

INTERNATIONAL HUMAN RIGHTS CLINIC
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Memorandum on Freedom of Assembly

Introduction

You have asked the International Human Rights Program (“IHRP”) to research “freedom of assembly” standards to determine whether the events surrounding the election in Iran on 12 June 2009 were in accordance with Iranian and International law.

The *Constitution* of Iran (“*Constitution*”) protects the right to freedom of peaceful assembly. This right is also protected by many provisions in international law, including article 21 of the *International Covenant on Civil and Political Rights* (“*ICCPR*”) to which Iran is a State Party. Iran qualifies the right to freedom of assembly in the *Constitution* by stating that freedoms in the *Constitution* may not be detrimental to the fundamental principles of Islam, the public interest or the independence and integrity of Iran.

The assemblies of June 2009 in Iran were peaceful gatherings which should have attracted the protections of Iranian law. However, the assemblies were subject to various restrictions by the Iranian Government. Based on evidence provided by the Iran Human Rights Documentation Center (“IHRDC”), the Iranian Government used various forces to initially clash with, and later disperse, demonstrators. In addition, demonstrators were attacked with batons, tear gas, and

rubber and regular bullets, and a number of demonstrators died as a result. Large numbers of demonstrators were arrested and held for days without access to lawyers or any other legal protections leading to various abuses.

Iran may argue that the demonstrations were legitimately restricted under Iranian law. However, under international law, lawful restrictions on the right to freedom of assembly must be in conformity with the domestic law, necessary in a democratic society and in pursuit of one or more of the aims provided in article 21 of the *ICCPR*. The Government of Iran's restriction on freedom of assembly was likely not in conformity with the law due to the lengthy notice period required in order for a demonstration to be authorized by law and due to the vagueness of the constitutional provisions upon which Iran may have relied. The infringement on freedom of assembly was not proportional to the interest being protected due to the extreme nature of the response by the Government, so it cannot be considered necessary in a democratic society. Even if the suppression of the assemblies were in conformity with the law and necessary in a democratic society, it can be argued that the restrictions were not for one of the legitimate aims delineated in the *ICCPR*; namely, protecting national security, public safety or public order (*ordre public*), public health, public morals, and the rights and freedoms of others. From this analysis, it is possible that Iran violated its own *Constitution* in suppressing the assemblies in June 2009 and a strong argument can be made that Iran violated international law.

Legal Protections of Freedom of Assembly

IRANIAN LAW

Iran recognizes the importance of public demonstration and protest in the preamble of the *Constitution*. In reviewing the creation of the Islamic Republic, the preamble states that:

In the course of this popular movement, the employees of all government establishments took an active part in the effort to overthrow the tyrannical regime by *calling a general strike and participating in street demonstrations*. The

widespread solidarity of men and women of all segments of society and of all political and religious factions, played a clearly determining role in the struggle.¹

The preamble also recognizes the importance of the participation of citizens by stating that the “constitution guarantees the rejection of all forms of intellectual and social tyranny and economic monopoly, and aims at *entrusting the destinies of the people to the people themselves*.”² Further, the active and broad participation in society by Iranian citizens is considered integral to achieving the goals of the constitution, including social development.”³

The Iranian *Constitution* explicitly protects the right of peaceful assembly in article 27. Article 27 states that “public gatherings and marches may be freely held, provided arms are not carried and that they are not detrimental to the fundamental principles of Islam”.⁴ The freedom of assembly is qualified within article 27 by the fundamental principles of Islam and it is qualified in the remainder of the *Constitution* by the public interest and the independence and integrity of Iran, in article 40 and article 9 respectively. Article 40 notes that “no one is entitled to exercise his rights in a way injurious to others or detrimental to public interests.”⁵ Whereas article 9 states that:

no individual, group, or authority, has the right to infringe in the slightest way upon the political, cultural, economic, and military independence or the territorial integrity of Iran under the pretext of exercising freedom. Similarly, no authority has the right to abrogate legitimate freedoms, not even by enacting laws and regulations for that purpose, under the pretext of preserving the independence and territorial integrity of the country.⁶

¹*Iran Constitution*, preamble, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>. [emphasis added]

²*Iran Constitution*, preamble, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>. [emphasis added]

³*Iran Constitution*, preamble, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>.

⁴*Iran Constitution*, Article 27, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>. [emphasis added]

⁵*Iran Constitution*, Article 40, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>. [emphasis added]

⁶*Iran Constitution*, Article 9, online: Iran Human Rights Documentation Center <<http://www.iranhrdc.org/httpdocs/English/pdfs/Codes/TheConstitution.pdf>>. [emphasis added]

INTERNATIONAL LAW

Freedom of assembly is formally and explicitly protected in international law.⁷ It is enshrined in many international treaties including article 20(1) of the *Universal Declaration of Human Rights* and article 21 of the *International Covenant on Civil and Political Rights*. In addition, the right is also found in regional treaties such as article 21 of the Organization of American States (OAS) *Declaration on the Rights and Duties of Man*, article 15 of the OAS *American Convention on Human Rights*, and article 11(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. The widespread and formal protection of this right demonstrates its acceptance and importance in international law. The principal provision in international law on freedom of assembly for the purpose of this analysis is article 21 of the *ICCPR*. Article 21 provides that:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.⁸

⁷ *Universal Declaration on Human Rights*, GA Res 217(III), UNGAOR, 3d Sess., UN Doc A/810 (1948), Article 20: (1), “Everyone has the right to freedom of peaceful assembly and association.” [emphasis added]; *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 21: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” [emphasis added]; Organization of American States, *Declaration of the Rights and Duties of Man*, Bogotá, Colombia, 1948, Article XXI. “Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.” [emphasis added]; *European Convention for the Protection of Human Rights and Fundamental Freedoms*: Article 11(1) “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.” [emphasis added]; Organization of American States, *American Convention on Human Rights*: Article 15. “Right of Assembly: The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.” [emphasis added]

⁸ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, Article 21.

