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КОМИССИЯ ПО ПРАВАМ ЧЕЛОВЕКА
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ГРАЖДАНСКИЕ И ПОЛИТИЧЕСКИЕ ПРАВА, ВКЛЮЧАЯ ВОПРОС СВОБОДЫ ВЫРАЖЕНИЯ МНЕНИЙ

Доклад, представленный Специальным докладчиком по вопросу о праве на свободу мнений и их свободное выражение г-ном Амбейи Лигабо

Добавление

МИССИЯ В ИСЛАМСКУЮ РЕСПУБЛИКУ ИРАН*

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* Настоящее резюме распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется только на языке, на котором он был представлен.

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Резюме

Настоящий доклад был подготовлен в соответствии с резолюцией 2002/48 Комиссии по правам человека. В нем излагается и анализируется информация о соблюдении права на свободу мнений и их свободное выражение, которую Специальный докладчик получил до и во время его поездки в Исламскую Республику Иран 4-10 ноября 2003 года от официальных и частных лиц, неправительственных организаций, а также из докладов Организации Объединенных Наций.

Специальный доклад отмечает стремление к реформам со стороны гражданского общества, членов парламента и высокопоставленных государственных чиновников, а также то обстоятельство, что в большинстве бесед отмечалось, что улучшение рамок защиты прав человека, и в частности права на свободу мнений и их свободное выражение, является важнейшей предпосылкой таких реформ. В этой связи он обращает внимание на высокую активность правительства и меджлиса на законодательном уровне, их стремление улучшить существующую правовую базу, обеспечив, в частности, более широкую защиту прав человека и основных свобод.

Вместе с тем Специальный докладчик констатирует, что серьезным препятствием для перемен являются различные институциональные путы, сковывающие государственные, парламентские и судебные процессы в результате контроля за ними со стороны невыборных институтов и органов, которые неподотчетны населению. По мнению Специального докладчика, такие институты и органы препятствуют реформе законодательства и деятельности институтов власти.

Что касается правовых рамок, то, по убеждению Специального докладчика, многие из ограничений на осуществление права на свободу мнений и их свободное выражение, предусмотренные в Законе о печати и Уголовном кодексе, не соответствуют ограничениям, которые допускаются пунктом 3 статьи 19 Международного пакта о гражданских и политических правах (МПГПП), поскольку, во-первых, многие из них выходят за рамки потребностей, перечисленных в этой статье, и, во-вторых, во многих случаях основания для таких ограничений не подкрепляются какими-либо объективными критериями или четкими определениями, допуская субъективное и произвольное их толкование судьями.

Поэтому Специальный докладчик призывает власти пересмотреть эти законы, приведя их в соответствие с международными нормами и стандартами защиты прав человека применительно к праву на свободу мнений и их свободное выражение, и

рекомендует дать четкие определения ограничений на осуществление этого права, которые соответствовали бы пункту 3 статьи 19 МПГПП.

В частности, Специальный докладчик считает, что злоупотребление правом на свободу мнений и их свободное выражение, как это право определяется в пунктах 1 и 2 статьи 19 МПГПП, должна преследоваться в порядке гражданского судопроизводства, и настоятельно призывает власти пересмотреть Закон о печати и Уголовный кодекс, с тем чтобы исключить любые уголовные санкции за мирное выражение своих мнений, в том числе в печати. В этой связи он настоятельно призывает Верховный совет по судоустройству рассмотреть возможность введения не предполагающих лишения свободы санкций за любые правонарушения, касающиеся печати и выражения мнений.

Специальный докладчик также отмечает, что подсудность революционным судам правонарушений, связанных с выражением мнений, оказывает явно негативное воздействие на осуществление права на свободу мнений и их свободное выражение из-за их крайне жесткой позиции по отношению к любым правонарушениям, связанным с печатью и выражением мнений. Он рекомендует изъять эти правонарушения из компетенции революционных судов.

Специальный докладчик также придерживается мнения о том, что Закон о предупреждении преступлений не должен распространяться на правонарушения, связанные с печатью, и такие правонарушения не могут входить в перечень наиболее тяжких преступлений, к которым применяется этот закон.

Специальный докладчик также испытывает озабоченность в связи с вопросом толкования исламских принципов, особенно в связи с определением правонарушений, связанных с выражением мнений, и отмечает, что они по-разному трактуются разными духовными лидерами. Специальный докладчик убежден в насущной необходимости более четко определить в законе содержание исламских принципов, и в частности критериев, которые применяются для установления момента нарушения таких принципов во избежание произвольности их толкования и отсутствия юридической определенности при их применении.

Специальный докладчик рекомендует принять национальную Хартию о правах человека в порядке применения международного права в области прав человека и статьи 20 Конституции, которая послужила бы четкой основой разработки и осуществления законов.

Что касается фактического осуществления права на свободу мнений и их свободное выражение, то Специальный докладчик обращает внимание на сложившееся в последние несколько лет общее впечатление о том, что положение в этом вопросе ухудшилось, а число закрытых изданий, а также людей, которые были арестованы, отданы под суд и приговорены к наказанию за мирное выражение своих мнений, увеличилось. Специальный докладчик не в состоянии сказать, вызвано ли это увеличение ужесточением позиции властей, и в частности судов, по отношению к таким правонарушениям или же тем, что после прихода к власти реформаторов в правительстве и меджлисе люди стали меньше бояться, более открыто призывать к реформе и критиковать государственные институты.

Специальный докладчик подчеркивает, что атмосфера страха, нагнетаемая систематическим преследованием людей, выступающих с критикой официальной политической и религиозной доктрины и функционирования институтов власти вкупе с суровыми и непропорциональными санкциями за такую критику приводит к самоцензуре среди многих журналистов, представителей интеллигенции, политических деятелей, учащихся и населения в целом, что на практике препятствует осуществлению свободы выражений мнений.

Специальный докладчик выявил ряд тенденций в области преследования и осуждения лиц за правонарушения, связанные с печатью и выражением мнений. В этой связи он одобряет заключение Рабочей группы по произвольным задержаниям по поводу положения узников совести и отмечает, что они подвергаются двойному наказанию: за ущемление их права на свободу выражения мнений и за отсутствие у них основных гарантий права на справедливое судебное разбирательство.

В частности, Специальный докладчик с озабоченностью отмечает применение мер наказания в виде продолжительного содержания под стражей без связи с внешним миром за преступления, связанные с печатью и выражением мнений, и напоминает о резолюции 2003/32 Комиссии по правам человека, в которой Комиссия напомнила государствам о том, что продолжительное содержание под стражей без связи с внешним миром может способствовать совершению пыток и само по себе являться одной из форм жестокого, бесчеловечного или унижающего достоинство обращения или даже пыткой, и настоятельно призвала все государства соблюдать гарантии в отношении свободы, безопасности и достоинства личности.

На основе вышеизложенного Специальный докладчик призывает власти предоставить полную амнистию всем заключенным, подвергшимся преследованию или наказанию за правонарушения, связанные с печатью и выражением мнений.

