



Fédération Internationale des Ligues des Droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,
ET DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

INTERNATIONAL FEDERATION
OF HUMAN RIGHTS

FEDERACION INTERNACIONAL
DE LOS DERECHOS HUMANOS

الفدرالية الدولية لحقوق الانسان

Paris, 1st December 2003

Re : FIDH assessment of the EU/Iran human rights dialogue

Dear Members of the COHOM,

Last year, the European Union decided to engage into a human rights dialogue with the Islamic Republic of Iran. The FIDH has been following the whole process very closely from the outset. The FIDH sent its assessment of the human rights situation in Iran to the EU in September 2002 (see www.fidh.org/communiq/2002/ir2309a.htm), in advance of the launch of the dialogue. Since one year, three sessions of the human rights dialogue have taken place and the FIDH had the opportunity to participate in those three sessions.

After each session, we issued a press release indicating our assessment of the meeting. However, our organisation would like to share with the EU a more in-depth analysis of the dialogue as a whole, which might feed the discussions among member states about the continuation of the human rights dialogue and its articulation with initiatives at the next session of the UN Commission on Human Rights.

The EU guidelines on the Human Rights dialogues (December 2001) specify that “the task [of assessing the dialogue once a year] will involve assessing the situation in relation to the objectives which the Union set itself before initiating the dialogue, and will examine how much added value has been provided by the dialogue. The examination will look particularly closely at the progress made on the priority areas of the dialogue. If progress has indeed been made, the assessment should, if possible, analyse how far the European Union's activities have contributed to that progress. If no progress has been made, the European Union should either adjust its aims, or consider whether or not to continue the human rights dialogue with the country concerned”.

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The Council Conclusions of 13 October 2003 indeed decided that “a review of the EU/Iran human rights dialogue should be carried out along the lines envisioned in the EU Guidelines on human rights dialogues” (Council Conclusions, para. 2).

The EU benchmarks on the basis of which the dialogue is to be assessed have not been made public. The present assessment will consequently address the main issues which, according to the FIDH, are indicators of the human rights situation on the ground. However, the FIDH considers that those benchmarks should be made public and progress achieved be regularly discussed before the European Parliament.

We would also like to take this opportunity to reiterate our call for the participation of representatives of effectively independent NGOs on the Iranian side, and in particular those of the Center of human rights defenders in Iran. We also believe that the EU should try and ensure participation of representatives of the Council of Guardians and the Office of the Supreme Leader.

We hope that the present submission will be helpful to the EU in the framework of the assessment of its human rights dialogue with Iran.

Sincerely yours

Sidiki Kaba
President

Karim Lahidji
Vice-President of the FIDH
and President of the LDDHI



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**ASSESSMENT OF THE EU/IRAN HUMAN RIGHTS DIALOGUE
NOVEMBER 2003**

- I. *Signing, ratification and implementation of international human rights instruments*
- II. *Cooperation with international human rights procedures and mechanisms*
- III. *The Death Penalty and other inhuman and degrading treatment*
- IV. *Right to a Fair Trial*
- V. *Status of Ethnic and Religious Minorities*
- VI. *Freedom of opinion and expression*
- VII. *Forthcoming parliamentary election*

- *Signing, ratification and implementation of international human rights instruments*

Ratification of international human rights instruments is an indicator of the will of the country concerned to engage into progress on human rights. It is of course only a first step, which must necessarily be followed by the cooperation with the UN treaty bodies and by the implementation of the instrument ratified in domestic law and in practice. Unfortunately, **no progress have been achieved by Iran in this field.**

One year ago, in advance of the launch of the dialogue, the FIDH insisted on the necessity for Iran to ratify the Convention on the Elimination of All Forms of Discrimination Against Women, including the Optional protocol recognising the competence of the CEDAW to receive and consider individual communications ; the UN Convention against torture

(CAT) ; and the Statute of the International Criminal Court. Those conventions should be ratified without reservations that are incompatible with their aim and object.

The first session of the EU/Iran Human Rights dialogue, which took place in December 2002, focused on the prevention of torture and discrimination. The draft legislation on torture and its necessary compatibility with the CAT have been discussed extensively as well as discrimination against women and the added value of CEDAW ratification. In spite of the hopes raised by the first roundtable and the assurances given by the Iranian side on that occasion, **the laws ratifying the CEDAW and the CAT have been censored by the Council of Guardians last August.** The reason invoked is the incompatibility of the text of those conventions with the principles of Sharia. Such an argument is in clear contradiction with the jurisprudence of CERD and CAT with regard to other Muslim countries.

