

## The Foreign Policy Centre Submission for the United Nations Universal Periodic Review: Iran

1. This submission wishes to draw attention to two significant human rights issues in Iran: systemic discrimination on the grounds of religion, ethnicity and gender; and the execution of minors. These two issues highlight significant breaches, not only of Iran's international treaty commitments but of its constitution, civil and penal codes. It draws on the findings of two recent Foreign Policy Centre (FPC) reports '*A Revolution without Rights: Women, Kurds and Bahai's searching for Equality in Iran*' by Geoffrey Cameron and Tahirih Danesh and '*From Cradle to Coffin: A Report on Child Executions in Iran*' by Nazanin Afshin-Jam and Tahirih Danesh. The key finding of both reports was that Iran is in clear breach of both its international human rights commitments and in many cases its own constitutional and legal protections. They also found that the Iranian penal code and constitution contained vague wavers to legal protections on religious grounds that contributed to a culture of arbitrary justice, where due process was regularly ignored and judicial autonomy contributed to severe human rights abuses.

### Overarching Challenges

2. The problems in the Iranian system that affect both discrimination and the execution of minors fall into two broad categories: failures of due process whereby the Iranian government fails to abide by its own laws; and where Iran's laws breach their international treaty obligations and recognised human rights norms. In the former case both the reports highlight weaknesses in Iranian rule of law. People are often held incommunicado in custody for long periods of time without knowing the charges against them, access to lawyers is often restricted until the later stages of the criminal proceedings and they are regularly denied the right to jury trial. Cases of arbitrary arrest and the use of torture are all illegal under Iranian law and they violate the International Covenant on Civil and Political Rights.
3. Judges can be more powerful than the law itself. According to Article 170 of the constitution, "Judges of Courts are obliged to refrain from executing statues and regulations of the government that are in conflict with the laws and norms of Islam." Despite the strict religious vetting that Iranian law receives this provision gives scope for the judge to make decisions based on their personal interpretations of *Shari'a* principles, *elm-e qazi* or judges' knowledge. The result is that minors, women, Kurds and Baha'is often find themselves unprotected by the law that can be arbitrary in its application.
4. There is often no effective recourse available to victims of rights violations, and where cases are overturned upon appeal to the Supreme Court they can be retried by the same lower court judge with the same outcome. For example a Kurdish journalist was arrested in December 2006 and sentenced to death for engaging in "acts against national security" and "spying for western countries." Hiwa Butimar's death sentence was overturned by the Supreme Court in October 2007 on the basis of procedural irregularities, but the case was returned to the same judge who had first sentenced him, Hamid Sultan Bakhsh, who in April 2008 sentenced him to death a second time.
5. Iran increasingly uses the pretext of national security to allow the state to side-step due process laws. This includes using provisions such as Article 186 of the penal code 'for being a member of, or supporting, an organisation that has waged armed struggle against the Islamic Republic' and Article 500, "advertising against the order of the Islamic Republic of Iran." Despite the One Million Signatures Campaign's efforts to conduct its affairs in accordance with the law, dozens of its members have been repeatedly imprisoned. The charges are often spurious: "propaganda against the system" and "acting against national security."
6. Iran has a record of creating generalised reservations to ignore articles or provisions in international law that it deems to be in contradiction to 'Islamic Laws and the internal legislation in effect'. This point was made explicitly clear in a formal reservation to the Convention on the Rights of the Child but has been made repeatedly by Iranian judicial figures and politicians about their commitments to other areas of international law.

## Systemic Discrimination

7. The *'A Revolution without Rights'* pamphlet identified 3 interrelated obstructions to women and minority groups achieving full equality in Iran:

