



# Impunity in Iran:

The Death of Photojournalist Zahra Kazemi



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The Iran Human Rights Documentation Center (IHRDC) is an independent and nonpartisan scholarly undertaking to establish a comprehensive and objective historical record of the human rights situation in the Islamic Republic of Iran since the 1979 revolution. This evolving historical record includes the collection and analysis of a broad range of documents and testimonies in an archive that is accessible to the public for research and educational purposes. Based on the principle that accounting for past abuses is essential for future social progress and democratic transformation, the IHRDC encourages an informed dialogue on the human rights situation in Iran. The IHRDC collaborates with a wide range of scholars and experts in human rights documentation and various other disciplines and projects.

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The Iran Human Rights Documentation Center seeks to:

Establish a comprehensive and objective historical record of the human rights situation in Iran since the 1979 revolution, and on the basis of this record, establish responsibility for patterns of human rights abuses;

Make such record available in an archive that is accessible to the public for research and educational purposes;

Promote accountability, respect for human rights and the rule of law in Iran; and

Encourage an informed dialogue on the human rights situation in Iran among scholars and the general public in Iran and abroad.

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Front cover photograph of Evin Prison provided courtesy of Fariba Amini  
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## The Death of Photojournalist Zahra Kazemi

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Center

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# TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>II.</b>	<b>METHODOLOGY</b>	<b>4</b>
A.	Sources	4
B.	Report Structure	5
<b>III.</b>	<b>INTRODUCTION</b>	<b>6</b>
A.	Event Narrative	6
1.	Kazemi’s Arrest	6
2.	Detention in Evin Prison	7
3.	Transfer to Baghiatollah al-Azam Hospital	7
<b>IV.</b>	<b>OFFICIAL INVESTIGATION EFFORTS INTO KAZEMI’S DEATH</b>	<b>9</b>
A.	Investigation and report by the Special Presidential Commission (SPC)	9
B.	Investigation and Report of the Parliamentary Article 90 Commission	13
	Findings of the Parliamentary Article 90 Commission	14
1.	Illegality of Kazemi’s arrest under Iranian law	14
2.	Interference with investigation efforts into Kazemi’s death	15
3.	Interference with the Article 90’s Commission’s constitutionally mandated public reporting mechanism	19
C.	Trial and acquittal of Reza Ahmadi for the “semi-intentional” killing of Kazemi	21
	Key issues in Ahmadi trial	22
1.	Witnesses	22
2.	Evidence	23
3.	Counsel’s access to information and court documents	24
4.	Verdict	24
<b>V.</b>	<b>PROBLEMS ILLUSTRATED BY THE KAZEMI CASE</b>	<b>25</b>
A.	Structural impediments to ensuring accountability for human rights violations	25
1.	Absence of an impartial, independent judicial system	25
2.	Broad and overlapping powers to carry out detention and interrogation shared by multiple organs	28
3.	Ineffectiveness of judicial remedies to address judicial violations	32
i.	Judicial handling of the Kazemi case	32
4.	Weak, ineffective human rights investigatory bodies	33
i.	Parliamentary Article 90 Commission	33
ii.	Other human rights investigatory bodies	33
5.	Weakness of the Rule of Law	34
B.	Violations of Domestic and International Law in the Kazemi Case	35
1.	Torture	35
i.	Torture and cruel, inhuman or degrading treatment is prohibited under international law	35
ii.	Torture is prohibited under Iranian domestic law	37
iii.	Right to be free from torture and cruel, inhuman or degrading treatment was violated in the Kazemi case	39
2.	Rights of the accused	40
i.	Iran’s obligations under international law include protections for rights of the accused	40

ii.	A range of legal protections for the rights of the accused exist in Iranian domestic law _____	41
iii.	Failure to respect rights of the accused in the Kazemi case _____	42
3.	State failure to protect and respect the right to life _____	43
<b>C.</b>	<b>Duty of states under international law to provide a remedy _____</b>	<b>44</b>
1.	Duty of states to investigate and prosecute violations _____	45
2.	State and individual responsibility under international law _____	47
i.	State responsibility for violations of international human rights law _____	47
ii.	Individual responsibility for violations of international criminal law _____	47
I.	Modes of Responsibility _____	47
II.	Superior Responsibility _____	48
III.	Superior Responsibility in the Kazemi case _____	50
<b>VI.</b>	<b>CONCLUSION _____</b>	<b>51</b>
<b>A.</b>	<b>Strengthening mechanisms of accountability _____</b>	<b>51</b>
<b>B.</b>	<b>Strengthening the rule of law _____</b>	<b>52</b>

## I. EXECUTIVE SUMMARY

In June 2003, photojournalist Zahra "Ziba" Kazemi was arrested in front of Tehran's Evin Prison; she emerged after more than three days of interrogation with injuries that would prove fatal. Kazemi's arrest and detention, and the aborted investigation efforts into her death, illustrate serious flaws in the Islamic Republic of Iran (IRI)'s judicial and law enforcement systems.

A review of the information provided by both the Iranian government and individual witnesses raises serious doubts as to the legality of Kazemi's arrest, detention and treatment in prison. These doubts, in turn, raise questions as to the independence and impartiality of the judicial system. Actions by judicial officials in the Kazemi case suggest that the judiciary, at least in circumstances where it works in conjunction with security officials, contributes to pervasive impunity for human rights violations and itself becomes a primary violator. Moreover, effective oversight and accountability are hindered by the current system in which a number of formal and informal security and intelligence organs appear to share overlapping authority to detain and interrogate accused persons.

In particular, efforts to determine the circumstances of Kazemi's death were impeded by a series of improper actions by Tehran's Chief Prosecutor, Saeed Mortazavi: coercion of witnesses to produce false or altered testimony; failure to cooperate with the investigation into Kazemi's death, including failure to appear before a commission mandated by parliament to investigate Kazemi's death; and alleged interference with the publication of that commission's final report detailing its findings.

The trial of a junior-level intelligence ministry officer for the "semi-intentional killing" of Kazemi also displayed serious flaws, such as the court's refusal to allow witnesses to be called (reportedly including at least twenty individuals who witnessed Kazemi's initial arrest); failure to exclude or inquire further into visibly forged or altered documents submitted as evidence; and failure to provide counsel for the Kazemi family with access to the complete court file. Moreover, both the prosecution's choice of defendant and the type of charge filed against him were sharply criticized by the victim's family, who produced extensive evidence implicating other government officials.

The Kazemi case raises serious questions about whether Iran has satisfied its obligations under international law. These include guaranteeing the right to life, prohibiting the use of torture, the duty to thoroughly and impartially investigate alleged violations of international human rights law, and the duty to prevent or punish violations, through criminal sanctions if necessary. Available medical evidence indicates that Kazemi was beaten, tortured and raped while in state custody, making the explanation put forward by judiciary officials—that Kazemi became faint and fell, hitting her head—difficult to sustain. The evidence suggests that legal prohibitions against torture and protections for the rights of accused persons (under both international law and Iranian law) were violated.

The IHRDC concludes that significant and meaningful reform—particularly of the judicial system—is needed to strengthen accountability and the rule of law in Iran.

## II. METHODOLOGY

### A. Sources

IHRDC gathered information for this report from examination of the following sources:

- Report produced by the Special Presidential Commission (composed of senior government officials from the ministries of Justice, Intelligence, Culture and Islamic Guidance, Interior, and Health and Medical Education) set up by President Mohammad Khatami to investigate Kazemi's death<sup>1</sup>;
- Report produced by the parliamentary commission (chaired by Member of Parliament Hossein Ansari Rad) mandated under Article 90 of Iran's constitution to investigate complaints against the government<sup>2</sup>;
- Appeal filed by counsel for Zahra Kazemi's mother, Ezzat Kazemi, after the trial and acquittal of Mohammad Reza Aghdam Ahmadi (an employee of the Intelligence Ministry charged with the "semi-intentional" killing of Kazemi)<sup>3</sup>;
- Medical records provided by Dr. Shahram Azam, the emergency room physician who treated Kazemi when she was brought from Evin Prison to Baghiatollah Hospital<sup>4</sup>, in addition to a forensic analysis of the available medical evidence, conducted by an IHRDC physician;
- Interviews and statements provided by individual witnesses and Iranian legal scholars;
- Media reports, including statements by IRI officials published in the Iranian press; and
- Reports by non-governmental organizations.

Where the report cites or relies on information provided by government actors or involved parties, it specifies the source of such information and evaluates the information in light of the relative reliability of each source.

Identities of certain individual sources have been omitted for their protection. Attorneys representing the Kazemi family were consulted for information, but did not influence the final conclusions of this report; nor did any IHRDC Board Member with ties to the Kazemi family or their attorneys participate in the Board deliberations and final approval of this report. Unless otherwise noted, page citations to documents originally written in Farsi refer to the English-language translations of those documents.

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<sup>1</sup> *Matn-e kaamel-e gozaresh-e hey'at-e veezheyeh ra'ees jomhoori baraaye reseedeegi beh masa'aleh-ye fot-e khaanom-e Zahra Kazemi* [Complete Report of the Special Presidential Committee to Investigate the Death of Mrs. Zahra Kazemi], SPECIAL PRESIDENTIAL COMMISSION TO INVESTIGATE THE DEATH OF MRS. ZAHRA KAZEMI, July 21, 2003 [hereinafter *SPC Report*] (**attached as Appendix 1**) (translation by IHRDC).

<sup>2</sup> *Gozaresh-e komeeseeyon-e aasl-e navad-e ghaanoon-e asaasi-e majles-e shoraaye Islami marboot beh elal va avaaamel-e koshteh shodan-e khaanom-e Zahra Kazemi akkaas va khabarnegaar-e Irani* [Report of the Parliamentary Article 90 Commission Regarding the Causes and Perpetrators of the killing of the Iranian Photojournalist, Ms. Zahra Kazemi], ISLAMIC CONSULTATIVE ASSEMBLY (MAJLIS), Oct. 30, 2003 [hereinafter *Article 90 Report*] (**attached as Appendix 2**) (translation by IHRDC).

<sup>3</sup> *Taghaazaayeh tajdeed-e nazar va naghz daadnaameh beh daadgaah-e tajdeed-e nazar-e ostan-i Tehran* [Request to Tehran Provincial Court of Appeals for Appeal and Reversal of Order], Plaintiff's Appeal of Judgment by Tehran General Criminal Court [Daadgah-e Omoomi Jazaae-e Tehran] no. 342, Class no. 1858/82 (Jul. 21, 2004), DAADGAAH-E TAJDEED-E NAZAR-E OSTAAN-E TEHRAN [TEHRAN PROVINCIAL COURT OF APPEALS], appeal filed in 2004 [hereinafter *Kazemi Appeal*] (**attached as Appendix 3**) (translation by IHRDC).

<sup>4</sup> Medical report of Dr. Shahram Azam describing his examination of Kazemi at Baghiatollah Al-Azam Hospital, dated June 27, 2003 (provided to IHRDC by Dr. Shahram Azam) [hereinafter *Medical Report of Dr. Shahram Azam*] (**attached as Appendix 4**) (translation by IHRDC).



## **B. Report Structure**

This report begins with a brief narrative of key events in Kazemi's detention and interrogation, drawing on information gathered by the Special Presidential Commission and Article 90 Commission inquiries into Kazemi's death. It follows with a description of the two-day trial of Mohammad Reza Aghdam Ahmadi (hereinafter "Reza Ahmadi"), including some of the major criticisms of the trial put forward by Kazemi family counsel.

With this as a background, the report examines broader, systemic problems illustrated by the Kazemi case.

First, the presence of structural impediments to accountability for human rights violations in Iran, including: the absence of an independent judiciary; defects in the operation of Iranian law enforcement institutions due to lack of oversight and overlapping authority to carry out detention and interrogation; the inadequacy of judicial remedies to address violations by the judiciary; and weak, limited human rights investigatory bodies.

Second, the weakness of the rule of law in Iran: specifically, authorities' simultaneous reliance on legal institutions to restrict individual rights yet refusal to abide by legal constraints on their power, such as due process and procedural protections, the prohibition on torture, and the duty to protect the right to life. The report then examines in detail the specific violations that occurred in the Kazemi case.

The report includes discussion of areas of Iranian law and practice that are out of step with international human rights law, and indications of reforms to remedy this disjunction. Separate inset boxes draw attention to features specific to the Kazemi case or points of interest.

### III. INTRODUCTION

Upon review of the documents related to the death of Zahra Kazemi, the IHRDC found that this case vividly illustrates chronic, structural problems in Iran's justice, prison and intelligence systems. In particular, the Iranian law enforcement system is characterized firstly by the *absence of a rule of law*, which is to say an unacceptable amount of discretionary power exercised arbitrarily, and secondly by *impunity*, or a lack of accountability of key actors for violations. The functioning of the judiciary is problematic, particularly in that it lacks neutrality and appears to be influenced by political actors.

#### A. Event Narrative

Born in Shiraz, Iran, Zahra Kazemi moved to France in 1974, where she studied at the University of Paris. With her son, Stephan Hashemi, she immigrated to Canada in 1993, where she later gained Canadian citizenship.<sup>5</sup> Kazemi became a photojournalist known for chronicling the day-to-day lives of people grappling with poverty, repressive governments, and war. Having completed assignments in Afghanistan and Iraq, she reportedly hoped to use Iran as a base for photojournalism and to accept assignments in the broader Middle East region.<sup>6</sup>

#### 1. Kazemi's Arrest

Traveling back to her native country in the summer of 2003 on her Iranian passport, Kazemi obtained an official photography permit from the Ministry of Culture and Islamic Guidance.<sup>7</sup> However, on June 23, 2003, while taking photographs at a vigil in front of Tehran's Evin Prison by families of those arrested and detained in Evin after demonstrations earlier that month,<sup>8</sup> Kazemi was approached by prison officials who reportedly accused her of taking pictures of the Evin prison wall (which had a sign stating that photography was prohibited). At 5:40 pm, Kazemi was arrested and taken inside Evin. Although exact events remain disputed, several sources reportedly testified to witnessing two prison officials, Mohammad Bakhshi (head of security of Evin prison) and Mozaffar Babai (known as "Tehrani"), confront Kazemi, and several witnesses stated that Bakhshi violently pulled Kazemi's bag out of her grasp, after which she fell to the

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<sup>5</sup> In addition to Canadian citizenship, Kazemi retained the Iranian citizenship she had gained upon her birth in Iran.

<sup>6</sup> *Iran: A Murder Mystery* (BBC News Television Broadcast on BBC Two, Feb.15, 2004). Transcript available at: [http://news.bbc.co.uk/2/hi/programmes/this\\_world/3475705.stm](http://news.bbc.co.uk/2/hi/programmes/this_world/3475705.stm) [accessed April 26, 2005] [hereinafter *Iran: A Murder Mystery*].

<sup>7</sup> *Article 90 Report*, *supra* note 2, at 7.

<sup>8</sup> According to the International Crisis Group:

On 10 June 2003, roughly 80 students living in Tehran University dormitories demonstrated against the school's rumored privatization plans. The immediate spark was economic ... [b]ut the demonstrations quickly took a decidedly political turn. Sensing an opportunity to voice their displeasure with the government, a horde of disenchanted youth from around the capital—many unemployed, including from families with strong religious backgrounds—soon joined the student demonstrators. ... In addition, several thousand middle-class Tehranis, some encouraged by Los Angeles-based Iranian satellite television stations, drove to the campus area and honked horns in solidarity. Throughout the week of unrest, protesters chanted slogans calling for, among other things, "freedom" and "referendum"—an increasingly popular battle-cry among young protesters which implies a popular vote on whether to change the regime. More radical protesters cried disparaging remarks against Supreme Leader Khamenei as well as the late Ayatollah Khomeini that were once unthinkable in a public rally. Still, although close to 10,000 people took part, at no time did the rallies appear to pose a serious threat to the regime. ... Some 4,000 demonstrators reportedly were arrested.

International Crisis Group, *Iran: Discontent and Disarray*, ICG MIDDLE EAST BRIEFING N°11, Oct. 15, 2003 at 4-5.

ground.<sup>9</sup> At least one witness stated that during the struggle, Bakhshi's hand hit Kazemi's head, though it is disputed whether the blow was intentional or accidental.<sup>10</sup>

## 2. Detention in Evin Prison

After arrest, Kazemi faced several days of intensive interrogation by at least three separate government organs (see Section IV(A) below). The precise sequence of events and identity of actors involved remains in dispute. To date, the most detailed chronology is that compiled by the Special Presidential Commission (SPC) set up by President Khatami shortly after Kazemi's death. The SPC chronology indicates that for more than three days Kazemi was traded back and forth between agents of the Public Prosecutor's Office, the intelligence unit of the Law Enforcement Forces<sup>11</sup> [LEF], and the Ministry of Intelligence and Security (hereinafter "Ministry of Intelligence") for questioning. Around 8:40 p.m. on June 26, Kazemi, who by all accounts had been in good health before her arrest, complained of feeling unwell. When a prison nurse was called in to examine her, Kazemi described faintness, nausea, and a headache; she began vomiting, with blood visible in the vomit.<sup>12</sup> Officials took Kazemi to the prison clinic and decided at 11:30 p.m. to transfer her to a hospital.<sup>13</sup>

## 3. Transfer to Baghiatollah al-Azam Hospital

Kazemi was admitted to Baghiatollah Al-Azam Military Hospital at 12:20 a.m. on June 27. A detailed account of Kazemi's medical condition was provided by an emergency room physician, Dr. Shahram Azam, who examined Kazemi upon her admission to Baghiatollah Hospital during the early morning of June 27, 2003.<sup>14</sup> Dr. Azam's medical report noted the following injuries:

- extensive bruising over various parts of Kazemi's body: the face, abdomen, back, thigh and groin area (including a bruise in the buttock area measuring 7.5 cm [3 inches] diagonally), left forearm and the back of the right arm up to near the shoulder, and on the soles of both feet;
- broken nose, broken fingers and several crushed toes and nails;
- "deep parallel linear abrasions" on the neck, and linear stripe-like wounds on the back; and
- a fractured skull.

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<sup>9</sup> *Kazemi Appeal*, *supra* note 3, at Part One, § 4.6 (2)(A)-(I).

<sup>10</sup> *Id.* at Part One, § 4.6 (2)(I).

<sup>11</sup> According to the International Crisis Group:

The Law Enforcement Forces, a kind of revolutionary police, were created in 1990 by merger of the municipal police, the gendarmerie and the revolutionary committees. Since the municipal police and gendarmerie were founded by the Shah, their allegiance to the new order was suspect. By contrast, the revolutionary committees were a direct offspring of the revolution and responsible for pursuing drug-dealers, the opposition, and "anti-Islamic" lawbreakers. According to well-informed Iranian sources, the merger did not achieve its objective of a more effective de-politicized force in charge of maintaining law and order. Instead, regular Shah-trained police serving within the Law Enforcement Forces have been sidelined, and former revolutionary committee members have assumed dominance. In recent years, a number of high-ranking Law Enforcement Forces commanders have also been implicated in violations of the law, including directing the 1998 attacks on close aides of President Khatami.

International Crisis Group, *Iran: The Struggle for the Revolution's Soul*, ICG MIDDLE EAST REPORT N°5, Aug. 5 2002, at 8 (citations omitted).

Political analyst Wilfred Buchta adds: "[t]he LEF play a crucial role in the maintenance of internal security, [as] became obvious when it quelled the student protests in Tehran in July 1999." Wilfred Buchta, *Iran's Security Sector: An Overview*, GENEVA CENTER FOR THE DEMOCRATIC CONTROL OF ARMED FORCES (DCAF) WORKING PAPER No. 146, Aug. 2004, at 12 [hereinafter *Iran's Security Sector: An Overview*].

<sup>12</sup> *SPC Report*, *supra* note 1, at 6.

<sup>13</sup> *Id.*

<sup>14</sup> See **Appendix 5a** (copy of Dr. Azam's medical license) and **Appendix 5b** (employment timesheet indicating dates of Dr. Azam's assignment to Baghiatollah Hospital during June 2003).

As a male physician, Dr. Azam was not permitted to perform an examination of the pelvic area, but the female emergency room nurse who performed the pelvic examination reported extensive bruising and damage to the area, indicating that a “very brutal rape” had taken place.<sup>15</sup>

Later that morning, Kazemi fell into a coma. On July 10, 2003, Kazemi was taken off life support<sup>16</sup> and pronounced dead.

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<sup>15</sup> See Medical Report of Dr. Shahram Azam at 2 (noting severe injuries to pelvic area); see also Richard Cleroux, *Iran secret police tortured woman to death, says doctor*, THE TIMES ONLINE (UK), April 1, 2005 (quoting Dr. Azam’s description of his medical observations during Kazemi’s examination), available at [www.timesonline.co.uk/article/0,,3-1549842,00.html](http://www.timesonline.co.uk/article/0,,3-1549842,00.html) [accessed April 17, 2006].

<sup>16</sup> It was reported that Kazemi’s life-support machine was switched off without any consultation of her mother or son, Stephan Hashemi.

## IV. OFFICIAL INVESTIGATION EFFORTS INTO KAZEMI'S DEATH

Official efforts to investigate the causes and circumstances of Kazemi's death included three significant developments:

- investigation and report by the Special Presidential Commission;
- investigation and report by the Parliamentary Article 90 Commission;
- trial and acquittal of Reza Ahmadi for the "semi-intentional" killing of Kazemi.

### A. Investigation and report by the Special Presidential Commission (SPC)

Following Kazemi's death, the Director-General of Foreign Press and Media at the Ministry of Culture and Islamic Guidance, Mohammed Hossein Khoshvaght, released a statement stating that Kazemi had died of a stroke.<sup>17</sup> Evidently unconvinced, the following day President Mohammad Khatami ordered an inquiry to be carried out by representatives of key government ministries, including the ministries of Justice, Intelligence, Culture and Islamic Guidance, and Interior.<sup>18</sup> They were requested to clarify the circumstances under which the death took place, clarify the ambiguities in the case, and report their findings to the President and the Iranian public.<sup>19</sup>

The SPC gathered information via a series of meetings with medical, intelligence, security, law enforcement, and judicial personnel, reviewing available documents and interviewing "officials, interrogators, and all others who came into contact with [Kazemi] in any way or were monitoring her movements."<sup>20</sup> Each government organ that had had custody of Kazemi was instructed to prepare a "separate and independent" report detailing:

the circumstances involved in her detention, including her behavior and actions, behavior of the judge, interrogator, and the other guards, her oral and written

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<sup>17</sup> See Open Letter from Mohammed Hossein Khoshvaght, General Manager of the Foreign Press and Media Administration to the Executive Editor of *Yaas-e No* newspaper, published as *Modeer-e koll-e ershaad dar moghaabel-e dorooghsaazi haayeh daadsetaan-e Tehran Eestad; aanche dar molaghaat-e Khoshvaght va Mortazavi rokh daad* [Deputy of Culture & Islamic Guidance stands up to Tehran's General Prosecutor's lies: What happened during Khoshvaght's visit with Mortazavi], ROOYDAD (2003) at 2-3 [hereinafter *Khoshvaght Letter*] (attached as Appendix 6) (translation by IHRDC). See also Section IV(B)(ii) *infra* for more detail on the events leading up to the publication of this letter.

<sup>18</sup> The Committee initially consisted of the Minister of Culture and Islamic Guidance (Ahmed Masjed-Jame'i), the Minister of Justice (Esmail Shoostari), the Minister of Intelligence (Ali Younesi), the Minister of Interior (Abdolvahed Moosavi Laari) and their deputies. Subsequently, Minister of Health and Medical Education Masood Pezeshkian was invited to join the committee (*SPC Report, supra note 1*, at 1, 3.) Iranian human rights lawyer Abdol Karim Lahiji has argued that the composition of the Special Presidential Commission may have hindered its ability to conduct an impartial investigation:

[N]or do we believe that this mission is an independent and impartial body which is indeed the precondition to the appointment of any fact-finding mission. Three of the four members of this committee, the Ministers of [Intelligence] and Justice and Minister of Culture and Islamic Guidance, who were fully aware of the situation from the very early hours of Zahra Kazemi's arrest because of their official political positions, not only did not intervene to stop this catastrophe, but also, with their continuous silence, allowed Saeed Mortazavi, the main suspect of this crime, to dare to order the Director-General of Foreign Press and Media at the Ministry of Culture and Islamic Guidance to announce Zahra Kazemi's death by stroke.

See *Naameh-yeh Karim Lahiji darbaareh-yeh gozaaresh-e hey'at-e veezheh-yeh ra'ees jomhoor* [Letter of Karim Lahiji Regarding the Special Presidential Commission's Report], July 22, 2003 [hereinafter *Statement by Abdol Karim Lahiji on the SPC Report*] (attached as Appendix 7) (translation by IHRDC) at 1.

<sup>19</sup> *SPC Report, supra note 1*, at 1.

<sup>20</sup> *Id.* at 1, 4.

testimonies, the manner of the guards' behavior and the conditions of the places in which she was kept.<sup>21</sup>

In addition, medical records from Evin Prison and Baghiatollah Al-Azam Hospital were to be examined by the Minister of Health and Medical Education.<sup>22</sup>

The SPC inquiry ended less than a week later, and on July 21, 2003 its final report was released.<sup>23</sup> The report divided Kazemi's detention and interrogation into four broad stages:

- For the first 21 hours, Kazemi was in the custody of the Prosecutor's Office and Prison;
- For the next 26 hours, she was in the custody of the intelligence unit of the Law Enforcement Forces;
- For the next 4 hours, she was in the custody of the Prosecutor's Office;
- And for the final 26 hours, she was in the custody of the Ministry of Intelligence.

Further details contained in the SPC chronology of events are described below:

#### **Chronology of events in Kazemi detention and interrogation as outlined in the SPC report**

##### **Phase One (21 hours with the Prosecutor's Office and the Prison)**

- **June 23, 5:40 p.m.** Kazemi was initially taken to an office of the prison guards, where she was questioned "in the presence of" two unnamed judges. Kazemi was requested<sup>24</sup> to hand over her camera, films and photography permit and return to pick them up the next day. Kazemi refused and "by her own responsibility" decided to stay with her possessions in prison.<sup>25</sup> At this point, Kazemi deliberately exposed her rolls of camera film to the light, rendering them unreadable.<sup>26</sup>

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.* at 4. Furthermore, "in order to further document the case, the decision was made for photographs and films to be taken of the corpse and kept in the archives of the Medical Examiner's office." *Id.* Kazemi family counsel questioned why these films were not requested and examined by investigators (*Kazemi Appeal*, *supra* note 3, at Part One, § 9).

<sup>23</sup> It has been suggested that parts of the SPC Report were actually never made public; Member of Parliament Mohsen Armin stated that there was an "attachment" to the SPC Report that had not been made public yet. See *Mohsen Armin: Mortazavi Baayad Mohaakemeh shavad; Zamimeh-yeh gozaresh-e tahgheegh-e ra'ees jomhoor darbaareyeh Zahra Kazemi montasher nashodeh!* [*Mohsen Armin: Mortazavi Must Stand Trial; The attachment to the Presidential Committee's report has not been published!*] [hereinafter *Mohsen Armin Statement: Mortazavi Must Stand Trial*] (**attached as Appendix 8**) (translation by IHRDC). The Article 90 Report, *supra* note 2, at 8, similarly indicates that some omission or censorship occurred, at least with regard to the testimony of Mohammed Hossein Khoshvaght, Director of Foreign Press and Media at the Ministry of Culture and Islamic Guidance:

According to [Minister of Culture and Islamic Guidance Masjed-Jame'i], the incident of Mr. Khoshvaght's summons to the Tehran Prosecutor's Office and what transpired between Mr. Khoshvaght ... and Mr. Mortazavi ... was mentioned at the end of the initial report provided by the Special Presidential Commission, bearing the signatures of the five Commission members. However, these remarks were later omitted. Discovering the reason for the omission, and identifying those responsible for the non-inclusion of this important subject, could uncover further facts that would be helpful in the discovery of the truth.

<sup>24</sup> When describing this incident, the report states "the *above-named individuals* asked her to present and leave her permit from the Ministry of Culture and Islamic Guidance and her camera and films for inspection and leave the prison and return the next day to retrieve [them]." *SPC Report*, *supra* note 1, at 4 (emphasis added). However, no individuals are named before this sentence in the report, leaving the intended reference unclear.

<sup>25</sup> Iranian human rights lawyer Abdol Karim Lahiji observed:

What is a prison, a hotel that people stay at freely of their own discretion? Why don't they make Zahra Kazemi leave the prison? A person is taken into custody only by committing a crime and that would be ordered by a judge. Nobody is allowed to stay at a prison by their own discretion. Now, if Zahra Kazemi's refusal is presupposed, why don't they keep her in the same room belonging to the "prison guards" until the inspection of the camera is done and why do they send her to "ward 240" after three hours of interrogation?

- **8:30 p.m.** Kazemi, under supervision, was sent with an officer of the prison to ward 240 of Evin Prison.
- **10:25 p.m. to June 24, 2:30 a.m.** Kazemi was interrogated for nearly 4 hours by officials from the judiciary (an unidentified deputy prosecutor<sup>27</sup> and, at times, Tehran's Public Prosecutor [Saeed Mortazavi]). Kazemi remained in ward 240 until 10:30 a.m. the next day.<sup>28</sup>
- **June 24, 10:30 a.m.** An arrest warrant was issued<sup>29</sup> and Kazemi was taken to Evin's women's ward.

#### **Phase Two (26 hours with the Law Enforcement Forces)**

- **2:30 p.m.** Kazemi was transferred to the custody of the intelligence unit of the Law Enforcement Forces in Ward 110 "by court order", in order to "continue investigation and for the purpose of collecting criminal background information about her."
- **6:45 p.m.** An unnamed "head of ward 110" went to Kazemi's cell to talk to her. It is unclear how long this visit lasted.
- **10:00 p.m.** Unidentified interrogators entered Kazemi's cell, but left after only 10 minutes.
- **June 25, 4:40 p.m.** Kazemi was taken to a different location in Evin accompanied by guards. When Kazemi heard the voice of an interrogator who had come to question her, she began to scream and swear.

#### **Phase Three (4 hours with the Prosecutor's Office)**

- **5:30 p.m.** Kazemi was handed over to the custody of the Prosecutor's Office; a representative of the Intelligence Ministry transferred her to ward 240. Kazemi stayed there until 9:30 p.m.

#### **Phase Four (26 hours with the Ministry of Intelligence)**

- **9:40 p.m.** Kazemi was put under the surveillance of intelligence agents. From 9:45 p.m. to 10:15 p.m., she was further interrogated, then "sent to her cell to rest."
- **June 25 10:30 p.m. to 10:00 a.m. June 26.** Kazemi remained in her cell in the women's wing.
- **June 26, 10:00 a.m. to 2:00 p.m.** Kazemi was further interrogated but reportedly "refused to answer the interrogator's questions, saying that the questions were irrelevant to her profession."
- **2:00 p.m.** Kazemi was returned to her cell and stayed there until 3:30 pm.

See *Statement by Abdol Karim Lahiji on the SPC Report*, *supra* note 18, at 1-2.

<sup>26</sup> Witnesses speculated that Kazemi had been interviewing and photographing detainees' families and did not want the photographs to be obtained by members of the intelligence services.

<sup>27</sup> Later reports identified this person as a Judge Arjmandi. See *Sharh-e maajaraayeh shekanjeh va ghatl-e Zahra Kazemi az zabaan-e Mohsen-e Armin [Details of the Events Leading to Torture and Murder of Zahra Kazemi]* (the complete text of Mohsen Armin's speech in the parliament on the torture and murder of Zahra Kazemi), MIHAN NEWS, Aug. 30, 2003 [hereinafter *Complete Text of Speech by Mohsen Armin*] (**attached as Appendix 9**) (translation by IHRDC) at 2; *Kazemi Appeal*, *supra* note 3, at Part One, § 10.

<sup>28</sup> Commentators have questioned why Kazemi was now being kept under tight surveillance and interrogated even though, mere hours earlier, she was ostensibly only requested to drop off her camera for inspection and pick it up the next morning. Abdol Karim Lahiji noted:

Why has everything changed during the [last] two hours and how come interrogating a person who has asked to be held in custody contrary to her two judges' opinion becomes so necessary and urgent that they decide to see her at 10:30 p.m. and Saeed Mortazavi and his deputy interrogate her until 2:30 in the morning? What kind of crime has a person with a clean criminal record, whose maximum offense might be taking pictures from the outside of Evin prison, committed such that the Public Prosecutor and his deputy should interrogate her in the middle of the night for four hours? Especially [since this is the same] prosecutor who has become an expert in making up spies in the short time that he has been in the judiciary.

See *Statement by Abdol Karim Lahiji on the SPC Report*, *supra* note 18, at 2.

<sup>29</sup> The *SPC Report* (*supra* note 1, at 5) states that this arrest order was issued by an unnamed "Branch 12" interrogator. The *Kazemi Appeal* (*supra* note 3, at Part Two, § 5-1) identifies this person as an interrogator from the Office of the Public Prosecutor (Region 7, Branch 12) by the name of Tabatabai-Nezhad.

<sup>30</sup> The reasons for this initial diagnosis are unclear; as the available medical evidence demonstrates, Kazemi had sustained numerous injuries not reflected by this diagnosis (see *generally* Medical Report of Dr. Shahram Azam, *supra* note 4).

- **3:30 p.m.** Another hour of interrogation began, concluding at 4:30 pm.
- **4:30 p.m.** Kazemi was examined by a physician from the Intelligence Ministry who found that she was generally in good health and able to properly respond to medical questions, only complaining of faintness and weakness. The doctor suggested that she break her hunger strike and take some medicine.
- **5:00 p.m. to 7:00 p.m.** Kazemi was returned to an interrogation room for further questioning. At this point, the interrogators realized she was not in good physical condition, so they called a nurse who gave her sugar water.
- **8:40 p.m.** A prison guard called his superior to inform him that Kazemi was not feeling well. As a result, a prison nurse was brought to see her. Kazemi complained of weakness, then fell asleep for ten minutes. As soon as she woke up, she complained of extreme discomfort—faintness, nausea, and a headache. During this time, she started bleeding from the nose and vomiting (with blood visible in the vomit). Officials took her to the prison clinic in a wheelchair.
- **11:30 p.m.** Evin prison officials decided to transfer Kazemi to Baghiatollah Al-Azam Hospital.
- **June 27 12:20 a.m.** Kazemi, accompanied by three guards, was admitted to Baghiatollah al-Azam Hospital emergency room for “digestive discomfort” or gastro-intestinal problems.<sup>30</sup>
- **1:30 p.m.** After brain death occurred, Kazemi was transferred to the critical care unit.
- **July 10.** Kazemi was pronounced dead.

The SPC found that medical evidence indicated that Kazemi’s death was caused by a blow to her skull – specifically, “fracturing of the skull, brain hemorrhage and its effects caused by a hard object hitting the head or the head hitting a hard object.”<sup>31</sup> However, it found that the medical evidence suggested two hypotheses:

- the time of the blow was 6/26/03 and no earlier than 24 hours before that; or,
- the time of the blow was 6/26/03 and no earlier than 12 hours before that.

Accordingly, the SPC concluded, “it is necessary that all people who, within the above window of time, came into contact with [Kazemi] must be identified and investigated.”<sup>32</sup> In addition, the SPC put forward the following proposals:

- a. that the case be referred to the Judiciary and a special and independent investigator be designated, for the purpose of identifying the main person or persons responsible for the incident<sup>33</sup>;
- b. that the nation be immediately informed of the results;

<sup>31</sup> *SPC Report, supra* note 1, at 6.

<sup>32</sup> *Id.* Observers criticized the commission’s perceived withholding of key information and apparent re-assignment of the very task that it had been set up to accomplish, noting that:

[T]he fact-finding mission questions neither Tehran Public Prosecutor and his deputy nor “all individuals who during the above-mentioned time periods,” interrogated Zahra Kazemi and suffices to say that these individuals “should be identified and interrogated.”

*Statement by Abdol Karim Lahiji on the SPC Report, supra* note 18, at 3.

<sup>33</sup> *SPC Report, supra* note 1, at 7. According to media reports, the Head of the Judiciary initially assigned this follow-up investigation to Mortazavi himself; a BBC article reported on July 21, 2003 that:

Saeed Mortazavi will lead the investigation surrounding the death of 54-year-old Ms. Kazemi ... Mr. Mortazavi’s appointment came a day after parliamentarians ... call[ed] for his resignation for failing to protect Ms Kazemi ... [T]he appointment of Mr. Mortazavi was made by the head of Iran’s Judiciary, Ayatollah Mahmoud Shahrudi, [who] had been asked by President Khatami to get to the bottom of the case after a government inquiry failed to state how and why the reporter died.

*Tehran prosecutor investigates journalist’s death*, BBC NEWS ONLINE, July 21, 2003, available at: [http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle\\_east/3085225.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/3085225.stm) [accessed April 26, 2006]. While the investigation appears to have been ultimately assigned to other parties, Mortazavi reportedly relinquished this role only after significant pressure. See also *Kazemi Appeal, supra* note 3, at Part One, § 4.3 (describing investigatory efforts into Kazemi’s death by a three-person committee set up by the Head of the Judiciary).



- c. that proper methods be developed and used to improve the quality of the detention of accused persons, particularly reporters.<sup>34</sup>

## B. Investigation and Report of the Parliamentary Article 90 Commission

Shortly after the release of the SPC report, a second investigation into Kazemi's death was initiated under Article 90 of Iran's constitution, which gives parliament the power to investigate and report on complaints by individuals<sup>35</sup> against the three branches of government.<sup>36</sup> Launched on July 30, 2003, the Article 90 Commission's investigation, chaired by MP Hossein Ansari Rad

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<sup>34</sup> However, the force of the SPC's demand for further inquiry into Kazemi's death is undermined by the "considerations" it listed near the conclusion of its report (evidently believing them to be mitigating factors):

1. Kazemi, "from the beginning to the end of her detention, refused to eat food and only drank water";
2. "During the different phases of her detention, she gave irrelevant answers to questions and declined to offer any clear answers";
3. On July 9, 2003, the order for her release on bail was issued, and "she was delivered to the custody of her family" at the hospital;
4. "All three of the related authorities have confirmed her rude, abnormal, and bad behavior during her detention";
5. "While she was in the custody of the Law Enforcement Forces, other than complaining of the punitive way she was treated by the guards on her first night of stay in the detention center, she made no other complaints."

*SPC Report*, *supra* note 1, at 7. In a similar vein, the SPC Report points out that "[w]hile in France, [Kazemi] started to have a disagreement with her husband ... and divorced him ..." (a detail of unclear relevance, except presumably to portray Kazemi as argumentative by nature.) *Id.* at 2. While the SPC's portrayal of Kazemi as uncooperative throughout her detention may have been an attempt to suggest she provoked any mistreatment she received, this argument fails under international guidelines for the treatment of detainees (discussed in Section V(B)(2) *infra*).

Note also that Consideration 3—that Kazemi's body was returned to her family at the hospital— is contested; see *Kazemi Appeal*, *supra* note 3, at Part One, § 9 (stating that Kazemi's mother was "forced" to have Kazemi's body buried quickly without an opportunity for physicians selected by the family to conduct an examination). Abdol Karim Lahiji argues that "this impudent lie is another reason to believe that the commission was partial and not independent in researching and carrying out their investigation." See *Statement by Abdol Karim Lahiji on the SPC Report*, *supra* note 18, at 3.

While the precise details concerning Consideration 5 are unclear, the *Kazemi Appeal* indicates that a report by the intelligence unit of the Law Enforcement Forces stated that Kazemi complained that she had been mistreated, beaten and assaulted when she was at Evin Prison, and a report of battery and assault was prepared for her (*Kazemi Appeal*, *supra* note 3, at Part Two, § 11-5).

<sup>35</sup> The Article 90 Report, *supra* note 2, at 1, explains that "[o]n July 9, 2003, a complaint was received from Ms. Ezzat Ebrahimi, mother of Ms. Zahra Kazemi, pleading for help with respect to the circumstances of her daughter, who was said to have been in a state of coma at Baghiatollah Hospital with no hope of remaining alive."

<sup>36</sup> Article 90 of the Constitution provides:

Whoever has a complaint concerning the work of the Assembly or the executive power or the judicial power can forward his complaint in writing to the Assembly. The Assembly must investigate his complaint and give a satisfactory reply. In cases where the complaint relates to the executive or the judiciary, the Assembly must demand proper investigation in the matter and an adequate explanation from them, and announce the results within a reasonable time. In cases where the subject of the complaint is of public interest, the reply must be made public.

Moreover, Article 2 of the Article 90 Execution Act makes clear that officials are required to respond to the Article 90 Commission's requests for information:

For the purpose of acquiring satisfactory information from [the three branches of the government], this Commission may extend invitations to, or engage in direct communications with, such officials who would be obliged to respond accordingly. In the case of non-compliance and the Commission's proof of [the latter's] offence of not responding, the matter should be given priority and heard by a competent court, and if the offence is proven, the appropriate punishment [as stipulated in the Note to the text] be determined and conveyed to the Commission.

See *Article 90 Report*, *supra* note 2, at 5.

and conducted over the course of several months<sup>37</sup>, gathered testimony and documents by means of a series of meetings with government officials.

## Findings of the Parliamentary Article 90 Commission

The commission's report, released in October 2003, catalogued numerous legal provisions violated during Kazemi's arrest and detention.<sup>38</sup> The commission harshly criticized the actions of Tehran Chief Prosecutor Saeed Mortazavi, particularly his role in a series of apparent efforts to interfere with official investigation efforts and cover up the circumstances of Kazemi's death.

### 1. Illegality of Kazemi's arrest under Iranian law

The Article 90 Commission emphasized that Kazemi had legally obtained a permit to conduct photography in Iran, albeit not permission to photograph the Evin prison wall.<sup>39</sup> The commission found that the arrest and detention of Kazemi seemed a disproportionate response to her alleged offense: ignoring "no photography" signs and possibly violating the scope of her photography permit.<sup>40</sup> As the commission pointedly observed:

*[I]n view of the fact that criminal acts are fully codified in the Criminal Laws, it is rather peculiar to have such judicial personality as Tehran's public prosecutor depict photographing the Evin wall as a crime, or on which account have a person detained or make that person the subject of a different bail order.<sup>41</sup>*

The commission emphasized that the espionage charges against Kazemi were unfounded:

*Certainly the initial arrest of the above-named, which has been construed as "Ms. Kazemi being directed into Evin prison", occurred without sufficient evidence on the charge of spying. The suggestion by the Ministry of Intelligence – which ... is the legal entity responsible for crimes such as spying<sup>42</sup> - that Ms. Kazemi should be freed is a plain indication of the fact that basically no satisfactory document and evidence for the laying of such charge existed.<sup>43</sup>*

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<sup>37</sup> For further details on the composition of the Article 90 Commission during the 6<sup>th</sup> Majlis [Parliament] and a list of its members, see [http://member.majlis.ir/pro/memberlist.asp?x\\_dore=200&z\\_dore=%3D%2C%2C&x\\_comission=30&z\\_comission=%3D%2C%2C](http://member.majlis.ir/pro/memberlist.asp?x_dore=200&z_dore=%3D%2C%2C&x_comission=30&z_comission=%3D%2C%2C) [accessed May 23, 2006] (in Farsi, translation on file with IHRDC).

<sup>38</sup> See generally *Article 90 Report*, *supra* note 2; for additional detail as to IRI legal provisions allegedly violated during Kazemi's arrest and detention, see *Kazemi Appeal*, *supra* note 3, at Part Two.

<sup>39</sup> *Article 90 Report*, *supra* note 2, at 7.

<sup>40</sup> The *SPC Report*, *supra* note 1, at 2, stated that "according to the representations of the Camera Press institute [as part of Kazemi's photography permit application process] her work was declared as purely obtaining photos of ordinary residents of Tehran and their daily life." The *Kazemi Appeal*, *supra* note 3, at Part Two, § 1, cites Moslem Shahi Sadrabadi, a soldier guarding the entrance of Evin Prison that day, as stating that Kazemi had merely been photographing the people demonstrating outside Evin—with no mention of her taking pictures of the prison building or any prohibited area.

<sup>41</sup> *Article 90 Report*, *supra* note 2, at 5.

<sup>42</sup> See Paragraph B of Article 10 of the Ministry of Intelligence Establishment Act, ratified on August 18, 2003 (cited in *Article 90 Report*, *supra* note 2, at 7).

<sup>43</sup> *Article 90 Report*, *supra* note 2, at 7. However, a common sentiment was that expressed by Director of Foreign Press and Media Khoshvaght: "[I]f someone really was a spy, would [she] need to get this kind of [photography] permit and then take photos of Evin Prison in front of the guards openly in this manner?" See *Khoshvaght Letter*, *supra* note 17, at 3. It is similarly unclear what evidence provided the basis for Mortazavi's claim that "in addition to spying, [Kazemi] had another mission to accomplish and that was to review the distribution of some one hundred million or five hundred million ... in American money among various people for the purpose of bringing down the regime; she wanted to see if they had carried out their tasks or not" (Khoshvaght's testimony before the Article 90 Commission, as cited in the *Article 90 Report*, *supra* note 2, at 2).

