



Human Rights in Iran

A Challenge to International
Human Rights Law



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Introduction

Human rights violations in Iran under Rouhani's Presidency have been the subject of detailed and reliable reports presented by UN officials and human rights institutions. They have also been at the centre of concern for the UN Special Representative on Human Rights in Iran, Mr. Ahmed Shaheed, who periodically reported to the United Nations Human Rights Council.

These reports are an undeniable testimony of the violations of the most basic human rights in Iran, raising the protests of awakened consciences around the globe. Organisations such as Amnesty International (AI) and Reporters without Borders (RSF) have also repeatedly warned about the dire human rights situation in Iran.

In the following pages we will review the ongoing worrisome situation of human rights in Iran with a special focus on the last two years of Rouhani's Presidency.

From the outset, it is necessary to underline the fact that human rights violations in Iran are deeply rooted in the legal system of the Islamic Republic and its mode of governance.

Over the past three decades more people have been executed in Iran for political expediency than any other country in the world in contemporary history. Some estimate the number to be as high as 120,000 executions. In the summer of 1988 alone, 30,000 political prisoners were annihilated in the span of just a few months. By the time Rouhani was elected, the world hoped the situation of human rights would improve. On the contrary, under the Presidency of Rouhani, contrary to all expectations, Iran has carried out the highest number of executions in the world per capita. The victims among others include political dissidents, ethnic and religious minority activists, those alleged to have committed acts against national security and others under the pretext of ordinary crimes. Most of these executions are the result of a perverted course of justice and unfair trials. Many of the suspects in those massacres are currently holding high ranking positions in Rouhani's cabinet or the judiciary.

The systematic human rights violations in Iran go far beyond the individuals'

misconduct and abuse of power. They are incorporated in the Constitution of the Islamic Republic. This makes Shari'a as interpreted by the Iranian Ayatollahs the primary source of law¹ and gives pre-eminence to the views and dictates of the religious supreme leader "Vally al Faqih" as a source of law. The Supreme Leader's fatwas (edicts) are mandatory and prevail over Iran's positive law and its international obligations.

While visibly the constitutional order of Iran appears to adopt the separation of powers, a basic tenant of democracy, the concept of "Vally al Faqih" introduced in the constitution² by Khomeini and his followers is the antinomy of democracy and separation of powers. "Vally al Faqih" claims divine authority on Earth. He holds the most powerful political office in the Islamic Republic. To date this position has been held by two leaders: first by the founder of the Islamic Republic, Ayatollah Ruhollah Khomeini and then by his successor Ali Khamenei.

The Supreme leader is the highest official of the State and the supreme commander of the Armed Forces³ with executive powers related to defence, religious affairs and election of the President, the Guardian Council⁴ and the Expediency Council⁵. The leader appoints the heads of some powerful posts such as the chief commander of the Islamic Revolutionary Guards Corps, the supreme commanders of the different Armed Forces, the members of the National Security Council dealing with defence and foreign affairs, the director of the national radio and television network, the heads of the major religious foundations and even the prayer leaders in city mosques. He also appoints the head of the judiciary⁶, the prosecutor, special tribunals and with the help of the head of the judiciary, half of the 12 jurists of the Guardian Council, the body that decides both what bills may become law and who may run for President or Parliament. According to the Iranian constitution the Supreme Leader also decides on the suitability of candidates for the Presidency of the Islamic Republic, he formalizes the election of the President of the Republic, he asserts the authority of the President and decides on dismissing him. He can veto the laws made by Parliament and gives assent for Presidential candidates to proclaim their candidacy. He makes declarations of war and peace together with a two third majority of Parliament. With all these powers in hand, he is effectively the one and absolute ruler of the country.

Since December 1977, Khomeini had progressively built around himself the perception that he was the 'Imam', a title that conferred upon him divine status and one which had not been used by mainstream Shi'a Islam for centuries⁷.

Such a constitutional order puts Iran among a few countries in the world that are in conflict with the basic principles of international law and the principle of universality and indivisibility of human rights⁸. The supremacy of what the mullahs decree as Islamic law (shari'a) over international law in the Iranian constitution puts the Country at odds with the United Nations Charter; the



Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

During the review of the human rights situation in Iran by the pair review mechanism of the UN Human Rights Council known as the Universal Periodic Review (UPR), the Council had authoritatively pinpointed the limits of the Iranian constitutional order and legislation in upholding the rule of law and human rights. These limits are recognized by the UN treaty bodies and special procedures, the UN Secretary General and the United Nations High Commissioner for Human Rights (HCHR), the thematic special rapporteurs and the concerned UN member States and NGOs. It is proposed that this study highlights some of the ongoing severe human rights violations in Iran, especially the high number of executions and the systematic use of the death penalty over more than three decades as a means to terrorise the public, briefly reviewing areas where the Iranian legal system has failed to comply with the universally accepted principles of international law of human rights and engages a reflection for change that will ensure full compliance with Iran's international obligations.



An Overview of the Current Human Rights Situation in Iran

Iran has no system for court case reporting and no mechanism which provide the public and the legal profession with free access to information about court rulings and judicial decisions. A limited amount of the Supreme Court jurisprudence is printed in the Official Gazette. These are mainly related to economic crimes or the crimes that could serve as a deterrent to those who may constitute a threat to the regime. Article 36 of the revised Islamic Penal Code and the note attached to it makes the publication of final conviction discretionary in hadd (singular of huddud) crimes of moharebeh and efsad-e fel-arz, or ta'zir crimes of up to the fourth degree, and also fraud of more than one billion (1,000,000,000) Rials, depending on whether or not in the view of the authorities publication may encroach on the public order or security.

However, the World Coalition Against the Death Penalty (WCADP) with 160 NGO

Table of Executions in Iran under

EXECUTIONS	Subject	Aug 2013												secret exe.																																					
		Aug 2013		secret exe.		Sep 2013		secret exe.		Oct 2013		secret exe.		Nov 2013		secret exe.		Dec 2013		secret exe.		Jan 2014		secret exe.		Feb 2014		secret exe.		Mar 2014		secret exe.		Apr 2014		secret exe.		May 2014		secret exe.		Jun 2014		secret exe.		Jul 2014		secret exe.		Aug 2014	
Total Executions		27	30	51	46	39	24	34	39	26	72	35	46	26	56	15	8	7	52	32	86	13	49	0	10	33	75																								
Women Executed		0		8		4		4		0		1		1		1		0		3		0		4		4																									
Public Executions		7		8		4		4		0		2		9		4		4		1		0		0		17																									
Political Executions		0		0		18		1		0		2		0		0		3		0		1		0		0																									
Minors Executed		1		1		0		2		3		0		2		2		2		0		0		0		2																									



Executions under Rouhani's Presidency August 2013 - August 2015

During the summer of his election campaign for Iran's Presidency, Hassan Rouhani made many pronouncements. On 27 May 2013, he stated "Anyone who wants to speak in a society should be able to come out and speak their mind... Criticise and critique without hesitation".¹¹

On the very day of his inauguration, Rouhani acknowledged "People want change... People want to live better, to have dignity as well as a stable life."¹² Yet as the pre-election rhetoric began to fade, so did all hope and expectation of change. It became glaringly obvious that it was business as usual. Not only had nothing changed, but in fact, in terms of human rights violations, things were getting considerably worse. A damning indictment on Rouhani's Presidency.

According to the UN Special Rapporteur on the Human Rights Situation in the Islamic Republic, Mr. Ahmad Shaheed, "**Iran continues to execute more individuals per capita than any country in the world**". A shocking revelation, given Rouhani's pre-election pronouncements and the zeal in which his Presidency was welcomed in the West. Mr. Shaheed requested Iran to "declare immediately a moratorium on executions".¹³

Recently, Amnesty International reported the execution in Iran of 694 people between 1 January and 15 July 2015. At this rate, it is believed that by the end





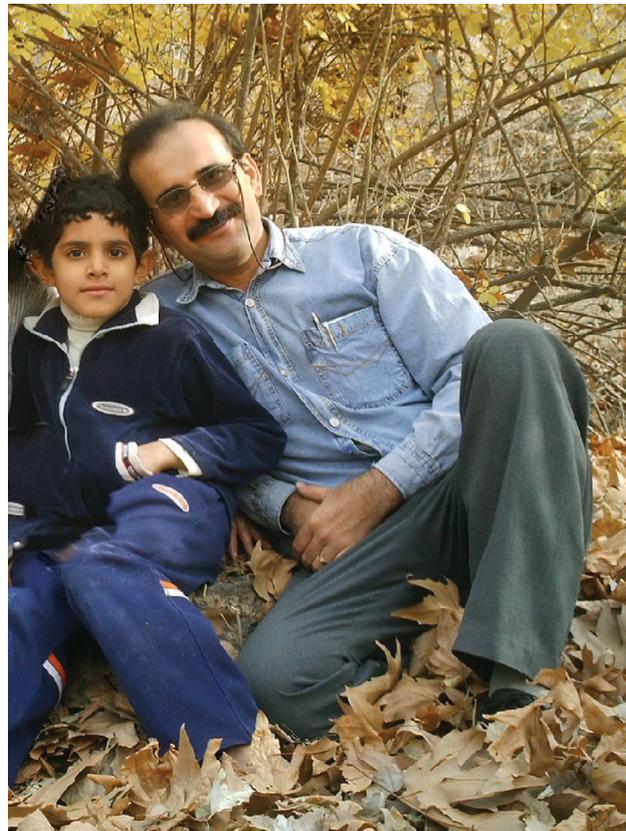
of the year this number will go far beyond the number of executions during the year 2014 with a total of at least 743 executions.¹⁴ This unprecedented spike in executions took place while Iran, under the Presidency of Hassan Rouhani, was negotiating with the Group of 5+1 to pacify its nuclear programme and to have the related sanctions lifted. Amnesty's report concludes that **"the staggering execution toll for the first half of this year paints a sinister picture of the machinery of the state carrying out premeditated, judicially-sanctioned killings on a mass scale"**.

