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IRAN: A LEGAL SYSTEM THAT FAILS TO PROTECT FREEDOM OF EXPRESSION AND ASSOCIATION

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Freedom of expression and association in Iran is curtailed by legal restrictions and by flaws in the administration of justice. It has resulted in a catalogue of unfair trials and the imprisonment of prisoners of conscience.

Some laws impose explicit restrictions on the right to freedom of expression and association, while others are vaguely worded and open to abuse. Iran's Constitution guarantees freedom of belief, yet restrictions on freedom of expression and association in Iranian law go beyond both the Iranian Constitution and international human rights treaties to which Iran is a state party. Restrictive, contradictory and vaguely worded provisions contained in the Penal Code, the Theologians' Law - a body of law that deals with offences committed by clerics - and the Public and Revolutionary Courts' Procedural Law undermine the right to freedom of expression. For example, the Penal Code prohibits a range of activities, such as those connected with journalism or public discourse, which do not amount to recognizably criminal offences.

Structural flaws in the judicial system, including with respect to its independence, often result in irregular trial procedures. The judiciary does not enjoy the independence accorded to it by constitutional provisions. Lower court judges are under pressure to investigate and prosecute allegations that may be brought by a superior judicial official who is often the official directly responsible for their appointment and continued employment as a judge. The functions of investigator, prosecutor and judge are frequently combined, bringing the impartiality of the judge into question, while judges must provide rulings for which they may be held personally responsible even when there is, as noted in Article 167 of the Constitution, "silence or deficiency of law".

Limits on the Bar Associations, re-established in 1999, which play a vital role throughout the world in securing the independence of lawyers, weaken its independence and, as a result, safeguards for defence against unfair trial. The function of the Bar Associations to grant licences to newly qualified lawyers and to freely choose its own representatives are, for example, essential safeguards of the independence of the Bar Associations. Recent legislation, however, has removed these functions. The judiciary controls those eligible for apprenticeship

places with the Bar Associations, their entry into the legal profession, their continued functioning as a lawyer. This weakens the independence of the Bar Association and undermines the professional integrity, security and independence required by lawyers.

Taken together, these flaws have obstructed the delivery of justice. Over recent years there have been numerous victims of arbitrary detention, unfair trial and imprisonment for no reason other than the expression of their conscientiously held beliefs. Such practices are not only contrary to Iran's own Constitution but also violate international human rights standards.

Amnesty International's other concerns in Iran include prolonged and often incommunicado detention, torture and ill-treatment of prisoners, including the use of cruel, inhuman and degrading punishments such as flogging and amputation; impunity of state officials for human rights violations; the extensive use of the death penalty and its public implementation and discriminatory laws including those relating to women's rights.

This report aims to inform and support the arguments of all those engaged in seeking reform of Iran's judicial system in line with its international human rights obligations. Amnesty International's recommendations are addressed to all Iranian nationals involved in the administration of justice.

KEYWORDS: FREEDOM OF EXPRESSION1 / FREEDOM OF ASSOCIATION1 / LEGISLATION1 / INDEPENDENCE OF JUDICIARY1 / TRIALS / HUMAN RIGHTS INSTRUMENTS / RELIGIOUS INTOLERANCE / DEFAMATION / POLITICAL BACKGROUND / PHOTOGRAPHS

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INTRODUCTION

The Constitution of the Islamic Republic of Iran contains many important safeguards of rights and freedoms that are guaranteed in the international instruments to which Iran is a state party (see box), including those relating to freedom of expression and fair trial. These seek to ensure that all individuals enjoy the same rights under law, and the human dignity that follows from this.

Human rights treaties that Iran has ratified:

- 1968 - International Convention on the Elimination of All Forms of Racial Discrimination
- 1975 - International Covenant on Civil and Political Rights
- 1975 - International Covenant on Economic, Social and Cultural Rights
- 1976 - Convention relating to the Status of Refugees
- 1976 - Protocol relating to the Status of Refugees
- 1994 - Convention on the Rights of the Child

There is also a vigorous human rights debate in Iran's parliament, the Islamic Consultative Assembly (ICA), amongst members of the judiciary, non-governmental and professional bodies such as the Bar Association, and many newspapers.

There are, however, issues of particular concern to Amnesty International regarding the implementation of international human rights safeguards, including in connection with freedom of expression and association and the administration of justice. The organization has repeatedly addressed the Iranian authorities on behalf of individual prisoners of conscience and people whose basic human rights appeared to be at risk, and has called for legislation to be reviewed and reforms to be implemented.

In August 2001, Amnesty International sent to the government and judicial officials a detailed memorandum on concerning freedom of expression and the administration of justice, which forms the basis of this report. The memorandum examined laws relating to freedom of expression, independence of the judiciary and restrictions on the Bar Association and right to defence, along with other issues relating to the administration of justice. The memorandum aimed to contribute to the debate in Iran and suggested ways of bringing laws and practice into harmony with Iran's international human rights obligations. Amnesty International asked the government of Iran and its judicial authorities for their comments on the memorandum. By the end of December 2001 the organization received acknowledgment that the government and judicial authorities had received the memorandum, but no comments or clarifications were received.