Moreover, the lack of evidence of wrongdoing by Kazemi meant that the necessary prerequisites for issuing an arrest warrant were not satisfied – thus, the arrest “could be regarded as ... illegal.” The commission explained:

*[I]n the wake of the arrest, the principles of Article 39 of the Constitution<sup>44</sup> have not been observed with regard to the accused. [...] Articles 32, 35 and 134 of the Public and Revolutionary Courts Procedures ratified on August 19, 1999, set out certain conditions that govern the permissibility or necessity of issuing an arrest warrant. The existence of apparent circumstances, clues and legal evidence that would support arraignment constitute basic requirements for issuing such a warrant. Now, with the objection of the Ministry of Intelligence to the arrest and continued detention of Ms. Kazemi, the only conceivable evidence would have been the roll of film in her camera. And as all pertinent authorities have confirmed, Ms. Kazemi, in the presence of prison staff, had caused the film in question to be exposed to light, rendering it unprintable. **It might therefore be concluded that the issuance of the arrest warrant by the honorable Evin prison judge had not been permissible.**<sup>45</sup>*

As further evidence that there was no legal basis for the initial arrest warrant, the commission pointed to the fact that Kazemi was released on a five-million-toman bail on July 9, 2003 (by which point she was already comatose.) The commission found that this:

*... clearly proves the point that the initial arrest warrant had not been issued on legal grounds, and, ultimately, such arrest could be regarded as an illegal arrest, which, pursuant to Article 575 of the Islamic Penal Code ... is an offence.<sup>46</sup>*

Finally, the commission noted that these irregularities occurred despite the fact that there were judges in Evin who could have ensured that procedural requirements were satisfied, as:

*there were judges present within the prison compound, who, upon conduct of an initial examination, could have facilitated Ms. Kazemi's release or issued other appropriate bail orders.<sup>47</sup>*

Additional questions regarding the legality of Kazemi's arrest and detention are discussed in Section V(B)(2) below.

## **2. Interference with investigation efforts into Kazemi's death**

The Article 90 Commission sharply criticized Prosecutor Mortazavi's failure to cooperate with its investigation and refusal to appear at commission investigatory sessions at which his presence

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<sup>44</sup> Article 39 of the Constitution (“Dignity of Arrested”) provides: “All affronts to the dignity and repute of persons arrested, detained, imprisoned, or banished in accordance with the law, whatever form they may take, are forbidden and liable to punishment.”

<sup>45</sup> *Article 90 Report, supra* note 2, at 7 (emphasis added). Kazemi family counsel argued that while IRI criminal procedure law permits the issuance of temporary arrest warrants, Article 37 of the Criminal Procedure laws requires that such warrants can be issued only with a proper legal basis, and that the reasons for the arrest and the suspect's right to object must be stated clearly in the text of the arrest warrant—requirements that were not satisfied. See *Kazemi Appeal*, Part Two, §§ 4-5. Moreover, Kazemi family counsel argue, given the view of police officers outside the prison (as cited in the *Kazemi Appeal* at Part Two, § 1) and the Ministry of Intelligence (as described in the *Article 90 Report, supra* note 2, at 3) that Kazemi posed no threat, as well as the failure to note any objection to the arrest on Kazemi's part in the arrest paperwork, there is reason to conclude that the issuance of the arrest warrant was procedurally unlawful. See *generally Kazemi Appeal*, Part Two.

<sup>46</sup> *Article 90 Report, supra* note 2, at 7.

<sup>47</sup> *Id.* at 6.

was requested. The commission found “astonishing” Mortazavi’s assertion that he was “not legally obliged to attend the sessions of the Article 90 Commission”, observing that:

*[H]ad Mr. Mortazavi conducted a brief review of the laws ... concerning the scope of the Commission’s authority, he would never have made such a big mistake and would not have accused the Commission of being uninformed about the laws.*<sup>48</sup>

Mortazavi’s obstruction of the investigation went beyond failure to appear at Article 90 Commission sessions; the commission uncovered a series of attempts by Mortazavi to impede the investigation, fabricate evidence, and coerce witnesses to withdraw or alter their previous testimony.<sup>49</sup> The commission also found evidence of interference with the investigation by other officials or unnamed individuals.

- **Mortazavi pressured Mohammed Hossein Khoshvaght (Director General of Foreign Media at the Ministry of Culture and Islamic Guidance) to produce false testimony and threatened to implicate him in the espionage allegations against Kazemi**<sup>50</sup>

The Article 90 Commission received a letter from Mortazavi (dated July 10, 2003) in which Mortazavi stated that according to a report by Mohammed Hossein Khoshvaght, the Director-General of Foreign Press and Media at the Ministry of Culture and Islamic Guidance, Kazemi had been “prepar[ing] reports and photographs for one of the foreign [espionage] services” with “no authorization from the Ministry of Intelligence and without observance of the legal procedure.”<sup>51</sup> Mortazavi’s letter stated that Khoshvaght “has made a written request, which is enclosed in the file, that the above-named be prohibited from carrying on her activities.”<sup>52</sup>

However, the Commission found that this report cited as evidence by Mortazavi was actually the product of coercion by Mortazavi himself; at a meeting with Commission representatives, Khoshvaght testified:

*Early in the morning of [June 25, 2003], a call was received on my cellular phone from the office of Mr. Mortazavi, requesting that I [contact him] immediately .... I contacted him right away and he informed me: “We have caught a spy reporter engaging in the act of spying, and have realized that the person’s activity permit has in fact been issued by you. Why do you provide work permits to spies?”*<sup>53</sup>

Mortazavi evidently threatened to implicate Khoshvaght in the alleged espionage, merely because Khoshvaght’s office had issued a photography permit to Kazemi, asserting that:

*[T]his is the same Ms. Kazemi who is a spy and has confessed to having carried out spying work, as well as her link with the [foreign] services .... In any event, you have assisted her in the execution of this offense. If she confesses to having had contact with you prior to her arrival in Iran from Iraq<sup>54</sup> and that she has*

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<sup>48</sup> *Article 90 Report*, *supra* note 2, at 5. The Article 90 Report notes that Baghiatollah al-Azam Military Hospital (where Kazemi was treated) and the office of the Law Enforcement Forces similarly failed to respond to requests for information by the Commission.

<sup>49</sup> *Id.* at 2-8.

<sup>50</sup> Khoshvaght’s open letter to the editor of *Yas-e Nau* describes in further detail the meeting in which Mortazavi pressured him to fabricate evidence (see *Khoshvaght Letter*, *supra* note 17, at 2-3).

<sup>51</sup> *Article 90 Report*, *supra* note 2, at 1.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 2.

<sup>54</sup> As noted above, Kazemi had previously carried out photojournalism assignments in Iraq.

carried out the offense in collaboration with you, that you have been her associate, what will you do?<sup>55</sup>

When Khoshvaght objected that “you would have to prove this”, Mortazavi reportedly replied:

*[I]t would take a long time before this matter is proved .... If I wanted to send [you] to Evin [prison], there you would be handled by an interrogator and the time of your release would not be certain, and I will not do this. At 4:00 o'clock it is also already too late to be setting bail, so I will not do that either. But you had better fill out this indictment form, [charging you] with being an accomplice in the spying offense.<sup>56</sup>*

Khoshvaght also testified to the Commission regarding a second meeting with Mortazavi, concerning the press statement Khoshvaght was to release after Kazemi's death:

*On [July 12, 2003], I received another call from [Mortazavi's] office and was told that Mr. Mortazavi would definitely like to see you .... I went to see him and right away he told me that this lady has died, and asked: “how are you going to dispatch this news now?” ... Then Mr. Mortazavi insisted that I write down something for media reporters, saying: “This lady, while in the custody of the Ministry of Intelligence interrogators, complains of ill health and is sent to hospital and there she dies of a stroke.” Mr. Mortazavi insisted that I put this in writing that the Ministry of Intelligence did not approve of her either ... and said that these words should not be attributed to him, that I should put them in writing as words of my own.<sup>57</sup> ... In a gesture of compromise, I agreed to attribute these words to a judicial official or a legal body rather than to the Prosecutor ... After the text had been typed, Mr. Mortazavi asked me to sign it and I did ... He ordered his staff to fax the signed text of the interview to the News Agency .... I was about to say goodbye when Mr. Mortazavi, with a satisfied grin, told me to stay put and not leave until the news had been dispatched by IRNA [the Islamic Republic News Agency] and a copy faxed to us.<sup>58</sup>*

Mortazavi reduced his pressure on Khoshvaght only when made aware of Khoshvaght's close family relationship to Iran's Supreme Leader, Sayyid Ali Khamenei.<sup>59</sup> However, Khoshvaght stated: “when Mr. Mortazavi ... made those false statements in writing, I was really shocked. My

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<sup>55</sup> Article 90 Report, *supra* note 2, at 2.

<sup>56</sup> *Id.*

<sup>57</sup> According to Khoshvaght, Mortazavi insisted that he not be identified as the source of this information because, as he explained, “I am under too much pressure these days and I will take more heat if you mention my name in your interview.” (See *Khoshvaght Letter*, *supra* note 17, at 3). In addition to dictating the content of the news release, Khoshvaght reported, Mortazavi

gave the draft that was prepared by [Khoshvaght] to his assistant and asked him to type in on the official letterhead of the Ministry of Culture and Islamic Guidance [Khoshvaght's ministry]! This letterhead was prepared by copying [the letterhead design from another interview Khoshvaght had given] and Mortazavi was the creative force behind it.

*Id.*

<sup>58</sup> Article 90 Report, *supra* note 2, at 2.

<sup>59</sup> *Id.* at 2. *Rooydad* reported that Khoshvaght's sister is married to the Leader's son (see *Khoshvaght Letter*, *supra* note 17, at 4).

conscience did not allow me to remain silent and I felt obligated to come up with a written response.”<sup>60</sup>

- **Mortazavi reportedly dictated a letter (officially written by an Evin prison official) stating that Kazemi suffered a “stroke”; when questioned by the Article 90 Commission, Mortazavi then pointed to that letter as evidence for the claim**

Mortazavi claimed that one source of information regarding Kazemi’s “stroke” was a letter from the chief of Evin prison’s security detention ward dated July 10, 2003.<sup>61</sup> However, the Ministry of Intelligence stated<sup>62</sup> that:

*[I]nitially the chief of the Evin prison’s security detention ward writes a letter dated June 27, 2003 to Tehran’s magistrate branch 12, district 7 [mentioning Kazemi’s hunger strike and stating that, due to the tearing of a brain blood vessel, she is in a coma]. [But] Mr. Mortazavi objects to the letter and once present at the Evin security detention ward asks why has the subject of hunger strike been mentioned? Then he asks that the letter be altered and as a result another letter, dated [June 28, 2003], is drafted and sent out instead. In this letter, the chief of the Evin security detention ward, addressing the branch 12 magistrate, writes: “Pursuant to the order of the physician at the Evin infirmary, the accused, Zahra Kazemi, due to suffering from a brain ailment, was transferred to Baghiatollah Hospital for treatment and according to her attending doctor, she has suffered a stroke and is currently in a state of coma.”<sup>63</sup>*

As the Article 90 Commission noted:

*Hence, according to the Ministry of Intelligence ... the second letter is drafted by the order and direction of Mr. Mortazavi, and that very same letter (prepared under the order of Mr. Mortazavi himself) is subsequently made use of as evidence in Mr. Mortazavi’s letter of reply!<sup>64</sup>*

The Commission observed that “[i]t may be argued that the opinion suggested by Mr. Mortazavi to the chief of the Evin detention ward is beyond the scope of authority and responsibility of a Judiciary official”, adding that “the compliance of the detention ward chief in this regard is indefensible.”<sup>65</sup>

- **The Evin prison record book and ward’s log were “tampered with and show signs of alteration”<sup>66</sup>**

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<sup>60</sup> *Article 90 Report, supra* note 2, at 2. Khoshvaght suggested that other government officials were aware of these interactions; for example, he noted that “Mr. Sahafi, the honorable Deputy Minister of Culture in charge of the Press and Propagation, was kept entirely informed of what had transpired (in both of these meetings.)” *Id.*

<sup>61</sup> *Article 90 Report, supra* note 2, at 6 (citing Mortazavi’s reply letter of August 31, 2003).

<sup>62</sup> *Id.* (citing a reply letter from the Ministry of Intelligence dated September 20, 2003.)

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* The Kazemi Appeal, *supra* note 3, at Part Two, § 10-3, quotes an Evin employee, Ehsan Mousavi, as stating that he rewrote a health status report regarding Kazemi and sent out an altered second version after speaking with Mortazavi (which referred to Kazemi’s alleged “stroke”).

<sup>66</sup> *Article 90 Report, supra* note 2, at 4. The Kazemi Appeal details a number of alterations to Kazemi’s prison records, including: the fact that one copy of the arrest report contained an additional final sentence, which the other copy lacked (described in more detail in Section IV(C)(ii) *infra*); a report on the sealing and opening of the cell door with “several erasures ... and the dates on it ... manipulated”; and “[e]rasures on the signatures under Ms. Kazemi’s interrogation reports.” See *Kazemi Appeal, supra* note 3, at Part Two, § 2, “Forgery and Additions”.

- **Interference with the testimony of witnesses to Kazemi’s arrest at Evin**

The Article 90 Commission obtained evidence indicating that Kazemi’s arrest (and the violence accompanying it) were witnessed by “the tower sentry, the prison personnel and a number of soldiers present, in all approximately 20 people who provided initial testimonies ... Subsequently, these witnesses are all gathered and taken away for debriefing ... so that they would all deny their testimonies. This is done by the Intelligence Protection staff of Evin Prison.”<sup>67</sup>

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In sum, the Commission noted that the evidence was “indicative of a certain disorder and confusion in the behavior of the Tehran Prosecutor and the ultimate aim of diverting the investigation into the death of Ms. Kazemi from its real course.”<sup>68</sup> However, the Commission refrained from presenting firm conclusions regarding the criminal responsibility of any actor in Kazemi’s “murder”<sup>69</sup> and instead stated that further inquiry was necessary.<sup>70</sup>

### **3. Interference with the Article 90’s Commission’s constitutionally mandated public reporting mechanism**

Despite the public reporting requirement under Article 90 of the constitution, public access to the commission’s report on Kazemi was limited. The report did obtain some exposure; on October 28, 2003, a member of the Commission read its report at an open parliamentary hearing, which

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<sup>67</sup> *Article 90 Report*, *supra* note 2, at 4. Note that Mohammed Bakhshi (alleged to have struck Kazemi during her arrest at Evin) was evidently the head of intelligence protection at Evin Prison at this time; see *Kazemi Appeal*, *supra* note 3, at Part One, § 4.1(4).

<sup>68</sup> *Article 90 Report*, *supra* note 2, at 8. Political pressure may have prevented the government investigatory bodies from making all of their findings public; in particular, several media reports that the Intelligence Ministry, in response to charges against it, “threatened to reveal all it knew” are suggestive of a compromise as to which findings would be made public. Comments by, for example, Director of Foreign Press and Media Khoshvaght (“of course, there is more which I will reveal to senior officials at the appropriate time ...”), *Khoshvaght Letter*, *supra* note 17, at 5, suggest that even the most outspoken government officials refrained from making certain information public.

<sup>69</sup> The Farsi word used here was *qatl*. See *Article 90 Report*, *supra* note 2, at 3.

<sup>70</sup> Despite this recommendation, few follow-up measures were taken after the release of the Article 90 Report. The Article 90 Commission specifically noted that:

[A] copy of this report is forwarded to the Judiciary Branch to be referred to an appropriate court, and another copy is forwarded to the Judges’ Disciplinary Court for the purpose of making an inquiry into the acts of violations by the Tehran public prosecutor and other judges who in the initial stage of the late Ms. Kazemi’s detention had interfered and issued illegal orders. The result of the inquiry, which ... must be priority driven, will have to be made available to this Commission.

*Article 90 Report*, *supra* note 2, at 8.

However, a recurrent problem appeared to be the question of how to prevent the case from being referred to the Tehran Prosecutor’s Office. For example, the Article 90 Commission, commenting on the illegality of Kazemi’s arrest, noted that: “the authority issuing the warrant could become subject to prosecution in the Judges’ Disciplinary Court and subsequently referred to the Tehran Prosecutor’s Office.” See *Article 90 Report*, *supra* note 2, at 9 (emphasis added). Requests by the Kazemi family for the appointment of an independent prosecutor (and the recommendation by the Special Presidential Commission that an “independent special investigator” be designated “for the purpose of identifying the main person or persons responsible for this incident”, *SPC Report*, *supra* note 1, at 8) evidently went unheeded.

Several internal inquiries (in addition to the investigations described above) were reportedly conducted by the government. The Kazemi Appeal alleges that Mortazavi attempted to reassign an internal investigation out of the hands of the Ministry of Intelligence to a Mr. Mahmoudi, head of intelligence protection at Tehran prisons (i.e., Mohammad Bakhshi’s supervisor)—an action for which, they argue, Mortazavi lacked legal authority. See *Kazemi Appeal*, *supra* note 3, at Part One, § 4.1. The Kazemi Appeal further notes that a three-member investigatory commission was set up by the Head of the Judiciary, and questioned why the findings of that commission had not been made public. See *id.* at Part One, § 4.3.

was broadcast live on Tehran's state-run radio.<sup>71</sup> However, Prosecutor Mortazavi took swift action to restrict public access to the report, as detailed below:

*[O]nly one newspaper in Tehran printed the committee's statement. The others ... didn't so much as report the findings. [Journalist Roozbeh Mirebrahimi] learned that Mortazavi had called all of Tehran's editors and threatened to close their newspapers if they covered the committee's finding. Soon after, Mirebrahimi took a call from a reporter for Radio Farda, the American-sponsored Farsi equivalent of Radio Free Europe. The reporter asked him why Tehran's newspapers had not reported on the commission's findings. "I said that Mortazavi was responsible," Mirebrahimi recalled. "And I remember that there was no one to back me up. No other editor came forward to say, 'We know – Mortazavi called us, too.' I was all alone."<sup>72</sup>*

Shortly afterwards, Mirebrahimi was reportedly summoned to meet with intelligence officials, who informed him that Mortazavi had complained about his actions. After being reprimanded, Mirebrahimi was released.<sup>73</sup>

This account is corroborated by human rights monitors, who reported that the night before the daily *Yas-e Nau* published the Article 90 Report, the paper's editor received a call from Mortazavi warning him not to publish it.<sup>74</sup> However, the paper had already gone to press for the next day, making *Yas-e Nau* the only print newspaper to publish the entire text of the Article 90 Report.<sup>75</sup>

As these incidents demonstrate, even where investigatory mechanisms such as the Article 90 commission exist, political realities present a fundamental obstacle to their ability to function.

### **Links between the Kazemi case and broader crackdown on the press**

Restrictions on the press are not merely violations in themselves; they also contribute to impunity by preventing the collection of information on violations and violators. Unfortunately, journalists' role in the dissemination of information lends itself to categorization under a number of vaguely defined criminal charges, such as "insulting the Supreme Leader", "insulting Islam", "spreading propaganda against the state", or "espionage" and "links to the foreign services."<sup>76</sup> Indeed, in the Kazemi case, Khoshvaght testified that Mortazavi told him outright:

<sup>71</sup> Laura Secor, *Fugitives: Young Iranians confront the collapse of the reform movement*, THE NEW YORKER, November 21, 2005, available at [http://www.newyorker.com/fact/content/articles/051121fa\\_fact4](http://www.newyorker.com/fact/content/articles/051121fa_fact4) [accessed May 20, 2006] [hereinafter *Fugitives*].

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Human Rights Watch, "LIKE THE DEAD IN THEIR COFFINS": TORTURE, DETENTION, AND THE CRUSHING OF DISSENT IN IRAN (June 2004) (available at <http://hrw.org/reports/2004/iran0604/>) [accessed May 21, 2006] [hereinafter LIKE THE DEAD IN THEIR COFFINS], at 59, n. 153.

<sup>75</sup> *Id.* On February 18, 2004, Prosecutor Mortazavi ordered the closure of *Yas-e Nau*, after it published excerpts from a letter circulated by over 100 members of parliament criticizing Supreme Leader Khamenei for approving the Guardian Council's disqualification of more than 2,000 candidates from upcoming parliamentary elections. Human Rights Watch reported that "[s]ecurity agents under Mortazavi's authority surrounded the building of one paper to prevent distribution of editions containing excerpts from the parliamentarians' letters." Human Rights Watch, *Iran: Reformist Newspapers Muzzled Before Election*, February 19, 2004, available at <http://hrw.org/english/docs/2004/02/19/iran7571.htm> [accessed May 19, 2006].

<sup>76</sup> See Amnesty International, *Iran: a legal system that fails to protect freedom of expression or association* (December 2001) at 3-9, available at <http://web.amnesty.org/library/Index/ENGMDE130452001?open&of=ENG-2D2> [accessed May 19, 2006] for a list of the legal provisions commonly used against journalists; the report notes that Iran's Penal Code "contains a number of vaguely worded articles relating to association and 'national security'



[A]ll of these reporters are spies; they come here and give instructions and create problems. You may help by not giving any more entry permits to reporters until the end of the month of Tir [July 22<sup>nd</sup> 2003].<sup>77</sup>

Mortazavi's unhesitating equation of journalists with spies—and his evident assumption that the Director of Foreign Press and Media could be relied upon to assist by denying journalists entry permits—gives rise to serious concern regarding the treatment of journalists. But while he may be its figurehead<sup>78</sup>, efforts to restrict freedom of the press in Iran extend far beyond Mortazavi. As one observer characterized the situation, “the rules of Iranian public discourse have remained fixed and unforgiving: you cannot criticize the Supreme Leader, the clergy, or the judiciary.”<sup>79</sup> In addition, the government routinely circulates a list of specific “red-lined”, or forbidden, subjects to the country's media.<sup>80</sup> Indeed, as Reporters Without Borders confirmed, Iran's Supreme National Security Council each week would send newspapers a list of banned subjects, including, in 2003, “the 1999 student demonstrations, resumption of talks with the United States, the murder of photojournalist Zahra Kazemi and anything about nuclear weapons agreements.”<sup>81</sup>

While the SPC Report on Kazemi's death emphasized the need for “developing and using proper methods to improve the quality of detention of the accused, especially reporters,”<sup>82</sup> the irony apparent here—that in attempting to shed light on sensitive topics through her journalism, Kazemi herself became a forbidden topic—raises serious concern about the safety of those who attempt to report on abuses.

### C. Trial and acquittal of Reza Ahmadi for the “semi-intentional” killing of Kazemi

In July 2004, Reza Ahmadi, a low-level official in the Intelligence Ministry, was put on trial for the “semi-intentional killing” of Kazemi. The two-day trial was highly controversial, in particular the prosecution's decision to focus on Ahmadi, a decision that was perceived as deliberately ignoring

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which prohibit a range of activities, such as those connected with journalism or public discourse, which do not amount to recognizably criminal offenses.” The Committee to Protect Journalists reported in 2000 that when Supreme Leader Khamenei announced that certain unnamed publications had become “base[s] of the enemy”, the judiciary “took this as its cue to launch an unprecedented crackdown on the pro-reform press. Within a few days, authorities banned 16 leading reformist newspapers.” See Committee to Protect Journalists, *Iran's Uncivil Wars*, August 14, 2000, at [http://www.cpj.org/Briefings/2000/Iran\\_aug00/Iran\\_aug00.html](http://www.cpj.org/Briefings/2000/Iran_aug00/Iran_aug00.html) [accessed May 19, 2006]; see also Joel Campagna, Committee to Protect Journalists, *Iran: the Press on Trial*, May 5, 2000, at [http://www.cpj.org/Briefings/2000/Iran\\_may00/Iran\\_may00.html](http://www.cpj.org/Briefings/2000/Iran_may00/Iran_may00.html) [accessed May 19, 2006].

<sup>77</sup> *Article 90 Report*, *supra* note 2, at 2.

<sup>78</sup> Mortazavi became Chief Prosecutor of Tehran on May 20, 2003, after a period as head of Court no. 1410, referred to as the “Press Court” and known for its prosecution and imprisonment of journalists and the closure of dozens of newspapers. Political scientist Nader Entessar notes:

The Press Court ... a unique and controversial legal institution ... has been a channel through which the conservative faction of the ruling hierarchy has sought to stifle dissent and prevent Iran's resurgent and lively press from challenging the country's power structure. Numerous newspaper editors and publishers have been brought before the Press Court and their publications have been closed down.

Nader Entessar, *Limits of Change: Legal Constraints to Political Reform in Iran*, JOURNAL OF THIRD WORLD STUDIES at 13, § 6 (2002), available at [http://www.findarticles.com/p/articles/mi\\_qa3821/is\\_200204/ai\\_n9045076](http://www.findarticles.com/p/articles/mi_qa3821/is_200204/ai_n9045076) [accessed May 19, 2006] [hereinafter *Limits of Change*].

<sup>79</sup> *Fugitives*, *supra* note 71.

<sup>80</sup> *Id.*

<sup>81</sup> Reporters Without Borders, *Iran Annual Report (2004)*, available at [http://www.rsf.org/article.php3?id\\_article=9940](http://www.rsf.org/article.php3?id_article=9940) [accessed May 19, 2006].

<sup>82</sup> *SPC Report*, *supra* note 1, at 7.

individuals suspected of more central involvement in the case.<sup>83</sup> Kazemi family counsel argued that the prosecution had no right to deny the complainant the right to incriminate others in a crime perpetrated against the victim; they also demanded to know why Ahmadi had been selected as the defendant, despite the fact that Kazemi's mother had specifically filed a complaint against the Public Prosecutor's Office.<sup>84</sup> The only apparent tie linking Ahmadi to Kazemi's injuries was his assignment to watch her; judiciary officials alleged that Ahmadi was the only person who spent extended periods of time alone with Kazemi during her detention.<sup>85</sup> The Ministry of Intelligence, however, insisted that Ahmadi had been chosen as a scapegoat.

Kazemi family counsel further questioned why the specific charge in the case was changed from a deliberately intentional to a "semi-intentional" act.<sup>86</sup> Moreover, Kazemi family counsel repeatedly insisted that the court technically lacked jurisdiction to hear the case.<sup>87</sup> As with the Article 90 Report, press coverage of the trial was reportedly restricted.<sup>88</sup>

## Key issues in Ahmadi trial

### 1. Witnesses

When Kazemi family lawyers attempted to call the numerous witnesses who had initially testified to having witnessed violence during Kazemi's arrest but later recanted their testimony or claimed they were mistaken, Judge Hossein Shahrabi Farahani denied the subpoena requests, and the prosecution's investigator did not follow up with the witnesses.

It appears that at least 20 people – including five judges and a number of soldiers and prison employees – initially filed reports describing what they witnessed during Kazemi's arrest.<sup>89</sup>

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<sup>83</sup> Other individuals were reportedly charged with involvement in Kazemi's death at various points, but only the case against Ahmadi proceeded to a full trial. See, e.g., *Kazemi Appeal*, *supra* note 3, at Part One, § 1 (noting that Maryam Asgharzadeh and Maryam Sheikholeslamzadeh had been charged with and temporarily detained for "participation in homicide").

<sup>84</sup> *Id.* at Part One, § 3. A witness who attended the trial reported that Judge Farahani explicitly refused to address any issues relating to Mohammed Bakhshi, stating that events related to individuals other than the defendant were extraneous to the case, despite the fact that, according to the *Kazemi Appeal*, Bakhshi had at one point been charged with intentional battery in the Kazemi case (Report provided by Witness A describing observations of Ahmadi trial, on file with IHRDC [hereinafter *Report of Witness A on Ahmadi Trial*]; see also *Kazemi Appeal* at Part One, § 1.)

<sup>85</sup> *Report of Witness A on Ahmadi Trial*, *supra* note 84.

<sup>86</sup> See *Kazemi Appeal*, *supra* note 3, at Part Three, § 3.

<sup>87</sup> Kazemi family counsel argued that according to note 1 to Article 4 of the Act for Establishment of General and Revolutionary Courts, crimes of the nature alleged in this case should properly have been heard in the Tehran Provincial Penal Court, not the General Penal Court which actually heard the case; see *id.* at Part One, § 1, "Intrinsic Lack of Jurisdiction", for further explanation of the alleged jurisdictional defects.

<sup>88</sup> Some Iranian newspapers were able to publish accounts of the trial proceedings, but it was reported that Mortazavi called a number of journalists to warn them not to publish accounts of the trial. See *Prosecutors Threaten Iranian Journalists Covering Kazemi Trial*, CBC News, July 19, 2004, available at [http://www.cbc.ca/world/story/2004/07/19/iran\\_kazemi040719.html](http://www.cbc.ca/world/story/2004/07/19/iran_kazemi040719.html) (quoting one reporter as stating that Mortazavi told him: "It's in your interest to consider the murder trial over and avoid publishing things that you should not.") Shortly after the trial, Mortazavi ordered the closure of two newspapers that had reported on the trial. See, e.g., *Iranian Prosecutor Shuts Two Newspapers: outlets reported on trial that implicated official in death of detained photographer*, WASHINGTON POST, July 27, 2004, at A18, available at <http://www.washingtonpost.com/wp-dyn/articles/A16431-2004Jul26.html> [accessed May 20, 2006]:

The prosecutor, Said Mortazavi, shut down *Jomhouriat*, which had published for only 12 days, and *Vaghayeh Ettefaghieh* over their coverage of the trial of an intelligence agent accused of beating and killing [Kazemi] .... The shuttering of the newspapers served as an example to other Iranian news media, sources in Tehran said.

<sup>89</sup> *Kazemi Appeal*, *supra* note 3, at Part 1, § 4.6; *Report of Witness A on Ahmadi Trial*, *supra* note 84.

Several of these witnesses were quoted as stating that during an initial scuffle, Mohammed Bakhshi<sup>90</sup> and Mozaffar Babai attempted to seize Kazemi's bag; at least one described seeing Bakhshi grab Kazemi's arm and pull it violently, after which Kazemi fell to the ground and appeared injured.<sup>91</sup> After the filing of these initial reports, four of the judges recanted their statements and claimed they had initially lied, while the other judge, Hassan Moghaddas Ahmadi, said that while Bakhshi's hand had made contact with Kazemi's head, the blow appeared accidental.<sup>92</sup> Several other witnesses also recanted their initial testimony, but at least one of those witnesses who recanted later was quoted as admitting that he had been pressured by officers of the Public Prosecutor's Office as well as intelligence officials.<sup>93</sup> Kazemi family counsel attempted to have these witnesses subpoenaed several times leading up to the trial, but Judge Farahani denied the requests.<sup>94</sup> The prosecutor's investigator did not follow up with any of these potential witnesses, and no perjury charges were filed against the witnesses who recanted their statements by declaring they had initially lied.<sup>95</sup>

## 2. Evidence

A visibly altered arrest report asserting that Kazemi had been photographing prohibited areas of Evin Prison was evidently put forward to suggest that Kazemi's arrest was justified, despite the fact that Intelligence Ministry officials and Kazemi lawyers both concluded that it was forged.<sup>96</sup> The report, describing the moment at which Kazemi was first spotted in front of Evin, contained a final sentence stating that "[i]t must be mentioned that the said person has been taking pictures of the restricted zone of the prison."<sup>97</sup> This last sentence, however, is said to have been written directly over the signatures on the letter.<sup>98</sup> Moreover, another copy of the arrest report – which should have been identical – instead ended with the sentence "[a]fter identification, she was identified as Zahra Kazemi" and did not contain the disputed final sentence alleging that Kazemi had been photographing a restricted area of the prison.<sup>99</sup> Requests for an investigation into this "addition" to the arrest report were evidently ignored.<sup>100</sup>

Other evidence was rejected during the trial, however; for example, when counsel for the Kazemi family attempted to cite to the official parliamentary investigatory commission report on Kazemi's

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<sup>90</sup> As noted above, Mohammed Bakhshi was the head of intelligence protection at Evin prison.

<sup>91</sup> See *Kazemi Appeal*, *supra* note 3, at Part One, § 4.6(2) (citing names of and testimony provided by a number of witnesses to Kazemi's arrest).

<sup>92</sup> See *id.* at Part One, § 4.6(2)(1).

<sup>93</sup> See *id.* at Part One, § 5 (stating that soldier Armin Omar Alaei testified: "I must confess that I was summoned to the Revolutionary and Public Prosecutor's Office in connection with Ms. Zahra Kazemi's case. They made me many promises and my statements were made under the pressures prevailing in those conditions. Moreover, I was under pressure by Section 209 (relating to the Ministry of Intelligence) and wrote some statements...").

<sup>94</sup> Iranian lawyers commenting on the case sharply criticized this decision. One commented:

The court's refusal to allow the calling of witnesses that were introduced to the court by the deceased mother's lawyer has no possible explanation. It seems that the lawyers' request for calling the introduced witnesses was a logical step towards carrying out Part 4 section 156 of the IRI Constitution, which provides that the judiciary has the responsibility of uncovering crimes and prosecuting those responsible.

Iran Student News Agency article, *Lawyers' Views on the 'Death of Zahra Kazemi' case*, 7/25/2004, available at <http://www.isna.ir/Main/NewsView.aspx?ID=News-410726> [accessed April 20, 2006] (translation by IHRDC).

<sup>95</sup> *Report of Witness A on Ahmadi Trial*, *supra* note 84; *Kazemi Appeal*, *supra* note 3, at Part One, § 12. Nor were the individuals involved in the "scuffle" during Kazemi's arrest called for questioning, despite the fact that their identity was known.

<sup>96</sup> *Report of Witness A on Ahmadi Trial*, *supra* note 84. See also *Kazemi Appeal*, *supra* note 3, at Part Two, § 2.1.

<sup>97</sup> *Kazemi Appeal*, *supra* note 3, at Part Two, § 2.1.

<sup>98</sup> *Kazemi Appeal*, *supra* note 3, at Part Two, § 2.1.

<sup>99</sup> *Kazemi Appeal*, *supra* note 3, at Part Two, §§ 2.1 and 2.5.

<sup>100</sup> *Report of Witness A on Ahmadi Trial*, *supra* note 84.

death, Judge Farahani reportedly objected that the report was not in the court file, and rejected the copy proffered by Kazemi counsel.<sup>101</sup>

### 3. Counsel's access to information and court documents

Kazemi family attorneys reported that they were prevented from effectively viewing the court file, despite the fact that they had requested a copy of the file beforehand; however, they were permitted some limited time to study the official file at the courthouse.<sup>102</sup> Furthermore, while the official file should have comprised over 2000 consecutively numbered pages, numerous pages were missing; Kazemi family counsel pointed out the existence of these gaps in the file and rhetorically asked how the pages had gone missing, but no explanation was provided.<sup>103</sup>

### 4. Verdict

Stating that it lacked sufficient evidence, the court cleared Ahmadi of the murder charges against him.<sup>104</sup> The judiciary released a statement after Ahmadi's acquittal concluding that:

*since the only suspect in the semi-intentional killing of Mrs. Zahra Kazemi was acquitted, there is only one choice left and that is ... that the death of Mrs. Kazemi was an accident due to the decrease in her blood sugar levels due to a hunger strike, that can cause a person to fall and sustain injuries.*<sup>105</sup>

Kazemi family lawyers protested the failure of the court to convict anyone of wrongdoing and requested further legal action. In 2005, after a brief hearing, an appeals court upheld Ahmadi's acquittal but called for further investigation, noting "shortcomings in the investigation"<sup>106</sup>; however, it is unclear what judicial action was taken in response to this directive.

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<sup>101</sup> Report of Witness A on Ahmadi Trial, *supra* note 84.

<sup>102</sup> Report of Witness A on Ahmadi Trial, *supra* note 84.

<sup>103</sup> Report of Witness A on Ahmadi Trial, *supra* note 84.

<sup>104</sup> See HUMAN RIGHTS WATCH, *Iran: Judiciary Stonewalls on Journalist's Death*, May 25, 2005, available at <http://hrw.org/english/docs/2005/05/24/iran11007.htm> [accessed July 10, 2006].

<sup>105</sup> Statement released by the Tehran Public Prosecutor's Office on July 27, 2004. See BBC Persian, *Vukala-i khandiyiyeh Zahra Kazemi khastar-i tain yik bazras-i vizhah shudand* [Mrs. Kazemi's Family Attorneys Requested that a Special Investigator be Assigned], July 28, 2004, available at [http://www.bbc.co.uk/persian/iran/story/2004/07/printable/040728\\_a\\_iran\\_kazemi.shtml](http://www.bbc.co.uk/persian/iran/story/2004/07/printable/040728_a_iran_kazemi.shtml) (translation by IHRDC).

<sup>106</sup> See CBC NEWS, *Iran court orders Kazemi case reopened*, Nov. 16, 2005, available at <http://www.cbc.ca/story/world/national/2005/11/16/kazemi051116.html>; BBC NEWS ONLINE, *Kazemi killing acquittal upheld*, Nov. 16, 2005, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/4442910.stm](http://news.bbc.co.uk/1/hi/world/middle_east/4442910.stm) [accessed July 10, 2006].

## V. PROBLEMS ILLUSTRATED BY THE KAZEMI CASE

### A. Structural impediments to ensuring accountability for human rights violations

Pervasive impunity for human rights violations in Iran stems from multiple factors, including:

- the absence of an impartial, independent judicial system;
- broad, overlapping powers to carry out detention and interrogation shared by multiple organs, with unclear lines of institutional supervision;
- the ineffectiveness of judicial remedies to address violations committed by the judiciary; and
- weak, limited non-judicial human rights investigatory bodies.

These factors severely undermine both the will and the capacity of the judicial system to conduct effective investigations into violations, as the Kazemi case illustrates.

#### 1. Absence of an impartial, independent judicial system

In areas that are critical for the protection of human rights, Iran's judiciary lacks *independence* - which requires freedom from interference in judicial affairs by other powers - and *impartiality*, meaning freedom from undue bias.<sup>107</sup>

**Prosecutors and judges often owe allegiance to - and are accountable to - specific political actors.** Article 39 of the Penal Procedure Code stipulates that in criminal investigations, "[t]he judge and the judicial interrogator shall proceed to investigate with utmost impartiality"<sup>108</sup>, and the Constitution states that that "the judiciary is an independent power."<sup>109</sup> However, the impartiality of judicial actors is undermined by the fact that certain prosecutors appear to have close ties to the Leader and to be primarily accountable to his office; moreover, the broad powers of the Head of the Judiciary (himself an appointee of the Leader)<sup>110</sup> over the appointment and dismissal of judges makes them vulnerable to political pressure.

Judges are in a simultaneously influential yet dependent position, as law is defined and enforced by a select group of judges "appointed by and accountable to the Leader."<sup>111</sup> The precariousness of their tenure is highlighted by Article 158 of the Constitution, which gives the Head of the Judiciary broad authority to appoint, dismiss, transfer, promote, and discipline judges. The UN Special Rapporteur on the Independence of Judges and Lawyers voiced particular concern

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<sup>107</sup> Indeed, these concepts are interlinked, as the lack of independence is commonly seen as an indicator of partiality. Furthermore, an independent and impartial judiciary is the cornerstone of the right to fair trial in international law, and contributes to preventing the abuse of power by executive authorities and other political influences over the law enforcement and justice systems.

<sup>108</sup> REDRESS, REPARATION FOR TORTURE: A SURVEY OF LAW AND PRACTICE IN 30 SELECTED COUNTRIES (IRAN COUNTRY REPORT), May 2003, available at <http://www.redress.org/studies/Iran.pdf> [hereinafter REDRESS, IRAN REPORT] at 11.

<sup>109</sup> Chapter XI, Article 156.

<sup>110</sup> The Head of the Judiciary is directly appointed by the Leader to a 5-year term.

<sup>111</sup> LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 43.

regarding a reported statement by the First Deputy of the Head of the Judiciary, Hadi Marvi, that “[j]udges must obey the Supreme Leader and have no independence in judgment.”<sup>112</sup>

Furthermore, the judicial nomination system appears to place few obstacles in the way of political actors’ ability to place hand-picked candidates in senior judicial positions.<sup>113</sup> For example, commentators have attributed Saeed Mortazavi’s rapid promotion, first to the head of the Press Court and then to the powerful position of Tehran Chief Prosecutor (despite his relatively few years of judicial experience) to his close ties to senior officials and the Leader.<sup>114</sup> Human rights monitors reported that during Mortazavi’s tenure as a judge in Tehran’s public court branch 1410 (the “Press Court”), authorities allegedly began to direct sensitive cases to his court, confident that they would end in conviction, regardless of the amount of evidence against the accused.<sup>115</sup> Moreover, it was reported that Mortazavi, while on the bench, would openly consult by phone with government officials about how to handle particular cases.<sup>116</sup>

According to a former government official interviewed by IHRDC<sup>117</sup>, while Mortazavi (as Chief Prosecutor) would be expected to be under the supervision of judicial authorities, in cases deemed highly “political”, Mortazavi in fact receives instructions and seeks direction directly from the office of the Leader<sup>118</sup>; the Leader is reported to be “very interested in and involved in micromanaging” issues relating to intelligence and security organs.<sup>119</sup> Furthermore, it is speculated that Mortazavi has a close relationship with at least one “parallel” secret service, itself evidently subject to the orders of the Leader.<sup>120</sup> Meanwhile, the Head of the Judiciary, Seyyed Mahmoud Hashemi-Shahroudi, has expressed a commitment to implementing judicial reforms, yet reportedly “turns a blind eye” to abuses in certain sectors while claiming that the judiciary remains independent.<sup>121</sup>

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<sup>112</sup> *Report of the UN Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumaraswamy*, February 1, 2001, E/CN.4/2001/65, at ¶ 116.

<sup>113</sup> See LAWYERS COMMITTEE FOR HUMAN RIGHTS, *THE JUSTICE SYSTEM OF THE ISLAMIC REPUBLIC OF IRAN*, 1993, at Chapter 2A (discussing required qualifications for judicial nominees).

<sup>114</sup> Written statement by Iranian lawyer provided to IHRDC. See also LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 44 (noting that Mortazavi was “reportedly assigned to the prosecutor’s office as a reward for his reliable tenure as a judge.”)

<sup>115</sup> LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 44.

<sup>116</sup> *Id.*

<sup>117</sup> IHRDC interview with former government official, New Haven, February 16, 2006 [hereinafter IHRDC interview with former government official].

<sup>118</sup> *Id.* The Office of the Leader is the formal office through which Khamenei wields his power; it handles administrative duties and also employs advisors upon whom he can call regarding questions relating to fields such as culture, economics, military affairs, and the media.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>122</sup> *Id.* Hashemi-Shahroudi indicated willingness to address the need for judicial reform; prior to the 2003 visit of the U.N. Working Group on Arbitrary Detentions, Hashemi-Shahroudi reportedly announced to senior members of the judiciary that on assuming his duties he had inherited the “ruins of the judiciary” and indicated that restructuring of the justice system would be his priority. See *Civil and Political Rights, Including the Question of Torture and Detention - Report of the Working Group on Arbitrary Detentions, Visit to the Islamic Republic of Iran (15-27 February 2003)*, UN Commission on Human Rights, 60<sup>th</sup> Sess., E/CN.4/2004/3/Add.2 at ¶ 48 (June 27, 2003) [hereinafter “UN Working Group Report”].

Media use of the phrase “judicial independence” occasionally suggested that the term evokes a distinct meaning in the Iranian context—specifically, that the judiciary is “independent” of government oversight. For example, a November 2003 article on the arrest of student activist Ahmad Batebi shortly after he met with the UN Special Rapporteur on Freedom of Expression quoted a government analyst as observing:

Mortazavi ... might have ordered the abduction of Batebi deliberately, just to show [Special Rapporteur] Ambeye Ligabo and the international community that ... the Judiciary is independent from the government.

**Ill-defined boundaries between the roles of prosecutors and judges.** Further problems arise from the fact that boundaries between the roles of judge and prosecutor are not clearly defined and the two roles frequently overlap. As the UN Working Group on Arbitrary Detentions (hereinafter “UN Working Group”) noted, the “[p]rinciple of separation of authority for prosecution and judgment” has not been consistently applied in Iran’s justice system. In the mid-1990s, after a lengthy campaign by former Head of the Judiciary Mohammad Yazdi,<sup>122</sup> the role of prosecutor was eliminated from the system entirely.<sup>123</sup> The International Commission of Jurists observed with concern that, as a result, the chief judges of the jurisdictions, who were simultaneously the chief justices of the Courts of First Instance, functioned both as prosecutor and judge in the same case.<sup>124</sup> Thus, chief judges of the Courts of First Instance, who should be impartial and presume the innocence of the defendants, were responsible for conducting investigatory procedures (including collection of evidence), preparing accusations against defendants, and interrogating defendants.<sup>125</sup> This system was similarly criticized by the UN Working Group, which noted that:

*[C]ases were tried in a manner that is incompatible with the norms guaranteeing the right to due process, including the essential norm of [f] the impartiality of the judge since ... in each case the same judge acts in succession as prosecutor, then investigating magistrate and lastly sentencing judge. **The Working Group thus considers that this multiplicity of functions is such as to vitiate the right to due process and that account should be taken of this in the context of amnesty laws and pardons.***<sup>126</sup>

By the time of Kazemi’s detention in 2003, the role of prosecutor had re-emerged as part of Iran’s judicial system.<sup>127</sup> However, the structural damage caused by the elimination of the prosecution service took longer to repair; the head of the Tehran judiciary admitted to the UN Working Group that the abolition of prosecutors seven years earlier had been “a disaster” for the administration of justice.<sup>128</sup> At the time of the Working Group’s visit – just months before Kazemi’s detention – the reform had begun to be applied in only three jurisdictions, including Tehran.<sup>129</sup>

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Iran Press Service, *Ahmad Batebi Surfaced in Evin Prison*, Nov 27 2003, available at [http://www.iran-press-service.com/articles\\_2003/Nov-2003/batebi\\_in\\_evin\\_271103.htm](http://www.iran-press-service.com/articles_2003/Nov-2003/batebi_in_evin_271103.htm) (accessed April 2, 2006).

