

# IRAN HUMAN RIGHTS REVIEW: RELIGION

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Preface by Cherie Blair



## **About the Iran Human Rights Review**

The Foreign Policy Centre (FPC) is delighted to publish the first in what we hope will be a series of Iran Human Rights Reviews. These will bring together the thinking of established and emerging analysts, activists, academics and politicians around the world to examine the many human rights challenges in Iran and put forward positive recommendations for policymakers and other interested stakeholders.

Tahirih Danesh, FPC Senior Research Associate, is leading the project with support from FPC's Policy Director, Adam Hug, who oversees the Centre's work on human rights and the Middle East.

The long-term development of the Iran Human Rights Review will be reliant on the FPC attaining funding to develop this work. If you would like to help support the work of the Iran Human Rights Review or any other projects in the Foreign Policy Centre's 'Democracy, Good Governance and Human Rights Programme' please contact Adam Hug on [adam.hug@fpc.org.uk](mailto:adam.hug@fpc.org.uk) or +44 (0)20 7729 7566. For more information about the FPC please visit our website [www.fpc.org.uk](http://www.fpc.org.uk) or email [events@fpc.org.uk](mailto:events@fpc.org.uk).

For further information on Iran Human Rights Review, suggestions and expressions of interest for future collaboration, please email the editorial team at: [research@fpc.org.uk](mailto:research@fpc.org.uk)

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The editorial team looks forward to working with Iranian experts, activists and Western colleagues who are not only dedicating their lives to the struggle for human rights, but are also making every effort to listen to the views of others, work with each other and create the main building blocks of a true democracy: a new culture of harmony and trust within the Iranian society.

## Contents

Preface – Cherie Blair	p3
Introduction and Policy Recommendations – Tahirih Danesh and Adam Hug	p4
On Human Rights and Democracy in Iran – Dr. Shirin Ebadi	p8
Challenges of Implementing Women's Rights in Iran – Dr. Fatemeh Haghighatjoo	p10
Iran’s Human Rights Deficit: Is Islam the Culprit? – Dr. Shireen Hunter	p16
Freedom of Conscience – Dr. Abdol-Karim Lahidji	p21
Why Human Rights Abuses in Iran Should Concern People Everywhere - John Weston	p25
The Third Form of Totalitarianism: “The Islamic Republic of Iran” – Dr. Wahied Wahdat-Hagh	p29
Human Rights, Religion and Laws – Dr. Hossein Ladjevardi	p35
Velayat-e Faqih, Law and Human Rights - Hamid Hamidi	p40
Appendix: Recent Reports and References on human rights in Iran	p46

## **Preface by Cherie Blair**

Religious freedom has a strong claim to being one of, if not the, oldest issues which we now consider to be a human right. Throughout history, examples can be found of states and empires not only tolerating but also respecting the beliefs of others within their territories. Well-known examples include the great civilisation of Ancient Persia, the Roman, Moghul, Ottoman and British Empires, and perhaps most famously, the Emirate of Cordoba during the tenth to twelfth centuries. In the modern era, the United Nations has expended tremendous energy in trying to ensure that religious intolerance both within and between states is curtailed. The right to hold religious beliefs is now part of the nucleus of those aspects of international human rights law which all states accept. Alongside the right not to be tortured or held in slavery, it is one of those few rights which can never be derogated from. But religious freedom is not just about the right to believe in a god, it is equally about how you choose to manifest your belief and also the right not to believe at all.

Religious freedom does not end with the right to hold certain beliefs; it is equally about not being discriminated against on the basis of those beliefs. It is that intolerance of others and less favourable treatment of them that has too often become a catalyst for the untold suffering and misery of millions. As the 1981 United Nations Declaration on Religious Intolerance notes, it is discrimination and intolerance on the basis of religion that has brought wars and great suffering to mankind over the centuries. Every international human rights agreement includes a provision to the effect that rights must be protected 'without distinction of any kind, such as race, colour, sex, religion, or other opinion ... or other status.' But we are confronted with very real dilemmas when religious traditions and beliefs are used as a justification, real or purported, for discrimination against others. Often such discrimination is on the basis of the religion of others or their gender. Should we then respect and allow the manifestation of such religious beliefs or should we seek to uphold the value and dignity of each individual? This is an acute problem in many parts of the world, and applies to almost all religious traditions be it Catholicism, Islam or Judaism. The articles in this review highlight how these issues, among others, manifest themselves in Iran.

The human rights situation in Iran is of on-going concern to people in many different parts of the world, be they expatriates, activists, academics or simply those with an interest in human rights. Dialogue and discussion, both with the reformist movement and the international community, is needed to end the increasing isolation of Iran. This project aims to illustrate some of the complexities of the situation and to inform readers of the many challenges facing Iran. I warmly welcome its publication and am pleased to be associated with it.

## Introduction by Tahirih Danesh and Adam Hug

“Everyone has the right to freedom of thought, conscience and religion” states Article 18 of the Universal Declaration of Human Rights. Iran remains a signatory to this Declaration. This means that despite its attempts to distance itself from these principles, the regime is required under international law to be committed not only to the protection, but also the promotion of these inalienable rights for all its citizens.

However, numerous reports by eyewitnesses, NGOs, UN rapporteurs, independent watchdogs and the media<sup>1</sup> point to an irrefutable pattern of policy and practice, which maintains the supremacy of a specific interpretation of a single branch of Islam by a single individual, the Supreme Leader or the Vali-e Faqih, over the rights of an entire nation.<sup>2</sup> This pattern lends itself to a vague set of laws applied inconsistently that are used to suppress dissent and stifle freedom of choice. Furthermore, Iran’s Vali-e Faqih-centred system leaves no room for elements of a just government including citizenship as a birthright, equal rights for all genders, sexualities and ethnicities, plurality of opinion or the progress and development of minorities.<sup>3</sup> Instead, evidence suggests a repetitive cycle of violent aggression against those who demand their rights, justified in the name of a specific interpretation of the Shari’a.

The aim of this first edition of the Foreign Policy Centre’s new publication, Iran Human Rights Review, is to develop public understanding of the fundamental challenge to human rights in general, and the right to religion or belief in particular, posed by the Iranian regime led by the Vali-e Faqih. It seeks to put forward a vision of a future in which Iranians are free to follow the call of their consciences to worship as they wish to do so or not to at all, while laying out some of the steps needed to realise such a vision. It does this by providing a platform for experts with varying viewpoints to put forth their contributions to a specific area of human rights abuse in Iran.

Whether it is decrying the requirement to wear the hijab in Iran or Saudi Arabia or defending the rights of Turkish or French women to wear Islamic dress, a consistent defence of the right to choose and practice one’s religion or beliefs requires an acceptance that it is not the responsibility of the state to manage the citizen’s relationship with whichever god they or their leaders happen to believe in. While states may address the matter of faith in a variety of ways from the American and French separation of church and state to those who have a formally established faith<sup>4</sup>; governments should not seek to impose the practices of the dominant religion on the public or restrict the freedoms of the minorities who do not share that creed.

Where any cleric, of any faith, claims that he or she knows the complete will of God; where they will brook no challenge to their personal interpretation of their faith, the scope of theological debate and discussion is limited. In a free society citizens can choose to reject or accept a particular interpretation. However when one narrow interpretation of a faith becomes the founding principle

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<sup>1</sup> A small sample of which can be found in the appendix to the review

<sup>2</sup> Syyid Hassan Taheri Khurram Abadi, 1983. *Velayat-e Faqih va Hakemiyat-e Mellat*. Qum: Daftar-e Entasharat-e Eslami, p. 90.

<sup>3</sup> On 29 September 2010 in a statement published through the official website of Ayatollah Dastgheib, this senior cleric and member of the Assembly of Experts, the body responsible for the selection of the Vali-e Faqih, criticised the current theory of Absolute Velayat-e Faqih and stated that the domain of the Vali’s duties is confined to that of coordinating “efforts by the three branches of the government and to prevent the violation of citizens’ rights by the three branches.” For the original Farsi version of the statement see: [http://www.dastgheib.com/index.php?option=com\\_content&task=view&id=816&Itemid=1](http://www.dastgheib.com/index.php?option=com_content&task=view&id=816&Itemid=1) and for an English report see: <http://www.insideiran.org/media-analysis/senior-ayatollah-criticizes-khamenei-for-overstepping-powers-as-supreme-leader/> [Accessed 7 October 2010].

<sup>4</sup> As a UK based think tank the editors are aware of the peculiarity in Britain where the Church of England remains established as the state church, whose leading members are able to sit in the revising chamber of parliament, (the House of Lords) despite having one of the most secular political and cultural environments in the world.

of a state, it can create a profound challenge for the human rights and freedoms of the citizens it claims to represent.

The history is replete with examples of wars and cycles of violence caused by attempts to impose ideologies or belief systems upon others, perhaps most notably in the upheavals of the twentieth century where the struggles were predominantly political. In the twenty-first century an increasing number of victims lose their lives in the name of religion.<sup>5</sup> While most of these victims may not be from Iran, the fact remains that the Islamic Republic plays a leading role in practising religion-based penal codes and laws, including capital punishment. During the first decade of the new century, Iran has managed to more than quadruple the number of its state executions<sup>6</sup>. Its revolving-door policies on arrests, increasing practice of torture and other forms of cruel treatment as well as draconian codes on women's family and social rights, and suffocation of its religious and ethnic minorities are but a few examples of how Iran's theocratic rulers are challenging and defying domestic and international human rights standards, all in the name of religion.

Although Iran is the world's only Shi'ite theocracy, the marriage of religion and political power is far from exclusive to Islam or Iran: India's Bharatiya Janata Party use Hinduism as part of their nationalist creed of Hindutva that has led at various points to ethnic violence against sections of India's Muslim community. Religious interpretations lie at the heart of some strands of more expansionist or exclusionist Zionism in Israel while a Buddhist clerical elite played a major role in pre-Chinese Communist controlled Tibet. The historical relationship between Christianity and political power contains the well-known mix of crusades and cathedrals, the Inquisition and innumerable works of art, literature and the foundations of the modern state. In a current European context it manifests itself as moderate conservative Christian democracy with smaller, more devout and hard-line, parties springing up, particularly in the east.

In Saudi Arabia and parts of the Gulf, Wahhabi Islam forms an important component of the political settlement of the state. While a conservative monarchy allows widespread rights to their particular brand of Islam as part of the social contract used to sustain the traditional elite in control, the promulgation of that belief system is not at the heart of the regime's *raison d'être*. Iran by contrast is in a state of permanent revolution where the claim to monopoly on clerical legitimacy is at the heart of the clerics' temporal power<sup>7</sup>. Iran's revolutionary state bends all political structures towards the dissemination of its interpretation of faith both within, and increasingly, beyond its borders.

The FPC's 2008 publication, *A Revolution without Rights? Women, Kurds and Bahá'ís searching for equality in Iran*, co-authored by Tahirih Danesh, in part explored religious rooted discrimination against Iran's Bahá'í, Sunni Kurdish and female populations. Building on this research, it was felt that examining the religious roots of the Iranian state was an essential prerequisite for exploring the range of human rights abuses conducted by the regime. Consequently, the right to religion is the first topic for the Iran Human Rights Review.

To this end we have brought together a diverse range of writers who give their own views on this challenging subject. Writing from different religious and political perspectives, they argue that the

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<sup>5</sup> Michael Penn & Aditi Malik, 2010. 'The Protection and Development of the Human Spirit: An Expanded Focus for Human Rights Discourse'. *Human Rights Quarterly*, Vol. 32, No. 3: p. 4.

<sup>6</sup> Annual reports by Amnesty International between 2005 and 2009. Please see <http://www.amnesty.org/en/news-and-updates/iran-executions-send-chilling-message-2010-03-30> [Accessed 10 September 2010].

<sup>7</sup> In an open letter addressed to the President and members of the United Nations Human Rights Council, the jailed cleric, Ayatollah Boroujerdi, demanded the investigation of human rights abuses in Iran as a result of intervention of religion into politics. See: <http://www.tolerance.ca/Article.aspx?ID=97131&L=en> [Accessed 6 October 2010]

current nature of its theocracy fundamentally undermines Iran's ability to uphold international standards of human rights, despite its codes and commitments.

As contributors to this publication explain, in Iran the right to religion or belief is ultimately sabotaged by rules and policies based on the interpretations and assertions of the Vali-e Faqih, the Supreme Leader of the country. Therefore, in reality, he is the sole Iranian who has the right to practice his religion without fear of punishment.

The authorities in Iran, under the leadership of the Vali-e Faqih, misrepresent and misuse religion as a means of unleashing human rights abuses against Iranian citizens. The international community is becoming increasingly aware of Iran's true application of human rights, as arbitrary limits are imposed on ordinary people by various arms of the Islamic Republic. However, the international community must also note Iran's misuse of human rights jargon, a tactic used to deflect attention away from the fundamental issue with Iran, that is, the body of policies that block anyone in Iran from accessing the right to expression and practice of any religion or belief system (aside from Twelver Ja'fari Shi'a school of Islam) without fear of the most serious of consequences.

Although previous Iranian regimes placed some restrictions on freedom of religion, in today's Iran the situation as regards freedom of religion is worse than ever before. Directly or indirectly, all Iranians are not only affected by the overwhelming powers of the Vali-e Faqih and his pronouncements on every aspect of political, social, economic, cultural or gender rights, but they also potentially face the ultimate punishment of execution. This is because none are accorded the right that is the true test of religious freedom, namely, the right to change one's religion.<sup>8</sup>

Despite appearances, Iran's tottering economy is in desperate need of a strong relationship with the international community. On the other hand, and as demonstrated time and again, Iran is highly sensitive to international pressure regarding its human rights record. However, its foreign policy machinery is learning to use this known sensitivity to manipulate the international community.<sup>9</sup> Consequently, dichotomous strategies based on economic interest can only strengthen Iran's brand of governance with impunity within its borders and beyond. Therefore, the gradual strangulation of innocent civilians in the name of Islam can be stopped, only if international policymakers place Iran's human rights record as the top condition for its engagement with the West and involve their Iranian counterparts in structural changes that can safeguard the rule of law and the promotion of human rights.

It is in light of the above position and the articles by selected experts published in this edition, that the Review offers the following policy recommendations:

- That Iran's human right abuses, both past and present, receive greater attention by international policymakers.
- That governments around the world (most pertinently to this publication the UK and Canadian governments and the EU) consider the application of targeted sanctions (freezing personal assets or travel bans) to key Iranian officials who are directly responsible for human rights abuses on grounds of religion.
- That the governments of EU member states and the international community support the call for the appointment of a special UN human rights rapporteur for Iran.
- That the UK and EU policymakers encourage their Iranian counterparts to fully cooperate with all UN mechanisms and procedures by:

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<sup>8</sup> In Iran the punishment for changing one's religion, or Apostasy, is death.

<sup>9</sup> In September 2010, just prior to President Ahmadinejad's trip to the U.S. to attend the UN General Assembly sessions, a number of detainees who had attracted a great deal of attention in Western media and policy circles, including American Sarah Shourd, were released on bail or their sentences were reduced.

- Ratifying the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservation
  - Upholding the Articles of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
  - Responding to the 1995 report submitted by the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran
  - Accepting a request by the UN Special Rapporteur on Freedom of Religion or Belief to visit Iran.
- That policymakers encourage their Iranian counterparts to facilitate structural changes to the Islamic Republic's Guardian Council to allow the Iranian Majlis (parliament) greater freedom in its functions on behalf of Iranian people and consider amending Article 13 of the Iranian constitution to include all unrecognised religious minorities, including the Bahá'ís.
  - That the international community, in particular officials from other Muslim majority countries, encourage and facilitate dialogue with Iranian policymakers regarding the rights of religious minorities.
  - That governments consider additional measures to promote religious freedom in Iran including strengthening Iranian religious leaders, both in Iran and in the diaspora, who are able to foster an inclusive understanding of their belief system in relation to law and politics. This would mean supporting innovative educational efforts in the diaspora, online and through Farsi language television and radio focused on religious plurality as a fundamental component of human rights and democracy.

