

**STIFLING DISSENT:
The Human Rights Consequences of
Inter-Factional Struggle in Iran**

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I. SUMMARY

Four years ago, President Mohammad Khatami crested to power on a wave of popular support as Iranians went to the polls in their millions to support his platform for reform. The scale of his victory dealt a serious blow to the conservative religious forces that dominated Iranian public and political life since the revolution of 1979 that overthrew the Shah. To most commentators at the time, it appeared that a sea change had taken place. A younger generation, it seemed, grown to adulthood since the revolution and tired of enduring the strictures of the state, had spoken out for change. Iran, it appeared, was entering a new era, and at last about to end its self-imposed isolation and open up again its communication and cooperation with the wider world.

Today, four years on, as President Khatami seeks reelection for a second term on June 6, the optimism that greeted that previous victory looks increasingly hollow. The past year, in particular, has brought a much harsher reality. The prospect of reform is now much more in the balance. As recently as February 2000, supporters of President Khatami won a further, convincing victory in elections to the *Majles*, or parliament, seemingly consolidating the process of reform. Since then, however, religious conservatives and opponents of reform have utilized their entrenched control over certain key institutions to mount a growing and effective counter surge against the reformists.

Their ability to do so stems directly from powers contained in Iran's post-revolution constitution. This strikes an uneasy balance between institutions of popular sovereignty and those charged with ensuring that governance accords with the precepts of divine law. This arrangement effectively pits the popularly-elected bodies, notably the presidency and the *Majles*, against the unelected religion-based institutions, comprising the Supreme Leader, the Council of Guardians, and the judiciary. The Supreme Leader is particularly powerful. He is chosen by a popularly-elected group of senior religious scholars and pious laymen known as the Assembly of Experts, and he appoints the Head of the Judiciary, who in turn appoints all chief judges. The Supreme Leader, advised by the Head of the Judiciary, also appoints the Council of Guardians, composed of twelve senior clerics whose responsibility it is to ensure that all laws passed by the *Majles* are compatible, in their view, with Islam.

Compounding their control over these important institutions, it is clear that the conservative religious forces opposed to President Khatami's reform agenda also maintain strong links with and influence over Iran's extensive internal security apparatus, notably the powerful Ministry of Intelligence.

Perhaps stung by Khatami's supporters' victory in the February 2000 election and threatened by an increasingly inquisitive and combative press, the conservatives have mounted an increasingly effective counteroffensive against the proponents of reform. In particular, they have used their dominance within the judiciary and the Council of Guardians to rein in and smother what had emerged as the engine of reform, the new, independent newspapers and journals. In little more than a year, the courts, under the control of the conservatives, have closed down more than thirty independent newspapers and journals, and sentenced at least twenty leading journalists, editors and publishers to prison terms.

The independent press was a particularly important target as it had emerged as the major mobilizing force for the reform movement during the first years after President Khatami's election. Writers and thinkers initiated debates about a broad range of subjects previously considered taboo in the Islamic Republic, including the role of the Supreme Leader and the place of the clergy in government and politics. Independent newspapers and journals carried exposés of corruption and the involvement of senior religious and government officials in illegal political violence as well as discussion about the role of women in society. The *Majles* also sought to amend the law to allow greater press freedom, only for this to be blocked by the Supreme Leader, Ayatollah Ali Khamene'i, and the Council of Guardians, on the grounds that such a change would be "un-Islamic."

But the fallout from the factional struggle has extended far beyond the press. Allies of President Khatami have been forced out of their positions in government, and some have been tried and imprisoned. Khatami's efforts to normalize relations with Europe and the West have also been undermined by high-profile prosecutions of members of religious minorities and of Iranians who participated in an international conference in Berlin. Most

recently, the conservatives have turned their attention to intellectuals and political activists who advocate reform, at least twenty of whom have now been detained without trial or jailed after unfair legal proceedings.

State agencies controlled by forces opposed to Khatami have also been involved in instigating and carrying out political violence, including killings of dissident intellectuals and activists since late 1998. According to an official inquiry, set up with President Khatami's support, Ministry of Intelligence agents were implicated in these politically motivated crimes. As a result, the president was able to obtain the removal of the intelligence minister, Gorban Ali Dori-Najafabadi, and his replacement by a more sympathetic appointee, but questions remain about the role of senior officials in ordering or sanctioning political murders. Three high-ranking security agents accused of carrying out these killings together with ten other lower level officials were tried behind closed doors and convicted in January 2001, leaving many questions unanswered. Dori-Najafabadi, despite being made to stand down as intelligence minister, remains a senior official within the judiciary. High officials alleged to have been involved in killing of dissidents both at home and abroad have been untouched by the inquiries to date.

Other policies of the Khatami presidency, such as easing restrictions on social interaction between the sexes and a more relaxed social climate, have also been rolled back in recent months by strict enforcement of a dress code and regulations concerning private social gatherings. The sense of greater personal freedom among young people and women as well as the professional middle class has been eroded by the activities of vigilante groups linked to hard-line conservative clerics.

By these various means, religious conservatives have progressively chipped away at President Khatami's powerbase and exposed his inability to push forward his popular mandate for reform or, indeed, to face down his main opponents. In the face of conservative hostility, Khatami appears to have calculated that if he were to give his full and overt support to the reformists it could provoke his removal from office and so destroy any hope of gradual reform from within the system. Throughout, he has trodden a careful line, seeking to identify himself as the defender of constitutionally legitimate institutions and to speak out in favor of the rule of law. As most victims of arbitrary and illegal acts are his supporters, however, his public criticisms of departures from legal procedure are widely interpreted by both his supporters and adversaries as coded support for imprisoned reformists.

With his first term in office about to end, the reform proposals that were at the center of Khatami's previous election campaign remain largely unrealized, and many of his principal supporters in the reform movement have been effectively neutralized. Khatami's own, and the reformists', main claims to influence continue to flow from the widespread popular support that they have repeatedly been able to demonstrate at the polls. But by silencing the independent press, playing on fears of foreign interference, and jailing reform leaders, the conservatives have struck at the heart of the reform movement.