The Secretary General of the United Nations, Mr. Ban Ki-moon has expressed "his alarm at the increasing number of death sentences handed down and executions carried out in the Islamic Republic of Iran."¹⁵ As Mr. Ban Ki-moon pointed out **"In the majority of cases that involve capital punishment, due process guarantees were often violated in proceedings that fell short of international fair trial standards..."**¹⁶ which led him to call on the Iranian authorities to adhere to the UN moratorium on executions in view to progressively abolish the death penalty.

Of the 1,869 executions during Rouhani's Presidency by the end of August (above), several executions were politically motivated:

Gholamreza Khosravi

Among these cases is that of Mr. Gholamreza Khosravi, a political prisoner executed on 1 June 2014, He was arrested in 2007 and charged with the offence of being an enemy of God (mohareb) for having provided financial assistance to the People's Mojahedin Organisation of Iran (PMOI), an Iranian opposition group seeking regime change in Iran. In an abrupt and shocking turn in Mr. Khosravi's case, he was executed while waiting to be released having served his original sentence of 6 years imprisonment. Clearly Mr. Khosravi execution was an extra-judicial killing. As Amnesty International points





out "the use of the death penalty is always abhorrent, but it raises additional concerns in a country like Iran where trials are blatantly unfair."¹⁷

Behrouz Alkhani

As recently as 26 August 2015, Mr Behrouz Alkhani a Kurdish political prisoner was subjected to prolonged torture and finally executed while his sentence was considered on appeal by the Iranian Supreme Court. Amnesty International described the execution as "a vicious act of cruelty by the Iranian authorities and a denigration of both Iranian and international law".¹⁸



Amnesty International reacted to this extra-judicial killing saying "The fact that the authorities have carried out the execution despite the pending appeal against a sentence imposed in a grossly unfair trial and international pleas to halt the execution, shows their utter disregard for justice. His execution is just further proof of the authorities' determined resolve to continue with a relentless wave of executions which has seen more than 700 put to death in Iran so far this year." ¹⁹

Farzad Kamangar

Farzad Kamangar, a 32 year old primary school teacher, poet, and human rights activist was executed on 9 May 2010 on a charge of violating national security, being a member of PJAK (a Kurdish opposition group) and being mohareb "an enemy of God". Asserting Mr. Kamangar's innocence, the defence lawyer stated that there had been absolutely no evidence to support the prosecutor's case against Mr. Kamangar. His trial was reported to have lasted no "more than five minutes, with the Judge issuing his sentence without any explanation and then promptly leaving the room..."²⁰





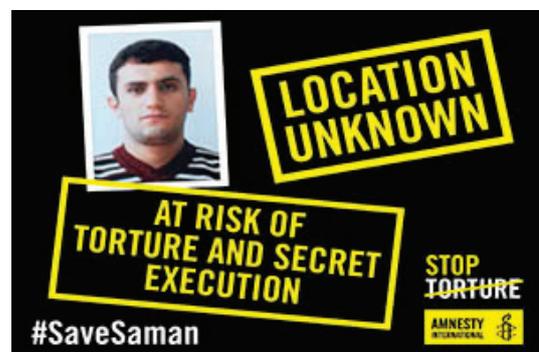
Execution of Minors

According to Amnesty International “two decades on from Iran’s ratification of the Convention on the Rights of the Child (CRC), the Iranian authorities continue to show a shocking lack of respect for the basic human rights of children.”²¹

*160 juvenile
offenders on
death row*



Saman Naseem, a Kurdish juvenile was arrested in the city of Sardasht aged 17 for allegedly taking up arms against Iran’s Revolutionary Guards and being a member of a Kurdish opposition party. He was sentenced to death and was due to be executed on 19 February 2015 after a forced confession. In a letter from Evin prison he wrote “During the first days, the level of torture was so severe that it left me unable to walk. All my body was black and blue. They hung me from my hands and feet for hours. I was blindfolded during the whole period of interrogations and torture, and could not see the interrogator and torture officers...They told me that they would kill me right there and would cover my grave with cement. When I wanted to sleep during nights, they would not let me rest by making noises using different devices, including by constantly banging on the door. I was in a state between madness and consciousness. I could not have any contact with my family during this time.”²² After immense international pressure, his case was judicially reviewed but he remains in prison awaiting a retrial.



According to the Secretary General’s annual report,²³ **at least 160 juvenile offenders were reportedly on death row as at December 2014.** According to the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, eight individuals below the age of 18 at the time of their offence were executed in 2014.²⁴



Violence Against Women, Gender Discrimination

Since the inception of the Islamic Republic, women have been the primary victims of the Iranian regime. Every aspect of a woman's life is dictated to her by misogynist Mullahs. Women's life in Iran under President Rouhani is no different.

One of the cases that had received worldwide attention was the execution of **Ms. Reyhane Jabbari**, a 26 year old woman executed on 25 October 2014, having spent 5 years on death row. Ms. Jabbari was hanged for allegedly killing Morteza



Abdolali Sarbandi a former member of Iran's Ministry of Intelligence. Ms. Jabbari maintained to her death that she stabbed Sarbandi in self-defence as he attempted to sexually assault her. According to the UN Secretary General's report "serious concerns were raised about due process in this case, in particular that her conviction had been allegedly based on confessions made under duress and that the court had apparently failed to take all relevant circumstantial evidence into account."²⁵

Despite a worldwide campaign for a re-trial and a call for clemency, Ms. Jabbari was executed to international condemnation. With some indifference, the Foreign and Commonwealth Office said Britain is "concerned" and that there had been "questions around due process".²⁶

In her own words, Jabbari in a message to her mother on learning of her fate said "don't cry for what you are hearing... the world did not love us. It did not want my fate. And now I am giving in to it and embracing death. Because in the court of God I will charge the inspectors... I will charge the judge, and the judges of the country's Supreme Court that beat me when I was awake and who did not refrain from harassing me. In the court of the creator I will charge... all those who, out of



ignorance or with their lies, wronged me and trampled on my rights and didn't pay heed to the fact that sometimes what appears as reality is different from it".²⁷

Acid Attacks on Women

A spate of acid attacks on women in 2014 in the city of Isfahan drew domestic and international horror and condemnation. At least fifteen women have been attacked, one fatally.²⁸



It is widely believed that the attacked women were targeted because of their clothing. Ironically, the head of the voluntary Basij, Mohammad-Reza Naghdi blamed "western intelligence services" being behind the attacks in an effort to destroy the image of Islam.²⁹ This claim was supported by Abbas-Ali Mansouri from the National Security Committee of the Iranian Parliament who said "Foreign and Zionist intelligence agencies" were responsible.³⁰ This is in stark contrast to Yousef Tabatabai-Nejad, the leader of Isfahan's Friday prayers who said "the issue of hijab has passed giving notices, and in order to counter mal-veilers, bludgeons must be raised and force must be used".³¹

Since the 1979 revolution, it has been compulsory for all women in Iran to wear the hijab and to be covered from head to toe. It is important to note that none of the victims wore a chador and all were young women, the youngest aged 21.

Questionably, no assailant has been caught or brought to justice, while those who demonstrated against violence against women were arrested, including several journalists.³²



The father of one of the victims (Soheila Jorkesh) said that State Security Force agents had threatened him, telling him not to speak to the media about the attack on his daughter.³³

Discriminatory Measures Against Women

In response to the dictates of the regime's leader, Khamenei, President Rouhani's Interior Ministry issued a directive on 20 June 2015 to generalise the Islamic dress code for women.³⁴

According to this directive, women's veil should be a "chador or loose ankle long dress with long sleeves without any marks or motifs, cloth trousers, and a large scarf that covers the head, hair and neck with conventional colours.

Unconventional jewellery should not be used. No makeup is allowed." Male employees should also "refrain from wearing T-shirts, tight or short-sleeve shirts, tight trousers or jeans, clothing with Western marks, ornaments, wide belts with unconventional buckles, and unsuitable hair and beard designs".³⁵



Morality police arresting a young woman for not observing the regime's dress code and wearing make up

Furthermore, as of 30 August 2014, Iranian authorities banned women from working in coffee shops. Musical performances between August and December 2014 were cancelled because of the participation of women.³⁶ As recently as June 2015, during a Volleyball World League match at Azadi Stadium in Tehran,



women were severely aggressed and prevented from entering the stadium. The beatings by the notorious morality police took place despite President Rouhani's election promise to relax the restrictive Islamic mores control. Preventing women from sports arenas is a violation of the Olympic Charter and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

Political Prisoners

Suspicious death

Shahrokh Zamani, 51, a political prisoner from Azerbaijan, Northwestern Iran, was found dead in his cell in Gohardasht (Rajai Shahr) Prison on September 13. At 5:00pm in the afternoon, his cellmates in Hall 12 of Ward 4 found his body in his bed with his mouth full of blood and a bruised head.