## **On Human Rights and Democracy in Iran by Dr. Shirin Ebadi**

### **Abstract**

Dr. Shirin Ebadi draws attention to the role that the Guardian Council plays in determining the Islamic standards that all laws must comply with under Iran's constitution. She notes its composition where the Supreme Leader either directly or indirectly appoints all members and overturned attempts to ratify the UN Convention against Torture and on Discrimination Against Women. She discusses the practice of Islam in other countries that do not apply it in the same way and clerical opposition to the regime. Dr. Ebadi argues for the curtailing of the power of the Guardian Council as was proposed under President Khatami.

### **Biography**

Dr. Ebadi is an Iranian lawyer, a former judge, human rights activist and a co-founder of the Centre for the Defenders of Human Rights in Iran. Her pioneering work on children's, women's, minorities' and refugee rights in her country has earned her a legion of honour, more than a dozen honorary doctorates and countless other achievements. On October 10, 2003, Ebadi became the first Muslim woman to receive the Nobel Peace Prize for her outstanding contributions to the advancement of democracy and human rights. Following her decision to represent the Bahá'í minority, state-sponsored media began a series of attacks on her and the Iranian authorities threatened or arrested, members of her family and staff. Dr. Ebadi left Iran in spring of 2009 and now resides in London, UK.

## **On Human Rights and Democracy in Iran**

Article 2 of the Constitution of the Islamic Republic of Iran, approved in Azar 1358 (October 1979), forms the foundation of the political system of the country on belief in God and obedience to the laws of Shari'a. Article 4 stipulates that all laws must be in accordance with Islamic standards and the responsibility to verify this matter rests with the Guardian Council. Additionally, during each round of presidential or parliamentary elections, the eligibility of each of the nominees for candidacy is determined by the Guardian Council. Only after this process the public can make its choice(s). The Guardian Council is composed of twelve individuals, six of whom are faqihs (religious experts) appointed by the Supreme Leaders and the other six are legal experts who are nominated by the head of the judiciary to the parliament, which votes in their favour.

The head of the judiciary is a cleric who is also appointed by the Supreme Leaders and therefore, it can be asserted that the members of the Guardian Council are all directly and indirectly appointed by the Supreme Leader.

According to Article 109 of the Constitution the Supreme Leader is an Islamic jurist who is chosen for the duration of his lifetime by the Expediency Council. The three powers of the legislative, administrative and judiciary function under his supervision.

After a brief look at the abovementioned Articles, it is evident that the entire body of laws and regulations of the Islamic Republic in Iran must adhere to Islamic Shari'a. Those in charge of assessing this matter are limited to a few with a common approach to Islamic thought, whose worldview is shared with their predecessors and who refuse to accept any other approach. It is due to this fact that during the past 31 years we have been witness to punishments such as stoning, dismemberment, flogging and execution of juveniles among others.

Furthermore, during the sixth parliament when most of the members adhered to the reformist school of thought, two bills were submitted which recommended that the Iranian government sign the United Nations Convention Against Torture as well as the UN Convention on the Elimination of

All Forms of Discrimination against Women. However, because the Guardian Council considered both Conventions as contradictory to Islamic Shari'a, it vetoed them.

The interpretations by the Guardian Council have met with the objections of many Iranian Muslims, including the clerics. Even the late Ayatollah Montazeri clearly stated that this government is neither Islamic nor a republic. After all Islam, much like any other religion, can have different interpretations. For instance, one Christian denomination allows abortion while another rejects it, while both adhere to Christianity. The same applies to Islam. We can see that in some Islamic countries, such as Tunisia, Algiers, Morocco, Indonesia and Malaysia, where punishments such as stoning or cutting off the hand of a thief are no longer in practice. We see that conditions surrounding women in Islamic countries and their rights differ greatly. Since the Islamic Revolution a large number of discriminatory laws have been imposed on Iranian women. Again, women in countries such as Indonesia and Morocco are in relatively better circumstances.

The important point is that we must not allow a few fundamentalist figures to impose their ideas on others in the name of Islam. The final solution is the separation of religion from state so that statesmen are not able to take advantage of the religious beliefs of the people. However, due to the resistance of the current regime, achieving this goal is impossibility. As a short-term measure then, the powers of the Guardian Council must be curtailed. The first step in this direction is to abolish the law of approval monitoring by the Guardian Council, which is common law and therefore, its abrogation is far simpler than constitutional reform. Naturally, if the public are permitted to elect their true representatives to the parliament, or vote for the presidential candidate of their choice, then a significant portion of problems borne out of abusing religion will be removed.

Another important point is that should the parliament approve such a law (abolition of approval monitoring) then the Guardian Council will veto it. Just as it did during the presidency of Mohammad Khatami when the sixth parliament approved the abolition bill, but the Guardian Council used its power to veto it. To curtail such powers we must engage in a process of seeking public opinion at the national and international levels and through efforts. We must also draw attention to the wrongdoings of the Guardian Council and show that the solution to the current political crisis in Iran, rather than violence and bloodshed, is that instead of taking advantage of its unlimited powers, the Guardian Council must respect the public's vote. That way the results of the recent presidential elections can serve as a positive step towards establishing democracy in Iran.

## **Challenges of Implementing Women's Rights in Iran by Dr. Fatemeh Haghighatjoo**

### **Abstract**

Achieving international women's rights and standards in a theocratic state is a formidable task due to structural obstacles based on Iran's constitution, patriarchal culture and norms, and national security assumptions. However, women's rights activists in Iran have tried to find ways to legislate and implement some of the standards for women's rights. Building relations with open-minded members of the clergy, expanding and strengthening the NGOs that deal with women's issues, networking among diverse women's rights groups and individuals, raising the public's awareness and bottom-up pressure campaigns are some of the tactics that women have used to achieve their goals while facing challenges including expulsion, prosecution and imprisonment, as well as closure of their organisations, newspapers and magazines.

### **Biography**

Dr. Fatemeh Haghighatjoo, a former member of the Iranian Parliament during Khatami's era, holds a Ph.D. in Counselling. Prior to her career as a politician, she taught at Tehran and Shahid Beheshti universities in Iran. After her resignation following a losing struggle for reform in 2004, she became a Visiting Scholar at the Centre for Women in Politics and Public Policy at University of Massachusetts in Boston, USA. She was then a fellow at the Centre for International Studies at MIT and later the Women and Public Policy Program at Harvard University. She is currently a Lecturer & Global Initiative Coordinator for the Centre for Women in Politics and Public Policy at McCormack Graduate School of Policy Studies at University of Massachusetts.

### **Challenges of implementing women's rights in Iran**

There is a vibrant and daring women's movement that is striving for equal rights in law and society in Iran. This movement is quite powerful and in recent years Iranian women have had many achievements. As a result of support provided by President Khatami during his tenure (1997-2005), the number of women's rights NGOs, magazines and websites has risen. For example, in 1997, the number of women NGOs was 67. That figure rose to 480 in 2004.

During the first municipal election in 1997, women received only a third of all main seats. But as the special budget for women's participation increased and the centre for women's participation funded NGOs, the debate over women's issues became more popular and that in turn led to a more vibrant women's movement. After this period, some of women's rights activists launched several campaigns against discriminatory laws and practices, including the campaigns to "Stop Stoning Forever" and the "One Million Signatures to End Discriminatory Laws" campaign. By forming a large coalition, women's rights activists have protested the Family Protection Bill to prevent it from passing through the Parliament for a final vote. The bill has two disputed articles. One is with regards to taking a second wife by a man without permission of his first wife and another is tax collection based on dowry at the time of marriage registration. This combination has spawned other widespread protests to the bill, including disagreement by many clergymen, political parties, and the judiciary system, resulting in a decision by the 8th Parliament to step back and reconsider the bill.

Concurrently, women's rights activists began to voice their demands in response to opposition promises and proposed plans during the presidential election campaigns. Now, after the fraudulent elections in 2009, women have emerged as the most prominent players in the protest movement known as the Green Movement. Despite innumerable barriers and challenges Iranian women have become agents of change and peaceful resistance. However, achieving gender equality has three main obstacles that I wish to address.

## Structural obstacles based on the constitution

Iran's Constitution clearly identifies and articulates the responsibilities of the government regarding women's rights. Articles 20 and 21 read:

### *Article 20*

*All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.*

### *Article 21*

*The government must ensure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals:*

- 1. Create a favourable environment for the growth of woman's personality and the restoration of her rights, both the material and intellectual;*
- 2. The protection of mothers, particularly during pregnancy and childbearing, and the protection of children without guardians;*
- 3. Establishing competent courts to protect and preserve the family;*
- 4. The provision of special insurance for widows, and aged women and women without support;*
- 5. The awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian.*

However, the Constitution also emphasises that all laws must be based on Islamic criteria. According to Article 4 "All laws and regulations including civil, criminal, financial, economic, administrative, cultural, military, political, or otherwise, must be issued according to Islamic principles." Although traditionally it was the community of the ulama who defined Islamic criteria, the Iranian Constitution restricts this power to the Guardian Council (GC). According to Article 91 of the Constitution, that responsibility is the domain of six clerics of the twelve-member Guardian Council, all of whom are appointed by the Supreme Leader.

Women's rights activists have set many goals to improve the lives of Iranian women. The One Million Signatures Campaign and the reformist Women's Forums endeavours are two examples aimed at these goals. All of them face insurmountable obstacles when confronted with the Constitution, but not necessarily the teachings of Islam. For instance, taking a second wife without the permission of the first wife, as proposed in the current bill, is interpreted as acceptable by some grand ayatollahs but as *haram* (prohibited by Islam) by others. Moreover, the diversity of opinions among ayatollahs in Iran is not represented in the views expressed by the twelve-member Guardian Council. Historically, the members of the Guardian Council have shown little or no interest in considering the opinions of more open-minded ayatollahs.

So the critical question is can women's rights activists find a way to change discriminatory laws within the framework of Iran's Islamic Constitution? This answer is far from simple because there are many contradictions in the Constitution. Some argue that there is no way to achieve equal rights for women in accordance with the Constitution, and that Islam is not compatible with women's rights. Others, including Islamic feminists, look for new interpretations of Islam in order to eradicate discriminatory laws and bring about gender equality within an Islamic framework. Historically speaking, other religions have faced this same challenge. Burn (2006) states that some theological feminists are also looking for new interpretations of Christianity that are compatible with women's rights.

In Iran the struggle over women's rights has become a part of a larger contention between the conservative and the reformist fronts and their interpretations of Islam. The conservatives promote

an absolutist and legalistic interpretation of Islam, premised on the notion of duty not rights, and tolerate little dissent, while making few concessions to the will of the people and contemporary realities. The reformists, on the other hand, try to uphold a pluralistic and tolerant reading of Islam, based on human rights and democratic values.<sup>10</sup>

Many reformist women who pursue women's engagement in politics and public policy established the Majma'-e Zanan-e Eslahtalab" [Reformist Women's Forum]. The Forum requested legal reform based on an open-minded reading of Shari'a at their plan of action for the 8th Parliamentary election campaign. The introduction to the plan of action states that:

*"The reformist women's forum believes that if the interpretation of the condition of "conformity with Islamic criteria" of the Article twenty proves to be an open-minded interpretation, one that works in women's favour, and is based upon the spirit of the Quran, morality, the pillars of belief, and jurisprudence, the forum's programs would be passed at the legislative body. However, if a closed-minded interpretation is given of "Islamic criteria" and Shari'a, and is based upon conformity with the well-known fuqaha (jurists), not only will it not give the human rights of Article 20, but it would also act to deprive women of their human rights. If the interpretation of religious texts were to be based upon reality, time, and location, it would set a precedent in jurisprudence that is contrary to some ongoing traditions that are wrong. Some of these traditions are even considered to be religious traditions. Alternatively, such jurisprudence would be able to reread traditions in favour women, to intend making legislation humanistic, and to grant greater justice on women's issues. That will not happen unless the parliament asks the new religious thinkers to re-interpret women's issues based on a religious framework. "*

The eminent Islamic authority, the Grand Ayatollah Saanei, has articulated an interpretation of Islam that is friendly to human and women's rights. He states, "The foundation of Islam is based on humanitarian values, restoring justice and protecting of human rights." He bases this statement on his own understating of Shiite jurisprudence and interpretations, and of the religious opinions that Iranian women's rights activists have articulated. Subsequently, Ayatollah Saanei's views are most conducive to affirming women's rights and gender equality. For instance, he disagrees with polygamy without permission of a man's first wife. In reference to the proposed parliamentary bill, he states: "I hope such a bill will not be ratified by the respected members of Parliament, and I always pray that such injustice and tyranny to women's rights does not become law".

The 6th Parliament (2000-2004), at which I had the honour of representing the people of Tehran, was a unique parliament. It passed many bills based on human rights, not only those favouring women but also political and economic rights. It also voted for the ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). However, all of these reforms were vetoed by the Guardian Council and most of them remained unanswered by the Expediency Council (an upper council) when referred for arbitration. In the end, some of the bills that the 6th Parliament had ratified did not become law, and for this reason, the Majlis deputies were not satisfied with the number and scope of ratifications related to gender equality. In fact, there is little hope for passing laws that favour women unless the majority of the Guardian Council is replaced with open-minded clerics such as Ayatollah Saneei – a remote possibility.

### **Patriarchal culture and norms**

It is also necessary to consider how the government views women's issues and what stereotypes they hold regarding women, in light of the patriarchal culture and norms in that country. A prime example indicative of cultural norms concerning women is a popular terminology referring to one's

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<sup>10</sup> Mir-Husseini, 2002.

wife as *zaeifeh* or the weakling. Although this term is losing its popularity, the concept continues to support the perception of woman as the weaker gender. Likewise, in many social circles there is a belief that if a woman is not watched over, she will succumb to immorality and perversion.

These examples have been reflected in Iran's laws and regulations. The compulsory dress code, requirements of a husband's permission for travel and employment, the setting of the age for marriage, citizenship, and, most recently, the effort by the Parliament to pass a law requiring girls to obtain permission to pursue their educations at universities out of their home cities or towns help to demonstrate this cultural influence.

At this point, I would like to share my personal experience as a former member of parliament in Iran. I was on the Judicial Commission when a member of the Guardian Council, Ayatollah Yazdi, appeared to explain the reasons for rejecting the Parliament's bill concerning the conditions of hardship required for a woman to obtain a divorce. As Ayatollah Yazdi was explaining the Council's reasoning, he degraded women by saying that some women would obtain a divorce in the morning but by the evening change their mind, withdraw their objections and instead express their desire to remarry. He went on to state that because women are so naïve, emotional, unstable, uncertain and weak-willed, we (clerics who are all male and in positions of legal authority) could not allow them to seek divorce. He was against the bill until I explained the importance of the bill in terms of previously unexamined psychological data showing the problems experienced by couples who are forced to continue living together while they wait to get legally divorced and the harmful impact of conflict and unhappiness on their children. After hearing these facts – which he had failed to consider – he and members of the Commission were convinced of the validity of the bill. He then said that the bill was still un-Islamic (a typical and patriarchal interpretation of Shari'a law, which places said law above considerations of human comfort or well-being). However, he went on to say that when I return to the Expediency Council, I would vote in favour of the bill on the grounds that it safeguards society's best interests. Several months later, the Expediency Council approved the bill with few changes.

