

Legal Research Series

**Electoral Process in Iran:
Analysis of Political Participation and Iran's
Compliance with International Human Rights
Obligations**

Raha Bahreini, Mohammad Nayyeri, Scott Sheeran

March 2014

Executive Summary

This legal research analysis belongs to a series of studies on human rights in Iran authored by the Human Rights in Iran Unit. The Human Rights in Iran Unit in the School of Law at the University of Essex focuses on the Islamic Republic of Iran (Iran)'s compliance with international human rights law. Each study tackles a distinct topic to measure international obligations against domestic law and practice and to identify underlying or systemic problems. The Unit seeks to provide an accessible account of the breadth and complexity of violations in Iran from the standpoint of international law, which may serve scholars, practitioners and anyone concerned with human rights in Iran.

This study reviews the electoral process within Iran as a whole, with particular emphasis on the principle of *Velayat-e Faqih* (guardianship of the Islamic jurist) and the degree of sovereignty over the Islamic people that is granted to the Supreme Leader as *Faqih* (the Islamic jurist). The analysis examines the Iranian law governing the election of the Presidential and legislative authorities, the Islamic Consultative Assembly and Guardian Council, as well as the Assembly of Experts and the Office of the Supreme Leader. These processes are examined in light of Iran's obligations under applicable international law, in particular, Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

The Iranian Constitution and other laws and regulations governing critical aspects of the electoral process in Iran are assessed the extent to which they conform to the rights on political participation recognized under Article 25 the International Covenant on Civil and Political Rights (ICCPR). The three main rights of political participation recognized under Article 25 are: (i) non-discrimination; (ii) the right to participate in public affairs; and (iii) the right to free and fair elections. While many other rights in the ICCPR are closely connected to political participation – such as the freedoms of expression, association and assembly – this analysis focuses primarily on Article 25. This study concludes that Iran is currently failing to comply with well-established legal principles, such as the principles of non-discrimination; the right to participate in public affairs; and the right to free and fair elections, which are inherent within Article 25 of the ICCPR.

With regard to the electoral process, this study finds that Iran violates a number of key legal requirements of Article 25 of the ICCPR:

- **The role of the Supreme Leader and Article 25(a) of the ICCPR** - The principle of *Velayat-e Faqih* (guardianship of the Islamic jurist) is central to the violation of Article 25. The principle underlies the Iranian Constitution, whereby the Supreme Leader as *Faqih* (the Islamic jurist) is granted a degree of sovereignty over the Iranian people. Despite the Office of Supreme Leader's ability in law and practice to exercise broad public power, falling within Article 25(a), this position is not directly or indirectly legitimated through public will. This is a result of a lack of public accountability as well as discriminatory qualification requirements, and an appointment process that lacks independence through a circular arrangement between the Assembly of Experts, the Guardian Council and the Office of the Supreme

Leader. Further, Article 25 of the ICCPR requires elections to be periodic, accountable and of democratic legitimacy. Elections within Iran do not meet these criteria, as required by Iran's international legal obligations.

- **Non-discrimination** - Article 115 of the Iranian Constitution requires that persons standing for the Presidency have 'faith and loyalty to the official religion of the country', which is Shiite Islam. This requirement, amongst others pertaining to other political offices provided for in Iranian law, discriminates against religious minorities within the country, which may make up an estimated twenty percent of the population. Similar provisions exist within Iranian law that disproportionately discriminate against women as well as individuals holding political or other beliefs.
- **Suppression of political parties** - Both the Iranian Constitution and the proposed Parties and Associations Law Reform Plan prohibit individuals from joining groups or political parties that act 'against Islamic criteria' or 'against the Islamic Republic'. These vague restrictions have resulted in suppression of political parties by means of arrests of participants and the suspension and banning of opposition parties. These laws and the resultant acts clearly violate both the right to participate in public affairs, as enshrined in Article 25(b) of the ICCPR and the right to freedom of association, which is provided in Article 22 of the ICCPR.
- **Arbitrary disqualification** - The Guardian Council is granted broad powers to disqualify presidential, parliamentary and Assembly of Expert potential candidates under several Iranian laws. The Presidential electoral process lacks transparency, accountability and the possibility of review, which enables disqualifications to occur without the possibility of considering whether such restrictions are reasonable. Although Parliamentary and Assembly of Expert candidates have the right of appeal, many of the eligibility criteria are either vague or open to interpretation, thereby enabling arbitrary disqualifications. There is little evidence to suggest that the appeal process is used often or to successfully overturn a disqualification. This lack of transparency and questionable right of appeal may result in violations of Article 25(b) of the ICCPR.

In light of these violations of international human rights law, this legal research study concludes that the electoral processes, including appointment of Presidential, Parliamentary and Assembly of Expert candidates, are not in compliance with Iran's obligations under the ICCPR. Furthermore, violations appear to be systemic and structural with regard to the principles of non-discrimination, the right to participate freely in public affairs and the right to free and fair elections, as enshrined in Article 25 of the ICCPR. The Iranian Government has claimed before international bodies that 'in the Islamic Republic of Iran, all institutions of government arise from the will and direct or indirect vote of the people.' This assertion stands in contrast with credible documentation on the situation practice, and does not withstand scrutiny against Iranian laws' failure to comply with relevant international legal obligations.

Contents

Table of Contents

1. INTRODUCTION	1
2.1 OVERVIEW	2
2.2.1 <i>GENERAL PRINCIPLES</i>	4
2.2.2 <i>APPLICATION OF ARTICLE 25(A) TO IRAN</i>	6
a. Does Article 25(a) apply to the Office of the Supreme Leader?	6
b. Does the Office of the Supreme Leader derive directly or indirectly from the vote and will of the people?	8
1. Discriminatory Qualification Requirements	8
2. Appointment Process	10
3. Periodicity, Accountability and Democratic Legitimacy	11
2.3 ARTICLE 25(B): THE RIGHT TO STAND FOR ELECTION	14
2.3.1 <i>GENERAL PRINCIPLES</i>	14
a. Non-discrimination and Equality	14
b. Freedom of Political Parties	15
c. Reasonable and Objective Restrictions	16
2.3.2 <i>APPLICATION OF ARTICLE 25(B) TO IRAN</i>	17
a. Discrimination	17
b. Suppression of Political Parties	25
c. Arbitrary Disqualification	25
3. CONCLUSION	28

1. Introduction

This study undertakes a review of the Islamic Republic of Iran (Iran)'s legal framework for political participation with regard to the right to participate in the conduct of public affairs and to stand for election. The extent of Iran's compliance with the relevant minimum requirements set out in Article 25 of the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a Party, is analyzed. Focusing on State organs that exercise State power under the Iranian Constitution ('Constitution'), the analysis finds that Iran violates the fundamental right to political participation guaranteed to its citizens under Article 25 of the International Covenant on Civil and Political Rights.

The study considers the general principles applicable to the right to participate in the conduct of public affairs (Article 25(a)) and then applies them to the situation in Iran. It then considers the general principles applicable to the right to stand for election (Article 25(b)) and applies them to Iran, focusing specifically on systematic discrimination, suppression of political parties and arbitrary disqualifications.

The Iranian Government has claimed that the Islamic Republic of Iran ('Iran') is a democratic State wherein 'all institutions of government arise from the will and direct or indirect vote of the people.'¹ In its third periodic report to the UN Human Rights Committee ('the Committee'), focusing on Iran's implementation of its ICCPR obligations, the Government stated:

The Leader as the first person of the country is chosen by the Assembly of Experts whose members are elected directly by the people. The President and representative of the parliament are also elected by the direct votes of people. Since the victory of the revolution 28 democratic elections have been held. There have been high turnouts of voters in all elections.²

This assertion stands in contrast to numerous UN Special Rapporteur reports, non-governmental reports, press releases and articles documenting violations of civil and political rights in Iran both in the law and in practice.³ This study identifies the legal source of violations of the right to stand for elections and to participate in public affairs,

¹ Iran's Third Periodic Report to the Human Rights Committee, UN Doc CCPR/IRN/3 (31 May 2010), para. 6 (hereinafter 'IRI's State Report').

² *Ibid.*

³ Eg Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran to the Human Rights Council, UN Doc A/HRC/22/56 (28 February 2013); Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran to the Human Rights Council, UN Doc A/HRC/19/66 (6 March 2012); F Hekmat, *Neither Free Nor Fair, Elections in the Islamic Republic of Iran* (Abdorrahman Boroumand Foundation, 2009), available at: <http://www.iranrights.org/english/document-604.php>; H Esfadiari and A Bertone (eds), *An Assessment of the Iranian Presidential Elections* (Woodrow Wilson International Centre for Scholars – Middle East Project, 2002), available at: http://www.wilsoncenter.org/sites/default/files/MEP_election.pdf; Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran to the members of the General Assembly, UN Doc A/67/369 (13 September 2012); AI Submission, *ibid*; The International Federation for Human Rights and the Iranian League for the Defence of Human Rights, *Submission to the Human Rights Committee on the Islamic Republic of Iran's Compliance with ICCPR* (17 October – 4 November 2011), available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/FIDH-LDDHI_Iran_CCPR103.pdf.

establishing Iran's failure to comply through its laws and institutions to binding international human rights obligations under Article 25 of the ICCPR.

2. International Legal Standards for Political Participation

2.1 Overview

The international legal standards for political participation are most clearly set out in the ICCPR.⁴ With 167 State Parties,⁵ the ICCPR is one of the most widely ratified international human rights treaties. Article 25 is the principal provision for political rights:

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 25 contains three broad guarantees for citizens of States Parties: subparagraph (a) provides the general right, while (b) and (c) are understood to elaborate the application of (a).

Article 25's introductory paragraph links back to the Article 2 general requirement for the ICCPR of non-discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' While the phrase in Article 25 'without unreasonable restrictions' implies that some restrictions may be 'reasonable' and therefore permissible,⁶ the summary of records from the drafting

⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

As of February 22, 2013, there were 167 States parties to the Covenant. United Nations Treaty Collection ('UNTC'), Status of Ratification, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁵ UNTC, *ibid*.

⁶ This includes, for example, the denial of suffrage to minors and those not meeting residency requirements or the placement of certain limitations on the right to stand for election such as a requirement of professional training. See UN General Assembly ('UN GA'), 3d Comm., 16th Sess., 1097th mtg, at 105,

stages of the ICCPR indicates that the standard of reasonableness was not intended to justify restrictions that conflict with the prohibition of discrimination set out in Article 2.⁷ In other words, discriminatory limitations of the right to political participation are not legitimate.

A proposal from the Soviet Union during negotiations of the ICCPR attempted to remove political opinion from the list of prohibited grounds in Article 2. However, the Uruguayan delegate noted, and the UN Commission on Human Rights (the forerunner to the UN Human Rights Council) agreed, that if non-discrimination on political grounds was omitted, then ‘the ruling party in every totalitarian State would continue to enjoy a monopoly of government.’⁸ Accordingly, the Commission rejected the Soviet proposal and voted in favour of an unrestricted reference to Article 2.⁹ While directed explicitly at individuals, Article 25’s non-discrimination reference may also be read to prohibit discrimination against political parties, as will be shown.¹⁰

Given Article 25’s complex nature, its interpretation must be considered both in practice and in context. Unusually, its meaning may vary depending on the political and constitutional arrangements of the State party. The study therefore turns to analyse the particular context of the Iranian constitutional arrangements.

2.2 Article 25(a): The Right to Participate in the Conduct of Public Affairs

U.N. Doc. A/C.3/SR.1097 (1961); UN GA, 3d Comm., 16th Sess., 1096th mtg. at 179, UN Doc. A/C.3/SR.1096 (1961); *Summary Record of the 365th Meeting*, UN Commission on Human Rights, 9th Sess., 365th mtg., at 5, 15-16, UN Doc. E/CN.4/SR.365 (1953); *Summary Record of the 364th Meeting*, UN Commission on Human Rights, 9th Sess., 364th mtg. at 6, UN Doc. E/CN.4/SR.364 (1953); *Summary Record of the 363d Meeting*, UN Commission on Human Rights, 9th Sess., 363d mtg. at 12, 15, 16, U.N. Doc. E/CN.4/SR.363 (1953).

⁷ See *Annotation by Secretary General of the Draft International Covenants on Human Rights*, UN GA, 10th Sess., Supp. No. 19, UN Doc A/2929 (1955), para. 177 [*hereinafter Annotation by Secretary-General*]. *The Annotation* states:

While it was considered necessary to prohibit restrictions, which amounted to discrimination, it was observed that in most countries the right to vote was denied to certain categories of persons, such as minors and lunatics, and that the right to be elected to public office and the right of access to public service were generally subjected to certain restrictions.

⁸ *Summary Record of the 363d Meeting*, UN Commission on Human Rights, 9th Sess., 363th mtg. at 12, 15, 16, UN Doc. E/CN.4/SR.363 (1953) at 8.

⁹ *Summary Record of the 367th Meeting*, UN Commission on Human Rights, 9th Sess., 367th mtg. at 12, UN Doc. E/CN.4/SR.367 (1953) at 11, 12.

¹⁰ See section 2.3.2(c) below.