In a note before his death he wrote: "I have been directly and indirectly threatened to death in the intelligence department, including by poisoning, placing me beside ordinary people suffering from AIDS, forcing psychologically unbalanced, murderous and dangerous individuals to attack me, placing intelligence agents under cover of prisoner with me who encouraged me to run away so that they could shoot me when I try to

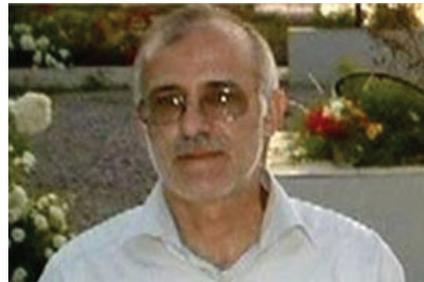




escape ... I warn everyone ... My death in prison, for whatever reason, should be blamed on the authorities." He was first arrested in 1993 for his secret activities in the painters' syndicate and was imprisoned for 18 months. On June 8, 2011, he was arrested in Tabriz and sentenced to 11 years prison term charged with "propaganda against the system (regime)". In September 2013, he was once again tried in mullahs' sham trials for "insulting the leader" and was condemned to 6 additional months in prison.

Sentence extended by Revolutionary Court

Ali Moezzi, 63, he was arrested in November 2009 and sentenced to two years for visiting his two children, members of opposition PMOI, in Camp Ashraf Iraq. He was arrested again in 2011 for having attended a funeral of Mohsen Dokmechi, a PMOI member tortured to death by refusing medical treatment in prison. In October 2012 he was sent to solitary



confinement following his refusal to denounce his anti-regime activities and affiliation to the PMOI and appear in a televised confession. He openly rejects the legitimacy of the regime's courts and judiciary and refuses to attend court sessions or abide by their rulings. In May 2015 while only a week of his sentence was remaining, new charges were brought against him and was sentenced to one more year imprisonment.

On September 6, 2015, he was forcibly taken in shackles from Karaj Central Prison to Tehran Revolutionary Court for yet another sham trial held for the third time to defend himself charged with "propaganda against the regime". While describing the court as being unlawful, he refused responding to the charges or the questions posed to him.

On hunger strike against death sentence

Mohammad Ali Taheri, 59, was sentenced to death on 1 August for "spreading corruption on earth" (efsad-e fel arz) by establishing a new spiritual group called Erfan-e Halgheh.

Mohammad Ali Taheri established "Erfan-e Halgheh," an arts and culture institute in Tehran during the 2000s, and, using healing concepts, treated patients with psychological and medical conditions. Taheri was arrested in 2010 on charges of "acting against national security" and was held in solitary confinement for 67 days before he was released.



He was arrested again on May 4, 2011, and after three court sessions, on



October 30, 2011, Branch 26 of Tehran Revolutionary Court sentenced him to five years in prison for “blasphemy,” to 74 lashes for “touching the wrists of female patients,” and 900 million toman in fines (approximately \$300,000) for “interfering in medical science,” “earning illegitimate funds,” and “distribution of audio-visual products and use of academic titles.”

He went on hunger strike in protest against his death sentence and at the time of this report in September he had gone passed 40th day of his strike.

Mother of a twin seriously ill deprived of treatment

Narges Mohammadi, 43, mother of a twin, is a human rights activist and the vice president of the Defenders of Human Rights Center in Iran. She was first arrested in 1998 for her criticisms of the Iranian government and spent a year in prison. In April 2010, she was summoned to the Islamic Revolutionary Court for her membership in the DHRC and jailed subsequently.



She was briefly released on bail but re-arrested several days later and detained at Evin prison. Mohammadi’s health declined while in custody, and she developed an epilepsy-like disease causing her to periodically lose muscle control.

International campaigns lead to her release but did not last long due to her continued anti-regime activities. This has been the trend over the year.

On May 5, 2015, Ms. Mohammadi was again jailed on the basis of new charges. She is currently going through harsh conditions and poor state of health with very little medical attention.

Attacks on Political Prisoners

On 17 April 2014, political prisoners in ward 350 of Iran’s notorious Evin prison were brutally attacked by prison guards. The attack resulted in broken bones, ribs and skull fractures. One prisoner suffered a heart attack and according to witnesses, the bus ferrying the wounded inmates was covered in blood. Four of the most seriously wounded inmates were taken to hospital and thirty two prisoners were subsequently transferred to solitary confinement as a result of the attack.³⁷



Ward 350 of Evin prison is reserved for political prisoners including lawyers, journalists, labour rights and minority rights activists, particularly members and supporters of the main opposition group, the PMOI.³⁸ According to The Guardian newspaper “many activists fear the attack was designed by hardliners to send a signal to Rouhani that the ruling system was not prepared to compromise on political prisoners”.³⁹

Furthermore, as recently as July 2015, on the day the Iran nuclear deal was struck, ward 8 of Evin prison where a number of political prisoners are held was attacked by prison guards. Purposely, political prisoners are often sent to criminal offenders wards as a degrading and humiliating treatment.⁴⁰

Denying Medical Care in Prisons

A notable case pertaining to the lack of medical care in prison is that of political prisoner **Ali Asghar Mahmoudian**. Aged 63, he suffers from numerous physical ailments in Semnan Central Prison and continues to be deprived of medical care. Mahmoudian was arrested in 2009 and condemned to 6 years in jail by a revolutionary court for being ‘mohareb’ (enemy of God) because of his support for the PMOI. He suffers from blocked arteries, haemorrhoids, prolapsed back disk and breathing difficulties.⁴¹

Amnesty International reported on 16 June 2014 that Kurdish Iranian prisoner **Zeinab Jalalian** currently risks losing her sight and is in urgent need of medical attention at Kermanshah Prison. Accused of membership of a Kurdish opposition group, Jalalian was jailed for life in 2010. She has suffered from eye problems for a number of



years, possibly as a result of beatings received during interrogation by the Iranian authorities. Jalalian has repeatedly been refused access to an eye specialist to receive the medical care she desperately requires. Her family have been unable to visit her for over a year and her request for prison leave in January 2014 was given on condition she make a televised confession. When she refused to do so,⁴² her leave permission was cancelled.



Another female political prisoner, **Reyhaneh Haj-Ibrahim** who suffers from neuralgia in the back and legs and was unable to walk had been prevented from seeking medical attention until she pays a bond of one billion Toman as a prerequisite for her treatment. She was arrested during the 2009 student uprising in Iran and is sentenced to 15 years in prison.⁴³

On 14 May 2014, the Iranian Ministry of Intelligence and Security (MOIS) agents chained the hands and feet of political prisoner **Mashaallah Haeri** who was hospitalized in Tehran's Day Hospital. This inhumane treatment caused bleeding to his nose and ears and his condition deteriorated. It is reported that he is currently in a coma.⁴⁴

In another case, **Karim Marouf Aziz**, a political prisoner aged 71 who has been in prison for 18 years has a deteriorating heart condition. He underwent open heart surgery but was later returned to Gohardasht prison without having undergone the full process of his medical treatment.⁴⁵



One prisoner, **Hamidreza Moradi** was at risk of having his leg amputated because prison authorities prevented him from seeking the medical care he so vitally needed. Mr. Moradi was imprisoned for writing for a sufi news website although he has since been released.⁴⁶

In November 2013, it was reported that the physical condition of Dervish rights activist **Kasra Noori** is critical. This prisoner of conscience was suffering from a disk prolapse which was inflicted on him in prison and has been unable to walk. Mr. Noori has served two years of his four-year and four-month hard-labour prison term.⁴⁷

Yet according to Javad Zariff, Iran's Foreign Minister "**we do not jail people for their opinions**",⁴⁸ implying that Iran has no political prisoners or prisoners of conscience, a statement that is clearly at odds with the facts.



Other Human Rights Issues

The March 2015 report of the Special Rapporteur on the Situation of Human Rights in Iran drew attention to numerous human rights challenges in the Islamic Republic. While it is beyond the scope of this paper to examine these in any great detail, the Special Rapporteur had certain specific concerns, one being the conditions in Iran's prisons and "insufficient or non-existent access to medical services for detainees" where sick prisoners were not provided with adequate medical attention.⁴⁹



Another matter raised by the Special Rapporteur is the independence of lawyers and the number of lawyers prosecuted for representing prisoners of conscience. An example given by the Rapporteur is the case of Mr. Masoud Shamsnejad, a Kurdish human rights lawyer who had his licence suspended for representing Kurdish political prisoners. He was also indicted for "propagation against the system" and was sentenced to 4 months in prison.

As reported by Amnesty International the "Iranian authorities have put another nail in the coffin of justice by making a retrogressive amendment in Iran's new Code of Criminal Procedures which limits the right to access an independent lawyer of one's choice during primary investigations in certain criminal cases, including those related to national security".⁵⁰

Another issue of concern to the Special Rapporteur was access to information and freedom of expression. According to his report "in November 2014, the Working Group on Determining Instances of Criminal Content confirmed that the Information and Technology Ministry will continue to filtering access to data on Instagram. In December 2014 Fars News reported that "immoral" pages on Instagram were blocked.⁵¹

Freedom of religion continues to be a concern for the Rapporteur as Iranian Sunni's, Orthodox Armenians and Assyrians are restricted from building places of worship. Baha'is continue to be persecuted by the Iranian regime as they face arbitrary detention and arrest because of their religion and Baha'i students are discriminated against on entry to University.