Iran signed the *ICCPR* on 4 April 1968 and ratified it on 24 June 1975.⁹ As a State Party it is bound by the provisions of the Covenant. The United Nations (“UN”) Human Rights Committee issues General Comments and Concluding Observations on the *ICCPR* and accepts complaints against States Parties which have ratified the First Optional Protocol of the *ICCPR*. While Iran is not legally bound by this jurisprudence, the Human Rights Committee’s interpretation of the rights of the *ICCPR* serves as persuasive authority for what Iran’s legal obligations under the *ICCPR* constitute in practice. In addition, while Iran is not bound by other regional human rights treaties, the language protecting the freedom of assembly in the *European Convention for the Protection of Human Rights and Fundamental Freedoms* is very similar to that found in the *ICCPR* so although the European Court of Human Rights (ECHR) applies a different treaty than the UN Human Rights Committee, its case law is nonetheless relevant and applicable.

DEFINITION OF ASSEMBLY

The Iranian *Constitution* does not define an assembly, but assembly is defined through international jurisprudence. The meetings which took place on and following 12 June 2009 were assemblies, based on the definition in international law. International jurisprudence highlights that an assembly is a gathering of individuals privately or in a public space either in a static meeting or a public procession, for discussing matters of common interest of any nature.¹⁰ In *Rassemblement Jurassien & Unité Jurassienne v. Switzerland*, the French speaking minority and the German majority in a German-speaking municipality of Switzerland were in a dispute. The Executive Council banned all meetings in the municipality to avoid potential clashes. The applicants claimed that the Executive Council had violated their right to freedom of assembly. The European Commission of Human Rights (the “European Commission”) held that the right to

⁹ United Nations Treaty Collection, *Chapter IV: Human Rights: International Covenant on Civil and Political Rights*, online: < http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en>. Iran is a State Party to the *ICCPR* and it has not made any reservations. The fact that Iran has not signed the *Optional Protocol* to the *ICCPR* does not diminish the relevance and importance of its existing human rights obligations under the *ICCPR*.

¹⁰ The Organization of American States, *Declaration of the Rights and Duties of Man*, Bogotá, Colombia, 1948, Article XXI. Article 21 defines directly what is protected by ‘assembly’, “a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.”

freedom of assembly “covers both private meetings and meetings in public thoroughfares.”¹¹ Similarly, in *Christians against Racism and Fascism v. UK*, the European Commission held that an “assembly” includes both static and in-motion meetings.¹² Based on these definitions, the gatherings in June 2009 were assemblies since numerous people met and marched together in a public space to promote a similar message.

PROTECTIONS FOR ‘PEACEFUL’ ASSEMBLIES

Only peaceful assemblies are protected in the Iranian *Constitution* and under international law.¹³ The assemblies in June 2009 were peaceful and should have attracted the right to peaceful assembly under the Iranian *Constitution* and article 21 of the *ICCPR*. Evidently, a peaceful assembly must be without violence. There cannot be physical attacks or threats, smashing of public property, destroying of furniture, setting cars on fire or similar behaviour.¹⁴ Likewise, the “notion of ‘peaceful assembly’ does not ... cover a demonstration where the organisers and participants have violent intentions”.¹⁵ However, the risk that violent extremists outside of the organizers of a demonstration may join the demonstration does not make the assembly unpeaceful or remove the right to assemble.¹⁶ The demonstrations following the June election in Iran were free from violence before the police or Government forces were involved and they should have thus been protected under the right to peaceful assembly.

¹¹ *Rassemblement Jurassien & Unité Jurassienne v. Switzerland* (1980), European Commission of Human Rights, 17 Decisions & Reports 93, at para. 3.

¹² *Christians against Racism and Fascism v. UK* (1980), European Commission of Human Rights, 21 Decisions & Reports 138, at para. 148.

¹³ See for example footnote 7.

¹⁴ Manfred Novak, *UN Covenant on Civil and Political Rights: CCPR Commentary 2nd Revised Edition* (Kehl, Germany: N.P. Engel Verlag, 2005) at 487.

¹⁵ *G v. Germany* (1989) European Commission of Human Rights, Application 13079/87, 60 Decisions and Reports 256. The applicant staged a sit-in demonstration in front of the Stuttgart barracks of the US forces. The applicant was charged under the German criminal code for having committed unlawful coercion. The court held that there was no violation of his Article 11 right to peaceful assembly but they did not find that his sit-in had violent intentions.

¹⁶ *Christians against Racism and Fascism v. UK* (1980) European Commission of Human Rights, 21 Decisions & Reports 138, at para. 148. The applicants planned a procession and asked for permission from the London police although permission was not necessary. The Commissioner of the Metropolitan police ordered a ban on all public procession for two months to avoid public disorder. The Commission did not find a violation of Article 11 but held that “the possibility of violent counter demonstrations, or the possibility of extremists with violent intentions, not members of the organising association, joining the demonstration cannot as such take away that right. Even if there is a real risk of a public procession resulting in disorder by developments outside the control of those organising it.”