В контексте постоянного приглашения правительства в адрес всех тематических механизмов Комиссии по правам человека Специальный докладчик с учетом своих заключений считает, что посещение страны Специальным докладчик по вопросу о пытках и Специальным докладчиком по вопросу о независимости судей и адвокатов могло бы сыграть полезную роль.

Специальный докладчик также убежден, что в качестве одного из первых шагов в направлении к выполнению его рекомендаций властям следует заручиться техническим сотрудничеством в области правления правосудия, в частности в отношении подготовки судей и сотрудников других правоохранительных органов. По мнению Специального докладчика, такая подготовка, в частности, должна быть ориентирована на нормы и стандарты осуществления права на справедливое судебное разбирательство и эффективное осуществление права на свободу мнений и их свободное выражение.

Annex

REPORT SUBMITTED BY THE SPECIAL RAPPORTEUR ON THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, AMBEYI LIGABO ON HIS MISSION TO THE ISLAMIC REPUBLIC OF IRAN (4 TO 10 NOVEMBER 2003)

CONTENTS

Introduction

1. On 24 July 2002, the Government of the Islamic Republic of Iran issued a standing invitation to all thematic mechanisms of the Commission on Human Rights to visit the country. By letter dated 7 October 2002, the Special Rapporteur expressed his interest in undertaking a fact-finding mission in Iran.

2. The visit took place from 4 to 10 November 2003. The delegation comprised the Special Rapporteur, an official from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and two interpreters from the United Nations Office at Geneva.

3. The Special Rapporteur would like to mention that, in the preparation of his mission and of the present report, he used material from official sources, as well as from many United Nations and civil society sources. He would, in particular, like to refer to the report of his predecessor on his visit to the Islamic Republic of Iran in 1995 (E/CN.4/1996/39/Add.2) and the report of the Working Group on Arbitrary Detention on its visit in February 2003 (E/CN.4/2004/3/Add.2).

4. The Special Rapporteur wishes to thank the authorities for their full cooperation throughout the mission. In particular, the Special Rapporteur would like to acknowledge the receipt of information from the Office of the Prosecutor for the Province of Tehran on individual cases of alleged violations of the right to freedom of opinion and expression, mentioned in communications he had sent to the Government since 2000. The Special Rapporteur would like to highlight that this information will be duly reflected in his report on country situations (which will be issued in document E/CN.4/2004/62/Add.1).

5. The Special Rapporteur also wishes to acknowledge the assurances of the Government that individuals and groups who cooperated with him, in particular individuals who met with him during his visit and those who have shared information with him, would not face any kind of reprisals or intimidation from the Government, other State institutions or private individuals and groups.

6. In this respect, the Special Rapporteur expresses his concern at reports that one person with whom he met during his visit, Ahmad Batebi, disappeared on 8 November 2003, just after the meeting. The Special Rapporteur was informed that Mr. Batebi, who was on leave from Evin prison at the time of the meeting with him, had been arrested and returned to Evin prison before the end of his leave period.

7. It is also reported that Mr. Batebi, who was sentenced in 2000 to a 15-year prison term after his participation in the July 1999 demonstrations, was in addition charged with "participation in illegal associations" after his arrest on 8 November. The Special Rapporteur is deeply concerned that these charges might be a reprisal against Mr. Batebi for his cooperation with an independent expert of the United Nations Commission on Human Rights.

8. The Special Rapporteur therefore calls on the Government to comply with Commission on Human Rights resolution 2003/9, which "urges Governments to refrain from all acts of intimidation or reprisal against (a) those who seek to cooperate or have cooperated with representatives of United Nations human rights bodies, or who have provided testimony or

information to them; (b) those who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms and all those who have provided legal assistance to them for this purpose; (c) those who submit or have submitted communications under procedures established by human rights instruments; and (d) those who are relatives of victims of human rights violations".

9. The Special Rapporteur wishes to express his thanks to the United Nations Resident Coordinator for his support, as well as to the United Nations Development Programme and the United Nations Information Centre in Tehran for their logistical and substantive assistance in the preparation of and during the mission.

I. PROGRAMME OF THE VISIT

10. The delegation met with senior officials from the executive, legislative and judicial branches of the Government, including the Deputy of the President for legal and parliamentary affairs; the Minister of Culture and Islamic Guidance; the Deputy Foreign Minister for Legal and International Affairs; the Deputy Interior Minister for Security Affairs; the Deputy Minister of Post, Telegraph and Telephone; the Adviser to the President and Head of the Centre for Women's Participation; the Director-General for international legal affairs of the Ministry for Foreign Affairs; the Deputy Head of the Judiciary for international affairs; the Tehran Prosecutor-General of Public and Revolutionary Courts; the Secretary of the Supreme Council for Judiciary Development; the Deputy of the Supreme Court of Justice and Head of the Office of the Prosecutor-General; the Head of the Courts of Justice of Tehran Province; the Head of the Press Court; the Head of the Second Branch of the Special Clerical Court; the Director of the National Prisons Office; and the Managing Director of the Islamic Republic News Agency (IRNA).

11. The Special Rapporteur regrets that, although arrangements were made in advance, he was not able to meet with representatives of the Council of Guardians and the Islamic Republic of Iran Broadcasting (IRIB).

12. The delegation also held meetings with the Islamic Human Rights Commission; the Article 90 Parliamentary Commission of the Majlis, including with members of the Commission's Committee on Human Rights; the Legal and Judiciary Commission of the Majlis; the Tehran Bar Association; the Association of Iranian Journalists; and with other members of civil society organizations and families of prisoners.

13. The delegation was also able to meet with seven detainees at Evin prison (Hashem Aghajari, Reza Alijani, Abbas Deldar, Akbar Ganji, Iraj Jamshidi, Mehrdad Lohrasbi and Samiak Pourzand). He regrets that, owing to lack of time, he was not able to meet with three detainees (Taghi Rahmani, Hoda Saber and Behruz Javid Tehrani) and that he was not authorized to meet with Abbas Abdi on the ground that his name was not mentioned in the list sent to the prison authorities prior to his visit.

14. The Special Rapporteur notes with appreciation in this respect that a number of detainees whom he had sought to meet were released before his mission, and that in particular

Dariush Zahedi was released from Evin prison two days prior to his visit as a gesture of goodwill by the authorities.

15. However, the Special Rapporteur notes that, despite an express commitment by officials in the judiciary, including the Deputy Head of the Judiciary for international affairs, Mr. Larijani, to release Reza Alijani from Evin prison before the departure of the Special Rapporteur from Iran on 10 November 2003, reports indicate that Mr. Alijani is still detained. The Special Rapporteur regrets in this respect that at the time of the finalization of his report, the Government had not yet responded to his letter asking for official information on this case.

II. INSTITUTIONAL AND LEGAL FRAMEWORK

A. Institutional framework

16. According to the Constitution, the Head of State is the Leader, among whose duties and powers are "the delineation of the general policies of the Islamic Republic of Iran", and supervision over their "proper execution"; he is the supreme commander of the armed forces and is responsible for the appointment and dismissal of the members of the Council of Guardians and the heads of the judiciary, the Military, the Revolutionary Guards and IRIB. He also confirms the suitability of new candidates for the Presidency and signs the decree formalizing the election of the President (art. 110). The Leader is elected by the Assembly of Experts, (art. 107), which is composed of 86 clerics elected by universal suffrage every eight years; the candidates for election to the Assembly have to be approved by the Council of Guardians. Article 111 of the Constitution provides that the Leader can be dismissed by the Assembly of Experts if he loses his qualifications or is unable to carry out his functions.