As the critical June 6 election approaches, both sides in this ongoing factional struggle now face dilemmas. For the conservatives, the question is whether, despite his continued advocacy of reform, President Khatami represents less of a threat in office, where his stature helps to channel discontent in a manner that preserves the Islamic Republic, than out of it. For the reformists, many of whom assert that Khatami's removal would bring catastrophic civil unrest, the calculation is the reverse: whether the minimal space they have been able to secure under Khatami is worth the stability this affords to the conservatives, who continue to exercise effective power.

It is against this background of continuing factional struggle among Iran's political and religious leaders, and its adverse implications for human rights, that the June 6 election is being played out. The outcome of the election will be crucial in determining both the future political direction of Iran and the extent to which existing human rights problems are addressed, and it will also have important implications for human rights in the wider Islamic world. Within Iran, the reformists have increasingly based their arguments on human rights principles, demanding greater freedom of expression, an independent judiciary and the rule of law, and the primacy of democratic accountability over clerical authority in essentially secular political matters. As recent events have demonstrated, currently there are no durable safeguards for human rights in Iran, the courts are subject to political manipulation and offer no protection under the law, and shadowy paramilitary and vigilante groups are able to kill and maim with impunity under the protection of leading state and clerical officials.

In this report, Human Rights Watch traces the impact on human rights of the conservative counterattack of the past year, and identifies major steps that should be taken by the Iranian authorities, and by those who may have influence upon them, to address human rights violations and bring government policies into conformity with its obligations under international law.

II. RECOMMENDATIONS

To the Government of Iran

- Release immediately all writers, editors, publishers, members of the Iran Freedom Movement and others detained or imprisoned for their peaceful exercise of freedom of expression, and ensure that others against whom charges are being brought have immediate and regular access to legal counsel and family and medical visits.
- Lift the banning orders on newspapers, and amend the press law and related legislation to guarantee freedom of expression, in accordance with Iran's obligations as a state party to the International Covenant on Civil and Political Rights. In particular, provisions in the press law that permit the prosecution of writers and journalists on charges such as "questioning the tenets of Islam and the revolution" should be revoked.
- Amend articles 24 and 26 of the constitution as well as relevant laws and administrative procedures to ensure that they are not used arbitrarily to penalize the exercise of basic civil and political rights such as freedom of expression and freedom of association.
- Revise the legal and administrative procedures of the Revolutionary Courts and the Special Court for the Clergy to bring them into full conformity with international fair trial standards. This includes ensuring that defendants are allowed prompt and regular access to defense counsel and that they have the right to call defense witnesses and question prosecution witnesses, and have the right to appeal to a higher independent tribunal.
- Revoke the banning of the Iran Freedom Movement by the Tehran Revolutionary Court.

To the European Union and Member States

- Call publicly on the government of Iran to release unconditionally persons imprisoned on charges stemming from their presence at the April 2000 Berlin conference on the future of Iran, and drop all pending charges against persons for attending this conference.
- Make clear that improvements in political and economic relations between Iran and the E.U. and its member states depend on government efforts to implement the recommendations above.
- Adopt a Community-wide position linking further aid and concessionary trade arrangements with Iran to unambiguous steps by the government to promote and protect the ability of Iranians to exercise their rights to freedom of expression, freedom to impart or receive information, and freedom of association.

III. THE CONSTITUTIONAL IMPASSE

The Constitution of the Islamic Republic of Iran, promulgated in 1979 and amended in 1989, locates its source of power in two realms. It speaks of the sovereignty of the will of the people and simultaneously enshrines the principle of the *velayat-e faqih* (rule of the supreme jurist), whereby the most learned Islamic scholar interprets and applies divine law. It creates both religiously-guided and popularly-elected political institutions. Since the earliest days of the republic, a tension has existed between the appeal to popular sovereignty, which united the many diverse groups that came together to overthrow the autocratic rule of the Shah, and the commitment of many of these same forces to rule in accordance with divine law.

The constitution gave ultimate authority to religious rule in what was seen as a political triumph for Ayatollah Khomeini, the first Supreme Leader. Constitutional articles upholding and protecting basic rights and freedoms were vitiated by qualifying clauses stating that such rights and freedoms can only be exercised in accordance with Islamic principles. The primacy of Islamic principles is asserted repeatedly throughout the Constitution, while the practical meaning of these directives is left vague. Similarly, Iranian criminal law includes such loosely defined offenses as “endangering Islamic principles,” or “waging war on God.” Authoritative interpretations are necessary to give meaning to these charges and directives.

The constitution provides for certain institutions and bodies to make these interpretations. At the top of the pyramid is the Supreme Leader of the Islamic Republic, the Faqih, whose interpretations of how divine law should be applied in any given circumstances carries the most weight.¹

The position of Supreme Leader is rooted in the Shi’a Muslim tradition of emulation of a *marja’ a taqlid*, a senior religious scholar recognized by his followers as a source of guidance for the faithful in resolving questions of how to live an observant religious life in the world. Traditionally, at any one time there have been a handful of Grand Ayatollahs to whom the Shi’i faithful have looked for guidance. These learned jurists have produced books offering guidance for their followers in many areas of personal life. They have traditionally been based in seminaries in the great centers of Shi’i religious learning in Qom, Mashad or Najaf, where they have educated generations of clerics who have devoted their lives to study or have gone out into the world as preachers in mosques throughout the Shi’i Muslim world. The essence of the tradition ensured diversity within mainstream Shi’i teaching. If a believer did not find the directives of one *marja’ a* to his or her liking, then he or she was free to choose another.