Iranian Christians too are not exempt from persecution. As at the beginning



of the year 2015, at least 92 Christians remain in detention, allegedly due to their Christian faith. Those who have converted to Christianity are persistently harassed and prevented from observing religious holidays such as Christmas day. On 19 October 2014, the Revolutionary Court of Alborz Province sentenced Pastors Behnam Irani, Reza Rabbani and Abdolreza (Mathias) Haghnejad to six years in prison on charges of "acting against national security" and "forming groups to overthrow the government."



Pastor Saeed Abedini and his family

Saeed Abedini, an American pastor has been imprisoned and beaten for his Christian faith. Having spent two months in hospital for injuries he sustained during his beating, he was returned to Evin prison. Pastor Abedini's wife Naghmeh said "This news is devastating to our family... This development also came as a complete shock to all of us. Saeed's family, who was present at the hospital when this occurred, witnessed the severe beatings that Saeed received - at one point seeing him collapse before being taken away. We're very concerned about his health."⁵²

Ms. Maryam Naghash Zargaran, a Christian inmate, currently imprisoned in Evin Prison has suffered harassment, beatings and sexual abuse by prison guards. Aged 36, she was arrested in the winter of 2012 on a charge of being a threat to national security. Her physical and mental health has deteriorated as a result of her treatment by the guards. She was sentenced to four years imprisonment.⁵³

Also of concern to the Rapporteur was the fact that "Iranian authorities reportedly continue to prosecute individuals for the possession and use of satellite dishes. Over the past few months, Iranian officials have increasingly acknowledged the potential health concerns of satellite jamming, which the Government uses to



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block public access to certain television channels." Apart from the fact that satellite jamming prevents the free flow of information to Iran, there are also reports of potential health concerns associated with jamming. Mr. Saeed Motassadi of the Department of the Environment has noted "the topic of jamming causing cancer [has been] studied many times, and the possibility exists of this illness coming about in individuals as a result from the effects of jamming."



Armored vehicle and road construction roller used for crushing satellite dishes on streets. Dishes are collected from houses and roof tops



Stoning, eye gouging and amputation continues as a form of punishment in Iran. In another shocking act of cruelty, two young men had their fingers amputated on 28 June in Khorasan Province for an alleged theft.⁵⁴ Furthermore, two prisoners were sentenced to amputation of one leg and one hand for stealing from a bank. The sentence for one of the prisoners was carried out on 3 August 2015 in the central prison of Mashhad and the other is due to be carried out shortly.⁵⁵

The eye of a prisoner is being gouged



Fingers of a prisoner cut off by a special machine developed by the regime





Freedom of Expression

Iran has been ranked among the world's top journalists jailers in the world and continues to occupy a leading place according to 'Article 19'⁵⁶. The selection of cases below is given for illustrative purposes of the harsh treatment of journalists and human rights activists in Iran.

Mostafa Azizi is the former Chair of the International Animated Film Association, Iran Chapter. On 8 June 2015 Azizi was given 8 years jail sentence for having peacefully expressed his views on social media. (Source Article 19)

Atena Farghadani is a cartoonist and political activist. She was arrested in January 2015 and sentenced to 12 years in prison for drawing a cartoon. (Source Article 19). The 2015 Award for Courage in Editorial Cartooning has been given to her for her bold decision to draw this cartoon and post it on her facebook.



Atena's cartoon depicting government officials, who restricted women's access to birth control, as animals



Washington Post Tehran correspondent **Jason Rezaian** was arrested on July 22, 2014. He is on trial in Iran on charges including espionage. The U.S. government, The Post, the Committee to Protect Journalists and his family all say that he was simply working as a journalist and that he should be freed immediately. (Whitney Shefte/The Washington Post & Article 19)

Nahid Gorji is a civil rights activist. She was arrested in October 2014 for her activity on social media. Two months after her arrest, several European MPs campaigned for her release. The court approved bail for her at \$143,000 but as she was unable to pay, to this day she remains behind bars. (Source Article 19)



Roya Saberinezhad Nobakht an Iranian-born British citizen, is being held in the Women's Ward at Evin Prison for postings on Facebook. In October 2013, she travelled to Iran to visit relatives but was arrested upon her arrival at Shiraz airport. (Source Article 19)

Soheil Arabi, a blogger charged with insulting the Prophet and the Imams and tried on August 30, 2014 at Branch 76 of the Tehran Criminal Court presided by Judge Khorasani who sentenced him to death. (Source Article 19)

Reza Entesari is a journalist and Sufi rights activist. He was arrested on 4 September 2011 while photographing a gathering of Gonabadi Dervishes, a Sufi order that believes in non-violence and follows a mystic interpretation of Islam. He was given an eight-year sentence. Throughout his detention, he has suffered repeated beatings and was sent to the notorious Rajaie Shahr Prison for protesting against his conditions. It was reported he was recently hospitalized for a heart attack but authorities have apparently ignored his family's requests for information on his whereabouts. (Source Article 19)



History of Executions in Iran

In order to fully grasp the significance of the deterioration of human rights under Rouhani, it is important to take a brief look at the history of executions since the inception of the Islamic Republic.

In February 1979, the Pahlavi dynasty of the last Shah was overthrown by the Iranian people expecting an end to the notorious era of the SAVAK.⁵⁷ However, the Shah's tyranny was replaced by the Islamic Republic of Iran led by Ayatollah Khomeini. The world's first religious regime had also spawned a new interpretation of Islam known today as "Islamic fundamentalism", an entirely new phenomena that would in time change the face of the modern world. The reign of terror started in Iran in 1981.

Soon the entire legal, religious and political system in Iran changed and even the rights guaranteed by the Constitutional Revolution of 1906 were clawed back. Hundreds of thousands of people would be executed, tortured and imprisoned in Iran's now infamous prisons and Iran would be known as the most horrific human rights violator. Thirty five years on, Iran continues to execute more people per capita of population than anywhere else on Earth.

While it is beyond the scope of this working paper to examine 35 years of human rights abuses in Iran, it is necessary to look at the founding of the Islamic Republic and to Iran's first Supreme Leader, Ayatollah Khomeini. Khomeini, a shi'ite cleric was born in the town of Khomein in 1902. Exiled by the Shah in 1965 for his opposition to the Shah's rule, he became the founder and face of the Islamic Republic. In fact, his ten year rule would in time come to shape the world.

During his years in exile in Najaf, Iraq, Khomeini worked on what he called the 'Velayate Faghih' a system of government ruled by the clergy with the principles and tenets of Islam at its core. Expelled by Iraq, Khomeini moved to Paris and after a total of 14 years in exile, the Ayatollah boarded a flight from Paris to Tehran on 1 February 1979.

While in exile, Ayatollah Khomeini was at pains to point out to the world's media that he had no desire for personal power and merely wanted to be a spiritual guardian to the people. In an interview with The Guardian he said "I don't want to have the power or the government in my hand; I am not interested in personal power."⁵⁸ In fact, throughout that year in numerous interviews with the world's press, Khomeini claimed to want no part in governing Iran.

To an Austrian TV reporter he said "I don't want to be the leader of the Islamic



Republic; I don't want to have the government or the power in my hands. I only guide the people in selecting the system."⁵⁹ To Le Journal he said "It is the Iranian people who have to select their own capable and trustworthy individuals and give them the responsibilities. However, personally, I can't accept any special role or responsibility."⁶⁰

In truth, the Ayatollah would violently surpass all others and seize a remarkable opportunity to put his theory of Islamic governance into practice and thereby change the Middle East and the world forever, giving birth to Islamic fundamentalism.

After his return to Iran, it soon became clear that Khomeini's rhetoric had changed. There are countless examples such as in March 1979 when speaking to a group of students in Qom when Khomeini said "Don't listen to those who speak of democracy. They all are against Islam. They want to take the nation away from its mission. We will break all the poison pens of those who speak of nationalism, democracy, and such things."⁶¹

Later that same year he said "That group [democrats] due to its opposition to Islam is opposing us, with the same fist that we destroyed the regime we will destroy that group as well."⁶²

After the election in 1979 Khomeini said "Those who have not voted for the Islamic Republic, it means that they want the previous system. Those who boycott the election so no one votes for the Islamic Republic are seditious. We will treat them like enemies, and we will oppress them. You are the enemies that want to cause trouble. You are the enemies that are conspiring against Islam and against the country... we will destroy you all. If you don't stop your evilness, we will mobilize an even higher mobilization, and we will clean out all of you."⁶³

All dreams and aspirations for a free and democratic Iran ended on 21 June 1981, the day Khomeini banned all political parties except the Islamic Republic Party, ordered guards to open fire on peaceful demonstrators and impeached President Baniadr. All political dissent and political opposition became illegal. As the representatives of God on Earth, the mullahs under the leadership of Vally al Faqih would decide on life and death of Iranians with no appeal.

