam*) and "insulting Islam" in connection with speeches the participants gave at the conference. The charges were based on various articles of the Penal Code, including Art. 498 and 500, cited above. At least nine of the defendants have been convicted and sentenced to prison terms, yet no evidence was produced to suggest that the defendants were involved in any violent activities connected to their participation at the conference. The sole evidence seems to have been limited to the defendants' presence at and their presentations to the conference. These presentations were, in fact, reproduced and published in 2000, in a book entitled "*Konferans-e Berlin; Khedamat ya Khiyanat*", (The Berlin Conference: Service or Treason). The book was fully authorized by the Ministry of Culture and Islamic Guidance and was, therefore, legally published.

Amnesty International believes that those convicted and sentenced to prison terms are - where they are still detained - prisoners of conscience, punished for the non-violent expression of their conscientiously held beliefs. The organization considers the conviction of participants at the Berlin conference, and their later imprisonment, under, inter alia, Art. 498, 499, 500 and 610 of the Penal Code, which address 'joining or forming an association' and 'acts against state security', to be contrary to Art. 19 of the ICCPR and Art. 23 and 24 of the Constitution. These vaguely worded articles have been used, in this case, to punish individuals for exercising their right to freedom of expression.

⁶ Art. 183 defines as *mohareb*: "Anybody who takes up arms to create fear and to deprive the people of freedom and security..."

Art. 186 extends this definition: "Any organized group or association that has an armed uprising against the Islamic government, as long as the central leadership of that group is in existence, all its members and followers who know the stands of that group or association or organization and conduct in some way effective activity and efforts to advance its goals, are *mohareb*, even though they may not be involved in the armed wing..."

"Insult" to Religion

Laws relating to religion have been used repeatedly to limit freedom of expression. These include, in particular, Art. 513 of the Penal Code and Art. 6 and 26 of the Press Code.

Under Art. 513, offences considered to amount to "insult" to religion can be punished by death or imprisonment of [between] one to five years. Similarly, Art. 6 and 26 of the Press Code *proscribe "writings containing apostasy and matters against Islamic standards (mavazin-e eslami)" and "the true religion of Islam..."*, but state that such cases will be heard in a criminal court. Art. 6 of the Press Code specifically states that those convicted will be *"assigned punishments according to Art. 698 of the Penal Code."* This article concerns the intentional creation of *"anxiety and unease in the public's mind"*, *"false rumours"* or writing about *"acts which are not true"*, even if it is a quotation, and provides for between two months and two years' imprisonment or up to 74 lashes.

Both the Penal Code and Press Code do not specifically define what activities constitute insult to religion and have, indeed, been used to punish people for the expression of their opinion. For example, journalists connected with the newspaper *Neshat* (Happiness), including the publisher, Latif Safari, editor Mashallah Shamsolvaezin and another journalist, Emadeddin Baqi, were detained, tried, convicted and sentenced, each to prison terms in excess of two years, for the publication of two articles which discussed the place of the death penalty in society. The court considered the two articles to amount to *"insults of religion."*

Special restrictions for theologians

Vaguely worded articles in the Theologians' Law have resulted in the prosecution, conviction and imprisonment of theologians for the mere expression of their views, whether in print or public discourse. According to Art. 18 of this law, *"acts which customarily cause insult to the dignity of Islamic theology (clergy) and the Islamic Revolution are construed as an offence for theologians."* Such unspecified 'acts' have resulted in unfair trials, notably of alleged press violations being tried in the Special Court for the Clergy (SCC) and the imprisonment of prisoners of conscience.

For example, Hojjatoleslam Hasan Yousefi Eshkevari, director of Ali Shariati Research Centre and contributing editor of *Iran-e Farda*, which was closed in April 2000, was charged under this law in connection with his presentation at the Berlin conference. He was arrested upon return from Germany in August 2000 and in October 2000 sentenced after an unfair trial before the Special Court for the Clergy (SCC) to a prison term, the length of which has not been made public. The trial reportedly was a consequence of his discussion of changes in Islamic laws concerning dress code and judicial punishments and organized religion's connection to state power. The charges brought against him are all punishable by death and included defamation, heresy, being at war with God and corrupt on earth as well as charges related to national security. The decision was not made known. However, in May 2001 it was made public that the death sentence had been overturned by an Appellate Court.

Another prominent case involves reformist cleric Hojjatoleslam val Moslemin Mohsen Kadivar, who was arrested on 27 February 1999, and sentenced to 18 months' imprisonment by the SCC on 21 April 1999. The charges brought against him reportedly included *"propaganda against the sacred system of the Islamic Republic"*,

"publishing lies" and "confusing public opinion". These charges are believed to relate to an article published in the newspaper Khordad on 14 February 1999 in which he appeared to question the role of the clergy in the government of Iran and expressed concerns over controls on freedom of expression.

Criticism, insult, satirization and defamation

There are at least nine laws, many of which are vague and overlap, that deal with insult and defamation, notably of state representatives. The punishments set out in the Press and Penal Codes provide for flogging, along with imprisonment. A number of individuals have been detained or imprisoned under these laws for activities which amount to no more than the expression of their conscientiously held beliefs. Amnesty International has adopted a number of these individuals, such as Emadeddin Baqi, Mashallah Shamsolvaezin and Hojjatoleslam val Moslemin Abdollah Nouri, as prisoners of conscience, as they were imprisoned for the non-violent expression of their conscientiously held beliefs.

Art. 23, 27 and 30 of the Press Code deal with criticism, insult and defamation. Art. 27 provides for the "invalidation" of a publisher's permit to publish and referral to the courts without the usual requirement of a formal complaint being lodged at the Press Court where insult of "the Leader or the Leadership Council of the Islamic Republic of Iran and the indisputable Sources of Imitation" has occurred. Art. 30 prohibits publication of articles containing personal insults, defamation, swear words and obscenity, though it provides no definition regarding what constitutes these acts.

Articles of the Penal Code relating to this area of crime and punishment include the vaguely worded Art. 514, 608, 609, 697 and 698. Art. 608 provides for flogging and a fine as punishment for "*insulting others, such as using foul language or indecent words...*". Art. 514 specifically identifies insults made against the late Ayatollah Ruhollah Khomeini, the first Leader of the Islamic Republic of Iran, while Art. 609 states that criticism of a wide range of state officials in connection with carrying out their work (*dar hal-e anjom-e vazife ya be sabab-e an*) can be punished by a fine, 74 lashes or between three and six months' imprisonment for insult (*toheen*). More specifically, Art. 609 prohibits criticism of state officials considered to be the heads of any of the three bodies: the Supreme Leader, the President, the Speaker of the Majles, assistants of the President, Ministers, deputies in Parliament, members of the Council of Guardians, Assembly of Experts, the judiciary and others.

Art. 697 states that if an individual makes allegations of an act that "*can be considered a crime according to law*", but who cannot prove that it is true, will be sentenced to between one month and one year's imprisonment or 74 lashes or a sentence combining the two. A note to the article states that where the statements have been proven, but where it constitutes "*propagation of obscenities*" (*fohesha*), the person will also be sentenced. Art. 698 concerns the dissemination of false information. This is punishable by flogging, a fine or imprisonment.

For example, in December 2000, Ali Afshari, a student representative of the *Daftar-e Tahkim-e Vahdat* (Office for Strengthening Unity), was arrested following a speech he gave at Amir Kabir University in which he reportedly called for a referendum on the election of the Supreme Leader, thus criticizing the *velayat-e faqih*, or rule of the jurisprudent, by which the leader of Iran is chosen. This opinion was reportedly considered to have been slanderous to the state's leadership and has resulted in his arrest, although Amnesty International does not know the specific articles under which

he was detained. He was held in incommunicado detention and his lawyer has stated repeatedly that he has not had access to Ali Afhsari at all. He has been in detention since then. In June 2001 he appeared on television apologizing for his actions.

A current case that was reported to Amnesty International concerned Mahmud Salehi, from the city of Saqqez (Saghez), who was the President of the local Bakers' Union. He was detained in connection with trade union activities in August 2000 and released in April 2001.

Admission criteria

Discussing freedom of expression it is important to mention a rather inconspicuous law that was passed in response to the creation of the Supreme Council of the Islamic Revolution in 1989. Its regulations determine who will be admitted to university, who can and cannot receive state assistance in terms of financial grants for education or training and who would be employed in a state body, be it the ministry or a parastatal organization, as well as who would be able to work as a teacher or doctor. There are six essential criteria which an applicant needs to fulfill, which, in essence, provide for sweeping exclusions that serve to restrict freedom of expression. They require the following:

1. Belief in Islam or an approved religion of the state;
2. Adherence to Islamic precepts (in case of non-Muslims, no violation of these);
3. Acceptance of the Islamic Republic of Iran (IRI);
4. Not having a connection with group against the IRI or with the Shah;
5. Not of unsound moral character;
6. Not having acted against or not in keeping with one's profession.

After 1989, however, Amnesty International does not have consistent evidence as to what a degree the regulations are implemented. There were cases in the past, when the Komite did still exist, and when it was a more difficult to get access to relevant information. The law could be enforced perfunctorily, or simply through a checklist, or invoked if somebody has got a bad relationship with someone applying for university or a state job. The criteria are still in the statute books and although the regulations may not be enforced, they can be enforced.

According to the stories of asylum seekers interviewed by Amnesty International, this law could indeed be one of the reasons why many people are seeking asylum abroad although very few actually refer to it in their claims of persecution. Furthermore, according to Iranian law a person is not guaranteed a job consistent with her/his training, but s/he is simply guaranteed a job. There are a lot of people who were trained in a variety of fields and may have worked for a ministry under the Shah, e.g. as a car driver. The consequence is, if they worked for the Shah, they may not get a work permit under the current regime.