OBLIGATIONS ON THE STATE TO PROTECT PEACEFUL ASSEMBLY

Article 21 of the *ICCPR* places a positive obligation on the State to protect the right to freedom of assembly from interference, including that of governments and private parties. This requirement of horizontal protection on behalf of the State is further recognized by the *OAS Report on Terrorism and Human Rights*. The OAS notes that the protection of the right to peaceful assembly:

may entail not only the obligation of a state not to interfere with the exercise of the right of assembly and of association, but in certain circumstances may require positive measures on the part of the state to secure the effective exercise of the freedom, for example by protecting participants in a demonstration from physical violence by individuals who may hold opposite views.¹⁷

In *Appleby and others v. United Kingdom*, the ECHR recalled that genuine, effective exercise of the freedom of assembly “does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.”¹⁸

While the State is not under an absolute duty to ensure that assemblies proceed peacefully, it must apply reasonable and appropriate measures to protect assemblies. In *Plattform ‘Arzte Fur Das Leben’ v. Austria* the applicants’ group faced extremely disruptive counter-demonstrators during their march, despite the presence of large contingent of police.¹⁹ The applicants claimed that Austria had a duty under article 11 to ensure the march could proceed peacefully. The ECHR held that positive, reasonable, and appropriate measures are required on behalf of the State to ensure demonstrations can proceed but an absolute guarantee by the State is not required.

Based on the above case law, even if the forces which dispersed the June assemblies in Iran were not Government or official forces, Iran had a duty to ensure that the assemblies could proceed

¹⁷ OAS, General Assembly, *Report on Terrorism and Human Rights*, at para. 359.

¹⁸ *Appleby and others v. United Kingdom* (6 May 2003), European Court of Human Rights, Application no. 44306/98, at para. 39. The applicants alleged that they had been prevented from meeting in the town centre, a privately owned shopping centre, to impart information and ideas about proposed local development plans. The Court found no violation of Article 11. While government has a duty to protect freedom of expression and assembly it is not unlimited. This was a privately owned space and the owners were able to deny entry to whomever they chose.

¹⁹ *Plattform ‘Arzte Fur Das Leben’ v. Austria* (1988), European Court of Human Rights, Case No. 5/1987/128/179.

peacefully. Iran may argue that this duty is not absolute, but in order to show that it acted lawfully, Iran must prove that it used reasonable and appropriate measures to ensure that the assemblies could proceed peacefully. The evidence provided by the IHRDC strongly suggests that this was not the case and that Iran did not act to ensure the demonstrations would proceed peacefully.

THE CONVERGENCE OF IRANIAN LAW AND INTERNATIONAL LAW

The gatherings in June 2009 were peaceful assemblies and, as such, they should have attracted the protection of both the Iranian *Constitution* and the *ICCPR*. However, Iranian officials restricted the right to freedom of assembly by suppressing the demonstrations. The only restrictions on the right to freedom of assembly which are valid in international law are those that are in conformity with the law, necessary in a democratic society, and in the interest of one of the grounds provided in article 21 of the *ICCPR*.

The restriction on the freedom of assembly in June 2009 likely violated international law under article 21 of the *ICCPR*. There is a strong argument to be made that the restrictions were not in conformity with the law. The key argument against Iran is that the restrictions by the State and the response by state officials to the demonstrations were not reasonable or proportional and were therefore not necessary in a democratic society. Finally, even assuming the previous arguments fail, there is evidence to suggest that Iran's action was not consistent with one of the legitimate aims provided in article 21 of the *ICCPR*.

RESTRICTIONS MUST BE IN CONFORMITY WITH THE LAW

Any restriction on freedom of assembly must be in conformity with the law according to article 21 of the *ICCPR*. This is a lower legal threshold to meet than other articles in the *ICCPR* or other regional human rights treaties. For example, the *European Convention for the Protection of Human Rights and Fundamental Freedoms* requires that restrictions on the right to peaceful assembly be 'prescribed by law.' Actions which are prescribed by law must be authorized

through a parliamentary act or equivalent legislation or from norms in jurisprudence in the case of common law jurisdictions. Actions which are in ‘conformity with the law’ can include legitimate administrative action by the State.²⁰

Iranian legislation, including the *Constitution* and the *Penal Code* provide a set of permissible purposes for restricting the right to assembly. As these restrictions are set out in law, Iran could claim that it meets the higher threshold of ‘prescribed by law’. However, Iran does not provide any other conditions or requirements that must be met in order for a restriction to be lawful. Even taking into account that there is a lower threshold for article 21 of the *ICCPR*, there is still an argument to be made that the restriction on freedom of assembly was not in conformity with the law.

Iran could argue that the assembly organizers did not give sufficient prior notice about the gathering, as required by law. Whereas a notice period would not normally infringe upon the right to assembly, it could be argued that the notice period required by Iran is too lengthy, amounting to a violation of the right to assembly. Further, although Iran could also claim that the assemblies violated provisions of the *Constitution* or the *Penal Code* and that suppressing them was in conformity with the law, an argument can be made that the legal provisions in the Iranian *Constitution* are not sufficiently precise or are overbroad and cannot be used to restrict the right to peaceful assembly.

Requirement of Notice

Requiring prior notice for assemblies does not normally infringe upon the right to freedom of assembly if the notice period is reasonable. However, Iranian law requires a lengthy notice period which likely results in a violation of the right to assemble. Iranian legislation provides that groups wishing to demonstrate must give detailed notice prior to the event and be authorized to continue. The *Regulations for Securing the Public Security and Lawful Marches* requires in article 30 that citizens submit an application to organize a march one week in advance of the

²⁰ UN General Assembly, *Annotations on the Text of the Draft International Covenants on Human Rights*, UN Document A/2929, at para. 141.

event to the Interior Ministry.²¹ Further, article 36 states that the application must include the object, aim, date and time of event, the path and location, details of the organizers, and slogans to be used.