<sup>122</sup> Statement by Iranian lawyer provided to IHRDC, on file with IHRDC.

<sup>123</sup> THE INTERNATIONAL COMMISSION OF JURISTS, IRAN: ATTACKS ON JUSTICE, August 27, 2002 [hereinafter ICJ, ATTACKS ON JUSTICE] (available at [http://www.icj.org/news.php3?id\\_article=2685&lang=en](http://www.icj.org/news.php3?id_article=2685&lang=en)) noted (at 197) that the Law of Establishment of General and Revolutionary Courts made several “widely criticised” changes to the judiciary system, and “the office of the Prosecutor was omitted from the institution of the judiciary.” The UN Working Group report noted that during the “seven-year period in which the prosecution service was suspended [,] [p]roceedings were initiated by the judge, who then conducted the investigation and, lastly, delivered judgment himself. As both prosecutor and examining magistrate, he was assisted by the law enforcement services or [Revolutionary Guards Corps], and, where appropriate, other armed forces, subject to authorization by the National Security Council (Code of Criminal Procedure, art. 15).” UN Working Group Report, *supra* note 122, at ¶ 17 (see Corrigendum).

<sup>124</sup> ICJ, ATTACKS ON JUSTICE, *supra* note 123, at 197.

<sup>125</sup> *Id.*

<sup>126</sup> UN Working Group Report, *supra* note 121, at ¶ 62 (emphasis added).

<sup>127</sup> The Working Group Report noted that “[a]n amendment to the Code of Criminal Procedure, voted by Parliament and approved by the Council of Guardians on 11 November 2002 ... reinstated the prosecution service.” *Id.* at ¶ 34(2).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

As demonstrated by the Kazemi trial, the real impact of the reinstatement of the prosecution service remained unclear.<sup>130</sup> In 2004, the assessment of human rights monitors remained that cases of individuals detained for their political opinions were in the hands of judges who served simultaneously as “prosecutor, investigator, and final decision maker.”<sup>131</sup>

The involvement of prosecutors and judges during investigations was conspicuously personal and hands-on. As of 2004, observers reported that judges in political cases often personally visited accused persons in interrogation rooms and detention areas, demonstrating the lack of clear separation between the roles of interrogator, prosecutor, and judge.<sup>132</sup>

**Similar questions have been raised regarding the role of judges in Evin in the Kazemi case.** As lawyer Abdol Karim Lahiji has argued:

[The public prosecutor's office] take[s] Zahra Kazemi to Evin Prison and “she is questioned in the presence of two judges.” But, it was not mentioned in the report who [the interrogators were]. Why do the two judges not interrogate her themselves? Investigation of the crime is the duty of the judge especially when two judges were present. Furthermore, what were the two judges doing at Evin prison and why was the suspect not taken to the Office of the Public Prosecutor?<sup>133</sup>

While the Article 90 Commission emphasized the necessity of “conduct[ing] a careful inquiry into the circumstances surrounding the two judges . . . , the reasons for their presence in Evin prison at certain hours and the manner of their decision-making”<sup>134</sup> – and demanded further inquiry into “violations by [Mortazavi] and other judges who in the initial stage of the late Ms. Kazemi’s detention had interfered and issued illegal orders”<sup>135</sup> – these key questions remain unresolved.

## **2. Broad and overlapping powers to carry out detention and interrogation shared by multiple organs**

Ensuring oversight and accountability for law enforcement operations is hindered by the evident absence of clear divisions of authority and lines of supervision among the range of organs that carry out arrests, detention and interrogation of detainees. The lack of effective mechanisms to check the wide powers granted to law enforcement organs is particularly troubling in light of the reportedly significant power exercised by “parallel institutions” whose members and activities

<sup>130</sup> See also Amnesty International, *Women human rights defenders at risk*, March 2005, at 8 (referring to the “uneven impact of the re-introduction of the role of prosecutor in 2002.”), available at <http://web.amnesty.org/library/index/engact770112005>.

<sup>131</sup> LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 43.

<sup>132</sup> *Id.* at 44. Similarly (as noted by Abdol Karim Lahiji in note 27, *supra*), the personal involvement of no less than the chief prosecutor of Tehran in Kazemi’s interrogation is striking. BBC News quoted Hamid Mojtahedi (a Canadian human rights lawyer with access to officials in the case) as stating:

When I met with [Mortazavi] I confronted him on this very issue [the fact that he personally attended Kazemi’s interrogation]. He said ‘well, I happened to be there checking on somebody else and I poked [my] head in to see how things are going.’ Well, in fact, it is not true, he took a personal interest in the case[,] he got personally involved and he’s a stakeholder in all of this.

*Iran: A Murder Mystery*, *supra* note 6.

<sup>133</sup> *Statement by Abdol Karim Lahiji on the SPC Report*, *supra* note 18, at 1. As noted in Section V(B)(2) *infra*, it is clear that the presence of these judges did not lead to heightened respect for due process protections during Kazemi’s detention.

<sup>134</sup> *Article 90 Report*, *supra* note 2, at 8.

<sup>135</sup> *Id.*



remain largely obscure.<sup>136</sup> These structural weaknesses further diminish the accountability of elected officials to the Iranian public.

**The wards of Evin Prison are divided into “prisons within a prison,” complicating the task of attributing responsibility for violations.** The UN Working Group conducted an official visit to Evin in February 2003, just months before Kazemi’s detention there. The Working Group noted the existence of “prisons within prisons” excluded from the oversight of the central prison administration – so much so that despite the fact that the Working Group had received permission from senior government officials (who were present with the delegation) to visit Section 209 of the prison, two unidentified individuals, apparently intelligence agents, demanded that the delegation leave.<sup>137</sup> As the Working Group noted with concern:

*The incident was all the more regrettable since it gave the impression, on the one hand, that there was something to hide, and on the other hand, that a secret service agent had obstructed the will of senior government authorities, which is disquieting for the future of the reforms being prepared. One positive result, however, was that the Working Group was able to visually verify the existence of this ‘prison within a prison’ through which most of the prisoners, in particular political prisoners, interviewed by the Group had passed.*<sup>138</sup>

Such incidents suggest that even where senior government officials indicate willingness to attempt to implement reforms, those efforts may easily be thwarted.<sup>139</sup> The Working Group concluded that “owing to the absence of guarantees such ‘imprisonment within imprisonment’ is arbitrary in nature and must be ended.”<sup>140</sup>

IHRDC’s interview with a former Evin detainee corroborated reports by human rights monitors that while officially under the control of the National Prisons Office, different government organs control distinct blocks of cells in Evin.<sup>141</sup> Several different wards of the prison appear to have effectively been handed over to judiciary authorities, the Revolutionary Guards corps, and the Ministry of Intelligence; in particular, it was reported that Section 209 was under the authority of the Ministry of Intelligence (authority possibly shared with members of the Revolutionary Guards corps), while Section 240<sup>142</sup> was controlled by the judiciary’s intelligence services.<sup>143</sup>

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<sup>136</sup> “Parallel institutions” refer to a range of extralegal organs of state coercion that are frequently involved in handling issues related to security and intelligence. Representatives of these parallel organs reportedly exercise control over specific sections of Evin Prison. See generally LIKE THE DEAD IN THEIR COFFINS, *supra* note 74 at 13-19, 46.

<sup>137</sup> UN Working Group Report, *supra* note 122, at ¶ 32(3).

<sup>138</sup> *Id.*

<sup>139</sup> The UN Working Group reported in 2003 that:

Subsequent to complaints ... [the parliamentary Article 90 Commission] investigated prisons at which arbitrary treatment occurred. The aim of the investigation was twofold: to identify unofficial (secret) prisons and visit them, then induce the ministries concerned to place them officially under the sole authority of the National Prisons Office. ... *Even if, through the efforts of the Article 90 commission, most of these prisons are gradually being placed in principle under the sole authority of the National Prisons Office, the intelligence services retain an obviously predominant influence, as the Working Group was regrettably able to verify during its visit to sector 209 of Evin prison.*

*Id.* at ¶ 36(b) (emphasis added).

<sup>140</sup> *Id.*

<sup>141</sup> See generally LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 13.

<sup>142</sup> The SPC Report, *supra* note 1 at 5, indicates that Kazemi was kept in this ward while in the custody of the Judiciary.

The distribution of *de facto* authority to oversee detention and interrogation among various separate (and sometimes competing) government organs – including, it appears, extra-legal institutions whose membership, source of authority, and methods of operation remain largely obscure – increases the difficulty of identifying violators and assigning blame for mistreatment in prison.<sup>144</sup>

In their 2001 study of security decision-making in Iran, Byman et. al found that Iran's numerous security institutions overlap substantially, both on paper and in reality, and have an uncertain command and control structure.<sup>145</sup> They argue that this large number of institutions, the significant role of non-governmental actors, the important role of individual personal ties, and the "lack of a clear division of labor" among security organs as resulting in conflicting policies and implementation.<sup>146</sup> However, they note, these overlapping duties may be deliberate; as infighting among government authorities has led to multiple, competing centers of power in general, the overlapping nature of security institutions "has several benefits for regime stability ... ; [w]hen multiple institutions have a security role, a successful military takeover of power becomes far more difficult."<sup>147</sup>

Obscure lines of authority and supervision are apparent in the intelligence structures as well. For example, while the Law Enforcement Forces are formally subordinate to the Ministry of Interior, the Head of the LEF is directly appointed by the Leader, and in turn appoints the (largely conservative) higher ranks of LEF officers. As a result, Minister of the Interior Abdolvahed Musavi-Laari, a reformist, openly stated in a December 1999 press conference that he "does not wield control over the LEF, since their officers don't obey his orders."<sup>148</sup>

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<sup>143</sup> LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 13. A former detainee interviewed by IHRDC similarly described Evin as a prison in which the wards controlled by various organs outside of the oversight of the National Prisons Office operated as separate worlds. IHRDC's interviewee echoed Human Rights Watch's observation that it "has not been able to confirm the fluctuations of power within the prison and the actual identities of those who control the solitary cells, due to the fact that prisoners are routinely blindfolded when moving within these structures." *Id.* IHRDC's interviewee speculated that several of these organs are ultimately under the supervision of the Office of the Leader.

<sup>144</sup> The UN Working Group similarly noted that "prisons are run by several authorities, such as the Ministry of Information [Intelligence], the Army and Military Police Counter-Intelligence Service, the Law Enforcement and General Inspectorate Protection Service, the Pasdaran Counter-Intelligence Service and Military police, the *Bassidj* [a type of militia], the Ministry of Defence Counter-Intelligence Service." UN Working Group Report, *supra* note 122, at ¶ 36(b).

<sup>145</sup> See Daniel Byman, Shahram Chubin, Anoushiravan Ehteshami, Jerrold D. Green, *Iran's Security Policy in the Post-Revolutionary Era*, Rand Corporation, 2001, available at [http://www.rand.org/pubs/monograph\\_reports/MR1320/index.html](http://www.rand.org/pubs/monograph_reports/MR1320/index.html) [hereinafter *Iran's Security Policy*] at 21. The authors caution, however, that the apparent lack of oversight may be misleading:

The apparent chaos that characterizes Iran's institutions often gives the impression that important players act without oversight. This impression is usually false. *To preserve the consensus, few actors dare conduct important operations without at least tacit approval of the senior leadership. Particularly at lower levels, individuals hesitate to make decisions without authorization from above ....* Iran's institutional structure reinforces oversight, or at least knowledge of security operations. Since the introduction of constitutional reforms in 1989, the command and control of the [Leader] have been exercised in an elaborate interlocking pattern in which no single organ or individual could hold the upper hand or act independently of the political leadership.

*Id.* at 22 (emphasis added). If this hypothesis is correct, it would have significant implications for superior responsibility analysis (discussed in Section V(C)(2)(ii)(III) *infra*) as it would suggest both knowledge and ability to prevent and punish violations on the part of certain official actors.

<sup>146</sup> *Iran's Security Policy*, *supra* note 146, at 21.

<sup>147</sup> *Id.* at 27.

<sup>148</sup> *Iran's Security Sector: An Overview*, *supra* note 11, at 12.

Paradoxically, the proliferation of intelligence organs is evidently in some cases a partial result of efforts to reform the system.<sup>149</sup> These complex structures also raise important questions for superior responsibility analysis (discussed at greater length in Section V(C)(2)(ii) below.)

### **The problem of overlapping institutional authority and lack of a clear division of labor among intelligence organs**

The Kazemi case highlighted the difficulties created by endowing multiple organs with overlapping jurisdiction to oversee detention and interrogation, as investigation efforts became mired in finger-pointing between the various groups that had held her in custody, including the Judiciary, the Intelligence Ministry, and the intelligence unit of the Law Enforcement Forces. The investigation into Kazemi's death, for example, turned into a battle between conservatives (who dominated the Judiciary) and the reformist-controlled Ministry of Intelligence; as characterized by one observer, Kazemi "had entered the parallel universes of Iran's divided power structure – as evident inside Evin, as it is outside."<sup>150</sup>

This proliferation of intelligence bodies appears to hinder the creation of oversight mechanisms to minimize abuses and ensure proper investigation afterwards. As the Article 90 Commission emphasized, "[b]ecause of the objection raised by the counter-espionage experts of the Ministry of Intelligence [to Ms. Kazemi's arrest], a certain kind of confusion and disorder in the disciplinary and judicial handing of Ms. Kazemi, both prior to and after her death, is evident."<sup>151</sup> However, this confusion was not necessarily the result of an absence of legal guidelines regarding institutional jurisdiction; the Ministry of Intelligence repeatedly emphasized that the situation would have been handled far better if Kazemi had been directly handed over to the organ technically responsible for espionage investigations:

*[T]he Ministry's Counter-espionage legal counsel objects to the Prosecutor, saying why do you hand over a person accused of spying to some quarter which lacks specialty on the matter? This lady should be in the custody of the Ministry of Intelligence. Our view has been that you ought to free her, but at the time of the arrest the normal procedure would have called for handing her over to the Ministry so that we could examine her and advise you of the results.*<sup>152</sup>

In fact, Kazemi family counsel argued that the officials who initially arrested Kazemi lacked the legal authority to do so, since prison officers assigned to work inside Evin were not authorized to intervene in incidents outside of the prison walls (and indeed, a separate group of police officers had apparently been deployed to keep the peace outside the prison).<sup>153</sup> Moreover, they argued, provisions regarding inter- and intra- prison regulations dictate that officers assigned to their respective posts cannot act beyond the scope of their assignment.<sup>154</sup> Under this view, the officials who arrested Kazemi could be charged with illegal arrest under Article 575 of the Penal Code.<sup>155</sup>

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<sup>149</sup> When the government attempted to "clean up" the Ministry of Intelligence after certain abuses in late 1998 and 1999 were publicized, many of the employees removed from the Ministry ended up working in the parallel security organs. See, e.g. LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 8, n. 7 (reporting that many of these individuals "moved to the intelligence services of the judicial authority and currently operate a parallel intelligence service targeting those who are politically active or vocal.")

<sup>150</sup> *Iran: A Murder Mystery*, *supra* note 6.

<sup>151</sup> *Article 90 Report*, *supra* note 2, at 7.

<sup>152</sup> *Id.* at 3 (quoting Deputies to the Minister of Intelligence).

<sup>153</sup> *Kazemi Appeal*, *supra* note 3, at Part Two, § 1.

<sup>154</sup> *Report of Witness A on Ahmadi Trial*, *supra* note 84.

<sup>155</sup> *Kazemi Appeal*, *supra* note 3, at Part Two, § 1.

### 3. Ineffectiveness of judicial remedies to address judicial violations

The co-option of the judiciary means that victims of abuses by the judiciary have few methods of recourse. As the judiciary is centrally involved in the systematic crackdown on those who express views critical of the government, and consistently violates basic due process rights,<sup>156</sup> it is structurally incapable of providing effective and impartial investigations into violations, particularly where prominent members of the judiciary are implicated. Pervasive impunity appears to have convinced certain judicial actors that they are immune from legal repercussions; Prosecutor Mortazavi, for example, has been quoted as asserting outright during a session with a political prisoner's family: "I don't have any need for the law. I am the law."<sup>157</sup>

#### i. Judicial handling of the Kazemi case

The Ahmadi trial (described in Section IV(C) above) starkly illustrated the inadequacy of judicial remedies to address violations by judicial actors.

Troubling aspects of the trial included the court's refusal to allow witnesses to be called and the failure of the assistant prosecutor to follow up with at least 20 witnesses to Kazemi's arrest; the high rate of "recantation" of testimony by these individuals also raises questions as to whether improper pressure was placed on witnesses, a concern supported by at least one witness's statement that he had been pressured by government officials with regard to his testimony (see Section IV(C)(1) above). The court's reported admission of visibly altered documents raises further questions regarding the standards of evidence used.

The legitimacy of the proceedings was repeatedly called into question by counsel for the victim's family, who argued that this court did not have legal jurisdiction to hear the case.<sup>158</sup> Even more controversial, however, was the choice of defendant and charge: the decision to focus prosecution efforts against Ahmadi (despite the fact that the Kazemi family had specifically filed charges against the judiciary) and to downgrade the charge from intentional to "semi-intentional" murder strongly suggest that political pressure hindered the prosecution's performance.

The ability of counsel to perform their job was hindered by interference with counsel's access to the complete court file – including the fact that numerous pages were missing from the official file (see Section IV(C)(3) above). The post-trial harassment (including arrest and detention) inflicted upon lawyers representing the Kazemi family was widely believed to be in retaliation for their pursuit of the case.

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<sup>156</sup> See generally LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 43. Similarly, the 2002 report of the U.N. Special Representative of the Commission on Human Rights to Iran emphasized that:

It seems very clear ... that the principle obstacle to reform, to the introduction and nourishment of a culture of human rights, is the judiciary, its patrons and its supporters .... It is a group that bears heavy responsibility for the ongoing violations of human rights in Iran.

Maurice Danby Copithorne, *Report on the Situation of Human Rights in the Islamic Republic of Iran*, E/CN.4/2002/42, at 5, ¶ 9.

<sup>157</sup> LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 43. Entrusting investigations to actors that are themselves implicated in violations is unlikely to be effective, as is entrusting judicial reform efforts to those same actors; for example, the UN Working Group in 2003 noted with regret "the recent appointment, questionable and questioned, of judge Saeed Mortazavi, a judge at the [Press court], as Attorney-General of Tehran, with the task of reforming the prosecution service." UN Working Group Report, *supra* note 119, at ¶ 64(5).

<sup>158</sup> See *Kazemi Appeal*, *supra* note 3, at Part One, § 1.

#### 4. Weak, ineffective human rights investigatory bodies

In recent years, several alternative human rights investigatory bodies have emerged in Iran. But they vary in diligence and effectiveness, and their lack of enforcement power hinders their ability to assist in bringing violators to justice even where misconduct is identified.

##### i. Parliamentary Article 90 Commission

As described above, Article 90 of Iran's Constitution authorizes a parliamentary committee to investigate and report on complaints by individuals against the three branches of government. During times of relative political openness, it appeared that the Article 90 mechanism might provide one of the few available tools to promote accountability, as the Commission "began to exert real pressure on hardliner judges and other authorities."<sup>159</sup> Though the Commission lacks real enforcement power, it provided the only available means of redress for many prisoners, who viewed the Commission's public reporting mechanism as a way to bring attention to their cases.<sup>160</sup> In 2000 and 2001, the Commission brought pressure on the judiciary in connection with the crackdown against journalists and students, treatment of political prisoners, and state accountability for violence against student demonstrators.<sup>161</sup> Those who filed complaints with the Article 90 Commission at times found the attention it drew to their cases beneficial, but also exposed themselves to retaliation.<sup>162</sup> Even the parliament members constitutionally mandated to carry out such investigations were not safe from retaliation; several of the most outspoken MPs who demanded information about the condition of political prisoners or who criticized the judiciary's targeting of journalists and activists were attacked by plainclothes agents during public appearances.<sup>163</sup>

##### ii. Other human rights investigatory bodies

In the 1990s, three official human rights organizations emerged—the Islamic Human Rights Commission, the Human Rights Commission of the Parliament, and the Department of Human Rights (established by the Foreign Ministry)—each "attached to different state institutions and controlled by different factions within the regime"<sup>164</sup>, and all with limited, if any, enforcement power.<sup>165</sup> In addition, the Commission for the Implementation of the Constitution and

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<sup>159</sup> LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 60.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 61.

<sup>162</sup> According to LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 1, one person who had filed a complaint stated "If there had been no press, no investigations by the Parliament, no Article 90 Commission, I think that I would still be in prison or I would be dead." But another person who had filed a complaint explained:

The newspapers wrote about my complaint to the Article 90 Commission. About two days after the newspapers ran the story of my complaint to the Article 90 Commission, several plainclothes men came and put me in a car right in front of my house. They took me out on the road toward Karaj and they beat me up badly. When they drove me back to Tehran, they dropped me off in front of the Parliament building and said, "There you go. If you want to go and complain to the Majlis [Article 90] Commission, there it is."

And, as another interviewee commented: "[W]hat can [the Article 90 Commission members] do? Not only do they not have any enforcement power, they are always getting arrested." *Id.* at 62.

<sup>163</sup> LIKE THE DEAD IN THEIR COFFINS, *supra* note 74, at 62.

<sup>164</sup> REZA AFSHARI, HUMAN RIGHTS IN IRAN: THE ABUSE OF CULTURAL RELATIVISM 278-9 (2001).

<sup>165</sup> It has been argued that these organizations often justified mistreatment of citizens or provided misinformation, and in some cases even participated in covering up human rights abuses. *Id.* The Islamic Human Rights Commission, however, eventually began to raise questions regarding allegations of torture and the existence of secret detention centers, particularly where Islamic clerics were targeted (*see id.*), and reportedly called for an independent and thorough investigation into Kazemi's death. *See* Amnesty International, Press Release, *Iran: An independent inquiry must be opened into the death of Zahra Kazemi*, 15 July 2003, AI Index: MDE 13/022/2003.

Constitutional Supervision was appointed in 1997 by President Khatami to review complaints regarding rights violations.<sup>166</sup>

While the creation of human rights investigatory bodies might appear to constitute acknowledgement that violators should be held accountable, the relative toothlessness and ineffectiveness of these mechanisms suggests otherwise. The organizations' complaint-related statistics were perhaps most revealing: for example, the Commission for the Implementation of the Constitution and Constitutional Supervision declared in a 1999 report that it had received more than four hundred complaints but "did not find them appropriate for consideration."<sup>167</sup> Meanwhile, the Islamic Human Rights Commission noted at one point that out of 444 complaints received, 161 (over a third) related to problems attributable to the judiciary, highlighting its role as a primary violator of human rights.<sup>168</sup>

## 5. Weakness of the Rule of Law

### **Official actors' reliance on legal institutions to restrict individual rights but failure to abide by legal constraints on their power.**

"Rule of law" refers to a constitutional structure in which the government itself is subject to legal constraints. Key components of this concept include the supremacy of legal authority and the principle that government actions are limited by law (i.e., "the law should rule officials, including judges, as well as ordinary citizens")<sup>169</sup> and reliance on mechanisms of impartial justice (i.e., courts should enforce the law in the same way with regard to everyone and should employ fair procedures.)<sup>170</sup> The rule of law thus requires a judiciary that is relatively independent from pressure by the executive and legislative branches of government, and a legal system—including judges, lawyers, and legal scholars—that is not subservient to arbitrary interference by political actors.<sup>171</sup>

President Khatami, from the beginning of his presidency, "emphasize[d] the importance of the rule of law in nurturing and enhancing the foundation of Iran's political system."<sup>172</sup> Indeed, in his inaugural speech on August 4, 1997, Khatami noted that "in order to serve the people, it is 'incumbent upon the executive, and is likewise the mandate and mission of the President of the Islamic Republic, to endeavor towards institutionalizing the rule of law, and the Constitution, first and foremost."<sup>173</sup>

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<sup>166</sup> ICJ, IRAN: ATTACKS ON JUSTICE, *supra* note 124, at 195.

<sup>167</sup> *Id.*

<sup>168</sup> UN Working Group Report, *supra* note 122 at ¶ 36(a).

<sup>169</sup> See Richard Fallon, "The Rule of Law" as a Concept in Constitutional Discourse, 97 COLUM. L. REV. 1 (January 1997) at 8.

<sup>170</sup> *Id.* at 9. For further discussion of the rule of law concept, see generally BRIAN TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY (2001). Three significant components highlighted by Tamanaha are: 1) a government limited by law; 2) formal legality (public, prospective laws with the qualities of generality, equality of application, and certainty); and 3) the rule of law, not man ("not to be subject to the unpredictable vagaries of other individuals—whether monarchs, judges, government officials, or fellow citizens.") *Id.* at 115-123.

<sup>171</sup> Useful guidelines in this area can be found in the U.N. *Basic Principles on the Independence of the Judiciary*, adopted by the Seventh U.N. Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by General Assembly Resolutions 40/32 and 40/146, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985).

<sup>172</sup> *Limits of Change*, *supra* note 78, at 1.

<sup>173</sup> *Id.* On another occasion, President Khatami spoke out even more forcefully regarding the importance of respect for legal rights, asserting that: "A system may manage to impose calm by using force and intimidation, but that will be nothing more than graveyard calm with people as zombies. In upholding the system, one must not deny citizens their inalienable rights." *Id.* at 14.

However, as prominent Iranian lawyer Mehrangiz Kar has argued, even opponents of political reform

welcomed [Khatami's] "Rule of Law" slogan. They knew that the Iranian legal structure was backwards enough that they could take protection behind it and to continue to eliminate dissenting voices from Iran's media and political life while making it look legal.<sup>174</sup>

Kar writes that a range of legal tools were developed from 1997 onwards to "effectively close the door of debate, discussion and criticism", including the passing of new laws to increase judicial authorities' ability to discourage the expression of dissenting thought and the passing of criminal procedure legislation in 1999 that severely restricted accused persons' right of access to an attorney during the investigation and interrogation stages.<sup>175</sup> She also argues that deliberate measures were taken to "paralyze supervisory mechanisms" such as the constitutional Article 90 mechanism and the Judges' Disciplinary Court.<sup>176</sup>

The judiciary's reliance on legal provisions as a tool to restrict individual rights – in contexts ranging from stringent requirements for photography permits to arrests based on vaguely worded criminal charges – contrasts sharply with its own failure to abide by limitations contained in Iranian law.

## **B. Violations of Domestic and International Law in the Kazemi Case**

The following section examines three primary areas of violation of international and domestic law illustrated by the Kazemi case:

- Prohibition on torture
- Rights of the accused
- Duty to guarantee the right to life

### **1. Torture**

#### **i. Torture and cruel, inhuman or degrading treatment is prohibited under international law**

Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a party, provides that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ...." General Comment 20 by the Human Rights Committee, the body responsible for monitoring compliance with the Covenant, points out that Article 7 is expansive, requiring that "state part[ies] ... afford everyone protection through legislative and other measures as may be necessary" against torture inflicted by "people acting in their official capacity, outside their official capacity or in a private capacity."<sup>177</sup> Furthermore, there is "no justification or

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<sup>174</sup> Statement by Mehrangiz Kar, *Yek tasvir-i kulli az sakhtar Ghavanin Iran dar duran-i Islahat (1376-1384)* [A General Overview of Iranian Legal Structures in the Reform Era (1997-2005)], on file with IHRDC [hereinafter *Mehrangiz Kar Statement*] (translation by IHRDC).

<sup>175</sup> *Mehrangiz Kar Statement*, *supra* note 175 (citing Note to Article 128 of the Penal Procedure Code passed in 1999.)

<sup>176</sup> *Mehrangiz Kar Statement*, *supra* note 175. The Judges' Disciplinary Court reportedly has the power to recommend judges for dismissal on the basis of "religious considerations". MP Mohsen Armin noted that "Judge Mortazavi has been convicted of several violations in the Judge's Disciplinary Court, but delivery of his conviction sentence was prevented." *Mohsen Armin Statement: Mortazavi Must Stand Trial*, *supra* note 23, at 1.

<sup>177</sup> See General Comment 20, U.N. Hum. Rts. Comm., 44<sup>th</sup> Sess. (1992), reprinted in U.N. Doc. HRI/Gen/1/Rev.1 (1994) at 30 [hereinafter General Comment 20]. The Human Rights Committee (HRC) periodically adopts

extenuating circumstances [which] may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.”<sup>178</sup> While Article 7 explicitly refuses to define the terms “torture” and “cruel, inhuman or degrading treatment or punishment”<sup>179</sup>, Article 1 of the Convention Against Torture provides a widely accepted definition of torture:

*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*<sup>180</sup>

However, article 7 of the ICCPR may not contain this requirement that a public official be involved.

The prohibition against torture in international law goes beyond the ICCPR, however, having reached the level of a universal, *jus cogens*<sup>181</sup> norm to which all states are bound. It should also be noted that torture is punishable under the doctrine of “universal jurisdiction”. Universal jurisdiction is a principle under which:

*[I]nternational law permits any state to apply its laws to punish certain offenses although the state has no links of territory with the offense, or of nationality with the offender (or even the victim). Universal jurisdiction over the specified offenses is a result of universal condemnation of those activities and general interest in cooperating to suppress them.*<sup>182</sup>

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“General Comments” elaborating the nature of States Parties’ obligations under particular articles of the Covenant. The HRC was established to monitor compliance with the ICCPR. It is empowered to comment on communications received from individuals who are from states that have ratified the Optional Protocol to the Covenant and who claim to have suffered a violation of any of the rights protected by the Covenant, but Iran has not ratified this Optional Protocol.

<sup>178</sup> *Id.* at 31.

<sup>179</sup> Indeed, the HRC has decided not to differentiate between the three levels of banned treatment/punishment in article 7. See General Comment 20, ¶ 4: “The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose, and severity of the treatment applied.”

<sup>180</sup> 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984).

<sup>181</sup> This refers to “a peremptory norm of general international law ... [that is] accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” The Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 8 I.L.M. 679, at 698-699, 1155 UNTS 331, available at <http://www1.umn.edu/humanrts/instreet/viennaconvention.html>.

“It should be noted that the prohibition of torture laid down in human rights treaties enshrines an absolute right, which can never be derogated from .... This is linked to the fact ... that the prohibition on torture is a peremptory norm or *jus cogens*.” Prosecutor v. Furundzija, Judgment, ¶ 144, I.C.T.Y., No. IT-95-17/1-T (1998).

<sup>182</sup> Restatement (3<sup>rd</sup>) of Foreign Relations Law: Universal Jurisdiction to Define and Punish Certain Offenses § 404 cmt. A (1987).



Generally piracy, war crimes, crimes against humanity, genocide, slave trade, apartheid, attacks on or hijacking of aircraft, and torture are recognized as crimes of universal jurisdiction under either customary international law or treaty law.<sup>183</sup>

## ii. Torture is prohibited under Iranian domestic law

The right to be free from torture is firmly enshrined in Iranian law, which has numerous prohibitions against torture and mistreatment of detainees:

- **All forms of torture for the purpose of extracting confessions or acquiring information are forbidden.** Article 38 of the Constitution provides: “All forms of torture for the purpose of extracting confession or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence. Violation of this article is liable to punishment in accordance with the law.”<sup>184</sup>
- **Inflicting harm on an accused person in forcing him to confess is a punishable offense.** Article 578 of the Islamic Penal Code of 1996 provides that “if any of the juridical or non-juridical authorities or employees inflicts corporal harm and torment upon an accused in forcing him to confess”, he shall, in addition to being subject to *Qesas* (retribution) or payment of blood money, be sentenced to a term of six months to three years in prison.<sup>185</sup>
- **The prohibition on mistreatment extends beyond torture.** Article 163 of the Executive Regulation for Prison Organization and Correction Centers, 2001, provides an absolute prohibition of verbal abuse, corporal punishment, and cruel and humiliating treatment of detainees.<sup>186</sup> In fact, Article 39 of the Constitution goes so far as to provide that: “All affronts to the dignity and repute of persons arrested, detained, imprisoned or banished in accordance with the law, whatever form they may take, are forbidden and liable to punishment.”<sup>187</sup>
- **The Penal Code speaks specifically to the situation where public officials violate constitutional rights.** Article 570 of the Islamic Penal Code prescribes the following punishment for the violation of constitutional rights, including torture, by public officials: “Any of the government officials and authorities who unlawfully violates personal liberty of the people or deprives people of the rights granted to them by virtue of the Constitution shall, in

<sup>183</sup> See, e.g., Restatement, *supra*; ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW 286 (2003).

<sup>184</sup> In November 2000, the Head of the Judiciary reportedly circulated a letter to all judges emphasizing that torture was forbidden and warning them against “unjustified” detention of suspects, preventing prisoners from meeting with their lawyers, and summoning suspects by telephone and detaining them without informing their families. *Report on the situation of human rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights, Mr. Maurice Danby Copithorne, pursuant to the Commission resolution 2000/28*, January 16, 2001, E/CN.4/2001/39 at ¶¶ 31. The letter is said to have noted that “unfortunately”, some judges have “unsuitable” attitudes and their treatment of accused persons “has been in contravention of the rules of legislated and canonical laws.” *Id.* It reportedly further stated that the violation of the rights of accused persons would lead to prosecution and, upon conviction, to permanent dismissal. The heads of departments and courts were to ensure that the contents of the letter were enforced. *Id.* However, it remains unclear whether this had a real impact in eradicating seemingly widespread violations.

<sup>185</sup> In addition, superiors who order such acts are clearly liable: Article 578 provides that “[w]hen the accused dies as a result of corporal harm and torment, the perpetrator shall be subject to the penalty for homicide; the person ordering the corporal harm and torment shall be punished for ordering an act of homicide” and “[i]f somebody orders in this respect, only the person who has issued the order shall be subject to the said imprisonment.”

<sup>186</sup> REDRESS, IRAN REPORT, *supra* note 108, at 7.

<sup>187</sup> The infliction of disproportionate or unlawful punishment by public officials is similarly prohibited: a public official who inflicts a punishment on a convicted person that is either harsher than the one imposed by the judgment or not imposed by any judgment is punishable by retribution and *dīya* ... if applicable or is subject to punishment between six months and three years’ imprisonment. Article 579 of the Islamic Penal Code.

addition to being discharged from his position and banned from holding public office for a period of three to five years, be sentenced to a term of six months to three years in prison.”

#### Note on the definition of torture under Iranian law

While the numerous prohibitions in Iranian domestic law against torture are laudable, a caveat is necessary: legislative activity in the year before Kazemi's death raised troubling questions regarding the scope and legal content of the prohibition against torture in Iranian law.<sup>188</sup>

It was reported that in March 2002, Iran's parliament passed a bill aimed at restricting the widespread use of torture and forced confessions in criminal trials. Human rights monitors reported that in June 2002, the bill was rejected by the Council of Guardians,<sup>189</sup> who reportedly objected that the bill would limit judges' authority to adjudicate on the admissibility of confessions, and therefore contradicted Islamic Shari'a. The bill was subsequently sent back to parliament for revision.<sup>190</sup>

The proposed bill, as described, would in any case have been problematic. The bill evidently did not uphold the right of detainees charged with a criminal offense to have prompt access to a lawyer, nor did it set limits on the length of time that a detainee may be detained incommunicado, two practices which have long facilitated the use of torture by the authorities.<sup>191</sup> The bill also reportedly stipulated that certain categories of suspects would be exempted from the safeguards contained in the bill, including:

- Members of "apostate groups"
- "Mohareb" (those "at war with God"), a term that is applied to many types of dissidents and government critics; and
- Individuals accused of "espionage", another loosely defined charge in Iranian penal law.<sup>192</sup>

The ease with which such accusations are made raises concerns in cases such as Kazemi's: by the time the parliamentary Article 90 Commission concluded that espionage charges were unfounded, Kazemi was already dead. If indeed legislators were to attempt to formulate a sort of "loophole" in the prohibition against torture for members of these, this would be a clear violation of both the ICCPR and international law.<sup>193</sup> As discussed above, numerous international instruments provide that there can be no justification for torture. However, the mere fact that such legislative exceptions were proposed suggests significant obstacles remain to the creation of a genuine culture of respect for the prohibition against torture in Iran.

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<sup>188</sup> Note also that as with other rights, torture is to be defined in conformity with Islamic criteria. Therefore, the punishments prescribed by the Shari'a, called *hudud*, are not considered to constitute torture or inhuman and degrading punishment.

<sup>189</sup> This body is responsible for ensuring that all laws passed by the Parliament are compatible, in their view, with Islam.

<sup>190</sup> HUMAN RIGHTS WATCH, *Iran: Veto on Torture Bill Condemned*, June 12, 2002, available at <http://hrw.org/english/docs/2002/06/12/iran4038.htm>.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> See also Nazila Fathi, *Hard-Liners in Iran Back Torture Ban*, THE NEW YORK TIMES, May 9, 2004 at 6 (reporting that the Guardian Council had approved a new law banning torture shortly after the bill was passed by Parliament, after having rejected an earlier bill three times).

### iii. Right to be free from torture and cruel, inhuman or degrading treatment was violated in the Kazemi case

An independent forensic analysis of available medical evidence conducted by IHRDC [attached as Appendix 10] suggests that that right to be free from torture and cruel, inhuman or degrading treatment was violated in Kazemi's case.

After examining available medical evidence, including: the report of Dr. Shahram Azam, reported results of the CT scan<sup>194</sup>, and information contained in the government-approved autopsy report, the analysis noted the following:

- a type and distribution of injuries observed on the body surface suggesting Kazemi was probably tortured
- multiple blunt head injuries on different parts of the head, which could not have been caused by a single impact or fall
- a basilar skull ring fracture (which most often occurs when the head whips forward violently and which studies have attributed to jaw impacts), most likely caused by a blow to the head
- multiple fractures as well as wounds or burns on the body surface, including a broken toe, fingers, nails, and nose
- the presence of what appear to be defensive wounds (contusions when a blunt instrument is being used, and cuts and stabs when a sharp instrument is being used, typically distributed along the dorsal surfaces of the hands, wrist joints and forearms, when a victim is attempting to ward off blows.) IHRDC's forensic analyst noted that some of the reported abrasions and contusions, such as the ecchymosis (bruising) in the back of the right forearm, could be understood in this light.
- Kazemi sustained multiple cutaneous injuries from repeated assaults, since the injuries are distributed on both sides of the body, upper torso, and extremities and are not merely one-sided. It is difficult to conceive of an accidental injury mechanism (or method of falling on the floor) by which all of these injuries could occur. Fingers and nail beds, however, are frequently a target during interrogations.<sup>195</sup>

The available medical evidence indicates that the treatment inflicted on Kazemi (extensive beating over multiple parts of her body, lacerations possibly caused by lashing, a broken nose and crushed toes and fingers, and rape) was severe enough to rise to the level of torture under international law.<sup>196</sup>

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<sup>194</sup> The forensic analysis examined the reported results of the CT-scan of the head and the official autopsy report, as quoted in the following: a statement by Abdol Karim Lahiji, *Tadaavom-e massooneeyat-e shekanjegaraan [Impunity for Torturers Continues]*, July 11, 2005 (hereinafter referred to as *Abdol Karim Lahiji Statement: Impunity for Torturers Continues*) (translation by IHRDC) [attached as Appendix 11]; the Medical Report of Dr. Shahram Azam, *supra* note 4; and statement by Mohsen Armin, *Mortazavi dar har haal baayad taht-e peygard-e ghaanooni qharaar geerad [In any case, Mortazavi should be "legally pursued"]*, July 27, 2003 [hereinafter *Mohsen Armin: Open Letter to Saeed Mortazavi*] (translation by IHRDC) [attached as Appendix 12].

<sup>195</sup> This analysis is corroborated by the testimony of a female intelligence officer, Paridokht Sa'adat Nejad, who is quoted as testifying that on June 24 when Kazemi was transferred to her custody, an official told Nejad that he had beaten Kazemi during the previous night and suggested that the Intelligence officials do the same. See *Kazemi Appeal*, *supra* note 3, at Part One, § 4.6(2)(E). Furthermore, it was reported that while being transferred to a different location of the prison, Kazemi was unable to walk and had to be carried. See *id.* at Part One, § 4.6(2)(B).

<sup>196</sup> For example, in *Muteba v. Zaire*, Hum. Rts Comm., 22th Sess., Communication No. (124/1982), U.N. Doc. CCPR/C/22/D/124/1982 (1984), *Miango Muiyo v. Zaire*, Hum. Rts Comm., 31st Sess., Communication No. (194/1985), U.N. Doc. CCPR/C/31/D/194/1985 (1987), and *Kanana v. Zaire*, Hum. Rts Comm., 49th Sess., Communication No. (366/1989), U.N. Doc. CCPR/C/49/D/366/1989 (1993), the HRC found various combinations of the following acts to constitute torture: beatings, electric shocks to the genitals, mock executions, and deprivation of food and water. In addition to torture, Article 7 also prohibits "cruel and inhuman" or "degrading" treatment. Such treatment was found to have occurred in the following cases, for example: *Linton v. Jamaica*, Hum. Rts Comm., 46th Sess., Communication No. (255/1987), U.N. Doc. CCPR/C/46/D/255/1987 (1992) (author was beaten unconscious, subjected to a mock execution and denied appropriate medical care); *Bailey v. Jamaica*, Hum. Rts Comm., 47th Sess., Communication No. (334/1988), U.N. Doc. CCPR/C/47/D/334/1988 (1993) (prisoner

## 2. Rights of the accused

### i. Iran's obligations under international law include protections for rights of the accused

The ICCPR, to which Iran is a party, provides for:

- freedom from arbitrary arrest<sup>197</sup>
- the right to be promptly charged and informed of the reason for one's arrest<sup>198</sup>
- the right to counsel (both at trial and at stages prior to trial) and doctor<sup>199</sup>
- the right to treatment with humanity<sup>200</sup> and right to be free from torture and ill-treatment<sup>201</sup>
- the right to be presumed innocent<sup>202</sup>

Similar protections for accused persons are provided for under international law more broadly; for example, in the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>203</sup>, which provides:

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was beaten repeatedly with clubs, iron pipes, and batons, and then left without any medical attention for injuries to his head and hands); *Hylton v. Jamaica*, Hum. Rts Comm., 51st Sess., Communication No. (407/1990), U.N. Doc. CCPR/C/51/D/407/1990 (1994) (prisoner was severely beaten by, and received repeated death threats from, prison wardens). There are also many cases where the HRC has found violations of article 7 without specifying which part of article 7 was breached. For example, in *Henry v. Trinidad and Tobago*, Hum. Rts Comm., 64th Sess., Communication No. (752/1997), U.N. Doc. CCPR/C/64/D/752/1997 (1999) the author was beaten so severely on the head by prison officials that he required several stitches; this action breached article 7.

Moreover, rape has increasingly begun to be recognized as a form of torture. See e.g., *Prosecutor v. Akayesu*, Trial Chamber, International Criminal Tribunal for Rwanda, Case No. ICTR-96-4-T (1998) at ¶ 597; Hannah Pearce, *An Examination of the International Understanding of Political Rape and the Significance of Labeling it Torture*, 14 INTL. J. REF. L. 534, 535 (2002) (examining current definitions of torture and "the international incidence of rape as it is used as a strategic weapon to humiliate and devastate", and arguing that "rape and other forms of sexual violence are used very much as a form of torture and ergo that torture is consistently committed though rape.")

<sup>197</sup> Article 9(1) states that detention must be in accordance with pre-existing law, and may not be arbitrary.

<sup>198</sup> Article 9(2) provides that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." The requirement to state the nature and cause of the allegation goes beyond mere statement of the charge; instead, it requires that the prosecutor provide not only the exact legal description of the offense but also the facts which gave rise to the charge. This is closely connected to the requirement under Article 9(3) that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

<sup>199</sup> In addition to the right to counsel at trial, there is a right to counsel in the stages prior to trial, stemming from Article 14(3)(b). The Human Rights Committee has stated unequivocally that "all persons who are arrested must immediately have access to counsel, be examined by a doctor without delay and be able to submit promptly an application to a judge to rule on the legality of the detention." Hum. Rts Comm., Concluding Observations on Georgia, U.N. Doc. A/52/40 [Vol. I] (Supp) (1997) at ¶ 254. Presence of counsel (alongside physicians) is required to ensure that rights of accused persons are protected, that detainees are not ill-treated and that any confession obtained using impermissible methods is excluded.

<sup>200</sup> Article 10(1) of the ICCPR demands that states treat detainees "with humanity and with respect for the inherent dignity of the human person." The accord of such respect has various components, likely including the prohibition on torture and ill-treatment, as well as adequate due process.

<sup>201</sup> Article 7 of the ICCPR provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (discussed more fully in Section V(B)(i) *infra*).

