



ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Memorandum

on

Media Regulation in the Islamic Republic of Iran

London
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1. Introduction

The purpose of this Memorandum is to examine the legal framework regulating the media in Iran in the context of the international standards governing the right to freedom of expression. Key issues regarding the legal framework, and how these problems are compounded by administrative and judicial practices, will be outlined, as well as the extent to which these diverge from international standards.

The sources of law for the regulation of the media addressed in the Memorandum are the Constitution, the Press Law and the Penal Code. There are also relevant provisions in other statutes such as the Theologians' Law and the Public and Revolutionary Courts' Procedural Law. Practice demonstrates that the Preventive Restraints Act is also utilised in respect of the media. Islamic law serves as an over-arching source of law,¹ which informs the content and interpretation of many of these legislative provisions.

Television and radio broadcasting are firmly controlled by a constitutionally entrenched State broadcasting monopoly.² Incoming foreign news is tightly restricted by a prohibition on satellite antennae introduced in 1995 and prior censorship provisions concerning all foreign publications.

In terms of press regulation, the Press Law very seriously restricts the role of the media within society. ARTICLE 19 is particularly concerned about the extensive restrictions on what content can be published and the excessively harsh penalties, including incarceration, flogging and suspension/banning of media outlets, which are standard sanctions for violation of the Press Law. ARTICLE 19 notes that the lack of objective criteria and clear definitions in the Press Law are particularly problematic from the perspective of the right to freedom of expression. The same law provides for licensing for all individuals and organisations operating in the press sector, another very serious concern. Finally, we note that there are a number of problematic administrative and judicial practices which further heighten the repressive impact of the legislative provisions, including the inappropriate use of the Revolutionary Court and the issuing of written orders by the Executive concerning what material can be discussed in the print media. These and other practices are outlined in detail in this Memorandum.

2. Protection of Freedom of Expression under International Law

2.1 International Standards

Article 19 of the *Universal Declaration of Human Rights* (UDHR)³ guarantees the right to freedom of expression in the following terms:

¹ Constitution of the Islamic Republic of Iran (Constitution), Article 4.

² *Ibid*, Article 175.

³ UN General Assembly Resolution 217A(III), adopted 10 December 1948.

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

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.⁴

The *International Covenant on Civil and Political Rights* (ICCPR),⁵ a treaty ratified by some 154 States imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found at Article 19 of the UDHR:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Iran signed the ICCPR on 4 April 1968 and ratified it on 24 June 1975. As a State Party, Iran has undertaken to respect the right to freedom of expression as provided for in Article 19 of the ICCPR. It has also committed itself to respect the reporting obligations of States Parties, whereby they commit to report on progress in implementing rights to the UN Human Rights Committee every five years. We note that Iran has not complied with these reporting obligations since 1992 and that, as a result, it is currently three reports behind.

Freedom of expression is a key human right, critical to the realisation of all other human rights. This was recognised at the very first session of the UN General Assembly in 1946, when it adopted Resolution 59(I) which states: “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”⁶

The guarantee of freedom of expression applies with particular force to the media, including both the broadcast and print media. The European Court of Human Rights has consistently emphasised the “pre-eminent role of the press in a State governed by the rule of law.”⁷ It has further stated:

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.⁸

And, as the UN Human Rights Committee has stressed, a free media is essential in the political process:

⁴ See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).

⁵ UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

⁶ 14 December 1946.

⁷ *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

⁸ *Castells v. Spain*, 24 April 1992, Application No. 11798/85, para. 43.