17. The President, who is elected by universal suffrage every four years, has "the responsibility for implementing the Constitution and acting as the head of the executive, except in matters directly concerned with the Office of the Leadership" (art. 113). This provision makes the executive branch, which has only a residual competence vis-à-vis the competences of the Leader, subordinate in effect to the Office of the Leadership.

18. The legislative branch is composed of the Islamic Consultative Assembly (Majlis Shura-e Islami), which is elected by universal suffrage every four years, and the Council of Guardians. The Majlis is responsible, inter alia, for drafting legislation, approving government bills and ratifying treaties. In accordance with article 90 of the Constitution, it also examines and investigates written complaints by the public against its own work and the work of the executive and the judiciary. This is done by its "Article 90 Commission".

19. The Council of Guardians acts in effect as the upper house of Parliament. It is composed of 12 members appointed, directly or indirectly, by the Leader - 6 are appointed by the Leader among the "*fuqaha*" (clerical elite) and the other 6 by the Majlis from a list of non-clerical jurists recommended by the head of the judiciary (who is appointed by the Leader). The Council of Guardians monitors, with a right of veto, the compliance with the Constitution and Shariah of all legislation adopted by the Majlis and endorses candidates for the Majlis after reviewing their suitability. The broad supervision of the Council of Guardians over the work of the Parliament and, to a certain extent, over its composition through the approval of candidates prior to

parliamentary elections gives it, and ultimately gives the Office of the Leader, a predominant role over the Parliament.

20. Another institution, which is halfway between the Office of the Leader and the legislative branch, is the Council for the Discernment of Expediency for the Interest of the System, or Expediency Council, which was established in 1988 by the then Leader, Ayatollah Khomeini. This Council, composed of 31 members appointed by the Leader, has two functions: to advise the Leader and to arbitrate conflicts between the Majlis and the Council of Guardians on the constitutionality and/or conformity with Islamic principles of a law adopted by the Majlis. One major concern generally expressed with respect to the Council of Guardians and the Expediency Council, a concern which the Special Rapporteur shares - is that, although these Councils are not elected, they are entrusted with extremely wide competences and powers over the democratically elected Majlis, in particular with regard to its legislative work.

21. The judiciary is, according to the Constitution (art. 156) "an independent power" responsible for the administration of justice, i.e. for all judicial, administrative and executive matters relating to the judiciary. In this framework, the head of the judiciary is responsible, inter alia, for the appointment, dismissal, assignment and promotion of judges (art. 158). In particular, he is responsible for the appointment of the President of the Supreme Court and the Prosecutor-General, who shall be selected among "Mojtaheds" (doctors in religious law). The Head of the judiciary shall also be a "Mojtahed", directly appointed by, and accountable to, the Leader (arts. 110 and 157). Therefore, control is exercised to a large extent by the Office of the Leader over the judiciary as an institution, and over individual judges.

B. Legal framework for the protection of the right to freedom of opinion and expression

22. In this section, the Special Rapporteur will briefly consider some aspects of the national legal framework governing the protection of the right to freedom of opinion and expression in the Islamic Republic of Iran.

1. The Constitution

23. The Constitution contains a number of general provisions dealing with human rights and civil and political liberties. In particular, article 3 (7) states that the Government is required to "direct all its resources … to ensuring political and social freedoms within the context of the law", and article 20 states that "All members of the nation, 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.

24. However, it does not specifically protect the right to freedom of opinion and expression as "the right to hold opinions without interference" and "the right to freedom of expression [which] shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media [of choice]", as it is defined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

25. Nonetheless, the Special Rapporteur notes that some constituent elements of the freedom of opinion and expression are recognized in the Constitution, such as freedom of belief (art. 23), freedom of expression for publications and the press (art. 24), freedom of association (art. 26), freedom of assembly and the right to hold public gatherings (art. 27) and freedom of speech and expression of ideas on radio and television (art. 175).

2. Other laws with a direct impact on the exercise of the right to freedom of opinion and expression

26. The Press Law, passed in April 2000 by the fifth Majlis - just before the inauguration of the sixth (reformist) Majlis - contains provisions which restrict freedom of expression. In particular, the new law in its article 12 requires the Press Supervisory Board to ban a publication that violates articles 6, 24 to 29 and 32 of the Law, which deal with issues such as "publishing atheistic articles or issues which are prejudicial to Islamic codes" or which promote "subjects which might damage the foundation of the Islamic Republic", national security, dignity and interests, insulting Islam or offending the Leader and religious authorities, publishing libel against officials or institutions or insulting legal or real persons who are "lawfully respected", publishing writings "containing apostasy and matters against Islamic standards", and quoting articles from "the deviant press, parties and groups which oppose Islam (inside or outside the country)".

27. In the same article, the new law also gives to Revolutionary Courts the competence to deal with cases of publication of classified documents or instigation to commit crimes against national security or against the country's foreign policy. In this respect, the Special Rapporteur notes with great concern the use of Revolutionary Courts to deal with press-related cases. Indeed, these courts - which were created by edict of the then Leader after the revolution to try high-level officials of the former regime and confirmed by the law on Public and Revolutionary courts of 1992, but have no basis in the Constitution - have jurisdiction over serious security-related crimes, such as offences against the internal and external security of the State, conspiracy, carrying arms, sabotage, use of terrorism, espionage and smuggling, or offences linked to illegitimate appropriation of wealth which, in the view of the Special Rapporteur, are not opinion- or press-related offences.

28. Another provision of the new law bars "members of anti-revolutionary forces …, those who have been convicted by a Revolutionary Court and all persons [who] indulged in anti-establishment activities" from pursuing press-related activities and/or holding posts in any press institution. This provision gives cause for grave concern, as it allows barring journalists from exercising their profession on the basis of extremely vaguely defined offences.

29. In addition, the Penal Code (Islamic Punishment Act) contains a number of provisions which have a direct negative impact on the exercise of the right to freedom of opinion and expression. These provisions deal with:

(a) The violation of national security: articles 498 and 499 provide for prison sentences ranging from 2 to 10 years for anyone "forming or joining a group or association outside or inside the country which seeks to disturb the security of the country"; article 500 provides for prison sentences for "anyone who undertakes any form of propaganda against the State";

(b) Defamation: article 513 punishes by death or by a prison term of between one and five years "insult" against Islam; article 697 punishes defamation by a prison term of between one month and one year; and article 609 punishes with a fine, 74 lashes or a prison sentence of between three and six months criticism of a number of State officials in connection with carrying out their duties;

(c) The publication of false news: article 698 punishes by flogging and/or imprisonment the intentional creation of "anxiety and unease in the public's mind", "confusing people's minds", "false rumours", or the publication of falsehoods.

