

ARTICLE 19's submission to the UN Universal Periodic Review of ISLAMIC REPUBLIC OF IRAN

For the consideration at the seventh session of the UPR Working Group in 2010

28 August 2009

Executive Summary

1. This submission of ARTICLE 19: Global Campaign for Free Expression seeks to make a constructive contribution to the process of preparation of the UPR of the Islamic Republic of Iran. ARTICLE 19 views positively the willingness of the Iranian Government to cooperate with the UN Human Rights Council in the framework of this review; especially since Iran has had a poor record regarding its international commitments to respect and promote human rights. It has repeatedly been late to submit its report to the relevant treaty bodies; for instance, it has not complied with its reporting obligations under the International Covenant on Civil and Political Rights ("ICCPR") since 1992 and, as a result, is currently three reports behind.
2. Given the expertise and scope of activities of ARTICLE 19 in Iran, this submission is restricted to raising concerns about the failure of the Iranian Government to fulfil its international obligations to protect **the right to freedom of expression**, in particular: restrictions on **freedom of expression in the Iranian Constitution**; highly restrictive regulation of **print media**; restrictions on **broadcasting**; restrictions on reporting and arbitrary **arrests and harassment of journalists and bloggers**; and **internet censorship**.

Restrictions on freedom of expression in the Iranian Constitution

3. Although the Constitution of Iran (of 1979, amended in 1989) expressly protects the right to freedom of expression, it simultaneously severely undermines its protection. It permits restrictions on freedom of expression (Article 20 with Article 24) in cases when it would be "detrimental to the fundamental principles of Islam or the rights of the public". The Constitution also requires the media to "strictly refrain" from the "diffusion and propagation of destructive and anti-Islamic practices" (the Preamble) and prohibits the exercise of constitutional rights in a manner which is injurious to others or detrimental to public interests (Article 40). It provides that "all civil, penal, financial, economic, administrative, cultural, military, political and other laws and regulations must be based on Islamic criteria. This provision applies absolutely and generally to all articles of the Constitution as well as all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter" (Article 4). These provisions constitute a substantial qualification on the right to freedom of expression, unlike international law, which requires any restrictions to be clear, to serve a listed legitimate aim and to be necessary to protect that aim.

Highly restrictive regulation of print media

4. The regulation of print media is provided predominantly by the Press Law (of 1986, amended in 2000) and the Islamic Penal Code (of 1991, ratified in 1996); as well as by other statutes such as the Theologians' Law and the Public and Revolutionary Courts' Procedural Law (of 1999). These laws very seriously restrict the role of the print media within society in a number of ways, especially through the following.
 - State's imposition of the objectives for the media: Under the Press Law, the press are obliged to enforce and pursue at least one of five "legitimate objectives", including "to campaign against manifestations of imperialistic culture...and to propagate and promote genuine Islamic culture and sound ethical principles" and they must "not undermine the realisation of the other goals or the principles of the Islamic Republic (Article 2). The press are obliged to restrict themselves to matters such as "constructive criticism", "while duly observing Islamic teaching and the best interest of the community", and content must be "void of insult, humiliation and detrimental effects" (Article 3). Similarly, the dissemination of any domestic and foreign news should take into account the best interests of the community (Article 5). ARTICLE 19 considers these provisions amounting to a serious interference with the editorial independence of media outlets.
 - Content Restrictions: The Press Law prohibits the publication of matters related to atheism, propagating luxury or extravagance, creating social discord or divisions, encouraging dissent against

the security, dignity or interests of the State, publishing sensitive information without prior authorisation, insulting Islam or offending State and religious officials, libel, or quoting articles from the deviant press or parties opposed to Islam in such a manner as to propagate those ideas (Article 6). At the same time, the Law fails to define these terms, leaving them open to subjective and arbitrary interpretation.