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[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.⁹

The Inter-American Court of Human Rights has stated: “It is the mass media that make the exercise of freedom of expression a reality.”¹⁰ The media as a whole merit special protection, in part because of their role in making public “information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’.”¹¹

The European Court of Human Rights has also stated that it is incumbent on the media to impart information and ideas in all areas of public interest:

Whilst the press must not overstep the bounds set [for the protection of the interests set forth in Article 10(2)] ... it is nevertheless incumbent upon it to impart information and ideas of public interest. Not only does it have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog”.¹²

2.2 Restrictions on Freedom of Expression

The right to freedom of expression is not absolute. Both international law and most national constitutions recognise that freedom of expression may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

A similar formulation can be found in the European and Inter-American regional human rights treaties.¹³ These have been interpreted as requiring restrictions to meet a strict three-part test.¹⁴ International jurisprudence makes it clear that this test presents a high standard which any interference must overcome. The European Court of Human Rights has stated:

Freedom of expression ... is subject to a number of exceptions which, however, must

⁹ UN Human Rights Committee General Comment 25, issued 12 July 1996.

¹⁰ *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

¹¹ *Thorgeirson v. Iceland*, note 7, para. 63.

¹² See *Castells v. Spain*, note 8, para. 43; *The Observer and Guardian v. UK*, 26 November 1991, Application No. 13585/88, para. 59; and *The Sunday Times v. UK (II)*, 26 November 1991, Application No. 13166/87, para. 65.

¹³ The African Charter has a different, rather weaker, formulation.

¹⁴ See, for example, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7 (UN Human Rights Committee).

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be narrowly interpreted and the necessity for any restrictions must be convincingly established.¹⁵

First, the interference must be provided for by law. This requirement will be fulfilled only where the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”¹⁶ Second, the interference must pursue a legitimate aim. The list of aims in Article 19(3) of the ICCPR is exclusive in the sense that no other aims are considered to be legitimate as grounds for restricting freedom of expression. Third, the restriction must be necessary to secure one of those aims. The word “necessary” means that there must be a “pressing social need” for the restriction. The reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.¹⁷

2.3 Constitution of the Islamic Republic of Iran

As noted above, the Constitution expressly protects the right to freedom of expression in Article 24, albeit in a qualified manner, as follows:

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

Article 20 exhorts the government to “direct all of its resources...to ensuring political and social freedoms within the context of the law”. We note with concern the qualification of being in conformity with Islamic criteria in Articles 20 and 24, which is in contradiction with the international protection of “information and ideas of all kinds” in Article 19 of the UDHR and ICCPR. Furthermore, the Constitution fails to place limits on laws which restrict freedom of expression, unlike international law, which requires any such laws to be clear, to serve a listed legitimate aim and to be necessary to protect that aim.

The Constitution states that “all members of the nation, both men and woman, equally enjoy the protection of the law and enjoy all human, political, economic, social and cultural rights, in conformity with Islamic criteria”.¹⁸ We consider certain provisions in the Press Law to be antithetical to these articles of the Constitution.

Other articles in the Constitution undermine protection of the right to freedom of expression as guaranteed under international law. The Preamble requires the media to “strictly refrain” from the “diffusion and propagation of destructive and anti-Islamic practices” and Article 40 prohibits the exercise of constitutional rights in a manner which is injurious to others or detrimental to public interests. Furthermore, Article 4 provides that “all civil, penal, financial, economic, administrative, cultural, military, political and other laws and regulations must be based on Islamic criteria. This provision applies absolutely and generally to all Articles of the Constitution as well as all other laws and regulations, and the

¹⁵ *Thorgeirson v. Iceland*, note 7, para. 63.

¹⁶ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49 (European Court of Human Rights).

¹⁷ *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40 (European Court of Human Rights).

¹⁸ *Ibid*, Article 20.

wise persons of the Guardian Council are judges in this matter.” We reiterate our concern that this amounts to a substantial qualification on the right to freedom of expression in Iran.

3. Relevant National Legislation and Practices

3.1 Scope of the Legislative Framework

As noted above in the Introduction, broadcasting is tightly controlled by the government in Iran through a constitutionally entrenched State broadcasting monopoly and a prohibition on satellite antennae for receiving foreign broadcasting content. The regulation of the print media is predominantly through the Press Law and the Penal Code. The Press Law, passed in April 2000 by the fifth Majlis, seeks to restrict the role of the media to pursuing a specific set of objectives, including “to propagate genuine Islamic culture and sound ethical principles” (Article 2(e)). Viewed in conjunction with the prohibition in the Preamble of the Constitution against the “diffusion and propagation of destructive and anti-Islamic practices”, these provisions present a serious incursion on the structural freedom of the press and independence from political influence. It is not for the State to dictate objectives for the media.