At the beginning of my term during the 6th Parliament in 2000, immediately attending to the demands of female constituents, my colleagues and I drafted a bill that would allow the government to allocate graduate scholarships for single women wishing to study abroad. There was a great deal of dispute and deliberation over this bill, and some of the grand ayatollahs, such as Makarem Shirazi, stated that their main disagreement over the bill was the likelihood that education abroad would lead to the immorality and perversion of single women. One of my tactics in pushing this bill through to enactment was to seek the support of an influential and respected mullah and MP. This man was the representative of the Supreme Leader at Tehran University, and he was in favour of the bill. I warned him that if he did not make an effort to stop such arguments, I would deliver a speech on the statistics of mullahs who had been imprisoned on account of their own acts of immorality and perversion. After being sent back and forth (much like a game of ping pong) between the Parliament and the Guardian Council, the bill was finally approved by the Council.

Another example of patriarchal norms influencing legislation is that the Supreme Leader urges policymakers, and the paramilitary [the Basij] to fight against "cultural invasion by the West." The assumption is that Iranian women are victims of an invasion by foreign ideas and cultures and that as such they are unwittingly influenced by the fashions of the Western, non-Islamic world. The practical consequence of this assumption is that women are at the receiving end of heavy attacks by the authorities. The cultural assumption has resulted in government policies regarding compulsory hijab laws for women, as well as the use of violence against women who do not observe these restrictive codes.

Harsh treatment for nonconformity with the dress code by police is in line with this attitude. As a result, the 7th Parliament passed a bill called the “Settlement of Fashion and Dress Affairs Law” in order to protect and strengthen the Iranian-Islamic identity and culture, forbidding advertisements showing models, as a practice against the Iranian-Islamic culture.

In 2007, Ali Khamenei, the Supreme Leader criticised the endeavours of the reformists to align Islam law with women-related foreign conventions and/or treaties. He stated “the attempt of some women’s rights activists and men to add to or cut part of the Islamic statutes or align them with some of the international conventions is absolutely wrong.” He then asked researchers at universities and jurisprudential schools to offer quality arguments against feminist views and propaganda.

As these examples demonstrate, patriarchal interpretations of the Shari’a law subject Iranian women to suffer from discriminatory laws.

### **National security assumptions**

The Iranian officials view women’s rights activists and the goals of the Iranian women’s movement as a threat to national security. They express the need to preserve Iranian culture through controlling women’s appearance and the content and flow of information regarding women’s rights, and hostility towards women’s rights activists. Security officials see such a threat, while in fact none is intended. Women’s rights activists simply want women to be treated equally before law when dealing with a divorce, settling inheritance, or seeking child custody. These are not against the country’s security and were part of the lives of Iranian citizens long before the inception of the Islamic Republic. However, in response to this perceived threat, security officials expend an enormous amount of time and resources briefing policymakers, while the ulama (grand ayatollahs) and Friday prayer leaders speak against the movement.

On another front, security officials use the media, to influence citizens and their point of view. They claim that women’s rights movement is imposed and manipulated by the American CIA and several other US-based organisations, alleging that they are plotting a regime change in Iran by spreading the discourse of “the dark ideology of fornication” in Iran.

Payam Fazlinejad (2008), a researcher at the state-run Keyhan Newspaper, has alleged that “the United States invests in women’s movement financially and politically to cause a velvet revolution. The USA looks for a feminist battle against the regime, which boundaries are not hard to imagine”.

The Iranian Security Ministry’s control and restriction of women’s rights activists is based on a plan. The Ministry uses many tactics, including threatening phone calls or SMS (text messages), distributing rumours and propaganda against the activists, spreading discord, initiating judicial proceedings against the activists, as well as prosecution, interrogation, detention and imprisonment. In addition they have suspended, summoned, and imprisoned activists, flogged them in public, banned them from universities, stopped their gatherings and rallies, imposed travel bans, and confiscated their passports and personal property – all based on the allegation of acting against national security and disrupting public order. However, despite these harsh challenges, women’s rights activists have not stopped their effort to raise public awareness and in fact have played a vital role in the Green Movement.

Women’s rights activists in Iran are alive and active but they continue to face challenges in redressing discriminatory laws. The Constitution, Iran’s patriarchal culture and norms, and national security are three main obstacles challenging this movement and its aims. In the long-term their

efforts will result in eliminating prejudiced laws that discriminate on the basis of gender. However, for the short term, it is difficult to change laws unless activists are capable of mobilising Iranian society, most particularly its female members, in this battle for equality.

## **Iran's Human Rights Deficit: Is Islam the Culprit? By Dr. Shireen Hunter**

### **Abstract**

Dr. Shireen Hunter states that there should be no inherent contradiction between Islam and human rights norms arguing that problems stem from particular interpretations. She notes the fluctuating state of Iranian human rights compliance, with the post-1988 period, particularly under Khatami, notable for the relaxation of restrictions on personal freedoms, but that since the 2009 election there has been a new level of crackdown. She draws the distinction between traditional Christian and Islamic political systems where rights are derived from religious duties with modern human-centred political systems where rights flow inalienably from that humanity. She strongly argues that Islam does not contradict democratic norms any more so than any other faith and indeed the process of Bay'a and consultative practices tend towards supporting democracy. She also notes that the Haq Ul Aql (the right to reason) should underpin freedom of expression and that the La Ikrah Fi Din (the injunction that there is no compulsion in faith) should be used to combat the criminalisation of apostasy in the Islamic world. In the Iranian context she argues that violations of human rights are not only due to the universal implementation of religious rules but also the non-religious considerations of power struggles within the Iran elite and the creation of the Vali-e Faqih to supersede the will of the people. She argues that it is the unwillingness to relinquish power that drives many abuses and makes the case for the Iranian reformist approach with a move from coercion to persuasion.

### **Biography**

Shireen Hunter is a visiting Professor at the School of Foreign Service at Georgetown University. Prior to that she was the director of Islam program at the Centre for Strategic and International Studies (1998-2005), Visiting Fellow at the Centre For European Policy Studies, Brussels (1994-1998) and Deputy Director of the Middle East program at CSIS (1983-1993). She has also worked as a Guest Scholar at the Brookings Institution and the Harvard Centre for International Affairs. Between 1965 and 1978 she was a member of the Iranian foreign services in Tehran, London and Geneva. She is the author, editor or contributor of 18 books, seven major monographs, 40 chapters, 40 journal articles and hundreds of opinion pieces and book reviews. Her latest book entitled *Iran's Foreign Policy in the Post-Soviet Era: Resisting the new International Order*, was published earlier this year.

### **Iran's Human Rights Deficit: Is Islam the Culprit?**

The countries where Islam is the religion, at least nominally, of the majority of the population, from Central Asia to the Middle East and beyond are among that group of countries where adequate respect for basic human rights is sorely lacking.

The Islamic Republic of Iran figures prominently among these countries. The state of human rights, especially those related to political freedoms, historically has never been very good with few exceptional periods. Under the Islamic Republic, in addition to political rights, personal and artistic freedoms ranging from the dress code to the kind of music allowed have also become drastically reduced. However, even under the Islamic Republic the state of human rights has fluctuated. By and large, after the end of the Iran-Iraq war in August 1988, restrictions on aspects of personal freedoms have been somewhat relaxed. And even under Ahmadinejad, despite periodic talk of campaigning against moral laxity, such as what is called Bad Hijabi (inadequate veiling) no significant tightening has occurred. In the political and civil arenas, during the presidency of Muhammad Khatami, the situation somewhat improved.

However, since Ahmadinejad's election the human rights situation in Iran has seriously deteriorated. This is best illustrated by the crackdown of government forces against protesters contesting the

fairness of the country's June 2009 presidential elections followed by the imprisonment of a vast number of opposition political leaders, students, journalists, artists and ordinary citizens. The charge against almost all of those detained is sedition and endangering the country's Islamic order (Nizam-e Islami).

Given the extremely unsatisfactory state of human rights in nearly all Muslim-majority countries, the temptation to blame the states' abuse of their citizens' human rights on Islam is quite strong. Indeed, many Muslim and Western experts have succumbed to this temptation. However, a closer study of Islamic legal norms and principles concerning rights will show that the human rights deficit of Iran, and other Muslim countries for that matter, has much less to do with religion than with their political cultures, especially the unwillingness of the ruling elites, secular and Islamic alike, to accept the principle of periodic and peaceful transfer of power, and to tolerate criticism. In effect, there is nothing in Islam that makes it more inimical to human rights compared to other religions. Although in certain regards, for instance the relationship between religion and politics, Islam appears less in line with democratic forms of governance it is in fact because of the manner in which certain Muslims interpret Islamic injunctions.

### **Religion, Democracy and Human Rights**

In nearly all religions, in particular Christianity and Islam, the purpose of human life and society is to live by God's law so as to adequately prepare for the afterlife. In traditional Islamic thinking the main duty of the ruler is to create circumstances in which believers can follow their religion in peace.<sup>11</sup> In other words, religious systems and societies based on religion are God-centred. In such systems, all rights and duties of people are ordained by God, and all rights and duties derive from God. Moreover, most rights specified in religious scripts can, in fact, be viewed as the direct result of duties. For instance, the right to life derives from the injunction "Thou Shall not Kill", or the right to property derives from the injunction "Thou Shall not steal." Therefore, religious systems, in addition to being God-centred, are also duty based.

By contrast, modern political systems are human-centred. In such systems, human beings, rather than God, form the source of law and the purpose of human existence, as best articulated in the American Declaration of Independence, is to experience "Life, Liberty and the Pursuit of Happiness." Furthermore, these systems are rights-based, in the sense that it is assumed that human beings have certain rights by the very virtue of being human and that these rights are natural and inalienable.<sup>12</sup>

What the above implies is that there always is a degree of tension between systems that are God-centred and systems that are human-centred. Even in societies where the political system is definitely human-centred, tensions between the religious and the secular elements are palpable. For instance, in the United States, controversies regarding abortion, same sex marriages and even stem cell research are fuelled by this same tension between the religious and the secular sectors of society.

The next question is whether Islam is particularly anti-human rights or anti-democracy. The simple answer is no. True, Islam provides guidelines for all aspects of life. However, the same applies to other religions, in particular Judaism, the laws of which have deeply influenced the Islamic system of

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<sup>11</sup> Imam Muhammad Ghazali is a major proponent of this view.

<sup>12</sup> The concept of natural rights was first introduced during the middle ages within the Christian tradition. However, the gradual acceptance of the theory of natural rights resulted from the advent of Enlightenment and the secularization of European societies, and later was enshrined in the Universal Declaration of Human Rights. See: Brian Tierney, "The Idea of Natural Rights: Origins and Persistence, *North Western University Journal of International Human Rights*, Vol. 2 No.2, April 2004. Available at: <http://www.law.northwestern.edu/journals/jhr/v2/2> [Accessed 10 September 2010].

laws in a number of areas.<sup>13</sup> Yet, Islam does not specify what form of government Muslims should have. It only instructs the Muslims on the qualities of an Islamic government, which are those of justice, mercy and caring for people. Other guidelines, notably those related to the critical role of people, especially their agreement to the rule of particular individual or individuals through the process of Bay'a or the pledge of allegiance and its withdrawal if the ruler fails to meet the peoples' needs and/or acts in an unjust manner, and an emphasis on consultation as the means of decision-making provides strong indications of Islam's preference for a popularly-based government. However, if throughout history these Islamic principles have been ignored by autocratic rulers, Islam should not bear the blame.

The same is true of the so-called Islamic economics. Islam provides guidelines for a just society and holds the government especially responsible to care for the vulnerable segments of society.<sup>14</sup> It admonishes against excessive accumulation of wealth and interest. The latter is also common to Christian tradition. The fact is that ideas related to Islamic government, politics and economics are a very recent phenomenon and the result of the Muslims' urge for cultural autonomy following decades of colonial and semi-colonial domination, but they are not firmly rooted in Islam itself.

As relating to the specific issue of human rights, Islam recognises five rights, notably the right to life (Haq'ul Nafs); the right to property (Haq'ul Mal); the right to family and progenitor (Haq'ul Nasl); the right to Reason (Haq'ul Aql) and the right to be free from slander (Haq'ul Nassab). In the context of the modern understanding of human rights the right to reason is especially important because it includes the right to one's opinion and the freedom to express it. Obviously, the right to free expression is limited in the sense that it prohibits blasphemous and anti-religious statements. But it clearly includes the right to criticise government and its handling of peoples' affairs.<sup>15</sup>

The right to reason also encompasses freedom of religion notwithstanding the current trends in the Muslim world, which consider rejection of Islam by those born as Muslims as punishable by death. Furthermore, the Qur'anic injunction that there is no compulsion in faith (La Ikrah Fid- Din) establishes freedom to choose one's religion. The current practice in the Muslim world derives from the perpetuation of a rule established for a specific period of Islamic history, when the small community of Muslims was besieged by various types of enemies and not the significant population of Muslims today.

Indeed, as demonstrated by reformist Muslim thinkers throughout the Islamic world from Morocco to Indonesia, a proper and contextual interpretation of Islamic injunctions can provide the foundation for a concept of Islamic human rights that closely approximates the international understanding of these rights.<sup>16</sup> However, a number of issues related to individual rights, especially gender rights and sexual preferences will remain controversial in the Muslim world both because of cultural attitudes and religious rules.<sup>17</sup>

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<sup>13</sup> For example "Orthodox Judaism provides for total regulation of society. All temporal acts have spiritual relevance and must, accordingly, conform to a strict religious code of law that is subject to rabbinical interpretation." Moreover, "These traditional Judaic conceptions of society have survived and coexist uneasily and in frequent conflict with secular Jewish nationalism of late nineteenth century origin". Norman L. Zucker "Secularization Conflicts in Israel " in Donald E. Smith (ed.) *Religion and Political Modernization*, New Haven: Yale University Press, 1974 p. 46, and " Donald E. Smith " Religion and Political Modernisation: Comparative Perspectives" in *Ibid*, p. 14.

<sup>14</sup> For example in Islam the *Bayt'ul Mal* (Public Treasury) is said to be responsible for the care of widows and orphans. Transferred to contemporary era, this means caring for the vulnerable segments of society.

<sup>15</sup> See: Khaled Abou Fadl "A Distinctly Islamic View of Human Rights: Does It Exist And Is It Compatible With The Universal Declaration of Human Rights?" in Shireen T. Hunter (ed.), *Islam and Human Rights: Advancing a U.S. –Muslim Dialogue*, Washington, D.C., The CSIS PRESS, 2005, p.35.

<sup>16</sup> See various chapters of Shireen T. Hunter (ed.) *Reformist Voices of Islam: Mediating Islam and Modernity*, Armonk , New York: M.E Sharpe, 2008.

<sup>17</sup> For example the Catholic Church—and some Protestant sects-- is opposed to the ordaining of Women as Priests and Muslim clergy oppose women leading Friday prayers and all oppose homosexuality.

## Human Rights and the Islamic Republic of Iran

Based on the above, certain aspects of Iran's human rights deficit derive from the religious nature of the Islamic Republic, and more particularly of the current leadership's interpretation of Islam. The current Iranian Constitution clearly states that Shari'a is the source of law in that country, and that no legislation contrary to the Shari'a is permitted.<sup>18</sup> Furthermore, the state's legitimacy derives first and foremost from its Islamic nature, and the will of the people is only a secondary source, despite Iranian reformists' and opposition parties' insistence on the Republican rather than the Islamic dimension of the state, or their incessant reference to Ayatollah Khomeini's dictum the standard is the peoples' will (Meyar ray-e mardom ast.). In effect, those who supported the formation of the Islamic Republic and its Constitution have brought the current predicament upon themselves. After all, in a religion-based state freedom of choice is restricted by religious rules. For instance, freedom to choose one's dress, especially in the case of women, is restricted by the religious requirements.

In the case of Iran the institution of the Vali-e Faqih further restricts the boundaries of political freedom and makes the establishment of a truly democratic government based on the will of the people even more difficult. However, there is nothing in Islamic rules and regulations that can justify the oppression of those whose opinion differs from that of the leader. As noted by Muslim Iranian reformists, there were no political prisoners during the reign of Imam Ali.