The creation of a kind of “state *marja’ a*” with the establishment of the position of Supreme Leader of the Islamic Republic was a radical departure from this tradition, in that it fused spiritual and temporal power in an unprecedented manner, and it greatly increased the temporal power of one *marja’ a* over that of his fellows. There were eminent dissenters to this during the ten years that Ayatollah Khomeini occupied the position he had created for himself,² but his prestige and political acumen, and the need for national unity during the bloody war with Iraq, ensured that he was easily able to override such opposition.

The problems inherent in the position of Supreme Leader of the Islamic Republic became more apparent with the selection by the Assembly of Experts of Ayatollah Khamene’i as Khomeini’s successor. Ayatollah Khamene’i was not widely regarded as one of the leading Islamic jurists of his day, and his status as a Grand Ayatollah was questioned by many. Some saw his appointment, therefore, as an essentially political choice, understandable for a position exercising the political authority of the Supreme Leader of the Islamic Republic but detracting from his prestige as the supreme spiritual guide. As time passed, the Leader’s overt political role, often seeking to balance antagonistic conservative and reformist political forces, became apparent. Inevitably, questions arose that if this was a temporal political office like any other, in fact more powerful than any other, then why

¹ He is chosen as the most learned jurist by a popularly elected group of senior religious scholars and pious laymen, the Assembly of Experts.

² Eminent dissenters included Grand Ayatollah Shar’iat Madari, and also traditional figures like Grand Ayatollahs Golpaygani and Araki.

should it not be filled by direct popular election? Some questioned the need for the position of Leader at all, or advocated a symbolic, politically neutral role for the Leader. Such discussions took on considerable momentum in the independent print media after President Khatami's election in 1997, providing conservatives with great incentive to close down the media.

A second body created by the constitution with the explicit purpose of safeguarding the Islamic character of the state, and therefore in determining what that character should be, is the Council of Guardians. The council has the power to vet all laws passed by the parliament, a power that it has exercised liberally throughout the history of the republic. This has taken on particular importance since the parliamentary election of May 2000, which resulted in the reformists gaining a majority for the first time. The council has acted repeatedly to block parliamentary attempts to advance reform measures.

The council exercises a second powerful influence over the legislature in vetting the fitness for office of prospective candidates for parliament and other elective offices in the Islamic Republic, including the president. The council is charged with assessing their piety, and may reject candidates without providing reasons. These powers have ensured that elections in Iran have been largely limited to competitions among those supporting the clerical leadership. Secular politicians and opponents of clerical rule have consistently been barred from seeking office. Prior to the February 2000 parliamentary elections, there was considerable concern among reformists that the council would exercise its powers to block reform supporters from standing as candidates. Some called for the council's powers over electoral candidates to be diminished, or at least for their deliberations to be made more transparent. In fact, the council vetoed relatively few reform candidates in the 2000 elections, thus heading off a conflict on that issue, but the council's position as a counterweight to the legislature ensures that it will be a target for reformist criticism in the future.

The third body charged by the constitution with carrying out its functions in accordance with Islamic principles is the judicial branch. The Supreme Leader directly appoints the Head of the Judiciary to a five-year term, and the latter appoints half the members of the Council of Guardians, all members of the Supreme Court, and the chief judges in all Iran's provinces. Islamic judges are empowered to apply the law in accordance with their interpretations of Islamic law. Much Iranian criminal law leaves broad scope for interpretation both in the definition of crimes and in devising remedies for victims and penalties for offenders. In recent years, the judicial branch has emerged as the major weapon in the hands of the conservatives in their fight against the reformists. It used the Press Court under its jurisdiction to imprison editors, publishers and journalists for "offending Islamic values." Reformists who are clerics can also be tried in Special Clergy Courts if they are accused of deviating from Islamic orthodoxy. The judicial branch has also become a target for much criticism for reformists.

Thus conservative clerics exercise control over the major state institutions that have the power to impose authoritative interpretations of Islamic law. They are thus in a position to interpret the constitution and the law to their advantage. Conservatives also control the security forces, enabling them to enforce their rulings. Their domination of the broadcast media provides them with an advantage in the battle of ideas, although many Iranians are able to overcome the state broadcast news monopoly by listening to broadcasts in Farsi from overseas, and increasingly viewing satellite television broadcasts as well.

Reformists, for their part, now have control over the state institutions elected by popular vote, principally the presidency and the Islamic Consultative Assembly or *Majles*, the Iranian parliament. The president appoints ministers (except the Head of the Judiciary) and has a responsibility to ensure that the constitution is upheld. In practice, the powers of the presidency and the legislature are limited by conservative control of the judiciary and the Council of Experts. The main source of power for the reformists is the support they receive from the electorate. Thus, reformist rhetoric makes frequent reference to the importance of public opinion. For example, on February 12, 2001, addressing a conference at the Ministry of the Interior, President Khatami stated:

We should be worried, God forbid, one day our people will feel the authorities are not meeting their real demands and that dirty hands have succeeded in disappointing them and thus alienating them.³

Conservatives counter such criticism by emphasizing the importance of promoting public respect for state institutions. Ayatollah Khamene'i responded to President Khatami's speech by asserting:

No person can allow himself to weaken the institutions which are the origin of national security like the police, the intelligence ministry and notably the judiciary.⁴

Over the past year a pattern has emerged of reformists challenging the prerogatives of conservative-dominated non-elected state institutions and being met with increasing repression from these institutions. This is the context in which the mounting incidents of arbitrary detention and restrictions of basic freedoms of expression, association and assembly have taken place.

³ BBC News, "Supreme Leader attacks reformists", Feb. 13, 2001.

⁴ *Ibid.*

IV. MUZZLING THE PRESS

Since April 2000, more than thirty independent newspapers and magazines have been closed down in Iran, usually by order of the judiciary, in direct violation of both Iranian law and of Iran's obligations under international human rights law, including as a state party to the International Covenant on Civil and Political Rights (ICCPR) to uphold freedom of expression.

The independent media's contentious relations with judicial authorities date back to before the Khatami era. The Press Court and other judicial authorities had closed numerous titles in previous years, but after 1997 the country witnessed a rapidly expanding independent print media expressing a wide array of opinions.