This period from 1980 is known as the 'reign of terror' when the Hizbollah, Revolutionary Guards and Basiji forces rounded up their vigilantes and beat, tortured and executed thousands. Approximately 100 people per day were executed during this period. The vast majority were executed by firing squad. In the following years many were hanged from cranes in public squares in towns and cities across Iran. Supporters and sympathisers of the PMOI were the primary victims of this crackdown, but this fate was not restricted to them as members and sympathizers of other political groups were also executed.



Ayatollah Khalkhali a notorious Shi'a cleric is known to have "held multiple public executions on the streets of Tehran, and boasted that he had personally dispatched to Allah in just three months a thousand 'counterrevolutionaries'".⁶⁴ He is quoted later as saying to a French newspaper (Le Figaro) "If my victims were to come back on earth, I would execute them again, without exceptions."⁶⁵

During this period, in response to a complaint by supporters of the PMOI in August 1980, when the organisation was still engaged in public activity in Iran, mullah Allameh a hard-line cleric and head of the revolutionary court of Bam, in southern Iran wrote "According to the decree of Imam Khomeini, the Mojahedin of Iran are infidels and worse than blasphemers ... They have no right to life." Throughout this period and up to the summer of 1988, absolute terror reigned across Iran. The break out of the Iran-Iraq war served the mullahs' regime and allowed them to quash the opposition and purge dissidents and political prisoners.

1988 Massacre of Political Prisoners

In the summer of 1988, in excess of 30,000 political prisoners were executed in prisons across Iran. The vast majority were supporters and sympathisers of the People's Mojahedin Organisation of Iran but there were other victims such as supporters of the leftist groups.

Seizing an opportunity to rid Iran of the thousands of political prisoners, many of them in prison since 1981, Ayatollah Khomeini issued a fatwa stating "It is decreed that those who are in prisons throughout the country and remain steadfast in their support for the Monafeqin (a pejorative term used by the mullahs to designate members of the PMOI) are waging war on God and are condemned to execution."⁶⁶

Death committees were set up consisting of a religious judge, an intelligence officer and a state prosecutor who simply asked the prisoners whether they remained loyal in their support of the Mojahedin. A former worker at Evin prison, Kamal Afkhami Ardekani in evidence presented to the United Nations said "They would line up prisoners in a 14-by-five-metre hall in the central office building and then ask simply one question, 'What is your political affiliation?' Those who said the Mojahedin would be hanged from cranes in position in the car park behind the building."⁶⁷

In March 1989, the French newspaper Le Monde reported: "Imam Khomeini summoned the Revolutionary Prosecutor, Hojjatol-Islam Khomeiniha, to instruct



him that henceforth all Mojahedin, those in prisons or elsewhere, must be killed for waging war on God. The executions followed summary trials. The trial consisted of various means of pressuring the prisoners to repent, to change their ways and confess. Cases of young Mojahedin who were executed included some who were jailed about eight years earlier, when they were 12 to 14 years old, for taking part in public demonstrations."

In a letter to his son Ahmad, Khomeini wrote "Annihilate the enemies of Islam immediately". According to Ardekani's testimony "The process went on and on without interruption." In two weeks, over 8,000 political prisoners were executed, buried in secret mass graves across Iran.



According to Amnesty International "The executions were authorized at the highest level of the Iranian leadership and were supposed to tackle the perceived threat from armed opposition groups, in particular the People's Mojahedin of Iran and the Fedayan-e Khalq. Amnesty International believes these executions amount to a crime against humanity."⁶⁸

As one of the few political prisoners who survived the 1988 massacre puts it "The international community to this day still sits with the masterminds of this massacre who hold senior government positions in Tehran. This is shameful."⁶⁹

In fact, President Rouhani's Minister for Justice, Mostafa Pourmohammadi, was a member of the death committees of 1988. As a representative of the Ministry of Intelligence, he was a member of the 3 man death committees that oversaw and facilitated the execution of tens of thousands of political prisoners in the summer of 1988. Ebrahim Reissi, currently the deputy to the head of the judiciary was also heavily involved in the 1988 massacre.

Human Rights Watch in quoting the memoirs of Ayatollah Montazeri wrote "Ayatollah Montazeri identified Mustafa Pour-Mohammadi as the representative



of the Ministry of Information in charge of questioning prisoners in Evin Prison and saw him as being a central figure in the mass executions of prisoners in Tehran. He recounts a meeting with Pour-Mohammadi and the two other members of the Evin Prison committee."⁷⁰



*Mostafa Pourmohammadi,
Rouhani's Minister for Justice*

The report continues "Ayatollah Montazeri, citing officials in charge of carrying out the executions, puts the number of executed prisoners between 2,800 and 3,800, but he acknowledges that his recollection is not exact."⁷¹ Montazeri also wrote "According to people responsible for carrying out these orders, approximately two thousand and eight hundred or three thousand and eight hundred – I cannot recall exactly – women and men were executed, relying on the authority of [Ayatollah Khomeini's] letter."⁷²

The significance of this massacre and the relevance to Iran's present history is "that these atrocities are still happening" as Mohammad Mohaddessin, the chairman of the Foreign Affairs Committee of the National Council of Resistance has pointed out.

A review of the history of executions since the inception of the Islamic Republic of Iran demonstrates that death penalty, arbitrary and extrajudicial executions in Iran are an institutionalised means of governance and the modus operandi of the Iranian regime. Therefore talk of moderates and hardliners is completely futile and serves only to conceal the reality of a treacherous regime that rules Iran with an iron fist.

*Tehran's
Khavaran
Cemetery,
graveyard
for victims
of 1988
political
prisoners'
massacre*





Thematic review of Iranian legislation and its incompatibility with human rights norms

1. The right to life and the death penalty

The Constitution of the Islamic Republic of Iran does not recognise the inviolability of human life. The Iranian legal order is built on a philosophy that considers laws nothing other than instruments for the implementation of the divine will as interpreted by the clerical establishment which essentially follow the writings of Ayatollah Khomeini.

Article 4 of the amended Constitution states "All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter" (emphasis added). The wise persons are none other than the clerics ruling the country.

Article 167 of the Constitution also states "The judge is bound to endeavour to judge each case on the basis of the codified law. 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 (plural of fatwa). 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."

Accordingly, statute laws also explicitly provide that Shari'a norms even when they have not been incorporated into domestic law are applicable. In certain criminal areas, Shari'a is claimed to be enforceable even privately by individuals such as in cases of qisas (retribution in kind on the basis of an eye for an eye and a tooth for a tooth as a right of the inheritors of the victim) and huddud in implementation of fatawa against whoever had committed an act deemed to be blasphemous (sabb al-nabi) against Allah, the Prophet Mohammad, or opposed to the established regime of the Islamic Republic of Iran. The Iranian theocratic regime considers this matter a sovereign choice that cannot be changed simply because it comes into conflict with western legal philosophy. Attempting to do so is in itself an act of heresy, its punishment could amount to that of the crime of moharebeh (enmity against God) or efsad-e fel-arz (sowing corruption on Earth).

Independent human rights observers are unanimous in that the Iranian judicial system lacks transparency. The true scale of executions carried out by the Islamic Republic of Iran is kept secret in order, as the Iranian authorities admit, "to soften international criticism and to avoid scrutiny". What is certain is that Iran



has continuously voted against the UN resolutions calling for the establishment of a moratorium on executions. To record its strongest opposition to the UN call for the establishment of a moratorium on executions in view of the eventual abolition of the death penalty, it had signed in 2012 a "Note verbale" to dissociate itself from the implementation of the pertinent UN resolution. By doing so, Iran avails itself the death penalty as an institutionalized tool of governance.

The UN Human Rights Council had recorded that Iranian criminal courts ignore the provisions of the International Covenant on Civil and Political Rights (ICCPR) which considers the sanctity of human life of a peremptory nature. Nonetheless, the current Iranian Constitution does not acknowledge the obligation of the State to implement the international instruments to which Iran is a party. It considers Shari'a and religious rulings or edicts to be of a higher value than international law. Therefore when a norm of international law is judged incompatible with Shari'a norms, the latter prevail according to articles 4 and 167 of the constitution of the Islamic Republic of Iran.

This assessment is shared by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Mr. Ahmed Shaheed, who reported that "The use of capital and other forms of cruel, inhumane and degrading punishment persist at alarming rates. This is especially alarming given the frequent application of the death penalty for crimes not considered 'most serious' under international human rights law, and considering policies and practices previously identified by the United Nations human rights mechanisms that continue to challenge the administration of justice"⁷³ in Iran. He highlighted that Iran continues to execute more individuals per capita than any country in the world.

According to a report prepared by The Project on Extra-Legal Executions in Iran (ELEI), the Iranian legislation makes it possible to apply the death penalty in more than 135 cases categorised in three classes of offences namely huddud, qisas, and ta'zirat.⁷⁴ Thirty one (31) offences in the category of huddud and four (4) in the category of qisas require mandatory capital punishment despite its inadmissibility in international law.⁷⁵ This puts Iran in the lead of countries applying mandatory death penalty. Furthermore, more than 100 cases punishable by death come under the category of ta'zirat punishments. These are not expressly prescribed in shari'a and are left to the discretion of the judge based on his own interpretation of the applicable law and his zeal in appreciating the gravity of the offense.