The Press Law also imposes a licensing requirement on publishing houses and individuals. The Press Supervisory Board (PSB), within the Ministry of Islamic Culture and Guidance (the Ministry) is responsible for addressing alleged violations of the Press Law and has the power to ban a publication which violates Articles 6, 24 to 29 or 32 of the Press Law.¹⁹ The PSB is also formally responsible for referring violations of the Press Law to the Press Court or Revolutionary Court where appropriate. The standard response to even an alleged violation of the Press Law is to suspend the publishing licence until the matter is resolved. Where a violation is found to have occurred, the licence is often cancelled.

The problems of the regulatory framework are compounded by administrative practices which intimidate both individual journalists and publishing houses and by problems within the judicial system, which fails to provide the proper level of protection of the right to freedom of expression. Each of these issues is discussed in greater detail below.

3.2 Restrictions on Broadcasting

ARTICLE 19 notes that a State broadcasting monopoly has expressly been recognised as being inconsistent with the protection of freedom of expression.²⁰ Only the very most repressive governments maintain State broadcasting monopolies in the modern world.

As regards the prohibition on satellite antennae, we emphasize that Article 19 of the ICCPR protects not only expression itself, but also the *means* of communication. The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and

¹⁹ Press Law, Article 4.

²⁰ UN Human Rights Committee General Comment No. 10, Freedom of Expression (Article 19), para. 2. See also *Capital Radio (Private) Limited v. Minister of Information, Posts and Telecommunications*, Judgment No. S.C. 99/2000, Const. Application No. 130/00 (Supreme Court of Zimbabwe).

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Expression (UN Special Rapporteur), in the context of a report on his 1996 visit to Iran,²¹ has specifically called upon Iran to remove the prohibition on satellite antennae for precisely this reason.²² The Special Rapporteur noted that the need may arise for States to protect public morality, including in relation to international broadcasts, but that States should not try to achieve this protection through the use of censorship or the banning of satellite antennae or other information carriers.

3.3 Content Restrictions in the Press Law

The Press Law seeks to place the media into a rigid framework of rights and responsibilities. Article 2 outlines five limited ‘legitimate objectives’ which the press is entitled to pursue, including “to campaign against manifestations of imperialistic culture...and to propagate and promote genuine Islamic culture and sound ethical principles” (Article 2(d)). Article 2 also imposes an obligation on the press to enforce at least one of the five objectives, and in a manner which does not undermine the realisation of the other goals or the principles of the Islamic Republic (Note 1 to Article 2).

The Press Law also provides that the press are obliged to restrict themselves to matters such as “constructive criticism” (Article 3), “while duly observing Islamic teaching and the best interest of the community”, and content must be “void of insult, humiliation and detrimental effects” (Article 3). Similarly, the dissemination of any domestic and foreign news should take into account the best interests of the community (Article 5).

There is also a broad and ill-defined range of content-based restrictions outlined in Article 6, prohibiting the publication of matters related to atheism, propagating luxury or extravagance, creating social discord or divisions, encouraging dissent against the security, dignity or interests of the State, publishing sensitive information without prior authorisation, insulting Islam or offending State and religious officials, any libel, or quoting articles from the deviant press or parties opposed to Islam in such a manner as to propagate those ideas. Strict content restrictions are also imposed in respect of the type of advertising contained in publications (Article 19).

ARTICLE 19 consider that these provisions amount to a serious interference with the editorial independence of media outlets and to an illegitimate restriction on freedom of expression. The terms of the Press Law fail to give meaningful guidance to journalists and editors, while providing officials with ample opportunity to censor, restrict and find offence. Many of these provisions fail to meet the requirement of being ‘provided for by law’ as the terms are vaguely drafted and undefined, leaving them open to subjective and arbitrary interpretation.