2.2.1 General Principles

Article 25(a) of the ICCPR contains a general right to take part in the conduct of public affairs. While reminiscent of the right in Article 21 of the Universal Declaration of Human Rights to take part ‘in the government,’ Article 25 uses the vague formulation ‘the conduct of public affairs’ in order to allow States parties to realize the fundamental right to political participation in a manner consistent with their political system.¹¹ Nonetheless, as a universal minimum standard, Article 25(a) requires that the exercise of State authority be based on the principle of sovereignty of the people, i.e. public officials are accountable for their exercise of power to citizens who could remove them from office.¹² States that are primarily grounded in alternative sources of “legitimacy” – dynastic continuity for monarchies, a divine mandate for theocracies – do not, therefore, satisfy paragraph (a).¹³ This is confirmed by the opening paragraph of the Committee’s General Comment No. 25: ‘Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.’¹⁴

Article 25(a) provides that citizens shall have the right to participate in public affairs ‘directly or through freely chosen representatives.’ Citizens participate directly in the conduct of public affairs when ‘they exercise power as members of legislative bodies or by holding executive offices.’¹⁵ They also participate directly when they ‘choose or change their constitution’, decide public issues ‘through a referendum or other electoral processes conducted in accordance with paragraph (b)’ and take part in ‘popular assemblies, which have the power to make decisions about local issues.’¹⁶ Citizens participate through freely chosen representatives ‘through voting processes which must be established by laws which are in accordance with paragraph (b).’¹⁷ In the *Marshall v. Canada* complaint, made under the Optional Protocol to the ICCPR, the Committee stated:

Surely it cannot be the meaning of Article 25(a) of the Covenant that every citizen may determine either to take part directly in the conduct of public affairs or to leave it to freely chosen representatives. It is for the legal and constitutional system of the State party to provide for the modalities of such participation.¹⁸

General Comment No. 25, a UN Human Rights Committee statement of interpretation for the ICCPR, reaffirms that Article 25(a) presupposes neither a particular system of

¹¹ M Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel 2 ed, 2005) at 570, para. 11.

¹² *Ibid.* Human Rights Committee, General Comment No. 25, ‘The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)’ (57th session) (1996), UN Doc CCPR/C/21/Rev.1/Add.7, para. 7 [hereinafter GC25].

¹³ Nowak, *CCPR Commentary* (n 11) at 570, para.11; T Franck, ‘The Emerging Right to Democratic Governance’ (1992) 86 *American Journal of International Law* 46 at 63-4.

¹⁴ GC25 (n 12) para. 1.

¹⁵ *Ibid.* para. 6.

¹⁶ *Ibid.*

¹⁷ *Ibid.* para. 7.

¹⁸ *Marshall v. Canada*, Human Rights Committee Communication No. 205/1986, CCPR/C/43/D/205/1986 at 40 (1991), para. 5.4.

democratic government nor a particular modality of political participation. The participation may be direct or indirect and it is for ‘the constitution and other laws’ of the State party to make this choice.¹⁹

While the way in which people exercise their right to sovereignty depends on the political system of the State Party, the body or bodies elected by the people or emanating from their will must ‘in fact exercise governmental power.’²⁰ The popularly elected body cannot be a mere advisory body; it must either itself play a vital role in governing the State or be in control of that body.²¹ For example, systems where members of the publicly elected legislature in practice elect the political leaders and therefore, the public indirectly elects the executive government (e.g. the Prime Minister), comply with Article 25.²² Thus, the election of public bodies may be both direct and indirect.

It may be difficult to measure the extent of real control exercised by the elected body.²³ Nonetheless, a violation of the rights guaranteed in Article 25 is found ‘[i]f the bodies that citizens elect have no more than a semblance of government power, and if that power or a substantial part of that power remains in the hands of un-elected persons, not accountable to the electors.’²⁴ This is supported by the Committee’s concerns over situations where undemocratic institutions wield significant political power.²⁵

Article 25 does not specify which government bodies shall be the subject of popular participation. Specific proposals to require ‘all organs of authority’ to be filled by elections were rejected during the negotiation of the ICCPR on the grounds that in most countries not all organs of authority are elected.²⁶ However, if the organ exercises ‘public affairs largely autonomously and independent of the legislative authority,’ it is necessary that it ‘be elected either directly or indirectly by the people.’²⁷ According to the Committee, ‘the conduct of public affairs, referred to in paragraph (a), is a broad concept, which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.’²⁸ State organs in which legislative, executive and administrative powers are concentrated in law and practice must be, therefore, validated, either directly or

¹⁹ GC 25 (n 12) para. 5.

²⁰ *Ibid*, para. 7.

²¹ S Joseph, *The International Covenant on Civil and Political Rights: cases, materials, and commentary* (OUP, 2004) at 655. See also S Joseph, ‘Rights of Political Participation’ in D Harris and S Joseph (eds), *The International Covenant on Civil and Political Rights and United Kingdom Law* (Clarendon Press, 1995) at 543.

²² *Ibid*; Nowak (n 11) at 571, para.12.

²³ *Ibid*.

²⁴ E Evatt, ‘The Human Rights Committee’s General Comment on Article 25’, in N Ando (ed.), *Towards implementing universal human rights: Festschrift for the twenty-fifth anniversary of the Human Rights Committee* (Nijhoff, 2004) at 183.

²⁵ E.g. see Human Rights Committee, Concluding Observations for periodic review of Chile (1999) UN Doc CCPR/C/79/Add.104, at para. 9.

²⁶ *Annotation by Secretary-General* (n 7) at para. 173.

²⁷ Nowak (n 11) at 571, para.12.

²⁸ GC 25 (n 12) para. 5.

indirectly, through elections.²⁹ Elections must be established by laws that are in accordance with the principles of genuineness and periodicity laid out in subparagraph (b).³⁰

In conclusion, Article 25(a) of the ICCPR establishes that the authority of government emanates from the will and consent of the people, and this is reflected in a right of the people as individuals. The right is flexible in its application and should be understood in the context of each State party's political and constitutional system.

2.2.2 Application of Article 25(a) to Iran

The Iranian Constitution merges the principle of popular sovereignty with the principle of *Velayat-e Faqih* (guardianship of the Islamic jurist), which is the Shiite theory that Islam gives a *Faqih* (Islamic jurist) custodianship over the people.³¹ Ayatollah Ruhollah Khomeini developed the idea of *Velayat-e Faqih*.³² In his doctrine, *Velayat* involves not only the pronouncement of judicial judgments but also the authority of the *Faqih* to render decisions on any matter, political or otherwise, affecting the welfare of the community.³³ In other words, the *Faqih* is granted actual sovereignty over the people. This forms the basis of the Iranian Constitution, which establishes two appointed institutions with religious and Islamic underpinnings: the Office of the Supreme Leader and the Guardian Council. These two institutions are key centers of public power in the Iranian State.³⁴ In addition, there are four tiers of popularly elected institutions and offices: the President, the Assembly of Experts, the Islamic Consultative Assembly ('parliament' or *Majlis*) and local councils.³⁵

The following section examines the process through which the Office of the Supreme Leader obtains its power and whether it is indeed, as the Iranian Government claims, empowered by and accountable to Iranian citizens and consistent with Article 25(a). The examination reveals that this body is not, despite its broad State power, legitimized through public will either directly or indirectly in elections and public consent, and therefore give rise to a violation of Article 25(a). Additionally, it demonstrates that the laws by which the Supreme Leader is established stand in direct violation of the principle of non-discrimination, laid out in Article 25's introductory provision and given content by Article 2 of the ICCPR.

a. Does Article 25(a) apply to the Office of the Supreme Leader?

²⁹ Nowak (n 11) at 574, para. 18.

³⁰ GC 25 (n 12) para. 7.

³¹ For more information see E Hooglund and W Royce, 'The Shi'i Clergy of Iran and the Conception of an Islamic State' (1985) 1(3) *State, Culture and Society* 102.

³² Imām Khomeini, Ruhollah Khomeini (Alhoda, trans. By Hamid Algar, 2002).

³³ Hooglund and Royce (n 31).

³⁴ In relation to the Office of the Supreme Leader, see Articles 110, 112, 113, 157 and 175, Iranian Constitution; In relation to the Guardian Council, see Articles 4, 68, 72, 85, 94, 96, 98 and 99, Iranian Constitution.

³⁵ See Article 99, Iranian Constitution.

Not ‘all organs of authority’ must be elected under the ICCPR and emanate from the will of the people.³⁶ However, should the organ in question be engaged in the conduct of public affairs autonomously or independently of the legislative or executive authorities, it must be filled either by elected officials or by appointed officials who are in some way responsible to elected officials (e.g. as judges are appointed with security of tenure).³⁷ The Iranian Constitution provides that the Supreme Leader is ‘the highest official in the country’³⁸ and executive, judicial and legislative authorities all function under his absolute rule.³⁹ In practice, the Supreme Leader does exercise significant influence and power in the Iranian State. The broad powers exercised by the Office of the Supreme Leader do constitute ‘conduct of public affairs’ within this meaning.

Insofar as executive authority is concerned, the Supreme Leader’s powers include supreme command of the Armed Forces; declaration of war and peace; appointment and dismissal of influential figures such as the head of the Iranian radio and television network, the chief commander of the Islamic Revolution Guards Corps, and the supreme commanders of the Armed Forces; the confirmation of the order for the induction of the President; and the dismissal of the incumbent president after an adverse judgment by the Supreme Court or a vote of non-competence by the Islamic Consultative Assembly.⁴⁰

Insofar as the Supreme Leader’s involvement in the judiciary is concerned, the Supreme Leader appoints and dismisses the head of the judiciary and wields the prerogatives of judicial pardon.⁴¹ As for his influence over the legislature, the Supreme Leader appoints *fuqaha* (Islamic jurists) of the Guardian Council,⁴² a body with extensive legislative and executive jurisdictions, including, among others, the authority to approve or reject legislative acts and resolutions on account of their compatibility with Islamic laws and constitutional provisions, and the authority to disqualify presidential and other candidates for office.⁴³

Beyond these powers, the Constitution provides that the Supreme Leader is responsible for ‘delineation of the general policies of the Islamic Republic of Iran’, ‘resolving conflicts between the three branches of the government’ and ‘resolving the problems which cannot be solved by conventional methods, through the Expediency Council.’⁴⁴ In recent times, the implied powers and scope of enumerated powers of the Office of the Supreme Leader have grown and consolidated to be the most politically powerful this

³⁶ *Annotation by the Secretary General* (n 7) at para. 173.

³⁷ See Human Rights Committee, General Comment No. 32, ‘Article 14: Right to equality before courts and tribunals and to a fair trial’ (90th session) UN Doc CCPR/C/GC/32 (2007), para. 19. See also, for example, *Oló Bahamonde v. Equatorial Guinea*, Communication No. 468/1991, UN Doc CCPR/C/49/D/468/1991 (1993), para. 9.4.

³⁸ Art. 113, Iranian Constitution.

³⁹ *Ibid.* Art. 57.

⁴⁰ *Ibid.* Art. 110.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.* Art. 91. For more on the Guardian Council, see section 2.2.2. (b) below.

⁴⁴ *Ibid.* Art. 110.

office ever has been.⁴⁵

Touching virtually every facet of governance in Iran, the powers of the Office of the Supreme Leader fall squarely within the criteria of ‘public affairs’ in Article 25(a). Therefore, Iran is obliged, pursuant to Article 25(a) of the ICCPR, to ensure that the people elect the Supreme Leader, either directly or indirectly.

b. Does the Office of the Supreme Leader derive directly or indirectly from the vote and will of the people?

The Iranian Constitution defines ‘the collective participation of people in the determination of their political, economic, social, and cultural destiny as one of the principal goals of government’⁴⁶ and proclaims that self-determination is ‘a God-given right’ that ‘no one shall take away.’⁴⁷ Respect for the principle of self-determination is confirmed in the Constitutional requirement that the ‘affairs of the country ... be administered on the basis of public opinion expressed by the means of elections.’⁴⁸ To this end, ‘the Constitution provides for the establishment of leadership by a qualified *faqih* (Islamic jurist), recognized as Leader by the people’⁴⁹ and vests the ‘task of appointing the Leader ... with the Experts (*Khobregan*) elected by the people.’⁵⁰

Taken together, these Constitutional provisions suggest that all institutions of government, including the Office of the Supreme Leader, arise from the will and direct or indirect vote of the people. However, this view is incapable of withstanding closer scrutiny. An examination of the legal provisions governing the appointment of the Supreme Leader by the Assembly of Experts reveals that this Office, contrary to Article 25 of the ICCPR, denies Iranian citizens the opportunity to take part in the conduct of public affairs, both directly and indirectly.

1. Discriminatory Qualification Requirements

The Office of the Supreme Leader is established by Article 5 of the Constitution, which provides that:

During the occultation of the *Vali Al-asr* (may God hasten his reappearance) [the 12th Hidden Imam of Shiite Islam], *Velayat-i Amr* [sacrosanct rule and custodianship] and *Imamat-i Ummah* [leadership of the community of believers] devolve upon the just and pious, well-informed, courageous, resourceful and capable *faqih* [Islamic jurist] who will assume the responsibilities of this office in accordance with Article 107.

⁴⁵ See K Sadjadpour, *The Supreme Leader* (United States Institute of Peace, undated) available at: <http://iranprimer.usip.org/resource/supreme-leader>; A Ansari, *Has Iranian Regime Learned Nothing From the 2009 Election Fiasco?* (CNN, 28 May 2013) available at: <http://edition.cnn.com/2013/05/27/opinion/opinion-ansari-iran-election/>.