<sup>202</sup> Two other requirements safeguard the right to treatment with humanity: the right to be presumed innocent (required by Article 14(2); ICCPR General Comment 13 sets the standard of proof at "guilty beyond a reasonable doubt"), and the interconnected right of accused persons to be kept separated from those convicted (Article 10(2)(a)).

- the right to be free from torture and ill-treatment (Principle 6) and not to be subject to violence (Principle 21).
- that those keeping a person under detention only exercise powers granted by law (Principle 9), provide the detainee with an opportunity to be promptly heard (Principle 11), and keep a detailed record of the reason for the arrest, place of detention, and agents involved in the detention (Principle 12). A clear record must exist of the persons involved in the interrogation. (Principle 23).
- that the detained person has the right to communicate with family and counsel (Principle 15 and 17), and if she is a foreigner, has the right to communicate with her country's consulate (Principle 16).
- that the detainee has the right to be medically examined (Principle 24).
- that an inquiry must take place when a person dies in detention and its findings be made available (Principle 34).

**ii. A range of legal protections for the rights of the accused exist in Iranian domestic law**

Iran's domestic law provides a narrower but still significant range of due process protections relevant to arrest and detention, including:

- prohibition on arbitrary arrest<sup>204</sup>
- requirement that charges be promptly explained to the accused and provision for judicial oversight<sup>205</sup>
- punishments stipulated for judicial officers and other agents of government who illegally take people into custody or initiate criminal prosecutions<sup>206</sup>
- prohibition on torture for the purpose of extracting confessions or information; the investigating judge may not resort to force<sup>207</sup>
- presumption of innocence<sup>208</sup>

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<sup>203</sup> G.A. res 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988). The *Body of Principles* is a non-binding but highly influential resolution setting recommended standards for the treatment of detained persons.

<sup>204</sup> Article 32 of the Constitution emphasizes that “[n]o one may be arrested except by the order and in accordance with the procedure laid down by law.”

<sup>205</sup> Article 32 of the Constitution provides that “[i]n case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible”, and specifies that violators of the above provisions are “liable to punishment in accordance with the law.”

<sup>206</sup> In addition, Article 575 of the Penal Code provides that judicial officials or other officers who, contrary to the law, take a person into custody, initiate criminal prosecutions or convict and sentence a person, are liable to a punishment of permanent dismissal from their judicial post and five years ban of serving in governmental positions.

<sup>207</sup> Article 38 of the Constitution provides that “[a]ll forms of torture for the purpose of extracting confession[s] or acquiring information” are prohibited, as is “compulsion of individuals to testify, confess, or take an oath.” As noted above, Article 38 explicitly provides that “any testimony, confession, or oath obtained under duress is devoid of value and credence.” In addition, Article 129 of the Penal Procedure Code provides that an investigating judge shall not resort to compulsion and duress when interrogating a defendant.

<sup>208</sup> Article 37 of the Constitution provides that defendants must be presumed innocent until their guilt has been established by a competent court.

### iii. Failure to respect rights of the accused in the Kazemi case

The SPC's chronology of events (Section IV(A), above) and the Article 90 Commission's lengthy discussion of the illegality of Kazemi's arrest (see Section IV(B)(1)) indicate that numerous procedural protections contained in Iranian law were violated.

The Kazemi Appeal alleges a number of other violations of procedural protections under Iranian law.<sup>209</sup> For example, Kazemi family counsel questioned the legality of both Kazemi's initial arrest and the issuance of her temporary arrest warrant; the fact that both the Ministry of Intelligence and police (organs technically qualified to handle such cases) had cleared Kazemi as a threat raises serious doubts as to the existence of a legal basis for her arrest or detention. Kazemi family counsel argued that Kazemi's detention violated Article 32 of the constitution and Article 24 of the criminal procedure code, which lay out prerequisites for such procedures. Kazemi counsel further alleged that "the reason to keep her under arrest and the type of crime were not explained to [Kazemi] when she entered the prison and before the order was issued, which is also a violation of Article 32 of the Constitution and Article 24 and 129 of the Criminal Procedure code."<sup>210</sup> This corresponds with the Article 90 Commission's conclusion that "keeping Ms. Kazemi under supervision, despite the presence of honorable judges in Evin prison, can in no way be ascribed to Article 24."<sup>211</sup>

The decision to keep Kazemi in custody is particularly striking in light of Principle 14 of the UN Guidelines on the Role of Prosecutors: "[p]rosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded."<sup>212</sup> The evidence described above also suggests violations of a number of other rights of accused persons under international law: for example, presumption of innocence,<sup>213</sup> access to a lawyer, and right to prompt and adequate medical care.<sup>214</sup>

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<sup>209</sup> See generally *Kazemi Appeal*, *supra* note 3, at Part Two (entitled "Violations and breaches of the law that happened from the beginning of Zahra Kazemi's arrest through her death").

<sup>210</sup> *Kazemi Appeal*, *supra* note 3, at Part Two, § 3.

<sup>211</sup> *Article 90 Report*, *supra* note 2, at 6.

<sup>212</sup> The *Guidelines on the Role of Prosecutors*, U.N. Doc. A/CONF.144/28/Rev.1 at 189, were adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Although non-binding, this instrument has significant persuasive authority.

<sup>213</sup> Media reports speculated that Kazemi was pressured to incriminate herself; for example, one reported that:

when [Kazemi] was returned to Evin and was again told to sign a confession, she [in defiance] wrote that she had been beaten during her interrogation at the prosecutor's office. Her [interrogators] kept the statement in her file.

THE GUARDIAN (UK), *Killer Images*, Nov. 19, 2005, available at: <http://www.guardian.co.uk/weekend/story/0,3605,1644900,00.html>. The Article 90 Commission similarly referred to a written statement by Kazemi saying that interrogators had beaten her and broken her toe. *Article 90 Report*, *supra* note 2, at 4.

<sup>214</sup> The Article 90 Commission noted that:

[T]he remarks made by Dr. Pezeshkian, the honorable Minister of Health and Medical Education ... to the effect that Ms. Kazemi's timely transference to a public medical facility staffed with brain surgeon residents would have "certainly saved her," prompts one to raise the question as to who bears the direct or indirect responsibility for such [a] fatal holdup, bearing in mind the existence of a clinic and presence of physicians inside Evin prison.

Remarks made at the session of the Commission held on July 29, 2003, cited in *Article 90 Report*, *supra* note 2, at 10.

### 3. State failure to protect and respect the right to life

Article 6(1) of the ICCPR, to which Iran is a party, guarantees that “[e]very human being has the inherent right to life” and that “no one shall be arbitrarily deprived of his life.”<sup>215</sup> This article has been interpreted by the UN Human Rights Committee as follows:

*States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.*<sup>216</sup>

Iran’s obligation to guarantee the right to life under international law goes well beyond the obligation to refrain from killing; it also includes the obligation to provide an effective investigation into and remedy for violations of Article 6(1) (see below). The right to life can thus be understood as: first, a general duty of governments to create conditions under which abuses by law enforcement are minimized and judicial remedies are available, and second, as a specific duty to fulfill such conditions in dealing with every individual.<sup>217</sup>

Government institutions which take people into custody, such as police or prisons, have particular responsibilities. Because these institutions house people who are under state authority and not free to leave at will, the state has an obligation to protect their welfare and ensure their security in the course of running the institution.<sup>218</sup> Thus, states have a clear duty to ensure that people do not die in state custody, which complements the state’s duty not to kill.<sup>219</sup> For example, in *Lantsov v. Russian Federation*,<sup>220</sup> a case in which a young man “entered the detention center in perfect health, but conditions there caused his death”, the Human Rights Committee emphasized:

*[T]he essential fact remains that the State party by arresting and detaining individuals takes the responsibility to care for their life. It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may reasonably be expected.*

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<sup>215</sup> The prohibition on the “arbitrary” deprivation of life means that life must not be taken in unreasonable or disproportionate circumstances. Some indicators of arbitrariness are how intentional the killing was and the necessity for it. See, e.g., *Suarez de Guerrero v. Colombia*, Hum. Rts Comm., 15th Sess., Communication No. (45/1979), at ¶ 13.2, U.N. Doc. CCPR/C/15/D/45/1979 (1982).

<sup>216</sup> CCPR General Comment No. 6, Hum. Rts Comm. 16<sup>th</sup> Sess. at 6(3) (1982).

<sup>217</sup> See KATE THOMPSON & CAMILLE GIFFARD, REPORTING KILLINGS AS HUMAN RIGHTS VIOLATIONS (University of Essex Human Rights Centre, 2002) 20-21, 32 [hereinafter REPORTING KILLINGS AS HUMAN RIGHTS VIOLATIONS].

<sup>218</sup> *Id.* at 34.

<sup>219</sup> See, e.g., *Dermitt Barbato v. Uruguay* in which the HRC found a violation of article 6 because “while the Committee cannot arrive at a definite conclusion as to whether Hugo Dermitt committed suicide [as government authorities asserted and the victim’s family contested], was driven to suicide or was killed by others while in custody ... yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or omission were responsible for not taking adequate measures to protect his life.” *Dermitt Barbato v. Uruguay*, Hum. Rts Comm., 17th Sess., Communication No. (84/1981), at ¶¶ 9.2, 10 and 11, U.N. Doc. CCPR/C/17/D/84/1981 (1982); *Fabrikant v. Canada*, Hum. Rts Comm., 79th Sess., Communication No. (970/2001), at ¶ 9.3, U.N. Doc. CCPR/C/79/D/970/2001 (2003) (emphasizing that a State is “responsible for the life and well-being of its detainees.”)

<sup>220</sup> *Lantsov v. Russian Federation*, Hum. Rts Comm., 74th Sess., Communication No. (763/1997), at ¶¶ 7.1, 9.2, U.N. Doc. CCPR/C/74/D/763/1997 (2002).

In that case, the HRC found a violation of Article 6 because of the failure “to take appropriate measures to protect Mr. Lantsov’s life during the period he spent in the detention center.”<sup>221</sup>

In the Kazemi case, an apparently healthy 54-year-old woman was taken into Evin prison and, after three and a half days of interrogation, emerged with fatal injuries. This indicates that Iran is in breach of its obligations to protect Kazemi’s life while in state custody.<sup>222</sup>

### C. Duty of states under international law to provide a remedy

Several of the general human rights treaties obligate states to “ensure” to all individuals the rights enumerated therein, for example, by requiring that violations be investigated by competent authorities, and that legal proceedings be available to victims for redress. As a party to the ICCPR, Iran is required:

- a) *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
- b) *To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
- c) *To ensure that the competent authorities shall enforce such remedies when granted.*<sup>223</sup>

The HRC has concluded that these provisions require that government authorities must conduct investigations into alleged violations, including summary executions, torture and disappearances, and bring to justice those responsible.<sup>224</sup> It has also determined that State Parties are “under an obligation to investigate, as expeditiously and thoroughly as possible, incidents of alleged ill-treatment” in prison.<sup>225</sup>

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<sup>221</sup> *Id.* at ¶ 9.2.

<sup>222</sup> The injuries inflicted upon Kazemi went beyond the justifiable use of force by law enforcement officers. Because of the potential for abuse in law enforcement procedures, international guidelines strictly regulate the use of force by officials in carrying out their functions. Internationally accepted standards for the proper use of force can be found, for example, in the *Code of Conduct for Law Enforcement Officials* (adopted by UN General Assembly resolution 34/169 of 17 December 1979), which states that law enforcement officers may use force “only when strictly necessary and to the extent required for the performance of their duty” (Article 3), and emphasizes that “the use of force by law enforcement officials should be exceptional; while ... law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used” (Comment (a) to Article 3). Given Kazemi’s size and the absence of any suggestion that she was armed, it is very unlikely that the amount of force allegedly used against her would have been necessary or proportional.

<sup>223</sup> ICCPR, Article 2(3).

<sup>224</sup> See, e.g., *Dermitt Barbato v. Uruguay*, *supra* note 219, at ¶ 11 (finding that the state was “under an obligation to take effective steps ... to establish the facts of Hugo Dermitt’s death”); *Muteba v. Zaire*, Hum. Rts Comm., 22th Sess., Communication No. (124/1982), U.N. Doc. CCPR/C/22/D/124/1982 (1984). The European Court of Human Rights has similarly interpreted the prohibition on torture in Article 3 of the European Convention of Human Rights with the general duty to guarantee Convention rights, as obliging states to investigate all cases of torture thoroughly and effectively. For example, in *Aksoy v. Turkey*, 23 E.H.R.R. 553, 594, ¶ 98 (1997), the Court found that the authorities’ failure to conduct an investigation had the effect of precluding other effective remedies: “such an attitude from a State official under a duty to investigate criminal offences was tantamount to undermining the effectiveness of any other remedies that may have existed.”)

<sup>225</sup> *Stephens v. Jamaica*, Human Rights Committee, 55th Sess., Communication No. (373/1989), at ¶ 9.2, U.N. Doc. CCPR/C/55/D/373/1989 (1995).



The European Court of Human Rights has indicated that in cases where governments possess exclusive knowledge of details surrounding the injuries or death of the alleged victim in their custody, the onus shifts to the authorities to provide a satisfactory and convincing explanation.<sup>226</sup>

For investigations to provide real accountability, they must meet international standards of thoroughness, timeliness and impartiality. The Human Rights Committee emphasized in General Comment 20 that “complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.” Enforcement bodies of human rights treaties have emphasized that such investigations must be impartial, which includes the need to ensure that those responsible for carrying out an investigation are independent from those implicated in the events.<sup>227</sup>

## 1. Duty of states to investigate and prosecute violations

Human rights enforcement bodies and legal commentators have argued that the right to a remedy provided in many human rights conventions implies that states are obligated to investigate and prosecute violators.<sup>228</sup> Some human rights conventions specifically require prosecution.<sup>229</sup> The HRC has expressly confirmed the state’s duty to prosecute violators with regard to Article 6 of the ICCPR (right to life), as follows:

*[T]he State party is under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations. This duty applies a fortiori in cases in which the perpetrator of such violations have been identified.*<sup>230</sup>

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<sup>226</sup> *Hugh Jordan v. The United Kingdom*, 2001 E.C.H.R. 327 at ¶ 103 (2001) (application no. 24746/94).

<sup>227</sup> In addition, human rights bodies such as the UN Human Rights Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights have discussed in detail the practical criteria that investigations must satisfy, and the U.N. *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* provide a thorough and widely respected set of standards for the investigation of alleged killings by security forces and subsequent legal proceedings.

See also *Velasquez-Rodriguez*, Inter-Am. Ct. H. R. (Ser.C) No.4 (1988), a case concerning the disappearance of a person allegedly tortured and killed by Honduran security forces. In that case, the Inter-American Court of Human Rights criticized an investigation of alleged disappearances investigation because it was conducted by the military—the party alleged to have perpetrated the crimes.

Furthermore, effective judicial investigations presuppose an independent judiciary. The U.N. *Basic Principles on the Independence of the Judiciary* emphasize that the judiciary must “decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason” (Principle 2).

<sup>228</sup> See generally Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CALIF. L. REV. 451 (1990); Diane Ortlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L. J. 2537; and Michael Scharf, *Accountability for International Crime and Serious Violations of Fundamental Human Rights: The Letter of the Law: the Scope of the International Legal Obligation to Prosecute Human Rights Crimes*, 59 LAW & CONTEMP. PROB. 41 (1996).

<sup>229</sup> For example, the Geneva Conventions, Genocide Convention, and Torture Convention require each state party to establish jurisdiction over offenses—the state must submit the case to the competent authorities for the purposes of prosecution or extradite the suspect.

<sup>230</sup> *Bautista de Arellana v. Colombia*, Hum. Rts Comm., 55th Sess., Communication No. (563/1993), at ¶ 8.6 U.N. Doc. CCPR/C/55/D/563/1993 (1995) (emphasis added). Furthermore, “there tends to be a presumption that where a person is taken into official custody in good health, and is injured or dies while in custody, the state has a duty to account for the death or injury.... Where the death cannot be explained, or the explanations are unsubstantiated ... it is possible to argue that the state is directly responsible for the killing.” REPORTING KILLINGS AS HUMAN RIGHTS VIOLATIONS, *supra* note 218 at 26.

Some legal scholars have also argued that there is an emerging customary international (universal) law duty to prosecute the perpetrators of certain crimes, such as crimes against humanity.<sup>231</sup>

In the Kazemi case, while two special government commissions conducted inquiries into her death, their thoroughness was called into question by the fact that both came to the specific conclusion that further investigation was needed to identify those responsible for Kazemi's death. The thoroughness of efforts by the judiciary to investigate the case was similarly cast in doubt by its release of a public statement asserting that the acquittal of the one defendant put on trial, Reza Ahmadi, confirmed that Kazemi's death must have been accidental and thus resolved the case.

Moreover, the judiciary's criminal investigation was hindered by a lack of impartiality, as the judiciary had held Kazemi in custody during her detention and may have been implicated in Kazemi's death. Both the Article 90 Commission Report and the Kazemi Appeal detail extensive interference with investigatory efforts by persons and institutions potentially implicated in Kazemi's death (including coercion of witnesses and tampering with documentary evidence). The Kazemi Appeal explicitly identifies numerous steps a more objective investigation should have taken and which investigators in the Kazemi case failed to carry out (*see generally* Part One, § 4 of the Kazemi Appeal, *supra* note 3, "Defects in the Investigation by the Public Prosecutor's Office").

These problems indicate that Iran as well failed to respect relevant sections of the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, which include:

- protection from violence or intimidation for complainants, witnesses, families and investigators
- removal from power or control over complainants, witnesses, families, or investigators of anyone potentially implicated in "extra-legal, arbitrary or summary executions"
- right of families to present other evidence
- government action to bring to justice persons identified by the investigation as having taken part
- detailed written report on the methods and findings of the investigation to be made public within a reasonable time<sup>232</sup>

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See also the Inter-American Court of Human Rights' interpretation of the American Convention on Human Rights. In *Velasquez-Rodriguez*, *supra* note 228 at ¶ 166, the Court, writing of the duty under Article 1(1) of the American Convention to "ensure" rights set forth in the Convention, stated:

This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of judicially ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

<sup>231</sup> For example, Naomi Roht-Arriaza argues that treaty provisions and judicial decisions (such as the ones discussed above), state practice (including adherence to U.N. resolutions and state representations before international bodies), and the law of state responsibility suggest an emerging obligation under customary international law to investigate grave human rights violations and take action against those responsible. Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CALIF. L. REV. 451 (1990).

<sup>232</sup> *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*; E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52 (Principles 15-18), U.N. Doc. E/1989/89 (1989). In resolution 1989/65, paragraph 1, the Economic and Social Council recommended that these principles should be taken into account and respected by governments within the framework of their national legislation and practices.

## 2. State and individual responsibility under international law

### i. State responsibility for violations of international human rights law

Under the doctrine of “state responsibility”, states may be held liable for discrete violations of human rights treaties. In other words, the actions of government officials, where they violate international law, may be attributed to the state under whose authority they are acting. This principle is reflected in the International Law Commission’s Articles on the Responsibility of States for Internationally Wrongful Acts, Article 7 of which notes that the conduct of a state organ or a person or entity empowered to exercise governmental authority shall be considered an act of the State if the organ, person, or entity acts in that capacity, “even if it exceeds its authority or contravenes instructions.”<sup>233</sup> Under these guidelines, the Islamic Republic would be liable for the torture and fatal injuries inflicted on Kazemi while she was exclusively in the custody of state officials.

### ii. Individual responsibility for violations of international criminal law

International law imposes duties and liabilities upon individuals as well as upon states. Thus, individuals may be charged for criminal acts they perform, such as torture, war crimes, or crimes against humanity, even if they were acting in an official capacity or under orders. This form of direct responsibility is affirmed under customary international law, and in a number of treaties, including the Convention Against Torture, the Nuremberg Charter, International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) statutes, and the Rome Statute of the International Criminal Court (ICC). They may also be charged with criminal offences under domestic statutes, such as murder, torture or rape, where offenders do not enjoy immunity under domestic law. Under international law, however, even the most senior officials and Heads of State cannot claim immunity for serious crimes, irrespective of whether such an official enjoys immunity under domestic law.

#### I. Modes of Responsibility

There are several ways in which individuals’ actions may lead to their being held liable for crimes under international law; the most straightforward is if a person directly commits the offense, for example, when a person commits the physical act of murder alone and unaided. However, criminal responsibility may attach to several other categories of actors: those who order, plan or instigate, participate in a common criminal purpose, or aid or abet serious violations of international human rights law.<sup>234</sup> In addition, through the doctrine of superior responsibility (discussed below) commanders and superiors who were not directly involved in the criminal act but failed to properly supervise and prevent or punish violations by their subordinates may also be held liable.

#### **Modes of criminal responsibility**

- *Commission* refers to direct personal participation, or alternately, a culpable omission (which is a failure to perform a legal duty).

<sup>233</sup> In 2001, the International Law Commission published the *Articles on the Responsibility of States for Internationally Wrongful Acts*, which codifies the principles of state responsibility. U.N. GAOR, 56<sup>th</sup> Sess., Supp. No. 10, U.N. Doc. A/56/10 (2001). Article 4 provides that “[t]he conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.” An “organ” is defined as including “any person or entity which has that status in accordance with the internal law of the State.”

<sup>234</sup> See, e.g., Article 25 of the Rome Statute of the International Criminal Court.

- *Orders, solicits or induces* means using a position of authority to convince another to commit a violation. Orders can be explicit or implicit, and need not be given directly to the person who commits the violation.
- *Aids or abets* refers to encouraging, assisting or advising the commission of a crime. Aiding or abetting means practical assistance, encouragement or moral support which has a substantial effect on the perpetration of the crime.<sup>235</sup>
- *Conspiracy or contribution to crime by group of persons acting with common purpose* refers to situations where several people together commit a crime, but where participants may commit different acts. For example, when committing the crime of torture, one person may be administering the physical acts of torture, while another may be questioning the victim and writing down any responses.<sup>236</sup> Under the category of participating in a common purpose or design, all perpetrators who are aware of the criminal purpose and share the requisite intent, are held equally criminally liable, irrespective of the contribution that is made to the commission of the crime.<sup>237</sup>

## II. Superior Responsibility

As explained above, individuals who did not order or assist with the crime may be charged with a criminal offence under the doctrine of superior responsibility if they fail to effectively supervise and prevent or punish violations by persons under their authority (i.e., subordinates). For example, the ICTY found a prison camp commander guilty under the doctrine of command responsibility for acts committed by his subordinates of murder, torture, causing great suffering or serious injury, and inhumane acts. He was commander of the prison camp for approximately six months, yet he failed to prevent the abuses, even though he “was fully aware of the fact that the guards at the Celebici prison-camp were engaged in violations of international humanitarian law.”<sup>238</sup>

For a person to be charged for a criminal offence under the doctrine of superior responsibility, the following requirements must be met:

- 1) there must be a superior-subordinate relationship,
- 2) the superior must exercise effective command, control, or authority over the perpetrators,
- 3) the superior must know, or have information which would allow him to conclude at the time, that the crimes were being or had been committed, and
- 4) the superior must fail to take the action necessary to prevent or repress the crimes.<sup>239</sup>

<sup>235</sup> The ICTY in *Prosecutor v. Furundzija*, *supra* note 179, at ¶ 235, held that “direct individual criminal responsibility and personal culpability for aiding and abetting ... has a basis in customary international law” and “requires practical assistance, encouragement or moral support which has a substantial effect on the perpetration of the crime”, which may occur through an omission as well as an act. The ICTR in many cases, including the Bagosora case, noted that: “assistance and encouragement may consist of physical acts, verbal statements, or even failure to act where the presence of a person in a position of authority at a place where a crime is being committed may convey approval for those crimes.” *Prosecutor v. Theoneste Bagosora, Gratién Kabiligi, Aloys Ntabakuze, Anatole Nsengiyumva*, Case No. ICTR-98-41-T, Decision on Motion for Judgment of Acquittal, ¶ 17 (Feb. 2, 2005).

<sup>236</sup> ANTONIO CASSESE, *INTERNATIONAL CRIMINAL LAW* 180 (2003).

<sup>237</sup> For further discussion of these modes of participation see, e.g. CASSESE, *supra*, Chapter 9; E. VAN SLIEDREGT, *THE CRIMINAL RESPONSIBILITY OF INDIVIDUALS FOR VIOLATIONS OF INTERNATIONAL LAW*, Chapter 2 (2003).

<sup>238</sup> *Prosecutor v. Delalic, et. al.*, “Celebici,” Case No. ICTY-96-21-T, Judgment, ¶ 770 (Nov. 16, 1998).

<sup>239</sup> See CASSESE, *supra* note 236, at 207-09.

These requirements are discussed in a little more detail below.

Military and civilian superiors. A person can be charged under the doctrine of command responsibility irrespective of whether he is a military commander or a civilian superior with authority over the person committing the crime.<sup>240</sup> According to the Rome Statute of the International Criminal Court, a civilian superior must have actual knowledge of the crime or consciously disregard evidence of the crimes in order to be criminally responsible.<sup>241</sup>

Effective control of the superior over the subordinate. Judgments of the international tribunals have held that a formal hierarchical relationship is not required for a court to find that the superior exercised control over the subordinate. Formal legal authority to control the actions of subordinates is not required, but rather, actual direct power of superiors to issue orders and apply punitive measures is sufficient to prove a superior-subordinate relationship.<sup>242</sup>

The superior's knowledge of the crimes. As enumerated above, in order to be criminally liable, the superior must have direct knowledge or have information which would allow him to conclude at the time that crimes were being committed or had been committed by his subordinates. Courts have found it difficult to be certain of what a superior actually knew at a given time, and therefore a body of law has emerged which permits judges to infer that the superior possessed actual knowledge of the crimes under certain circumstances. Thus, a sufficient accumulation of evidence may demonstrate that the superior could not have remained unaware of the allegations of criminal conduct, and may consequently be held to have "constructive" knowledge. For example, a judgment of the ICTY concluded that "the crimes committed in the Celebici prison-camp were so frequent and notorious that there is no way that [the defendant] could not have known or heard about them," and further noted that "despite this, he did not institute any monitoring and reporting system whereby violations committed in the prison camp would be reported to him".<sup>243</sup> Alternately, the knowledge requirement is met when a superior is made sufficiently aware of allegations which should prompt or require further inquiry into whether such offences are in fact being committed by subordinates.<sup>244</sup>

Duty to prevent and punish. Courts have interpreted the duty to prevent or punish broadly, and have found breaches of this duty when a superior allows a climate of impunity to prevail, in which the commission of international crimes is tolerated or encouraged. For example, a commander may be held to have failed to punish crimes, due to his failure to create an environment of discipline and respect for the law, which in effect encourages the commission of atrocities.<sup>245</sup> A judgment of the ICTY interpreted the superior's duty to punish to include an obligation to investigate the crimes and report them to competent authorities, if the superior does not have the power to punish them himself.<sup>246</sup> In the United States, a jury held the former Salvadoran Minister of Defense and Public Security and the former Director-General of the National Guard liable for torture committed by subordinates under the doctrine of superior responsibility even though the

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<sup>240</sup> See, e.g., *Prosecutor v. Delalic, et. al, "Celebici,"* Case No. ICTY-96-21-A, Appeal Judgment, ¶ 196 (Feb. 20, 2001); see also Rome Statute, Article 28 (b).

<sup>241</sup> Article 28(b), Rome Statute of the International Criminal Court.

<sup>242</sup> The ICTY Appeals Chamber held in *Celebici* that "[a]s long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control." *Celebici*, *supra* note 241, at ¶ 198. See also *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Appeal Judgment, ¶ 76 (March 24, 2000) and *Prosecutor v. Blaskic*, Case No. ICTY-95-14-T, Judgment, ¶ 302 (March 3, 2000).

<sup>243</sup> *Celebici*, *supra* note 239 at ¶ 770.

<sup>244</sup> *Id.* at ¶ 383.

<sup>245</sup> *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgment, ¶ 50 (June 7, 2001).

<sup>246</sup> *Prosecutor v. Kordic & Cerkez*, Case No. IT-95-14/2-T, Judgment, ¶ 446 (Feb. 26, 2001).

The court noted that "[c]ivilian superiors would be under similar obligations, depending upon the effective powers exercised and whether they include an ability to require the competent authorities to take action." *Id.*

senior officers were not present and did not commit the acts.<sup>247</sup> Plaintiffs provided examples of concrete steps superiors could have taken to fulfill their duty to prevent and punish criminal acts:

- issuing repeated and public denunciations of abuses,
- demanding immediate reports of all civilian deaths and detentions,
- punishing officers for failing to make such reports or to follow up on abuses,
- issuing clear instructions about the treatment of civilians and how to handle allegations of abuses,
- personally inspecting sites where human rights abuses were alleged to have occurred,
- cooperating with juridical and non-governmental investigations,
- protecting witnesses to human rights abuses, and
- removing rather than promoting individuals accused of rights violations.<sup>248</sup>

### III. Superior Responsibility in the Kazemi case

When Zahra Kazemi was in state custody, numerous indicators should have alerted superiors and those responsible at Evin that international human rights law and criminal law violations were taking place, or could be taking place, and which indicated a clear need for further inquiry by superiors. They include the following:

- Widespread use of torture in Evin prison has been well-documented, and should have led to the institution of a system by which superiors were informed of any reported violations of human rights law which should be investigated. Moreover, officials suspected to have been engaged in torture previously should have been carefully supervised.
- Zahra Kazemi was tortured and severely beaten. Her physical condition over the course of her stay in Evin prison should have triggered an investigation by superiors. Kazemi wrote a statement regarding mistreatment she had experienced and a report of assault and battery was prepared about her.<sup>249</sup>
- Several witnesses noted that Kazemi could not walk during one prison transfer—her limp body was dragging on the ground.<sup>250</sup>
- During a prison transfer, one official reportedly told the official receiving Kazemi that he had beaten her “as much as he could” and suggested that the receiving officer do the same.<sup>251</sup>

It can be concluded from this evidence that superiors who possessed effective command and control over those officials under whom Kazemi was held failed to take the action necessary to prevent or punish the crimes, as required under international law. Moreover, there is significant evidence of interference with investigations into Kazemi’s death, including by Prosecutor Mortazavi, who himself possessed a duty to punish human rights violations by virtue of his official position as Prosecutor-General of Tehran.

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<sup>247</sup> See Beth Van Schaack, *Command Responsibility: The Anatomy of Proof in Romagoza v. Garcia*, 36 U.C. DAVIS L. REV. 1213 (2003).

<sup>248</sup> *Id.* at 1255.

<sup>249</sup> See *Article 90 Report*, *supra* note 2, at 5; *Kazemi Appeal*, *supra* note 3, at Part Two, § 11-5.

<sup>250</sup> *Kazemi Appeal*, *supra* note 3 at Part One, § 4.6(2)(B) and (D).

<sup>251</sup> See *supra* note 195 (citing *Kazemi Appeal* at Part One, § 4.6(2)(E)).

## VI. CONCLUSION

As this report has shown, numerous human rights violations occurred in the Kazemi case. Kazemi's initial arrest and continued detention appear to have taken place in violation of the law, and her time in custody consisted of a succession of abuses and breaches of proper law enforcement and judicial practices, as the protections accorded to detainees and accused persons under both Iranian and international law were flagrantly violated. Moreover, the severe nature and extent of Kazemi's injuries—broken nose; crushed fingers, toes, and nails; extensive bruising over many parts of her body; lacerations; and evidently rape— indicate that the prohibition on torture and cruel, inhuman or degrading treatment was violated. Finally, the fatal nature of the injuries sustained while Kazemi was in detention indicates that Iranian authorities failed in their duty to protect the right to life. Despite the fact that those actors who are directly responsible for these violations, as well those implicated through the doctrine of superior responsibility, should have been held liable as prescribed by criminal law, as yet, no one has been held accountable for these violations. The ultimate failure of the judicial system to hold anyone accountable for Kazemi's death is striking. As counsel for the Kazemi family have noted:

*if the judicial system is unable to find out the truth of an incident which has happened in a restricted place and under strict security, how will this system be able to function in finding out the truth in other cases?!*<sup>252</sup>

Unfortunately, the systemic institutional problems highlighted in this report, relating in particular to the functioning of the judiciary, suggest that there is little reason to expect accountability in the future.

In addition to holding violators accountable in the Kazemi case, serious structural and institutional reforms are urgently needed to ensure that such violations are not repeated in the future. Law enforcement operations create particular risks of arbitrary killings at the hands of state officials. Thus, as suggested earlier, the state's duty to guarantee the right to life should inform state actions both *before* and *after* alleged violations take place: while the duty to protect life is relevant in the context of actions to prevent a killing (such as in the establishment of proper rules, training and oversight for law enforcement personnel), actions which take place after a death (such as thorough and independent investigations and impartial prosecution of alleged violators) also contribute to effective protection, as they operate as deterrent measures which contribute to the prevention of impunity.

This report has highlighted two key areas in which reform is needed to facilitate Iran's ability to satisfy these requirements:

### A. Strengthening mechanisms of accountability

A recurrent theme in this report is the necessity of strengthening mechanisms of accountability-- both in the positive sense (for protective oversight) and the negative sense (to investigate and assign blame for wrongdoing so that impunity does not continue).

A key component of the duty to guarantee the right to life is the need for effective monitoring, which in turn requires a clear chain of command over all officials responsible for arrest, detention and imprisonment. All deaths and injuries caused by the use of force must be reported immediately to superior officers and investigated. Iran's domestic law already recognizes the principle of criminal liability for superiors who issue illegal orders,

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<sup>252</sup> *Kazemi Appeal*, *supra* note 3, at Part Three, § 1.

but superiors in the law enforcement forces and judiciary should be mindful of the additional potential for liability under superior responsibility principles of international law, and structure methods of supervision and internal accountability accordingly. Furthermore, clear lines of accountability are crucial if citizens are to be able to hold elected officials accountable, and truly independent and public oversight processes must be made available to address claims of official misconduct.

The Kazemi case similarly highlights the importance of creating clearer divisions of official authority or jurisdiction over intelligence and security affairs. However, this task will not be simple; as noted above, overlapping duties may be the result of strategic considerations, and restraining the various security organs that have proliferated over recent years may be far more difficult than it was to create them.

## **B. Strengthening the rule of law**

IRI authorities cannot claim moral authority simply because legal rules are used to justify detention and ill-treatment while simultaneously ignoring procedural protections contained in Iran's domestic law. Genuine respect for the rule of law requires adherence to limitations on government power as well as the exercise of government authority. As the Kazemi case reveals, the rule of law cannot rest solely on the executive but requires the development of a culture within the judiciary and civil society. While multiple obstacles exist to the creation of such a culture of rule of law, one in particular highlighted by the Kazemi case is the tendency to manipulate fears of "foreign involvement" in order to justify violations—a framework that vilifies human rights advocacy and places many Iranian human rights advocates at risk. Parliament member Mohsen Armin has criticized this mindset, frequently reflected by the actions of judicial officials:

*Seeing each movement as a plot against the regime, searching for spy and regime overthrow plots in every event, considering the press and political activists and people with opposing viewpoints to be agents of foreign powers and dependent on them, considering oneself the ultimate power and completely disregarding all the legal procedures and laws, thinking that the strength of the regime is in getting confessions from detainees ... [t]he accusation of espionage against Mrs. Kazemi ... is a result of this mindset.*<sup>253</sup>

Indeed, the Article 90 Commission pointed out the failure of Mortazavi to pay the "attention duly expected of any judicial authority to the text of legislation."<sup>254</sup>

As the Kazemi case demonstrates, the judiciary has failed to abide by not just international law but also Iranian law, which provides that the judiciary is an "independent" power responsible for protecting the rights of society and investigating crimes in accordance with the Qur'anic verse "When you judge among the people, judge with justice" (4:58).<sup>255</sup> Until systemic abuses by the judiciary—the organ ostensibly responsible for ensuring that law is properly enforced—are addressed, impunity for human rights violations will remain pervasive.

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<sup>253</sup> *Mohsen Armin Statement: Mortazavi Must Stand Trial*, *supra* note 23, at 2.

<sup>254</sup> *Article 90 Report*, *supra* note 2, at 6.

<sup>255</sup> See Chapter XI of the IRI Constitution, [The Judiciary], Article 156 [Status, Functions] and the section entitled "The Judiciary in the Constitution."



# Impunity in Iran

## The Death of Photojournalist Zahra Kazemi

### **Appendices**

## **APPENDICES TABLE OF CONTENTS**

- Appendix 1** - Translation of Special Presidential Commission Report
- Appendix 2** - Translation of Article 90 Report
- Appendix 3** - Translation of Kazemi Appeal
- Appendix 4** - Translation of Medical Report of Dr. Shahram Azam
- Appendix 5a** - Translation of Dr. Shahram Azam's Medical License
- Appendix 5b** - Translation of Employment Timesheet for Dr. Shahram Azam
- Appendix 6** - Translation of Khosvaght Letter
- Appendix 7** - Translation of Abdol Karim Lahiji's Statement on the Special Presidential Commission Report
- Appendix 8** - Translation of Mohsen Armin Statement, Mortazavi Must Stand Trial
- Appendix 9** - Translation of the Complete Text of Mohsen Armin's Speech in Parliament
- Appendix 10** - Forensic Report and Analysis Conducted by IHRDC Physician
- Appendix 11** - Translation of Abdol Karim Lahiji Statement, Torturers Continue to Face Impunity
- Appendix 12** - Translation of Mohsen Armin's Open Letter to Saeed Mortazavi

## Appendix 1

### REPORT OF THE SPECIAL PRESIDENTIAL COMMITTEE (translated into English by IHRDC)

#### Complete Report of the President's Special Committee

#### To Investigate the Death of Mrs. Zahra Kazemi

Iranian Student News Agency [ISNA], Tehran

Legal and juridical service--Political Science

The report of the President's Special Commission to investigation the death of Mrs. Zahra Kazemi is published.

ISNA reports that the complete text of this report has been submitted to the President as well as a copy being faxed to his office, and is as follows:

Following the order of the President, a follow-up committee consisting of the Ministers of Intelligence, Justice, Interior, and Culture and Islamic Guidance was assigned and immediately started their investigation. In the first phase the committee asked all the related organs to submit their full technical and expert report to the committee.

Therefore, the Ministries of Interior, Justice, and Intelligence, in collaboration with the Ministry of Health and Medical Education, the Law Enforcement Forces, and the Office of the Medical Examiner prepared the relevant information and submitted it to the committee. After seven consequent meetings, the members of the committee and their experts and consultants finalized the results of their research in a meeting that took place in the office of the Ministry of Culture and Islamic Guidance on 28/4/1382 [7/19/2003], from 6:30 am till 10:30 am, and submitted the 14-page text to President Khatami. The report is as follows:

#### **In the name of God**

After the news of the death of Mrs. Zahra Kazemi, the Iranian photographer and reporter residing in Canada, on Saturday 21/4/1382 [7/12/2003] following her arrest and hospitalization, by presidential decree on 22/4/1382 [7/13/03] a committee was created consisting of Mr. Ahmad Masjed Jame'i (Minister of Culture and Islamic Guidance), Mr. Laari (Minister of Interior), Mr. Younesi (Minister of Intelligence) and Mr. Shoostari (Minister of Justice). They were assigned to resolve the ambiguities in this incident, clarify the situation and the factors affecting it, and report to the President as well as the nation.

This report encompasses the outcomes of seven meetings of the special committee, experts committee, and the medical, intelligence, security, law enforcement and judicial teams. It will be finalized with conclusions, suggestions and remarks.

## **A) Who is Zahra Kazemi?**

Zahra (Ziba) Kazemi (Father's name: Ahmad; Birth certificate number: 2116; Iranian citizen) was born in 1327 [1948] in Shiraz. She got a degree in cinematography in Iran and 29 years ago moved to France where she got a Ph.D. in art from Sorbonne University.

While in France, she started to have a disagreement with her husband (Mohammad Ali Hashemi) and divorced him a year after she gave birth to her only son Salman (Stephan).

Mrs. Zahra Kazemi was working as an independent/freelance photojournalist and was also working with some publications in Canada such as Recto Verso, Gazette de femme, Globe and Mail and also the British Camera Press institute.

She started her career as a reporter on Iran in Aban of 1382 [November 2001]. At that time, as a representative of Gazette de Femme and while holding an Iranian passport, in order to request to travel to Afghanistan, she went to the Ministry of Islamic Guidance and Culture's Office of Foreign Press and Media (FPM).

The Office of FPM, with the help and cooperation of the related authorities, presented her to the Doogharoon border on 20/9/1380 [12/11/2001] and prepared for her return from the same border on 27/9/1380 [12/18/2001].

Then, she left Iran on 21/3/1381 [6/11/2002] and returned again on 1/2/1382 [4/21/2003]. On 3/2/1382 [4/23/2003], as introduced by the Office of Foreign Press and Media and with the cooperation and coordination of the related authorities and military checkpoints in Iran, she left the border of Parviz Khan to go to Suleymaniyah [Iraq] and on 29/2/1382 [5/19/2003], returned from the same border but without previously informing and alerting the aforementioned office.

After returning from Iraq, showing her Iranian passport and a letter from the Camera Press institute, she went to the Office of FPM and applied for a permit to take photographs of daily life of random people in Tehran, students, some universities in Tehran and also Tehran dormitories. According to the representations of the Camera Press institute, her work was declared as purely obtaining photos of ordinary residents of Tehran and their daily life.

On 31/3/1382 [6/21/2003], a letter of introduction was provided by the said administration to the Law Enforcement Forces addressing the four requested subjects listed above.

In this letter, of which a copy was sent to the office of an assistant of the Law Enforcement Forces, a request has been made of the force to show her the necessary cooperation with accordance to the "rules and regulations" from the day of 31/3/1382 [6/21/2003] till 7/4/1382 [6/28/2003]. This statement was presented to Mrs. Kazemi on 2/4/1382 [6/23/2003] by the Office of Foreign Press and Media. That same evening, in order to take pictures and prepare a report on the families of the imprisoned prisoners [accused of taking part in] the recent riots in Tehran, she appears in front of the Evin prison. At 17:40 that night, she is arrested by the office of the public prosecutor of Tehran.

In doing as mentioned, Mrs. Kazemi has violated the permission. Furthermore, she took pictures of a place where there was a sign clearly visible, stating "Photography Strictly Prohibited."

This Iranian reporter, from the time of her arrest (17:40 on 2/4/1382 [6/23/2003]) till 20 minutes past midnight on 6/4/1382 [6/27/2003] when she was transferred to Baghiatollah Al-Azam Hospital, was in the custody of the Office of the Public Prosecutor, the intelligence unit of the Law Enforcement Forces and

the Ministry of Intelligence. She fell into a coma at 10:30 am on 6/4/1382 [6/27/2003] at Baghiatollah Al-Azam Hospital and died at 16:30<sup>1</sup> on 19/4/1382 [7/10/2003].

## **B) Main Actions of the Special Committee**

A preliminary meeting of the ministers who were in the committee was held at 19:00 on 22/4/1382 [7/13/2003]. In this meeting, with the presence of the press secretary of the Ministry of Culture and Islamic Guidance the different methods of approaching the problem by the committee were considered. Then the ministers each assigned one of their deputies as a special representative to follow up the case.

Consequently, a meeting of the representatives of the IGC, Intelligence and Justice ministries was held on 23/4/1382 [7/14/2003] at 7:00 in the morning at the office of the Ministry of Islamic Guidance and Culture. In this meeting the different possible hypotheses regarding the incident of Mrs. Kazemi's death were studied and it was decided that in order to complete the Special Committee's members and begin specialized investigations, the minister of Health and Medical Education should be invited to join the committee and collaborate.

Also, it was requested that the Law Enforcement Forces present one of their deputies to the committee to aid in furthering the intelligence and police work aspects of the investigation. Furthermore, it was decided that each of the organs that had custody of Mrs. Kazemi at any time during her arrest should prepare a separate and independent report about the methods of her interrogation and detention and present it to the committee by Wednesday 25/4/1382 [7/16/2003].

At 20:30 on 23/4/1382 [7/14/2003] the Expert Committee meeting was held with the Office of the Islamic Guidance and Culture Ministry. During the meeting, Doctor Pezeshkian, the Minister of Health, presented his findings along with the result of the reports and research of the three independent expert teams of neurosurgeons, ear, nose and throat experts, and four official experts from the Office of the Medical Examiner. According to his report, the death of Mrs. Kazemi was caused by a blow to her skull and hemorrhage caused by it; and this blow had also caused a linear fracture in her skull.

In this meeting, it was decided that for completion of the expert medical investigations, the deceased's medical records at Evin Prison and Baghiatollah Al-Azam hospital – where the deceased was hospitalized and later died – should be studied by Dr. Pezeshkian. It was also decided that in order to investigate more fully, the burial of the body should be postponed and the news should be publicly announced.

At 14:00 on 24/4/82 [7/15/2003], the Expert Committee meeting was held with the presence of Dr. Pezeshkian in the Office of the Minister of Culture and Islamic Guidance. The results of the investigations of the Medical Examiner's Office were read, confirming that the skull had a linear fracture in the left side of the head, and the rest of the body was not damaged. In this report it was clearly stated that the cause of death was fracturing of the skull and internal bleeding and hemorrhage of the brain due to a hard object coming into contact with it or it coming into contact with a hard object and there are no signs of beatings or wounds visible on the body.