Amnesty International's further concerns in Iran include prolonged and often incommunicado detention, torture and ill-treatment of prisoners, including the use of cruel,

inhuman and degrading punishments such as flogging and amputation; impunity of state officials for human rights violations; the extensive use of the death penalty and its public implementation and discriminatory laws including those relating to women's rights.

BACKGROUND

Freedom of expression and association in Iran is curtailed by legal restrictions and by flaws in the administration of justice. It has resulted in unfair trials and the imprisonment of prisoners of conscience.

Iran's Constitution guarantees freedom of belief. However, restrictions on freedom of expression and association in Iranian law go beyond both the Iranian Constitution and the international human rights treaties to which Iran is a state party. Restrictive, contradictory and vaguely worded provisions contained in the Penal Code, the Theologians' Law - a body of law that deals with offences committed by clerics - and the Public and Revolutionary Courts' Procedural Law undermine the right to freedom of expression. For example, the Penal Code prohibits a range of activities, such as those connected with journalism or public discourse, which do not amount to recognizably criminal offences.

Sources referred to in this report that relate to minimum international standards concerning administration of justice and the duties of lawyers, prosecutors and the judiciary include the following:

- United Nations' Basic Principles on the Independence of the Judiciary
- United Nations' Basic Principles on the Role of Lawyers
- United Nations' Guidelines on the Role of Prosecutors

The restrictions set out in national law are exacerbated by structural flaws in the judicial system. The judiciary does not enjoy the independence accorded to it by constitutional provisions and the functions of investigator, prosecutor and judge are frequently combined, bringing the impartiality of the judge into question. Lower court judges are under pressure to investigate and prosecute allegations that may be brought by a superior judicial official who is often the official directly responsible for their appointment and continued employment as a judge and judges must provide rulings for which they may be held personally responsible even when there is, as noted in Article 167 of the Constitution, "silence or deficiency of law".

The Bar Association in Tehran and other regional centres in Iran were re-established by the judicial authorities in 1999 after many years in abeyance. Restrictions on its functions weaken its independence and therefore safeguards against unfair trial. The function of the Bar Association to grant licences to newly qualified lawyers and to freely choose its own representatives are, for example, essential safeguards of the independence of the Bar Association. Recent legislation, however, has removed these functions. The judiciary controls who is eligible for apprenticeship places with the Bar Association, entry into the legal profession, and continued functioning as a lawyer. This weakens the independence of the Bar

Association and undermines the professional integrity, security and independence required by lawyers and could lead to exclusion on the basis of ethnic origin, religion, or beliefs.

Taken together, these flaws have obstructed the delivery of justice. Over recent years there have been a catalogue of victims of arbitrary detention, unfair trial and imprisonment for no reason other than the expression of their conscientiously held beliefs. Such practices are not only contrary to Iran's own Constitution but also violate international human rights standards.

An academic conference entitled *Iran After the Elections* held in Berlin in April 2000, in which a number of Iranian intellectuals participated, was disrupted by political groups based outside Iran. The conference was filmed by Iran's state broadcasting company and shown in Iran, where it caused controversy. On return to Iran, the participants were summoned for questioning and some were detained, often for prolonged periods. In October and November 2000, participants and translators of conference papers were tried on serious but vaguely worded charges concerning "attempts against national security", "propaganda against the state" and "insulting Islam". At least nine people were convicted and sentenced to prison terms, yet the only evidence against them seems to have been their presence and presentations at the conference. These presentations were, in fact, reproduced and published in late 2000, in a book (see page 5) authorized by the Ministry of Culture and Islamic Guidance. At the time of writing, many of their cases were being heard by the Tehran appeals court.

This report aims to inform and support the arguments of all those engaged in seeking reform of Iran's judicial system in line with its international human rights obligations. Amnesty International's recommendations are addressed to all Iranian nationals involved in the administration of justice.

IRANIAN LEGISLATION

• Laws limiting freedom of expression and association

Legal safeguards for freedom of expression and association are recognized by the Constitution and international human rights treaties to which Iran is a state party. The basis for individual freedom of expression is found in Article 23 of the Constitution. It states that "The investigation of individuals' beliefs is forbidden" and that "no one may be molested or taken to task simply for holding a certain belief". Article 24 also provides for freedom of expression in press and publications.

Restrictive, contradictory and vaguely worded provisions contained in the Penal Code, the Theologians' Law and the Public Courts and Revolutionary Tribunals Procedural Law, however, undermine the full exercise of the right to freedom of opinion and expression. Such limitations in national law go beyond those permitted under the Constitution and Article 19 (3) of the International Covenant on Civil and Political Rights (see box).

Article 19 of the International Covenant on Civil and Political Rights, to which Iran is a state party, sets out the minimum international standards for freedom of expression and association. It states that:
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.

- **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 recognizably criminal offences. Articles 498 and 499 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, yet there is no definition of "disturb" or "security of the country" in the Code.

Restrictions to freedom of expression and association need to be clearly set out in national law. They must be consistent with international human rights standards and should make clear that such provisions do not apply to those who are exercising their rights to freedom of opinion, expression, association, who are neither using nor advocating the use of violence.

Articles 500 and 610 deal with national security and are similarly vaguely worded. Article 500 states that "...anyone who undertakes any form of propaganda against the state...will be sentenced to between three months and one year in prison." Under Article 610, two or more persons who conspire to commit or facilitate a non-violent offence against internal or external security of the nation will be imprisoned for between two and five years. Again, 'security' and 'propaganda' are not defined in the Penal Code. In practice these articles have been used to detain, try and convict journalists, intellectuals and social commentators who have done no more than express their conscientiously held beliefs in writing or in public statements.