The legislation on torture has been barred a third time by the Council of Guardians last August. The prospects for the adoption of that text are dim at the moment, in spite of the extensive discussions on that issue which took place on the occasion of the first session of the EU/Iran human rights dialogue.

The Statute of the ICC was signed by Iran on 31 December 2000. Since then, no progress has been achieved with regard to ratification of the Statute. According to the International Coalition for an International Criminal Court, discussions pertaining to ratification of the Rome Statute have taken place in the Cabinet. However, ratification of the Rome Statute has not been considered a priority. The Statute will have to be approved by the Parliament and by the Council of Guardians in order to be ratified, but it has not even been transmitted to the Parliament for the time being. Regarding discussions about the implementation of the Statute in domestic law, officials have stated that the Ministry of Justice and the Office of the Director for Legal Affairs of the Foreign Ministry are conducting a study of the Rome Statute from the perspective of domestic and Sharia law¹. **On the whole, however, there seems to be no progress since the signing of the Rome Statute.**

- Cooperation with international human rights procedures and mechanisms

Cooperation with UN mechanisms is as well an important criteria of the good will of a government to improve its human rights record. **Some progress have been achieved by Iran in that regard, but we fear that they are cosmetic.**

With regard to the UN treaty bodies, the FIDH welcomes the presentation by Iran of its periodic state report to the CERD in November 2002, thus enabling a dialogue between the Iranian authorities and the treaty body last August. Iran also submitted in July 2002 its second periodic report to the Committee on the Rights of the Child, which is to be examined in September 2004. However, Iran has not reported to the ICESCR and ICCPR for almost 10 years.

¹<http://www.iccnw.org/countryinfo/northafricamiddleeast/iran.html>

In addition, delivering the periodic reports is one side of the coin, the other side being the level of implementation of the recommendations and concluding observations adopted by those bodies. However, the last recommendations of the treaty bodies remain largely ignored².

In July 2002, Iran issued a standing invitation to all UN thematic mechanisms. In the wake of that announcement, the UN Working Group on Arbitrary Detention (WGAD) visited Iran in February 2003 and the Special Rapporteur on Freedom of Expression visited Iran from 4 to 10 November 2003.

In its report, the WGAD considers that in terms of access to prisons and prisoners, "cooperation by the authorities was on the whole positive"³. It notes, however, that family members of political prisoners held in Iran were prevented from meeting with the Working Group, and were even arrested (and later released) in violation of the right to peaceful assembly. In addition, Abbas Amir-Entezam, a well-known opposition figure, was arrested after the WGAD left Iran, apparently as a reprisal for having cooperated with the Working group. He was subsequently released for health reasons (he spent more than twenty years in prison in the past). He was operated at the end of October but he might be put back in jail at any moment. Since the visit of the WGAD, persecution of the press has increased with the arrest of several journalists (see below).

The report of the Special Rapporteur on freedom of Expression is not available yet but it seems that the cooperation by the Iranian authorities has been satisfactory.

Discussions are underway to agree a date for a visit by the Working Group on Enforced Disappearances and the Special Rapporteur on Migrants.

In any case, as stressed by the WGAD itself, such visits [of UN Human Rights mechanisms] must be considered "a means not an end, a beginning and not the culmination of a process". Up to now, however, **the recommendations of the WGAD and the CERD have not been implemented, neither have those of the CCPR and the ICESCR. There has been no signal of any efforts to do so.**

- The Death Penalty and other inhuman and degrading treatment

In Iran, the death penalty is implemented for ordinary crimes as well as for crimes of opinions. In violation of article 6.2 of ICCPR ("In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes..."), the death penalty in Iran applies to many offences : the Iranian criminal Code punishes by the death penalty the "fornication of a non-Muslim with a Muslim woman" (art. 82c), "fornication of a single for the fourth time, each preceding time having been condemned to 100 lashing" (art. 90), homosexuality (art. 110), "consumption of alcohol for the third time, each preceding time having been condemned to 80 lashes" (art. 179), armed robbery (art. 185), blasphemy (art. 513), etc.

² E/C.12/1993/7, CCPR/C/79/Add.25 and CERD/C/63/CO/6

³ E/CN.4/2004/3/Add.2, para 31.

The death penalty is carried out for crimes committed by minors, in violation of art. 37 of the Convention on the Rights of the Child, and in spite of the recommendations formulated by the UN Committee on the rights of the Child (CRC/C/15/Add.123, 28 June 2000, para. 30) : "The Committee strongly recommends that the State party take immediate steps to halt and abolish by law the imposition of the death penalty for crimes committed by persons under 18". In addition, the death penalty is inflicted through hanging and beheading in public (art. 101 of the Islamic Criminal Code) as well as through death by stoning (art. 83 of the Islamic Criminal Code).