### Religious Obstacles:

8. Article 3.9 of Iran's constitution demands the abolition of "all forms of undesirable discrimination and [promotes] the provision of equitable opportunities for all." However, because the protection of civil rights is conditional on vaguely defined "Islamic criteria," as set out in Article 4 of the Constitution, conservative religious elements use their interpretation of Islam to discriminate against these groups, while alternative interpretations from clerics such as Ayatollah Hossein-Ali Montazeri and Ayatollah Yousof Sanei have been ignored.
9. **Baha'is:** Baha'is are denied legal recognition in Iran due to their following of Mirza Husayn-Ali (Baha'u'llah)— who founded the new religion in mid-19<sup>th</sup> century Persia. Baha'u'llah's claim to a divine revelation directly challenges Islamic belief that Muhammad was the last messenger of God and is seen as an implicit challenge to the *Velayat-e Faqih* whereby the Supreme Leader exercises judgement in advance of further divine action. Due to following a faith founded after Islam the *Shari'a* does not recognise Baha'is as a 'protected religious minority'. Baha'is are therefore considered heretics or apostates by the Iranian system and denied access to higher education and state employment along with other basic rights outlined in the constitution. Thousands of Baha'is have been denied their pensions because of their religion, and they have been openly offered their pensions back for converting to Islam. In September and October 2008 a group calling itself 'The People's Movement Against Baha'ist Institutions in Iran' circulated a petition demanding "the Public Prosecutor deal with all the elements of the [Baha'i] institutions and dissolve this organisation." The petition was prominently displayed at a major sermon by Ayatollah Khamenei in Tehran and outside the Khomeini Mosque in Qom.
10. **Women:** In Iran there is wearing of the *hijab* remains compulsory as is segregation of the sexes in schools, universities, offices, buses, hospital, swimming pools, beaches and at public ceremonies. A bill introduced at the end of Khatami's presidency proposed a greater degree of control over promotion of morality and prevention of vice. 'The Means and Ways of Propagating the Culture of Chastity and Hijab' was ratified by the High Council of the Cultural Revolution in April 2005. Soon after the bill's approval and the election of President Ahmadinejad, a body was set up to oversee its strict application to all aspects of life for Iranian women. The agents and officers of this body often employ verbal abuse, corporal punishment, imprisonment and torture as enforcement techniques.
11. **Kurds:** While Article 12 of the Iranian constitution explicitly defends the rights of non-Shi'a Muslims, in practice Sunni Kurds face religious discrimination in their community affairs and in access to public office. Very few Sunnis have positions in embassies, universities and other important public institutions. They are unable to achieve the highest-ranking positions in government or the judiciary. Article 115 of the constitution states that the President may not be an adherent of another school of Islamic thought. Although the constitution protects the rights of Sunnis to administer their own religious affairs, religious leadership in Kurdish areas has often been non-Sunni and non-Kurdish. A Kurdish community that raised over a million rials to enlarge the Dar al-Ehsan mosque in Sanandaj was prevented from completing the project. Despite obtaining all the necessary building permits the Ministry of Islamic Guidance stepped in to block the new extension and confiscated the funds even though in Tehran there are over one million Sunni Muslims but not a single mosque to serve that community.

### Legal Obstacles:

12. Legal protections for minority groups are outlined in the Iranian constitution and the Code of Criminal Procedure e.g. the constitution which declares 'the abolition of all forms of unjust discrimination and the provision of equitable opportunities for all'. However many are not adhered to in practice or generalised, even arbitrary, exemptions are used that prevent the application of those protections.

13. **Baha'is:** The Iranian constitution, particularly article 13, excludes Baha'is from many citizenship rights. Without legal recognition or protection, a 2008 report from the UN Secretary General on the situation of human rights in the Islamic Republic of Iran (A/63/459), notes that members of the Baha'i community are "subjected to arbitrary detention, false imprisonment, confiscation and destruction of property, denial of employment and Government benefits and denial of access to higher education." The report continued to single out the "extremely severe restrictions" on the rights of Baha'is, protected under the International Covenant on Civil and Political Rights. The constitution upholds many human rights norms, but makes them conditional on interpretations of Islamic law. For example, Article 14 says that Muslims must respect the human rights of "all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran." Iran regularly claims Baha'is are involved with subversive political activity in Iran, a claim rejected by the UN Secretary General's Report. Many Baha'is have been convicted of apostasy through judicial interpretation of *Shari'a*, an offence that did not exist formally in Iran's penal code. However in September 2008 the *Majlis* passed the draft Islamic Penal Code Bill that would make apostasy illegal under the penal code, however the mandatory death penalty has been removed for now at the committee stage. This flouts Iran's prior commitments to Articles 18 of both the Universal Declaration of Human Rights and the International Covenant on Political and Civil Rights.
14. **Women:** The civil and penal codes, their interpretation in court, and the process of trial and sentencing all disadvantage women in the court of law where they have fewer rights than men in areas of marriage and divorce, child custody, inheritance and freedom of movement. They are particularly discriminated against in family law. Men have the more rights to divorce, and a man may divorce his wife at any time. He may also marry as many as four women and can contract unlimited 'temporary marriages'. Iranian Civil Code, Articles 1125 and 1129 show that to obtain a divorce a woman must prove in court that her husband is: mentally ill; unable to provide for them and their families; unable to consummate the marriage and have children; or suffering from an incurable disease. Articles 1158 and 1159 of the Civil Code show that with respect to child custody, the basic tenets of family law automatically favour the father: according to the civil code, any child born during and after marriage belongs to the husband. In other legal areas, a woman is counted as worth half of a man.<sup>1</sup> Women face additional discrimination in the sentencing for crimes such as adultery. The penal code requires a judge to use documented evidence, the law, and his 'knowledge' or 'intuition' to make decisions. Lawyer and women's activist Shadi Sadr has argued that women sentenced to death by stoning are usually not convicted on the basis of testimony or confession but primarily according to the "knowledge" of the judge. Women face widespread physical abuse and sexual violence in Iran and very few legal provisions exist to protect them e.g. rape victims must provide four male eyewitnesses or three male and two female witnesses to achieve legal recourse. If the defendant is acquitted because of insufficient evidence, the victim can be charged with 'false accusation' or 'illicit sexual relations.' The UN has received reports of women sentenced to prison terms for defending themselves against sexual assault; 'self-defence' is not considered to be grounds for acquittal in Iran. Impunity in the treatment of women in Iran is widespread. Husbands are unaccountable for the treatment of their wives. Judges make arbitrary decisions against women, and prison guards are not investigated for abuse of women. Article 1117 of the civil code gives the husband the right to forbid his wife from taking a job that is incompatible with the interests of the family or her dignity.
15. **Kurds:** Charges made against Kurdish activists often include allegations of unspecified breaches of national security or violating morality, which create a legal exemption from honouring human rights protections outlined in the constitution. For example, freedom of expression is allowed, except when as Article 24 of the Constitution states "it is detrimental to the fundamental principles of Islam or the rights of the public." Activities that are 'against' Islam or the IRI can be broadly defined to suit the purposes of the authorities. Such charges are used as a pretext for cracking down on criticism, activism or dissent of any kind. Arbitrary detention, disappearances, unfair trials and indefinite solitary confinement are routine for Kurdish prisoners. Torture in all its forms, humiliation and other punishments are used against those in custody. Roya Toloui has described how she was kicked, slapped, and beaten. Only when those who had physically abused her asked for her children to be brought into the prison and threatened to burn