30. The Special Rapporteur notes in this respect that efforts are being made by the current Majlis to define certain offences more precisely. For example, a law defining insult and defamation was adopted by the Majlis, but was rejected by the Council of Guardians. This law was brought by the Majlis for arbitration to the Expediency Council, which has not yet reviewed it. The practice shows that the Expediency Council has a tendency to either confirm the decisions of the Council of Guardians on constitutionality or on conformity with Shariah of progressive laws adopted by the Majlis, or not to take action, as the Council is not constrained by time limits in its review of laws brought to it for arbitration.

31. In addition, regarding the implementation of laws, the Special Rapporteur would like to stress that he has noted a number of factors that have a negative impact on, inter alia, the exercise of the right to freedom of expression. One the one hand, the system of appointment of judges makes it a requirement for "secular" jurists to train in religious law to qualify as judges, while religious jurists are not required to train in secular law to become judges. Therefore, many judges apply civil and public legal norms and concepts only in regard and with reference to Islamic law.

32. Another concern of the Special Rapporteur regarding the implementation of laws relates to the alleged practice of the judiciary of assigning political cases (mostly press- and opinion-related cases) to a number of first instance and appeal courts which are either known for their severe stance vis-à-vis press- and opinion-related offences, or take orders from the higher judiciary.

33. Finally, the Special Rapporteur notes that many press offences or offences relating to the peaceful expression of an opinion listed in the Penal Code are punishable by prison terms and/or flogging. With respect to the former, the Special Rapporteur is of the view that the provision for prison terms for press- or opinion-related offences is clearly disproportionate with the effective exercise of the right to freedom of opinion and expression and should not be permissible.

34. With respect to the provisions governing corporal punishment for press- or opinion-related offences, the Special Rapporteur is of the view that these are contrary to international human rights norms and standards, and he wishes to recall Commission on Human Rights resolution 2003/32 on torture, in which Governments are reminded that "corporal punishment … can amount to cruel, inhuman or degrading treatment or even torture". In addition, in its general comment No. 20 on article 7 of ICCPR, the Human Rights Committee considers that the

prohibition of torture extends to the prohibition of "corporal punishment … ordered as punishment for a crime …".

III. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. The written press

35. The Special Rapporteur notes with satisfaction the important number of newspapers and magazines published in Iran, as well as the dramatic increase in the number of requests for the registration of publications (according to the Ministry of Islamic and Cultural Guidance, an average of 99 per cent of requests to publish newspapers and magazines are granted).

36. As far as books are concerned, the Special Rapporteur notes that, according to official statistics from the Ministry of Islamic and Cultural Guidance, 35,000 titles were published in 2002, against 1,700 in 1978.

37. The Special Rapporteur welcomes reports that a draft bill is being prepared by the Majlis on the establishment of an independent press council to monitor the activities of journalists and the written media.

38. The Special Rapporteur also appreciates the fact that generally there is no prior censorship, in law and in practice, of newspapers and magazines.

39. However, he notes in this respect that IRNA, which is directly subordinate to the authority of the Government, is governed by five principles (preservation of State secrets and national security; public morality; strengthening linguistic and religious solidarity; human dignity; and not publishing information prohibited by law) and that there is rigorous monitoring by IRNA editorial supervisors of articles written by journalists before they are published, in order to ensure that all published articles are in line with these five principles. This, in the view of the Special Rapporteur, amounts to prior censorship and is contrary to the effective exercise of the right to freedom of opinion and expression.

40. The Special Rapporteur takes note that, with the reform of the judicial system, press cases will henceforth be investigated by three judges from the Office of the Prosecutor and, after indictment, heard by three judges. In addition, article 168 of the Constitution provides that "Political and press offences will be tried openly and in the presence of a jury, in courts of justice". The Special Rapporteur considers that this provides procedural guarantees for the hearing of press offences, although reports indicate that in most cases such offences are in practice heard in closed trials, either by decision of the competent judge or by effectively preventing the public from accessing the courtroom.

41. With respect to legislation governing the activities of the press, the Special Rapporteur is very concerned at the extremely restrictive provisions of the Press Law, as well as at the numerous provisions in the Penal Code restricting freedom of opinion and expression, as mentioned in section II.B above. The Special Rapporteur considers that the restrictions on freedom of opinion and expression permissible under these two laws are far too extensive to

enable an effective exercise of the right to freedom of opinion and expression in the written press.

42. In addition, the Special Rapporteur was informed that over the past few years, the judicial authorities have frequently had recourse to the 1960 Preventive Restraint Act to temporarily ban newspapers on the basis of articles deemed to be contrary to the law. The Special Rapporteur notes that the Act aims at avoiding the recurrence of serious crimes (hooliganism, murder, etc.), and that it is not aimed at press offences. A number of temporary bans have reportedly been imposed on newspapers under the Act, some of which have lasted for more than three years and are still in force, without a trial and a court decision.

43. The Special Rapporteur was informed that a law was adopted by the Majlis banning the use of the Preventive Restraint Act against newspapers, and he notes with concern that the law was rejected by the Council of Guardians on the grounds that the interpretation of the Act in this law excluding the press from its implementation was "discriminatory".

44. Furthermore, the Special Rapporteur feels that there is a culture of restriction on press reporting, in particular among officials in the judiciary. In particular, he was struck by the statement of the Head of the Courts of Justice for Tehran Province, who told him that the press was not the forum to discuss all issues, and that it should only reflect "proper" ideas.

45. The Special Rapporteur notes that as a result of repressive legislation applicable to the press and of a perception that there is a repressive culture within the judiciary vis-à-vis press reporting, there is in practice systematic repression of any expression in the press criticizing the establishment, in particular religious authorities, calling for reform, or in any other way deemed unlawful. The Special Rapporteur also notes that the great majority of cases of prosecution of press offences brought to his attention have resulted in the ban (temporary or definitive) of the publications concerned and the sentencing of the journalists concerned to prison terms. Statistics of the Office of the Prosecutor General for Tehran indicated that 81 publications were closed down - 59 after judicial decision and 22 after decision by the Press Supervisory Board - and unofficial statistics indicate that 98 publications were closed in the past five years - 59 after court decision and 39 after a decision of the Press Supervisory Board or after a temporary ban under the Preventive Restraint Act. Unofficial statistics also indicate that 23 journalists are currently imprisoned in Tehran.

46. While noting that such a framework is definitely not conducive to an effective exercise of the right to freedom of opinion and expression, the Special Rapporteur also considers that it creates a climate of self-censorship among journalists and contributors to newspapers and magazines.

B. Journalists and intellectuals

47. The Special Rapporteur notes that there are many cases of journalists and intellectuals being prosecuted under various provisions of the Press Law or the Penal Code. It seems that the great majority of cases are initiated by the authorities (the Council of Guardians, the Revolutionary Guards, the Basij, IRIB, the prosecutors or, in the provinces where the institution

of the Prosecutor has not yet been re-established, directly by judges), and not by a complaint from a private individual or group.