The issue of requiring notice prior to a demonstration is addressed by the UN Human Rights Committee and the ECHR. Requiring notice prior to a demonstration does not normally encroach on the right to freedom of assembly and may be an acceptable restriction if the notice period is reasonable. In *Kivenmaa v. Finland* the applicant held a banner and distributed leaflets at the arrival of a foreign head of state. The applicant was arrested by the Finnish authorities for holding a public meeting without giving prior notice. The UN Human Rights Committee held that “a requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible with the permitted limitations laid down in article 21 of the Covenant.”²² Similarly, in *Rassemblement Jurassien & Unité Jurassienne v. Switzerland*, discussed above, the European Commission held that requiring notice does not infringe on the right to peaceful assembly. The European Commission stated that the requirement of “such a procedure is in keeping with the requirements of article 11.1, if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting, and accordingly does not as such constitute interference with the exercise of the right.”²³

Even where the requirements of being in conformity with the law and being reasonable are met, restricting a demonstration based solely on a notice requirement may not be in conformity with the law. Spontaneous demonstrations which do not threaten enumerated grounds for restricting freedom of assembly (national security, public order, public morals, etc) should not be suppressed solely on the basis of lacking prior notice. If the demonstrations in June were spontaneous and they did not have prior authorization, they likely still required protection by Iranian officials. In the *Eva Molnar v. Hungary*, the ECHR reiterated that requiring prior notice

²¹ Cited in Adineh Abghari, *Introduction to the Iranian Legal System and the Protection of Human Rights in Iran* (London: British Institute of International and Comparative Law, 2008).

²² *Kivenmaa v. Finland* (21 March 1994), Human Rights Committee, Communication No. 412/1990 at para. 9.2. The Committee found a violation of article 21 because the restriction on the assembly was not in the interests of one of the legitimate aims provided in article 21.

²³ *Rassemblement Jurassien & Unité Jurassienne v. Switzerland* (1980), European Commission of Human Rights, 17 Decisions & Reports 93 at para. 3.

does not normally infringe on the right to peaceful assembly. But the court held that “spontaneous gatherings must not be put down solely for lacking prior notice or article 11 lacks substance.”²⁴

The requirement of notice must be for the protection of the peaceful nature of the assembly and not to *de facto* prohibit all assemblies. This requires that the discretion of the official authorizing or prohibiting an assembly not be used arbitrarily. In *Himat Lal shah v. Commissioner of Police*, the appellant’s request for permission to hold a public meeting was rejected. He claimed that requiring permission to hold a public meeting was a violation of his right to freedom of assembly.²⁵ The Supreme Court of India held that requiring notice be given in advance of public meetings is legitimate for the aim of ensuring the rights of others are protected and protecting public order. The Court also held, however, that a law which confers arbitrary powers on the authorized officer must be struck down. In addition, the court noted that the requirement of notice cannot be such as to restrict the right to assembly entirely. Likewise, in *Sa’ar Adv et al v. Minister of the Interior and of the Police*,²⁶ the Supreme Court of Israel also held that an unfettered discretion to control the right of assembly is incompatible with the right.

While restricting the right to assembly for lack of prior notice may be in conformity with the law, in the case of the events in Iran in June 2009, it can be argued that the notice period required was too lengthy a requirement. The time period required by Iranian legislation prior to an assembly is one week, considerably longer than the six hour timeframe considered acceptable by the Human Rights Committee.²⁷

²⁴ *Eva Molnar v. Hungary* (7 January 2009), European Court of Human Rights, Application no. 10346/05, at para. 37. The applicant alleged that the dispersal of the demonstration in which she had participated because of a mere lack of prior notification to the police had infringed her freedom of peaceful assembly, within the meaning of Article 11 of the Convention. The court found no violation of article 11 because although the freedom of assembly was infringed it was done so with a legitimate aim of preventing disorder and protecting the rights of others.

²⁵ *Himat Lal shah v. Commissioner of Police*, Supreme Court of India, (1973) 1 SCC 227.

²⁶ *Sa’ar Adv et al v. Minister of the Interior and of the Police*, Supreme Court of Israel, 34(2) Piskei Din 169, excerpted in (1982) 12 Israeli Yearbook on Human Rights 296 cited in Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International jurisprudence* (Cambridge: Cambridge University Press, 2002).

²⁷ *Kivenmaa v. Finland* (21 March 1994), Human Rights Committee, Communication No. 412/1990 at para. 9.2.

In Conformity with the Constitution or Penal Code

Just as requiring notice prior to an assembly may be a requirement which is in conformity with the law, if a ban on an assembly is authorized by legislation then the ban is likely in conformity with the law. In *Ivanov and others v. Bulgaria*, the ECHR held that a ban “imposed in accordance with the procedure laid down in the *Meetings and Marches Act*” was “prescribed by law.”²⁸ In June, the Iranian government refused the application of several leaders for peaceful demonstrations and then cancelled several important religious and official days that had been traditionally used for demonstrations.²⁹ Iran could argue that these restrictions were in conformity with the law and therefore lawful under article 21. However, to be valid, laws must be sufficiently clear and precise. It can be argued that the provisions in the *Constitution* and the *Penal Code* are not sufficiently precise to restrict assemblies on that basis.