For example, 29 individuals who participated in or provided services for 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. The charges against them included indeterminate "acts against state security", "collaboration with counter-revolutionary groups", "forming or membership of a group or association that seeks to disturb state security", "propaganda against the state" and "insulting Islam".

The charges centres on Articles 498 and 500 of the Penal Code. At least nine of the defendants were convicted and sentenced to prison terms by the lower court, yet no evidence

was produced to suggest that the defendants were involved in any violent activities connected with their participation at the conference. The sole evidence seems to have been limited to the defendants' presence and their presentations at an academic conference. These same presentations were later reproduced and published in late 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.

Human rights lawyer Mehrangiz Kar [f], 58 and journalist Akbar Ganji, 42, were two of the participants at the conference in Berlin. Both were detained and convicted as a result of their participation at the conference (see boxes on each).

Mehrangiz Kar © Heinrich Böll Institute

Mehrangiz Kar was arrested and detained following her return from the conference. In December 2000, she was tried and sentenced to four years' imprisonment for statements that she made at the conference. She was released on bail prior to the appeal court hearing in November 2001.

At the conference she made statements which did not incite to violence. According to the charge sheet, she stated that "that the Islamic system has violated the human rights and the rights of the Iranian nation over the past 21 years..." and that "It [is] necessary to carry out an examination of the State's record not only over the past ten years, but over the past 21 years. This is what the Iranian people expect from the reformist current in Iran. To make up for the violation of their human rights during the past 21 years." She also stated that:

"Iran's legal structure in various ways operates completely against women's human rights. On family matters, the women have no rights, either as a spouse or as a mother... Sometimes when I am meant to speak about women's rights, believe me when I say that I feel deeply disgusted, because I have to give a long list of violations of women's rights, for which I do not have any solutions. And the solutions that are sometimes published in the country's newspapers, are random solutions. As long as the conservatives have all the levels of power in their hands, there was only one view, and all used to say "This is it", and this is what Islam is all about. Islam has stoning; it has some heavy punishments; Islam does not allow women to reach high positions; and so on and so forth. And many of those who, because of their involvement in cultural production, believe that laws need to be critiqued, run away from this field of activity and have already done so, in order to avoid exposing their and their families' lives and reputations to danger....If, in a country, one half of the population is subjected to financial, corporal, emotional and personal violence by the country's binding laws, and still women's rights are not an "issue", then what is an issue?"

Amnesty International believes that those convicted and imprisoned by the lower court - where they are still detained - are prisoners of conscience, punished for the non-violent expression of their conscientiously held beliefs. At the time of writing, many appeal hearings of the sentences

were being heard. Amnesty International has repeatedly called for all charges to be dropped and for those still detained to be released immediately and unconditionally.


Akbar Ganji © Heinrich Böll Institute

Akbar Ganji, like the other participants, was accused, under Article 498 of the Penal Code, of "taking part in an attempt against internal security" together with elements from the "subversive and belligerent" political groups based outside the country, some of whose members attended the event. Under Article 500 they were charged with conducting "propaganda against the Islamic system". The "proof" of the charges were provided by statements he made at the conference.

Akbar Ganji reportedly stated, for example, that "human history has shown that democracy cannot be created by revolutionary means and that revolutions and revolutionaries have been unable to establish democratic governments." Additionally, he reportedly stated that "We do not have the right to tell people what to wear and what not to wear. I consider the democratic project, the process of democratization of Iran to be an irreversible project. Democracy shall certainly rule in Iran. We shall certainly see a free and democratic Iran."

Akbar Ganji was detained in April 2000 in connection with these and other statements, none of which incited to violence. He was kept in solitary confinement for a prolonged period of time prior to his trial. In December 2000, he was sentenced to 10 years' imprisonment. During the period prior to his appeal court hearing, he was not released. The sentence was reduced by the appeal court to six months' imprisonment in May 2001. He was not released and was re-arrested while still in custody and placed in solitary confinement for 45 days, according to his wife Ma'soumeh Shaf'ie. The appeal court verdict was immediately challenged by the Tehran judiciary.

Akbar Ganji had been in detention for over one year when, in July 2001, new charges were made against him. Replying to a journalist's question about how fresh charges could be made while his client was in prison, Akbar Ganji's lawyer reportedly stated that "the court probably read one of his books." A court hearing in the same month increased the appeal court's verdict to six years' imprisonment and on 16 August 2001 his lawyer stated that he had been in solitary confinement for 81 days and "everyone knows the psychological impact it has on the detainee".

During the court hearings in November 2000 he stated that Akbar Ganji had been ill treated in custody and lodged a complaint against the head of the Tehran judiciary. Amnesty International is unaware of any independent judicial investigation into these complaints. Akbar Ganji is a prisoner of conscience and should be released immediately and unconditionally.

- **"Insult" to religion**

For many centuries, Iran has enjoyed a tradition of debate, discussion and interpretation of religious precepts, yet laws relating to religion have been used repeatedly to limit freedom of expression. These include, in particular, Articles 513 of the Penal Code and Articles 6 and 26 of the Press Code.