In reality, a considerable degree of violations of the political and civil rights of Iranians has to do with non-religious considerations related to power struggles among various factions of Iran's leadership. The roots of these struggles go back to the pre-revolutionary era and the diverse forces that coalesced against the Shah to topple his regime but then divided into factions after his downfall.

### Can Reformist Islam Provide a Remedy To Iran's Human Rights Deficit?

The Iranian society of today is characterised by a degree of cultural division between those who remain religious and prefer a system that upholds Islamic moral and ethical principles; and those who are either secular or have a more liberal understanding of religion. This is not particular to Iran, and in fact represents a struggle prevalent throughout the Muslim world. It is the result of the fact that modernity in the Muslim world was an imported phenomenon rather than the result of the organic transformation of society as was the case in North-western Europe.<sup>19</sup> Moreover, modernisation in the Muslim world happened in a haphazard way and did not affect all segments of society in an equal fashion.<sup>20</sup> In other words, Iran's current political problems to some degree reflect different cultural tendencies and belief systems among its population.

In such a bifurcated system one side's victory means almost complete disenfranchisement of the other. In this light, the problems in Iran become more obvious, including the fact that the Islamic Republic's brand of religion as state ideology is now directly linked to power. In other words, the rejection of the state's version of Islam or accepting the reformists' version will determine the power of one group over the other.

A potential way out of this cycle of violating the human rights of citizens residing in such countries is a new reading of the Islamic Shari'a and tradition with an eye to making it more compatible with the current understanding of universal human rights. This is what Iranian reformists, including prominent clergy, have been suggesting for nearly two decades. Underpinning the reformist thinking is that Islam, as a religion based on persuasion rather than coercion allows a contextual and rational

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<sup>18</sup> In fact, according to Ayatollah Khomeini the duty of the parliament in an Islamic system is not to legislate, at least not in areas where there are Islamic rules, but rather set programs (Barnameh Gozari).

<sup>19</sup> Modernisation of southern Europe happened much later hence some of still persisting issues of governance in these countries.

<sup>20</sup> See Shireen T, Hunter and Huma Malik (eds.) *Modernization, Democracy and Islam*, Westport, Connecticut: Praeger, 2005.

reading of its teachings. A contextual reading of the Shari'a would distinguish and adjust those principles that apply to special circumstances<sup>21</sup> from the general teachings of the religion, leading to a harmonious relationship between Shari'a and human rights. Such an approach can alone uphold the objectives of the Shari'a (Maqasid'ul Shari'a) and include some of the most fundamental principles of human rights: justice, mercy and the well-being of each and every human being. The problem in the case of Iran is that religion has become state ideology, and as is the case with secular ideologies such as socialism, directly linked to power. In other words, the acceptance of reformist Islam will increase the power of one group while undermining that of others.

However, as pre- and post-revolutionary history shows, Iran's human rights deficit is only partly due to the religious character of its political system. Further evidence includes cases of secular governments in the Muslim majority countries which have recorded some of the most outrageous violations of human rights. Acts such as unlawful imprisonment and torture are due to the political culture of these countries, in particular their unwillingness to peacefully transfer power from one government to another. The use of human rights as a means of political pressure by outside powers, and double standards applied to different state violators undermines the position of human rights activists in the Islamic world, including Iran.

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<sup>21</sup> For an account of the views of prominent Iranian Muslim reformist thinkers see: Shireen T. Hunter, "Islamic Reformist Discourse in Iran: Proponents and Prospects", in Shireen T. Hunter 9ed.) *Reformist Voices of Islam*, pp.58-87.

## **Freedom of Conscience by Dr. Abdol-Karim Lahidji**

### **Abstract**

Dr. Abdol-Karim Lahidji examines the implications of the Article 18 of the Universal Declaration, what it should mean and how it relates to other international protections on freedom of conscience and belief. He argues that Iran is still bound by commitments it made in 1975 but that the current constitution ignores this and is, therefore, discriminatory. He questions the ability of other Islamic schools to manifest or promote their religion, while noting that the three 'protected' minorities explicitly cannot. All other faiths have no protections or status and Muslims are prevented from changing faiths under punishment of death. Lahidji refers to the 1995 report of the UN Special Rapporteur on freedom of religion arguing that his concerns have not been resolved in the subsequent 15 years.

### **Biography**

Dr. Abdol-Karim Lahidji received his doctorate in legal studies from Tehran University in 1965. His interest in human rights advocacy began in high school and intensified while he was attending law school. In 1977, he established the Iranian Association of Jurists (IAJ) and the Iranian Association for Liberty and Human Rights (IALHR) with the purpose of promoting the Universal Declaration of Human Rights in the society at large. After the Revolution, he was among the first ones to condemn the executions and other violations of human rights by the new regime. Exiled in France in 1982, Dr. Lahidji established the League for the Defence of Human Rights in Iran (LDDHI) in order to expose the Islamic Republic's human rights record. In 1984, LDDHI joined the Europe based International Federation for Human Rights (FIDH) where he has been elected vice-president for five consecutive terms. Addressing a variety of human rights and legal issues, Dr. Lahidji has lectured at dozens of universities and civic associations throughout Europe and North America and has written three books and more than a hundred articles for a number of Persian publications and web sites in exile. In 1990, Dr. Lahidji was the recipient of Human Rights Watch award for outstanding monitors of human rights in the world.

### **Freedom of Conscience**

The primary definition of conscience is a human being's awareness and understanding of his or her self. The definition of freedom of conscience, however, is freedom of thought, belief and religion. This concept has been delineated in Article 18 of the Universal Declaration of Human Rights: "Everyone has the right to freedom of thought, conscience and religion." This Article then cites examples of these freedoms. Among them are the freedom to change one's religion and the freedom to manifest one's religion. The way in which one should be able to manifest his or her religion is also explained: "[E]ither alone or in community with others and in public or private" and "in teaching, practice, worship and observance."

No detail has been left out in defining this right. A human's thought, belief and religion are respected as matters dealing with conscience and spirit, and they are protected against any infringement or violation. The tragic experience of religious and sectarian warfare had an impact on the minds of the declaration's drafters, and, as a result, they have repeatedly mentioned belief and conviction in addition to religion. They do not discuss freedom of opinion in this Article. Freedom of opinion and expression are mentioned in Article 19. Article 18, however, goes beyond freedom of opinion and discusses thought, belief, conviction and conscience. In addition to religion, it always mentions the term "belief" in order to leave no room for misinterpretation or misuse. This is because belief is broader than religion. Belief may be materialised in a religious context, but not every belief is considered religion. For instance, opposition to war may have different ideological, philosophical,

religious or political reasons. Yet, some anti-war individuals are considered conscientious objectors. This term refers to individuals who, based on their own beliefs, consider human life above everything else. They do not go to fight on the front line during times of war, nor do they perform military service in peacetime. They maintain that their beliefs and their consciences do not allow them to kill another person, and that they cannot prepare themselves for war and bloodshed. Some of them may have religious faith too. Yet, they consider their belief a matter of conscience separate from or above their religion.

In Article 18 of the International Covenant on Civil and Political Rights, freedom of thought, conscience, religion and belief are mentioned. This phrase is added next: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

The Universal Declaration of Human Rights was passed by the UN General Assembly in 1948. The International Covenant on Civil and Political Rights was passed by the General Assembly in 1966, but it went into effect on March 24, 1976. Yet religious discrimination and belief-based legal inequality were so widespread that the UN General Assembly passed the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief on November 25, 1981.

In Article 1 of this Declaration, freedom of thought, conscience and religion are mentioned together yet again. However, in order to prevent misgivings about the definition of religion and to negate the idea that religion should be differentiated from other sorts of belief, Article 1 states, "*[T]his right shall include freedom to have a religion or whatever belief of his choice.*"

In Article 2 of the Declaration, any exclusion, restriction, distinction or preference associated with human rights or political freedoms that is based on religion or another belief system is considered an example of intolerance and discrimination. In Article 3, legal discrimination based on religion or belief is considered an affront to human dignity and the fundamental freedoms proclaimed in the Universal Declaration of Human Rights, Charter of the United Nations and international human rights covenants. It is also considered the largest obstacle to the formation of peaceful and friendly relations between nations.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were ratified by the Iranian parliament in 1975. Since then Iran has been considered party to both covenants. According to the principles of international law, unless a state formally withdraws from a treaty, that state is responsible before the international community for enforcing the international treaties to which it is party. Joining international human rights treaties such as international human rights covenants obliges conformity of that country's constitution and laws to the terms of those covenants, and it mandates the recognition and observance of the rights and political freedoms of all of that country's citizens.

The Constitution of the Islamic Republic of Iran does not recognise human rights or fundamental freedoms according to international human rights covenants. Human rights are based on legal equality regardless of religion, race, sex, colour, belief and social and economic status, among other things. The Islamic Republic's Constitution, however, is discriminatory. The rights of non-Muslims are not equal to those of Muslims, nor are the rights of women equal to those of men. Also, the rights of lay people are not equal to those of (high-level) clerics. Neither freedom of conscience nor freedom of religion is mentioned. Article 12 of the Islamic Republic Constitution declares Iran's official religion to be Twelve Ja'fari Shi'a. This Article addresses the followers of other Islamic sects with this phrase: "They are free to perform their religious rites according to their religious jurisprudence." Yet, the right to manifest one's religion, either in private or public, is not mentioned. Can a Sunni Iranian publicly promote his or her religion and speak of Abu Bakr and Umar's legitimacy? Article 13

exclusively mentions three religious minorities by stating: "They are free to exercise their religion within the legal framework." These three minorities do not have the right to manifest or promote their religion. Evangelical priests who were abducted and murdered were not guilty of anything but promoting their religion. Limiting the title of "recognised minority" to Zoroastrians, Jews and Christians has created a social problem out of the situation of the followers of other religions and creeds. Thousands of Iranians live in a legal vacuum. A Bahá'í is not only deprived of political and social rights, but he or she is also denied civil rights and freedoms, unless he or she hides his or her faith. Sabian Iranians and followers of other faiths are in the same situation. Iran's civil law, and family law in particular, are derived from Shi'a jurisprudence. Therefore, the adherents of other Islamic sects, as well as the three recognised minorities, are subject to their own religious laws in personal affairs such as marriage, divorce, inheritance and wills. But what is the status of the adherents of unrecognised religions? They must either falsely introduce themselves as Muslims or they will be denied their civil rights and liberties.

The right to study in schools and universities, the right to be employed at governmental agencies and many other rights and freedoms are similarly affected. It is interesting to note that Article 14 states that the government of the Islamic Republic and Muslims are required to treat non-Muslims fairly in accordance with Islamic justice, and to observe their human rights. But these vague concepts have never been defined, and they have not, in practice, led to observance of the rights of non-Muslims.

Furthermore, the freedom to change one's religion is not recognised for Iranian Muslims. In fact, it is punishable by death. When non-Muslims convert to Islam, however, they will be granted more rights. In effect, instead of existence of freedom of belief and religion, enjoyment of rights and freedoms has become a function of religious belief.

As a result, the Constitution of the Islamic Republic and the actions of the Iranian government are in no way in conformity with universal norms of human rights, including the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Since the UN General Assembly had declared its strong determination to adopt necessary measures towards the elimination of all sorts of discrimination based on religion or belief, the Human Rights Commission selected a Special Rapporteur to investigate and report on the status of freedom of religion and belief in Iran. The Rapporteur was from Tunisia, a Muslim country. Abdelfattah Amor came to Iran in December 1995. Two months later, he presented his report to the Human Rights Commission. After 15 years, this report is still relevant because no changes have taken place regarding freedom of conscience in the Islamic Republic, whether in the legislative arena or in practice.

Abdelfattah Amor distinguishes religious government from state religion: "[A] State religion is not, in itself, in contradiction with human rights. However, this state of affairs - which is consecrated by the Iranian Constitution - should not be exploited at the expense of the rights of minorities and the rights associated with citizenship, which imply that citizens should not be discriminated against on grounds such as, inter alia, religion or belief. From this standpoint, the concept of Islamic criteria as set forth in Article 4 of the Constitution should be precisely defined in regulations or legal texts without, however, giving rise to discrimination among citizens."

According to Article 4, "all civil, penal, financial, economic, administrative, cultural laws and regulations, among others, should be based on Islamic criteria." The term "Islamic criteria" is not defined in the Constitution or any other law. This Article only states, "The power to settle this issue is vested in the Guardian Council's religious jurists." The Guardian Council is comprised of six Shi'a jurists who believe in the Guardianship of the Jurist, and who are appointed by the Islamic Republic's

Supreme Leader. Guardian Council decisions are made by majority vote. Therefore, four religious jurists can void laws passed by the parliament on the grounds of nonconformity with “Islamic criteria.”

It should be noted that in addition to Article 4, this term has been repeatedly mentioned in the Third Chapter of the Constitution, which discusses the “rights of the people,” (see Articles 20, 21, 24, 26, 27 and 28). The rights and freedoms of the people are recognised within the framework of “Islamic criteria.” Therefore, the fatwas and opinions of Shi’a jurists have cast a shadow on all Iranian laws, and in many instances they have become law themselves. Among such instances are penal laws and concepts such as Qisas, Hadd (fixed punishment), Ta’zir (discretionary punishment), Blood Money, Mohareb (one who wages war against God), Corrupt on Earth, and cruel punishments such as stoning, crucifying, amputating and lashing. It is clear that this legal and penal system rules over all Iranian people whether they are Shi’a, non-Shi’a, Muslim or non-Muslim.

An historical irony is that in religious governments, in addition to freedom of thought, the religious freedoms of adherents of faiths other than the state religion have been subject to more discrimination, infringement and oppression compared to any other time.

Abdelfattah Amor portrays a regrettable picture of the situation of religious minorities, especially the Bahá’ís. Due to a religious government and lack of tolerance and equal rights, the Bahá’ís are increasingly feeling like foreigners in their own country. Very many have been forced to leave their homeland. A recent example of persecution is the 10-year sentence imposed on seven Bahá’í administrators in Iran, which was handed down a few weeks ago after two years of imprisonment and a show trial behind the closed doors of the Revolutionary Court.

A last word to Iran’s leaders and others is that human rights and fundamental freedoms such as freedom of conscience are universal and beyond nationality or religion. The discourse about the conformity or non-conformity of human rights with Islam or other religions is an interesting topic for theoretical and academic debates. Yet, these debates have no place in actions of governments, whether religious or secular, in relation to their international obligations regarding human rights. It is the religious government that should conform its actions and words to human rights principles. It should stop egregious violation of human rights and end denial of people’s freedoms, such as the freedom of conscience and freedom of religion.

## **Why Human Rights Abuses in Iran Should Concern People Everywhere by John Weston MP**

### **Abstract**

Canadian politician John Weston MP gives his case for the international community's engagement with human rights in Iran. He gives four reasons based on fundamental values; shared roots of human rights and security problems; threats to human rights activists and their families both abroad and in Iran; and the damage to the vitality of the Iranian diaspora. He supports both the current stance of the Canadian Government and the case for sanctions on the regime.

### **Biography**

John Weston is the Member of Parliament for West Vancouver – Sunshine Coast – Sea to Sky Country, where most of the February 2010 Winter Olympics were held. An international lawyer by training, he earned his Bachelor of Arts and Bachelor of Laws from Harvard University and Osgoode Hall Law School respectively. He spent over ten years practicing law in Asia. He is a member of Canada's governing Conservative Party, led by Prime Minister Stephen Harper.

## **Why Human Rights Abuses in Iran Should Concern People Everywhere**

### **Background**

Iran is a long way from Canada and the plight of Iranians who suffer under the Government of Iran may seem a remote problem for people from other countries. However, human rights abuses in Iran threaten the peace and security of people elsewhere, presenting a problem that must be tackled, not just for the sake of justice, but also for the peace, order, and good government of Western democracies.