No measure have been taken by the Iranian authorities to ensure that capital punishment is not imposed for crimes other than the most serious, as requested by the International Covenant on Civil and Political Rights.

With regard to corporal punishments, (in particular amputation, flogging and stoning), the Iranian delegation to the first session of the EU/Iran human rights dialogue affirmed that those sanctions are foreseen by the Sharia and won't be prohibited in Iran, even if the UN Convention against torture is ratified in the future. However, the delegation committed to adopt a de fact moratorium on the death by stoning.

With regard to the death by stoning, a decree was adopted by the Judiciary in order to adopt a moratorium on the death by stoning. However, such a decision can be reversed at any moment : it should be enshrined in a law adopted by the Parliament. To our knowledge, no condemnation to the death by stoning have been executed in 2003.

According to Amnesty International, in 2002, at least 113 people, including six women, were executed, many in public. At least two people were reportedly executed by stoning and at least one execution was broadcast on television. At least 84 people were flogged. The true numbers of executions and floggings may have been considerably higher. Political organizations, for example, reported that 450 people were executed in 2002.

Up to 25 October 2003, Amnesty International had recorded 98 executions in Iran this year. Amnesty specifies that in a 4 November 2003 report on human rights violations, the Iran-based Emrooz website reported that over the month of October, there has been a considerable increase in death sentences and amputation. Its report cited 13 executions from late August to mid-October, along with three convictions to amputation.

- Right to a Fair Trial

The second session of the EU/Iran HR dialogue, in March 2003, focused on the themes of fair trial and the rule of law.

If the reestablishment of the function of prosecutor in February 2003 in the judicial system was a positive step, **the appointment of Mr Mortazavi as the Attorney-General of Tehran is extremely preoccupying**. Mr Capithorne, the UN Special Representative on Iran, had already acknowledged that Mr Mortazavi was responsible for the closure of

newspapers in 2000 and for the arrest of editors and journalists, for the arrest of lawyers who had legitimately exercised their profession as well as for the arrest of the intellectuals who had participated in the conference in Berlin. The WGAD qualifies that appointment as “questionable and questioned”⁴. The FIDH has called for the suspension of Mr Mortazavi from his functions⁵.

The FIDH would like to stress that Mr Mortazavi is responsible for the repression against the pacific protests of last June and he had authority on the detention center of the Guardians of the Revolution where Mrs Kazemi would have been tortured. The involvement of the Prosecutor of Tehran in the death of Ms Khazemi is clearly evidenced in the Article 90 Commission's report relating to that case⁶.

In that regard, the resolution recently adopted by the Third Committee of the UN general Assembly asks to the government of Iran to appoint a prosecutor who is impartial (para 3.e).

In its report, the WGAD notes that it “was struck by the absence of a culture of counsel which seriously undermines due process”. According to the WGAD, this is partly explained by the fact that criminal proceedings are “concentrated in the hands of a single person since the judge prosecutes, investigates and decides the case” (para 49). According to the Working Group, the repression exerted against the lawyers “for having, as a legitimate part of their role as defence counsel, drawn the attention of the court to the ill-treatment suffered by their clients or malfunctions in the system of justice” also contributes to that situation.

In that regard, it should be noted that **Mr Nasser Zarafchan is still in prison**. On 18 March 2002, Mr. Nasser Zarafchan, lawyer of Mrs. Sima Pouhandeh, the widow of Mohammed Djafar Pouhandeh, (writer and human rights defender, assassinated in 1998) was sentenced by the Military Tribunal of Teheran, to three years imprisonment for “possession of firearms and alcohol” and to another 2 years imprisonment for declarations made during a press interview on the issue of the assassination of Iranian intellectuals, and to 50 lashes. Mr. Zarafchan’s trial before the Military Tribunal of Tehran had begun on November 3, 2001. Mr. Zarafchan appealed against the decision of the Tribunal. On 15 July 2002, the Teheran Military Court confirmed the first decision. As the appeal before the Supreme Court was not suspensive, Mr Zarafchan could from then be imprisoned at any time. On 7 August 2002, Mr. Nasser Zarafchan was eventually arrested. He is now detained in Evin prison and the several requests for a suspension of his sentence for health reasons have been rejected. The Supreme Court dismissed his appeal on 25 November 2003.