Under Article 513, offences considered to amount to an "insult" to religion can be punished by death or prison mtermsimprisonment of between one and five years. Similarly, Articles 6 and 26 of the Press Code proscribe "writings containing apostasy and matters against

Islamic standards [and] "the true religion of Islam...", but state that such cases will be heard in a criminal court. Article 6 of the Press Code specifically states that those convicted will be "assigned punishments according to Article 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.

Neither the Penal Code nor Press Code specifically define what activities constitute insult to religion, and both have 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 to religion."

- **Specific restrictions on the freedom of expression of theologians**

Vaguely worded articles in the Theologians' Law have resulted in the closure of newspapers and the prosecution, conviction and imprisonment of theologians for the expression of their views, whether in print or public discourse. According to Article 18 of this law, "acts which customarily cause insult to the dignity of Islamic theology (clergy) and the Islamic Revolution are interpreted 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 and the imprisonment of prisoners of conscience.

On 27 November 1999 former Interior Minister and Vice President Hojjatoleslam Abdollah Nouri, publisher of the banned newspaper, *Khordad,* was sentenced to five years' imprisonment by the Special Court for The Clergy after an unfair trial.

Abdollah Nouri faced 20 charges based on "insult" and "defamation", none of which were defined or specified in any way. He was accused of publishing "anti-Islamic" articles, insulting government officials, promoting friendly relations with the United States of America and giving publicity to Ayatollah Hossein Ali Montazeri, under house arrest since 1997.

Abdollah Nouri's trial was mostly held in an open court and he had access to legal representation of his choice. However, the trial fell far short of international standards for fair trial: the Special Court for the Clergy is not independent (see below), and the judge called a halt to the defence, instructing the lawyer simply to submit the text of his defence. Prior to receiving this, the jury, picked by the judge, declared Abdollah Nouri guilty on 15 of the 20 charges.

Abdollah Nouri did not appeal against the sentence, stating that he did not recognize the court or its verdict. He was taken to Evin prison following the trial and his newspaper *Khordad* has now been banned for an indefinite period of time. Abdollah Nouri is a prisoner of conscience and should be released immediately and unconditionally.

• **Criticism, insult, defamation and dissemination of false information.**

At least nine laws, many of which are vague and overlap, deal with criticism, insult and defamation, notably of state officials; and at least one deals with the dissemination of "false information". The punishments for such charges include imprisonment and the cruel, inhuman and degrading punishment of flogging.

Article 27 of the Press Code provides for the cancellation of an individual's permit to publish and referral to the courts without the requirement of a formal complaint being lodged at the Press Court where there has been an alleged insult to "the Leader or the Leadership Council of the Islamic Republic of Iran and the indisputable Sources of Imitation"[1]. Article 30 of the same code prohibits the publication of articles containing personal insults, defamation, and other offences, but no indication is given as to what constitutes these serious infractions.

The Penal Code addresses the issues of criticism and insult in the vaguely worded Articles 514, 608 and 609. Article 514 singles out "insults" made against the late Ayatollah Ruhollah Khomeini, the first Leader of the Islamic Republic of Iran, Article 608 provides for flogging and a fine as punishment for "insulting others, such as using foul language or indecent words..." Article 609 states that criticism of a wide range of state officials in connection with carrying out their work can be punished by a fine, 74 lashes or between three and six months' imprisonment for insult. Once again, the Penal Code provides no guidance regarding what determines "criticism" or "insult".

Article 697 of the Penal Code considers defamation. It states that if an individual makes allegations of an act that "can be considered an offence according to law", but cannot prove that it is true, that person will be sentenced to between one month and one year's imprisonment or 74 lashes or a sentence combining the two. However, if the statements are proven, but the judge concludes that it is a "propagation of obscenities", the person will also be sentenced.

Article 698 concerns the dissemination of false information or rumours with the intention of causing anxiety or unease in the public's mind. This is punishable by flogging or imprisonment. In October 2001, Fatemeh Govara'i [f], a journalist and member of the Dr 'Ali Shariati Cultural Studies Centre (*Daftar-e Pajohesh-ha-ye Farhangi-ye Doktor 'Ali Shari'ati*),

[1] The 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)

was sentenced to six months' imprisonment and 50 lashes by a General Court in Qazvin, in central Iran, for charges including "spreading falsehood" in connection with an interview she gave to the weekly journal, *Velayat-e Qazvin*. She is reported to have criticized the breaking up by law enforcement officials of a private, unofficial gathering organized by Dr Ebrahim Yazdi, leader of the Iran Freedom Movement, a nationalist and religious group which was tolerated until March 2001.

THE ROLE OF THE JUDICIARY

Resolution 31 adopted at the 1999 session of the United Nations Commission on Human Rights stated that "an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice[2]."

Iran's judiciary lacks the structural independence guaranteed by the Constitution and there continues to be, at the time of writing, an absence of the separation of powers regarding the functions of investigator, prosecutor and judge. Lower court judges are required to give a ruling, even in the absence of codified law, and despite being held personally responsible for the judgments. These flaws have resulted in a catalogue of unfair trials.

The UN Principles on the Independence of the Judiciary:
- are, according to the preamble, "formulated to assist Member States in their task of securing and promoting the independence of the judiciary";
- " should be taken into account and respected by Governments within the framework of their national legislation and practice...", as stated in the preamble ;
- state under Principle 1 that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country;
- require under Principle 2 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;
- seek to ensure under Principle 5 that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures;
- details in Principle 6 how 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.