Canada's responses to the Iranian Government, including the recent round of sanctions imposed by Canada and other countries, relate to Iran's nuclear, missile, chemical, and biological weapons programs. As discussed below, it is not a coincidence that the Iranian Government sanctioned by the UN, is a government guilty of a pattern of committing human rights abuses against its own people, an issue on which Canada has consistently focused the world's attention.

I was elected in Canada's most recent federal elections, in October 2008, in the riding called "West Vancouver – Sunshine Coast – Sea to Sky Country". Along with the fame associated with hosting most of the February 2010 Winter Olympics competitions, our area is home to one of the largest numbers of persons in Canada who claim Iranian background. Official estimates range up to 300,000, in terms of the number of residents who claim such background; the numbers range between 2,500 and 5,000 in the riding I represent. In the course of my parliamentary duties, I often advocate for persons of Iranian background inside and outside the House of Commons.

### **Four Reasons to Take Iran's Human Rights Abuses Seriously:**

#### **1. It's the Right Thing to Do**

Some people argue people around the world must stand up for the rights of oppressed Iranian people simply because it is the right thing to do. German Lutheran pastor, theologian, and Nazi resister Dietrich Bonhoeffer, paraphrasing fellow Nazi resister Martin Niemöller, put this argument with his ringing indictment of passivity:

First they came for the Communists, but I was not a Communist so I did not speak out. Then they came for the Socialists and the Trade Unionists, but I was neither, so I did not speak out. Then they

came for the Jews, but I was not a Jew so I did not speak out. And when they came for me, there was no one left to speak out for me.

Bonhoeffer believed that we have a duty to stand up for our “neighbour”, whoever and wherever that person may be. Oppression knows no boundaries. As Edmund Burke wrote, evil abounds when good people do nothing.

## **2. Human Rights Abuses and Illegal Weapon Warfare Programs Hatched from the Same Government**

People like Bonhoeffer and Burke might say that we have a duty to help people in Iran simply because “it’s the right thing to do”. Reasonable people might disagree, concluding that such matters are an internal affair, the business of the people of Iran. But even those who would adopt a more isolationist policy have other reasons to oppose the policies of the Iranian Government. Iran is a threat to international and regional peace and security. The combination of Iran’s human rights practices, its weapons programs, its democratic deficit and its support for listed terrorist entities make it a special and dangerous case. Promoting human rights is the only way to encourage internally generated and responsible changes in governance which in the long run offer the only real chance of changing Iran’s domestic, foreign and security policies.

As elaborated below, the most recent sanctions flow from Iran’s failure to comply with UN Resolution 1929, passed by the UN Security Council in June 2010, which deals with Iran’s nuclear proliferation programmes. Human rights are not referred to in the Resolution. Some critics of these sanctions wrongly suggest that, by failing to cite human rights abuses, the countries imposing the sanctions have ignored the human rights abuses. However, imposing sanctions relating only to the four indicated programmes of the Iranian government is a step consistent with the condemnation of Iran in other forums for its human rights violations. Governments which imposed sanctions pursuant to Resolution 1929 undoubtedly found it easier to focus on those four programs in order to coordinate their actions rather than try to reach agreement on a broadened array of issues.

## **3. The Iranian Government is Intimidating People Outside Iran and Threatening Their Families Back Home.**

The award-winning autobiographical book and later film *Persepolis* depicts the tragic story of a young Iranian woman whose uncle is executed by Iranian authorities in contemporary times. She is an only child, beloved by her parents, who help her go to Europe to study and work, as many Iranian parents do. The young woman suffers through unrequited love affairs, develops a drug dependence; and ends up on the streets, estranged from her family. The moving story shows how human rights abuses affect a broader circle of persons beyond those imprisoned or executed. The implication of *Persepolis* is that a whole society is tainted.

Those touched by the executions, the torture, and the imprisoning of Iranian people for political reasons, comprise a broad and widening circle. Certainly, family members and friends in Iran fall under this group. But, as surprising as it may be to most Canadians, people of Iranian background in Canada often express a fear that the Iranian government will punish dissidents of Iranian background, regardless of where they are.

When I organised a Canadian National Tour for the 2003 Nobel Peace Laureate Dr. Shirin Ebadi, formerly one of Iran’s first female judges, many people of Iranian background expressed their desire to hear Dr. Ebadi’s address – but feared to be seen publicly to associate with an acknowledged dissident. You might have expected such fear in Tehran – but in Vancouver, Toronto, and Ottawa?

#### **4. The Health, Welfare and Productivity of the Iranian Diaspora are Being Steadily Eroded**

In his book, *Trust: The Social Virtues and The Creation of Prosperity*, Francis Fukuyama draws an analogy between the "juice" that makes the commercial world progress, that is, financial capital, and what makes the social world progress, that is, trust. If you take at face value that people of Iranian background in Canada and other countries are divided by fear and anxiety arising from events in Iran and the concern that the Iranian Government may be watching their actions, their community must be paying a price. Fear propagated through a community corrupts trust and undermines progress. The Persian Empire, has a noble history dating back thousands of years. People of Persian background have made great contributions to "humanity and, particularly, Canadian culture". What more could the community accomplish, absent such fear and anxiety?

#### **Response of the Canadian Government**

The Government of Canada has acted formally on many fronts to condemn the Government of Iran at the United Nations and elsewhere, all the while expressing its support for the Iranian people and their democratic aspirations.

Canada has adopted a Controlled Engagement Policy, which limits its political and economic relations with Iran. For example, under the Policy, there are no direct air links between the two countries and no new Iranian consulates beyond those already established in Canada.

On May 17, 2005, Canada tightened its Controlled Engagement Policy. Official contacts between Canada and the Islamic Republic of Iran were limited to four subjects:

- the human rights situation in Iran;
- Iran's nuclear program and its lack of respect for its non-proliferation obligations;
- the case of Mrs. Zahra Kazemi, allegedly tortured and killed in an Iranian prison in 2003 and other consular issues; and
- Iran's "role in the region".

Iran's "role in the region" includes its relationship with Israel, with Hamas, and with Hezbollah. For seven consecutive years, and with the support of its like-minded partners, Canada has successfully sponsored a resolution on the Situation of Human Rights in Iran at the UN General Assembly. The adoption of these resolutions send a strong signal to the Islamic Republic of Iran that the international community remains deeply concerned by its deteriorating human rights situation.

During the Fall 2009 session of the United Nations General Assembly, Canada demonstrated its opposition to the policies of Iran's President Mahmoud Ahmadinejad by refusing to attend the President's address to the United Nations. Representatives of other countries walked out of the address when President Ahmadinejad began to condemn Israel but Canada had simply refused to have a representative there in the first place.

Canada's condemnation of Iran's human rights record crosses party lines. In a rare show of unity in our minority parliament, I was honoured to muster consent of the House of Commons in June 2009, in favour of a resolution I moved in support of the democratic rights and aspirations of the people of Iran.

I organised the Shirin Ebadi National Tour of April 2010, acting in my role as Member of Parliament. People of Iranian background of various political sympathies assisted me in organising the Tour,

which featured her moving speeches to audiences in Vancouver, Toronto, and Ottawa. In Canada's capital, she made a special appearance before the House of Commons Sub-Committee on Human Rights, met one-on-one with the Prime Minister, the Minister of Foreign Affairs, and the Minister of Citizenship & Immigration; and participated in an expert panel discussion on, among other things, human rights in Iran. Dr. Ebadi's National Tour helped to unify all Canadians, especially those of Iranian background, and increased knowledge about human rights abuses in Iran, and their effect on people around the world.

## **Sanctions**

The international community is increasingly unified in condemning the Government of Iran for pursuing reckless, hostile policies. UN Resolution 1929, passed in June 2010, and other UN resolutions have called for Iran's compliance with its international nuclear obligations. Soon after the UN Security Council passed Resolution 1929, with the support of Russia and China, the governments of Canada the EU, US, and Australia followed with robust sanctions, built on sanctions already in place.

The Government of Canada is consistent in promoting human rights around the world, whether by opposing the Iran Government's nuclear and weapons programmes or by opposing individual human rights abuses in Iran. In consultation with like-minded countries, Canada implemented new sanctions against the Government of Iran, operating under its Special Economic Measures Act (SEMA). The new sanctions commenced on July 22, 2010. Prime Minister Stephen Harper and the Minister of Foreign Affairs Lawrence Cannon both issued statements at the time (<http://www.johnweston.ca/sanctions>).

The Government of Iran is increasingly out of step with basic values that cross countries, governments, and cultures, including its own constitution and Islamic values. Canadians stand together, hoping for a happier day for Iranian people. We do not desire to hurt the average Iranian citizen but acknowledge that the alternatives to sanctions would be much worse for all humankind.

## **Hope for the Future**

Iran has a proud democratic heritage. Observers often refer to the culmination of democracy in Iran under Prime Minister Mohammad Mossadegh, in 1953, when he lost his role. The emphasis in Persian society on education and entrepreneurship has made Iran a country of urbane people, who are naturally open to democratic aspirations, to playing a positive role in building a peaceful, productive world. Iran is in fact a logical centre for the promotion of freedom, democracy, the rule of law, and human rights. Current policies of the Government of Iran frustrate those things and foster great ills in Iran and throughout the world. Looking ahead in Iran, it is easy to envision a perilous descent into chaos occasioned by a government that abuses human rights and fosters illegitimate programmes to propagate missiles, nuclear arms, chemical weapons, and biological warfare. But we must never forget an alternative, loftier vision of a Persian people who are an engine of dynamic economic, cultural, social, and scientific growth in Iran, and throughout the world. As Martin Luther King said, "Let freedom reign, and let justice roll down like a river!"

## **The Third Form of Totalitarianism: “The Islamic Republic of Iran” by Dr. Wahied Wahdat-Hagh**

### **Abstract**

Dr. Wahied Wahdat-Hagh’s contribution gives a wide-ranging and caustic overview of the structure of the revolutionary Iranian state and how this relates to restriction of religious and other freedoms. He highlights that the Supreme Leader’s legitimacy rests on the claim in effect to be the regent to the Twelfth Imam, ruling the state in preparation for his appearance. This leads to state organs being bent towards the goal of creating a unified populous and mass movement popular support is essential to maintaining the credibility of the revolutionary state. He draws attention to the way in which this focus leads to the persecution of women, Bahá’ís and trade union activists among others. He argues that the merging of religion and politics creates a new form of totalitarianism and rejects the reformist alternative.

### **Biography**

A Senior Fellow at the European Foundation for Democracy, Dr. Wahdat-Hagh is an Iranian scholar based in Germany. He writes regular columns for a wide range of German publications addressing the threat of Iran as well as its violations of human rights and minority rights. Dr. Wahdat-Hagh is consulted on a regular basis by both policy-makers as well as international media.

### **The Third Form of Totalitarianism: “The Islamic Republic of Iran”**

The totalitarian regimes of the twentieth century tried to create a new “religion” to seduce the masses. They developed a dominant ideology based on biological, racial and class prejudices to found a totalitarian regime. In the case of Iran, some Islamist ideologues use the historical religion of Islam as a weapon against the people in the name of the “Islamic nation” (Ummat), the leader (Rahbar) and God (Allah). Therefore, Islamism borrows these and similar elements from the religion of Islam and frames it within a fundamentalist ideology.

### **Criteria of the new state ideology and rule in “Islamic Republic of Iran”**

The following elements are characteristic of the new ideology legitimated with religious and political arguments in the Islamic Republic of Iran:

- Leader
- Islamist ideology and propaganda
- Institutions promoting totalitarian policies
- Mass movement and mass mobilisation of the nation
- No-party political system
- Anti-Semitism in the form of eliminatory anti-Zionism
- Gender-based persecution of women
- Anti-Bahá’ísm
- Dismantling of the independent labour movements and trade unions

### **Leader**

Khomeini legitimised the absolute power of the clergy in his interpretation of revolutionary Islam. According to his vision of supreme leader, the leader shall rule as the successor of the Twelfth/Hidden Imam, until he reappears. This is the pseudo-religious legitimisation of Iran’s state ideology.

Nevertheless, Ayatollah Khomeini installed the mythology of Shi'a Messianism in the state ideology of Iran. Today, when Ahmadinejad speaks of the return of the Twelfth Imam, he refers to Khomeini's concept of the absolute rule of the leader. It is the state's responsibility to prepare for the return of the Twelfth Imam. The revolutionary leader is God's representative on earth and has absolute power. Additionally, Ayatollah Mesbah Yazdi, who serves as religious mentor to President Ahmadinejad, believes that the leader of the revolution is chosen by God, in other words the group of experts which has the responsibility to "elect" the leader only discovers and acts on God's will.

### **Islamist ideology and propaganda: God, Leader and an Islamic nation**

God, leader and Islamic nation are the key issues of Khomeini's Islamist ideology. In Iran, there is no sovereignty of the people. Instead, the concept of Ummat or the "nation of God" is subjected to full obedience to God and his representative personified in the Supreme Leader. This is the construct of an Islamic democracy in Iran. In fact, Khomeini stressed that clerical rule needs not just the support but also the admiration of the people. Those uneducated in Islamic law have to receive *Irshad*, namely, the right guidance to be a role model for Muslims in the world. Khomeini and the Islamic Republic's overall goal remains the Islamisation of the totality of the Iranian society: in prisons by torture and capital punishment; in society by force of special military personnel; at institutions, including ministries, the army, universities and schools through special representatives; and in publications and the mass media by strict control through the responsible Ministry. The message is simple: in Iran democracy is defined as the totalitarian and utopian unity of God, Leader and the entire population as an *Islamic* nation.

### **Institutions promoting totalitarian policies**

The Islamic Revolutionary Guard Corps and Basij help secure the military power of the Leader. The increase in the level of violence at the hands of the Revolutionary Guards may be due to the fact that a) power crumbles in a totalitarian dictatorship and therefore, b) the dictatorship secures its power through greater oppression of society.

The Iranian secret service promotes a reign of terror at home and abroad. Civilian-clothed officers are mostly responsible for violence against Iranian citizens, as demonstrated during the 2009 post-election uprising. Not only through the exportation of the revolutionary goals of eliminating the opposition by terror, but by also monitoring and intimidating exiled Iranians, official arms of the Iranian Government seek to extend their powers over those living outside of Iranian borders. In case of the parliament, it should be noted that the representatives are not democratically elected. The Guardian Council nominates an approved list of candidates who according to their criteria and judgment can get elected. Furthermore, the president has virtually no political power, and even the few strong presidents, like Ahmadinejad, can only act as agents of the Supreme Leader.

### **Mass movement and Mass mobilisation**

Although domestic support for the Islamic Republic may now be dwindling, the Iranian regime came into power on a wave of mass populism. The Islamist mobilisation of the masses grew significantly in the 1960s following Khomeini's exile, and gradually led to the victory of the Islamic Revolution in 1979. This was mainly achieved by Khomeini who singlehandedly attracted the masses through his talks and sermons taped in exile and distributed by his band of followers on cassettes and videocassettes at Iranian mosques and privately among Bazaaris and other discontented sectors of the population. Following the establishment of the Republic he continued this practice through regular public sermons broadcast mainly from his home in Jamaran.

With his death, however, much of this force was lost. Khomeini's successor, Ali Khamenei, is not the charismatic and unifying figure that Ayatollah Khomeini was. In fact, after the last presidential elections in the summer of 2009, a segment of the mass protesters marched in the name of Khomeini against Khamenei and appealed for the preservation of the totalitarian Constitution once founded by the charismatic Father of the Islamic Revolution. They marched in opposition to the obvious masses who supported the reformist candidates, Moussavi and Karroubi, and demanded far more rights and liberties than can be realised within the framework of the Islamic constitution defended by their leaders.

The state views the masses as a symbol of its strength and tries to mobilise them on symbolic days such as pseudo-elections, the anniversary of the Islamic Revolution, the anniversary of the occupation of the U.S. Embassy and Al-Quds Day.