Indeed, there is a ubiquitous absence of definitions within the Press Law, which seriously undermines the protection of freedom of expression through the media. ARTICLE 19 is particularly concerned regarding the interpretation of Islamic principles, especially when it comes to the definition of opinion related offences. We note that there are varying

²¹ The UN Special Rapporteur has visited Iran twice, once in 1996 and once in 2004.

²² Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 11 March 1996, E/CN.4/1996/39/Add.2, paras. 50 and 64.

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interpretations thereof, including among clerics. This undermines the certainty of the law and the scope of legitimate restrictions being placed on the right of freedom of expression.

The UN Special Rapporteur has stated that there is an urgent need to define more clearly the contents of Islamic principles in the law and, in particular, the criteria applied to determine the point at which it is considered that there is a breach of these principles, in order to avoid arbitrariness in their interpretation and lack of legal security in their implementation.²³

Furthermore, ARTICLE 19 notes that a number of the restrictions go beyond what is permitted in accordance with the list of legitimate protected interests provided for in Article 19(3) of the ICCPR and, as a result, breach international guarantees of the right to freedom of expression. For example, in a democracy, public figures and officials should be required to tolerate a wider degree of criticism than ordinary citizens. The Iranian provisions protecting the State and religious authorities from any form of criticism whatsoever are therefore totally illegitimate restraints on freedom of expression.

We also have serious concerns with the prohibition against propaganda, which has wide scope of misuse in suppressing speech based on conscientiously held beliefs which do not pose any threat to national security or other public interests.

Further, we note that the criminalisation of defamation is antithetical to international standards. In accordance with the necessity part of the test for restrictions, the means used to discourage defamation should be carefully targeted, to prevent the dampening of legitimate criticism. Even if they are applied with moderation, criminal defamation laws can still cast a long shadow: the possibility of being arrested by the police, held in detention and subjected to a criminal trial will be in the back of the mind of a journalist when he or she is deciding whether to expose, for example, a case of high-level corruption. The UN, OSCE and OAS special mandates on freedom of expression have issued a joint declaration stating: “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”²⁴ The UN Human Rights Committee has several times expressed its concern over the misuse of criminal defamation laws in concrete cases, recommending a thorough reform in countries as wide-ranging as Azerbaijan,²⁵ Norway,²⁶ and Cameroon.²⁷

We also note that the prohibition against insult contained in the Theologians’ Law (the body of law which deals with offences committed by clerics) has been used in the closure of publications. A number of the articles in the Theologians’ Law are vaguely worded and Article 18 – “acts which customarily cause insult to the dignity of Islamic theory and the

²³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 12 January 2004, E/CN.4/2004/62/Add/2, para. 102.

²⁴ Joint Declaration of 10 December 2002. Available at: <http://www.cidh.oas.org/Relatoria/English/PressRel02/JointDeclaration.htm>.

²⁵ *Concluding observations of the Human Rights Committee: Azerbaijan*, UN Doc. CCPR/CO/73/AZE, 12 November 2001.

²⁶ *Concluding Observations of the Human Rights Committee: Norway*, UN Doc. CCPR/C/79/Add.112, 1 November 1999.

²⁷ *Concluding observations of the Human Rights Committee: Cameroon*, UN Doc. CPR/C/79/Add.116, 4 November 1999.

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Islamic Revolution” – is of particular concern given its potential to suppress public discourse through the press.

3.4 Excessively Harsh Penalties

The Penal Code provides for mandatory imprisonment terms for many of the violations of the Press Law, including insult of State or religious officials, engaging in propaganda activities, or publishing of libel, false information or satirical material. Anyone who explicitly violates any religious taboo in public shall be imprisoned or flogged, in addition to receiving specific punishment for the offence.

In addition, the power of the PSB, the Press Courts and the Revolutionary Courts to suspend or cancel a press licence is an inordinately extreme measure which seriously undermines the proper protection of the right to freedom of expression. ARTICLE 19 notes that statistics of the Office of the Prosecutor General for Tehran indicates that from approximately 1999 to 2004, 81 publications were closed down: 59 after judicial decision and 22 after decision by the PSB. Unofficial statistics place the figures much higher.