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<sup>1</sup> For information regarding testimony, see Islamic criminal code Articles 74, 75, 118, 119, 128, 137 and 171; Iranian legal procedure code, Article 230. For information regarding inheritance, see Iranian Civil Code, Paragraph 1, Articles 899, 900, 901, 907.

them to death, did she give them the false confessions they desired. Aside from violating international law, the widespread use of torture also contravenes Iran's own Article 38 constitutional ban on the use of torture.

### **Social Obstacles:**

16. **Baha'is:** Baha'is suffer from a cultural intolerance that is perpetuated by a prejudiced school curriculum and encouraged by the state-controlled media and newspapers that regularly publish defamatory articles about the Baha'i Faith, its people and history. Between 2005 and 2008 more than 200 defamatory articles about the Baha'is were published in establishment paper *Kayhan*. In November 2005, Ayatollah Khamenei called on the military and security forces to "monitor and manage their [the Baha'is'] social activities". After two decades of a ban the government now permits Baha'is to sit qualifying exams without any real intention of allowing them to enter higher education. In June 2007, around 1000 Baha'i students sat the exams, but more than 700 were later informed their files were 'incomplete' and exams could not be graded. Of more than 200 admitted, 128 were later expelled as a result of their Baha'i identity. Furthermore a leaked communication from the director general of the Central Security Office of the Ministry of Science, Research and Technology instructed eighty-one Iranian universities to expel Baha'i students.
17. **Women:** Although there has been some advancement in education and employment for women in the Islamic Republic, the government still restricts educational choices and career avenues. While 62% of students in higher education are women, they are still denied full and equal access. Furthermore, a recent policy in several regions restricts women to studying only in institutions of higher education where their parents or spouses reside. In other cases where women may be admitted in other locations, they can only do so with the permission of their parents or spouses. Female university students also have fields of study barred to them through the imposition of gender-based quotas for university students in particular faculties, such as agriculture, physiotherapy, material science and medicine.
18. **Kurds:** The Iranian constitution does allow the use of minority languages in education however there have been restrictions in practice. For example Soma, an NGO that ran nursery schools in Sandaj and Mahabad, has been closed down because they taught in the Kurdish. According to the report of the mission to the Islamic Republic of Iran by U.N. Special Rapporteur on Adequate Housing Miloon Kothari, submitted to the HRC in 2006, Kurds were disproportionately affected by confiscation and 'confiscation style' purchase of property by the government. The Human Rights Organization of Kurdistan reported in February 2007 that more than 1,500 teachers and professors in Kurdistan had been fired by the authorities on religious grounds.