### **No-party political system**

All secular movements were eliminated at the outset of the Islamic Revolution. The first wave of this process of purging reached its height in 1981 when royalists, secular nationalists and the most leftist organisations were outlawed. In May 1983 the Communist Party was also banned. Khomeini even banned the Islamic Republican Party (IRP) just prior to his death. His rationale was that there were too many discussions within the Party that could have been manipulated by the "enemies of Iran". These steps imply that Iran's totalitarian rule differs from the other totalitarian dictatorships in the twentieth century. Therefore, the third form of totalitarian rule has a no-party system. The Islamist factions are not comparable with political parties and their democratic nature.

In this light, the case of Nehzat-e Azadi (Liberation Movement), a religious-nationalist party, is of particular importance. It was never allowed to build a government as a party. In the 1990s, the movement was banned, though members were allowed to remain politically active as individuals. The party had always been under assault from the regime, including the first post-revolutionary Prime Minister, Mehdi Bazargan, who was a member of the party. Even Ayatollah Khomeini was attacked for supporting the party, viewed allegedly as a form of "American Islam".

The current absence of political parties in Iran has led to confusion for political activists inside Iran and political observers outside its borders. Many members of the banned Islamic Republican Party have re-aligned themselves with reformists and hard-line Islamic organisations, resulting in an illusion that a democratic process exists and that influence is possible through empowering the reformists. However, the presidency of Mohammed Khatami demonstrated that such a process is, in fact, impeded by institutional safeguards, and that the regime continues to shut down the opposition. In April 2010 two important reformist organisations, Mosharekat and Mojahedin of Islam, were banned, providing further evidence of the totalitarian motives of the regime and the impossibility of a truly democratic process under the Islamic Republic.

### **Anti-Semitism in the form of eliminatory anti-Zionism**

In reality, Khomeini's brand of anti-Zionism is a form of anti-Semitism. The ideological defamation and the call for the complete destruction of the Jewish state of Israel, coupled with the use of traditional anti-Semitic stereotypes and Holocaust denial, can only be defined as eliminatory anti-Zionism. This ideology is associated with similar ideologies responsible for the establishment of new fundamentalist Islamic states. In such cases, religious communities, namely those of Zoroastrians, Jews and Christians, are recognised as legal, but according to Islamic law, though protected, are not given equal rights. The believers of the new Bahá'í faith are entitled to no rights.

The origins of Khomeini's anti-Semitism dates back to the early 1960s. Khomeini wrote, "I ask the Islamic governments why they are arguing about oil? Palestine has fallen into disfavour. Throw the Jews out of Palestine. You are useless." Khomeini also accused those who were not aggressive enough in their opposition to Israel of being "in an alliance with the Jews and the Shah."<sup>22</sup> Prior to Khomeini's rise, Iranian fundamentalists were under the influence of the Fadaiyan-e Islam movement, which remained in communication and collaboration with the Egyptian fundamentalist Qutb. In 1948, Navab Safavi and Ayatollah Kashani, leading figures of the Fadaiyan organised anti-Jewish demonstrations in Tehran.

### **Historical Discourse: The Iranian Women's movement and Tahirih**

Some 150 years ago Tahirih, a renowned scholar, poetess and the first woman to accept the new-found religion that was sweeping across Persia (known today as the Bahá'í faith) dared to remove her veil (hijab) at a public gathering of men, signalling a new age of the right to life, equality of sexes and belief. Tahirih is one of the most symbolic figures of the Iranian women's movement: a heroine who had to pay for her courage with her life. What is significant about Tahirih, as a symbol of Iranian women's struggle for equality, is that she embodies major challenges to the current regime. Through her writings and efforts, Tahirih highlighted the importance of women's empowerment, as a fundamental means of social progress and prosperity. The Iranian government of the time and its auxiliary arm of power-seeking clerics could not stand the woman who dared to introduce such concepts or entered into scholarly exchanges with learned men, often proving their views and assumption as faulty or dated. She was subjected to intense persecution while she grew in popularity. Finally, when Tahirih was detained and imprisoned at the house of a Qajar official, it is known that she refused the promises of fame and fortune in exchange for recanting her beliefs by saying: "You can kill me as soon as you want, but you can not stop the emancipation of women." To this day, Tahirih's writings influence the masses and help breathe life into a movement aimed at achieving equal rights for all Iranian citizens, regardless of limitations based on gender or other social constructs.

### **Suppressing the emancipation of women**

Khomeini spoke out against equal rights of women as far back as the 1960s. He believed modern women were influenced by Zionist and imperialist ambitions. From the moment he came into power, Khomeini took steps to restrict the rights of women. Here are a few examples:

- On 26.2.1979 Khomeini abolished the Family Protection Act established in 1967.
- On 3.3.1979 Khomeini declared that women can no longer work as judges.
- On 6.3.1979 Khomeini declared that women must observe Islamic hijab laws.
- On 8.3.1979 Iranian women who demonstrated against the Islamic laws of hijab were met with violence.
- On 29.3.1979 Khomeini declared that men and women are not allowed to walk together on beaches and in sports arenas. A new system of gender segregation was soon introduced.
- In December 1979 the new (totalitarian) Islamic constitution was formulated.
- Women were regularly harassed when full hijab laws were not observed.
- In 1983, the Iranian Parliament adopted the Islamic penal code, under which women who fail to observe hijab laws face punishment such as public lashing.

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<sup>22</sup> Ayatollah Khomeini, 1964. *Sahifeh-e Nour*, Vol. 1, p. 94. Available on-line at: [http://www.islamicecenter.com/ketaabkhaaneh/sahifeh\\_noor/sahifeh\\_noor\\_jeld\\_1\\_khomeini\\_05.html#link2](http://www.islamicecenter.com/ketaabkhaaneh/sahifeh_noor/sahifeh_noor_jeld_1_khomeini_05.html#link2) [Accessed 10 September 2010]

The oppression of women is pursued systematically by the Iranian state. Abolhassan Banisadr, the first president under Khomeini, urged women to give up Western patterns of consumption. In June 1981 Zahra Rahnavard (wife of the 2009 presidential elections candidate, Mir Hossein Mousavi) along with a few others founded the Women's Society of Islamic Revolution. They defined the "true role" of the Muslim woman. Today Zahra Rahnavard speaks up for Muslim women who demand more rights within the existing constitution, while legal experts such as Shirin Ebadi and Shadi Sadr state that only a full reform and structural change of the constitution allows a democratisation of Iran based on equal rights for women and men. In fact, Iranian exiled lawyers have drafted a new constitution dismissing the position of the totalitarian institutions of the Supreme Leader, the Guardian Council, the Revolutionary Guards and the Shari'a.

### **Anti-Bahá'ism**

The imprisonment of the seven Iranian Bahá'í leaders is symptomatic of the regime's policy towards the adherents of this particular faith as well as Iranians following other belief systems. Since Spring of 2008, Mrs. Fariba Kamalabadi, Mr. Jamaloddin Khanjani, Mr. Afif Naeimi, Mr. Saeid Rezaie, Mrs. Mahvash Sabet, Mr. Behrouz Tavakkoli, and Mr. Vahid Tizfahm have remained in custody. The seven Bahá'ís have been charged with the crimes of espionage, propaganda against the regime, and spreading "corruption on earth," among others. In the summer of 2010 these prisoners of conscience were sentenced to 20 years of imprisonment (now reduced to 10) and transferred to one of the most dangerous and violent Iranian prisons, a move comparable with capital punishment. Currently, there are close to 50 Iranian Bahá'ís in prison and countless others are deprived of a range of rights such as employment, education or even freedom to bury their dead. Since 1979, more than 200 Bahá'ís have been executed. Thousands have been arbitrarily imprisoned. Many innocent prisoners have to place exorbitant amounts for bails ranging between US\$ 100,000 to 300,000. According to the laws of the land, Bahá'ís are also deprived of inheritance rights.

The systematic and pre-meditated persecution of the Bahá'ís is a clear case of genocide, because as Article 6 of the Rome Statute of the International Criminal Court states: "genocide" means *any* of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."<sup>23</sup>

Although international support for the Bahá'ís is on the rise, nevertheless, world players remain silent about this genocide-in-progress. Perhaps one day soon democracies around the globe will stand up against the systematic persecution of the Bahá'ís in Iran, which is a prime example of the totalitarian rule in the Islamic Republic of Iran.

### **Dismantling of the independent labour movement and trade unions**

It is an historical fact that leftist organisations and social democratic trade union movements were destroyed at the outset of the Islamic Revolution. The leftist movement was, in fact, a vital soldier in the struggle against the Pahlavi regime. Nevertheless, leftist intellectuals were forced to flee the country or face elimination. Their organisations, which are in most cases dogmatic, went

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<sup>23</sup> Rome Statute of the International Criminal Court [http://untreaty.un.org/cod/icc/statute/99\\_corr/cstatute.htm](http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm)

underground. Over the past few years, a massive crackdown on independent labour activists has gone largely unchecked. Many leading figures and activists, most notably Mansour Osanloo, remain either in prison or face continuous harassment including routine interrogation and expulsion.

### **Totalitarian constitutional dictatorship**

The Iranian Constitution and criminal law are among the "normative" issues and factors of the new totalitarianism. In addition, there is the fact that Islamist government policies prevail beyond the laws and stabilise the totalitarian dictatorship by even banning the reform-Islamists. Over the past two centuries, Iranian society has been fighting to overcome outdated traditional laws and introduce a modern and parliamentary democracy. So far, they have failed to achieve their goals.

In new Islamist totalitarianism, politics are religionised and religion is politicised. The clerical interpretation of religion prevents the democratic aim of separation of church (or in this case mosque) and state. The monopolists of power in Iran claim to represent a divine message. The totalitarian claim of the system rests on an exclusive claim to truth, which legitimises the rule of totalitarian institutions. Such alleged legitimacy is based on an absolute will, which all fundamentalist ideologies have in common. But there are differences between fundamentalist secular power and a fundamentalist church, for example. Fundamentalist groups and institutions in a constitutional democracy may be a source of danger but they can be controlled. A fundamentalist church, however, demands absolute obedience. If the state develops the same will to rule, it becomes a totalitarian dictatorship.

This totalitarian claim is visible through its dogmatic absolutism. The command of the revolutionary leader forces not only the debate on which is a right or wrong interpretation of religion to follow. The command of the revolutionary leader is presented as the absolute truth, which the oppressed citizens have to follow. The totalitarian ideology of Islamism entirely rejects democratic human rights standards and idealises the past. The new Islamist totalitarian utopia is not forward looking. It wants to revive the past in the future. Such arbitrary interpretation of religion and its place in the world forces change on society through violence.

With the power of the new totalitarian dictatorship and the utopian ideology of the dictatorship society is left with political homogeneity. The result is the creation of ideologically defined conformist Muslims and loyal citizens. Here, the alleged enemies are demonised and constitutional states based on human rights and democracy become the enemy.

The twentieth century witnessed two false gods, namely, German National Socialism and Stalinism. In the twenty-first century Islamism is the third false god. As totalitarian will and rule contradict human nature and the human desire to be free, totalitarian dictatorships never fully realise their anti-historical will to rule. Social change and transformation of values are universal processes that are evident in the reality of Iranian society, and continue to act as a catalyst for the advancement of freedom and human rights.

## **Human Rights, Religion and Laws by Dr. Hossein Ladjevardi**

### **Abstract**

Dr. Hossein Ladjevardi, writing from a secular humanist tradition, outlines the incompatibility between certain aspects of the Iranian constitution and the Universal Declaration of Human Rights. He argues, based on a series of poll data, that the figures show a decline in religious identification and loss of faith amongst the Iranian public in response to the Iranian government and its actions.

### **Biography**

Dr. Hossein Ladjevardi is the President of the Association des Chercheurs Iraniens (ACI), established in 1992 and has conducted various research projects with French universities and the UN. He worked as a senior lecturer on Research Methodology at Tehran University and other universities between 1978 and 1982; Executive Project Manager for Population Growth in Iran on behalf of the United Nations Development and Population (UNDP) between 1973 and 1976; and as a senior researcher at the Social Research and Study Institute, Tehran University, between 1970 and 1972. Dr. Ladjevardi has also worked as a Statistics and Demography specialist in the Statistics Centre of Iran. He was awarded a Ph.D. in Sociology (Demography) from the Sorbonne, Paris in 1978. Dr. Ladjevardi published a two-volume book in July 2010, entitled "The Today and Tomorrow of Iran: Volume I 'Concern', Volume II 'The Parliament of Minds.'

### **Human Rights, Religion and Laws**

UDHR Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

In the latter half of the twentieth century, the incompatible marriage of 'human rights' and 'religion' engaged the lives and minds of many defenders who have tried to instil harmony, sometimes at great cost to their own lives and liberty.

To understand how religion may be incorporated in universal human rights a deeper look at the socio-political and cultural application of law is required. If the true meaning of law is interpreted and applied then human rights would be inherently observed even in the most religious of societies. There are many different interpretations of law but the one set out here is derived from a secular humanist viewpoint free from any religious traditions and rites, divine or otherwise - a set of universal rules and values to maintain order among people, governments and international relations based on equality and justice.

The Universal Declaration of Human Rights (UDHR) and its subsequent instruments, covenants and treaties are the ideal embodiment of these universal values, which are based on justice and equality free from bias, prejudice or privilege.

A perfect example of how these inherent and inalienable rights can and are violated is in today's Iran under the rule of a religious theocracy claiming divine legitimacy. The lack of respect for law – even for its own - is apparent in how the Islamic Republic has governed Iran in the last thirty-one years. Following the post-election events witnessed by the world community last year, the topic of human rights violations in Iran conjure up images of state-sponsored violence, rape, torture, illegal detention and farcical show trials. Yet, the root of these violations must be sought in the Islamic

Constitution - not forgetting that the Islamic Republic has remained as a signatory to Covenants signed before the 1979 Revolution and has in its own right ratified others. The Islamic Constitution states:

*Article 4: All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the fuqaha' of the Guardian Council are judges in this matter;*

*Article 12: The official religion of Iran is Islam and the Twelver Ja'fari school [in usual al-Din and fiqh], and this principle will remain eternally immutable;*

*Article 19: All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and colour, race, language, and the like, do not bestow any privilege;*

*Article 20: All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria;*

*and*

*Article 21: The government must ensure the rights of women in all respects, in conformity with Islamic criteria.*

Article 12 is in direct contradiction of Article 1 of the UDHR, which states that all human beings are endowed with reason and conscience, meaning that they must be free to choose what they believe in as reiterated in Article 18 of the UDHR concerning religion.

Article 19, which defines who enjoys equal rights in Iran, intentionally and purposefully does not include gender and religion in its definition, as both are sources of discrimination or privilege according to the Islamic criteria explained in Article 4.

Based on Articles 20 and 21 these Islamic criteria legally and institutionally hinder the progress and violate the rights of women, half of Iran's population, as well as that of Iran's diverse religious groups.

The equal rights movement spearheaded by the women's movement is out of the scope of this article but the persistence and resilience with which Iranian women have fought for their dignity and equal rights is inspirational and worthy of mention at every given opportunity.

The thirty-one-year insistence on Islamifying the society not only has failed but has actually produced a negative approach to religion. Loss of faith or converting from Islam to another religion (despite being punishable by death) is even reflected in the Islamic Republic's own published figures, as unreliable as they may be. In the official statistics, those who have any religion other than the four protected by the Islamic Constitution (Islam, Christianity, Judaism and Zoroastrianism) identify themselves as 'Other' or 'Not Declared'. Iranian Bahá'ís, for example, or those who have changed their religion fall into these categories. The figures below are compiled from official census statistics as published by the Statistical Centre for Iran:

	1986	1996	2006
'Not Declared' and 'Others'	90,282	147,295	259,551
Rate of Increase every ten years	-	1.63%	1.76
Population Growth	3.9%	2.5%	1.6%

The figures indicate an almost threefold (2.8) increase in a twenty-year period in the 'Not Declared' and 'Others' category while population growth has actually decreased by more than half.