⁴⁶ Art. 3(8), Iranian Constitution.

⁴⁷ *Ibid.* Art. 56.

⁴⁸ *Ibid.* Art. 6.

⁴⁹ *Ibid.* preamble.

⁵⁰ *Ibid.* Art. 107.

Article 107 provides for the appointment of the Supreme Leader by an Assembly of ‘Experts elected by the people’ who ‘will review and consult among themselves concerning all the *fuqaha* [Islamic jurists] possessing the qualifications specified in Articles 5 and 109.’

Article 109 describes the qualification requirements of the Supreme Leader:

1. Scholarship, as required for performing the functions of *efte'* [delivery of religious rulings] in various Islamic jurisprudential fields
2. Justice and piety, as required for the leadership of the Islamic *Ummah* [community of believers]
2. Right political and social perspicacity, prudence, courage, administrative facilities, and adequate capability for leadership.

In case of multiplicity of persons fulfilling the above qualifications and conditions, the person possessing the better jurisprudential and political perspicacity will be given preference.

These religious-based conditions raise questions about Iran’s compliance with the minimum requirements of Articles 2 and 25 of the ICCPR. It is important to note that the Supreme Leader’s role concerns general political power that affects all people in the Iranian State, and is not a more delimited role for a religious figure as may be found in some other States. Article 109 of the Iranian Constitution is therefore not consistent with ICCPR obligations insofar as it excludes all persons who are not associated with the status of a learned Islamic *faqih* and persons who hold beliefs other than Shiite Islam from the Office of the Supreme Leader. Furthermore, women are excluded from the Office because exercising *Velayat* is considered to be only a man’s prerogative.⁵¹

As a sovereign state, Iran is entitled to define its constitutional organization of government in accordance with its national identity and values and historical, cultural and religious background. However, as noted earlier, the drafters of the ICCPR did not intend the standard of reasonableness to sanction forms of discrimination set out in Article 2.⁵² By acceding to the ICCPR, Iran has undertaken to ensure that no citizen, in exercising his or her right to participate in the conduct of public affairs, is hindered or restricted in law or in fact for reason of his or her race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁵¹ Principle 88/1, *soorat-e mashrooh-e mozakerat-e majlis-e Barresi-e nahayee-e qanun-e asasi* [Summary Record of the Discussions of the Assembly of Experts for Constitution] vol. 3 (Tehran: The Islamic Consultative Assembly Publications, 1368), p. 1770-71 [hereinafter ‘Principle 88/1’]. For further information on women’s rights within Iran, please refer to HRIU’s upcoming report, *A Legal System of Inequalities: Analysis of the Legal Status of Women in Iran and Iran’s International Human Rights Obligations* (2014, forthcoming).

⁵² Annotations of SG (n 7) and *Summary Record of the 367th Meeting* (n 9).

Iran has asserted that the conception of human rights, developed in Western liberal democracies, cannot be adopted as the model for Iran.⁵³ The right to stand for Leadership is discriminatory as it is restricted to members of the clergy, but the Iranian government argues that members of the Council of Experts, who in turn are elected by the people, choose the Supreme Leader; thus, he is indirectly chosen through the will of the people.⁵⁴ The Supreme Leader however is not subject, through a periodic electoral process, to the will of the people and is as such not accountable to them. On the contrary, the Supreme Leader's legitimacy is described in domestic official statements as being absolute and of a divine nature, not dependent in any manner whatsoever upon the opinion of the people.⁵⁵

2. Appointment Process

Article 107 of the Constitution describes the process of appointing the Supreme Leader as follows (emphasis added):

After the demise of the Great Leader of the Global Revolution of Islam and the founder of the Islamic Republic of Iran, His Excellency Grand Ayatollah Imam Khomeini, whose leadership was recognized and accepted by a decisive majority of the people, *the task of appointing the Leader shall be vested with the Experts elected by the people*. The Experts will review and consult among themselves concerning all the *fuqaha* [Islamic jurists] possessing the qualifications specified in Articles 5 and 109 ... The Leader thus elected by the Experts shall assume *Velayat-i Amr* [sacrosanct rule and custodianship] and all the responsibilities arising therefrom.

With respect to 'the Experts' referred to in Article 107, Article 108 provides:

The law setting out the number and qualifications of the Experts, the mode of their election, and the code of procedure regulating their sessions during the first term, must be prepared by the *fuqaha* [jurists] on the first Guardian Council, passed by a majority vote [in that Council] and then finally approved by the Leader of the Revolution. The power to make subsequent changes or revisions to this law and enact other provisions concerning the duties of the Experts is within the competence of the Experts themselves.

An amendment made in 1986 to Article 99 of the Constitution brought the Assembly of Expert elections, like Presidential, Parliamentary and Municipal Council elections, under

⁵³ See, eg, Islamic Republic of Iran, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1* (18 November 2009) UN Doc A/HRC/WG.6/7/IRN/1, para. 130.

⁵⁴ The Islamic Republic of Iran's response to the draft of the Special Rapporteur's report on the situation of human rights in the Islamic Republic of Iran to the 25th session of the Human Rights Council, available at: <<http://shaheedoniran.org/wp-content/uploads/2014/03/IRI-Response-to-2014-HRC-Draft-Report.pdf>> para 40.

⁵⁵ For example, Ayatollah Kazem Seddiqi, Imam of Friday Prayer of Tehran, stated that: "velayat-e faqih and velyat of the Supreme Leader is an absolute authority ... the absolute authority of the vali-e faqih is the same as God's authority and anyone who stands against him [i.e. the Supreme Leader] as it stands against God..." (See Deutsche Welle, 6 May 2011 <<http://www.dw.de/احمدی‌نژاد-بہ-ایران-رہبر-حامی‌ان-ادامہ‌ش‌دار/a-15056919>>.)

the supervision of the Guardian Council. This supervision has been construed in effect as providing the Supreme Leader with a role to officially approve candidates. In an ‘Interpretive Opinion’ issued on 5 December 1999, the Guardian Council stated:

The supervision stated in article 99 is proactive [*nezarat-e estesvabi*, i.e. with the right to make legally binding interventions] and includes all executive stages of the election, including confirming or rejecting the qualifications of candidates.⁵⁶

These changes to the constitutional arrangements have been criticized for creating a defective circular arrangement whereby the political composition of the Assembly of Experts tasked with appointing and monitoring the Supreme Leader is predetermined by the six jurists on the Guardian Council, who are themselves appointed by the Supreme Leader.⁵⁷ It is also worth mentioning that in 2011 five of the six clerical members of the Guardian Council sat on the Assembly of Experts as well.⁵⁸ This creates a clear disjuncture with the requirements of Article 25 and arguably with the Iranian Constitution as well. There has only been one transfer to a new Supreme Leader, from Ayatollah Khomeini to Ayatollah Ali Khamenei in 1989. In practice, Ayatollah Khomeini prior to his death exercised some influence in the positioning for appointment of his successor.

3. Periodicity, Accountability and Democratic Legitimacy

The disjuncture between the will of the people and the Office of the Supreme Leader becomes further apparent when Article 25’s requirements concerning periodicity are contrasted with the lack of public accountability or recourse against the Supreme Leader in both law and practice.

Under Article 25 of the ICCPR, elections must be conducted ‘fairly and freely on a periodic basis.’⁵⁹ The UN Human Rights Committee states that ‘periodic’ means that elections must be held at regular intervals ‘which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors.’⁶⁰ This is relevant to elected bodies and offices (directly elected), as well as for bodies and offices that are appointed by and derive their authority from other elected bodies (indirectly elected). Although the decision as to the precise duration of these intervals rests with the State Parties, one expert states that the customary span of four to six years may not be overly exceeded.⁶¹ This is to ensure ‘a sustained democratic order,

⁵⁶ Interpretation of Article 99 of the Constitution of the Islamic Republic of Iran (‘IRI’) (05 December 1991) available at: <http://www.princeton.edu/irandataportal/elections/electoral-laws/principle-99/>.

⁵⁷ S Hechemi, *Iranian Constitutional Law: Governance and Political Institutions vol. II* (Mizan Publication 5th ed, 1391) p. 48.

⁵⁸ Y Alem, *Duality by Design: The Iranian Electoral System* (International Foundation for Electoral Systems, March 2011) available at: http://www.ssup.it/UploadDocs/14620_2_R_Duality_by_Design_The_Iranian_Electoral_System_Yasmin_Alem.pdf.

⁵⁹ GC 25 (n 12) para. 19.

⁶⁰ *Ibid*, para 9.

⁶¹ Nowak (n 11) at 575, para. 19.

continually answerable to the will of the people.’⁶² Accordingly, one-off elections will not suffice for international human rights purposes⁶³ because the public mandate is then of indefinite duration and there is limited recourse and accountability to the people. Iran is likely in breach of these standards in light of the fact that Ayatollah Khamenei has continuously occupied the Office of the Supreme Leader and exercised significant political power for the past 25 years without any reaffirmation of the will or consent of the Iranian people according to ICCPR requirements.

While Article 5 of the Iranian Constitution sets a term-limit of eight years for members of the Assembly of Experts, neither Iran’s Constitution nor other laws proscribe a term-limit for the Office of the Supreme Leader. Nor does the law define a specific process for the Assembly of Experts to validate the Supreme Leader’s rule at regular intervals. Article 111 of the Constitution only authorizes the Assembly of Experts to dismiss the Leader in situations where he ‘becomes incapable of fulfilling his constitutional duties, or loses one of the qualifications mentioned in Articles 5 and 109, or it becomes known that he did not possess some of the qualifications initially.’ Furthermore, this Article of the Constitution has been the subject of divergent interpretations among members of the Assembly of Experts.

One view of Article 111 is that the authority to determine the continued qualification of the Supreme Leader necessarily entails an authoritative body to supervise his performance in order to determine whether he is fulfilling his constitutional duties. According to this interpretation, the Assembly of Experts is a ‘monitoring organ’ elected by the people, to which the Supreme Leader must be answerable.⁶⁴ Another view is that the Assembly of Experts must not assume a supervisory role for that will weaken the position of the Supreme Leader and diminish the ‘dignity of his venerable office.’⁶⁵ The proponents of this view hold that there is a distinction between determining the Supreme Leader’s continuing qualification on the one hand and supervising his performance on the other.

Over the course of its history, the Assembly of Experts has increasingly gravitated towards the narrower view of its authority in respect of the Supreme Leader. Support for this position is found in the record of the sessions of the 1986 Constitutional Amendment Council, which considered and rejected the proposal to define the role of the Assembly of Experts as one of regular supervision. Mohammad Yazdi, a member of the Constitutional Amendment Council, noted:

Experts have no right ... to examine and tell the Supreme Leader that he is ... not qualified and dismiss him. ... The current Constitution provides that if [it is

⁶² Center for Human Rights, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections* (United Nations, 1994) at 11.

⁶³ *Ibid.*

⁶⁴ Mohsen Kadivar, Interview with Radio Free Europe, 8 Oct 2010, available at: <<http://kadivar.com/?p=104>>.

⁶⁵ Abdollah Nouri, a member of the Constitutional Amendment Council, *Soorat-e mashrooh-e mozakerat-e shoray-e baznegari-e qanun-e asasi [Record of the Discussions of the Council of Amendment of the Constitution]* vol. 3 (Tehran: The Islamic Consultative Assembly Publications, 1990) p. 1269.

established that] he does not satisfy the requirements, they can dismiss him, but it does not say that Experts can have a constant proactive supervision over him to see if he satisfies the requirements.⁶⁶

Another member of the Constitutional Amendment Council, Hojjat ol-Islam Mousavi Khoeniha, stated: “Nowhere have we explicitly defined a supervisory group for other state officials, the head of the judiciary and the president, while these officials are much more susceptible of deviation than the person who has been selected as the Leader.”⁶⁷ These statements evidence an approach to interpretation that the Office of the Supreme Leader is exempt from periodic affirmation of public approval and accountability processes familiar to democratic systems based on the principle of popular sovereignty. A review of the biannual resolutions of the Assembly of Experts supports the above observation.

Recent statements of Iranian authorities similarly suggest that the Supreme Leader is not responsible to the people in his exercise of authority. The statements elevate the Supreme Leader to a sacred status beyond reproach and criticism and condemn any attempt that might be perceived as questioning his rule as blasphemous.⁶⁸ For example, Ayatollah Mo'men, a member of the Assembly of Experts, stated:

Referring the right of governance and the election of *Vali Faqih* to people is contrary to reality and against reason because this important institution, which has been designed by the God, will not subsist if it is put in the hands of the people. The Experts of the Assembly of Experts do not determine the inherent entitlement of the *Vali-Faqih* to govern. Nor can they claim that they give him his *Velayat* and select him in their capacity as representatives of the people. The *Velayat* of the *Vali-Faqih* over society is assigned by the Almighty God.⁶⁹

Ayatollah Ka'abi, another member of the Assembly of Experts, stated:

While no one can deny the role of people in the country's political system, power in the Islamic Republic of Iran is of a divine nature ... Accordingly, the president, if not approved by the Supreme Leader, is *Taghut* [defiant toward God]. The president is obliged by reason of shari'a and law to execute the wise policies of His Excellency the Supreme Leader and he will commit both a

⁶⁶ Mohammad Yazdi, *Soorat-e mashrooh-e mozakerat-e shoray-e baznegari-e qanun-e asasi [Record of the Discussions of the Council of Amendment of the Constitution]* vol. 3 (Tehran: The Islamic Consultative Assembly Publications, 1990) p. 1280.