The Press Court is a branch of the General Court that usually deals with offenses related to the press. According to Article 168 of the Constitution, trials for press offenses should be held openly and in the presence of a jury, whose composition is defined in the Press Law. Article 6 sets out loosely defined restrictions on the press forbidding the publication, for example, of material that "harms the bases of the Islamic Republic." The prohibitions are subject to much arbitrary use.

In July 1999, the closure of the popular *Salam* newspaper and threats by the parliament—then dominated by conservative forces—to pass new legislative restrictions on the press sparked the most serious civil unrest in more than a decade. After students at Tehran University took part in a peaceful demonstration on July 8, 1999, members of an unidentified uniformed militia force entered the student dormitories that night and attacked students, throwing some out of the windows and arresting others. At least four students were killed in the assault, three hundred wounded and over four hundred arrested. Over the next days, students took to the streets in Tehran and numerous other cities, protesting the assault on the dormitories, demanding an inquiry and calling for the release of those detained. Protests degenerated into riots as enforcers associated with conservative leaders within the government, the Ansar-e Hezbollahi (Partisans of the Party of God), joined security forces in breaking up demonstrations.

Both President Khatami and Supreme Leader Ayatollah Ali Khamene'i condemned the raid on the university dormitories. Minister of Interior Abdullah Mousavi-Lari declared that it had taken place without ministry authorization. Senior Tehran police chiefs were charged with responsibility for allowing the raid, although the head of Tehran's police department, Hedayat Lotfian, was exonerated. In mid-August 1999 a hard-hitting report by the National Security Council⁵ criticized the police and conservative militia groups, and President Khatami declared that "police officers and non-military personnel" were responsible for the raid, but no public criminal proceedings were instituted. The full story of who ordered the raid and which forces carried it out remain shrouded in mystery.

Pressure on the independent media intensified after the February 2000 parliamentary elections but before the new parliament assumed office. The outgoing, conservative-dominated parliament had passed a series of amendments to the Press Law holding individual writers as well as editors and publishers accountable for articles deemed to be offensive to Islam or to have incited public opinion. The amended law required applicants for new newspaper licenses to obtain prior approval from the judiciary. This closure of a previous loophole that had enabled closed newspapers to reopen under a different name within a few days has proved crucial in enabling the judiciary to suppress Iran's independent print media.

The Supreme Leader openly sanctioned the assault on the press. Speaking at Friday prayers on April 22, 2000, Ayatollah Khamene'i characterized the press as a "stronghold of Western influence" in Iran. He defended the newspaper closures by saying, "we are trying to stop the enemy from realizing his propaganda conspiracy." President Khatami was far less direct, simply hinting that conservatives were exploiting religious values to increase their grip on power:

⁵ A coordination body of senior leaders of the security forces headed by the president.

The political tendencies and groups, by relying on religious sanctities and everything that is held in respect and honor by the people, take unfair advantage of the situation to enhance factional interests and specific tendencies.

At the same time, Khatami was careful to distance himself from some of the independent media, whose content, he warned, signified an unacceptable “shift towards secularism” in Iran.

Twelve titles (eight daily newspapers, three weekly titles and a monthly magazine⁶) were closed in one day, on April 23, and several more in subsequent days. In issuing the closure orders on April 23 the judiciary announced that the banned publications had consistently ignored warnings to stop publishing material that “denigrated Islam and the religious elements of the Islamic revolution.” The statement from the judicial department said that the titles had “brought smiles to the faces of the enemies of the Islamic Republic and hurt the feelings of devout Muslims.” Judicial officials alleged that the press was working in behalf of foreign powers.

The mass closures did not comply with the requirements of Iran’s press law, which requires that formal charges be lodged against publications prior to their closure and that there be a court hearing. Nevertheless, additional closures were ordered in the following days. Those shut down included *Mosharekat*, the daily newspaper associated with the Islamic Iran Participation Front, a reformist political faction, and *Sobh-e Imrouz*, another popular daily that was published by Said Hajjarian, a senior advisor to President Khatami. A month earlier, in March, Hajjarian had been the victim of an assassination attempt, apparently planned within the security forces, that left him confined to a wheelchair. His newspaper was ordered closed, according to a judicial official, because the judicial department had received more than ninety complaints against it. Hajjarian, then still in critically injured after the attempt on his life, was in no position to respond.

The press closures were accompanied by the imprisonment of prominent editors, journalists and publishers. On April 10, Mashallah Shamsolvaezin, a pioneering editor of independent newspapers, was sentenced to thirty months of imprisonment for “insulting religious values.” Complaints had been made against him to the Press Court by the Ministry of Information and the state broadcasting agency. More cases of imprisonment of writers and editors followed.

On April 22 investigative journalist Akbar Ganji, the editor of *Fath* newspaper, was summoned before the Tehran press court and after several hours of interrogation was ordered to be detained “temporarily.” He had been investigating the role of senior state officials in a series of political murders that took place at the end of 1998. His articles had implicated many powerful figures, including former President Ali Akbar Hashemi Rafsanjani. He was later sentenced to ten years of imprisonment to be followed by five years of internal exile in the south of Iran. On May 15, Tehran’s Appeals Court reduced the sentence to six months from ten years.⁷

The following day, Latif Safari, publisher of the banned newspaper *Neshat*, was sentenced to two-and-a-half years in prison for publishing articles “offensive to Islam.” The article which sparked his prosecution had questioned the use of the death penalty and the application of the Islamic principle of *qisas*, or retribution.