48. Having examined all the cases brought to his attention, the Special Rapporteur has identified the following pattern in the process applied to such cases:

(a) Most cases relate to an alleged violation of national security provisions, or to provisions on insult to Islam or to religious figures in the Press Law and the Penal Code;

(b) Access to a lawyer is allegedly permitted only after an extremely long period of incommunicado detention (which can reportedly extend from 30 days to, in some cases, more than one year). In this respect, the Special Rapporteur expresses his concern that, according to Commission on Human Rights resolution 2003/32, "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture";

(c) After indictment, there is sometimes a provision for release on bail, but the amounts demanded are reportedly extremely high;

(d) In most cases, hearings take place in closed trials by a Revolutionary Court, in violation of article 168 of the Constitution, and there are reports that in some cases, witnesses called by the defence were not allowed in the court and the files transmitted to the defence lawyers were not complete;

(e) In all cases brought to the attention of the Special Rapporteur, extremely severe sentences were imposed on the defendants - prison terms of several years, sometimes lashes and, in rare cases, the death penalty.

49. The Special Rapporteur is seriously concerned about this pattern, which indicates that, in addition to numerous prosecutions on the basis of substantive legal provisions severely restricting the right to freedom of opinion and expression, many of which can be interpreted arbitrarily on account of their vagueness, the procedural rights of the defendants are not respected.

50. In order to illustrate his concern, the Special Rapporteur would like to refer to a few of the cases of intellectuals and journalists brought to his attention. For example, Hashem Aghajari, a history professor at the Tarbiat Modares University in Tehran, was arrested on 8 August 2002 after a speech delivered on 19 June 2002 in Hamadan entitled "Islamic Protestantism". Mr. Aghajari was sentenced on 7 November 2003 to 74 lashes, five years' imprisonment, five years' suspension from teaching, five years' deprivation of his civil rights and to the death penalty, for insult against Islam and religious leaders, apostasy and heresy. It seems that the death sentence was later repealed by the Supreme Court, although it is reported that IRIB reports and some officials in the judiciary continue to refer to his death sentence, and the case has been referred back to the court in Hamadan which has reportedly not reviewed it yet. In the meantime, Mr. Aghajari is still detained in Evin prison in Tehran.

51. The Special Rapporteur would also like to refer to the case of the intellectuals who participated in the April 2000 Berlin Conference. During the conference, some provocateurs reportedly disrupted the discussions, which were filmed by IRIB and broadcast on public television in Iran. As a result, many intellectuals who participated in the Conference, including Hassan Yosefi Eshkevari and Akbar Ganji, were arrested upon their return in Iran and charged with "harming national security" and "spreading propaganda against the regime". They were sentenced to seven and six years of imprisonment, respectively.

52. Samiak Pourzand, a journalist and film critic, was arrested on 24 November 2001 by the intelligence services, presumably in connection with his position as manager of the *Majmue-ye Farrhangi-ye Honari-ye Tehran*, a cultural centre for writers, artists and intellectuals, and with his articles, which are critical of the regime. Mr. Pourzand was detained in solitary confinement for four months after his arrest, without access to a lawyer or medical assistance, although he is 72 years old and has health problems. On 3 May 2002, he was sentenced by the Tehran Press Court to 11 years' imprisonment on charges of "undermining State security through his links with monarchists and counter-revolutionaries", allegedly on the basis of "confessions", which are thought to have been extracted under duress, and at the end of a closed trial where he was represented by court-appointed lawyers. Also, in July 2002, Mr. Pourzand was apparently forced to appear on State television in order to make a public confession, which seems to have been obtained under duress.

53. As far as journalists are concerned, the Special Rapporteur wishes to refer to the cases of Abbas Abdi and Iraj Jamshidi, which provide concrete illustrations of the pattern described above. Mr. Abdi, a journalist and director of the *Ayandeh* public opinion firm, was arrested on 4 November 2002 on charges of "having received money from either the United States polling firm Gallup or a foreign embassy", after the publication of an *Ayandeh* poll indicating overwhelming support for a resumption of Iran's ties with the United States of America. He was sentenced on 2 February 2003 by Press Court No. 1410 to eight years of imprisonment. He seems to have spent a long period in incommunicado detention and his lawyer is said to have limited access to him.

54. Mr. Jamshidi, editor-in-chief of the economic daily *Asia*, was arrested on 6 July 2003 with his wife, Saghi Baghernia, the newspaper's managing editor. Ms. Baghernia was reportedly released on bail on 7 July, while Mr. Jamshidi was placed in incommunicado detention, initially at Evin prison in Tehran and on 9 July at an undisclosed location. They were arrested on charges of "publicity against the regime", after the newspaper carried a photograph of People's Mujahideen leader Maryam Rajavi on 5 July alongside an article published earlier by IRNA. In parallel, the newspaper was suspended on the order of the Tehran Public Prosecutor, Said Mortazavi. Mr. Jamshidi was transferred back to Evin prison the day before he met with the Special Rapporteur on 9 November, after having spent 18 weeks in solitary confinement at an undisclosed location, and he is now awaiting trial.

C. Students

55. During his visit, the Special Rapporteur also enquired about the situation of students, in particular in relation to the events of July 1999 and June/July 2003, during which numerous

students were attacked, arrested, tried and sentenced for having participated in demonstrations calling for reform and protesting against the socio-economic situation in the country.

56. The Special Rapporteur was informed that, during both the 1999 and the 2003 events, students demonstrating peacefully were reportedly attacked by members of the Basij (a paramilitary group under the authority of the Revolutionary Guards, which is represented in each university through a Students Basij Organization) and of the Ansar Hezbollah (a group dependent on the authority of the Office of the Leader) and many were arrested.

57. It seems that a number of those arrested (it was not possible to have precise statistics) were charged with "threats against national security", "confusing people's minds" and/or "propaganda against the State", after long periods of incommunicado detention - in Tehran, mostly in block 325 of Evin prison, which is allegedly the headquarters of the Supreme Command of the Revolutionary Guards, and in sector 209 of Evin prison*, during which they were reportedly subjected to long and repeated periods of oral and written interrogation, and to ill-treatment.

58. The process is then very similar to the pattern identified in the cases of journalists and intellectuals as cited above. Students prosecuted for their participation in the 1999 and 2003 demonstrations were reportedly not allowed the assistance of a lawyer until their indictments and - in the cases of those who have already been tried - the trials by a Revolutionary Court were closed and often very short.

59. The Special Rapporteur is seriously concerned that in most cases extremely heavy sentences were pronounced against students; in particular, a number of students arrested after the 1999 demonstrations such as Mehrdad Lohrasbi and Abbas Deldar, whom he met in Evin prison, and Ahmad Batebi were sentenced to death, but the sentences were commuted on appeal to 15 years' imprisonment.

60. In view of this situation, the Special Rapporteur is deeply concerned about the situation of students indicted after the 2003 demonstrations, most of whom are awaiting trial and who are at risk of being condemned to very heavy sentences.

61. It is also reported that in parallel to penal prosecutions, the case of these students was referred to the disciplinary committees of their respective universities for a decision on their possible expulsion from university. These committees are reported to keep files on students relating mainly to the students' political activity and religious behaviour, on the basis of files kept by the Students Basij Organization and the "Guard forces", which are said to be representatives of the Ministry of Information (intelligence) at universities. In this connection, the Special Rapporteur is concerned at reports that these files are used in the selection of public employees.