In this meeting, the report of the technical investigations of the related organs involved in the detention of Mrs. Kazemi, which include the Office of the Public and Revolutionary Prosecutor of Tehran, Law Enforcement Forces and the Ministry of Intelligence, was read and each of the representative of the respective organs, explained the circumstances involved in her detention, including her behavior and actions, behavior of the judge, interrogator, and the other guards, her oral and written testimonies, the manner of the guards' behavior and the conditions of the place in which she was kept.

At this meeting it was decided that: her medical file in the Baghiatollah Al-Azam Hospital and Evin Prison's clinic must be obtained by the Intelligence Ministry and made available to Dr. Pezeshkian. The

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<sup>1</sup> Translator's note: the time of death cited here appears to conflict with that given later in this report, at section D(4) below.

reports submitted by the organs, divided into four segments, i.e., the first 21 hours (in the office of the Prosecutor and prison), next 26 hours (in the office of the Law Enforcement Forces), the following 4 hours (in the office of the Prosecutor and prison), and the last 26 hours (in the Intelligence ministry), must be prepared and submitted to the Ministry of Culture and Islamic Guidance. This report must explain in exact detail the before-mentioned time periods, using the available documents and evidence and also visits and interviews with the officials, interrogators and all others who came into contact with her in any way or were monitoring her movements.

On Wednesday 25/4/1382 [7/16/2003] at 8:00 a.m., a meeting of the ministers who were members of the Special Committee was held at the government official meeting room and with the presence of Dr. Pezeshkian, and the press secretaries of the Ministries of Islamic Guidance and Culture, Interior and Intelligence. At the beginning, Dr Pezeshkian described the result of studying the medical files and the medical actions taken and explained his conclusions as follows: death was a result of hemorrhage in the brain due to a blow to the head and not a stroke (apoplexy). The report of the Evin Prison doctor was read and Mr. Pezeshkian commented that: because of nose bleeding, the occurrence of the incident [blow to the head] must be much more recent than two weeks ago; the incident must have occurred recently and it is necessary to investigate further to determine the approximate time of the occurrence of the incident. The committee decided that until the cause of death and the approximate time of the occurrence of the incident [blow to the head] were officially announced by the Medical Examiner's Office, no news will be published. Regarding the requests of the deceased's mother, the corpse must be returned to her family as soon as possible and in the case that they wish to have an autopsy done by their own trusted doctors, any possible assistance must be provided.

Also in order to further document the case, the decision was made for photographs and films to be taken of the corpse and kept in the archives of the Medical Examiner's Office.

On Wednesday 25/4/1382 [7/16/2003] at 19:00, the ministers and their experts reviewed the documents and the written reports of the Law Enforcement Forces and the Intelligence Ministry. However, the written report of the Judiciary was not ready for presentation, hence, it was asked decided that the said report must be provided and sent by the Minister of Justice immediately. In this meeting, the questions and uncertainties of the Committee members were addressed and studied. In the end, the memo of the Medical Examiners Commission that was composed in the presence of Dr. Pezeshkian (Minister of Health) and Dr. Sadr (head of the Medical Examiner's office), and was signed by 12 independent specialists, was read.

In this memo, the time of blow to the skull was determined to be, most likely, on 5<sup>th</sup> of Tir [06/26/2003] and at most 24 hours before that time.

In this meeting, the Ministers decided the outline of the final report and that this report should be ready to be presented to the president on Saturday.

### **C) Incidents During the Period of Detention**

#### **\* Phase One (21 hours in the custody of the Office of the Public Prosecutor and Prison)**

1. On 2/4/1382 [6/23/2003] at 17:40, Mrs. Zahra Kazemi, who was photographing the families of individuals detained after the riots of Khordad [22 May 2003 to 21 June 2003] in Tehran and were gathered outside the Evin prison in an area marked "Photography Strictly Prohibited," was asked to come in to the office of the prison guards and explain herself in the presence of two Judges. The above-named individuals asked her to present and leave her letter from the Ministry of Culture and Islamic Guidance and her camera and films for inspection and leave the prison and return the next day to retrieve her belongings. She refused to do so and explained that she would like to, on her own responsibility, remain with her belongings in prison. Then she took out

the film from her camera and blackened it by exposing it to light. Mrs. Kazemi blackened her other film in the same manner.

2. On 2/4/1382 (6/23/2003) at 20:30, she was transferred, by one of the personnel, to section 240 of Evin Prison under the designation "Under Supervision."
3. From 22:25 of 2/4/1382 (6/23/2003) till 2:30, 3/4/1382 (6/24/2003), she was interrogated by the Assistant Prosecutor and in parts of the interrogation, Tehran's Chief Prosecutor was also present.
4. On 3/4/1382 (6/24/2003), from 2:30 till 10:30 she was staying in section 240.
5. At 10:30, she was taken from [the custody of] section 240, the order for her arrest is issued by the interrogator of Branch 12 and so she was delivered to [the custody of] the women's wing of Evin prison.
6. On 3/4/1382 (6/24/2003) at 14:30, to continue investigation and for the purpose of collecting criminal and background information about her and her penal records, she was delivered to the custody of the intelligence unit of the Law Enforcement Forces.

**\* Phase Two (26 hours in the custody of the Law Enforcement Forces)**

1. On 3/4/1382 (6/24/2003) at 14:30 she was delivered to [the custody of] the women's wing, ward 110 (under the Intelligence unit of the Law Enforcement Forces) by court order.
2. At 18:45 the head of ward 110 entered the women's wing to speak to Mrs. Kazemi.
3. At 22:00, the interrogators entered the women's wing for the purpose of interrogating Mrs. Kazemi and then left that wing after 10 minutes.
4. On 4/4/1382 (6/25/2003) at 16:40, the accused, accompanied by her guides, in order to deliver her to [the custody of] Evin prison left the headquarters. Once in Evin, as soon as she heard the voice of the interrogator who had come to meet her, she started to yell and scream obscenities at him/her [the interrogator].

**\* Phase Three (4 hours in the custody of the Public Prosecutor's Office)**

1. On 4/4/1382 (6/25/2003) at 17:30, the accused was handed over to the Public Prosecutor's Office. The representative of the Intelligence Ministry took [custody of] her and transferred her to section 240 and she stayed there until 21:30.

(For more information, the reports for this time period need to be studied.)

**\* Phase 4 (26 hours in the custody of the Intelligence Ministry)**

1. On 4/4/1382 (6/25/2003) at 21:40, she was placed in the custody of the Intelligence agents at Evin Prison.
2. On the same day from 21:45 till 22:15, for 30 minutes, an oral interview is done and interrogation of her is postponed to the next day. The accused is then sent to her cell to rest.
3. From 22:30 of the above date till 10:00 of the next day she was in her cell (in the women's wing).
4. On 5/4/1382 (6/26/2003) from 10:00 till 14:00, the first phase of interrogation was conducted. She refused to answer the questions saying that the questions were irrelevant to her profession.
5. At 14:00, she was returned to her cell. She stayed there until 15:30.
6. At 15:30, the second phase of interrogation began. It continued till 16:30.
7. At 16:30, the Intelligence Ministry physician examined her. His report states that: the patient is generally healthy, she answered the medical questions properly and only complained of weakness and faintness. The doctor recommended her that she should break her hunger strike and also take medication.
8. From 17:00 till 19:00, she returned to the interrogation room and the interrogation continued. At this time the interrogators noticed that she did not look like she was in a normal state. And so the nurse gave her sugar water and she drank it and was then returned to the wing.

9. At 20:40, the guard reported to the supervisor of the wing that the detainee felt faint. A security nurse from the medical office [of the prison] went to the cell and Mrs. Kazemi said: "I'm feeling faint, please give me my strengthening shot." The accused fell asleep after saying this, and again, 10 minutes later, report of her extreme discomfort reached the authorities. She was complaining of faintness and nausea and headache and at the same time, while wiping her nose, noticed fresh blood coming from it. After a few minutes she vomited and light blood was visible in the vomit. At this point the decision is made to transfer her to the medical wing of Evin in a wheelchair.
10. On 5/4/1382 [6/26/2003] at 23:30, the medical wing in Evin decided to transfer the patient, who was in critical condition, to Baghiatollah Al-Azam Hospital. At this time, the patient, accompanied by 3 guards, was transferred to Baghiatollah Al-Azam Hospital with the Evin Prison ambulance.

#### D) Medical Measures

1. Mrs. Kazemi entered the Baghiatollah Al-Azam Hospital at 00:20 a.m. on 6/4/1382 [6/27/2003] accompanied by 3 other people. In her admission form, her reason for admission was indicated as "digestive discomfort".
2. The medical actions taken with respect to the patient were in response to the diagnosis of digestive problems, for which the record is available.
3. On 6/4/1382 [6/27/2003] at 13:30, the patient, with the occurrence of brain death (in a vegetative state), was transferred to the Critical Care Unit and neurological remedies are performed on her.
4. At 17:30 on 19/4/1382 [7/10/2003], the patient died.

#### E) Cause and Time of Death

1. According to her Medical Examiner report, the cause of Mrs. Kazemi's death was "fracturing of the skull, brain hemorrhage and its effects caused by a hard object hitting the head or the head hitting a hard object."
2. According to the report of 25/4/82 [06/16/03] of the Medical Examiners Office, which reflects the final conclusions of the Medical Commission composed of the Health Minister, Head of the Medical Examiner's office, and 13 other expert doctors in different medical fields, the time of the [fatal] blow was determined to be approximately 5<sup>th</sup> of Tir [06/26/2003] no earlier than 24 hours before that time.
3. In order to investigate the matter in more detail and become more certain of the conclusions, Dr. Pezeshkian, Minister of Health, invited seven of the medical specialists in the fields of Neurosurgery, Radiology and Medical Examination to, along with himself, comprise a new medical commission and investigate the matter even further. In the memo of 27/4/82 [7/18/03], the commission reported that according to what is written in the patient's medical reports from Baghiatollah Al-Azam Hospital, the blow to the head had occurred no earlier than maximum of 36 hours before her admission to the hospital and most probably was accompanied by loss of consciousness.

#### Conclusion

With regards to the medical reports about the time of the blow to the skull of Zahra Kazemi, two hypotheses can be made:

A-The time of blow to the skull was 5/4/82 [06/26/2003] and no earlier than 24 hours before that time.

B- The time of blow to the skull was 5/4/82 [06/26/2003] and no earlier than 12 hours before that time.

Hence, it is necessary that all people who, within the above window of time, came in contact with her must be identified and investigated.



**Proposals:**

The Committee, which studied the documents and evidence and received written and oral reports from the Office of the Public and Revolutionary Prosecutor of Tehran, Law Enforcement Forces and the Ministry of Intelligence, paying special attention to the status and sensitivity of the case and the points of view of people, inside and outside the country, suggests the following proposals:

- a. Referring the case to the Judiciary and designating an independent special investigator for the purpose of identifying the main person or persons responsible for this incident;
- b. Immediately informing the nation of the results;
- c. Developing and using proper methods to improve the quality of the detention of the accused, particularly reporters;

**Considerations:**

1. Mrs. Kazemi, from the beginning to the end of her detention, refused to eat food and only drank water.
2. During the different phases of her detention, she gave irrelevant answers to the questions and declined to offer any clear answers.
3. On 18/4/82 [7/09/03], she was released by the case judge, having received the 5 million Toman bail, and at the location of the hospital, she was delivered to the custody of her family.
4. All three of the related authorities have confirmed her, rude, abnormal, and bad behavior during her detention.
5. While she was in the custody of the Law Enforcement Forces, other than complaining of the punitive way she was treated by the guards on her first night of stay in the detention center, she made no other complaints.

**Finished 28/4/1382 [07/19/2003]**

Ali Younesi, Minister of Intelligence

Abdolvahed Mousavi Laari, Minister of Interior

Esmail Shooshtari, Minister of Justice

Ahmad Masjed Jame'i, Minister of Culture

Masood Pezeshkian, Minister of Health and Medical Education

## Appendix 2

### REPORT OF THE PARLIAMENTARY ARTICLE 90 COMMISSION (translated into English by IHRDC)

In the Name of God

**Report of the Constitutional Article 90 Commission of the Islamic Consultative Assembly about the Inquiry into File 4952M regarding the Causes and Perpetrators of the Killing of Iranian Photojournalist, Ms. Zahra Kazemi.** This report was read today at the public assembly of Parliament by [MP] Jamileh Kadivar.

On 18/04/82 [July 9, 2003], a complaint was received from Ms. Ezzat Ebrahimi, mother of Ms. Zahra Kazemi, pleading for help with respect to the circumstances of her daughter, who was said to have been in a state of coma at Baghiatollah Hospital with no hope of remaining alive. Immediately thereafter, the Commission sent a letter, referenced M90/15479/4952 and dated 18/04/82 [July 9, 2003], to Mr. Alizadeh, the honorable Chief of the Tehran Justice Administration, the response to which was: I have no role in this matter, this is a matter of concern to Mr. Mortazavi, Tehran's Chief Prosecutor.

On 19/04/82 [July 10, 2003], another letter, referenced M90/15504/4952 and dated 19/04/82 [July 10, 2003], was faxed to Mr. Marvi, the honorable Deputy Chief Justice, in which the Commission's reporter was named as the intended person to pay a visit to Ms. Kazemi in the hospital.

Five days later, i.e. on 24/4/82 [July 15, 2003], the Commission received a reply, referenced 20/M/31/182 and dated 19/04/82 [July 10, 2003], from Mr. Mortazavi, the honorable Chief Prosecutor of Tehran. The letter, excerpted verbatim, stated:

"... pursuant to a report by Mr. Mohammed Hossein Khoshvaght, the Director General of Foreign Press and Media at the Ministry of Culture and Islamic Guidance, the above-named (Ms. Kazemi), having had no authorization from the Ministry of Intelligence and without observance of the legal procedure, has made her presence in the country and has ventured to prepare reports and photographs for one of the foreign services. The Ministry of Culture's Director General of the Foreign Press and Media has made a written request, which is enclosed in the file, that the above-named be prohibited from carrying on her activities. This matter was further pursued by the office of the Deputy Minister of Intelligence for Counter-Espionage, and Ms. Kazemi was handed over to that office for the required investigation. Following the first stage of the investigation, the above-named complains of ill health and is transferred by the said Ministry's Office of the Deputy for Counter-Espionage to Baghiatollah Al-Azam Hospital for treatment."

At the end of the letter Mr. Mortazavi adds, "she (the Commission's reporter) herself may make independent arrangements to visit the hospital and meet Ms. Kazemi in person."

The Commission receives this letter at a time when the news of Ms. Kazemi's death had already been published in all the newspapers for several days. Subsequently, on 07/05/82 [July 29, 2003], the Commission held a meeting with Mr. Masjid-Jame'ie, the honorable Minister of Culture and Islamic Guidance, Mr. Shooshtari, the honorable Minister of Justice, Mr. Pezeshkian, the honorable Minister of Health and some of their respective deputies, as well as the honorable Vice President, Mr. Seyyed Mohammed Ali Abtahi, and a number of deputies to the Minister of Interior and the Minister of Intelligence, together with Mr. Khoshvaght, the honorable Director General of

the Foreign Press and Media, and Dr. Sadr, the honorable Chief Coroner. A 92-page transcription of the audiotaped statements made by these gentlemen was produced, and a detailed discussion regarding the Special Presidential Commission's report dated 28/04/82 [July 19, 2003] took place.

At the foregoing meeting, Mr. Khoshvaght, the Director General of the Foreign Press and Media, stated:

"... Early in the morning of Wednesday 4/4/82 [June 25, 2003], a call was received on my cellular phone from the office of Mr. Mortazavi, requesting that I make contact with Mr. Mortazavi immediately... I contacted him right away and he informed me: 'We have caught a spy reporter engaging in the act of spying, and have realized that the person's activity permit has in fact been issued by you. Why do you provide work permits to spies?' (When the subject file of the issued permit and Ms. Kazemi's photograph were viewed), Mr. Mortazavi said: 'yes, this is the same Ms. Kazemi who is a spy and has confessed to having carried out spying work, as well as her link with the service... In any event, you have assisted her in the execution of this offense. If she confesses to having had contact with you prior to her arrival in Iran from Iraq and that she has carried out the offense in collaboration with you, that you have been her associate, what will you do?' I said to Mr. Mortazavi: 'you would have to prove this...' He said: 'it would take a long time before this matter is proved... If I wanted to... if I wanted to send [you] to Evin, there you would be handled by an interrogator and the time of your release would not be certain, and I will not do this. At 4:00 o'clock it is also already too late to be setting bail, so I will not do that either. But you had better fill out this indictment form, [charging you] with being an accomplice in the spying offense....' (Eventually, when I realized that he would not abandon his persistence...). I made him aware of the family relationship that I maintained with the highest government officials. Once Mr. Mortazavi became aware of this, his attitude changed considerably. He did not apologize of course, but a situation of total trust was established and he said that the circumstances were very difficult and dangerous... that 'all of these reporters are spies; they come here and give instructions and create problems. You may help by not giving any more entry permits to reporters until the end of the month of Tir [July 22].' I was very much receptive and said to Mr. Mortazavi that we would be very sensitive and act accordingly if that was the case. Mr. Mortazavi went on to say that in addition to spying, this lady had another mission to accomplish and that was to review the distribution of some one hundred million or five hundred million (the uncertainty is on my part) in American money among various people for the purpose of bringing down the regime; she wanted to see if they had carried out their tasks or not? On Saturday Teer 21 [July 12], I received another call from his office and was told: 'Mr. Mortazavi would definitely like to see you today at 3:00...' I went to see him and he told me right away that this lady has died, and asked: 'how are you going to dispatch this news now?'

(Then Mr. Mortazavi insisted that I write down something for media reporters, saying: ... 'This lady, while in the custody of Ministry of Intelligence interrogators, complains of ill health and is sent to hospital and there she dies of a stroke.' Mr. Mortazavi insisted that I put this in writing that the Ministry of Intelligence did not approve of her either ... and said that these words should not be attributed to him, that I should put them in writing as words of my own.... In a gesture of compromise, I agreed to attribute these words to a judiciary official or a legal body rather than to the Prosecutor.... After the text had been typed, Mr. Mortazavi asked me to sign it and I did... He ordered his staff to fax the signed text of the interview to the News Agency... I was about to say goodbye when Mr. Mortazavi, with a satisfied grin, told me to stay put and not leave until the news has been dispatched by IRNA [the Islamic Republic News Agency] and a copy faxed to us ... He said: 'pray to God or may God see to it that this does not turn into a complicated matter, because you are at fault anyway, because you have provided the authorization.' Faced with this kind of attitude, I felt compelled to show an appropriate reaction and told him: 'you may take any measure against me that pleases you....' But when Mr. Mortazavi, in response to Mr. Armin, made those false statements in writing, I was really shocked. My conscience did not allow me to remain silent and I felt obligated to come up with a written response."

In another segment of his testimonial, Mr. Khoshvaght stated: "Mr. Sahafi, the honorable Deputy Minister of Culture in charge of the Press and Propagation, was kept entirely informed of what had transpired (in both of these meetings) ... In any event, the probability of my arrest existed and this would have contributed to extending the conflict... And when I realized that his [Mortazavi's] intention is to resort to threat and intimidation, I said to him to take whatever measure he deemed expedient and I would be defending myself in accordance with the law."

On 04/06/82 [August 26, 2003], Ms. Ezzat Kazemi called on the Commission and reiterated her complaint regarding the investigation of the death of her daughter, and explicitly stated that "at the hospital I saw signs of beating and wounds on her body... and after the occurrence of death, they summoned me by telephone to the Evin prison, and because I was not in a good condition at the time, my landlord went instead of me. They told him: 'it would be advisable both for you and her to arrange the burial of the body as soon as possible.' The next day they came over and obtained my consent ... and I was forced to consent..."

On that same day (04/06/82) [August 26, 2003], the Commission held a meeting comprised of the honorable Deputies Minister of Intelligence for legal affairs, Intelligence Protection and Counter Espionage, and several honorable members of the Parliament assigned to other specialized commissions. As in the case of the previous meeting, Mr. Mortazavi, the Tehran prosecutor, who had been invited to attend, did not show up.

At this meeting, the deputies of the Minister of Intelligence gave important testimonies regarding the causes and perpetrators of Ms. Zahra Kazemi's murder, which were taped and transcribed verbatim, and are attached to the file.

Some of the notable remarks made by the Deputies to the Minister of Intelligence are as follows:

"From the very early days all aspects of the problem were evident to the ministry... During the past fifty days, the Ministry has endured hardships and pressures and has executed all its efforts... it has had a number of correspondences with the Supreme Leader, the Head of the Judiciary, the president, and the [court] branch reviewing the file. Repeated discussions and sessions have been held with everyone who, in some capacity, was involved with this matter. All this was done in order to channel the inquiry into the right path and prevent harm to the regime. Unfortunately, however, the same unequivocal assertions made by the (Judiciary) officials prior to the inquiry, were now presented as final conclusions. When the security establishment of the regime becomes the subject of such unjust and inequitable treatment, one must surely be concerned with the fate of the entire citizenry..."

Elsewhere in their testimonies, the deputies of the Minister state:

"...The Ministry's Counter-espionage legal counsel objects to the Prosecutor, saying: why do you hand over a person accused of spying to some quarter which lacks the specialty in the matter? This lady should be in the custody of the Ministry of Intelligence. Our view has been that you ought to free her, but at the time of the arrest the normal procedure would have called for handing her over to the Ministry so that we could examine her and advise you of the results ..."

With respect to the blows received by Ms. Kazemi, one of the Intelligence Ministry Deputies states the following:

"...The inquiry reveals that Ms. Kazemi has received blows on two instances, once when they wanted to take her backpack from her and she refused to give it up. At this point a powerful blow lands on the left side of her face and from the side she falls down [sic]. The injuries are confirmed in the hospital's medical records and at this stage she was in the custody of some of the judges among the Evin prison personnel [sic]... This scene is witnessed by the tower sentry, the prison personnel and a number of soldiers present, in all approximately 20 people who have provided initial testimonies... Subsequently, these witnesses are all gathered and taken away for

debriefing... so that they would all deny their testimonies. This is done by the Intelligence Protection staff of Evin prison... The prison's record book and the wards' log are tampered with and show signs of alteration. We are of the opinion that the Judiciary (Tehran Prosecutor's Office) had already resolved to look for leads on this matter inside the Ministry of Intelligence. The police report to the Special Presidential Commission states that Ms. Kazemi has written down (by her own hand) that "they have broken my nose, thumb and my toe..." How could it be that the Ministry of Intelligence which had suggested that the individual should be freed, would later go to the prison and kill her?

In a letter to the President, Mr. Younesi, the honorable Minister of Intelligence, writes: "The personnel of the Ministry of Intelligence are being penalized for belonging to your government and for steering clear of acts of oppression and injustice."

Elsewhere in the testimonies of the Ministry of Intelligence it is noted "...Regarding this matter, the Supreme Leader emphasizes two points. One is that Mr. Shahroudi's concern should be fact-finding, not expediency, and secondly, for the process to be a speedy one and a judgment proclaimed. The designated arbitrator at the office of the Supreme Leader, having studied the documents of the Ministry of Intelligence and those of the Tehran Prosecutor's Office, sides with the Ministry....but that does not lead to any action..."

The friends in the Judiciary maintain that, based on medical opinion, one should not at all be concerned with the second day and third day (of the detention); that whatever needs to be determined should have occurred on the fifth day... Mr. Shahroudi (the honorable Head of the Judiciary) whom I (one of the Deputies to the Minister of Intelligence) called upon said to me: so what that two people are detained! The regime would benefit from this. I said: the person responsible should be detained; that this has nothing to do with us. He responded: do not interfere with the work of the Judiciary...."

Considering the overall content of the file, and to ascertain the views of the Tehran Prosecutor's Office and clear existing ambiguities, on 05/06/82 [August 27, 2003], a letter, referenced M90/15742/4952, was sent to Mr. Mortazavi, the Tehran Public Prosecutor. It consisted of fifteen specific questions, answers to which were expected by 09/06/82 [August 31, 2003]. Some of the questions were as follows:

- Why is it that while Ms. Kazemi's activities had been authorized by the Ministry of Culture and Islamic Guidance, the Prosecutor has declared that she has acted without authorization?
- Why has the cause of her death been described as "stroke"?
- Why is it that while she was in a state of coma, her detention order is changed to a bond or bail order?
- What reasons and evidence were there to support the detention order, or essentially, what were the legal grounds for charging Ms. Kazemi with spying or disturbing national security?

And other questions of this nature.

Mr. Mortazavi's response to these questions was provided in a letter referenced 20/5608/82 and dated 09/06/82 [August 31, 2003], copies of which were forwarded to the honorable Minister of Intelligence and Commander of the Law Enforcement Forces so as to ascertain their comments on particular references made in the letter, thus enabling the Commission to give an opinion based on detailed study of those references. Nonetheless, despite repeated communications with the honorable Commander of the Law Enforcement Forces, to date no reply has been made [to the Commission]. In any event, based on the response of the honorable Minister of Intelligence and other requested organizations, the following should be said in regard to the reply letter provided by the honorable Prosecutor:

First:

More than two pages of the content of this letter are void of any legal substance. The reason for [the author's] non-attendance of the Commission's official sessions is alleged to be a distortion of the participants' remarks by some of the Commission members. This is an untrue allegation against the members of the Commission and is an excuse worse than committing the sin itself. Even more astonishing is [the author's] assertion that "I am not legally obliged to attend the sessions of the Article 90 Commission." Had Mr. Mortazavi conducted a brief review of the laws legislated by the Islamic Consultative Assembly concerning the scope of the Commission's authority, he would never have made such a big mistake and would not have accused the Commission of being uninformed about the laws. To make this point clear it would be advisable to take note of Article 2 of the Constitution Article 90 Execution Act, ratified by Parliament on 25/08/1365 [November 16, 1986] and endorsed by the Council of Guardians. It states:

"... For the purpose of acquiring satisfactory information from the foregoing officials (the three branches of the government of the Islamic Republic of Iran and all ministries and affiliated departments and organizations, as well as revolutionary foundations and institutions and agencies that in one way or another are associated with the foregoing branches), this Commission may extend invitations to, or engage in direct communications with, such officials who would be obliged to respond accordingly. In the case of non-compliance and the Commission's proof of the [the latter's] offense of not responding, the matter should be given priority and heard by a competent court, and if the offence is proven, the appropriate punishment as stipulated in the Note to the Single Article (ratified on 05/02/1365 [April 25, 1986]) be determined and conveyed to the Commission."

Thus, the remarks made by Mr. Mortazavi as Tehran's Public and Revolutionary Prosecutor, are cause for astonishment in every respect.

Second:

Responding to the question: why have you regarded Ms. Kazemi's activities to be without permit?, Mr. Mortazavi states that in lines 11 and 12 of page 3 of the report by the Special Presidential Commission it is noted that "Ms. Kazemi has acted in contravention of the permit issued to her and has taken photographs from a site with displayed signs prohibiting photography."

As is explicitly evident in Mr. Mortazavi's response, Ms. Kazemi had been issued a permit, but taking of photographs of the wall of Evin prison where a "No Photography" sign was on display would have been prohibited. This amounts to evading the issue and raising a less substantial matter, which is at variance with the clarity of the question asked. Furthermore, in view of the fact that criminal acts are fully codified in the Criminal Laws, it is rather peculiar to have such judicial personality as Tehran's Public Prosecutor depict photographing the Evin wall as a crime, or on which account have a person detained or make that person the subject of a different bail order.

Also, a separate correspondence on the same subject, referenced M90/15810/4952 and dated 01/07/82 [September 23, 2003], has been sent to the honorable Tehran Prosecutor, with an expected reply date of 06/07/82 [September 28, 2003]. In it, the Prosecutor is requested to make available to the Commission the evidence that would support the claim in the Prosecutor's first reply dated 19/04/82 [July 10, 2003] that his allegations had been based on a letter received from the Director General of the Foreign Press, requesting that the activities of Ms. Kazemi be stopped. As of this date, no response has been made.

Third:

Mr. Mortazavi attributes the Commission's expressed astonishment regarding Ms. Kazemi's circumstances (of being under supervision) to the Commission's lack of knowledge of pertinent laws, including Article 24 of the Criminal Procedure laws. It must be said that Mr. Mortazavi is mixing up two legal notions here, because the substance of Article 32 of the Constitution and Article 24 of the Criminal Procedure call for having the Law Enforcement Forces under supervision with regard to keeping an individual in custody not more than 24 hours on a writ of detention. The Law Enforcement Forces are required to refer the file to competent judicial authorities immediately. In the matter at hand, as stated in Mr. Mortazavi's reply, (Ms. Kazemi was directed into the Evin premises to offer an explanation), there were judges present within the prison compound, who, upon conduct of an initial examination, could have facilitated Ms. Kazemi's release or issued other appropriate bail orders. Accordingly, keeping Ms. Kazemi (under supervision), despite the presence of honorable judges in Evin prison, can in no way be ascribed to Article 24, [as Mr. Mortazavi has done]. Had he paid sufficient judicial attention duly expected of any judicial authority to the text of legislation, he would not have responded in the manner he has, unfairly accusing the Commission of ignorance of current laws.

In Mr. Mortazavi's reply letter of 09/06/82 [August 31, 2003], the source of the information regarding Ms. Kazemi's "stroke" is said to have been a letter from the chief of Evin's prison security detention center, dated 19/04/82 [July 10, 2003]. The reply letter from the Ministry of Intelligence dated 29.06.82 [September 20, 2003] states that initially the chief of the Evin prison's security detention ward writes a letter dated 06/04/82 [June 27, 2003] to Tehran's magistrate branch 12, district 7, saying that: "...from the moment of arrival, (Ms. Kazemi) has refused to put on a blindfold and wear the prison outfit, and has conducted a hunger strike. Because of the effects of the hunger strike, at 23:25 hours on 05/04/82 [June 26, 2003] she was transferred to Baghiatollah Hospital where she is now hospitalized. Currently, due to the tearing of a brain blood vessel, she is in a state of coma, and the occurrence of anything at any moment is deemed possible. The matter is reported for your information and appropriate action." In its above-mentioned letter of reply, the Ministry of Intelligence further states that Mr. Mortazavi objects to this letter and once present at the Evin security detention ward asks why has the subject of hunger strike been mentioned? Then he asks that the letter be altered and as a result another letter, dated 07/04/82 [28 June 2003], is drafted and sent out instead. In this letter, the chief of the Evin security detention ward, addressing the branch 12 magistrate, writes: "Pursuant to the order of the physician at the Evin infirmary, the accused, Zahra Kazemi, due to suffering from a brain ailment, was transferred to Baghiatollah Hospital for treatment and according to her attending doctor, she has suffered a stroke and is currently in a state of coma."

Hence, according to the Ministry of Intelligence's letter of reply, the second letter is drafted by the order and direction of Mr. Mortazavi, and that very same letter (prepared under the order of Mr. Mortazavi himself) is subsequently made use of as evidence in Mr. Mortazavi's letter of reply! It may be argued that the opinion suggested by Mr. Mortazavi to the chief of the Evin detention ward has been something beyond the scope of authority and responsibility of a Judiciary official, and, as well, the compliance of the detention ward chief in this regard is indefensible. In another segment of Ministry of Intelligence's letter of reply dated 29.06.82 [September 20, 2003], in relation to the same subject matter, it is stated that "the issue of the tearing of a brain vessel and subsequent announcement of a stroke is one of those instances where the guards who were present in the hospital have heard it from the attending doctors and nurses and has nothing to do with the expression of specialized opinion. Certainly, to expect being informed of a specialized opinion through the detention ward officials and guards, and the acceptance and reliance upon [such opinion] does not seem to be a rational act on the part of any experienced judge... Now, considering the Tehran Prosecutor's response to the Article 90 Commission and his insistence regarding the manner of drafting correspondences or conveyance of them, the subject could have various meanings and aspects..."

To complete its documentation and information concerning the subject matter of the file, the Commission has also engaged in correspondence with the honorable Minister of Culture and Islamic Guidance, the honorable Minister of Intelligence, the honorable Minister of Health and Medical Education, the honorable Commander of the Law Enforcement Forces, the honorable Director of Baghiatollah al-Azam Hospital and the honorable President of the Islamic Republic, such correspondence having been transmitted by fax so that pertinent replies would be obtained no later than 10/06/82 [September 1, 2003]. However, as of this date, satisfactory responses have neither been received from the said hospital, nor from the Law Enforcement Forces. Nevertheless, due to the domestic as well as international significance of the foregoing incident, and in the framework of the express responsibilities of the Constitution Article 90 Commission and legislation approved by parliament pertaining to the scope of the Commission's duties and authorities, and in view of all aspects and forthcoming responses, the following legal considerations regarding the present file should be noted.

1) For the purpose of engaging in her professional activities, Ms. Kazemi had undoubtedly obtained a legal permit from the Ministry of Culture and Islamic Guidance, and, therefore, Mr. Mortazavi's quoting [a third party] in his letter of reply referenced 20/M/31/82 and dated 19/04/82 [July 10, 2003], as to non-obtainment of such activity permit, cannot be supported by facts.

2) Certainly the initial arrest of the above-named, which has been construed as "Ms. Kazemi being directed into Evin Prison", occurred without sufficient evidence on the charge of spying. The suggestion by the Ministry of Intelligence- which, (as per paragraph B of Article 10 of the Ministry of Intelligence Establishment Act, ratified on 27/05/62 [August 18, 2003]), is the legal entity responsible for detection of crimes such as spying- that Ms. Kazemi should be freed is a plain indication of the fact that basically no satisfactory document and evidence for the laying of such charge existed. In addition, in the wake of the arrest, the principles of Article 39 of the Constitution have not been observed with regard to the accused.

3) Articles 32, 35 and 134 of the Public and Revolutionary Courts Procedures ratified on 28/05/78 [August 19, 1999], set out certain conditions that govern the permissibility or necessity of issuing an arrest warrant. The existence of apparent circumstances, clues and legal evidence that would support arraignment constitute basic requirements for issuing such a warrant. Now, with the objection of the Ministry of Intelligence to the arrest and continued detention of Ms. Kazemi, the only conceivable evidence would have been the roll of film in her camera. And as all pertinent authorities have confirmed, Ms. Kazemi, in the presence of prison staff, had caused the film in question to be exposed to light, rendering it unprintable. It might therefore be concluded that the issuance of the arrest warrant by the honorable Evin prison judge had not been permissible. Moreover, the changing of the arrest warrant to a bond or a five-million-toman bail on 15/04/82 [July 6, 2003], while Ms. Kazemi was brain dead, clearly proves the point that the initial arrest warrant had not been issued on legal grounds, and ultimately, such arrest could be regarded as an illegal arrest which, pursuant to Article 575 of the Islamic Penal Code ratified in 1375 [1996], is an offence. Accordingly, even without the complainant's pursuit of the matter and solely on grounds of public interest the nature of the offence, the authority issuing the warrant could become subject to prosecution in the Judges' Disciplinary Court and subsequently referred to the Tehran Prosecutor's Office.

4) According to the report issued by the Special Presidential Commission, which was composed of five honorable members of the cabinet, following Ms. Kazemi's initial interrogation on 02/04/82 [June 23, 2003] she was put "under supervision." Because of the objection raised by the counter-espionage experts of the Ministry of Intelligence to the arrest and continued detention of Ms. Kazemi, a certain kind of confusion and disorder in the disciplinary and judicial handling of Ms. Kazemi, both prior to and after her death, is evident. On account of the Ministry of Intelligence's letter of reply, Mr. Khoshvaght's testimony, the conscious efforts of the Tehran Prosecutor's Office to wrongly justify Ms. Kazemi's death and Mr. Mortazavi's endeavor to draft the initial correspondence in a certain way, as well as his untrue and contradictory statements, the two-day detention of the Evin prison intelligence protection officer and his/her subsequent release, and the



totality of the testimony of the deputies to the Minister of Intelligence at the Commission's session held on 04.06.82 [August 26, 2003] and their confirmation of the fact that the attending judicial branch has been substantially focusing its work on two of the Ministry of Intelligence personnel, and above all, based on the alteration done to the Evin prison record book and the changes of the initial testimonies of the eyewitnesses in the prison regarding Ms. Kazemi's assailant, all of these are indicative of a certain disorder and confusion in the behavior of the Tehran Prosecutor and the ultimate aim of diverting the investigation into the death of Ms. Kazemi from its real course. It would be necessary to conduct a careful inquiry into the circumstances surrounding the two judges referred to in the Special Commission's report, the reasons for their presence in Evin prison at certain hours and the manner of their decision-making.

5) According to the remarks made by Mr. Masjid-Jame'ie, the honorable Minister of Culture and Islamic Guidance at the session of the Commission held on 07/05/82 [July 29, 2003] and the attached copy of the honorable Minister's letter of reply dated 15/06/82 [September 6, 2003], the incident of Mr. Khoshvaght's summons to the Tehran Prosecutor's Office and what transpired between Mr. Khoshvaght, the Ministry's Director General of the Foreign Press and Media, and Mr. Mortazavi, the honorable Prosecutor, was mentioned at the end of the initial report provided by the Special Presidential Commission, bearing the signatures of five Commission members. However, these remarks were later omitted. Discovering the reason for the omission, and identifying those responsible for the non-inclusion of this important subject, could uncover further facts that would be helpful in the discovery of the truth.

6) The remarks made by Dr. Pezeshkian, the honorable Minister of Health and Medical Training, at the session of the Commission held on 07/05/82 [July 29, 2003], to the effect that Ms. Kazemi's timely transference to a public medical facility staffed with brain surgeon residents would have "certainly saved her", prompts one to raise the question as to who bears the direct or indirect responsibility for such fatal holdup, bearing in mind the existence of a clinic and presence of physicians inside Evin prison.

7) Pursuant to Article 2 of the Implementation of the Article 90 of the Islamic Republic of Iran's Constitution Act, ratified by the Islamic Consultative Assembly on 25/08/65 [November 16, 1986], the non-attendance of Mr. Mortazavi, the Public Prosecutor of Tehran, in the meetings of the commission in spite of official invitations extended to him, which could otherwise have had a definite bearing on the discovery of truth, is considered a violation.

8) By virtue of Article 5 of the Implementation of the Article 90 of Iran's Constitution Act, ratified by Parliament on 25/08/65 [November 16, 1986] and endorsed by the Council of Guardians on 05/09/65 [November 26, 1986], a copy of this report is forwarded to the Judiciary Branch to be referred to an appropriate court, and another copy is forwarded to the Judges' Disciplinary Court for the purpose of making an inquiry into the acts of violations by the Tehran Public Prosecutor and other judges who in the initial stage of the late Ms. Kazemi's detention had interfered and issued illegal orders. The result of the inquiry, which, pursuant to the foregoing, must be priority driven, will have to be made available to this commission.

Hossein Ansari Rad  
Chairman of the Article 90 Commission  
October 29, 2003

## Appendix 3

### APPEAL FILED BY KAZEMI FAMILY (translated into English by IHRDC)

In The Name of God

Respectful Magistrate and Advisors of Tehran Province Court of Appeal

Greetings;

Concerning the judgment no. 342, dated Jul. 21, 2004 for the case filed under class. no. 1858/82, issued by Tehran General Penal Court, I hereby appeal the judgment issued and request review thereof based on the evidence and reasons detailed below:

Preamble:

Dear Gentlemen,

Undoubtedly, man has recognized justice as one of the highest values since he first recognized himself and reflected on things beyond his mundane needs: eating, sleeping, anger and lust. It is for the same reason that in our civilization's method of evaluating wisdom, "one hour of justice is superior to seventy years' worship." If we praise Kaveh<sup>1</sup> and hate Zahhak<sup>2</sup>, that is solely for their deeds. We are tempted to claim that our time is not coincident with what Nasrollah Monshi<sup>3</sup> says:

"Our time has a tendency toward moral degradation; ... saying lies is the rule, truth is a rare asset, rights are violated and injustice prevails, obeying mundane desires is common and going against one's better judgment is [allowed], legitimate ways and the rightful oppressed are restrained and the oppressors are revered, greediness is victorious and satisfaction with what man possesses is defeated and this pleases the oppressor..."

Dear Judges,

There is no doubt that a murder has occurred and the rights of a victim have been violated and by changing the name of "murder" to "death" the crime will not be forgotten-- since the lower court accepted the charge of murder and rejected its being manslaughter, you should try to find the murderer. If judicial attention was paid to a part of the case got the judicial attention it deserves, then there would no need for this appeal. Now you must take steps to resolve this apparent error that the Parliament's Article 90 Commission (to preserve its legal reputation) and the Ministry of Intelligence (because of its responsibilities) both know who the murderer is but the court of justice has failed to discover the truth. We hope that you pay attention to the apparent evidence and the witnesses presented and discover and announce the truth in a way that is closer to justice. We hope it will never occur that future generations say unanimously that in this case, everyone recognized and understood and announced the truth while the statements made by the public prosecutor served as a blindfold to cover the truth-seeking eyes of the judge. If in our time, our intellectuals respect Allende and hate Pinochet, it is because of the positions they chose to take, in choosing between justice and injustice. Therefore, if we don't tell the truth, we have taken justice to the slaughterhouse in favor of expediency. Hafez says: "In the afterworld in which the

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<sup>1</sup> Persian epic figure, a symbol of justice.

<sup>2</sup> Persian epic figure, a symbol of tyranny.

<sup>3</sup> Persian author.

criteria of justice govern, those who have committed wrongdoings will be embarrassed" and God asks us "to make justice rule and defeat injustice, though the criminals do not like it."

Before getting involved in the case, we want to draw the attention of the honorable judges to some procedural objections and defects in the investigation. Then we will proceed to the substance of the case.

## **Part One—Procedural Objections**

### **1. Intrinsic Lack of Jurisdiction**

In view of the fact that the client has requested punishment (line 4, page 8, volume 4 of the case dated December 23, 2004, reference no. Shiraz 15 s 82/21/43), and considering the fact that the charges explained to the defendants, including Ms. Maryam Asgharzadeh and Maryam Sheikholeslamzadeh, were participation in homicide and they were temporarily detained for the same reason (page 389 of the case) and Mr. Mohammed Bakhshi was charged with intentional battery (pages 519 and 520 of the case), and considering the fact that as explained by the Medical Examiner's Office on Aug. 23, 2003, the blow(s) imparted to the deceased Zahra Kazemi were of a deadly nature (the last line of page 912 of the case) and according to note 1 to Article 4 as amended on 28/7/1381 [October 20, 2002] of the Act for Establishment of General and Revolutionary Courts, essentially the processing of murder cases falls under in the jurisdiction of provincial penal courts, and the findings of the Public Prosecutor's Office regarding the type of homicide committed could not be binding on the court and the determination of the kind of offense that occurred and its comparison with legal articles ultimately rests with the court, and what lawmakers intended to say by the phrase: " General Penal Courts .... can only investigate those crimes that are mentioned in the issued indictment" as stated in paragraph c) Article 14 of Amendment dated Oct. 20, 1995 of the Act for establishment of General and Revolutionary Courts, is that investigation must be done for those acts of wrongdoing for which the court has been asked to issue punishment for the offender(s), regardless of the way in which the Public Prosecutor's Office characterized the act. In other words, the finding of the Public Prosecutor's Office to the effect that the homicide in question was murder, manslaughter or of a negligent nature cannot undermine the competence of the provincial penal court to examine the claim brought to it by the plaintiff and request that the offender be punished and the findings of the public prosecutor's office cannot be binding on the court. This is supported by the uniform legal process decision no. 4870, dated Dec. 3, 1960 made by the General Board of the Supreme Court as well as the uniform legal process decision no. 4870, dated Sep. 26, 1995, made by the same General Board of the Supreme Court. Therefore, the General Penal Court lacks jurisdiction to investigate and the objection of intrinsic lack of jurisdiction of the court seems valid. So we ask you to examine this objection before proceeding to the substance of the case. (Copies of decisions 478-12/9/39 and 600-4/7/74 are enclosed, appendices 1 and 2.)

**2. On page 6 of the appealed judgment, line 15 onwards, we read, "...although in the court's view the Public Prosecutor's Office should have taken a proper decision (issuing a non-prosecution order) with regard to the claim of murder by the claimant, because the offense was found to be manslaughter by the court.**

**But, unfortunately, not only have neither of the prosecution orders issued by the public prosecutor's office been served yet to the plaintiff or her attorneys, but also, decisions made concerning the charge of murder (including the non-prosecution order, etc.) have not been served to the same.** Here our client's rights have been violated and defects in the investigation are apparent. Note that, if the non-prosecution orders were served to the plaintiff before issuing the indictment and thereby the plaintiff could object to them, it was most likely that the question of whether the homicide was a case of murder or "murder-like" and the orders issued for the case would be resolved at the appeal stage and the proceeding not be extended. But unfortunately the public prosecutor's office made a biased decision and has not served the non-

prosecution orders yet. In addition, it has not made any decision concerning the claim for murder--as clearly stated by the lower court-- yet.