• Independence of the judiciary

Article 156 of the Constitution states that the judiciary is "an independent power, the protector of the rights of the individual and society, [and] responsible for the implementation of justice." Laws on the structure of the judiciary and current practice have, however, undermined the true independence of the judiciary.

Further, a senior judicial official has stated that judges have no independence in

[2] Economic and Social Council, Commission on Human Rights resolution 1999/31, Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/RES/1999/31)

judgement (see box below). The UN Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran and the Special Rapporteur on the Independence of Judges and Lawyers have both voiced concern over this statement[3].

Speaking to students at the Sharif Technical University on 8 October 2000, the First Deputy of the Head of the Judiciary, Hojjatoleslam val Moslemin Hadi Marvi, reportedly stated that "no one except for the Leader [*Vali Faqih*] is qualified to judge; to do so is at the discretion of the Leader. If not, the judgment has no place in religious jurisprudence [Shari'a] or law. A judge cannot say "it is my opinion..."; a judge must obey. The innocent judge is a very part of the Leader and has no independence in judgment." (*Hamshahri* and other newspapers 9 October 2000)

Moreover, the Head of the Judiciary is not elected from his peers by means of a confidential ballot, but is appointed to a five-year term by the Supreme Leader, to whom he is accountable. The Leader, according to official documents submitted to the UN[4], is "the highest authority in the country". According to Article 110 of the Constitution, he "has the responsibility and authority to determine general policies of the country..." The same flawed method of appointment, based on Article 162 of the Constitution, is used to appoint the Chief of the Supreme Court and the Prosecutor General, further undermining the true independence of the judiciary.

- **The employment, disciplining and removal of judges**

The Constitution charges the Head of the Judiciary to carry out all judicial, administrative and executive matters relating to the judiciary. According to Article 158 of the Constitution, he 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."

All appointments to the judiciary are modeled on the flawed method of the appointment of the Head of the Judiciary by the Leader: the provincial heads of the judiciary, who - as is detailed below - also carry out investigations and prosecute suspects, appoint lower ranking judges who also have investigative and prosecutorial powers in their respective jurisdictions.

Article 158 of the Constitution, which gives sweeping powers of appointment and removal of judges to the Head of the Judiciary, appears to contradict Article 164. This 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".

[3] United Nations Commission on Human Rights, *Report of the Special Rapporteur on the independence of judges and lawyers*, Dato' Param Cumaraswamy, submitted in accordance with Commission resolution 2000/42, 1 February 2001 [E/CN.4/2001/65]

[4] This is stated in the *Core document forming part of the reports of States Parties: Iran (Islamic Republic of)*, 15 July 1999 [HRI/CORE/1/Add.106]

Yet the judge in such a trial may also be appointed by - and dependent on - the Head of the Judiciary and his own appointments. This structural flaw weakens the ability of judges to deliver justice independently and free from influence.

For example, on 26 November 2001, the judge of Branch 27 of the Tehran Appeal Court was reported to have been removed by the head of the Tehran judiciary, following doubt expressed over a verdict passed by him. He had reduced Akbar Ganji's prison (see box above) sentence from six years to six months' imprisonment. The head of the Tehran judiciary, citing article 235 of the Code of Criminal Procedures, which provides for a further appeal where, *inter alia*, another judge finds fault with a verdict, sought to have Akbar Ganji's appeal heard in another court. This was heard before Branch 1 of the Tehran Appeal Court, presided over by the head of the Tehran judiciary, who was the prosecutor and appellant. Article 235 of the Code of Criminal Procedures does not provide for the removal of a judge where a verdict may have been found to be faulty and it appears that the appeal court judge was removed arbitrarily.

- **Impartiality: the separation of powers**

As indicated above, there is no clear separation of powers between the roles and functions of investigator, prosecutor and judge. In 1994, in a reform of the Revolutionary and Public Courts, these functions were vested in presiding judges of the case under investigation.

Furthermore, Article 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 Article 30 enables the judge of the court to personally attend preliminary investigation sessions in order to supervise the manner of the investigation."

This structure creates confusion regarding the roles in which judges are likely to find it difficult to maintain the impartiality required under international human rights standards. It directly contravenes Guideline 10 of the United Nations' Guidelines on the Role of Prosecutors, which states that "The office of prosecutors shall be strictly separated from judicial functions."

It also undermines the guarantee of an impartial hearing in the Public and Revolutionary Courts as required under international standards for fair trial, including the provisions set out in Article 14 (1) of the International Covenant on Civil and Political Rights.

Under this structure, the independent and impartial administration of justice by many lower and appeal court judges is made exceedingly difficult: they are handed the nearly impossible task of having to investigate and prosecute allegations, some of which may be brought by their superior, and the region's 'chief prosecutor' and the judge may well feel under pressure to convict those before him precisely because the charges originate from his superior.

- **The constitutional requirement to give a ruling**

Article 167 of the Constitution states that "The judge is bound to endeavour to judge each case on the basis of the codified law", but 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 fatawa [decrees made by theologians]. He, on the pretext of the silence or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgement."