⁶⁷ *Ibid*, p. 1263.

⁶⁸ See, for example: Fars News, ‘The Leader’s *Velayat* is the *Velayat* of the God’s Prophet’ (11 January 2013) available at: <http://www.farsnews.com/newstext.php?nn=13911022000107>; Fars News, ‘The Representative of the Supreme Leader: *Velayat Faqih* is divinely *Velayat*’ (20 January 2013) available at: <http://www.farsnews.com/newstext.php?nn=13911101001073>; Hawzah, ‘Ayatollah Alavi Gorgani: *Velayat Faqih* is the representative of the Hidden Imam’ (3 October 2010) available at: <http://www.hawzah.net/fa/news/newsview/85309>; Fars News, ‘The rejection of *Velayat Faqih* is the denial of God’ (6 December 2010) available at: <http://www.farsnews.com/newstext.php?nn=8909141780>.

⁶⁹ Hawzah, ‘Ayatollah Mo'men: *Velayat-e Vali Faqih* has been assigned by the Almighty God’ (2 February 2010) available at: <http://www.hawzah.net/fa/news/newsview/82591>.

religious wrong and a legal wrong if he acts otherwise.⁷⁰

This section demonstrates that the role of the Assembly of Experts cannot be deemed as one of ensuring the democratic legitimacy and accountability of the Office of the Supreme Leader. Members of the Assembly of Experts owe their position to the Supreme Leader and his appointees at the Guardian Council. Indeed, law and practice confirm that members of the Assembly of Experts do not find the supervision of the Supreme Leader to fall within their remit. It therefore seems clear that the Office of the Supreme Leader does not have direct or indirect legitimacy in the Iranian political system from the will of the Iranian people. This is contrary to the requirements of Article 25(a), which requires that government and public officials are accountable, directly or indirectly, for their exercise of power to citizens who could remove them from office. The problem of the legitimacy of public power in Iran under Article 25 is compounded by the fact that the Supreme Leader is the highest official authority in the Islamic Republic and all elected bodies and offices are subject to his authority and broad discretionary powers.

2.3 Article 25(b): The Right to Stand for Election

2.3.1 *General Principles*

Article 25(b), concerning ‘the right to vote and be elected at genuine periodic elections’, is an application of the general rule laid down in subparagraph (a) and is considered to be the most important political right in the ICCPR.⁷¹ The UN Human Rights Committee states that genuine elections must ‘guarantee and give effect to the free expression of the will of the electors.’⁷² Voters have ‘a free choice of candidates’⁷³ and are ‘free to support or to oppose government, without undue influence or coercion of any kind that may distort or inhibit the free expression of the elector's will.’⁷⁴ State Parties violate Article 25(b) if they limit the choice of voters to an officially recognized political party or ideology⁷⁵ and/or prevent candidates ‘expressing alternative political views’ from standing for election.⁷⁶ In establishing broad electoral choice as a principle of Article 25, the Human Rights Committee addresses the effective implementation of the right to be elected through three main elements: non-discrimination and equality, freedom of political parties and reasonable and objective restrictions.

a. Non-discrimination and Equality

Article 25(b) secures to every citizen the right and the opportunity to be elected at genuine periodic elections without discrimination based on any of the grounds provided

⁷⁰ Khabaronline, ‘Member of the Assembly of Experts: The president if not appointed and approved by the Leader, is *Taghut*’ (17 January 2013) available at: <http://khabaronline.ir/detail/271336/politics/parties>.

⁷¹ Nowak (n 11) at 574, para. 18.

⁷² GC 25 (n 12) para. 21.

⁷³ *Ibid*, para. 15.

⁷⁴ *Ibid*, para. 19.

⁷⁵ *Chiiko Bwalya v. Zambia*, Human Rights Committee Communication No. 314/1988, UN Doc CCPR/C/48/D/314/1988 (1993).

⁷⁶ GC 25 (n 12) para. 22.

in Article 2 of the ICCPR such as race,⁷⁷ colour, sex,⁷⁸ language,⁷⁹ religion, political or other opinion,⁸⁰ national or social origin, property or birth. The Committee has endorsed special measures designed to address patterns of discrimination and ensure political representation for disadvantaged groups.⁸¹ However, such measures are, in that specific context, compatible with the right to stand for election and its non-discrimination requirement.⁸² In contrast, the exclusion of women, members of ethnic, linguistic or religious minorities or persons of lower social standing (in terms of educational, professional or religious attainments) from Iran's elected office must be seen as a violation of Article 25.⁸³

b. Freedom of Political Parties

The UN Human Rights Committee has stated that '[t]he right to freedom of association [under Article 22 of the ICCPR], including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25.'⁸⁴ This is because '[p]olitical parties and membership in parties play a significant role in the conduct of public affairs and the election process.'⁸⁵ Scrutiny over whether opposition parties are permitted, the extent to which those parties are allowed to operate freely and whether any parties have been banned is important because freedom of association is an 'essential condition ... for effective exercise of the right to vote and must be fully protected.'⁸⁶ The Committee has consistently indicated that States which do not permit the formation of alternative political parties or try to suppress the activities of alternative political parties are acting contrary to Article 25.⁸⁷

⁷⁷ *C. J. v. Canada*, Human Rights Committee Communication No. 19/1977, UN Doc CCPR/C/OP/1 (1984).

⁷⁸ *Shirin Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius*, Human Rights Committee Communication No. 35/1978, UN Doc CCPR/C/OP/1 (1984).

⁷⁹ *Ignatane v. Latvia*, Human Rights Committee Communication No. 884/1999, UN Doc CCPR/C/72/D/884/1999 (2001).

⁸⁰ *Chiiko Bwalya v. Zambia* (n 75); *Jorge Landinelli Silva et al. v. Uruguay*, Human Rights Committee Communication No. 34/1978, UN Doc CCPR/C/OP/1 (1984); *Luciano Weinberger Weisz v. Uruguay*, Human Rights Committee Communication No. 28/1978, UN Doc CCPR/C/OP/1 (1984).

⁸¹ See, eg, Concluding Observations of the Human Rights Committee: India, UN Doc CCPR/C/79/Add. 81 (4 August, 1997) para. 10.

⁸² *R. D. Stalla Costa v. Uruguay*, Human Rights Committee Communication No. 198/1985, UN Doc Supp. No. 40 (A/42/40) (1987). See also UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 23: Political and Public Life, UN Doc A/52/38 (1997).

⁸³ See on non-discrimination, GC 25 (n 12) para. 15; also *International Convention on the Elimination of All Forms of Racial Discrimination* (21 December 1965) UNTS, vol. 660, p. 195, art. 5(c); *Convention on the Elimination of All Forms of Discrimination Against Women* (18 December 1979) UNTS vol. 1249, p. 13, art. 7; *Declaration on the Elimination of Discrimination against Women* (7 November 1967) GA Res. A/RES/2263, art. 4; *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 25 November 1981, GA Res. A/RES/36/55, art. 4; *Civil and Political Rights, Including the Question of Religion Intolerance, Report submitted by Asma Jahangir, Special Rapporteur on freedom of religion or belief*, UN Doc E/CN.4/2005/61 (20 December 2004) para. 47.

⁸⁴ HRC GC 25 (n 12) para. 26.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, para. 12.

⁸⁷ See, for example, DPR Korea, Report of the Human Rights Committee (volume I), UN Doc A/56/40 [VOL.I](SUPP)(26 October 2001) para. 86(25).

It may also be said that such actions violate the requirement of non-discrimination, despite this requirement typically applying to the protection of individuals rather than to groups.⁸⁸ On this point, Hernan Santa Cruz, former Special Rapporteur of the Sub-commission on Prevention of Discrimination and Protection of Minorities (a body of independent experts that was replaced by the UN Human Rights Council Advisory Committee), has stated that:

Political opinion is frequently expressed by political parties and organizations sponsoring certain ideas of government or maintaining certain political principles or beliefs. Discrimination on the ground of political opinion is therefore directed not only against individuals, but against political parties and organizations as such. The most drastic type of discrimination in this sphere, found in some countries, consists of the total suppression of all political parties and organizations. While clearly discriminatory, such action has ... in some notable instances ... become a permanent arrangement reflecting the philosophy of the Government, and therefore a persistent form of discrimination directed against almost all the nationals of that country.⁸⁹

c. Reasonable and Objective Restrictions

The UN Human Rights Committee has stated that '[a]ny restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria.'⁹⁰ In no event may these restrictions conflict with the prohibition of discrimination in Articles 25 and 2 of the ICCPR, nor may they deprive persons of the right to stand for election by reason of political opinion or affiliation.⁹¹ If a candidate is required to have a minimum number of supporters for nomination, 'this requirement should be reasonable and not act as a barrier to candidacy.'⁹²

It is central to the right of political participation that no person may be subject to restrictions solely due to their political opinion, and this has been recognized by the Committee in complaints against States.⁹³ Candidates must not be unreasonably required to be members of parties or of specific parties.⁹⁴ States should 'indicate and explain the legislative provisions which exclude any group or category of persons from elective office.'⁹⁵ They should also describe the electoral system and explain 'how the different political views in the community are represented in elected bodies.'⁹⁶ In *Bwalya v. Zambia*, the Committee stated that any 'restrictions on political activity outside the only

⁸⁸ G Fox, 'The Right to Political Participation in International Law' (1992) 17 Yale J. Int'l L. 539 at 554-55.

⁸⁹ H Santa Cruz, *Study of Discrimination in the Matter of Political Rights*, UN Doc E/CN.4/Sub.2/213/Rev. 1, U.N. Sales No. 63.XIV.2 (1962) at 37.

⁹⁰ See GC 25 (n 12) para. 15.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Eg see *Alberto Altesor v. Uruguay*, Human Rights Committee Communication No. 10/1977, UN Doc CCPR/C/OP/1 at 105 (1985); *Weinberger Weisz v. Uruguay*, Human Rights Committee Communication No. 28/1978, UN Doc CCPR/C/OP/1 at 57 (1980).

⁹⁴ GC 25 (n 12) para. 17.

⁹⁵ *Ibid.*, para. 15.

⁹⁶ *Ibid.*, para. 22.

recognized political party amount to an unreasonable restriction of the right to participate in the conduct of public affairs.⁹⁷

The three elements – non-discrimination and equality, freedom of political parties and reasonable and objective restrictions – are all central to the exercise of the right of political participation in Article 25.

2.3.2 Application of Article 25(b) to Iran

This section examines the compliance of Iran’s electoral law and practice with the requirements of Article 25(b). The analysis below suggests that discrimination on grounds of religion, sex and political and other opinion is integral to the framework. There is also evidence of systematic violations of political freedoms that are essential to the full enjoyment of the rights protected by Article 25. The unreasonable and discriminatory restrictions that determine and restrict the eligibility for political candidacy indicate that Iran’s framework for political participation is incompatible with Article 25.

This section analyses the application of Article 25 to Iran in three parts. The first section focuses on the discrimination between citizens in the right to stand for election on the grounds of religion, sex, or political or other opinion. Second, the suppression of political parties and organizations by Iran is assessed. The third section considers the arbitrariness of the way in which candidates are disqualified for Presidential, Parliamentary and Assembly of Experts elections on the basis of the decision of the Guardian Council, the members of which are mostly appointed by the Supreme Leader.

a. Discrimination

1. Religion

In its third periodic report to the UN Human Rights Committee in 2010, Iran cited the following provisions of its Constitution with respect to freedom of religion and equality of persons:

- Article 23, which forbids ‘investigation of individuals’ beliefs’ and protects every one from being ‘harassed or taken to task simply for holding a certain belief’;
- Article 14, which bounds the government ‘to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights’;
- Article 19, which ‘prohibits all forms of discrimination’ and mandates that ‘[a]ll people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights’; and

⁹⁷ *Bwalya v. Zambia*, Human Rights Committee Communication No. 314/1988, UN Doc CCPR/C/48/D/314/1988 (1993), para 6.6.

- Article 20, which requires that ‘[a]ll citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.’