The Press Court was not the only weapon at the disposal of the conservatives in their war against the reformist press. In June, the Special Court for the Clergy,⁸ an extra-constitutional body created by decree of the Supreme Leader to discipline dissident clerics, ordered the closure of *Bayan*, a newspaper published by Hojatoleslam Ali Akbar Mohtashami, a former minister of the interior and senior advisor to the president. Prior to the parliamentary election campaign the Special Court for the Clergy had sentenced Hojatoleslam Abdullah Nouri to prison for five years. He had been seen as the likely reformist candidate for the position of speaker of

⁶ The dailies were: *Guzrishi-e Ruz*, *Bamdad-e No*, *Aftab-e Imruz*, *Payam-e Azadi*, *Fath*, *Arya*, *Asr-e Azadegan* and *Manateq-e Azad*. The three weeklies were *Payam-eHajar*, *Aban* and *Azresh*. The monthly magazine was *Iran-e Farda*.

⁷ Islamic Republic News Agency (IRNA) website www.irna.com, May 15, 2001

⁸ The Special Court for the Clergy is an extra-constitutional body created by decree of Ayatollah Khomeini and subsequently ratified by Ayatollah Khamene’i. Some jurists argue that the creation of the court violates the constitution because it is not compatible with the principle of equality before the law.

parliament. His trial was widely reported by the independent media, and he used the occasion to advocate reform and criticize the conservative's dominance of state institutions. His defense arguments in court were collected and published in what became a best-selling book.⁹

Because the Special Court for the Clergy has no legal jurisdiction over the press, Hojatoleslam Mohtashami had ignored previous summonses to the court to answer charges relating to the newspaper. The Special Court announced that it ordered the closure in order to prevent further offenses by the newspaper. Among the articles that raised objections was one criticizing the judiciary for overstepping its competence and entering into the political realm.

The new parliament, convened at the end of May, sought to reverse the restrictions on the press imposed by the outgoing Majles. This included the requirement that applicants for new newspaper licenses obtain prior approval from the judiciary which had closed a previous loophole that had enabled banned newspapers to reopen days later under a new name. At the beginning of August the Supreme Leader, Ayatollah Khamene'i, stepped in to head off a brewing confrontation between the parliament and the Council of Guardians, frustrating the reformist agenda. In a letter to the Majles dated August 6, 2000 he wrote:

Should the enemies of Islam, the revolution and the Islamic system take over or infiltrate the press, a great danger would threaten the security, unity and faith of the people and, therefore, I cannot allow myself and other officials to keep quiet in respect of this crucial issue...

The current law, to a degree, has been able to prevent the occurrence of this great calamity, and its interpretation, amendment and similar actions that have been anticipated by the Majles committee are not legitimate and not in the interest of the country and the system.

On behalf of the parliament, the Speaker, Mehdi Kahroubi, agreed to cease all debate on the amendment to the press law.

Several reformist members of parliament criticized this unprecedented intervention by the Supreme Leader in parliamentary affairs, but they were drowned out by conservatives who strongly supported the Leader's action and received no evident support from President Khatami, who refrained from criticizing the intervention.

In July and August 2000 the number of newspaper closures rose to more than twenty¹⁰ and other journalists were sentenced to prison terms. They included Emadedin Baqi, member of the editorial board of *Fath*, who was sentenced to five-and-a-half-years of imprisonment by the Press Court for questioning the tenets of Islam and of the revolution in violation of Article 6 of the Press Law. In August, journalist Ahmad Zeidabadai was detained for failing to answer a summons to appear before the Press Court to answer charges relating to articles he had published for several independent newspapers, including *Hamshahri*, a newspaper published by the Tehran municipality. Other journalists for independent newspapers, including Massoud Behnoud and Ebrahim Nabavi, were also taken into custody.

As press closures and arrests of journalists continued, reformists appealed to the rule of law. Deputy Minister of Culture and Islamic Guidance for Press Affairs Shaban Shahidi stated on August 19, "It would be ideal if no publication is shut down before going to trial, and that no journalist or managing director would be arrested without an open trial in front of a jury." He also stated that reopening some of the closed newspapers "could help calm down the atmosphere in the country." President Khatami finally spoke out on the press clamp down on August 21, 2000 at a televised news conference, "The situation which has come about nowadays for our press and mass media is not satisfactory," he said.

⁹ The title, "The Hemlock of Reform," suggested that the reform movement was being poisoned by his prosecution.

¹⁰ These include: Gozaresh-e Ruz, Bamdad-e No, Aftab-e Emruz, Payam-e Azadi, Fath, Arya, Asr-e Azadegan, Azad, Payam-e hajar, Aban, Arzesh, Iran Farda, Akhbar Eqtesad, Manatq-e Azad, Mosharekat, Ava, Tavana, Ruzdaran, Bahar, Jvanan-e Qorveh and Qeseh-yi Zendigi.

I agree completely that any offense or deviation should be dealt with, but within the framework of the law... A selective approach to the press and the people is not desirable. Everything should be done within the framework of the law and regulations. We should know that our regime is strong enough so as not to give the impression that, God forbid, it is weak and afraid because of such a method.¹¹

Nevertheless, conservatives kept up their pressure. On October 3, Ayatollah Mesbah Yazdi, in remarks at Qom's Abshar mosque, said, "if the government had done its duty, it would have hanged all these idle babblers from gallows, so that the people might utter their worst curses over them."¹²

Eight more publications were closed down in October. The few independent publications that remained faced constant harassment from the judicial authorities as their editors and journalists were repeatedly summoned to appear before the Press Court to answer for perceived offense in articles they published.

In December 2000 advocates of greater press freedom suffered a further blow when Minister of Culture and Islamic Guidance Ata'ollah Mohajerani resigned. He was seen as the main guiding hand behind efforts to liberalize and increase press freedom and had been repeatedly challenged to resign by conservatives. In 1999, he had escaped an attempt to impeach him only by making an impassioned and eloquent defense of press freedom on the floor of the parliament. Mohajerani's departure from office represented for many the end of the period in which the independent print media had been able to act as the public voice of the reform movement. He had worked with diminishing success from within the system to safeguard an independent voice for the press.