We express our concern at the excessively harsh penalties which are imposed for the range of violations of the Press Law. Such penalties are grossly excessive for speech-related conduct and are inconsistent with the protection and promotion of freedom of expression under international law.

The imposition of corporal punishment and incarceration for speech-related offences is clearly disproportionate and antithetical to the protection of freedom of expression. In his 2000 Report to the UN Commission on Human Rights, the UN Special Rapporteur noted: “In the case of offences such as ‘libelling’, ‘insulting’ or ‘defaming’ the head of State and publishing or broadcasting ‘false’ or ‘alarmist’ information, prison terms are both reprehensible and out of proportion to the harm suffered by the victim. In all such cases, imprisonment as punishment for the peaceful expression of an opinion constitutes a serious violation of human rights.”²⁸ Corporal punishment – such as an order of lashing – amounts to cruel, inhuman or degrading treatment and Article 7 of the ICCPR imposes an absolute prohibition against such treatment. In its General Comment No. 20 on Article 7 of the ICCPR, the Human Rights Committee considered that the prohibition on torture extends to the prohibition of “corporal punishment...ordered as punishment for a crime....”²⁹

3.5 Licensing

As noted above, the Press Law also imposes a licensing scheme on publishing houses and individuals (Article 7), overseen by the Ministry and administered by the PSB, which is subject to the supervision of the Ministry. An exception is made for publications of Islamic liberation movements from other countries (Article 7).

There are a number of restrictions placed on who may apply for a publishing licence, including an age restriction of 25 years, Iranian citizenship, possessing tertiary education or

²⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the UN Commission on Human Rights, E/CN.4/2000/63, para. 205.

²⁹ 10 March 1992.

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seminary education verified by the PSB, and a requirement to “be free of moral corruption” and not to have a criminal record (Article 9).

The PSB functions as a media regulatory body, examining press licence applications and alleged press violations, imposing temporary bans on press licences and filing written requests for legal proceedings in competent courts where appropriate (Articles 10 and 12). The Ministry can also direct the PSB to file a request for legal proceedings (Article 12). The PSB is composed of a judge, a representative of the Ministry of Islamic Culture and Guidance, a university professor appointed by the Minister of Culture and Higher Education, and a press managing director as elected by the press (Article 10). The Ministry has the right to examine and approve of the qualifications of the latter nominees (Note 4 to Article 10), which introduces an element of vetting of the representative by the Ministry.

Publications are also closely monitored by the Ministry through the requirement to submit an annual sealed ledger containing an outline of all revenues and expenditures, which the Ministry can inspect whenever it deems appropriate (Article 20). Additionally, each printing house must forward two copies of their publications regularly and free of charge to the Ministry (Article 21).

ARTICLE 19 considers the imposition of a licensing scheme for the press to be a matter of serious concern, and the restrictions placed on licensees exacerbates this concern. The right to establish a publication is clearly an important vehicle for “imparting information and ideas” and an exercise of the right to freedom of expression. The UN Human Rights Committee has repeatedly expressed its concerns at licensing requirements for the print media, holding that they constitute a violation of the right to freedom of expression.³⁰ A licensing scheme presents a serious obstacle to this right and the criteria listed in the Press Law pose an additional barrier to obtaining a licence, subject to the discretion of the PSB, a body controlled by the Ministry.

The restrictions on who may apply for a media licence are inconsistent with international law since they fail to recognise that the right to express oneself through the mass media belongs to everyone, not only those whom the government considers particularly qualified or suitable. They also deprive the general public of the right to receive information and ideas from diverse sources of their own choice. Subjective criteria such as being free of moral corruption are of particular concern, as is prohibiting the licensing of anyone who has spoken publicly in favour of the former regime through the mass media (Note 5 to Article 9). The UN Special Rapporteur has noted that this provision gives cause for grave concern, as it allows journalists to be debarred from exercising their profession on the basis of extremely vaguely defined offences.³¹ These are illegitimate restrictions on the right to freedom of expression, both for individual journalists and from the perspective of the general public’s right to receive information.