Recent studies show that 88% of criminologists do not believe the death penalty is an effective deterrent against criminality.⁷⁶ Why does the Islamic Republic of Iran extend it against non-violent civil and political activists? The answer resides in our view on two realities. First, like in medieval times in Europe, it is used as a means of safeguarding the pre-eminence of the obscurantist theologians over enlightened civil society. Second, to suppress any attempts to press for reforms



or question the Islamic Republic's established constitutional order. The recent execution of Arab teachers, Hadi Rashedi and Hashem Shabani, who belonged to an Arab minority cultural group called "Al-Hiwar" (dialogue), Gholamreza Khosravi, charged with giving economic support to the People's Mujahedeen Organisation of Iran (PMOI) and Mohsen Amir Aslani charged with insulting the Prophet Jonah and heresy, as well as the death sentence upheld against Soheil Arabi by the Iranian Supreme Court for insulting the Prophet on Facebook⁷⁷, illustrate these realities.

2. Rights of the child, juvenile justice and application of death penalty to underage offenders in Iran

Today, the overwhelming majority of members of the international community have abandoned retributive justice when dealing with juveniles who come into conflict with the law (juvenile offenders). The Convention on the Rights of the Child to which Iran is a member is built on four general principles.⁷⁸ These are overarching rights that are needed for any and all rights in the Convention to be realised:

- Right to life, survival and development (article 6): children have the right to life and governments must do all they can to ensure children survive and develop to their fullest potential. The right to life and survival guarantees the most basic needs such as nutrition, shelter or access to health care.
- Best interest of the child (article 3): a child's best interests must be a top priority in all decisions and actions that affect children. All adults should do what is best for children and should think about how their decisions will affect children. Determining what is in children's best interests should take into account children's own views and feelings.
- Non-discrimination (article 2): the Convention applies to all children whatever their ethnicity, gender, religion, language, abilities, whatever they think or say, no matter what type of family they come from, whatever their circumstances.
- Right to be heard (article 12): every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.

The application of the death penalty to juveniles (children under the age of 18) violates these four fundamental principles. The death penalty is expressly banned by international conventions such as the International Covenant on Civil and Political Rights (ICCPR) whose article 6(5) reads: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age..."; the Convention on the Rights of the Child (CRC), article 37(a) states, "Neither



capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age..." Iran is a member of both conventions.

There is a general consensus that the child's right to life and the ban on the death penalty for under 18's had evolved as a peremptory norm of international law (jus cogens) from which no derogation is permitted. Iran ratified the ICCPR in 1975 under the imperial regime without reservations and ratified the Convention on the Rights of the Child on 13 July 1994. Upon ratification of the latter, the government of Iran set a general reservation which states "The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect." According to the Vienna Convention on the Law of Treaties, such a reservation cannot waive Iran's obligation to exempt offenders who did not reach the age of criminal responsibility (those under 18 years of age) from the punishment of the death penalty. The CRC imposes on states the obligation to bring their domestic laws to its standards and does not permit reservations that are incompatible with its object and purposes (Article 51.2 of the Vienna Convention on the Law of Treaties). Does Iran respect this obligation?

Iran continues to sentence juveniles to death despite having ratified the CRC and ICCPR, which forbids the infliction of the death penalty on anyone below 18 years of age at the time of the offence, not at the time of implementation of the sentence. Article 140 of the Iranian Criminal Code 2013 provides that "Criminal responsibility in the cases of hudud, qisas, and ta'zirat (these are punishments where death penalty, amputation, crucifixion and flogging apply) shall be established only when the individual is sane, pubescent (having attained puberty or sexual maturity), and free at the time of commission of the offense".

The age of sexual maturity (pubescence) is defined in article 147 of the Penal Code 2013 and in article 1210 of the Civil Code for boys to be full fifteen (15) lunar years and for girls full nine (9) lunar years, corresponding respectively to 14.5 years and 8 years 8 months. This provision makes it possible to sentence a 14 and half year old male child and 8 years and 8 months old female child to death and delay the execution till the child reaches 18. Clearly, this legislation is in conflict with international law on what constitutes adulthood. Iran adheres to the CRC provisions to the extent to which they are compatible with Islamic law and on its own definition of adulthood. While both the ICCPR and the CRC are international standard setting instruments and both limit the age of criminal responsibility to 18 years at the time of the offence. Iran as a member of the United Nations and party to both conventions is expected to be bound by international law and is under the obligation to bring its national legislation to the standards set by these conventions.



Iran however seems to have chosen the barbaric medieval approach to juvenile justice. In the recent past, it has sentenced to death persons below 18 years of age at the time of the commission of the offence, mostly for murder as qisas but also for muharabeh "enmity against God", efsad-e fel-arz (sowing corruption on Earth), drug offences and rape. In a number of cases the sentence has been carried out before the child offender reached 18. In some other cases, courts have delayed the execution of the death penalty until the convicted child reached the age of 18.

3. Torture in Iran

The Islamic Republic of Iran practices two types of torture and other cruel, inhuman or degrading treatment or punishment:

- A. Torture and other cruel, inhuman or degrading treatment or punishment within the Iranian legal framework;
- B. Torture and other cruel, inhuman or degrading treatment or punishment outside the legal framework.

A. Institutionalised torture within the legal framework of Iran

Although the new Iranian penal code bans torture for the purpose of extracting confession or acquiring information or to compel individuals to testify against their will, article 38 of the amended Penal Code 2013 does not ban torture in generic terms. It only bans it for the purposes specified in article 38. Torture and other forms of inhuman or degrading treatments as judicial punishment are permissible and in certain cases are mandatory in Iranian law when used in the scope of huddud, qisas and ta'sir, prescribed by law and implemented by the judiciary. Articles 15 and 18 of the penal code 2013 specify that punishments under the precepts of Hadd (plural Huddud), Qisas and Ta'zir include death, stoning, crucifixion, limb amputation and public flogging. All these punishments fall under the international law definition of torture.

This legislation and judicial practice is openly opposing international law. Article 5 of the Universal Declaration of Human Rights; article 7 of the ICCPR; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 put an absolute ban on torture, cruel, inhuman or degrading treatment or punishment. Since the adoption of the Convention against Torture (CAT) by the United Nations General Assembly on 10 December 1984, "the absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law".⁷⁹ The Iranian legislation is clearly in conflict with the international norms which had elevated



the crime of torture to a crime against humanity that comes under the jurisdiction of the International Criminal Court and national courts that accept the exercise of the universal jurisdiction.

With this legislation Iran stands out as a pariah state defying the Charter of the United Nations which sets among its aims and objects:

- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.

B. Torture outside the legal framework

Article 14 of the ICCPR sets the procedural guarantees of a fair trial that often plays a crucial role in the more substantive guarantees of other rights such as the right to life under article 6, the prohibition against torture and inhuman, cruel or degrading treatment or punishment under article 7 and the right to liberty and security of person under article 9. These substantive rights may be violated when an unfair trial results in a death sentence, where statements obtained through the use of torture or other ill-treatment are accepted as evidence, or where persons are detained without trial for unreasonable lengths of time.

Torture and other cruel, inhuman or degrading treatment or punishment related to the security of the regime in Iran, are believed to be a common practise. The much awaited revision of the Iranian legislation had failed to adhere to article 14 which sets the international standards for a fair trial necessary for upholding the others rights under the ICCPR.

The revised Iranian Code of Criminal Procedure (April 2014) in its Article 15 grants the power of arrest and investigation to the Islamic Republic of Iran's Disciplinary Forces; directors and assistant directors of prisons regarding affairs related to prisoners; the officers of the Basiji Forces of the Islamic Republic Revolutionary Guards; other Armed Forces in issues where the Supreme National Security Council has designated all or part of the responsibilities of an officer to the Armed Forces; and officers or agents who, according to particular laws, are considered to be judicial officers within designated responsibilities. This diversity in the agents who have the power to arrest had introduced opacity and confusion when it comes to accountability. Finding who made the arrest, the legality of the arrest, and the whereabouts of the arrested person becomes an impossible task.

Pre-trial investigation (initial investigation) is the most sensitive period in the criminal proceedings. Arrested suspects are often subjected to interrogations



in the first hours of arrest during which time they could be forced to confess or to sign documents admitting guilt, hence the importance of having access to a lawyer of one's choice as soon as the suspect is arrested.⁸⁰ Iran's new Code of Criminal Procedures limits the right to access an independent lawyer of one's choice during primary investigations in state security related affairs. The detainee is denied access to lawyers for up to one week after arrest in cases concerning national security and offences such as carrying arms, sabotage, use of terrorism, espionage and smuggling, or offences linked to illegitimate appropriation of wealth as well as offences under Iran's anti-narcotics law. During this week, the suspect is usually held incommunicado and subjected to torture and ill treatment to have him/her confess. The new code of Criminal Procedure (2014) maintained the Note to Article 128 of the Code of Criminal Procedure version 1999 which reads "in case where the issue is confidential or the presence of other parties apart from the accused causes corruption as well as cases of crimes against national security, the presence of a lawyer during primary investigations depends on the authorization of the court". This provision denies the automatic right to have a lawyer of one's own choice.