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* On the basis in particular of the findings of the Working Group on Arbitrary Detention, section 209 seems to be a sector of the prison under the authority of the intelligence services through which most prisoners, in particular political prisoners, go through during their pre-trial detention (see E/CN.4/2004/3/Add.2, paragraph 32 (3)).

62. The Special Rapporteur was also informed that a number of students' organizations recently sent a open letter to the Secretary-General of the United Nations, in which they reported on the human rights situation in the country, in particular in relation to freedom of opinion and expression, trade union rights, women's rights, etc. Reports seem to indicate that those students who had signed the letter were later accused by the Prosecutor of Tehran of "creating disorder", "threatening the national security" and "insulting the Leader". It seems that the cases against these students have not yet been tried. However, there are fears that they will receive heavy sentences.

D. Lawyers

63. Another concern of the Special Rapporteur relates to reports that lawyers do not benefit from immunity from prosecution with regard to what they say in court in defence of their clients or for statements they make on a case. It is reported that often, the legal provision used to prosecute lawyers is the "dissemination of falsehoods".

64. In addition, the Special Rapporteur was informed that article 187 of the Third Development Plan (2000-2004) vests the judiciary with the authority to deliver annual licences to new lawyers, licences which were until then issued by the bar associations in each province of the country. The reason invoked in the Plan is that this will favour an increase in the number of lawyers in the country, create employment and facilitate people's access to lawyers. As far as the right to freedom of opinion and expression of lawyers is concerned, the Special Rapporteur believes that this creates two problems: the first is that the lawyers concerned (i.e. those who have been granted a licence since the entry into force of the Third Development Plan in 2000) are extremely cautious as to cases they accept to defend, especially political cases, and the second is that they will be even more cautious as to what they say in defence of their clients, not only for fear of penal prosecutions, but also to have their annual licences renewed by the judiciary.

65. In the light of information he has received, the Special Rapporteur would like to mention the case of Nasser Zarafchan, a human rights defender and lawyer. Mr. Zarafchan, a lawyer for the families of the four intellectuals and opposition figures whose killings in 1998 were orchestrated by the intelligence services, was arrested on 16 December 2000 by the Judicial Organization of the Armed Forces - which does not have jurisdiction over civilians - because of an interview he gave in which he criticized the investigation and complained that information was missing from the files given to the defence lawyers by the judge.

66. Mr. Zarafchan was charged with "dissemination of confidential information", although the case, including its political dimension, was widely publicized in the country and abroad and with "possession of alcohol and weapons" (a charge widely believed to have been fabricated), and sentenced to two years in prison on the first charge, to three years on the second and to 70 lashes. He was also banned from exercising his profession as a lawyer, following a closed trial by a military court which, however, under article 172 of the Constitution has competence over "crimes related to the special military or police duties of the members of the army, the police and the Islamic Revolutionary Guard Corps", and not over civilians.

67. The Special Rapporteur is very concerned about reports that those actions are said to have been taken to prevent Mr. Zarafchan from defending the families of the victims and to pressure him not to divulge publicly information on those responsible for the murders.

E. Parliamentarians

68. With regard to parliamentarians, the Special Rapporteur notes that the statutes of the Majlis provide for immunity from prosecution regarding statements made in the context of their parliamentary duty. However, in practice, there have been a number of cases where parliamentarians were prosecuted for statements they made in the Majlis.

69. The Special Rapporteur also notes that, in the context of the forthcoming elections to the Majlis in February 2004, fears have been expressed that the power of the Council of Guardians, with its right of veto, to screen candidates for election might be used as a form of reprisal against members of the Majlis who have been either too critical of religious leaders and the establishment, or too vocal in calling for reform.

70. In this context, the Special Rapporteur notes, as a side point, that article 99 of the Constitution stipulates that the Council of Guardians "shall be charged with responsibility for supervising the elections" of the Assembly of Experts, the President and the Majlis. He notes that a Government Bill adopted by the Majlis attempted to define this provision by, inter alia, requiring that only objective criteria be applied in the screening of candidates, as opposed to the subjective criteria, such as "proper religious thinking" or "proper behaviour", which are reportedly currently applied by the Council of Guardians. This draft law was rejected by the Council of Guardians.

F. The case of Zahra Kazemi

71. The Special Rapporteur would like to make specific reference to the case of Zahra Kazemi, firstly because of its gravity, secondly because of its exceptional nature, and thirdly, because of the concerns raised by the way the case is being handled by the authorities.

72. Mrs. Kazemi, an Iranian-Canadian photojournalist and film-maker, was arrested on 23 June 2003 while she was taking pictures of families of detainees protesting in front of Evin prison against the detention of their relatives for their participation in the recent demonstrations. She had obtained a permit to take pictures during her stay in Iran in June and July from the Foreign Press Service of the Ministry of Culture and Islamic Guidance. After her arrest, Mrs. Kazemi was interrogated for four days, without any access to a lawyer, by officials from the Prosecutor's Office, including the Deputy Prosecutor and the Prosecutor, Said Mortazavi; the Intelligence Unit of the Law Enforcement Forces; and the Ministry for Information (intelligence). On 27 June, she was taken unconscious to the hospital, where she remained in a coma until 10 July, when she died. Mrs. Kazemi's family was informed of her whereabouts only on 6 July and of her death on 12 July, when the Government made the official announcement through IRNA.

73. Preliminary reports from the Office of the Prosecutor indicated that Mrs. Kazemi died from a digestive disorder, but an independent medical examination was not allowed. This statement

provoked waves of protests, both inside and outside the country, as all non-governmental reports available indicated that Mrs. Kazemi was ill-treated during her detention, resulting in her death.

74. On 13 July, President Khatami announced that an inquiry into Mrs. Kazemi's death would be carried out by a Ministerial Inquiry Committee composed of representatives of the Ministries of Culture and Islamic Guidance, Justice, Information (intelligence), the Interior and Health. On the same day, the Director General of the Foreign Press Service of the Ministry of Culture and Islamic Guidance announced that Mrs. Kazemi died as a result of a stroke. However, he subsequently wrote a letter to the Majlis indicating that he was pressured by Prosecutor Mortazavi to make that statement, which was false. On 16 July, Vice-President Abtahi announced that Mrs. Kazemi had died as a result of a skull fracture after sustaining a blow while in custody, and on 21 July, the report of the Ministerial Inquiry Committee confirmed this statement.

75. On that basis, the case was assigned to Judge Javad Esmaeili on 25 July. On 30 July, the Article 90 Commission of the Majlis decided to launch an inquiry into Mrs. Kazemi's death. On 30 August, before the conclusion of the inquiry of the Article 90 Commission of the Majlis, two intelligence officials were arrested and charged with "quasi-intentional murder", while no charges were brought against the Office of the Prosecutor, despite the fact that most reports indicated that it was involved in Mrs. Kazemi's death.

76. On 28 October, the Article 90 Commission of the Majlis released its report, which concluded that Prosecutor Mortazavi and other members of the judiciary were directly involved in Mrs. Kazemi's death, having subjected her to violent interrogations in Evin prison. The Commission also accused them of attempting to cover up the cause of her death.