This trend was most evident in two Internet surveys carried out by Association des Chercheurs Iraniens in 2007 and 2010. In the first survey, viewpoints on religion and identity were measured. Two main traits were clearly identified, i) regarding the level of importance of Iranian identity over religious or ethnic identities, the majority of the 20-29 age group (the largest participant age group) identified themselves with Iran's ancient civilisation and culture; and ii) loss of faith or anti-religious sentiments.

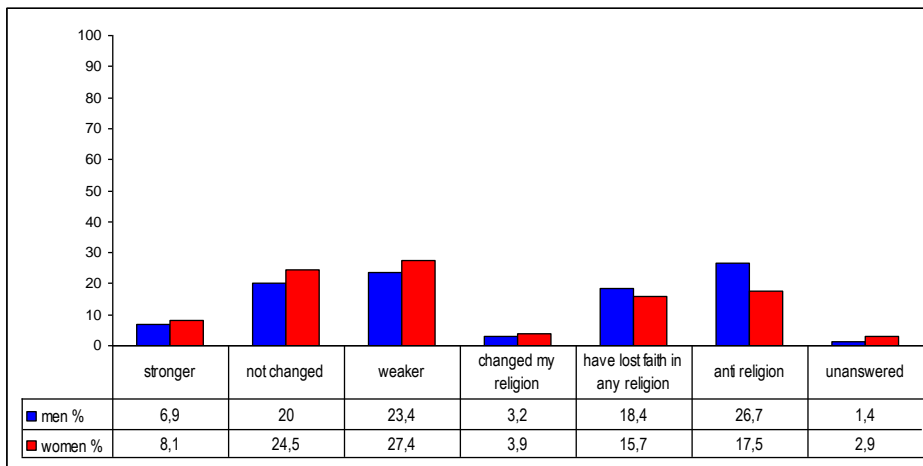


Fig 1: Question 11: In view of the events and developments in Iran under the Islamic Republic, how have your religious beliefs been affected?

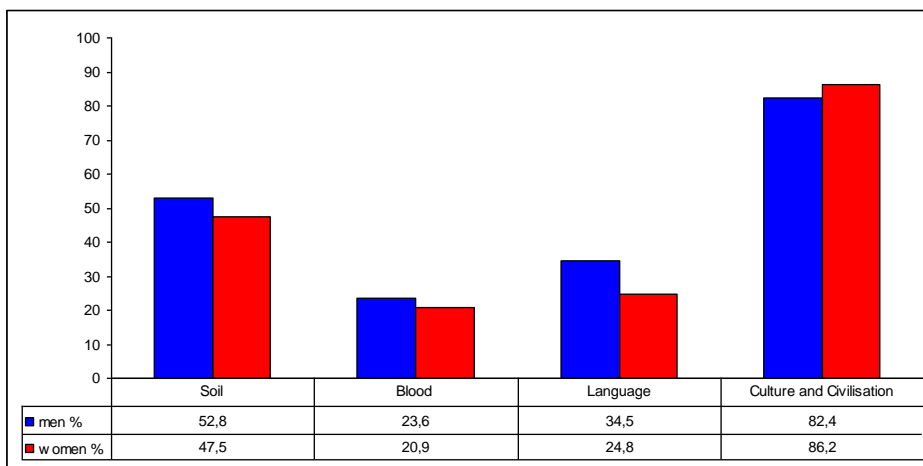


Fig 2: Question 14: Where do you derive your identity from? (Multiple answers)

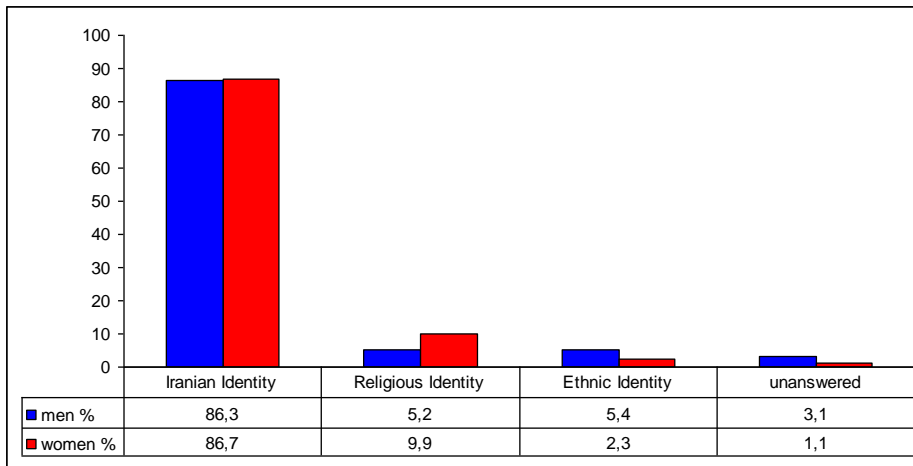


Fig 3: Question 16: Which of the above forms of identity is important to you?

The second survey concentrated on the events following the tenth presidential elections. Nevertheless, the question on religious beliefs produced startling results, particularly, in the 35 to 39 years age group.

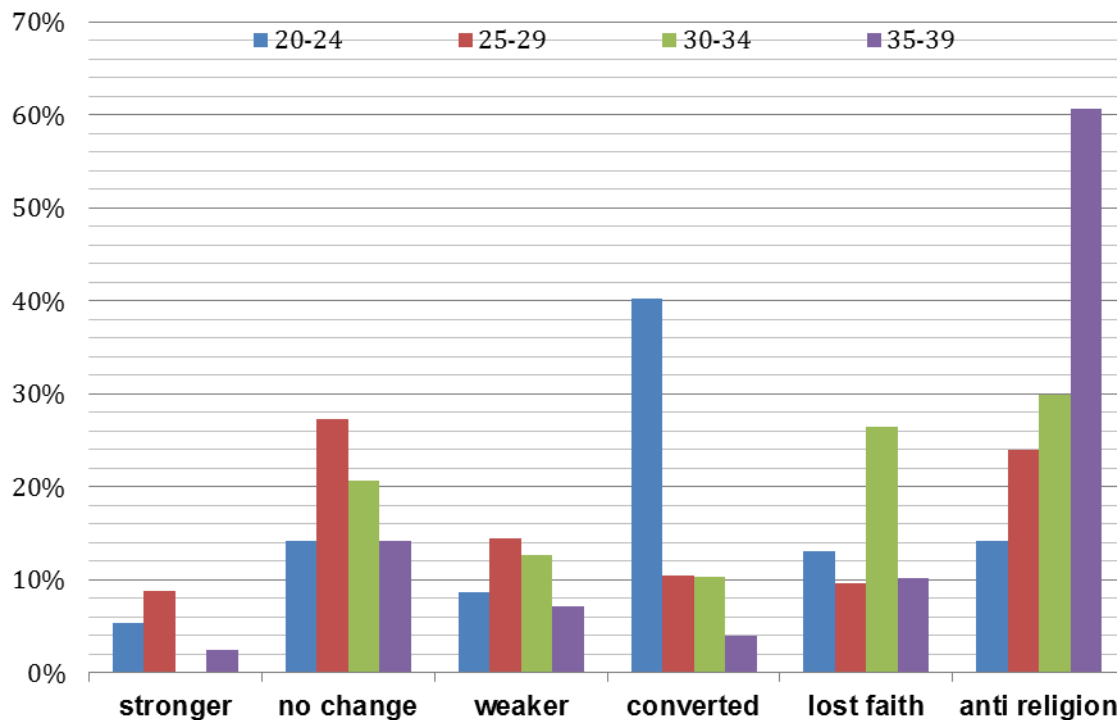


Fig 4: Question 12: In view of the events and developments in Iran under the Islamic Republic, how have your religious beliefs been affected?

Evident from both surveys and Islamic Republic’s figures is the move away from the stated official religion which can only indicate a policy failure as well as demonstrate the consequences of violation of one of the most fundamental rights: that of freedom to choose one’s own religion or belief. Despite awareness of the damage the policies of the last three decades have done to “Islam”, the regime appears to be pursuing them with more vigour by giving power and protection to its “extrajudicial” or “rogue” agents to persecute religious minorities. Moreover, fresh powers of arrest and punishment have been brought in against religious freedom by codifying “apostasy” in the proposed Islamic Penal Code with the maximum sentence of death.

The Islamic Republic must be reminded that as a signatory of the 1993 Vienna Declaration it has a duty and responsibility to bring its national laws in line with the international instruments to which it is a signatory. Iran must be held accountable for non-observance of human rights with more than resolutions and condemnations. At the same time, the so-called negotiations over the nuclear issue must not be an excuse for the international community to remain silent on the abuse of rights in Iran. Smart sanctions targeting identified individuals and institutions may be one way of applying pressure.

In conclusion, religious traditions or cultural values must not form the foundation of the laws of the land. They are private matters and while both are to be respected, in a fair and just society neither is damaged or devalued and the law actually provides for their rightful place within society.

The Islamic regime must not be allowed to get away with systematic and 'legal' violations of rights under the guise of tradition and culture. Its excuses must not be tolerated when appearing at international meetings and openly defending the abuse of, for example, the Bahá'ís or insisting on unequal rights for women, based on customs and culture. The protests of the last year and the obvious dissatisfaction with the entirety of the system must be a serious warning for the ruling elite and the international community alike.

## **Velayat-e Faqih, Law and Human Rights by Hamid Hamidi**

### **Abstract**

Hamid Hamidi discusses the development of the idea of the Velayat-e Faqih, the rule of the supreme jurist in Shi'a jurisprudence, where clerics take on guardianship of society in the absence of the Twelfth Imam prior to his arrival. He argues that in Shi'a tradition, prior to the mid 1800s, before the influence of Mulla Naraqi, jurists gave individual opinions and not general proclamations on or directions on public policy. As Iranian politics developed so did the concept of Velayat, albeit prior to the Revolution its scope related to individual duties and religious responsibilities rather than wider political activity. Khomeini transformed the concept to be the foundation of the Islamic Republic with all power deriving from the ability of the head of the religious establishment to interpret the Shari'a and he enshrined it in the constitution. Hamidi contrasts the traditional role of constitutions, the Universal Declaration of Human Rights and the Iranian constitution and highlights the contradictions caused by the composite nature of Iran's approach, unsuccessfully melding modern constitutional norms with the Velayat. He notes Khamenei's recent fatwa strengthening the authority of the Velayat-e Faqih over that of other jurists and sources of power and argues that this leaves little room for the human rights of its citizens.

### **Biography**

Hamid Hamidi is a respected European-based Iranian journalist. Over the past two decades he has dedicated much of his time to supporting efforts towards Iranian women's struggles for equal rights, and has conducted research and studies concerning important social issues including the rights of women and children as well as human rights.

### **Velayat-e Faqih, law and human rights**

When did the concept of Velayat-e Faqih enter Shi'ite political writings? What is the source of its legitimacy? How is it justified as the rule of the divine over an entire nation?<sup>24</sup> Is the concept in line with modern principles such as the right to self-determination or majority's vote as the source of the legitimacy of a government? Does political Shi'ite jurisprudence accommodate human rights, and if so, how?

### **Government Legitimacy**

The legitimacy of any government (legality and not acceptability and lawfulness) is a long-standing issue in political philosophy. In order to prove its legitimacy, the system of a government stands in need of identification of the basic principles that define the legitimacy (legality) of its political order. It is based on this that it can then assume responsibility for public and social affairs. So one can ask the question, what, if any, is the source of the legitimacy of the Velayat-e Faqih? How does religion view this phenomenon?

Some of those who believe in Islam claim that Velayat-e Faqih is a system of governance based on guardianship on behalf of and in the absence of the Hidden Twelfth Imam. Others view people's votes and choice as the source of government legitimacy (as in acceptability) and regard government as an outcome of a social contract between the elected and the electors. This contradiction yields to a fundamental challenge between the concepts of 'social contract' and 'natural rights' of the people on the one hand, and 'divine contract' and 'divine duties' on the other. As Shi'ite teachings clarify, a government is legitimate when it is headed by one of the Imams. The first cause of concern for Shi'as (with regards to legitimacy) is the possibility of usurping power in the absence of the Hidden Imam.

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<sup>24</sup> Some Shi'ites believe that in the Vali-e Faqih represents the Promised Imam and has the right to rule until His appearance.

For centuries, it was the absence of the Imam, which caused Shi'as to avoid involvement in political activities or accept donations in His name. In fact, until the mid 1800s Islamic jurisprudence lacked any explicit injunctions on the issue of Velayat or politics. Furthermore, interpretations rendered by Islamic jurists, even regarding public affairs, were simply regarded as individual opinions of the jurists and not public policy. In this same vein, matters regarding governance and the affairs of state were only discussed in light of the duties and characteristics of the ruler and not the manner of his rule.

More importantly, one of the fundamental principles in Islamic jurisprudence specifies that no one has the right to guard over another. Instead, each person is responsible for one's own affairs.<sup>25</sup>

The first mention of political guardianship of the jurists,<sup>26</sup> as in an Islamic jurist ruling over an entire nation, is in the writings of Mulla Ahmad Naraqī less than two centuries ago. A number of other jurists (Sheikh Morteza Ansari and Akhund Khorassani, Ayatollah Khomeini) opposed this view and believed that Islamic jurisprudence fails to legitimise the political aspects of such a position. However, a few others began to expound on Naraqī's proposition, including Mohammad Hossein Najafi Saheb Javaher, Mohammad Hossein Boroujerdi, Golpaygani and Khomeini.

Prior to the Constitutional Revolution in Iran, the concept of Velayat was further developed, however, it did not go further than pronouncements on differentiation between secular and religious affairs. During the second term of Qajar Muslim clergy were increasingly vocal against foreign influence by the British and the Russians and greatly influenced internal affairs of Iran.<sup>27</sup> By the third term, the concept of Velayat with regards to religious governance saw more development but the clergy remained focused on personal judgements and duties of the individual (i.e. caring for the orphans, the handicapped, etc.). After the Revolution, however, this was further extended to matters regarding public hygiene, security and education. The jurists also came face to face with modern concepts such as human rights, freedom, justice, supervision, separation of power, equality and advocacy. This encounter resulted in two responses. One was the establishment of constitutional rule with Sheikh Fazlollah Nouri as the appointed representative of Islamic jurists over matters pertaining to individual duties and Muslim reign over matters pertaining to public affairs; and the other was the formation of a constitutional government based on approval of the jurists through Ayatollah Naieni. Based on the latter, the state is governed by logic not compulsion, and supreme jurists handle all matters pertaining to Islamic laws, but they are not in charge of the government.

### **Velayat-e Faqih in an Islamic Government**

Velayat-e Faqih is the most noteworthy aspect of the Islamic Republic. In accordance with the constitution, it yields a great deal of power in political affairs both directly (appointments and dismissals) and indirectly (legislation and ultimate authority). The intellectual and theoretical foundation of the Islamic Republic is based on the views and theories of Ayatollah Khomeini and the constitution, as the legal and administrative structure founded on those views and theories.

In other words, intellectually and theoretically speaking, Velayat-e Faqih is an absolute power, and politically speaking, it encompasses the constitution. The constitution is composed within a legal framework born out of the Shari'a, which according to qualified Islamic jurists, is obtained from the

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<sup>25</sup> This was first identified by Ayatollah Sheikh Ja'far Kashef Ul-Gheta, during the reign of the Qajars.

<sup>26</sup> The term itself was first mentioned by Shahid Thani in Malek Ul-Afham, in reference to matters pertaining to judgement, Friday public prayers, and duties of the jurists in the absence of the Hidden Imam with no reference to public or political affairs.