Other Issues of Concern

Death Penalty⁷

⁷ Amnesty International: Iran: Halt the surge of executions, 17 August 2001
<http://web.amnesty.org/ai.nsf/Index/MDE130312001?OpenDocument&of=COUNTRIES\IRAN>

According to Amnesty International in 1999 there were 165 executions, many related to drug trafficking. The UN Special Representative on Iran estimated that 130 executions occurred from January 2000 to end July 2000. In 1998 a serial killer in Tehran was executed by hanging. The media emotionally followed the case and the execution was a very public affair. In August 1998 one of the Baha'is in detention, Ruhollah Rowhani, was executed after the death sentence was confirmed by the Supreme Court. This was initially denied by the Iranian Government, which later had to admit that Mr. Rowhani had indeed been executed.

By Law the death penalty can be carried out for offenses such as espionage, murder, armed robbery, abduction, rape, adultery or incest, sexual intercourse between a non-Muslim man and a Muslim woman, homosexual intercourse, drug smuggling, the use of arms to spread fear or alarm among the people or deprive them of their freedom or security, or the spreading of corruption on earth (mofsed).

A famous case was that of the German businessman Helmut Hofer, who was sentenced to death in January 1998 for having had sexual relations with a Muslim woman, and who was later released. (see UNHCR Background Paper) The issue was of particular interest as it came after the Mykonos trial in which a German Court accused Iran's highest officials of responsibility in the killing of four Iranian opposition figures in Germany. Hofer was eventually released. The release is said to have coincided with the release of an Iranian accused of spying in Germany. As already mentioned, the cleric Eshkevari was recently sentenced to death after his arrest upon return from participation in the Berlin Conference, a sentence which was later overturned.

In 2000, at least 75 executions were reported and 16 death sentences imposed, often in connection with murder charges. However, the true number may have been considerably higher. The Head of the Judiciary announced in January 2001 that 800 people were on death row following their convictions for drug trafficking. Death sentences passed after the unfair trials of Akbar Mohammadi, Ahmad Batebi, Mehrdad Sohrabi and Abbas Deldar, who had been detained following the student demonstrations in July 1999, were commuted on 30 April. (AIR)

On 21 May 2001, in what seemed a purely political case, a former member of the Iranian airforce, was imprisoned, convicted and executed for espionage.

The number of executions recorded by Amnesty International in Iran until June 2001 has reached 44, although the true figure may be much higher.

The use of the death sentence is, however, not undisputed and there are indications of dissent: Following the end of their trial in January 2001, 15 secret service agents were convicted of murdering four political activists and writers in 1998. The verdicts passed by a military court included three death sentences and five life imprisonment terms; seven defendants were sentenced to between two and 10 years in prison; three others were acquitted. All fifteen appealed to the Supreme Court against their convictions. Relatives of several of the victims rejected the death sentences saying that they were seeking truth rather than vengeance, and complained that the full truth about the murders had still not been revealed. Although the Ministry of Intelligence admitted that a network of "rogue" agents was responsible for the murders, it denied that they were carried out with the knowledge of senior officials. The closed-door hearings and the failure of the prosecutors to indict, or at least summon as witnesses, any high-ranking officials has angered reformist groups, who suspect a cover-up.

As a reaction to the public debate, there have also been attempts to silence voices of criticism. Three journalists, Mashallah Shamsolvaezin (Asr-e Azadegan, Neshat - 30 months), Latif Safari (Neshat - 30 months) and Emadeddin Baghi (Fat'h, Neshat - 3 years), who discussed the death penalty in the press, have been imprisoned for insulting Islam.

Stoning

Art. 104 of the Penal Code states that *"...the stones should not be too large so that the person dies on being hit by one or two of them, nor so small so that they cannot be called stones."* Execution by stoning causes grievous pain before death and is a cruel, inhuman and degrading punishment.

A man who sentenced to death by stoning managed to escape in November 1998.⁸ Another man was stoned to death in April 1999 in Babol in northern Iran for the murder of his three sons. Ahmad Asqarpour was reported to have killed his sons, aged between seven and 12, because he thought they would stand in the way of his plans to divorce his wife and marry another woman. He received 60 lashes before his execution.

On 21 May 2001, a 35-year-old woman was reportedly been stoned to death in Evin prison where she had served eight years on charges of being "corrupt on earth", for appearing in a pornographic film. This was the first stoning of a woman recorded since 1997. The woman had reportedly denied any involvement, but her death sentence was upheld by the Supreme Court, apparently on the basis of witness testimony that she was the woman in the film. The report did not say when the execution was carried out.

Maryam Ayoubi (f) aged 31, (no word on Hossein Esna 'Ashari, aged 24) who murdered her husband, was reported to be facing death by stoning, as the sentence was reportedly upheld in November 2000. The sentence was carried out on 11 July 2001.⁹

Torture and ill-treatment / CID treatment

In 2000, AI recorded 49 floggings - many for "depraved dancing" - and 10 amputations, but again the true number may have been higher. In July 2001, BBC reported that *"in the past few weeks about 100 young men have been flogged in several incidents in Iranian towns."*¹⁰

Students Akbar Mohammadi and Ahmad Batebi were tortured in the Towhid detention centre in South Central Tehran, which had already been in use under the Shah and has in the meantime been closed by the authorities. Towhid, administered by the Ministry of Intelligence, was closed in August 2000 by order of the judiciary. Akbar Mohammadi stated that his feet were whipped with metal cables and that he was

⁸ BBC: Lucky escape from execution, 22 November 1998

<<http://news6.thdo.bbc.co.uk/hi/english/world/middle%5Feast/newsid%5F219000/219713.stm>>

⁹ Amnesty International: Iran: stonings should stop, 11 July 2001

<<http://web.amnesty.org/ai.nsf/Index/MDE130242001?OpenDocument&of=COUNTRIES\IRAN>>

BBC: Iranian adulteress stoned to death, 12 July 2001

<<http://news6.thdo.bbc.co.uk/hi/english/world/middle%5Feast/newsid%5F1435000/1435760.stm>>

¹⁰ BBC: New floggings in Iran, 29 July 2001

<<http://news6.thdo.bbc.co.uk/hi/english/world/middle%5Feast/newsid%5F1463000/1463656.stm>>

suspended by his limbs. In addition, he was repeatedly kicked and beaten, and when he could no longer move he was told by his torturers that all he needed to do was to admit that he had thrown a molotov cocktail during the student demonstrations. If he had agreed to that they would have stopped the beating. Ahmad Batebi stated that he had been beaten while blindfolded and bound, and ordered to sign a confession. He reportedly wrote that his head was plunged into a drain full of excrement and held under, forcing him to inhale excrement through his nose and into his mouth. Their death sentence was overturned in April 2000 and the two men were sentenced to 15 and 10 years' imprisonment respectively (see ai Annual Report 2000).

In early 2001 three men were reported to have had four fingers of their right hands amputated after being convicted of repeated theft; three young men from the same family received 180 lashes each for drinking alcohol and having illicit sexual relations; four men received 99 lashes each before being hanged for murder, adultery and rape.

Current human rights issues in Iran

New legislation

The presidential campaign went quietly. Parliament passed two new laws that have not been ratified by the Council of Guardians, but if ratified could have brought a significant improvement of the human rights situation in Iran.

One deals with the definition of political crimes for the first time in 20 years, and would have made arbitrary arrest more difficult and perhaps helped reformist politicians already jailed to get retrials. It sets out what constitutes a political crime and states that someone accused of a political crime must be tried in an ordinary court and must have access to a lawyer, and that he will not be advised to wear prison garb. However, shortly after Khatami's re-election the Guardian Council has rejected the law.

The second law concerns the reform of the Public and Revolutionary Courts, in particular regulations concerning the unification of prosecution and judgment. If ratified it would separate the role of prosecution and that of judgment. In addition, the law obliges the judiciary to guarantee the rights of the defence on every stage of the interrogation and investigation, stipulating that the judge has no right to hold a court meeting in the absence of the defence lawyer. A judge disregarding the rights of the defence present should face disciplinary actions by an administrative court.¹¹

Prison conditions

As prison conditions discussed widely in the Iranian press, the issue has received a lot of attention and has been discussed by members of Parliament themselves. A parliamentary delegation has recently visited Iranian prisons and reported that they are extremely overcrowded.

Amnesty International has heard that it is possible to bribe one's way out of prison. That may not be so much the case in Tehran, but certainly in the provinces, where in individual cases prisoners might be able to leave even through the front door. For instance, if the prison authorities in a small town received a fax ordering them to release a prisoner, they would reportedly obey the order. These reports are not confirmed, however.

¹¹ ACCORD does not have information on the current state of the draft law.

Most major cities and some minor cities have a so-called Office of the Republic. The Internet and electronic tools have been used to set up databases that help to locate people and to check who is released legally from prison. Therefore, according to unconfirmed reports, moving around to avoid places where you could be at risk of criminal persecution, may not always be possible. However, there are anecdotal cases where a powerful religious figure, usually associated with Qom, has the connections to prevent someone from going to prison or if they go there that nothing will happen to them.

The recent amnesties marking the birth of the Prophet, which included some 6000 inmates, are very common in the Muslim world. It is very well possible that they may also be linked to prison conditions as they present a convenient measure against overcrowding. Prisoners wanting to be released under the amnesty have to pay fees, and the opportunity is used to set those free who have been imprisoned e.g. in connection with the Hajarian assassination (security officers) or in connection with freedom of expression (journalists). Amnesties are certainly used very selectively.

Political violence

One of the most prominent cases was the assassination attempt on Saeed Hajjarian, one of the leaders of the largest reformist faction, the Islamic Iran Participation Front (IIPF). He was shot at in central Tehran on 12 March by two men on a 1000 ccm motorcycle. He was rushed to hospital in a coma but is now able to speak and walk again and to continue to work as city councillor. In Iran there is a general ban on motorcycles over 200 ccm. Large motorcycles are known to be reserved for members of the Ministry of Intelligence and the armed forces. Eight people were tried, and after three hearings one received a 15-year sentence, four were sentenced to between 3 and 10 years for their role in the attack, three of the accused were acquitted. The trial was rushed, with the intention – according to some newspapers – to allow those who masterminded the operation to escape.

There were student demonstrations throughout the year 2000, in particular in Khorramabad in northwestern Iran, at the end of August 2000. Violent clashes between pro-reform supporters of President Khatami and those opposed to any change. Two clerics who wanted to address the meeting, Abdolkarim Soroush and Mohsen Kadivar, a former prisoner of conscience, were blocked by protesters from entering the university premises. In the disturbances that followed, many protesters, including several policemen, were injured, and 20 people were arrested. Ultimately, at least six different investigations into the disturbances were carried out.