3. [This occurred] despite the fact that the client has filed a complaint against anyone responsible for killing her daughter (in the presence of Shiraz Court of Justice's on-duty-judge) and **stated in particular that: "...I hereby file a complaint against the public prosecutor's office and according to what trusted people (whose names I cannot disclose now... and two others from other organs whose names I don't know) told me—I am sure this act occurred in the public prosecutor's office "** (page 439 of the case)

As you see, **the client has sued agents of the public prosecutor's office. For the sake of justice and considering the sensitivity of the case and its international implications, the Head of the Judiciary assigned a special investigator--not responsible to Tehran public prosecutor's office--to carry out the investigations required for such a critical case after consulting with all the intelligence experts and the culprits would have been found. It is worth noting that some agents of the public prosecutor's office have committed offenses besides the murder of Zahra Kazemi that will be discussed below.**

#### **4. Defects in the investigation by the public prosecutor's office**

If the present case is studied by any unbiased person, shocking defects in the investigation become clear. The defects are so apparent that even the defendant's attorney has referred to them clearly and in detail in his (72-page) defense and has asked that the investigations be completed. Here, I mention some of them in order to clarify the truth of the matter:

**4.1.** At first, the inspector of the first branch of the public prosecutor's office (penal section) assigned the investigation **to the Ministry of Intelligence on 12/5/82 (August 3, 2003) and has ordered that organ explicitly, in writing, to conduct a proper and sufficient investigation regarding the details of this issue and extended this order, to be in effect until otherwise stated, on 14/5/82 [August 5, 2003].** Thereafter, the Ministry of Intelligence started its investigation and obtained significant results. **Meanwhile, the Tehran Public Prosecutor's office issued an order to Mr. Mahmoudi (in charge of intelligence protection for Tehran prisons) and that same person provided a report on the same subject, the contents of which conflict with the facts found and conclusions reached by Ministry of Intelligence. Subsequently, the investigator in question ordered that the investigation be taken away from the Ministry of Intelligence. Here, the following questions are raised:**

**1)** While the inspector was investigating, why and for what reason did Mr. Mortazavi, Tehran's public prosecutor, request that a parallel investigation to be conducted by Mr. Mahmoudi, in charge of information protection of Tehran prisons? It is noteworthy that Mr. Mahmoudi, in charge of intelligence protection for Tehran prisons, addressed a report to Tehran's Public Prosecutor, including, among other points, that, "pursuant to your order issued this date Aug. 10, 2003, concerning the investigation and examination of the arrest and treatment of the deceased defendant, Ms. Zahra Kazemi, a detailed report is given below." It is not clear whether the order referred to by Mr. Mahmoudi was oral or in writing and why there is no trace of it in the case?! How has the authority in question been able to conduct and complete the investigation?!!

**2)** Considering the paragraph below, Section (f) of Article 9 of the Act for amendment of the Establishment Act for the General and Revolutionary Courts of Justice, after referring investigations to the investigator, the public prosecutor is not entitled to refer it to another authority, especially in this case in which the claim of murder was likely, and in such a case, the action of the public prosecutor violates the rules explicitly laid down in law.

**3)** Under the law, the head of intelligence protection of Tehran's prisons is not considered a judicial agent and if we assume--though this not a valid assumption—that Tehran's public

prosecutor was entitled to assign the investigation to another authority, how could that other authority be the person in question?!

4) Now assume that the head of intelligence protection of Tehran Prisons was regarded as a judiciary agent and Tehran's public prosecutor was entitled to assign a parallel investigation to him--again an invalid assumption-- then considering the fact that some employees of Evin prison have been and are suspects and, in particular, Mr. Mohammad Bakhshi (head of intelligence protection of Evin prison) is one of the main defendants in this case, why has the public prosecutor illegally assigned the investigation in an unlawful manner as explained above to Mr. Bakhshi's head and superior?!

It is noteworthy that the defendant's attorney has protested this as well, as expressly stated on pages 63 and 64 of the defense provided by him on Jul. 19, 2003.

4.2. In the letter no. 763231/m/1032310, dated Aug. 28, 2003 by the Ministry of Intelligence, addressed to the head of Penal Affairs at the Tehran Public Prosecutor's office, we read,

**"-Section 3- Pursuant to our investigations mentioned before, the intelligence experts are willing to, in the presence of specialists in the field, attempt to re-enact the crimes scenes, on the condition that their job security be guaranteed and the occurrence of a plot (against someone) be prevented"** (page 1319 of the case file). This raises the following questions:

1) In spite of the fact that reenactment of the scene of the homicide is one of the important things that investigators in any homicide case try to carry out and in spite of the explicit suggestion made by Ministry of Intelligence, why has the honorable inspector of the first branch not welcomed such a suggestion nor made any effort to recreate the scene of the homicide?! It is noteworthy that the experts from the Ministry of Intelligence, during the first few days after the case was referred to them, even prepared a sketch of the location where a blow was imparted to the head of the deceased, Zahra Kazemi, and provided it to the Public Prosecutor's office (page 835 of the case file).

2) Why has the fact that a security organization asked that the job security of the witnesses be guaranteed not raised questions in the mind of the honorable investigator?! Which other powerful institution is there that would give even the Ministry of Intelligence cause to worry that the witnesses would not be ready to give testimony for fear of losing their job as a result?!

3) Why has the honorable inspector has not asked the Ministry of Intelligence what they meant by using the phrase, "occurrence of a plot ... be prevented"?! Whose plot was the Ministry of Intelligence concerned about? The importance of the subject becomes clear when we note that the letter in question was prepared and sent by a senior authority in the Ministry of Intelligence (the General Legal Director.)

4.3. In spite of the fact that a three-member board was formed by the head of judiciary at the state general inspection organization, and apparently it developed a report after detailed investigations, we see no trace of that report in the case! Shouldn't the respectful inspector pay attention to the contents of that report?! Why has that person not requested such an important report?! It is surprising that even after the case was referred to branch 1158 of Tehran General Penal Court, the state general inspection organization has requested the case file relating to Kazemi, and it was kept by the same organization for a long time, but the lower court (branch 1158) has taken no step to become informed about the findings of the state general inspection organization!!

4.4. After the client filed a complaint with the Article 90 Commission, the committee in question prepared a detailed report and made the higher authorities and the community aware of important points relating to the misrepresentation efforts made by some elements of the public prosecutor's office. Unfortunately, the public prosecutor's office took no steps toward becoming informed about

the contents of the report and ultimately we, the attorneys of the plaintiff, in the investigation session dated Jul. 18, 2004, submitted a copy of the report to the lower court that is enclosed. Now we ask the unbiased conscience of those honorable judges for judgment and ask them whether not paying attention to the contents of the committee in question and not requesting a copy thereof is not questionable?! It is very surprising that after the announcement of the completion of the proceedings, we see that a letter from the public prosecutor's representative, containing the response of Mr. Saeed Mortazavi (Tehran's Public Prosecutor) to the same committee's report, is annexed to the case without being recorded in the indicator book, which in addition to being illegal, is very ambiguous and questionable!!

**4.5.** Mr. Salimi Namin, Chairman of the Center for Iranian Historical Studies, stated on June 15, 2004, " the case of Zahra Kazemi was an issue for which at most one wrongdoing officer ought to be charged—[the one] who skirmished with a reporter for a camera during which a blow was imparted to the reporter and she was killed by it." Here the question is raised as to why the public prosecutor and/or the lower court did not summon the person in question and did not investigate the evidence for his statement?! It is interesting that the character of the person asserting these words is known to the public and his identity is clear and known as well (page 5 of the defense statement provided by the defendant's attorney, dated 28/4/83 [July 18, 2004]).

**4.6.** We must say, with the utmost regret, that the Public Prosecutor's office has not followed the principle of remaining unbiased in conducting investigations and has taken the fact that 4-5 soldiers present at the scene recanted their testimony as evidence for their initial statements being false, and has ignored the original testimony by them and other witnesses and informed persons present at the scene (there are at least 20 of them). To make the truth clear, we refer you, respectful judges, to a part of the view expressed by the head of the Public Prosecutor's office--penal affairs--dated Aug. 31, 2003 (pages 1248 to 1257 of the case file):

"The Ministry of Intelligence and the national prisons office--each in opposition to the other--claim that soldiers who testified that the deceased was beaten by "Bakhshi" and recanted from their testimony afterwards, were threatened and given promises to do so..." (page 1249 of the case file).

Now we ask the unbiased conscience of those respectful judges for judgment and ask the following questions:

- 1)** First, why were the statements of the head of the national prisons office preferred over those made by employees and the staff of Ministry of Intelligence without any reason?!
- 2)** Second, why was attention not paid to the presence of other witnesses who did not recant their testimony and the fact that their statements all show that Ms. Zahra Kazemi was beaten by Mr. Bakhshi and Mr. Tehrani?!

To make clear the truth, we hereby draw your attention to some statements made by witnesses and informed persons who never recanted from their testimony:

**A)** Mr. Siamak Salari, the on-duty officer of the prisons organization, has testified on Aug. 5, 2003 (pages 483 to 485 of the case file) that:

"Q. Was she beaten or not?

"A. I only saw the scene in which Bakhshi and Tehrani intended to take the bag from that foreign woman by force. I saw that Mr. Bakhshi held her hand forcefully under his arm and shoulder and pulled it violently and took the bag with its strap out of her hand. I only saw that violent movement and on the same day, I heard from some soldier who witnessed the scene carefully and I cannot remember who were they since my memory does not work well, that Mr. Bakhshi beat her and grasped the bag..." (page 484 of the case file.)

Mr. Siamak Salari continues, " ...Then Mr. Bakhshi took the bag forcefully from her. While he held the bag in one hand, held the woman's hand under his arm and dragged her by force and continued until the woman released the bag. He still dragged her until Mr. Tehrani came close and I saw that the woman fell down on the left side and screamed terribly and let herself fall on the ground as if her left hand was broken. Then she sat and her general condition was not good..." (page 485 of the case file.)

Here, any unbiased mind would ask the following questions:

First, why were the soldiers present at the scene, the identity of whom is reflected in the case file, not confronted with this officer to determine which soldiers had seen Mr. Bakhshi beating the face of the deceased Zahra Kazemi with his fist?!

Second, why has attention not been paid to the statements of this unbiased witness and why has it not been compared with those made by other witnesses and informed persons?!

**B)** Mr. Moharram Rahimi, an Evin Prison service employee has testified in the presence of an inspector on Aug. 5, 2003 as follows:

"...it was about 6:00 or 7:00. I arrived with the car...Mr. Asgharzadeh, a judge, hit the car and ordered it to stop. I stopped the car out of respect for him. He said: take these three women up...They brought her by force and made her get in the car. She sat in the middle and the two women sat by her sides on the back seat. Also, a man, about 45, sat on the front seat. He told me to move. Then the judge came close and said: Don't give this woman food, water or visiting rights for one week. I started moving ...we arrived at the women's section. I stopped. First the woman sitting on the left got off and ordered the woman to get off, but saw that she couldn't. Then the woman said she had fainted. The woman on the right side got off to help. The man sitting on the front seat asked a soldier standing in front of the jail gate to come for help. The soldier came and grabbed her two legs. The two women held her on either side from under her arms and brought her up to the front of the entrance gate. She could not walk herself..." (page 486 of the case) (note that the reason for her fainting is that she was beaten when entering the prison.)

**C)** Mr. Majid Zare', assistant prison guard, has stated as follows in the presence of the inspector:

"...Then Mr. Bakhshi along with Mr. Tehrani took the bag by force. Then the woman fell down, face down. She sat on the ground for a few minutes in a shocked state..." (page 792 of the case.)

**D)** Mr. Majid Abedi Najafi, conscript, has stated as follows in the presence of the inspector:

"...They wanted to make that female defendant get out of the car. She was in a bad state and fell down when taken out of the car. Those female guardians held her from under her arms lifted her up while that soldier grasped her legs and they dragged her while her buttocks were in contact with the ground. They brought her to section 24." (pages 793 to 795 of the case file).

These assertions show that Ms. Zahra Kazemi fainted because of the blow imparted to her head.

**E)** Ms. Paridokht Sa'adat Nejad, an employee to the intelligence service of the Law Enforcement Forces, stated about the events that occurred during the delivery of Zahra Kazemi on 3/4/82 [June 24, 2003], in the presence of the inspector on Sep. 3, 2003:

"...The officer accompanying Ms. Zahra Kazemi when she was delivered, returned and said that the defendant (Zahra Kazemi) was very rude and he had beaten her as much he could since she had hit the female officers there and had not cooperated with them, and even took out the film in the camera with her and broke it. Because of the accused's lack of cooperation, she was subject to this man's beating. He advised me to beat her too. I responded: maybe you have permission to

beat, but we don't, and we never raise our hand against accused persons. After transfer to our section [of the detention area], the accused treated the female officers there well and was very calm and well-behaved. After writing the arrest report and conducting a physical examination of her, we noticed her toenail was broken... She herself reported the same in her own handwriting to the officials of the section..." (pages 1269 and 1270 of the case file).

Now the following questions are raised:

First, why was Ms. Sa'adat was not personally confronted with the relevant employees of Evin prison to determine the identity of the person who confessed that he had beaten Zahra Kazemi?!

Second, why has no adequate investigation has been carried out concerning the indications of beating and breaking of the toenail of Ms. Zahra Kazemi as evidenced by other witnesses as well and the fact that she personally reported the same when still alive?!

Third, Ms. Sa'adat has never recanted her testimony but has why the honorable inspector not paid attention to it?!

**F)** Mr. Mojtaba Faraji, son of Asghar, has stated in the presence of the inspector on Jun. 23, 2003 that:

"...When I came to the rear of the room once, I saw Ms. Zahra Kazemi who fell down the ground. Of course, I was obliged to return back to my position (page 826 of the case) (why has it not investigated why she fell down?!)

**G)** Mehdi Jabbari Nejad, son of Mohammad, has stated in the presence of the inspector on Aug. 6, 2003 that:

"...Moreover, after changing my shift, while I was going to the resting center, I saw that Mr. Tehrani was dragging Ms. Zahra Kazemi and it seemed that she was trying to stand up or something like that, I am not sure..."

As you see, the witnesses mentioned above never recanted their testimony and have stated unanimously that when Zahra Kazemi entered the jail area, Mr. Mohammad Bakhshi and Mr. Mozaffar Babai, known as Tehrani, attacked and injured her, but the public prosecutor's office has not gone into the details of their statements and has not conducted a careful investigation!!

**H)** The Ministry of Intelligence, after being assigned the investigation formally and in writing by the first branch of the public prosecutor's office (penal section), conducted investigations and prepared a detailed report on Aug. 10, 2003, in which an important part of the truth is reflected (pages 838 to 845 of the case), but unfortunately, the inspector of the same branch did not pay the least attention to what is in that report and supported by documentation!! It is noteworthy that the report in question was prepared by a senior official of the Ministry of Intelligence.

**I)** Mr. Hassan Moghaddas Ahmadi (deputy-public prosecutor), has stated as an informed person, that:

"...A person, who I found out later was named Bakhshi, took her bag by force and it seemed that while he took the bag, his arm contacted with her face naturally" (pages 1353 and 1354 of the case file.)

Dear judges, as you see, one senior judge of the public prosecutor's office testifies that Mr. Mohammad Bakhshi took Zahra Kazemi's bag by force and his arm contacted her face, which coincides with statements made by other witnesses and informed persons. Of course, he has tried to pretend that the blow was unintentional, which conflicts with the reality, especially when



we consider that the same witness (Mr. Hassan Moghaddas) had testified that Mr. Bakhshi resorted to the use of force to take the bag.

**5-** One of the soldiers who was present at the scene, named Armin Omar Alaei, [in spite of the fact that he] initially testified explicitly, has stated the following during the withdrawal of his testimony:

"...Considering the events that occurred, I must confess that I was summoned to the Revolutionary and Public Prosecutor's office in connection with Ms. Zahra Kazemi's case. They made me many promises and my statements were made under the pressures prevailing in those conditions. Moreover, I was under pressure by Section 209 (relating to Ministry of Intelligence) and wrote some statements..." (page 1251 of the case file). Here, any unbiased mind asks the question: Isn't it true that exerting pressure to obtain testimony is forbidden by Article 38 of the Constitution and is an offense?! So why has the inspector not conducted any investigation concerning the identity of those who forced him to give false testimony?! Couldn't the case be that this claim made by him might be false, and his previous claim, that coincides with that of other witnesses, might be true?! Why has the public prosecutor's office not conducted any investigation into this?!

**6-** Mr. Mehdi Rezvan, an Evin Prison official, has testified that:

"...While I was speaking with Ms. Zahra Kazemi, Mr. Moghaddas tried to release the bag from Ms. Zahra Kazemi's back. She noticed it and started crying and became unnerved..." (pages 1338 and 1339 of the case).

Your honors: Why has the honorable investigator not verified those statements?! while the statement is made by an official? If they are true, was the judge in question entitled to make them and get involved in the case?! Isn't it a case of an offense committed by a senior judge that entails disciplinary action?!!

**7-** According to the report provided by the Intelligence Unit of the Law Enforcement Forces, at 1:30 am, Jun 24, 2003, that is, while Ms. Zahra Kazemi was undergoing late-night interrogation, they were called from Evin and they sent forces to Evin Prison for the delivery of Zahra Kazemi, but after sending the forces to Evin Prison, Mr. Arjmandi refused to turn Zahra Kazemi over to the Law Enforcement Forces. This was repeated again in the same day at 11:00 am! (Page 1140 of the file)

With what purpose were these measures taken? And why was there a refusal to turn Ms. Zahra Kazemi over to them during the middle of the night around 1:30 to 2:00 a.m. of 82/4/3 [24/06/2003], although the public prosecutor's office had contacted the Intelligence Unit of the Law Enforcement Forces? And why did they turn her over again to the Law Enforcement Forces on the same day at 10:00 or 11:00 a.m.?! Unfortunately, the interrogator of the 1st branch of the criminal prosecution office has not paid attention to any of these incidents, as if they were all ordinary events!!

**8-** According to the report by the Intelligence Unit of the Law Enforcement Forces, the late Zahra Kazemi had told them that they broke her nose at the Evin Prison in the evening of 83/4/2 [23/06/2003] but the interrogator of the 1st branch of the public prosecutor' office did not conduct any investigation with the officers who had seen traces of assault and battery on the late Kazemi's body on 82/4/3 [24/06/2003].

**9-** The Special Presidential Commission wrote a detailed report on the case which was broadcast by the public media and a copy of it was attached to the file (pages 1146 to 1177).

Page 1172 of the report reads that "... considering the request by her mother, her body should be returned to her family immediately and if the family members would like their own trusted

physicians to examine the body, that should be facilitated. Moreover, to document the investigation in more detail, it was decided that the photos and films would be taken of the body and recorded in the coroner's office."

Your honours, despite the emphasis put by the afore-mentioned special investigatory commission, a fair person might raise the question of why the body of the late Zahra Kazemi was not returned to her mother and why she was forced to bury her body immediately without examination by the family's trusted physicians!!!

And why did the interrogator not ask for the recorded films and not interrogate the doctors who wrote the examination reports to see if they have really examined the body and watched the films by themselves or if they have merely commented on the report after reading the examination reports?!!

It is worth mentioning that signs of assault and battery have been observed on the body of Ms. Zahra Kazemi. However, these signs, like the broken nose and fingers of the hand and feet, have neither been mentioned in the coroner's examination report nor have those injuries been mentioned in other reports!!

**10-** Why has the investigator not examined which person or persons might have interrogated Ms. Zahra Kazemi during the night while beating her in the evening of 82/4/2 [23/06/2003] till the morning of 82/4/3 [24/06/2003]?!! It should be mentioned that according to the content of the Special Presidential Commission Report (pages 1164 to 1177), interrogations on 82/4/3 [24/06/2003] were conducted from the middle of the night till the early morning at the presence of Mr. Saeed Mortazavi (Tehran Public Prosecutor) and Mr. Arjmandi (Deputy Public Prosecutor); however, the identity of the interrogator was not known and the handwriting on the interrogation papers did not match that of the two mentioned officials!!

Why does the investigator believe that Ms. Zahra Kazemi was beaten by the intelligence service interrogators during the few minutes that she was alone in the room with them but he does not pay any attention to the 4 hours of interrogation conducted by unknown parties? The outcome of the 4 hours of interrogation is just a couple of pages of interrogation papers and the interrogator has not thought about the possibility that the interrogation papers in that night might have been taken out from the file or the interrogation might have been conducted orally using physical torture and assault!? Or he has not intended to investigate this possibility!!

**11-** Your honours, why, despite the fact that both Ministry of Intelligence and the Law Enforcement Forces intelligence unit have rejected the idea that Ms. Zahra Kazemi was a spy on one hand, and on the other hand, it is not logical by any rationale that a spy could go to take photos and films of a heavily guarded and secured place during daylight and in the direct view of hundreds of people!!, have Mr. Hassan Moghaddas Ahmadi and Saeed Mortazavi (Tehran Public Prosecutor) insisted that Ms. Zahra Kazemi was a spy and insisted so much on this illusory and baseless allegation that the Public Prosecutor along with his deputy – and a number of unknown people – decided to interrogate Ms. Zahra Kazemi during the night?!! Is it proper for a judiciary official to accuse a person of espionage when this assumption is not even provable?!! Should it not be asked and investigated what the intention of these men was that they made such a baseless accusation to Ms. Kazemi?!! And why didn't they turn her over to the counterintelligence department of the Intelligence Ministry?!

**12-** More than 20 people were present during the incident between Ms. Zahra Kazemi and security officers when she entered the prison and they were all of the belief that the two security officers named Mr. Mohammad Bakhshi (Evin Prison Head of Security) and Mozaffar Babai (known as Tehrani) scuffled with Ms. Zahra Kazemi and beat her and angrily took her purse since she was refusing to give it to them and she fainted after that incident.

Why has the recantation of testimony by those 4 or 5 soldiers who were present at that incident not raised questions for the interrogator of the criminal prosecutions office, 1st branch?!! And if they really perjured themselves – and their perjury was against prison officials (!) why (in spite of the explanation of the charge of perjury to them and the clear admission of their previous testimony being false) has the investigator issued the order for staying the perjury proceedings?!! And why has the plaintiff not been notified of the orders to stay the proceedings(!) so that the client can reserve her right to complain against them?!!

**13-** As mentioned in the report by the Ministry of Intelligence dated 82/5/19 [10/08/2003] (page 838 to 845), Ms. Zahra Kazemi was not turned over to Mr. Tehrani (i.e. Mozaffar Babai) at 22:30 p.m. on 82/4/2 [23/06/2003] but apparently she was turned over to individuals the identities of whom attempts are made to keep undisclosed (page 893 of the file)!! Now, we would like to ask the honorable judges to pass judgment conscientiously while posing this question: Why has the Prosecutor's Office not made any attempt to identify these individuals and not even asked Mr. Mozaffar Babai about them?!!

It should be mentioned that in the report by the Ministry of Intelligence dated 82/5/19 [10/08/2003] (page 838 to 845), a number of violations of the law by prison officers and prosecuting officials have been reported which would make any impartial investigator conduct further investigation to uncover the truth; however, apparently in this case the investigator involved has not been interested in finding the truth and establishing justice!!

## **Part Two—Violations of the law occurred from the beginning of Zahra Kazemi's arrest through her death**

### **1- Unlawful arrest:**

As you may know, guards and officials of Evin Prison are not legally authorized to arrest individuals who commit a misdemeanor outside of the prison; based on this assumption, a soldier named Mr. Moslem Shahi Sadrabadi who was a guard at the entrance of the Evin Prison describes the day of the incident as follows: "... It was 5:00 p.m. that a lady was reporting on the demonstration by the people and sometimes was taking pictures from them ... A lieutenant was there who came to control the situation and calm down the people every day at 2:00 p.m. I told him that a lady was reporting on the demonstration and taking pictures, would it be OK? He contacted the headquarters and they replied that "if it does not cause unrest and she is an authorized journalist, it is OK ..."' (page 803). As you see, to control unrest and take necessary measures to control a violent situation that might occur, they had deployed police officers outside the prison and this further confirms that officers inside the prison were not authorized to interfere in any incident that might happen outside a prison and those who were somehow involved in the arrest of Ms. Zahra Kazemi (including police officers or judiciary or other officials) would be guilty of unlawful arrest under article 575 of the Islamic Penal Law. Unfortunately, no one has paid attention to this crime during the investigations and no perpetrators are prosecuted which is one of the cases of violations in the investigation.

Another note mentioned in the report and in the statement by the afore-mentioned soldier is that Ms. Zahra Kazemi had been merely reporting on the demonstration and taking pictures of the people outside Evin Prison and nothing has been said about taking pictures of the Evin Prison building or of any restricted zone in the report by the said soldier. Special attention will be paid to this matter in the next sections.

### **2- Forgery and additions:**

**2-1-** Unfortunately, further examination of the file reveals a glaring forgery and addition to the first paper of the Zahra Kazemi's arrest proceeding report on 82/4/2 [23/06/2003]. The said original proceeding report did not include the sentence: "it should be mentioned that the said person had been taking pictures from the restricted zone of the prison" and this sentence has been added

after the completion of the proceeding report, because a part of the added sentence has been written over the signature of one of the signatories. Therefore, we request a full investigation of the said forgery and addition according to the articles 523 and 532 of the Islamic Criminal Law.

Moreover, there is a copy of the said proceeding report dated 82/4/2 [23/06/2003] which does not include the added sentence in the page 38 of attachments to the defence letter by the lawyer of Mr. Mohammad Reza Aghdam. At the back of that copy which has been submitted to the court, there is another copy of the proceeding report which includes the added sentence!!

The original copy of the above-mentioned proceeding report is recorded in page 143 of the file and there are a number of its duplicate copies in page 1 and 1161.

**2-2-** The proceeding report on sealing and opening the cell door number 4 has several erasures and is without signatures and the dates on it are manipulated (from page 831 to 834 of the case file).

**2-3-** The letter dated 82/4/3 [24/06/2003] by Mr. Mortazavi to the Commander of the intelligence unit of the Law Enforcement Forces about a special mission to investigate the possibility of espionage by Ms. Kazemi which is signed by Mr. Mortazavi and sealed by the deputy Public Prosecutor. The issuing date is 82/4/3 [24/06/2003] but the undersigned date is dated as 82/4/2 [23/06/2003]. (Page ...) (Back of page 6 of attachments to the defence statement by the lawyer of Mr. Mohammad Reza Aghdam) (It is strange that the Prosecutor's order letter is sealed by his deputy!!)

**2-4-** Erasures on the signatures under the Ms. Kazemi's interrogation reports belonging to Mr. Tabatabai-Nezhad, the interrogator of the Prosecutor's Office - region 7, branch 12 at the Evin Prison (page 1, 4, 8, 10, 11, and 12 of the interrogation report)

(Page 146 to 157) (Page 9, 10, 11, 12, and 14 of the attachments to the defense statement by the lawyer for the defendant and their back pages) and also the interrogation report on 82/4/2 [23/06/2003] from Ms. Zahra Kazemi is apparently signed by Mr. Tabatabai Nezhad despite the fact that he was absent in that date. (Page 15 ... of the attachments to the defense statement by the defense lawyer.)

**2-5-** There are 2 copies of the proceeding report of Ms. Zahra Kazemi's arrest dated 82/4/2 [23/06/2003] which is signed by head of the Evin Prison and sealed to be sent back to the investigation branch 12. In one of the copies the last sentence reads as: "Meanwhile, after identification, it had the name of Zahra Kazemi". In the other copy after this sentence, a new sentence has been added as: "Moreover, the said person had been taking pictures of the restricted zone of the prison." (Page 38 and its back page in the attachments to the defense statement by the defense lawyer) (Pages 143, 1, and 1161 of the file).

**2-6-** The proceeding report dated 82/4/25 [16/07/2003] by the medical examination commission in the presence of Dr. Sadr, Pezashkian and Mr. Mortazavi referenced 10/d/3589 dated 82/4/25 [16/07/2003] with the coroner's head office letterhead. The same proceeding report is registered in the confidential record book of the ministry under the reference m/1/582 dated 82/4/25 [16/07/2003] with a different type and without mentioning the name of Mr. Mortazavi. (Page 27 and its back page in the attachments to the defense statement by the defense lawyer)

Now we should ask this question:

What is the reason to delete and add the said sentences and why are there discrepancies between the proceeding reports, which is prosecutable by articles 523 and 532 of the Islamic Criminal Law?!

**2-7-** The proceeding report dated 82/4/3 [24/06/2003] on the letterhead of the Tehran Prisons General Department about sealing the door of the cell number 4 in which there are erasures on the time of the exact lights-out and is signed by an unknown sealing officer. (Page 34 of the attachments to the defense statement by the defense lawyer) and there is another proceeding report on the letterhead of the Tehran Prisons General Department which also mentions sealing the door of the cell number 4 again at 1:20 p.m. on 82/4/2 [23/06/2003] and at 23:27 on 82/4/3 [24/06/2003] ... without the signature of the officer on duty and the acting deputy of the prison. (Back of page 36 of the attachments to the defense letter by the defense lawyer.)

**2-9-** The exact time that Ms. Nasrin Nayerini enters women ward number 216 is registered with erasures [scratches] in the event notebook number 1 under item 149. It should be mentioned that the named person was one of the staff members of Evin Prison who has never been interrogated.

The above cases not only prove that the forgery and addition have occurred but also that there have been a number of shortcomings in the investigations.

**3-** According to Article 32 of the Constitution and Article 24 of the criminal procedure law, only judicial law enforcement officers are authorized to keep a suspect for 24 hours under certain legal conditions and the concerned judiciary authorities can merely issue one of the interlocutory decrees subject to the article 132 of the criminal procedure if necessary and if the legal conditions are in accordance with the Articles 32, 35, 37 and 132 of the criminal procedure law. That would be contingent upon the existence of any evidence of the offence and reasons to associate the offence to the suspect. Nevertheless, Mr. Arjmandi issued the order to keep Ms. Zahra Kazemi under arrest from 82/4/2 [23/06/2003] through 82/4/3[24/06/2003] without any reasons. This order is against the above-mentioned articles of law and can be considered a violation of the article 570 of the Islamic Criminal Law. In particular, the reason to keep her under arrest and the type of the crime were not explained to her by the issuing authority when she entered the prison and before the order was issued, which is also a violation of Article 32 of the constitution and Articles 24 and 129 of the criminal procedure law.

**4-** Issuing the temporary arrest warrant for Ms. Zahra Kazemi by the interrogator of the prosecutor's office - region 7, branch 12 at the Evin Prison is based on no reason and is an illegal act of taking a suspect into the custody. The clause "H" of the article 3 of the 81/7/28 [20/10/2002] amendment to the criminal procedure states that "an interrogator can issue ... a temporary arrest warrant for the suspect ... during any point in the investigation process which is subject to the articles of the General and Revolutionary Courts' criminal procedure law passed on 78/6/28 [19/09/1999]."

None of the regulations under the article 35 and 32 of the criminal procedure law passed on 78/6/28 [19/09/1999] has been observed with regard to Ms. Zahra Kazemi's case. Moreover, according to Article 37 of the same law "All issued temporary arrest warrants should be reasonable and the legal reference, its reasons as well as the suspect right to object the verdict should be stated clearly in the text of the arrest warrant." which is not the case and the arrest warrant issued by the interrogator of the prosecutor's office - region 7, branch 12 at the Evin Prison is not in accordance with the above-mentioned regulations and is illogical and not reasonable at all. It is interesting that the release is mentioned first but later it is changed to custody thus there is a contradiction in the top and bottom sentences in the arrest warrant which seems to be a violation of article 575 of the Islamic Criminal Law and is indictable. (Page 42 of the case file).

It is also interesting that about 12 days after this date her temporary custody status changes to bail without any change in her legal status!!

## **5- Violation of law in issuing a temporary arrest warrant to take Ms. Zahra Kazemi into custody:**

**5-1** Clause “H” of the amendment to the criminal procedure states that “If the interrogator has issued a temporary arrest warrant, he is obliged to send the file to the Public Prosecutor for review within 24 hours ...” however, here the temporary arrest warrant to take late Ms. Zahra Kazemi into custody has been issued by the interrogator of the prosecutor’s office - region 7, branch 12 at the Evin Prison on 82/4/3 [24/06/2003] and probably the assistant to the public prosecutor has seen it later on 82/4/4 [25/06/2003].

It is quite surprising that the interrogator of the branch 12 Mr. Tabatabai-Nezhad issues the order to carry out the investigations and turn the late Ms. Zahra Kazemi over to the deputy of the Law Enforcement Forces and ... at the bottom of the arrest warrant and in the same day that it is issued i.e. on 82/4/3 [24/06/2003] before even having the agreement of the public prosecutor or his assistant on the issued warrant. The said date has also been manipulated. (Page 42)

Now a question comes to the mind of any impartial person:

What is the reason that the signature under the order is illegible and has erasures on it and whether the interrogator’s order to carry out investigations and turning Ms. Zahra Kazemi to the Law Enforcement Forces intelligence service deputy has been issued after the public prosecutor’s agreement with this decision or not? And if it was issued at the same time that the warrant was issued why it was dated 82/4/4 [25/06/2003]?!

**5-2** Clause “H” of Article 3 of the amendment to the criminal procedure law states that any temporary arrest warrant is subject to the objections and in case of any complaints it should be followed up in a general court. Unfortunately, in this case, despite the complaint by Ms. Zahra Kazemi about the issuance of the warrant by the interrogator of the prosecutor’s office - region 7, branch 12 at the Evin Prison and despite sending the case to the revolutionary court to hear Ms. Zahra Kazemi’s complaint about the warrant, there is no record of the complaint in the revolutionary court. Therefore, we may ask this question that who has prevented the complaint case from being heard and sent to the revolutionary court?! And this issue should have been investigated but no investigation has been recorded.

**6-** According to the article 44 of the bylaw of the Prisons Organization: “Prisoners are received at the prison after presenting an official order sealed and signed by a judge who issued that order or arrest warrant...”. On 82/4/2 [23/06/2003] when the late Zahra Kazemi was being turned over to the ward 240 of the Evin Prison, not only was no official order received by the prison’s officials, who received her without any order by a judge, but also it is not recorded in any prison’s minute-book records or event diary. (Page 592, copy of the page 283 of the event diary item 30 and page 123 and 399 of the file item 21 of the events) This reads as “the prisoner is without any paper or order.” The case seems to be subject to Article 573 of the Islamic Criminal Law and the offenders can be prosecuted.

**7-** According to the proceeding report on 82/4/8 [29/06/2003] by the State Inspection Department which has been written after the inspection of the prison diaries and noting no seal on them, the event diaries of the ward 240 have been sealed and submitted to Mr. Haj Kazem (page 830 of the file). However, according to the proceeding report by the Ministry of Intelligence dated 82/5/15 [06/08/2003] it is observed that: “Its lead seal is not in order and its wire is broken, in a word, its seal has been opened” (Page 829 of the file) which can be subject to the article 543 of the Islamic Criminal Law and the offenders can be prosecuted and punished by law.

**8-** Forcing Ms. Zahra Kazemi to sit in a car and the fact that she was assaulted by several strangers (men who are not allowed to touch a non-related Muslim woman) - who were prison staff or officials – is subject to article 637 and 638 of the Islamic Criminal Law and the offenders can be prosecuted and punished by law (pages 484, 486, 788, 792 of the court file).

**9-** Failing to take Ms. Zahra Kazemi to the hospital on time while according to the clause 6 in the report number 1, page 17 by the Article 90 Commission, the honorable Minister of Health has said in the meeting by the said Commission on 82/5/7 [29/07/2003] that: “If Ms. Zahra Kazemi would have been taken to a government medical center on time – where they have resident neurosurgeons – she should have survived” shows a violation of the prison’s regulations and the offenders can be prosecuted. It should be mentioned that concealing the concussion of Zahra Kazemi and not submitting the correct medical information from the time she is hospitalized in the Baghiatollah al-Azam hospital is a violation of the law.

**10- Striving to conceal the crime:**

**10-1-** Despite the statement by Mr. Ahmadi and Aboutalebi before the interrogator as quoting Ms. Zahra Kazemi when she told them during the investigations that: “They hit my face.” The said individuals have refused to file this statement in the proceeding report and have just said it orally to the deputy ministers. This statement has been confirmed by the deputy counterintelligence department of the Intelligence Ministry. (Page 21 of the indictment).

**10-2-** Trying to get Zahra Kazemi’s purse by force by locking her in the arms of male officers (religiously unacceptable touching and assaulting a female by males) - which is a crime per se and is subject to articles 637 and 638 of the Islamic Criminal Law and, in addition to that, beating her, which resulted in her death and is subject to another criminal provision and is not reported in the proceeding report by the officers and judges who were present at the crime scene. If such a crime was seen by the judges and officers, they had to report it.

It should be mentioned that one of the judges who was present at the scene named Mr. Hassan Moghaddas Ahmadi (deputy Public Prosecutor) has said as reflected in his statements in pages 1353 and 1354 of the file that: “An individual, whom I found out later was named Bakhshi, got her purse with force and it seemed that his arm hit her face naturally [i.e. accidentally] ...”

Refusing to report these illegal acts in the proceeding report and failing to investigate the hitting incident - to see if it was intentional or not – although eyewitnesses have testified that it was intentional – can be considered as an attempt to hide the crimes which occurred.

**10-3- Preparing false reports to hide the truth:**

Mr. Ehsan Mousavi, son of Mohammad Esmā'il, (Intelligence staff) has said on the page 1432 of the file that: “Proceeding according to the hierarchical order of events regarding coordinating with the Public Prosecutor’s office on this particular case, and after personal conversations with the Public Prosecutor, Mr. Mortazavi, in the security prison ... it was decided that another letter should be written based on the report by the operation’s officers in the hospital stating that the said person had a stroke, and this letter should be sent to the Prosecutor’s office while asking the first letter to be returned by that office. Thus, I told the security prison officer to write a letter and her stroke in the hospital should be just mentioned in that letter and nothing should be mentioned about her hunger strike [...]. The letter was written and sent to the Prosecutor’s office and the first letter returned. I informed the deputy Public Prosecutor, Mr. Arjmandi, in person that following my personal conversation with Mr. Mortazavi, it was decided that the first letter should be returned and another letter with this content should be written and sent to the office so please return the first letter. He replied that the first letter was with Mr. Mortazavi and he said that he would get the letter from him and you should send a person to take it from me and we did that.” At the end he is asked this question: “How was the neurological problem of Zahra Kazemi diagnosed on 82/4/7 [28/06/2003] at the time the letter was sent to the interrogator of the branch 12?” He replied: “.... The first letter that was sent on 82/4/6 [27/06/2003] contained information about her hunger strike and her medical conditions and in fact it contained what the security prison staff had observed and heard but after sending her to a hospital outside of the prison and based on the statement of

a security officer who was with the suspect, quoted nurses [who stated] that she had a stroke and brain vessel injuries so ... the term 'stroke' was mentioned in the second letter ...".

The intelligence officer has added to his statements in page 1334 that: "But I think as a result of coordination between Mr. Hojjati, deputy minister, and Mr. Mortazavi and vice versa, they wanted this letter to be sent and I told the security prison officials to do so because at the same night Mr. Mortazavi had asked Mr. Arjmandi to come immediately to the prosecutor's office at the Evin Prison and he had come and the letter was delivered to him and another letter was written for the hospital to send the suspect to the coroner's office." He further adds in page 1345 that: "... I was supposed to return the first letter and send the second letter after talking with the honorable Public Prosecutor (Mortazavi) and I did so."

**10-4-** The proceeding report on breaking the seal of the door of the Evin cell number 4 on 82/4/3 [24/06/2003], signed by individuals whose identities are not disclosed, explained that: "At 3:15 the seal of the door of the cell number 4 was broken before the undersigned since the prisoner was sent to the clinic." They have also reported the breaking of the seal at 5:25. What is said in page 34 of the attachments to the defence statement by the lawyer for the accused shows that the late Zahra Kazemi had been sent to the clinic on 82/4/3 [24/06/2003], but unfortunately there is no record of it and there is no record by the clinic on 82/4/3 [24/06/2003] in the file which is an example of efforts to conceal the crime and is subject to article 554 of the Islamic Penal Law.

#### **10-5- Attempt to delay the exact time of the death:**

According to the 14-page report by the Special Presidential Commission (from page 1164 to 1177), particularly the contents of the page 1167, Ms. Zahra Kazemi "was brain dead at 13:30 on 82/3/6 [27/05/2003]" but her death has been announced on 82/4/19 [10/07/2003] and during this period there has been an attempt to remove traces of battery and assault on her body and we would like to focus the attention of the esteemed court at the statement by Dr. Reza Movahedi, the Intelligence Ministry's doctor on 82/6/23 [14/09/2003] reported in pages 1346 to 1347 of the file: "... despite the passage of more than 15 days from the death and absorption of haematoma cells I didn't notice anything else. " Dr. Abbas Hakim has said on 82/4/6 [27/06/2003] in page 1122 of the file that:

"... At present the patient is kept at ICU and is in coma as she does not response to any stimuli and is brain dead."

Page 112 and 113 of the medical commission file reported with the presence of Health Minister, Tehran Public Prosecutor and the head of coroner's office reads as: "... Finally on 82/4/6 [27/06/2003] at about 13:00 o'clock, it has resulted in irrecoverable brain damages ..." (page 113 of the file)

**11-** Failing to report the existing traces of battery and assault on the body of Zahra Kazemi and fail to do sufficient investigations as to their cause:

**11-1-** In the report of the examination of the body, at page 109 and 259 to 261 of the file dated 82/4/21 [12/07/2003] it mentions the following symptoms:

- A- Bruises being absorbed on both left and right breasts
- B- Bruise being absorbed on the right hand
- C- Ecchymosis in absorption stage in the left occipital region of the head (measuring 2 x 5 cm)
- D- During the examination of the base of the skull, a linear fracture was observed alongside the back of the petrous bone extending to the foramen magnum on the left side and another linear fracture at the internal structure of the posterior region at the left side of the skull.
- E- During the examination of the throat and larynx, ecchymosis was observed in the soft tissue on the right side of the thyroid gland.



**11-2-** Mrs. Ezzat Kazemi noticed the traces of battery and assault on the body of Zahra Kazemi when she visited her at the hospital (page 5 of the report by the parliamentary Article 90 Commission).

**11-3-** In page 1012 which is apparently a copy of clinical file of the late Zahra Kazemi, it is said that: "... The patient has ecchymosis on both of her feet, toes, and on the right hand arm. There is a superficial bruise in the left ankle."

**11-4-** In page 1021 of the nurse's report it says:  
"A 6 cm bruise on the patient's left foot, both feet are swollen about 8-9 ( ) and a bruise with the size of 2 cm is on the rib cage"

**11-5-** In the report by the intelligence unit of the Law Enforcement Forces at page 1135 and 1136 of the file, it is said that:

Page 1136 – "... When she realized that she was talking with the related authorities, she announced that: 'I was mistreated and physically and verbally assaulted last night when I was at Evin Prison.' At this time a report of battery and assault was taken from her ..."

Page 1135 – "... While in custody, she told Ms. Hashemi that: 'last night I was at Evin Prison, they broke my nose, thumb and also my toe.' She has written exactly the same statement herself and signed it."

**11-6-** Failure to send the clinical report of the late Zahra Kazemi from the hospital and failure to pay due attention in comparing it with the coroner's report by the interrogator involved and not ordering the said opinions to be completed, which is a significant violation which occurred in the process of investigation.

**12-** Failure to examine Ms. Zahra Kazemi when she first arrives at the prison:

This is a violation of articles 107 and 114 of the Prisons Organization bylaw and is subject to prosecution by law.

**13-** Physically and verbally assaulting Ms. Zahra Kazemi when she enters the prison is a violation of Article 39 of the Constitution and is subject to the Article 608 and 614 of the Islamic Penal Law.

### **Part Three– Substantive Pleadings**

**1-** What is to be understood from the contents of the case file, especially from the clear witness statements (of more than 20 individuals) is that Ms. Zahra Kazemi was severely beaten and assaulted by Mr. Mohammad Bakhshi and Mozaffar Babai (known as Tehrani) when she was illegally summoned to the prison and from 22:30 o'clock on 82/4/2 [23/06/2003] till 2:30 a.m. on 82/4/3 [24/06/2003] was questioned by an unknown interrogator or interrogators (!) and severely beaten and assaulted, but the court and prosecutor's office has been incapable of identifying the murder suspect or suspects!! Now this question may come to the mind of an impartial person: if the judicial system is unable to find out the truth of an incident which has happened in a restricted place and under strict security, how will this system be able to function in finding out the truth in other cases?! Doesn't this incapacity of the court or the prosecutor's office reflect badly on the judiciary system and make it appear weak?! Is it rational to sacrifice the expediency of a nation and a country for just one or a number of individuals – in any official capacity?! Doesn't this negligent failure to consider the witness statement by one of the high-ranking judges of this country (i.e. Mr. Hassan Moghaddas, Deputy Public Prosecutor) - who witnessed with his own eyes that Mr. Bakhshi's arm hit Ms. Zahra Kazemi's face - an evidence of failure to be impartial by the interrogator?!!

Doesn't assaulting a woman in the presence of at least 5 judges of this country and more than 20 officers and soldiers of Evin Prison to the extent described by the coroner's office as being a fatal blow and then not identifying the perpetrator disgrace justice and make the sections of the Judiciary who were responsible for handling this incident appear weak?!!