77. During his visit, the Special Rapporteur made requests for information on the result of inquiries into, and the investigation of, Mrs. Kazemi's death to several officials of the Government and the judiciary, including Vice-President Abtahi, the Tehran Prosecutor, and the Article 90 Commission of the Majlis. He notes with regret and concern that he has received no substantive response thereto, as all he was told was that the case was being investigated by a court, which would take into account the inquiries carried out. The Special Rapporteur is not satisfied with these answers, especially as the information he received indicates that up to now, although there seem to have been comprehensive inquiries into the circumstances of Mrs. Kazemi's death, including who might be responsible, there seem to have been no comprehensive public report thereon, as the reports of both the Ministerial Inquiry Committee and the Article 90 Commission of the Majlis are alleged to have been partially censored before being released to the public.

78. The Special Rapporteur notes with great concern that Mrs. Kazemi was killed after she was arrested for performing her work as a journalist. He fears that, in the present circumstances, there will be no adequate and satisfactory response from the authorities to this odious crime and that the chain of responsibility will not be elucidated, at least not publicly, thus allowing the persons responsible for Mrs. Kazemi's death to remain unpunished.

79. The Special Rapporteur is concerned that, by failing to fully disclose the findings of the comprehensive inquiries carried out, the authorities are favouring a climate of impunity for

officials of law enforcement agencies and send a message that officials are not accountable to the people for their acts.

80. On a related note, the Special Rapporteur appeals to the authorities to allow Mrs. Kazemi to be buried in Canada, in accordance with the express wish of Mrs. Kazemi's son, Stephan Hachemi, and her mother, Ezzat Kazemi.

G. Other groups

81. The Special Rapporteur is also concerned at the situation of writers and artists whose works are subjected to prior censorship, as all works of arts - from books, plays and movies to exhibitions and other artistic events - must obtain prior authorization from the Ministry of Islamic Guidance and Culture on the basis of rules adopted by the Supreme Council of Culture, appointed by the Leader.

82. In addition, in a number of cases in which the authorization was granted, some books, plays, movies and exhibitions were banned or closed down by a judge, and the artists, publishers, translators and editors, as the case may be, were prosecuted. The Prosecutor General for the Province of Tehran indicated that sometimes, even though the authorization was legally granted on the basis of the rules defined by the Supreme Council for Culture, the judiciary feels that there is a need to investigate the case to determine its compatibility with these rules, and a judge has the competence to revoke an authorization on this basis.

83. The situation of the Baha'i is also a cause of concern for the Special Rapporteur. Noting that, although the Baha'i are the most important religious minority in Iran (approximately 300,000-350,000 Baha'i are said to be living in the country); however, according to article 13 of the Constitution, the only religious minorities that are granted the freedom to perform their religious rites and practise their religion in personal status matters and religious education are Iranian Zoroastrians, Jews and Christians, the only recognized religious minorities.

84. The Special Rapporteur notes that, on this basis, members of the Baha'i community are barred from expressing themselves as Baha'i. In addition, the Special Rapporteur received reports that members of the Baha'i community are routinely harassed, arrested and sometimes sentenced to long periods of imprisonment, either for "apostasy" or "association with Baha'i institutions".

H. Political activity

85. Freedom of opinion and expression is central to any form of democratic political life. In this respect, the Special Rapporteur notes with satisfaction that since the revolution, presidential parliamentary and local elections, as well as the election of the Assembly of Experts, have been held by secret ballot at regular intervals.

86. According to general comment No. 25 of the Human Rights Committee on article 25 of ICCPR, "[t]he effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election … must be justifiable on objective and reasonable criteria. Persons

who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as … by reason of political affiliation". The Special Rapporteur is of the view that the practice of the Council of Guardians of screening, mainly on the basis of subjective criteria, the candidates to the election of the Majlis - the constitutionality of which is questionable as it does not correspond to the letter of article 99 of the Constitution (see section II.E above) - is an impediment to the effective exercise of the right to take part in the conduct of public affairs and to the free expression of voters.

87. In addition, the Special Rapporteur received reports that members of opposition political parties or organizations routinely face harassment or are prosecuted by the authorities, thereby creating an atmosphere of intimidation vis-à-vis involvement in opposition political activity.

88. In particular, the Special Rapporteur was informed that 14 members of the Democratic Front of Iran are reportedly imprisoned in Tehran, especially in connection with the July 1999 events. Similarly, reports indicate that some members of the National Religious Movement are also imprisoned for the peaceful expression of their opinion.

IV. CONCLUSIONS AND RECOMMENDATIONS

89. **The Special Rapporteur wishes to emphasize that the protection of the right to freedom of opinion and expression is at the heart of the promotion and protection of human rights. In this respect, he recalls Commission on Human Rights resolution 2003/42, which states that "the effective promotion and protection of the human rights of persons who exercise the right to freedom of opinion and expression are of fundamental importance to the safeguarding of human dignity" and "that restrictions on the exercise of the right to freedom of opinion and expression could indicate a deterioration in the protection, respect for and enjoyment of other human rights and freedoms".**

A. Institutional framework

90. **During his visit to Iran, the Special Rapporteur found that there was a strong desire for reform among the civil society, and a parallel willingness to reform among members of Parliament and at the highest levels of the Government. He notes with satisfaction that in most of his discussions, an improved framework for the protection of human rights, and in particular of the right to freedom of opinion and expression, was identified as an essential initial step towards reform.**

91. **In this respect, the Special Rapporteur recognizes that the Government has on some occasions expressed its concern over a number of judicial decisions relating to intellectuals or journalists (for example in the cases of Mr. Aghajari and Mrs. Kazemi) and to the closure of certain newspapers.**

92. **He also acknowledges that the Government and the Majlis are very active at the legislative level, endeavouring to improve the existing legal framework, in particular in relation to a better protection of human rights and fundamental freedoms.**

93. **However, the Special Rapporteur notes that there are impediments to reform, in particular owing to various institutional locks on governmental, parliamentary and judicial processes resulting from the control exercised thereon by unelected institutions and bodies, which are not accountable to the people - such as the Expediency Council, the Council of Guardians, the Supreme Council for Culture and the Head of the judiciary - and which in practice have hitherto hampered reforms at the legislative level and in the functioning of institutions.**

B. Legal framework

94. **With respect to the legal framework, the Special Rapporteur deems it necessary to underline that, according to article 19, paragraph 3, of ICCPR, restrictions on the exercise of the right to freedom of opinion and expression are permissible only when they are necessary for respect of the reputations of others and for the protection of national security or of public order, or of public health or morals. Article 19, paragraph 3, also requires that such restrictions shall be provided by law, in particular to provide a clearly delimited frame of precisely identified and defined limitations to the freedom of expression.**

95. **The Special Rapporteur considers that many of the limitations provided for, in particular, in the Press Law and the Penal Code, do not conform to the permissible restrictions listed in article 19, paragraph 3, of ICCPR, firstly because many go beyond the clauses listed in this article, and secondly because in most cases the grounds for these limitations ("disturbing the security of the country"; "insult against Islam"; "criticism"; "propaganda" against the State; "issues prejudicial to Islamic codes"; "matters against Islamic standards"; "deviant press, parties and groups"; "anti-revolutionary forces"; "anti-establishment activities") lack any objective criteria and clear definition, and are therefore open to subjective and arbitrary interpretation by judges implementing them. In this respect, the Special Rapporteur wishes to recall that Commission on Human Rights resolution 2003/42 stresses the "need to ensure that unjustified invocation of national security … to restrict the right to freedom of expression and information does not take"**.