Iran could argue that the restrictions were in conformity with article 27 of the *Constitution*, which states that no citizen may exert the right to freedom of assembly in a manner detrimental to the fundamental principles of Islam. However, the phrase ‘detrimental to the fundamental principles of Islam’ is probably not sufficiently precise for officials to restrict an assembly based on this criterion. Jurisprudence from the ECHR notes that citizens must be able to foresee what conduct is appropriate when examining legislation or else the rule cannot be regarded as ‘law’. In *Djavit An v. Turkey*, the ECHR stated that:

one of the requirements flowing from the expression “prescribed by law” is the foreseeability of the measure concerned. A rule cannot be regarded as “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.³⁰

While the issue of foreseeability in *Djavit An v. Turkey* is discussed in the context of the terms ‘prescribed by law’, a similar argument can be made that foreseeability is required for Government action to be in ‘conformity with the law’. The phrase ‘detrimental to the

²⁸ *Ivanov and others v. Bulgaria* (24 November 2005), European Court of Human Rights, Application no. 46336/99, at para. 62.

²⁹ Fact provided by the IHRDC.

³⁰ *Djavit An v. Turkey* (9 July 2003), European Court of Human Rights, Application no. 20652/92, at para. 65.

fundamental principles of Islam’ is likely not sufficiently precise for citizens to foresee what action is prohibited by the law, even taking into account legitimate ‘administrative action’ which is permissible under the lower standard of in ‘conformity with the law’.

The notion that ‘detrimental to the fundamental principles of Islam’ is not sufficiently precise to be in conformity with the law has been addressed by the UN Committee on the Rights of the Child (“CRC”). In its Concluding Observations, the CRC called on Iran to “establish clear criteria to assess whether a given action or expression is in accordance with interpretations of Islamic texts”.³¹ Further, the Human Rights Committee has stated that States Parties to the *ICCPR* must have “clear standards protecting the right of individuals to engage in peaceful assembly”.³²

Alternatively, Iran could argue that the restrictions on the assemblies were in conformity with other laws. For example, if the assemblies were injurious to the rights of others or the public interest, Iran could argue that action against the assemblies was in conformity with the law in article 40 of the *Constitution*. Additionally, article 9 of the *Constitution* provides that citizens must not exercise any right in a manner which infringes the political, cultural, economic, and military independence or the territorial integrity of Iran. If the assemblies in June infringed upon any of these factors, Iran could argue that the restriction on the right to assemble was in conformity with the law under article 9. Likewise, the Iranian *Penal Code* prevents offences against public morals and civil unrest³³ and suppressing assemblies contrary to these provisions

³¹ UN Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Iran (Islamic Republic of)*, 28 June 2000, CRC/C/15/ADD.123(CRC,2000), online: <[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.123.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.123.En?OpenDocument)> at para. 34. While the *Ahzb Act* further outlines who will determine what is contrary to the fundamental principles of Islam, the finding by the UN Committee on the Rights of the Child illustrates that this act does not provide enough detail for the phrase to be sufficiently precise.

³² UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Ukraine*, 28 November 2006, CCPR/C/UKR/CO/6, online: <<http://www.universalhumanrightsindex.org/documents/825/996/document/en/pdf/text.pdf>> at para. 15. “During the 2004 elections, students participating in a peaceful protest march to Kiev were arrested and detained *en masse*. (art. 21) The State party should ensure that there are clear standards protecting the right of individuals to engage in peaceful assembly and to exercise the right of free expression.”

³³ *Iran Penal Code*, approved by the Islamic Consultancy Parliament on 30 July 1991 and ratified by the High Expediency Council on 28 November 1991, Book 5: Chapter 18: Offenses against Public Moral, online: <http://mehr.org/Islamic_Penal_Code_of_Iran.pdf>

could be argued to be in conformity with the law. If Iran did assert such an argument, it could be argued in response that the provisions in question are not sufficiently clear or precise to meet the ‘conformity with the law’ requirement. However, this argument is weaker than that against the phrase ‘detrimental to the fundamental principles of Islam’.

The Human Rights Committee has also suggested that legislation must not be overbroad. It could be argued that the legal provisions on which Iran may rely are overbroad and therefore unlawful. In its concluding observations of the Republic of Korea, the Committee noted that:

the prohibition of all assemblies on major roads in the capital would appear to be overbroad. While some restrictions on assemblies on main roads in the interests of public order are permissible, article 21 of the Covenant requires that all such restrictions be in conformity with the law and be necessary in a democratic society. The absolute restrictions on the right to hold assemblies on main roads imposed by the State party do not meet these standards.³⁴

The provision that freedom of assembly not be exercised in a manner ‘detrimental to the fundamental principles of Islam’ could be considered overbroad such that it amounts to a *de facto* ban on all assemblies. However, this argument is not as strong as the argument suggesting that the phrase is not sufficiently precise.

As the arguments that the restriction on the right to freedom of assembly by Iran was not in conformity with the law under article 21 of the *ICCPR* vary in strength, I will consider whether

Article 637 – Any man and woman who are not married and who commit a crime against public morality, excluding adultery, should be sentenced to flogging (99 lashes). If one of them did not consent to the crime, then only the one who initiated the crime should be punished.

Article 638- Anyone who explicitly violates any religious taboo in public besides being punished for the act should also be imprisoned from ten days to two months, or should be flogged (74 lashes). Note- women who appear in public without a proper *hijab* should be imprisoned from ten days to two months or pay a fine of 50,000 to 500,000 Ryal.

Article 639 – The following people should be imprisoned from one to ten years, and in the case of category (a) the property should be confiscated according to decision of the court.

a) anyone who manages a property where activities against public moral take place;

b) anyone who encourages people to violate public moral;

Article 640 – The following people should be imprisoned from three months to one year and pay a fine of 1,500,000 to 6,000,000, and also be flogged up to 74 lashes, or any of these punishments.

c) anyone who publicizes any picture, text, photo, drawing, article, newsletter, newspaper, movie, or any other thing that violates public morals;

d) anyone who is included in the circulation of the above items;

See also: Book 5, Chapter 1: Crimes against National Security; Book 2, Part 7: Punishment for Civil Unrest.