The Iranian government further notes that the ‘followers of the three religions of Zoroastrianism, Christianity, and Judaism, and the followers of other Islamic schools are free to perform their religious rites’ and that ‘their religious beliefs should not prevent them from realizing their social and citizenship rights.’⁹⁸ However, when reporting on the implementation of Article 25, Iran identifies a series of candidacy qualification requirements that contradict its general position on freedom of religion and equality as stated above. Notable among these are:

- Article 3(1) of the Law on Assembly of Experts Elections (1980), which limits membership in the Assembly of Experts to those who have acquired *Ijtihad* [authority for interpretation of Islamic laws];⁹⁹
- Article 115 of the Constitution, which requires Presidential candidates to be from among ‘religious political *rejal*’ and have ‘faith and loyalty to the official religion of the country’, which is Shiite Islam;
- Article 28 of the Law on Islamic Consultative Assembly Elections (1999), which requires candidates have ‘firm belief in and practical commitment to Islam’. A narrow exception is carved out under this article for followers of Zoroastrianism, Christianity and Judaism so long as they are ‘firm in their religious beliefs’. This is in response to Article 64 of the Constitution, which reserves five seats in the Majlis (Parliament) for followers of recognized religious minorities; and
- Article 30(4) and 30(5) of the Elections Act of Islamic Consultative Assembly (1999), which deprives those ‘convicted opponents of Islamic Republic of Iran’ and those ‘convicted of apostasy in competent courts of law’ of the right to ‘put forward their candidacy’.¹⁰⁰

In its report to the UN Human Rights Committee, Iran implies that the near complete exclusion of non-Shiite Muslims from political bodies and office is justified in light of the fact that ‘less than 2% of the population is from religious minorities.’¹⁰¹ However, this assertion is at odds with both law and fact. First, Iran’s religious minorities may constitute up to twenty percent of the population when one includes Baha’is, members of other faith groups that Iran refuses to recognize as religious groups and non-Shiite Islam (e.g. Sunni or Sufi).¹⁰² Second, Iran does not recognize the right to convert from Islam to

⁹⁸ IRI’s State Report (n 1) para. 605.

⁹⁹ A copy of this law (in Persian) can be found here:
<http://www.dastour.ir/brows/?lid=%20%20%20%20105951>

¹⁰⁰ Approved on 28 November 1999, available at: <<http://www.refworld.org/docid/4c35cba22.html>>.

¹⁰¹ IRI’s State Report (n 1) para. 3.

¹⁰² Human Rights Watch, *Iran: Religious and Ethnic Minorities: Discrimination in Law and Practice* (1 September 1997) available at: <http://www.hrw.org/reports/1997/09/01/iran-religious-and-ethnic-minorities>;

another religion nor the right to adopt atheistic or non-theistic beliefs and is reported to use a wide-range of coercive measures including physical force, penal sanctions and the death penalty, to compel such non-believers to adhere to Islam.¹⁰³ Regardless of religious demographics, Iran is not permitted to make religion-based distinctions between citizens in the enjoyment of the rights guaranteed by Article 25. To do so is in breach of Articles 2 and 25 of the ICCPR, as well as Article 18(2), which prohibits policies or practices with the intention or effect of impairing the freedom to have or adopt a religion or belief of one's choice.¹⁰⁴

2. Gender

Similar inconsistencies mark Iran's claims in the area of gender equality and political rights and participation.¹⁰⁵ Article 3 of the Iranian Constitution defines among the principal goals of government 'the participation of the entire people in determining their political, economic, social, and cultural destiny', 'securing the multifarious rights of all citizens, both women and men', 'providing legal protection for all, as well as the equality of all before the law' and 'the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all in both material and intellectual spheres'.

In so far as the Assembly of Experts is concerned, Iran's law does not impose any restrictions on women as long as they can prove their expertise in religious matters. Most of Iran's high profile clerics, including some members of the Assembly, have suggested that there is no bar to participation by women in the Assembly of Experts.¹⁰⁶ In practice however, the Guardian Council has rejected female candidates' applications, including to the Assembly of Experts, in 1990, 1998 and 2006. The only exception is the presence of Monireh Gorji Fard in Iran's first Assembly of Experts, which was established in 1979 for the purpose of drafting the Constitution ('Assembly of Experts for Constitution'). Notably, this was at a time when the Guardian Council did not have the Article 99

Iran Human Rights Documentation Center, *Crimes against Humanity: The Islamic Republic's Attacks on the Baha'is* (2008) available at: <http://www.iranhrcd.org/english/publications/reports/3155-crimes-against-humanity%3A-the-islamic-republic's-attacks-on-the-baha'%C3%ADs.html#preface>.

¹⁰³ *Ibid.* See also Human Rights Watch, *Iran: Christian pastor faces execution for 'apostasy'* (30 September 2011) available at: <http://www.hrw.org/news/2011/09/30/iran-christian-pastor-faces-execution-apostasy>; Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (Human Rights Council 22nd session), UN Doc A/HRC/22/56 (28 February 2013) paras. 59-67; FIDH, *Discrimination against Religious Minorities in Iran* (August 2003) available at: <http://www.fidh.org/IMG/pdf/ir0108a.pdf>.

¹⁰⁴ Human Rights Committee, General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18), UN Doc CCPR/C/21/Rev.1/Add. 4 (30 July 1993) para. 5; Special Rapporteur on freedom of religion or belief, *Civil and Political Rights, including the Question of Religious Intolerance*, U.N. doc E/CN.4/2005/61 (20 December 2004) para. 47.

¹⁰⁵ For a general overview of women's rights in Iran, please refer to HRIU, *A Legal System of Inequalities: Analysis of the Legal Status of Women in Iran and Iran's International Human Rights Obligations* (2014, forthcoming).

¹⁰⁶ E Rad, 'The Fourth Assembly of Experts and Seats Devoid of Women' (2007) 28 *The Journal of Women's Rights* 14, available at: <http://www.noormags.com/view/fa/articlepage/178077>.

supervisory powers that it currently enjoys over Assembly of Experts elections.¹⁰⁷

As for the Office of the President, Article 115 of the Constitution provides: ‘The President must be elected from among religious and political *rejal*.’ The literal meaning of the Arabic word *rejal* is men but it may also be read to refer to credible personalities. The draft text of the 1979 Constitution did not specify gender as a condition of eligibility for Presidency.¹⁰⁸ However, in August 1979, a recommendation was made to the Assembly of Experts for Constitution to add the Farsi word for man to the definition of the President.¹⁰⁹ The summary record of the Assembly meeting indicates two divergent approaches to this recommendation. One advocated for the adoption of the exclusionary recommendation on the basis that ‘in Islamic *feqh*, *velayat* [leadership and custodianship] is a man’s prerogative and involves intellectually tasking undertakings that God ... has not wanted women to be burdened by.’¹¹⁰ Those in the Assembly maintaining this approach argued:

In women, sentimental and emotional characteristics are strong and reason is weak. Islam has, therefore, ordained that governance and judgment not be given to women ... our sisters are all Muslim and seek only what Islam has given them and no more. They recognize that to desire more is to go against the Truth.¹¹¹

This statement evidences the fact that gender-based discrimination in political participation is justified by reference to ‘women’s weakness and inability to perform heavy responsibilities due to their strong emotions, in particular during menstruation, pregnancy, breastfeeding and childcare.’¹¹²

The other approach advocated for the inclusion of women on the basis that Presidency merely involves the exercise of executive power and is as such only a question of *vekalat* [representation] and not *velayat* [leadership and custodianship]. On this view, while women ‘shall never obtain the status of *rahbariat* [leadership]’, they ‘may occasionally reach a level of growth and development ... rendering them capable of exercising executive power.’¹¹³

The recommendation for an explicit exclusion of women did not receive the necessary number of Assembly votes to pass. However, little time was spent debating the term *rejal* and how it shall be defined. Commentators argue that this vague formulation was adopted to put the controversial debate over women’s political rights to rest while ensuring that women would have little, if any, chance for qualification in reality.¹¹⁴

¹⁰⁷ Article 99 states: ‘The supervision stated in article 99 is proactive [*nezarat-e estesvabi*, i.e. with the right to make legally binding interventions] and includes all executive stages of the election, including confirming or rejecting the qualifications of candidates’. See above for further discussion.

¹⁰⁸ Article 76, Draft Constitution.

¹⁰⁹ Principle 88/1 (n 51) p. 1766.

¹¹⁰ *Ibid*, p. 1769.

¹¹¹ *Ibid*, p. 1771.

¹¹² J Kadivar, ‘Women and Executive Power’ in T Povey and ER Povey (eds), *Women, Power and Politics in 21st Century Iran* (Ashgate Publishing Ltd 2012) p. 133.

¹¹³ Principle 88/1 (n 51) p. 1770.

¹¹⁴ Eg see Hechemi (n 57) p. 275.

In relation to the legislature, the main issue for women is exclusion in practice. Between 1980 and 1988, on average only four women per year were elected to the *Majlis* (Parliament) out of 290 members. The number of women representatives increased to 9, 14 and 13 women in 1992, 1996 and 2000 respectively. This pattern was, however, disrupted in the parliamentary elections of 2008 and 2012 as the number of women representatives decreased yet again to 8 and 9 respectively.¹¹⁵ This accounts for only 3.1% of the 290 seats in the parliament, which is far below the percentage of women parliamentarians in Islamic countries in the region (e.g. 27.7% in Afghanistan, 25.2% in Iraq, 19% in Tajikistan, 17.5% in the United Arab Emirates, 16% in Azerbaijan, 14.2% in Turkey and 12% in Syria).¹¹⁶

3. Political or other opinion

Iran's political participation framework is also discriminatory towards persons whose political opinions do not conform to Iran's particular political and Islamic ideology, as evidenced through:

- Article 3(1) of the Law on Assembly of Experts elections (1980), which demands that candidates have 'belief in the system of the Islamic Republic of Iran';
- Article 115 of the Constitution, which requires that presidential candidates be faithful believers 'in the fundamental principles of the Islamic Republic of Iran';
- Articles 28 of the Law on Islamic Consultative Assembly Elections (1999), which requires both 'full belief and commitment to the sacred system of the Islamic Republic of Iran' and 'practical allegiance to the Constitution and the progressive principle of the absolute rule of the Supreme Leader'; and
- Article 30 of the Law on Islamic Consultative Assembly Elections (1999), which denies the right to be elected to the legislature to a wide range of people, including, *inter alia*, those 'connected with the past regime' such as members of the city and town councils, freemasons, and members of the Senate and *Majlis*; those 'convicted of acting against the Islamic Republic of Iran'; those 'convicted of apostasy', and those associated with 'political parties, organizations, and groups which have been declared illegal by competent authorities.'

The exclusionary nature of Iran's political participation framework is also evident from a series of broad and vaguely worded Penal Code provisions that allow for 'the systematic repression of people expressing critical views against the authorized political and

¹¹⁵ Alem (n 58) p. 43.

¹¹⁶ The data has been compiled by the Inter-Parliamentary Union on the basis of information provided by National Parliaments by February 1 2013. For more information, visit <http://www.ipu.org/wmn-e/classif.htm>.

religious doctrine’ of Iran.¹¹⁷ These Penal Code provisions include:

- Articles 498 and 499, which provide for prison sentences ranging from two to ten 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, which provides for prison sentences for ‘anyone who undertakes any form of propaganda against the regime of the Islamic Republic of Iran or in support of groups or organizations opposing the government’;
- Article 513, which punishes an ‘insult’ against Islam by death or by a prison term of between one and five years;
- Article 514, which punishes ‘any form of insult’ against ‘His Excellency Imam Khomeini, the founder of the Islamic Republic of Iran and the Honorable the Supreme Leader’ by a prison sentence of between six months and two years;
- Article 609, which punishes with a fine, 74 lashes or a prison sentence of between three and six months, criticism of ‘any of the leaders of the three branches of the government, or presidential deputies, or ministers, or any of the members of the parliament, or any of the staff of the ministries, or any other state employees, in connection with carrying out their duties’;
- Article 698, which punishes with 74 lashes and imprisonment between two months and two years, the intentional creation of ‘anxiety and unease in the public mind’, ‘confusing people’s minds’, ‘false rumors’ or ‘the publication of falsehoods’; and
- Articles 280-287 and 189-191, which provide for the death penalty and cruel and inhuman punishments such as amputation, crucifixion or internal exile for the vaguely worded crimes of *efsad-e fel arz* [sowing corruption on earth] and *moharabeh* [enmity against God]. These Articles have been used in the past against political dissidents and government critics who have exercised their right to freedom of expression, association and assembly without resort to violence.¹¹⁸

UN Special Rapporteurs, human rights treaty bodies and international human rights organizations have raised concern about the severe impact of these opinion-related offences on the exercise of the right to freedom of opinion and expression, which has resulted, since the inception of Islamic Republic of Iran in 1979, in countless cases of arbitrary arrest and detention, unfair trial, torture and other cruel, inhuman and degrading

¹¹⁷ Ambeyi Ligabo, Special Rapporteur on the right to freedom of opinion and expression, *Civil and Political Rights including the question of freedom of expression: Addendum Mission to the Islamic Republic of Iran*, U.N. doc E/CN.4/2004/62/Add.2 (12 January 2004), para. 105.

¹¹⁸ Human Rights Watch, *Codifying Repression: An Assessment of Iran’s New Penal Code* (August 28 2012), pp. 9-12, available at: <http://www.hrw.org/node/109622/section/9>.

treatment or punishment, and arbitrary deprivation of life.¹¹⁹

In the early 1980s, documentation suggests that the Iranian government arrested, imprisoned, tortured and executed thousands of Iranian citizens whose beliefs and political engagements conflicted with those of the regime.¹²⁰ This process culminated with the *Fatwa* [Islamic Decree] of Ayatollah Khomeini in July 1988, whereupon the mass execution of between 3000 to 5000¹²¹ political prisoners was implemented between August and September of the same year.¹²² The climate of fear induced by these systematic and widespread violations of human rights was followed by a series of reported murders and enforced disappearances of dissident Iranian intellectuals between 1988 and 1998, which effectively led to self-censorship on the part of many politicians, intellectuals, students, journalists and the population at large.¹²³ It is said that the total suppression of alternative political views became ‘a permanent arrangement reflecting the philosophy of government, and therefore a persistent form of discrimination directed against almost all the nationals of the country.’¹²⁴

Parliamentary and presidential elections in Iran have taken place within this context, with many considering that elections remain a race between candidates who are loyal to the Islamic Republic of Iran’s ideological and political values.¹²⁵ This is undoubtedly at variance with the requirement that there be in genuine elections ‘a plurality of choice

¹¹⁹ See, eg, Ambeyi Ligabo (n 117).