Human rights observers had documented a pattern of conduct of the judicial officers related to the revolutionary courts where torture and other cruel, inhuman or degrading treatment or punishment are systematically used for extracting confessions in the absence of a lawyer.⁸¹ Specialised national and international NGOs as well as the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and other human rights treaty bodies have repeatedly expressed concern on the use of torture in Iran.⁸²

Furthermore, the Iranian legislation related to human rights is always accompanied with a claw-back clause such "as provided by law" or "according to Shari'a criteria". These clauses open the way for derogating from the international human rights standards and give supremacy to the religious unwritten law, customs and fatawa (edicts) that are from another age and have no basis in the Holy Quran. Iran finds it legitimate to justify bypassing the fundamental human rights standards simply by claiming that a given international norm is incompatible with Shari'a or with a law based on Shari'a.

The Iranian officials' argue that the Islamic Republic is a divine regime. It has the duty to carry out Islamic laws and fatawa (edicts). It rejects the idea that human rights norms are universal and indivisible. It challenges the UN Charter's objectives including the objective "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". They argue that Muslims must accept only the rule of God.

In this state of affairs, the way forward to place Iran among the society of nations is to seek a radical change. A change that empowers the people to freely

determine their way of life and the way they manage their public affairs. Today's powerful indicator of the absence of free determination of people's way of life in the Middle East region including Iran is the phenomenon of the "swarms" of refugees and asylum seekers "flocking" to the West⁸³ with thousands of them drowning in the Mediterranean waters.

4. Violence and discrimination against women

Contrary to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), certain Iranian religious authorities insist that the physical and mental weakness of women makes them incapable of working in certain jobs. Laws are adopted in this direction to legally incapacitate women from exercising certain functions such as the function of judge in courts other than juvenile courts, certain medical and educational fields and reduce their worth. Blood money (diya) paid for a murdered or bodily harmed female is half that of a murdered or bodily harmed male. A woman's testimony in court is given half the weight of that of a man, in inheritance her shares are far less than what is recognized for a man. Evidence of such state-sponsored discrimination against women is deeply rooted in Iran's constitution that incarnates Islamic fundamentalism of another age.

The CEDAW is the equivalent of an international bill of rights for women. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. It was adopted in 1979 by the UN General Assembly and had been ratified by 189/194 states. The Iranian Majlis (parliament) ratified the CEDAW in 2003 and then was vetoed by the Guardian Council⁸⁴ on the ground that it is incompatible with Shari'a.

During examination of the Iranian report in the framework of the Universal Periodic Review (UPR), Iran had admitted the institutionalised discrimination against women and had committed to abandon it in law and in practice and to bring its national legislation to the standards set by international law. However, this pledge is revealed to be made simply to whitewash the image of Iran before the international community as no steps were taken toward implementing these pledges. The UN Special Rapporteur on the situation of human rights in Iran reported that the situation of women in Iran had worsened since President Rouhani's election. Recent legislative attempts made by the Iranian Parliament appear to have further restricted the rights of women to their equal enjoyment of internationally recognized rights. "Concerns previously expressed over gender inequality in law and practice persist", the report underlined.⁸⁵

While having accepted the recommendation made in the UPR process to reform the discriminatory provisions of penal laws, Iran had expressly rejected the specific recommendations that urged it to undertake efficient reforms aimed



at eliminating gender-based violence, to ratify CEDAW and to accept a visit to the country by the Special Rapporteur on violence against women, a tangible indicator that the theocratic regime is not ready for change.

The Iranian discriminatory laws against women persist in a number of areas. We are not intending to present here a full study of these laws; but to give a few samples where discrimination and violence against women speaks for itself.

Punishments for Adultery and Marital Infidelity

Iranian law establishes a discriminatory regime regarding adultery and marital infidelity. It grants men an exclusive right to marry four wives for the purpose of founding a family and procreating. In addition men could contract as many mut'a marriages (temporal marriage for sexual pleasure) as he could afford. Ethically and morally, this is a form of legal adultery since it is basically contracted for sex, and requires no substantive or procedural conditions.

Zina as defined in article 221 of the penal code is sexual intercourse of a man and a woman who are not married to each other. The Iranian penal law classified zina as a crime that falls within the category of huddud. It is punished by stoning and in certain cases prescribed by law the punishment is increased to death penalty (articles 224 and 225 of the Penal Code). This crime in practice is overwhelmingly directed against Iranian women because Iranian men have the right to marry four permanent wives and an unrestricted right to contract temporary Mut'a marriages. Iran took no action towards the abolition of stoning as a punishment for Zina. The new Islamic Penal Code continues to prescribe the medieval punishment of stoning as a penalty for people convicted of having intercourse outside of marriage even when this takes place between consenting adults.

Sexual enslavement of the wife

Article 1108 of Iran's Civil Code obliges women to fulfil the sexual needs of their husbands at all times. This is known as the requirement of tamkin [to be subservient]. A woman's refusal to engage in sexual activity with her husband when he wishes to, constitutes noshuz [disobedience] and can disqualify her for maintenance rights if he decides to divorce her.

Perversion of the Principle of "best interest of the child"

Despite the Iranian public's opposition,⁸⁶ the Guardian Council of the Islamic Republic had used Shari'a to legitimize marriages between a custodian parent (guardian) and a child under custody (child under guardianship)⁸⁷ before and



after the age of maturity. In 2013, the Iranian Parliament on the request of the Guardian Council, amended article 27 of the bill for the protection of children and adolescents who either have no guardian or have abusive guardians to legalise the marriage of a custodian parent to the child under custody when it is found by the State Welfare Organisation and a competent court to be “in the best interests of the child”. Such a provision perverts the principle of the “best interest of the child” and is contrary to article 19 of the Convention on the Rights of the Child which provides that “States Parties take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse ... or exploitation, including sexual abuse.” A number of specialists consider this form of child abuse in the Islamic Republic of Iran as a legalisation of paedophilia.

Inheritance

According to article 913 of the Civil Code, a wife may inherit one quarter of her deceased husband’s estate if he leaves no children and one-eighth of his estate if he leaves children. A husband may however, inherit one quarter of his deceased wife’s estate if she leaves children and the whole of it when there are no children. Article 907 of the Civil Code grants male heirs twice the share of the female heir and articles 946 to 948 exclude real estate from being inherited by a surviving wife.

Divorce

Articles 1130 and 1133 of the Civil Code entitles men to divorce their wives at will whereas they require women seeking divorce to prove that they are enduring an intolerable level of difficulty and hardship in the marriage as described by law, which is a codification of some tribal customs.

Freedom of movement

According to article 18 of the Iranian Passport Law, women need the written authorisation of their husbands in order to be issued a passport and article 19 of the said law gives the husband the right to impose a travel ban on his wife(s). Articles 1005 and 1114 of the Civil Code empower a man with the exclusive right to determine the place of the wife’s residence. A wife will be considered nashezeh [disobedient] and could be denied spousal maintenance rights if she leaves her husband’s home against his will, even if it is for escaping a situation of domestic violence, unless she can prove to the court that she faces a significant life threatening risk.



5. Freedom of expression

I. International Norms Guaranteeing Freedom of Expression

A. The Universal Declaration of Human Rights (UDHR)

Article 19 of the Universal Declaration of Human Rights (UDHR) guarantees the right to freedom of expression in the following terms:

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

The provisions of the UDHR, including article 19, adopted in 1948 by the UN General Assembly have acquired the legal force as customary international law. They oblige all members of the international community including the Islamic Republic of Iran.

B. International Covenant on Civil and Political Rights

The ICCPR elaborates upon and gives legal force to the rights contained in the UDHR. States parties to the ICCPR, including the Islamic Republic of Iran, are bound to incorporate its provisions in their domestic legislation and to implement its framework at the national level. Article 19 of the ICCPR guarantees the right to freedom of expression in the following terms:

- Everyone shall have the right to freedom of opinion
- 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.

Freedom of expression as a fundamental right is a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of all human rights.

Article 17 of ICCPR provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. The Human Rights Committee⁸⁸ considers this right a guarantee against all interferences whether they emanate from State authorities or from other legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences. Any restriction on the constitutive elements of freedom of expression as detailed in Article 19 must be assessed against the tests of:

- a) It must be prescribed by law;
- b) It must pursue a legitimate aim;

c) It must be proportionate and necessary.

Iran signed the ICCPR on 4 April 1968 and ratified it on 24 June 1975. Iran is therefore legally bound to respect and to ensure the right to freedom of expression as codified in Articles 17 and 19 of the ICCPR.

II. Freedom of Expression under Islamic Republic of Iran

As in other fields of legislation, the Islamic Republic of Iran relies heavily on the clawback clauses which subject laws and regulations to the condition of compatibility with 'the Islamic criteria' and 'the higher interests of the Islamic Republic'. As 'the Islamic criteria' and 'the higher interests of the Islamic Republic' are not clearly defined, they are left to the law enforcement agencies to subjectively implement, often in violation of international norms and standards and in disregard to the three-part test that it must be prescribed by law; it must pursue a legitimate aim; and must be proportionate and necessary.

The clawback clauses in the Islamic Republic's laws are factors that had often stripped freedom of expression in Iran from the international protection standards and facilitated the persecution of journalists and human rights activists. The most common charges directed against activists include: every form of publication and dissemination considered as propaganda against the regime; acting against national security; insulting the Supreme Leader; secessionism and participation in armed struggle (for ethnic minority activists); spreading lies and acting against public morality and chastity. When these charges are independently subjected to the three part test above, they are often discredited.

Note 2 of Article 1 of the Iranian Law regulating the Press of 1986, amended in 1989 and 2000, makes a non-authorized publication by the Press Supervisory Board subject to regular laws. That means considered illegal and sanctioned according to the provisions of the Penal Code.