- **Criminal defamation and insult**: Criminal defamation still remains an offence in Iran, and is used to stifle criticism. Similarly, insult is prohibited in the Theologians' Law and has been used to close publications. A number of the articles in the Theologians' Law are vaguely worded; of particular concern is the prohibition of "acts which customarily cause insult to the dignity of Islamic theory and the Islamic Revolution" (Article 18), given its potential to suppress public discourse through the press. For example, in December 2006, Kurdish novelist Shahram Ghavami was prosecuted for the publication of his novel, *Birba*, on charges of "insulting the state." The authorities detained him for two months in the Ministry's detention centre in Sanandaj before releasing him on bail of approximately 20 million Toman (app. US\$20,000).
- **Licensing**: The Press Law also requires publishing houses and individuals to obtain a licence from the Press Supervisory Board (PSB), within the Ministry of Islamic Culture and Guidance (Ministry), with a number of restrictions placed on who may apply for such a licence. All publications are also closely monitored by the Ministry through the requirement to submit an annual sealed ledger containing an outline of all revenues and expenditures, which the Ministry can inspect whenever it deems appropriate (Article 20). Additionally, each printing house must forward two copies of each publication, free of charge, to the Ministry. This system has resulted in censorship, and self-censorship, in the media, art and literature. The exhausting bureaucratic hurdles associated with publishing and distributing publications in Iran have forced authors and publishers, in the best case scenario, to wait several months for their new books, novels and political essays to be granted permission to be published; while many renowned writers have ceased to seek publication. Those who write and publish in the Kurdish language face particular difficulties in obtaining publication permits. For example, in 2006, Shahram Ghavami (mentioned above) was refused a third printing of his novel *Soheila*. Reportedly, the authorities required him to delete 761 passages in order to get a republication permit, which he refused to do. Similarly, Behzad Khoshali, a writer and researcher from Saghz, has written and translated a number of books in recent years, but the Ministry has not granted the necessary permits to publish any of them, without providing any reasons for this.
- **Harsh penalties**: The PSB is also responsible for addressing alleged violations of the Press Law and has the power to ban publications for such violations. Practice shows that the standard response to even an alleged violation of the Press Law is to suspend the publishing licence until the matter is resolved. Where a violation is found to have occurred, the licence is often cancelled. Furthermore the Penal Code provides for mandatory imprisonment terms for many violations of the Press Law. Anyone who explicitly violates any religious taboo in public shall be imprisoned or flogged, in addition to receiving specific punishment for the offence. An example of the application of these sanctions is the case of Bahram Valad-Beigi, editor-in-chief of the bilingual Persian and Kurdish daily *Ashti*, who was tried in July and October 2007, together with the paper's general manager, Barhan Lahnoni. The charges included "sharing the ideology of Barzani", "disturbing the public opinion by publishing lies and articles aimed at stirring trouble and ethnic and racial conflict" and "covering developments and news in Iraqi Kurdistan." On 3 December 2007, the Penal Court in the province of Kurdistan banned *Ashti* and ordered Valad-Beigi to pay a fine of 100,000 Toman (app. US\$100). On 9 April 2008, Branch 27 of the Supreme Court upheld the fine, but revoked the ban on the paper; *Ashti* has not resumed publication since. In another case, in August 2009, a leading reformist newspaper, *Etemad-e Melli*, was closed following its plans to publish allegations that protesters had been raped while incarcerated in Tehran's prisons during the country's ongoing post-election upheaval. The authorities claimed that the newspaper had printed material against "national security" and "public peace".
- **Censorship**: Despite a formal prohibition of censorship in Iranian law, the Islamic Republic News Agency (IRNA), which is directly subordinate to the government, rigorously monitors articles written by journalists before they are published, in order to ensure that they are in line with IRNA's five governing principles, namely preservation of state secrets and national security; public morality;

strengthening linguistic and religious solidarity; human dignity; and not publishing information prohibited by law. A wide range of independent and official reports allege that individuals, including media workers, are routinely summoned to government offices to be instructed or warned not to continue exercising their right to freedom of expression.

5. The problems of the regulatory framework are compounded by a number of problematic judicial practices which further heighten the repressive impact of the legislative provisions and which intimidate both individual journalists and publishing houses. Press offences are heard by specialised Press Courts, which are empowered to impose criminal penalties on individuals and to order the closure of newspapers and periodicals. The authorities have also employed other courts, such as Islamic Revolutionary Courts, to prosecute publishers, editors and journalists for press activities, in apparent breach of the Constitution. Practice also demonstrates that over the past few years the judicial authorities have utilised the Preventive Restraint Law 1960 (directed at avoiding the recurrence of crimes such as hooliganism and murder) to temporarily ban newspapers for articles deemed to be contrary to the law. A number of temporary bans have reportedly been imposed on newspapers under the Law, some of which have lasted for more than three years, in the absence of any trial or court decision.

Restrictions on broadcasting

6. Television and radio broadcasting are firmly controlled by a constitutionally entrenched State broadcasting monopoly which largely reflects the views of the Supreme Leader Khamenei and the conservative clerical establishment. Private, independent broadcasters are prohibited. Incoming foreign news is tightly restricted by a prohibition on satellite antennae introduced in 1995 and prior censorship provisions concerning all foreign publications. Although viewing of satellite channels is widespread and has been largely tolerated by the authorities, there are occasional crackdowns, as for example in the summer of 2006. A state broadcasting monopoly is clearly inconsistent with the right to freedom of expression. International law protects not only expression itself, but also the *means* of communication and the use of censorship or the banning of satellite antennae or other information carriers is not legitimate.