Attacks on the press and on journalists continued in 2001. In January, the authorities closed the philosophical and cultural monthly *Kiyan*. The journal had published academic articles debating the philosophical underpinnings of the reform movement. Among the journalists most recently detained are Fariba Davoodi-Mohajer, arrested on February 18, and Mohammad Vali Beig, head of the *Jame-e Rouz* publishing society. On February 28, 2001, journalist Massoud Behnoud was sentenced to nineteen months of imprisonment for "spreading untruths and insulting the Islamic system." Two independent journalists, Hoda Saber and Reza Alijani, were taken into detention in March 2001 and as of late May were still being held in an unknown location. On March 18, 2001 the Press Court ordered the closure of four more independent newspapers, one daily, *Douran-e Emrouz*, and three monthly publications, *Peyam-e Emrouz*, *Jamaeh Madani* and *Mubayyin*.

¹¹ Islamic Republic News Agency, (IRNA) website www.irna.com, Aug. 21, 2000.

¹² *Iran* newspaper, Oct. 3, 2000.

V. SILENCING CRITICS

As well as journalists and editors, many prominent reformist activists who published their views in the independent media were caught up in the crackdown on independent publications and charged on account of articles they had published. Meanwhile, the judiciary has also mounted prosecutions against other leading reformists and political activists.

The Berlin Conference Participants

One group that the judiciary targeted were Iranians who participated in an international conference on the future of Iran that was held in April 2000 in Berlin. The conference, organized by Germany's Green Party and several German foundations, aimed to examine the prospects for reform in Iran following the reformists' success in the February 2000 elections. Those who attended included a number of Germany-based Iran experts as well as Iranian activists living in exile, but also Iranians who traveled to Germany from Iran in order to take part. Soon after their return to Iran, however, several of the latter were detained and questioned, among them veteran independent politician Ezzatollah Sahhabi and women's rights activists Mehrangiz Kar and Shala Lahidji. The reformist cleric Hojatoleslam Hassan Youssefi Eshkevari, who delayed his return to Iran until August, was also later detained.

In October 2001 at least twelve reformist activists who had attended the Berlin conference were brought to trial before the Revolutionary Court in Tehran, though the number of named defendants eventually reached seventeen. On January 13, 2001, the court convicted seven of them on vague charges of having "conspired to overthrow the system of the Islamic Republic." The court convicted three other defendants on lesser charges, imposing fines and suspended sentences, and acquitted seven others. Even so, the trial breached recognized international fair trial standards: the authorities held several of the defendants for months without access to legal counsel and the judge, as is common in Revolutionary Court cases, acted also as prosecutor. Further, the trial was conducted behind closed doors.

Investigative journalist Akbar Ganji (see above) received a particularly severe sentence, ten-years of imprisonment to be followed by five years of internal exile in the south of Iran.¹³ He had previously published articles implicating powerful, high-level officials in the 1998 killings of leading dissident writers and intellectuals, and the assassination attempt on Said Hajjarian (see above). Two translators employed by the German Embassy in Tehran, Saeed Sadr and Khalil Rostamkhani, received ten and nine-year sentences respectively. Khalil Rostamkhani had not actually attended the Berlin conference, though he had helped in its preparation. His wife, Roshanak Darioush, a prominent translator of German literature into Persian, served as a translator at the conference, but she did not return to Iran to face charges. Ganji's sentence was subsequently reduced to six months imprisonment on appeal.

The Revolutionary Court in the Berlin case also sentenced student leader Ali Afshari to five years in prisons, and veteran politician Ezzatollah Sahabi to serve four-and-a-half years. Both of them were already detained for their criticism of government policy by the time the Berlin prosecutions were announced in October. Their families had not been informed of their places of detention. Shala Lahidji and Mehrangiz Kar each received four year prison sentences. Ms. Kar, recently diagnosed with breast cancer, was for a time prevented from leaving the country for medical treatment. Hojatoleslam Hassan Youssefi Eshkevari, remained in prison awaiting sentencing by a Special Court for the Clergy on charges of apostasy. He was originally sentenced to death, but this verdict was quashed by an appeals' court in May 2001. Two other writers, Changiz Pahlevan and Kazem Kardavani, have not returned to Iran from Germany, having been informed that charges have been prepared against them also.

Other Prosecutions of Dissidents

On December 9, 2000 Saeed Montazeri, a son of the dissident cleric Ayatollah Hossain Ali Montazeri, was summoned by the Special Court for the Clergy for distributing copies of his father's memoirs. Ayatollah Montazeri, for many years the designated successor to Ayatollah Khomeini as Leader of the Islamic Republic, fell

¹³ Tehran's Appeals Court reduced the sentence from ten years to six months on May 15, 2001.

out of favor in 1989 and has spent much of the last decade under house arrest in Qom. His views, critical of the institution of *velayat-e faqih*, have been a thorn in the side of the authorities throughout this period. His relatives and followers have been frequent targets for prosecution by Special Court for the Clergy.

In attempting to weaken President Khatami's bid for a second term of office in the June 2001 elections, conservatives also targeted Deputy Minister of the Interior Mustafa Tajzadeh. Tajzadeh had been responsible for administering the February 2000 parliamentary elections, and was held by many conservatives to be responsible for their loss in those elections. He is also facing legal charges following the ministry's report about serious unrest at a rally in Khorramabad in August 2000, when students gathered to hear speeches by Mohssen Kadivar and Abdol Karim Soroush. The report, for which Tajzadeh was responsible, attributed much of the blame to violent vigilantes who attacked the students. The charges against Tajzadeh appeared designed to remove him from his position and disqualify him from supervising the forthcoming presidential elections. He was forced to resign from his position in April 2001.

On March 26, 2001 member of parliament Fatima Haghigatjoo was detained on charges of inciting public opinion and insulting the judiciary following remarks she made on the floor of the parliament. She was released on bail the next day, but continues to face prosecution. She is the first sitting member of parliament to be prosecuted for statements made under cover of parliamentary privilege.