Other cases include that of Amir Farshad Ebrahimi (see under 'Impunity') and "Kou-ye-Daneshgah" (Tehran University dormitory) as well as the beating up of Hojjatoleslam Abdollah Nouri and Mashallah Shamsolvaezin.

Impunity

Although in the trial of those who carried out the serial murders in 1998 15 secret service agents were convicted the masterminds of the operation went unpunished. When the Head of the Ministry of Intelligence was summoned by the prosecution, the judiciary rejected the motion, arguing that they had already taken his statement and since the Minister was a cleric he spoke the truth and did not need to come to court.

In a case involving the Law Enforcement Forces (LEF) dating back to May 1999, an eight-months jail sentence against Brigadier General Gholamreza Naqdi, former head of intelligence and security, was upheld by an Iranian appeals court in February 2000. He was brought to trial following allegations by over 30 district mayors in March 1998 that they were tortured by the security police to extract confessions during their detention on charges of corruption.

Brigadier General Farhad Nazari and 18 officials of the Law Enforcement Forces were acquitted by a military court of disobeying Ministry of the Interior orders in connection with a raid on student dormitories during the 8 July 1999 student demonstrations. Students injured in the raid, represented by Mohsen Rahami (see above), were, however, compensated by the same court. (AIR)

Amir Farshad Ebrahimi appeared in a video in 2000 where he reportedly speaks of his activities in the vigilante group, *Ansar-e Hezbollah*. He allegedly implicates senior establishment figures in allegations about the activities of the group, including a failed attempt to murder Hojjatoleslam Abdollah Nouri, former Vice President and Interior Minister. He was imprisoned after an unfair trial by a Special Court for the Clergy.

Social Unrest

In response to the persistent economic problems in Iran, numerous protests have taken place in the year 2000 throughout the country. In one incident, three people were reportedly killed on 5 July 2000 in the southern city of Abadan following the violent confrontation between security forces and angry demonstrators protesting over the chronic shortage of drinking water.

Positive Signs

Besides the passing of laws on the definition of political crimes and the reform of the Public and Revolutionary Courts by the Majles, the work and impact of the Article 90 Commission of the Majles, which investigates human rights abuses and gets increasingly good media coverage, is very encouraging. The Commission seeks to implement the provisions of Article 90 of the Constitution which charges *Majles* deputies with the duty of receiving and remedying the people's complaints against the judiciary, the executive and the legislature. The article specifically states that any citizen can lodge a complaint with parliamentarians to investigate actions by the executive, judiciary and government officials.

The Article 90 *Majles* Commission welcomed a decision in December 2000 by the head of the Tehran Justice Department to allow prisoners to have meetings with MPs, thus overturning an earlier ruling by Judge Mortazavi forbidding such contacts.

Furthermore, the Islamic Human Rights Committee, headed by Mohammed Hassan Ziaifar, has been extremely effective in supporting lawyers and in ensuring that fair trial procedures have taken place.

Presentation by Bernard Quah,
additional remarks by Drewery Dyke
11 June 2001¹²

II. Groups at risk

II.1. Political opposition

Opposition parties

Especially in the early years after the revolution most existing opposition groups in Iran were brutally and systematically crushed. Members of groups such as the Mudjahedin-e Khalq Organization (MKO), the Organization of Fedayan (majority and minority), the Tudeh Party as well as the Communist Party of Iran, who had actively participated in toppling the Shah were one by one rounded up, prosecuted, executed and made to inform on other groups or on their own members. Although this slow elimination process happened in the 1980s this does not mean that individuals who had affiliations with one of the above groups do not face any risk of persecution today.

As a consequence of the systematic repression after the Revolution, at present there is hardly any organized traditional opposition to the present Islamic Government. Although abroad there are many opposition groups, ranging from leftist parties, to nationalist, monarchist, ethnic or clerical Islamic groups, none of these groups has any power basis inside Iran.

Mudjahedin-e Khalq Organization (MKO)

However, although the MKO operates from abroad the Government of Iran feels the MKO to be a threat and is worried about possible infiltration through Afghanistan or Iraq and terrorist attacks against state institutions or individuals. In the past two years these attacks have clearly intensified and for the first time there are repeated references to activities by the MKO (officially called *Monafeghin* or hypocrites). There have indeed been a number of bomb blasts and killings of military or individuals who had a position of responsibility at the time of the Revolution (2/6/98 bomb explosion in a revolutionary court killed three persons and injured six; 2/6/98 bomb explosion at Revolutionary Guards HQs in Tehran with no casualties; 1994 bomb explosion at the shrine of Imam Reza in Mashhad killed 26 people) carried out by the MKO. The MKO has also claimed responsibility for the murder (August 1998) of Assadullah Lajevardi and his brother in the centre of the Tehran Bazaar. Lajevardi was a former revolutionary prosecutor, former Head of Evin prison and former Head of Iran's Prison Organization.

The MKO have a military capacity in Iraq and have been reported to have made arrangements with the Taliban in Afghanistan to use their territory bordering Iran. The MKO currently operate a satellite TV broadcast and frequently have cross-border commando-type operations. Only recently, there was an exchange of fire (May 2001) between Iranian authorities and MKO fighters. The MKO's bases inside Iraq are located in firing range of small missiles to the Iranian border. Although there have been

¹² For further information on human rights issues and groups at risk Iran please see also UNHCR: Background Paper on Refugees and Asylum Seekers from the Islamic Republic of Iran, January 2001 <www.unhcr.ch>

reports that civilians were killed on the Iraqi side of the border, who happened to be associated with the Mudjahedin, it is worth noting that the Mudjahedin are an armed group and that it would be extremely unusual to have members of their group unarmed on that side of the border. There are cross-border incursions by the MKO as far north as North Kordestan. The border to Iraq is quite porous and not controlled in most places except the south. In addition, there have been unconfirmed reports relating to the trafficking of children to European countries, notably to Germany and the Netherlands.

The MKO has no powerbase in Iran. They are feared and hated by a whole generation of Iranians who have lived through the Iran-Iraq war and who consider the MKO as traitors because they sided with the enemy. However, a situation may be developing that might provide a fertile ground for recruitment by the MKO amongst mainly young Iranians, who are disappointed with the present situation and who have never experienced war. The Iranian Government is aware of the presence of the MKO on the country's borders and of the MKO's excellent PR efforts abroad to present themselves as the main Iranian opposition group. Thus the MKO may be revived by instigating the younger generation to take on their cause.

Members of the MKO are proven to be at risk. Those who are seen to have or to have had links with this organization are prosecuted severely. Of course, as the MKO is not unwilling to commit human rights violations, the possibility of exclusion will need to be considered.

KDPI, CPI-Komaleh, Rahe Kargar

Occasionally, there are reports of skirmishes in the areas bordering Iraq between the Iranian army and the Kurdish Democratic Party of Iran (KDPI), which operates from Iraqi territory. However, the KDPI as well as the Komaleh, the Kurdish branch of the Communist Party of Iran, have seriously curtailed their activities. The murder of the former Leader of the KDPI, Abdolrahman Ghassemlou, in 1989 in Vienna and the later murder of his successor Sadegh Sharifkandi in Berlin (Mykonos restaurant) in 1992 as well as the murder of other important members of the KDPI in Northern Iraq have dealt a very serious blow to KDPI activities and to the morale of its members. As a consequence of the harsh actions initiated by the Iranian government against these groups they do have no power base inside Iran. Some very committed KDPI members stated that they abandoned their party as they no longer had faith in its capacity and political agenda. In addition, as is the case for most Communist parties, events in Eastern Europe and the changes in the major Communist parties have also had a devastating effect on Komaleh activities.

Although KDPI and CPI-Komaleh have no power basis in Iran and mainly share some facilities in Iraq, their members are at risk as they face incursions from the Iranian authorities. In addition, there is the Rahe Kargar, the Organization of Revolutionary Workers of Iran, which is as close to being a 'categorical at-risk-group' as is possible. The UK recently admitted one Rahe Kargar activist.

Nationalist/Monarchist Groups

Liberal Nationalist groups such as the National Movement of Iranian Resistance (NMIR, Nezhat-e Moghavammat-e-Milli) who were very active in the early eighties and supported by many former Iranian military officers in and outside of Iran, have also been losing ground and no longer play an active role in opposition activities inside Iran.

The murder of its leader Shahpour Bakhtyar in Paris in 1991 had a crushing effect on the group's activities.

Although often Iranian asylum seekers claim to have carried out activities for either nationalist or monarchist groups inside Iran (distributing pamphlets, putting up posters, organizing resistance etc...) there is no evidence of any such activities inside Iran. Occasionally urban professionals such as lawyers or doctors who have a fax machine receive unwelcome and unsolicited fax messages from abroad with monarchist or secular nationalist messages.

There are, however, numerous monarchist splinter groups in many of the European countries, that have lost all sense of reality with respect to Iran. Some are not more than coffee gatherings, others try to pursue some structured activities with members, admission fees, occasional publications, contact with the exile community and with recent arrivals from Iran, some are slightly more active such as the Derafsh-e Kaviani led by former Minister Manouchehr Ganji, but in fact none of these organizations are known in Iran or have activities inside the country.

Freedom Movement of Iran (FMI)

The only existing opposition party currently in Iran is the Freedom Movement of Iran (FMI, *Nehzat-e Azadi*). This party, founded in 1961 by former Prime Minister Mehdi Bazargan, had been tolerated in Iran but never formally accepted. The party had been openly criticizing Iranian domestic and foreign policies. After Bazargan's death in 1995 the party was not permitted to carry out its activities any longer. In February 1998 the then Minister of the Interior Abdullah Nouri, announced that the party was illegal while at the same time hinting that the application would be considered if the party were to register under another name. The Minister of the Interior also announced that Ansar-e Hezbollah, a radical group known for its incitement of violence against other political groups was equally illegal unless it registered formally. The application for registration of one political party, the Kargozaran-e-Sazandegi (Executives of Construction), has been approved as is the case with a number of other political parties.