The requirement to rule on cases in the absence of codified law contradicts Principle 2 of the Basic Principles on the Independence of the Judiciary, that " The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law..." and constitutes a further encroachment to the independence of judges.

- **Personal liability of judges**

Judges in Iran must also bear in mind that they may be held responsible for losses incurred as a result of a judgment: Article 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 Islamic criteria, if it be a case of default."

Principle 16 of the Basic Principles on the Independence of the Judiciary, however, 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."

- **The Special Court for the Clergy (SCC)**

Amnesty International published an assessment of the Special Court for the Clergy in 1997[5]. It concluded that trials before it fall short of minimum international standards for fair trial. It is an extraordinary court established by edict, whose procedure code has no provision for appeal. The court therefore contravenes international human rights standards that provide for the right to be tried by ordinary courts using established judicial procedures, guaranteeing, inter alia, the right to appeal to a higher tribunal.

In December 1998, in his report submitted to the Fifty Fifth session of the UN Commission on Human Rights, the Special Representative on the situation of Human Rights in Iran stated that "it is difficult to justify the continued existence of such an apparently and secretive tribunal." The Special Representative recommended that it be abolished, or at least that it be converted into a commission charged with settling theological issues in the narrowest sense.

[5] Please see *Iran: Human Rights Violations against Shi'a Religious Leaders and their followers*, issued by Amnesty International in June 1997 (AI Index MDE/13/18/97)

- **Bill on the Reform of the Revolutionary and General Court and re-establishment of the procuracy**

Parliament's Legal Affairs Committee reportedly approved this draft bill in June 2001. On 25 November 2001 the Islamic Consultative Assembly, or parliament, approved the first 12 articles of the 22 article bill. At the time of writing, the remaining articles were pending approval and would then be sent to the Council of Guardians for ratification prior to enactment.

If passed, it remains to be seen whether the bill will provide for the separation the duties of investigation, prosecution and judgment. It could establish independent prosecutors who, at the provincial level, could be accorded the same professional rank as the head of the provincial judiciary. While it is not known how the prosecutors would be appointed nor how the role of investigative judge would develop in practice, the draft bill also foresees the separation of civil and penal courts, allowing greater specialization by suitably trained judges.

The bill is an opportunity for parliament and the Council of Guardians to bring greater transparency, accountability and speed to the administration of justice and to enable judges and prosecutors to develop specialized skills. If, however, the judiciary retains responsibility for the selection of the prosecutor, the bills' provisions could become an additional burden to the judicial system and further undermine the administration of justice.

THE ROLE OF LAWYERS AND THE BAR ASSOCIATIONS

The independence and security of lawyers and their professional association - the Bar Associations - are among the internationally supported essential elements for the protection of human rights in the administration of justice. Current provisions for the registration of lawyers, their apprenticeship with a given Bar Association, and the independence of the Bar Associations fall far short of international standards. Specifically, they undermine the independence of lawyers and the Bar Associations, limiting the right of the accused to effective defence.

For example, since 1997, the duties and functions typically carried out by Bar Associations at an international level have been, in Iran, reduced in scope from the provisions that existed under the 1956 (Legal) Bill on the Independence of the Bar Associations.

- **Limits on who can serve an apprenticeship with the Bar Associations**

Article 2 of the Law on the Requirements for Obtaining a Lawyer's License (1997) sets out sweeping exclusions regarding who can become a lawyer (see box below). By specifically excluding individuals on the basis of belief and association, these regulations undermine the independence of lawyers.

The Bar Associations are made complicit in implementing these limitations by being required to contact the "competent authorities" to ensure that the conditions set out in the law are fulfilled.

The law concerning the requirements for becoming a lawyer contains limits to freedom of expression and association that contravene international standards:

Article 2 of the Law on the Requirements for Obtaining a Lawyer's License (1997) states:

"Permission to work as a trainee lawyer shall be issued to individuals who, in addition to having a BA degree in law or a higher degree; or basic Islamic Law or its equivalent from religious seminaries and universities, possess the following conditions:
A. Belief in and practical devotion to Islam and its precepts
B. Belief in the Islamic Republic, Velayat-e Faqih [Leadership by a religious jurisprudent] *and loyalty to the Constitution. [...]*
D. Not having had 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.
E. Not having the record of being an associate of the defunct Pahlavi regime or strengthening the foundations of the former regime.
F. Not having membership in or supporting outlawed groups opposed to the Islamic Republic of Iran."

These limits are also in contrast to Article 23 of the Constitution, which states:

"The investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief."

By means of these limitations, the judiciary and "competent authorities" - believed to include the Ministry of Intelligence - control those who may be eligible for training places with a Bar Association, and later entry into the legal profession. These provisions undermine the independence of lawyers and of the Bar Association as they limit the personal freedom and professional security of the applicant; limit lawyers from providing effective defence of their clients and undermine the professional integrity, security and independence required by lawyers.

These limitations also contravene Iran's international commitments to freedom of expression and association under Articles 19 and 22 of the International Covenant on Civil and Political Rights, as well as Principle 10 of the Basic Principles on the Role of Lawyers, which requires governments and professional associations to ensure that there is no discrimination against a person with respect to entry into, or continued practice within, the legal profession on grounds of a variety of criteria including political or other opinion.