The Working Group made specific recommendations with regard to the immunity of counsel in pleading cases, the active involvement of counsel from the outset of the procedure and during all stages, as well as access to legal aid. **No action has been taken in that regard by the Iranian authorities.**

⁴Para 64.

⁵<http://www.fidh.org/communiq/2003/ir1807f.htm>

⁶Report N° 1 from the Constitution Article 90 Commission concerning “Inquiry into File M4529 regarding the causes and perpetrators of the killing of Iranian photojournalist Ms Zahra Khazemi”, à la suite de la plainte introduite le 9 juillet 2003 par la mère de la victime.

- Status of Ethnic and Religious Minorities

The situation of those minorities is particularly preoccupying. Christian, Baha'i and sometimes Sunni minorities are victims of discrimination. Bahai's are notably discriminated in the fields of higher education (secondary schools and universities), confiscation of properties or religious buildings, imprisonment and restrictions on freedom of movement. A number of legal provisions in the Constitution, the Penal Code and the Civil Code explicitly discriminate against all non-Muslim⁷.

Article 12 of the Constitution of the Islamic Republic of Iran states:

“The official religion of Iran is Islam and the Twelver Ja’fari school, and this principle will remain eternally immutable. Other Islamic schools are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites. These schools enjoy official status in matters pertaining to religious education, affairs of personal status (marriage, divorce, inheritance, and wills) and related litigation in courts of law. [...]”

Despite the existence of a specific status for three recognized religious minorities (Zoroastrians, Jews and Christians) in the Constitution, they face severe discrimination. A number of legal provisions discriminate *per se* against all non-Muslims. In addition, Zoroastrians, Jews and Christians are only free to perform their religion “*within the limits of the law*”, the authorities have imposed in practice important limits to their right to exercise their religion. Conversion from Islam to one of the three recognized religions (apostasy) may still be punishable by death. Moreover, all three minorities complain of discrimination in the field of employment, report clear limitations imposed upon their upward mobility and complain of being treated like “second-class citizens”.

As a consequence of Articles 12 and 13 of the Constitution, citizens of the Islamic Republic of Iran are officially divided into four categories: Muslims, Zoroastrians, Jews and Christians.

Therefore, despite the fact that they constitute the largest religious minority in Iran (about 300 000 members), the Bahá’ís are a “non-recognized” religious minority without any legal existence, classified as “unprotected infidels” by the authorities. They are not even granted the theoretical right to perform their religion and are subject to systematic discrimination on the basis of their religious beliefs. In addition, it should be noted that on the occasion of the first session of the EU/Iran human rights dialogue, the Iranian side said clearly that the situation of the Bahá’ís could not be discussed since they constitute a sect...

In the same manner, atheists do not have any recognized status. They must declare their faith in one of the four officially recognized religions in order to be able to claim a number of legal rights, such as the possibility to apply for the general examination to enter any university in Iran.

⁷See FIDH report on Discrimination against religious minorities in Iran, August 2003 - <http://www.fidh.org/asia/rapport/2003/ir0108a.pdf>

In August 2003, the CERD took note “with concern of the reported discrimination faced by certain minorities, including the Baha'is” and notably recommended "that the State party ensure that all persons enjoy their right to freedom of thought, conscience and religion, without discrimination based on race, colour, descent, or national or ethnic origin”⁸.

Up to now, the recommendations issued by the CERD have not been implemented. The FIDH is not even aware that the observations of the Committee have been made readily available to the public in all minority languages, as requested by the CERD⁹.

- Freedom of opinion and expression

The third session of the EU/Iran human rights dialogue, which took place last October, focussed on the themes of freedom of opinion and expression as well as the right to development. On that occasion, the FIDH transmitted to the EU a briefing note on freedom of expression in Iran, stressing the very serious violations of that right (see <http://www.fidh.org/asie/rapport/2003/ir1509a.pdf>).

In the report published after its visit to Iran, the WGAD stresses that “prisoners of conscience are punished twice over. Many of them have, on the one hand, simply peacefully exercised their fundamental right to freedom of opinion and expression and, on the other, have been unable to benefit in most cases from the guarantees which are essential to the right to fair trial... solutions must be sought to bring about their release in the near term”¹⁰. (emphasis added)

However, in spite of that clear request, **many journalists and intellectuals are still in prison**. Several of those who have been arrested after the visit of the WGAD and are still in prison :

- Iraj Jamshidi
- Behzad Zarinpour
- Abbas Abdi
- Ali-Reza Jabbari, condemned to four years in prison
- Syamak Pourzand, whose detention had already been considered arbitrary by the WGAD in May 2003.
- Reza Alidjani, Taghi Rahmani and Hoda Rezazadeh-Saber had been condemned to heavy sentences on 10 May by the Revolutionary Tribunal of Tehran after an unfair trial and were waiting for the judgement on appeal. They were arrested on 14 and 15 June 2003. They are among the 15 intellectuals who participated in the Berlin conference in April 2000, where were discussed reforms in Iran, and were condemned to heavy sentences on 10 May 2003 by the Revolutionary Tribunal of Tehran.
- Alireza Ahmadi is in prison since last July.