¹²⁰ Iran Tribunal on the Abuse and Mass Killings of Political Prisoners in Iran, 1981-1988, *Findings of the Truth Commission Held 18th-22nd June, 212* (30 July 2012), available at: http://www.prisonersofconscience.org/includes/documents/cm_docs/2012/i/iran_tribunal_report.pdf. Some of the political groups persecuted by Iran included the People’s Mujahedin Organization of Iran (MKO); the Organization of Iranian People’s Fedai Guerrillas (OPIFEG) and its offshoots, the OPIFEG (Minority) and the Organization of Iranian People’s Fedaian (Majority); the Union of Iranian Communists; the Union of Combatant Communists; the Revolutionary Organization of the Toilers of Iranian Kurdistan (Komolah); the Organization of Revolutionary Workers of Iran (Rah-e Kargar); the Iranian Organization of Sahand; the Tudeh Party of Iran; the Ranjbaran Party of Iran; the Democratic Party of Iranian Kurdistan (PDKI); the Forghan Organization; the Organization of Razmandegan for the Freedom of the Working Class; and the Organization of Paykar for the Emancipation of the Working Class.

¹²¹ There are no exact figures of the number of victims due to suppressive political climate and Iran’s refusal to give any information about the mass graves wherein it buried the victims’ bodies.

¹²² Amnesty International, *Iran: Violations of Human Rights 1987-1999* (AI Index MDE 13/21/90) available at: <http://www.amnesty.org/ar/library/asset/MDE13/021/1990/en/5a289bf6-ee5e-11dd-9381-bdd29f83d3a8/mde130211990en.pdf>; Amnesty International, *Iran: the 20th Anniversary of 1988 Prison Massacre* (19 August 2008) available at: <https://www.amnesty.org/en/library/asset/MDE13/118/2008/en/f5123dcd-6de3-11dd-8e5e-43ea85d15a69/mde131182008en.html>; Iran Human Rights Documentation Center, *Deadly Fatwa: Iran’s 1988 Prison Massacre* (2009) available at: <http://www.iranhrdc.org/english/publications/reports/3158-deadly-fatwa-iran-s-1988-prison-massacre.html#.UTP04KUiWgE>; Geoffrey Robertson, *The Massacre of Political Prisoners in Iran 1988* (Abdorraham Boroumand, Foundation, 2011) available at: http://www.iranrights.org/english/attachments/doc_3518.pdf.

¹²³ See, eg, Article 19, *Unveiled: Art and Censorship in Iran* (September 2006) available at: <http://www.article19.org/data/files/pdfs/publications/iran-art-censorship.pdf>; Lawrence van Gelder (ed.), ‘Iran Advises Self-Censorship’ (*New York Times*, 29 April 2008) available at: http://www.nytimes.com/2008/04/29/arts/29arts-IRANADVISESS_BRF.html?_r=0.

¹²⁴ Santa Cruz (n 89).

¹²⁵ Hekmat (n 3).

among candidates expressing alternative political views.’¹²⁶ Individuals who invoke these genuine election standards risk suffering not only discrimination in their enjoyment of the rights guaranteed by Article 25 but also arbitrary arrest and detention, torture and other gross human rights violations.

Seculars, liberals, socialists and others who oppose the concept of *velayat-e faqih*, advocate the separation of religion and state, and seek fundamental constitutional reform are no longer the only victims of violations in Iran. In the aftermath of June 2009 presidential elections, it is reported that Iran has made the effective enjoyment of political participation rights impossible even for individuals who are committed to the foundational principles of the Islamic Republic or at one time held high-level official positions.¹²⁷

For example, severe prison sentences, as a result of unfair trials marked by alleged torture and forced confessions, have been issued for:

- Seyyed Mostafa Tajzadeh (political Vice Minister of the Ministry of Interior of Iran in the government of President Mohammad Khatami between 1997 and 2005);
- Mohsen Mirdamadi (member of parliament from 2000 and 2004 and as the head of the reformist Islamic Iran Participation Front since 2006);
- Behzad Nabavi (Deputy Speaker of the parliament and was one of the founders of the reformist Mojaehin of the Islamic Revolution Organization which was declared illegal after June 2009); and
- Mohammad Ali Abtahi (Iran’s Vice President in the government of president Mohammad Khatami between 2001 and 2004).

Furthermore, the UN Working Group on Arbitrary Detention determined that former 2009 Presidential candidates Mehdi Karoubi and Mir Hossein Mousavi and their wives were arbitrarily detained,¹²⁸ as in practice were hundreds of other prisoners of conscience who were imprisoned for exercising their rights to freedom of opinion and expression and freedom of association and assembly during the protests following the 2009 presidential election.¹²⁹ There are reports that Iranian officials are labeling the 2009 post-election protests as *Fitnah* (sedition), as the Head of the Guardian Council has done,¹³⁰ and 2009

¹²⁶ Evatt (n 24) p.192.

¹²⁷ See, e.g., Amnesty International, *We are ordered to crush you: Expanding repression of dissent in Iran* (February 28 2012) 39-41, available at: <http://www.amnestyusa.org/sites/default/files/mde130022012en.pdf>; Iran Human Rights Documentation Center; *Violent Aftermath: the 2009 Election and Suppression of Dissent in Iran* (2010) pp. 61-90, available at: <http://www.iranhrdc.org/english/publications/reports/3161-violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran.html#.UTQBpaUiWgE>.

¹²⁸ Opinions adopted by the Working Group on Arbitrary Detention (64th session) No. 30/2012 (Islamic Republic of Iran), UN Doc A/HRC/WGAD/2012/30 (26 November 2012).

¹²⁹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran (Human Rights Council 22nd session), UN Doc A/HRC/22/56 (28 February 2013) para. 13.

¹³⁰ Islamic Revolution Document Center, ‘Ayatollah Janati’s Last Word on *Fitnahgaran*’ (14 December 2012) available at: <http://www.irdc.ir/fa/content/25532/default.aspx>.

post-election protesters and their supporters as *fitnah-garan* (sedition coordinators) and *saketin-e fitnah* (sedition sympathizers).¹³¹

b. Suppression of Political Parties

In addition to individual discrimination on political grounds, the evidence is strong that political parties as an institution have been repressed by the Islamic Republic of Iran. Under Article 26 of the Constitution, the ‘formation of parties, societies, political or professional associations ... is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic republic’.¹³² Building on this, the proposed Parties and Associations Law Reform Plan prohibits ‘followers and associates of antagonistic groups that act or have previously acted against the Islamic Republic’ from joining or forming political parties, violating the right to freedom of association.¹³³

The situation in practice is not dissimilar. For example, the UN Human Rights Committee recognized in February 2011 that a court order dissolved two pro-reform political parties and dozens of political opposition members were arrested.¹³⁴ In November 2011, the UN Secretary-General noted with concern that the reformist Islamic Iran Participation Front, the Mujahidin of the Islamic Revolution and the Freedom Movement of Iran reputedly had their licences suspended and were banned from running for the 2012 elections.¹³⁵ Furthermore, opposition groups were also denied permission to stage rallies.¹³⁶

The Islamic Republic of Iran’s failure to respect Article 22’s right to freedom of association also results in a violation of the Article 25(b) right to be elected in light of the close interrelationship between the two rights.

c. Arbitrary Disqualification

The Council of Guardians is granted broad powers to disqualify presidential, parliamentary and Assembly of Expert potential candidates under Articles 99 and 110(9) of the Constitution, Article 3 of the Law on Assembly of Experts Elections, Article 3 of the Law on Islamic Consultative Assembly Elections and Article 8 of the Law on Presidential Elections.

¹³¹ Eg Fars News, ‘Free election’ talk is due to *Fitnahgarans*’ and political perverts’ fear of disqualification’ (12 January 2013), available at: <http://www.farsnews.com/newstext.php?nn=13911023000093>.

¹³² Art. 26, Iranian Constitution.

¹³³ Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, UN Doc A/HRC/19/66 (6 March 2012), para 15.

¹³⁴ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations on the Islamic Republic of Iran*, UN Doc. CCPR/C/IRN/CO/3 (29 November 2011), para 29 [hereinafter HRC CO 2011].

¹³⁵ UNGA, *Report of the Secretary-General on the Situation of Human Rights in the Islamic Republic of Iran*, UN Doc A/67/327 (22 August 2012), footnote 14.

¹³⁶ *Ibid*, para 28.

Presidential Candidates

During the 2009 Presidential election the Guardian Council approved only four candidates out of more than 450 prospective candidates.¹³⁷ During the 2013 Presidential election the Guardian Council approved only eight candidates out of over 680 potential candidates.¹³⁸ In both cases, prominent and respected public figures were disqualified and excluded.

Under Article 57 of the Law on Presidential Elections, the Guardian Council must provide a copy of the decision on the eligibility of candidates to the Ministry of the Interior. The Ministry of the Interior is then required to make disqualifications public.¹³⁹ The Law on Presidential Elections does not address whether the reasoning for the Guardian Council's decision is disclosed to the disqualified candidate or the public, nor whether there is the possibility of appeal. Anecdotal reports suggest that disqualified candidates are not provided reasonable information setting out the basis of the decision.

The lack of transparency, accountability and review enables disqualifications to occur without the possibility of considering whether such restrictions are reasonable. It appears likely that such a situation makes the disqualifications arbitrary by default. This is in violation of Article 25(b).

Parliamentary Candidates

Prior to the 2004 Majlis election, the Guardian Council disqualified a third of the 8,200 candidates.¹⁴⁰ The Executive Board of the election district has responsibility for reviewing the eligibility of candidates in the first instance.¹⁴¹ Disqualification 'must be based on the law and based on legitimate documentation and records.'¹⁴² County and district governors must 'provide a written and confidential report to the candidate stating the reason for his/her disqualification [by the Executive Board] – including the articles from the law that are the basis for the ineligibility.'¹⁴³ The reviewing authority must

¹³⁷ HRC CO 2011 (n 134) para. 29.

¹³⁸ Unauthored, *Iran: Threats to Free, Fair Elections* (Human Rights Watch 24 May 2013) available at: <http://www.hrw.org/news/2013/05/24/iran-threats-free-fair-elections>; S Dehghan, *Iran Election: Rafsanjani Blocked From Running for President* (The Guardian, 21/05/2013) available at: <http://www.theguardian.com/world/2013/may/21/iran-presidential-election-rafsanjani-disqualified>; K Vick, *Iran's Supreme Leader Tightens Grip After Disqualifying Two Top Presidential Candidates* (Time World, 22/05/2013) available at: <http://world.time.com/2013/05/22/irans-supreme-leader-tightens-grip-after-disqualifying-two-presidential-candidates/>.

¹³⁹ Art. 58, 2000 Presidential Electoral Law available at:

http://www.princeton.edu/irandataportal/elections/pres/law/Presidential_Electoral_Law.pdf.

¹⁴⁰ M Monshipouri, 'Shirin Ebadi' in D Forsythe, *Encyclopedia of Human Rights* (OUP 2009) 78; Unauthored, *The Europa World Year Book* (Taylor & Francis 45th edition, 2004) 2158.

¹⁴¹ Art. 50, 1999 Electoral Law for Parliamentary Elections available at:

<http://www.princeton.edu/irandataportal/elections/lawparl/>. [hereinafter '1999 Electoral Law']

¹⁴² *Ibid.*, Art. 50(1)

¹⁴³ *Ibid.*, Art. 51; Art. 29, 1987 Executive Bylaw of the Parliamentary Elections Law available at:

<http://www.moi.ir/Portal/Home/ShowPage.aspx?Object=Instruction&CategoryID=c2cf29ae-2e8e-4319->

provide the reason and evidence for disqualification *if requested by the candidate*.¹⁴⁴

There is a right of appeal to the Supervisory Board,¹⁴⁵ following which the county and district governors must again provide the disqualified candidates with a report including ‘the articles of the Law that are the basis of the disqualification, as well as the relevant evidence and documents’.¹⁴⁶ There is then a right of appeal to the Guardian Council.¹⁴⁷ Again, county and district governors are required to ‘issue the decision of the Guardian Council on the disqualification of all ineligible candidates to the individual candidates’.¹⁴⁸

Despite the right of appeal, many of the eligibility criteria are either vague or open to interpretation, thereby enabling arbitrary disqualifications. Furthermore, the opportunity for obtaining reasons from the Guardian Council for the disqualification appears to be limited. There is little evidence to suggest the appeal process is used often or to successfully overturn a disqualification. This could amount to a violation of Article 25(b).