96. **With regard to the Press Law, the Special Rapporteur wishes to recall that in August 2000, the sixth (current) Majlis introduced progressive amendments to its provisions, but that discussion in the Majlis was prohibited by the unprecedented direct intervention of the Leader. In the view of the Special Rapporteur, this signals that the press in Iran is perceived by the establishment as a major agent for reform and that, as such, restrictive legislation governing its activities is purposefully utilized to muzzle it.**

97. **The Special Rapporteur therefore urges the authorities to review these legal texts in order to bring them into line with international human rights norms and standards relating to freedom of opinion and expression, and recommends that the provisions limiting the exercise of this right be given clear definitions in law, in the framework of article 19, paragraph 3, of ICCPR.**

98. **With respect to the provisions of the Press Law and the Penal Code limiting the exercise of the right to freedom of opinion and expression, the Special Rapporteur is of the**

view that cases of abuse of the right to freedom of opinion and expression, as defined in article 19, paragraphs 1 and 2, of ICCPR, call for civil suits.

99. **The Special Rapporteur therefore urges the authorities to review the Press Law and the Penal Code in order to repeal all criminal provisions dealing with the peaceful expression of one's opinion, including in the press. This, in the view of the Special Rapporteur, could be done in the context of the judicial reform currently under way in Iran which seeks, inter alia, to identify a number of offences for which alternative sentences to prison terms will be established. The Special Rapporteur urges the Supreme Council for Development of the Judiciary to consider including press- and opinion-related offences in this category of offence.**

100. **The Special Rapporteur notes that the use of Revolutionary Courts to try opinion-related offences clearly has a negative impact on the exercise of the right to freedom of opinion and expression. He refers to the conclusions of the Working Group on Arbitrary Detention, in particular in paragraph 65, paragraph 1, on the "reduction of the proliferation of judicial decision-making bodies", in which it notes that "owing to their jurisprudence, which is extremely restrictive of freedom of opinion and expression on the one hand and of due process and the right to a fair trial on the other, [Revolutionary Courts] are responsible for many of the cases of arbitrary detention for crimes of opinion".**

101. **As far as the use of the Preventive Restraint Act in relation to press offences is concerned, the Special Rapporteur recommends that the law adopted by the Majlis in this respect be re-examined as, in his view, press offences cannot be defined as most serious crimes, to which this Act should apply.**

102. **Another issue of concern to the Special Rapporteur is that of the interpretation of Islamic principles, especially when it comes to the definition of opinion-related offences. Many interlocutors mentioned to him the existence of a "red line", the crossing of which is considered a breach of Islamic principles. However, during his meetings, the Special Rapporteur found that the criteria applied to determine the point at which the "red line" is crossed varies extensively, even among clerics. In the view of the Special Rapporteur, there is an urgent need to define more clearly the contents of Islamic principles in the law, in order to avoid arbitrariness in their interpretation and lack of legal security in their implementation.**

103. **The Special Rapporteur is of the view that the adoption of a national Charter of Human Rights, elaborating on international human rights law and on article 20 of the Constitution, would be helpful in regard to a review of the legal framework in Iran, by providing a clear framework within which laws would be drafted. In this respect, he would like to draw the attention of the Government to the outcome of the seminar "Enriching the universality of human rights: Islamic perspectives on the Universal Declaration of Human Rights", organized jointly by the Office of the United Nations High Commissioner for Human Rights and the Organization of the Islamic Conference in November 1998, in the context of the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights, which highlighted the compatibility between Islamic law and its interpretation and Universal Declaration of Human Rights.**

C. Principal considerations and concerns

104. **With regard to the actual exercise of the right to freedom of opinion and expression, the Special Rapporteur notes the general perception that over the past few years, the situation in this regard seems to have deteriorated, as the number of publications closed down and the number of people arrested, prosecuted and sentenced for the peaceful expression of their opinion have increased. The Special Rapporteur is not in a position to state whether this increase is due to the adoption of a more severe stance by the authorities, in particular the judiciary, vis-à-vis these offences, or to the fact that since the election of a reformist President in 1997 and the inauguration of a reformist Majlis in 2000, there is less fear among the population to be vocal about reform and critical about the functioning of public institutions.**

105. **The Special Rapporteur also notes that many of the interlocutors he met during his mission told him that in Iran, "there is freedom of expression, but there is no freedom after expression". The Special Rapporteur would go even further, underlining that the climate of fear induced by the systematic repression of people expressing critical views against the authorized political and religious doctrine and the functioning of institutions, coupled with the severity and disproportion of the sentences imposed, leads to self-censorship on the part of many journalists, intellectuals, politicians, students and the population at large, thus in effect impeding freedom of expression.**

106. **In the present report, the Special Rapporteur identified a number of patterns relating to the prosecution, trial and punishment of press- and opinion-related offences. In this respect, he would like to endorse the conclusion of the Working Group on Arbitrary Detention regarding the situation of prisoners of conscience, when it noted that they were punished twice over: by having their right to freedom of opinion and expression infringed and by not benefiting from the basic guarantees for the right to a fair trial.**

107. **With particular reference to the use over prolonged periods of incommunicado detention in all of the cases of people detained for the expression of their opinion brought to his attention, the Special Rapporteur recalls Commission on Human Rights resolution 2003/32, in which the Commission "reminds all States that prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person".**

108. **In view of the above, the Special Rapporteur calls on the authorities to grant a complete amnesty to all prisoners prosecuted or convicted of press- and opinion-related offences. In particular, he welcomes the commitment expressed during his visit by the authorities to grant Mr. Pourzand a complete amnesty.**

109. **Noting with appreciation the standing invitation extended by the Government to all thematic mechanisms of the Commission on Human Rights and the cooperation of the authorities with the mechanisms that have visited the country, the Special Rapporteur**

wishes to underline that such visits should be seen as part of a process of dialogue between the authorities and United Nations human rights mechanisms, with a view to formulating informed and objective recommendations that could be considered as the basis for technical cooperation programmes. In this context, and taking into account his findings, the Special Rapporteur believes that a visit by the Special Rapporteur on the question of torture and the Special Rapporteur on the independence of judges and lawyers would be useful.

110. **As a first step towards the implementation of his recommendations, the Special Rapporteur urges the authorities to seek technical cooperation in the area of the administration of justice, in particular with respect to the training of judges and other law enforcement officials. Such training should particularly focus on the norms and standards governing the right to a fair trial and the effective exercise of the right to freedom of opinion and expression.**

111. **The Government is invited to report to the Special Rapporteur on the measures taken to implement his recommendations.**