³⁴ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Republic of Korea*, 1 November 1999, CCPR/C/79/Add.114, online: <<http://www.unhcr.org/refworld/docid/3ae6b0190.html>> at para. 18.

the restrictions were necessary in a democratic society and whether they were for a legitimate aim of article 21.

RESTRICTIONS MUST BE NECESSARY IN A DEMOCRATIC SOCIETY

Assuming that Iran is able to show that the restriction on the right to assembly was in conformity with the law, it must prove that the restrictions were necessary in a democratic society to be lawful in international law. International jurisprudence indicates that a response which is necessary in a democratic society is proportional to the legitimate aim to be achieved. There is evidence that the Iranian Government or Iranian officials attacked demonstrators with batons, tear gas, rubber bullets and regular bullets which ultimately lead to the deaths of a number of citizens.³⁵ In addition, large numbers of demonstrators were arrested and held for days without access to lawyers or any other legal protections which lead to various abuses. Restrictions which infringe the right of peaceful assembly must be proportional and reasonable. The type of restriction on the right and the intensity of interference must be absolutely necessary to attain the purpose (for example, defending national security).

While States are given a wide margin to prove that the means to restrict freedom of assembly are necessary, there are limits to the flexibility. In *Rassemblement Jurassien & Unité Jurassienne v. Switzerland*, discussed above, the European Commission held that:

it is primarily up to the national authorities to judge whether there is really an imperative social requirement, as implied by the concept of "necessity"...[T]he Convention allows the contracting states a margin of appreciation in applying the measures restricting the exercise of a guaranteed right such as the right of peaceful assembly. However, this margin is fairly broad once the authority...is confronted with a foreseeable danger affecting public safety and order and must decide, often at short notice, what means to employ to prevent it.³⁶

However, States must provide clear, sufficient reasons to justify the infringement. States cannot impose an outright ban on assemblies unless there are no other means to achieve the aim. Additionally, where demonstrators are not involved in violence there is a degree of tolerance

³⁵ Fact provided by the IHRDC.

³⁶ *Rassemblement Jurassien & Unité Jurassienne v. Switzerland* (1980), European Commission on Human Rights, 17 Decisions & Reports 93 at para. 9.

required by the State. In *Öllinger v. Austria*, the ECHR reiterated that States have a margin of appreciation for assessing whether a need exists to restrict an assembly. The Court noted, however, that in deciding whether a restriction was valid under the Convention it will consider “whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were “relevant and sufficient.”³⁷ Similarly, the OAS *Report on Terrorism and Human Rights* calls for proportional and reasonable restrictions. States cannot ban “participation in certain groups, absent evidence that clearly raised a threat to public safety or security sufficient to justify an extreme measure of this nature”.³⁸ In addition, the ECHR held in *Nurettin Aldemir and others v. Turkey* that if demonstrators are not engaged in violence, then authorities must show some tolerance towards the gathering.³⁹ Finally, in *Denmark et al v. Greece* the European Commission held that restrictions on peaceful assembly which are necessary in a democratic society cannot include an outright ban unless there is no other means of protecting public order.⁴⁰

³⁷ *Öllinger v. Austria* (29 September 2006), European Court of Human Rights, Application no. 76900/01, at para. 33. A member of parliament for the Green Party, notified the Salzburg Federal Police Authority (*Bundespolizeidirektion*) under section 2 of the Assembly Act (*Versammlungsgesetz*) that on All Saints’ Day, 1 November 1998, from 9 a.m. until 1 p.m., he would be holding a meeting at the Salzburg municipal cemetery in front of the war memorial to commemorate Jews killed in Salzburg. Another group wished to commemorate the SS killed in WW2. The applicants meeting was denied authorisation.

³⁸ OAS, General Assembly, *Report on Terrorism and Human Rights*, at para. 363. “ In the context of these rules and principles, the Commission considers it important to emphasize that measures to prevent and punish terrorism must be carefully tailored to recognize and guarantee due respect for these rights. This would generally prohibit states from, for example, banning participation in certain groups, absent evidence that clearly raised a threat to public safety or security sufficient to justify an extreme measure of this nature. These protections similarly require states to ensure that laws or methods of investigation and prosecution are not purposefully designed or implemented in a way that distinguishes to their detriment members of a group based upon a prohibited ground of discrimination, such as religious beliefs, and to guarantee that methods of this nature are closely monitored and controlled to ensure against human rights infringements.”

³⁹ *Nurettin Aldemir and others v. Turkey* (2 June 2008), European Court of Human Rights, Applications nos. 2124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 at paras. 46-47. Trade union members were protesting a bill to amend the trade union act. Demonstration was peaceful but authorities intervened quickly which caused clashes. The Court found a violation of Article 11. “46. Where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.” “47. Accordingly, the Court considers that in the instant case the forceful intervention of the police officers was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.”

⁴⁰ *Denmark et al v. Greece* (The Greek Case) (1976), European Commission on Human Rights, 12 Yearbook, at paras. 392-396.

Iran has been called on by the CRC in the past to develop appropriate and proportionate means to protect public morals while safeguarding the right of every child to freedom of expression and assembly.⁴¹ The evidence gathered by the IHRDC reveals that this has not been achieved as the response by the Iranian government and police following the June 12 elections was not proportional to any aim to be achieved (e.g. protecting national security or public safety).