Suppression of the Religious – Nationalist Alliance

On March 18, 2001, the Tehran Revolutionary Court ordered the effective closure of the Iran Freedom Movement, an unlicensed political party, on the grounds that it was attempting to "overthrow the Islamic regime." This was in contravention of Iran's political parties law, which states that the courts may not take action against a political party before a special committee responsible for overseeing party activities files a formal complaint.¹⁴ No such complaint has been made against the Freedom Movement, which had attempted to register as a political party in the early 1980s. The Ministry of the Interior turned down its application in July 1992. The party appealed, but no court hearing was ever scheduled.

The Freedom Movement, throughout its fifty-year history, has been an advocate of constitutional Islamic rule with respect for democratic principles. Several of its leaders, including former Prime Minister Mehdi Bazargan, served in the first government of the Islamic Republic in 1979. Since then it has attempted to nominate candidates for parliamentary and presidential elections, but its candidates have almost always been ruled inadmissible by the Council of Guardians.

The closure of the Freedom Movement followed the arrest and detention of twenty-one independent political activists associated with the religious nationalist trend at a political meeting in Tehran on March 11. The meeting was held in the home of Mohamed Basteh-Negar, son-in-law of Grand Ayatollah Taleghani, a renowned critic of the Shah and an inspirational figure for supporters of a liberal view of Islamic government in Iran. The Revolutionary Court stated that the activists, who are associated with various movements and parties, were linked to the Freedom Movement.

The adherents of this loose alliance support the reform policies of President Khatami and have criticized efforts to block reform by conservative clerics. They had held weekly meetings since 1984 at which they debated current political events. Since the 1997 election of President Khatami, they had widened participation in this forum and attendance had increased accordingly.

Eleven of those arrested have not been allowed access to legal counsel, doctors or their families. They are being held incommunicado, in violation of Iranian and international law, and their whereabouts remain unknown. Among the eleven who remain in detention are: Dr. Mohammad Maleki, the former chancellor of the University of Tehran, Dr. Habibullah Peiman, Taghi Rahmani, Mohammad Basteh Nagar, Dr. Ali Reza Rajaei, Mahmoud Omrani, Saeid Madani-Farokhi, Mohammad Mohammadi-Ardehali, Dr. Hossein Rafei, Dr. Reza Reiss-Toussi,

¹⁴ This committee is also known as an "Article 10 Commission" in reference to Article 10 of the political parties law.

Dr. Massoud Pedram and Morteza Kazemian. The elderly veteran political activist Ezzatollah Sahabi also remains in detention on unknown charges at an unknown location.

More than forty independent political activists have been rounded up in Tehran and around the country since April 7. Many of them were associated with the Iran Freedom Movement. Among those detained was eighty-year-old Dr. Seyed Ahmad Sadr Haj Seyed Javadi, a founding member of the Freedom Movement and a prominent legal scholar. An extensive legal archive dating back to the pre-Revolutionary period was removed from his house at the time of his arrest.

In the course of the raids, security forces ransacked the offices of the Bazargan Cultural Foundation and the Association of Islamic Engineers. They seized computers and files dating back many years. The Bazargan Foundation and the Association were legally registered under Iranian law. Detentions took place in many cities.¹⁵

¹⁵ The list of detainees from different cities compiled by Human Rights Watch names the following:

- Tehran: Dr. Seyed Ahmad Sadr Hajseyed Javadi, former Minister of Justice and the Interior during the transitional government; Hashem Sabaghian, former Deputy Prime Minister and spokesman for the transitional government; Mohammad Tavasoli, former mayor of Tehran; Dr. Gholam-Abas Tavasoli, former chancellor of Isfahan University; Abolfazl Bazargan engineer and deputy prime Minister in the transitional government; Reza Masmouie, engineer; Mahmoud Naimpour, engineer; Dr. Hossesin Bani-Assadi; Mr. Abouzari, the head of Bazargan Cultural Foundation; Dr. Razmjou; Bagher Valibeik; Vahid Mirzadeh; Mr. Aghaei; Mr. Badeizadehgan, head of the Bazargan Foundation; Dr. Khossro Mansourian;
- Mashhad: Mr. Taher Ahmad-Zadeh, 80 year old former governor of Khorasan province; Dr. Del-Assay, Physician; Dr. Aliakbar Sar Jamei; Mr. Hamed Alavi; Hojatoleskam Etezagh; Dr. Hadi Hadizadeh, well-known Iranian physicist;
- Isfahan: Dr. Reza Gharavi; Mr. Mostafa Messkin; Mr. Eshghaghi; Mr. Moslehi; Mr. Salavati, managing director of closed Mofid newspaper; Tabriz: Dr. Ghafar Farzadi, professor at Tabriz University;
- Zanjan: Mr. Ahad Rezaei; Raouf Taheri;
- Boukan: Khossro Kord-pour, teacher;
- Shiraz: Dr. Seyed Mohammad Mehdi-Jafari, professor of Shiraz university; and Abbas Zadegan.

VI. LEGAL BACKGROUND

International Law

Under international human rights law, the Iranian government is obliged to uphold basic freedoms of expression and association, and to protect against arbitrary detention and unfair trials. Since 1975, Iran has been a party to the International Covenant on Civil and Political Rights (ICCPR), which codifies these fundamental rights. In its efforts to stifle dissent, Iranian authorities have violated international human rights law through its enforcement of abusive laws, the use of courts that do not meet international standards, and various other practices.

International human rights law safeguards the right to freedom of expression.

Article 19 of the ICCPR, ratified by Iran in 1975, reads in part:

- 1) Everyone shall have the right to hold opinions without interference.
- 2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The ICCPR requires that restrictions on expression “will only be such as are provided by law and are necessary: a) For respect of the rights or reputations of others; b) For the protection of national security or of public order (*ordre public*), or of public health or morals (article 19 (3)).” The prosecutions of attendees at an international conference in Berlin, for example, constitute a violation of Article 19 (2) of the ICCPR, which protects the right to “seek, receive and impart information of all kinds, regardless of frontiers.”