- **Limits placed on the Bar Associations**

Principle 24 of the Basic Principles on the Role of Lawyers requires states to ensure that lawyers are 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 Tehran Bar Association was forcibly ejected from its office in 1981 and many of its members fled or were arrested in 1982[6]. Although, from that point, on the head of the Tehran Bar Association was appointed by the judiciary, the legal basis for the body had not lapsed: the 1955 (Legal) Bill on the Independence of the Bar Association and legislation passed in 1956 entitled the Procedures Regarding the Legal Bill on the Independence of the Bar Association remained in force. Both of these laws broadly meet international standards for the independence of the legal profession as set out in the Basic Principles on the Role of Lawyers. Nevertheless, from at least 1978 to 1999, lawyers were unable to elect the executive body of the Bar Associations. Now, although elections do take place, these are subject to "external interference" by the judiciary that violates Principle 24 of the Basic Principles on the Role of Lawyers.

Under the 1997 Law on the Requirements for Obtaining a Lawyer's License, those who wish to stand for the board of a Bar Association must face the same sweeping exclusions applied to trainee lawyers under Article 2, discussed above. Article 4 additionally requires the High Disciplinary Court of Judges to "investigate the eligibility of candidates to the board", ensuring that Bar Association members cannot freely elect representatives of their choice.

In late 1999, those individuals who stood for election to the 21st Board of the Bar Association were subject to approval - or rejection - by the High Disciplinary Court of Judges. According to unconfirmed reports received by Amnesty International, the head of the court stated that the court had no role in the investigation into the competence of those standing, since it had sent the list of those standing for election to the Ministry of Intelligence and was merely reflecting the latter's decisions regarding who could stand for election to the board of the Bar Association.

Not long after his election, the head of the Tehran Bar Association protested to the Supreme Disciplinary Court of Judges against these limitations.

Amnesty International acknowledges the right of states to impose limits on joining associations to those who have committed human rights violations or been convicted of recognizably criminal offences. However, the organization believes that such restrictions can only be imposed on individual cases; not applied generally to a group, faith or class of people. It is important for the law in this instance to be clear about who determines such limitations.

- **Disciplining lawyers**

Principle 28 of the Basic Principles on the Role of Lawyers stipulates 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. In Iran, Bar Associations are no longer able to

[6] Amnesty International, *Iran: Unfair trials of political detainees*, July 1992 (AI Index MDE 13/15/92)

discipline their members, despite the legal provisions and international principles supporting this function.

The 1956 (Legal) Bill on the Independence of the Bar Associations upholds this principle. It provides for investigations into the malpractice of lawyers to be undertaken by the Bar's Lawyers' Disciplinary Prosecutor and the Lawyers' Disciplinary Courts. Article 17 of this law, moreover, states that no lawyer can be suspended or banned from the practice of law except by a final decision by the Disciplinary Court.

The full scope of functions of the Lawyers' Disciplinary Prosecutor and Courts has, however, lapsed. The role of Disciplinary Prosecutor appears inactive, as the Lawyers' Disciplinary Courts only considers cases brought before it either by the judiciary or by members of the Bar Associations.

Members of the Bar Associations may appeal against judgments issued by these courts, but in contravention of Principle 28 of the Basic Principles on the Role of Lawyers, the appeal appears to be heard by the High Court for the Discipline of Judges, which can suspend or ban the lawyer.

- **Further measures undermining the independence and security and of lawyers and Bar Associations**

Article 187 of the May 2000 Law on the Third Economic Social and Cultural Development Plan entered into force in September 2001. Despite having the noble aims of seeking to provide access to legal services for a greater number of people, it is a further encroachment by judicial authorities - albeit couched in an economic bill - on the legal profession, its professionalism, and specifically, the Bar Associations, whose membership does not appear to have been consulted in its drafting. The Tehran Bar Association has made clear its detailed concerns about the law to Iranian officials and the public for over a year (see below).

Article 187 stipulates 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." The advisors are authorized to present cases in court as a lawyer in court.

It is common international practice for the Bar Association to grant licenses to newly qualified lawyers, following a recognized method of qualification. Article 6 of the 1956 (Legal) Bill on the Independence of the Bar Association authorized the Bar Associations to issue licenses to qualified lawyers, in keeping with the spirit of, for example, Principle 9 of the Basic Principles on the Role of Lawyers: that lawyers be made aware of the ideals, ethical duties of the profession and of human rights and fundamental freedoms.

The present law removes this function, giving it to the judiciary. This makes all law students subject to the sweeping exclusions described above and significantly reduces the

independence and security of lawyers, and, as a consequence, Bar Associations. It is a violation of Principle 16 of the Basic Principles on the Role of Lawyers, which states that "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference..."

Human rights lawyers, Shirin Ebadi [f] and Mohsen Rahami - along with several others - were tried on 15 July 2000 in a closed hearing by Branch 16 of the General Court. On 28 September 2000 they were sentenced to 18 month suspended prison sentences and both were banned from practising law for five years; others received prison sentences for their involvement in the alleged offence. Both were tried by a General Court in connection with their activities as lawyers.

The two had met at Shirin Ebadi's office to conduct an interview with a witness who appeared to have relevant testimony for cases on which the two lawyers were working. Shirin Ebadi was one of a team of lawyers whose clients were family members of four individuals murdered in 1998 and 1999. The alleged murderers were then on trial and Shirin Ebadi was representing them. Hojjatoleslam Mohsen Rahami was the defence lawyer of students pursuing damages in connection with injuries they sustained during a security forces' raid on student dormitories in July 1999.