Finally, in regard to the PSB functioning as a regulatory body, it is a fundamental requirement that any body exercising regulatory powers over the media be independent of political influence in order to properly safeguard freedom of expression. The relationship between the PSB and the Ministry is close and there is no indication that the PSB’s

³⁰ See, for example, *Concluding observations of the Human Rights Committee: Lesotho*, 8 April 1999, UN Doc. No. CCPR/C/79/Add.106, para. 23.

³¹ Note 23, para. 28.

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mandate is to function independently of government influence and control. ARTICLE 19 considers this arrangement to be incompatible with international standards.

3.6 Lack of Prompt Access to Judicial Remedies

We note that international standards require that where the right to freedom of expression is at stake, granting administrative powers to ban and/or suspension media outlets are completely illegitimate. Indeed, these powers should be exercised, if at all, only under the most limited circumstances, and by the judiciary. At the very minimum, any administrative powers in this area should be subject to immediate review by independent judicial authorities, in keeping with the obligation of States under Article 2(3) of the ICCPR to ensure judicial oversight were questions of the violation of civil and political rights may be engaged.

The UN Human Rights Committee has noted that the manner in which a State defines and restricts expression determines the extent to which individuals enjoy the right to freedom of expression: “It is the interplay between the principle of freedom of expression and such limitations and restrictions which determine the actual scope of the individual’s right.... [W]hen a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”³² ARTICLE 19 considers that the illegitimate, not to mention totally excessive, use of temporary bans and suspensions creates an unacceptable stifling of the right to freedom of expression of the Iranian media.

3.7 Interference by the Executive

Both the Constitution³³ and the Press Law contain express provisions forbidding censorship. Article 4 of the former states that, “no government or non-government official should resort to co-ercive measures against the press to publish an article or essay, or attempt to censure and controlling the press”. Despite this, the Islamic Republic News Agency (IRNA), which is directly subordinate to the government, rigorously monitors articles written by journalists before they are published, in order to ensure that they are in line with IRNA’s five governing principles, namely preservation of State secrets and national security; public morality; strengthening linguistic and religious solidarity; human dignity; and not publishing information prohibited by law. ARTICLE 19 considers that this practice of prior censorship is contrary to the effective exercise of the right to freedom of expression.

According to Reporters Without Borders’ Iran Annual Report for 2004 and the US State Department Human Rights Report for 2004, the Supreme National Security Council sends all newspapers a list of banned subjects each week, such as – in the case of 2003 – the 1999 student demonstrations, resumption of talks with the United States, the murder of photojournalist Zahra Kazemi and anything about nuclear weapons agreements.³⁴

³² United Nations, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.2, March 29, 1996, p. 11.

³³ Article 25.

³⁴ Reporters Without Borders, ‘Iran – Annual Report 2004’ (3 May 2004) and US State Department Bureau of Democracy, Human Rights and Labour, Country Report on Human Rights Practice for 2004, (February 2005) <http://www.state.gov/g/drl/rls/hrrpt/2004/41721.htm>, p. 8.

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A wide range of independent and official reports allege that individuals, including press and media officials, are routinely summoned to government offices for the purpose of being instructed or warned not to continue exercising their right to freedom of expression.³⁵ Furthermore, there is considerable scope within the loosely drafted provisions of the Press Law for executive interference with the functioning of journalists and publishing houses.

The UN Special Rapporteur has specifically requested Iran to cease this practice.³⁶ Additionally, the Special Rapporteur called on Iran to take effective measures to prevent officials from encouraging or supporting private persons among the general public who resort to illegal action – including the use of violence, threats, harassment and intimidation – against persons seeking to exercise or promote the right to freedom of expression.³⁷ ARTICLE 19 considers that both of these practices represent a serious threat to the protection and promotion of freedom of expression.