The U.N. Human Rights Committee, which oversees the compliance of ratifying states to the ICCPR, has noted that the manner in which a state defines and restricts expression determines the extent to which individuals enjoy that right: “It is the interplay between the principle of freedom of expression and such limitations and restrictions which determine the actual scope of the individual's right... [W]hen a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”¹⁶ Several of the restrictions on freedom of expression in Iranian law and practice create unacceptable infringements of the right to freedom of expression.

Many independent activists have been subjected to arbitrary arrest or detention in violation of Article 9 of the ICCPR. Detainees have been held indefinitely in incommunicado detention, and their right to *habeas corpus* denied, in clear violation of Article 9 (4) of the Covenant, that states:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Legal actions against activists, journalists, and others who have been detained or imprisoned also violate international standards. Article 14(1) of the ICCPR provides that “in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

The denial of access to legal counsel during the pre-trial detention period is a violation of Article 14 (3) of the Covenant, which states:

¹⁶ United Nations, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.2, March 29, 1996, p. 11.

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees in full equality:

(. . .)

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.

Article 22 of the ICCPR protects the right to freedom of association. Restrictions imposed on the Freedom Movement and on other independent political groupings exceed those permitted under Article 22 (2) of the Covenant. This states (in relevant part):

No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Domestic Law

Basic civil liberties and political rights, including freedom of expression and freedom of association, are not adequately protected in Iranian law. For instance, Article 24 of the constitution, establishing the right to freedom of expression, qualifies that right by wide-ranging restrictions on its exercise:

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

The 1985 press law, which details the legal procedures for dealing with offenses by the press, narrowly defines the role of the media in violation of the right to freedom of expression. Article 6 of the law establishes the purpose of the press:

- a) To enlighten public opinion and raise public knowledge and understanding....;
- b) To advance the objectives set forth in the Constitution of the Islamic Republic of Iran;
- c) To strive to eliminate false and divisive social boundaries and to avoid setting different social groups and classes against each other by classifying them on the basis of ethnicity, language, mores, and local customs;
- d) To struggle against the manifestations of the colonialist culture (such as profligacy, love of luxury, rejection of religiosity, propagation of prostitution);
- e) To maintain and strengthen the policy of “neither east nor west.”¹⁷

In addition, the law prohibits the press from engaging in discourse “harmful to the principles of Islam” (*mabani va ahkam-e Islami*) or to the “public interest” (*houghugh omumi*). Article 6 of the Press Law is extremely imprecise. Phrases such as “harmful to the principles of Islam” give little meaningful guidance to journalists and editors, but provide officials with ample opportunity to censor, restrict, and initiate legal proceedings.

The 1985 press law stipulates that in exceptional circumstances the Supervisory Press Board within the Ministry of Information is empowered to close newspapers or magazines by administrative order. The two instances specified in the law are insulting the Leader of the Islamic Republic or the “recognized sources of emulation” (*marja-e taghaid*), and repeatedly insulting public morals. The powers of the Supervisory Press Board are not clearly defined in the press law. Its administrative powers to close newspapers and detain journalists and editors have been used extensively against the independent media.

The Supervisory Press Board, dominated by members of the executive branch of government is neither independent nor impartial. Its quasi-judicial powers to determine violations of the Press Law run counter to

¹⁷ Press Law, article 6.

Article 14 (1) of the ICCPR, which provides that in a suit at law, “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

The Press Law ostensibly forbids censorship while broadly establishing a basis for the harsh punishment of content deemed inappropriate. Article 4 declares that “no official or unofficial authority has the right to exert pressure on the press for the publication of any material or article, or to attempt to censor or control the press.” But Article 6 forbids, among other things, publishing material which “creates divisions among the different strata of society,” or “harms the bases of the Islamic Republic.” Such sweeping language is open to abuse. As described above, Article 6 of the law sets broadly defined restraints for the press, using sweeping language, that has been manipulated to target criticism of government policies, and diverse views on social and religious subjects. Such limitation of speech is in contravention of international law.

The authorities have on occasion employed other courts, such as Revolutionary Courts, to prosecute publishers, editors and journalists for their press activities. The Revolutionary Courts, established ostensibly as a temporary measure in 1979, remain a fixture of the Islamic Republic's justice system. They are empowered to try “any offense against internal or external security.” Procedures in such courts fall far short of international standards: defendants may be held indefinitely in incommunicado pre-trial detention, proceedings are held in secret, and the defendant has no right of access to legal counsel. This is also in apparent contravention of the constitution's article 168, which states that “political and press offenses will be tried openly and in the presence of a jury, in courts of justice.”¹⁸ A second exceptional court, the Special Court for the Clergy, has also been used in some freedom of expression and press-related cases where the defendants have been Muslim clerics. This court also offers few safeguards to the defendant and its proceedings are usually held in secret.

In recent newspaper closure cases the Press Court has justified its actions as being in accordance with Article 156 (5) of the constitution (which empowers the Press Court to take “appropriate measures in order to prevent crime”) and by reference to Articles 12 and 13 of the Precautionary Measures Law of the Iranian penal law (which empowers courts to order the seizure of “instruments used for committing crimes”). The use of these provisions farther undermines the protection for press freedom provided for in Iranian law. On March 18, 2001 the Ministry of Culture and Islamic Guidance issued a statement regretting the use of these provisions by the Judiciary in its actions against the press.¹⁹

The right to freedom of association is also strictly qualified under the constitution. Article 26 of the constitution authorizes the “formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities,” but with the proviso that “they do not violate to principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic.” This falls short of the right to freedom of association set forth in Article 22 of the ICCPR.

¹⁸ Article 168 then states that “the manner of the selection of the jury, its powers, and the definition of political offenses, will be determined by law in accordance with Islamic criteria.

¹⁹ Islamic Republic News Agency, Mar. 18, 2001, www.irna.com.

VII. ACKNOWLEDGEMENTS

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