### **Execution of Minors**

19. As Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions put it in his 2007 report to the Human Rights Council, 'The Islamic Republic of Iran is the only country in the world to which I continue to receive significant numbers of credible reports of such sentences (of execution) being imposed, and in some cases, carried out on juveniles'. Between 2005 and June 2009, 33 young people who committed crimes as minors were executed, while at least 160 further young people remain on death row. Iran is a state party to both the Convention on the Rights of the Child (CRC) and ICCPR that prohibits the death penalty against under 18s.
20. The reasons behind this practice stem from interpretations of the *Shari'a*. Firstly, it sets the age of criminal responsibility based on a definition of the age of puberty, 15 lunar years (14 years 7 months) for boys and 9 lunar years for girls (8 years 9 months) an almost 6 year gender discrepancy. At these ages they are deemed responsible for their actions and the death penalty can be applied. It should be noted that like many other countries the age of majority for many other matters in Iran including voting, unrestricted employment, driving licence is set at 18. To set an age of criminal responsibility below the age of majority in other areas is not uncommon across the world, however it is extremely unusual to apply the full range of criminal sanctions to those below 18.

21. Secondly Iran's position on certain capital crimes, most notably murder, is that the state acts as an arbiter in what is essentially a personal matter between the accused and the victim's family, crimes defined as *qesas* (retribution). This type of crime makes the decision to execute based on the victim's ability to pay *diyah* (blood money compensation). If the compensation available is not accepted then the sentence of death is applied. Despite its interpretation of *qesas* the Iranian state can not absolve itself of its responsibility for the execution of minors. The decisions are made according to its legal system and the incarceration and execution carried out according to its penal system.
22. Yet as with the situation facing Iran's women and minorities it is not only discrimination in Iranian law that causes the problems, there are systemic failures of due process that have led to potentially unsafe convictions in capital crimes and higher court judicial decisions have been ignored that led to the deaths of minors. *'From Cradle to Coffin'* identifies a series of different process breaches including in the recent case Delara Derabi, executed without the required 48 hours notice to her family and a mere 12 days into a 2 month stay of execution issued by the then Head of the Iranian Judiciary, Ayatollah Shahroudi. Elements of the Iranian state have attempted to reform the law to restrict the application of the death penalty, most notably the Juvenile Crimes Investigation Act that 8 years after its initial proposal in 2001 and 3 years since its first reading in Parliament in 2006 has yet to be brought into law. It is essential that international pressure is placed on Iran to implement a moratorium on the execution of minors and that steps are taken to ensure its abolition in all cases including *qesas* crimes.

### **Recommendations**

1. The UNHRC should ensure that the human rights situation in Iran receives continuous and wide-ranging attention beyond the UPR process.
2. The UPR should recommend that the Islamic Republic of Iran co-operate fully with all UN mechanisms and procedures including: in its response to the UN General Assembly's annual resolutions of concern regarding its human rights situation; accepting the request of the UN Special Rapporteur on Freedom of Religion or Belief to visit that country; allowing unannounced visits of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; resolving overdue reporting for (i) the UN Human Rights Committee, (ii) UN Committee on Economic, Social and Cultural Rights, and (iii) the UN Committee on the Elimination of Racial Discrimination.
3. The UPR should urge Iran to ratify the UN Convention on the Elimination of All Forms of Discrimination Against Women and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment including OPCAT without reservations.
4. The UPR should make clear to Iran that undefined derogations from its treaty and constitutional commitments on religious grounds are not acceptable and that clarity must be given over how it plans to abide by its obligations or where it explicitly rejects international law and the application of safeguards provided in the constitution. Where it does make explicit rejections pressure should be applied on the Iranian government to change its practices.
5. The UPR should call for Iran to immediately implement a moratorium on the execution of minors in all cases including *qesas* crimes. It should put pressure on the Iranian government to implement the Juvenile Crimes Investigation act and other planned legal measures to end the practice of executing minors and those convicted as minors. Such measures must be fully comprehensive and include *qesas* crimes.
6. The UPR should call on the Iranian government to offer all Iranians, including women, Kurds, Baha'is and other minorities the dignity of equal treatment as citizens.
7. The UPR should encourage Iran to implement its own existing laws that provide protections to those accused of crimes, implement reforms that are necessary to remove explicit barriers to equality under the law, to clarify or remove areas of ambiguity that can lead to arbitrary prosecution, such as the crime of 'insulting Islamic sanctities.'
8. The UN should encourage Iran to accept offers of training for judges and other members of the legal system, while exploring the criminal procedure models provided by other Islamic nations that avoid the execution of minors.
9. The UN should encourage Iran to allow the open expression of alternative interpretations of Islamic theology on the subject of civil rights by clergy and citizens, exploring the option of *ijtehad*. However debate on theological issues is not an alternative to accepting international human rights standards.