3.8 Problems In the Judicial System

The judiciary, according to the Constitution, is “an independent power”, responsible for the administration of justice.³⁸ The Constitution further provides, however, that the head of the judiciary will be a Mojtahead directly appointed by, and accountable to, the Leader.³⁹ The UN Special Rapporteur, in his 2004 Report, noted that the effect of this is that, “control is exercised to a large extent by the Office of the Leader over the judiciary as an institution, and over individual judges”.⁴⁰

Article 168 of the Constitution provides that political and press offences will be tried openly and in the presence of a jury in the courts of justice. Specific provision is made for the hearing of press offences in specialised courts, the Press Courts. Tehran’s Public Court 1410, commonly known as the Press Court, hears most cases relating to journalists and publications based in Tehran. In other Iranian cities, other public courts serve the same function. The Press Courts are empowered to impose criminal penalties on individuals and to order the closure of newspapers and periodicals. We note that the authorities have also employed other courts, such as Islamic Revolutionary Courts, to prosecute publishers, editors and journalists for their press activities, in apparent contradiction to the stipulations of constitutional Article 168.

The Islamic Revolutionary Courts, established on a temporary basis in 1979, have become a permanent fixture of the Iran’s justice system. These courts have jurisdiction over serious security related crimes, such as offences against the internal and external security of the State, conspiracy, carrying arms, sabotage, use of terrorism, espionage and smuggling, and offences linked to illegitimate appropriation of wealth. The UN Special Rapporteur has specifically noted that such offences are not opinion or press related and, as such, should not be tried in the Revolutionary Courts.⁴¹

³⁵ Note 22, para.49; US State Department Bureau of Democracy, Human Rights and Labour, Country Report on Human Rights Practice for 2005, (February 2006), Section 2a.

³⁶ Note 22, para. 73.

³⁷ Note 22, para. 74.

³⁸ Constitution, Article 156.

³⁹ *Ibid*, Articles 110 and 157.

⁴⁰ Note 23, para. 21.

⁴¹ Note 23, para. 27.

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These ostensibly ‘temporary’ courts do not respect international standards. Defendants may be held indefinitely in incommunicado pre-trial detention, proceedings are held in secret and the defendant has no right of access to counsel. A second exceptional court, the Special Court for the Clergy, has also been used in some press related cases where the defendants have been Muslim clerics. The Theologians’ Law is applied by these courts. These courts, which also offer few due process safeguards to the defendant, and whose hearings are usually held in secret, are used to discipline allegedly dissident clerics and to stifle religious opinions regarded as heretical.⁴²

There are also reports that, over the past few years, the judicial authorities have utilised the Preventive Restraint Act 1960 to temporarily ban newspapers on the basis of articles deemed to be contrary to the law. This Act is directed at avoiding the recurrence of serious crimes such as hooliganism and murder, rather than so-called press offences. A number of temporary bans have reportedly been imposed on newspapers under the Act, some of which have lasted for more than three years, in the absence of any trial or court decision.⁴³

ARTICLE 19 notes that independent reports widely allege that Iran’s judiciary lacks the structural independence guaranteed by the Constitution and that there continues to be an absence of the separation of powers regarding the functions of investigator, prosecutor and judge.⁴⁴ ARTICLE 19 also notes that, despite the apparent safeguard of a requirement of a jury in press cases, this body only has an advisory capacity and its decision is not binding on the judge. The lack of independence of the judiciary, the qualified role of the press jury and the inappropriate use of the Revolutionary Court for alleged Press Law violations represent a systematic threat to the protection of freedom of expression. Resolution 31, adopted at the 1999 session of the United Nations Commission on Human Rights, stated that “an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice.”⁴⁵

⁴² See Section 3.4.

⁴³ See, for example, note 23, para. 42.

⁴⁴ Amnesty International, ‘Iran: A legal system that fails to protect freedom of expression and association’, (London 2001), p 1; Freedom House, ‘Countries at the Crossroads 2005 – Country Report on Iran’, (June 2005),

<http://65.110.85.181/modules/publications/ccr/modPrintVersion.cfm?edition=2&ccrpage=8&ccrcountry=88>.

⁴⁵ Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, 26 April 1999.