A videotape was made of the witness' testimony, in which he reportedly discussed his activities as a member of a militant group, *Ansar-e Hezbollah*, or Partisans of the Party of God. He allegedly implicated senior establishment figures in allegations about the activities of the group, which include a failed attempt to murder Hojjatoleslam Abdollah Nouri, former Vice President and Interior Minister.

The tape was later found to be in circulation in public and the two lawyers were arrested, along with several others. They were charged with "disturbing public opinion", "disseminating false information" and other offences.

On 27 June 2000, the two were arrested, separately. Shirin Ebadi has reportedly stated that at one o'clock in the afternoon on the day she was arrested, she heard in a news broadcast that one woman and one cleric had been arrested in connection with the tape. She then received a telephone call from a friend, but she reassured her friend that she had not been arrested. Six hours later two plain-clothes officers appeared at her office and she went to court for initial interrogations. She spent 25 days in temporary custody prior to being released on bail.

The trial took place *in camera* but the judiciary permitted two observers from the Tehran Bar Association to attend the trial; a similar request from parliament was denied. Both lawyers have appealed the verdict, against which the Tehran Bar Association publicly protested, and continue to practice law[7].

- **Reactions to the enactment of Article 187**

Article 187 of the May 2000 Law on the Third Economic Social and Cultural Development Plan has consistently been opposed by the Bar Associations. On 6 November 2001, the Bar Associations, along with participants representing the judiciary and executive, held an extraordinary meeting to discuss the article and its impact. The topics debated included the independence and dignity of judges and Bar Associations.

[7] Amnesty International press statement, 14 July 2000, *IRAN: More Failures of Iranian Justice* (AI Index MDE 13/019/2000).

The 18-point declaration of principles issued at the close of the event was unprecedented in its appeal to the authorities to uphold international standards with regard to human rights and the role of the Bar Association and judiciary.

Point 2 of the declaration, for example, calls for complete compliance with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and other international treaties which Iran has ratified and to which it is a state party. Point 3 calls for protection of the independence of the judiciary and judges, and for the cessation of political intervention into judicial matters. Point 5 calls for protection of the independence of the Bar Associations according to internationally accepted provisions, the Law on the Independence of the Bar Associations and Article 24 of the Basic Principles on the Role of Lawyers.

On 7 November 2001, the day after the declaration was issued, as part of an emergency measure, parliamentarians annulled the article. It remains to be seen whether this move will be finally approved by the Guardian Council.

CONCLUSIONS AND RECOMMENDATIONS

Vague and overlapping laws limiting freedom of expression and association; a flawed structure of the judiciary, lacking true independence and marred by an unsound system of appointments, hampered by a lack of separation of powers and the judges' legal obligation to give a ruling for which they are held personally responsible and which may not be backed up in law, have led to many failures in the administration of justice in Iran.

The safeguards of defence normally provided by lawyers and an independent Bar Association have been dramatically weakened by their dependence on the judiciary, resulting in a pattern of irregular procedures both before and during trials, and flawed provisions for appeal. In Iran today there is a pattern of arrest, detention and imprisonment of individuals following unfair trial for no other reason than the expression of their conscientiously held beliefs. Amnesty International proposes the following recommendations.

To the Iranian government and judicial authorities and to all those involved in the administration of justice

* Release immediately and unconditionally all prisoners of conscience;

- **Concerning laws restricting freedom of expression and association**

* Review all laws, including those highlighted in this report, which limit the right to freedom of expression and association, with the aim of bringing them into line with international standards contained in the International Covenant on Civil and Political Rights, to which Iran is a state party;

- **Concerning the judiciary**

* Review all laws concerning the structure of the judiciary, its independence, method of appointments and discipline, and the constitutional framework in which it works; to ensure that its independence and functions adhere to the UN Basic Principles on the Independence of the Judiciary;
* Review laws that require judges to rule where a relevant law may not exist;
* Amend laws making the judge personally liable for their rulings;
* Review the current bill regarding the re-establishment of the role of prosecutors to ensure that it adheres to the UN Guidelines on the Role of Prosecutors;

- **Concerning lawyers and the Bar Associations**

* Provide legal provisions guaranteeing the security and freedom from interference of lawyers and the Bar Associations in accordance with international principles, including the UN Basic Principles on the Role of Lawyers;
* Re-instate all lawyers who may have been banned in connection with the pursuit of their profession;
* Establish clear, consistent or transparent criteria regarding eligibility for membership of the Bar's executive committee;
* Ensure that provisions governing licensing of lawyers adhere to international standards and practice;

- **Concerning the administration of justice**

* Review procedural laws relating to the administration of justice to ensure that arrest, detention, access to legal counsel and trial procedures, including the right to appeal, are brought into line with international standards;
* Publicize all individuals' rights under international and domestic law with regards to arrest and detention;
* Enhance cooperation with domestic human rights' bodies;
*Enhance cooperation with international human rights' bodies and the United Nations Organization and UN mechanisms, by means of awareness raising initiatives and training; and by permitting these bodies to visit Iran;
* Implement the recommendations made by Amnesty International, the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, other UN mechanisms and international human rights bodies in connection with the administration of justice in Iran.