<sup>27</sup> The Tobacco Sanctions during the reign of Nasir al-Din Shah

Book (Koran) and Sunna (tradition). The Vali-e Faqih, then, is the symbol of Islamic jurisprudence. In this light, Shari'a laws are considered as the foundation, and the constitution built on that foundation. After all, followers of the Vali-e Faqih system of governance accept God and the Prophet as their rulers, and religious principles, Imamate and Islamic jurisprudence as the basis of their state. This is in contradiction to secular states where the right to legislate is viewed as one of the fundamental rights of human beings, and therefore constitutions are at the apex of the legal structure.

In order to better understand the position of the Vali-e Faqih within the Islamic Republic, we must consider the following articles of the constitution.

Article 4 explicitly states that all laws, rules, regulations, and directives must be in line with Islamic standards. Since this Article is part of the preamble of the constitution, it overrules other articles, and therefore if stipulations based on other sections of the constitution do not comply with Islamic standards, they are not acceptable, even if they are in line with the constitution.<sup>28</sup> Article 5 states that in the absence of the (Hidden/Twelfth) Imam, the position of guardian is assumed by the Faqih.<sup>29</sup> Following ideological beliefs the right to rule over people by the Imam, according to Article 57, is fulfilled through Velayat-e Faqih. Articles 110 and 177 of the Islamic Republic's constitution enumerate the powers of the Vali, which places him in complete charge of every arm and activity of the government.

Clearly, the Islamic Republic is a religious and ideological system of governance. This is emphasized in the first section of its constitution. For example, Article 2 stipulates that the Vali-e Faqih is the only person who is able to assume power and convey the will of the divine. Article 5 further emphasizes whenever power is assumed by anyone other than a Faqih, the foundation of the system itself is no longer based on Imamate and will subsequently fail to embody divine legitimacy.

### **The Islamic Constitutions and the Universal Declaration of Human Rights**

A constitution is the highest legal document in a country. It acts as a guide for legislation. It defines the political principles, hierarchy, status and parameters of political power of its government. It determines and guarantees the rights of citizens and is approved by them in order to safeguard their welfare, order, individual and group freedoms, social and political rights as well as relations with other countries and the global community. It also assists those in charge of its implementation in defining the relationship between the various arms of the government (all of which must directly or indirectly be elected by the people). In light of such a scope:

1) A constitution is in no way a contract between the people and the government. Instead, it is the law and the directive of the people to the government (judiciary, legislative and executive arms). The public does not vote to legislate laws in order to limit their rights and freedoms, they do so in order to ensure their rights and determine the responsibilities of the ruler(s). In this vein, government is defined as upholding rights in trust and, therefore, in reality they are not entitled to any rights over the people. In other words, those elected by the people have accepted the responsibilities of representing them by safeguarding their rights in collaboration with other arms (of the government) and the global community.

2) In addition to the above, the aim of approving a constitution is to facilitate material welfare and social tranquillity. Therefore, no interpretation can be in contradiction with the spirit and the letter of the law. In other words, any interpretation that is in opposition to the articles and spirit of the

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<sup>28</sup> Jalaloddin Madani, *Fundamental Rights*, Vol. 3, p. 44

<sup>29</sup> Article 5 states "During the Occultation of the Wali al-Asr (may God hasten his reappearance), the velayah and leadership of the Ummah devolve upon the just ('adil) and pious [muttaqi] Faqih, who is fully aware of the circumstances of his age; courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office in accordance with Article 107."

constitution must be to the benefit of the masses and their rights. Furthermore, interpretations must be in accordance with the exigencies of time and place. A constitution is not a dead text void of any spirit rendering one single interpretation. Social, political, global, international and economic changes necessarily influence the understanding of lawmakers and interpreters of the constitution.

In the case of Iran, the challenges posed by its constitution are not only due to its contradictory sections or its overall inconsistency with the Universal Declaration of Human Rights. The challenges lie in the fact that the constitution is an amalgamation of ideas from a number of inconsistent systems. As an amalgamation, and not a collection, it embodies and reflects conflicting principles.

The first conflict is based on the contradictory aims of the founding authors of the constitution. The second conflict arises from the friction between those aims and the incapability of Iranian society achieving them. Furthermore, parts of the constitution are borrowed from other countries. These parts only bear partial relevance, as they represent particular Western philosophical and political paradigms. But this is not all. Another part of the constitution is based on Islamic fiqh and the seminary culture. The majority of this body represents contradictory and conflicting elements due to its internal inconsistencies and the fact that it opposes the first section, meaning those articles borrowed from Western secular sources. Therefore, each of these inconsistent systems stands as a barrier to the legal implementation of the other and the constitution in its totality forms a body of laws that in interpretation and implementation stands in contradiction to the Universal Declaration of Human Rights.

For instance, the Iranian constitution stipulates that the law treats everyone equally. But this principle is not divorced from that of supreme guardianship by the jurist. In fact, the entire constitution is subjected to any and all limitations imposed by it. Based on that and those articles of the constitution that relate to the rights of the leader, citizens are not treated equally by the law. If absolute and complete guardianship by the jurist is the most encompassing article of the constitution, then other articles are to be interpreted and implemented accordingly. Therefore, when assessing the constitution, the percentage or number of articles that refer to human rights is irrelevant. Rather it is important to note the priority of these articles and when challenges in implementation arise assess which can overrule the other.

However, this is not the only challenge to an analytical approach to the Iranian constitution, as it emphasises the order and not the content of the articles. Each of the articles of the constitution and the document as a whole are based on a general understanding of the nature of man, society and knowledge. Separating this understanding from its articles and content is impossible. Without a basic notion of human nature and the fate of man and his role in society, of knowledge as a branch of humanity, and of society as the place of human interaction, drafting a constitution is an impossible task. Likewise, drafting and conceptualising laws without understanding the underlying views of the public is impossible. Within an analytical framework, assessing a constitution based on its articles must focus on comparing the scope and number of its laws. Based on that if just laws outnumber the others then that body of laws is deemed the same. However, based on a systemic approach the focus is on the ultimate result of a legal system. It is this ultimate result that affects a society.<sup>30</sup> To better understand this point we can review specific articles of the Iranian constitution.

## Article 56

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<sup>30</sup> Dr. Ahmad Alavi expands on this relationship in his work entitled *Rabeteḥ għanoon-e asāsi hokumat-e Iran va manshour-e jahāni-e hoghoogh-e bashar* (The relationship between the constitution of the Islamic Republic in Iran and the Universal Declaration of Human Rights) available on-line at: <http://www.komitedefa.org/sidor/Aad.htm>

Article 56 states: "Absolute government over the world and man belongs to God, and it is He who has made man the master of his own social destiny. No one can deprive man of this divine right, nor subordinate it to the vested interests of a particular individual or group. The people are to exercise this divine right in the manner specified in the following articles."

This article was mentioned in the original draft as follows:

Article 15: "The right to national government is the right of all people and must be of benefit to the public. No individual or group can assume this divine public law or exploit it for the purpose of personal or group benefit."

The Article was approved with 66 votes in favour and 6 votes against it. At that point in time, some believed that the authority of man over his own fate is against Islamic standards. Karami, one of the opponents of this article writes: "This text is against Shari'a as the absolute fate of man is not in his hands."<sup>31</sup> However, most of the representatives did not share this view and so the article was approved.

### **Article 57**

Article 57 states: "The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the absolute velayat al-amr and the leadership of the Ummah, in accordance with the forthcoming articles of this constitution. These powers are independent of each other."

Prior to 1368 (1989) this article was as follows: "The powers of government in the Islamic Republic are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the velayat al-amr and the leadership of the Ummah, in accordance with the forthcoming articles of this constitution. These powers are independent of each other and interactions between them are facilitated by the president."

A number of points must be highlighted: 1) only three powers have been described, 2) these powers bear direct results, in the form of legislation, punishment and implementation, 3) the leader bears the sole responsibility for supervision of all three powers and then the parliament is in charge of the supervision of any bodies run by senior officers, such as the national media or the judiciary. For instance, the appointment of the head of the national police, which is done by the leader, is still under the direct supervision of other powers. Therefore, the three powers are separate but based on the constitution supervised the other and were in turn responsible to the others.

However, during the 1368 (1989) review of the constitution, the responsibility for coordinating the three powers was removed from the presidency and the phrase 'absolute' was added to the text of the Article. So a question arises as to whether the leader is also the 'absolute' guardian of people and public institutions? Or does the 'absolute supreme jurist' oversee political parties and leadership experts? Do the instructions of the leader apply to the critics of government or are they simply viewed as guidance? There is no legal documentation within the body of the constitution that binds the leader's instructions to the general public and civil organisations. If orders and instructions of the supreme leader are viewed as laws, which apply to everyone, including religious scholars, political parties, non-governmental organisations, leadership experts and the general public, then we have accepted that an individual will also judge his own actions. This was manifested in Ayatollah Khamenei's recent fatwa, which removed the veil of 'government of God's will' that over the past three decades had hidden the authoritarian face of the ruling theocracy in Iran. Khamenei

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<sup>31</sup> Proceedings of the parliamentary session reviewing the constitution, meeting number 21, p. 537

demanded everyone's obedience to the decisions of the Vali-e Faqih and stated that based on Shi'a beliefs:

'All Muslims must obey the instructions of the Vali-e Faqih, as they are in effect subjected to his injunctions (amr) and prohibitions (nahi). This order also applies to grand jurists, in addition to those who emulate them. In our view, the necessity to obey the Velayat-e Faqih is no different than obedience to Islam and the Imams.'

In another section, Khamenei refers to the 'absolute supreme jurist' as the sovereign of Muslims in managing their Islamic societies and stated "the sovereign of Muslims after assuming the weighty responsibility of leadership based on the Shari'a, must, in whatever case he deems necessary, make his decisions and issue orders based on Islamic fiqh." In his words "decisions and powers of the Vali-e Faqih that take into account the interests of Muslims and Islam, if faced with public opposition, override people's decisions and powers." He further states that if the Vali-e Faqih has occupied the position of guardianship through legal channels, then obedience to his instructions pertaining to matters of government is binding on everyone including other faqihs. It is not permissible for anyone to oppose the supreme leader on the merits of his own judgement. Furthermore, with regards to the fact that "the concept of administrative guardianship does not exist" in Islamic studies, Khamenei states that opposition to administrative matters based on legal codes and regulations and "instructions by representatives of the Vali-e Faqih within each of their assigned jurisdiction" is not permitted.

Based on the above perspective, man is deprived of any inalienable rights before the government and bears no responsibility but to obey the instructions of the divine ruler. As history of religion demonstrates, such a perspective leads to devastating effects on the life of humanity, which is best evident in the contradictions between theocracy and democracy. A human being, however, has two natural tendencies of rationality and freewill that entitle him to rights. Therefore, in terms of acknowledging the concept of human rights it is essential to understand what it means to be human being. Because a person is not only responsible before the government, other human beings or God, but he is also entitled to certain rights, even though those who support the 'will of God' school of thought view human rights (void of duties) as a form of blasphemy.

Unfortunately, the authoritarian outlook of the leadership and the main figures within Iran's power structure, fail to consider the full extent of human rights including its human and material dimensions, is rooted in power presentation. This directly results in discrimination and destruction at all levels of society, with a notion of social justice conditioned on regarding human beings as human but disregarding any type of ethnic, linguistic, religious or racial distinctions leading to "random justice." In light of such an outlook, penal laws and punishment of offenders do not result in reform and restitution of a just and lawful society, instead, they lead to a mafia system of governance that in the name of the will of God and religious teachings, hides behind the veil of religion, and has taken over the fate of an entire nation. It has also planted seeds of hatred, rancour and revenge, today's enemies of humanity.

In reality, Velayat-e Faqih does not address any of today's problems and challenges. Instead, it reduces society, its values and ethics, to its own level. Today's Iran is much like the Middle Ages, when government, religion and power formed the three pillars of society, and the legitimacy of the government or monarchy was granted by religion, as both dominated the society and its discourse. As a result, the authorities have left no room in theory or in practice for human beings and their rights.

## **Appendix: Recent Reports and References on human rights in Iran**

*The following is a selection of noteworthy references focused on religion and human rights covering the period of March to October 2010*

Below is a report dated 9 August 2010 published by Fars News Agency. It is based on a presentation by Iran's Minister of Information which was delivered at a meeting held for senior officials of the Ministry of Education. The report refers to activities such as education of children by the Christian minority in Iran as a form of 'soft war' against the state. It also refers to kindergartens and non-profit schools run by the Baha'is as a ploy backed by the Zionists. He ends his presentation by emphasizing that his Ministry is responsible for warning the education sector about such 'conspiracies and threats' and in return they must inform the 'nameless soldiers of the Promised Imam' about 'suspicious movements':

<http://www.farsnews.com/printable.php?nn=8905181239>

According to a report by Radio Farda, the seven leading members of the Baha'i minority, who had been held in detention for over two years were sentenced to 20 years of imprisonment on charges of 'Espionage, collusion and collaboration for the purpose of endangering the national security and spreading corruption on earth.'" After a substantial wave of objections by international human rights organisations, governments, media and civil society, their sentences were reduced to ten years:

[http://www.radiofarda.com/content/F11\\_Iran\\_Bahaei\\_seven\\_leaders\\_Dian\\_Alai/2122154.html](http://www.radiofarda.com/content/F11_Iran_Bahaei_seven_leaders_Dian_Alai/2122154.html)

Below is a detailed report by the International Federation for Human Rights regarding discrimination against ethnic and religious minorities in Iran for reference at the 77<sup>th</sup> session of the United Nations Committee on the Elimination of Racial Discrimination:

<http://www.unhcr.org/refworld/docid/4c8622f72.html>

This is the annual report submitted by UN Secretary-General to the 65<sup>th</sup> session of the United Nations General Assembly on the situation of human rights in the Islamic Republic of Iran and includes a number of references to religious minorities:

[http://www.un.org/ga/search/view\\_doc.asp?symbol=a%2F65%2F370&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=a%2F65%2F370&Lang=E)

Below is the report of the Working Group on the Universal Periodic Review on Iran:

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IR/A\\_HRC\\_14\\_12\\_Iran.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IR/A_HRC_14_12_Iran.pdf)

The proceedings of the adoption of the outcome of Universal Periodic Review of Iran is available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10139&LangID=E>

During the UN Human Rights Council general debate on the implementation of the Vienna Declaration on 15 June 2010, Norway's representative, Madame Bente Angell-Hansen, read a statement on behalf of 54 states, expressing their concern regarding Iran's human rights record. The texts of the statement and the list of countries supporting the statement are available at:

<http://geneva.usmission.gov/2010/06/15/u-s-joins-over-50-nations-to-support-hrc-statement-on-iran/>

The following is a brief published by Pew Forum on its in-depth report entitled "Global Restrictions on Religion" originally published in 2009 and covering 198 countries around the world including Iran:

<http://pewforum.org/Government/Briefing-on-US-International-Religious-Freedom-Policy.aspx>

The annual U.S. Department of State report on Iran section C covers freedom of religion:

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136068.htm>

Pages 180 to 184 of the following report produced by Minority Rights Group International highlights the plight of religious minorities in Iran:

[www.minorityrights.org/download.php?id=840](http://www.minorityrights.org/download.php?id=840)

The following report, published by the International Federation for Human Rights (FIDH) and the Iranian League for the Defence of Human Rights (LDDHI), highlights severe discriminations faced by religious minorities in Iran:

<http://www.fidh.org/IMG/pdf/IrandiscrimLDDHI545a.pdf>

The Iran Human Rights Review, edited by Tahirih Danesh and Adam Hug, is a new Foreign Policy Centre project that seeks to be an important resource for policy makers and activists that combines information and analysis with recommendations for action.

This inaugural edition of the review focuses on the critical issue of religion in relationship to human rights in Iran. It contains short essays from some of the world's leading experts on Iranian human rights Dr Shirin Ebadi, Dr Fatemeh Haghighatjoo, Dr Shireen Hunter, Dr Abdol-Karim Lahidji, Hamid Hamidi, Dr Wahied Wahdat-Hagh, and John Weston MP.



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