Assembly of Expert Candidates

The Guardian Council has the sole responsibility for determining whether candidates possess the relevant qualities;¹⁴⁹ these qualities include a ‘reputation for religious belief, reliability, and moral behaviour’,¹⁵⁰ belief in the system of Iran¹⁵¹ and ‘not having an anti-political and anti-social background’.¹⁵² There is a right to appeal against the Guardian Council’s decision, but it is the Guardian Council who conducts this appeal.¹⁵³ As with Presidential candidates, the Executive Bylaws for the Election of the Assembly of Experts of the Leadership do not address whether the explanation for the Guardian Council’s decision are disclosed to the disqualified candidate or the public.

Some of the eligibility criteria lack clarity and are open to varying interpretations. The right of appeal is undermined due to the fact that the reasoning behind disqualification does not appear to be disclosed and the same body that made the decision at first instance conducted the appeal itself. There is similarly little evidence to suggest that the appeal process is used and effective. This amounts to a violation of Article 25(b).

[a926-1e311d44c6d1&WebPartID=047d863f-3208-4565-b655-95e0b262749f&ID=381ee8c0-261d-487c-879f-ba5d05f5f033](#). [hereinafter ‘Executive Bylaw’]

¹⁴⁴ Executive Bylaw, *ibid*, Art. 29(1).

¹⁴⁵ 1999 Electoral Law (n 141), Art. 51(1); Executive Bylaw (n 143) Art. 30.

¹⁴⁶ 1999 Electoral Law, *ibid*, Art. 52(2); Executive Bylaw, *ibid*, Art. 33.

¹⁴⁷ 1999 Electoral Law, *ibid*, Art. 52(2) and (3); Executive Bylaw, *ibid*, Art. 34.

¹⁴⁸ Executive Bylaw, *ibid*, Art. 37.

¹⁴⁹ *Ibid*, Art. 11(1).

¹⁵⁰ *Ibid*, Art. 11A.

¹⁵¹ *Ibid*, Art. 11D.

¹⁵² *Ibid*, Art. 11E.

¹⁵³ *Ibid*, Art. 16(3).

3. Conclusion

The rights relating to political participation are fundamental to accountability and transparency and are well-established in international human rights law. This legal research study analysed Iran's obligations under Article 25 of the ICCPR, which provides for the right to participate in the conduct of public affairs and the right to stand for election. In light of those obligations, and a detailed review of Iranian law and practice, this study concludes that Iran is currently failing to comply with its obligations under Article 25.

Article 25, and therefore the right to stand for election, contains three main elements: non-discrimination and equality, freedom of political parties, and reasonable and objective restrictions. Iran's law and practice stands in contradiction to these principles. Individuals wishing to stand for election are disqualified and discriminated against on grounds of religion, gender and political and other opinion. Political parties are suppressed insofar as they act or have previously acted against those in power. Due to the interpretation of domestic laws and a lack of appeal in some cases, the Council of Guardians is able to arbitrarily disqualify candidates for the Presidency, the Parliament and the Assembly of Experts.

The principle of *Velayat-e Faqih* (guardianship of the Islamic jurist) is also central to the violation of Article 25. The principle underlies the Iranian Constitution, whereby the Supreme Leader as *Faqih* (the Islamic jurist) is granted a degree of sovereignty over the Iranian people. Despite the Office of Supreme Leader's ability in law and practice to exercise broad public power, falling within Article 25, this position is not directly or indirectly legitimated through public will. This is a result of a lack of public accountability as well as discriminatory qualification requirements, an appointment process that entails a defective circular arrangement between the Assembly of Experts, the Guardian Council and the Office of the Supreme Leader.

Bibliography

International Treaties and Conventions

Charter of the United Nations (adopted 24 October 1945) 1 UNTS XVI

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III) (UDHR)

International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969, ratified by IRI 12 March 1969) 660 UNTS 195 (CERD)

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976, ratified by IRI 23 March 1976) 999 UNTS 171 (ICCPR)

United Nations Treaty Series, International Covenant on Civil and Political Rights (status as at: 21/02/2014) available at:

https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en.

Other International Instruments

Treaty-based

(i) CERD

UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 21, 'Right to Self-Determination' (48th session) (1996), UN Doc A/51/18.

(ii) HRC

Human Rights Committee, General Comment No. 12, 'The Right to Self-Determination of Peoples (Art.1)' (21st session) (1984) UN Doc HRI/GEN/1/Rev.1

Human Rights Committee, General Comment No. 25, 'The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)' (57th session) (1996), UN Doc CCPR/C/21/Rev.1/Add.7

Human Rights Committee, General Comment No. 28: Equality of rights between men and women (article 3), (29 March 2000), UN Doc CCPR/C/21/Rev.1/Add.10

Human Rights Committee, General Comment No. 32, 'Article 14: Right to equality before courts and tribunals and to a fair trial' (90th session) (2007), UN Doc CCPR/C/GC/32

Human Rights Committee, *Concluding Observations of the Human Rights Committee: India* (1997) UN Doc CCPR/C/79/Add. 81

Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Iran' (29 November 2011) UN Doc CCPR/C/IRN/CO/3.

(iii) CEDAW

UN Committee on the Elimination of Discrimination Against Women, *CEDAW General Recommendation No. 23: Political and Public Life* (1997) UN Doc A/52/38.

Charter-based

(i) UN Commission on Human Rights/ Human Rights Council

Resolution

UNCHR Res 1989/51 (7 March 1989).

UNCHR Res. RES 1999/57 (April 27 1999).

Working Group on the Universal Periodic Review

Compilation Prepared by the Office of the High Commissioner for Human Rights: Islamic Republic of Iran (25 November 2009) UN Doc A/HRC/WG.6/7/IRN/2.

Report of the Working Group on the Universal Periodic Review: Islamic Republic of Iran (15 March 2010) UN Doc A/HRC/14/12.

Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention (64th session) No. 30/2012 [Islamic Republic of Iran] (26 November 2012) UN Doc A/HRC/WGAD/2012/30

Universal Periodic Review Documentation

Human Rights Council, *Islamic Republic of Iran National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1* (18 November 2009) UN Doc A/HRC/WG.6/7/IRN/1.

Special Rapporteur Reports

UNGA, Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, *Civil and Political Rights including the question of freedom of expression: Addendum Mission to the Islamic Republic of Iran*, (12 January 2004) UN Doc E/CN.4/2004/62/Add.2.

UNGA, Report submitted by Asma Jahangir, Special Rapporteur on freedom of religion or belief (20 December 2004) UN Doc E/CN.4/2005/61.

Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran (6 March 2012) UN Doc A/HRC/19/66.

Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran to the Human Rights Council (28 February 2013) UN Doc A/HRC/22/56.

(ii) UN General Assembly

UNGA Doc A/2929, Annotations on the text of the draft International Covenants on Human Rights (1 July 1955).

UNGA, *Declaration on the Elimination of Discrimination against Women*, A/RES/2263 (7 November 1967).

UNGA, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* A/RES/36/55 (25 November 1981).

UNGA, Enhancing the effectiveness of the principle of periodic and genuine elections, Res 43/157 (8 December 1988).

UNGA, Enhancing the effectiveness of the principle of periodic and genuine elections, Res 46/137 (17 December 1991).

UNGA, *Report of the Secretary-General on the Situation of Human Rights in the Islamic Republic of Iran* (22 August 2012) UN Doc A/67/327.

National Instruments

Domestic Law

Constitution of the Islamic Republic of Iran (1979), available at: <http://www.unhcr.org/refworld/docid/3ae6b56710.html>

Parties Law and Its Relevant Executive Regulations (1981), available at: <http://www.unhcr.org/refworld/docid/4c35e25a2.html>

The Law on Guardian Council's Supervision of the Presidential Election of the Islamic

Republic of Iran (1985), available at: http://www.princeton.edu/irandataportal/elections/pres/law/Law_Guardian_Council_Supervision_Presidential_Elections.pdf

The Law on Guardian Council's Supervision of Elections of Islamic Consultative Assembly, (1986), available at: <http://rc.majlis.ir/fa/law/show/90096>

Press Law (1986), available at: <http://www.unhcr.org/refworld/docid/4c35e3cd2.html>

Executive Bylaw of the Parliamentary Elections Law (1987) available at: <http://www.moi.ir/Portal/Home/ShowPage.aspx?Object=Instruction&CategoryID=c2cf29ae-2e8e-4319-a926-1e311d44c6d1&WebPartID=047d863f-3208-4565-b655-95e0b262749f&ID=381ee8c0-261d-487c-879f-ba5d05f5f033>.

Islamic Penal Code (1991), available at: <http://www.unhcr.org/refworld/docid/4d384ae32.html>

Interpretation of Article 99 of the Constitution of the IRI (05/12/1991) available at: <http://www.princeton.edu/irandataportal/elections/electoral-laws/principle-99/>.

The Law on Organization, Functions and Elections of Islamic Councils and Mayors Law (1996), available at: <http://www.parliran.ir/index.aspx?siteid=1&pageid=3152>

The Law on Islamic Consultative Assembly Elections (1999), available at: <http://www.unhcr.org/refworld/country,LEGAL,,LEGISLATION,IRN,4562d8cf2,4c35c5a22,0.html>

The Law on Presidential Election (2000), available at: <http://www.princeton.edu/irandataportal/elections/lawpar/>.

Executive Bylaws for the Election of the Assembly of Experts of the Leadership (approved 1982, modified 2006) available at: <http://www.princeton.edu/irandataportal/laws/executive-bylaws-assembly-of-experts/>.

Iran Computer Crimes Law (2011), available at: <http://www.cyberpolice.ir/page/2431>

The Content of Cybercrime as related to Islamic Consultative Assembly Elections (2012), available at: <http://terakmeh.com/1390/10/11/ان‌ت‌خ‌اب‌ب‌ا‌م‌ر‌ت‌ب‌ط‌م‌ج‌ر‌م‌ان‌ه‌م‌ح‌ت‌و‌ای‌م‌ص‌اد‌ی‌ق/>

Proposed Amendment to the Law on Presidential Election (2012), available at: <http://www.yjc.ir/fa/news/4141006/ان‌ت‌خ‌اب‌ات‌ق‌ان‌ون‌اص‌ل‌اح‌ط‌رح‌ک‌امل‌م‌تن>

Other State Sources

Zohreh Attaie Ashtiani (ed), *Women in Power and Decision Making in Status of Women in Islamic Republic of Iran* (Tehran: The Centre for Women and Family Affairs, 2008),

available at: http://iranianembassy.nl/en/9_hogh_bash/zanan/93.pdf

Islamic Republic of Iran, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1* (18 November 2009) UN Doc A/HRC/WG.6/7/IRN/1

Iran's third periodic report to the Human Rights Committee (31 May 2010) UN Doc. CCPR/C/IRN/3.

Jurisprudence

Human Rights Committee, *Weinberger Weisz v. Uruguay* (1980) U.N. Doc. CCPR/C/OP/1.

Human Rights Committee, *C. J. v. Canada* (1984) UN Doc CCPR/C/OP/1.

Human Rights Committee, *Shirin Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius* (1984) UN Doc CCPR/C/OP/1.

Human Rights Committee, *Alberto Altesor v. Uruguay* (1985) UN Doc CCPR/C/OP/1.

Human Rights Committee, *Stalla Costa v. Uruguay* (1987) UN Doc Supp. No. 40 (A/42/40).

Human Rights Committee, *Marshall v. Canada* (1991) UN Doc CCPR/C/43/D/205/1986 at 40.

Human Rights Committee, *Bwalya v. Zambia* (1993) UN Doc CCPR/C/48/D/314/1988.

Human Rights Committee, *Oló Bahamonde v. Equatorial Guinea* (1993) UN Doc CCPR/C/49/D/468/1991

Human Rights Committee, *Landman v. Finland* (1994) UN Doc CCPR/C/52/D/511/1992.

Human Rights Committee, *Gauthier v. Canada* (1999) UN Doc CCPR/C/65/D/633/1995.

Human Rights Committee, *Ignatane v. Latvia* (2001) UN Doc CCPR/C/72/D/884/1999.

Human Rights Committee, *Matyus v. Slovakia* (2002) UN Doc CCPR/C/75/D/923/2000.

Human Rights Committee, *Karakurt v. Austria* (2002) UN Doc CCPR/C/74/D/965/2000.

Academic Sources

General

M. J. Bossuyt, *Guide to the "travaux préparatoires" of the International Covenant on Civil and Political Rights* (Boston: Kluwer Academic Publishers, c1987).

R. Burchill (ed), *Democracy and International Law* (Hampshire: Ashgate Publishing, 2006).

J. Crawford, 'Democracy and the Body of International Law', in G. H. Fox and B. R. Roth (eds), *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000).

J. M. Ebersole, 'The United Nations' Response to Requests for Assistance in Electoral Matters' (1993) 33 *Virginia Journal of International Law* 91.

E. Evatt, 'The Human Rights Committee's General Comment on Article 25', in N. Ando (ed.), *Towards implementing universal human rights: Festschrift for the twenty-fifth anniversary of the Human Rights Committee* (Leiden : Nijhoff, 2004).

T. Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46.

G. H. Fox and B. R. Roth (eds), *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000).

G. H. Fox and B.R. Roth, 'Democracy and International Law' (2001) 27(3) *Review of International Studies* 327.

G. H. Fox, 'The Right to Political Participation in International Law' (1992) 17 *Yale Journal of International Law* 539.

G. S. Goodwine-Gill, *Free and fair elections: International Law and Practice* (Geneva: Inter-Parliamentary Union, 1994).