RESTRICTIONS MUST HAVE A LEGITIMATE AIM

Even if it were assumed that Iran is able to show that the restrictions on the assemblies were in conformity with the law and necessary in a democratic society, it must still show that the aim of restricting the assemblies was in the interest of one of the categories listed in article 21 of the *ICCPR*. Specifically, any restrictions must be in the interest of protecting national security, public safety, public order (*ordre public*), public health, public morals, or the rights and freedoms of others. Given international law requirements, if Iran claims that the demonstrations were contrary to the fundamental principles of Islam, it must show that the ‘fundamental principles of Islam’ is a restriction which falls into one of the six categories above. This is also true for any restrictions on the bases of article 9 and 40 of the Iranian *Constitution* or the *Penal Code*.

National Security

Iran may argue that the assemblies violated the independence and territorial integrity of Iran contrary to article 9 of the *Constitution*. Under international law, freedom of assembly may be restricted in the interests of national security. However, the precise nature of the threat to national security must be clearly outlined by the State. In *Tae Hoon Park v. Republic of Korea*, the applicant was arrested under the *National Security Law* of the Republic of Korea for participating in an organization and demonstrations in the United States which were critical of the US involvement in South Korea and which called for unity between North and South Korea. Korea argued that the restriction of the right to assembly was justified to protect national

⁴¹UN Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Iran (Islamic Republic of)*, 28 June 2000, CRC/C/15/ADD.123(CRC,2000), online: <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.123.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.123.En?OpenDocument)> at para. 34.

security. The Human Rights Committee found a violation of article 19 under the *ICCPR* because South Korea did not “specify the precise nature of the threat which it contends that the author's exercise of freedom of expression posed.”⁴²

It is unlikely that Iran specified the nature of any threat to national security posed by the demonstrations held in June 2009. If this is the case, it cannot claim that it had the legitimate aim of protecting national security under article 21 of the *ICCPR*. Additionally, article 9 of the *Constitution* also provides that “no authority has the right to abrogate legitimate freedoms, not even by enacting laws and regulations for that purpose, under the pretext of preserving the independence and territorial integrity of the country.” This suggests that Iran will face obstacles within its own constitution in trying to justify the suppression of the assemblies on the basis of national security.

Public Safety and Public Order

Iran may argue that the assemblies posed a threat to public safety or order. However, States must give relevant and substantiated evidence that there is a real risk to public order or safety. A hypothetical risk to the safety of the public is not grounds for an outright ban on assemblies. In the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, the applicants were a political organization in southern Bulgaria. The group held meetings for the purpose of gaining recognition of the Macedonian minority in Bulgaria. The police claimed there was fierce anti-Bulgarian sentiment within these meetings and there was evidence that the organization had previously taken part in violent clashes. Over a period of several years the group tried to get authorization for further meetings. This authorization was routinely denied and followed by mayoral bans on any assemblies on the grounds of a threat to public safety and order. The ECHR found a violation of article 11. It held that “the decisions of the mayors and the local courts referred only to a hypothetical danger for public order, without providing further details.

⁴² *Tae Hoon Park v. Republic of Korea* (20 October 1998), UN Human Rights Committee, Communication 628/1995, at para. 10.3.

The risk of minor incidents thus did not call for a ban on Ilinden's meetings."⁴³ In another case based on a similar factual situation, *Ivanov and others v. Bulgaria*, the ECHR reiterated that "the Court must scrutinize the reasons given by the national authorities" for restricting assemblies. Further, the Court noted that the bans did not state the basis for the conclusion that there was a threat to public order. That Court stated that:

even assuming that the legitimate aims pursued were public safety and the prevention of disorder, it can hardly be concluded that the authorities gave relevant and sufficient reasons justifying the prohibitions of the rallies, substantiating their finding that there was a risk to public order, and that the bans were thus necessary in a democratic society. It should also be noted that in their observations the Government did not specify any particular reasons to justify the bans, but merely stated that the authorities had acted in conformity with national law and that their actions had not been arbitrary.⁴⁴

Similarly, the Supreme Court of Israel held in *Sa'ar Adv et al v. Minister of the Interior and of the Police*, that to lawfully deny the right to freedom of assembly, police must prove a real and immediate danger of disturbance of public order.⁴⁵

Speeches and messages containing the words "struggle" and "liberation" do not necessarily promote disorder. In *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, discussed above, the ECHR cited a previous case and noted that "the mere fact that a message read out at a commemorative ceremony to a group of people...contained words such as "resistance", "struggle" and "liberation" did not necessarily mean that it constituted an incitement to violence, armed resistance or an uprising".⁴⁶

Consequently, the threshold for restricting the right to assemble in order to protect public safety and order is high. It requires substantiated and clear evidence which, it can be argued, Iranian officials have failed to establish in relation to suppressing the assemblies of June 2009.

⁴³ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2 January 2002), European Court of Human Rights, Applications nos. 29221/95 and 29225/95, at para. 94.

⁴⁴ *Ivanov and others v. Bulgaria* (24 November 2005), European Court of Human Rights, Application no. 46336/99, at para. 63.

⁴⁵ *Sa'ar Adv et al v. Minister of the Interior and of the Police*, Supreme Court of Israel, 34(2) Piskei Din 169, excerpted in (1982) 12 Israeli Yearbook on Human Rights 296.

⁴⁶ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2 January 2002), European Court of Human Rights, Applications nos. 29221/95 and 29225/95, at para. 102.

The Protection of Public Morals

Freedom of assembly may be restricted to protect public morals. The Iranian Government could claim that restricting the assemblies in June 2009 on the basis of the fundamental principles of Islam was for the legitimate aim of protecting public morals. It could further claim that the assemblies violated the *Penal Code* provision criminalizing offences against public morals.