⁸CERD/C/63/CO/6, 15 August 2003, para 14

⁹Ibid, Para 21.

¹⁰Para 65.3

In addition, two other journalists are in prison since the year 2000 :

- Akbar Ganji, of the daily *Sobh-é-Emrooz*, arrested on 22 April 2000, sentenced to ten years in jail in January 2001 and still detained. He was accused of revealing details on the murder of intellectuals and regime opponents in late 1998 and of accusing politicians of being involved.
- Hassan Yussefi Eshkevari, arrested in August 2000 and condemned to seven years in prison in October 2002 .

Hossein Ghazian, a journalist at *Norooz*, is imprisoned since October 2002.

Another intellectual, Hachem Aghajari, writer and academic, was condemned to the death penalty in November 2002 because he had criticised a speech by the cleric. He is still in prison, since the sentence has been reduced to a three years prison term.

It should also be noted that several tens of students are still in prison in connection with the protests of 1999; this is notably the case of Ali Afchari, Ahmad Batebi, Manoutchehr Mohammadi and Akbar Mohammadi).

In June 2003, **pacifist protests in favour of democratic reforms in Iran were violently repressed** by armed groups linked to the Hezbollah with the complicity of the armed forces. Militia groups, known as the “Basiji” militia spread terror among the protesters. Fully devoted to the Supreme Guide of the Revolution, Ayatollah Ali Khamenei, they follow the orders of the Attorney-General of Teheran, Mr Saïd Mortazavi. During the demonstrations, they circulated amongst demonstrators, dressed-up in civilian clothes, on light motorbikes with iron bars. They beat the demonstrators and ravaged the students dormitories. They also proceeded to the “arrestations” or evictions of demonstrators. Demonstrators “re-appeared” then in detention under the auspices of the office of the Attorney-General of Teheran, which proves their link.

Several tens of persons have been injured and at least one student was killed by bullets at the Chiraz University. According to several sources, more than one thousand persons would have been arrested or would have disappeared. Officially, more than 250 protesters were arrested since 10 June 2003, when the protests began. Now, **several hundreds of persons would still be detained ; their number and their identity have not been announced.**

According to the press releases issued by the EU Presidency after the first and the second sessions of the dialogue, the EU Troika presented a list of individual cases in Iran requesting information from the Iranian side. The Council “welcomed the fact that the Iranian side provided information regarding individual cases that the EU had requested”¹¹. However, in light of the number of prisoners of opinion still in jail, this is in no way sufficient to be considered as a progress.

The Center of Human Rights Defenders in Iran, chaired by Chirin Ebadi, was created one year ago. In October 2002, the founding members of the organisation applied for the legal recognition to the authorities but, up to now, they are still waiting for a reply. The Center

¹¹Council Conclusions of 13 October 2003, para. 2.

will be attributed the Human Rights Award of the French Republic in December of this year.

- **Forthcoming parliamentary election**

On February 20, 2004, the parliamentary election will take place.

The current Constitution (art. 99) states that the Council of Guardians observes the elections and reacts *a posteriori* if there is a complaint. However, the interpretation given by the Council of Guardians is the opposite. Since years, the Council of Guardians rejects candidatures to elections. In previous parliamentary elections, several hundreds of candidates, which were approved by the Ministry of Interior, were nevertheless rejected by the Council of Guardians on grounds of being “too at the left” or “not going to the prayers on a Friday”, etc. The system is now of a “restricted list” of candidates, selected in advance of the election, in violation of article 25 of the ICCPR regarding free and fair election.

The Parliament passed a bill to reform the procedure to designate the candidates specifying that the Council of Guardians had no role of pre-selection of the candidates. However, the project was blocked by the Council of Guardians last July. One might well forecast that a vast majority of the current members of the Parliament, who took reformist positions, will be banned from the re-election process through this undemocratic filter.

The description above testifies very clearly that **no progress have been achieved in the field of freedom of opinion and expression in the past year**. People are still jailed for the mere exercise of their right to freedom of expression and the perspectives with regard to the forthcoming election are dim.