H. Hannum, *Autonomy, Sovereignty, and Self-Determination The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

K. Herndl, 'The Case-Law of the Commission as Regards the Right to Free Elections (Article 3 of protocol 1)', in M. Salvia and M. E. Villiger (eds) *The Birth of European Human Rights Law*, (Baden-Baden: Nomos Verlagsgesellschaft, 1998).

E. Hooglund and W. Royce, 'The Shi'i Clergy of Iran and the Conception of an Islamic State' (1985) 1(3) *Culture and Society* 102.

S Joseph, *The International Covenant on Civil and Political Rights: cases, materials, and commentary* (OUP, 2004).

S Joseph, 'Rights of Political Participation' in D Harris and S Joseph (eds), *The International Covenant on Civil and Political Rights and United Kingdom Law* (Clarendon Press, 1995).

S. Marks, *The Riddle of all Constitutions: International Law, Democracy and the Critique of Ideology* (Oxford: Clarendon Press, 2000).

M. Monshipouri, 'Shirin Ebadi' in Forsythe, D., *Encyclopedia of Human Rights* (OUP 2009).

T. D. Musgrave, *Self-Determination and National Minorities* (Oxford: Oxford University Press, 1997).

M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl: N.P. Engel 2 ed, 2005).

B. R. Roth, *Governmental Illegitimacy in International Law* (New York: Oxford University Press, 1999)

E. Rad, 'The Fourth Assembly of Experts and Seats Devoid of Women' (2007) 28 *The Journal of Women's Rights* 14.

Unauthored, *The Europa World Year Book* (45th edition, Taylor & Francis 2004)

F. Thomas, 'The Emerging Right to Democratic Governance' (1992) 86 *American Journal of International Law* 46.

A. Verstichel, *Participation, Representation and Identity: The right of persons belonging to Minorities to effective participation in public affairs: content, justification and limits* (Antwerp: Intersentia, 2009).

M. Weller (ed), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford: Oxford University Press, 2010).

S. Wheatly, 'Democracy in International Law: A European perspective' (2002) 51 *International Comparative Law Quarterly* 225.

Iran Specific

R. Afshari, *Human Rights in Iran: The Abuse of Cultural Relativism* (Philadelphia: University Press, 2001).

A. M. Ansari, *Crisis of Authority: Iran's 2009 Presidential Election* (London: Chatham House, 2010).

H. Asayesh *et al.*, 'Obstacles of Political Party Development in Iran' (2010) 2(10) *Report*

and Opinion 28.

R., E.P., *Power, Islam, and Political Elite in Iran: A Study on the Iranian Political Elite from Khomeini to Ahmadinejad* (Leiden: Brill, 2009).

S. C. Fairbank, 'Theocracy Versus Democracy: Iran Considers Political Parties' (1998) 52(1) *The Middle East Journal* 17.

M. J. Gasiorowski, 'The Power Struggle in Iran' (2000) 7(4) *Middle East Policy* 22.

S. Hechemi, *Iranian Constitutional Law: Governance and Political Institutions vol. II* (Mizan Publication 5th ed, 1391)

J Kadivar, 'Women and Executive Power' in T Povey and ER Povey (eds), *Women, Power and Politics in 21st Century Iran* (Ashgate Publishing Ltd 2012).

R. Razavi, *The Politics of Reform in Iran (1997-2005): The development of electoral processes, the evolution of civil society and the rise of political movements* (Lewiston, N.Y.: Edwin Mellen Press, 2010).

H. Rezaei, *The Politics in Post-Revolution Iran: with Special Reference to Khatami's Presidency* (Pune University, 2011), available at: <http://shodhganga.inflibnet.ac.in/handle/10603/2024> (accessed November 20, 2012).

G. Robertson, *The Massacre of Political Prisoners in Iran 1988* (Abdorrahman Boroumand, Foundation, 2011).

K. Sadjadpour, *The Supreme Leader* (United States Institute of Peace, undated) available at: <http://iranprimer.usip.org/resource/supreme-leader>

A. W. Samii, 'Iran's Guardian Council as an Obstacle to Democracy' (2001) 5(4) *Middle East Journal* 643.

A. Schirazi, *The Constitution of Iran: Politics and State in the Islamic Republic*, translated by John O'Kane (London: I.B. Tauris, 1997).

A. W. Smii, 'The Changing Landscape of Party Politics in Iran: A Case Study' (2005) 1(1) *The Journal of the European Society for Iranian Studies* 53.

Non-Governmental Organizations

Amnesty International, *Iran: the 20th Anniversary of 1988 Prison Massacre* (19 August 2008) available at: <https://www.amnesty.org/en/library/asset/MDE13/118/2008/en/f5123dcd-6de3-11dd-8e5e-43ea85d15a69/mde131182008en.html>

Amnesty International, *Ayatollah must retract Iran election comments* (29 October 2009), available at: <http://www.amnesty.org/en/news-and-updates/ayatollah-must-retract-iran-election-comments-20091029>

Amnesty International, *Iran: Ensure free presidential election* (15 May 2009), available at: <http://www.amnesty.org/fr/library/asset/MDE13/046/2009/fr/25d062b9-2643-4a8e-908a-d72929557665/mde130462009en.html>

Amnesty International, *Iran: Submission to the Human Rights Committee for the 103rd Session of the Human Rights Committee (17 October – 4 November 2011)*, available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_Iran_HRC103.pdf

Amnesty International, *We are ordered to crush you: Expanding repression of dissent in Iran* (February 28 2012), available at: <http://www.amnestyusa.org/sites/default/files/mde130022012en.pdf>

Anoush Ehteshami *et al* (eds), *Understanding Iran's Assembly of Experts* (Durham, Centre for Iranian Studies and Durham University, 2006), available at: <http://www.dur.ac.uk/resources/iranian.studies/Policy%20Brief%201.pdf>

Article 19, *Unveiled: Art and Censorship in Iran* (September 2006) available at: <http://www.article19.org/data/files/pdfs/publications/iran-art-censorship.pdf>

Article 19, *Islamic Republic of Iran: Computer Crimes Law* (December 2011), available at: [http://www.article19.org/data/files/medialibrary/2921/12-01-30-FINAL-iran-WEB\[4\].pdf](http://www.article19.org/data/files/medialibrary/2921/12-01-30-FINAL-iran-WEB[4].pdf)

Center for Human Rights, *Human Rights and Elections: A Handbook on the Legal, Technical and Human Rights Aspects of Elections* (United Nations, 1994).

Farid Hekmat, *Neither Free Nor Fair, Elections in the Islamic Republic of Iran* (Abdorrahman Boroumand Foundation, 2009), available at: <http://www.iranrights.org/english/document-604.php>

Haleh Esfadiari and Andrea Bertone (eds), *An Assessment of the Iranian Presidential Elections* (Washington: Woodrow Wilson International Centre for Scholars – Middle East Project, 2002), available at: http://www.wilsoncenter.org/sites/default/files/MEP_election.pdf

Human Rights Watch, *Access Denied: Iran's Exclusionary Elections* (12 June 2005), available at: <http://www.hrw.org/reports/2005/06/12/access-denied-iran-s-exclusionary-elections>

Human Rights Watch, *Codifying Repression: An Assessment of Iran's New Penal Code* (August 28 2012), available at: <http://www.hrw.org/node/109622/section/9>

Human Rights Watch, *Iran: Threats to Free, Fair Elections* (24 May 2013) available at: <http://www.hrw.org/news/2013/05/24/iran-threats-free-fair-elections>

International Federation for Human Rights and the Iranian League for the Defence of Human Rights, *Submission to the Human Rights Committee on the Islamic Republic of Iran's Compliance with ICCPR* (17 October – 4 November 2011), available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/FIDH-LDDHI_Iran_CCPR103.pdf

Iran Human Rights Documentation Center, *Deadly Fatwa: Iran's 1988 Prison Massacre* (2009) available at: <http://www.iranhrdc.org/english/publications/reports/3158-deadly-fatwa-iran-s-1988-prison-massacre.html#.UTP04KUWgE>

Iran Human Rights Documentation Center, *Violent Aftermath: the 2009 Election and Suppression of Dissent in Iran* (2010), available at: <http://www.iranhrdc.org/english/publications/reports/3161-violent-aftermath-the-2009-election-and-suppression-of-dissent-in-iran.html#.UTQBpaUiWgE>

Yasmin Alem, *Duality by Design: The Iranian Electoral System* (International Foundation for Electoral Systems, 2011), available at: http://www.ifes.org/~media/Files/Publications/Books/2011/Duality_by_Design_The_Iranian_Electoral_System.pdf

News Media

A. Ansari, *Has Iranian Regime Learned Nothing From the 2009 Election Fiasco?* (CNN, 28/05/2013) available at: <http://edition.cnn.com/2013/05/27/opinion/opinion-ansari-iran-election/>.

Aida Ghajar, 'Amir Arjomand Mousavi's Senior Adviser "If the Status Quo Continues, Participation in the Elections Is A Strategic Mistake"' *Jaras* (7 August, 2010), available at: <http://www.rahesabz.net/story/40900/>

Ali Kheradpir, *Election Law Change Mooted*, *Peyvand Iran News* (13 March 2010), available at: <http://www.payvand.com/news/10/mar/1120.html>

'The Legal Framework for Vetting Candidate,' *Aftab News* (16 January 2008), available at: <http://www.aftabnews.ir/vdcauon49anoi.html>

Feminist School, 'Never Mind Women Ministers, Where are the Women's Votes?' (29 September, 2009), available at: http://www.sssup.it/UploadDocs/7322_7_S_Never_Mind_Women_Ministers_Where_are_the_Women_s_Votes_Awid_07.pdf

Frederick Kagan, 'Political Structures of Iran,' *Iran Tracker*, available at: <http://www.irantracker.org/basics/political-structures-iran>

Homeyra Mokhtarzadeh, 'A Primer on Iran's Presidential Election System,' *ace The Electoral Knowledge Network*, available at: <http://aceproject.org/today/feature-articles/a-primer-on-iran2019s-presidential-election-system>

'Full text of Guardian Council report on Iran presidential election,' *BBC Monitoring Middle East* (18 July 2009), available at: <http://www.iranaffairs.com/files/document.pdf>

International Federation for Human Rights, *Iran: confiscated election, FIDH and LDDHI fear a bloody repression* (15 June 2009), available at: <http://www.fidh.org/Iran-confiscated-election-FIDH-and>

'Iranian court bans two leading opposition parties,' *BBC News* (27 September 2010), available at: <http://www.bbc.co.uk/news/world-middle-east-11421538>

Jamshid Barzegar, 'Presidency of Women: Need for a new interpretation of political rejāl,' *BBC Persian* (24 October, 2004), available at: http://www.bbc.co.uk/persian/iran/story/2004/10/041024_mj-jb-women-president.shtml.

Kaveh-Cyrus Sanandaji, 'Ethnic Politics and the Tenth Presidential Election,' *The National Democratic Institute* (21 May, 2009), available at: <http://www.ndi.org/node/15471>

Masih Alinejad, 'Iranian Women and the Kindness of the Presidential Candidates,' *National Democratic Institute* (21 May 2009), available at: <http://www.ndi.org/node/15461>

Mehrangiz Kar, 'Political Participation in Iran: From the Constitutional Revolution to the Present,' *Gozar: A Forum on Human Rights and Democracy in Iran* (1 February, 2007) available at: <http://www.gozaar.org/english/articles-en/Political-Participation-in-Iran.html>

Mehrangiz Kar, 'The Advisory Role of the Guardian Council,' *Gozar: A Forum on Human Rights and Democracy in Iran* (13 February, 2010), available at: <http://www.gozaar.org/english/articles-en/The-Advisory-Role-of-the-Guardian-Council.html>

Nagah Mohamed Ali, 'Iran's ethnic minorities key issue in elections,' *Alarabiya* (23 May, 2009), online: http://www.alarabiya.net/save_pdf.php?cont_id=73553

Nayereh Tohidi, 'Women and the Presidential Elections: Iran's New Political Culture,' *Informed Comment* (April 9, 2009), available at: <http://www.juancole.com/2009/09/tohidi-women-and-presidential-elections.html> [accessed on November 20, 2012].

Peyman Majidzadeh, 'The Guardian Council: The Keystone of a Theocratic System,' *IITPCM International Commentary* (April 2012), available at:

http://www.sssup.it/UploadDocs/14647_12_F_The_Guardian_Council_Peyman_Majidzadeh.pdf

Reporters Without Borders, *'An election without free flow of news and information is not democratic'* (14 June 2009), available at: www.rsf.org/An-election-without-free-flow-of.html

The New York Times, 'Iran Advises Self-Censorship' (29 April 2008) available at: http://www.nytimes.com/2008/04/29/arts/29arts-IRANADVISESS_BRF.html?_r=0.

Vick, K., *Iran's Supreme Leader Tightens Grip After Disqualifying Two Top Presidential Candidates* (Time World, 22/05/2013) available at: <http://world.time.com/2013/05/22/irans-supreme-leader-tightens-grip-after-disqualifying-two-presidential-candidates/>

Dehghan, S., *Iran Election: Rafsanjani Blocked From Running for President* (The Guardian, 21/05/2013) available at: <http://www.theguardian.com/world/2013/may/21/iran-presidential-election-rafsanjani-disqualified>