Article 6 of the Iranian Press Law puts severe limits on freedom of the press. It has to conform to the 'Islamic principles and codes' and to respect 'public rights'. The law does not define with the required precision the 'Islamic principles and codes' and the 'public rights' involved. The interpretation and implementation of these concepts is left to the law enforcement agencies and the political expediency of the moment.

In addition to the general limitations, article 6 of the Press Law bans publishing articles or topics that are prejudicial to Islamic codes or promoting subjects which might damage the foundation of the Islamic Republic including issues that might be considered atheistic; promoting luxurious life and what could be seen as extravagance; what could be interpreted as creating discord among different social walks of life specially by raising ethnic and racial issues; what



could be understood as encouraging and instigating individuals and groups to act against the security, dignity and interests of the Islamic Republic of Iran within or outside the country; what could be regarded as insulting Islam and its sanctities or offending the Leader of the Revolution and recognized religious authorities (senior Islamic jurists); publishing criticism of the Constitution or libellous statements against officials, institutions, organizations and individuals in the country or insulting legal or real persons who are lawfully respected, even by means of pictures or caricatures, etc. These restrictions are vague and un-defined. They give the state-censorship wide powers of appreciation in determining the legality of any media work. The restrictions contained in the Iranian Press Law are in conflict with the UDHR and the ICCPR common article 19 and do not comply with the three part test above.

Conclusion

To understand the realities of the fundamentalist regime in Iran one has to answer the following question: who governs in Iran? The bone of contention in this question revolves around a disconnected group of theologian rulers who stole the people's revolution and established an environment where the big man's word (Vally al Faqih) is final. The clerics' leadership remains a major but often neglected cause of the country's demise. Iranians today are confronted with an immense constitutional handicap which is responsible for their disability to make sense of how justice, democracy and the fulfilment of human rights might be advanced. More than in the darkest periods of Iranian history, the clerics had left no room for progressive social movements, civil society associations and ordinary citizens to rise against oppression, repression and dire inequality.

Nonetheless, the struggle for democracy in Iran championed by the NCRI members particularly the PMOI has managed to tease out the interconnectedness between politics and justice/injustice by raising questions of human dignity, respect and sustainable human development by recovering and uncovering the links in theory and practice between democracy, human rights and social justice. The NCRI President-elect's 10 point plan⁸⁹ opens a gateway into these connections in a way that reclaims democracy by reviving its emancipatory perspectives, by committing to the ballot box as the only criterion for legitimacy; freedom of association, expression and the media; abolition of the death penalty; freedom of religion and secularisation of the state; gender equality and equal participation of women in political leadership; the rule of law and justice as a foundation of the state, adherence to and respect of the international human rights conventions; the equality of all nationalities; recognition of private property, private investment and the market economy; a foreign policy based on peaceful coexistence and compliance with the United Nations Charter; a non-nuclear Iran, free of weapons of mass destruction.

President Obama and the EU member states administrations invested much energy in their attempt to re-shape their relations with Tehran, but Iran's response has been illusive and non-committal. After thirty six years in power, the totalitarian and hegemonic regime remains a serious threat to the people of Iran, to the region and to the whole international community. Any rapprochement with such a regime that does not take into consideration the strategy and the values presented in the NCRI president-elect's 10 point plan is bound to be discredited and rejected by all those who aspire for a democratic Iran, abiding by law and respecting human rights.



End Notes:

1. Article 2 of the Constitution
2. Articles 5 and 107 of the Constitution
3. Articles 110 and 113 of the Constitution
4. Ibid
5. Article 112 (2) The permanent and changeable members of the [Expediency] Council shall be appointed by the Leader.
6. Article 157 of the Constitution
7. Shi'a branch of Islam believes that the Twelfth and the last Imam has been hidden by divine power and will only reappear at the end of history as a messiah to lead an era of Islamic justice. However, the majority of the clerical establishment in Iran never accepted the use of this title and even those clerics who supported Khomeini's Islamic revolution shed away from it.
8. See Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993
9. <http://www.worldcoalition.org/Iran-Islamic-Republic-of>
10. Statement reported in: Civil Society Report on the Implementation of ICCPR by Project on Extra-Legal Executions in Iran (ELEI), 11 September 2011
11. The Telegraph, 26 May 2015, Hassan Rouhani's glaring failure to curb human rights abuses in Iran.
12. The Guardian, 4 August 2013, Hassan Rouhani sworn in as president of Iran, urging moderation and respect.
13. The Guardian, 16 March 2015, Iran's human rights situation worsening, says UN special rapporteur.
14. AI Report of 23 July 2015, <https://www.amnesty.org/en/latest/news/2015/07/irans-staggering-execution-spree/>
15. Report of the Secretary General on the Situation of human rights in the Islamic Republic of Iran, 20 February 2015.
16. Ibid.
17. Amnesty International, 23 July 2015, Iran's 'staggering' execution spree: nearly 700 put to death in just over six months.
18. Amnesty International, 26 August 2015, Iran: Kurdish man executed while awaiting appeal of his death sentence.
19. Ibid.
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23. Ibid, Report of the Secretary General
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25. Report of the UN Secretary General on the situation of human rights in the Islamic Republic of Iran, 20 February 2015.
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29. Iranians protest over acid attacks against women, The Guardian, 22 October 2014.
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31. NCRI - 17 October, 2014.
32. Amnesty International Report 2014/15 - Islamic Republic of Iran.
33. NCRI - 2 November 2014
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35. Iran: Ratcheting up repressive policy against women, gender discrimination, 24 June 2015, NCRI Iran.
36. March 2015 report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, 12 March 2015.
37. How Rouhani treats political prisoners in Iran, The Hill, 1 May 2014.
38. Iranian prisoners allegedly forced to run gauntlet of armed guards, The Guardian, 22 April 2014.
39. Iranian prisoners allegedly forced to run gauntlet of armed guards, The Guardian, 22 April 2014.
40. Suppressive forces raid Evin Prison; a political prisoner suffers heart attack, NCRI, 4 August 2015.
41. NCRI, 22 January 2015
42. Amnesty International, 16 June 2014
43. NCRI, 7 May 2014
44. NCR, 15 May 2014
45. Human Rights & Democracy Activists in Iran, 7 October 2014
46. Majzooban-e Noor, 5 November 2013



47. Majzooban-e Noor, 23 November 2013
48. The Guardian, 1 May 2015, 'Iranian foreign minister angers supporters with human rights claim'.
49. Report of the Special Rapporteur, Ahmed Shaheed, Ibid.
50. Iran: Draconian amendment further erodes fair trial rights, Amnesty International, 25 June 2015.
51. Report of the Special Rapporteur, Ahmed Shaheed, Ibid
52. Fox News, 21 May 2014
53. NCRI, 25 November 2014
54. Inhuman punishments - Iran amputates fingers of two men in shocking act of cruelty, Amnesty International, 30 June 2015.
55. 4 August 2015, NCRI Iran.
56. "Article 19" is a human rights organisation based in London. It is named after article 19 common to the UDHR and the ICCPR. It monitors freedom of expression and the freedom of the media worldwide.
57. Iranian Organization of Intelligence and National Security under the Shah's regime
58. The Guardian, Paris, November 16, 1978.
59. Interview with an Austrian TV reporter, Paris, November 16, 1978.
60. Interview with Le Journal newspaper, Paris, November 28, 1978.
61. In a meeting with Iranian students and educators, Qom (3), March 13, 1979.
62. Talk at the Fayzieah School, Qom, 5 June, 1979.
63. In a message at the end of the month-long Islamic fasting celebration, September 3, 1979.
64. Guests of the Ayatollah, by Mark Bowden, page 501.
65. Ayatollah Sadeq Khalkhali, The Telegraph, 28 November 2003.
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78. CRC/C/GC/10 25 April 2007, COMMITTEE ON THE RIGHTS OF THE CHILD Forty-fourth session Geneva, 15 January-2 February 2007, GENERAL COMMENT No. 10 (2007) Children's rights in juvenile justice.
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81. See The OHCHR doc. A/HRC/22/5, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran pages 8-10
82. Ibid
83. Language used by the UK Prime Minister, David Cameron, and other right wing and nationalist politicians: Illegal immigrants are trying to 'break into' UK. London Evening Standard, 15 August 2015. 'We can't take any more people', UKIP's Suzanne Evans urges Britain to end migrant madness, Express of June 26, 2015.
84. A twelve-person body composed of six Islamic theologians and six jurists, the Guardian Council guarantees the conformity of laws and international conventions to the norms and principles of Shari'a, equivalent to the constitutional Council in some countries.
85. Supra note 7 above
86. Almonitor the Pulse of the Middle East, "Anger, Confusion Cloud Iran's



Adoption-Marriage Bill”, posted 7 October 2013, <http://www.al-monitor.com/pulse/originals/2013/10/irnp-iran-marriage-adoption.html#>

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88. HUMAN RIGHTS COMMITTEE, Thirty-second session Adopted: 8 April 1988, HRI/GEN/1/Rev.9 (Vol. I)
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CSDHI

Le Comité de soutien aux Droits de l'homme en Iran (CSDHI) or Committee in Support of Human Rights in Iran was founded in 2004 in France and its objective is to promote human rights and support advocates of democracy in Iran.



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