The members of the Freedom Movement were the latest victims of the clampdown on freedom of expression and association. Currently, twenty-six members of the Iran Freedom Movement face charges of "acts against national security" and planning to "overthrow the system." The trial is to be held in Tehran's Revolutionary Court.¹³

Clerics

Given that the traditional opposition to the current Islamic regime is practically non-existent in Iran, the true opposition nowadays comes from within the system. There are reports that the majority of those who are currently detained and considered political prisoners are clerics.

A case in point is a comprehensive June 1997 report by Amnesty International on the persecution against clerics called "Iran: Human Rights Violations against Shi'a Religious Leaders and their followers". It indicates serious and widespread human rights violations against Shi'a religious leaders opposed to fundamental tenets of the Iranian political system such as the concept of *velayat-e-faghih*. The AI report notes

¹³ Human Rights Watch: Iran: Release Detainees from Iran Freedom Movement, 10 November 2001
<<http://www.hrw.org/press/2001/11/iran1110.htm>>

"that since 1995 dozens if not hundreds of followers of religious leaders have reportedly been arrested often in an attempt to pressurize the leaders to change their views or stop their opposition. At least three senior religious leaders have also reportedly been placed under house arrest. Some of those detained are said to have been subjected to numerous methods of torture or ill-treatment including beatings, severe burns, electric shocks, sleep deprivation, confinement in very small spaces, threatened executions and threats to relatives. A few have been sentenced to prison terms, sometimes accompanied by flogging, after apparently unfair trials and the fate of some is unknown."

Last year, the daughter of Ayatollah Hossein Ali Montazeri, who has been under house arrest for seven years and been released yet, wrote a public letter stating that she had been visiting prisons since childhood for one or another member of her family but that the treatment she had recently experienced was far worse than that she remembered when visiting prisons in the time of the Shah. Her husband (Montazeri's son-in-law) Hadi Hashemi, was arrested in June as part of a crackdown on supporters of Ayatollah Montazeri in the Central province of Isfahan. At least 15 people were reportedly arrested after Supreme Leader Ali Khamenei issued a harsh warning to Montazeri supporters in May 1998, accusing them of plotting against the regime. Clerics are prosecuted by the Special Court for the Clergy, that was originally established in order to ensure that the clergy could not be considered to be above the law and that it could also be prosecuted if some of its members acted contrary to the Law. Unfortunately, the Special Court for the Clergy (SCC) has become one of the most repressive and conservative organs within the Iranian establishment. Recently Hojatoleslam Eshkevari, a highly respected liberal-minded mullah, was arrested and sentenced to death by the SCC upon his return from the Berlin Conference of April 2000. The death sentence was overturned by an Appellate Court in May 2001 and Eshkevari is waiting for his case to be heard again by a Special Court for the Clergy.¹⁴

Generally, the extent to which persecution of clerical opposition takes place to the regime is little known outside of Iran. It is important to be alert to the possibility that supporters of particular opposition clerics might face persecution themselves. For instance, currently there is an asylum applicant in the UK, claiming persecution because of his affiliation with Montazeri. In addition, Montazeri's website, before it was shut down for a copyright violation (it was based on a server in Australia), featured a long list with the names of members of his family who were murdered.

With regard to the persecution of those who carry out opposition activities inside Iran, those who have proved that they belong to groups that are actively carrying out political activities against the Iranian regime in Iran or abroad can face severe persecution. With regard to those who are abroad it will depend on the profile of the person and the degree to which the Iranian security is aware of the activities. It all depends on what kind of documentation exists on a person. If there is evidence that a person is involved in opposition political activities this might be detrimental to the person's security.

Opposition in exile .

¹⁴ "Ruhollah Yusefi-Eshkevari said in this regard: "The Special Clergy Court has given my father informal news." He said that an appeals court had overruled the initial court judgement against his father. He said: "A retrial may be held before the end of the year [to March 2002]." He added that his father had not met his family recently but continued to speak to them every evening on the phone." reported by Hayat-e Now: "Alireza Rajayi: Those arrested on the 21st Esfand have not yet received a summons", 10 October 2001 (WNC Document FBIS-NES-2001-1119)

Political assassinations of opponents abroad have been a regular feature since the time of the Revolution, starting from the murder on Tabatabaei, spokesman of the Shah in the USA, to the reported killings of members of the KDPI in Northern Iraq or of Abdurrahman Ghasemlou, Sadeq Sharefkandi, Shahpour Bakhtyar and many others.

There is a particular danger for Iranians known to have links with the MKO, KDPI, Fedayan, high profile members of the NMIR or of some of the more known nationalist/monarchist parties abroad.

On the other hand, there are cases where members of the Fedayin majority faction who had fallen foul with the Iranian regime in 1979 and even 1985/86 have gone back to Iran and opened businesses. In individual cases, involving problems with the authorities in the past, and more recently if the problems are rather low-key, there might not be any risk of persecution upon return. Elections in the US for the Iranian parliament required valid Iranian ID cards and reportedly the showing was quite good, due to the participation of many Iranians including those who may previously have had problems with the authorities.

There are no reports on persecution of people who had studied in former Socialist countries.

Journalists/Editors¹⁵

The most noticeable effect of President Khatami's commitment to reforms was the absolute revolution that had occurred in the written press. There was an enormous amount of new publications, newspapers, magazines and for the first time since the establishment of the Islamic Government there was, within certain limits, an unprecedented freedom of expression, criticism of the Government, analysis of political events, exposure of corruption, etc. However, even at that time, freedom of expression was not tolerated if it conflicted with Islamic principles or was considered disloyal to the principles of the Islamic Revolution. However, in the past two years, the conservative dominated judiciary has banned most reformist publications which had been backing moderate President Khatami and imprisoned many editors, journalists and publishers. The Leader Khamenei has repeatedly attacked the reformist press as bases of the enemy and intervened to stop the Majles from amending a very repressive press law that had been passed by the outgoing former Majles. The Guardian Council ruled that any change to the existing press law would be against Islam's basic principles and against the Leader's wish. There are still examples of arrests of editors, journalists and writers in 2001 (arrest of Mohsen Saidzadeh, a cleric who had written an article criticizing the strict norms regulating the role of women; death sentence for spying for Morteza Firoozi, former editor of Iran News; three-month detention of Akbar Ganji, editor of the weekly Rah-e-Nau, accused of blasphemy against Ruhollah Khomeiny); closure of newspapers (Jameh).

In the current circumstances it will be necessary to very carefully assess cases of individuals claiming fear of persecution based on their writings. It is evident that in particular writers, journalists, editors and other intellectuals who have challenged the system and those who have openly criticized or questioned the Islamic foundations of the Iranian regime, the Islamic Revolution or have openly attacked the radical

¹⁵ For more detailed information on freedom of expression please see Part I., Chapter on Human Rights (p. 18ff.)

conservative establishment are facing very serious problems such as arrest and detention or face harassment by non-State agents.

Reformist intellectuals

In the past years, there have been a series of arrest initiated by the conservative judiciary that have targeted reformist journalists, editors, writers, lawyers, publishers, student leaders, officials close to the President, dissenting clerics partial to the Khatami Government. This is a new development that has introduced a new group of potential asylum seekers with a different profile than in the past years. Recently, President Khatami has accused the conservative judiciary of misusing its powers to repress any reforms in Iran, typically in form of arbitrary arrests and torture of detainees.

It is clear that when presented with cases of vocal pro-Government intellectuals or with intellectuals criticizing the institution of the Islamic State, the case will need to be examined on an individual basis while keeping in mind the pattern of current arrests and harassment of vocal reformist intellectuals. However, it would be wrong to assume that all intellectuals are being persecuted. Each case will need a careful review.

Berlin Conference¹⁶

A Revolutionary Court in Tehran on 13 January 2001 announced tough jail sentences for 7 intellectuals for their involvement in a conference in Berlin (April 2000) that was seen by hard-liners as a threat to the Islamic system. The verdicts, much harsher than expected, exacerbated Iran's internal struggle. In all, 17 intellectuals were arrested and put on trial. Hojjatolislam Hasan Yousefi Eshkevari, a well-known dissident cleric, was sentenced to death by the Special Court for the Clergy which was later overturned. In addition to the charge of undermining state interests, the 51-year-old cleric was accused of apostasy. In January 2001, Tehran's Revolutionary Court issued its verdict for the remaining 16 of whom 6 were acquitted, two were fined and one received a suspended jail sentence. The remaining 7 were given jail sentences ranging from 4 to 10 years. All are expected to appeal. Two women, Mehrangiz Kar, Iran's most prominent women's rights lawyer and Shahla Lahiji, a publisher, were both sentenced to four years in prison. Ms. Kar is seriously ill with breast cancer developed while in detention. The court has denied treatment abroad. Ms. Kar is also facing a separate trial on charges of not observing Iran's strict Islamic dress code. Analysts in Tehran saw the Court's verdict as aimed against the President's political reforms and said it would intensify the power struggle with his conservative opponents just 6 months prior to the scheduled Presidential elections.

Student demonstrations¹⁷

With regard to claims of students who have participated in student demonstrations, it should be kept in mind that of the thousands who participated in student rallies all over the country several hundred were arrested. Thus not only the student leaders were arrested and later imprisoned but also a number of mere participants were convicted with some of them still being in detention. Amnesty International knows of a number of

¹⁶ HRW: Stifling Dissent: The Human Rights Consequences of Inter-Factional Struggle in Iran, May 2001. <<http://www.hrw.org/reports/2001/iran>>

¹⁷ Differences in the assessment by the country resource persons of the risk of persecution of participants in student demonstrations were clarified in the afternoon session.

cases in the UK relating to the July 1999 incidents and of one case in Norway regarding Khorramabad in northern Iran. In this regard, it is important to keep an eye out for particular riots as only a small number of protests and demonstrations actually involve students and intellectuals.