In international law, what constitutes ‘public morals’ is broad and the UN Human Rights Committee states that a margin of discretion must be given to national authorities when assessing whether or not behaviour contravenes public morals. However, the Committee has also held that determining what violates public morals cannot be a solely domestic question. In *Hertzburg v. Finland*, the Finnish Broadcasting Corporation, of which Finland owned a 90% stake, prevented several people from producing or airing television programs discussing or portraying homosexuality. The applicants argued that their rights under article 19 on freedom of expression had been violated. Finland claimed they had a right to restrict freedom of expression for the protection of public morals. The Human Rights Committee found no violation of article 19(2) primarily because “public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities.”⁴⁷ This case would lend support to Iran if it were to claim the messages or actions of the assemblies were contrary to public morals. However, in another case, *Toonen v. Australia*, the Human Rights Committee held that it could not accept that “moral issues are exclusively a matter of domestic concern, as this would open the door to withdrawing from the Committee's scrutiny a potentially large number of statutes interfering with privacy.”⁴⁸

⁴⁷ *Hertzburg v. Finland* (1982), UN Human Rights Committee, Communication No.61/1979, CCPR/C/15/D/61/1979 at para. 10.3.

⁴⁸ *Toonen v. Australia* (4 April 1994), UN Human Rights Committee, Communication No. 488/1992, CCPR/C/50/D/488/1992, at para. 8.6. Toonen claimed that the Tasmanian state law criminalizing private homosexual acts violated his right to privacy under Article 17 of the ICCPR. There were differing views of the State Party and Tasmania on the justifications of Article 17. Tasmania claimed that the interference with privacy was justified on the grounds of protecting public health and public morals. The Human Rights Committee disagrees and found Toonen’s rights under article 17 had been violated and that Tasmania should repeal the law.

Iran could claim that the assemblies in June 2009 were restricted in order to protect public morals. It could be argued that, because what constitutes public morals is not a solely domestic question, substantiated and clear evidence is required to show that given behaviour violates public morals. If Iran does not produce this kind of clear evidence, then the June 2009 restriction on the right to peaceful assembly was not valid under international law. Admittedly, this argument is the weakest of those positing that Iran did not restrict freedom of assembly in accordance with a legitimate aim provided in article 21 of the *ICCPR*. That said, if it could be shown that the restrictions were not in conformity with the law or necessary in a democratic society, then this argument is not necessary.

The Protection of the Rights and Freedoms of Others

Governments must strike a balance between protecting the right of citizens to assemble peacefully and protecting the rights of others. The rights of others, which could come in conflict with the right to assemble, include the right to counter-demonstrate or the right to movement. Iran may argue that the suppression of the assemblies in June 2009 was for the protection of the rights of other citizens. This could be supported by article 40 of the Iranian *Constitution* which states that no citizen may exercise his rights in a manner injurious to others. However, this aim usually requires a balancing of rights and an outright ban on assemblies would be legitimate in very few situations.

For example, an outright ban of assemblies of one group to protect the right to assemble of another is not usually a valid restriction. In *Ollinger v. Austria*, the applicant notified the Salzburg Federal Police Authority under section 2 of the Assembly Act that on All Saints' Day he would be holding a meeting at the Salzburg municipal cemetery in front of the war memorial in order to commemorate Jews killed in Salzburg. Another group had previously applied to commemorate the *Schutzstaffel* (colloquially, the "SS") killed in World War Two by assembling on the same day in a similar location. The applicant's meeting was denied authorization. The Court held that "the unconditional prohibition of a counter-demonstration is a very far-reaching

measure which would require particular justification, all the more so as the applicant wished... to express an opinion on an issue of public interest”⁴⁹.

Similarly, the freedom of movement of others cannot restrict the right to assembly in its entirety. In *Sa’ar Adv et al v. Minister of the Interior and of the Police*,⁵⁰ the Supreme Court of Israel held that a balance must be found between the rights of those wishing to demonstrate and the right to freedom of passage. The Court held that some inconvenience to residents of a city must be expected in order to uphold the right to freedom of assembly. While restrictions may be placed on an assembly to reduce this inconvenience, assemblies may not be banned outright in order to protect the rights of other to movement.

CONCLUSION

Peaceful assemblies were suppressed by the Iranian Government and officials in June 2009. Domestically, Iran may be able to justify this restriction on freedom of assembly through provisions in its *Constitution* on the grounds that the assemblies were detrimental to the fundamental principles of Islam, the public interest, the right of others or the independence and integrity of Iran. However, as a party to the *ICCPR*, Iran may only restrict the right to freedom of assembly in a manner which is in conformity with the law, necessary in a democratic society and for the aim of protecting national security, public safety or public order (*ordre public*), public health, public morals, or the rights and freedoms of others. It is unlikely that Iran will be able to prove that the restriction on the right to freedom of assembly was pursuant to one of the delineated aims of the *ICCPR*. However, even if it were able to do so, it is not probable that Iran would be able to show that the restriction of freedom of assembly was proportional to that aim and, therefore, necessary in a democratic society. As such, based on the given facts, there is a strong argument that Iran violated international law under article 21 of the *ICCPR* when it suppressed the demonstrations and assemblies held in June 2009.

⁴⁹ *Ollinger v. Austria* (29 September 2006), European Court of Human Rights, Application No. 76900/01 at para. 44.

⁵⁰ *Sa’ar Adv et al v. Minister of the Interior and of the Police*, Supreme Court of Israel, 34(2) Piskei Din 169, excerpted in (1982) 12 *Israeli Yearbook on Human Rights* 296 cited in Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International jurisprudence* (Cambridge: Cambridge University Press, 2002).