Restrictions on reporting and arbitrary arrests and harassment of journalists and bloggers

7. Iran is currently regarded as the country with largest number of journalists and bloggers in prison. Authorities regularly detain or harass journalists and bloggers who write critically about religious or political figures, the Islamic revolution and its symbols. Notable examples include:
 - Omid Reza Mirsayafi, a 29-year-old cultural blogger, writing primarily about traditional Persian music and culture, was arrested on 22 April 2008. He was convicted in November 2008 for insulting the Iranian Supreme Leader Khomeini and the country's religious leaders and for anti-state propaganda (under Articles 500 and 514 of the Penal Code). He received a sentence of two years and six months imprisonment, one of the longest handed down to a blogger in Iran. On 18 March 2009, Mirsayafi died in Evin Prison after he failed to receive medical assistance, under circumstances that have not been fully explained.
 - Roxana Saberi, Iranian-American freelance journalist, was arrested in Iran in January 2009, charged with espionage and subsequently sentenced to an eight-year prison term. An appeals court reduced the charge to possessing classified information and reduced her prison term to a two-year suspended sentence. Saberi was released on in May 2009.
 - Hossein Derakhshan, a prominent blogger, was arrested on 1 November 2008, allegedly on charges of "spying for Israel" and "insulting religion". In August 2009, he remains under detention and has not been formally charged.
 - Journalists defending women's rights face particular repression. For example, at least seven well-known women's rights writers were prosecuted in 2008. Among them was Shahnaz Gholami, a women's rights activist and editor of *A Woman's Rights are Human Rights* blog, who was arrested in November 2008 for posting articles deemed to be damaging to national security on her blog. Gholami, who also experienced harsh prison conditions in jail, was released on bail of 200 million Tumans (app. US\$200,000) on 17 January 2009 after going on a hunger strike. Another journalist, Parvin Ardalan, writing for the *Change for Equality* website and a recipient of the 2007 Olof Palme Prize for human rights, faced several charges in 2008, including accusations of endangering national security. The Sixth Branch of the Islamic Revolutionary Court sentenced her to a six-month prison term, although she was freed on appeal later in the year.
 - Journalists writing for Kurdish, Azeri, and Arab publications and those who seek to cover the regime's

treatment of ethnic minorities are frequently harassed by the state authorities. For example, in 2008, four writers and editors were imprisoned for reporting for critical ethnic outlets or for seeking to expose the government's treatment of minorities. The imprisoned included Mohammad Hossein Fallahiyazadeh, a television reporter serving a three-year term after recounting the government's harsh treatment of Iranian-Arab protesters in Khuzestan province; Mohammad Seddigh Kaboudvand, managing editor of the Kurdish weekly *Payam-e Mardom*, who was sentenced to 11 years on anti-state charges; and Massoud Kurdpour, a freelance journalist in West Azerbaijan province, sentenced in October 2008 to a year in prison on charges of "propaganda against the regime" after doing interviews with foreign media about the government's treatment of minorities.]

8. Harassment of journalists includes travel restrictions, both within Iran and on leaving the country, along with interrogations and threats after returning from abroad. For example, on 26 January 2007, 15 women journalists were detained for questioning by the Ministry of Intelligence when they wanted to travel to an educational workshop on journalism in India. Twelve of the women were freed after several hours but warned that they should not attend the training or they could face unspecified consequences on their return. Three others were detained for 24 hours in Evin Prison, run by the Intelligence Ministry, and charged with "acting against state security". While they were detained, security officials searched their homes and removed personal effects, including computers and notebooks, and since their release they have been prevented from working. Another example is the case of Taghi Rahmani, a writer and journalist who was prevented from attending the annual conference of PEN Denmark in January 2007.
9. State authorities also frequently abuse national security laws to arrest, detain and harass journalists, especially those working for minority media outlets. For example, in July 2007, Mohamad Sadigh Kaboudvand, a journalist and the president of the Association for the Defence of Human Rights in Kurdistan (RMMK) was arrested for "acting against national security by establishing the [RMMK]" and given a one year prison sentence for "propaganda against the system." In October 2008, the sentence was increased by an additional 10 years imprisonment by the Appeal Chamber of the Revolutionary Court in Tehran. Another Kurdish journalist, Asu Saleh, has been arrested on similar charges on multiple occasions; the latest was in June 2007, when he was accused of "acting against national security," "propaganda against the state," "agitating youth to participate in illegal gatherings," and "working with opposition." In August 2007, the court sentenced him to one year in prison after which Saleh fled the country.
10. Persecution of journalists and bloggers has heightened after the disputed presidential elections in June 2009.
 - The authorities clamped down on journalists and media workers covering these events. Newspapers were closed, websites and broadcasters blocked, and dozens of journalists arrested or attacked. More than 40 prominent newspaper editors, journalists, media workers, cartoonists and bloggers have been arbitrarily arrested and imprisoned since the election. Imprisoned journalists have been under a lot of pressure to make confessions for organising or participating in a "colour revolution". There are strong indications that they are under strong pressure to "confess" to planning the demonstrations well in advance of the elections, and having "connections" with foreign powers. Many such confessions were made in a mass trial of 140 people on 1 August 2009 in Tehran.
 - There have also been many reports of journalists being beaten and arrested while reporting during the protests. For example, George McLeod, reporter for the Canadian newspaper *The Globe and Mail*, was arrested, threatened with a gun and beaten by Iranian security forces before being briefly detained; reporters Jan Eikelboom and Dennis Hilgers, journalists working for the Dutch current affairs TV programme *Nova*, were attacked while riot police were dispersing a crowd, and they were also briefly detained, their footage confiscated and their press permits cancelled.
 - Foreign journalists from several international news organisations, including Belgian, Spanish, Canadian, American, Emirati and Italian newscasters, had their tapes confiscated and some were beaten while covering public protests. Several journalists were detained without charge, including Maziar Bahari, a Canadian-Iranian reporter for *Newsweek* and a documentary film maker who was arrested on 21 June 2009 and who had his journalistic equipment confiscated. He remains imprisoned, reportedly without any access to a lawyer, and there are fears of him being mistreated and tortured. Another example is the arrest of Iason Athanasiadis, a British-Greek journalist with the Pulitzer Center on Crisis Reporting, who was detained for 19 days in June 2009 in solitary confinement and