**2-** The lower court has given a verdict to pay blood money from the public treasury based on Article 255 of the Islamic Criminal Law without complaining about the true violations of law during the investigations!! Whereas the conditions under which article 255 is fulfilled are as follows:

A- When a person is killed as a result of an overcrowding situation<sup>4</sup> or when a murdered body is found in a public place; [and]

B- There is no evidence for the judge to suspect an individual or a group of people of murder; however, if there is any doubt as to whether the killing was carried out by an individual or group of people, the judge is required to seek corroborating evidence.

However, firstly, in this case the murder is not caused by any overcrowding and is not subject to the case of finding the murdered body in a public place; rather the murder has happened in a restricted and secured place which is under strict control so in this case there is only one possibility and that is a fatal blow by a certain individual in the presence of 20 eyewitnesses.

Secondly, in this file there is not only suspected evidence to believe that there is one or more murderers but there are also persuasive reasons (like the testimony of at least one high-ranking judge) in the file that confirms a blow by Mr. Mohammad Bakhshi and neither the judges in the Public Prosecutor's Office nor the judge in the lower court tried to investigate this matter!!

Thirdly, with respect to Article 255 of the Islamic Penal Law on wilful murder, and the fact that the lower court has at least accepted the wilful murder of Ms. Zahra Kazemi, wouldn't it have been appropriate for the lower court to order that the investigations be completed by reviewing and simulating the crime scene and identifying the exact murderer or murderers?!!

**3-** Considering the statement of the coroner's office that: "the hit was fatal in nature" but postponing determination of the exact time of the blow to later criminal investigations (Pages 910 and 911 of the file) which is subject to the clause B of the article 206 of the Islamic Criminal Law but it is not known why the prosecutor's office and the lower court have made an attempt to represent it as quasi-intentional without any reason?!

**4-** In the last two lines of the page 8 of the [verdict] it says that: "... considering the fact that measures taken by the Prosecutor's Office and the court have not been resulted in identifying the murderer ..."

Now this question is not answered: What measures were taken by the lower court to identify the murderer that purportedly obtained no results?!!

To clarify the truth, I must focus the attention of the honorable judges of the appeal court at this note that in the inquest meeting on 83/4/27 [18/07/2004] and 83/4/28 [19/07/2004], we, the lawyers of the complainant, made two requests to the lower court. The first request is that the court summon those twenty witnesses who were present at the scene in which Ms. Zahra Kazemi was hit in the face and head and listen to their testimonies. The second request is that the court investigate the reason why the clothes of the murdered Zahra Kazemi were tattered and bloody according to the report by the Ministry of Intelligence (the second folder of the 4th volume of the case, which has unfortunately not been counted during the preparation of this defense letter). We had asked from the lower court to investigate the reason why Zahra Kazemi's clothes were tattered and bloody, which is reflected in the proceeding report and in the video cassette recorded

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<sup>4</sup> E.g., a stampede.

at the public court hearing. However, the lower court did not pay attention to any of our requests and made no attempt to investigate the matter to uncover the truth.

5- Despite the fact that experts are not allowed to interfere in judicial affairs and can only give technical and fully documented comments on any referred case based on his or her expertise and profession, unfortunately the medical examination commission has interfered in the judgment procedure and has reported “the possibility of an accidental” blow!! But this commission has postponed the recognition of the exact time of the hitting incident to later criminal investigations!! We ask for justice and fair judgment by the honorable judges and pose this question: Wouldn't it have been appropriate for the prosecutor's office or the lower court to investigate this conflict and interference, especially according to the lawyers of the suspect one or two of the coroner's physicians who had given comments on the exact date of the incident changed their previous statements and told that it would be possible the hitting had happened 72 hours before 83/4/5 [25/06/2004]. (Page 47 and 46 and back of the page 46 as well as the attachments to the defense letter by the defense lawyer)

Now according to the said cases and with due consideration to the fact that the murderer or murderers are known by the Iranian public opinion and even the Government speaker has said in the media that the Ministry of Intelligence is ready to identify and reveal the murderer or murderers by simulating the crime scene and with respect to the fact that the map of the place in which Ms. Zahra Kazemi was hit for the first time by Mr. Bakhshi is recorded and documented by the devoted officers of the Intelligence Ministry (page 835 of the file) and since any failure to comply with justice might result in unpredictable consequences for the people of this country; therefore, we ask the honorable judges of the review authority and all the other sympathetic government officials not to allow the national interest of 70 million noble and justice-advocating Iranians to be jeopardized because of a number of lawbreakers who want to escape justice.

We hope that the honorable judges of the review authority pave the way for justice to be administered by reversing the issued verdict and taking necessary measures to reveal the truth of the matter.

Regards,

Lawyers for the Plaintiff, Mrs. Ezzat Kazemi Ahmadabadi

Seyed Mohammad Ali Dadkhah – Abdolfattah Soltani – Seyed Mohammad Seifzadeh- Shirin Ebadi

\* \* \*

Translator's note: Unless otherwise indicated, references to dates in this translation follow the European format (i.e. day/month/year).

## Appendix 4

### MEDICAL REPORT OF DR. SHAHRAM AZAM (translated into English by IHRDC)

[Introductory section by Dr. Azam:]

I am Dr. Shahram Azam, a physician with the armed forces. I was referred to Baghiatollah hospital via a letter dated December 22, 2002 [7.8.81] and numbered K-612-80-216-23 to do overtime work in emergency shifts. I started working in the hospital's emergency ward on January 21, 2003 [1.11.81].

On the first night of Ms. Zahra Kazemi's hospitalization, I was the emergency night shift's resident doctor. The nursing office of the hospital has confirmed this in a working-hours report dated July 26, 2003 [4.5.81] and numbered J-00-D-75.

In view of Ms. Zahra Kazemi's inhumane treatment and considering the efforts of Islamic Republic authorities to swiftly bury her to conceal the evidence of torturing her, and considering that I was the night shift emergency resident physician on June 26, 2003 [5.4.82] and that I was her examining physician at the hospital, I consider it my moral and human duty to give testimony and pronounce my observations to international human rights organizations with regard to injuries inflicted on her through torture, assault and battery and, in this regard, play a small role in exposing the inhuman and brutal nature of the Islamic regime.

Therefore, I implore all free-thinkers who are active in connection with Ms. Ziba<sup>1</sup> Kazemi to assist me in presenting my testimony and keeping this case alive until it reaches the desirable conclusion which is the condemnation of the suppressive regime of the Islamic Republic.

Therefore, I submit a summary of Ms. Ziba Kazemi's clinical file, including her clinical description when hospitalized and the medical treatment she received during the seven hours of her first night of hospitalization.

[Medical report by Dr. Azam follows]

\* \* \*

#### **Clinical Description**

cc: bloody emesis secondary to nose bleed

HPI: Patient is a 54-year-old female with bloody emesis following nose bleed. According to those accompanying the patient and the referral report from the prison clinic, patient vomited following nose bleed and has had altered level of consciousness. Reportedly, the altered mental status related to present illness started few hours ago.

#### **Clinical Examination**

Patient is noted to have Epistaxis, bloody emesis and altered mental status. Patient is in coma and responds only to painful stimuli.

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<sup>1</sup> Translator's note: Zahra Kazemi was also called by the nickname "Ziba".

Head and neck: Ecchymosis in the right frontal and temporal areas resulting from blow. There is a fluctuating hematoma and edema in the left occipital area.

The nasal bone is fractured. Ecchymosis around the nasal bridge and orbital rim is noted.

A liquid bloody discharge in the nostril is noted consistent with signs of epistaxis.

Eyes: Pupils equal, reactive to light. Funduscopic examination shows papilledema due to increase in the intracranial pressure.

Ears: Ecchymosis in the area of temporal bone extending to the ear canal, causing the narrowing of the canal during examination and making examination of TM difficult. The left TM is intact but the right TM in the upper quadrant is completely ruptured. The ossicles are exposed.

Neck: Deep parallel linear abrasions are seen in the shape of parallel lines. Three lines observed in the back of the neck. There were no cervical spinal injuries on the neck examined.

Chest: Asymmetric expansion of lungs with ecchymosis and crepitation of the joints of the ribs, bony crepitus at the costochondral junction of 5-7th rib.

Ecchymosis and several linear strip-like wounds on the back noted.

In listening to the lungs no pathological injuries are observed. Lung examination reveals no abnormal pathological findings.

Heart exam: sinus rhythm, no murmur or other extra sounds.

Abdomen: In examination, abdomen is soft and there is no mass. Liver is felt 2.5 cm below the costal margin. Ecchymosis in the left lower quadrant noted.

Pelvic and genitals: In the pubic area, extensive ecchymosis extending to the thigh and groin. Urinary catheterization reported traumatic lesions in the genital area. Trauma in genital was reported. In the back, in the area of the buttock and sacrum ecchymosis measuring 7.5 cm diagonally is observed.

Extremities: In the upper extremities extensive ecchymosis in the back of the right arm up to near the shoulder as well as fractured middle and distal phalanges of the fifth and middle finger noted. Ecchymosis of the back of the left forearm up to the wrist noted. The distal phalange of the left middle finger is fractured. The nails of the left index finger and thumb are broken.

Lower Extremities:

Ecchymosis is present on the groin of the left thigh extending to the anterior of the thigh. Swelling of the right knee-joint and ecchymosis on the back of the knee noted. The right big toe and nail are crushed and fractured. Left, third and fourth toes and nails are fractured as well.

Ecchymosis of both soles of the feet noted.

Ecchymosis and linear wounds measuring 7-9 cms in length in the calf region of the forelegs (right three lines and on the left five lines)

Neurological examination: Deep tender reflexes are exaggerated on both sides.

**Treatment Plans:**

NGT placement for stomach cleaning was difficult due to the fractured nose. The gastric lavage contained no blood, probably indicating that the bloody vomit was due to the blood swallowed from the epistaxis.

At 2:30, patient was moved to the relevant unit to be scanned. The obtained CT-scan of the head showed a linear fracture of the skull as well as an extensive right temporal haematoma with cerebral damage and edema resulting in ventricular compression.

**Consultation with neurosurgeon:**

Mr. Ahmad Saidi visited the patient at 3:25. Based on the neurosurgeon's diagnosis of subarachnoid hemorrhage with severe edema 2° to trauma, Dexamethasone for infection and Mannitol serum was prescribed.

At the end of my shift at 6:45 the patient's general condition was the same but coma was deepened and patient was not at all responding to painful stimulation.

At 10:30 of June 27, 2003 [6.4.82] patient stopped breathing and required the aid of a ventilator and therefore was transferred to the intensive care unit. At 13:00 brain death was confirmed.

**Appendix 5A**

**DR. SHAHRAM AZAM'S MEDICAL LICENSE**  
(translated into English by IHRDC)

In the Name of God  
Islamic Republic of Iran

Ministry of Health, Medical Treatment and Education

Permanent Medical License

No. K/8/20983

Date: [25/5/1377] Aug. 18, 1998

By virtue of the law to practice Medicine, approved on June 1, 1981 and the amendments to Medical Practitioners, Dentists and Pharmacists' outside of center Service Act, ratified on May 25, 1981, and the further amendments and annexations thereto, whereas:

Dr. Shahram Azam, Son of Fathollah, Holder of ID Card No. 10320, Issued in Ilam, Born in 1966, graduated from Urmia University in 1993 in the field of Medicine and was exempted from the pertinent legal services, this License under the code 207941 is granted to him to practice medicine in Iran. This license is not regarded as a permit to open a clinic or medical facility. Opening of a clinic or medical office is dependent on a permit to be issued observing the relevant laws and decrees.

Signed and Sealed

For the Minister of Health, Medical Treatment and Education.

**Appendix 5B**

**DR. SHAHRAM AZAM'S EMPLOYMENT TIMESHEET**  
(translated into English by IHRDC)

Baghiatollah Medical Sciences University

Date: 4/5/82 [7/26/03]  
No.: J-00-D-75  
Attachments: none

In the name of God

From: nursing office of the Baghiatollah Hospital (AJ)  
To: Command Office (BHI)-Law Enforcement Forces  
Subject: staff physician Major Shahram Azam with personnel number 402660970

Hello

Hereby the abovementioned person's working hours for the month of Tir [June 22 to July 22] in the emergency ward of the hospital are declared:

2.4.82 [June 23, 2003] night shift 12 hours  
5.4.82 [June 26, 2003] evening and night shift 18 hours  
10.4.82 [July 1, 2003] evening and night shift 18 hours  
16.4.82 [July 7, 2003] evening and night shift 18 hours  
27.4.82 [July 18, 2003] evening and night shift 18 hours  
30.4.82 [July 21, 2003] evening and night shift 18 hours

Total 102 hours.

The above is submitted for your perusal.

Head of the nursing office of Baghiatollah Hospital (AJ)  
Second Colonel Abdolrahim Zolfaghari

Recipients:

- 1- Hospital's payroll office for calculations and payment of wages
- 2- Dr. Shahram Azam



## Appendix 6

### **KHOSHVAGHT LETTER** (translated into English by IHRDC)

#### **Deputy of Culture & Islamic Guidance stands up to Tehran's General Prosecutor's lies What happened during Khoshvaght's visit with Mortazavi**

*Rooydad*

"After the publication of Said Mortazavi's claims in the newspapers and the reading of [some of those claims] before Parliament, Mohammed Hussein Khoshvaght, the Director-General of Foreign Press and Media, replied to Mortazavi's comments on Wednesday night by sending a letter to the Speaker of the Parliament. This letter demonstrates the truth of the issues raised by Armin<sup>1</sup> as well as Mortazavi's violations and is considered a key [document] in Zahra Kazemi's case."

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To the Executive Editor of *Yas-e Nau* newspaper

With regard to the letter of the General [public] and Revolutionary Prosecutor of Tehran which was sent to the speaker of the parliament and published on July 23, 2003 in your newspaper, and the parts of the letter [relating to] Mrs. Zahra Kazemi's death and to me, I would be grateful if you publish my reply according to Article 23 of the Press Acts as soon as possible.

Mohammed Hussein Khoshvaght

Director-General of Foreign Press and Media

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Dear Mr. Karroubi,

The Honorable Speaker of the Islamic Parliament

In response to the second paragraph of the letter sent to me by the Honorable General and Revolutionary Prosecutor of Tehran dated July 22, 2003 [31/4/1382] and his comments about me, kindly have this letter read in the next public session of Parliament for the information of the honorable members of the parliament and the people.

Before I continue, I would like to emphasize that I am not a member of any political party and I consider myself solely a servant to the people and the Islamic Republic of Iran. My only wish is the honor and glory of Islam, the people, the regime and the Honorable Leader of the country.

Therefore, I have avoided talking to the media and granting interviews regarding my interactions with Mr. Mortazavi and the passing of Mrs. Zahra Kazemi during the last couple of days, in order to avoid contributing to the political and media frenzy. But, now that the comments of the Honorable General Prosecutor of Tehran have been published, I find myself obliged to tell the truth in the presence of all-knowing, all-seeing God.

I am very hopeful that this action will pave the way for the problem to be identified more accurately and for more appropriate decisions to be made.

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<sup>1</sup> Translator's note: Reference to Mohsen Armin, a parliament member who spoke out strongly against Mortazavi's cover-up efforts during the investigation into Kazemi's death.

1- On July 12, 2003, Mr. Mortazavi's office contacted me and I was told that he wanted to see me as soon as possible.

Even though I was scheduled to attend a [pre-scheduled] meeting as a representative of Ministry of Culture and Islamic Guidance, I accepted his invitation.

Before I explain what happened on that visit, I would like to note the first visit that I had with Mr. Mortazavi on Wednesday June 25, 2003; a visit that was also requested by him and was related to Mrs. Zahra Kazemi.

On the morning of Wednesday, June 25, 2003, Mr. Mortazavi's office contacted me. During that call, the General Prosecutor of Tehran gave me the news regarding the detention of a spy journalist. During the call, Mr. Mortazavi stated that the detained journalist had confessed to "spying and being connected to the [intelligence] services." The Honorable General Prosecutor of Tehran then said: "You have given a letter of reference [introduction]<sup>2</sup> to a spy to work as a journalist. Therefore, you need to come in person to the prosecutor's office between 10 and 11 o'clock today and bring with you a reputable guarantor<sup>3</sup>, and all of your recent files related to British and American journalists."

So I appeared at the Office of Prosecutor General on that day at 12 o'clock, accompanied by the Chairman of Foreign Journalists (not as a guarantor, but so that he could help me identify the detained journalist and, if required, provide me with more detailed information regarding the actions taken to give her the work permit). I took more than twenty documents with me.

From the very beginning, Mr. Mortazavi tried not to mention the detainee's name-- by asking different questions, he was trying to test me to see if I knew who this "spy" was that I had given the permit to. Anyway, after waiting for four hours in his office, it finally became clear that the detainee was Mrs. Zahra Kazemi.

Based on the letter of reference signed by me on June 21, 2003 which had requested the police to cooperate with Mrs. Zahra Kazemi "in accordance with rules and regulations" for taking photos of people's everyday lives, students, universities and dormitories [*Kooy-e-daneshgah*], Mr. Mortazavi, said: "you are accused of being an [accomplice]!" In response to him I said: "Based on the contents of this permit, there is no indication of any partnership in the alleged crime. In addition, if someone really was a spy, would [she] need to get this kind of permit and take photos of Evin prison in front of the guards openly in this manner?"

Also I reminded him that a copy of the above-mentioned letter of reference had been sent to Tehran's security police and the Department of Foreign Citizens of the Law Enforcement Office.

Anyway, finally Mr. Mortazavi said: "The judge in the case wanted to release the order for your arrest, but I stopped him," and "I will refrain from sending you to Evin for interrogation and having bail set for you," and asked me to fill out a form as an accused person. Then after listening to my explanations, he asked me to write a statement as an "informed person" [someone with knowledge of relevance/value to the case] and request a cancellation of Mrs. Zahra Kazemi's aforementioned [photography] permit.

Once we were finished, Mr. Mortazavi kept the other files and so far, even after repeated requests and follow-up, he has not returned them.

Now we return to the visit requested by Mr. Mortazavi on July 12, 2003 [21/4/1982].

During the visit, first Mr. Mortazavi told me that Mrs. Zahra Kazemi had died. I expressed my regrets and told him: "IRNA [Islamic Republic News Agency] has requested an interview and asked questions regarding

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<sup>2</sup> Translator's note: *Muarrifi nameh*-- The Ministry of Culture and Guidance provides official letters to photographers and journalists allowing them to carry out certain activities, and clearly stating what activities are covered/permitted.

<sup>3</sup> Translator's note: *Zamin*-- someone who serves as a type of character reference during certain proceedings.

four issues; I have replied to them and was going to send the [transcription/text] of the interview for approval of the [relevant?] authorities when you invited me [to this meeting].”<sup>4</sup> This text is exactly the same as the one that Mr. Mortazavi has attached to his letter.

[Mortazavi] requested to see the text. After reading the text, astonishingly, he asked me to write what he wanted.

I replied to him that if he had more information about Mrs. Zahra Kazemi’s death, he should tell me and I would write [about] it myself in whatever way I deemed appropriate.

He mentioned a couple of things like “she expressed that she was feeling unwell when she was with the interrogators of the Intelligence Ministry” and “death was caused by a stroke” and asked me to write the text and send it to IRNA with the coordination of the Honorable Secretary of Culture and Islamic Guidance.

I prepared the draft and I quoted everything that has been mentioned by Mr. Mortazavi. Mr. Mortazavi opposed the idea of narrating [being quoted directly] and finally, after he kept insisting, I agreed to remove his name and instead of it used phrases like “related judicial officials”, “according to information received” and “legal officials”.

I removed his name as the source of information because he said: “I am under too much pressure these days and I will take more heat if you mention my name in your interview.”

Then something strange happened; Mr. Mortazavi gave the draft that was prepared by me to his assistant and asked him to type it on the official letterhead of the Ministry of Culture and Islamic Guidance! This letterhead was prepared by copying the transcription of my first interview and Mr. Mortazavi was the creative force behind it.

I need to emphasize that I, without ever having been scared of Mr. Mortazavi and his tricks, only ignored organizational customs [rules] and allowed the typing of the statement [on that letterhead] and the public prosecutor’s next actions, because I didn’t intend to allow the death of the Iranian journalist (which was going to turn into a major foreign policy issue for Iran) create friction between me and him or our organizations-- especially since the death of Mrs. Zahra Kazemi had been announced by one or two foreign media outlets and IRNA was waiting impatiently for the comments of the Department of Foreign Press and Media.

After typing the letter, I signed it and sent it to IRNA. Once I signed the letter, another interesting incident happened: I was going to say goodbye and leave his office (after four hours there), but Mr. Prosecutor, with a charming smile, asked that I not leave his office until IRNA published the news. Then he contacted Mr. Nasser, the Chairman of IRNA, and asked him to publish my interview “as soon as possible and without any alterations.”

Once the news (as published) was faxed back to Mr. Mortazavi, looking extremely satisfied, dismissed me!

Before leaving, he once more reminded me of my fault in letting Mrs. Zahra Kazemi “commit the crime” and said: “God forbid that this issue escalates, since in that event you will be pursued [taken into custody]!”

It was then that I responded to him very directly: “You do everything you want against me and I will defend myself as necessary according to the law.”

Before leaving, I asked him about the files belonging to the Department of Foreign Press and Media which were handed over to him on June 25, 2003 and which he had kept. Mr. Mortazavi replied that the documents were [still] under investigation.

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<sup>4</sup> Translator’s note: This “interview” was to be conducted in written format; IRNA had evidently sent a list of questions to Khoshvaght, who had prepared answers to the questions in writing (the text or transcription referred to here).

Dear Mr. Karroubi, I must add that Tehran's Number Seven Interrogation Office, Branch 12, sent a letter to the Department of Foreign Press and Media on Sunday July 20, 2003, requesting the complete files of two foreign journalists.

[As indicated by the foregoing detailed explanations], I:

- 1) have never asked to visit Mr. Mortazavi.
- 2) have never asked to read Mrs. Kazemi's case file (and I have not read it).
- 3) have never asked to use the General Prosecutor's Office's equipment for typing the letter.
- 4) do not remember Mr. Mortazavi leaving the office to attend a meeting while I was there.
- 5) never said a word about wanting to making sure that the news [release/interview responses] was not altered [by IRNA] nor use the public prosecutor's office to [send off the interview text] because the Ministry of Culture and Islamic Guidance was closed.

Therefore, I firmly deny all of his statements. Of course, there are some other issues that I will only reveal to the appropriate senior officials, upon their request.

In the end, I need to remind you that considering Mr. Mortazavi's extreme religiosity and piety, it will not be difficult to prove all the above-mentioned things, as I assume that the discrepancy between my statements and his is just due to a mistake and is not intentional.

I ask God for success and [that he] grace all the officials and myself in our quest to serve Islam and the IRI.

Regards,

Mohammed Hussein Khoshvaght

Director-General of Foreign Press and Media

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*Rooydad's complementary information with regard to Khoshvaght's visit with Mortazavi*

If it was someone other than Khoshvaght, he would have been taken into custody!

Rooydad's journalist received complimentary information about Khoshvaght's visit with Mortazavi right after publishing of Director-General of Foreign Media and Press, Mohammed Hussein Khoshvaght's explanations regarding the claims made by Said Mortazavi and read from the parliament podium.

According to Rooydad's journalist's report, at the beginning Mortazavi calls Khoshvaght [aside] and pressures him to announce that Kazemi died of a stroke; then he gives the [interrogation form] to Khoshvaght and threatens him with detention. In response to Mortazavi's persistent pressure, Khoshvaght informs him that he is the brother-in-law of the Leader's son.<sup>5</sup> Once Mortazavi realizes this, he takes the form back and tries to conciliate and apologizes to him and then he decides to achieve his goals by using alternative techniques (which were then explained by Khoshvaght and Armin).

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<sup>5</sup> Translator's note: Khoshvaght's sister is reportedly married to the Leader's son.

## Appendix 7

### ABDOL KARIM LAHIJI'S STATEMENT ON THE SPECIAL PRESIDENTIAL COMMISSION REPORT

(translated into English by IHRDC)

Three of the four members of this Commission, the Ministers of Information and Justice, and the Minister of Culture and Islamic Guidance, because of the political and professional stature of their positions, were fully aware of the situation from the early hours of Zahra Kazemi's arrest. However, they not only did not intervene to stop the catastrophe but with their continuous silence, allowed Saeed Mortazavi, the prime suspect of this crime, to complicate the case to its current state.

Abdol Karim Lahiji  
Wednesday Mordad 1<sup>st</sup>, 1382 [July 23, 2003]

Ten days after the official announcement of Zahra Kazemi's death, the Special Presidential Commission report was published. From the very beginning, we did not expect any miracle to result from seeking assistance at this shrine. This is because we have neither forgotten the outcomes of the findings of the previous investigative commissions nor do we believe that this mission is an independent and impartial body, which is indeed the precondition to the appointment of any fact-finding mission. Three of the four members of this commission, the Ministers of Information [Intelligence] and Justice and the Minister of Culture and Islamic Guidance, who were fully aware of the situation from the very early hours of Zahra Kazemi's arrest because of their official political positions, not only did not intervene to stop the catastrophe but also, with their continuous silence, allowed Saeed Mortazavi, the main suspect of this crime, to dare to order the Director General of Foreign Press and Media of the Ministry of Culture and Islamic Guidance to announce Zahra Kazemi's death by stroke. How is it possible to choose these three Ministers as members of the fact-finding mission regarding this crime while they have been, at least in some way, fully aware of this tragedy and kept silent for nearly three weeks?

That is why the untold in this report is much more than what has been told. However, even the little that was told is worthy of deliberation.

1. Zahra Kazemi had previously received a reporters' ID card [photography permit] from the Foreign Press and Media Department of the Ministry of Culture and Islamic Guidance and had traveled to Afghanistan and Iraq using that ID before returning to Iran.
2. Considering that record, the same department issues a reporter's ID card for Zahra Kazemi on 31 Khordad 1382 [21 June 2003] and in the next day with that ID in hand "she goes outside the Evin Prison to report and take pictures of the families of prisoners arrested during the recent unrest in Tehran and at 17:40 pm she is arrested by the Public Prosecutor's office."
3. Therefore, the arrest order has been issued by the Public Prosecutor's office. They take Zahra Kazemi to Evin prison and "she is questioned in the presence of two judges." But it was not mentioned in the report who questioned her. Why the two judges do not interrogate her themselves? Investigation of the crime is the duty of the judge especially when two judges were present. Furthermore, what were the two judges doing at Evin prison and why the suspect was not taken to the Office of the Public Prosecutor?
4. Then it was said that "the named individuals ask Ms. Zahra Kazemi to surrender her Ministry-issued ID, camera, and films for the inspection and leave the prison and return the next day to get them back. She refuses to do so and says that she wants to stay with her possessions on her own responsibility." Who are "the named individuals"? No individual is named before this sentence. Does it mean interrogators or the two judges? What is a prison, a hotel that

people stay at freely of their own discretion? Why don't they make Zahra Kazemi leave the prison? A person is taken into custody only by committing a crime and that would be ordered by a judge. Nobody is allowed to stay at a prison by their own discretion. Now, if Zahra Kazemi's refusal is presupposed, why don't they keep her in the same room belonging to the 'prison guards' until the inspection of the camera is done and why do they send her to 'ward 240' after three hours of interrogation?

5. The interrogation resumes two hours later and this time it is done "by the assistant prosecutor" (without disclosing his identity) before the Tehran Public Prosecutor (Saeed Mortazavi) and continues till "2:30 am of the morning of 82/4/3 [24/06/2003]." Why has everything changed during the two hours and how come interrogating a person who has asked to be held in custody contrary to the two judges' opinion becomes so necessary and urgent that they decide to see her at 10:30 pm and Saeed Mortazavi and his deputy interrogate her until 2:30 in the morning? What kind of a crime has a person with a clean criminal record, whose maximum offense might be taking pictures from the outside of Evin Prison, committed such that the Public Prosecutor and his deputy must interrogate her in the middle of the night for four hours? Especially [since this is the same] prosecutor who has become an expert in making up spies in the short time that he has been in the judiciary. And he issues an order to search Zahra Kazemi's home and seize all of her documents, papers and equipment including her Canadian passport and her travel documents relating to her trip to Iraq for photography. This is where Mortazavi's deranged and paranoid mind starts working and he goes to the trapped prey to get a confession. But the gentlemen on the commission never even approach to this topic.
6. At 10:30 am on Tir the 3rd [24/06/2003], she is handed in to the interrogation office of branch 12 who issues a temporary arrest warrant for her. But there is no mention of what she is accused of in the report. Under the severe and harsh law of the Islamic Republic of Iran, issuing an arrest warrant is only possible for important crimes and misdemeanors. What accusations were there against Zahra Kazemi to authorize the issuance of her temporary arrest warrant? Espionage?
7. Zahra Kazemi was in the hands of the "Intelligence Unit of the Law Enforcement Forces" from 2:30 pm on Tir the 3<sup>rd</sup> [24/06/2003] till 4:30 on Tir the 4<sup>th</sup> [25/06/2003]. At 6:45 pm "the head of ward 110 enters the women's ward to talk with Ms. Kazemi." At 10 pm "interrogators enter the women's ward to interrogate the suspect and leave there after 10 minutes."

#### Questions:

- Why do they hand in the suspect to the Intelligence Unit of the Law Enforcement Forces after four hours of interrogation by the prosecutor and his deputy and after issuing the temporary arrest warrant? Is it because she was accused of espionage and her interrogation should have been done by the Counter-intelligence Office of the Ministry of Intelligence?

- Apart from the fact that the identity of the head of ward 110 is not disclosed, what was he doing for more than three hours in Zahra Kazemi's cell? What did the interrogators who entered Zahra Kazemi's cell after him see that made them leave the women's ward ten minutes later? Was the physical and mental state of Zahra Kazemi the reason they did not continue the interrogation?

- What had they done to Zahra Kazemi during this 48 hours that caused her to "shout and curse" when she was transferred to the Evin prison at 4:30 pm on Tir the 4<sup>th</sup> [25/06/2003]? Mohsen Armin, a deputy speaker and vice chairman of the parliamentary foreign affairs committee, said during his speech [before the start of the session] at parliament: "Zahra Kazemi told the Law Enforcement investigators that her head was hit during the interrogation in the Office of the Public Prosecutor and instead of being hospitalized, "she was ordered returned to Evin Prison the same afternoon by Mortazavi."

8. According to the coroner's report [by the Office of the Medical Examiner], the cause of death is "fracture of the skull and hemorrhage caused by a hard object hitting or the head hitting a hard object." A medical investigation commission consisting of the Head of the State Forensic Organization [Medical Examiner's Office] and 13 specialist physicians has estimated the time of the blow "around Tir the 5<sup>th</sup>, 1382 [26/06/2003] and at a maximum 24 hours before that."

Nevertheless, the fact-finding commission questions neither the Tehran Public Prosecutor and his deputy, nor "all individuals, who during the above-mentioned time periods," interrogated Zahra Kazemi and suffices to say that these individuals "should be identified and interrogated." Therefore, it is suggested that the case is remanded "to the Judiciary" so that an independent special investigator be appointed to investigate the case and identify the main person or persons responsible for this incident.

More interesting, it is mentioned in the report that Zahra Kazemi is released on a 5 million Tomans<sup>1</sup> bail on 82/4/15 [06/07/2003] by the judge and delivered to her family in the hospital. This impudent lie is another reason to believe that the commission was partial and not independent in researching and carrying out their investigation. On Tir the 15<sup>th</sup> [06/07/2003] when the supposed bail was issued for Zahra Kazemi, she had already been "brain dead" for 10 days and they kept her body on a respirator to keep her death from occurring [in the period] before the Tir 18<sup>th</sup> [09/07/2003], the anniversary of the [1999] student uprising and their bloody suppression by the militia, in order not to increase the students' anger and provoke a rebellion. The body of Zahra Kazemi was never given to her family, and today, 12 days after the official announcement of her death, they refuse to give her body to her recently bereaved family and do not even allow Stephan Hashemi to receive the body of her mother to bury in Canada along with his hopes and wishes.

This is a new page added to the thick file of two decades of atrocities of the Islamic Republic and a new tale of justice in Iran.

Paris 31 Tir 1382 [22 July 2003]

Abdol Karim Lahiji

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<sup>1</sup> Translator's note: the equivalent of U.S. \$5438.55 on 04/10/2006, probably around \$5800.00 in June 2003.

## Appendix 8

### **MOHSEN ARMIN STATEMENT: MORTAZAVI MUST STAND TRIAL** (translated into English by IHRDC)

#### **Mohsen Armin: Mortazavi must stand trial** **Enclosure of President's Commission report about Zahra Kazemi has not been published yet.**

Mohsen Armin, a Parliament Member, revealed in a new letter that he wrote about Judge Mortazavi that the president's commission report about Zahra Kazemi has a "report attachment" which has not been published and not everyone is aware of.

Yesterday, Mohsen Armin, a leading member of the Islamic Revolution Mojaheddin [fighters] Organization and a parliament member, in response to Judge Mortazavi's letter, again emphasized Mortazavi's involvement in many anti-reform incidents over the past six years and also stressed [Mortazavi's] decisive role in the death of Dr. Zahra Kazemi.

Armin has sent parts of his report to the media to be published, but aside from the anti-reform media who will naturally refuse to publish it, it seems unlikely that the pro-reform and semi-independent media will publish it completely [in uncensored form]. There are a few complex matters regarding Mortazavi mentioned in this letter:

[Mohsen Armin said:]

"I stressed in my speech: 'Judge Mortazavi has been convicted of several violations in the Judge's Disciplinary Court' but delivery of his conviction sentence was prevented.

Also I specifically mentioned the active role Judge Mortazavi played in coercing confessions from the imprisoned students and having the detainees give televised interviews. Judge Mortazavi's silence in this matter is a sign of the accusations validity."

--In another part of his letter, Armin, noting the policy of [mutual] consideration that has been going on for 6 years, wrote:

"Of course he can deny it. In that case, I will have no alternative but to state the truth more clearly and with more details."

In this speech, in addition to mentioning the events that occurred during the parliament's two-week vacation period, I pointed out the summons and mass arrests of reporters and chief editors and writers of the press, and even named some of them. The above-mentioned actions were carried out by both the Tehran prosecutor's office and the courts.

In my speech, as one of the [tens of] witnesses to the fact that Judge Mortazavi has knowledge about the cause of Mrs. Kazemi's death and his attempts to conceal that fact after explaining the summoning of Mr. Khoshvaght [to Mortazavi's office] and the dictation of the text of his interview about Mrs. Kazemi and Judge Mortazavi's questionable hastiness in faxing the interview text, I asked: "why didn't Judge Mortazavi inform the Ministry of Islamic Culture and Guidance instead of summoning the director of Foreign Press and Media? At the time of death, the accused was in the custody of the Intelligence Ministry. Why didn't Judge Mortazavi let the Intelligence Minister investigate the cause of death and announce it himself?"

Now I want to inform the readers of new matters related to the death of Zahra Kazemi. Zahra Kazemi was transferred to the Baghiyatollah-al-Azam Hospital 20 minutes past midnight on (27



June, 2003). A few hours later she falls into a coma. According to standard procedure for these kinds of patients, a CT scan should have been performed on the 6<sup>th</sup> after she fell into a coma. According to the documents attached to the Special Presidential Committee's report, brain damage, numerous intense hemorrhages caused by bruising in the areas around the ear, the frontal and temporal areas of the right side and inside of the brain tissue. The bruising in the right side was so extensive that it put pressure on the cerebral cortex.

In other words, after the sixth [of Tir] the CT Scan result and the cause of the massive hemorrhage, meaning repeated blows to the head, was recorded in the patient's report and the doctors and head of the hospital were aware of it.

Also, according to reliable information Judge Mortazavi personally attended at least one of the late detainee's interrogations.

There are other important points, but I prefer to mention them at another, more suitable time.

This incident can be placed in the category of political disputes, as has been the disagreeable fashion of late. Everyone who is eager to clarify the real reason behind and punish those responsible for the death of Mrs Kazemi can be considered an enemy of the regime, an advocate for foreign countries and the agent of the enemy. The Islamic Regime can be sacrificed to protect Judge Mortazavi and the existing methods, which are despicable and unworthy of defending. The situation can be directed in a such a manner as to cause Europe to come to Canada's defense and put up a united front against Iran--and then the situation can be advertised inside Iran as an example of an enemy conspiracy and this case handled like the University Dormitories case so that eventually someone will be convicted for [a petty crime such as] stealing the camera or hairbrush of Mrs. Kazemi. Or, the case can be dealt with in a decisive, transparent manner and as quickly as possible. Those responsible for causing and carrying out this incident, whatever post or position they might have in any of the government organs, must be identified and punished in an effort to reassure public opinion inside and outside of the country of the health of the regime and its impartiality in this case and allow the regime to save face in the eyes of the international community which is now is paying special attention to this matter.

What happened to Mrs. Kazemi is the result of the improper and harmful processes that Judge Mortazavi and his protectors and people who think like him put in place in the Public Prosecutor's office and, prior to that, in some courts.

Seeing each movement as a plot against the regime, searching for a spy and regime overthrow plots in every event, considering the press and political activists and people with opposing viewpoints to be agents of foreign powers and dependent on them, considering oneself the ultimate power and completely disregarding all the legal procedures and laws, thinking that the strength of the regime is in getting confessions from detainees and having such TV interviews done are the obvious characteristics of these incorrect processes that most are familiar with. It was based on these incorrect processes that the June 2003 prompted a search for espionage agents and a foreign contact network and the involvement of the reformist parties and groups and even parliament members and parts of the government. The confessions that were taken from the detained students are the result of this mindset. The accusation of espionage against Mrs. Kazemi-- whose only crime was that she photographed the gathering of the families of prisoners in front of Evin--is a result of this mindset. It was simpler to stop Mrs. Kazemi from taking pictures from a location where photography is forbidden and her camera could be easily taken from her and she could be taken to the hotel where she was staying. Mrs. Kazemi's death in prison was an incident that could easily be prevented if the repeated warnings of those who had the best interests of the regime at heart about the actions of Judge Mortazavi and sympathizers [those who think like him] had been heard in the last couple of years. Even though this fact was linked to the unfortunate death of Mrs. Kazemi, we shall not let [the longstanding concerns about Mortazavi's actions] be overshadowed by this death.

I have no judgment about Mr. Mortazavi's role in this incident. All the same, it is pretty clear from the available documents and evidences and others' opinions and testimony and also his own conflicting testimony and denial of the truth that he has made every effort to conceal the incident from people and authorities and has proven that he is not competent to be a judge and public prosecutor. It should not be assumed that finding the one responsible for the beating, and identifying that, for example, someone in prison had beaten Mrs. Kazemi is going to convince public opinion inside and outside of Iran about the way this incident ended. Judge Mortazavi is one of the models and epitomes of the kind of improper methods that caused the death of Zahra Kazemi. Hence, in addition to identifying and punishing those responsible for the death of Zahra Kazemi--whichever [government] organ they might be from--the only other way that public opinion might be satisfied is by dismissing Judge Mortazavi and investigating the actions of him and those who think like him, with regard to this situation or others.

## Appendix 9

### COMPLETE TEXT OF MOHSEN ARMIN'S SPEECH (translated into English by IHRDC)

#### Details of the Events Leading to Zahra Kazemi's Torture and Killing as Stated by Mohsen Armin

The Complete Text of Mohsen Armin's Speech in Parliament<sup>1</sup>

"In the process of legal investigation of Zahra Kazemi's murder case, even though the deceased was in the custody of 3 different organs of the Office of the Public Prosecutor, the Law Enforcement Office, and the Intelligence Ministry during her detention, and according to the Special Presidential Commission's report, the beating that lead to her brain hemorrhage could have happened in connection with any of the three mentioned organs, still only five members of the Intelligence Ministry's personnel, two of the female guards, one prison doctor and two interrogators were detained.

At that time, I said that all of the members of these three organs who came into contact with Zahra Kazemi during her detention should be interrogated. Limiting the research and inquiry to the personnel of one of the three organs is worrisome and is diverting the course of investigation to the point where, whatever its outcome, public opinion will not be satisfied. In spite of these concerns, the proceedings continued until two days ago, when the Office of the Revolutionary Prosecutor released a statement accusing two of the interrogators of the Ministry of Intelligence. The Ministry of Intelligence, in retaliation, released a statement denying the claims of the Office of the Public Prosecutor, and mentioned suggestive documents and evidence that will show the truth behind the incident and that a few people are attempting to divert its meaning.

Following the two aforementioned statements, the Parliamentary Article 90 Commission invited authorities from the Judiciary and the Ministry of Intelligence to attend the Commission's meeting examining the incident.

The National Security and Foreign Policy Council (NSFPC) followed suit as well and invited the authorities of the Ministry of Intelligence to provide necessary explanations regarding the [Zahra Kazemi] case file. These two meetings took place yesterday [8/29/2003]; Tehran's Public and Revolutionary Prosecutor and other legal and judicial authorities did not attend [the meeting in] parliament.

Even though the reporters of the two commissions, the Article 90 Commission and NSFPC, have the duty to inform the public of the discussions taking place in the meetings of these two Commissions and the Article 90 Commission reporter gave a very interesting report yesterday about the meeting of this Commission, I, as promised to the noble people of Iran in my previous speech and the interviews that followed it regarding the case file on the murder of Zahra Kazemi, will reveal the truth if the course of investigation of this case is diverted and instead of exposing the reality of this case and telling the facts, efforts are made to hide the persons responsible for this disgrace in a secure corner to the point that the interest and the reputation of the country are jeopardized to help certain persons or authorities.

What I am about to say, is neither a political analysis of the situation nor a theory based on guesses or personal opinion, but it is documented by authentic information presented yesterday by high-ranking officials of the Ministry of Intelligence.

- 1- Zahra Kazemi enters Iran with an official permission from the ministry of Islamic Guidance and Culture to take pictures of people's everyday life. She is arrested, with physical beating involved, and detained on the day of 3/4/82 [6/24/2003] while

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<sup>1</sup> Published 8/30/2003

- photographing the gathering of the detainees' families in front of the entrance to Evin prison. She is an Iranian who is a resident of Canada and has traveled to Iran many times before and does not have any previous criminal or espionage record.
- 2- From the time of her arrest till her transfer to Sina Hospital [sic] at 20 minutes past midnight on the day of 6/4/82 [6/27/2003], she was in the custody of the three following organs: first day, Office of the Public Prosecutor; from 5:00 pm on 3/4/82 [6/24/2003] until the day of 5/4/82 [6/28/2003], Law Enforcement Office; on 5/4/82 [6/28/2003] for four hours, Office of the Public Prosecutor; from 21:45 of 5/4/82 [6/28/2003], Ministry of Intelligence.
  - 3- From the beginning of her arrest, without any evidence or reason that would indicate as such, she was accused of espionage and is detained. The Deputy Anti-Espionage office of the Ministry of Intelligence is alerted and requested to take her into their custody. The Ministry of Intelligence, who perhaps think espionage is an improbable charge, reports that there is no need to arrest her. The accused should be taken to her place of residence in Tehran and investigation should take place there.
  - 4- In spite of the Ministry of Intelligence's professional opinion, the accused is delivered to the Law Enforcement Intelligence Office by the Prosecutor. Once informed, the legal counsel of the Ministry complains to the Office of Public Prosecutor of their action and says that those accused of espionage must be delivered to the Anti-Espionage office of the Ministry and no other organs. Now that she has been arrested, she must be delivered to the Ministry of Intelligence.
  - 5- In the course of the investigations of the Ministry of Intelligence, it becomes clear that she was subject to physical violence in two separate stages. From the beginning of her arrest and inside the prison due to her lack of cooperation and resistance to turning over her belonging to the authorities, she is subject to beating on the right side of her face and head. She loses her balance and is immediately delivered to ward 240. According to the testimonies of various witnesses present at the time of her transfer to the ward, at this stage the accused was completely faint, to the point that the prison guards were dragging her to the ward by holding her hands and feet. Testimonies of witnesses, guards, and authorities with regard to this event are available.
  - 6- The blows were so serious and worrisome that the next day when the accused was delivered to the Law Enforcement Office, the individual who struck her, whose identity is completely known and is an employee of one of the organizations that are under the protection of the Judiciary, contacts the Law Enforcement Office and inquires about her condition and well being.
  - 7- After being transferred to the ward, the accused is interrogated between the hours of 22:25 pm and 2:30 am of 3/4/82 [6/24/2003] by Judge Mortazavi, his deputy Judge Arjmandi, and another person whose identity has not been revealed to the Ministry of Intelligence. There is no information available about the circumstances of this interrogation. The unusual presence of the Public and Revolutionary Prosecutor of Tehran and his deputy for 4.5 hours during the interrogation of the accused shows the intentions, sensitivity and extreme interest of the prosecutor in this case.
  - 8- The accused, after being delivered to the Law Enforcement Office, is interrogated on the day of 3/4/82 [6/24/2003] and according to the written report of the Law Enforcement Forces states that in the Office of the Public Prosecutor she was beaten and her nose and a few fingers and toes were broken.
  - 9- In the initial report of the hospital at the time of the patient's admission, there was mention of indications of beating and injuries.
  - 10- After transferring the accused to the hospital, the office of the Public Prosecutor has made significant efforts to conceal the incident.
  - 11- Authorities of the Ministry of Intelligence say that Judge Mortazavi had said, before the Special Presidential Committee's report was released, that ["] Zahra Kazemi had a stroke. If they reach another conclusion, it will be blamed on the Ministry of Intelligence["] and he asks the authorities of this ministry to state that the accused was a spy.
  - 12- After the start of the process of investigation into the incidents surrounding Zahra Kazemi's death and during the research phase, the judge of the case appoints the

Ministry of Intelligence to investigate. According to their investigation, the witnesses and those who saw the incident are identified and questioned, the stages [steps involved in or times of occurrence of] and the methods of beating and the person responsible for it are identified and the witnesses testified before the judge.