Rejected Asylum Seekers

There are two dimensions to this issue. On the basis of the information Amnesty International receives, usually a person who gets back will be asked why s/he was abroad. If the answer is along the lines of "I just tried to find a job", they will most likely be allowed to go home to their families. Generally speaking, it does depend on what kind of documentation exists on the returnee and what the actual practice of the country is in which the concerned individual applied for asylum. In some cases rejected asylum seekers are issued one-time laissez-passers or similar travel documents.

DD. If you have so many cases involving one of the three categories it raises the question of credibility. Armenians are a small group who are not in the first instance subject to human rights violations.

II.2. Religious minorities

Iran is an Islamic State with an Islamic Government governed by Islamic Law. It is unavoidable that discrimination of non-Muslims occurs. The Constitution of Iran officially recognizes as religious minorities in Iran Christians, Jews and Zoroastrians, as they are 'religions of the book'. Within the limits of the Law these minorities are free to perform their religious rites and ceremonies and to act according to their own rules in matters of personal affairs and religious education. The Constitution further declares that these religious minorities should be respected as long as they refrain from engaging in conspiracy or activities against Islam and the Islamic Republic of Iran (Art. 14).

In addition, members of the recognized religious minorities have representatives in the Majles. At present there seems to be an outflow of Christians (Armenians and Assyrians) from Iran. Meetings with representatives of the communities as well as many of its members give the impression that one of the main reasons for the outflow is the possibility of immigration to the USA and the facility with which it is possible to obtain a visa for certain European countries from where they are then processed for further migration. The situation appears not to have changed over the last two years.

Armenians are a small group who are not in the first instance subject to human rights violations. Persecution of Armenian Christians would be something quite unusual, something one usually does not hear of. Stories of Armenian-Orthodox asylum seekers who were not living in the Northwest, where Christians normally live, and claim persecution could indicate a new trend. In any case, if an Armenian is an Evangelical Christian who proselytizes, s/he would be at risk.

Thus, in principle there is no persecution per se with regard to the recognized religious minorities. However, there are elements of discrimination that can vary from person to person, from place to place and depending on the mood of the moment. UNHCR suggests that on a case by case basis, claims from persons belonging to religious minorities be considered in light of the possible elements of discrimination. If these elements are many and if the subjective element of fear is there, one could argue that

on cumulative grounds the discrimination experienced could amount to persecution. (e.g. Baha'is) In addition, Christians who proselytize among Muslims have been at risk.

Concerning Muslims, there are no sanctions imposed on those who do not follow Shiism. There is no regulation that requires a person to go to the mosque or men to wear beards. On the other hand, there can be occasions, in certain areas, at certain times (e.g. religious holidays), when religious tensions do arise and there may be the risk of human rights violations in some parts of the country as a result of not adhering to or appearing not to adhere to the religious precepts.

It is also crucial to understand that in Iran it is unthinkable that somebody does not belong to any religious group. The religious affiliation of every Iranian citizen is registered in her/his national ID card.

Jews

About 27.000 Jews are thought to live in Iran making it the largest Jewish community in the Middle East outside Israel. The community is based in Tehran, the central Fars province and in particular Shiraz and Isfahan. Around 10,000 are estimated to live in Tehran. Prior to the Revolution the community was estimated to be 70,000. Since the Revolution there have been large departures of members of the Jewish community. Together with the Christian and Zoroastrian faiths the Jewish religion is one of the three religious minorities officially recognized by the Iranian Constitution. The Iranian Jewish community has the right to one seat in the Majles and its members have the right to profess their faith. Undoubtedly there is a certain degree of discrimination. This is evident from the Iranian laws that clearly make a distinction in treatment between Muslims and non-Muslims.

The "espionage" trial

In March 1999, 13 Jews were arrested in Shiraz and Isfahan and charged with spying against the Islamic Republic of Iran on behalf of Israel and the US. The group consisted of Rabbis, religious teachers and community workers and all belonged to the more orthodox section of the Jewish community in Fars province. Shortly after the arrest, while international pressure was increasing, it was announced that in addition to the 13 Jews, 8 Iranian Muslims had also been arrested for the same offence. Ultimately, only 4 Muslims remained of the original group of 8. The verdict, issued on 1 July 2000, found 12 suspects guilty (10 Iranian Jews and 2 Muslims) and acquitted 5 suspects (3 Iranian Jews and 2 Muslims). Those convicted were given prison sentences of between 2 to 13 years, although an appeals court in September 2000 reduced the sentences by up to 6 years, leaving the convicted men with sentences of 2 to 9 years.

According to most analysts at the time, the arrests were seen in the context of attempts by hard-line conservatives in the judiciary to discredit the reform-minded Government by tainting its successes in the field of diplomacy and foreign policy. According to Morris Motamed, a newly elected Jewish representative in the Majles, Jewish emigration had accelerated in 1999 as a result of apprehension due to the spy case. However, from his point of view, there are no religious reasons to leave Iran.

Asked if following this trial, the situation had deteriorated for the Jewish community, the UN Special Rapporteur on Iran, Maurice Copithorne, stated that the situation had not deteriorated over the last 5 years. However, with regard to the overall situation, Mr Copithorne noted that a latent anti-semitic dimension existed in Iran.

According to Amnesty International, the situation of Jews is quite complex. The Shiraz trial certainly had a negative knock-on effect concerning anti-Jewish sentiments. In this context, it is also worth noting that the entry and exit of some minorities, and Jews in particular, is closely regulated and that the Iranian authorities meet annually with leading Iranian Jews in Geneva to review who will be allowed to leave and enter the country.

UNHCR would not declare a situation of general persecution of Jews in Iran. Claims should, however, be considered on a case by case basis, taking into consideration the subjective elements of the individual case that might have been exacerbated by the Court case and the verdict. Also elements of discrimination should be considered that could lead to the assessment that on cumulative grounds one could speak of discrimination amounting to persecution.

Baha'is

There are still an estimated 300,000 Baha'is living in Iran. Undoubtedly the situation has changed since the early years after the Revolution and improved, but it is far from acceptable. On the positive side, some Baha'is are receiving passports, Baha'is are permitted to receive education, and there does not seem to be any systematic persecution of Baha'is compared to the level of the initial years of the revolution. However, the situation is still one of very serious concern and far from acceptable in terms of human rights compliance. There is still a great level of discrimination. Baha'is are not allowed to further their education above third grade of High School; have no access to special schools; are not permitted to have free entry and exit from Iran but

are only given a one-time exit; the 21 Baha'is in prison accused of apostasy or espionage are still detained (11 since 1997); in August 1998 Ruhullah Rowhani, a Baha'i who was amongst the group of Baha'is in prison, was executed on the charge of having tried to convert a Muslim to the Bah'ai faith in prison. The Government of Iran denied that any execution had taken place but later informally confirmed to some Western Governments through their diplomatic representations abroad that the execution had taken place after confirmation of the death sentence by the Supreme Court.

Discrimination is still occurring with regard to inheritance rights, blood money, compensation and other rights accorded to Muslims; prohibition of employment in Government service; no restoration of pension and social security rights to those who were dismissed; public accusation of espionage by the former Chief of the Judiciary, Ayatollah Yazdi; prohibition to profess their faith; prohibition of official gatherings and of the functioning of a Bah'ai National Assembly; no restoration of confiscated property. According to the Baha'i Universal House of Justice, on January 2000 there were still 11 Baha'is in prison because of their religious beliefs. Two have been sentenced to death and a third death sentence was expected to be issued.

Concerning members of other communities who have close relations with Baha'is the picture is less clear. For instance, a person marrying a Baha'i will certainly have to go through an official bureaucratic process, thus the fact of the marriage will at least to a certain degree be public. The risk of persecution, however, depends on many other factors, e.g. how well-known the marriage is in the community.

It should also be noted that it is very difficult and risky to obtain information on the situation of Baha'is in Iran. The Baha'i community is living under a lot of pressure and is not keen to take any risks that might increase their current problems and jeopardize the slight improvements that have occurred in the past few years. In eligibility interviews with Baha'is there often is a basic inconsistency on the one hand between the bland, unemotional, uneventful narration and on the other hand totally contrasting reports by human rights groups and others who had visited Iran. Why then had some of the asylum seekers approaching UNHCR felt the need to do so as they did not describe any specific persecution and sometimes did not appear to be even aware of the discrimination their community was faced with?

One should keep in mind when assessing Bah'ai cases that the Bah'ai community has no interest in publicizing the real state of affairs as that could compromise slight improvements and possibly the situation of those Baha'is currently detained as well as those sentenced to death, for whom appeals for amnesty have been made. The statements by the UN Special Rapporteur on Iran, Galindo Pohl, in his report of 1991 are still applicable to the situation of Baha'is in general in Iran today "[...] a great discriminatory attitude towards the Baha'i community persisted [...]. It was also asserted that in many cases administrative and judicial decisions concerning Baha'is were characterized by arbitrariness and that the degree of discrimination or tolerance towards members of the community depended to a large extent on the attitude taken by particular authorities or individual civil servants. Baha'is were generally considered as unprotected infidels outside of the protective precept of the Law and in cases brought before a court their rights depended on the individual judge's good will."

There may have been some slight improvements in the situation of the Baha'is, but it is still essential to be very liberal when deciding on Baha'i claims, as the situation in Iran definitely would justify that. Although in principle one should consider claims case by

case, there is a wealth of information that should bring us to accept the near totality of Baha'i asylum claims.