interrogated for hours to pressure him to confess to helping the rioters. All foreign journalists working in Iran were accused of "supporting the rioters" and were expelled from the country.

Internet censorship

11. Internet access has been severely restricted in Iran and internet censorship, initially justified by the government to filter "pornographic and obscene" material in the late 1990's, serves as an important tool for the government to restrict access to independent sources of information and to mute the voice of dissidents, reporters and bloggers. The methods by which the freedom of expression on internet is restricted include:

- Blocking and filtering of websites of news wires, news agencies and social media and filtering of individual websites and blogs. The extent of internet censorship has been estimated at between 5-10 million websites according to government sources. For example, the websites for both local and foreign news portals such as Baztab, Emrouz, BBC and Voice of America and their Persian services have been intermittently blocked. In the weeks prior to the presidential elections 2009, as press freedom was deteriorating and several newspapers were shut down, some of the candidates turned to internet and social networking websites to promote their message. Many websites supporting reformist candidates were shut down or filtered, and access to social networking sites including Youtube, Facebook and Twitter were restricted. According to ARTICLE 19 sources, the new filtering system now includes a large number of personnel who go through a list of potentially "harmful content" which includes anti-government and anti-religious websites and decide whether to ban them or not. This list is then passed on to internet service providers. A newly created special prosecutor's office specialises in internet issues, working directly with intelligence services. Legislation has been proposed that would make the creation of blogs promoting "corruption, prostitution, and apostasy" punishable by death.
- Requirement of a license to "publish material" on internet: In 2009, the Press Law was amended to include the internet. Online content is now required to meet the severe restrictions placed on printed and broadcast media mentioned above. Websites are now also required to obtain a license before publication, and are subject to the authority of the Press Supervisory Board. Online publications which do not obtain a license face charges such as propaganda against national security and "insult to religion" which can carry up to five years imprisonment or death penalty. The government requires all bloggers to register their web sites with the Ministry of Art and Culture.

Recommendations

ARTICLE 19 considers the problems described above to amount to serious breaches of the right to freedom of expression as guaranteed under international law. We call upon the Human Rights Council to urge the Government of Iran to:

- Immediately review all restrictions on freedom of expression in the Constitution, Press Law, Penal Code and other laws with a view to amending them to bring them into line with international standards;
- Review the system of media regulation and repeal all provisions that interfere with freedom of the media, and create and maintain an environment in which the media can work freely, effectively and independently from political influence;
- Abolish all criminal defamation provisions and replace them with appropriate provisions in the civil law; also abolish all excessive penalties for speech-related conduct;
- Abolish the licensing system for print media and for disseminating material on the internet;
- Stop persecuting and targeting media workers and immediately launch an independent review of all cases of journalists imprisoned in connection with their professional work, with a view to release those wrongfully imprisoned. Also, ensure that no criminal charges are brought against journalists as a result of their professional activities or lawful exercise of their right to freedom of expression;
- Repeal all internet censorship restrictions and state blocking and filtering of online content and anchor the online flow of information in the right to freedom of expression.