- 13- Then the process changes immediately; the judge orders the investigation to come to a halt and no longer be pursued. The witnesses are rounded up and kept in quarantine for 2 days. It is explained to them that they should take back their testimony. They are convinced and filmed and then they are taken to the judge to testify that their previous testimony was a lie.
- 14- Mr. Pezeshkian creates another special medical committee to obtain better and more detailed results and this time investigates the incident based on the hospital CT scan report and other information and comes to more clear conclusions. I have announced the conclusions previously in an interview.
- 15- The judge of the case writes a letter to Mr. Pezeshkian and complains about the medical committee continuing their work and the release of the new and more precise opinion of the committee.
- 16- According to the authorities of the Ministry of Intelligence, during their detention, the arrested and accused personnel of the Ministry of Intelligence were constantly prompted to say that the accused was a spy and had fallen down on her own.

Judge Mortazavi visits the detainees and while admiring them as believers in God and the regime and Leader asks them to declare that Zahra Kazemi was a spy.

- 17- The prison guards who were present and would have seen anything that happened were moved to other locations and the Post Guard tablet of the prison books, indicating who was on duty, is scratched and touched [i.e., altered].
- 18- According to the authorities of the Ministry of Intelligence, Ayatollah Hashemi-Shahrudi, once he was informed of the results of the Ministry of Intelligence's investigations, said that the work of the Judiciary should not be questioned. The same source also mentioned that he said: "you [Ministry of Intelligence] and we are both part of the same regime. What difference does it make which organization's personnel are accused?"
- 19- The Judiciary authorities also said: "in the current situation, it is not advisable for attention to be diverted towards us, because our enemies inside the country might abuse it to their advantage."
- 20- And finally, in this incident, from the beginning-- meaning from the time that due to the prosecutor's [Mortazavi's] creativity, the Head of the Department of Foreign Press and Media was forced to announce that Zahra Kazemi died of a heart attack until today—that two of the Ministry of Intelligence personnel have been accused by the Prosecutor, the truth has not been told to the people, other than in the report of the Commission appointed by the people's president.

The end.

## Appendix 10

### FORENSIC REPORT AND ANALYSIS CONDUCTED BY IHRDC PHYSICIAN

#### **Summary**

This analysis concludes that the death of Iranian-Canadian journalist Zahra Kazemi was the result of multiple head trauma sustained while in detention. This conclusion is based on available medical evidence, including: the medical report of Dr. Shahram Azam, the emergency room physician who examined Kazemi at Baghiatollah al-Azam Hospital, the reported results of the CT scan, and the reported findings of the government-approved autopsy report (as described by several sources, cited below). These sources document the type and distribution of injuries observed on the body surface, including the multiple blunt head injuries. Furthermore, it is noted that there were multiple fractures as well as wounds or burns on the body surface, including broken toes, fingers and nose. These injuries indicate that Zahra Kazemi was probably tortured and sustained base-of-skull fractures and blunt trauma in the temporal area with resultant intracranial bleeding and edema. The fracture at the base of the skull, as described in the reports of the CT scan, is indicative of a low-velocity impact generally seen in injuries sustained in assaults from close range. These multiple, bilateral blunt head injuries could not have been caused by a single impact or blow, which means that the reported injuries of Zahra Kazemi could not be the result of a simple fall on the floor.

This report specifically compares the findings reported by physicians and medical examiners in this case. The autopsy was not performed by an independent examiner, and the case was considered highly sensitive by state officials. Therefore, the autopsy findings may not have been comprehensive. The evidence of sexual assault reported in the ER report is absent from the autopsy report, but generally there is significant agreement between these reports on all other injuries and their locations.

This analysis was drafted by a physician affiliated with IHRDC and reviewed by an outside reviewer with expertise in the field. The author has not conducted an independent, first-hand investigation of these findings nor has he had the opportunity to examine the body of the victim. However, the specificity of some of the reported injuries allows definitive conclusions pertaining to the cause and manner of Zahra Kazemi's death.

#### **Purpose**

To determine the cause and manner of death in the case of Zahra Kazemi, a 54-year-old Iranian-Canadian female, whose body was brought to the Baghiatollah al-Azam Military Hospital by security officers on June 27, 2003.

It is alleged that she was tortured, raped and beaten to death while in detention in Tehran's Evin prison. Islamic Republic of Iran officials assert that she died accidentally as a result of a fall.

#### **I. Introduction**

The Kazemi family attorneys and other independent human rights organizations were unable to obtain permission from the Islamic Republic of Iran authorities to perform an exhumation autopsy. Hence, this evaluation is based on review of the available medical records, reports on the CT-scan, and the reported results of the official autopsy.<sup>1</sup>

<sup>1</sup> Efforts were made to analyze the available evidence using standard forensic methodology. See, e.g., Steve Gilbert, MRS, "Investigative Significance of Coup and Contrecoup Head Injuries", (Washington DC, 1990), available online at [http://members.aol.com/SVG2254/coup\\_html.html](http://members.aol.com/SVG2254/coup_html.html) [accessed May 12, 2004] ("Upon encountering a victim with a head injury, several considerations need to be made in regards to the method in which the injury was sustained. The movement of the head (or lack thereof) in relation to the impact, the condition of the

The IHRDC interviewed Dr. Shahram Azam, a former military staff physician who left Iran and sought asylum in Canada in 2004, who has stated that he examined Kazemi's body in the emergency room.

The report also evaluated the following:

- the reported results of the CT-scan of the head, as stated in:
  - Dr. Shahram Azam's ER examination report, **attached to IHRDC main report as Appendix 4** (hereinafter "Dr. Azam report"); and
  - Mohsen Armin's Open Letter to Saeed Mortazavi (dated July 27, 2003), **attached to IHRDC main report as Appendix 12** (hereinafter "Mohsen Armin statement");
- the results of the official autopsy report, as reported in the statement by Abdol Karim Lahiji<sup>2</sup>, "Torturers Continue to Face Impunity" (dated July 11, 2005), **attached to IHRDC main report as Appendix 11** (hereinafter referred to as "Karim Lahiji statement"); and
- the nature of injuries described during the Reza Ahmadi trial<sup>3</sup>

## II. Circumstances of the Death

On June 23, 2003, Zahra Kazemi was arrested in front of Evin prison in Tehran, near an area with signs prohibiting photography. On June 27, 2003 at 00:20 hours she was admitted to the Baghiatollah al-Azam Military Hospital emergency room. She was unconscious upon admission and never regained consciousness.<sup>4</sup>

The emergency room examination of the head revealed ecchymosis<sup>5</sup> in the right frontal and temporal areas as well as a fluctuating hematoma<sup>6</sup> in the left occipital<sup>7</sup> area.

The nasal bone was fractured and there was significant ecchymosis and swelling around the nasal bridge and orbital rim.

Fundoscopy examination revealed papilledema which indicated increased intracranial pressure. Ecchymosis in the area of the temporal bone extending to the ear canal was evident. The left tympanic membrane was intact but the right was ruptured and the ossicles were exposed.

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victim's scalp at the time of the impact, location of the impact, and the mass and velocity of the object which came in contact with the impact site, all must be examined." )

<sup>2</sup> Prominent Iranian human rights lawyer.

<sup>3</sup> Ezzat Kazemi, Zahra Kazemi's mother, stated during the trial that at the hospital she had seen multiple injuries on Kazemi's body, including burns and a broken hand and foot. See, e.g., Nazila Fathi, Iran Stops Trial in the Murder of a Journalist, *The New York Times*, July 19, 2004.

<sup>4</sup> As described in Dr. Azam report.

<sup>5</sup> Ecchymosis, blackness, is an extravasation of blood by rupture of capillary vessels, and hence it follows contusion; but it may exist, as in cases of scurvy, and other morbid conditions, without the latter.

<sup>6</sup> A hematoma, or haematoma, is a collection of blood, generally the result of hemorrhage. Hematomas exist as bruises (ecchymosis), but can also develop in organs.

<sup>7</sup> The occipital bone is a bone situated at the back and lower part of the cranium.

The reported CT scan results confirm multiple areas of contusion with hemorrhage around the ear, frontal and right temporal areas and brain edema<sup>8</sup> on the right resulting in increased intracranial pressure and ventricular compression.

The autopsy report<sup>9</sup> states that there is a base of skull fracture in the areas of the ridge of the petrous bone extending to the foramen magnum on the left side along with another linear fracture in the occipital bone. The autopsy report also reveals hemorrhage in the right lobe of the thyroid gland.

Both the ER examination and the hospital bedside chart<sup>10</sup> indicate the ecchymosis on the legs and toes and the right forearm. The ER examination reports a crushed right big toe, and several other fractured toes.<sup>11</sup>

Only the ER examination reports ecchymosis and trauma to the groin and pelvic areas.

### **III. Course of Medical Treatment at Baghiatollah al-Azam Military Hospital, June 27, 2003**

The body of Zahra Kazemi arrived at Baghiatollah al-Azam Military Hospital on June, 27, 2003 at 00:20 hours, and was examined by Dr. Shahram Azam, an emergency room physician. Examination included external inspection, NG tube insertion<sup>12</sup> and gastric lavage, and a neurosurgical consultation obtained from Dr. Ahmad Saidi, the neurosurgeon on call. Based on this evaluation Zahra Kazemi had received severe head trauma with multiple skull fractures causing severely increased intra-cranial pressure resulting in ventricular compression and intracranial hemorrhage. She received Mannitol and Dexamethasone and at a later point stopped breathing, requiring the aid of a ventilator.

### **IV. Evaluation of medical reports:**

In sum, the following were evident from Dr. Azam's report and the reported CT scan and autopsy results:

1. Multiple skull fractures<sup>13</sup>
2. Fractured nasal bone<sup>14</sup>
3. Blunt trauma in the temporal area<sup>15</sup>
4. Linear parieto-occipital skull fracture<sup>16</sup>
5. Fracture of the petrous ridge at the base of the skull extending to foramen magnum.<sup>17</sup>

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<sup>8</sup> Edema is swelling caused by too much fluid in the body.

<sup>9</sup> As described in Karim Lahiji statement.

<sup>10</sup> As described in Karim Lahiji statement.

<sup>11</sup> This is consistent with the police report described in the Article 90 Commission report on its investigation into Kazemi's death, which reported that Kazemi (during her detention) stated: "I was in Evin last night. They have broken my nose, thumb and toe."

<sup>12</sup> The naso-gastric tube (NG tube) is a plastic tube, inserted into a nostril through the nose, into the throat, down the esophagus and into the stomach.

<sup>13</sup> As described in Dr. Azam report and Karim Lahiji statement.

<sup>14</sup> As described in Dr. Azam report.

<sup>15</sup> As described in Mohsen Armin statement.

<sup>16</sup> As described in Karim Lahiji statement.

<sup>17</sup> As described in Karim Lahiji statement.



6. Brain hemorrhage, edema and the compression of lateral ventricles due to severe cerebral edema (swelling)<sup>18</sup>

## V. CONCLUSION

It is the opinion of the author, within a reasonable degree of medical and forensic certainty, that:

1. Zahra Kazemi died as a result of multiple blows to the head causing brain hemorrhage and edema. The type and distribution of injuries observed on the body surface, including the broken nose, toes and fingers and multiple ecchymosis and abrasions indicate that Zahra Kazemi was most likely tortured and beaten extensively before sustaining the final blow to the head.
2. Zahra Kazemi suffered a basilar skull fracture.<sup>19</sup> A basilar skull fracture most often occurs when the head whips forward violently, essentially separating the base of the skull from the spinal cord. Clinical studies have attributed basilar skull ring fractures to mandibular (jaw) impacts. Studies show that direct loading on the temporomandibular joint (TMJ) in conjunction with tensile loading imposed locally around the foramen magnum to simulate the effect of the ligaments and musculature of the neck is capable of producing basilar skull fractures. Falling rigid surface impacts were less likely to produce such fractures. This suggests that the reported injury of Zahra Kazemi was most likely caused by a blow to the head.

The fracture of the petrous ridge at the base of the skull and the extension to the foramen magnum, confirmed by the autopsy report, is indicative of low- to medium- velocity close-range impact, which according to at least one study would have to be an average force of 4300+/- 350 N.

Kazemi sustained both base-of-skull fractures and blunt trauma in the temporal area. It is impossible for a single blow or impact (such as that caused by a fall) to cause severe blunt head injuries to two distinctly different parts of the head.

The findings in this case are consistent with trauma generally seen in the settings of torture, assault and head beating. While it is difficult to be sure about her exact time of death, it is possible to conclude that Zahra Kazemi was unlikely to be conscious for more than 24 hours after the delivery of this last blow to her head which caused the brain hemorrhage and edema. Therefore the initial beating at the time of her arrest and subsequent interrogations and tortures that produced broken fingers and toes would have preceded this final and lethal blow to her jaw.<sup>20</sup>

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<sup>18</sup> As described in Dr. Azam report and Mohsen Armin statement.

<sup>19</sup> Basilar skull fractures, breaks in bones at the base of the skull, require more force to cause than cranial vault fractures. Thus they are rare, occurring as the only fracture in only 4% of severe head injury patients (Graham DI and Gennareli TA, Chapter 5, "Pathology of Brain Damage After Head Injury", Cooper P and Golfinos G. 2000. Head Injury, 4<sup>th</sup> Ed. Morgan Hill, New York.; Orlando Regional Healthcare, Education and Development Self-Learning Packet 2004, "Overview of Adult Traumatic Brain Injuries", available at <http://www.manimalia.org/docs/TBI.pdf> [accessed May 18, 2006]. Caused by a blow to the back of the head, basilar fractures have characteristic signs: blood in the sinuses; a clear fluid called cerebrospinal fluid (CSF) leaking from the nose or ears; raccoon eyes (bruising of the orbits of the eyes that result from blood collecting there as it leaks from the fracture site); and battle sign (caused when blood collects behind the ears and causes bruising). Patients with basilar skull fractures are especially likely to get meningitis (Downie, Andrew. Tutorial: CT in Head Trauma, 2001, available at <http://www.radiology.co.uk/srs-x/tutors/cttrauma/tutor.htm>.) [accessed May 12, 2006]. Bones may be broken around the foramen magnum, the hole in the base of the skull through which the spinal cord enters and becomes the brain stem, creating the risk that blood vessels and nerves exiting the hole may be damaged (Brain Injury Association of America, "Types of Brain Injury", at [http://www.biausa.org/Pages/types\\_of\\_brain\\_injury.html#diffuse](http://www.biausa.org/Pages/types_of_brain_injury.html#diffuse)) [accessed May 18, 2006].

<sup>20</sup> My main reference for this analysis is below:

3. Finally, Zahra Kazemi sustained multiple cutaneous injuries from repeated assaults since the injuries are distributed on both the sides of the body, across the nose, upper torso and extremities and not merely one-sided.

The reported injuries also suggest the presence of defensive wounds. Defensive wounds consist of contusions when a blunt instrument is being used or cuts and stabs when a sharp instrument is being used-- such wounds are typically distributed along the dorsal surfaces of the hands, wrist joints and forearms and are sustained when a victim is attempting to ward off blows. Some of the reported abrasions and contusions such as the ecchymosis in the back of right forearm could be understood in this light.

4. Although the IHRDC is not able to independently verify this, medical records reviewed indicate that Zahra Kazemi also sustained fractures of the right middle and distal phalanges of the fifth and middle finger, and distal phalanges of the left middle finger. Report also indicated broken nails of the left thumb and index finger and fractured third and fourth left toe. There are no plausible accidental injury mechanisms or scenarios through which all these fractures could

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McElhaney JH, Hopper RH Jr, Nightingale RW, Myers BS (Department of Biomedical Engineering, Duke University, Durham, North Carolina, USA.) Mechanisms of basilar skull fracture. *J Neurotrauma*. 1995 Aug; 12 (4):669-78.

Summary: Basilar skull fractures comprise a broad category of injuries that have been attributed to a variety of causal mechanisms. The objective of this work is to develop an understanding of the biomechanical mechanisms that result in basilar skull fractures, specifically focusing on mandibular impact and neck loading as potential mechanisms. In the characterization of the injury mechanisms, three experimental studies have been performed. The first study evaluated the response of the base of the skull to midsymphysis loading on the mental protuberance (chin) of the mandible. Five dynamic impacts using a vertical drop track and one quasi-static test in a servohydraulic test frame have been performed. In each test, clinically relevant mandibular fractures were produced but no basilar skull fractures were observed. The second study assessed the fracture tolerance of the base of the skull subject to direct loading on the temporomandibular joint in conjunction with tensile loading imposed locally around the foramen magnum to simulate the effect of the ligaments and musculature of the neck. Among four specimens that sustained either complete or incomplete basilar skull ring fractures remote from the sites of load application, the mean load at fracture was 4300 +/- 350 N. Energy to fracture was computed in three of those tests and averaged 13.0 +/- 1.7 J. Injuries produced were consistent with clinical observations that have attributed basilar skull ring fractures to mandibular impacts. In the third series of experimental tests, loading responses resulting from cranial vault impacts were investigated using unembalmed human cadaver heads and ligamentous cervical spines. Multiaxis load cells and accelerometers, coupled with high-speed digital video, were used to quantify impact dynamics. The results of these experiments suggest that while there is a greater probability of cervical spine injury, basilar skull ring fractures can result when the head is constrained on the impact surface and the inertia of the torso drives the vertebral column onto the occiput.

See also:

Zhu BL, Quan L, Ishida K, Taniguchi M, Oritani S, Fujita MQ, Maeda H. Longitudinal brainstem laceration associated with complex basilar skull fractures due to a fall: an autopsy case. *Forensic Sci Int* 2002; 126: 40-2.

Summary: This report describes an autopsy case of a rare longitudinal brainstem laceration associated with complex basilar skull fractures. The victim was a 40-year-old male who died immediately after falling from a roof (9.2m in height) of a factory onto a concrete floor. The postmortem examination revealed an incomplete ring fracture of the base of the skull with longitudinal fractures of the sphenoid (clivus of the dorsum sellae turcicae) and occipital bones, cerebral contusions in the frontal and temporal poles, a longitudinal brainstem laceration at the posterior median sulcus of the pons accompanied with multiple contusional hemorrhages in the brainstem and corpus callosum. Related blunt-force injuries were observed in the parieto-occipital region of the head, shoulder and upper back involving the fractures of the cervical and thoracic vertebrae, and sternum and ribs, indicating a huge impact to the occiput and subsequent impression of the vertebral column into the base of the skull due to violent anteroflexion of the neck, which caused the complex basilar skull fractures, contusions and longitudinal laceration of the brainstem.

happen. However, the most common mechanism through which such injuries occur is in the setting of torture, as the fingers and nail beds are frequently a target during interrogations.

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## Appendix 11

### ABDOL KARIM LAHIJI STATEMENT, TORTURERS CONTINUE TO FACE IMPUNITY

(translated into English by IHRDC)

Sunday, July 11, 2005

#### **Torturers Continue to Face Impunity**

#### **Abdol Karim Lahiji, The Society for the Defense of Human Rights in Iran**

Today coincides with the second anniversary of the official announcement of Zahra Kazemi's death. Even though, according to the Special Presidential Commission, her "brain death occurred on 6/27/03 at 13:30 p.m.", her death was announced on July 11, so that the Ministry of Intelligence physician, Dr. Reza Movahedi, was not able to observe the evidence of torture on Zahra Kazemi's body "due to the passing of more than 15 days from the time of brain death; and the absorption of hematoma clots."

Dr. Abbas Hakim, another physician, stated on the day Zahra Kazemi was transferred to the hospital (6/27/03) that, "the patient is presently hospitalized in the I.C.U. section. She is in a coma and is not responding to any stimuli. She is brain dead."

Furthermore, Saeed Mortazavi had taken charge of a committee composed of intelligence, military, and judiciary agents from a month before the anniversary of the July 9 event in order to nip in the bud any movements to perform a ceremony to mark the anniversary of the savage attack in Tehran University's dorms [in 1999]. The announcement of Zahra Kazemi's death several days before the July 9 anniversary would have added to people's anger and agitation, especially among women and the youth.

However, the signs of and traces of torture and battery on Zahra Kazemi's body were so obvious that the Medical Examiner has identified the following in an autopsy report on 7/12/03, nineteen days after Zahra Kazemi's arrest:

- A. Bruises in the process of being absorbed<sup>1</sup> on left and right breasts.
- B. Bruise being absorbed on right hand.
- C. Contusion and the resultant hematoma being absorbed on the left occipital area.
- D. In the examination of the base of the skull, observed a linear fracture alongside the back of the petrous bone extending to the foramen magnum on the left side and another linear fracture on the inside of the occipital bone.
- E. Upon the examination of the larynx and the throat, contusion was observed on the soft tissue on the right side of the thyroid.

A commission composed of autopsy physicians on 7/23/03 also indicated that the blows sustained by Zahra Kazemi "were deadly in nature." The extract from the patient's file says, "The patient has aqueous condition on legs, toes, and right forearm. A surface wound observed on left ankle. A 6 centimeter-long scratch on the patient's left leg and a surface scratch by the length of 2 centimeters on the chest."

A Law Enforcement Forces intelligence unit report quotes Zahra Kazemi saying, "I was in Evin prison last night. They broke my nose; they broke my thumb, and also my toe." These reports can be found in the judicial file, though not all of the reports, evidence and documents pertaining to this atrocity are in the file. More than 20 people who witnessed how she was arrested and battered have clearly stated that Mohammad Bakhshi, head of the intelligence security at Evin prison and Mozaffar Babai, nicknamed Tehrani, charged at Zahra Kazemi to take her camera and purse and hit her so hard on the face and head that, "the woman fell on her left; they pulled her purse and she shrieked..."

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<sup>1</sup> I.e., fading and becoming less visible.

Moharram Rahimi, a services employee of Evin, told the investigator that Asgharzadeh, one of the resident judges of Evin prison, stopped his car and asked him to bring Zahra Kazemi and two female agents inside the prison. He continued, saying:

"They forced her into the car, put her in the middle and the two women sat in the back on her right and left sides. A man around 45 sat in the front. The man said: 'Go!' Mr. Judge (Asgharzadeh) came forward and said: 'Don't give this woman water, bread or visitors for a week.'

We started off and went to the women's section. We stopped. First the woman on the left got off and said: 'Get out, lady.' She saw she didn't move. She said: 'the lady has fainted.' The woman on the right side got off and went to help her. The man sitting in front told the guard standing in front of the door to come over and help. The guard came and helped. He took the lady's feet. The other two women took her right and left arms and carried her to the door. She wasn't walking on her own..."

Thus, there is no doubt that Zahra Kazemi had brain hemorrhage due to blows to her head and face while being arrested. She was locked unconscious in solitary confinement, instead of being taken to the prison clinic or a hospital. They didn't stop there. Saeed Mortazavi, who knew a photojournalist had been arrested in front of Evin Prison, came in person to interrogate her from 22:30 p.m. to 2:30 a.m. on June 24, together with Arjmandi, his deputy, and some other "investigators", despite her critical condition. What they did to her was so severe that some hours later when she was passed on to the Law Enforcement Forces intelligence unit, her nose, thumb and toe were broken; and she kept vomiting and fainting during the next two days when she was being handed over among Evin prison [personnel], the Law Enforcement Forces intelligence unit, and the Ministry of Intelligence. Saeed Mortazavi ordered the Law Enforcement Forces intelligence unit to investigate Zahra Kazemi's "spy status", and even though both Law Enforcement Forces intelligence unit and the Ministry of Intelligence rejected the spy accusation, he and Hassan Moghaddas Ahmadi, his other deputy, insisted that the accused person was a spy, and issued Zahra Kazemi's detention order. On July 6, 10 days after Zahra Kazemi's "brain death", this order was converted to a bail bond.

But Saeed Mortazavi does not leave it at that. First, he puts pressure on Khoshvaght, director of the press at the Ministry of Culture and Islamic Guidance, by calling him "an aide to the spies", but later when he realized that Khoshvaght was a relative (by marriage) of the Leader, calms down and asks him to cooperate, as "these journalists are all spies. They come, mislead, and cause problems. Please be cooperative and do not permit any foreign reporters to enter Iran until the end of the month of Tir [July 22]."

Saeed Mortazavi realized the graveness of the situation after Zahra Kazemi's "brain death" and coma. Fake documents and several attachments were added to her file. One of them is the sentence added at the bottom of the arrest document, signed by the head of Evin prison, which reads, "It is to be noted that the above-mentioned was photographing the prohibited section of the prison," to justify the spy accusation. Under the interrogation papers of the evening of June 22 evening to the morning of June 23, they have added the signature of an interrogator who was not on duty on that date ... then he tried to justify the reason for the brain death by a fraudulent report. First, he came up with hunger strike, but then switched to stroke. Ehsan Moosavi, the Ministry of Intelligence employee told the interrogator that after negotiations with Mortazavi, "It was decided to prepare another letter based on the operations agents' report from the hospital that the here-mentioned had a stroke and to send the letter to the court to replace the first letter, and the court would return the first letter." In response to the investigator's question of "How was Zahra Kazemi's brain problem diagnosed on 6/28/03, when the letter was submitted to the Branch 12 investigator?" he said, "The first letter that was sent on 6/27/03 is on the issue of hunger strike and its side effects. However, after the accused was transferred to the hospital, according to the statements of Ahad, one of the operation agents who was accompanying the accused, the hospital nurses' indicated that there had been tearing of the brain blood vessels and a resultant stroke, and ... the second letter mentions the phrase stroke or brain problems ..."

Thus, not only do the reports from the Special Presidential Commission and Parliamentary Article 90 Commission denote the direct involvement and liability of Saeed Mortazavi and his assistants and their numerous crimes (torture, deadly battery, illegal arrest, forging and altering official documents, making false reports, taking advantage of one's position, not transferring the patient to doctor or hospital, etc.), other sufficient reasons exist in the judicial file to prove their guilt.

In a government where the judicial system, instead of being a source of adjudication and a place for the oppressed to send their pleas, is itself a criminal accusation-making machine and a tool for oppressing, detaining and torturing opposing thinkers, it is not astonishing at all that Saeed Mortazavi, Arjmandi, Mohammed Bakhshi, Mozaffar Babai, et al. are not being prosecuted. Was it not the case that in the dossier of the political murders known as the "chain murders", instead of the actors and those who issued the religious death sentences, Akbar Ganji, whose only crime was "divulging the truth", and Nasser Zarafshan, the victim's attorney, were imprisoned? Did they not acquit the agents of battery, assault, murder and looting of the students in the case of the 1999 student demonstrations, and go so far as to issue a death sentence for the student who was murdered in that atrocity and sentencing many other students to long prison terms? Is it not true that cases like the Berlin Conference, the "tape-making case", and tens of other fabricated case-files for freedom-seekers were the results and product of this judicial system?

The day they refused the basic request of Zahra Kazemi's only son to transfer his mother's corpse to Canada, it was clearly revealed to me, the author of this article, that they wanted to wash the blood off their hands. They didn't want to submit the tortured, injured and torn corpse of their victim as a proof of their atrocity to her son. We have seen that there is no limit to the shamelessness of these pigs. We know they do not mind committing another indignity, as they have committed thousands of them. Therefore, I reminded Stephen Hachemi and his Canadian attorneys not to naively expect the Islamic republic judiciary system to divulge the truth and to pursue or to punish the ones involved in this atrocity. As Sadi, the Persian poet, said:

Salt land would not grow hyacinths;  
Waste not the seed, nor the effort.

That is how, on the second anniversary of Zahra Kazemi's death, Saeed Mortazavi still holds the position of Prosecutor of Tehran; with a likelihood of attaining the position of Minister of Justice one of these days. One of his colleagues and collaborators has managed to become president. So, there is an exigency, and there is no obstacle. Saeed Mortazavi's partners in crime are also keeping their posts and positions; with the possibility of getting a raise!

But tyrants and criminals will not be safe forever. The dawn of "Universal Jurisdiction" is on the way to open a window of hope to the oppressed seekers of justice. Of course, the tyrants, hijackers and murderers do not like this term, because they hear the bells tolling for them. One of them was a recent Evin prison interrogator in charge of forcing those who do not believe in the Islamic Republic, such as Saeedi-sirjani, repent and ask for mercy. He was the director of the widely published *Kayhan* newspaper, a position given to him for his commitment to holy jihad. It made him stop his physical terrorist duties, only to start another kind of terrorism aimed at killing intellectual thought. He insulted me, saying that I had made up the term "Universal Jurisdiction", and that even the novices of law studies know that such term does not exist. He is right in that those teachers who taught him Islamic punishment laws that he later carried out are not familiar with such terminology.

The hatred these despots and their supporters show towards the defenders of human rights is the reflection of efforts and battles the defenders are committed to in order to maintain human dignity, respect for basic freedoms and to prosecute those who usurp freedoms and rights. To constitute an international court fifty years after the approval of the Universal Declaration of Human Rights confirms the experience and also the reality that the universality of human rights will not take place without active support from an international institution. This struggle will last until the era of torturers and human rights offenders is over. Finally, the 30-year struggle of the families of human rights victims together with the defenders of human rights is

proving fruitful in Argentina, Brazil, Chile, Uruguay, South Africa, Morocco, etc. Hijackers, torturers and international criminals are being condemned one after another in national or international courts. Human rights have become universal and will be even more universal as it is part of human fate. Why bother if the enemies of human rights dislike the term? As a poem says:

Sunshine is in demand, let the moth reject it.

Abdol Karim Lahiji

Head of the Society for the Defense of Human Rights in Iran  
Vice-President of the International Federation for Human Rights

## Appendix 12

### MOHSEN ARMIN: OPEN LETTER TO SAEED MORTAZAVI (translated into English by IHRDC)

#### **Mohsen Armin's reply to Saeed Mortazavi: In any case Mortazavi must be subject to "legal investigation"**

- According to information received, Judge Mortazavi attended at least one session of the interrogation.
- The CT scan results show brain hemorrhage and multiple severe bleeding caused by injuries and bruises around the ear, the front and right sides of the head and inside the cerebral cortex tissues. The big swelling of the right side to the back of the head was so severe that it had put pressure on the cerebral cortex of the brain.
- Between June 27, 2003 and July 10, 2003, Judge Mortazavi was definitely aware of doctors' opinion (that the cause of death is brain injury), so his request to Mr. Khoshvagt to announce that Zahra Kazemi's death was caused by stroke was intentional and aimed at concealing the primary cause of death.

Sunday, July 27 2003

*Rooydad*: On Saturday, Mohsen Armin, Tehran's MP, replied to Said Mortazavi's comments by sending a detailed letter. At the beginning of the letter, Armin addressed the executive editors of the newspapers:

Respectfully, regarding the response letter of Judge Mortazavi published in your newspaper, that was nothing but insults and false allegations about me, please find attached my letter of reply. According to Article 23 of the Press Act, please take action to publish it using the same title I have chosen and with the same content; otherwise the Tehran Prosecutor's office will investigate the case.

Here is the full text of Armin's reply:

Judge Mortazavi's response to my speech in the open session of parliament gave me the opportunity to provide more detailed and documented information to the noble people of Iran.

1- Before I start talking about Judge Mortazavi's claims and clarify their contradictions and fallacies, I would like to emphasize that, although he tried in his reply to offer a rebuttal to everything I mentioned in my speech, sometimes even by pointing out irrelevant subjects, he has remained silent about a few of the issues brought up in my speech, which further proves their veracity.

I emphasized during that speech that "Judge Mortazavi has been charged by the Judges' Disciplinary Court, for repeated offences" but the execution of his charges was prevented. I also specified that Judge Mortazavi had an active role in getting confessions from jailed students and conducting televised interviews with the detainees. Judge Mortazavi's silence regarding these two issues is only reason to prove that they are true. Of course, he can deny it all he wants. In that case, I will be obliged to explain the truth more clearly and give more details.

2- In my speech, I mentioned all the incidents that happened during the two-week parliamentary holiday and pointed out the massive detention of journalists and press editors. Some of them I even mentioned by name. Some of these detentions have been carried out by the Tehran prosecutor's office and some by the courts. In order to justify his actions, Judge Mortazavi mentioned two cases; neither had anything to do with the cases or the names I had spoke of and



this was only an act on his part to fool people by giving the impression that the reason for the detentions were bribing and taking acting against religion and people's belief.

In part of his response, he accused me of insulting the media by saying that "the national newspapers had to publish the headline that the prosecutor had dictated," while he himself mentioned two irrelevant cases, and while clearly insulting the press community of the country, accused all the respectful and detained journalists and writers of *taking actions against people's religion and belief*, *bribing* and similar charges and he added another offence to his case file. This is while one of the detainees he accused of bribery is not even a press journalist but a reporter for IRIB.

Even the two mentioned journalists with regard to whom Judge Mortazavi attempted to make public accusations have not yet had a trial, and no allegation has yet been proven in their case. Accusing a person of something that has not been proven in court, especially publicly, is a crime and subject to legal investigation. So obviously, Judge Mortazavi has attempted to taint people's reputation and ruin their name and that is a violation of the law.

3- The interesting points in Mortazavi's reply are the astonishing misleading arguments and more astonishing arrogance.

In my speech, after explaining how Mr. Khoshvaght was invited and how everything was dictated to him with regard to Mrs. Zahra Kazemi's death and the fact that Judge Mortazavi was in such a hurry to dispatch it, I asked "why instead of addressing the issue to the Minister of Culture and Islamic Guidance, did Judge Mortazavi invite the Director-General [of Foreign Press and Media]? The detainee was in the custody of the Intelligence Ministry when she died, so why doesn't he let the Minister of Intelligence investigate the cause of death and announce it?" Judge Mortazavi replies: "Armin insults the President and the cabinet by saying that one should *let* the Minister of Intelligence investigate the cause of death." It is obvious that by using the term "let" in my speech I meant judge Mortazavi was in such a rush to announce the death of Mrs. Zahra Kazemi due to a stroke that he didn't give any time to the Ministers of Culture and Intelligence to investigate the cause, but Judge Mortazavi in response says that the Minister of Intelligence had permission to investigate the cause and my claim is false.

This kind of interpretation not only is an indication of the use of fallacious arguments, but an indication of Judge Mortazavi's arrogance. I have to say: "Mr. Mortazavi! I didn't mean you don't give permission to ministers. As I have said before in my speech, Mr. Mortazavi is not in a high enough position to take these actions without any support." This arrogance is part of his character and is one of the reasons for his ambitious and law-breaking ways. There are multiple indications of this arrogance in this short response. For instance, please read the below sentences:

"On Saturday July 12, 2003, Mr. Khoshvaght, the Director-General of Foreign Press and Media, contacts the General and Revolutionary Prosecution's office in person and requests to visit me. I agreed to see him if he would wait for his turn..."

4- I have explained during my speech that "Following Zahra Kazemi's death, Judge Mortazavi calls the Director-General of Foreign Media and Press without coordinating with the Ministry of Culture and Islamic Guidance and asks him to announce a "stroke" as the cause of the death.

Judge Mortazavi has denied this claim and pointed out a couple of issues:

- a) Mr. Khoshvaght himself went to ask for more details in order to respond to journalists' questions.
- b) He did not play any role in preparation of the interview and also did not change anything; all he did was correct the date of the death.
- c) He agreed with Mr. Khoshvaght's request for typing the transcription of the interview in his office.

- d) According to Mr. Khoshvagh't's request and because it was the end of the business day, the transcription was faxed from his office to IRNA.
- e) Because it was the end of the business day by that time, Mr. Khoshvagh't asked him to contact IRNA to make sure that IRNA had not changed anything in the faxed interview.

Mr. Khoshvagh't has denied all the claims by sending a letter to the honorable Speaker of the Parliament and I don't need to repeat them again. I don't know Mr. Khoshvagh't and I have never met him before.

Fortunately, because Mr. Khoshvagh't is not dependant on any political party and also because of his relatives, Judge Mortazavi and his supportive anti-reform newspapers can not accuse him of sending the letter because of political interests and his support for reformists. I would like to thank Mr. Khoshvagh't for his courage and the fact that he didn't choose to remain silent in the face of Judge Mortazavi's false claims and to collaborate in concealing the truth about Mrs. Zahra Kazemi's death.

Even if Mr. Khoshvagh't had not replied to his claims, any reader would have noticed his false claims, because:

- a) Fortunately, Judge Mortazavi has attached both the initial and the final transcriptions to his letter. Comparing the two texts shows that the changes are more than just correcting the date of the death as opposed to his claims.

All the changes made by Judge Mortazavi were to present a false picture of Mrs. Zahra Kazemi, that she is accused of being a spy, and similarly, every sentence or phrase that was in favor of her was removed from the text.

In order to avoid making this letter longer, I leave comparing the two transcriptions to the readers.

- b) IRNA is under the supervision of the Ministry of Culture and Islamic Guidance and therefore there is a close relation between this organization and the Office of Foreign Press and Media. So I assume Mr. Khoshvagh't's relation with the Director-General of IRNA is closer than Judge Mortazavi. The transcription of the interview is not an official letter and it is possible to send it without typing and the Director-General is not a regular clerk, so he can enter his office easily and fax the transcription to IRNA from there.

- c) Why does Mr. Khoshvagh't need to be worried about making changes to the transcription by IRNA?

Can IRNA change anything in such an important transcription? If Mr. Khoshvagh't was worried about this, he could contact IRNA himself to make sure that the news has been dispatched with no change and there was no need to use Prosecutor's office and phone. Does Judge Mortazavi think that the readers of his letter are so stupid that they don't know a director-general has his cell phone in his pocket?

- d) Not only one time, but a couple of times Judge Mortazavi has contacted IRNA and during these contacts not only he tried to make sure the transcription has not changed, but he emphasized the need to dispatch the news urgently.

Why does Judge Mortazavi care so much about the urgency of dispatching the news with no alteration, although he didn't play any role in preparation of it?

5- Now I would like to give new details about Zahra Kazemi's death:

Zahra Kazemi is transferred to Baghiyatollah hospital at 12:20 AM on June 27, 2003. She lapses into a coma after a few hours. According to the regular procedure for such patients, she needs to go under CT scan the same day, June 27. According to the documents attached to the Special Presidential Committee's report, the CT scan result shows brain hemorrhage and multiple severe bleeding caused by bruising [depression injury] around the ear, the front and right sides of the

head and the cerebral cortex. The swelling on the right parietal and the occipital lobes is so severe that it put pressure on the cerebral cortex of the brain.

In other words, on the patient's chart from June 27, 2003 onwards, the CT scan result and the cause of the brain injuries and hemorrhages-- i.e, multiple blows to the head-- had been recorded and doctors and the head of hospital were aware of them.

On the other hand, Mr. Khoshvaght says that Judge Mortazavi called him on June 25, 2003 and stated that Mrs. Zahra Kazemi is a spy, and threatened to accuse him of being an accomplice because of the permit he had given to the journalist. Also, according to reliable sources, Judge Mortazavi participated at least in one of the interrogations.

It seems Judge Mortazavi had a special interest in this case and personally investigated it, so he couldn't be indifferent about her status in the hospital and unaware of the doctor's opinion about her condition and the cause of death that was brain hemorrhage due to blows to the head.

Therefore, his claim that he found out about Zahra Kazemi's stroke through the prison guard's report on July 10, 2003 and based on the report he has told Mr. Khoshvaght that the cause of death was stroke is totally false. Judge Mortazavi was aware of the doctors' opinion during the period between June 27 and July 10.

Therefore, his request that Mr. Khoshvaght announce that Zahra Kazemi's death was caused by stroke was deliberate and done to conceal the truth.

6- Judge Mortazavi did not consider Zahra Kazemi a regular detainee. He mentioned a couple of times to different people that she was a spy, so as soon as she is transferred to hospital and doctors find out that brain injuries are the cause of death, he has to take necessary action to find out the cause of the brain damage. He needs to order that all the agents who were involved in her detention be interrogated to identify who was responsible for her death. But Judge Mortazavi didn't take any action from June 27, 2003 until the day when her death was announced and the president assigned a special committee to investigate it. Therefore there are two scenarios: either the death of a person in prison due to brain injury is not important enough for Judge Mortazavi to investigate the cause; or he was aware of it and tried to conceal the truth.

In both cases, Judge Mortazavi is subject to legal investigation.

7- Nine days after hospitalization, on July 5, 2003 while Mrs. Zahra Kazemi was in a coma, she was released on bail for 5 million tomans. What was the reason for this release? What had happened between June 27 (when she fell into a coma) and July 5 so that she was set free? The truth is that nothing had happened; the only explanation is that the people who were involved in this case were under pressure and trying not to take responsibility.

There are other facts that I prefer to discuss later on.

8- This incident can be placed in the category of political disputes, as has been the disagreeable fashion of late. Everyone who is eager to clarify the real reason behind and punish those responsible for the death of Mrs Kazemi can be considered an enemy of the regime, an advocate for foreign countries and the agent of the enemy. The Islamic Regime can be sacrificed to protect Judge Mortazavi and the existing methods, which are despicable and unworthy of defending. The situation can be directed in a such a manner as to cause Europe to come to Canada's defense and put up a united front against Iran--and then the situation can be advertised inside Iran as an example of an enemy conspiracy and this case handled like the University Dormitories case so that eventually someone will be convicted for [a petty crime such as] stealing the camera or hairbrush of Mrs. Kazemi. Or, the case can be dealt with in a decisive, transparent manner and as quickly as possible. Those responsible for causing and carrying out this incident, whatever post or position they might have in any of the government organs, must be identified and punished in an effort to reassure public opinion inside and outside of the country of the health of

the regime and its impartiality in this case and allow the regime to save face in the eyes of the international community which is now is paying special attention to this matter.

What happened to Mrs. Kazemi is the result of the improper and harmful processes that Judge Mortazavi and his protectors and people who think like him put in place in the Public Prosecutor's office and, prior to that, in some courts.

9- Seeing each movement as a plot against the regime, searching for a spy and regime overthrow plots in every event, considering the press and political activists and people with opposing viewpoints to be agents of foreign powers and dependant on them, thinking of oneself as the ultimate power and completely disregarding all the legal procedures and laws, thinking that the strength of the regime is in getting confessions from the detained and having such TV interviews done are the obvious characteristics of these incorrect processes that most are familiar with. It was based on these incorrect processes that the June 2003 prompted a search for espionage agents and a foreign contact network and the involvement of the reformist parties and groups and even parliament members and parts of the government. The confessions that were taken from the detained students are the result of this mindset. The accusation of espionage against Mrs. Kazemi-- whose only crime was that she photographed the gathering of the families of prisoners in front of Evin--is a result of this mindset. It was simpler to stop Mrs. Kazemi from taking pictures from a location where photography is forbidden and her camera could be easily taken from her and she could be taken to the hotel where she was staying. Mrs. Kazemi's death in prison was an incident that could easily be prevented if the repeated warnings of those who had the best interests of the regime at heart about the actions of Judge Mortazavi and sympathizers [those who think like him] had been heard in the last couple of years. Even though this fact was linked to the unfortunate death of Mrs. Kazemi, we shall not let [the longstanding concerns about Mortazavi's actions] be overshadowed by this death.

I have no judgment about Mr. Mortazavi's role in this incident. All the same, it is pretty clear from the available documents and evidences and others' opinions and testimony and also his own conflicting testimony and denial of the truth that he has made every effort to conceal the incident from people and authorities and has proven that he is not competent to be a judge and public prosecutor.

10- And one final word: I have mentioned in my speech that, "the prosecutor ordered that his dictated text be put in the front page of all the newspapers." And also I said that "the press prepares its front page based on Judge Mortazavi's orders, because they are scared of closure."

Judge Mortazavi said: According to Article 23 of the Press Act, if something is published against a person in the newspaper, that person has the right to ask the newspaper to publish the response. The response can be published in double the space of the initial text.

Judge Mortazavi's reference to Article 23 of the Press Act is irrelevant and it should be interpreted according to the media's common law, but let us assume that he is correct and that he can order all the newspapers to put his comments in the front page the way he likes. Everybody knows that all the conservative newspapers like *Keyhan*, *Resalat* and so on did not publish my speech or published it with major omissions. In contrast, they published Judge Mortazavi's response in a large font and in some cases on the front page, and they used insulting words like: "Mortazavi's response to lies..." Now is a good time to see if Judge Mortazavi practices what he preaches or whether he is just a good example of the saying "talk is cheap". I will send the response to the newspapers and according to Article 23 of the Press Act, I want it to be published in the front page with the title that I have chosen. If they do not do that, I will file a complaint with the Prosecutor and Judge Mortazavi needs to force them to publish it. Well, I can assume what the result would be, but this is another way of evaluating Judge Mortazavi's honesty and fairness.



Iranian-Canadian photojournalist Zahra "Ziba" Kazemi was born in Shiraz, Iran. In June 2003, at the age of 54, she was arrested while taking photographs in front of Tehran's Evin prison. She subsequently died of injuries sustained while in detention.