When assessing a Baha'i claim it is also recommended to ascertain the true membership of the applicant to the Baha'i community through presentation of a certificate from the relevant local Spiritual Assembly or the Baha'i Universal House of Justice. However, the fact that a Baha'i certificate is not available or that the Spiritual Assembly does not "certify" a particular case does not necessarily mean that the applicant is not a Baha'i, nor that the individual would have no reasons to fear persecution in Iran on grounds of adherence to the Baha'i faith. What could be the case is that the Spiritual Assembly temporarily wishes to punish the Baha'i asylum seeker for particular activities that go against the faith. This was the case in the late 1980s when the Baha'i Assembly refused to certify all those Baha'is who had left Iran legally with a passport. The justification offered was that in order to obtain a passport the applicant must have omitted to mention the Baha'i faith in the application for the passport, thus in the eyes of the Assembly denying the Baha'i faith. This denial of faith was considered more important than the fact that the person by applying for a passport and omitting to mention the word Baha'i might have managed to avoid persecution from a regime that did persecute Baha'is.¹⁸

Conversion/Apostasy

An Iranian Muslim who converts to another religion is considered guilty of apostasy. The crime of apostasy is, in accordance with Islamic Law as applied in Iran, punishable by death or lifetime imprisonment, depending on the particular circumstances of the case. With regard to the punishment, a distinction is made. For those born from Muslim parents (even if only one of them is a Muslim) anyone found converting shall be executed. Those born from non-Muslim parents who had converted to Islam and then converted again to another religion, shall be invited to repent. In the event they refuse they shall be executed. With regard to women detention and flogging shall be applied instead of the death sentence. There have been executions, particularly in the early years of the revolution. It would appear that at present the Government is not pursuing an active and systematic policy of investigation and prosecution of cases of apostasy. However, it should be noted that some of the Baha'is sentenced to death have been charged with apostasy.

Interestingly, there are also reports of Armenian-Orthodox - not even Evangelical - Christians, who converted to Islam, and were ostracised by their communities. These reports are very hard to confirm, however.

When confronted with cases claiming persecution because of their conversion, it would be advisable to make a distinction between those individuals who have genuinely converted in Iran prior to departure or flight and are known to the religious institutions with whom they have converted and those who decided to convert after arrival in a potential host country. Depending on the credibility of the case, those who converted in Iran should definitely be recognized, as the risk they have taken is very great and

¹⁸ Taqiah is a specific facet of Shiism, which provided early-century Shias to dissimulate by denying their religious affiliation. As Shias are safe or even in positions of power in most Middle Eastern countries, leading clerics and Ayatollahs would most likely not decide that Taqiah should currently be practised. Concerning Baha'is, there is no clarity whether they have been instructed to use Taqiah in order to avoid persecution. However, the attitude displayed by the Baha'i Assembly in the 1980s would rather speak against it.

would show the level of personal commitment. Recognition of their refugee status would be based on the genuine fear of persecution if detected and if prosecuted.

Concerning proofs or certification that show that somebody has converted prior to her/his departure and is recognized by her/his own religious institution, in individual cases such papers may have been issued. Nonetheless, as these kinds of documents will put a person at risk when trying to leave Iran, it is more likely that they are not issued and that a refugee would not carry them with her/him.

It is important to add that conversion abroad could also be perfectly genuine. Iran is a place where people are fine as long as they do what they do behind closed doors and within their own four walls. People may drink, practice homosexuality and their religious faith after conversion. Yet, if a person who converted abroad walked down central Tehran wearing a cross, s/he would certainly have to face difficulties. S/he may not be at risk if s/he keeps a low profile. In general, however, it is very difficult to assess what is going to happen to a person who converted to another faith upon return. In such cases, a case by case assessment would need to be made taking into account the ultimate reasons for conversion and the degree of publicity surrounding the case. In addition, although Iranian embassies may well monitor activities of Iranian exile communities it would be highly unusual if they kept track of Iranian baptisms abroad.

Proselytizing

Possibly with the exception of the Church of the "Assemblies of God", all other churches are extremely cautious with respect to proselytizing. In 1994 three Evangelical Christian leaders were killed. They were accused of having sought converts amongst Muslims. Mehdi Dibaj, Assemblies of God Leader in Iran, was sentenced to death for apostasy after nine years of imprisonment. The other two were the Head of the Evangelical Council of Pastors in Iran, Bishop Kaik Hovsepien Mehr, who had campaigned relentlessly for the release of Dibaj, and a prominent Presbyterian minister, Reverend Tatavous Mikaelian, who succeeded Bishop Hovsepien as Head of the Evangelical Council.

One might say, if those people had kept a low profile they would have been safe. However, given that the very nature of their religion is universal and evangelical, proselytizing is one fundamental aspect of practising their faith. More complex cases might involve individuals who contend to have proselytized at home, which is very difficult to prove. At a certain point then one will just have to make a decision to believe or not believe the person if it is not possible to retrieve any additional conclusive information. Yet if, e.g. a Jehovah's Witness wanted to proselytize amongst Armenians and Assyrians, this would most likely not have any negative repercussions for the person who is proselytizing.

II.3. Ethnic minorities

There are many ethnic minorities in Iran such as Arabs, Bakhtiaris, Armenians, Baluchis, Azeris, Kurds, Lor, Qashghais, Torkomans and others. Art. 15 of the Constitution of Iran mentions Farsi as the official language of Iran, but adds that *the use of local and ethnic languages in the press and for the mass media and the teaching of their literature shall be allowed besides the Farsi language*. Art. 19 of the

Constitution mentions that the people of Iran belonging to whatever ethnic or tribal group shall enjoy equal rights.

Kurds

"Kurds are believed to number about 6 million, mainly living in the Northwest of the country, principally in the province of Kurdistan, along the border with Iraq and Turkey. Ethnic Kurds can be found in all walks of life in Iran, both in the private and public economy sectors as well as in Iran's military and civilian establishment. The Islamic regime views harshly those rebellious Kurdish leaders seeking autonomy, notably those of the Kurdish Democratic Party of Iran (KDPI) as well as the Marxist Komaleh and their militant supporters. However, few Kurds seek independence, the slogan of the KDPI is "Autonomy for the Kurds and Democracy for Iran". Yet, the government remains convinced that any form of autonomy will lead to the progressive break-up of Iran. Iranian troops are permanently stationed in Kurdish areas and also monitored activities of members of the Iraqi Kurdish Democratic Party in the areas."¹⁹

On 28 November 2000 reformist Kurdish MP Jalal Jalalizadeh denounced before Parliament what he said was a campaign of repression and serial killings against the some 6-million-strong Kurdish minority in Iran. This included prohibition of religious freedom for the Sunni Muslim Kurds in a country that has a Shiite Muslim majority. However, despite his vocal criticism he was able to maintain his position.

Baluchs

Iranian Baluch are not targeted as a group and not persecuted unless they are involved in some general opposition-related activities. They are mainly concentrated in Baluchistan province at the border with Pakistan and Afghanistan. Their claims should be examined on an individual basis and recognition should be decided on the merits of the case. It should also be noted that drug smuggling is an acute security problem in Sistan Baluchistan province, where there is a high number of security forces and a high degree of continuous tension because of the proximity of the Afghan and Pakistan borders and the war against drug trafficking. There are large areas in these provinces that are not under the control of the Iranian authorities. In addition, the jails are overcrowded with Afghans and Baluchis who have been lured into the lucrative drug trade.

Azeris

Iranian Azeris are not targeted as a group and not persecuted unless they are involved in some general opposition-related activities. Their claims should be examined on an individual basis and recognition should be decided on the merits of the case. On the one hand, the majority of the shopkeepers in Tehran are Azeris and speak Turkish. On the other hand, there is the case of Dr. Mahmud Ali Chehregani, a prominent member of the Azeri community. He had demanded recognition of the national rights of the Azeri community as guaranteed under Art. 15 of the Constitution, which permits the use of regional languages in the media and in schools in addition to Persian. Dr. Chehregani has been imprisoned since 1999 and is considered by Amnesty International as a prisoner of conscience.

¹⁹ UNHCR: Background Paper on Refugees and Asylum Seekers from the Islamic Republic of Iran, January 2001, p. 31 <www.unhcr.ch>

As mentioned above, opposition activities, such as nationalism expressed by Azerbaijanis, are subject to arbitrary detention and unfair trials. MP Chehregani was taken into detention on the way to his office in the Parliament, and later tried before a Revolutionary Court. Trials before the Revolutionary Court typically deal with national crimes, e.g. currency and drug offences. Dr. Chehregani was accused of importing shampoo and perfumes. On the basis of depriving the Iranian treasury of taxes, he was tried in a closed trial. He was given the right to have a lawyer, but only an hour and a half before the trial. Therefore, he defended himself. In the course of the trial, a judge from Tehran was brought in, in addition to the Tabrasi judge, an Azerbaijani judge. Dr. Chehregani, through his own guile and cleverness managed to get a telephone connection to the man who was to serve as a main witness against him. The man had also been detained and had stated "yes, I saw you taking perfume across the border". At the end of his testimony, Dr. Chehregani asked the man: "Were you forced to give this testimony?" The witness remained silent. At the end of the trial Chehregani said: "Look, you bring this man in from Tehran, who cannot answer this question. Is this a fair trial?" He was sentenced to jail.

Arabs

*"At least one million Arabs, mainly Shi'a Muslims, live in Iran, primarily in Khuzestan and in the south. The Sunni Arabs tend to live on the Gulf coastline. Attempts by the Arabs of Khuzestan to gain autonomy in 1979 gave way to support for Iran during the Iran-Iraq war of 1980-1988. Many are employed in the agriculture and oil industries."*²⁰

An approved presidential candidate in this election, Defence Minister Ali Shamkhani, who is from Ahwaz and speaks Arabic, is a symbol for the community. Like every other group, however, Arabs do not openly express their ethnic identity. In terms of levels of discrimination, there is some evidence of riots in Abadan that have been connected to the fact that Khuzestan as a province has been neglected by the central government. On a more general level, the question of regional and ethnic identity will come to the fore in the second part of Khatami's term. There have been death sentences, mainly against people with ethnic background, although those convicted had been involved in violent acts such as the bombing of offices and liaisons, etc.

Afghans²¹

In 2001, a change occurred in the position of the Iranian government towards Afghan refugees. In the follow-up to the implementation of Art. 40 which is meant to address all foreigners living in Iran, everyone who is in Iran without a valid visa or residence permit regardless of his/her national origin, is subject to deportation. At the same time, UNHCR has been approached to begin with status determination of 2 million Afghan refugees currently estimated to reside in Iran, which is an impossible task. Otherwise they are all subject to deportation. This is still being negotiated.

II.4. Gender

Women

²⁰ UNHCR: Background Paper on Refugees and Asylum Seekers from the Islamic Republic of Iran, January 2001, p. 32 <www.unhcr.ch>

²¹ The major changes in the political and security situation in Afghanistan since September 2001 have had a significant impact on the situation of Afghan refugees coming to and living in Iran. For details please refer to UNHCR's website <www.unhcr.ch>.

Iranian women were very much involved in the 1979 Revolution. Women were told to take to the streets and participate in the overthrow of the Shah and in the establishment of an Islamic State. While initially women in the Revolution were heralded as heroic militants, gradually the clerical elite has come to describe the ideal woman as an obedient wife and mother.

Compared to several other countries in the region (Afghanistan, Saudi Arabia, parts of Pakistan) women in Iran have a more prominent role in society and have more freedom to work, study, travel, drive, etc. It should be noted that following the Revolution the percentage of women attending schools has dramatically increased compared to the times of the Shah. For instance, there are more women at Iranian universities than men. Moreover, there are women serving terms in Parliament and working as teachers, lawyers, judges and in positions of responsibility in public administration.

There are a number of women's organizations (semi-official as well as non-governmental) that have been created since the Revolution and in particular in the last few years such as the Cultural and Social Council for Women, the Women's Affairs Commission, Women's Affairs Bureau, Women's Sports Department, International Office for Women, Bureau for Promotion of Rural Women's activities, Rural Women's Cooperative, Women's Solidarity Societies, etc.²²

From a legal point of view there is definitely a marked difference between men and women. There are many regulations in which treatment of men and women is not the same. Examples are in the field of blood money or compensation for death of a family member, whereby the life of a woman in financial terms is valued less than that of a man, and the witness system, whereby one man equals two women. In addition, women cannot work or obtain a passport without the husband's permission, cannot marry without the father's written consent, automatically lose custody of their children at the time of divorce or death of the husband.

With regard to passports, the requirements are usually checked when a person wanting to leave applies for a passport. If the criteria, one of them being the husband's permission, are not fulfilled the passport will not be issued. Once you are at the airport you should not have a problem. There does not seem to exist a special written permission by the husband for a woman to leave the country.

Adultery

The Penal Code accords the death penalty, stoning or flogging to the adulterer and sets out a number of different scenarios to determine which punishment shall apply in each case, for example, if a non-Muslim man commits adultery with a Muslim woman he is subject to the death penalty (see the Hofer case); if a man or woman who is married permanently commits adultery, the penalty is stoning; if the alleged adulterer or adulteress is unmarried, the punishment is 100 lashes. Art. 82, which lists the cases in which adultery carries the death penalty, stipulates that a rapist should receive the death penalty. In an interview with the UN Special Representative, Iran's Minister of Justice, Hojatoleslam Ismaeil Shushtari (1992), reportedly stated that certain penalties such as the stoning of adulterers could not be abrogated by the Government since

²² A new book "Women in Iran - the inside story", by Elaine Sciolino and Robin Wright, is to be published soon.

they had originally been established under Islamic Law. In case false testimony has led to accusation of adultery and the adultery is not proved, the false claimant can be prosecuted and accorded 80 lashes. Cases of adultery are dealt with by the regular courts and not by the Revolutionary Courts.

There have been reported instances of stoning in the past few years. However, the last report of the UN Special Representative for Iran (dated 8 September 2000) indicates that stoning appears finally to be declining in Iran. In March 2000, the press quoted the Ministry of Justice spokesperson as stating that stoning may not be in the country's interest, and that the Head of the Judiciary believes that it should avoid acts which could insult and taint the country's image. (for recent cases of stoning please see p. 24-25 of this report)

Divorce²³

Despite the provisions in the Civil Code, whereby a man can divorce his wife whenever he wishes, in practice a man cannot divorce his wife without referring to the Special Family Court in order to register the divorce with divorce registry offices that would require the certificate of irreconcilable differences, issued by the Court or a Court order, denoting that the registry is allowed to carry out the registration (immoral conduct, etc.). It would appear that the divorce rate has increased in the last few years and that the Family Courts are confronted with an increasing number of women seeking divorces.

Probably the most publicized and known aspect of women's life in Iran is the imposition of hejab or Islamic dress code. In Iran all women (Iranian, foreign, Muslim or non-Muslim) have to comply with the rules of hejab in all public places. The women's hair must be fully covered and their faces free of make-up. In addition to a scarf women must wear a roupoush or manto which is a large, formless overcoat. Contraventions of the dress code are punishable by either a verbal reprimand (in hotels, restaurants, at the airport) or by a fine, or 74 strokes of the lash, or a prison term of 10 days to two months. There are periods of apparent relaxation of the dress code by the authorities. However, at intervals and irregularly there are raids in public places or road blocks by police units monitoring moral conduct, Revolutionary Guards and Basiji intent on arresting and taking in for questioning women who are considered not to be properly covered. It has to be added that in parts of big cities, such as Tehran and Isfahan, the dress code is slightly relaxed compared to the rest of Iran. In some tribal areas the dress code is not as strictly enforced and traditional dresses can be seen instead of the overcoat and scarf. In some Christian villages women do not cover their hair.

Interestingly, two years ago, there was a German decision to forcibly veil women for photographs for documents that were to be sent back to the authorities in Iran.

It should be noted that there is still a large group of women who consider the imposition of hejab as humiliating, discriminatory and repressive. While assessing refugee claims of women who declare that they cannot tolerate the hejab, one should try to assess the level of tolerance of the individual case and take into account the subjective element. For one woman compliance with hejab might not be more than a nuisance but acceptable under the circumstances while for other women it might be experienced as an intolerable, humiliating, degrading and unacceptable imposition. This could be accompanied by examples of specific harassment in the individual case.

²³ see Ziba Mir Hussein: "Divorce Iranian style".

If a case is recognized, the grounds for recognition would be on the basis of fear of persecution owing to membership of a particular social group.

Domestic violence

We are confronted with a number of claims of women stating to have been the victims of domestic violence and that there would be no recourse or protection. In principle, a woman victim of domestic violence can avail herself of the protection provided by legal provisions. However, such victims are sometimes so terrorized that they prefer to remain silent and take no action against their husbands. Sometimes they also refrain from taking measures against the husband because initiating such actions could only provide them with effective protection if they opt to obtain a divorce. They may be reluctant to get a divorce or they may fear losing their children, since the father or paternal grandfather has the right of guardianship of children in case of a divorce.

In conformity with Art. 1115 of the Civil Code, if living in the same house with the husband involves the risk of bodily injury or financial damage, or jeopardizes the dignity of the wife, she can choose a separate dwelling and if the alleged risk is proven the Court will not order her to return to the house of the husband. When a wife is a victim of domestic violence, she can file a complaint against the husband for battery, and based on the afore-mentioned provisions, she can leave the house. A wife can also apply for a divorce on the grounds of domestic violence based on para 4 of Art. 8 of the Law on Family Protection and the Court will issue a certificate of irreconcilable differences (based on which the divorce will be registered by a notary) if it is proven that continuation of conjugal life is unbearable for the wife. In order to prove domestic violence a woman can refer to a state hospital and obtain a report that should be submitted to a family court.

Custody of children

UNHCR is faced with many cases that invoke the loss of custody to the family of the husband or to the husband following death of the husband or divorce. Normally upon divorce or death of the father custody goes to the mother. Art. 1169 of the Civil Code specifies that *"the mother shall have a preferential right to the custody of her child in the first two years of the child's life, after which the father shall have the custody unless the child is a girl in which case she will remain under the mother's custody until she reaches the age of 7."*

A landmark case in 1998 was the case of Aryan Golshani, an 8-year-old boy who died due to severe beatings and malnutrition at the hands of his stepmother. Following divorce, despite the fact that the mother had been given custody of the then 6-year-old child she did not succeed in getting the child as the father opposed the mother's claim to custody. Following the very publicized death of the child, an emotional public debate unfolded with regard to custody laws in the country.

In 1998, the Majles has agreed to add five paragraphs to this article in which exceptions to the automatic custody right of the father are enumerated such as addiction, sickness and violence. However, a leading women's rights lawyer described this as propaganda and said that in her opinion a woman still had a very small chance of obtaining custody of minor children as the main article granting preferential custody to the father was still valid.

Under normal circumstances one should note that a distinction is made between custody and guardianship. For example, while custody of very young children is with the mother, guardianship remains with the father and therefore mothers cannot travel outside of Iran without the permission of the father of the child even if the child is technically in custody of the mother.

There are no specific provisions relating to the departure of a mother with minor children from the country without the consent of the father. Based on the Law on Passports, authorization in writing of the Guardian (according to the Civil Code the father or paternal grandfather), is necessary for issuance of a passport for a minor or inclusion of a minor's name in a relative's passport. Therefore if a woman has managed to obtain travel documents for her minor children, she has probably resorted to an illegal act based on which she can be sentenced upon return. For example she may have forged her husband's authorization and submitted it to the Passport Bureau and could therefore be sentenced to imprisonment from two months to up to two years.

Homosexuals/Transsexuals

Although homosexuality is never spoken about and thus a hidden issue, in practice it is not difficult to encounter homosexuals in Iran. There are special parks in Tehran, known as homosexual meeting places. There are also a large number of transvestites walking around in North Tehran. Furthermore, sex changes are permitted in Iran and operations are frequently and openly carried out. A different sexual orientation may, however, create problems. Still, homosexuality is practised every day, and as long as this happens behind closed doors within your own four walls, and as long as people do not intend to proselytize 'transvestitism' or homosexuality, they will most likely remain unharmed.

Again the issue of expression versus persecution has to be raised. Amnesty International Japan deals with the case of a young man who claims that because he is homosexual he should not be sent back to Iran. He was not subject to human rights violations prior to his departure from Iran but according to Amnesty International would be if he were to express his gayness openly after returning to Iran. The Japanese authorities have disagreed with this assessment. Most likely, however, if the concerned individual tried to conceal his sexual orientation in public, he would not be at risk.

From a legal point of view it is important to take a look at Iranian law (the Islamic Punishment Act), which carries the following provisions for homosexual acts:

Art. 110: The prescribed punishment for homosexual relations in case of intercourse is execution and the mode of the execution is at the discretion of the religious judge.

Art. 111: Homosexual intercourse leads to execution provided that both the active and the passive party are of age, sane and consenting.

Art. 112: Where a person of age commits homosexual intercourse with an adolescent, the active party shall be executed and the passive party, if he has not been reluctant, shall receive a flogging of up to 74 lashes.

Art. 113: Where an adolescent commits homosexual intercourse with another adolescent, they shall receive a flogging of up to 74 strokes of the whip unless one of them has been reluctant.

Art. 114 to 126 establish how to prove homosexual intercourse.

Art. 127 to 134 relate to lesbian sexual relations. Punishment for sexual intercourse among lesbians is 100 lashes and in case of recidivity (3 times) execution.

So far, UNHCR has not been able to trace any cases of execution only on the grounds of homosexual relations. In fact, the burden of proof is quite high and it would be difficult to prove homosexual liaisons or intercourse. According to some reports in local papers there have been instances of execution of homosexuals. It is not confirmed whether the homosexual act alone led to execution or whether the person was accused on other charges too.

However, jurisprudence, burden of proof notwithstanding, certainly has used accusations of homosexuality. Furthermore, it does happen that homosexuality is mentioned as one of the accusations amongst other offences held against the defendant. For instance, accusations of homosexuality have been used in unfair trials, such as the case of a Sunni leader in Shiraz in 1996/97, who was clearly prosecuted for politically reasons. There have also been other political cases, although not in the recent past.

In addition, there was the case of a woman who appeared in a pornographic film with her face blackened out. Yet, it is hard to see how the witnesses can tell if it is the same woman if the face is blackened out, as is usually the case in Iranian pornographic publications. Nevertheless, she was prosecuted. Moreover, it raises the question of denunciation and a number of issues concerning fair trial. If there were indeed four witnesses, who had seen the film by actually having been there, it begs the question what they were doing there and why they were not charged.

With regard to eligibility and claims based on persecution on grounds of homosexuality the following elements need to be taken into account:

The fact that, irrespective of the standard/burden of proof, the sentence for homosexuality is death is a very important element in any assessment. It would be inappropriate to water down the existence of the death sentence with arguments of a high burden of proof, relative tolerance or the fact that there is no systematic effort to prosecute homosexuals.

The subjective element is essential. One should consider on a case by case basis how intolerable it is for the asylum seeker not to be able to openly express his/her sexual orientation, not only because of the social context but also because it is considered to be against the law and punishable by death.

One should make a distinction between those who claim to have been active homosexuals in Iran or have stated being active after their arrival in a host country. The principle of refugee sur place should still apply, if the person determining eligibility does not have a problem with the credibility of the asylum seeker.

If one were to recognize refugee claims of asylum seekers claiming persecution on grounds of their sexual orientation, this would be for fear of persecution owing to membership in a particular social group.

II.5. Military Service/desertion

The Iranian army, which is believed to have a few hundred thousand men in active service, comprises mostly conscripts serving a two-year term.

Although there is no alternative service, it is possible to buy out military service for those who were abroad since 1987. The price to be paid varies according to the level of education with a higher price for PhD students and a lower one for those who only completed High School. Last year there was a bill submitted to the Majles and supported by the Army, suggesting that every year it would be possible to exempt 100,000 potential draftees provided that a sum of 10 million Rials (USD 5,700)²⁴ was paid. The bill was passed by the Majles and approved by the Council of Guardians but vetoed by the Leader. At present there are new regulations with respect to temporarily postponing military service for those who wish to further their education abroad. A sum of 30 million Rials (USD 17,100) needs to be deposited by the applicant to the Military Service Department. If the applicant does not return the sum will be forfeited. In case of return the sum will be reimbursed but military service will still need to be completed.

Draft evasion

Art. 58 of the Law pertaining to military service states:

- a) Draft evaders in times of peace who present themselves in times of peace after a decision is made as to their service or upon completion of their service shall be deprived of receiving their exemption certificate or their service certificate for 6 months up to one year and draft evaders in times of peace who are arrested will not receive their exemption or service certificate for 1 to 2 years.
- b) Draft evaders in times of peace who present themselves in times of war, shall receive their service card upon termination of their service or exemption card right away and those who are arrested will be deprived of receiving their certificate for 2 to 4 years.
- c) Draft evaders in times of war who present themselves in times of war, shall be deprived of receiving their certificate for 1 to 2 years, and those who are arrested will be deprived of receiving their certificate for 3 to 5 years.
- d) Draft evaders in times of war who present themselves in times of peace shall be deprived of receiving their certificate for 5 to 7 years and those who are arrested will be deprived of receiving their certificate for 7 to 10 years.

The importance of receiving a military service completion card is that without it the person deprived of the certificate cannot work in a public function, cannot marry, travel abroad, obtain a passport etc. Moreover, the judge can sentence the draft evader to other punishment (Ta'zir) as he deems fit.

II. 6. Drug offences / double conviction

Iran has a very strict policy with regard to drug offences. Drug-related crimes are examined and investigated by the Revolutionary Courts. The Iranian authorities have regularly declared that Iranians who were convicted outside of Iran for crimes punishable under Islamic Law, could still be prosecuted upon return. However, UNHCR has not been able to find any jurisprudence confirming sentences for persons convicted of drug-related crimes abroad. UNHCR also does not possess any information on the degree of double conviction upon return for persons convicted of drug-related crimes outside of Iran.

²⁴ Official floating rate, source: CIA World Factbook 2001. "note: Iran has three officially recognized exchange rates; the averages for 1999 are as follows: the official floating rate of 1,750 rials per US dollar, the "export" rate of 3,000 rials per US dollar, and the variable Tehran Stock Exchange rate, which averages 7,863 rials per US dollar; the market rate averages 8,615 rials per US dollar."

Amnesty International has had one case of double conviction for drug offences. If a person carries more than 30 grams of heroine or 5 kg of opium s/he is subject to the death penalty. In Spain, an Iranian national was caught smuggling drugs. Al International Secretariate in London responded to a query from Amnesty International Spain that he would in principle be at risk of double prosecution. It, however, depended on the documentation that existed on the individual's case. The person could perhaps return without problems by stating that he had just tried to immigrate to Spain.

II.7. Exit and return

Exit formalities have considerably relaxed since the initial years after the revolution. While previously it was very difficult to obtain a passport, in recent years it has become much easier. However, departure procedures are still such that it would be highly improbable that anyone with a forged passport in which name and number do not tally would be able to leave the country. Security officials at the airport possess lists of suspected or wanted persons and it is not unusual that passengers wishing to leave are prevented from leaving and told to refer to the security department. In general, the security checks at Tehran airport are still very strict and it is doubtful that anyone with a security record and convictions in Iran for political offences would be able to leave the country legally by air. Yet, although the degree is hard to assess, corruption certainly exists and in individual cases people may be able to bribe their way out of the airport.

However, leaving the country across the border to Pakistan, but also to Turkey and Azerbaijan, is fairly easy and happens all the time.

Upon return, in recent years the practice has become more liberal with regard to possession and confiscation of items purchased abroad, such as CDs from Dubai and other Western products. It mostly depends on what the authorities are looking for. If they assume that a person has returned from a country like the USA this person certainly will be questioned and undergo stringent checks, but will normally not be detained for a longer period of time.

There is one case of an Iranian who has been facilitated to return to Iran voluntarily by UNHCR offices. Here the bureaucracy does sometimes not work very well. In principle, an Iranian travel document must be issued by an Iranian embassy in a foreign country. Upon arrival at the airport in Iran, the travel documents of this particular returnee were not accepted by the airport authorities. The problem arose because the Ministry of the Interior as well as the Ministry of Foreign Affairs are competent to issue travel documents, but both ministries have different interests and internal regulations and procedures. The resolution of the case took much coordination until the returnee was allowed into the country. Ultimately, there is no information on what happens after people have passed the checks, unless the authorities provide the information themselves.

III. Conclusion

When visiting Iran, there is the feeling that common person they fear inviting visitors to their homes because they tend to be watched. If they seem to be talking to foreigners about issues that are considered to be sensitive they could be brought up by the Pasdaran to be questioned by intelligence or police. Yet, it has to be said that while the above impression is very strong in a city like Mashhad, Tehran may be much more open.

For instance, representatives from a decision-making body who had travelled to Iran in 2000 and 2001 and have met many Iranians, especially young people, who were very interested in meeting and establishing contacts with European people. Young men and women alike did not hesitate to speak openly to one another and to go a teashop with the visitors although they were not married.

Nonetheless, it is rather not a question of young people in general feeling safe to do as they like. People may behave differently, depending on who is around. Certainly, South Tehran has a different composition than North Tehran. ???, a predominantly Sunni and Kurdish area, has a different composition than Mashhad, which is religiously mainly Shia. People in the North of Tehran, in the urban centres, are open, they may go out and enjoy themselves, which will not be the case in many places in South Tehran. Ultimately, it does depend on class, place and time.

On a more general level, it seems that the process of reforms is irreversible. The youth will be in power in five to ten years and there will be no going back. However, there is a great danger that the situation will get out of hand. If the conservatives continue to block all efforts to introduce reform, the fault line that is at present one of revolutionary conservatives on the one hand and post-revolutionary reformists on the other will change to one of Islamists versus secularists. That situation could prove disastrous.

In terms of eligibility, compared to two years ago there are new categories of persons that are and will continue to request asylum. The new category consists of intellectuals who either have stated their opposition to the Islamic State structure and to the institution of Vali-ye-Faqih, or are perceived as pushing for reforms to the present structure.

All in all, the situation in the Islamic Republic of Iran is a very complex and complicated one. It is extremely difficult to apply very strict and clear guidelines when assessing the claim of an Iranian asylum seeker. Apart from the clear cases in which based on objective facts and events there is an evident problem of credibility, in other cases in which credibility is not the issue but the issue is interpretation of the level of persecution with regard to the individual case, one should always take into account the level of arbitrariness and inconsistency in application of the legal system that is part of every day life in Iran. This is indeed one of the commitments that President Khatami has promised to address while stressing the importance of the Rule of Law. However, it is clear that the situation is still far from being one in which the interpretation of rules and the application of the Law is clear-cut and consistent. One should therefore liberally use the principle of the benefit of the doubt when credibility is not the issue with respect to Iranian asylum claims.